

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

LARUE AND LORI ELLIS,
husband and wife,

Plaintiff,

vs.

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

THE CITY OF JACKSONVILLE,
et al

Defendants.

_____/

**ST. JOHNS RIVER WATER MANAGEMENT DISTRICT'S ANSWER TO THE
PLAINTIFFS' SECOND AMENDED VERIFIED COMPLAINT AND AFFIRMATIVE
DEFENSES**

Defendant, St. Johns River Water Management District ("SJRWMD") by and through undersigned counsel, hereby files its Answer and Affirmative Defenses to the Second Amended Verified Complaint filed by the Plaintiffs, Larue and Lori Ellis ("Plaintiffs").

General Allegations

1. SJRWMD admits that Plaintiffs are the owners of certain real property located at 2194 San Pablo Road South, Jacksonville, Florida, but SJRWMD is without knowledge and therefore denies the remainder of the allegations in Paragraph 1. The document described in paragraph 1 as attached as Exhibit "A" to the Complaint speaks for itself.

2. SJRWMD admits that Defendant, City of Jacksonville, Florida, is a municipal corporation established and existing under the Laws and Charter of the State of Florida. SJRWMD is without knowledge and therefore denies the remainder of the allegations in Paragraph 2.

3. SJRWMD admits the allegations in Paragraph 3.

4. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 4.
5. SJRWMD admits that venue appropriately lies with this Court.
6. SJRWMD admits that Plaintiffs acquired the Property in 1997 but is without knowledge and therefore denies the remainder of the allegations in Paragraph 6.
7. SJRWMD admits that the Property is adjacent to and north of Hogpen Creek, but SJRWMD is without knowledge and therefore denies the remainder of the allegations in Paragraph 7.
8. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 8.
9. SJRWMD admits the allegations in Paragraph 9.
10. SJRWMD is without knowledge and therefore denies that the City owned and operated the Sandalwood Canal at the time that Plaintiffs acquired the Property, but admits that the Sandalwood Canal transports surface water from upstream development through an open outfall into Hogpen Creek.
11. SJRWMD admits the allegations in Paragraph 11.
12. SJRWMD admits that permitted work occurred in that area but is without knowledge and therefore denies the remainder of the allegations in Paragraph 12.
13. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 13.
14. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 14.

15. SJRWMD is without knowledge and therefore denies the allegations in the first sentence of Paragraph 15. As to the second sentence of Paragraph 15, SJRWMD is generally aware that at least one of the weirs described herein may not have been constructed, as is also referenced in the first sentence of Paragraph 21.d. of the Plaintiffs' Second Amended Verified Complaint.

16. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 16.

17. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 17. The document described in paragraph 17 as attached as Exhibit "B" to the Complaint speaks for itself.

18. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 18. The document described in paragraph 18 as attached as Exhibit "C" to the Complaint speaks for itself.

19. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 19.

20. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 20.

21. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 21.

A. As to Paragraph 21.A., SJRWMD admits permitted work occurred but is without knowledge and therefore denies the remainder of the allegations in Paragraph 21.A.

B. As to Paragraph 21.B., SJRWMD is without knowledge and therefore denies the allegations in Paragraph 21.B.

C. As to Paragraph 21.C., SJRWMD is without knowledge and therefore denies the allegations in Paragraph 21.C.

D. As to Paragraph 21.D., SJRWMD admits the first sentence of Paragraph 21.d. SJRWMD is without knowledge and therefore denies the allegations in the second sentence of Paragraph 21.D.

E. As to Paragraph 21.E., SJRWMD is without knowledge and therefore denies the allegations in Paragraph 21.E.

F. As to Paragraph 21.F., SJRWMD is without knowledge and therefore denies the allegations in Paragraph 21.F.

22. SJRWMD admits the allegations in Paragraph 22.

23. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 23.

Count I

24. In response to paragraph 24, SJRWMD re-alleges and incorporates its responses to paragraphs 1 through 23 above as though fully set forth herein.

