

**ANSWER, AFFIRMATIVE
DEFENSES AND
COUNTERCLAIM**

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

RIVER CITY ALE WORKS, LLC,

Plaintiff,

v.

WHEELING NATIONAL
HERITAGE AREA CORPORATION
& THE ARTISAN CENTER,

Defendant.

CIVIL ACTION NO. 17-C-58

**DEFENDANT'S ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIM**

COMES NOW the Defendant and Counterclaim Plaintiff, Wheeling National Heritage Area Corporation and The Artisan Center ("WNHAC"), by counsel, and for their answer, affirmative defenses and counterclaim against Plaintiff and Counterclaim Defendant, River City Ale Works, LLC ("River City") states as follows:

ANSWER

1. WNHAC admits the first two sentences of Paragraph 1 of the Complaint. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 1 of the Complaint, and therefore denies the allegations stated therein.
2. WNHAC admits the first sentence of Paragraph 2 of the Complaint. WNHAC denies the second sentence of Paragraph 2 of the Complaint.
3. WNHAC denies the allegations contained in Paragraph 3 of the Complaint.
4. The allegations of the first two sentences of Paragraph 4 of the Complaint are characterizations of the terms of a written document and the legal meaning and import of

a written document, the terms of which speak for themselves, and WNHAC denies any allegations that are inconsistent with the text of said document, or are rendered inaccurate, incomplete, or misleading based on a reading of the complete text of the document and applicable law. WNHAC denies the allegations contained in the last sentence of Paragraph 4 of the Complaint.

5. WNHAC admits the allegations contained in Paragraph 5 of the Complaint.
6. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 6 of the Complaint, and therefore denies the allegations stated therein.
7. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 7 of the Complaint, and therefore denies the allegations stated therein.
8. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 8 of the Complaint, and therefore denies the allegations stated therein.
9. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 9 of the Complaint, and therefore denies the allegations stated therein.
10. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 10 of the Complaint, and therefore denies the allegations stated therein.

11. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 11 of the Complaint, and therefore denies the allegations stated therein.
12. WNHAC denies the allegations contained in Paragraph 12 of the Complaint.
13. On information and belief, and based on its understanding of the allegations contained in Paragraph 13 of the Complaint, WNHAC denies the allegations contained in Paragraph 13.
14. The allegations of Paragraph 14 of the Complaint are characterizations of actions which speak for themselves, and WNHAC is without knowledge that River City "paid literally hundreds of thousands of dollars to WNHAC in rent," and therefore denies the allegations stated therein.
15. WNHAC denies the allegations contained in Paragraph 15 of the Complaint.
16. WNHAC denies the allegations contained in Paragraph 16 of the Complaint.
17. WNHAC denies the allegations contained in Paragraph 17 of the Complaint.
18. WNHAC denies the allegations contained in Paragraph 18 of the Complaint.
19. The allegations contained in Paragraph 19 of the Complaint are characterizations of the terms of written communication or documents, the terms of which speak for themselves, and WNHAC denies any allegations that are inconsistent with the text of said written communication or documents, or are rendered inaccurate, incomplete, or misleading based on a reading of the complete text of the written communication or documents.
20. The allegations contained in Paragraph 20 of the Complaint contain characterizations of written or oral communications, the terms of which speak for themselves, and WNHAC denies any allegations that are inconsistent, incomplete, or misleading.

21. WNHAC denies the allegations contained in Paragraph 21 of the Complaint. The allegations contained in the second sentence of Paragraph 21 of the Complaint are characterizations of the terms of written communication and documents, the terms of which speak for themselves, and WNHAC denies any allegations that are inconsistent with the text of said written communication or documents, or are rendered inaccurate, incomplete, or misleading based on a reading of the complete text of the written communication or documents. The last sentence of Paragraph 21 of the Complaint contains no factual allegations to which an admission or denial can be stated.
22. WNHAC denies the allegations contained in Paragraph 22 of the Complaint.
23. The allegations contained in Paragraph 23 of the Complaint are characterizations of the terms of written communication or documents, the terms of which speak for themselves, and WNHAC denies any allegations that are inconsistent with the text of said written communication or documents, or are rendered inaccurate, incomplete, or misleading based on a reading of the complete text of the written communication or documents. To the extent the allegations contained in Paragraph 23 of the Complaint refer to verbal communication, WNHAC denies the allegations contained therein.
24. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 24 of the Complaint, and therefore denies the allegations stated therein.
25. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 25 of the Complaint, and therefore denies the allegations stated therein.

26. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 26 of the Complaint, and therefore denies the allegations stated therein.
27. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 27 of the Complaint, and therefore denies the allegations stated therein.
28. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 28 of the Complaint, and therefore denies the allegations stated therein.
29. WNHAC is without knowledge or information sufficient to admit or deny the truth of the allegations contained in the remainder of Paragraph 29 of the Complaint, and therefore denies the allegations stated therein.
30. WNHAC denies the allegations contained in Paragraph 30 of the Complaint.
31. WNHAC denies the allegations contained in Paragraph 31 of the Complaint.
32. WNHAC denies the allegations contained in Paragraph 32 of the Complaint.
33. WNHAC denies the allegations contained in Paragraph 33 of the Complaint.
34. WNHAC denies the allegations contained in Paragraph 34 of the Complaint.
35. WNHAC denies the allegations contained in Paragraph 35 of the Complaint.
36. WNHAC denies the allegations contained in Paragraph 36 of the Complaint.
37. WNHAC denies the allegations contained in Paragraph 37 of the Complaint.
38. WNHAC denies any allegations contained in the Complaint which are not expressly admitted.

