

DOCKET NO.: X07-HHD-CV-18-6090558-S

WILLIAM & LAURIE PAETZOLD;	:	SUPERIOR COURT
ANDREW PINKOWSKI	:	
	:	COMPLEX LITIGATION DOCKET
V.	:	AT HARTFORD
	:	
METROPOLITAN DISTRICT COMMISSION	:	MARCH 1, 2019

**DEFENDANT METROPOLITAN DISTRICT COMMISSION’S
ANSWER AND SPECIAL DEFENSES TO AMENDED COMPLAINT**

Pursuant to Practice Book § 10-46 *et seq.*, Defendant Metropolitan District Commission (“MDC”) hereby answers Plaintiffs’ Amended Complaint (the “Complaint”) and asserts the following special defenses:

Introduction

In response to the allegations under the heading “INTRODUCTION,” MDC admits that it has charged a non-member town surcharge to certain customers in East Granby, Farmington, Glastonbury, and South Windsor. MDC further admits that the Connecticut Supreme Court issued a decision in a case captioned *Town of Glastonbury v. Metropolitan District Commission* on or about March 6, 2018, and avers that the Supreme Court decision and Superior Court decision referenced in Plaintiffs’ allegations speak for themselves. MDC denies that Plaintiffs’ allegations constitute a complete or accurate description of the referenced court decisions. MDC avers that no response is required to Plaintiffs’ allegation that they intend to bring this case as a class action. MDC denies that Plaintiffs are entitled to bring any claims on behalf of a class and

denies that Plaintiffs or any putative class members are entitled to any relief. MDC denies all of the remaining allegations under the heading “INTRODUCTION.”

THE PARTIES¹

1. Admitted that the MDC is a specially chartered municipal corporation, established in 1929 by the Connecticut General Assembly, with its headquarters in Hartford, Connecticut.

Denied that the MDC is a “quasi-municipal corporation.”

2. Admitted.

3. Admitted.

4. Admitted that East Granby, Farmington, Glastonbury and South Windsor are considered non-member towns of the MDC.

5. Admitted that the MDC provides water service to approximately 9,000 homes and businesses in the non-member towns. The allegation that the MDC does not provide sewer service to any non-member town customers is denied.

6. The allegations in Paragraph 6 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 6.

7. The allegations in Paragraph 7 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 7.

8. MDC admits that Plaintiffs William and/or Laurie Paetzold have made some payments to the MDC for water service at various times. MDC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8, and leaves Plaintiff to their proof.

¹ Headings in the Amended Complaint are included in this Answer for the convenience of the reader. Any factual allegations in the headings are denied.

9. MDC admits that Plaintiff Andrew Pinkowski has made some payments to the MDC for water service at various times. MDC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9, and leaves Plaintiff to their proof.

MDC'S WRONGFUL SURCHARGE

10. Denied.

11. MDC admits that it believed that it believed that it had a legal right to charge the Surcharge. The remaining allegations in Paragraph 11 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the remaining allegations in Paragraph 11 as stated.

12. Denied.

13. MDC admits that the Connecticut Supreme Court issued a decision in a case captioned *Town of Glastonbury v. Metropolitan District Commission* on or about March 6, 2018. MDC further states that the Connecticut Supreme Court's opinion issued in that case speaks for itself. MDC denies any remaining allegations in Paragraph 13 as stated.

14. MDC states that the Connecticut Supreme Court's opinion referenced in Paragraph 14 speaks for itself. MDC denies any remaining allegations in Paragraph 14 as stated.

15. The allegations in Paragraph 15 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 15 as stated.

CLASS ACTION ALLEGATIONS

16. The allegations in Paragraph 16 describe the intent to bring a class action and purport to define the proposed "class," and therefore no response is required. To the extent that a

response is required, MDC denies the allegations, denies that Plaintiffs are entitled to bring any claims on behalf of a class, denies that Plaintiffs are entitled to certification of the proposed class, and denies any factual allegations in Paragraph 16.

