

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Horry County Circuit Court
Benjamin H. Culbertson, Circuit Court Judge

Appellate No. 2019-000413

Karl & Terri Hager; Robert Singleton & Teresa Singleton; Jay & Susan Welborn; Erik Arnold; and Bowers Caravelle LLC; derivatively on behalf of Caravelle Resort Association, Inc and on behalf of themselves and those similarly situated.....Appellants

v.

McCabe, Trotter & Beverly, P.C. and Gold Crown Management Company.....Defendants

of which

McCabe, Trotter & Beverly, P.C. is.....Respondent

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
)
) C/A NO.: 2018-CP-26-2974

Karl & Terri Hager, Robert Singleton, Jay & Susan
Welborn, Erik Arnold, and Bowers Caravelle,
LLC, derivatively and on behalf of Caravelle Resort
Association, Inc. and on behalf of themselves and
those similarly situated,

Plaintiffs,

v.

McCabe, Trotter & Beverly, P.C. and Gold Crown
Management Company, Inc.,

Defendants.

**ANSWER OF DEFENDANT
MCCABE, TROTTER & BEVERLY, P.C.
TO THE AMENDED COMPLAINT**
(Jury Trial Demanded)

Defendant McCabe, Trotter & Beverly, P.C. ("MTB"), responds to the Plaintiffs' Amended Complaint as follows:

1. MTB denies all allegations not specifically admitted in this Answer.
2. Upon information and belief, MTB admits paragraph 1.
3. In response to paragraph 2, MTB denies the owners are proper Plaintiffs, individually, derivatively, or as a class, against MTB.
4. In response to paragraph 3, MTB admits only that Caravelle Resort Owners Association, Inc. is a nonprofit corporation organized and existing under South Carolina law with a registered agent of John Reyelt, 1805 Oak St., Myrtle Beach, SC 29577.
5. In response to paragraph 4, MTB admits only that, upon information and belief, the Association is comprised of 346 residential units and 3 commercial units. MTB denies all remaining allegations in paragraph 4.

6. In response to paragraph 5, MTB craves reference to the Master Deed and statute cited and denies said paragraph to the extent it is inconsistent with either.

7. MTB admits paragraph 6.

8. In response to paragraph 7, MTB admits only that it represented the Association, and the scope and duration of the representation was defined by agreement between MTB and the Association. MTB did not represent any of the Plaintiffs, who have no basis to pursue claims against MTB. It denies all remaining and/or inconsistent allegations in said paragraph.

9. MTB denies paragraphs 8 – 9.

10. Upon information and belief, MTB admits paragraph 10.

11. In response to paragraph 11, MTB admits only that, upon information and belief, Gold Crown served as property manager for the Association pursuant to an agreement.

12. MTB denies paragraphs 12 – 13.

13. Paragraphs 14 – 16 state conclusions of law to which MTB is not required to respond. At this time, MTB does not contest venue.

14. MTB denies paragraphs 17 – 25, including all subparts.

15. MTB denies paragraphs 26 – 27 as stated, including all subparts.

16. MTB denies paragraph 28.

17. In response to paragraph 29, MTB realleges all preceding paragraphs as if repeated here verbatim.

18. In response to paragraph 30, MTB admits only that, upon information and belief, an HO-6 policy and/or HO-6 policies were purchased from Lloyd's of London covering owners as named insureds. Further responding, Article 11.2 of the Master Deed provides as follows:

Section 11.2 Insurance by Property Owner. Each Property Owner shall be responsible for obtaining, and shall obtain an HO-6 policy or other suitable policy approved by the Association, at his or her sole expense, insurance covering the personal property, fixtures, decorations, and furnishings within his or her own Unit, and the additions and improvements made by him or her to the Unit. Each Owner shall be responsible for obtaining, and shall obtain, at his or her own expense, insurance covering his or her liability for the safety of the premises within his or her Unit. If obtainable, all such insurance policies shall include, however, provision or endorsement waiving (i) any right of the insurer to subrogation to claims against the Association and against individual Owners, as well as their agents, servants, employees, and guests and (ii) any right of the insurer to contribution or proration because of the master hazard policy. A current copy of all insurance required by this provision shall be filed with the Association or its manager.

Further responding, it appears upon information and belief, that Exhibit 1 to the Amended Complaint is a copy of the Master Deed, while Exhibit 2 appears to be a copy of the Bylaws. MTB denies all remaining and/or inconsistent allegations in paragraph 30.

19. In response to paragraphs 31 – 33, MTB craves reference to the policy/policies and denies said paragraphs to the extent they are inconsistent with the same.

