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December 29, 2003

From: Susan Kliethermes

413533

Matt

To:	Company:	Fax Number:
Clerk of the Court, Circuit Court, Camden County, MO	Circuit Court, Camden County	(573) 346-5422

Number of Pages Transmitted (including this cover sheet): 17

Message:

Staff
Exhibit No. 52
Date 12/24/10 Reporter PF
File No. SR-2010-12410
WR-2010-041

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JCDOCS 14854v1



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December 29, 2003

Via Facsimile (573) 346-5422 and U.S. Mail

Clerk of the Court
Circuit Court of Camden County
Courthouse
One Court Circle
Camdenton MO 65020

Re: Four Seasons Lakesites, Inc. v Lake Region Water & Sewer Co.
Case No. CV103-760CC

Dear Madam or Sir:

Attached for fax filing with your Court today is,

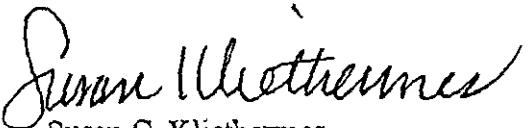
**Answer of Defendants Lake Region Water & Sewer Co.
and Waldo Morris to Plaintiff's Petition.**

The original of this Answer will be placed in the U.S. Mail to you today.

Thank you for your assistance.

Sincerely,

LATHROP & GAGE L.C.

By: 

Susan C. Kliethermes
Paralegal

Attachment

cc: Attorneys of Record

JCDOCS 14846v2

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IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

FOUR SEASONS LAKESITES, INC.,)

Plaintiff,)

vs.)

Case No. CV103-760CC

LAKE REGION WATER & SEWER CO.,)
et al.,)

Defendants.)

ANSWER OF DEFENDANTS LAKE REGION WATER & SEWER CO.
AND WALDO MORRIS TO PLAINTIFF'S PETITION

GENERAL ALLEGATIONS

COME NOW Defendants Lake Region Water & Sewer Co. and Waldo Morris (hereinafter "Lake Region," "Morris," or collectively "Defendants"), through undersigned counsel, and for their answer to the General Allegations in Plaintiff's Petition state as follows:

1. Admit.

2. Admit.

3. Admit.

4. Admit. In answering further, Defendant Lake Region states that it provides water and sewer service to those in its certificated service area as approved by the Missouri Public Service Commission.

5. Defendants admit that Defendant Waldo Morris is the sole shareholder of all Lake Region stock. All allegations contained in paragraph 5 not specifically admitted are denied.

6. Admit. In answering further, Defendant Lake Region states that the name of the company was changed as required by Plaintiff.

7. Defendants admit that as part of the consideration for the sale of stock in Four Seasons Water and Sewer Company by Four Seasons Group, Inc., to Roy and Cindy Slates, any rights or interest Plaintiff Four Seasons Lakesites, Inc., may have had in availability or standby fees were assigned to Roy and Cindy Slates personally. Defendants deny that Exhibit A to the Assignment represents the only availability or standby fees for which Plaintiff's rights or interests were assigned. All allegations contained in paragraph 7 not specifically admitted are denied.

8. Defendants admit that as a result of Slates pledging stock in Lake Region Water & Sewer Company and pledging any rights and interest in the availability or standby fees to Morris, Morris is now the sole shareholder of Lake Region Water & Sewer Company and possesses the rights and interest in the availability or standby fees. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned as only those listed on Exhibit A. All allegations contained in paragraph 8 not specifically admitted are denied.

COUNT I

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants admit that since acquiring the rights and interests in the availability or standby fees, Morris has collected those availability and standby fees. Defendants deny that Morris collected any standby fees that were not assigned to him. In answering further, Defendants deny Plaintiff's categorization and limitation of availability or standby fees assigned to Roy and Cindy Slates as only those listed on Exhibit A. All allegations contained in paragraph 2 not specifically admitted are denied.

