

# *Blumberg and Blumberg, P.C.*

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September 23, 2024

Otsego County Clerk  
46<sup>th</sup> Circuit Court  
225 W. Main Street  
Gaylord, MI 49735

**RE: Wilderness Valley POA v Postlewait  
Case No. 24-19789-CH**

Dear Clerk:

Enclosed for filing are the following:

1. Appearance
2. Answer to Complaint
3. Affirmative Defenses
4. Counter Complaint
5. Proof of Service

Judge's Copy has been sent directly.

Thank you.

Sincerely,

BLUMBERG AND BLUMBERG, P.C.

  
Wendie Forman  
Legal Assistant

/wmf  
Enclosures

cc: Catherine Postlewait  
Paul Slough

STATE OF MICHIGAN  
46<sup>TH</sup> CIRCUIT COURT  
OTSEGO COUNTY

WILDERNESS VALLEY PROPERTY  
OWNERS ASSOCIATION, INC., JASON  
CAVERSON, and Individual; Brent  
Titus, Jr., an Individual, and  
Leonard Uller, an Individual,  
Plaintiffs Counter Defendants,

Case No. 24-19789-CH  
Hon. Colin G. Hunter (P71821)

vs

CATHERINE M. POSTLEWAIT,  
an Individual  
Defendant Counter Plaintiff.

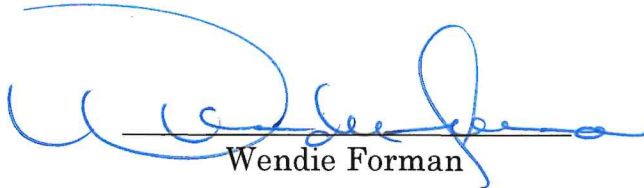
KIRKPATRICK, SLOUGH, DUTSMAN-  
COY & MOTT, PLC  
Attorneys for Plaintiffs Counter Defendants  
BY: William Paul Slough (P70489)  
145 N Otsego Ave  
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BLUMBERG AND BLUMBERG, P.C.  
Attorneys for Defendant Counter Plaintiff  
BY: Elliot J. Blumberg (P34979)  
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**PROOF OF SERVICE**

On September 23, 2024, Appearance, Answer to Complaint, Affirmative Defenses,  
and Counter Complaint were served on William Paul Slough via email at  
Paul@gaylordlaw.com.

I declare that these statements are true to the best of my information, knowledge,  
and belief.

  
Wendie Forman

STATE OF MICHIGAN  
46<sup>TH</sup> CIRCUIT COURT  
OTSEGO COUNTY

WILDERNESS VALLEY PROPERTY  
OWNERS ASSOCIATION, INC., JASON  
CAVERSON, and Individual; Brent  
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Plaintiffs,

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Hon. Colin G. Hunter (P71821)

vs

CATHERINE M. POSTLEWAIT,  
an Individual  
Defendant.

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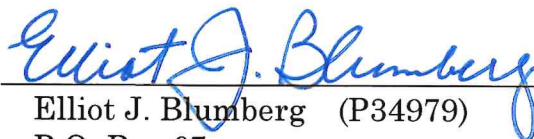
APPEARANCE

TO THE CLERK OF THE COURT:

Please enter my appearance in the above-captioned matter on behalf of  
Defendant, Catherine M. Postlewait.

BLUMBERG AND BLUMBERG, P.C.  
Attorneys for Defendant

BY:



Elliot J. Blumberg (P34979)  
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STATE OF MICHIGAN  
46<sup>TH</sup> CIRCUIT COURT  
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**ANSWER TO COMPLAINT**

**Now Comes Defendant**, Through her attorneys Blumberg and Blumberg, P.C. and  
in response to Plaintiffs' Complaint states as follows:

1. Defendant is without sufficient knowledge to admit or deny the allegation and hold Plaintiffs to their proofs.
2. Defendant can neither admit or deny the allegation and hold those Plaintiffs to their proofs.
3. Admit.
4. Defendant admits a path does extend across her property which has never been maintained by Wilderness Valley ("WVPOA").

