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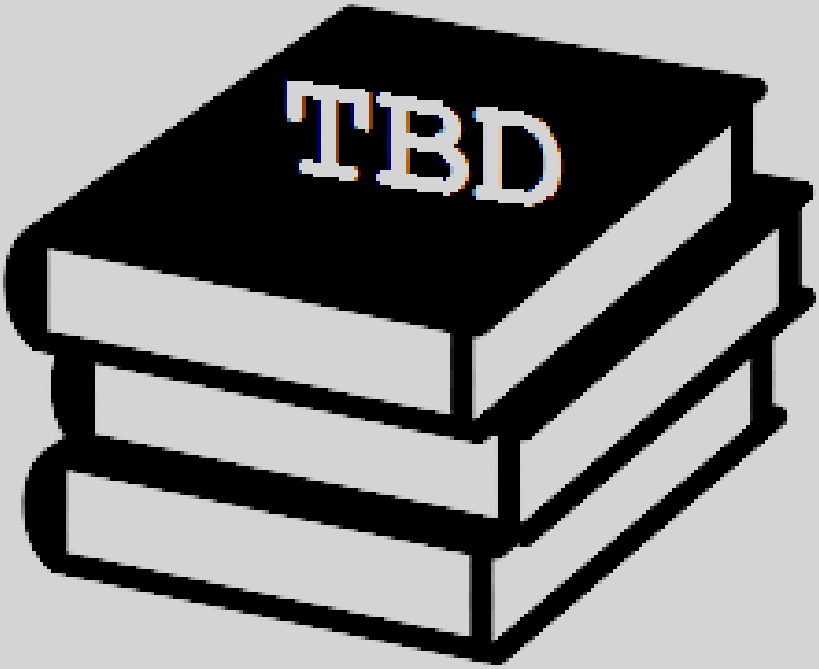


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**IN THE CIRCUIT COURT OF THE**
**4TH JUDICIAL CIRCUIT OF FLORIDA**
**IN AND FOR DUVAL COUNTY, FLORIDA**

**CASE NO.: 2017-CA-7200**
**HONORABLE CIRCUIT COURT JUDGE:**
**KEVIN BLAZS**

**JEFFREY SAND**

Plaintiff,

v.

**ALL FLORIDA PROPERTY GROUP, INC. et al**

Defendant,
Jointly and Individually

_____/

**JEFFREY SAND MBA JD**
Plaintiff in Propria Persona
1105 Registry Blvd
St. Augustine, FL 32092
904-429-7727

**ALL FLORIDA PROPERTY GROUP, INC.**
Defendant
335 Pineda Ct, # 101
Melbourne, Florida 32940
(321) 622-5211

**RONALD E. STAFFORD**
Defendant
335 Pineda Ct, # 101
Melbourne, Florida 32940
(321) 622-5211



ACCEPTED: DUVAL COUNTY, RONNIE FUSSELL, CLERK, 12/22/2017 12:40:03 PM

**EDWARD A. STOREY, III**

Defendant
3670 Maguire Blvd
Suite 200
Orland, Florida 32803
(407) 674-0840

**THOMAS WADE YOUNG**

Defendant
2601 Delaney Avenue
Orlando, Florida 32806
(407) 617-3347

**WILMINGTON SAVINGS FUND SOCIETY**

Defendant
500 Delaware Avenue
Wilmington, DE 19801
(302) 792-6000

**WILMINGTON SAVINGS FUND SOCIETY**
**SERIES 2014-2**

Defendant
500 Delaware Avenue
Wilmington, DE 19801
(302) 792-6000

**MOTION TO STRIKE BOTH DEFENDANTS' DISPOSITIVE MOTIONS AS TO MOTION TO ENFORCE SETTLEMENT AGREEMENT AS SHAM SETTLEMENT AGREEMENT PLEADING PURSUANT TO FLORIDA RULES OF CIVIL PROCEDURE 1.150(a) AND MOTION TO DISMISS AS TO PLAINTIFF SAND REQUEST FOR MANDATORY EVIDENTIARY HEARING**

