

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

Plaintiff,

v.

CIVIL ACTION NO.: 09-CV-81222-
DIMITROULEAS/SNOW

DEAN, MEAD, EGERTON, BLOODWORTH,
CAPOUANO & BOZARTH, P.A.,

Defendant.

AMENDED ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. (“Dean Mead” or “Defendant”) answers the correspondingly numbered paragraphs of Plaintiff’s Complaint for Damages and to Avoid and Recover Fraudulent Transfers and for Other Relief (the “Complaint”) and asserts affirmative defenses as follows:¹

The Parties, Jurisdiction and Venue

1. Defendant is without knowledge of the allegations contained in paragraph 1 of Complaint and, therefore, such allegations are denied.

2. Defendant is without knowledge of the allegations contained in paragraph 2 of Complaint and, therefore, such allegations are denied.

3. Defendant is without knowledge of the allegations contained in paragraph 3 of Complaint and, therefore, such allegations are denied.

¹ Capitalized terms used in this pleading and not otherwise defined herein are intended to have the meaning ascribed to such terms in the Complaint.

4. Defendant is without knowledge of the allegations contained in paragraph 4 of Complaint and, therefore, such allegations are denied.

5. Defendant is without knowledge of the allegations contained in paragraph 5 of Complaint and, therefore, such allegations are denied.

6. Defendant is without knowledge of the allegations contained in paragraph 6 of Complaint and, therefore, such allegations are denied.

7. Admitted for jurisdictional purposes only.

8. Defendant is without knowledge of the allegations contained in paragraph 8 of Complaint and, therefore, such allegations are denied.

9. Admitted.

Facts Common to All Counts

10. Defendant is without knowledge of the allegations contained in paragraph 10 of Complaint and, therefore, such allegations are denied.

11. Defendant is without knowledge of the allegations contained in paragraph 11 of Complaint and, therefore, such allegations are denied.

12. Defendant is without knowledge of the allegations contained in paragraph 12 of Complaint and, therefore, such allegations are denied.

13. Defendant is without knowledge of the allegations contained in paragraph 13 of Complaint and, therefore, such allegations are denied.

14. Defendant is without knowledge of the allegations contained in paragraph 14 of Complaint and, therefore, such allegations are denied.

15. Defendant is without knowledge of the allegations contained in paragraph 15 of Complaint and, therefore, such allegations are denied.

16. Defendant is without knowledge of the allegations contained in paragraph 16 of Complaint and, therefore, such allegations are denied.

17. Defendant is without knowledge of the allegations contained in paragraph 17 of Complaint and, therefore, such allegations are denied.

18. Defendant is without knowledge of the allegations contained in paragraph 18 of Complaint and, therefore, such allegations are denied.

19. Defendant is without knowledge of the allegations contained in paragraph 19 of Complaint and, therefore, such allegations are denied.

20. Defendant is without knowledge of the allegations contained in paragraph 20 of Complaint and, therefore, such allegations are denied.

The Fraudulent Investment Scheme of the Creative Capital Entities

A. *Overview of the Scheme*

21. Defendant is without knowledge of the allegations contained in paragraph 21 of Complaint and, therefore, such allegations are denied.

22. Defendant is without knowledge of the allegations contained in paragraph 22 of Complaint and, therefore, such allegations are denied.

23. Defendant is without knowledge of the allegations contained in paragraph 23 of Complaint and, therefore, such allegations are denied.

24. Defendant is without knowledge of the allegations contained in paragraph 24 of Complaint and, therefore, such allegations are denied.

25. Defendant is without knowledge of the allegations contained in paragraph 25 of Complaint and, therefore, such allegations are denied.

26. Defendant is without knowledge of the allegations contained in paragraph 26 of Complaint and, therefore, such allegations are denied.

27. Defendant is without knowledge of the allegations contained in paragraph 27 of Complaint and, therefore, such allegations are denied.

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

28. Defendant is without knowledge of the allegations contained in paragraph 28 of Complaint and, therefore, such allegations are denied.

29. Defendant is without knowledge of the allegations contained in paragraph 29 of Complaint and, therefore, such allegations are denied.

30. Defendant is without knowledge of the allegations contained in paragraph 30 of Complaint and, therefore, such allegations are denied.

31. Defendant is without knowledge of the allegations contained in paragraph 31 of Complaint and, therefore, such allegations are denied.

