

**STATE OF MICHIGAN
IN THE 46th JUDICIAL CIRCUIT COURT
OTSEGO COUNTY**

Michigan Department of
Environmental Quality, et al.
Plaintiffs,

Case No. 09-12933-CE(m)
Honorable Dennis F. Murphy

v

Golden Lotus, Inc.,
Defendant

Pamela J. Stevenson (40373)
Assistant Attorney General - Environment
Attorney for Plaintiffs
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P.O. Box 30755
Lansing, MI 48909
(517) 373-7540

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ANSWER TO COMPLAINT

Defendant, Golden Lotus, Inc., answers the Complaint as follows:

1. This paragraph does not allege facts pursuant to MCR 211(B)(1) which require an answer and, instead, contains a statement of the relief requested by Plaintiffs. Defendant states that the requests for relief set forth in this paragraph should be denied for the reason that they are not supported by the facts nor by applicable law.

2. Defendant neither admits nor denies the allegation of Plaintiffs that they are relying upon Part 31 and Part 301 of the NREPA for the reason that this is not an allegation of fact, but rather the state of mind of Plaintiffs. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or falsity of this allegation and, therefore, leaves Plaintiffs to their proofs. To the extent that this allegation implies that Defendant violated Parts 31 and 301,

Defendant denies for the reason that it is untrue and constitutes the erroneous legal conclusion of Plaintiffs.

As to the allegation that "Part 31 provides that the Department of Environmental Quality shall protect and conserve the water resources of the state and the Great Lakes, which are or may be affected by any type of contamination", Defendant denies for the reasons that it is so vague and ambiguous as to be incapable of answer, and it incorrectly summarizes the provision of Part 31 upon which Plaintiff apparently relies, to wit:

The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. MCL 324.3103(1).

To the extent that this allegation implies that Defendant violated Part 31, Defendant denies for the reason that it is untrue and constitutes the erroneous legal conclusion of Plaintiffs.

As to the allegation that:

Part 301 provides in part that a person shall not fill bottom land, diminish, or structurally interfere with the natural flow of an inland lake or stream without first obtaining a permit from the department,

Defendant admits that this is a correct statement of the law. Defendant states that, to the extent that this allegation implies that Defendant violated Part 301, Defendant denies for the reason that it is untrue and constitutes the erroneous legal conclusion of Plaintiffs.

JURISDICTION AND VENUE

3. Defendant admits that this Court has jurisdiction to determine whether Part 31 has application to the facts and circumstances underlying Plaintiff's Complaint; but, denies as untrue and as the erroneous legal conclusion of Plaintiffs that Part 31 has such application.

Defendant admits that this Court has jurisdiction over that portion of Plaintiffs' Complaint

which seeks relief authorized under MCL 324.30112(1); but denies as untrue and as the erroneous legal conclusion of Plaintiffs that this Court has jurisdiction over that portion of Plaintiffs' Complaint which seeks relief not authorized under that statutory provision, to wit, removal of Defendant's dam.

Defendant admits that this Court has jurisdiction pursuant to MCL 600.605 over the issue of application of Part 31 and that portion of Plaintiffs' Complaint which seeks the relief authorized under MCL 324.30112(1); but denies as untrue and as the erroneous legal conclusion of Plaintiffs that this Court has jurisdiction pursuant to MCL 600.605 over that portion of Plaintiffs' Complaint which seeks removal of Defendant's dam.

4. Defendant admits that this Court has personal jurisdiction over Defendant and that venue is proper in Otsego County, except for that portion of Plaintiff's request for relief which requires Plaintiff to first exhaust its administrative remedies, to wit, removal of Defendant's dam.

PARTIES

5. Defendant states no contest.

6. Defendant states no contest.

7. Defendant states no contest.

8. Defendant states no contest.

9. Defendant admits that it is the owner of the Song of the Morning Ranch ("Ranch"), but denies the allegation that the Ranch is "adjacent to an impoundment of the Pigeon River" for the reason that it is an inaccurate characterization of the relationship of the impoundment to the Ranch, to wit, most of the impoundment lies within the boundaries of the Ranch property, and only a small portion lies adjacent.

