

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

2011-CP-10-1084

ROOSEVELT SIMMONS,)
)
 Plaintiff,)
)
 v.)
)
 MASE and COMPANY, LLC, J. AL CANNON,)
 JR., CHARLESTON COUNTY SHERIFF'S)
 DEPARTMENT, CHARLESTON COUNTY,)
 CHARLESTON COUNTY REVENUE)
 COLLECTIONS DEPARTMENT and)
 HARRY LONG,)
)
 Defendants.)

Civil Action No: 2:11-cv-00709-RMG

**DEFENDANT MASE AND
COMPANY, LLC'S ANSWER
TO PLAINTIFF'S SECOND
AMENDED COMPLAINT,
CROSS-CLAIM AND
COUNTERCLAIM**

ALB

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Counsel for Defendant, Mase and Company, LLC (MASE) (and its sole member, Charles E. Masencup), hereby files this Answer to Plaintiff's Second Amended Complaint by denying each and every allegation not herein expressly admitted, reserving all rights to amend this answer and/or to file motions pursuant to Federal Rule of Civil Procedure, including but not limited to Rules 12 and 15, and as plead herein, and by alleging as follows. Though not named an actual party to this action, to the extent any answer is deemed required from Mase and Company, LLC's sole member, Charles E. Masencup, this Answer is intended to serve as that pleading.

FOR A FIRST DEFENSE

1. Answering allegations of Paragraph 1 of the Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.

2. The allegations of Paragraph 2 of Plaintiff's Second Amended Complaint states conclusions of law, which conclusions MASE is required neither to admit nor deny.
3. Answering the allegations of Paragraph 3 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
4. Answering the allegations of Paragraph 4 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
5. Answering the allegations of Paragraph 5 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
6. Answering the allegations of Paragraph 6 of Plaintiff's Second Amended Complaint, MASE has insufficient information and knowledge either to admit or deny those allegations and, therefore, denies those allegations.
7. The allegations of Paragraph 7 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
8. The allegations of Paragraph 8 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.

9. Upon information and belief, MASE admits the allegations of Paragraph 9 of Plaintiff's Second Amended Complaint but craves reference to the actual sales, title and deed documents referenced for their exact terms.
10. The allegations of Paragraph 10 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
11. The allegations of Paragraph 11 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
12. Answering the allegations of Paragraph 12 of Plaintiff's Second Amended Complaint, MASE admits only that, upon information and belief, TMS 283-00-00-498 is undeveloped land. The remaining allegations of Paragraph 12 either state conclusions of law not requiring a response from MASE or include facts about which MASE has insufficient information and knowledge either to admit or deny and, therefore, those allegations are denied.
13. Answering the allegations of Paragraph 13 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 12 above as if set forth herein verbatim.
14. The allegations of Paragraph 14 of Plaintiff's Complaint state either conclusions of law MASE is required neither to admit nor deny or include allegations about which MASE has insufficient information and

knowledge either to admit or deny and, therefore, those allegations are denied.

15. The allegations of Paragraph 15 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
16. The allegations of Paragraph 16 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
17. The allegations of Paragraph 17 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
18. The allegations of Paragraph 18 of Plaintiff's Complaint state either conclusions of law MASE is required neither to admit nor deny or include allegations about which MASE has insufficient information and knowledge either to admit or deny and, therefore, those allegations are denied.
19. Answering the allegations of Paragraph 19 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 18 above as if set forth herein verbatim.
20. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 20 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

21. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 21 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
22. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 22 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
23. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 23 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
24. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 24 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
25. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 25 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
26. The allegations of Paragraph 26 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
27. The allegations of Paragraph 27 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.

28. Answering the allegations of Paragraph 28 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 27 above as if set forth herein verbatim.
29. The allegations of Paragraph 29 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
30. The allegations of Paragraph 30 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
31. The allegations of Paragraph 31 of Plaintiff's Second Amended Complaint state conclusions of law, which conclusions MASE is required neither to admit nor deny.
32. Answering the allegations of Paragraph 32 of Plaintiff's Second Amended Complaint, MASE reasserts and realleges each and every allegation of Paragraphs 1 through 31 above as if set forth herein verbatim.
33. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 33 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
34. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 34 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

35. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 35 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
36. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 36 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.
37. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 37 of Plaintiff's Second Amended Complaint and, therefore, denies those allegations.

FOR A SECOND DEFENSE
MOTION TO DISMISS
(Rules 8 and 12)

38. Plaintiff failed to state any cause of action against MASE or its sole member, Charles E. Masencup, on which relief may be granted. Indeed, the only allegation directly identifying either of these entities/person alleges merely that MASE purchased property from the County of Charleston. No allegations of bad faith or knowledge of any issues regarding the property on the part of MASE or Masencup are made in the Plaintiff's pleadings. Any dispute about whether the County properly sold such property is between Plaintiff and the other Defendants to this action and can be addressed solely by money damages, which damages this Defendant has no reason to believe should be awarded, and need not involve MASE, the current owner and good faith purchaser for value of the property at issue. Thus, the Amended Complaint should be dismissed,

as to this Defendant, with prejudice, pursuant to Federal Rules of Civil Procedure, Rules 8 and 12 and costs and fees awarded to MASE for having to defend this frivolous suit as to this Defendant. MASE also expressly reserves the right to file a motion to dismiss or for judgment on the pleadings, pursuant to Rule 12 of the Federal Rules of Civil Procedure, specifically but not limited to Rule 12(c), once all pleadings are filed in this matter.