32. Defendant is without knowledge of the allegations contained in paragraph 32 of Complaint and, therefore, such allegations are denied.

33. Defendant is without knowledge of the allegations contained in paragraph 33 of Complaint and, therefore, such allegations are denied.

34. Defendant is without knowledge of the allegations contained in paragraph 34 of Complaint and, therefore, such allegations are denied.

35. Defendant is without knowledge of the allegations contained in paragraph 35 of Complaint and, therefore, such allegations are denied.

C. *Fraudulent Misrepresentations and Omissions*

36. Defendant is without knowledge of the allegations contained in paragraph 36 of Complaint and, therefore, such allegations are denied.

37. Defendant is without knowledge of the allegations contained in paragraph 37 of Complaint and, therefore, such allegations are denied.

38. Defendant is without knowledge of the allegations contained in paragraph 38 of Complaint and, therefore, such allegations are denied.

39. Defendant is without knowledge of the allegations contained in paragraph 39 of Complaint and, therefore, such allegations are denied.

40. Defendant is without knowledge of the allegations contained in paragraph 40 of Complaint and, therefore, such allegations are denied.

41. Defendant is without knowledge of the allegations contained in paragraph 41 of Complaint and, therefore, such allegations are denied.

42. Defendant is without knowledge of the allegations contained in paragraph 42 of Complaint and, therefore, such allegations are denied.

43. Defendant is without knowledge of the allegations contained in paragraph 43 of Complaint and, therefore, such allegations are denied.

44. Defendant is without knowledge of the allegations contained in paragraph 44 of Complaint and, therefore, such allegations are denied.

D. *The Wildwood Transaction*

45. Defendant is without knowledge of the allegations contained in paragraph 45 of Complaint and, therefore, such allegations are denied.

46. Defendant is without knowledge of the allegations contained in paragraph 46 of Complaint and, therefore, such allegations are denied.

47. Defendant admits that the records of the Florida Secretary of State reflect that Dolce Regency, LLC was formed as a Florida limited liability company on May 29, 2008 and

that on July 24, 2008, the Articles of Organization of Dolce Regency, LLC were amended to change the name of the entity to Dolce Regency Suites, LLC and to add Pacific Atlantic Investment, LLC as Manager of the entity. Defendant is without knowledge of the remaining allegations contained in paragraph 47 of the Complaint and, therefore, such allegations are denied.

48. Defendant is without knowledge of the allegations contained in paragraph 48 of Complaint and, therefore, such allegations are denied.

49. Defendant is without knowledge of the allegations contained in paragraph 49 of Complaint and, therefore, such allegations are denied.

50. Denied that the Wildwood Purchase Agreement was executed in or about July 2008; it is averred that the Wildwood Purchase Agreement was executed by Theodule on or about September 15, 2008. The remainder of the paragraph is admitted.

51. The allegations contained in the first sentence of paragraph 51 of the Complaint are admitted. Defendant is without knowledge of the remaining allegations contained in paragraph 51 of the Complaint and, therefore, such allegations are denied.

52. Defendant is without knowledge of the allegations contained in paragraph 52 of Complaint and, therefore, such allegations are denied.

53. Denied. Defendant avers that it received \$300,000 by wire transfer from the Mondesir & Alexis Title Services, Inc. – Real Estate Escrow Account at Wachovia Bank into its trust account on October 17, 2008. It is further averred that Defendant caused the funds to be deposited in an interest-bearing money market escrow account at SunTrust Bank, established with the consent of, and for the benefit of, Dolce Regency and bearing Dolce Regency's taxpayer identification number.

54. The first sentence is admitted. The remainder of the paragraph is denied. It is averred that Dolce Regency's failure to close constituted a default by Dolce Regency, which caused the earnest money deposit of \$300,000 (the alleged "Wildwood Transfer"), together with the interest thereon, to be forfeited as liquidated damages pursuant to the agreement between the parties to the Wildwood Purchase Agreement. The \$300,000 earnest money deposit, together with the interest earned, was disbursed, pursuant to the Wildwood Purchase Agreement as follows:

(a) to DDC, LLC, a Florida limited liability company which is a member of Wildwood Investments, the sum of \$120,320.10.

(b) to Lake Willis Investments, LLC, a Florida limited liability company which is a member of Wildwood Investments, the sum of \$94,320.09;

(c) to Railey & Harding, P.A., the attorneys for Cathay Holdings, Inc., the holder of the first mortgage encumbering the Wildwood Lots, the sum of \$19,411.50 as and for attorneys' fees and costs; and

(d) to Defendant, the sum of \$66,269.05 as and for attorneys' fees and costs.

