

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

IMAD MANSOUR and
GAIL MANSOUR, his wife,

CASE NO.: 2017-CA-000203

Plaintiffs,

vs.

CAPTAIN'S BAIT, TACKLE & BBQ, LLC
and COUNTY OF FLAGLER,
a political subdivision of the State of Florida,

Defendants.

DEFENDANT FLAGLER COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant, County of Flagler ("Flagler County" or "Defendant"), responds to plaintiffs' complaint as follows:

ANSWER

1. Admitted for jurisdictional purposes only; otherwise denied.

COUNT I – IMAD MANSOUR vs. CAPTAIN'S BBQ

2.-6. Count I is not directed to Flagler County. To the extent Count I could be construed to be directed to Flagler County, the allegations are denied.

COUNT 2 – GAIL MONSOUR vs. CAPTAIN'S BBQ

7.-9. Count 2 is not directed to Flagler County. To the extent Count 2 could be construed to be directed to Flagler County, the allegations are denied.

COUNT 3 – IMAD MANSOUR vs. COUNTY OF FLAGLER

10. Admitted Flagler County owned the land and building located at 5862 N. Ocean Shore Blvd., in Palm Coast, Florida, and leased same to Captain's Bait, Tackle & BBQ, LLC; otherwise, denied.

11. Without knowledge, therefore denied.
12. Denied.
13. Denied.
14. Denied.
15. Denied.

COUNT 4 – GAIL MANSOUR vs. COUNTY OF FLAGLER

16. Denied.
17. Without knowledge, therefore denied.
18. Denied.

Flagler County denies each and every allegation not explicitly admitted herein, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant affirmatively alleges plaintiffs' damages or injuries, if any, were proximately caused or contributed to by plaintiff Imad Mansour's own negligence and, therefore the claims of the plaintiffs should be either barred completely, or diminished in accordance with the degree of the plaintiff Imad Mansour's own negligence.

SECOND AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that as a result of the incident described in the plaintiffs' complaint, plaintiff Imad Mansour has received payments from collateral sources, as that term is defined in *Florida Statutes*, and therefore defendant is entitled to a set-off or deduction equal to the value of all benefits paid or payable to plaintiff Imad Mansour from any collateral source.

THIRD AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that the condition described in plaintiffs' complaint was open and obvious, and therefore this defendant was under no duty to warn of the existence of said condition.

FOURTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that plaintiff Imad Mansour's knowledge of the alleged defective condition was equal to or greater than that of defendant and therefore defendant had no duty under law to warn of said condition.

FIFTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges the premises in question were maintained in a reasonably safe condition and the condition alleged by plaintiffs to have caused their injuries and/or damages were not unreasonably defective or dangerous.

SIXTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that plaintiff's claims for damages is subject to and governed by the provisions of *Fla. Stat. § 768.28, Fla. Stat.*, including but not limited to the notice of claim provisions and monetary limitations contained therein. Plaintiffs have failed to comply with the provisions of § 768.28, and their claims are premature and should be dismissed.

SEVENTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that the condition complained of by plaintiffs is so commonly expected on such premises, that there is no legal duty to warn of said condition.

EIGHTH AFFIRMATIVE DEFENSE

Defendant affirmatively alleges that plaintiffs' injuries and damages, if any, were caused, in whole or in part, by the conduct of third parties beyond their custody, control and supervision and for whose conduct they bear no responsibility, including but not limited to co-defendant Captain's Bait, Tackle & BBQ. Any liability on the part of defendant Flagler County should be reduced by the same percentage of the negligence of the third parties in accordance with the principles of comparative negligence. *See Fabre v. Marin*, 623 So.2d 1182 (Fla. 1993).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Florida Courts E-Filing Portal on this 9th day of May, 2017, to: Robert W. Elton, Esquire, Law Offices of Robert W. Elton, 1951 West Granada Boulevard, Ormond Beach, FL 32174-4834, at: relton@eltonlaw.com and celton@eltonlaw.com; John L. Morrow, Esquire, at: jmorrow@conroysimberg.com and eserviceorl@conroysimberg.com; and Sarah May Smith, Esquire at: ssmith@conroysimberg.com, lclement@conroysimberg.com, and eserviceorl@conroysimberg.com.

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