

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No. 09-80190-HURLEY/ROSENBAUM

**JONATHAN E. PERLMAN, Esq., as court-
appointed Receiver of Creative Capital
Consortium, LLC et al.,**

Plaintiff,

v.

**CAPTIN CONSTRUCTION GROUP, INC.,
a Georgia corporation,,**

Defendant.

/

ANSWER AND DEFENSES

Defendant Captin Construction Group, Inc. ("Captin"), submits this Answer and Defenses to Plaintiff's Complaint to Avoid and Recover Fraudulent Transfers and for other Relief ("Complaint"). To the extent a response is required, Captin denies all allegations contained within headings and subheadings in the Complaint. All allegations not specifically admitted are denied.

ANSWER

1. Captin states that the Receivership Order speaks for itself. Captin is otherwise without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the remaining allegations in paragraph 1.

2. Captin states that the Court's December 31, 2008 Order speaks for itself. Captin is otherwise without sufficient knowledge or information to form a belief as to

what occurred in a litigation to which it was not a party and therefore denies the remaining allegations in paragraph 2.

3. Captin states that the Receivership Order speaks for itself. Captin is otherwise without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the remaining allegations in paragraph 3.

4. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 4 and therefore denies same.

5. Captin states that paragraph 5 states a legal conclusion to which no response is required.

6. Captin states that paragraph 6 states a legal conclusion to which no response is required.

7. Captin states that paragraph 7 states a legal conclusion to which no response is required.

8. Captin states that paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, Captin denies the allegations in paragraph 8.

9. Captin states that paragraph 9 states a legal conclusion to which no response is required.

10. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 10 and therefore denies same.

11. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 11 and therefore denies same.

12. Captin admits the allegations in paragraph 12.

13. Captin is without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the allegations in paragraph 13.

14. Captin is without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the allegations in paragraph 14.

15. Captin is without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the allegations in paragraph 15.

16. Captin is without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the allegations in paragraph 16.

17. Captin states that the Receivership Order speaks for itself. Captin is otherwise without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the remaining allegations in paragraph 17.

18. Captin states that the December 31, 2008 Order speaks for itself. Captin is otherwise without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the remaining allegations in paragraph 18.

19. Captin is without sufficient knowledge or information to form a belief as to what occurred in a litigation to which it was not a party and therefore denies the allegations in paragraph 19.

20. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 20 and therefore denies same.

21. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 21 and therefore denies same.

22. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 22 and therefore denies same.

23. Captin is without sufficient knowledge or information to form a belief as to the allegations contained in paragraph 23 and therefore denies same.

24. Captin admits that it received payments from Creative Capital Consortium LLC ("Creative Capital") and George Theodule ("Theodule"). Captin denies that said payments are subject to recovery by the Receiver. Captin further denies the remaining allegations contained in paragraph 24.

25. Captin admits that Creative Capital paid it the sum of \$50,000.00 and that Theodule paid it the total sum of \$100,000.00. Captin further admits that Exhibit A purports to contain copies of the documents evidencing said payments. Captin denies that there was little or no reasonably equivalent value for the transfer. Captin further denies the remaining allegations in paragraph 25.

26. Captin denies the allegations in paragraph 26.

27. Captin incorporates by reference the answers set forth in paragraphs 1 through 26 as if fully set forth herein.

28. Captin states that paragraph 28 states a legal conclusion to which no response is required.

29. Captin states the allegation in paragraph 29 is a legal conclusion to which no response is required.

30. Captin states the allegation in paragraph 30 is a legal conclusion to which no response is required.

31. Captin states the allegation in paragraph 31 is a legal conclusion to which no response is required. To the extent a response is required, Captin admits that it received a payment from Creative Capital on or about September, 2008 but denies the remaining allegations in paragraph 31.

32. Captin denies that it did not give Creative Capital and Theodule reasonably equivalent value in exchange for the payments it received. Captin states that it is without sufficient knowledge or information to form a belief as to the allegations regarding Creative Capital contained in paragraph 32 and therefore denies same

33. Captin admits that it received a payment(s) from Creative Capital and/or Theodule. Captin denies that it did not receive said payment(s) in good faith. Captin is without sufficient knowledge or information to form a belief as to the remaining allegations contained in paragraph 33 and therefore denies same.

34. Captin states the allegation in paragraph 34 is a legal conclusion to which no response is required. To the extent a response is required, Captin denies the allegations in paragraph 34.

35. Captin incorporates by reference the answers set forth in paragraphs 1 through 26 as if fully set forth herein.

36. Captin admits that the Complaint purports to raise a claim for unjust enrichment in Count II but denies that the Complaint does state such a claim.

37. Captin admits that it received payments from Creative Capital and Theodule in exchange for valuable consideration. Captin denies the remaining allegations contained in paragraph 37.

