

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

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

Plaintiffs,

v.

CASE NO.: 12-cv-80486-DMM

REGENCY REALTY GROUP, INC.,

Defendant.

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**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

Defendant hereby answers Plaintiff's Complaint and responds to the allegations therein  
as follows as follows:

1. Without knowledge, therefore, denied.
2. Without knowledge, therefore, denied.
3. Without knowledge, therefore, denied.
4. Admit.
5. Admit.
6. Without knowledge, therefore, denied.
7. Admit.

**FACTS COMMON TO ALL COUNTS**

8. Without knowledge, therefore, denied.
9. Without knowledge, therefore, denied.
10. Without knowledge, therefore, denied.
11. Without knowledge, therefore, denied.

12. Without knowledge, therefore, denied.
13. Without knowledge, therefore, denied.
14. Without knowledge, therefore, denied.
15. Without knowledge, therefore, denied.

**THE FRAUDULENT INVESTMENT SCHEME OF THE RECEIVER ENTITIES**

***A. Overview of the Creative Capital Sales Pitch***

16. Without knowledge, therefore, denied.
17. Without knowledge, therefore, denied.
18. Without knowledge, therefore, denied.
19. Without knowledge, therefore, denied.

***B. Investor Funds Are Raised Through a Network of Investment Clubs under the Auspices of a Bogus, Self-Regulatory Agency***

20. Without knowledge, therefore, denied.
21. Without knowledge, therefore, denied.
22. Without knowledge, therefore, denied.
23. Without knowledge, therefore, denied.
24. Without knowledge, therefore, denied.
25. Without knowledge, therefore, denied.
26. Without knowledge, therefore, denied.

***C. Funds Lost Due to Ponzi Scheme***

27. Without knowledge, therefore, denied.
28. Without knowledge, therefore, denied.
29. Without knowledge, therefore, denied.

***D. The Dolce Regency Transaction***

30. Without knowledge, therefore, denied.
31. Without knowledge, therefore, denied.
32. Without knowledge, therefore, denied.
33. Without knowledge, therefore, denied.
34. Without knowledge, therefore, denied.
35. Without knowledge, therefore, denied.
36. Without knowledge, therefore, denied.
37. Without knowledge, therefore, denied.
38. Without knowledge, therefore, denied.
39. Admit that Regency Realty received certain payments on its existing note, otherwise, denied.
40. Without knowledge, therefore, denied.

**COUNT I**

**Action to Avoid and Recover Fraudulent Transfers Made by Dolce Regency as Debtor Pursuant to Chapter 726 of the Florida Statutes**

41. Defendant reincorporates its prior responses.
42. Without knowledge, therefore, denied.
43. Without knowledge, therefore, denied.
44. Without knowledge, therefore, denied.
45. Admit that Chapter 726 of the Florida Statutes speaks for itself, otherwise denied.
46. Admit that Chapter 726 of the Florida Statutes speaks for itself, otherwise denied.
47. Denied.
48. Denied.
49. Denied.

50. Denied.

**COUNT II**

**Action to Avoid and Recover Fraudulent Transfers Made by Creative Capital as Debtor  
Pursuant to Chapter 726 of the Florida Statutes**

(Against Defendant as Subsequent Transferee)

51. Defendant reincorporates its prior responses.

52. Without knowledge, therefore, denied.

53. Without knowledge, therefore, denied.

54. Without knowledge, therefore, denied.

55. Admit that Chapter 726 of the Florida Statutes speaks for itself, otherwise denied.

56. Without knowledge, therefore, denied.

57. Denied.

58. Denied.

**COUNT III**

**Conversion**

59. Defendant reincorporates its prior responses.

60. Denied.

61. Denied.

62. Denied.

63. Denied.

**COUNT IV**

**Unjust Enrichment**

64. Defendant reincorporates its prior responses.

65. Admit that Plaintiff asserts a claim for unjust enrichment, but denied that he is entitled to the relief sought.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

### **COUNT V**

#### **Imposition of Constructive Trust or Equitable Lien**

72. Defendant reincorporates its prior responses.

73. Admit that Plaintiff asserts a claim for imposition of a constructive trust or equitable lien, but denied that he is entitled to the relief sought.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

### **Affirmative Defenses**

Defendant further responds to the Complaint and raises the following affirmative defenses.

1. Failure to State Cause of Action. Plaintiff's Complaint, and each count therein, fails to state valid causes of action, and the claims are therefore barred.

2. Payment of Pre-Existing Debt and Receipt of Reasonably Equivalent Value. In 2004, Defendant sold certain real property to a third party and in return obtained a note and mortgage on the real property. The "Regency Transfer", as defined in the Complaint, and any other alleged payments to Defendant, were payments on the pre-existing note which was fully secured by the pre-existing mortgage, and made in conjunction with extending the note to a new maturity date. Given the foregoing, there was clearly an exchange of reasonably equivalent value -- the reduction in the note and mortgage amount and the extension of the note due date. Therefore, any consideration received by Defendant was in exchange for a reasonably equivalent value provided to Plaintiff. Plaintiff's claim is therefore barred or reduced.

3. Payment of Pre-Existing Debt Pursuant to Agreement. Defendant realleges the matters stated in its Second Affirmative Defense and further states that at the time of all or some of the transfers to Defendant, the payments were pursuant to an agreement for such purposes. Accordingly, Plaintiff's claims are barred or reduced.

4. Nature of Debtor's Transaction. Defendant realleges the matters stated in its Second Affirmative Defense and further states that at the time of all or some of the transfers to Defendant, the alleged Debtor of Plaintiff (a) was not engaged in a business or transaction for which the remaining assets of Debtor were unreasonably small in relation to the business or transaction, and (b) did not intend to incur, or believed or reasonably should have believed that it

would incur, debts beyond its ability to pay as they became due. Accordingly, Plaintiff's claims are barred or reduced.

