

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW**

MATTHEW SOVA, JANE SNELL, JAMES
LAMB, SCOTT KUCHAR, ADAM ENGEL,
SAMANTHA ENGEL, and all those
similarly situated in Saginaw County,
Michigan,
Plaintiffs,

Case No.: 25-002533-CH
Honorable Julie Gafkay

RESPONSE

v.

CONSUMERS ENERGY COMPANY and
ARBORMETRIC SOLUTIONS, LLC,
Defendants

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**PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT ARBORMETRIC'S JOINDER FILING**

Defendant ArborMetrics Solutions, LLC's filing does not raise a single new argument of its own. Instead, it simply piggybacks upon Defendant Consumers Energy's motion wholesale and asks the Court to dismiss the claims against it for the same

reasons. For the reasons already explained in Plaintiffs' Response in Opposition to Consumers Energy's Motion for Summary Disposition, that request fails. ArborMetrics' joinder rises or falls with Consumers Energy's primary-jurisdiction argument—and that argument fails because this case is not about trimming rules, reliability metrics, or how utilities are regulated. It is about where someone may lawfully step foot and what they may lawfully do once they get there.

Put plainly, if a person does not have the right to be on one's land, it does not matter whether they are a utility, a contractor, or a subcontractor three steps removed. Trespass is trespass.¹ ArborMetrics does not get a free pass simply because it was hired by someone who is regulated.

ARGUMENT

I. This Case Is About Where ArborMetrics' Crews Went, Not How Trees Are Trimmed

Defendant ArborMetrics frames the case as though homeowners are complaining about forestry practices or line-clearing science. That is not what happened. ArborMetrics' crews physically entered private yards, walked beyond any public right-of-way or easement, and sprayed permanent blue paint on privately owned trees. No trimming had yet occurred. The tortuous harm was already done the moment the crew stepped where it had no right to stand and marked what it had no right to mark.

An everyday example makes the point. If a delivery company hires a driver to make a drop-off, and that driver cuts across a neighbor's yard, spray-paints a fence, and leaves,

¹ Under Michigan law, "activities by" the easement owner "that go beyond the reasonable exercise of the use granted by the easement may constitute a trespass to the owner of the servient estate." *Schadewald v Brulé*, 225 Mich App 26, 40; 570 NW2d 788 (1997). Stated another way, exceeding the scope of an easement is treated as wrong answerable in trespass in Michigan. *Embrey v Weissman*, 74 Mich App 138, 143; 253 NW2d 687 (1977) ("activities that went beyond the reasonable exercise of the use granted could constitute trespass")

the driver cannot later say, “I was just following company policy.” And the company cannot in turn say, “We’re regulated by the US Department Transportation, so the court can’t hear this.” Regulation of the business does not turn trespass into permission. Courts decide where people may lawfully go on private land. They always have.

II. ArborMetrics Is Not Subject to the MPSC—And That Matters

Even if Consumers Energy were entitled to argue for deference to the Michigan Public Service Commission (it is not), that argument does not carry over to ArborMetrics. ArborMetrics is not a public utility. It is not regulated by the MPSC. It does not file tariffs, submit reliability plans, or answer to the Commission. The MPSC has no authority to discipline ArborMetrics, order it to stay off private land, or compensate homeowners for what it did. That fact alone defeats ArborMetrics’ request for dismissal or stay.

That said, the primary-jurisdiction doctrine only makes sense as it applies to ArborMetrics when there is an agency that can actually hear the dispute and do something about it. There is no MPSC process where a homeowner can file a complaint against ArborMetrics for trespass, demand removal of paint from trees, or obtain damages for unlawful entry. Sending this case to the MPSC would not resolve anything as to ArborMetrics. It would only delay justice while the real dispute remains untouched.

III. ArborMetrics’ “We’re Just the Contractor” Argument Is No Defense

ArborMetrics also suggests that because it acted jointly with Consumers Energy and faces the same claims, the case should rise or fall together. That cuts the other way. Contractors are responsible for their own conduct. Acting “at the direction of” another party does not immunize a contractor from trespass or property damage. If anything, it confirms that ArborMetrics was a hands-on participant in the physical entry and marking that Plaintiffs challenge. Stated simply, Michigan law does not ever recognize a “just

following orders” exception to trespass. Because ArborMetrics entered land without legal authority, it is answerable for that entry regardless of who hired it.

IV. No Trimming Has Occurred—and No Agency Expertise Is Needed

Finally, ArborMetrics repeats the claim that tree marking is the “first step” in trimming and therefore belongs before the MPSC. That misses the point. The first step in a trespass is the step onto the land. The harm here does not depend on whether trimming happens later. The paint is already on the trees. The invasion has already occurred. No agency expertise is required to decide whether someone crossed a boundary they had no right to cross.

CONCLUSION

Defendant ArborMetrics’ filing adds nothing new and tries avoid the real central question: where did its crews have the legal right to go? That question is answered by deeds, easements, and Michigan property law—not by regulators at the Michigan Public Service Commission in Lansing. Because ArborMetrics is not regulated by the MPSC, because no agency process exists to resolve homeowners’ claims against it, and because this case concerns straightforward trespass and property-rights violations, ArborMetrics’ motion for summary disposition or stay should be denied.

RELIEF REQUESTED

WHEREFORE, the Court is requested to deny the pre-answer motion in full and direct Defendant ArborMetrics Solutions LLC to answer the amended complaint forthwith.

Date: December 20, 2025

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document(s) was provided to and/or served on parties or at least one of his/her attorney of record on the date stated above by the following method(s):

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