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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LEHMAN INVESTMENT COMPANY, LLC,

Appellant,

v.

Circuit Court Appeal No. 21-186123-AA

Agency Case No. 17-024366-REM

Hon. Nanci J. Grant

CITY OF THE VILLAGE OF CLARKSTON, a

Municipal Corporation and its Historic

District Commission,

Appellee.

THE LAW OFFICE OF JOHN D. MULVIHILL, PLLC

By: John D. Mulvihill (P35637)

Attorney for Appellant

20 W. Washington, Ste. 2

Clarkston, Michigan 48346

(248)625-3131

jdmulvihill@sbcglobal.net

THOMAS J. RYAN, P.C.

Thomas J. Ryan (P19808)

Attorney for Appellee

2055 Orchard Lake Road

Sylvan Lake, Michigan 48320

(248) 334-9938

sylvanlawtr@gmail.com

**RESPONDENT/APPELLEE'S ANSWER TO APPELLANT'S MOTION
FOR MISCELLANEOUS RELIEF**

NOW COMES Respondent/Appellee, City of the Village of Clarkston, a municipal Corporation and its Historic District Commission, by and through its attorney, Thomas J. Ryan, P.c., and in answer to Appellant's Motion for Miscellaneous Relief Pursuant to MCR 7.112 and MCR 7.216 states unto this Honorable Court as follows:

1. Answering paragraph one, the City of the Village of Clarkston, a municipal corporation and its Historic District Commission hereinafter referred to as "Clarkston" admits the allegations as true.

2. Answering paragraph two, Clarkston admits the allegations as true.

LAW OFFICES OF
OMAS J. RYAN, P.C.
2055 ORCHARD LAKE ROAD
SYLVAN LAKE, MICH.
48320
(248) 334-9938

3. Answering paragraph three, the Order speaks for itself without further response by Clarkston herein.

4. Answering paragraph four, Clarkston denies the allegations categorizing new evidence as untrue.

5. Answering paragraph five, Clarkston denies this is new evidence and denies that the City concealed or did not disclose any evidence to Appellant for the reason said allegations are untrue.

6. Answering paragraph six, Clarkston being without sufficient information to form a belief leaves Appellant to its proofs.

7. Answering paragraph seven, the City and the prior owner of the subject property were involved in public litigation, which was settled, for the reason said allegations are true.

8. Answering paragraph eight, states Exhibit 1 speaks for itself without further response by Clarkston herein.

9. Answering paragraph nine, Clarkston being without sufficient information to form a belief leaves Appellant to its proofs.

10. Answering paragraph ten, Clarkston admits the allegations as true.

11. Answering paragraph eleven, the report cited speaks for itself without further response by Clarkston herein.

12. Answering paragraph twelve, the soil boring report speaks for itself without further response by Clarkston herein. Further, Exhibit 3 attached herein speaks for itself without further response by Clarkston herein.

13. Answering paragraph thirteen, Clarkston denies any lack of disclosure or transparency by the Appellee herein for the reason said allegations are untrue.

14. Answering paragraph fourteen, Clarkston being without sufficient information to form a belief as to the inspection by the City and leaves Appellant to its proofs.

15. Answering paragraph fifteen, Clarkston states Exhibit 4 speaks for itself without further response by Appellee herein.

16. Answering paragraph sixteen, Clarkston being without sufficient information to form a belief leaves Appellant to its proofs.

17. Answering paragraph seventeen, Clarkston being without sufficient information to form a belief leaves Appellant to its proofs.

18. Answering paragraph eighteen, Clarkston states as Appellee did not own or sell the subject property to the Appellant, the Appellee has no information as to what was disclosed between the Seller and Purchaser/Appellant. However, it is significant that the Appellant alleges "the Seller did not disclose the full extent of the structural damage to the house or the engineering reports." This is a matter between the Purchaser/Appellant and Seller and did not involve the City.

19. Answering paragraph nineteen, Clarkston states the Appellant was aware of the cracking and did not perform any further inspection of the matter and has ignored the issue until now.

20. Answering paragraph twenty, Clarkston is unable to state what the Appellant would have done based upon other information and leaves Appellant to its proofs. In further answer, the Appellant acknowledges it did not receive information from the seller and knew of the cracks but seeks to blame the City for possible Seller non-disclosure and inaction by Appellant.