5. Defendant admits that this Court has jurisdiction and Venue is proper as the subject property is located in Otsego County. Defendant denies that the individual Plaintiffs hold any interest to the real property at issue nor does the amount in controversy exceed \$25,000.

### **General Allegations**

6. Defendant accepts as a general proposition the assertion and conclusion of law contained in Paragraph 6. Defendant affirmatively asserts that restrictive covenants cannot be selectively enforced. Moreover, the subject property has been abandoned by the Association.
7. The right to enforce restrictions cannot be selectively enforced.
8. Defendant asserts that the easement in question has been abandoned by the Association and have been solely maintained by Defendant.
9. Plaintiffs' rights have been extinguished by virtue of their abandonment of the easement for over 20 years.
10. No hunting rights have been exercised by property owners of Wilderness Valley.
11. Defendant denies that the path across her property is a trail. Defendant however acknowledges that the pathway has been solely maintained by her for over 20 years.
12. Defendant asserts that such easement has been abandoned.
13. Denied.
14. Defendant's gate has never been locked. The easement has been abandoned by Plaintiffs thus extinguishing any rights of ingress and egress.

### Count I.

15. Defendant incorporated by reference her answers to Paragraphs 1-14 above as though set forth verbatim.
16. As stated above any right of ingress and egress has been extinguished by the abandonment of the easement by the Plaintiffs.
17. The individuals named in this action have no rights of ingress and egress based on the abandonment of the easement. Moreover, the named individuals have trespassed and committed acts damaging Defendant's property, including the destruction of her personal property.
18. Denied.

**Wherefore,** Defendant prays this Court to determine as a matter of law that any rights of ingress and egress expressly created have been extinguished by Plaintiffs' abandonment of the property. Defendant further asserts that a prescriptive easement now exists in favor of Defendant.

### Count II.

19. Defendant incorporates by reference her answers to Paragraphs 1-18 above as though set for the verbatim.
20. Denied as untrue.
21. Denied. To the contrary, Defendant alone has occupied and maintained Powhattan Pass for over 20 years.
22. Denied.

**Wherefore,** Defendant prays this Court to deny any such request made by Plaintiffs and request that her costs and actual attorney fees be awarded and grant such other relief as is deemed fair and equitable.

**Count III.  
Trespass**

23. Defendant incorporates by reference her answers to Paragraphs 1-22 above as though set forth verbatim.

24. Denied.

25. Denied.

26. Plaintiffs no longer have the right of ingress and egress as they have abandoned the easement along Powhattan Pass.

27. Denied.

28. Denied.

29. Denied. To the contrary, Plaintiffs' actions have destroyed the property belonging to Defendant.

**Wherefore,** Defendant prays this Court to deny the relief sought in Count III and award her costs and actual attorney fees wrongfully incurred the defense of this frivolous action.

**Count IV.  
Injunctive Relief**

30. Defendant incorporates by reference Paragraphs 1-29 above as though set forth verbatim.

31. Denied.

32. Defendant has exclusively used and maintained Powhattan Pass for over 20 years.

The placement of the gate is to prevent further damage done to Defendant's property.

33. Plaintiff no longer has any right to lawful use of Powhattan Pass.

34. Denied as untrue.

35. Denied. Alternate easements exist for the use of Plaintiffs.

36. Denied. Plaintiffs have not used Powhattan Pass for well over 20 years. Defendant has exclusively possessed and maintained the easement which has legally been abandoned by Plaintiffs.

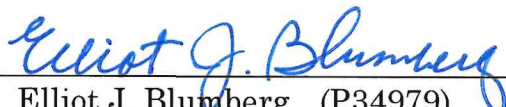
37. Denied.

38. Denied. Without the utilization of a gate, Plaintiffs will continue to destroy Defendant's property.

**Wherefore,** Defendant prays this Court deny Plaintiffs; request for injunctive relief and further award her costs and actual attorney fees incurred in the defense of this action.