5. Debtor Not Insolvent at Time of Subject Transactions. Defendant realleges the matters stated in its Second Affirmative Defense and further states that at the time of all or some of the transfers to Defendant, the alleged Debtor of Plaintiff was not insolvent or became insolvent as a result of the subject transfers. Accordingly, Plaintiff's claims are barred or reduced.

6. Defendant's Good Faith. Defendant realleges the matters stated in its Second Affirmative Defense and further states that at the time of all or some of the transfers to Defendant, the Defendant was a good faith transferee who took for value and/or was a subsequent transferee who acted in good faith transferee and took for value. Accordingly, Plaintiff's claims are barred or reduced.

7. Defendant Not Liable As Transferee. At all times material, the Defendant was not the first transferee or the person for whose benefit all or some of the transfers were made. Accordingly, Plaintiff's claims are barred or reduced.

8. Plaintiff's Release of Alleged Debtor and/or Prior Transferees. Plaintiff's claims are barred or reduced by reason of Plaintiff's prior release of his claims against the alleged Debtor Dolce Regency and/or other transferees of the monies prior to Defendant.

9. Transfers Not Voidable Because Paid In Compliance with Article 9 Security Interest. Defendant realleges the matters stated in its Second Affirmative Defense and further states that all or some of the transfers were in payments related to the enforcement of a security interest held by Defendant in compliance with Article 9 of the Uniform Commercial Code. Accordingly, Plaintiff's claims are barred or reduced.

10. Transfers Not Void And/Or Reduced To Extent of Value Given. Defendant realleges the matters stated in its Second Affirmative Defense and further states that at the time of all or some of the transfers to Defendant, the Defendant was a good faith transferee who provided value to or for the benefit of the Debtor, and therefore is entitled to a lien or a right to retain its interest in the assets transferred, enforcement of Debtor's obligation incurred to Defendant, and/or a reduction in the amount of Defendant's liability to Plaintiff. Accordingly, Plaintiff's claims are barred or reduced.

11. Absence of Claims Against Dolce Regency. Plaintiff, and/or the Creditor Entities on whose behalf Plaintiff brings his claims, have no valid claims against Dolce Regency, and/or have settled and released all such claims. As such, Dolce Regency is not a Debtor of Plaintiff and/or the Creditor Entities, and therefore Plaintiff's claims against Defendant arising from transfers from Dolce Regency are barred.

12. Origin of Funds Transferred Not From Creditors. The origin of all or some of the alleged funds transferred to Defendant were from sources other than the Plaintiff and/or the Creditor Entities on whose behalf Plaintiff brings his claims. As such, Plaintiff's claims against Defendant for the recovery of some or all of such monies transferred are barred or reduced.

13. Plaintiff's Unclean Hands. Plaintiff may not recover because some or all of the entities for which he is a receiver lack clean hands and or have acted in pari delicto. Accordingly, Plaintiff's claims are barred or reduced.

14. Claims Barred By Statute of Limitations. All or some of Plaintiff's claims are barred by the applicable statute of limitations given the date of the transfers.

15. No Demand for Possession. Plaintiff's claim for conversion fails as Plaintiff did not make a demand for possession.

16. No Conversion Claim Related to Monies. Plaintiff's claims for conversion and for imposition of a constructive trust fail because all or some of the alleged transfers consists of monies not capable of specific identification.

17. Monies Transferred Were Not From Creative Capital. The origin of all or some of the alleged funds transferred to Defendant were from sources other than Creative Capital. As such, Plaintiff's claims against Defendant on behalf of Creative Capital for conversion of all or some of such monies is barred or reduced. Further, Defendant had no dealings with Creative Capital and the monies paid to Defendant were paid by and between several other persons prior to any payment to Defendant, which at the time of payment to it, had the right and authority to accept the monies in exchange for a reasonably equivalent reduction of the note and mortgage. Accordingly, Plaintiff's claims are barred or reduced.

18. Certain of Plaintiff's Conversion Claims Are Barred by Florida Law. Plaintiff's claims for punitive and special damages, as well as attorney's fees, are barred by applicable Florida law.

19. Economic Loss Rule. Plaintiff's claims are barred by Florida's economic loss rule.

20. No Equitable Claims. While denying that Plaintiff is entitled to any recovery in this case, Plaintiff has an adequate remedy at law for all claims herein in the form of money damages. Accordingly, Plaintiff's claims for equitable relief in Counts 4 ( Unjust Enrichment ) and 5 ( Imposition of Constructive Trust and Equitable Lien ) are barred.

21. No Benefits Received By Defendant. Defendant realleges the matters stated in its Second Affirmative Defense and further states that no benefit was conferred on Defendant by the Receivership Entities via Dolce Regency. Further, to the extent the payments were conferred by

Dolce Regency, the payments were for the benefit of its wholly owned affiliate, Regency Suites I, LLC, which in return received a reasonably equivalent reduction in the amount of the pre-existing note and mortgage for such payments. Accordingly, Plaintiff's claims are barred or reduced.

22. No Confidential Relationship. Plaintiff's claim for imposition of a constructive trust fails because there is no confidential relationship between Plaintiff and Defendant.

WHEREFORE, the Defendant REGENCY REALTY GROUP, INC., demands that the Complaint be dismissed, and Defendant reimbursed for its costs, and such other relief as the Court deemed just and appropriate.

Dated: June 8, 2012

Foley & Lardner LLP

/s/ John A. Tucker

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 8, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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