

IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA

DEVELOPMENT ASSOCIATES, INC.,

Plaintiff,

v.

STUDIOSAVANNAH, LLC
d/b/a KAT-5 STUDIOS,

Defendant.

CIVIL ACTION

FILE NO.: SPCV22-01097-MO

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT AND COUNTERCLAIM**

Defendant StudioSavannah, LLC d/b/a Kat-5 Studios ("Defendant"), by and through its counsel, hereby files its *Answer and Affirmative Defenses to Plaintiff's Complaint and Counterclaim*, and states as follows:

AFFIRMATIVE AND OTHER DEFENSES

Without conceding the burden of proof as to any issue, Defendant asserts the following affirmative defenses to preserve its right to assert them at trial, to give Plaintiff notice of its intention to assert these defenses, and to avoid waiver of any defenses.

FIRST DEFENSE

The Complaint fails to state a claim against Defendant upon which relief may be granted, and the Complaint should therefore be dismissed.

SECOND DEFENSE

Plaintiff's claims are barred as no valid and enforceable contract ever existed between the parties.

THIRD DEFENSE

In the alternative, Plaintiff's claims are barred, in whole or in part, by its failure to satisfy a condition precedent of any governing contract.

FOURTH DEFENSE

To the extent any of the following affirmative defenses are shown applicable through discovery, Defendant asserts the affirmative defenses of estoppel, laches, setoff, statute of limitations, and waiver.

FIFTH DEFENSE

Plaintiff's claims are barred to the extent Plaintiff failed to mitigate, or to make a reasonable attempt to mitigate, its damage.

SIXTH DEFENSE

Defendant reserves the right to assert any additional defenses and matters in avoidance as may be appropriate upon the facts and issues disclosed during the course of additional investigation and discovery. Subject to and without waiver of reservation, Defendant responds to the enumerated allegations of the Complaint as follows:

ANSWER TO PARTIES, JURISDICTION AND VENUE

1.

Defendant is without knowledge or information sufficient to admit or deny the allegations in Paragraph 1 of the Complaint, and therefore denies the same.

2.

Defendant admits the allegations of Paragraph 2 of the Complaint.

3.

Defendant admits that the Court has personal jurisdiction over it and that venue is proper in this Court. However, Defendant specifically denies that an enforceable contract existed between the parties.

ANSWER TO FACTUAL ALLEGATIONS

4.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

5.

Defendant is without knowledge or information sufficient to admit or deny the allegations in Paragraph 5 of the Complaint, and therefore it denies the same.

6.

Defendant admits the allegations contained in Paragraph 6 of the Complaint.

7.

Defendant denies the allegations contained in Paragraph 7 of the Complaint.

8.

Defendant admits the allegations contained in Paragraph 8 of the Complaint.

9.

Defendant admits only that it received a Letter of Intent from Plaintiff on September 15, 2021. Defendant specifically denies any allegations that the Letter of Intent included all the necessary terms of the proposed agreement or created a binding an enforceable agreement between the parties.

10.

Defendant admits the allegations contained in Paragraph 10 of the Complaint.

11.

Defendant denies the allegations contained in Paragraph 11 of the Complaint.

12.

Defendant denies the allegations contained in Paragraph 12 of the Complaint.

13.

Defendant denies the allegations contained in Paragraph 13 of the Complaint.

14.

Defendant denies the allegations contained in Paragraph 14 of the Complaint.

15.

Defendant denies the allegations contained in Paragraph 15 of the Complaint.

16.

Defendant denies the allegations contained in Paragraph 16 of the Complaint.

17.

Defendant denies the allegations contained in Paragraph 17 of the Complaint.

18.

Defendant denies the allegations contained in Paragraph 18 of the Complaint.

19.

Defendant denies the allegations contained in Paragraph 19 of the Complaint.

20.

Defendant denies the allegations contained in Paragraph 20 of the Complaint.

21.

Defendant denies the allegations contained in Paragraph 21 of the Complaint.

22.

Defendant denies the allegations contained in Paragraph 22 of the Complaint.

23.

Defendant denies the allegations contained in Paragraph 23 of the Complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of the Complaint.

25.

Defendant denies the allegations contained in Paragraph 25 of the Complaint.

26.

Defendant admits only that it closed on the sale of the Property on or about February 23, 2022. Defendant denies all other allegations contained in Paragraph 26 of the Complaint.

27.

Defendant denies the allegations contained in Paragraph 27 of the Complaint.

ANSWER TO COUNT I: BREACH OF CONTRACT

28.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

29.

The allegations in Paragraph 29 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 29 of the Complaint.

30.

Defendant denies the allegations contained in Paragraph 30 of the Complaint.

31.

The allegations in Paragraph 31 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 31 of the Complaint.

ANSWER TO COUNT II: BREACH OF FIDUCIARY DUTY

32.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

33.

The allegations in Paragraph 33 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 33 of the Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of the Complaint.

35.

The allegations in Paragraph 35 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 35 of the Complaint.

ANSWER TO COUNT III: FRAUD

36.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

37.