**Reliance on Demand  
for Trial by Jury**

BLUMBERG AND BLUMBERG, P.C.  
Attorneys for Defendant

BY:   
Elliot J. Blumberg (P34979)  
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(989) 732-3534

Dated: September 23, 2024

STATE OF MICHIGAN  
46<sup>TH</sup> CIRCUIT COURT  
OTSEGO COUNTY

WILDERNESS VALLEY PROPERTY  
OWNERS ASSOCIATION, INC., JASON  
CAVERSON, and Individual; Brent  
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**Affirmative Defenses**

**Now Comes Defendant**, through her attorneys and assert the following affirmative defenses:

1. Plaintiffs fail to state a claim upon which relief can be granted.
2. The individual Plaintiffs do not have a standing to bring the instant action.
3. Plaintiff Association's failure to maintain or utilize the easement has resulted in an abandonment of the easement.
4. Defendant's sole use and maintenance of the easement for over 20 years creates a prescriptive easement in her favor.
5. Defendant's exclusive use and possession of Powhattan Pass for over 20 years constitutes adverse possession of the subject property.

6. Plaintiff's failure to utilize or maintain Powhattan Pass for over 20 years extinguishes the easement.
7. Plaintiffs' claim of a prescriptive easement fails as the alleged use of Plaintiffs was not exclusive.
8. Plaintiffs' claim for injunctive relief fails as their likelihood of prevailing is unlikely.
9. Plaintiff has failed to repair or maintain the easement and has resulted in the extinguishing of the right of ingress and egress.
10. Plaintiffs' failure to utilize the easement constitutes an abandonment of Powhattan Pass.
11. Plaintiff's selective enforcement of its covenants makes the instant enforcement improper.
12. Defendant's exclusive possession of Powhattan Pass makes her the owner of the property.
13. Defendant reserves the right to add such defenses as are learned during discovery.

BLUMBERG AND BLUMBERG, P.C.  
Attorneys for Defendant

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Dated: September 23, 2024

STATE OF MICHIGAN  
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WILDERNESS VALLEY PROPERTY  
OWNERS ASSOCIATION, INC., JASON  
CAVERSON, and Individual; Brent  
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Plaintiffs-Counter Defendants,

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Defendant-Counter Plaintiff.

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**Counter Complaint**

**Now Comes Defendant-Counter Plaintiff**, and for her Counter Complaint, states as follows:

1. Counter Plaintiff is the owner of real property located in Wilderness Valley, Hayes Township, Otsego County, Michigan and has owned the subject property since 2003.
2. Counter Plaintiff's property contains a trail across her property commonly known as Powhattan Pass.
3. Powhattan Pass served as an easement for the purpose of ingress and egress for members of the Wilderness Valley Property Owners Association.
4. Between the years 2003-2024, Counter Plaintiff solely occupied and maintained the

trail known as Powhattan Pass.

5. The trail was to provide ingress and egress to residents of the Wilderness Valley Association.
6. During the 21 years of ownership by Counter Plaintiff she has solely repaired and maintained Powhattan Pass.
7. Counter Plaintiff has exclusively maintained and used the easement exclusively during the period of 2003 until 2023 when members of the association trespassed onto her property.
8. Counter Plaintiff's exclusive maintenance and use of the easement has been uninterrupted, open, and notorious for a period of over 20 years.
9. Counter Plaintiff's exclusive use and possession the easement has resulted in a prescriptive easement for Counter Plaintiff.

**Wherefore,** Counter Plaintiff prays this Court to determine that a prescriptive easement exists in the favor of Counter Plaintiff and award her the exclusive right to install a gate to secure her property.

#### **Count II.**

10. Counter Plaintiff incorporates by reference Paragraphs 1-9 above as though set forth verbatim.
11. Counter Plaintiff is the owner of real property located within the real estate development known as Wilderness Valley.
12. Defendant Jason Caverson is believed to be an owner of property located within Wilderness Valley.
13. In July 2024, Defendant Caverson entered upon Counter Plaintiff's property, without permission or legal right and destroyed property belonging to Counter Plaintiff.

