

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

DONALD R. THARPE,

Plaintiff,

Case No.: 502018CA010375XXXXMB

vs.

GARY HENDERSHOTT,

Defendant.

_____ /

**AMENDED ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS**

COMES NOW, Defendant, by and through undersigned counsel, and files his Answer and Affirmative Defenses, and in support hereof states:

1. Defendant admits the allegations contained in Paragraphs 3, 4, 6, and 8.
2. Defendant denies the allegations contained in Paragraphs 1, 5, 7, 9, 10, 11, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89, and demands strict proof thereof at trial.
3. Defendant is without sufficient information to admit or deny the allegations contained in Paragraphs 2, 12, 13, 14, 15, 22, 24, and 41, and demands strict proof thereof at trial.

AFFIRMATIVE DEFENSES

1. Plaintiff has unclean hands in this matter given his illegal dealings with third parties, including US Army Military Museums, and this Court should not provide him an avenue for recovery.
2. It would violate of public policy to provide a remedy to Plaintiff in this matter.
3. Plaintiff is guilty of laches.
4. Plaintiff committed fraud on Defendant concerning the maintenance and value of the Aston Martin listed in the Complaint.
5. Plaintiff committed fraud as to the values of the various items he placed on consignment with Defendant, to the benefit of Plaintiff and the Detriment of Defendant.
6. Plaintiff fails to sufficiently plead the contracts upon which it is relying on in this action.
7. Plaintiff has no basis in fact or in law to bring its claims and both he and his attorney should be held jointly and severally liable to Defendant under Fla. Sta. Section 57.105.
8. Plaintiff has defamed Plaintiff, per se, by untruthfully publishing the claims in the instant action to third parties outside of the action, and to which Defendant has become aware.
9. Plaintiff has tortuously interfered with Defendant's business relations.
10. Plaintiff was aware of contracts between third parties and Defendant, and wrongfully interfered with those contracts to the detriment of Defendant.
11. Defendant had Plaintiff's authorization to obtain and sell on consignment the items Defendant is alleged to have stolen from Plaintiff.

12. Any contracts entered into with Plaintiff occurred prior to Plaintiff's alleged disability.
13. Plaintiff is a debt collector under the act, and has engaged in unfair debt collection practices.
14. Defendant is entitled to a set-off for all monies paid to Plaintiff and not accounted for by Defendant.
15. Plaintiff has failed to state a claim of fraud with sufficient particularity.
16. There was an accord and satisfaction among the various written agreements.
17. Defendant returned to Plaintiff those items Plaintiff requested to be returned.
18. Defendant has not wrongfully deprived Plaintiff of any of his goods.
19. Plaintiff has failed to specify the requisite criminal intent in its cause of action for civil theft.
20. Plaintiff has failed to specify over which goods Defendant is asserting wrongful dominion and control.
21. Plaintiff has failed to state a cause of action for elder abuse with particularity.
22. Plaintiff cannot claim both breach of contract and the equitable claim of unjust enrichment at the same time.
23. Under Plaintiff's FDUPTA claim, Plaintiff is liable to Defendant for Defendant's attorney fees.
24. Plaintiff breached its Commission Contract with Defendant by failing to disclose liens and other claims on the property consigned to Defendant.
25. Plaintiff failed to provide the required 90-day notice of return of items.

26. Plaintiff was committing a fraud on Middleburg Bank by selling properties on which the bank held a security interest, without informing the bank of sales which should have been paid directly to Middlebury Bank.

COUNTERCLAIMS

COMES NOW, Counter-Plaintiff, by and through undersigned counsel, and files his Counterclaims against Counter-Defendant DONALD R. THARPE, and in support hereof states:

1. This is an action in excess of \$10,000,000.00, exclusive of interest, costs, and attorneys' fees.
2. Counter-Plaintiff is an individual citizen of Florida with an address located in Delray Beach, Florida.
3. Counter-Defendant is a citizen and resident of Midland, Virginia.
4. Venue is proper in this judicial district since Counter-Defendant purposely availed itself of this venue in the subject action and the events, claims and common nucleus of facts arising from the claims herein occurred here.
5. All conditions precedent to bringing this action have been satisfied, complied with, or waived.
6. Since 2004, Counter-Plaintiff and Counter-Defendant had a business relationship whereby Defendant would consign goods with Counter-Plaintiff for sale.
7. Upon sale of these goods, Counter-Defendant would received payment, minus a 10% commission to Counter-Plaintiff.
8. The general terms of the agreements were forth in agreements that are already part of this action.

COUNT I – BREACH OF CONTRACT

9. Counter-Plaintiff re-alleges the allegations contained in Paragraphs 1-8 herein.
10. Counter-Plaintiff and Counter-Defendant entered into various written and oral agreements for the consignment and sale of Counter-Defendant's goods.
11. Counter-Plaintiff acted in accordance with those agreements.
12. Counter-Defendant breached those agreements by representing that he was providing the goods with free and clear title and that there were no liens or other encumbrances on the goods.
13. In fact, title to the goods were encumbered by various liens and other related debts.
14. Counter-Plaintiff represented to third-parties that the goods had free and clear title.
15. Counter-Plaintiff's reputation was placed on the line by the representations he made to third-parties concerning the status of the goods, since they were actually owned by and/or had a lien held by Middleburg Bank over Plaintiff's entire historical collection..

WHEREFORE, Counter-Plaintiff demands damages, together with such further relief as is warranted.

