

**THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT**

**LAURIE B. FRANKLIN TRUST,** )  
**LAURIE FRANKLIN, AND** )  
**DARRELL FRANKLIN** )  
 )  
**Plaintiffs,** )  
 )  
v. )  
 )  
**MISSION HILLS COUNTRY CLUB,** )  
**INC.** )  
 )  
**Defendant.** )

**Case No. 22CV02286  
Division 6  
K.S.A. Chapter 60**

**ANSWER TO PLAINTIFFS’ PETITION**

Mission Hills Country Club, Inc. (“MHCC”), by and through counsel, for its answer to Plaintiffs Laurie B. Franklin Trust, Laurie Franklin, and Darrell Franklin’s (“Plaintiffs”) Petition, denies all allegations in the Petition that are not specifically admitted herein, and further answers as follows:

**ANSWER**

1. Answering paragraph 1 of Plaintiffs’ Petition (the “Petition”), MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.
2. Answering paragraph 2, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.
3. Answering paragraph 3, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.
4. MHCC admits the allegations in paragraph 4 of the Petition.
5. MHCC admits the allegations in paragraph 5 of the Petition.

6. MHCC denies the allegations in paragraph 6 of the Petition. MHCC states that the Mission Hills Country Club (the “Club”) is located in Mission Hills, Kansas, not the Mission Woods neighborhood, in which Plaintiffs claim to live.

7. Answering paragraph 7, MHCC admits that the Club has tennis courts and pickleball courts.

8. Answering paragraph 8, MHCC admits that the Club’s tennis courts are located on the property, and that residential properties are in the surrounding area of the Club’s property. MHCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies and demands strict proof of same.

9. Answering paragraph 9, MHCC converted some of its tennis courts into pickleball courts in 2017. MHCC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

10. The allegations of paragraph 10 are admitted.

11. Answering paragraph 11, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.

12. Answering paragraph 12, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.

13. MHCC denies the allegations in paragraph 13, and in particular, MHCC denies that Plaintiffs have reasonable expectations of the noise associated with their alleged ownership of property bordering the Club.

14. Answering paragraph 14, MHCC denies the allegation of nuisance and denies the allegation that the noise from pickleball exceeds allowable limits. Further answering, MHCC states that it has taken reasonable and appropriate efforts to abate the noise, and that it met with

and attempted to work with Plaintiffs to address their concerns, but that Plaintiffs filed this lawsuit while MHCC was making such efforts.

15. The allegations of paragraph 15 are denied.

16. MHCC admits that pickleball courts are smaller than tennis courts but denies Plaintiffs' allegations regarding "the intended configuration." To the extent the allegations suggest liability on behalf of MHCC, the allegations are denied.

17. MHCC admits that there are differences between tennis and pickleball but denies Plaintiffs' allegations that the resulting noise is louder, more intrusive, or obnoxious.

18. Answering paragraph 18, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.

19. The allegations in paragraph 19 are denied.

20. The allegations in paragraph 20 are denied.

21. The allegations in paragraph 21 are denied.

22. The allegations in paragraph 22 of the Petition are denied. Rather, MHCC's rules limit use of the pickleball courts to 8 a.m. to 9 p.m. daily.

23. The allegations in paragraph 23 of the Petition are denied. Rather, MHCC's rules limit use of the pickleball courts to 8 a.m. to 9 p.m. daily.

24. Answering paragraph 24, MHCC denies that the allegation that the pickleball courts are utilized at 6 a.m. or that Plaintiffs can hear the pickleball courts from inside their property with windows and doors closed. MHCC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies and demands strict proof of same.

25. The allegations in paragraph 25 are denied.

26. MHCC denies the allegation in paragraph 26 that the pickleball courts substantially interfere with Plaintiffs' use and enjoyment of their property. MHCC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies and demands strict proof of same.

27. Answering paragraph 27, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.

28. Answering paragraph 28, MHCC denies that the sound from pickleball play is loud, constant and intrusive. MHCC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies and demands strict proof of same.

