

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

)	
)	
Plaintiff,)	
)	Civil Action
v.)	File No.: 22A00866
)	
PM RESIDENTIAL MANAGEMENT, LLC,)	
)	
Defendant.)	
_____)	

**PM RESIDENTIAL MANAGEMENT, LLC’S
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW, PM Residential Management, LLC (hereafter “Defendant PM Residential”), Defendant in the above-styled civil action and files this its Answer and Affirmative Defenses to Plaintiff’s Complaint as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim against Defendant PM Residential upon which relief can be granted and, therefore, Plaintiff’s Complaint should be dismissed.

SECOND AFFIRMATIVE DEFENSE

Defendant PM Residential is not liable to Plaintiff because it has not breached any legal or contractual duty owed to Plaintiff with regard to the allegations of Plaintiff’s Complaint.

THIRD AFFIRMATIVE DEFENSE

The injuries and damages alleged by Plaintiff were not proximately caused by any negligence on the part of Defendant PM Residential or any entity or person for whose actions Defendant PM Residential was or is legally liable. To the extent that Plaintiff’s damages were a

result of negligence, said negligence would be the proximate cause of the actions of entities or persons other than Defendant PM Residential or its agents.

FOURTH AFFIRMATIVE DEFENSE

If the evidence shows that the Plaintiff was negligent in bringing about the injuries and damages set forth in the Complaint and said negligence was equal to or greater than any negligence on behalf of the Defendant PM Residential, then Plaintiff is not entitled to damages.

FIFTH AFFIRMATIVE DEFENSE

If the evidence shows that the Plaintiff was comparatively negligent in bringing about the injuries and damages set forth in the Complaint, but said negligence was less than any negligence found on behalf of the Defendant PM Residential or its agents, any award of damages to Plaintiff should be reduced to the extent of Plaintiff's own negligence.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover against Defendant PM Residential because Plaintiff, by the exercise of ordinary care, could have avoided the consequences of any act, or failure to act, by Defendant PM Residential or its agents.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover from Defendant PM Residential because Plaintiff's alleged damages were not proximately caused by any act or omission of Defendant PM Residential.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because Plaintiff had equal or superior knowledge of the alleged hazard or defect that is the subject of this action, including any alleged criminal activity.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff failed to mitigate Plaintiff's damages, if any, then Plaintiff's damages must be reduced accordingly.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's failure to specifically plead items of special damages bars his recovery in this action.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant PM Residential assert the defenses of failure to avoid consequences, failure to mitigate damages, intervening and superseding cause, and last clear chance.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's damages were caused by the acts of others, and damages should be apportioned accordingly.

THIRTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because Georgia does not have sufficient procedural safeguards to ensure that the jury's discretion in awarding punitive damages was reasonably constrained. Therefore, any award of punitive damages would be an excessive and arbitrary deprivation of property without due process of law.

FOURTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the

Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because such an award would be tantamount to a severe criminal penalty. Therefore, any award of punitive damages would violate Defendant PM Management's due process rights under the United States and Georgia Constitutions.

FIFTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because Georgia law did not provide Defendant PM Management with fair notice that its activities might subject them to exemplary damages. Therefore, any award of punitive damages would violate Defendant PM Management's due process rights under the United States and Georgia Constitutions.

SIXTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because Defendant PM Management's actions did not demonstrate the degree of reprehensibility necessary for an award of punitive damages. Therefore, any award of punitive damages would violate Defendant PM Management's due process rights under the United States and Georgia Constitutions.

SEVENTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the

Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because a less drastic remedy could achieve the desired result of future compliance with state law. Therefore, any award of punitive damages would violate Defendant PM Management's due process rights under the United States and Georgia Constitutions.

EIGHTEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because Defendant PM Management's actions were not adjudged illegal in Georgia before this action was filed. Therefore, any award of punitive damages would violate Defendant PM Management's due process rights under the United States and Georgia Constitutions.

NINETEENTH AFFIRMATIVE DEFENSE

An award of punitive or exemplary damages in this action would constitute a violation of Defendant PM Management's right to due process of law under the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and under Paragraphs 1 and 2 of Article 1 of the Georgia Constitution because there is no evidence that anyone will be threatened with any additional potential harm by Defendant PM Management's actions.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff's damages were caused by the acts of others, and damages should be apportioned accordingly.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant PM Management is not indebted to Plaintiff for the sum sought or in any amount whatsoever.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Security measures on Defendant PM Management's part had no role in the alleged attack on Plaintiff, and additional security measures would not have prevented the attack on Plaintiff, based on the facts and circumstances currently known to Defendant PM Management.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant PM Management neither owed nor assumed any duty.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim for recovery of expenses, costs, and attorney's fees is insufficient in fact and in law. At all times, Defendant PM Management acted in good faith and with reasonable and probable cause, and has in no way acted in bad faith or with stubborn litigiousness and has not caused Plaintiff any unnecessary trouble or expense

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Based on the facts currently known to Defendant PM Residential, Plaintiff was not an invitee or licensee of Defendant PM Residential and as a result owed no duty of care to Plaintiff except to refrain from causing a willful or wanton injury.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff has failed to add an indispensable party.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff assumed the risk of potential combat.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant PM Management hereby specifically retain (and deny any waiver of) any and all affirmative defenses available to it that become evident during the course of discovery.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Defendant PM Residential responds to the specifically enumerated paragraphs of Plaintiff's Amended Complaint as follows:

PARTIES, JURISDICTION AND VENUE

1.

