

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OCEANA

Peter J. and Trystin Vanderstelt,
husband and wife,

Case No. 2022 015089-CH

Plaintiffs

v.

Hon. Susan K. Sniegowski

Carla J. Alfred, et al,

Defendants

**AMENDED ANSWER WITH COUNTERCLAIM OF
DEFENDANT NCBA CONSERVATION ORGANIZATION**

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Comes now NCBA Conservation Organization, a Michigan corporation (hereinafter “NCBACO”), and, pursuant to the Court’s Scheduling Order entered October 3, 2022, files this its amended Answer with Counterclaim:

Answer

1. The NCBACO admits the factual allegations contained in the paragraph numbered 1 of the complaint.
2. The NCBACO admits the factual allegations contained in the paragraph numbered 2 of the complaint.
3. On information and belief, NCBACO denies the factual allegations contained in paragraph 3, Exhibit B, as the westernmost portion of the land described was previously vacated, as alleged in paragraph 12 of the complaint. NCBACO admits that Exhibit C shows the Subject Property and much other property.
4. The NCBACO admits the factual allegations contained in the paragraph numbered 4 of the complaint.
5. NCBACO objects to the allegations contained in paragraph 5 as they are an allegation of law to which no response is required. NCBACO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and specifically whether Exhibit D is a complete list of those required to be named and served under the law.
6. The NCBACO admits the factual allegations contained in the paragraph numbered 6 of the complaint.
7. The NCBACO admits the factual allegations contained in the paragraph numbered 7 of the complaint.

8. NCBACO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.
9. NCBACO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.
10. NCBACO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint.
11. NCBACO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the complaint.
12. The NCBACO admits the factual allegations contained in the paragraph numbered 12 of the complaint.
13. NCBACO objects to the allegations contained in paragraph 13 as they are an allegation of law to which no response is required. To the extent any fact is alleged, it is denied.
14. The NCBACO denies the allegations contained in paragraph 14 of the complaint.
15. The NCBA denies each and every factual allegation in the complaint not admitted above.
16. The NCBACO does not oppose the vacation of Parsons Avenue as a street available to the general public.
17. The NCBACO appears for the limited purpose of protecting its rights as an owner of land in the plat Pentwater Beach Addition No. 2 as set forth in *Nelson v. County of Roscommon*, 117 Mich. App. 125, 132 (1982).

Counterclaim

18. NCBACO is a Michigan nonprofit corporation organized in 2011.
19. NCBACO is a charity under Section 501(c)(3) of the Internal Revenue Code.
20. NCBACO owns real property, including property in Pentwater Beach Addition No. 2, which it holds for the benefit of residents of Michigan for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing pursuant to MCL 211.7o(5).
21. NCBACO is the owner of lots 38-40 of Block 8 in Pentwater Beach Addition No. 2 adjacent to plaintiffs' property, a total of more than 300 lots in Pentwater Beach Addition No. 2, and more than 100 lots in Pentwater Beach Addition No. 1 (which contains the northerly half of Parsons Avenue).
22. In its Answer as originally filed NCBACO requested that the following language be included in any order entered by the Court in this action: "Despite the vacation of Parsons Avenue, for as long as NCBACO remains an owner of land in Pentwater Beach Addition No. 2, NCBACO and its invitees retain the inherent common-law right of owners of lots in a plat to the non-destructive use and enjoyment of the vacated Parsons Avenue."
23. Plaintiffs have declined to agree they would request the Court to include that language in a Court order.
24. On information and belief, NCBACO avers that plaintiffs seek to receive pursuant to the claims made in their complaint an unencumbered fee simple absolute interest in the southerly 35 feet of Parsons Avenue which is adjacent to plaintiffs' lots pursuant to MCL 560.227a(3).

25. On information and belief, NCBACO avers that plaintiffs deny NCBACO or any other landowners in the plat will have any rights to use the southerly 35 feet of Parsons Avenue which is adjacent to plaintiffs' lots as a street after vacation of Parsons Avenue by the Court.

26. NCBACO and other landowners in the plat will have a continuing right to use the southerly 35 feet of Parsons Avenue which is adjacent to plaintiffs' lots as a street if the Court vacates Parsons Avenue because of the dedication of Parsons Avenue as a street in the original plat.


27. There is an actual controversy between NCBACO and plaintiffs as to NCBACO's right to use as a street the southerly 35 feet of Parsons Avenue which is adjacent to plaintiffs' lots if the Court vacates Parsons Avenue.

28. NCBACO is entitled to a declaratory judgment in its favor pursuant to MCR 2.605 that NCBACO and its invitees will have the right to use the southerly 35 feet of Parsons Avenue adjacent to plaintiffs' lots as a street if Parsons Avenue is vacated.

29. Plaintiffs are required to file a responsive pleading to this counterclaim within 21 days after service hereof pursuant to MCR 2.108(A)(4), MCR 2.110(B)(2), MCR 2.118(B), and the Court's order in this action of October 3, 2022.

WHEREFORE, NCBACO requests that the Court:

- a) Enter a declaratory judgment that NCBACO and its invitees may use the southerly 35 feet of Parsons Avenue adjacent to plaintiffs' property as a street if the Court enters an order vacating Parsons Avenue; and
- b) any and all other and further relief to which NCBACO is entitled.


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CERTIFICATE OF SERVICE

This is to certify pursuant to MCR 2.104(A)(2)(d) that I have this day served a copy of this Answer and Counterclaim on plaintiffs, LARA and other state defendants, Consumers Power, and Stacy Hissong by first class mail deposited at the post office in Pentwater, Michigan not later than 5 p.m. and addressed to:

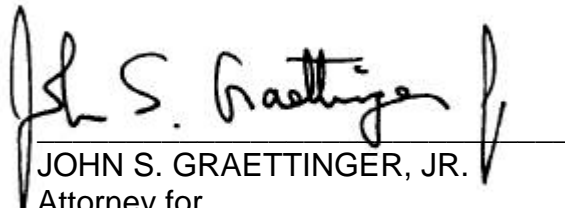
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on this 14th day of October, 2022.


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I

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Notice

I am willing to enter a stipulation to allow all parties to serve documents by email in this action subject to the requirements of the Michigan Court Rules, including MCR 2.107(C)(4). My email address appears in the signature block above. The sole limitation and condition I would require in addition to those imposed by Michigan Court Rules is that for service by email to be effective, any document served must be sent "read receipt" requested **and** the party serving must retain the response or other evidence proving receipt of the document for the period specified in MCR 2.107(C)(4)(j).

I further state that I will accept service by email if and only if any document served on me is sent to my email address above "read receipt" requested, service otherwise conforms to Michigan Court Rules, and the party serving retains my response or other evidence proving my receipt of the document for the period specified in MCR 2.107(C)(4)(j).