21. Answering paragraph twenty-one, Clarkston admits it proceeded upon Subsection d as ordered by the Hearing Officer and the State Historic Preservation Review Board

22. Answering paragraph twenty-two, Clarkston states this is an argument and not a statement of fact and does not require a response by Appellee herein.

23. Answering paragraph twenty-three, Clarkston states the Order of Remand from Judge Plummer speaks for itself without further response by Appellee herein.

24. Answering paragraph twenty-four, Clarkston denies the allegation as untrue. In further answer Clarkston states the City did not sell the property to the Appellant and was unaware of any lack of level of due diligence done by the Appellant herein.

25. Answering paragraph twenty-five, Clarkston states the argument for Counsel by Appellant speaks for itself without further response by Appellee herein.

26. Answering paragraph twenty-six, Clarkston admits the settlement and engineering reports are not part of the record before this Court as the City had no easement for the drain, which it did not place on the subject property and attempted to remedy it in 2008/2009 for the reason said allegations are true.

27. Answering paragraph twenty-seven, as previously indicated to this Court the subject property is being reviewed by the Study Committee for the Clarkston Historical District Commission and admits the allegations as true.

28. Answering paragraph twenty-eight, Clarkston being without sufficient information to form a belief leaves the Appellant to their proofs.

29. Answering paragraph twenty-nine, Clarkston being without sufficient information to form a belief leaves Appellant to its proofs.

30. Answering paragraph thirty, Clarkston states the report speaks for itself without further response by Appellee herein.

31. Answering paragraph thirty-one, Clarkston states the report speaks for itself without further response by Appellee herein.

32. Answering paragraph thirty-two, Clarkston denies the allegations contained herein for the reason said allegations are untrue. In further answer, as this is a hearing under the

Administrative Procedures Act and this information has not been seen or reviewed by a Hearing Officer it would be error for the Court to allow any such evidence to be added to the record and considered in this instant appeal without a review by an administrative body below.

33. Answering paragraph thirty-three, Clarkston denies the allegations as untrue.

34. Answering paragraph thirty-four, Clarkston denies the allegations as untrue as this additional evidence is not relevant to the current issues before this Honorable Court.

35. Answering paragraph thirty-five, Appellant has already made these arguments to this Honorable Court and the Appellee and is waiting for this Court to decide the issues in this case.

36. Answering paragraph thirty-six, Clarkston denies the allegation as untrue. In further response, if anybody failed to disclose to the Appellant it was the Seller of the property, which in these pleadings the Appellant has acknowledged there was not an appropriate disclosure and the Appellant ignored the cracking after it purchased the property.

37. Answering paragraph thirty-seven, the Affidavit of Mr. Roth is based on the Affidavit of Mr. Pytiak, which does not contain specific information as to the cost and evaluation but uses conclusionary language with his opinion.

38. Answering paragraph thirty-eight, does not require a response from Appellee herein as it is a request for relief and not a statement of facts.

WHEREFORE, Appellee prays this Honorable Court:

A. Deny Appellant's request based upon the fact as a matter of law the City, as it did not sell the subject property to Appellant, was under no obligation to disclose any information it had relevant to the subject property, which should have been received by the Appellant from the Seller of the property.

B. Appellant has acknowledged that the Seller did not disclose the appropriate information to it and ignored the cracks in the basement area after the sale was concluded. Thus, Appellant has sat on its hands for these many years and now blames the Appellee for nondisclosure when there was no such legal obligation to disclose.

C. That the Administrative Procedure Act, of which Appellant is proceeding in this Court, is based upon the record below and as there is no record of this issue and evidence which has been reviewed and ruled on by the administrative body, the State Historic Preservation Board, that issue, if any, would have to be brought by a new action at the local level to determine whether the Appellant actually meet its burden under a Notice to Proceed with these facts or not.

D. Appellee prays Appellant's Motion be denied.

Respectfully submitted,

BY: Thomas J. Ryan
THOMAS J. RYAN, P.C. (P19808)
Attorney for Appellee
2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248)334-9938
sylvanlawtr@gmail.com

Dated: January 20, 2022

Proof of Service

I hereby certify that on January 20, 2022, I electronically filed the foregoing document with the Clerk of the Court using the MiFile System, which will send notification to such filing to the attorney(s) of record.

/s/ Kelly Nesbitt
Kelly Nesbitt
2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248)334-9938
sylvanlawtr@gmail.com