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Mammoth Fireside Condominium No. 1 Owners' Association

FILED

FEB 20 2009

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONO
BY KAY RICHMOND

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONO – SOUTH COUNTY BRANCH

MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION, a California unincorporated association,

Plaintiff,

v.

MAMMOTH 8050, LLC, a Delaware limited liability company; SEAN COMBS, an individual; SFI MAMMOTH HOLDINGS, LLC, a Delaware limited liability company; iSTAR FINANCIAL INC., a Maryland corporation; ALL PERSONS OR ENTITIES UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD UPON PLAINTIFF'S TITLE THERETO; and DOES 1 through 100,

Defendants.

SFI MAMMOTH HOLDINGS LLC, a Delaware limited liability company;

Cross-Complainant

v.

///

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Case No.: 16452

Original Cross-Complaint filed May 27, 2008

Assigned For All Purposes To
Honorable Edward Forstenzer
Department 1

ANSWER OF MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION TO CROSS-COMPLAINT OF SFI MAMMOTH HOLDINGS LLC

MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION, a California unincorporated association; ROES 1 through 100,

Cross-Defendants.

Plaintiff/cross-defendant MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION ("Cross-Defendant") for itself alone and for no other person, firm, or corporation, answer the Cross-Complaint for Breach of Contract and Declaratory Relief ("Cross-Complaint") of defendant/cross-complainant SFI MAMMOTH HOLDINGS LLC ("Cross-Complainant") as follows:

GENERAL DENIAL

1. Pursuant to the provisions of California Code of Civil Procedure section 431.30(d), this answering Cross-Defendant denies, generally and specifically, each and every allegation contained in the Cross-Complaint and the whole thereof, in each and every cause of action therein, and further denies that Cross-Complainant has been injured or damaged in the sum alleged or any sum whatsoever, by reason of any act, breach, or omission on the part of answering Cross-Defendant or any of this answering Cross-Defendant's agents, servants, or employees.

FIRST AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

2. As a first separate and distinct affirmative defense, this answering Cross-Defendant alleges that the Cross-Complaint, and each cause of action therein, fails to state facts sufficient to constitute a cause of action against this answering Cross-Defendant.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate)

3. As a second separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant alleges that any and all recovery by

Cross-Complainant, if any, is barred by virtue of Cross-Complainant's failure to properly mitigate its own alleged damages, if any.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

4. As a third separate and distinct affirmative defense this answering Cross-Defendant alleges that the Cross-Complaint, and each cause of action therein, is time barred by the applicable statute of limitation sections in the Code of Civil Procedure including, but not limited to, Sections 337, 337.1, 337.15, 338, 339, 340 *et seq.*, and 343.

FOURTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

5. As a fourth separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant alleges that recovery by Cross-Complainant would be unjust and inequitable under the circumstances of the case, as all performance required by this answering Cross-Defendant were properly performed.

FIFTH AFFIRMATIVE DEFENSE

(Waiver, Bar and Estoppel)

6. As a fifth separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant alleges that by its conduct Cross-Complainant has waived, is barred, and is estopped from any recovery for the matters set forth in the Cross-Complaint.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

7. As a sixth separate and distinct affirmative defense, this answer Cross-Defendant alleges that the Cross-Complaint, and each cause of action therein, is barred by the doctrine of

laches.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. As a seventh separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant alleges that Cross-Complainant is barred by its unclean hands and failure to do equity in the factual circumstances upon which the Cross-Complaint is based, and Cross-Complainant is therefore estopped from asserting any causes of action against this answering Cross-Defendant .

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel, Waiver, Failure to Notify)

9. As an eighth separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant alleges that any claims against this answering Cross-Defendant are barred by estoppel and waiver due to the failure of Cross-Complainant to give this answering Cross-Defendant any notice of defects, if any, and a reasonable opportunity to cure any alleged defects.

