

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA
CASE NO.: 2014-CA-004578

SWEETWATER BY DEL WEBB
MASTER HOMEOWNERS' ASSOCIATION,
INC.,

Plaintiff/Counter-Defendant,

vs.

LARRY MURPHREE,
Defendant/Counter-Plaintiff.

ANSWER AND AFFIRMATIVE DEFENSES TO THE COUNTERCLAIM

Plaintiff/Counter-Defendant, Sweetwater by Del Webb Master Homeowners' Association, Inc. ("ASSOCIATION"), by and through its undersigned counsel, files its answers to the Complaint filed herein as follows:

JURISDICTION

1. Paragraph 1 and 2 are admitted for jurisdictional purposes only.
2. As to Paragraph 3 and 4, the ASSOCIATION is without knowledge to form a response, therefore denied.
3. Paragraph 5 is admitted.
4. As to Paragraph 6, the ASSOCIATION is without knowledge to form a response, therefore denied.
5. Paragraph 7 is admitted for jurisdictional purposes only.

PROCEDURAL HISTORY

6. Paragraph 8 is admitted.
7. As to Paragraph 9, the ASSOCIATION is without knowledge to form a response, it is therefore denied and the ASSOCIATION demands strict proof thereof.

8. Paragraph 10 and 11 are denied, and ASSOCIATION demands strict proof thereof.
9. Paragraph 12 is admitted.
10. Paragraph 13 is admitted in so much as the litigation involved a flower pot violation, but deny any allegation of ownership of the porch by Defendant/Counter-Plaintiff and all other allegation contained therein.
11. Paragraph 14 is admitted.
12. Paragraph 15 is admitted.
13. Paragraphs 16, 17, 18, 19, and 20 as to all actions of ASSOCIATION, and ASSOCIATION demands strict proof thereof.
14. As to Paragraph 21, ASSOCIATION admits the second case was filed, but ASSOCIATION denies the remainder of the allegations and demands strict proof thereof.
15. Paragraph 22 is denied, and ASSOCIATION demands strict proof thereof.
16. As to Paragraph 23, the ASSOCIATION admits it prevailed on its Motion to Dismiss, but denies the remainder of the Paragraph and demands strict proof thereof.
17. Paragraph 24 is admitted.
18. Paragraph 25 is admitted insomuch as it pertains to the requirements to verify notice or lack of notice for a preliminary injunction claim pursuant to Rule 1.610, Fla. R. Civ. P.
19. Paragraph 26 is denied.
20. Paragraph 27 is admitted.

COUNT 1 BREACH OF CONTRACT

21. As to Paragraph 28, ASSOCIATION make the same responses in regard to Paragraphs 1 through 27.
22. Paragraph 29 is admitted.

23. Paragraph 30 is denied as to ASSOCIATION, and ASSOCIATION demands strict proof thereof.
24. Paragraph 31 is denied and ASSOCIATION demands strict proof thereof.
25. As to Paragraph 32, the ASSOCIATION admits the agreement is attached and it says what it says, but denies the remainder of the Paragraph and demands strict proof thereof.
26. Paragraph 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 are denied, and ASSOCIATION demands strict proof thereof.

COUNT 2 INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

27. As to Paragraph 43, ASSOCIATION makes the same responses in regard to Paragraph 1 through 27.
28. Paragraph 44 is admitted.
29. Paragraph 45 is denied, and ASSOCIATION demands strict proof thereof.
30. Paragraphs 46, 47, 48, 49, 50, 51, and 52 are denied as to ASSOCIATION, and ASSOCIATION demands strict proof thereof.
31. As to Paragraph 53, the ASSOCIATION admits the action was based on the Right to Display the American Flag Act of 2005 and resulted in a settlement agreement, but denied any allegations as to Defendant/Counter-Plaintiff's feelings or motives, denies any allegation Defendant/Counter-Plaintiff did not receive a monetary settlement from the HOA, and denies all other allegations contained therein.
32. Paragraphs 54 and 55 are denied as to ASSOCIATION, and ASSOCIATION demands strict proof thereof.
33. As to Paragraph 56, the ASSOCIATION admits it has an email for owners in ASSOCIATION, but denies the remainder of the Paragraph and demands strict proof thereof.

34. Paragraph 57 is denied.
35. Paragraph 58 is admitted in so much as the Florida Statutes say what they say, but the ASSOCIATION denies the remainder of the Paragraph and demands strict proof thereof.
36. Paragraph 59 is denied as to any claims of the automatic withdraw account, and ASSOCIATION is without knowledge as to the remaining allegations and demands strict proof thereof.
37. As to Paragraph 60, the ASSOCIATION denies any allegations of email blasts and their contents, and ASSOCIATION is without knowledge as to the remainder of the Paragraph and denies the same demanding strict proof thereof.
38. ASSOCIATION is without knowledge as to Paragraph 61 and denies the same demanding strict proof thereof.
39. As to Paragraph 62, ASSOCIATION admits Defendant/Counter-Plaintiff filed two federal lawsuit on his own accord, a lien was filed against his property and subsequently amended, this action is pending in this Court, and the non-confidential settlement agreement is attached to the Complaint in this action as well as the Counter Claim, but ASSOCIATION denies the remainder of the Paragraph and demands strict proof thereof.
40. ASSOCIATION is without knowledge as to the allegations in Paragraph 63 and denies the same demanding strict proof thereof.
41. Paragraphs 64 and 65 are denied, and ASSOCIATION demands strict proof thereof.