FOR A THIRD DEFENSE
(No Constitutional Claim Against MASE)

39. Though Plaintiff's Second Amended Complaint appears to assert causes of action only against the other Defendants, to the extent any constitutional claim is intended to be made against MASE, such claim may not proceed as constitutional violations of the nature raised in Plaintiff's Second Amended Complaint may only be committed by state actors. Neither MASE nor Masencup are state actors.

FOR A FOURTH DEFENSE
(Comparative Negligence/Sole Negligence)

40. Any injuries or damages sustained by Plaintiff, all of which are denied as related to any action or inaction of MASE or its sole member, are due to and caused by Plaintiff's own negligence, gross negligence, recklessness, wantonness, and/or illegal behavior or that of the other Defendants as more specifically described in the cross-claim contained herein.

FOR A FIFTH DEFENSE
(Waiver, Estoppel, Laches, Acquiescence, Stale Demand, Statute of Limitations,
Service of Process, Proximate Cause, and Failure to Mitigate)

41. Plaintiff's claims are barred, in whole or in part, and particularly as relates to MASE and its sole member, by the doctrines of estoppel, laches, waiver, acquiescence, stale demand, statute of limitations, service of process, lack of proximate cause between any act or omission of MASE or its sole member and the damages claimed, and/or failure to mitigate Plaintiff's damages.
42. Further answering Plaintiff's Second Amended Complaint, Plaintiff failed to take any steps to maintain ownership of the property or otherwise protect his claimed interest prior to its sale, which property was purchased in good faith by MASE from Charleston County. Plaintiff thereby failed to mitigate his damages and instead MASE became the legal owner of the property, maintaining it and incurring and assuming any and all liabilities and costs of such ownership.

FOR A SIXTH DEFENSE
(Good Faith Purchaser)

43. Defendant MASE purchased the relevant property in good faith, for value determined through a bidding process, and with no knowledge or information from which a reasonable person could or should have deduced that title would not be cleanly provided to the relevant property upon the payment of the purchase price provided by this Defendant. As such a good faith purchaser for value, this Defendant is entitled to dismissal of any and all claims against it, to retain ownership of the property purchased, and for reimbursement by Plaintiff and/or the other

Defendants for any and all costs and fees related to defense of this litigation.

FOR A SEVENTH DEFENSE
& COUNTERCLAIM
(South Carolina Frivolous Civil Proceedings Sanctions Act)

44. Pursuant to the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code § 15.26.10, et seq., MASE and/or its sole member are entitled to recover from Plaintiff their attorney's fees and court costs incurred in litigation this matter, along with lost business opportunities resulting from the *lis pendens* placed on the property by Plaintiff. As a good faith purchaser for value of the relevant property, and with no allegations contained in Plaintiff's Second Amended Complaint or any other pleading asserting any facts on which it could be determined that this Defendant did not purchase the relevant property in good faith and without knowledge of any reasons why such property was not available for purchase and rightfully purchased by MASE, naming this Defendant in this action is inappropriate and amounts to a frivolous civil proceeding against this Defendant.

FOR AN EIGHTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT AND HARRY LONG
(Negligence)

45. In reliance upon the property's being offered for sale by one or more the Defendants named above, MASE incurred various costs and expenses related to the purchase and maintenance of the relevant property and

other damages, including but not limited to costs incurred to defend this litigation and lost business opportunities, which costs and other damages were proximately caused by one or more of these Defendants' negligence, either alone or in combination with the negligence of Plaintiff as earlier alleged.

FOR A NINTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR., CHARLESTON COUNTY SHERIFF'S
DEPARTMENT, CHARLESTON COUNTY, CHARLESTON COUNTY REVENUE
COLLECTIONS DEPARTMENT AND HARRY LONG
(Indemnification)

46. Any and all damages awarded to Plaintiff in this action, which damages are denied, against Defendant MASE (or its sole member), were the result of actions or inactions of the other Defendants such that MASE (and/or its sole member) is entitled to full indemnification from the other Defendants for any such amounts entered against it, indemnification for the full fair market value of the property at issue if such property is awarded to Plaintiff, and indemnification for all fees and costs incurred by MASE in defending this action.

Wherefore, having fully answered the Second Amended Complaint, Defendant MASE (and its sole member) hereby prays that the Second Amended Complaint, including all claims contained therein, be dismissed with prejudice, that Plaintiff be responsible for all costs associated with defendant this action and for such other relief as is requested in this pleading or is otherwise deemed just and proper by this Court.

/s Wendy J. Keefer

Wendy J. Keefer (Fed. Id. 7193)
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October 28, 2011

Attorneys for Defendant MASE and
COMPANY, LLC and its sole member,
Charles E. Masencup