

7.

BRISTOL, SS SUPERIOR COURT

FILED

COMMONWEALTH OF MASSACHUSETTS

MAR 10 2021 SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

BRISTOL, MARC J SANTOS, ESQ.
CLERK/MAGISTRATE

CIVIL ACTION NO. 2073CV00524

CHRISTINA J. MALOTT,
Plaintiff,

v.

TOWN OF DARTMOUTH,
Defendants.

**ANSWER, AFFIRMATIVE DEFENSES AND JURY DEMAND OF THE DEFENDANT,
THE TOWN OF DARTMOUTH, TO PLAINTIFF'S COMPLAINT**

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted, in that the defendants have no obligation to pay the plaintiff any amount of the loss or damages alleged.

THIRD AFFIRMATIVE DEFENSE

The defendant, The Town of Hull, responds to the allegations in the plaintiff's Complaint as follows:

1. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same. to recovery in any amount from the defendants, and call upon the plaintiff to prove same.

2. The defendant admits it is a municipality located in Bristol County, Massachusetts, but denies the remaining allegations in this paragraph as they call for a legal conclusion to which no responsive pleading is required.

3. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

4. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

5. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

6. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

7. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

8. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

9. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

10. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

11. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

12. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

13. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

14. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

15. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

16. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

17. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

18. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

19. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the plaintiff to prove same.

COUNT I
Violation of the Massachusetts Civil Rights Act, G.L. c. 12§§ 11H-11J

20. The defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 19 of the plaintiff's Complaint as if fully set forth herein.

21. This Count was dismissed by Joint Stipulation of the Parties dated October 14, 2020; thus, no response is required for this paragraph.

22. This Count was dismissed by Joint Stipulation of the Parties dated October 14, 2020; thus, no response is required for this paragraph.

23. This Count was dismissed by Joint Stipulation of the Parties dated October 14, 2020; thus, no response is required for this paragraph.

24. This Count was dismissed by Joint Stipulation of the Parties dated October 14, 2020; thus, no response is required for this paragraph.

COUNT II - Negligence

28. The defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 24 of the plaintiff's Complaint as if fully set forth herein.

29. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

30. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

COUNT III – Negligent Infliction of Emotional Distress

31. The defendant repeats and realleges its responses to the allegations set forth in paragraphs 1 through 30 of the plaintiff's Complaint as if fully set forth herein.

32. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

33. The defendant denies the allegations contained in this paragraph, denies that the plaintiff is entitled to recovery in any amount from the defendant, and calls upon the plaintiff to prove same.

WHEREFORE, the defendant requests that the Complaint against them be dismissed and that they be awarded costs, attorneys' fees and such other relief as this Court seems just and appropriate

AFFIRMATIVE DEFENSES

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's negligence was greater than that of the defendant, and, therefore, the plaintiff is barred from recovery under M.G.L. c. 231 § 85.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that because of the plaintiff's comparative negligence, damages allowed, if any, shall be diminished in proportion to the amount of negligence attributable to the plaintiff in accordance with M.G.L. c. 231 § 85.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that if there was any defective condition on the property, which the defendant denies, the plaintiff may not recover on the grounds that, after discovering the alleged defective condition and being made aware of the danger, if any, it posed to her, the plaintiff proceeded to unreasonably make use of the premises and injured thereby.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that if the plaintiff suffered injuries or damages, as alleged, such injuries or damages were caused by someone for whose conduct the defendant was not and is not legally responsible.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states the plaintiff's claims is barred by the recreational use statute, M.G.L. c. 21, § 17C.

NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that if the plaintiff proves that she was injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for which this defendant is not liable.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims against the defendant are based upon the defendant's alleged exercise or performance or a failure to exercise or perform a discretionary function or duty and/or on the defendant's employees alleged exercise or performance or a failure to exercise or perform a discretionary function or duty within the scope of their employment. The plaintiff's claims against the defendant are, therefore, barred by virtue of M.G.L. c. 258, § 10(b).

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's recovery, if any, is limited pursuant to the provisions of M.G.L. c. 258.

TWELFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim is barred by the requirements set forth in M.G.L. c. 258, §4 because she failed to make proper presentment to the defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claim is barred by M.G.L. c. 258, §10(j).

FOURTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff, by virtue of her actions or conduct and/or the actions of her agents, servants, employees or representatives, cannot recover from the defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff failed to mitigate her damages and, therefore, her recovery, if any, in this action is barred and/or limited by that failure to mitigate.

SIXTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's claims are barred by the doctrine of unclean hands, waiver, estoppel and/or laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

The defendant hereby reserves the right to amend this Answer to assert such additional affirmative defenses as may be warranted or justified by facts disclosed while this litigation remains pending.

JURY DEMAND

The defendant demands a trial by jury.

Town of Dartmouth

By Its Attorneys,

/s/ Gareth W. Notis

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by electronic mail on March 8, 2021.

/s/ Gareth W. Notis

Gareth W. Notis, Esq.