

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Ashton Park Trace Apartments, LLC, )

Plaintiff, )

vs. )

CIVIL ACTION NO.  
1:14-CV-04056-MHC

City of Decatur, Georgia; Urban )

Redevelopment Agency of the City of )

Decatur; The Potts Company, LLC; )

The Potts Company, Inc.; Reeves )

Contracting Company, Inc.; Silverman )

Construction Program Management, Inc.; )

Kimley-Horn and Associates, Inc.; and )

Geo-Hydro Engineers, Inc. )

Defendants. )

**RESPONSIVE PLEADINGS, ANSWER and COUNTERCLAIM  
OF DEFENDANT GEO-HYDRO ENGINEERS, INC. TO CROSSCLAIMS  
OF DEFENDANTS THE CITY OF DECATUR, GEORGIA AND  
URBAN REDEVELOPMENT AGENCY**

COMES NOW, Geo-Hydro Engineers, Inc., (“Geo-Hydro”) and files its Responsive Pleadings, Answer and Counterclaim to Defendants The City of Decatur, Georgia and Urban Redevelopment Agency (“City Defendants”).

**DEFENSE**

City Defendants’ claims are barred by its failure to state a claim upon which relief can be granted.

DEFENSE

The City Defendants' claims are barred by the City Defendants' contributory negligence.

DEFENSE

The City Defendants' claims are barred by estoppel.

DEFENSE

If Geo-Hydro was negligent, which is emphatically denied, the negligence of the City Defendants' equaled or exceeded that of Geo-Hydro.

DEFENSE

No act or omission by Geo-Hydro either proximately caused or proximately contributed to any of City Defendants' alleged damages.

DEFENSE

Geo-Hydro contracted with City of Decatur only; Geo-Hydro made its reports to City of Decatur only; Geo-Hydro has no connection with or liability to Urban Redevelopment Agency of the City of Decatur.

DEFENSE

Geo-Hydro shall rely upon such other affirmative defenses, the existence of which may become known through discovery, and reserves the right to amend its Reply to assert the same.

DEFENSE

Without waiving the above defenses, Geo-Hydro answers the specific allegations of the Crossclaims as follows:

1.

Geo-Hydro incorporates its responses to the Amended Complaint as if set out herein. Geo-Hydro denies that its activities caused or contributed to the cause of any alleged damage to the City Defendants; Geo-Hydro denies it is liable to City Defendants under any theory of law; Geo-Hydro is without knowledge sufficient to form a belief as to all of the remaining responses of the City Defendants to Paragraphs 1 – 236 of the Amended Complaint.

2.

Admit.

3.

Geo-Hydro admits that City Defendants have paraphrased certain allegations of the Plaintiff; Geo-Hydro denies that any professional work performed by Geo-Hydro in connection with the Vault Project was negligent. Geo-Hydro denies it caused or contributed to the cause of any damage to Plaintiff's property.

4.

Geo-Hydro admits that it entered into one or more written agreements with

the City of Decatur; Geo-Hydro denies any characterization of those agreements by City Defendants; Geo-Hydro admits that it agreed to and did install ground water monitoring wells. However City Defendants failed to use the ground water monitoring wells to evaluate any impact on the adjacent properties caused by City Defendants' dewatering.

5.

Geo-Hydro admits that it bored four monitoring wells around the site including one on the Plaintiff's property. Geo-Hydro admits that it delivered a written report on or about June 13, 2013 to City Defendants. Geo-Hydro denies that Paragraph 5 accurately states the conclusion of Geo-Hydro.

6.

Geo-Hydro believes that the Plaintiff alleges dewatering activities may have contributed to the cause of the alleged damage to its property; Geo-Hydro denies that it caused or contributed to the cause of any alleged damage to the Plaintiff's property.

7.

Geo-Hydro admits that City Defendants has paraphrased portions of the Plaintiff's Complaint; Geo-Hydro denies that it caused or contributed to the cause of any alleged damage to Plaintiff's property.

8.

Geo-Hydro is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8.

9.

Denied.

10.

Denied.

11.

Denied.

12.

Denied.

Any allegation in the Crossclaim not responded to is denied.

**COUNTERCLAIM OF GEO-HYDRO ENGINEERS, INC.,  
("GEO-HYDRO") DEFENDANT IN CROSSCLAIM AGAINST THE CITY  
OF DECATUR, A PLAINTIFF IN CROSSCLAIM**

Geo-Hydro pursuant to FRCP 13 files this counterclaim against the City of Decatur (the "City") alleging as follows:

1.

Geo-Hydro incorporates by reference its defenses and responses to the allegations of Plaintiff's First Amended Complaint Paragraphs 1-236 as if fully set forth herein.

2.

The City is subject to the jurisdiction and venue of this court as set forth in the Plaintiff's First Amended Complaint.

3.

The City has filed a crossclaim against Geo-Hydro.

4.

Plaintiff alleges, among other things that dewatering performed on the City's Vault Project caused or contributed to the cause of damage to its apartment building.

5.

