

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

Ashton Park Trace Apartments, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Action File No.
v.	)	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.; and Silverman	)	
Construction Program Management, Inc.,	)	
	)	
Defendants.	)	

**DEFENDANT POTTS COMPANY, LLC’S ANSWER TO PLAINTIFF’S  
COMPLAINT AND FIRST AMENDED COMPLAINT**

Plaintiff Ashton Park Trace Apartments, LLC’s (“Park Trace” and/or “Plaintiff”) filed its First Amended Complaint before Defendant Potts Company, LLC’s (“Potts LLC” and/or “Defendant”) Answer to the original Complaint was due. Potts LLC hereby Answers the numbered paragraphs of the First Amended Complaint, and this Answer also serves as a response to the original Complaint. Potts LLC Answers as follows:

**FIRST AFFIRMATIVE DEFENSE**

Complaint fails to state a claim for each count upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

All or a portion of Plaintiff's claims are barred by the economic loss rule to the extent and damages sought by Plaintiff in tort are purely economic.

**THIRD AFFIRMATIVE DEFENSE**

All or a portion of Plaintiff's claims are time barred.

**FOURTH AFFIRMATIVE DEFENSE**

Potts LLC' liability, if any, is reduced by the negligence of other defendants and non-parties to this case.

**FIFTH AFFIRMATIVE DEFENSE**

Potts LLC' breached no duty owed to Plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

Potts LLC' actions are not the proximate cause of Plaintiff's alleged damage. Plaintiff's alleged damage was caused, if at all, by the Owners and its design professionals whose plans called for dewatering and specified the level to which the water must be lowered. Owner and its designers were responsible for

analyzing whether dewatering activities would have any impact on surrounding properties.

**SEVENTH AFFIRMATIVE DEFENSE**

Potts LLC has not interfered with Plaintiff's property in an unlawful manner.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff fails to state a claim for negligence per se. An action for negligence per se lies where a party has violated a statute or ordinance that does not provide for a cause of action. Plaintiff seeks to establish negligence per se for violation of O.C.G.A. §§ 51-9-1 and 51-9-9, both of which independently provide a cause of action.

**NINETH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to attorney's fees in this case as a bona fide controversy exists here, and Potts LLC has not acted in bad faith, been stubbornly litigious or caused Plaintiff unnecessary trouble and expense.

**TENTH AFFIRMATIVE DEFENSE**

Punitive damages are not warranted here as Potts LLC has not acted with willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care creating the presumption of conscious indifference to consequences.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails in whole or in part because Plaintiff has failed to mitigate its damages.

**TWELFTH AFFIRMATIVE DEFENSE**

All or a portion of Plaintiff's damages, if any, were caused by codefendants named in this action and must be apportioned pursuant to O.C.G.A. § 51-12-33.

**STATEMENT OF THE CASE**

Potts LLC generally denies the Statement of the Case and states that work was done pursuant to drawings and designs prepared by the Owner and its design professionals, all of which required dewatering and the lowering of the ground water to a specified level. Potts LLC specifically relied on the conclusion of the Owner and its design professionals that lowering the groundwater would not damage buildings on the adjacent property. Potts LLC properly performed its duties and is not liable for the claims and damages asserted by Plaintiff. Without limiting the generality of the foregoing denial Potts LLC responds to the specifically enumerated paragraphs of Plaintiffs complaint as follows:

**PARTIES**

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies same.

a. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1(a) and therefore denies same.

b. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 (b) and therefore denies same.

2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 and therefore denies same.

3. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and therefore denies same.

4. Defendant admits Paragraph 4, except that Defendant denies that Mike Potts and Richard Kelly are members of the LLC.

5. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies same.

6. Admitted.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies same.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies same.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies same.

### **JURISDICTION AND VENUE**

10. Defendant admits the Plaintiff and Defendants are citizens of different states. Defendant lacks knowledge or information sufficient to form a belief as to the amount in controversy and therefore denies same.

11. Denied.

12. Admitted.

### **GENERAL ALLEGATIONS**

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 13 and therefore denies same.

14. Admitted.

15. Admitted.

16. Admitted.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 and therefore denies same.

18. Admitted.

19. Admitted.

20. Admitted.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies same.

22. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and therefore denies same.