COUNT 3 NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

42. As to Paragraph 66, ASSOCIATION makes the same responses in regard to Paragraph 1 through 27 and 43 through 65.
43. Paragraph 67 is denied, and ASSOCIATION demands strict proof thereof.

44. Paragraph 68 contains no facts to admit or deny, but ASSOCIATION denies the same as the claim contains elements.

COUNT 3[4] BREACH OF FIDUCIARY TRUST OF THE HOA AND REQUEST FOR APPOINTMENT OF RECEIVER

45. As to Paragraph 69, ASSOCIATION makes the same responses in regard to Paragraph 1 through 27.

46. Paragraphs 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, and 87 are denied, and ASSOCIATION demands strict proof thereof.

WHEREFORE, Plaintiff/Counter-Defendant, SWEETWATER BY DEL WEBB MASTER HOMEOWNERS' ASSOCIATION, INC., petitions this Court to find none of Defendant/Counter-Plaintiff's counts have merit and award the Association its costs and attorney's fees and such other relief as this Court may deem just and proper in defense of this action.

AFFIRMATIVE DEFENSES

Failure to State a Cause of Action

In considering failure to state a cause of action, the court must look to the four corners of the complaint. Pizzi v. Central Bank and Trust Co., 250 So. 2d 895, 897 (Fla. 1971). Defendant/Counter-Plaintiff has failed to state a cause of action as to each and every count of the complaint by failure to at least plead each required element of a claim. Failure to prove an essential elements to a cause of action is fatal to establishing a case. Schopler v. Smilovits, 689 So. 2d 1189 (Fla. 4th DCA 1997). Therefore by not properly pleading the elements of breach of contract (a valid contract, a material breach, and damages), intentional infliction of emotional distress (wrongdoer's conduct was intentional or reckless, the conduct was outrageous as in it goes beyond all bounds of decency, the conduct cause emotional distress, and the emotional distress was severe), negligent infliction of emotional distress (claimant suffered physical injury,

the physical injury was caused by psychological trauma, the claimant is involved in some way to the event causing the injury to another, and claimant has a close personal relationship with the injured person), and breach of fiduciary trust (the existence of a duty, the breach of that duty, damage proximately caused by the breach).

Assertion of Legal Right as to Counts 2 and 3

In bringing a claim for intentional infliction of emotional distress or negligent infliction of emotional distress, assertion of a legal right is always a defense. A privilege exists as a matter of law to engage in reckless or even outrageous conduct if there is sufficient evidence that shows the Defendant/Counter-Plaintiff did nothing more than assert legal rights in a legally permissible way. Canto v. J.B. Ivey and Co., 595 So. 2d 1025, 1028 (Fla. 1st DCA 1992). Here, as evidenced by the attachments to the Counter Claim, the Association did nothing more than assert legal rights under promulgated rules. This is a bar to the Counts.

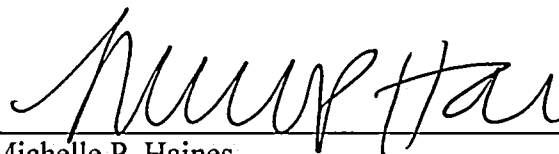
Failure to Mitigate

The doctrine of mitigation of damages, also known as the principle of avoidable consequences provides that a party cannot recover damages flowing from consequences which that party could reasonably have avoided. Associated Hous. Corp. v. Keller Bldg. Products of Jacksonville, Inc., 335 So. 2d 362, 364 (Fla. 1st DCA 1976). The Counter Claim states a series of violations committed by Defendant/Counter-Plaintiff, including the flower pot violation for an unauthorized object. The Defendant/Counter-Plaintiff received letters attached to the Counter Claim from the Tides Condominium at Sweetwater by Del Webb Association, Inc. notifying of the violation and took no steps to mitigate the damages. Relief should be denied based on this principle as to all Counts.

WHEREFORE, Plaintiff/Counter-Defendant, SWEETWATER BY DEL WEBB MASTER HOMEOWNERS' ASSOCIATION, INC., petitions this Court to deny all claims

made by Defendant/Counter-Plaintiff and to award the Association its costs and attorney's fees and such other relief as this Court may deem just and proper.

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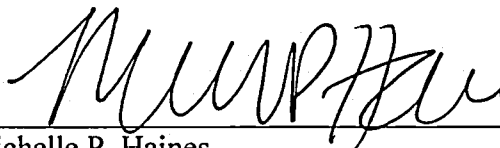
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Service of court filings: service@jaxlandlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served this ^{30th} day of September, 2014 by Electronic Mail to the following: Affinity Law, PL c/o Gust G. Sarris at pleadings@affinitylaw.com.



Michelle P. Haines