14. Among the property destroyed were signs belonging to Counter Plaintiff.

15. The actions of Defendant were willful and intention and done to inflict damage and destruction to Counter Plaintiff's property.

16. As a direct and proximate result of Defendant's actions, Counter Plaintiff has been financially damaged.

**Wherefore**, Counter Plaintiff prays this Court to enter judgment against Defendant Caverson in an amount in excess of \$10,000, plus the costs to restore her property.

### **Count III Adverse Possession**

17. Counter Plaintiff incorporates by reference Paragraphs 1-16 above as though set forth verbatim.

18. Counter Plaintiff has exclusively used a roadway known as Powhattan Pass in Wilderness Valley.

19. From 2003 through 2024, Counter Plaintiff has exclusively maintained the roadway and used the roadway to the exclusion of others.

20. Counter Plaintiff's use of Powhattan Pass has been open, notorious, continuous for over 20 years.

21. No use, other than Counter Plaintiff's use of the roadway, has resulted in her ownership by adverse possession.

**Wherefore**, Counter Plaintiff prays this Court to enter judgment and determine as a matter of law that she is the owner of the property known as Powhattan Pass.

#### Count IV

22. Counter Plaintiff incorporates by reference Paragraphs 1-21 above as though set forth verbatim.
23. Counter Plaintiff is an owner of real property located in Wilderness Valley, a real estate development located in Otsego County, Michigan.
24. Wilderness Valley is subjected to restrictive covenants and deed restrictions.
25. The restrictions provide for the use of easements throughout the development.
26. One of the easements, known as Powhattan Pass, has been exclusively maintained by Counter Plaintiff since her ownership of her property.
27. In recent weeks, Defendant Association has taken steps to allow passage along the easement and has brought this action to enforce the restrictions in Wilderness Valley.
28. There are other property owners within the Wilderness Valley development that have placed gates or otherwise to block entry to the easement.
29. Counter Defendant Association has selectively chosen to enforce the aforementioned restriction based on Counter Plaintiff's sex.
30. The selective enforcement of a restrictive covenant makes the restriction unenforceable.

**Wherefore,** Counter Plaintiff prays this Court to declare that the restrictive covenant as it relates to the ownership and use of Powhattan Pass is unenforceable and establish ownership in favor of Counter Plaintiff.

#### Count V

31. Counter Plaintiff incorporates by reference Paragraphs 1-30 above as though set forth verbatim.

32. For over thirty years, Counter Plaintiff has provided road maintenance and snow removal services for the Wilderness Valley Property Owners Association.
33. With the filing of the instant lawsuit, Counter Defendant has terminated the services of Counter Plaintiff.
34. The decision to terminate the services and refusal to allow her to continue to provide services to the Association was based on her sex and sexual orientation.
35. The Michigan Civil Rights Statute, Elliot-Larsen Civil Rights Act, MCL 37.2102 et seq. has been expanded to prohibit discrimination in hiring on the basis of sex and sexual orientation.
36. After years of satisfactory work performance, Counter Plaintiff was informed that she would have to reapply for the road maintenance position.
37. The actions of the Wilderness Valley P.O.A's and decision was made upon the discovery of Counter Plaintiff's sexual orientation.
38. The actions of the Counter Defendant are intentional and made with the intent to discriminate.
39. As a direct and proximate result of Counter Defendant's actions, Counter Plaintiff has been damaged.

**Wherefore,** Counter Plaintiff prays this Court to enter judgment against Counter Defendant in the amount of \$100,000, plus exemplary damages in the amount of \$50,000, plus costs and actual attorney fees as allowed by statute.

**RELIANCE ON TRIAL BY  
JURY IS HEREBY MADE**

BLUMBERG AND BLUMBERG, P.C.  
Attorneys for Defendant Counter Plaintiff

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Dated: September 23, 2024