

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

BNY MELLON, NATIONAL ASSOCIATION  
and THE BANK OF NEW YORK MELLON,

Plaintiffs,

v.

OCCUPY PITTSBURGH, an unincorporated  
association, JANE DOES (1-50), and JOHN  
DOES (1-50),

Defendants.

CIVIL DIVISION

No.: GD 11-025549

**PLAINTIFFS' REPLY TO DEFENDANT'S  
NEW MATTER**

Code: 003-Trespass Against Property Owner

Filed on behalf of Plaintiffs BNY Mellon,  
National Association and The Bank of New  
York Mellon

Counsel of Record for These Parties:

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CIVIL DIVISION  
ALLEGHENY COUNTY PA



such allegations are therefore denied and strict proof thereof demanded. BNY specifically denies that the merits of the unrelated matters referenced by Defendant in the first paragraph to the "Introduction" to Defendant's Answer have any relevance in this lawsuit and further denies any characterization of such unrelated matters. The second and third paragraphs of the "Introduction" to Defendant's Answer contain legal conclusions to which no response is required; if a response is required such allegations are denied. By way of further response, BNY Mellon denies as incorrect that the Occupation of BNY Mellon Green has been peaceful with no incidents of violence or damage. To the contrary the Occupation has not been entirely peaceful, upon information and belief there has been at least one incident of violence during the occupation, and substantial damage has occurred to BNY Mellon Green as the result of the Occupation. BNY Mellon further denies as incorrect that BNY Mellon Green is a public square or public forum and that it has been used as such by Defendant. To the contrary, BNY Mellon Green is not a public forum or a public square and it has not been used as such by Defendant. BNY Mellon further denies any characterization of the Guidelines and Notice delivered by BNY Mellon, which documents speak for themselves. By way of further answer, Occupy Pittsburgh has no license to continue the Occupation.

2. In reply to Paragraph 2 of Defendant's New Matter, BNY Mellon admits the Occupation. The remaining averments of Paragraph 2 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the remaining averments of Paragraph 2. By way of further response, BNY Mellon is a private party; BNY Mellon Green is private property owned by BNY Mellon and is not a public forum; the Occupation has excluded BNY Mellon, its employees,

tenants, guests, including the general public, from the quiet use and enjoyment of BNY Mellon Green; and the Occupation does not constitute conduct protected by the First Amendment to the United States Constitution or Article I, Sections 7 and 20 of the Pennsylvania Constitution. By way of further response, the name of the property upon which the Occupation is occurring is BNY Mellon Green and any averment to the contrary is denied as incorrect.

3. In reply to Paragraph 3 of Defendant's New Matter, BNY Mellon admits the Occupation. After reasonable investigation, BNY Mellon is without information sufficient to form a belief as to whether Defendant has not received any citations or charges from the Pittsburgh Police or any other city agencies. Such allegations are therefore denied and strict proof thereof required at trial. BNY Mellon denies the remaining averments of Paragraph 3 of Defendant's New Matter. By way of further response, Paragraphs 1 and 2 hereof are incorporated by reference as if fully set forth herein.
4. In reply to Paragraph 4 of Defendant's New Matter, BNY Mellon denies the averments of Paragraph 4 of Defendant's New Matter. By way of further response, Occupy Pittsburgh has engaged in conduct that has substantially damaged BNY Mellon Green; upon information and belief, has engaged in conduct that threatens the health, safety, and welfare of persons using BNY Mellon Green; and has on many occasions not worked cooperatively with BNY Mellon Security. To the contrary, members of Occupy Pittsburgh have incited conflict with BNY Mellon Security on many occasions in inappropriate ways. By way of further response, Paragraph 1 hereof is incorporated by reference as if fully set forth herein. After reasonable investigation, BNY Mellon does not have knowledge sufficient to form a belief as to the truth of any remaining averments

of Paragraph 4 of Defendant's New Matter; any such allegations are hereby denied and strict proof thereof is demanded.

