

JUDICIAL DISTRICT COURT - SUMMIT

2009 APR 28 AM 8:53

FILED BY



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**IN THE JUDICIAL DISTRICT COURT
SUMMIT COUNTY, STATE OF UTAH**

**THE ONTARIO COURT DRIVEWAY
ASSOCIATION**, a Utah non-profit
Corporation,

Plaintiff,

v.

**PARK CITY MUNICIPAL
CORPORATION**, a Utah Municipal
Corporation, **PARK CITY COUNCIL**, in its
capacity as the park City Council, **PARK
CITY FIRE SERVICE DISTRICT**, a Utah
Special Service District,

Defendants.

**ANSWER OF PARK CITY FIRE
SERVICE DISTRICT**

Case No. 080500834
Judge Bruce Lubeck

Defendants Park City Fire Service District ("PCFSD"), by and through its counsel, Wrona Law Offices, P.C., hereby answer Plaintiffs The Ontario Court Driveway Association's ("Ontario Court") Petition for Review & Complaint for Declaratory & Injunctive Relief ("Complaint") as follows:

FIRST DEFENSE

Ontario Court's Complaint, and each count thereof, fails to state a claim as to PCFSD upon which relief can be granted.

SECOND DEFENSE

PCFSD admits, denies and alleges as follows:

1. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 1, 2 and 3 of the Complaint, and therefore denies the same.

2. PCFSD admits the allegations contained in Paragraphs 4, 5 and 6 of the Complaint.

3. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Complaint, and therefore denies the same. Further, PCFSD avers that the documents identified or referred to in Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Complaint speak for themselves. To the extent that the allegations contained in Paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the Complaint exceed the information contained in the documents identified or referred to, PCFSD denies the same.

4. PCFSD avers that the documents identified or referred to in Paragraphs 31, 32, 33, 34, 35 and 36 of the Complaint speak for themselves. To the extent that the allegations contained in Paragraphs 31, 32, 33, 34, 35 and 36 of the Complaint exceed the information contained in the documents identified or referred to, PCFSD denies the same.

5. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 37, 38 and 39 of the Complaint, and therefore denies the same. Further, PCFSD avers that the documents identified or referred to in Paragraphs 37, 38 and 39 of the Complaint speak for themselves. To the extent that the allegations contained in Paragraphs 37, 38 and 39 of the Complaint exceed the information contained in the documents identified or referred to, PCFSD denies the same.

6. Paragraph 40 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

7. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 41, 42, 43, 44, 45 and 46 of the Complaint, and therefore denies the same.

8. Paragraph 47 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

9. The allegations contained in Paragraph 48 of the Complaint constitute a legal conclusion which requires no response from PCFSD.

10. Answering the allegations contained in Paragraph 49 of the Complaint, PCFSD denies that a dispute exists between Ontario Court and PCFSD, and is without knowledge as to the truthfulness of the remainder of the allegations contained in Paragraph 49 of the Complaint, and therefore denies the same.

11. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 50 and 51 of the Complaint, and therefore denies the same.

12. Paragraph 52 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

13. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 53, 54, 55, 56, 57 and 58 of the Complaint, and therefore denies the same.

14. Paragraph 59 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

15. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 60, 61, 62, 63, 64, 65, 66 and 67 of the Complaint, and therefore denies the same.

16. Paragraph 68 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

17. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 69, 70, 71, 72, 73, 74, 75, 76, 77 and 78 of the Complaint, and therefore denies the same.

18. Paragraph 79 of the Complaint constitutes an incorporation and re-allegation of prior allegations, which requires neither an admission nor a denial from PCFSD.

19. PCFSD is without knowledge as to the truthfulness of the allegations contained in Paragraphs 80, 81, 82, 83, 84, 85, 86, 87 and 88 of the Complaint, and therefore denies the same.

20. PCFSD denies each and every allegation contained in the Complaint which has not been specifically and directly admitted, including but not limited to the allegations in the General Allegations, First Claim for Relief, Second Claim for Relief, Third Claim for Relief, Fourth Claim for Relief, Fifth Claim for Relief, Sixth Claim for Relief and Prayer for Relief, all is set forth in that document.

THIRD DEFENSE

Ontario Court's recovery is barred by one or more of the following affirmative defenses: estoppel, laches, waiver, public policy, statute of limitations, license, acquiescence, election of remedies, conditions precedent and subsequent, and failure to mitigate damages, if any.

FOURTH DEFENSE

Ontario Court failed to properly serve PCFSD with a notice of claim as required by UTAH CODE ANN. § 63G-7-401. That failure precludes Ontario Court from pursuing its claims.

FIFTH DEFENSE

PCFSD is a special service district of the State of Utah and is not affiliated with Park City Municipal Corporation or the Park City Council. As such, PCFSD had no involvement in the approval of the Marsac Subdivision or in the dedication of the Ontario Court Driveway for use by emergency vehicles. On that basis, PCFSD is an improper party to this action.

SIXTH DEFENSE

PCFSD has no administrative or enforcement duties or authority under the Park City Land Management Code or the Park City Fire Code.

SEVENTH DEFENSE

The allegations contained in the Complaint which summarize or make reference to documents incorrectly state the content and/or intent of those documents.

EIGHTH DEFENSE

If Ontario Court suffered any injury, loss and/or damage (and PCFSD denies that Ontario Court did suffer any injury, loss and/or damage) such injury, loss and/or damage would have been solely and proximately caused by actions and/or omissions of persons or entities other than PCFSD.

NINTH DEFENSE

PCFSD has attempted to persuade Ontario Court to dismiss this action as against PCFSD. However, Ontario Court refused to do so. Where the allegations named in the Complaint constitute the type of frivolous actions identified in UTAH CODE ANN. § 78B-5-825, PCFSD is entitled to his attorney's fees and costs expended in defending against the Complaint.

TENTH DEFENSE

Where the Ontario Court plat map shows that there are fire hydrants and fire service access points located along the Ontario Court Driveway, Ontario Court is estopped from claiming that the driveway was not intended for use by emergency vehicles.

ELEVENTH DEFENSE

Ontario Court is vindicating its own purposes in this action and not a strong or societally important public policy and thus is not entitled to an award of attorney's fees as a private attorney general.

TWELFTH DEFENSE

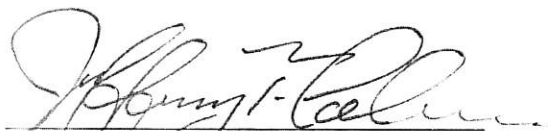
The public easement of record on the Ontario Court Driveway encompasses use of that driveway by emergency vehicles.

THIRTEENTH DEFENSE

PCFSD may have additional defenses, including, but not limited to, additional affirmative defenses not known to it, but which may be discovered during the course of these proceedings. PCFSD does not waive such defenses and specifically asserts them hereby, reserving the right to amend to plead those defenses as they become known. PCFSD further reserves the right to counterclaim, cross claim and bring third party complaints where appropriate.

DATED this 22nd day of April, 2009.

WRONA LAW OFFICES, P.C.



Jeffery P. Colemere
Attorney for Park City Fire Service District

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April, 2009, I caused to be served via U.S. first class mail, postage prepaid, a true and correct copy of the foregoing **ANSWER OF PARK CITY FIRE SERVICE DISTRICT** upon the following:

Joseph E. Tesch
Stephanie K. Matsumura
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Gwen Mortensen