

1 CCAN  
David R. Koch (Nevada Bar No. 8830)  
2 Steven B. Scow (Nevada Bar No. 9906)  
KOCH & SCOW, LLC  
3 11500 S. Eastern Ave., Suite 110  
4 Henderson, Nevada 89052  
Tel: 702-318-5040  
5 Fax: 702-318-5039  
Attorneys for Plaintiff  
6

**FILED**  
MAY 19 3 58 PM '08  
*CR. [Signature]*  
CLERK OF THE COURT

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 CMKM DIAMONDS, INC., a Nevada  
Corporation,  
10  
11 Plaintiff,  
12 vs.  
13 DAVE DESORMEAU, individually; JOHN  
EDWARDS, individually; ETON  
14 PROPERTIES CORP.; DOES 1 THROUGH  
15 50, and ROE CORPORATIONS 1-50,  
inclusive,  
16 Defendants.

CASE NO: A538649  
DEPT NO: XIII

**CMKM DIAMONDS, INC.'S REPLY TO COUNTERCLAIM**

17  
18 Plaintiff, CMKM Diamonds, Inc. ("CMKM") hereby replies to the counterclaim filed by  
19 Eton Properties Corp. in this action as follows:

20 **REPLY TO COUNTERCLAIM**

- 21 1. CMKM admits the allegations of paragraphs 1 and 2.

22 **REPLY TO FIRST CAUSE OF ACTION**

- 23 2. In response to paragraph 3, CMKM repeats and realleges all previous allegations of  
the preceding paragraphs.  
24 3. CMKM denies the allegations of paragraphs 4, 5, 6, 7, and 8.

25 **REPLY TO SECOND CAUSE OF ACTION**

- 26 4. In response to paragraph 9, CMKM repeats and realleges all previous allegations of  
27 the preceding paragraphs.  
28

1 5. CMKM denies the allegations of paragraphs 10, 11, and 12.

2 **REPLY TO THIRD CAUSE OF ACTION**

3 6. In response to paragraph 13, CMKM repeats and realleges all previous allegations  
4 of the preceding paragraphs.

5 7. CMKM denies the allegations of paragraphs 14, 15, and 16.

6  
7 **AFFIRMATIVE DEFENSES**

8 CMKM also alleges the following affirmative defenses, but the listing of an  
9 affirmative defense is not and should not be construed as an admission that it bears the  
10 burden of proof on that issue.

11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 The counterclaim and each cause of action therein fails to state facts sufficient to  
14 constitute a claim upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Unclean Hands)**

17 Counterclaimant's unclean hands preclude the recovery sought in the counterclaim  
18 in this action.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Contributory Conduct)**

21 Any damages or injuries suffered by counterclaimant were caused or contributed to,  
22 either wholly or partially, by the unlawful, wrongful and/or improper acts of  
23 counterclaimant, and as such complainant is barred, either in whole or in part, from any  
24 recovery against CMKM.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Justification)**

27 CMKM alleges that its acts or omissions, if any, were justified.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIFTH AFFIRMATIVE DEFENSE**

**(Offset)**

Counterclaimant’s damages, if any, are more than offset by damages caused to CMKM by counterclaimant’s wrongful conduct.

**SIXTH AFFIRMATIVE DEFENSE**

**(Mitigation)**

The damage suffered by counterclaimant, if any, was aggravated by its failure to use reasonable diligence to mitigate any such damage.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver and Estoppel)**

The counterclaim and each cause of action are barred by the doctrines of waiver and/or estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Constructive Trust)**

CMKM’s claim for constructive trust of the real property at issue supports the lis pendens complained of by counterclaimant.

**NINTH AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

CMKM alleges that it may have additional defenses available and affirmative cross-claims of which it is not fully aware or cannot otherwise assert at the present time. CMKM reserves the right to assert additional defenses and affirmative cross-claims at a later date.

WHEREFORE, CMKM prays for judgment with respect to the counterclaim as follows:

- 1. That counterclaimant take nothing by reason of its counterclaim;
- 2. For costs of suit incurred herein;

//  
//  
//

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 3. For reasonable attorneys' fees; and
- 4. For such other and further relief as this Court deems just and proper.

DATED: May 19, 2008

**KOCH & SCOW LLC**



David R. Koch  
Koch & Scow LLC  
11500 S. Eastern Ave., Suite 110  
Henderson, NV 89052  
Tel: (702) 318-5040  
Fax: (702) 318-5039  
Attorney for CMKM Diamonds, Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

**PLEASE TAKE NOTICE** that on the 19th day of May, 2008, I served the foregoing **CMKM DIAMONDS, INC.'S REPLY TO COUNTERCLAIM** via US mail to the following addressee(s):

Harold P. Gewerter  
HAROLD P. GEWERTER, ESQ., LTD.  
5440 W. Sahara Avenue, Third Floor  
Las Vegas, NV 89146

Dave Desormeau  
1603 Mowbray Ct.  
Henderson, NV 89074

Dated: May 19, 2008

  
\_\_\_\_\_  
By an employee of Koch & Scow LLC