5. In reply to Paragraph 5 of Defendant's New Matter, the averments of Paragraph 5 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 5. By way of further response, BNY Mellon denies as incorrect that BNY Mellon Green consists of "streets, sidewalks, and public parks." To the contrary, there are no streets or public parks on BNY Mellon Green, which is private property. There are walkways on BNY Mellon Green but they differ in character from public sidewalks in that the walkways on BNY Mellon Green are narrower and they are on private property. By way of further response, Paragraph 2 hereof is incorporated by reference as if fully set forth herein.
6. In reply to Paragraph 6 of Defendant's New Matter, BNY Mellon denies as incorrect that Exhibit C, which speaks for itself, was part of BNY Mellon's project development documents approved by the City of Pittsburgh Planning Commission on June 16, 1998 and November 10, 1998. BNY Mellon denies the remaining averments of Paragraph 6 of Defendant's New Matter as stated. BNY Mellon admits that the BNY Mellon Service Center Project, including BNY Mellon Green, is part of the Central Triangle Tax Increment Financing District; on or about April 5, 2000, the Urban Redevelopment Authority of Pittsburgh issued redevelopment bonds for the Central Triangle Tax Increment Financing District; and a portion of the funds were used for the BNY Mellon Service Center Project, but denies that this has any relevance to this case and denies that such circumstances make BNY Mellon Green a public forum or provide any other basis for Defendant's Occupation. By way of further response, Exhibit B speaks for itself. By

way of further response, Paragraph 2 hereof is incorporated by reference as if fully set forth herein.

7. In reply to Paragraph 7 of Defendant's New Matter, the averments of Paragraph 7 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 7. By way of further response, the Occupation does not constitute conduct protected by the First Amendment to the United States Constitution or Article I, Sections 7 and 20 of the Pennsylvania Constitution.
8. In reply to Paragraph 8 of Defendant's New Matter, BNY Mellon admits the Occupation and otherwise denies the averments of Paragraph 8. By way of further response, BNY Mellon denies that since October 15, 2011, BNY Mellon Green has been kept open to BNY Mellon's employees, tenants, guests, or the general public. To the contrary, Occupy Pittsburgh has controlled and limited access to and usage of BNY Mellon Green during the Occupation. After reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 of Defendant's New Matter. Such allegations are therefore denied and strict proof thereof is demanded. By way of further response, Paragraphs 1 and 2 hereof are incorporated by reference as if fully set forth herein.
9. In reply to Paragraph 9 of Defendant's New Matter, the averments of Paragraph 9 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 9. By way of further response, the Occupation does not constitute conduct protected by the First Amendment to the United States Constitution.

10. In reply to Paragraph 10 of Defendant's New Matter, the averments of Paragraph 10 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 10. By way of further response, the Occupation does not constitute conduct protected by Article 1, Section 7 of the Pennsylvania Constitution.
11. In reply to Paragraph 11 of Defendant's New Matter, the averments of Paragraph 11 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 11. By way of further response, the Occupation does not constitute conduct protected by Article 1, Section 20 of the Pennsylvania Constitution.

WHEREFORE, BNY Mellon respectfully requests that Defendant's request for relief be denied and that this Court enter judgment granting the relief in favor of Plaintiffs requested in Plaintiffs' Complaint.

12. In reply to Paragraph 12 of Defendant's New Matter, BNY Mellon incorporates Paragraphs 1-11 of this Reply as if fully set forth herein.
13. In reply to Paragraph 13 of Defendant's New Matter, Paragraph 13 of Defendant's New Matter is denied. By way of further response, BNY Mellon denies causing, creating, approving, authorizing, submitting or ratifying any statement allegedly made Pittsburgh Police Lieutenant Ed Trapp and BNY Mellon is not bound by any such statement. By way of further response, after reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining averments of Paragraph 13 of Defendant's New Matter. Such averments are therefore denied and strict proof thereof is demanded. By way of further response, Occupy Pittsburgh has caused

substantial damage to BNY Mellon Green and, upon information and belief, has engaged in dangerous, unsafe and inappropriate conduct on BNY Mellon Green.

