

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

TWO COMMERCE, LLC,

Plaintiff

CASE NO.: 2019 CA 000803

vs.

PALM COAST DATA, LLC, STUDIO
MEMBERSHIP SERVICES, LLC,
MEDIA DATA RESOURCES, LLC, and
FULCIRCLE MEDIA, LLC,

Defendants.

**PALM COAST DATA, LLC'S ANSWER AND AFFIRMATIVE DEFENSES
TO COUNT I OF PLAINTIFF'S COMPLAINT¹**

Defendant, PALM COAST DATA, LLC ("Palm Coast"), answers Count I of Plaintiff's Complaint as follows:

ANSWER

1. Palm Coast admits the allegations contained in Paragraphs 1, 2, 8 and 12 of Plaintiff's Complaint for jurisdictional purposes only.
2. Palm Coast admits the allegations contained in Paragraphs 4, 10, 14 and 15 of Plaintiff's Complaint.
3. Palm Coast denies the allegations contained in Paragraphs 9, 13, 18, 19 and 20 of Plaintiff's Complaint.

¹ Count I of Plaintiff's Complaint seeks eviction from commercial premises, and pursuant to the summons served, required a response within five (5) days of service. PALM COAST DATA, LLC answers only that Count of the Complaint, and, along with the other defendants to this action (who are not named in Count I) will respond separately to the remaining Counts of the Complaint in accordance with the 20 day time requirement in the summons.

4. Palm Coast is without knowledge as to the allegations contained in Paragraphs 3, 5, 6, 7 and 23 of Plaintiff's Complaint and therefore denied same.
5. In response to the allegations contained in Paragraph 16 of Plaintiff's Complaint, Palm Coast denies the allegation as stated and refers to the Court to the Lease for its true and correct terms.
6. In response to the allegations contained in Paragraph 17 of Plaintiff's Complaint, Palm Coast denies the allegation as stated and refers to the Court to the Lease for its true and correct terms.
7. In response to the allegations contained in Paragraph 21 of Plaintiff's Complaint, Palm Coast admits the receipt of a letter dated December 2, 2019 attached to the Complaint as Exhibit B, but denies the allegations of the paragraph as stated and denies that such letter was a proper notice of default.
8. In response to the allegations contained in Paragraph 22 of Plaintiff's Complaint, Palm Coast admits the receipt of a letter dated December 13, 2019 attached to the Complaint as Exhibit B, but denies the allegations of the paragraph as stated.
9. All allegations of the Complaint not specifically admitted herein are denied.

AFFIRMATIVE DEFENSES

10. As and for its first affirmative defense, Palm Coast asserts that the Plaintiff failed to comply with mandatory conditions precedent to suit, including but not limited to Plaintiff's service of a wholly inaccurate notice and demand for possession prior to the initiation of this action and as such must be denied all relief it seeks. Specifically, the notice was insufficient and defective per the terms of the lease, includes amounts which are not due and owing per the terms of the lease, and include items which are not rent.

Plaintiff, in an attempt to evict Palm Coast and due strictly to its disappointment that Palm Coast failed to purchase another property from Plaintiff manufactured defaults and outrageous late fees, and demanded sums not yet due per the terms of the lease.

11. As and for its second affirmative defense, Palm Coast asserts that Plaintiff, by its actions, including, but not limited to, its demanding amounts not owed by Palm Coast under the lease, has waived its right to pursue eviction.

12. As and for its third affirmative defense, Palm Coast asserts that Plaintiff, by its actions, including, but not limited to, its demanding amounts not owed by Palm Coast under the lease, is estopped from pursuing eviction.

13. As and for its fourth affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by Plaintiff's breach of the covenant of good faith and fair dealing.

14. As and for its fifth affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by the doctrine of unclean hands.

General Factual Allegations applicable to Palm Coast's 6th-13th Affirmative Defenses

15. Prior to execution of the lease and guaranty which are the subject of this action, Plaintiff or its related and affiliated entities and their owners were the owner of Palm Coast. As such, Plaintiff was fully and completely aware of the finances of Palm Coast, its ability to support (or not support) lease payments and other obligations, and the entire operation of Palm Coast and its business.

16. The lease and guaranty which are the subject of this action are a small piece of a much larger and complicated transaction, the sale of Palm Coast to its current owners by entities and persons related to and affiliated with Plaintiff, pursuant to, among multiple

related documents, that certain Membership Interest Purchase Agreement dated April 26, 2019 (collectively the “Palm Coast Sale”).

