

DISTRICT COURT, COUNTY OF ARAPAHOE,
STATE OF COLORADO
Arapahoe County Justice Center
7325 South Potomac Street
Centennial, Colorado 80112

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FILING ID: FD80F96BEBBAB
CASE NUMBER: 2023CV32439

Plaintiff: HEATHER GARDENS METROPOLITAN
DISTRICT

v.

Defendant: THE HEATHER GARDENS ASSOCIATION, a
Colorado nonprofit corporation

Attorneys for the Heather Gardens Association:
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Carey Smith, #48773
Winzenburg, Leff, Purvis & Payne, LLP
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COURT USE ONLY

Case Number: 2023CV32439

Division: 15

DEFENDANT'S ANSWER TO COMPLAINT

Defendant the Heather Gardens Association ("Association") by and through its attorneys, Winzenburg, Leff, Purvis & Payne, LLP, answers Plaintiff's Complaint as follows:

STATEMENT OF THE CASE

1. The Association admits this is an action to terminate a contract between the Heather Gardens Metropolitan District ("District") and the Association. The Association denies the remaining allegations.

PARTIES AND VENUE

2. The Association admits that the District's principal place of business is in this judicial district. The remaining allegations are denied for lack of information or belief.

3. The Association admits the allegations in paragraph 3.

4. The Association admits that its principal place of business is in this judicial district and that venue is proper. The Association denies the remaining allegations in paragraph 4.

FACTUAL ALLEGATIONS

5. Admitted.

6. Denied for lack of information or belief.

7. The Association admits that it is responsible for maintaining certain common areas within the Heather Gardens community. The remaining allegations are denied for lack of information or belief.

8. The Association admits that it entered a Management Agreement with the District dated August 23, 2018. The remaining allegations reference the Management Agreement, which speaks for itself, to which no response is required.

9. The allegations reference the Management Agreement, which speaks for itself, to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

10. The allegations reference the Management Agreement, which speaks for itself, to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

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16. The allegations reference the Management Agreement, which speaks for itself, to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

17. The allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

18. The allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

19. The allegations reference the Management Agreement, which speaks for itself, to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

20. The allegations reference the Management Agreement, which speaks for itself, to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

21. The Association admits that its representatives met with the District's representatives on July 19, 2023; August 3, 2023; and August 16, 2023. The Association admits that the District drafted proposed changes to the Management Agreement. The remaining allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant

denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

22. The Association admits that it raised the possibility of the District hiring its own employees. The Association denies the remaining allegations contained therein.

23. The Association admits that it requested mediation. The remaining allegations are denied for lack of information and belief.

24. The Association admits that it mediated with the District on November 16, 2023, and that the mediation failed to resolve the parties' dispute. The remaining allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

25. The Association admits that the District has not agreed to arbitration. The remaining allegations contain legal conclusions, to which no response is required.

FIRST CLAIM FOR RELIEF

26. The responses of the foregoing paragraphs 1-25 are incorporated herein by reference.

27. The Association admits that it received a Resolution of the Board of Directors of the Heather Gardens Metropolitan District regarding Termination of Management Agreement, dated December 7, 2023, which speaks for itself. The remaining allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

28. The allegations reference the Management Agreement, which speaks for itself, and contain legal conclusions to which no response is required. To the extent a response is required, Defendant denies all allegations to the extent that the Management Agreement's characterization is incorrect, incomplete, inapplicable, or taken out of context and denies all remaining allegations contained therein.

29. Defendant denies Plaintiff's prayer for relief set forth in its First Claim for Relief in its entirety.

30. Defendant denies Plaintiff's alternate prayer for relief set forth in its First Claim for Relief in its entirety.

AFFIRMATIVE DEFENSES

Defendant incorporates into these Affirmative Defenses all of the above general responses, admissions and denials and reserves the right to add or delete them based on discovery.

FIRST DEFENSE

The First Amended Complaint fails to state claims against Defendant upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claim are barred or limited by Plaintiff's own prior material breaches of the Management Agreement.

THIRD DEFENSE

Plaintiff's damages/losses, if any, may have been the result of one or more intervening or superseding causes for which Defendant is not responsible.

FOURTH DEFENSE

Plaintiff engaged in one or more breaches of contract, thereby excusing Defendant's performance.

FIFTH DEFENSE

Plaintiff's claims against Defendant are without substantial justification, entitling Defendant to costs, expenses, expert witness fees, and attorney fees pursuant to C.R.S. § 13-17-101, *et seq.*

SIXTH DEFENSE

Plaintiff's claims are barred, in whole or in part, based on the doctrine of inducing a breach.

SEVENTH DEFENSE

The claims asserted herein are barred or limited by the terms of any written agreements, declarations, covenants, and/or bylaws applicable to the claims asserted.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrines of consent, modification, and/or revision to any contracts or agreements.

NINTH DEFENSE

Plaintiff's claims are barred, in whole or in part, based on prevention of performance.

TENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, in that at all times relevant hereto, Defendant acted honestly and in good faith with respect to the performance of its duties and obligations, and, to the extent Plaintiff incurred damages due to its own conduct or the conduct of others, Defendant cannot be held liable for those acts and/or omissions.

ELEVENTH DEFENSE

The terms of any applicable contract, the applicable governing documents, other agreements and/or CCIOA may bar or limit Plaintiff's claims.

TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

FOURTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FIFTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

SIXTEENTH DEFENSE

Defendant reserves the right to add such other additional affirmative defenses or to voluntarily withdraw defenses as discovery proceeds.


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WHEREFORE, Defendant Heather Gardens Association, having fully responded to Plaintiff's Complaint, requests that the same be dismissed or, in the alternative, that Plaintiff takes nothing by way of its Complaint, and that Defendant be awarded attorney fees and costs, and for such other and further relies as the Court deems appropriate.

DATED January 30, 2024.

Respectfully submitted,

WINZENBURG, LEFF, PURVIS & PAYNE, LLP

By: 
Travis B. Keenan, #41354

Attorneys for Defendant Heather Gardens Association

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2024, a true and correct copy of the foregoing **DEFENDANT'S ANSWER TO COMPLAINT** was filed with the Court and served via Colorado E-Filing to the following:

Peter C. Forbes, #14081
Kamper & Forbes, LLC
730 Seventeenth Street, Suite 700
Denver, CO 80202

/s/ Elizabeth Mueller

Elizabeth Mueller