14. In reply to Paragraph 14 of Defendant's New Matter, BNY Mellon admits that on November 1, 2011, agents of BNY Mellon delivered the Guidelines to Occupy Pittsburgh and the Guidelines speak for themselves. Any remaining averments of Paragraph 14 of Defendant's New Matter are legal conclusions to which no response is required. To the extent that a response is required, such averments are denied. By way of further response, BNY Mellon denies as incorrect that the Guidelines constitute a license or any surrender of BNY Mellon's private property rights in BNY Mellon Green. By way of further response, Occupy Pittsburgh has not complied with the Guidelines. By way of further response Paragraph 2 hereof is incorporated by reference as if fully set forth herein.
15. In reply to Paragraph 15 of Defendant's New Matter, the Guidelines speak for themselves and BNY Mellon denies any characterization inconsistent with the Guidelines. By way of further response, Paragraph 14 hereof is incorporated by reference as if fully set forth herein.
16. In reply to Paragraph 16 of Defendant's New Matter, the averments of Paragraph 16 of Defendant's New Matter are legal conclusions to which no response is required. To the extent that a response is required, such averments are denied. By way of further answer, BNY Mellon denies that the Guidelines constitute a license or any surrender of BNY Mellon's private property rights in BNY Mellon Green. BNY Mellon denies that Occupy Pittsburgh has not caused damage to BNY Mellon Green. To the contrary, Occupy Pittsburgh has substantially damaged BNY Mellon Green. BNY Mellon denies that

Defendant has any license to occupy BNY Mellon Green based on the Guidelines, any alleged statement of any City of Pittsburgh police officer, or otherwise. By way of further response, even if arguably a license had been granted, any license that Defendant may have had to occupy BNY Mellon Green was revocable by BNY Mellon at will and clearly would have been revoked by the Notice provided Defendant on December 9, 2011. By way of further response, Paragraphs 1, 2, 4, 13 and 14 hereof are incorporated by reference as if fully set forth herein.

17. In reply to Paragraph 17 of Defendant's New Matter, BNY Mellon admits posting a Notice on December 9, 2011 that speaks for itself. BNY Mellon denies the remaining averments of Paragraph 17 of Defendant's New Matter as stated. By way of further response, Paragraphs 1, 2, 4, 13, 14 and 16 hereof are incorporated by reference as if fully set forth herein.
18. In reply to Paragraph 18 of Defendant's New Matter, BNY Mellon denies that any statement from a city employee or the Guidelines provided any basis upon which Occupy Pittsburgh could reasonably rely for making any expenditure or for BNY Mellon's consent to an Occupation of BNY Mellon Green without duration. By way of further response, BNY Mellon denies as incorrect that any such expenditure could form the basis for any license, irrevocable or otherwise. After reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining averments of Paragraph 18 of Defendant's New Matter. Such averments are therefore denied and strict proof thereof is demanded. By way of further response, upon information and belief, any expenditures by Defendant were modest and involved personal or temporary items, and Defendant has received the benefit and use of such expenditures and, upon

information and belief, continues to possess and enjoy such items. By way of further response, Paragraphs 1, 2, 4, 13, 14 and 16 hereof are incorporated by reference as if fully set forth herein.

19. In reply to Paragraph 19 of Defendant's New Matter, BNY Mellon denies the averments of Paragraph 19 of Defendant's New Matter. By way of further response, Paragraphs 1, 2, 4, 13, 14, 16 and 18 hereof are incorporated by reference as if fully set forth herein.
20. In reply to Paragraph 20 of Defendant's New Matter, BNY Mellon denies the averments of Paragraph 20 of Defendant's New Matter. By way of further response, Paragraphs 1, 2, 4, 13, 14, 16, 18 and 19 hereof are incorporated by reference as if fully set forth herein.
21. In reply to Paragraph 21 of Defendant's New Matter, the averments of Paragraph 21 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 21. By way of further response, Paragraphs 1, 2, 4, 13, 14, 16, 18, 19 and 20 hereof are incorporated by reference as if fully set forth herein.
22. In reply to Paragraph 22 of Defendant's New Matter, BNY Mellon denies the averments of Paragraph 22 of Defendant's New Matter. By way of further response, the December 9, 2011 Notice speaks for itself. By way of further response, the Notice expressly references the use of propane on BNY Mellon Green. By way of further response, Paragraphs 1, 2, 4, 13, 14, 16 and 18 hereof are incorporated by reference as if fully set forth herein.
23. In reply to Paragraph 23 of Defendant's New Matter, BNY Mellon denies the averments of Paragraph 23 of Defendant's New Matter. By way of further response, upon information and belief, after the Guidelines were given to members of Occupy Pittsburgh