COUNT II – FRAUDULENT MISREPRESENTATION

16. Counter-Plaintiff re-alleges the allegations contained in Paragraphs 1-8 herein.
17. Counter-Defendant represented to Counter-Plaintiff that the goods consigned to Counter-Plaintiff had free and clear title.

18. At the time of making these representations, Counter-Defendant knew that these representations were false since the Middleburg Bank had mortgaged his entire historical collection.

19. Counter-Defendant made these statements to Counter-Plaintiff to induce him to sell Counter-Defendants goods.

20. Based on these misrepresentations, Counter-Plaintiff did in fact sell Counter-Defendant's goods.

21. Counter-Plaintiff was damaged by Counter-Defendant's misrepresentations, including damage to his reputation in the industry.

WHEREFORE, Counter-Plaintiff demands damages, together with such further relief as is warranted.

COUNT III – NEGLIGENT MISREPRESENTATION

22. Counter-Plaintiff re-alleges the allegations contained in Paragraphs 1-8 herein.

23. Counter-Defendant represented to Counter-Plaintiff that the goods consigned to Counter-Plaintiff had free and clear title.

24. At the time of making these representations, Counter-Defendant either knew, should have known, or acted in reckless disregard to the fact that these representations were false since the Middleburg Bank had mortgaged his entire historical collection..

25. Counter-Defendant made these statements to Counter-Plaintiff to induce him to sell Counter-Defendants goods.

26. Based on these misrepresentations, Counter-Plaintiff did in fact sell Counter-Defendants goods.

27. Counter-Plaintiff was damaged by Counter-Defendant's misrepresentations, including damage to his reputation in the industry.

WHEREFORE, Counter-Plaintiff demands damages, together with such further relief as is warranted.

COUNT IV – DEFAMATION PER SE

28. Counter-Plaintiff re-alleges the allegations contained in Paragraphs 1-8 herein.

29. Counter-Defendant under consignment agreement with Counter-Plaintiff provided various goods to Counter-Plaintiff for sale.

30. Counter-Plaintiff made the sales of the goods and compensated Counter-Defendant thereon.

31. Counter-Defendant made false claims to third parties outside of this litigation that Counter-Plaintiff had stolen Counter-Defendants goods and/or sold the goods without the knowledge of Counter-Defendant.

32. These false claims published to third parties directly related to Counter-Plaintiff's conduct of and ability to conduct his business.

33. Specifically, Lewis Leigh Jr., a retired attorney and the largest collector in Virginia, informed Counter-Plaintiff that he would no longer be doing business with him since he had heard Plaintiff making the false representations Plaintiff makes in his Complaint against Counter-Plaintiff at a trade show.

34. Counter-Plaintiff had previously done One (1) million dollars of business with Mr. Leigh at a 10% commission. Mr. Leigh has an over ten (10) million dollar collection.

35. Among the falsities uttered by Plaintiff were that Counter-Plaintiff had stolen a “Cardinal’s Ring” (which is part of an August 2014 inventory given by Plaintiff to Counter-Plaintiff) and a “Pair of Drawings”, as well as alleging that Counter-Plaintiff had failed to pay him his percentage of a 2004 Aston Martin, which was sold outright to Counter-Plaintiff by Plaintiff, as evidence by the signed Bill of Sale and Plaintiff signing the title over to Counter-Plaintiff.

36. These and other statements were not only likely to damage Counter-Plaintiff’s reputation in the industry, but actually did cause significant damage to Counter-Plaintiff’s reputation in the industry, and were directly responsible for lost commissions to Counter-Plaintiff.

WHEREFORE, Counter-Plaintiff demands damages, together with such further relief as is warranted.

COUNT V – TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

37. Counter-Plaintiff re-alleges the allegations contained in Paragraphs 1-8 herein.

38. Counter-Defendant under consignment agreement with Counter-Plaintiff provided various goods to Counter-Plaintiff for sale.

39. Counter-Plaintiff made the sales of the goods and compensated Counter-Defendant thereon.

40. Counter-Defendant made false claims to third parties outside of this litigation that Counter-Plaintiff had stolen Counter-Defendants goods and/or sold the goods without the knowledge of Counter-Defendant.

41. Specifically, Lewis Leigh Jr., a retired attorney and the largest collector in Virginia, informed Counter-Plaintiff that he would no longer be doing business with him since he had heard Plaintiff making the false representations Plaintiff makes in his Complaint against Counter-Plaintiff at a trade show.

42. Counter-Plaintiff had previously done One (1) million dollars of business with Mr. Leigh at a 10% commission. Mr. Leigh has an over ten (10) million dollar collection.

43. Among the falsities uttered by Plaintiff were that Counter-Plaintiff had stolen a “Cardinal’s Ring” and a “Pair of Drawings”, as well as alleging that Counter-Plaintiff had failed to pay him his percentage of a 2004 Aston Martin, which Counter-Plaintiff had actually purchased outright.

NOT A CERTIFIED COPY

44. These and other statements were not only likely to damage Counter-Plaintiff's reputation in the industry, but actually did cause significant damage to Counter-Plaintiff's reputation in the industry, and were directly responsible for lost commissions to Counter-Plaintiff.

WHEREFORE, Counter-Plaintiff demands damages, together with such further relief as is warranted.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served by E-MAIL SERVICE on the attorneys of record/interested parties in this action on this 18th day of December, 2018.

/s/ Michael D. Stewart
Michael D. Stewart, Esq.
150 S.E. 2nd Ave, Suite 1000
Miami, Florida 33131
Telephone: (305) 590-8909
Fax: (305) 415-9920
ms@themiamilaw.com