23. Admitted.

24. Denied because Potts LLC does not know what is meant by “deep.”

25. Admitted generally. Denied to the extent a specific starting point for excavation is asserted in paragraph 25.

26. Denied as stated. By way of further response, Potts LLC states that construction drawing show the designed slopes and photographs evidence excavation. Additional project documents may show mores specific measurements. Potts LLC admits that soldier piles were installed.

27. Denied as stated. Potts LLC admits that soldier piles were installed and were temporary.

28. Denied as stated. Potts LLC admits that excavation was approximately 30 feet for the stormwater vault.

29. Denied.

30. Denied to the extent causation is asserted or implied. Otherwise, Potts LLC does not know dates of alleged damage and therefore denies same.

31. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 and therefore denies same.

32. Denied to the extent the implication is that Potts LLC caused any damage.

33. Denied to the extent the implication is that Potts LLC caused any damage.

34. Denied.

35. Admitted.

36. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 and therefore denies same.

37. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 and therefore denies same.

38. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 and therefore denies same.

39. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 and therefore denies same.

40. Denied as to Potts LLC.



## CAUSES OF ACTION

### Count One – Breach of Contract Against the City of Decatur

41. Denied.

42. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

43. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

44. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

45. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

46. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

47. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

48. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

49. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

50. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

51. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

52. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

53. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

54. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

55. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

56. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

**Count Two – Violation of O.C.G.A. § 44-9-3  
Against the City of Decatur and the URA**

57. Denied.

58. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

59. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

60. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

61. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

62. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

63. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

64. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

65. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

66. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

67. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

**Count Three – Negligence  
Against the City of Decatur**

68. Denied.

69. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

70. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

71. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

72. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

73. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

74. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

75. Denied to the extent of any direct or indirect allegations of wrongdoing by Potts LLC.

**Count Four – Inverse Condemnation  
Against the City of Decatur**

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

82. Denied.

**Count Five – Nuisance  
Against the City of Decatur**

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

**Count Six – Interfering with Enjoyment of Private Property  
(Violation of O.C.G.A. § 51-9-1)  
Against All Defendants**

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. Denied.

108. Denied.

109. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 109 and therefore denies same.

110. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 110 and therefore denies same.

111. Denied.

112. Denied.

113. Denied.

**Count Seven – Negligent Construction  
Against Potts and Reeves**

114. Potts LLC. incorporates all prior denials and affirmative defenses as if fully set forth herein.

115. Admitted and they both did so.

116. Admitted.

117. Denied as stated. Potts LLC was hired to perform the scope of work it was contracted for.

118. Admitted.

119. Admitted and they both did so.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

**Count Eight – Negligence  
Against Potts and Silverman**

127. Potts LLC incorporates all prior denials and affirmative defenses as if fully set forth herein.

128. Denied as stated because Potts LLC does not know what is meant by “skilled” services. Potts and Reeves did not provide project designs. Both performed the contractually required scope of work.

129. Admitted.

130. Admitted.

131. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 131 and therefore denies same.

132. Denied.

133. Denied.

134. Denied.

135. Denied.



**Count Nine – Negligence Per Se  
Against the City of Decatur**

136. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 136 and therefore denies same.

137. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 137 and therefore denies same.

138. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 138 and therefore denies same.

139. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 139 and therefore denies same.

140. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 140 and therefore denies same.

141. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 141 and therefore denies same.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Paragraph 146 contains no factual allegations; therefore Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

147. Paragraph 147 is a legal conclusion requiring no response. However, upon Defendant's information and belief, admitted.

148. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 148 and therefore denies same. Defendant denies the allegations to extent any allegations in this paragraph could be imputed to Potts LLC.

149. Denied.

150. Denied.

**Count Ten – Negligence Per Se  
Against Potts and Reeves**

151. Potts LLC incorporates all prior denials and affirmative defenses as if fully set forth herein.

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Paragraph 157 contains no factual allegations; therefore Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

158. Paragraph 158 is a legal conclusion requiring no response. However, upon Defendant's information and belief, admitted.

159. Denied.

160. Denied.

161. Denied.

**Count Eleven – Negligence Per Se  
Against Silverman**

162. Denied.

163. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 163 and therefore denies same.

164. Denied.

165. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 165 and therefore denies same.

166. Denied.

167. Denied.

168. Paragraph 168 contains no factual allegations; therefore Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

169. Paragraph 169 is a legal conclusion requiring no response. However, upon Defendant's information and belief, admitted.

170. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 170 and therefore denies same. Defendant denies the allegations to extent any allegations in this paragraph could be imputed to Potts LLC.

171. Denied.

172. Denied.

**Count Twelve – Professional Malpractice Against Kimley-Horn**

173. Denied

174. Admitted.

175. Admitted.

176. Admitted.

177. Admitted.

178. Admitted.

179. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 179 and therefore denies same.

180. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 180 and therefore denies same.

181. Admitted. Reeves and Potts have no duty to repair adjacent facilities damaged by design failures of others.

182. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 182 and therefore denies same. Reeves and Potts have no duty to repair adjacent facilities damaged by design failures of others.

183. Admitted.

184. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 184 and therefore denies same.

185. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 185 and therefore denies same.

186. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 186 and therefore denies same.

187. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 187 and therefore denies same.

188. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 188 and therefore denies same.

189. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 189 and therefore denies same.

**Count Thirteen – Professional Malpractice Against Geo-Hydro**

190. Denied.

191. Admitted.

192. Defendant admits that Geo-Hydro prepared a report on this topic. Defendant lacks knowledge or information sufficient to form a belief as to what Geo-Hydro did in performing that report and thus denies the remaining allegations of this paragraph.

193. Admitted.

194. Admitted.

195. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 195 and therefore denies same.

196. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 196 and therefore denies same.

197. Admitted.

198. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 198 and therefore denies same.

199. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 199 and therefore denies same.

200. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 200 and therefore denies same.

201. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 201 and therefore denies same.

202. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 202 and therefore denies same.

203. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 203 and therefore denies same.

204. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 204 and therefore denies same.

205. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 205 and therefore denies same.

206. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 206 and therefore denies same.

**Count Fourteen – Negligence Per Se Against Kimley-Horn**

207. Denied.

208. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 208 and therefore denies same.

209. Denied.

210. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 210 and therefore denies same.

211. Denied.

212. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 212 and therefore denies same.

213. Paragraph 213 contains no factual allegations; therefore Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

214. Paragraph 214 is a legal conclusion requiring no response. However, upon Defendant's information and belief, admitted.

215. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 215 and therefore denies same.

216. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 216 and therefore denies same.



217. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 217 and therefore denies same.

**Count Fifteen – Negligence Per Se Against Geo-Hydo**

218. Denied.

219. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 219 and therefore denies same.

220. Denied.

221. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 221 and therefore denies same.

222. Denied.

223. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 223 and therefore denies same.

224. Paragraph 224 contains no factual allegations; therefore Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

225. Paragraph 225 is a legal conclusion requiring no response. However, upon Defendant's information and belief, admitted.

226. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 226 and therefore denies same.

227. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 227 and therefore denies same.

228. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 228 and therefore denies same.

**Count Sixteen – Attorney’s Fees and Expenses of Litigation  
Against All Defendants Under O.C.G.A. § 13-6-11**

229. Potts LLC incorporates all prior denials and affirmative defenses as if fully set forth herein.

230. Denied.

231. Denied.

232. Denied.

**Count Seventeen – Punitive Damages  
Against All Defendants Under O.C.G.A. § 51-12-5.1**

233. Potts LLC incorporates all prior denials and affirmative defenses as if fully set forth herein.

234. Denied.

235. Denied.

236. Denied.

**PRAYER FOR RELIEF**

Defendant Potts LLC respectfully requests that this Court deny Plaintiff's Prayer for Relief and enter judgment in favor of Defendant Potts LLC.

DATED: January 16<sup>th</sup>, 2015.

Respectfully submitted,

/s/ Brad C. Parrott

Brad C. Parrott

Georgia Bar No. 595999

Mary Lillian Walker

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**CERTIFICATE OF FONT SIZE**

I certify that this document has been prepared in Time New Roman font, 14 point, a font that complies with Local Rule 5.1.

/s/ Brad C. Parrott  
Brad C. Parrott  
Georgia Bar No. 595999

**CERTIFICATE OF SERVICE**

This is to certify that I this day served a copy of the foregoing **DEFENDANT POTTS COMPANY, LLC'S ANSWER TO PLAINTIFF'S COMPLAINT AND FIRST AMENDED COMPLAINT** upon all counsel of record via the CM/ECF System which will automatically send an email notification of such filing to the following counsel of record:

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This 16<sup>th</sup> day of January, 2015.

Respectfully submitted,

/s/ Brad C. Parrott  
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