

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

MILLIE TOMBLIN dba C&J Security,

Plaintiff,

v.

Civil Action No. 16-C-34
Honorable Darrell Pratt

SCANNED

EAGLE PIPELINE, LLC an Ohio
Limited Liability Company and
COLUMBIA PIPELINE GROUP INC.; and
COLUMBIA PIPELINE GROUP SERVICES
COMPANY, a Delaware corporation,

Defendants,

and

EAGLE PIPELINE, LLC an Ohio
Limited Liability Company,

Defendant and Third-Party Complaint Plaintiff,


and

EAGLE PIPELINE, LLC an Ohio
Limited Liability Company,

Defendant and Third Party Plaintiff,

v.

COLUMBIA GAS TRANSMISSION, LLC,
a Delaware limited liability company,
Third-Party Defendant.

FILED
CLERK OF COURT'S OFFICE
2016 JUN 17 AM 10:10
WAYNE COUNTY, WV
BY 

SCANNED

**THIRD PARTY DEFENDANT COLUMBIA GAS TRANSMISSION,
LLC'S ANSWER TO EAGLE PIPELINE, LLC'S AMENDED THIRD-PARTY
COMPLAINT**

NOW COMES Third Party Defendant Columbia Gas Transmission, LLC (hereinafter "CGT") by counsel, Marsha Williams Kauffman and Robinson & McElwee PLLC, and responds to the allegations in Eagle Pipeline, LLC's (hereinafter "Eagle") Amended Third-Party Complaint.

FIRST DEFENSE

In response to the specific allegations set forth in Eagle's Amended Third-Party Complaint, CGT states and avers as follows:

1. CGT incorporates by reference the responses set forth in all of the paragraphs contained in CGT's Answer to Eagle's Amended Third-Party Complaint to the extent that the paragraphs referenced CGT.
2. CGT admits the allegations set forth in Paragraph No. 2 of Eagle's Third-Party Complaint.
3. CGT states that the easements, rights of ways and other documents regarding its property interests that have been recorded and are part of Exhibit D, speak for themselves.
4. CGT admits that the Project referenced in Eagle's Amended Cross-Claim included installation of a 16" pipeline. CGT denies the remainder of the allegations set forth in Paragraph No. 4 of Eagle's Third-Party Complaint.

5. CGT admits that it had knowledge of work to be performed on its property.

6. Although “affiliate company” is not defined, CGT admits that it is, generally speaking, an affiliate of CPGSC.

7. Upon information and belief, CGT admits the allegations set forth in Paragraph No. 7 of Eagle’s Amended Third-Party Complaint.

8. CGT admits that the Notice of Mechanic’s Lien attached to the Third-Party Complaint appears to have been recorded in Wayne County on March 11, 2016. CGT states that the remainder of the allegations set forth in Paragraph No. 8 of Eagle’s Third-Party Complaint contains legal conclusions. To the extent that the remainder of the allegations set forth in Paragraph No. 8 may be deemed to make any factual allegations against CGT, CGT denies the same.

9. CGT states that Paragraph No. 9 of Eagle’s Third-Party Complaint contains only legal conclusions and makes no factual allegations against CGT. To the extent that Paragraph No. 9 of Eagle’s Third-Party Complaint may be deemed to make any factual allegations against CGT, CGT denies the same.

SECOND DEFENSE

CGT raises, so as not to waive, the defenses of lack of personal jurisdiction, insufficiency of process, insufficiency of service of process, and failure to join an indispensable party under Rule 19 of the West Virginia Rules of Civil Procedure.

THIRD DEFENSE

CGT reserves the affirmative defense that the Eagle's Amended Third-Party Complaint fails or may fail to state a claim against CGT upon which relief may be granted, and, therefore, should be dismissed pursuant to Rule 12(b) of the West Virginia Rules of Civil Procedure.

