

IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

LARUE AND LORI ELLIS,
Husband and Wife;

Plaintiffs,

v.

CASE NO. 2015-CA-1413
Division: CV-B

THE CITY OF JACKSONVILLE,
et al.,

Defendants.

_____ /

**CITY OF JACKSONVILLE'S ANSWER AND
AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT**

Comes now Defendant, the City of Jacksonville (the "City"), by and through the undersigned counsel, and files this Answer in this cause showing the following:

GENERAL ALLEGATIONS

The Parties

1. Admitted for jurisdictional purposes only; admitted that Exhibit A to the Amended Complaint is a legal description and address, which speak for themselves.
2. Admitted that the City is a municipal corporation established under the Laws of Florida. The remainder is denied.
3. Without knowledge.
4. Without knowledge.
5. Admitted as to venue only.

The Property

6. Without knowledge.

7. Without knowledge.
8. Without knowledge.

The Improvements

9. Admitted that the Sandalwood Canal is a stormwater conveyance used by the City. The remainder is denied.

10. Admitted that the Sandalwood Canal is a stormwater conveyance used by the City. The remainder is denied.

11. Denied.

12. Admitted that the City improved Sandalwood Canal and Hodges Boulevard. The remainder is denied.

13. Without knowledge.

14. Admitted that City retained CDM as the professional consultant. The City denies all remaining allegations of Paragraph 14 to the extent such allegations are inconsistent therewith.

15. Denied.

16. Admitted that stormwater is being discharged into the Sandalwood Canal. The remainder is denied.

17. Without knowledge.

18. Denied.

19. Denied.

20. Without knowledge.

21. Without knowledge.

22. Admitted that proper notice to the City was provided; however, denies all remaining allegations of Paragraph 22 to the extent such allegations are inconsistent therewith.

23. Without knowledge.

COUNT I
(Trespass by the City)

24. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

25. Without knowledge as to Plaintiff's possessory status. The remainder is denied.

26. Denied.

27. Without knowledge.

28. Denied.

29. Denied.

30. Denied.

31. Without knowledge.

32. Denied.

COUNT II
(Private Nuisance Against the City)

33. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

34. Denied.

35. Denied.

36. Without knowledge.

37. Denied.

38. Denied.

39. Denied.

40. Without knowledge.

41. Without knowledge.
42. Without knowledge.
43. Denied.
44. Denied.
45. Denied.
46. Denied.

COUNT III
(Public Nuisance against the City and SJRWMD)

47. Admitted for jurisdictional purposes only.
48. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.
49. Without knowledge.
50. The City expressly refers to the Statute cited in Paragraph 50 for its terms and denies all allegations of Paragraph 50 to the extent such allegations are inconsistent therewith.
51. The City expressly refers to the Statute cited in Paragraph 51 for its terms and denies all allegations of Paragraph 51 to the extent such allegations are inconsistent therewith.
52. The City expressly refers to the Statute cited in Paragraph 52 for its terms and denies all allegations of Paragraph 52 to the extent such allegations are inconsistent therewith.
53. The City expressly refers to the Statute cited in Paragraph 53 for its terms and denies all allegations of Paragraph 53 to the extent such allegations are inconsistent therewith.
54. Denied.
55. Denied.
56. The City expressly refers to the Statute cited in Paragraph 56 for its terms and denies all allegations of Paragraph 56 to the extent such allegations are inconsistent therewith.
57. Denied.

58. Denied.

COUNT IV
**(Professional Negligence in the Design of the Improvements
against CDM)**

59. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

60. The City realleges its responses to paragraphs 1-23, as if fully set forth therein.

61. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

62. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

63. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

64. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

65. This paragraph relates to actions of parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

66. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

67. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

68. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

69. This paragraph relates to parties other than the City; therefore, the City takes no part in the response or otherwise denies the allegations.

GENERAL DENIAL

The City denies any and all allegations contained in Plaintiffs' Second Amended Complaint that were not directed toward the City and all allegations that were not specifically admitted herein.

AFFIRMATIVE, SPECIAL AND/OR ALTERNATIVE DEFENSES

1. The City alleges that Plaintiffs' Second Amended Complaint and each cause of action therein fails to state a cause of action against the City upon which relief can be granted.

