

Hello Katie,

Fred Sprouse here. As I believe you know, I represent the Frisco Market Place Association and Owners (320 E. Main). Although I believe I have previously sent it, I wanted to make sure that you had my clients' Answer and Counterclaims in the lawsuit that MM Properties, LLC filed against my clients. That court pleading is attached hereto and my clients' counterclaims against MM Properties, LLC begin on page 7 of the pleading. Although my clients speak very well for themselves (see Chad's email below), I thought that Staff should be aware of certain problems that my clients believe have arisen as a result of MM Properties, LLC's development. As you might imagine, of utmost concern is, what my clients believe to be, the compromise of the Frisco Market Place's building foundation (and other structural damage) as a result of MM Properties' excavation. My clients have made claims against MM Properties, LLC for removal of lateral and subjacent support of the Frisco Market Place building foundation, as well as claims for damage to other portions of the building. Please see the Counterclaims at page 9. I was a bit surprised that the existence of the lawsuits filed by MM Properties, LLC against my clients and against the Frisco Hotel is a matter which is not even addressed in the Staff Report.

Inasmuch as the pending legal cases could impact the Town of Frisco, I am copying Thad Renaud on this email.

Best regards,
Fred Sprouse

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DISTRICT COURT, SUMMIT COUNTY, COLORADO 501 N. Park Ave., P.O. Box 269, Breckenridge, CO 80424-0269	DATE FILED: March 10, 2020 2:31 PM FILING ID: D77CD609A3D14 CASE NUMBER: 2020CV30013
Plaintiff: MM Properties, LLC v.	
Defendants/Counterclaimants: Frisco Market Place Owners Association, Michal Ulehla, Andy Schmit, Margarita Aleksanyan	▲ COURT USE ONLY ▲
Attorney for Defendants: Frederick V. Sprouse, #15398 SPROUSE LAW, LLC P. O. Box 4837 Breckenridge, CO 80424 Phone Number: (970) 423-6678 E-mail: fred@fredsprouselegal.com	Case Number: 2019CV30013 Div.: T
COMBINED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS	

COME NOW the Defendants and Counterclaimants, named above (collectively, the “Defendants”), and for their Combined Answer, Affirmative Defenses and Counterclaims to the Plaintiff’s Complaint for Encroachment and Preliminary Injunction (the “Complaint”), state and allege as follows:

ANSWER

PARTIES, JURISDICTION AND VENUE

1. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 1 of the Complaint and, therefore, deny the same.
2. Regarding the allegations contained in Paragraph 2 of the Complaint, Defendants admit only that the Frisco Market Place Owners Association, if any exists, is unincorporated. Defendants deny the remaining allegations contained in Paragraph 2 of the Complaint and leave Plaintiff to its proofs.
3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. Regarding the allegations contained in Paragraph 5 of the Complaint, Defendants admit only that Andy Schmit is the owner of Unit 201; Defendants deny that anyone named “Shmit” owns Unit 201.

6. Regarding the allegations contained in Paragraph 6 of the Complaint, Defendants admit only that Margarita Aleksanyan is the Owner of Unit 202; Defendants deny that anyone named “Alesanyan” owns Unit 202.

7. Defendants admit the allegations contained in Paragraph 7 of the Complaint.

8. Defendants admit the allegations contained in Paragraph 8 of the Complaint.

GENERAL ALLEGATIONS

9. Defendants admit the allegations contained in Paragraph 9 of the Complaint.

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint.

11. Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. Regarding the allegations contained in Paragraph 12 of the Complaint, Defendants admit only some of the named Defendants’ properties are comprised of commercial units and some of the named Defendants’ properties are comprised of residential units. Defendants deny the remaining allegations contained in Paragraph 12 of the Complaint.

13. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 13 of the Complaint and, therefore, deny the same.

14. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 14 of the Complaint and, therefore, deny the same.

15. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 15 of the Complaint and, therefore, deny the same.

16. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 16 of the Complaint and, therefore, deny the same.

17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

18. Regarding the allegations contained in Paragraph 18 of the Complaint, Defendants admit only that precipitation is drained from the roof by a gutter system. Defendants

are without sufficient knowledge, information or belief to either admit or deny the remaining allegations contained in Paragraph 18 of the Complaint and, therefore, deny the same.

19. Due to confusing nature of the allegations in Paragraph 19, Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 19 of the Complaint and, therefore, deny the same.

20. Regarding the allegations contained in Paragraph 20 of the Complaint, Defendants admit only that a “swamp cooler” exists on the roof which creates condensation which is drained using a downspout.

21. Regarding the allegations contained in Paragraph 21 of the Complaint, Defendants admit only that the middle downspout drains and water soaks into the ground. Defendants are without sufficient knowledge, information or belief to either admit or deny the remaining allegations contained in Paragraph 21 of the Complaint and, therefore, deny the same.

22. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 22 of the Complaint and, therefore, deny the same.

23. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 23 of the Complaint and, therefore, deny the same.

24. Regarding the allegations contained in Paragraph 24 of the Complaint, Defendants expressly deny that they affixed any utility meters to any Condos. Defendants are without sufficient knowledge, information or belief to either admit or deny the remaining allegations contained in Paragraph 24 of the Complaint and, therefore, deny the same.

25. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 25 of the Complaint and, therefore, deny the same and expressly allege that to the extent an encroachment exists, the meters lay within a prescriptive easement.

26. Regarding the allegations contained in Paragraph 26 of the Complaint, Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 26 of the Complaint and, therefore, deny the same.

27. Defendants are without sufficient knowledge, information or belief to either admit or deny the allegations contained in Paragraph 27 of the Complaint and, therefore, deny the same and expressly allege that to the extent an encroachment exists, the conduits lay within a prescriptive easement.

28. Defendants admit the allegations contained in Paragraph 28 of the Complaint as said allegations related to Plaintiff MM, but expressly allege that Defendants, and/or Defendants’

predecessor in interest, received permission and consent for the placement of all meters and related conduits in their present location.

29. The allegations contained in Paragraph 29 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

30. The allegations contained in Paragraph 30 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

31. The allegations contained in Paragraph 31 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

FIRST CLAIM FOR RELIEF

32. Paragraph 32 is a reference to other allegations. Defendants respond in the same manner as they responded to the referenced allegations.

33. The allegations contained in Paragraph 33 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

34. The allegations contained in Paragraph 34 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

35. The allegations contained in Paragraph 35 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

SECOND CLAIM FOR RELIEF

36. Paragraph 36 is a reference to other allegations. Defendants respond in the same manner as they responded to the referenced allegations.

37. The allegations contained in Paragraph 37 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. The allegations contained in Paragraph 39 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations. Further, Defendants expressly allege that, upon

knowledge, information and belief, Plaintiff does not even have Town of Frisco, Summit County, or Summit Fire District approval, for its proposed building plan.

40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.

41. The allegations contained in Paragraph 41 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint and Defendants expressly allege that the allegations in Paragraph 43 are patently false (*See*, for example, Plaintiff's Paragraph 37).

THIRD CLAIM FOR RELIEF

44. Paragraph 44 is a reference to other allegations. Defendants respond in the same manner as they responded to the referenced allegations.

45. The allegations contained in Paragraph 45 of the Complaint are conclusions of law which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

46. Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. The allegations contained in Paragraph 47 of the Complaint are either conclusions of law or prayers for relief which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

FOURTH CLAIM FOR RELIEF

48. Paragraph 48 is a reference to other allegations. Defendants respond in the same manner as they responded to the referenced allegations.

49. The allegations contained in Paragraph 49 of the Complaint are either conclusions of law or prayers for relief which require no response. However, to the extent that facts are alleged which require a response, Defendants deny said allegations.

50. Defendants deny the allegations contained in Paragraph 50 of the Complaint and Defendants expressly deny that Plaintiff has any damages.

PLAINTIFF'S PRAYER FOR RELIEF

Plaintiff's prayers for relief require no response by Defendants. However, to the extent that facts are alleged therein which require a response, Defendants deny said allegations.

DEFENDANTS' AFFIRMATIVE DEFENSES

As affirmative defenses to the Complaint, Defendants state and allege as follows:

51. Defendants incorporate Paragraphs 1 through 50, above, as though fully set forth and restated herein.

52. All or a portion of Plaintiff's claims are barred because any action taken by Defendants as alleged in the Complaint or otherwise, was an exercise of legal rights in a legally permissible manner.

53. All or a portion of Plaintiff's claims are barred because Plaintiffs fail to state a claim for which relief may be granted against Defendants, including, but not limited to Plaintiff's failure to adequately allege facts which would entitle it to injunctive relief.

54. All or a portion of Plaintiff's claims are barred because Plaintiff has failed to show the lack of an adequate remedy at law.

55. All or a portion of Plaintiff's claims are barred by the doctrines of waiver and consent.

56. All or a portion of Plaintiff's claims are barred by reason of acts, omissions, representations, and conduct by Plaintiff upon which Defendants relied to their detriment, thereby barring any recovery under the doctrine of estoppel.

57. All or a portion of Plaintiff's claims, including, but not limited to its claims for injunctive relief, are barred by the doctrine of unclean hands.

58. Plaintiff's damages, if any it may have, should be reduced or offset by Defendants' damages to the fullest extent allowed by applicable law.

59. Any loss or injury suffered by Plaintiffs is the proximate result of Plaintiff's own acts, actions or omissions.

60. All or a portion of Plaintiff's claims are barred by the Defendants' adverse possession and/or prescriptive easements of related to the real property in question.