17. In connection with the Palm Coast Sale, Plaintiff, its related entities, and their respective principals (collectively, “Sellers”), made numerous material misrepresentations to Palm Coast and its now owners (collectively, “Buyers”), and likewise failed to disclose numerous material facts to Buyers. Said material misrepresentations and omissions include, but are not limited to (and Buyers still investigating the scope and breadth of the fraud of Sellers), (i) Sellers’ failure to segregate client “trust” monies, which were deposited by clients of Palm Coast in advance for postage costs (and which at any given time range from \$2-\$3 Million), and use of those client funds by Sellers as cash of Palm Coast, in order to satisfy the Palm Coast Sale requirement that Palm Coast have at least \$1 Million in cash at the time of closing. In reality, at the time of closing, without counting the client postage funds, Palm Coast had negative cash of \$1.5Million, as opposed to \$1 Million in cash as required; (ii) Sellers’ failure to disclose to Buyers the nature and status of the Palm Coast contract with NRA, and the significant impact to Palm Coast’s bottom line, despite Sellers being aware of same at the time of closing, thereby resulting in an overvaluation of Palm Coast; (iii) Sellers’ failure to disclose to Buyers the nature and extent of operational credits being provided to and promised to various clients of Palm Coast due to operational failures and deficits of Sellers during their ownership and operation of Palm Coast. Just since Buyer’s acquisition, Palm Coast has had to provide hundreds of thousands of dollars in operational credits due to the failures of Sellers which were not disclosed; (iv) Seller’s failure to disclose the nature of Palm Coast’s arrangement with Slatashore. Slatashore is a class action claims recovery firm. Palm Coast has serviced this

client and incurred considerable cost solely based on future payments from Slatashore which would only be made once the class action was settled. The delayed payment terms of Slatashore was never disclosed by Sellers to Buyers, and has resulted in a current outstanding receivable from Slatashore of over \$387,000, which continues to grow, and severely impact the cash flow of Palm Coast; and (v) Sellers' materially misrepresented to Buyers the market value of the subject premises, and the ability of Palm Coast to have cash flow sufficient to satisfy the rental obligations under the subject lease. Upon information and belief, Sellers misrepresentations and omissions to Buyer were all part of Sellers' scheme to induce Palm Coast to enter into the subject lease, which in turn would result in a grossly overvalued price for the subject premises (using the overvalued lease to establish a net operating income grossly over market, and which would result in an overvaluation of the premises for purposes of sale to a third party), allowing Sellers to not only defraud Buyers but another unwitting buyer of the building as well.

18. Buyers' reasonably relied on the representations of Sellers, and the omission of material facts by Sellers in proceeding with the transaction. Had Buyers known the true state of facts surrounding Palm Coast, Buyers would not have purchased Palm Coast and would not have entered into the subject lease.
19. Buyers have been damaged as a result of the fraudulent misrepresentations and omissions of Sellers.
20. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its sixth affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by Plaintiff's fraud (by way of material misrepresentations and omissions) in inducing Palm Coast to enter into the subject lease.

21. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its seventh affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by the doctrine of unclean hands.
22. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its eighth affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by the doctrine of waiver.
23. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its ninth affirmative defense, Palm Coast asserts that Plaintiff is estopped from pursuing its eviction claim.
24. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its tenth affirmative defense, Palm Coast asserts that Plaintiff's eviction claim is barred by Plaintiff's breach of the covenant of good faith and fair dealing.
25. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its eleventh affirmative defense, Palm Coast asserts that it is entitled to a set-off for any rents allegedly due Plaintiff.
26. Based on the factual allegations set forth in paragraphs 15-19 above, as and for its twelfth affirmative defense, Palm Coast asserts that the lease should be rescinded.
27. Palm Coast has retained the undersigned counsel to represent it in this action. Pursuant to the subject lease, Palm Coast is entitled to recovery of its attorneys' fees and costs from Plaintiff.

WHEREFORE, Palm Coast respectfully request that this Court dismiss Count I of Plaintiff's Complaint, enter judgment against Plaintiff and in favor of Defendant, Palm

Coast, award Palm Coast its attorneys' fees and costs, and for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts e-filing portal to Warren R. Ross, Esq. and Tamsen Hays, Esq. of Wotitzky, Wotitzky, Ross, McKinley & Young, P.A., 1107 West Marion Avenue, Unit 111, Punta Gorda, FL 33950, warren.ross@wotitzkylaw.com, thays@wotitzkylaw.com; donna@wotitzkylaw.com on January 6, 2020.

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