3. Paragraph 3 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 3 requires an answer, Defendants deny paragraph 3. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5. In answering further, Defendants assert that Plaintiff has no legal interest in the availability or standby fees and no standing to request access to the amount of those fees collected.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

COUNT II

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

COUNT III

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT IV

1. Defendants reassert the answers to all above numbered paragraphs..

2. Defendants are without sufficient information to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient information to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient information to answer paragraph 4; therefore, paragraph 4 is denied.

5. Defendants are without sufficient information to answer paragraph 5; therefore, paragraph 5 is denied.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT V

1. Defendants reassert the answers to all above numbered paragraphs.

2. Defendants are without sufficient knowledge to answer paragraph 2; therefore, paragraph 2 is denied.

3. Defendants are without sufficient knowledge to answer paragraph 3; therefore, paragraph 3 is denied.

4. Defendants are without sufficient knowledge to answer paragraph 4; therefore, paragraph 4 is denied.

5. Denied.

6. Denied.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

8. Paragraph 8 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 8 requires an answer, Defendants deny paragraph 8.

COUNT VI

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged a total of \$18,164.43 for its services. In answering further, Defendants deny that Plaintiff is entitled to \$18,164.43 for excavation and rock drilling.

4. Denied.

5. Denied.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT VII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Lake Region has not paid the \$18,164.43. In answering further, Defendants deny that Plaintiff is entitled to \$18,164.43 for rock drilling and excavation.

4. Paragraph 4 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 4 requires an answer, Defendants deny paragraph 4.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

COUNT VIII

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Defendants admit that Plaintiff charged Lake Region \$5,489.54, but deny that it was for concrete work for Defendant Lake Region.

4. Defendants admit the charges were fair and reasonable, but deny that the charges were for concrete work.

5. Admit.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

7. Paragraph 7 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 7 requires an answer, Defendants deny paragraph 7.

COUNT IX

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Paragraph 5 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 5 requires an answer, Defendants deny paragraph 5.

6. Paragraph 6 calls for a legal conclusion and therefore does not require an answer. To the extent that paragraph 6 requires an answer, Defendants deny paragraph 6.

COUNT X

1. Defendants reassert the answers to all above numbered paragraphs.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

7. Denied. In answering further, Defendants assert that Plaintiff's alleged damages are an ascertainable amount of money, which by definition is an adequate remedy at law.

8. Denied.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiffs' Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

ADDITIONAL AND AFFIRMATIVE DEFENSES

1. Defendants state that all allegations not specifically admitted in the answer above are denied, and all answers above are incorporated herein.

2. The assignment of availability and standby fees contested by Plaintiff in this action was expressly stated consideration in a July, 1998, Stock Purchase Agreement whereby Four Seasons Group, Inc. transferred all stock, rights, and interest in Four Seasons Water & Sewer Company (now renamed Lake Region Water & Sewer Company, Defendant herein) to Roy and Cindy Slates.

3. As part of that consideration, Four Seasons Group, Inc. had its subsidiary, Four Seasons Lakesites, Inc., assign all interest it had in the availability or standby fees to Roy and Cindy Slates.

4. The rights, interests, and obligations for which Plaintiff seeks relief in this action were conveyed by the Stock Purchase Agreement and assignment of rights and interests in the availability or standby fees, and Plaintiff has no claim for relief.

Standing

5. Plaintiff cannot assert rights or interests in the availability or standby fees.

6. The availability or standby fees are paid by individual private lot owners at the time that each such individual purchases a lot in order to reserve sewer and water capacity until the time the individual finishes building a home and connects the finished home to Four Season's Water & Sewer Company.

7. Plaintiff does not pay the fee, Plaintiff does not, and cannot, provide water or sewer service, nor does Plaintiff have any other legally cognizable interest in the availability or standby fees which Plaintiff admits are to provide sufficient sewer and water capacity.

8. Plaintiff has no standing to assert an interest in the availability or standby fees for itself or any third party.

9. The assignment of availability and standby fees was an assignment by Plaintiff Four Seasons Lakesites, Inc., and Four Seasons Water & Sewer Co. (which is now Defendant Lake Region Water & Sewer Co.).