38. Captin admits that it knowingly and voluntarily accepted and retained payments from Creative Capital and Theodule as a down payment for real property, which it thereafter held the property for Creative Capital and Theodule. Captin denies the remaining allegations contained in paragraph 38.

39. Captin denies the allegations in paragraph 39.

40. Captin denies the allegations in paragraph 40.

41. Captin denies the allegations in paragraph 41.

42. Captin incorporates by reference the answers set forth in paragraphs 1 through 26 as if fully set forth herein.

43. Captin admits that the Complaint purports to state a claim for constructive trust, equitable lien, or resulting trust in Count III but denies that the Complaint does state such a claim.

44. Captin admits that it received payments from Creative Capital and Theodule in exchange for valuable consideration. Captin denies the remaining allegations contained in paragraph 44.

45. Captin admits that it knowingly and voluntarily accepted and retained the payments from Creative Capital and Theodule as a down payment for a lease-purchase agreement on real property and the first-month's rent. Captin states that after it

received the payment, it took the property off the market and held it for Creative Capital and Theodule. Captin denies the remaining allegations contained in paragraph 45.

46. Captin denies the allegations in paragraph 46.

47. Captin denies the allegations in paragraph 47.

48. Captin denies the allegations in paragraph 48.

49. Captin incorporates by reference the answers set forth in paragraphs 1 through 26 as if fully set forth herein.

50. Captin admits that the Complaint purports to state a claim for accounting in Count V but denies that the Complaint does state such a claim.

51. Captin admits that it entered into one transaction with Creative Capital and Theodule. Captin denies the remaining allegations in paragraph 51.

52. Captin is without sufficient knowledge or information to form a belief as to the allegations regarding the purportedly "fraudulent activities" of the Receivership Entities and therefore denies same. Captin denies the remaining allegations in paragraph 52.

Captin denies that the Plaintiff is entitled to any of the relief requested in any of the WHEREFORE clauses contained in the Complaint.

DEFENSES

FIRST DEFENSE

The payments Creative Capital and Theodule made to Captin are not voidable because Captin received the payments from Creative Capital and Theodule in good faith and for reasonably equivalent value. The payments made to Captin were a down payment on a lease-purchase agreement for property and the first month's rent.

SECOND DEFENSE

The payments Creative Capital and Theodule made to Captin are not voidable because Captin received the payments from Creative Capital and Theodule in the ordinary course of its business in connection with a lease-purchase agreement and lease for residential property it constructed by Captin.

THIRD DEFENSE

The payments Creative Capital and Theodule made to Captin are not voidable because Captin retained the payments in connection with termination of a lease for real property after Creative Capital and Theodule defaulted on the lease. Captin served a default notice on Theodule and when default was not cured, Captin filed a dispossessory action in the Magistrate Court of Rockdale County, Georgia and received a writ of possession in March, 2009.

FOURTH DEFENSE

It would be inequitable and unjust for Plaintiff to recover the funds transferred to Captin who was forced to keep the property off the market for eight months during which time it did not receive rent or other payment and the value of the property decreased. Captin suffered serious damages as a result of Creative Capital's and Theodule's default under the lease.

FIFTH DEFENSE

Plaintiff's claim for unjust enrichment fails because the funds were transferred in connection with an express contract.

SIXTH DEFENSE

Plaintiff's claim for accounting fails because the funds were transferred in connection with an express, uncomplicated contract; there was no fiduciary relationship; and there were no complicated accounts or transactions between the parties.

SEVENTH DEFENSE

Plaintiff's claims for unjust enrichment; for accounting; and for constructive trust, equitable lien, and resulting trust all fail because Plaintiff has an adequate remedy at law.

EIGHTH DEFENSE

Plaintiff's claim for constructive trust fails because constructive trust is a remedy and not an independent cause of action. Since Plaintiff fails to state a claim for unjust enrichment, the constructive-trust count also fails.

NINTH DEFENSE

Plaintiff's claim for resulting trust fails because there was no intention among the parties to create a trust relationship.

TENTH DEFENSE

Plaintiff's claim for equitable lien fails because there is no allegation of actual fraud, misrepresentation, or other affirmative deception on the part of Captin; there is no written contract demonstrating an intention to charge a particular property with a debt or obligation; and no general consideration of rights and justice as applied to the relations of the parties and circumstances of their dealings in this case warrant a finding of equitable lien.

ELEVENTH DEFENSE

Plaintiff's claims and requested relief are barred because Plaintiff lacks standing to bring the above claims and/or because the claims are moot.

Dated: June 9, 2009

Respectfully submitted,

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Group, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2009 a copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notice to Plaintiff's counsel listed on the attached Service List.

SERVICE LIST

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