

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

FILED
2013 MAY 29 P 4:22
CLERK OF SUPERIOR COURT
DEKALB COUNTY GA

THE COMMUNITY CENTER OF
SOUTH DECATUR, INC.,

Plaintiff,

v.

PROGRESSIVE DECATUR, LLC; JILL
CELESTE ALIKONIS d/b/a
McGOWAN'S OAKHURST PUB and
JILL CELESTE GALLERY; and,
PALATE CAFÉ, INC.,

Defendants.

Civil Action File No. 13-CV-3283-6

COPY

PLAINTIFF THE COMMUNITY CENTER OF SOUTH DECATUR, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO
DEFENDANT PROGRESSIVE DECATUR, LLC'S COUNTERCLAIMS

COMES NOW, Plaintiff The Community Center of South Decatur, Inc. ("CCSD"), and states and affirms that the allegations set forth in *Defendant Progressive Decatur, LLC's Counterclaims Against Plaintiff* (the "Counterclaims") are automatically denied pursuant to O.C.G.A. § 9-11-12(a); however, the incendiary and inflammatory nature of the Counterclaims requires CCSD to file this its *Answer and Affirmative Defenses* by way of further response to the Counterclaims respectfully showing this Court the following:

FIRST AFFIRMATIVE DEFENSE

The Counterclaims fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Counterclaims regarding slander are barred in whole or in part by the affirmative defense of truth pursuant to O.C.G.A. § 51-5-6.

THIRD AFFIRMATIVE DEFENSE

The Counterclaims alleging slander are barred in whole or in part due to the absence of any showing of an uttering and publishing of slanderous words by CCSD.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaims alleging slander are barred in whole or in part due to the absence of any malicious act by CCSD.

FIFTH AFFIRMATIVE DEFENSE

The Counterclaims alleging slander are barred in whole or in part due to the absence of any special damage sustained by PD.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaims alleging slander are barred in whole or in part pursuant to O.C.G.A. § 51-5-7.

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaims alleging slander are barred in whole or in part pursuant to O.C.G.A. § 51-5-4.

EIGHTH AFFIRMATIVE DEFENSE

The Counterclaims are barred to the extent CCSD took any actions in connection with the allegations of the Counterclaims, CCSD acted with reasonable care and in good faith towards PD at all times, and without malice or oppression towards PD.

NINTH AFFIRMATIVE DEFENSE

The Counterclaims are barred in whole or in part by the *Development Agreement* entered into by and between Progressive Redevelopment, Inc.; Progressive Oakhurst, LLC; PD; and, the City of Decatur, Georgia, and dated August 30, 2000.

TENTH AFFIRMATIVE DEFENSE

The Counterclaims are barred in whole or in part by the *Letter of Intent for Option Agreement* entered into by and between PD and CCSD, and dated September 18, 2002, and filed and recorded in the Real Estate Records of DeKalb County, Georgia in Deed Book 15537, Page 710.

ELEVENTH AFFIRMATIVE DEFENSE

The Counterclaims are barred in whole or in part by the *Lease* entered into by and between PD and CCSD, and dated September 18, 2002, and filed and recorded in the Real Estate Records of DeKalb County, Georgia in Deed Book 15537, Page 716.

TWELFTH AFFIRMATIVE DEFENSE

The Counterclaims are barred by the doctrines of waiver, estoppel and laches.

THIRTEENTH AFFIRMATIVE DEFENSE

The Counterclaims are barred because PD has unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

The Counterclaims seeking declaratory judgment are barred under O.C.G.A. § 9-4-2.

FIFTEENTH AFFIRMATIVE DEFENSE

The Counterclaims seeking declaratory judgment are barred by the fact that there is no actual controversy.

SIXTEENTH AFFIRMATIVE DEFENSE

The Counterclaims seeking declaratory judgment are barred by the fact that PD has other adequate legal and/or equitable remedies.

SEVENTEENTH AFFIRMATIVE DEFENSE

PD is not entitled to recover punitive damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Counterclaims seeking punitive damages are barred because PD cannot demonstrate the conditions precedent for asserting a claim for punitive damages under Georgia law.

NINETEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would be in violation of both the United States and state of Georgia Constitutions. An award of punitive damages would also violate the equal protection rights of CCSD and would violate the excessive fines clause of the United States Constitution.

TWENTITH AFFIRMATIVE DEFENSE

The Counterclaims seeking attorneys' fees are barred because PD cannot demonstrate the conditions precedent for asserting a claim for costs of litigation or attorneys' fees under Georgia law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As discovery has not yet begun, CCSD specifically reserves the right to raise any additional claims or affirmative defenses which may be discovered. CCSD hereby incorporates by reference all affirmative defenses set forth in O.C.G.A. § 9-11-8(c) to the extent applicable. Defenses asserted herein are based upon the initial theories of counsel. CCSD further specifically reserves the right to withdraw or add any defenses to conform to the evidence presented at the time of trial.