FOURTH DEFENSE

CGT hereby raises and preserves each and every defense set forth pursuant to Rules 8, 9, and 12 of the West Virginia Rules of Civil Procedure, and also reserves the right to raise such additional defenses as may appear appropriate following further discovery and factual development.

FIFTH DEFENSE

CGT raises, so as not to waive, the defenses of accord and satisfaction, release, assumption of the risk, waiver, abandonment and comparative and/or contributory negligence.

SIXTH DEFENSE

CGT denies that this civil action is one in which costs and attorneys' fees are recoverable, and therefore, moves to dismiss these claims.

SEVENTH DEFENSE

To the extent that Eagle's Amended Third-Party Complaint asserts or alleges that Eagle is entitled to recover punitive or exemplary damages from CGT, then CGT asserts the following defenses:

1. Eagle's Amended Third-Party Complaint for punitive damages violates, and is therefore barred by, the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States of America on grounds including the following:

- a. it is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon Plaintiffs satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;
- b. the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts or wrongdoing, which infringes upon the Due Process and Equal Protection Clauses of the Fourteen Amendment of the United States Constitution;
- c. the procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against a defendant, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- d. the procedures to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;
- e. the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or

similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

- f. the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon the Due Process Clause of the Fifth and fourteenth Amendments and the Equal Protection Clause of the fourteenth Amendment of the United States Constitution;
- g. the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;
- h. the award of punitive damages to Plaintiffs in this action would constitute a deprivation of property without due process of law; and
- i. the procedures pursuant to which punitive damages are awarded permits the imposition of an excessive fine and penalty.

2. Eagle's Amended Third-Party Complaint for punitive damages violates and is, therefore, barred by the provision of the Constitution of the State of West Virginia, including but not limited to Article III, Sections 4, 5, 6 and 10, on grounds including the following:

- a. it is a violation of the Due Process and Equal Protection Clauses to impose punitive damages, which are penal in nature, against a civil defendant upon Plaintiffs satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

- b. the procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- c. the procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against Equitable;
- d. the procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of award of punitive damages;
- e. the procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts;
- f. the procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum fine for the same or similar conduct;
- g. the procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;
- h. the award of punitive damages to Plaintiffs in this action would constitute a deprivation of property without due process of law; and
- i. the procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

EIGHTH DEFENSE

CGT is not guilty of any intentional, willful, malicious or outrageous acts which proximately caused or contributed to the damages allegedly sustained by Eagle and, therefore, Eagle is prohibited from recovery of punitive damages.

NINTH DEFENSE

The injuries or damages of Eagle, if any, are a direct result of weather, nature, an unforeseen circumstance, or other outside force, and therefore, Eagle may not recover against CGT.

TENTH DEFENSE

The negligence and additional actions of others, who are not CGT, are the sole cause of Eagle's damages, if any, and therefore, Eagle may not recover against CGT.

ELEVENTH DEFENSE

The sole acts or omissions of Eagle are the sole cause of the damages of which Eagle now complains.

TWELFTH DEFENSE

The damages of which Eagle complains were not the proximate result of any act of omission or commission on the part of CGT.

THIRTEENTH DEFENSE

Eagle, by its conduct, assumed the risk of any alleged damages which may result from their acts of omission and commission and, therefore, may not assert this cause of action against CGT.

FOURTEENTH DEFENSE

Any alleged injuries and/or damages to Eagle were, or may have been, caused by the acts of others or through their own fault, and are in no way attributable to any wrongdoing on the part of CGT.

FIFTEENTH DEFENSE

Eagle, by its conduct, may not successfully assert this cause of action against CGT under the doctrine of "unclean hands."

SIXTEENTH DEFENSE

Eagle, by its conduct, is estopped from asserting this cause of action.

SEVENTEENTH DEFENSE

CGT denies that it breached any affirmative duty or standard of care with respect to Eagle.