25. The allegations in paragraphs 25 through 32 do not appear to be directed at SJRWMD. Insofar as a response is required, SJRWMD is without knowledge and therefore denies the allegations in paragraphs 25 through 32.

Count II

26. In response to paragraph 33, SJRWMD re-alleges and incorporates its responses to paragraphs 1 through 23 above as though fully set forth herein.

27. The allegations in paragraphs 34 through 46 do not appear to be directed at SJRWMD. Insofar as a response is required, SJRWMD is without knowledge and therefore denies the allegations in paragraphs 34 through 46.

Count III

28. Paragraph 47 is a characterization of Plaintiffs' case to which no response is required.

29. In response to Paragraph 48, SJRWMD re-alleges and incorporates its responses to paragraphs 1 through 23 above as though fully set forth herein.

30. SJRWMD admits the allegations in Paragraph 49.

31. SJRWMD admits the allegations in Paragraph 50.

32. SJRWMD admits the allegations in Paragraph 51.

33. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 52.

34. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 53.

35. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 54.

36. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 55.

37. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 56.

38. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 57.

39. SJRWMD is without knowledge and therefore denies the allegations in Paragraph 58.

Count IV

40. Paragraph 59 is a characterization of Plaintiffs' case to which no response is required.

41. In response to Paragraph 60, SJRWMD re-alleges and incorporates its responses to paragraphs 1 through 23 above as though fully set forth herein.

42. The allegations in paragraphs 59 through 68 do not appear to be directed at SJRWMD. Insofar as a response is required, SJRWMD is without knowledge and therefore denies the allegations in paragraphs 59 through 68.

43. SJRWMD acts in reliance on representations made by Plaintiffs' counsel that Plaintiffs do not seek attorneys' fees and costs from SJRWMD through this proceeding. Otherwise, the allegations in paragraph 69 does not appear to be directed at SJRWMD. Insofar as a response is required, without knowledge that therefore deny the allegations in paragraph 69.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiffs do not seek to recover their reasonable attorneys' fees and costs from SJRWMD in Counts III and IV of their Second Amended Verified Complaint. If Plaintiffs' position changes, Plaintiffs are not entitled by law or equity to an award of attorneys' fees or costs from SJRWMD and SJRWMD demands strict proof thereof.

SJRWMD reserves the right to add or amend affirmative defenses if any party seeks relief against the District, and asks the Court to award any applicable costs and grant any other necessary and appropriate relief.

Respectfully submitted on this 22nd day of November, 2021.

/s/ Thomas I. Mayton, Jr.

Thomas I. Mayton, Jr.
Florida Bar No. 905909
386-329-4109
Steven J. Kahn
Florida Bar No. 1026807
386-329-4112
Office of General Counsel
St. Johns River Water Mgt. Dist.
4049 Reid Street
Palatka, FL 32177
tmayton@sjrwmd.com
skahn@sjrwmd.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail this 22nd day of November, 2021, to the following:

Kevin A. Schoepfel, Esquire
kschoepfel@ds-law.net
mnorman@ds-law.net

Ross D. Ginsberg
rginsberg@whgd.com

Cindy Duque Bonilla
cbonilla@wwhgd.com

Trisha D. Bowles
tbowles@coj.net
aseegobin@coj.net

I further certify that, on the date noted above, a true and correct copy of the foregoing was delivered by email or U.S. Mail to the following parties who are not registered participants of the state-wide E-Filing Portal:

Pitman-Hartenstein & Association, Inc. Engineers
c/o E.H. Pitman, Jr. as registered agent
4911 River Point Road
Jacksonville, FL 32207

Sheldon E. Gibbs, P.E.
7400 Baymeadows Way, Suite 215
Jacksonville, FL 32256

The Gibbs Group, PLLC
7400 Baymeadows Way, Suite 215
Jacksonville, FL 32256

/s/Thomas I. Mayton, Jr. _____
Thomas I. Mayton, Jr.