

IN THE SUPERIOR COURT OF CHATHAM COUNTY

STATE OF GEORGIA

MBM DEVELOPMENTS, LLC,)
)
Plaintiff,)
v.)
)
D & A DISTRIBUTION, LLC, and)
SAVANNAH MALL REALTY HOLDING, LLC,)
)
Defendants.)

CIVIL ACTION FILE NO.
SPCV22-00842-KA

**DEFENDANT SAVANNAH MALL REALTY HOLDING, LLC'S
AFFIRMATIVE DEFENSES AND ANSWER TO PLAINTIFF'S
COMPLAINT FOR PRIVATE NUISANCE**

Defendant Savannah Mall Realty Holding, LLC (“Savannah”), files these Affirmative Defenses, Answer to the Plaintiff’s Complaint for Private Nuisance (the “Complaint”), showing the Court as follows:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrines of estoppel, waiver, and laches.

THIRD AFFIRMATIVE DEFENSE

No act or omission of Savannah caused or contributed to any of Plaintiff’s alleged damages. Therefore, Plaintiff is barred from any recovery against Savannah.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred because Plaintiff has not suffered any recoverable damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff lacks capacity or standing to bring the Complaint.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is not the real party in interest.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has not alleged, or suffered, damages proximately caused by Savannah.

EIGHTH AFFIRMATIVE DEFENSE

Savannah did not create the noise or other engage in any of the conduct that Plaintiff complains is a nuisance.

NINTH AFFIRMATIVE DEFENSE

At no time has Savannah acted in bad faith, been stubbornly litigious, or caused Plaintiff unnecessary trouble and expense. Therefore, Plaintiff is not entitled to an award of attorneys' fees, costs, and the expenses of litigation pursuant to O.C.G.A. § 13-6-11, or any other statute, common law, or contract law.

TENTH AFFIRMATIVE DEFENSE

Without waiver of its affirmative and other defenses which are incorporated herein by reference, Savannah responds to the individually numbered paragraphs in the Complaint as follows:

ANSWER

1.

Savannah denies the allegations contained in paragraph 1 of the Complaint.

2.

Savannah admits the allegations contained in paragraph 2 of the Complaint.

3.

Savannah denies the allegations contained in paragraph 3 of the Complaint.

4.

Savannah denies the allegations contained in paragraph 4 of the Complaint.

5.

Savannah is without knowledge or information sufficient to form a believe as to the truth of the allegations of paragraph 5 of the Complaint.

6.

Savannah is without knowledge or information sufficient to form a believe as to the truth of the allegations of paragraph 6 of the Complaint.

7.

Savannah is without knowledge or information sufficient to form a believe as to the truth of the allegations of paragraph 7 of the Complaint.

8.

Savannah denies the allegations contained in paragraph 8 of the Complaint.

9.

Savannah admits the allegations contained in paragraph 9 of the Complaint.

10.

Savannah is without knowledge or information sufficient to form a believe as to the truth of the allegations of paragraph 10 of the Complaint.

11.

Savannah denies the allegations contained in paragraph 11 of the Complaint.

12.

Savannah denies the allegations contained in paragraph 12 of the Complaint.

13.

Savannah denies the allegations contained in paragraph 13 of the Complaint.

14.

Savannah denies the allegations contained in paragraph 14 of the Complaint.

15.

Savannah denies the allegations contained in paragraph 15 of the Complaint.

16.

Savannah is without knowledge or information sufficient to form a believe as to the truth of the allegations of paragraph 16 of the Complaint.

17.

Savannah denies the allegations contained in paragraph 7 of the Complaint.

18.

Savannah denies each and every allegation of the Complaint not expressly admitted herein.

WHEREFORE, Savannah respectfully prays that this Honorable Court grant the following relief:

- a) That the Complaint for Private Nuisance be dismissed as to Savannah with all costs cast against Plaintiff;
- b) That judgment be entered against Plaintiff and in favor of Savannah;
- c) That Savannah be awarded its reasonable attorneys' fees and costs incurred in defending this action; and
- d) That the Court grant such other and further relief as may be just and appropriate under the circumstances.

[SIGNATURE SHOWN ON FOLLOWING PAGE]

This 10th day of October, 2022.

Respectfully submitted,

BERMAN FINK VAN HORN P.C.

By: /s/ Charles H. Van Horn

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COUNSEL FOR DEFENDANT
SAVANNAH MALL REALTY
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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2022, I electronically filed the foregoing **DEFENDANT SAVANNAH MALL REALTY HOLDING, LLC'S AFFIRMATIVE DEFENSES AND ANSWER TO PLAINTIFF'S COMPLAINT FOR PRIVATE NUISANCE** with the Clerk of the Court using the **Odyssey eFileGA** system, which will automatically send email notification of such filing to counsel of record as follows:

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By: /s/ Charles H. Van Horn
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