**NOW COMES** Jeffrey Sand MBA JD, Plaintiff in Propria Persona, and states the following in support of this Motion:

1. Plaintiff Sand asserts that "the substantial matters of law intended to be argued shall be stated specifically and with particularity." **Fla. R. Civ. P. 1.140(b)**.
2. Plaintiff Sand asserts that he has met the burden in his **Motion to Strike** for Defendants' failure to state a cause of action as the trial court must consider the facts outside the "four corners of the settlement agreement" as there was no agreement due to conspiracy to commit fraud and fraud by Defendant Ronald E. Stafford, Defendant All Florida Property Group Inc, economic duress, unconscionability, lack of consideration as so stated by the Defendant. This Honorable Court should assume that all allegations in the Plaintiff's Motion to Strike are evidenced and dispute Defendant's Dispositive Motions and ergo allow the case to go to trial as Plaintiff Sand asserts discoveries are required. **Florida Rules of Civil Procedure 1.150(a)**.
3. Plaintiff Sand has asserted in his complaint that Defendants did breach their second FARBAR contract. The contract so stated as a settlement agreement was not binding as it was only signed under Economic Duress, was unconscionable and lacked due consideration as to habitability as to having numerous dangerous electrical code violations that are lethal if human contact is made and agreed upon repairs were not made in accord and consideration of any purchase as Defendants agreed to.
4. Plaintiff Sand asserts the Striking of the Settlement Agreement is permitted under **Fla. R. Civ. P. 1.140(f)** fraud and scandalous matters as asserted and pertaining specifically to the contested **Settlement Agreement as a Sham Pleading.**

5. If the trial court grants Defendants' **Motion to Dismiss**, the Plaintiff Sand ordinarily must be given leave to amend the complaint and will accordingly. **See Trotter v. Ford Motor Credit Co., 868 So. 2d 593 (Fla. 2d DCA 2004).**
6. Defendants' Motion to Dismiss is not a responsive pleading, and so Plaintiff Sand can amend an initial complaint at any point prior to the trial court's ruling on a Motion to Dismiss. A judge's discretion to deny amendment of a complaint arises only after the defendant files an answer or if the Plaintiff Sand already has exercised the right to amend once. **Boca Burger, Inc. v. Forum, 912 So. 2d 561, 567 (Fla. 2005).**
7. Defendants are seeking and wishes to dismiss all of the counts, the defendants did not answer to any counts when filing a **Motion to Dismiss**. If the motion is successful, the entire complaint is dismissed with leave to amend. If the motion is unsuccessful, the defendant has ten days to answer. **See Fla. R. Civ. P. 1.140(a)(3).**
8. Plaintiff Sand states this Honorable Court could strike pursuant to **Rule 1.140(f)**, which permits a trial court to strike "scandalous matter from any pleading at its discretion if so required as a matter of law and justice." **Fla. R. Civ. P. 1.140(f).** The standard is different from a motion to dismiss; however, as the court must find that the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." **See Rice-Lamar v. City of Fort Lauderdale, 853 So.2d 1125, 1133-34 (Fla. 4th DCA 2003)(citing McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss, 704 So.2d 214, 216 (Fla. 2d DCA 1998)).**
9. Plaintiff Sand's **Motion to Strike** a defense tests the legal sufficiency of the defense. **See Burns v. Equilease Corp., 357 So.2d 786, 787 (Fla. 3d DCA 1978)**. In addition, **Rule 1.120**, contains specific pleading rules governing defensive pleadings. For example, **Rule 1.120(b)'s** particularity requirement applies to defenses alleging fraud or mistake. **See Thompson v. Bank of New York, 862 So.2d 768, 770 (Fla. 4th DCA 2003); Codomo v. Carroll, 438 So. 2d 158 (Fla. 2d DCA 1983).**
10. Plaintiff Sand asserts the **Settlement Agreement is a Sham Pleading** and it is based upon conspiracy to commit fraud and fraud as allegations of fact this is a Sham Pleading and subject to being struck by a **Motion to Strike**.