EIGHTEENTH DEFENSE

CGT has neither violated any known law or laws, nor constitutional rights of Eagle, nor could CGT have reasonably anticipated that they would violate any known laws or constitutional rights of Eagle. CGT further asserts any and all benefits, protections, privileges, limitations and immunities afforded to it by regulations, statutes, the common law, and the Constitutions of the United States and the State of West Virginia.

NINETEENTH DEFENSE

CGT completely and consciously fulfilled each and every duty owed to Eagle.

TWENTIETH DEFENSE

CGT denies all allegations contained in Eagle's Amended Third-Party Complaint that allege or imply any responsibility, failure to meet a responsibility, duty or violation of a duty with respect to it; or that allege or imply that they violated any applicable statutes, rules, regulations, or standards that caused or contributed to Eagle's alleged damages.

TWENTY-FIRST DEFENSE

CGT asserts that Eagle failed to mitigate its damages or, in the alternative, if Eagle did mitigate damages, CGT is entitled to have those mitigated damages credited to those amounts, if any, allegedly owed by CGT to Eagle.

TWENTY-SECOND DEFENSE

The actions of CGT in no way contravened any recognized public policy of the State of West Virginia.

TWENTY-THIRD DEFENSE

CGT denies each and every allegation in Eagle's Amended Third-Party Complaint not specifically admitted herein.

TWENTY-FOURTH DEFENSE

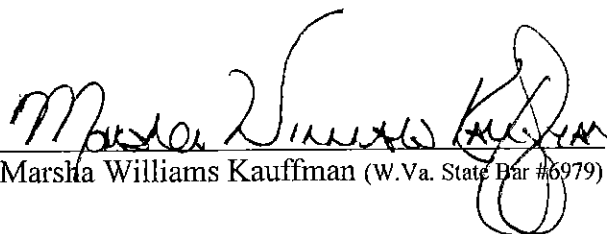
CGT specifically reserves the right to plead any and all other affirmative defenses not specifically raised herein that may arise during discovery or otherwise. Further, CGT specifically reserves the right to file an amended answer, counterclaims, or third-party complaints should additional discovery demonstrate the propriety of the same.

CERTIFICATE OF SERVICE

I, Marsha Williams Kauffman, Counsel for Columbia Gas Transmission, LLC, do hereby certify that true copies of **THIRD PARTY DEFENDANT COLUMBIA GAS TRANSMISSION, LLC'S ANSWER TO EAGLE PIPELINE, LLC'S AMENDED THIRD-PARTY COMPLAINT** were served through the regular course of the United States Postal Service, postage prepaid, this 14th day of June, 2016 addressed as follows:

Norman T. Daniels
Daniels Law Firm, PLLC
P.O. Box 1433
Charleston, West Virginia 25325
Counsel for Eagle Pipeline, LLC

Ancil G. Ramey
Steptoe & Johnson PLLC
P.O. Box 2195
Huntington, West Virginia 25722-2195
Counsel for Millie Tomblin d/b/a C & J Security, Inc.


Marsha Williams Kauffman (W.Va. State Bar #6979)

TWENTY-FIFTH DEFENSE

CGT plead, so as not to waive, that Eagle failed to exhaust its administrative remedies and that this action should, therefore, be dismissed.

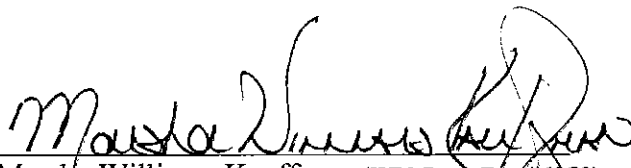
TWENTY-SIXTH DEFENSE

CGT hereby raises the defense of statute of limitations.

WHEREFORE, CGT respectfully requests that this Court dismiss Eagle's Third Party Complaint against it and that the Court award its fees and expenses in responding to Eagle's Third-Party Complaint including, but not limited to, reasonable attorneys' fees, and for such other relief as this Court deems appropriate in the interest of justice.

**COLUMBIA GAS
TRANSMISSION, LLC**

By counsel,



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