20. MTB denies paragraph 34 as stated.

21. MTB denies paragraph 35.

22. In response to paragraph 36, MTB admits only that, upon information and belief, Hurricane Matthew caused significant damage to the property.

23. MTB lacks knowledge and information sufficient to respond to paragraphs 37 – 38 and therefore denies them.

24. In response to paragraph 39, MTB admits only that, upon information and belief, Delta entered into a contract with the HOA for certain work at the property. However, MTB was not involved in this process.

25. MTB denies paragraph 40.

26. MTB denies paragraph 41.

27. MTB denies paragraph 42 to the extent it is directed towards MTB.

28. In response to the first sentence in paragraph 43, MTB admits only that Article 9, Sec. 6 of the Master Deed provides as follows:

Section 9.6. Right of Access. The Board shall have the right of access to each Unit during reasonable hours and with reasonable notice for maintaining, repairing, or replacing any Common Elements located within or accessible through the Unit, and the right of immediate access for making emergency repairs within the Unit necessary to prevent damage to the Common Elements or to another Unit, including the right to enter a Unit for pest or rodent control. This easement and right of access may be exercised by the Board, by its agents and employees, or by the manager to whom the responsibility of maintaining has been delegated. To facilitate entry in the vent of any such emergency, the Owner of each Residential Unit, if required by the Board, shall deposit, under the control of the Board or its designee, a key to such Unit. Damages resulting to any Unit because of such maintenance and repairs shall be corrected promptly at the expense of the Association.

MTB denies the second sentence of paragraph 43 and denies that it gave the Board the referenced advice.

29. MTB denies paragraph 44.

30. MTB lacks knowledge and information sufficient to respond to paragraph 45.

31. MTB denies paragraphs 46 – 49 the are directed towards MTB.

32. MTB lacks knowledge and information sufficient to respond to paragraphs 50 – 52 and therefore denies them.

33. MTB denies paragraph 53 as stated and craves reference to the letter (Ex. 3 to the Am. Complaint).

34. MTB denies paragraph 54.

35. MTB denies paragraph 55 as stated and craves reference to Ex. 5 to the Am. Complaint.

36. MTB denies paragraph 56 and craves reference to Ex. 6 to the Am. Complaint. Further responding, MTB specifically denies the letter gave legal advice to the owners, and MTB notes that the letter was written as counsel for the HOA *informing the owners of the HOA's position relative to soft goods replacement.*

37. MTB denies paragraph 57 as stated and craves reference to Ex. 7 to the Am. Compl.

38. MTB denies paragraph 58 as stated and craves reference to Ex. 8 to the Am. Compl. Further responding, MTB specifically denies the letter gave legal advice to the owners, and MTB notes that the letter was written as counsel for the HOA *informing the owners of the HOA's position relative to soft goods replacement.*

39. MTB denies paragraph 59 and craves reference to Ex. 9 to the Am. Compl.

40. MTB denies paragraph 60 and craves reference to Ex. 10 to the Am. Compl.

41. MTB denies paragraphs 61 – 63.

42. MTB denies paragraphs 64 – 85.

43. In response to paragraph 86, MTB admits only that, upon information and belief, some owner(s) submitted commentary on the issues online.

44. MTB denies paragraphs 87 – 89.

45. In response to paragraph 90, MTB realleges all preceding paragraphs as if repeated here verbatim.

46. In response to paragraph 91, MTB only admits it represented the Association pursuant to the specific terms of the firm's agreement with the Association. MTB did not represent the Plaintiffs. Ever.

47. MTB denies paragraphs 92 – 111.

48. In response to paragraph 112, MTB realleges all preceding paragraphs as if repeated here verbatim.

49. In response to paragraph 113, MTB admits only that it owes certain duties under the law to its clients, including the Association. MTB denies paragraph 113 to the extent it is inconsistent with this.

50. MTB denies paragraphs 114 – 115.

51. In response to paragraph 116, MTB realleges all preceding paragraphs as if repeated here verbatim.

52. Paragraphs 117 – 119 are not directed towards MTB, thus it is not required to respond.

53. In response to paragraph 120, MTB realleges all preceding paragraphs as if repeated here verbatim.

54. In response to paragraph 121, MTB admits only that it owed certain duties under the law to its client, the HOA.

55. MTB denies paragraphs 122 – 124 to the extent they are directed towards MTB.

56. MTB denies paragraph 125.

57. In response to paragraph 126, MTB realleges all preceding paragraphs as if repeated here verbatim.

58. MTB denies paragraphs 127 – 133 to the extent they are directed towards MTB.

59. MTB denies paragraphs 134 – 135.

60. In response to paragraph 136, MTB realleges all preceding paragraphs as if repeated here verbatim.

61. MTB admits paragraph 137 to the extent it understands said paragraph.

62. MTB denies paragraphs 138 – 147 to the extent they are directed towards MTB.

63. MTB denies paragraphs 148 – 149.

64. In response to paragraph 150, MTB realleges all preceding paragraphs as if repeated here verbatim.

65. Paragraphs 151 – 157 are not directed towards MTB, thus it is not required to respond.

To the extent MTB is required to respond, it denies those paragraphs.

