

No. 10-CI-7127

CIRCUIT CLERK'S OFFICE
JEFFERSON CIRCUIT COURT

JEFFERSON CIRCUIT COURT
DIVISION THIRTEEN (13)
Judge Frederic J. Cowan

2011 FEB 18 A 9 18

ATRIUM AT STONYBROOK, LLC
CLERK 5

PLAINTIFF

VS.

ANSWER AND COUNTERCLAIM OF
ATRIUM AT STONYBROOK 1B, INC.

ATRIUM AT STONYBROOK 1B, INC.

DEFENDANT

Comes the Defendant, Atrium at Stonybrook 1B, Inc., (hereinafter "Stonybrook 1B"), by counsel, and for its Answer to the Complaint, heretofore filed states as follows:

1. The Defendant admits numerical Paragraphs 3, 5, 6, and 7 as set forth in the Plaintiff's Complaint.

2. The Defendant is without sufficient information or knowledge upon which to form a belief as to the truthfulness of the allegations of Paragraph 1 as set forth in the Plaintiff's Complaint, therefore it is denied.

3. The Defendant admits in part numerical Paragraph 2, that it is a Kentucky Corporation in good standing subject to the jurisdiction of this Court, however, it is without sufficient information or knowledge upon which to form a belief as to the truthfulness of the rest of the allegations contained in Paragraph 2, as set forth in the Plaintiff's Complaint, therefore they are denied.

4. The Defendant is without sufficient information or knowledge upon which to form a belief as to the truthfulness of the allegations of Paragraph 4 as set forth in the Plaintiff's Complaint, therefore it is denied.

AFFIRMATIVE DEFENSES

5. The Complaint fails to state a claim upon which relief can be granted.
6. The Plaintiff's Complaint is barred by the statute of frauds, statute of limitations, estoppel, failure of consideration, fraud, illegality, and/or waiver.
7. The Defendant reserves the right to plead any other affirmative defenses and counterclaims as may, in good faith, be provided for or disclosed during discovery.

COUNTERCLAIM

8. The Defendant is charged with the administration and representation of the condominiums known as the Atrium at Stonybrook pursuant to the Declaration of Master Deed of record in Deed Book 6654, Page 657 and as amended in Deed Book 6922, Page 207, and further amended in Deed Book 7620, Page 307, all in the Office of the Clerk of Jefferson County, Kentucky.
9. The Plaintiff, Atrium at Stonybrook, LLC, is the successor entity of Atrium at Stonybrook, Inc., the developer of the condominiums known as the Atrium at Stonybrook, pursuant to the Articles of Merger of Atrium at Stonybrook, Inc., into NextOne LLC, as filed in the Secretary of States Office on September 13, 2004, document No. 0590671.06.
10. The Plaintiff owed the Defendant the duty to properly construct the Club House and Pool according to the requirements of the local building, planning and zoning codes, and customary standards of construction, workmanship and usability.
11. The Plaintiff did not construct a Club House, but designated a residential condominium unit as the Club House which does not comply with local building, planning and zoning codes.

12. The Plaintiff, pursuant to the Master Deed, was to execute a 30 year lease of the Club House and Pool and all facilities therewith to the Council of Co-Owners, but has refused to do so.

13. The Plaintiff executed only one lease for the Club House and Pool which commenced on May 1, 2001 and terminated on April 30, 2004.

14. The Plaintiff has failed to properly maintain and repair the Club House and Pool.

15. The Plaintiff developer, as original administrator, manager and Board of Directors of the condominium, owed the Defendant a fiduciary duty to handle the financial affairs of the association and other administrative affairs of the association and this duty was breached.

16. The Plaintiff claim for a debt owed is premised in part for monies owed under a lease that does not exist and facilities that are not compliant with the building, planning and zoning codes.

17. The Defendant's members were promised in the Master Deed, that when they purchased a condominium from the Plaintiff, the Plaintiff would construct a Club House and Pool that they could use for their enjoyment.

18. The Plaintiff's intentional and willful disregard of repairs to the pool, its failure to construct a Club House, and its intentional and willful disregard of the building, planning and zoning codes has rendered the facilities worthless.

COUNT I: FRAUD

19. Defendant reaffirms, reiterates and incorporates by reference the allegations contained in numerical paragraphs 1-18 as if fully stated herein.

20. The Defendant's members were promised in the Master Deed, that when they purchased a condominium from the Plaintiff, the Plaintiff would construct a Club House and Pool that they could use for their enjoyment.