on November 1, 2011, there have been instances of Occupy Pittsburgh using controlled substances, using open flames (based on the presence of smoke indicating such flames), storing propane and gasoline products, and allowing tripping hazards on BNY Mellon Green. By way of further response, Paragraphs 1, 2, 4, 13, 14, 16 and 18 hereof are incorporated by reference as if fully set forth herein.

WHEREFORE, BNY Mellon respectfully requests that Defendant's request for relief be denied and that this Court enter judgment granting the relief in favor of Plaintiffs requested in Plaintiffs' Complaint.

24. In reply to Paragraph 24 of Defendant's New Matter, BNY Mellon incorporates Paragraphs 1-24 of its Reply as if fully set forth herein.

25. In reply to Paragraph 25 of Defendant's New Matter, BNY Mellon admits that, since its opening on July 2, 2001, BNY Mellon Green has historically closed during the winter months, without objection from the City of Pittsburgh, and the Occupation is preventing BNY Mellon from closing BNY Mellon Green as normally would occur. Any other allegations of Paragraph 25 of Defendant's New Matter are denied as stated. By way of further response, BNY Mellon denies any characterization of BNY Mellon's Complaint, including BNY Mellon's request for relief, which speaks for itself. By way of further response, Paragraph 2 hereof is incorporated by reference as if fully set forth herein.

26. In reply to Paragraph 26 of Defendant's New Matter, the averments of Paragraph 26 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 26 and denies any implication that BNY Mellon Green is Urban Open Space. To the contrary, BNY Mellon did not designate BNY Mellon Green as Urban Open Space, nor did the

City Planning Commission require or approve the designation of BNY Mellon Green as Urban Open Space. By way of further response, BNY Mellon Green is temporary open space reserved for future development. By way of further response, BNY Mellon denies as incorrect that the City of Pittsburgh Zoning Code in effect on June 3, 1998 ("1988 Zoning Code") requires Urban Open Space be "open to the public without restriction." By way of further response, any requirements of Urban Open Space are limited. If BNY Mellon Green was Urban Open Space, which it is not, this would not require BNY Mellon to permit the Occupation and, in fact, the Occupation is inconsistent with the requirements of Urban Open Space. The averments in this pleading as to zoning issues are upon information and belief.

27. In reply to Paragraph 27 of Defendant's New Matter, the averments of Paragraph 27 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 27, except that BNY Mellon admits that businesses in the area maintain business hours in the winter months. By way of further response, BNY Mellon denies that BNY Mellon Green constitutes Urban Open Space under the 1988 Zoning Code. To the contrary, BNY Mellon did not designate BNY Mellon Green as Urban Open Space, nor did the City Planning Commission require or approve the designation of BNY Mellon Green as Urban Open Space. BNY Mellon Green is temporary open space reserved for future development. By way of further response, any requirements of Urban Open Space are limited. If BNY Mellon Green was Urban Open Space, which it is not, this would not require BNY Mellon to permit the Occupation and, in fact, the Occupation is inconsistent with the requirements of Urban Open Space. By way of further response, Paragraphs 2

and 26 hereof are incorporated by reference as if fully set forth herein.

28. In reply to Paragraph 28 of Defendant's New Matter, the averments of Paragraph 28 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 28. By way of further response, Paragraphs 25, 26 and 27 hereof are incorporated by reference as if fully set forth herein.
29. In reply to Paragraph 29 of Defendant's New Matter, the averments of Paragraph 29 of Defendant's New Matter are conclusions of law to which no response is required.
30. In reply to Paragraph 30 of Defendant's New Matter, the averments of Paragraph 30 of Defendant's New Matter are conclusions of law to which no response is required.
31. In reply to Paragraph 31 of Defendant's New Matter, BNY Mellon admits that the pedestrian promenade Sidewalk adjacent to BNY Mellon Green has steps. The averment of Paragraph 31 of Defendant's New Matter that the Sidewalk is not "handicapped accessible" is a conclusion of law to which no response is required. BNY Mellon denies the remaining averments of Paragraph 31. By way of further response, public sidewalks exist that provide handicapped accessible routes between Ross Street and Grant Street which BNY Mellon shovels during the winter months. By way of further response, the pedestrian promenade Sidewalk adjacent to BNY Mellon Green received zoning approval as Urban Open Space. By way of further response, Paragraphs 25, 26 and 27 hereof is incorporated by reference as if fully set forth herein.
32. In reply to Paragraph 32 of Defendant's New Matter, the averments of Paragraph 32 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 32. By

