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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal From Lancaster County
Court of Common Pleas
Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2023-CP-29-01534
Appellate Case No. 2025-002538

MTS CLT, LLC. Appellant,

v.

Jane M. Pettus, Trustee of the
Joseph A. Pettus and Jane M. Pettus
Revocable Living Trust u/i/d April 12, 2005
and Rob Bilbro Respondents.

APPENDIX TO RECORD ON APPEAL

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INDEX TO APPENDIX TO RECORD ON APPEAL

Pleadings

Plaintiff's Reply to Counterclaims.	1
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STATE OF SOUTH CAROLINA
LANCASTER COUNTY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2023-CP-2901534

MTS CLT, LLC,

Plaintiff,

v.

JANE M. PETTUS, TRUSTEE OF THE
JOSEPH A. PETTUS AND JANE M.
PETTUS REVOCABLE LIVING
TRUST U/I/D APRIL 12, 2005, and
ROB BILBRO,

Defendants.

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS OF
DEFENDANT JANE M. PETTUS,
TRUSTEE OF THE JOSEPH A.
PETTUS AND JANE M. PETTUS
REVOCABLE LIVING TRUST
U/I/D APRIL 12, 2005**

Plaintiff MTS CLT, LLC ("MTS"), by and through counsel, replying to the Counterclaims asserted by Defendant Jane M. Pettus, Trustee of the Joseph A. Pettus and Jane M. Pettus Revocable Living Trust U/I/D April 12, 2005 ("Pettus") as follows:

FIRST DEFENSE

(Reply to Counterclaim)

1. Except as expressly admitted below, all allegations in Pettus's Counterclaim are denied. MTS answers the specific allegations asserted by Pettus in her Counterclaims as follows:

2. No response is necessary to Paragraphs 1 through 18 of Pettus's Counterclaims. To the extent a reply may be required, MTS denies these allegations to the extent they are inconsistent with the allegations of the Complaint.

3. No response is necessary to Paragraphs 19 through 37 of Pettus's Counterclaims, as such Paragraphs set forth separately enunciated affirmative

defenses to the Complaint. To the extent a reply may be required, MTS denies these paragraphs to the extent they are inconsistent with the allegations of the Complaint.

4. No response is necessary to Paragraphs 38 of Pettus's Counterclaims. To the extent a reply may be required, MTS denies these allegations to the extent they are inconsistent with the allegations of the Complaint.

5. The allegations contained in Paragraph 39 of the Counterclaims are admitted.

6. The allegations contained in Paragraph 40 of the Counterclaims are admitted.

7. The allegations contained in Paragraph 41 of the Counterclaims are admitted.

8. With regard to the allegations in Paragraph 42 of the Counterclaims, it is admitted that on or about November 30, 2020, MTS entered into a contract with Pettus, wherein Pettus agreed to sell to MTS approximately 57 acres of land designated with the property index numbers 0003-00-052.00 and 0003-00-052.06. It is further admitted that Exhibit A to the Counterclaims is a copy of that agreement, which speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 42 of the Counterclaims are denied.

9. The allegations contained in Paragraph 43 of the Counterclaims are admitted.

10. The allegations contained in Paragraph 44 of the Counterclaim refer to the content of Exhibit A attached to the Counterclaims, which document speaks for

itself. Except as expressly admitted herein, the allegations contained in Paragraph 44 of the Counterclaims are denied.

11. The allegations contained in Paragraph 45 of the Counterclaims refer to the content of Exhibit A attached to the Counterclaims, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 45 of the Counterclaims are denied.

12. The allegations contained in Paragraph 46 of the Counterclaims refer to the content of Exhibit A attached to the Counterclaims, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 46 of the Counterclaims are denied.

13. With regard to the allegations in Paragraph 47 of the Counterclaims, it is admitted that the Agreement was extended twice. Except as expressly admitted herein, the allegations contained in Paragraph 47 of the Counterclaims are denied.

14. The allegations contained in Paragraph 48 of the Counterclaims are denied.

15. With regard to the allegations in Paragraph 49 of the Counterclaims, it is admitted that on or about July 18, 2022, the Agreement was amended. It is further admitted that the Exhibit B to the Counterclaims is a copy of that amendment, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 49 of the Counterclaims are denied.

16. The allegations contained in Paragraph 50 of the Counterclaims refer to Exhibit B of the Counterclaims, which document speaks for itself. Except as expressly

admitted herein, the allegations contained in Paragraph 50 of the Counterclaims are denied.

17. The allegations contained in Paragraph 51 of the Counterclaims refer to Exhibit B to the Counterclaims, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 51 of the Counterclaims are denied.

18. With regard to the allegations in Paragraph 52 of the Counterclaims, it is admitted that the Amendment was extended three times. Except as expressly admitted herein, the allegations contained in Paragraph 52 of the Counterclaims are denied.

19. With regard to the allegations in Paragraph 53 of the Counterclaims, it is admitted that counsel for Pettus sent a letter to MTS on or around September 18, 2023 which document speaks for itself. It is further admitted that the Exhibit C to the Counterclaims is a copy of that letter, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 53 of the Counterclaims are denied.

20. The allegations contained in Paragraph 54 of the Counterclaims are denied.

21. With regard to the allegations in Paragraph 55 of the Counterclaims, it is admitted that MTS and Pettus did not close the property sale transaction because MTS had no obligation to close. Except as expressly admitted herein, the allegations contained in Paragraph 55 of the Counterclaims are denied.