66. MTB denies the prayer for relief, that comprising the remainder of the Amended Complaint.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to State a Claim)

67. The Am. Complaint fails to state facts sufficient to constitute a cause of action against MTB, and the Court should therefore dismiss it pursuant to SCRCP 12(b)(6).

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(S.C. Code § 15-36-100)

68. Plaintiffs' expert affidavit filed with the Am. Complaint fails to meet the requirements of S.C. Code § 15-36-100, and the Court should therefore dismiss the Am. Complaint. MTB also raises any other defense provided for in the S.C. Frivolous Proceedings Act, S.C. Code § 15-36-10, et seq. MTB maintains this Am. Complaint is frivolous, and MTB should recover costs and attorney's fees associated with responding to it.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Judgmental Immunity)

69. MTB is not liable to Plaintiffs, third parties whom MTB did not represent, for actions taken in the course of representing its client, the HOA. Plaintiffs' claims against MTB are barred accordingly.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Proximate Cause).

70. Nothing MTB did or failed to do proximately caused any damage to Plaintiffs, whom MTB did not represent.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Intervening/Superseding Acts of Others)

71. Any alleged injuries Plaintiffs sustained were or may have been caused in whole or in part by the acts or omissions of persons other than MTB, over whom MTB had no control, or by superseding intervention of causes outside MTB's control.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Serve)

72. Plaintiffs have failed to perfect service of the Am. Summons and Am. Complaint on MTB.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Estoppel)

73. Plaintiffs should be estopped in equity from recovery against MTB.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Punitive Damages Unconstitutional)

74. Plaintiffs' claim for punitive damages violates the Constitutions of South Carolina and the United States, and such claim should be barred and/or limited appropriately.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Abandonment)

75. The Plaintiffs are barred from recovery against MTB to the extent they abandoned the property allegedly converted.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Duty)

76. MTB did not owe any fiduciary or other duty to the Plaintiffs that could serve as a basis for their claims against MTB.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Unclean Hands)

77. The Plaintiffs are barred from recovery against the Defendants because they have or may have unclean hands.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Adherence to Standard of Care)

78. At all times relevant to this action, MTB acted within the standard of care applicable to it as lawyers.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Failure to Mitigate)

79. Plaintiffs have failed to mitigate their alleged damages as the law requires.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Waiver)

80. The doctrine of waiver bars Plaintiffs from recovery against MTB.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Privity)

81. MTB did not represent Plaintiffs. There is no privity between them that could serve as the basis for Plaintiffs' claims against MTB under the law.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Lack of Standing)

82. Plaintiffs lack standing necessary to pursue a claim against MTB.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Contributory/Comparative Negligence)

83. The Court should bar Plaintiffs from recovery to the extent they were negligent under the doctrines of contributory/comparative negligence applicable under South Carolina law.

FURTHER RESPONDING TO THE AMENDED COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE:
(Reservation and Non-waiver)

84. MTB reserves any additional and further defenses as may be revealed by information obtained during discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to the Am. Complaint, MTB prays that this Court dismiss Plaintiffs' claims with prejudice, award costs of this action and other such other further relief as it deems just and proper. MTB demands a jury trial.

Respectfully submitted,

By: /s/ Andrew W. Countryman
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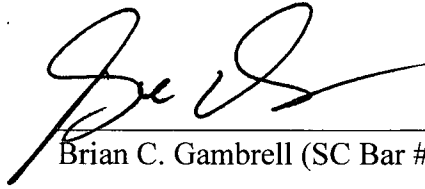
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CERTIFICATE OF COUNSEL.

I, Brian C. Gambrell, the attorney for Appellants, do hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



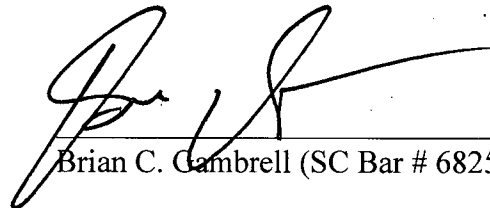
Brian C. Gambrell (SC Bar # 68253)

PROOF OF SERVICE

I, Brian C. Gambrell, the attorney for Appellant, do hereby certify that I served First class Mail the Record on Appeal on September 6, 2019.

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