10. If Plaintiff is correct in its assertion that availability and standby fees for lots sold after August 6, 1998, were not assigned to Roy and Cindy Slates, which Defendants deny, any interest in those fees would remain in the company now named Lake Region Water & Sewer Co, Defendant herein.

Failure to State a Claim Against Defendant Four Seasons Water & Sewer Co., Failure to State a Claim Against Defendant Waldo Morris, Improper Uniting of Claims and Parties

11. Plaintiff Four Seasons Lakesites, Inc., assigned its interest in the availability and standby fees to Roy and Cindy Slates personally.

12. Roy and Cindy Slates assigned their interests and rights in the availability and standby fees to Defendant Waldo Morris.

13. Counts I, II, and X of Plaintiff's Petition seek relief against both Waldo Morris and Lake Region Water & Sewer Co. for allegedly exercising rights and interests in the availability or standby fees that purportedly belong to Plaintiff.

14. Plaintiff has failed to assert any facts, or state any claim, which if true would establish that Defendant Lake Region Water & Sewer Co. has exercised any right or interest in the availability or standby fees allegedly held by Plaintiff.

15. Count VII of Plaintiff's Petition seeks relief from Defendant Waldo Morris for alleged acts of Lake Region Water & Sewer Co. on the sole basis that Waldo Morris is a shareholder of Lake Region Water & Sewer Co.

16. Lake Region Water & Sewer Co. is a duly authorized corporation, and Mr. Morris cannot be sued on the basis that he is a shareholder.

17. Plaintiff's Petition alleges ten counts against Defendants based upon unrelated acts over a five-year period, and intermixes requests for relief between Lake Region Water & Sewer Co. and its shareholder Waldo Morris without stating specific bases or facts establishing that each defendant is allegedly liable for the relief requested by Plaintiff.

Estoppel, Laches, and Course of Conduct

18. Plaintiff alleges that it is entitled to availability or standby fees, and interest, for all lots Plaintiff sold subsequent to August 6, 1998.

19. The obligation of the individual property owners to pay the availability or standby fees is created when Plaintiff sells a lot to a lot purchaser and the obligation of the lot purchaser to pay the fees is attached as a covenant on the lot.

20. Plaintiff knows who it has sold lots to since August 6, 1998.

21. Plaintiff has known since August 6, 1998, that those lot owners have paid the availability or standby fees to Defendant Morris.

22. Plaintiff has waited over five years to bring this action alleging that Defendants have been collecting availability or standby fees that Plaintiff alleges belong to it.

23. Since August, 1998, Plaintiff has continued attaching the requirement to pay availability or standby fees to the lots it sells, has continued to allow Defendant Waldo Morris to collect the fees, and has continued to allow Defendant Waldo Morris to spend the fees for the benefit of Defendant Lake Region Water & Sewer Company to guarantee capacity and services for Plaintiff's developments.

24. Pursuant to Chapter 644, RSMo, and its implementing regulations, Plaintiff cannot sell lots without first demonstrating to the Missouri Department of Natural Resources that the entity certificated by the Missouri Public Service Commission to provide sewerage to the geographic area where the lots are located has sufficient capacity to provide sewer service for the lots Plaintiff sells.

25. Defendant Lake Region Water & Sewer Co. is the entity certified by the Missouri Public Service Commission to provide sewerage to Plaintiff's developments.

26. When Four Seasons Group, Inc., transferred the water and sewer company through the July, 1998, Stock Purchase Agreement, Plaintiff Four Seasons Lakesites, Inc., was limited by the State of Missouri to sell no more than fifty lots because of insufficient sewage capacity.

27. Lake Region Water & Sewer Company has used the availability or standby fees to build a new sewage treatment plant and new water tower, invest in capital improvements, and otherwise increase capacity and services in order to provide capacity for Plaintiff's developments.