NINTH AFFIRMATIVE DEFENSE

(Conduct of Others)

10. As a ninth separate and distinct affirmative defense, this answering Cross-Defendant alleges that Cross-Complainant's damages, if any, were caused by the conduct of parties and entities other than answering Cross-Defendant.

TENTH AFFIRMATIVE DEFENSE

(Failure To State Facts For Claim Of Damages)

11. As a tenth separate and distinct affirmative defense, this answering Cross-Defendant alleges that the Cross-Complaint, and each and every cause of action therein, fails to state any fact

which would entitle Cross-Complainant to recover general, compensatory, statutory, punitive, and/or other damages (including attorney fees and costs) against these answering Cross-Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

12. As an eleventh separate and distinct affirmative defense, this answering Cross-Defendant is informed and believes, and on that basis alleges, that the Cross-Complaint, and each cause of action therein, is barred because of a failure of consideration.

TWELFTH AFFIRMATIVE DEFENSE

(Excuse of Performance)

13. As a twelfth separate and distinct affirmative defense, this answering Cross-Defendant is informed and believes, and on that basis alleges, that the Cross-Complaint, and each cause of action therein, is barred because any performance alleged to be due from Cross-Defendant has been excused by Cross-Complainant.

THIRTEENTH AFFIRMATIVE DEFENSE

(Offset)

14. As a thirteenth separate and distinct affirmative defense, this answering Cross-Defendant is informed and believes, and on that basis alleges, that any amount of damages claimed by Cross-Complainant are offset by damages suffered by Cross-Complainant as set forth in the Second Amended Complaint herein.

FOURTEENTH AFFIRMATIVE DEFENSE

(Additional Defenses)

15. As a fourteenth separate and distinct affirmative defense to the Cross-Complaint, and each cause of action therein, this answering Cross-Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet

unstated, affirmative defenses available. This answering Cross-Defendant reserves the right to assert additional defenses in this action in the event that discovery indicates that such additional defenses would be appropriate.

WHEREFORE, this answering Cross-Defendant prays for judgment as follows:

1. That Cross-Complainant take nothing by way of this action and that the Cross-Complaint be dismissed with prejudice;

2. For costs of suit incurred herein, including reasonable attorney fees; and,

3. For such other and further relief as the court may deem just and proper.

Dated: February 19th, 2009

SONGSTAD & RANDALL LLP

By: _____

William D. Coffee, Esq.
Attorneys for Plaintiff/Cross-Defendant
Mammoth Fireside Condominium No. 1 Owners' Association

SERVICE LIST

I am employed in the County of Orange, State of California, over the age of eighteen years, and not a party to the within action. My business address is SONGSTAD & RANDALL LLP, 2201 Dupont Drive, Suite 100 Irvine, California 92612. On the date indicated herein, I served the foregoing copy of the document(s) described as: **ANSWER OF MAMMOTH FIRESIDE CONDOMINIUM NO. 1 OWNERS' ASSOCIATION TO CROSS-COMPLAINT OF SFI MAMMOTH HOLDINGS (Mammoth Fireside v. Mammoth 8050 LLC et al., Mono County Superior Court, South County Branch, Mammoth Lakes Court Case No. 16452)**

By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

XX By placing the document(s) listed above in sealed envelope(s) with postage thereon fully prepaid, in the United States mail at Irvine, California, addressed as set forth below, or as stated on the attached service list

By placing the document(s) listed above in sealed envelope(s), registered mail, return receipt requested, with postage thereon fully prepaid, in the United States mail at Irvine, California, addressed as set forth below, or as stated on the attached service list.

By placing the document(s) listed above in a sealed Federal Express envelope fully prepaid for delivery next business day, addressed as set forth below, or as stated on the attached service list.

By causing to be personally delivery of the document(s) listed above to the person(s) at the address(es) set forth below, or on the attached service list.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X *(State)* I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **February** 19, **2009** at Irvine, California.

Barbara C. Przybylski

Barbara C. Przybylski

SERVICE LIST

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