11. Plaintiff Sand in his **Motion to Strike** the **Settlement Agreement as a Sham Pleading** will (a) be verified, (b) shall set forth fully the facts on which the movant relies, and (c) will be supported by affidavit and movant requested that the entire **Sham Pleading Settlement Agreement** be struck before the cause is set for trial and this Honorable Court must hear the Motion and hold an evidentiary hearing.
12. This Honorable Court has the inherent power to impose sanctions on a party who perpetuates a fraud on the court. **Figgie Intern. v. Alderman, 698 So 2d 563, 567 (Fla 3d DCA 1997), Tramel v. Bass, 672 So.2d 78, 83 (Fla. 1st DCA 1996). See Babe Elias Builders, Inc. v. Pernick, 765 So.2d 119, 120 (Fla. 3rd DCA 2000).**
13. This Honorable Court must conduct an evidentiary hearing to determine that the falsity of the pleading clearly and indisputably appears. **Herranz v. Siam, 2 So.3d 1105, 1106 (Fla. 3d DCA 2009) (citing Pacheco v. Waserman, 701 So. 2d 104, 106 (Fla. 3d DCA 1997) and Slatko v. Virgin, 328 So.2d 499, 500 (Fla. 3d DCA 1976); Cromer v. Mullally, 861 So. 2d 523, 525 (Fla. 3d DCA 2003).**
14. The Defendant has not included any responsive to Plaintiff Sand's complaint or motions as to contract defenses outside the four-corners rule. A plaintiff need only generally allege satisfaction of conditions precedent, but a defendant must deny that they occurred with particularity. **See Fla. R. Civ. P. 1.120(c).**
15. Plaintiff Sand asserts that law generally provides that a party waives all defenses that it does not present in either a **Motion to Dismiss** or in the answer. The rule creates somewhat of a dilemma for defense counsel. To avoid waiver, defendants sometimes raise every defense including those that are fraudulent and scandalous that might possibly apply to the cause of action, regardless of whether any factual basis exists. **Rule 1.140(h)**
16. The defendants' attorney's **Motion to Dismiss** was raised to avoid discovery and "discovery should be allowed and the complaints answered as to pleading filed."
17. Plaintiff Sand states if so required he will file amendments as to permission by consent of leave of court. "Leave of court shall be given freely when

justice so requires." **Fla. R. Civ. P. 1.190(a).** A trial court has broad discretion in considering a **Motion for Leave** to amend.

18. Plaintiff Sand asserts in practice, most trial judges seem to prefer to grant an amendment and then entertain a motion to dismiss rather than deny leave to amend on grounds of futility. Trial courts should be especially liberal in granting leave to amend where it is sought prior to a summary judgment hearing or in theory a **Motion to Dismiss** all counts and complaints as this Defendants seek in this Honorable Court in this case at bar. **See Thompson v. Bank of New York, 862 So. 2d 768 (Fla. 4 th DCA 2003).**
19. Plaintiff Sand if required seeks liberality in granting leave to amend as to the fact that granting leave to amend diminishes as the case progresses to trial, and amending a complaint during trial to assert a new cause of action generally should not be permitted over objection. **See Palm v. Taylor, 929 So.2d 566, 568 (Fla. 2d DCA 2006).**
20. Plaintiff Sand has filed a new complaint based upon his Notice to Dismiss without prejudice as to the addition of a new parties to an action that will relate back to the original complaints and add additional Defendants and Counts. **See Kozich v. Shahady, 702 So. 2d 1289 (Fla. 4th DCA 1997).**
21. Allegations against the new parties and new counts do not relate back in cases of a misnomer, the new parties have sufficient "identity of interests" as to the separate case filed against new Defendants and separate counts as so stated and filed in the subsequent complaint at issue.
22. The rules of civil procedure are intended to provide for liberal joinder of parties however, an efficient determination of issues this case at bar requires splitting. Specifically, **Rule 1.210(a)** states that all persons having an interest in the subject of the action require separate complaints, counts as any person having an adverse interest to the plaintiff may be made a defendant and Plaintiff asserts all cases filed not be consolidated as it would prejudice Plaintiff. Further, "[a]ny person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause." **Fla. R. Civ. P. 1.210(a).**