TWENTY-SECOND AFFIRMATIVE DEFENSE (ANSWER)

Each of the averments set forth in the Counterclaims is denied unless specifically

admitted herein. CCSD answers the specific averments set forth within the Counterclaims as follows:

COUNTERCLAIM I

(SLANDER)

1.

CCSD admits Paragraph No. 1 of the Counterclaims.

2.

CCSD denies Paragraph No. 2 of the Counterclaims.

3.

CCSD denies Paragraph No. 3 of the Counterclaims.

4.

CCSD denies Paragraph No. 4 of the Counterclaims.

5.

CCSD denies Paragraph No. 5 of the Counterclaims.

6.

CCSD denies Paragraph No. 6 of the Counterclaims.

7.

CCSD denies Paragraph No. 7 of the Counterclaims.

8.

CCSD denies Paragraph No. 8 of the Counterclaims.

9.

CCSD denies Paragraph No. 9 of the Counterclaims.

10.

CCSD denies Paragraph No. 10 of the Counterclaims.

11.

CCSD denies Paragraph No. 11 of the Counterclaims.

12.

CCSD denies Paragraph No. 12 of the Counterclaims.

COUNTERCLAIM II

**(DECLARATORY JUDGMENT REGARDING
UNENFORCEABILITY OF OPTION TO PURCHASE)**

13.

CCSD admits Paragraph No. 13 of the Counterclaims.

14.

CCSD admits Paragraph No. 14 of the Counterclaims.

15.

Paragraph No. 15 of the Counterclaims does not require a response, as the *Letter of Intent for Option Agreement* speaks for itself. In the event Paragraph No. 15 is deemed to require a response, CCSD denies that PD is entitled to the requested relief.

16.

CCSD denies Paragraph No. 16 of the Counterclaims as written.

17.

CCSD denies Paragraph No. 17 of the Counterclaims as written.

18.

CCSD denies Paragraph No. 18 of the Counterclaims as written. By way of further

response, CCSD states that the *Letter of Intent for Option Agreement* is a binding and enforceable agreement and contract between and among CCSD and PD. Furthermore, PD affirmed the *Letter of Intent for Option Agreement* by its own actions and omissions and cannot now seek to set aside a decade long agreement for its own convenience and current benefit.

COUNTERCLAIM III
(PUNITIVE DAMAGES)

19.

Responding to Paragraph No. 19 of the Counterclaims, CCSD incorporates by reference, as if fully set forth herein, each and every one of its previous responses to Paragraph Nos. 1 - 18.

20.

CCSD denies Paragraph No. 20 of the Counterclaims.

21.

CCSD denies Paragraph No. 21 of the Counterclaims.

COUNT IV
(ATTORNEYS' FEES)

22.

Responding to Paragraph No. 22 of the Counterclaims, CCSD incorporates by reference, as if fully set forth herein, each and every one of its previous responses to Paragraph Nos. 1 - 21.

23.

CCSD denies Paragraph No. 23 of the Counterclaims.

24.

CCSD denies Paragraph No. 24 of the Counterclaims.

CCSD denies that PD is entitled to any of the relief for which it prays for in Paragraph Nos. 1 - 8 of the *ad damnum* prayer for relief immediately following Paragraph No. 24 of the Counterclaims. CCSD further denies that PD can satisfy the conditions precedent for damages, recovery, and relief sought against CCSD under Georgia law.

WHEREFORE, CCSD prays as follows:

- (a) PD takes nothing through its Counterclaims, and such Counterclaims be dismissed in their entirety;
- (b) Judgment be entered in favor of CCSD and against PD on the Counterclaims;
- (c) The Court award CCSD its costs of litigation, including, but not limited to reasonable attorney's fees and expert witnesses' fees to CCSD and against PD in an amount to be proven at trial; and
- (d) The Court award to CCSD and against PD such other relief as deemed just and equitable.

This the 29th day of May, 2013.

WILLIAMS TEUSINK, LLC



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Georgia Bar No. 763910

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Counsel for Plaintiff The Community Center of South Decatur, Inc.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel in the foregoing matter with a copy of the foregoing pleading by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon, as follows:

Darren Summerville, Esq.
Summerville Moore, P.C.
400 Colony Square, Suite 1900
1201 Peachtree Street, NE
Atlanta, Georgia 30361

John E. Taylor, Esq.
P.O. Box 680546
Marietta, Georgia 30068

This the 29th day of May, 2013.

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