

BOURNE, NOLL & KENYON

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW

382 SPRINGFIELD AVENUE, SUITE 507
SUMMIT, NEW JERSEY 07901

(908) 277-2200

FAX (908) 277-6808

www.bournenoll.com

CARY R. HARDY
JAMES R. OTTOBRE
EDWIN R. MATTHEWS*
PETER W. ULICNY[‡]
ELLYN A. DRAIKIWICZ[‡]
MICHAEL D. MEZZACCA[◊]

* NJ AND NY BAR
◊ CERTIFIED CIVIL TRIAL ATTORNEY
‡ LL.M. IN TAXATION

OF COUNSEL

ROBERT B. BOURNE
EDWARD T. KENYON (1929-2017)
MARTIN RUBASHKIN (RET.)

COUNSEL

CLAIRE E. TOTH[‡]

November 16, 2018

Via Federal Express

Clerk, Chancery Division
Ocean County Courthouse
118 Washington St., Room 121
Toms River, NJ 08754

*Re: 641 Arnold Ave LLC v. 637 Arnold LLC
Docket No.: OCN-C-194-18
Our File No.: 4186-044*

Dear Sir/Madam:

Enclosed for filing is an original and one copy of an Answer and Counterclaim on behalf of defendant. Kindly return a stamped filed copy in the self-addressed stamped envelope enclosed for this purpose and charge account no. **8500** for any filing fee. Thank you for your attention.

Very truly yours,


MICHAEL D. MEZZACCA
For the Firm

MDM/lc
w/encl.

cc: Adam J. Steuerman, Esq. (via email)
Scott Dolan, 637 Arnold LLC (via email)

BOURNE, NOLL & KENYON

Michael D. Mezzacca, Esq.

ID#022641992

382 Springfield Avenue

Suite 507

Summit, NJ 07901

(908) 277-2200

Attorneys for Defendant

637 Arnold LLC

641 ARNOLD AVE LLC,

Plaintiff,

vs.

637 ARNOLD LLC,

Defendant.

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: OCEAN COUNTY

:
: Docket No. OCN-C-194-18

:
: **CIVIL ACTION**

:
: **ANSWER, SEPARATE DEFENSES,
: COUNTERCLAIM**
:

The defendant, 637 Arnold LLC ("Defendant" or "637 Arnold") by way of Answer to the Verified Complaint filed herein states as follows:

FIRST COUNT

1. Admitted.
2. Admitted.
3. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.
4. Admitted.
5. Denied.
6. Admitted.
7. Admitted.
8. Denied.
9. Defendant neither admits nor denies the allegation of this paragraph.
10. As to defendant, admitted. As to plaintiff, defendant is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.

WHEREFORE, Defendant judgment dismissing the Plaintiff's First Count of the Verified Complaint with prejudice together with attorneys fees, costs and such other relief as the Court deems just and equitable.

SECOND COUNT

1. Defendant repeats and realleges its answers to the previous allegations as though set forth herein at length.

2. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs. (And, there is no Ex.C to the Complaint defendant has in its possession).

3. Denied. Defendants has not "claimed" anything, but has relied on its own survey, and others as set forth in Scott Dolan's November 5, 2018 Certification.

4. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph and leaves plaintiff to its proofs.

5. Defendant neither admits nor denies the allegation of this paragraph.

WHEREFORE, Defendant demands judgment dismissing the Plaintiffs' Second Count of the Complaint with prejudice together with attorneys fees, costs and such other relief as the Court deems just and equitable.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

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

SECOND SEPARATE DEFENSE

Defendant incorporates the Certification of Scott Dolan dated November 5, 2018.

THIRD SEPARATE DEFENSE

Defendant incorporates the letter brief filed on its behalf dated November 5, 2018

FOURTH SEPARATE DEFENSE

Defendant reserves the right to amend this answer to assert additional defenses upon completion of further investigation and discovery.

COUNTERCLAIM

637 Arnold LLC, by way of counterclaim against the plaintiff 641 Arnold Ave LLC, says:

1. 637 Arnold LLC repeats and realleges its answers to the foregoing as though set forth herein at length.
2. The Certification of Scott Dolan dated November 5, 2018 is incorporated by reference. It is plaintiff's building that encroaches on defendant's property.

WHEREFORE, 637 Arnold LLC demands judgment against the plaintiff 641 Arnold Ave LLC dismissing the Complaint and declaring that plaintiff's building encroaches on defendant's property and for costs of suit, attorney's fees, and such other relief as the Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

Defendant hereby designates Michael D. Mezzacca as its trial counsel in this matter.

BOURNE, NOLL & KENYON
Attorneys for Defendant

By: 
MICHAEL D. MEZZACCA

Dated: November 16, 2018

CERTIFICATION PURSUANT TO RULE 4:5-1

Defendant through its undersigned attorneys, hereby certifies, in accordance with the requirements of R. 4:5-1, that the matters in controversy in the within litigation are not, to the best of its knowledge and belief, the subject of any other action pending in any other court or of a pending arbitration, nor is any such action or arbitration proceeding contemplated to the knowledge of this defendant.

Defendant further certifies that it presently has no knowledge of the names of other parties who should be but have not been joined in the within action.

BOURNE, NOLL & KENYON
Attorneys for Defendant

By: 
MICHAEL D. MEZZACCA

Dated: November 16, 2018

CERTIFICATION OF FILING AND SERVICE

I hereby certify that the within pleading has been forwarded for filing with the Clerk of the Superior Court, Chancery Division, Ocean County Courthouse, 206 Court House Lane, Toms River, NJ 08753 on this date via Federal Express and that a true copy has been served upon the following, via regular mail and email:

Adam J. Steuerman, Esq.
Sinn, Fitzsimmons, Cantoli, Bogan,
West & Steuerman
501 Trenton Avenue
Pt. Pleasant Beach, NJ 08742
Attorneys for Plaintiff

BOURNE, NOLL & KENYON
Attorneys for Defendant

By: 
MICHAEL D. MEZZACCA

Dated: November 16, 2018