Pursuant to a Contract with the City, Geo-Hydro made a report to the City dated December 20, 2012 entitled Report of Subsurface Exploration and Geotechnical Engineering Evaluation. The report stated in part:

SUPPLEMENTAL EXPLORATION

Due to the anticipated impact groundwater will have on the proposed construction and the need for temporarily lowering

the groundwater level over a large area, additional subsurface exploration is recommended for adjoining developments. The temporary dewatering measures can potentially depress the groundwater level under neighboring structures, which could cause consolidation of existing soils and induce settlements on these structures. We recommend that monitoring wells be installed within adjacent properties to determine the consistency of the subsurface materials and determine the stabilized groundwater levels. These monitoring wells can also be utilized during construction to monitor the effects of dewatering. Once construction sequencing and dewatering are more developed, the potential effects of dewatering on neighboring structures can be evaluated in more detail. Lastly, considering the magnitude and potential effects to the vault construction on neighboring properties and structures, it would be prudent and advisable to implement a monitoring program to record ground deformation during the construction period. Similar to the scope of supplemental subsurface exploration, the scope of a ground deformation monitoring program can be developed once

construction sequencing and other information are further developed.

6.

Pursuant to a Contract with the City, Geo-Hydro prepared a report to the City dated June 13, 2013 entitled: Evaluation of Potential Impact of Large-Scaled Dewatering Ebster Park Regional Stormwater Detention Facility; the report stated in part:

EVALUATIONS AND RECOMMENDATIONS

...

Because the test borings represent a small statistical sampling of subsurface conditions, it is possible that conditions may be encountered during construction that are substantially different from those indicated by the test borings. In these instances, adjustments to the design and construction may be necessary.

...

We do not expect that existing neighboring buildings will experience noticeable settlement as a result of dewatering associated with the Vault Project.

...

In our initial geotechnical engineering report for this project (report number 120561.00 dated December 20, 2012) we recommended implementing a monitoring program to record ground deformations during the construction period. We still believe such monitoring would be prudent.

A basic ground deformation monitoring program should involve the installation of settlement hubs or benchmarks located in the properties and areas outside the limits of vault construction. An initial baseline should be established and periodic measurements should be performed to determine whether ground subsidence is occurring. If subsidence occurs as expected, the monitoring program will provide information to determine the magnitude and rate of subsidence. However, the monitoring program will be most useful if the magnitude of ground subsidence begins to exceed our estimates. That information would facilitate decision making related to modifications to the construction sequence, remedial measures, or even temporary suspension of construction if necessary.

7.

The City did not follow any of Geo-Hydro's recommendations set out above.

8.

Following the report of June 13, 2013, the City did not engage Geo-Hydro to provide any further services in connection with the Vault Project.

9.

The report dated June 13, 2013 was the last activity Geo-Hydro had in connection with the Vault Project.

10.

After Geo-Hydro's last activity in connection with the Vault Project:

- a) Others designed the stormwater detention vault;
- b) Others designed and implemented the permanent dewatering system;
- c) Others designed and implemented the temporary dewatering system;
- d) Others constructed the vault; and
- e) Others supervised; observed; and managed the construction of the Vault Project.

11.

Upon information and belief, the monitoring wells were not utilized during construction to monitor the effects of dewatering until approximately seven (7) months after the June 13, 2013 report; at that time the ground water table was 9½ feet below the elevation measured in June 2013 before dewatering began.

12.

The recommendations contained in the reports and quoted above, were made to the City so that dewatering would not cause damage such as Plaintiff alleges.

13.

Had the City followed the recommendations made by Geo-Hydro, then dewatering would not have caused the damage Plaintiff alleges.

14.

Plaintiff seeks damages from Geo-Hydro for damage to its structure caused by dewatering.

15.

The City was negligent and breached its duty under contract in its failure to follow the recommendations or take other steps to detect ground deformations and changes in the ground water table.

16.

If Geo-Hydro is liable to Plaintiff for damage caused by dewatering, then the City is liable to Geo-Hydro for the City's failure to follow the recommendation in the reports.

WHEREFORE, Geo-Hydro prays as follows:

- (a) that Defendant Decatur's Crossclaim against it be dismissed;
- (b) all costs charged to Defendant Decatur;
- (c) that Geo-Hydro have such other and further relief as is equitable and appropriate under the circumstances; and
- (d) for any damages awarded to Plaintiff against Geo-Hydro and for Geo-Hydro's attorney's fees and other expenses in this action.

Dated: March 9, 2015.

GREENFIELD, BOST & KLIROS, P.C.

By: /s/ John W. Greenfield

John W. Greenfield

Georgia State Bar No. 309050

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served all counsel in the foregoing matter, with a copy of the foregoing Responsive Pleadings, Answer and Counterclaim of Defendant Geo-Hydro Engineers, Inc. to Crossclaims of Defendants The City of Decatur, Georgia and Urban Redevelopment Agency by depositing a copy of same in an envelope with adequate postage affixed thereon to ensure delivery by regular United States mail and addressed as follows:

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This 9<sup>th</sup> day of March, 2015.

GREENFIELD, BOST & KLIROS, P.C.

By: /s/ John W. Greenfield  
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