Defendant denies the allegations contained in Paragraph 37 of the Complaint.

38.

Defendant denies the allegations contained in Paragraph 38 of the Complaint.

39.

Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40.

Defendant denies the allegations contained in Paragraph 40 of the Complaint.

41.

The allegations in Paragraph 41 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 41 of the Complaint.

ANSWER TO COUNT IV: BREACH OF GOOD FAITH AND FAIR DEALING

42.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

43.

The allegations in Paragraph 43 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 43 of the Complaint.

44.

Defendant denies the allegations contained in Paragraph 44 of the Complaint.

45.

Defendant denies the allegations contained in Paragraph 45 of the Complaint.

ANSWER TO COUNT V: PROMISSORY ESTOPPEL

46.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

47.

Defendant denies the allegations contained in Paragraph 47 of the Complaint.

48.

Defendant denies the allegations contained in Paragraph 48 of the Complaint.

49.

Defendant denies the allegations contained in Paragraph 49 of the Complaint.

50.

Defendant denies the allegations contained in Paragraph 50 of the Complaint.

51.

Defendant denies the allegations contained in Paragraph 51 of the Complaint.

ANSWER TO COUNT VI: ATTORNEY'S FEES AND EXPENSES OF LITIGATION

52.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

53.

Defendant denies the allegations contained in Paragraph 53 of the Complaint.

ANSWER TO COUNT VII: PUNITIVE DAMAGES

54.

Defendant incorporates herein the responses to the preceding allegations to the Complaint as set forth above.

55.

Defendant denies the allegations contained in Paragraph 55 of the Complaint.

COUNTERCLAIM

Counterclaim Plaintiff StudioSavannah, LLC d/b/a Kat-5 Studios ("Counterclaim Plaintiff") hereby files its Counterclaim against Counterclaim Defendant Development Associates, Inc. ("Counterclaim Defendant"), and states as follows:

1.

By filing this action, Counterclaim Defendant submitted itself to the Court's jurisdiction and venue.

2.

The Court has jurisdiction over the subject matter of the claims asserted herein.

3.

The purpose of this Counterclaim is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations between the Counterclaim Plaintiff and the Counterclaim Defendant.

4.

Pursuant to O.C.G.A. § 9-4-1, *et seq.*, Counterclaim Plaintiff seeks a declaratory judgment against Counterclaim Defendant.

5.

An actual controversy exists between Counterclaim Plaintiff and Counterclaim Defendant.

6.

The Court has power to declare rights and other legal relations and such declaration shall have the force and effect of a final judgment.

COUNT ONE: DECLARATORY JUDGMENT

7.

Counterclaim Plaintiff incorporates by reference the proceeding allegations contained in the Counterclaim.

8.

The Term Sheet for DAI (attached to the Complaint as Exhibit E) (the “Term Sheet”) is not a valid an enforceable contract between Counterclaim Plaintiff and Counterclaim Defendant.

9.

The consent of the parties being essential to a contract, until each has assented to all the terms, there is no binding contract. O.C.G.A. § 13-3-2. In other words, there must be a meeting of the minds between the parties concerning all of the essential terms of the agreement. *Blum v. Morgan Guar. Trust Co.*, 709 F.2d 1463 (11th Cir. 1983) (applying Georgia law); *see also Clark v. Schwartz*, 210 Ga. App. 678 (1993).

10.

Here, the Term Sheet fails to articulate materials terms of the agreement whereby the parties had a meeting of the minds.

11.

The Term Sheet is illusory and merely constitutes an agreement to agree. Under these circumstances, there is no valid contract between the parties.

COUNT TWO: ATTORNEY'S FEES AND EXPENSES OF LITIGATION

12.

Counterclaim Plaintiff incorporates by reference the proceeding allegations contained in the Counterclaim.

13.

Counterclaim Defendant's actions demonstrate bad faith, constitute stubborn litigiousness, and/or has caused Counterclaim Plaintiff unnecessary trouble and expense, which includes an entitlement for recovery in costs and expenses of litigation, and attorneys' fees as provided under O.C.G.A. § 13-6-11.

WHEREFORE, Counterclaim Plaintiff prays for the following:

- a. That the Court grant judgment for Counterclaim Plaintiff against Counterclaim Defendant on all Counterclaims;
- b. That the Court make and enter a declaratory judgment that no contract exists between Counterclaim Plaintiff and Counterclaim Defendant;
- c. That Counterclaim Defendant be taxed all costs and attorneys' fees incurred by Counterclaim Plaintiff; and
- d. For such other and further relief as this Court deems just and proper.

Dated: December 26, 2022.

/s/ Richard J. Valladares

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StudioSavannah, LLC d/b/a Kat-5 Studios

CERTIFICATE OF SERVICE

I hereby certify that on December 26 2022, I electronically transmitted the foregoing **DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF’S COMPLAINT AND COUNTERCLAIM** using the Odyssey eFileGA electronic filing system, which will automatically send notification of such filing to the participants registered to receive such service.

DATED: December 26, 2022

/s/ Richard J. Valladares
Richard J. Valladares