22. With regard to the allegations in Paragraph 56 of the Counterclaims, it is admitted that on September 29, 2023, Pettus, through counsel, sent MTS a letter which document speaks for itself. It is further admitted that Exhibit D to the Counterclaims contains a copy of the letter, which document speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 56 of the Counterclaims are denied.

23. With regard to the allegations in Paragraph 57 of the Counterclaims, it is admitted that MTS and Pettus did not close the property sale transaction because MTS had no obligation to close. Except as expressly admitted herein, the allegations contained in Paragraph 57 of the Counterclaims are denied.

24. With regard to Paragraph 58 of the Counterclaims, it is admitted that on November 1, 2023, Pettus's counsel sent MTS another letter which document speaks for itself. It is further admitted that the November 1, 2023 letter is contained in Exhibit D, which speaks for itself. Except as expressly admitted herein, the allegations contained in Paragraph 58 of the Counterclaims are denied.

25. The allegations contained in Paragraph 59 of the Counterclaims are denied.

26. The allegations contained in Paragraph 60 of the Counterclaims are admitted upon information and belief.

27. The allegations contained in Paragraph 61 of the Counterclaims are denied.

28. With regard to the allegations in Paragraph 62 of the Counterclaims, it is admitted that on November 3, 2023, Plaintiff filed a lis pendens concerning the Subject Property. Except as expressly admitted herein, the allegations contained in Paragraph 62 of the Counterclaims are denied.

29. With regard to the allegations in Paragraph 63 of the Counterclaims, it is admitted that Plaintiff filed the Complaint within the statutory time after filing the lis pendens in order to, among other things, preserve and perfect the lis pendens. Except as expressly admitted herein, the allegations contained in Paragraph 63 of the Counterclaims are denied.

30. With regard to the allegations in Paragraph 64 of the Counterclaims, MTS incorporates by reference the preceding answers and responses of this Reply as if fully set forth herein.

31. The allegations contained in Paragraph 65 of the Counterclaims are admitted.

32. The allegations contained in Paragraph 66 of the Counterclaims are admitted.

33. The allegations contained in Paragraph 67 of the Counterclaims are denied.

34. The allegations contained in Paragraph 68 of the Counterclaims are denied.

35. The allegations contained in Paragraph 69 of the Counterclaims are admitted.

36. The allegations contained in Paragraph 70 of the Counterclaims are admitted upon information and belief.

37. The allegations contained in Paragraph 71 of the Counterclaims are denied.

38. The allegations contained in Paragraph 72 of the Counterclaims are denied.

39. With regard to the allegations in Paragraph 73 of the Counterclaims, MTS incorporates by reference the preceding answers and responses of this Reply as if fully set forth herein.

40. With regard to the allegations in Paragraph 74 of the Counterclaims, it is admitted that Defendant purports to bring a cause of action pursuant to the Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 *et seq.* Except as expressly admitted herein, the allegations in Paragraph 74 of the Counterclaims are denied.

41. The allegations contained in Paragraph 75 of the Counterclaims constitute a request for relief. MTS denies that Pettus is entitled to any relief, including the relief sought in Paragraph 75 of the Counterclaims.

42. The allegations contained in Paragraph 76 of the Counterclaims constitute a request for relief. MTS denies that Pettus is entitled to any relief, including the relief sought in Paragraph 76 of the Counterclaims.

43. The allegations contained in Paragraph 77 of the Counterclaims constitute a request for relief. MTS denies that Pettus is entitled to any relief, including the relief sought in Paragraph 77 of the Counterclaims.

44. MTS acknowledges and has no objection to Pettus's right to a jury trial concerning the Counterclaims.

SECOND DEFENSE

45. The Counterclaim should be dismissed with prejudice pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to set forth factual allegations sufficient to constitute a cause of action.

THIRD DEFENSE

46. Pettus's Counterclaims are barred by the Doctrine of Laches.

FOURTH DEFENSE

47. Pettus's Counterclaims are barred by the Doctrine of Unclean Hands.

FIFTH DEFENSE

48. Pettus's Counterclaims are barred by the Doctrines of Estoppel, Ratification, Waiver, and Release.

SIXTH DEFENSE

49. Pettus's Counterclaims are barred because she has suffered no damages.

SEVENTH DEFENSE

50. Pettus's Counterclaims are barred, reduced, or limited pursuant to applicable South Carolina statutory and common law regarding limitations of awards, caps on recovery, and set offs.

EIGHTH DEFENSE

51. Pettus's Counterclaims are barred due to Pettus's failure to comply with, and ensuing breach of the Contract.

NINTH DEFENSE

52. Pettus's entitlement to damages, which is strictly denied, is subject to a limit established by the Contract.

TENTH DEFENSE

53. Pettus's Counterclaims are barred due to Pettus's failure to mitigate damages.

ELEVENTH DEFENSE

54. MTS has acted in good faith and with proper business purpose at all relevant times.

TWELFTH DEFENSE

55. MTS incorporates by reference the allegations contained in the Complaint in bar of Pettus's Counterclaims.

WHEREFORE, MTS prays unto the Court as follows:

1. That Pettus's Counterclaims be stricken;
2. That Pettus have and recover nothing on the Counterclaims, and that the Counterclaims be dismissed with prejudice;
3. That MTS have and recover the relief prayed for in the Complaint;
4. That the Court tax the costs of this action against Pettus; and
5. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Respectfully submitted, this 17th day of January, 2024.

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