

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., SHERIFF OF CHARLESTON COUNTY,)
 and CHARLESTON COUNTY,)
)
 Defendants.)
 _____)

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

**AMENDED
ANSWER, CROSS-CLAIM, AND
COUNTERCLAIM OF DEFENDANT
MASE AND COMPANY, LLC**

JURY TRIAL DEMANDED

FILED
2012 MAR -5 PM 4:19
WILE J. ARMSTRONG
CLERK OF COURT

Defendant, Mase and Company, LLC (MASE), hereby amends its previously filed answer and further answers Plaintiff's Amended Complaint by denying each and every allegations not herein expressly admitted, reserving all rights to amend this answer pursuant to Federal Rules of Civil Procedure, and by alleging as follows. Though not having been named as a party to this suit no answer is required, to the extent any answer is required by the sole member of Mase and Company, LLC, Charles E. Masencup, this Answer is intended to serve as that pleading.

FOR A FIRST DEFENSE

1. Answering the allegations of Paragraph 1 of Plaintiff's 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 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 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 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 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 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 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 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 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 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 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 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 Amended Complaint, MASE reasserts and realleges each and every allegations of Paragraphs 1 through 12 above as if set forth herein verbatim.
14. The allegations of Paragraph 14 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
15. The allegations of Paragraph 15 of Plaintiff's 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 Amended Complaint contain only legal conclusions or facts about which MASE has insufficient information either to admit or deny and, therefore, those allegations are denied.
17. The allegations of Paragraph 17 of Plaintiff's 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 Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
19. Answering the allegations of Paragraph 19 of Plaintiff's Amended Complaint, MASE reasserts and realleges each and every allegations 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 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 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 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 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 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 Amended Complaint and, therefore, denies those allegations.
26. The allegations of Paragraph 26 of Plaintiff's 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 Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny.
28. The allegations of Paragraph 28 of Plaintiff's Amended Complaint state conclusions of law which conclusions MASE is required neither to admit nor deny. To the extent this paragraph asserts any inequities, those inequities were suffered by MASE as a good faith purchaser of TMS 283-00-00-498.
29. Answering the allegations of Paragraph 29 of Plaintiff's Amended Complaint, MASE reasserts and realleges each and every allegations of Paragraphs 1 through 28 above as if set forth herein verbatim.

30. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 30 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
31. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 31 of Plaintiff's Amended Complaint and, therefore, denies those allegations.
32. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 32 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
33. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 33 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
34. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 34 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.
35. MASE has insufficient information and knowledge either to admit or deny the allegations of Paragraph 35 of Plaintiff's Amended Complaint and, therefore, denies those allegations. Moreover, these allegations contain legal conclusions requiring no response.

36. To the extent the use of the term "Defendants" in Paragraph 36 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
37. To the extent the use of the term "Defendants" in Paragraph 37 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
38. To the extent the use of the term "Defendants" in Paragraph 38 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
39. To the extent the use of the term "Defendants" in Paragraph 39 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.
40. To the extent the use of the term "Defendants" in Paragraph 40 of Plaintiff's Amended Complaint refers to or may refer to MASE or its sole member, Charles E. Masencup, those allegations are denied.

FOR A SECOND DEFENSE
(Impossibility)

41. Plaintiff's Amended Complaint includes a cause of action for civil conspiracy, which claim is impossible, as legally, entities cannot participate in a conspiracy, only persons are able to do so. Therefore, this cause of action should be dismissed with prejudice.

FOR A THIRD DEFENSE
(Rules 8 and 12)

42. 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/persons alleges merely that MASE purchased property from the County of Charleston. 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 between the parties, which damages this Defendant has no reason to believe should be awarded, and need not involve MASE, the current owner of the property at issue. Thus, the Amended Complaint should be dismissed, at least as to this Defendant, with prejudice, pursuant to Federal Rules of Civil Procedure, Rules 8 and 12. MASE also expressly reserves its right, once pleadings are closed and/or completed, to file a motion to dismiss or for judgment on the pleadings as to this Defendant pursuant to Rule 12 of the Federal Rules of Civil Procedure, specifically but not limited to Rule 12(c).

FOR A FOURTH DEFENSE
(No Constitutional Claim Against MASE)

43. As constitutional violations may only be committed, as a matter of law, by government entities, no claim for constitutional violation may proceed against the MASE Defendant or its sole member, each a private entity or person.

FOR A FIFTH DEFENSE
(Comparative Negligence/Sole Negligence)

44. 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 SIXTH DEFENSE
(Waiver, Estoppel, Laches, Acquiescence, Stale Demand, Statute of Limitations, Service of Process, Proximate Cause, and Failure to Mitigate)

45. 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 of MASE or its sole member and the damages claimed, and/or failure to mitigate Plaintiff's damages.
46. Further answering Plaintiff's 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 continued as the legal owner of the property maintaining it and incurring and assuming any and all liabilities and costs of such ownership.

FOR A SEVENTH DEFENSE
(Good Faith Purchaser)

47. Defendant MASE purchased the relevant property in good faith 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, 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 for any and all costs and fees related to defense of this litigation.

FOR AN EIGHTH DEFENSE
& COUNTERCLAIM
(South Carolina Frivolous Civil Proceedings Sanctions Act)

48. Pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-26-10, et seq., MASE and its sole member are entitled to recover from Plaintiff their attorney's fees and court costs incurred in litigating this matter. As a good faith purchaser for value of the relevant property, and with no allegations contained in Plaintiff's Complaint or Amended Complaint 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 with clean title by this Defendant, naming of this Defendant in this action is inappropriate and amounts to a frivolous civil proceeding against this Defendant.

FOR AN NINTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR. and CHARLESTON COUNTY
(Negligence)

49. In reliance upon the property's being offered for sale by the Sheriff of Charleston County, MASE incurred various costs and expenses related to the purchase of the relevant property, maintenance of it and other damages, including but not limited to the costs incurred to defend this litigation, which costs and other damages were proximately caused by these Defendants' negligence either alone or in combination with the negligence of Plaintiff earlier alleged.

FOR A TENTH DEFENSE
& AS A CROSS-CLAIM AGAINST
DEFENDANTS J. AL CANNON, JR. and CHARLESTON COUNTY
(Indemnification)

50. 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, along with the fees and costs incurred in defending this action.

Wherefore, having fully answered the Amended Complaint, the answering MASE Defendant hereby prays that the Amended Complaint, including all claims contained therein, be dismissed with prejudice, that Plaintiff be responsible for all costs

associated with defending this action, and for such other relief as the Court deems just and proper.

April 29, 2011

/s Wendy J. Keefer
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COMPANY, LLC and its sole member,
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