

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsd.uscourts.gov**

Case No. 09-80190-HURLEY/HOPKINS

**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 AFFIRMATIVE DEFENSES

Defendant Captin Construction Group, Inc. ("Captin"), by and through its undersigned attorneys, pursuant to Rules 8 and 12, Federal Rules of Civil Procedure, answers the First Amended Complaint filed by Plaintiff Jonathan E. Perlman, Esq., as court appointed receiver for Creative Capital Consortium, LLC et al. ("Plaintiff"), and without waiving Defendant's Motion to Dismiss for Lack of Personal Jurisdiction and Motion to Transfer for Improper Venue, states:

1. Defendant admits the allegations in paragraph 1 of the Amended Complaint.
2. Defendant admits the allegations in paragraph 2 of the Amended Complaint.
3. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 3 of the Amended Complaint, and therefore, denies those allegations.

4. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 4 of the Amended Complaint, and therefore, denies those allegations.

5. Defendant admits the allegations contained in paragraph 5 of the Amended Complaint.

6. Defendant denies the allegations contained in paragraph 6 of the Amended Complaint.

7. Defendant denies the allegations contained in paragraph 7 of the Amended Complaint.

8. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 8 of the Amended Complaint.

9. Defendant admits the allegations contained in paragraph 9 of the Amended Complaint and therefore denies.

10. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 10 and therefore denies.

11. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 11 and therefore denies.

12. Defendant admits the allegations contained in paragraph 12 of the Amended Complaint.

13. Defendant admits the allegations contained in paragraph 13 of the Amended Complaint.

14. Defendant admits the allegations contained in paragraph 14 of the Amended Complaint

15. Defendant admits the allegations contained in paragraph 15 of the Amended Complaint.

16. Defendant admits the allegations contained in paragraph 16 of the Amended Complaint.

17. Defendant admits the allegations contained in paragraph 17 of the Amended Complaint.

18. Defendant admits the allegations contained in paragraph 18 of the Amended Complaint.

19. Defendant admits the allegations contained in paragraph 19 of the Amended Complaint.

20. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 20 of the Amended Complaint and therefore denies.

21. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 21 of the Amended Complaint and therefore denies.

22. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 22 of the Amended Complaint and therefore denies.

23. Defendant demands strict proof of the allegations contained in paragraph 23 of the Amended Complaint and therefore denies.

24. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 24 of the Amended Complaint and therefore denies.

25. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 25 of the Amended Complaint and therefore denies.

26. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 26 of the Amended Complaint and therefore denies.

27. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 27 of the Amended Complaint and therefore denies.

28. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 28 of the Amended Complaint and therefore denies.

29. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 29 of the Amended Complaint and therefore denies.

30. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 30 of the Amended Complaint and therefore denies.

31. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 31 of the Amended Complaint and therefore denies.

32. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 32 of the Amended Complaint and therefore denies.

33. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 33 of the Amended Complaint and therefore denies.

34. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 34 of the Amended Complaint and therefore denies.

35. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 35 of the Amended Complaint and therefore denies.

36. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 36 of the Amended Complaint and therefore denies.

37. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 37 of the Amended Complaint and therefore denies.

38. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 38 of the Amended Complaint and therefore denies.

39. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 39 of the Amended Complaint and therefore denies.

40. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 40 of the Amended Complaint and therefore denies.

41. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 41 of the Amended Complaint and therefore denies.

42. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 42 of the Amended Complaint and therefore denies.

43. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 43 of the Amended Complaint and therefore denies.

44. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 44 of the Amended Complaint and therefore denies.

45. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 45 of the Amended Complaint and therefore denies.

46. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 46 of the Amended Complaint and therefore denies.

47. Defendant does not have sufficient knowledge to admit or deny the allegations contained in paragraph 47 of the Amended Complaint and therefore denies.

48. Defendant denies the allegations in paragraph 48 of the Amended Complaint.

49. Defendant admits the allegations in paragraph 49 of the Amended Complaint.

50. Defendant admits that Creative Capital paid Defendant the sum of \$50,000.00 and shows George Theodule paid Defendant the total sum of \$100,000.00. Defendant denies that there was little or no reasonably equivalent value. Defendant denies the remaining allegations contained in paragraph 50 of the Amended Complaint. Defendant shows that it is in the business of developing and constructing residential dwellings and that George Theodule executed a lease purchase agreement and lease for residential property constructed by Captin. The funds in question were paid to Captin as a down payment on the purchase of the property in August, 2008. Theodule paid one month rent on the property then defaulted on the agreement and lease. Captin served a default notice on Theodule and when the default was not cured, Captin filed a dispossessory action in the Magistrate Court of Rockdale County and received a writ of possession in March, 2009. By keeping the property off the market for eight (8) months and by not getting rent or other compensation and due to the decrease in value due to market forces, Captin has suffered losses in excess of \$300,000.00 on the transactions with Theodule making Captin virtually insolvent.

51. Defendant is without knowledge of the allegations of in paragraph 51 regarding payments between Creative Capital and Homeland Title and therefore denies. Defendant restates and incorporate by reference as if fully set forth herein its answer in paragraph 50 above in response to paragraph 51 of the Amended Complaint.

52. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 52 of the Amended Complaint and therefore denies.

53. Defendant does not have sufficient information to admit or deny the allegations contained in paragraph 53 of the Amended Complaint and therefore denies.

