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May 5, 2020

Via Electronic Filing Only

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
2nd Floor
Harrisburg, PA 17120

Re: *Municipality of Penn Hills co Scott Andrejchak v Union Railroad Company et al.*
Docket No. **C-2019-3013809**

Dear Secretary Chiavetta:

Attached for electronic filing in the above-referenced proceeding is Union Railroad Company's Motion to Dismiss or for Judgment on the Pleadings, which I have served today by email on Judge Dunderdale and all counsel of record.

Sincerely,

/s/ Samuel F. Reynolds, Jr.

Samuel F. Reynolds, Jr.

cc w/encl, via email:

Hon. Katrina L. Dunderdale
Craig H. Alexander, Esquire
Kayla L. Rost, Esquire, BIE

**BEFORE THE
TOPENNSYLVANIA PUBLIC UTILITY COMMISSION**

Municipality of Penn Hills c/o Scott Andrejchak	:	
	:	
v.	:	
	:	Docket No. C-2019-3013809
Union Railroad Company	:	
	:	

**UNION RAILROAD COMPANY’S
MOTION FOR JUDGMENT BY ADMISSION OR JUDGMENT ON THE PLEADINGS**

Respondent, Union Railroad Company, LLC, through undersigned counsel, moves for Judgment by Admission or Judgment on the Pleadings on the grounds that the Complainant has failed or refused to file a reply to new matter, violated the Court’s Interim Order requiring Complainant to plead, and the Complaint is deficient as a matter of law, upon representing:

1. On October 24, 2019, the Municipality of Penn Hills (“Penn Hills”) filed a formal complaint against Union Railroad Company, LLC (“Union RR”)¹ and others in which Penn Hills alleges that Union RR is responsible for clearing an obstructed storm water inlet that causes occasional local flooding and demolishing, securing or repairing an abandoned railroad building that is dangerous and a nuisance.

2. On November 14, 2019, Union RR filed and served an answer and new matter, which contained a Notice to Plead.

3. Union RR alleged in its sworn new matter that Union RR: (1) does not own the buried inlet and abandoned building; (2) does not own or occupy the parcels on which the inlet

¹ Union Railroad Company, LLC (“Union RR”) is a Class III carrier that operates from its northern terminus at the North Bessemer Yard in Penn Hills Borough to its southern terminus in Clairton, Pennsylvania.

and building are located; and (3) has no contractual or other obligation to clear the inlet or remove or repair the abandoned building.

4. Union RR also alleged in its new matter that (1) Penn Hills owns or occupies the parcel where the buried inlet is located; and (2) the Canadian National Railway (“Canadian Railway”) owns the abandoned building and parcel on which it is located.

5. The Pennsylvania Rules of Civil Procedure require a party against new matter is alleged to plead within 20 days of service of the new matter. *See* Pa. R.C.P. No. 1026 (“every pleading subsequent to the complaint shall be filed within twenty days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading contains a notice to defend or is endorsed with a notice to plead.”)

6. Penn Hills was required by the rules to reply to Union RR’s new matter by December 4, 2019.

7. In the Second Interim Order, the Court noted that Penn Hills has not replied to Union RR’s new matter.

8. At the telephonic hearing on March 27, 2020, the Court reminded Penn Hills’ counsel that no reply to new matter had been filed of record.

9. In the Third Interim Order dated April 16, 2020, the Court gave Penn Hills two *additional* weeks to file its reply to new matter – *i.e.*, on or before May 1, 2020.

10. Penn Hills has failed or refused to file a reply to Union RR’s new matter.

11. Penn Hills has violated the Pennsylvania Rules of Civil Procedure and the Court’s Third Interim Order by failing or refusing to reply to Union RR’s new matter.

12. Under Pa. R.C.P. No. 1029(b), “[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication.”

13. Pa. R.C.P. No. 1037(b) allows the Court to enter judgment by default or admission.

14. Penn Hills has admitted the factual averments of Union RR's new matter by having failed or refused to deny them.

15. Pa. R.C.P. 1034 requires the Court to enter judgment on the pleadings if the plaintiff is required but fails to respond to new matter that demonstrates the moving party is entitled to judgment as a matter of law. *Chinweifenu v Southwest Airlines, Co.*, No. 151201420, 2016 WL 4418873, at *1 (Pa.Com.Pl., Philadelphia County Aug. 2, 2016)(citing *Keil v. Good*, 356 A.2d 768, 771 (Pa. 1976)).

16. Union RR is entitled to judgment as a matter of law because there is no legal basis upon which Penn Hills can compel Union RR to clear an obstructed storm water inlet that is located on land which Penn Hills owns or occupies and which Union RR neither owns nor occupies.

17. Similarly, there is no legal basis upon which Penn Hills can compel Union RR to demolish, repair or secure an abandoned building which the Canadian Railway owns, on land which the Canadian Railway owns, and which Union RR neither owns nor occupies.

18. Penn Hills' Complaint necessarily implicates legal and possessory rights and interests in real estate, which, under the Statute of Frauds,² must be in writing in order to be enforceable.

² From and after April 10, 1772, all leases, estates, interests of freehold or term of years, or any uncertain interest of, in, or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents, thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding; except, nevertheless, all leases not exceeding the term of three years from the making thereof; and moreover, that no leases, estates or interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall, at any time after the said April 10, 1772, be assigned, granted or surrendered, unless it be by deed or note, in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereto lawfully authorized by writing, or by act and operation of law. 33 P.S. § 1.

19. In the nearly seven months since it filed its Complaint, Penn Hills has not attached to its pleadings, averred, produced or even identified a single document that obligates or purports to obligate Union RR to maintain, or clear, the obstructed storm water inlet (which is on Penn Hills land), nor any document that obligates or purports to obligate Union RR to demolish, repair or secure an abandoned building (which the Canadian Railway owns and is erected on land which the Canadian Railway owns).

WHEREFORE, Union Railroad Company, LLC requests the Court to enter judgment by admission or judgment on the pleadings in favor of Union RR and against the Municipality of Penn Hills, dismissing the Complaint at Complainant's cost.

Date: May 5, 2020

Respectfully submitted,

/s/ Samuel F. Reynolds, Jr.
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Attorney for Union Railroad Company

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion for Judgment by Admission or Judgment on the Pleadings has been filed electronically and served on this 5th day of May 2020, via email, upon:

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/s/ Samuel F. Reynolds, Jr.

SAMUEL F. REYNOLDS, JR.
Attorney for Union Railroad Company