way of further response, Paragraph 31 hereof is incorporated by reference as if fully set forth herein.

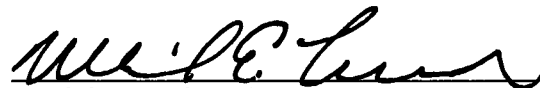
33. In reply to Paragraph 33 of Defendant's New Matter, BNY Mellon admits that The Bank of New York Mellon has a Wall Street address. After reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining averments of Paragraph 33 of Defendant's New Matter, and specifically is without knowledge as to Defendant's beliefs or messages or those of Occupy Wall Street. Such allegations are therefore denied and strict proof thereof is demanded. Any additional allegations of Paragraph 33 are denied.
34. In reply to Paragraph 34 of Defendant's New Matter, BNY Mellon admits that Occupy Pittsburgh has at times criticized BNY Mellon. After reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining averments of Paragraph 34 of Defendant's New Matter, and specifically is without knowledge as to Defendant's beliefs or whether Defendant will continue to publicly criticize BNY Mellon. Such allegations are therefore denied and strict proof thereof is demanded. By way of further response, Paragraph 1 and 33 hereof are incorporated by reference as if fully set forth herein.
35. In reply to Paragraph 35 of Defendant's New Matter, BNY Mellon, which desired to avoid confrontation and risk to its employees and others, did not prevent Defendant from access to BNY Mellon Green and posted a Notice on December 9, 2011 that speaks for itself. By way of further response, Defendant's criticism of BNY Mellon was not a reason for the December 9, 2011 Notice. After reasonable investigation, BNY Mellon is without knowledge sufficient to form a belief as to the truth of the remaining averments

of Paragraph 35 of Defendant's New Matter, and specifically is without knowledge as to Defendant's beliefs. By way of further response, Paragraphs 1, 2, 33 and 34 hereof are incorporated by reference as if fully set forth herein.

36. In reply to Paragraph 36 of Defendant's New Matter, the averments of Paragraph 36 of Defendant's New Matter are conclusions of law to which no response is required. To the extent a response is required, BNY Mellon denies the averments of Paragraph 36. By way of further response, Paragraphs 1, 2, 33, 34 and 35 hereof are incorporated by reference as if fully set forth herein.

WHEREFORE, BNY Mellon respectfully requests that Defendant's request for relief be denied and that this Court enter judgment granting the relief in favor of Plaintiffs requested in Plaintiffs' Complaint.

Dated: January 25, 2011



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Counsel for Plaintiffs BNY Mellon,  
National Association and The Bank of New  
York Mellon

VERIFICATION

I, Vincent Sands, as Executive Vice President of The Bank of New York Mellon and BNY Mellon, National Association, verify, on behalf of the Plaintiffs, that to the best of my knowledge or on information and belief, the statements made in the foregoing Plaintiffs' Reply to Defendant's New Matter are true and correct.

I understand that false statements herein are subject to the penalties 18 Pa. Cons. Stat. § 4904 relating to unsworn falsification to authorities.

Executed on this 23 day of January, 2012.

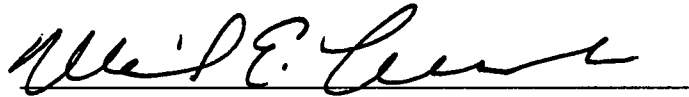
  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing Plaintiffs' Reply to Defendant's New Matter to be served upon the following via hand delivery:

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Dated: January 25, 2012



Counsel for Plaintiffs  
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