23. The **Florida Rules of Civil Procedure** provide two mechanisms a trial court can use to reconsider and correct another court's prior decision as it lacks jurisdiction.
24. In a jury action. **Fla. R. Civ. P. 1.530(b).** There are many potential grounds including evidentiary rulings, improper arguments and failure of comport with the manifest weight of the evidence to be presented by Plaintiff Sand as to the record of this case at bar. **See, e.g., McCloud v. Sherman Mobile Concrete Co., Inc., 579 So.2d 773, 774 (Fla. 2d DCA 1991).**
25. Plaintiff Sand attests Motions for Relief from Judgment are limited to the five specific grounds: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) **fraud, misrepresentation, or other misconduct of an adverse party**; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application. **Fla. R. Civ. P. 1.540(b).** Such motions have been filed within a "reasonable time," except that motions raising the first three grounds (mistake, newly discovered evidence, or fraud) must be filed within one year of the judgment. See id. Not to be confused with a motion for rehearing, a motion for reconsideration is a common law motion seeking to invoke a trial court's inherent authority to modify or vacate any of its non-final rulings prior to entry of a final judgment. **See Bettez v. City of Miami, 510 So. 2d 1242 (Fla. 3d DCA 1987)**. Motions for reconsideration are "unauthorized" by the rules and therefore not governed by the limitations for the above-referenced motions. For this reason, however, a **Motion for Reconsideration** generally does not toll the time for filing an appeal, whereas a **Motion for Rehearing** does. **See Fla. R. App. P. 9.010(i).**

**WHEREFORE**, this Honorable Court's Plaintiff Sand requires an Evidentiary Hearing as mandated by **Florida Rules of Civil Procedure**, to Strike the Defendants' attorney **Sham Settlement Agreement** and **Motion to Dismiss.** It is further requested that a jury trial is required to proceed with Plaintiff Sand's multiple counts complaint in this case at bar.

Plaintiff Sand attests to recusal of the prior trial Court Judge Tatiana Salvador. Subsequent new hearings are required by law to be conducted in this Honorable court by the assigned Circuit Court Judge Kevin Blazs as to any rulings and/or orders by the former recused Honorable Circuit Court Judge Tatiana Salvador.

Furthermore, Plaintiff Sand asserts his legal rights be adjudicated in this Honorable Court as to **Florida Rules of Civil Procedure** before this Honorable Circuit Court Judge Kevin Blazs.

Date: December 21, 2017

Jeffrey Sand MBA JD
Plaintiff in Propria Persona
1105 Registry Blvd
St. Augustine, FL 32092
904-429-7727

**BRIEF AND SUPPORT OF THE MOTION TO STRIKE BOTH DEFENDANTS' DISPOSITIVE MOTIONS AS TO MOTION TO ENFORCE SETTLEMENT AGREEMENT AS SHAM SETTLEMENT AGREEMENT PLEADING PURSUANT TO FLORIDA RULES OF CIVIL PROCEDURE 1.150(a) AND MOTION TO DISMISS AS TO PLAINTIFF SAND REQUEST FOR MANDATORY EVIDENTIARY HEARING**

In this Case at Bar, Plaintiff Sand is asserting the Settlement Agreement is a Sham Pleading forcing Plaintiff Sand and his wife to sign or the Defendants will not return the down-payment. Further note, Defendants did breach the Second FARBAR contract and the financial provision as set forth to return the down-

payment in the event of lender failure. With the expiration of the second FARBAR contract, Plaintiff Sand asserts the contract in its entirety and additional conditions including a non-refundable $50,000 down-payment be void ab initio as the contract has expired and was breached by Defendants. In addition, conspiracy to commit fraud and fraud on the part of Defendant All Florida Property Group, Inc., Defendant Ronald E. Stafford, Defendant Wilmington Savings Fund Society and Defendant Wilmington Savings Fund Society Series 2014-2 as to undisclosed underground flooding and electrical lethal conditions on the part of the seller put Plaintiff Sand's family at severe risk. In further, Plaintiff Sand and his family were subjected to constant threats, harassments, false promises and failure to provide habitability as to Municipal Code of the City of Jacksonville.