COUNT I
Action to Avoid and Recover Fraudulent Transfers
Pursuant to Chapter 726, Florida Statutes
(Against Homeland Title- as Initial Transferee)

54. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 53 above.

55. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

56. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

57. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

58. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

59. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

60. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

61. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

62. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

63. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

COUNT II
Action to Avoid and Recover Fraudulent Transfers
Pursuant to Chapter 726, Florida Statutes
(Against CCG- as Initial Transferee)

64. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 63 above.

65. Paragraph 65 asserts a legal conclusion and Defendant therefore denies the allegations in paragraph 65 of the Amended Complaint.

66. Paragraph 66 asserts a legal conclusion and Defendant therefore denies the allegations in paragraph 66 of the Amended Complaint.

67. Defendant denies the allegations in paragraph 67 of the Amended Complaint.

68. Paragraph 68 contains a recitation of Florida law and does not require an admission or a denial by the Defendant.

69. Paragraph 69 asserts a legal conclusion and Defendant therefore denies the allegations in paragraph 69 of the Amended Complaint.

70. Defendant denies the allegations in Paragraph 70 of the Amended Complaint.

71. Defendant denies the allegations contained in paragraph 71 of the Amended Complaint.

72. Defendant denies the allegations contained in paragraph 72 of the Amended Complaint.

73. Defendant denies the allegations contained in paragraph 73 of the Amended Complaint.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

COUNT III
Action to Avoid and Recover Fraudulent Transfers
Pursuant to Chapter 726, Florida Statutes
(Against CCG- as Subsequent Transferee)

74. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 73 above.

75. Paragraph 75 asserts a legal conclusion and Defendant therefore denies the allegations in paragraph 75 of the Amended Complaint.

76. Defendant denies the allegations contained in paragraph 76 of the Amended Complaint.

77. Paragraph 77 asserts a legal conclusion and Defendant therefore denies the allegations in paragraph 77 of the Amended Complaint.

78. Defendant denies the allegations contained in paragraph 78 of the Amended Complaint.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

COUNT IV
Action to Avoid and Recover Fraudulent Transfers
Pursuant to Chapter 726, Florida Statutes
(Against Ardelean – as Initial Transferee)

79. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 78 above.

80. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

81. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

82. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

83. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

84. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

85. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

86. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

87. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

88. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

WHEREFORE, Defendant requests judgment in its favor, and for such other and

further relief as the Court deems just and proper.

COUNT III [sic]
Action to Avoid and Recover Fraudulent Transfers
Pursuant to Chapter 726, Florida Statutes
(Against Ardelean - as Subsequent Transferee)

89. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 88 above.

90. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

91. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

92. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

93. Defendant states the allegations in this paragraph do not apply to this Defendant and therefore denies.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

COUNT VI
Unjust Enrichment
(Against CCG and Ardelean)

94. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 93 above.

95. Defendant denies the allegations of paragraph 95 of the Amended Complaint.

96. Defendant admits that the Receivership Entities conferred a benefit on Defendant by making a transfer, however, defendant states that said transfer was in

exchange for value and denies the remaining allegations contained in paragraph 96 of the Amended Complaint.

97. Defendant admits that it knowingly and voluntarily accepted and retained the benefit, but states that the benefit was received in exchange for value and denies the remaining allegations contained in paragraph 97 of the Amended Complaint.

98. Defendant denies the allegations contained in paragraph 98 of the Amended Complaint and shows that the funds received by Captin were expended in the ordinary course of business, that Captin had no notice of nor reason to suspect the funds were procured by fraud, that the transactions with Theodule which are the subject of the Amended Complaint caused grave losses to Captin and that to require Captin to return the funds would be inequitable and unjust to Captin.

99. Defendant denies the allegations contained in paragraph 99 of the Amended Complaint and shows that to the contrary, the transactions with Theodule which are the subject of the Amended Complaint caused grave losses to Captin and caused or contributed to Captin becoming insolvent.

100. Defendant denies the allegations contained in paragraph 101 of the Amended Complaint.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

**COUNT III [sic]
Imposition of Constructive Trust or Equitable Lien
(Purportedly Against CCG and Ardelean)**

101. Defendant reasserts, restates and incorporates by reference as if fully set forth herein its answers to paragraphs 1 through 101 above.

102. Defendant denies the allegations of paragraph 102 of the Amended Complaint.

103. Defendant admits that the Receivership Entities conferred a benefit on Defendant by making a transfer, however, defendant states that said transfer was in exchange for value and denies the remaining allegations contained in paragraph 103 of the Amended Complaint.

104. Defendant admits that it knowingly and voluntarily accepted and retained the benefit, but states that the benefit was received in exchange for value and denies the remaining allegations contained in paragraph 104 of the Amended Complaint.

105. Defendant denies the allegations contained in paragraph 105 of the Amended Complaint.

106. Defendant denies the allegations contained in paragraph 106 of the Amended Complaint.

107. Defendant denies the allegations contained in paragraph 107 of the Amended Complaint.

WHEREFORE, Defendant requests judgment in its favor, and for such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

First Affirmative 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.

First Affirmative Defense: Pursuant to Rule 12(b)(2), Federal Rules of Civil Procedure, the Court lacks jurisdiction over the Defendant.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that I electronically filed a true and correct copy of the foregoing document using the CM/ECF system and that copies of same, together with proof of filing, will be served by Electronic Mail and to the addressees as indicated below:

Dated: March 12, 2010

Attorneys for Defendant

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SERVICE LIST

Case No. 09-80190-HURLEY/ROSENBAUM

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