

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

IN THE VANDERBURGH CIRCUIT COURT

EVANSVILLE WATER AND SEWER UTILITY,)
Plaintiff)

v.)

CAUSE NO. 82C01-1807-PL-004109

MCCURDY RENAISSANCE, LLC;)
MCCURDY 100 DEVELOPMENT, LLC;)
MCCURDY 100 TENANT, LLC;)
BVFL I FI LLC;)
BMO HARRIS BANK N.A.; and)
ENHANCED CAPITAL HTC FUND I, LLC,)
Defendants)

MCCURDY RENAISSANCE, LLC;)
MCCURDY 100 DEVELOPMENT, LLC; and)
MCCURDY 100 TENANT, LLC,)
Counterclaim Plaintiffs)

v.)

EVANSVILLE WATER AND SEWER UTILITY,)
Counterclaim Defendant)

PLAINTIFF/COUNTERCLAIM DEFENDANT'S
ANSWER TO COUNTERCLAIM AND AFFIRMATIVE DEFENSES

Comes now the Plaintiff/Counterclaim Defendant Evansville Water and Sewer Utility ("EWSU"), and for its Answer to Defendants/Counterclaim Plaintiffs' McCurdy Renaissance, LLC, McCurdy 100 Development, LLC, and McCurdy 100 Tenant, LLC's (herein collectively referred to as the "McCurdy Defendants"), Counterclaim and Affirmative Defenses, states as follows:

1. Defendant/Counterclaim Plaintiff, McCurdy 100 Development, LLC, ("Owner") owns title to real estate located at 101 S.E. First Street, Evansville, Indiana 47708 (the "McCurdy Building").

ANSWER: EWSU admits the allegations in paragraph 1 of the McCurdy Defendants' Counterclaim.

2. Owner is in the business of renting space to residential and commercial tenants in the McCurdy Building.

ANSWER: EWSU is without sufficient information to admit or deny the allegations contained in paragraph 2 of the McCurdy Defendants' Counterclaim.

3. As early as October 6, 2018, EWSU and/or its agents knowingly, willfully and maliciously made false statements as to the legality and/or amounts of water being discharged from the McCurdy Building into the City's storm water system.

ANSWER: EWSU denies the allegations in paragraph 3 of the McCurdy Defendants' Counterclaim.

4. As early as October 6, 2018, EWSU and/or its agents made false statements as to the amount of fees it should have been paid as a result of the water being discharged from the McCurdy Building into the City's storm water system.

ANSWER: EWSU denies the allegations in paragraph 4 of the McCurdy Defendants' Counterclaim.

5. On or about March 13, 2018, Plaintiff filed false liens against the McCurdy Building, knowingly, willfully and maliciously alleging false amounts from McCurdy to Plaintiff.

ANSWER: EWSU denies the allegations in paragraph 5 of the McCurdy Defendants' Counterclaim.

6. Plaintiff's claims of lien were filed without basis and with the malicious intent of extracting payment from Owner.

ANSWER: EWSU denies the allegations in paragraph 6 of the McCurdy Defendants' Counterclaim.

7. As a result of EWSU's slander of Owner's title to the McCurdy Building, Owner has suffered special damages including but not limited to a) loss of renewal of existing residential leases; b) loss of new residential leases; and c) loss of commercial leases.

ANSWER: EWSU denies the allegations in paragraph 7 of the McCurdy Defendants' Counterclaim.

WHEREFORE, Plaintiff Evansville Water and Sewer Utility respectfully requests that Defendants/Counterclaim Plaintiffs, McCurdy Renaissance, LLC, McCurdy 100 Development, LLC, and McCurdy 100 Tenant, LLC, take nothing by way of their Counterclaim and that judgment be entered in favor of Plaintiff/Counterclaim Defendant and against Defendants/Counterclaim Plaintiffs on the Counterclaim and for all other relief just and proper in the premises.

AFFIRMATIVE DEFENSES

1. EWSU, at all relevant times, including in the recording of its sewer lien, acted in good faith.
2. McCurdy Defendants' counterclaim fails to state a claim upon which relief can be granted.
3. McCurdy Defendants' counterclaim is barred by the doctrine of laches, waiver, and estoppel.
4. McCurdy Defendants' counterclaim is barred by the doctrine of unclean hands.
5. McCurdy Defendants' damages were caused by the acts of persons and entities other than EWSU.
6. McCurdy Defendants' damages, if any, are the result of acts or omissions of the McCurdy Defendants or third parties and are in no way attributable to any wrongdoing on the part of EWSU.
7. McCurdy Defendants failed to mitigate their damages, if any.

8. EWSU reserves the right to amend these affirmative defenses as discovery progresses.

Respectfully submitted,

ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP

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**CERTIFICATE OF SERVICE AND
COMPLIANCE WITH ADMINISTRATIVE RULE 9(G)**

I hereby certify that the foregoing or attached Court Record or document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9(G). I further certify that on the 2nd day of October, 2018, a true and complete copy of the foregoing document was served upon the foregoing electronically via the Court's electronic filing system:

Krista B. Lockyear
kbl@lockyearlaw.com

and via U.S. mail to:

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/s/ Clifford R. Whitehead
Clifford R. Whitehead