Prejudice and firsthand knowledge are evidentiary matters to be determined at trial upon submission of the evident to the jury. **See. e.g., §90.403 Fla. Stat. (2014)**. Fraud, the factual merit of the allegations thereof are matters for the jury to decide. **Knight v. State 107 So.3d 449, 458 (Fla. 5th DCA 2013)** ("if the judge concludes that either of the two results...is fairly possible, he must let the jury decide the matter.") In sum, the Defendants stated a legal defense based on asserted false allegations of facts is a Sham Pleading and subject to being struck by a Motion to Strike.

Defendants' fraud upon the Court can result of striking of Defendants' pleadings as well as a ruling against Defendants. **Desimone v. Old Dominion Ins. Co. 740 So 2d 1233, 1234 (Fla. 4th DCA 1999)**. However, a full blown evidentiary hearing may well be required. See, **Reyes ex. Rel, Barcena v. Roush, 99 So. 3d 586 (Fla. 2nd 2012)**.

Plaintiff Sand requires a **Motion to Strike Sham Pleadings** as a sanction directed toward Defendants as Plaintiff Sand requests through this Honorable Court an Order directing that his discovery requirements are met as a matter of law. **Fla. R. Civ. P. 1.380(b)(2)(C)**.

If a party deems any pleading or part thereof...to be a sham, that party may move to strike the pleading or part thereof before the cases is set for trial and the court

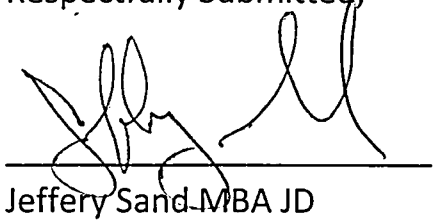
shall hear the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed shall be stricken **Fla. R. Civ. P. 1.150(a)**.

Furthermore, a **Sham Pleading** is define as one that while in good form is false in facts or when good in form but false in fact and not pleaded in good faith. The words "false" and "sham," as applied to pleadings, are usually construed as synonymous. And since the chief characteristic of the Settlement Agreement in this case at bar is a sham not pleaded in good faith but rather the result of a breached second FARBAR contract which is voided and only signed under economic duress as to seizure of all down-payment assets due to either sign or else and dated not allowing the time necessary to resolve non-habitability including lethal conditions and subsequently the illegal seizure of a $50,000 non-refundable deposit which is voided as the contract was breached by the Defendants. Since the chief characteristic of the Settlement Agreement as that of a **Sham Pleading**, it is undoubted falsity in that it was in bad faith and falsehood to continue a breached contract terms as to non-habitability, return of down-payment, fraud as to failure to disclose by seller as to under-floor flooding, rotten pipes and finally potentially lethal exposure to water and 440 volt 3 phase current throughout all floor electrical outlets in the house at this case at bar.

This case is about Defendants' defrauding as much as possible from Plaintiff Sand, Defendants' greed and seller's sacrifice of safety as to habitat of Plaintiff Sand, buyer, and his family who repeatedly were threatened, promised false illusion of repairs and continued rent raising and retaliation for Plaintiff Sand reporting numerous code violations. The house was non-habitable and dangerous contrary to the Law of Habitability. Plaintiff Sand asserts and attests through proof that there are genuine issues to be tried **Johnson v. Studstill, Fla., 71 So. 2d 251**. All doubts as to existence of a genuine issue as to a material facts are proven by Code Violations, picture of flooding and irrigation pipes leaking under the house as documented by inspections. **Meadows v. Edwards 82 So. 2d 733 (1955)**

**Motion to Strike Sham Pleadings** shall be served at least 20 days before the time fixed for the hearing. **Fla. R. Civ. P. 1.510(c)**.