2. If any liability exists on the part of the City to Plaintiff, such liability is to be completely indemnified by CDM Smith, Inc. f/k/a Camp Dresser & McKee, Inc. ("CDM") or the other Engineering Defendants.

3. Plaintiffs' claims, or parts thereof, are barred due to fact that there is no causation between the improvements made and the damages sought in the Second Amended Complaint. Instead, the alleged damage, if any, to Plaintiffs' property was caused by other factors.

4. At all times material, Plaintiffs were aware of and acquiesced to the stormwater system which, at all times, was situated on and traversed across their property. The stormwater system does not constitute a governmental encroachment on Plaintiffs' property.

5. The City neither caused the property damage or intrusion alleged in the complaint, nor did it undertake any physical activity or occupation on Plaintiffs' property.

6. The stormwater system alleged in the Second Amended Complaint did not destroy the value of Plaintiffs' property.

7. The perfunctory allegations in the Second Amended Complaint do not demonstrate

either a continuing physical invasion of the property, or a substantial ouster and deprivation of all beneficial use of Plaintiffs' property.

8. Florida's Constitution does not provide just compensation to Plaintiffs for the property damage alleged in the Second Amended Complaint.

9. The City acquired title to the area occupied by the stormwater system by adverse possession and by prescriptive easement. Plaintiffs knew or should have known about such occupation because it was and always has been open, notorious and visible. What's more, public records have historically documented that the stormwater system is located within a floodway.

10. Plaintiffs' claims are barred by the doctrine of laches.

11. Plaintiffs' claims are barred by their failure to exhaust administrative remedies due to their failure to contest the SJRWMD permit.

12. Plaintiffs' claim for damages is barred by the doctrine of sovereign immunity.

13. Plaintiffs' claims are barred or reduced in value for failure to mitigate.

14. Plaintiffs' claims are barred to the extent the damage to or occupation of their property was caused by Plaintiffs or a third party unassociated with the City.

15. Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

16. Plaintiffs' claims are barred by the applicable statute of limitations and/or statute of repose, including Section 768.28, Florida Statutes.

17. The incident and damages alleged in this action were caused or contributed to by the negligence of third parties, to-wit: unknown contractor, unknown installer, unknown manufacturer, and unknown engineer, for which this defendant is not legally responsible, and this Defendant is therefore entitled to an apportionment of fault pursuant to Florida Statutes, section 768.81.

18. Plaintiffs' damages, if any, should be apportioned in relation to the responsibility of the parties or other persons, contractors, subcontractors, employees, agencies pursuant to the Supreme Court's decision in *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993). City will identify all entities, agencies or individuals responsible, in whole or in part, for the damages alleged by Plaintiffs as they are revealed through discovery and prior to the trial of this case.

19. Plaintiffs' damages were caused by their own negligent or improper acts.

20. Plaintiffs' have failed to name indispensable parties that are responsible for the claims or underlying actions arising to the claims against the City, to wit: unknown parties involved in the engineering, design, and construction of the bulkhead, including the manufacturer of the materials used in the bulkhead construction.

Respectfully submitted,

OFFICE OF GENERAL COUNSEL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2021, I electronically served the foregoing to the following individuals and on this 24th day of November, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notices of the electronic filing to:

<p>Kevin A. Schoepfel, Esq., C. Popham Decunto, Esq., Durant, Schoepfel, DeCunto & Ratchford, P.A., 6550 St. Augustine Road, Suite 105, Jacksonville, FL 32217 kschoepfel@ds-law.net mlewis@ds-law.net Attorneys for Plaintiffs</p>	<p>Matthew A. Marone, Esq. Weinberg, Wheeler, Hudgins, Gunn & Dial 3344 Peachtree Road, NE. Suite 2400 Atlanta, GA 30326 mmarrone@wwhgd.com aharrison@wwhgd.com Attorneys for CDM Smith, Inc.</p>
<p>William H. Congdon, Esq. General Counsel St. Johns River Water Management District 4049 Reid Street Palatka, FL 32177 wcongdon@sjrwmd.com Attorneys for St. Johns River Water Management District</p>	

/s/ Jason R. Teal
General Counsel