

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

JAYHAWK RACING PROPERTIES, LLC, and))	
HEARTLAND PARK RACEWAY, LLC,)	
)	Case No. 2016CV424
Plaintiffs,)	
)	Division 5
vs.)	
)	K.S.A. Chapter 60
CITY OF TOPEKA, KANSAS,)	
)	
Defendant.)	

ANSWER TO COUNT III OF PLAINTIFFS' PETITION

Defendant, City of Topeka, Kansas (“City”), by and through its attorneys, hereby submits its Answer to Count III of the Petition filed by Plaintiffs, Jayhawk Racing Properties, LLC (“Jayhawk”) and Heartland Park Raceway, LLC. The City has filed a Motion to Dismiss Counts I and II of Plaintiffs’ Petition and Memorandum in Support Thereof contemporaneously with this Answer. In response to Count III, the City states and alleges:

1. Given that the City has filed a Motion to Dismiss Counts I and II of Plaintiffs’ Petition, no answer or response is required to the allegations contained in Paragraph No. 100.
2. In response to the allegations contained in Paragraph No. 101, the City admits that during the term of Jayhawk’s ownership interest in and management of Heartland Park from March 2003 to July 2015, the City charged Jayhawk monthly stormwater drainage fees. The City denies the remaining allegations contained in Paragraph No. 101.

3. The allegations contained in Paragraph No. 102 assert legal arguments and conclusions to which no answer or response is required.

4. The City denies the allegations contained in Paragraph Nos. 103-107.

5. In response to the allegations contained in Paragraph No. 108, the City admits that on July 30, 2015, Jayhawk paid a past due bill for stormwater, water and other charges. The City denies the remaining allegations contained in Paragraph No. 108.

6. In response to the allegations contained in Paragraph No. 109, the City admits that it denied Jayhawk's July 30, 2015 request for a refund.

7. The City denies the allegations contained in Paragraph No. 110.

8. In response to the allegations contained in Paragraph No. 111, the City states that the "1988 DMA" is the best evidence of its terms and provisions. Accordingly, the City denies the allegations contained in Paragraph No. 111 to the extent they are inconsistent with the document's actual terms and provisions or fail to include other relevant language.

9. In response to the allegations contained in Paragraph No. 112, the City states that the "1988 DMA," including all exhibits, is the best evidence of its terms and provisions. Further answering, the City states that the "1988 DMA" does not address stormwater services or fees for Heartland Park.

10. In response to the allegations contained in Paragraph No. 113, the City states that the "1988 DMA" is the best evidence of its terms and provisions. Accordingly, the City denies the allegations contained in Paragraph No. 113 to the extent they are inconsistent with the document's actual terms and provisions or fail to include other relevant language.

11. In response to the allegations contained in Paragraph Nos. 114-115, the City states that the “1988 DMA” and the “2005 Amendment” are the best evidence of their respective terms and provisions. Accordingly, the City denies the allegations contained in Paragraph Nos. 114-115 to the extent they are inconsistent with the documents’ actual terms and provisions or fail to include other relevant language.

12. In response to the allegations contained in Paragraph No. 116, the City states that it adopted Ordinance No. 16472 on July 7, 1992, which established a stormwater drainage fee.

13. In response to the allegations contained in Paragraph No. 117, the City states that certain provisions in Ordinance No. 16742 were repealed by Ordinance No. 17059, adopted on December 17, 1996, now codified, as subsequently amended, as Topeka Municipal Code, Chapter 13.25.

AFFIRMATIVE AND OTHER DEFENSES

14. Further answering, the City denies each and every allegation that has not been specifically admitted herein.

15. Count III fails to state a claim upon which relief can be granted against the City.

16. To the extent they are inconsistent with Kansas law, the “1988 DMA” and the “2005 Amendment” are void, illegal, and unenforceable against the City.

17. Plaintiffs have failed to satisfy any and all necessary conditions precedent to filing suit against the City.

18. Count III is barred, in whole or in part, by the doctrines of voluntary payment, waiver, estoppel, and unclean hands.

19. Additionally, Count III is barred, in whole or in part, by the applicable statutes of limitations.

20. The City hereby reserves the right to add any other matter constituting either an avoidance or an affirmative defense that may later appear to it through or as the result of discovery.

WHEREFORE, having fully answered Count III of Plaintiff's Petition, Defendant, City of Topeka, Kansas prays that the Court enter judgment in its favor and against Plaintiffs, for its costs and attorneys' fees as allowed by law, and for such other relief as this Court deems just and proper.

LATHROP & GAGE LLP

By: /s/ Thomas V. Murray
Thomas V. Murray, KS #07591
tmurray@lathropgage.com
Melissa Hoag Sherman, KS #20278
msherman@lathropgage.com
Building 82, Suite 1000
10851 Mastin Boulevard
Overland Park, KS 66210-1669
Telephone: (913) 451-5100
Telecopier: (913) 451-0875

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served, by facsimile transmission, on the following counsel of record this 7th day of July 2016:

Wesley A. Weathers
Patricia E. Riley
Cynthia J. Sheppard
Goodell, Stratton, Edmonds & Palmer, LLP
515 S. Kansas Ave.
Topeka, KS 66603
(785) 233-8870 (facsimile),

ATTORNEYS FOR PLAINTIFFS.

/s/ Thomas V. Murray

Thomas V. Murray