61. All or a portion of Plaintiff's claims are barred because Plaintiff has failed to name indispensable parties and/or the real parties at fault.

62. Defendants reserve the right to allege additional affirmative defenses and additional facts supporting its affirmative defenses after conducting further discovery, investigation, research, and analysis.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendants request that Plaintiff's claims against Defendants be dismissed, and further request that Defendants be

awarded their costs and reasonable attorney's fees so wrongfully incurred in responding to the Complaint, and for such other and further relief as this Court deems appropriate and just.

DEFENDANTS' COUNTERCLAIMS

COME NOW the Defendants/Counterclaimants, named above, (collectively, the "Defendants" or "Counterclaimants"), and for their Counterclaims against the Plaintiff (the "Counterclaims"), state and allege as follows:

GENERAL ALLEGATIONS

1. Defendants incorporate the allegations set forth in Paragraphs 1 through 62, above, as though fully restated and set forth herein.

2. Plaintiff is the owner of certain real property located at 310 Main Street, Frisco, Colorado 80443 ("Plaintiff's Real Property").

3. Defendants own certain adjacent real property located at 320 Main Street, Frisco, Colorado 80443, including certain, but not all, improvements located thereon ("Defendants' Real Property").

4. Plaintiff has been attempting to redevelop Plaintiff's Real Property for several months.

5. In the course of its redevelopment efforts, Plaintiff, through its authorized agents, has engaged in construction activities, including, but not limited to, the removal of existing structures, excavation of for new structures, removal of real property and improvements located on the Counterclaimants' land, pouring of foundations, laying of utility lines and other activities.

6. Although Plaintiff claims that it wishes to construct a "zero-lot-line structure," upon knowledge, information and belief, Plaintiff has not received Town of Frisco approvals for a zero-lot-line building as of the date of this filing.

7. In the course of Plaintiff's redevelopment and construction activities, Plaintiff or Plaintiff's authorized agents entered upon Defendants' Real Property, without Defendants' consent or permission, and damaged or destroyed portions of the structural foundation and building located at 320 Main Street known as Frisco Market Place. This damage and destruction included the removal of dirt/land, removal or destruction of concrete foundation, punching holes in the side of the building and other damage to the exterior of Defendants' property, or below it.

8. Plaintiff further severed and/or caused the interruption of gas utility lines to the Defendants' Real Property resulting in damages to some or all of the Defendants and their personal property.

9. In addition to the damage and destruction caused by Plaintiff to the building known as Frisco Market Place, and in the course of its trespass and subsurface construction

activities, Plaintiff destroyed, eliminated and/or compromised the lateral and subjacent support of the Frisco Market Place building.

10. As a result thereof, the structural integrity of the building located at 320 Main Street has been compromised; specifically, visible cracks and openings in the drywall of ceilings and walls have appeared and certain door locks are no longer operational; this state of affairs did not exist prior to Plaintiff's construction activities.

11. Upon knowledge, information and belief, Plaintiff continues to engage in, or pursue government approval for, construction activities which have damaged, and will continue to damage, Defendants and/or Defendants' Real Property.

FIRST COUNTERCLAIM FOR RELIEF - TRESPASS

12. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 11, above, as though fully restated and re-alleged herein.

13. As alleged above, Plaintiff or Plaintiff's authorized agents entered upon Defendants' Real Property, without Defendants' consent or permission, and damaged or destroyed portions of the structural foundation and building located at 320 Main Street known as Frisco Market Place and caused other damages.

14. Plaintiff's construction activities upon Defendants' Real Property has been, and continues to be, without the permission, invitation or consent of the Defendants.

15. As a direct and proximate result of said Plaintiff's trespass, the Defendants are being injured and/or have sustained and continue to sustain damages in an amount to be determined at trial, including the loss of use of, and damage to, that real property upon which the Plaintiff's trespass has occurred and continues to occur.

SECOND COUNTERCLAIM FOR RELIEF – NEGLIGENCE

16. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 15, above, as though fully restated and re-alleged herein.

17. Plaintiff owed a duty to Defendants to prevent activities on Plaintiff's Real Property which created an unreasonable risk of harm to Defendants.

18. Plaintiff negligently and/or intentionally engaged in activities on its property that removed the lateral and subjacent support to Plaintiff's property, and caused damage to the exterior and interior of that building known as Frisco Market Place.

19. Plaintiff's activities caused harm to Defendants and resulted in damages to Defendants.

THIRD COUNTERCLAIM FOR RELIEF – PRIVATE NUISANCE

20. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 19, above, as though fully restated and re-alleged herein.

21. Plaintiff intentionally and/or negligently removed the lateral support of Defendants' Real Property, damaged the interior and exterior of the building and severed the utility lines servicing Defendants' property.

22. Such conduct unreasonably interfered with the use and enjoyment of Defendants' Real Property creating an unstable situation resulting in damage and the potential for great harm.