21. The Plaintiff's intentional and willful disregard of repairs to the pool, its failure to construct a Club House, and its intentional and willful disregard of the building, planning and zoning codes has rendered the facilities worthless.

22. In order to induce the Defendant members to purchase property, the Plaintiff executed a fraudulent scheme whereby it knowingly and recklessly made material misrepresentations and omissions, upon which the Defendant members relied to their detriment and injury.

23. As a direct and proximate result of the Plaintiffs' fraudulent scheme, the Defendant members, by justifiably relying thereupon, acted and did forbear to act and have suffered damages for which they are entitled to recover compensatory damages.

24. Plaintiffs' fraudulent and oppressive acts and omissions were committed willfully, maliciously and with flagrant indifference and wanton disregard of the rights and safety of the Defendant members; for which the latter are entitled to recover punitive damages.

25. The Defendant is entitled to compensatory and punitive damages from the Plaintiff due to the intentional and willful disregard of the Defendant's monetary and proprietary rights.

COUNT II: BREACH OF CONTRACT/ESTOPPEL/UNJUST ENRICHMENT

26. Defendant reaffirms, reiterates and incorporates by reference the allegations contained in numerical paragraphs 1-25 as if fully stated herein.

27. The Plaintiff, by and through the Master Deed, entered into a contract with the Council of Co-Owners which obligated the Plaintiff to build a Club House and Pool, execute a 30 year lease with the Council, collect fees, and maintain the Club House and Pool.

28. The Plaintiff was contractually obligated to operate in honesty in fact in the conduct or transactions concerned and the observance of reasonable commercial standards of fair dealing and did in fact breach said obligation, said breach being the proximate cause of the Defendants' damages.

29. By undertaking the actions complained of herein, the Plaintiff has been unjustly enriched for which it would be inequitable to permit same to benefit, and is promissorially and equitably estopped from denying the contract and its obligations.

30. As a direct and proximate result of Plaintiffs' breach and unjust enrichment, the Defendant has suffered damages in excess of the jurisdictional minimum and is entitled to compensatory damages for same.

COUNT III: NEGLIGENCE

31. The Defendant reaffirms, reiterates and incorporates by reference the facts and allegations contained in numerical paragraphs 1-30 by reference as if fully stated herein.

32. The Plaintiff has negligently pursued its business activities as pertains to the repair of the pool, failure to construct a Club House, collection of fees, and its intentional and willful disregard of the building, planning and zoning codes which have rendered the facilities useless, said negligence being the proximate cause of Defendants' actual

damages for which the Plaintiff is liable and for which the Defendant is entitled to compensatory damages.

30. Said negligence was wanton, willful and reckless, and is the proximate cause of Defendants' actual damages, for which the Plaintiff is liable.

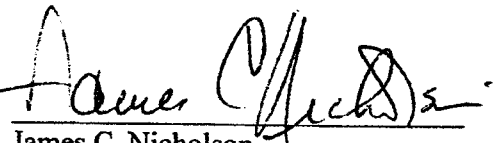
COUNT IV – DECLARATION OF RIGHTS

31. The Plaintiff has failed to comply with the Master Deed and has permitted other individuals who are not members of the Council of Co-Owners to use the Club House and Pool facilities. The Defendant request a Declaration of Rights with regards to these issues pursuant to KRS 418.045 since an actual controversy exists.

WHEREFORE, the Defendant, Atrium at Stonybrook 1B, Inc., respectfully demands as follows:

1. The Plaintiff's Complaint be dismissed;
2. A trial by jury;
3. That the Court enter a Judgment against the Plaintiff for any and all misappropriated funds, for repairs necessary to properly complete the Club House and Pool according to the building, and planning and zoning codes;
4. That the Court grant Defendant a Declaration of Rights pursuant to KRS 418.045 addressing the rights of the parties to the pool, Club House, and other common property;
5. Judgment against the Plaintiff for attorney fees and costs herein expended;
6. For any and all other relief to which the Defendant may appear entitled.

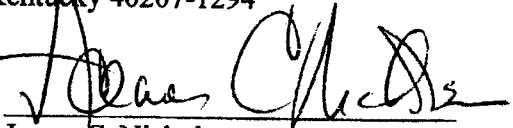
Respectfully Submitted,



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502-583-3212. FAX 569-0596
Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was FAXED (502-893-8913), this 18th day of February 2011 to: Randall L. Wright, *Counsel for the Plaintiff*, 6010 Brownsboro Park Blvd., Suite G, Louisville, Kentucky 40207-1294



James C. Nicholson
Counsel for the Defendant