

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

THE MAJESTIC STAR CASINO, LLC,)
)
) Plaintiff)
) v.) Civil Action No. 2:08CV126 WL
))
UNITED STATES STEEL CORPORATION,)
))
) Defendant)

ANSWER

Defendant, United States Steel Corporation, by undersigned counsel, answers the Complaint of plaintiff, The Majestic Star Casino, LLC, and states the following.

Parties, Jurisdiction, and Venue

1. Plaintiff, The Majestic Star Casino, LLC ("Majestic"), is a corporation organized and existing under the laws of the state of Indiana with its principal place of business at One Buffington Harbor Drive, Gary, Indiana 46406.

Answer: Defendant, United States Steel Corporation, has insufficient knowledge or information to admit or deny these allegations. The allegations therefore are denied.

2. Defendant, United States Steel Corporation ("U. S. Steel"), on information and belief, is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 600 Grant Street, Pittsburgh, Pennsylvania, 15219.

Answer: Admitted.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U. S. C. § 1332 inasmuch as Majestic and U. S. Steel are citizens of different states and

the amount in controversy in this matter, exclusive of interest and costs, exceeds the sum of \$75,000.

Answer: The allegations of paragraph 3 are legal conclusions to which no response is required. To the extent that a response is required, these allegations, specifically as to the amount in controversy, are denied.

4. This Court has personal jurisdiction over U. S. Steel because it conducts business in the state of Indiana.

Answer: The allegations of paragraph 4 are legal conclusions to which no response is required. To the extent that a response is required, these allegations are denied.

5. Venue in this Court is proper pursuant to 28 U. S. C. § 1391(a)(2) because the property at issue is located in the Northern District of Indiana, Hammond Division.

Answer: The allegations of paragraph 5 are legal conclusions to which no response is required. To the extent that a response is required, these allegations are denied.

Allegations Common to All Counts

1. Majestic is the owner in fee simple of certain property located at One Buffington Harbor Drive, Gary, Indiana 46406 ("Premises").

Answer: Defendant, U. S. Steel, has insufficient knowledge or information to admit or deny these allegations. The allegations therefore are denied.

2. Majestic acquired the Premises from GNC Corporation, successor in title to Universal Atlas Cement Company ("Universal").

Answer: Defendant, U. S. Steel, has insufficient knowledge or information to admit or deny these allegations. The allegations therefore are denied.

3. On or about August 16, 1954, Universal and U. S. Steel entered into an "Agreement" ("Agreement") whereby Universal granted an easement ("Easement") in favor of U. S. Steel to allow U. S. Steel to transmit electrical energy across the Premises ("Easement Premises") using certain equipment ("Equipment") as more fully described below. A true, correct, and authentic copy of the Agreement is attached hereto to and made a part hereof as **Exhibit A**.

Answer: Admitted in part and denied in part. It is admitted that there is an Easement, which is embodied in Exhibit A. It is denied that Majestic has any rights under the Agreement.

4. Paragraph 1 of the Agreement states, in relevant part:

Universal hereby grants to Corporation [U. S. Steel] permission and authority to install, maintain operate, repair, replace, renew and relocate towers, poles, wires, cables, and all other necessary and convenient equipment for the transmission of electrical energy over two electric power transmission lines . . . all of which lines, towers, poles and equipment therefore are hereinafter collectively termed "equipment", with right of ingress and egress over the adjoining premises of Universal

Answer: Admitted.

5. The Agreement Recitals provide, in pertinent part:

said line and facilities have been augmented so as to provide for the transmission of 69,000 volts of electrical energy, and Corporation [U. S. Steel] now owns and operates an additional power line with facilities for the transmission of 22,000 volts of electrical energy, over and across certain lands of Universal.

Answer: Admitted in part and denied in part. The 'Recital' language is admitted. It is denied that this language has any contractual significance or that it lends itself to interpretation or enforcement of the Agreement.

6. Majestic is successor to the interests of Universal.

Answer: Defendant, U. S. Steel, has insufficient knowledge or information to admit or deny this allegation. The allegation therefore is denied.

7. Paragraph 9 of the Agreement states, in relevant part:

It is understood and agreed that if at any time after the installation of said equipment Corporation [U. S. Steel] shall fail to use said equipment for a period of five (5) consecutive years . . . then the rights herein granted, without further notice, immediately shall cease and terminate, and Corporation [U. S. Steel], upon the termination of said rights in the manner aforesaid, or in any other manner provided in this agreement, upon written demand of Universal immediately shall remove said equipment or such portion or portions thereof as Universal may require from the property of Universal, and shall restore said property to a condition equal to that which existed at the time of installation of said equipment, at the sole cost and expense of Corporation [U. S. Steel]

Answer: Admitted in part and denied in part. The language is admitted. The applicability of the language to this case is denied.

8. U. S. Steel has not used the Equipment for at least five (5) consecutive years.

Answer: Denied. The Equipment has been maintained, repaired, renewed and used by U. S. Steel consistently and from year to year.

9. On or about December 7, 2005, Majestic, by counsel, sent U. S. Steel a notice of Termination ("Termination Notice").

Answer: Admitted in part and denied in part. The Termination Notice is admitted. It is denied that the Notice was in any way proper or effective.

