IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ANNE E. MOORE, an individual,

Plaintiff,

v.

CIVIL ACTION NO. 15-C-2056
Judge: Kaufman

H3LLC, a West Virginia limited liability Company, and MICHAEL HOEFT, in his Individual capacity and as manager of H3LLC, and DOES 1 THOUGH 25,

Defendants.

Answer to Plaintiff's Complaint on Behalf of Michael Hoeft

First Defense

Defendant, Michael Hoeft, by counsel, hereby moves to dismiss the Complaint on the grounds that it fails to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

Second Defense

In response to the specific allegations set forth in the Complaint, Michael Hoeft states as follows:

1. Paragraph 1 of Plaintiff's Complaint appears to refer to deed records of Barbour County, West Virginia, which speak for themselves. Accordingly, Defendant Michael Hoeft denies the allegations in paragraph 1 insofar as they are inconsistent with the records of Barbour County.

2. Defendant Michael Hoeft admits the allegations contained in paragraph 2 of the Complaint.

EXHIBIT
C

3. Defendant Michael Hoeft admits the allegations contained in paragraph 3 of the Complaint.

4. The allegations in paragraph 4 of the Complaint are not directed at this Defendant, and no response is required. To extent a response is required, Michael Hoeft is without information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 and therefore denies the same.

5. Paragraph 5 is a legal conclusion to which no response is required. To the extent a response is required, this Defendant denies the allegations contained therein.

6. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the Complaint and therefore denies the same.

7. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint and therefore denies the same.

8. Defendant Michael Hoeft, upon information and belief, admits that Plaintiff dropped off a lease to Forest Jones. As to the remaining allegations, Michael Hoeft is without knowledge and information sufficient to form a belief as to their truth and therefore denies the same.

9. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of the Complaint and therefore denies the same.

10. Defendant Michael Hoeft admits that Plaintiff signed a contract to which the parties were H3 LLC and Plaintiff. This defendant denies the remaining allegations contained within paragraph 10.

11. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of the Complaint and therefore denies the same.

12. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of the Complaint and therefore denies the same.

13. Defendant Michael Hoeft denies the allegations contained in paragraph 13 of the Complaint.

14. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of the Complaint and therefore denies the same.

15. Defendant Michael Hoeft denies the allegations contained in paragraph 15 of the Complaint.

FIRST CAUSE OF ACTION

(Breach of Written Contract Against Defendants H3 LLC, Michael Hoeft and Does 1 through 5, inclusive.)

16. Defendant Michael Hoeft re-alleges and responds to paragraphs 1 through 15 of the Complaint as though restated herein verbatim.

17. Defendant Michael Hoeft admits that H3 LLC offered to contract with Plaintiff. As to the remaining allegations, paragraph 17 of the Complaint appears to refer to a contract by and between H3 LLC and Plaintiff, the terms of which speak for themselves. Accordingly, this Defendant denies the allegations in paragraph 17 insofar as they are inconsistent with the terms of the contract to which paragraph 17 refers.

18. Defendant Michael Hoeft denies the allegations contained in paragraph 18 of the Complaint and demands strict proof thereof.

19. Defendant Michael Hoeft denies the allegations contained in paragraph 19 of the Complaint and demands strict proof thereof.

SECOND CAUSE OF ACTION

(Breach of Oral Contract Against Defendants H3 LLC, Michael Hoeft and Does 6 through 10, inclusive.)

20. Defendant Michael Hoeft re-alleges and responds to paragraphs 1 through 19 of the Complaint as though restated herein verbatim.

21. Defendant Michael Hoeft denies the allegations contained in paragraph 21 of the Complaint and demands strict proof thereof.

22. Defendant Michael Hoeft denies the allegations contained in paragraph 22 of the Complaint and demands strict proof thereof.

23. Defendant Michael Hoeft denies the allegations contained in paragraph 23 of the Complaint and demands strict proof thereof.

THIRD CAUSE OF ACTION

(Violation of West Virginia Code § 39B-1-101 *et. seq*, against Defendants H3 LLC, Michael Hoeft and Does 11 through 15, inclusive.)

24. Defendant Michael Hoeft re-alleges and responds to paragraphs 1 through 23 of the Complaint as though restated herein verbatim.

25. Defendant Michael Hoeft denies the allegations contained in paragraph 25 of the Complaint and demands strict proof thereof.

26. Defendant Michael Hoeft denies the allegations contained in paragraph 26 of the Complaint and demands strict proof thereof.

27. Defendant Michael Hoeft denies the allegations contained in paragraph 27 of the Complaint and demands strict proof thereof.

28. Defendant Michael Hoeft denies the allegations contained in paragraph 28 of the Complaint and demands strict proof thereof.

FOURTH CAUSE OF ACTION

(Negligence against Defendants H3 LLC, Michael Hoeft and Does 16 through 20, inclusive.)

29. Defendant Michael Hoeft re-alleges and responds to paragraphs 1 through 28 of the Complaint as though restated herein verbatim.

30. Defendant Michael Hoeft denies the allegations contained in paragraph 30 of the Complaint and demands strict proof thereof.

31. Defendant Michael Hoeft denies the allegations contained in paragraph 31 of the Complaint and demands strict proof thereof.

32. Defendant Michael Hoeft denies the allegations contained in paragraph 32 of the Complaint and demands strict proof thereof.

FIFTH CAUSE OF ACTION

(Tortious Interference with Prospective Business Relationship against Defendants H3 LLC, Michael Hoeft and Does 21 through 25, inclusive.)

