

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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|-------------------------------|---|-----------------------|
| Michael Brower, |) | |
| |) | |
| COMPLAINANT, |) | |
| |) | |
| v. |) | Case No. WC-2017-0207 |
| |) | |
| Branson Cedars Resort Utility |) | |
| Company, LLC, |) | |
| |) | |
| RESPONDENT. |) | |

**LEGAL MEMORANDUM IN SUPPORT OF RESPONDENT’S
MOTION FOR SUMMARY DISPOSITION**

COMES NOW Respondent, Branson Cedars Resort Utility Company, LLC, by and through undersigned counsel, and for its Legal Memorandum in Support of its Motion for Summary Disposition in this cause, states to the Court as follows:

I. SUMMARY

“You can put a dress on a pig, but at the end of the day, it’s still a pig.”

--Satsky v. United States, 993 F. Supp. 1027, 1030 n.6 (S.D. Tex. 1998).

Complainant alleges that the duplex in this case is anything but what it really is—a duplex. Complainant, the Browsers, filed a Complaint against Respondent alleging that the Brower structure at 310 Heavy Timber Dr., Ridgedale, Missouri 65739 should not be treated as two separate units so that two customer flat rates are charged to the Brower structure. The Brower structure is quite obviously a duplex. There is an upper unit with four bedrooms, a kitchen, a living area, and a bathroom. There is a lower unit with four bedrooms, a kitchen, a living area, and a bathroom. There is no internal connection between the two units, such as a staircase. You must go outdoors in order to go from the lower unit to the upper unit and vice versa. The

definition of a “unit” in Rule 1 R on Sheet 8 of the water tariff shows that each rental unit of a multi-tenant rental property is to be considered a separate unit.

The Browers state that they have “pleaded” with Branson Cedars Resort Utility Company, LLC to install a meter to charge for usage. Yet, the Browers were told by Branson Cedars Resort Utility Company that they needed a meter on the Brower structure. And the Browers have failed to pay anything to reimburse Branson Cedars Resort Utility Company, LLC for the money it incurred so far in hooking up the Brower structure so it can have water service. The Browers cannot defend their position in this Complaint under the guise of not getting a meter on the structure when the Browers refused to reimburse Branson Cedars Resort Utility Company, LLC for the costs incurred in hooking up the Brower structure to the water supply.

Summary Disposition in favor of Respondent is appropriate.

II. STANDARD OF REVIEW

A Motion for Summary Disposition, in accordance with 4 CSR 240-2.117, is akin to a motion for summary judgment. Summary judgment is proper when there is no genuine issue of material fact such that the movant is entitled to judgment as a matter of law. *Ameristar Jet Charter, Inc. v. Dodson Int’l Parts, Inc.*, 155 S.W.3d 50, 58 (Mo. banc 2005). A claimant has the burden of establishing that there is no genuine dispute as to the material facts upon which at trial the claimant would have had the burden of persuasion. *ITT Commercial Finance Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 381 (Mo. banc 1993). If the claimant can make a prima facie showing that there are no genuine issues of material fact about those material facts he would have had the burden of proving at trial, and the adverse party does not establish any specific facts presenting a genuine issue for trial, the claimant has the right to a judgment as a matter of law. *Id.*

III. ARGUMENT

Summary Disposition is appropriate in this case because the Brower structure consists of two separate units. As set forth more particularly in the Statement of Uncontroverted Material Facts, the Brower Structure is a duplex. It has the capability to be rented out as two separate units. The upper and lower units do not have any internal connection, such as an internal stairway. Complainant states that somehow the “intent” of the owner is paramount, yet there are no guarantees how this Brower structure will be rented out going forward. It was built as a duplex, and it is a duplex.

Respondent agrees with Staff Report that there are a couple definitions and rules within the Company’s tariff, effective November 1, 2015, that appear to apply in this matter.

- Rule 1.D defines “CUSTOMER” as “any person, firm, corporation or governmental body which has contracted with the Company for water service or is receiving service from Company, or whose facilities are connected for utilizing such service, and except for a guarantor is responsible for payment for service.”
- Rule 1.R defines “ ‘UNIT’ or ‘LIVING UNIT’ ” as “the premises or property of a single water consumer, whether or not that consumer is the Customer. It shall pertain to any building whether multi-tenant or single occupancy, residential or commercial, or owned or leased. Each mobile home in a mobile home park and each rental unit of a multi-tenant rental property are considered as separate units for each single family or firm occupying same as a residence or place of business.” (emphasis added).

Pursuant to these definitions, the upper unit and lower unit are separate units for which each should be billed a customer flat rate.

James A. Merciel, Jr., P.E., Missouri Public Service Commission, informed Branson Cedars Resort Utility Company, LLC that the Brower structure should be considered two separate units in a correspondence sent on April 29, 2016. He explained that each rental unit should be subject to the residential flat monthly rate for water and sewer service. Mr. Merciel stated:

If this building has one water service connection, then each unit is still considered a separate customer for flat rates. If one water service connection is involved then come the day that meters might be installed for residential customers and metered rates designed, the owner of the building could be considered to be one customer, picking up water use of both living units through one metered connection.

See Exhibit A attached to the Statement of Uncontroverted Material Facts. All in all, the duplex is just that—a duplex. That means two units. As such, that means two customer flat rates.

Complainant would like to argue that he has “pleaded” with Branson Cedars Resort Utility Company, LLC to install a meter to charge for usage. Yet, the Browers have failed to pay anything to reimburse Branson Cedars Resort Utility Company, LLC for the money it incurred in hooking up the Brower structure so it can have water service. Branson Cedars Resort Utility Company, LLC should have no obligation to pay for meters when Complainant refuses to pay for prior services provided by Respondent in connecting the Brower structure to water. Until Complainant is willing to pay for all hookup fees and the meter, the Brower structure should be billed as two units as set forth plainly in the definitions.

WHEREFORE, Respondent respectfully requests that its Motion for Summary Disposition be granted.

NEALE & NEWMAN, L.L.P.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 14th day of August, 2017:

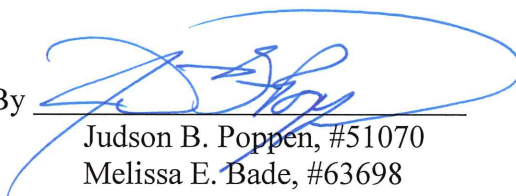
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