AFFIRMATIVE DEFENSES

WNHAC reserves the right to rely upon the following affirmative defenses to the claim asserted in the Complaint to the extent supported by evidence later developed or facts later learned, without now assuming the burden of proof on any such defense that would otherwise rest on River City and with reservation of its right to amend or supplement its responses to the Complaint, as well as its affirmative defenses, as information is gathered through discovery:

1. River City's claim is barred under the doctrine of first breach.
2. River City's claim for equitable relief is barred under the doctrine of unclean hands.
3. River City's claim for injunctive relief is barred by its failure to plead a cause of action as the basis for an injunction.
4. River City's claim for injunctive relief is barred by the fact that the dispute is not ripe.
5. River City's claim for injunctive relief is barred because it has an adequate remedy at law.
6. River City's claim for equitable relief is barred because it has an adequate remedy at law.
7. River City's claims are barred in whole or in part because it has failed to state a claim upon which relief can be granted.
8. River City's action is barred by the doctrine of justification, as the conduct of which River City complains was legally justified.
9. WNHAC reserves the right to raise any additional defenses as may be revealed by discovery or investigation in this matter.

WHEREFORE, WNHAC, having fully answered the Complaint, requests the Court to enter judgment in its favor and against River City, to award WNHAC its costs and expenses

incurred, including attorneys' fees; and to grant such other and further relief as may be deemed just and proper under the circumstances of this case.

COUNTERCLAIM

COMES NOW the Defendant and Counterclaim Plaintiff, WNHAC, by its counsel, and for its counterclaim against the Plaintiff and Counterclaim Defendant, River City, it is stated and alleged as follows:

THE PARTIES AND FACTUAL BACKDROP

1. The Counterclaim Plaintiff, WNHAC is qualified non-profit corporation formed under the laws of the State of West Virginia, with its principal place of business located at 1400 Main Street, 4th Floor, Wheeling, West Virginia.
2. The Counterclaim Defendant, River City, is a limited liability company organized and existing under the laws of the State of West Virginia, with its principal place of business located at 1400 Main Street, Wheeling, West Virginia.
3. WNHAC leases from the City of Wheeling, West Virginia a building known as The Artisan Center with an address of 1400 Main Street, Wheeling, West Virginia ("Artisan Center"). WNHAC leases space in The Artisan Center to tenants.
4. By the terms of a lease executed by WNHAC and River City on May 1, 2011, a copy of which is attached hereto as Exhibit A ("Lease"), WNHAC leased the first floor and portions of the third floor of The Artisan Center to River City.
5. The use of the third floor of The Artisan Center for events conducted by River City was also granted to River City for the term of the Lease.

6. The Lease requires River City to pay WNHAC “six percent (6%) of the Gross Sales gained from events conducted by Lessee on the third floor of the Wheeling Artisan Center.”
7. The Lease provides that WNHAC may examine River City’s “books and records from time to time, during reasonable business hours after reasonable prior notice, to verify Lessee’s reported gross sales.”
8. On January 31, 2017, in accordance with paragraph 13 of the Lease, WNHAC provided River City with a Notice of Default for River City’s breach of its obligations under the Lease, including the obligation to timely pay rent.
9. On February 10, 2017, WNHAC notified River City that, in accordance with paragraph 14 of the Lease, that it terminated River City’s lease as a remedy for River City’s default.

**COUNT I: ACTION FOR ACCOUNTING; ACTION FOR PROFITS; ACTION FOR
EQUITABLE ACCOUNTING**

10. WNHAC incorporates by reference each of the allegations in Paragraphs 1-9 of its Counterclaim.
11. River City has been and is a fiduciary of WNHAC’s, or in a position of trust, in collecting, reporting and paying WNHAC its proper share of the gross sales from events conducted by River City on the third floor of The Artisan Center, in accordance with its obligations under the Lease.
12. On information and belief, River City has experienced financial difficulties in the operation of its business, and these financial difficulties have affected River City’s business of conducting events on the third floor of the Artisan Center.

13. Without an accounting, WNHAC is unable to verify that River City has properly reported gross sales from events River City conducted on the third floor of The Artisan Center during the term of the Lease.
14. WNHAC lacks an adequate remedy at law to verify that River City has properly reported gross sales from events River City conducted on the third floor of The Artisan Center during the term of the Lease.
15. An accounting is required to assure that River city has properly reported gross sales from events River City conducted on the third floor of the Artisan Center during the term of the Lease.

WHEREFORE, Counterclaim Plaintiff WNHAC respectfully requests the Court order an River City to immediately provide a full accounting of the gross sales from events conducted by River City on the third floor of The Artisan Center during the term of the Lease, May 1, 2011 to February 10, 2017, that the Court order River City to maintain all records relevant and necessary to produce a full accounting, and for all further relief as the Court deems appropriate.

Respectfully submitted,

WHEELING NATIONAL HERITAGE
AREA CORPORATION
Counterclaim Plaintiff,

By: 
Of Counsel

Patrick S. Cassidy, Esq. (WV State Bar No. 671)
Irvin N. Shapell, Esq. (WV State Bar No. 12075)
CASSIDY, COGAN,
SHAPELL & VOEGELIN, L. C.
The First State Capitol

1413 Eoff Street
Wheeling, WV 26003
Telephone: (304) 232-8100
Fax: (340) 232-8200
pscassidy@walslaw.com
ins@walslaw.com