28. Plaintiff has never had to stop selling lots due to lack of capacity from Lake Region Water & Sewer Company, and Plaintiff has been able to develop and sell more lots because of Lake Region Water & Sewer Company's use of the availability or standby fees. Had Lake Region Water & Sewer Company not used the fees for their intended purpose, which only Lake Region Water & Sewer Company can do, Plaintiff's development would have stopped long ago.

29. Since August, 1998, Plaintiff has received the benefit of Lake Region Water & Sewer Company using the availability or standby fees to increase capacity so Plaintiff could sell more lots.

30. Plaintiff is equitably estopped from claiming availability or standby fees from August, 1998, to present, because Plaintiff has already received the benefit of those fees.

31. Plaintiff has waited an unreasonable amount of time to bring this action.

32. Plaintiff's unreasonable delay has worked to Plaintiff's benefit and Defendants' detriment.

33. Plaintiff's course of conduct is an admission that Plaintiff does not have rights or interest in the availability or standby fees.

Failure to Join an Indispensable Party and Failure of Consideration

34. Plaintiff Four Seasons Lakesites, Inc., now challenges in this action the assignment of the availability or standby fees which was express consideration granted by Four Season Group, Inc., by alleging that the assignment transferred something less than all interest in the availability or standby fees to the detriment of Defendants.

35. Four Season's Group, Inc. is an indispensable party to this litigation in that Plaintiff is now disputing the consideration expressly granted by Four Seasons Group, Inc.

Statute of Frauds

36. Counts III and IV of Plaintiff's Petition seek relief for an alleged oral contract for real and personal property for a value of \$87,500.00.

37. Count V of Plaintiff's Petition seeks relief for an alleged oral contract for goods and services worth \$81,750.00.

38. Counts VI and VII of Plaintiff's Petition seek relief for an alleged oral contract for services worth \$18,164.43.

39. Counts VIII and IX of Plaintiff's Petition seek relief for services worth \$5,489.54.

40. Pursuant to §400.2-201, RSMo, contracts for goods, the price of which is \$500.00 or more, are not enforceable unless in writing.

41. The alleged oral contracts Plaintiff seeks to enforce in this action are for "goods" as defined at §§400.2-105 - 400.2-107, RSMo, and therefore not enforceable.

42. The alleged oral contracts Plaintiff seeks to enforce in this action are for real property or an interest therein, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

43. The alleged oral contracts Plaintiff seeks to enforce in this action are for services for a time longer than one year or not to be performed within one year of the making, and therefore were required to be in writing to be enforceable. §432.010, RSMo.

Statute of limitations

44. Counts I, II, and X seek relief based upon the July, 1998, Stock Purchase Agreement and assignment of availability or standby fees dated August, 1998.

45. Pursuant to §516.120, RSMo, such an action based upon a contract must be commenced with five years.

46. Plaintiff did not commence this action within five years as required by §516.120.

Plaintiff Drafted the Assignment

47. Plaintiff drafted the assignment of availability or standby fees.

48. Plaintiff seeks to use ambiguities in the assignment to Plaintiff's advantage in establishing that Plaintiff allegedly did not assign availability or standby fees for lots sold after August, 1998.

49. Plaintiff's assertion that it did not assign availability or standby fees for lots sold after August, 1998, is based solely on ambiguity in the assignment.

50. Because Plaintiff drafted the assignment, any ambiguity in the assignment must be construed against Plaintiff.

WHEREFORE, having fully answered Plaintiffs' Petition and Plaintiff having failed to plead a cause or causes of action, Defendants respectfully request that Plaintiff's Petition be dismissed and Defendants be granted such other and further relief as deemed just and proper.

Respectfully submitted,

LATHROP & GAGE L.C.

By: 

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Kurt U. Schaefer (45829)
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Jefferson City, MO 65101
Telephone: (573) 893-4336
Telecopier: (573) 893-5398

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by facsimile and U.S. Mail, postage prepaid, this 29th day of December, 2003, to the following:

John E. Curran
Brook McCarrick
P O Box 600
Osage Beach, MO 65065
Facsimile: (573) 348-3093


Attorney for Defendants