33. Defendant Michael Hoeft re-alleges and responds to paragraphs 1 through 28 of the Complaint as though restated herein verbatim.

34. Defendant Michael Hoeft is without knowledge and information sufficient to form a belief as to the truth of the allegations set forth in paragraph 34 of the Complaint and therefore denies the same.

35. Defendant Michael Hoeft denies the allegations contained in paragraph 35 of the Complaint and demands strict proof thereof.

36. Defendant Michael Hoeft denies the allegations contained in paragraph 36 of the Complaint and demands strict proof thereof.

37. Defendant Michael Hoeft denies the allegations contained in paragraph 37 of the Complaint and demands strict proof thereof.

38. Defendant Michael Hoeft denies the allegations contained in paragraph 38 of the Complaint and demands strict proof thereof.

39. Defendant Michael Hoeft denies the allegations contained in paragraph 39 of the Complaint and demands strict proof thereof.

40. The unnumbered WHEREFORE paragraph, along with accompanying subparagraphs 1 through 8, require no response. To the extent that a response is required, this Defendant denies any and all allegations contained therein.

41. Defendant Michael Hoeft denies any allegations contained in Plaintiff's Complaint which are not specifically admitted herein.

Third Defense

Any claims against Michael Hoeft are barred by the doctrines of estoppel, waiver, ratification, acquiescence, laches and/or applicable statutes of limitations, and unclean hands.

Fourth Defense

Any claims against Michael Hoeft are barred in whole or part because Plaintiff has not suffered any cognizable injury by any conduct of H3 LLC and Michael Hoeft.

Fifth Defense

Plaintiff's claims are barred by the terms of any and all agreements by and between her and H3 LLC.

Sixth Defense

Michael Hoeft invokes all contract defenses, including, but not limited to, the first breach rule, impossibility, illegality, and impracticability in accordance with the statutory and common law of the State of West Virginia.

Seventh Defense

Michael Hoeft asserts a failure to mitigate any purported damages.

Eighth Defense

Michael Hoeft denies any and all liability for any sum whatsoever.

Ninth Defense

Michael Hoeft breached no terms of any agreement referred to by Plaintiff in its Complaint.

Tenth Defense

In the event Plaintiff attempts to claim punitive damages, Plaintiff is not entitled to recover any punitive damages.

Eleventh Defense

In the event that Plaintiff attempts to claim exemplary or punitive damages, said damages violate Michael Hoeft's right to procedural and substantive due process as provided by the Fifth and Fourteenth Amendments to the United States Constitution and Article III, Section 10, and all other applicable provisions of the Constitution of the State of West Virginia.

Twelfth Defense

In the event that Plaintiff attempts to claim exemplary of punitive damages, said damages violate Michael Hoeft's right to equal protection under the law and are otherwise unconstitutional under the Fourteenth Amendment to the United States Constitution and Article III, Section 1, and all of the applicable provisions, of the Constitution of the State of West Virginia, including, but not limited to, the protection from excessive fines and to proportional penalties as provided in Article II, Section 5, of the Constitution of the State of West Virginia.

Thirteenth Defense

Michael Hoeft hereby reserves the right to plead or assert defenses listed in Rule 8(c) of the West Virginia Rules of Civil Procedure, or any other matter constituting an avoidance or affirmative defense, if the same be warranted as a result of the discovery in this case or the evidence adduced at trial.

Fourteenth Defense

Michael Hoeft hereby asserts improper venue, pursuant to Rule 12(b)(3) of the West Virginia Rules of Civil Procedure.

Fifteenth Defense

Plaintiff's alleged damages, if any, were not proximately caused by any act or omission of Michael Hoeft.

Sixteenth Defense

Plaintiff's alleged damages, if any, were not proximately caused by any act or omission of Michael Hoeft but by the intervening acts or omissions of other persons or entities for whose actions Michael Hoeft is not legally responsible or vicariously liable.

Seventeenth Defense

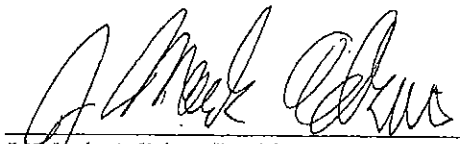
Michael Hoeft invokes the defense of comparative negligence or fault and alleges that the negligence or fault of Plaintiff must be compared to the negligence or fault, if any, of Michael Hoeft and any other alleged tortfeasors and that Plaintiff's recovery, if any, must be reduced by the corresponding degree of negligence or fault of Plaintiffs.

Eighteenth Defense

Michael Hoeft invokes the doctrine of comparative assumption of risk and alleges that the fault of Plaintiff must be compared to the fault, if any, of Michael Hoeft and any other alleged tortfeasors and that any recovery by Plaintiff must be reduced by the corresponding degree of fault of Plaintiff.

WHEREFORE, Defendant Michael Hoeft respectfully requests that this Court dismiss the Plaintiff's Complaint and grant it its costs and fees in defending this action, and such other and further relief as this Court deems just and proper.

MICHAEL HOEFT
By Counsel



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Certificate of Service

I, J. Mark Adkins, do hereby certify that I have caused copies of the hereto attached ***Answer to Plaintiff's Complaint on Behalf of Defendant Michael Hoeft***, to be served upon the following by placing the same in the regular United States Mail, postage prepaid:

Mark F. Underwood, Esquire
UNDERWOOD LAW OFFICES
923 Third Avenue
Huntington, WV 25701
Counsel for Plaintiff

on this **21st day of December, 2015.**

J. Mark Adkins (WVSB 7414)