Count 1

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

56. Defendant is without knowledge of the allegations contained in paragraph 56 and, therefore, such allegations are denied.

57. Defendant is without knowledge of the allegations contained in paragraph 57 of Complaint and, therefore, such allegations are denied.

58. Defendant is without knowledge of the allegations contained in paragraph 58 of

Complaint and, therefore, such allegations are denied.

59. Florida Statutes, Chapter 726 speaks for itself and, to the extent this paragraph is inconsistent therewith, it is denied.

60. Florida Statutes, Chapter 726 speaks for itself and, to the extent this paragraph is inconsistent therewith, it is denied.

61. Denied.

62. Denied that Dolce Regency did not receive reasonably equivalent value for the Dean Mead Transfer; Defendant is without knowledge of the remaining allegations contained in paragraph 62 of the Complaint and, therefore, such allegations are denied.

63. The first sentence is denied. It is affirmatively averred that, as indicated in paragraph 54 above, the Dean Mead Transfer constituted liquidated damages payable and paid as a result of the default by Dolce Regency. As to the second sentence, Defendant denies that Dolce Regency did not receive reasonable equivalent value for the Dean Mead Transfer. Defendant is without knowledge as to the remaining allegations of paragraph 63, and they are therefore denied. It is averred that all funds received, held, invested and disbursed by Defendant were received, held, invested and disbursed in good faith and with the authorization and consent of all affected parties

64. Denied.

Count 2

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

66. Defendant is without knowledge of the allegations contained in paragraph 66 of Complaint and, therefore, such allegations are denied.

67. Defendant is without knowledge of the allegations contained in paragraph 67 of Complaint and, therefore, such allegations are denied.

68. Denied that the Wildwood Transfer is voidable. Defendant is without knowledge of the remaining allegations contained in paragraph 68 of the Complaint and, therefore, such allegations are denied.

69. Denied.

Count 3

70. The Defendant reasserts and incorporates by reference its answers to paragraphs 1 through 69, as if fully set forth herein.

71. Admitted Plaintiff intends to assert a claim for unjust enrichment; denied it is entitled to the relief requested.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Denied.

Count 4

78. The Defendant reasserts and incorporates by reference its answers to paragraphs 1 through 77, as if fully set forth herein.

79. Admitted Plaintiff intends to assert a claim for imposition of constructive trust or equitable lien; denied it is entitled to the relief requested.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

85. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that any payments it received were for fair consideration.

SECOND AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that it is a subsequent transferee and asserts all defenses available to it as a subsequent transferee.

THIRD AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that Dolce Regency was solvent at the time of the transfers to Defendant.

FOURTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that its receipt of the funds that resulted from the alleged transfers was in good faith.

FIFTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that its receipt of funds was without knowledge of the voidability of the transfer.

SIXTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges all defenses under Florida Statutes § 726.109.

SEVENTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that Dolce Regency and Creative Capital are alter egos of George L. Theodule.

EIGHTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges, on information and belief, that Creative Capital has no, or may have no, creditors.

NINTH AFFIRMATIVE DEFENSE

Count 3, unjust enrichment, and Count 4, imposition of constructive trust or equitable lien, fail to state claims upon which relief may be granted.

TENTH AFFIRMATIVE DEFENSE

Count 4 improperly combines two claims for relief into one count.

ELEVENTH AFFIRMATIVE DEFENSE

The alleged Dean Mead Transfer was made for the benefit of others, including, but not limited to, the sellers of the Wildwood Property.

TWELFTH AFFIRMATIVE DEFENSE

Defendant acted solely as a conduit in the Wildwood Transaction.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff has an adequate remedy at law and, therefore, all claims for equitable relief are waived.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to assert any additional defenses and matters in avoidance that may be disclosed during the course of additional investigation and discovery.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for equitable relief are barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to reasonably mitigate its damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

Pursuant to the contract between the parties to the Wildwood Transaction, all or substantially all of the Dean Mead Transfer was distributed to parties other than Defendant and, thus, there are no funds in its possession upon which to assert a constructive trust or equitable lien.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 1, 2009, 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 all CM/ECF participants.

s/ Nichole M. Mooney

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