23. The interference was so substantial that it would have been offensive or caused inconvenience or annoyance to a reasonable person on an adjacent property.

24. The interference was negligent and intentional, and Defendants suffered damages as a result thereof.

FOURTH COUNTERCLAIM FOR RELIEF – LATERAL SUPPORT
(Strict Liability)

25. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 24, above, as though fully restated and re-alleged herein.

26. Defendants' Real Property is entitled to lateral or subjacent support from Plaintiff's Real Property.

27. Plaintiff negligently and/or intentionally removed natural and necessary lateral or subjacent support to Defendants' Real Property.

28. As a result of Plaintiff's actions removing natural and necessary lateral support, Defendants suffered damages such that Defendants' Real Property is moving as a result of lack of structural integrity and in danger of sustaining additional damages.

29. Defendants have not conducted any activity on Defendants' Real Property which would materially increase lateral pressure on Defendants' Real Property and which could have been the proximate cause of damage to Defendants' building and underlying real property.

FIFTH COUNTERCLAIM FOR RELIEF – PRELIMINARY INJUNCTION

30. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 29, above, as though fully restated and re-alleged herein.

31. The Plaintiff has removed and plans to continue to remove the lateral and subjacent support from Defendants' Real Property.

32. The Plaintiff's actions are causing harm to the Defendants such that Defendants' building and real property has been damaged, with said damage in danger of worsening to the point of additional or increased movement.

33. The harm that Plaintiff is causing to Defendants' Real Property will continue unless Plaintiff ceases to remove the lateral and subjacent support to Defendants' Real Property and takes further steps to stabilize the lateral and subjacent support of Defendants' property.

34. An injunction is required to end such harm and to prevent future harm. Such an injunction will be appropriate because:

- a. The Defendants will achieve actual success on the merits;
- b. Irreparable harm will result unless the injunction is issued;
- c. The threatened and/or actual injury outweighs the harm that the injunction may cause to the Plaintiff;
- d. Defendants have no plain, adequate or speedy remedy at law;
- e. The injunction, if issued, will maintain the status quo and will not adversely affect the public interest.

35. Accordingly, the Defendants seek the issuance of an injunction from this Court directing Plaintiff to cease any activities that decrease the lateral and subjacent support of Defendants' Real Property and take steps to stabilize the property so that Defendants suffers no further harm.

SIXTH CLAIM FOR RELIEF – RULE 105

36. Defendants incorporate the allegations contained in their Answer, Affirmative Defenses and in Paragraphs 1 through 35, above, as though fully restated and re-alleged herein.

37. Defendants are the owners and in possession of the Defendants' Real Property situate in Summit County, Colorado, and described herein as 320 Main Street, Frisco, Colorado 80443, as well as that portion of the property, including a portion of 310 Main Street, on which its building foundation and utility infrastructures are located.

38. Defendants or their predecessors in interest have owned all or a portion of said real property for over 40 years.

39. Plaintiff may claim an interest in a portion of Defendants' Real Property by virtue of its perceived property lines.

40. There may be persons interested in the subject matter of this action whose names cannot be inserted herein because said names are unknown to Defendants at this time, although diligent efforts have been made to ascertain the names of said persons.

41. The Plaintiff's and unknown persons claim some right, title, or interest in and to the Property adverse to Defendants. The Plaintiff's and unknown persons' claims are without foundation or right, and are inferior to Defendants' title.

WHEREFORE, for all of the foregoing reasons, Defendants respectfully request the following relief:

- a. Judgment in favor of Defendants and against Plaintiff on Plaintiff's claims for relief;
- b. An award of damages to the Defendants and against Plaintiff in an amount to be determined and proven at trial;
- c. An Order of this Court providing injunctive relief ordering Plaintiff to cease and desist from any activities that remove the lateral and subjacent support of Defendants' Real Property and to take steps to stabilize the lateral and subjacent support of Defendants' property;
- d. Defendants' costs, expert fees, pre-judgment and post-judgment interest and attorney's fees as allowed by law;
- e. A complete adjudication of rights with regard to those real properties which are the subject matter of this action; and
- f. For such further relief as the Court deems just.

Respectfully submitted this 10th day of March, 2020.

SPROUSE LAW, LLC

/s/ Frederick V. Sprouse

By:

Frederick V. Sprouse, #15398
Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I filed the foregoing Answer, Affirmative Defenses and Counterclaims via ICCES this 10th day of March, 2020 and caused the same to be served upon:

Mark Cribbet, Esq.
PO Box 1639
Breckenridge, CO 80424

/s/ Frederick V. Sprouse

In accordance with C.R.C.P. 121§ 1-26(7), a printed copy of this document with original signature(s) is being maintained by Sprouse Law, LLC, and will be made available for inspection by others or the Court upon request.