29. Answering paragraph 29, MHCC lacks knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies and demands strict proof of same.

30. The allegations in paragraph 30 are denied.

31. Answering paragraph 31, MHCC states that while it continuously considers potential capital improvement projects and changes to club amenities, it has no definitive present plans to convert additional tennis courts to pickleball courts or build additional pickleball courts.

32. Answering paragraph 32, MHCC admits the allegation in paragraph 32 that Plaintiff provided notice to MHCC and the City of Mission Hills about her complaints about the pickleball courts. MHCC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies and demands strict proof of same.

33. Answering paragraph 33, MHCC admits that it was aware of the City of Mission Hills Architectural Review Board meeting on August 17, 2021, and that Plaintiffs raised complaints about MHCC's pickleball courts at that meeting. MHCC denies that the pickleball courts have caused any intrusion.

34. Answering paragraph 34, MHCC admits that Plaintiffs and some other people made complaints about the pickleball courts at the meeting, and that MHCC still has pickleball courts. MHCC denies any implication that there is a substantial intrusion and disruption caused by the existing pickleball courts.

35. Answering paragraph 35, MHCC denies that the pickleball courts interfere with the use and enjoyment of the surrounding residential properties. The remaining allegations in paragraph 35 Complaint contain legal conclusions to which no response is required. To the extent a response is required, the remaining allegations are denied.

36. Answering paragraph 36, MHCC admits that it permits pickleball on the Club's property. The remaining allegations in paragraph 36 of the Complaint contain legal conclusions to which no response is required. To the extent a response is required, the remaining allegations are denied.

37. The allegations in paragraph 37 are denied.

38. The allegations in paragraph 38 are denied.

39. The allegations in paragraph 39 are denied.

40. Answering paragraph 40, MHCC denies that it has created a nuisance. MHCC lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies and demands strict proof of same.

41. The allegations in paragraph 41 are denied.

#### **AFFIRMATIVE DEFENSES**

1. To the extent any allegations in the Petition are not expressly admitted or denied above, they are denied herein.

2. The Petition fails to state a claim upon which relief may be granted by this Court under any theory.

3. Plaintiffs' claim is barred because Plaintiffs have not suffered any actual damage or harm.

4. Plaintiffs' claims are barred by the applicable statute of limitations.

5. Plaintiffs' claims are barred by laches or acquiescence.

6. Plaintiffs' claims are barred by the "coming to the nuisance" doctrine and/or assumption of risk.

7. Plaintiffs have failed to mitigate their damages.

8. Plaintiffs' claims are barred by unclean hands and/or other equitable defenses.

9. Plaintiffs' claims are barred in whole or in part in that MHCC is lawfully utilizing its property, including that MHCC's use of its property violates no ordinance or other law.

10. Plaintiffs' claims are barred in whole or in part because the annoyance claimed of is neither substantial nor unreasonable.

11. Plaintiffs' claims are barred are in whole or in part because MHCC has established reasonable restrictions surrounding the use of the pickleball courts and has taken reasonable steps to mitigate any issues for surrounding property owners, such as Plaintiffs.

12. MHCC reserves the right to amend its answer and assert other defenses, affirmative or otherwise, as they come to light during discovery and/or further investigation.

WHEREFORE, having fully answered Plaintiffs' Petition, Defendant Mission Hills Country Club, Inc. requests judgment in its favor and against the Plaintiff and/or dismissal of Plaintiff's Petition with prejudice, for Defendant's costs and expenses incurred herein, and for such other and further relief as the Court deems just, equitable and proper.

**JURY DEMAND**

MHCC demands trial by jury on all issues so triable.

Respectfully submitted,

POLSINELLI PC

*/s/ Jason L. Bush*

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ATTORNEYS FOR DEFENDANT  
MISSION HILLS COUNTRY CLUB, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of June, 2022, a copy of the above and foregoing was electronically filed with the Clerk of Court, thereby giving notice to all counsel of record, including:

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*/s/ Jason L. Bush*

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