

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

CAPTAIN'S BAIT, TACKLE & BBQ, LLC.
A Florida limited liability corporation,

Plaintiff,

v.

CASE NO. 2019 CA 000381
DIVISION 49

FLAGLER COUNTY, a political subdivision of
the state of Florida,

Defendant.

_____ /

MOTION TO COMPEL DEPOSITIONS

The Plaintiff, Captain's Bait, Tackle & BBQ, LLC ("Captain's BBQ"), hereby moves
to compel the depositions of Al Hadeed and Jerry Cameron on the following grounds:

1. Al Hadeed is the County Attorney for Defendant, Flagler County ("the County").
2. Jerry Cameron is the County Administrator for the County.
3. This action is predicated on the alleged breach of the Amended and Restated Captain's Bait, Tackle & BBQ Lease at Bings Landing ("Amended/Restated Lease") between Captain's BBQ and the County executed November 18, 2018.
4. The parties originally entered the lease of a building which the Amended/Restated Lease amends/restates in 2011 ("2011 Lease").

5. Pursuant to the terms of the Amended/Restated Lease it was entered because the building subject of the 2011 Lease (“building”) was not suitable for occupancy¹.

6. Among the affirmative defenses raised by the County are defenses which assert:

a. The County was entitled to rescind the Amended/Restated Lease because the parties were mutually mistaken as to the material facts pertaining to the condition of the building and whether it could be repaired or rehabilitated; and

b. The County was entitled to rescind the Amended/Restated Lease because Captain’s BBQ induced the County to execute the Amended/Restated Lease through misrepresentations as to the condition of the building; and

c. Captain’s BBQ is not entitled to relief because of misrepresentations as to material facts associated with the Amended/Restated Lease and its undisclosed failure to reasonably maintain the building.

¹ In the fifth “Whereas” paragraph of the Amended/Restated Lease, on page 1, it is stated that: “WHEREAS, the Parties have discovered that the Original Location suffers from significant structural deficiencies, defects, and deterioration, which is well beyond normal wear and tear and not caused by lack of maintenance or repair, **that renders the Original Location unsuitable for the Lessee’s intended use and occupancy for the remainder of the present term of the Lease Agreement**”. (emphasis supplied).

7. Pursuant Section 11 of the 2011 Lease, the County is “responsible for maintaining the trees and grounds, exterior building maintenance, including without limitation the roof, except for improvements of fixtures, made or installed by the Lessee”.

8. Also, pursuant to Section 11 of the 2011 Lease, the County is “responsible to maintain and repair any water heaters and HVAC units located on or serving the Leased Premises.”

9. Mr. Hadeed was the County Attorney when the 2011 Lease was entered, when the Amended/Restated Lease was entered, at all times in between, and was directly involved in the negotiation of these documents.

10. Mr. Hadeed is, and at all times material, was, familiar with the condition of the building and the maintenance of same.

11. Mr. Cameron became the County Administrator after the Amended/Restated Lease was entered, but nonetheless, is, and was soon after the time he became employed by the County, familiar with the condition of the building, and various assessments of the condition of the building made by internal, and external, parties.

12. Mr. Cameron has had discussions with representatives of Captain’s BBQ regarding the condition of the building, he is familiar with maintenance issues related to the building both before, and since, his employment commenced, and he has made

representations to the County Board of County Commissioners with respect to the condition of the building.

13. Captain's BBQ has no intention of inquiring at deposition with Mr. Hadeed, or Mr. Cameron, on anything which might be privileged communications with counsel for the County, or otherwise privileged.

14. Counsel for the County has indicated that they object to having the depositions of Mr. Hadeed and Mr. Cameron taken.

15. Given the allegations of the Complaint, and the defenses raised by the County, Mr. Hadeed and Mr. Cameron are critical fact witnesses who must be deposed.

WHEREFORE, the Plaintiff, Captain's Bait, Tackle & BBQ, LLC, respectfully requests that this Motion to Compel Depositions be granted along with such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of November, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the Florida Court eFiling Portal and has also been served by using the eFiling Portal.

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