17. The allegations in Paragraph 17 describe a reservation of a purported right to modify or amend the definition of the proposed “class,” and therefore no response is required. To the extent that a response is required, MDC denies the allegations, denies that Plaintiffs are entitled to bring any claims on behalf of a class, denies that Plaintiffs are entitled to certification of the proposed class, denies that Plaintiffs have any unfettered right to modify or amend their proposed class definition, and denies any factual allegations in Paragraph 17.

18. The allegations in Paragraph 18 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 18.

19. The allegations in Paragraph 19 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 19.

20. The allegations in Paragraph 20 constitute legal conclusions to which no response is required. To the extent a response is required, MDC lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, and leaves Plaintiffs to their proof.

21. The allegations in Paragraph 21 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 22.

23. The allegations in Paragraph 23 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 23 as stated.

COUNT 1: BREACH OF CONTRACT

24. The allegations in Paragraph 24 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 24.

25. Denied.

26. The allegations in Paragraph 26 constitute legal conclusions to which no response is required. To the extent a response is required, MDC denies the allegations in Paragraph 26 as an incomplete statement of applicable law.

27. Denied.

28. Denied.

29. Denied.

COUNT 2: BREACH OF GOOD FAITH AND FAIR DEALING

30-41. As Count Two has been stricken by the Court, no response is required. *See* Order (Doc. No. 118.86); Memo. of Decision (Doc. No. 125.00).

MDC avers that no response is required to the prayer for relief that follows Count 2. To the extent a response is required, the allegations in the Prayer for Relief are denied, and MDC denies that Plaintiffs are entitled to any of the relief sought.

SPECIAL DEFENSES

FIRST SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred, in whole or in part, by the applicable statute of limitations, including the limitations period set forth in Conn. Gen. Stat. §§ 52-576 and/or 52-581.

SECOND SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred, in whole or in part, by laches.

THIRD SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred, in whole or in part, by the doctrines of estoppel and/or waiver.

FOURTH SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred, in whole or in part, by the voluntary payment doctrine.

FIFTH SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of members of the putative class are barred, in whole or in part, by the statute of frauds, Conn. Gen. Stat. § 52-550, to the extent that the alleged agreement was not to be performed within one year from the making thereof, and/or to the extent that the agreement concerns an interest in real property.

SIXTH SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred by governmental immunity.

SEVENTH SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred by the filed rate doctrine.

EIGHTH SPECIAL DEFENSE TO COUNT 1

Plaintiffs' claims and those of the members of the putative class are barred, in whole or in part, by the doctrine of setoff and recoupment to the extent that Plaintiffs and/or members of the putative class owe money to the MDC.

NINTH SPECIAL DEFENSE TO COUNT 1

To the extent Plaintiffs and/or members of the putative class are entitled to any recovery, which is denied, such recovery must be reduced to the extent Plaintiffs and/or members of the putative class failed to mitigate their damages.

TENTH SPECIAL DEFENSE TO COUNT 1

The claims of some members of the putative class may be barred by accord and satisfaction.

ELEVENTH SPECIAL DEFENSE TO COUNT 1

The claims of some members of the putative class may be barred by release.

TWELFTH SPECIAL DEFENSE TO COUNT 1

The claims of some members of the putative class may be barred by res judicata.

THIRTEENTH SPECIAL DEFENSE TO COUNT 1

In the event that Plaintiffs may be permitted to adjudicate not only their claims, but also those of the members of the putative class, through purported generalized classwide proof, MDC's rights to trial by jury and due process would be violated. MDC is entitled to individualized determinations of each member of the putative class's claims and MDC's

defenses to those claims. Accordingly, this case cannot be tried on a class basis or on any type of representational basis.

ADDITIONAL SPECIAL DEFENSES

MDC reserves the right to assert additional available defenses that may apply based upon information that is disclosed in discovery or its investigation of this case.

DEFENDANT
METROPOLITAN DISTRICT
COMMISSION

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on March 1, 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

/s/ Wystan M. Ackerman