GENERAL ALLEGATIONS

10. Defendant neither admits nor denies the allegation that the Pigeon River is a “clear, navigable stream” for the reason that characterization of the stream as “clear” is so vague and ambiguous as to be incapable of answer, and characterization of the stream as “navigable” constitutes a legal conclusion of Plaintiff, with the consequence that Defendant lacks sufficient knowledge or information upon which to form a belief as to its truth or falsity and, therefore, leaves Plaintiffs to their proofs.

Defendant neither admits nor denies the remaining allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

11. Defendant neither admits nor denies the allegation contained in the first sentence of this paragraph for the reason that the phrase “most significant dam located on the Pigeon River” is so vague and ambiguous as to be incapable of answer, and Defendant lacks sufficient knowledge or information upon which to form a belief as to its truth or falsity and, therefore, leaves Plaintiffs to their proofs. Defendant neither admits nor denies the allegations of the second sentence for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

12. Defendant admits.

13. Defendant states that no Addendum was attached to the copy of the Complaint served on Defendant. Counsel for Defendant has checked with the Court Clerk and is advised that no Addendum is attached to the original Complaint filed by Plaintiffs with the Court. As a result of this omission, Defendant is answering this paragraph on the assumption that it is in possession of a true

copy of the Consent Judgment intended by Plaintiffs to have been attached to the Complaint. Its answer is necessarily conditioned, and without waiver of its right to amend its answer, upon receipt from Plaintiff's counsel of a copy of the Addendum. Based upon these conditions, Defendant denies the allegations of the first sentence of this paragraph as untrue; admits the allegation that significant upgrades and repairs were made to the dam; and, denies the allegation that the "DNR ordered the Defendant to make repairs and upgrades" for the reason that it is untrue as a mischaracterization of the reason for the repairs and upgrades, to wit, they were made pursuant to an agreement of the parties and embodied into a Consent Judgment entered on September 28, 1988, in the matter of *Attorney General of the State of Michigan, et al. v Golden Lotus, Inc., et al.*, Otsego County Circuit Court file no. 84-2871-CE (the "1984 Litigation").

14. Defendant denies the allegations of this paragraph for the reason that they are untrue and a misstatement of the terms of the 1988 Consent Judgment. Defendant states that the actual language of the Consent Judgment is:

(g) The services of persons shall be retained on a continuing basis who are trained in dam maintenance and safety and who will be responsible for implementing an approved dam safety and management program. [1988 Consent Judgment, p. 4, par. A, incorporating by reference pp. 45 and 46 of the Court's Bifurcated Trial Opinion entered June 8, 1987].

15. Defendant denies the allegations of this paragraph as untrue.

16. On information and belief, Defendant admits.

17. On information and belief, Defendant admits the allegations contained in the first two sentences. Defendant neither admits nor denies the allegations of the third sentence for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs. Defendant states that, on information and

belief, there may have been some flow remaining *via* the hydroelectric turbine.

18. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

19. Defendant denies the allegation that there was a “malfunction of the dam” for the reason that it is untrue. Defendant admits that it did not notify the DEQ or DNR, but states that notification was not required for the reason that DEQ and DNR representatives were at the dam so quickly following the event that Defendant did not have opportunity to provide notification; and, that Defendant has cooperated fully with Plaintiffs in their investigation of the event.

20. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

21. Defendant neither admits nor denies the allegations of the first sentence of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs. On information and belief, Defendant admits the allegation contained in the second sentence that the DNR made contact with a person at the Ranch, but denies the allegation that Defendant acknowledged a malfunction at the dam for the reason that it is untrue.

22. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

23. Defendant neither admits nor denies the allegations of this paragraph for the reason

that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

24. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

25. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

26. On information and belief, Defendant admits that the DEQ interviewed one of the persons responsible for operation of the dam on or about June 25, 2008. Defendant neither admits nor denies the remaining allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

27. Defendant admits.

28. Defendant denies the allegations of this paragraph as untrue.

29. Defendant neither admits nor denies the allegations contained in the first sentence of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs. Defendant neither admits nor denies the allegations contained in the second sentence of this paragraph for the reason that they are so vague as to be incapable of answer; and, to the extent that Plaintiff's use of the phrase "many years" implies that the consequences of the June 23 event were other than *de minimis*, Defendant denies as untrue.

30. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

31. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

32. Defendant neither admits nor denies the allegations of this paragraph for the reason that it is without sufficient knowledge or information upon which to form a belief as to their truth or falsity and, therefore, leaves Plaintiffs to their proofs.

33. Defendant denies the allegations of this paragraph as untrue.

COUNT I

34. Defendant repeats and incorporates by reference its answers to paragraphs 1 - 33.

35. Defendant states no contest.

36. Defendant denies the allegations of this paragraph as untrue and as the erroneous legal conclusion of Plaintiffs.

37. Defendant denies the allegations of this paragraph as untrue.

COUNT II

38. Defendant repeats and incorporates by reference its answers to paragraphs 1 - 37.

39. Defendant states no contest.

40. Defendant denies the allegations of this paragraph as untrue and as the erroneous legal conclusion of Plaintiffs.

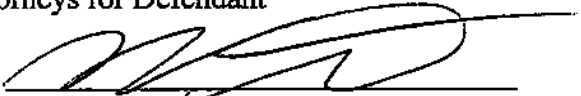
RELIEF REQUESTED

Defendant respectfully requests that this Court:

- A. Dismiss the Complaint with prejudice;
- B. Award Defendant its costs and attorneys fees incurred in defending against the Complaint; and,
- C. Grant such other and further relief as it shall deem appropriate under all the circumstances.

Date: March 26, 2009

SCHLECTE LAW FIRM, P.C.
Attorneys for Defendant

By: 
William M. Schlecte (P19991)

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NOTICE OF AFFIRMATIVE DEFENSES

Defendant gives notice of the following affirmative defenses:

1. Plaintiffs have failed to state a cause of action upon which their request for certain relief can be based, to wit, removal of the dam.
2. Plaintiffs have failed to state a claim upon which relief can be granted insofar as they allege a violation of Part 31 of the NREPA.
3. Plaintiffs have failed to exhaust their administrative remedies with respect to their request for dam removal.
4. Plaintiffs have failed to state a claim upon which their request for certain relief, to wit dam removal, can be based.
5. Plaintiffs' claims are barred, in whole or in part, by the acts and omissions of

Plaintiffs.

6. Plaintiffs' claims and remedies lie, in part, exclusively within the purview of Part 315 of the NREPA.

7. Plaintiffs' claims, insofar as they seek removal of Defendant's dam, constitute an impermissible taking of Defendant's property, contrary to the U.S. and Michigan constitutions.

8. Plaintiffs' action, insofar as it seeks removal of Defendant's dam, is discriminatory on the basis of religion.

9. Plaintiffs' suit, insofar as it seeks removal of Defendant's dam, constitutes unconstitutional state action to violate the civil rights of Defendant.

10. Defendant reserves the right to plead and prove such other and further affirmative defenses as they may become known during discovery.

Date: March 26, 2009

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Attorneys for Defendant

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Affirmative Defenses 03-26-09.wpd

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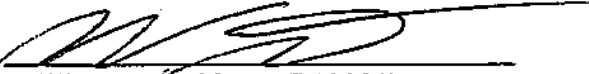
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DEMAND FOR JURY TRIAL

Defendant demands a trial by jury on all issues so triable by right.

Date: March 26, 2009

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Attorneys for Defendant

By: 
William M. Schlecte (P19991)