Respectfully Submitted,



Jeffery Sand MBA JD

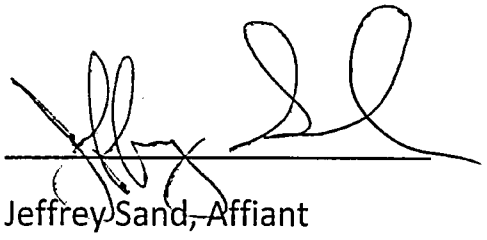
**AFFIDAVIT OF MOTION TO STRIKE BOTH DEFENDANTS' DISPOSITIVE MOTIONS AS TO MOTION TO ENFORCE SETTLEMENT AGREEMENT AS SHAM SETTLEMENT AGREEMENT PLEADING PURSUANT TO FLORIDA RULES OF CIVIL PROCEDURE 1.150(a) AND MOTION TO DISMISS AS TO PLAINTIFF SAND REQUEST FOR MANDATORY EVIDENTIARY HEARING**

STATE OF FLORIDA)

)SS:

COUNTY OF DUVAL)

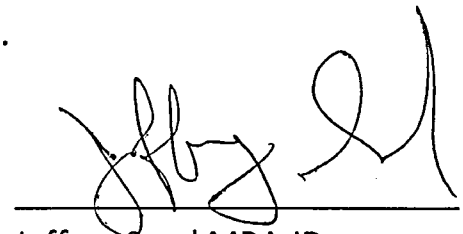
I, Jeffrey Sand, affiant being duly sworn, says that on the 21st day of December 2017 that he amended his **Motion to Strike** both **Defendants' Dispositive Motions** as to **Motion to Enforce Settlement Agreement** as **Sham Settlement Agreement Pleading** pursuant to **Florida Rules of Civil Procedure 1.150(a)** and **Motion to Dismiss** as to Plaintiff Sand request for mandatory Evidentiary Hearing and does depose and will testify as to the contents thereof and that the same is true of his own knowledge and belief.



Jeffrey Sand, Affiant
1105 Registry Blvd
St. Augustine, Fl 32092
904-429-7727

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via email to Thomas Young esq, via tom@twylaw.com on December 21, 2017.



Jeffrey Sand MBA JD
Plaintiff in Propria Persona
1105 Registry Blvd
St. Augustine, Fl, 32092
904-429-7727

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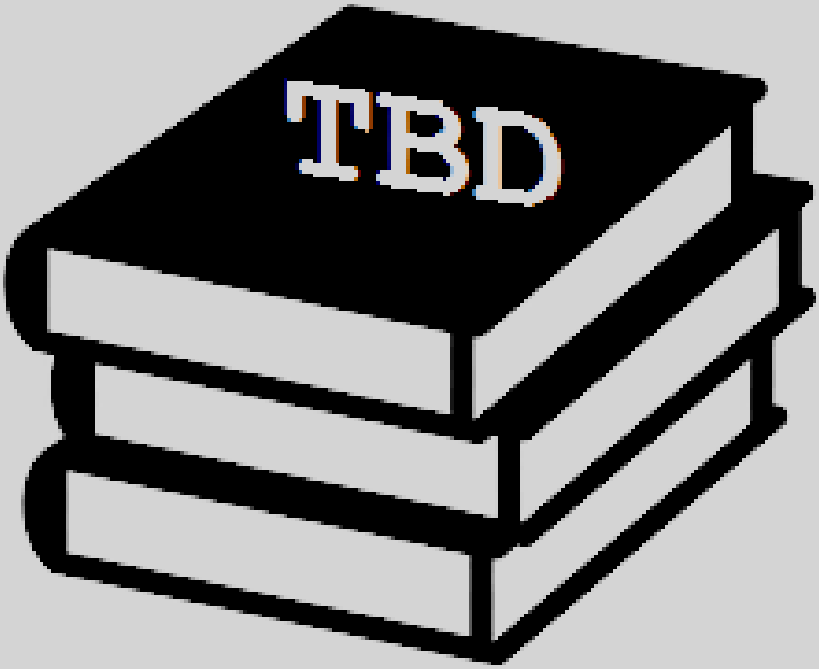


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