10. Despite the Termination Notice, U. S. Steel has failed to remove all Equipment from the Premises.

Answer: Admitted in part and denied in part. It is admitted that U. S. Steel has not removed its Equipment. It is denied that U. S. Steel had any obligation to remove the Equipment, or that its failure to remove the Equipment is wrongful.

Count I – Declaratory Judgment

11. Majestic incorporates by reference the allegations contained in paragraphs 1 through 10 of the Complaint as if restated, in full, herein.

Answer: The Answers set forth in paragraphs 1 through 10 above are incorporated herein by reference as though set forth at length.

12. Majestic is entitled to a judgment from this Court declaring that the Easement terminated and that U. S. Steel must remove all Equipment from the Premises.

Answer: The allegations of paragraph 12 are legal conclusions to which no response is required. To the extent that a response is required, these allegations are denied.

WHEREFORE, defendant, United States Steel Corporation, respectfully requests that Count II be dismissed, and that judgment be entered in its favor, together with attorneys' fees, costs of suit and such other and further relief as this Honorable Court may deem appropriate.

Count II – Claim for Damages

13. Majestic incorporates by reference the allegations contained in paragraphs 1 through 12 of the Complaint as if restated, in full, herein.

Answer: The Answers set forth in paragraphs 1 through 12 above are incorporated herein by reference as though set forth at length.

14. Pursuant to Paragraph 9 of the Agreement, the Easement terminated.

Answer: Denied. The Easement and U. S. Steel's right to maintain and use the Equipment have not terminated.

15. As a result of the Easement terminating, U. S. Steel no longer has an interest in the Premises.

Answer: Denied.

16. Majestic notified U. S. Steel in writing that the Easement terminated and U. S. Steel must remove the Equipment from the Premises.

Answer: Admitted in part and denied in part. Majestic's notification is admitted. It is denied that the notification was in any way proper or effective, or that U. S. Steel had any duty to remove its Equipment in response to the notification.

17. Despite demand, U. S. Steel has refused to vacate the Premises or remove the Equipment.

Answer: Admitted in part and denied in part. It is admitted that U. S. Steel has not vacated the Premises or removed its Equipment. It is denied that U. S. Steel had any obligation to vacate the Premises or to remove its Equipment, or that its failure to do so is wrongful.

18. U. S. Steel's knowing exertion of unauthorized control over the Premises constitutes conversion.

Answer: The allegations of paragraph 18 are legal conclusions to which no response is required. To the extent that a response is required, these allegations are denied.

19. As a direct and proximate result of U. S. Steel's conversion, Majestic has suffered and will continue to suffer damages, including but not limited to attorneys' fees and expenses incurred in prosecuting this action.

Answer: Denied. U. S. Steel has no liability to Majestic, and has not caused any damage to Majestic.

20. Pursuant to Indiana Code § 34-24-3-1, Majestic is entitled to treble damages for harm caused by U. S. Steel's conversion of Majestic's property.

Answer: The allegations of paragraph 20 are legal conclusions to which no response is required. To the extent that a response is required, these allegations are denied.

WHEREFORE, defendant, United States Steel Corporation, respectfully requests that Count II be dismissed, and that judgment be entered in its favor, together with attorneys' fees, costs of suit and such other and further relief as this Honorable Court may deem appropriate.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state any claim against U. S. Steel upon which relief can be granted.

SECOND DEFENSE

The claims and requests for relief are barred by applicable statutes of limitation and/or doctrine of laches.

THIRD DEFENSE

The claims and requests for relief are barred by waiver, accord and satisfaction, release and/or estoppel.

FOURTH DEFENSE

The claims and requests for relief are subject to and barred by the Statute of Frauds.

FIFTH DEFENSE

Majestic's claims are barred by failure of consideration.

SIXTH DEFENSE

Majestic has suffered no damages, compensatory, exemplary or statutory, as a result of any action or omission of U. S. Steel.

SEVENTH DEFENSE

U. S. Steel denies the material allegations of the Complaint and damages alleged in the Complaint, and demands strict proof thereof at trial.

EIGHTH DEFENSE

Any action taken by U. S. Steel or decision made regarding the Premises and Equipment located thereon was correct and legitimate under governing legal principles and the doctrine of justification generally.

NINTH DEFENSE

U. S. Steel has breached no obligation to Majestic.

TENTH DEFENSE

U. S. Steel did not convert the Premises, or any other property of Majestic.

ELEVENTH DEFENSE

Majestic has failed to mitigate its alleged damages.

TWELFTH DEFENSE

Majestic has no enforceable rights under the Agreement, and is not a proper party in interest.

THIRTEENTH DEFENSE

Majestic is not entitled to declaratory relief.

FOURTEENTH DEFENSE

U. S. Steel hereby specifically denies any allegations contained in the Complaint that were not expressly admitted herein.

FIFTEENTH DEFENSE

U. S. Steel reserves its right to assert any additional defenses that may arise as discovery progresses or otherwise in the course of this litigation.

WHEREFORE, defendant, United States Steel Corporation, respectfully requests that Count II be dismissed, and that judgment be entered in its favor, together with attorneys' fees, costs of suit and such other and further relief as this Honorable Court may deem appropriate.

Respectfully submitted,

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Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer of defendant, United States Steel Corporation, to the Complaint has been served upon the following attorneys of record on this 16th day of June, 2008, via the Court's Electronic Case Filing system:

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/s/ Anthony F. Jeselnik

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