Defendant PM Residential denies the allegations of Paragraph 1 of Plaintiff's Complaint.

2.

Defendant PM Residential responds to the subparts of Paragraph 2 of Plaintiff's Complaint as follows:

- a. Defendant PM Residential admits that it managed the apartment complex known as Bristol Creek Apartments. Defendant PM Residential denies all allegations not expressly admitted.
- b. Defendant PM Residential admits subpart b of Paragraph 2 of Plaintiff's Complaint.
- c. Defendant PM Residential admits subpart c of Paragraph 2 of Plaintiff's Complaint.
- d. Defendant PM Residential admits subpart d of Paragraph 2 of Plaintiff's Complaint.

3.

Defendant PM Residential admits that this Court has personal jurisdiction over Defendant PM Residential. Defendant PM Residential denies any remaining allegations of Paragraph 3 of Plaintiff's Complaint and specifically denies that this is the only Court in which jurisdiction is proper.

4.

Defendant PM Residential admits that venue is proper in DeKalb County, Georgia. Defendant PM Residential denies any remaining allegations of Paragraph 4 of Plaintiff's Complaint and specifically denies that this is the only Court in which venue is proper.

FACTS

5.

Defendant PM Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of Plaintiff's Complaint, and therefore denies the same.

6.

Defendant PM Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of Plaintiff's Complaint, and therefore denies the same.

7.

Defendant PM Residential denies the allegations of Paragraph 7 of Plaintiff's Complaint.

8.

Defendant PM Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 of Plaintiff's Complaint, and therefore denies the same.

9.

Defendant PM Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 of Plaintiff's Complaint, and therefore denies the same.

10.

Defendant PM Residential is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 of Plaintiff's Complaint, and therefore denies the same.

11.

Defendant PM Residential admits that it was the property manager for the apartment complex known as Bristol Creek Apartments. Defendant PM Residential denies any remaining allegations of Paragraph 11 of Plaintiff's Complaint

LIABILITY

12.

Defendant PM Residential denies the allegations of Paragraph 12 of Plaintiff's Complaint.

13.

Defendant PM Residential denies the allegations of Paragraph 13 of Plaintiff's Complaint.

14.

Defendant PM Residential denies the allegations of Paragraph 14 of Plaintiff's Complaint.

15.

Defendant PM Residential denies the allegations of Paragraph 15 of Plaintiff's Complaint.

16.

Defendant PM Residential denies the allegations of Paragraph 16 of Plaintiff's Complaint.

17.

Defendant PM Residential denies the allegations of Paragraph 17 of Plaintiff's Complaint.

18.

Defendant PM Residential denies the allegations of Paragraph 18 of Plaintiff's Complaint.

19.

Defendant PM Residential denies the allegations of Paragraph 19 of Plaintiff's Complaint, including all subparts.

20.

Defendant PM Residential denies the allegations of Paragraph 20 of Plaintiff's Complaint.

21.

Defendant PM Residential denies the allegations of Paragraph 21 of Plaintiff's Complaint.

22.

Defendant PM Residential denies the allegations of Paragraph 22 of Plaintiff's Complaint.

23.

Defendant PM Residential denies the allegations of Paragraph 23 of Plaintiff's Complaint.

24.

Defendant PM Residential denies the allegations of Paragraph 24 of Plaintiff's Complaint.

25.

Defendant PM Residential denies the allegations of Paragraph 25 of Plaintiff's Complaint.

26.

Defendant PM Residential denies the allegations of Paragraph 26 of Plaintiff's Complaint.

27.

Defendant PM Residential denies the allegations of Paragraph 27 of Plaintiff's Complaint.

28.

Defendant PM Residential denies the allegations of Paragraph 28 of Plaintiff's Complaint.

29.

Defendant PM Residential denies the allegations of Paragraph 29 of Plaintiff's Complaint.

30.

Defendant PM Residential denies the allegations of Paragraph 30 of Plaintiff's Complaint.

CAUSATION

31.

Defendant PM Residential denies the allegations of Paragraph 31 of Plaintiff's Complaint.

32.

Defendant PM Residential denies the allegations of Paragraph 32 of Plaintiff's Complaint.

DAMAGES

33.

Defendant PM Residential denies the allegations of Paragraph 33 of Plaintiff's Complaint.

34.

Defendant PM Residential denies any allegations in Plaintiff's Complaint which have not been expressly admitted herein, including all allegations of any and all WHEREFORE

clauses of Plaintiff's Complaint.

WHEREFORE, Defendant PM Residential Management, LLC requests that the following relief be granted:

- a) That Plaintiff's Complaint be dismissed with prejudice;
- b) That Defendant PM Residential be granted a jury trial of twelve;
- c) That all costs be cast upon Plaintiff;
- d) That Defendant PM Residential be awarded its reasonable attorney's fees and costs incurred in asserting its rights through this action; and,
- e) That Defendant PM Residential be awarded such other and further relief as this Court deems just and proper.

This 7th day of April, 2022.

Respectfully submitted,

SWIFT CURRIE MCGHEE & HIERS, LLP

/s/ John M. McCall

Roger E. Harris

Georgia Bar No. 331302

Rebecca E. Strickland, Esq.

Georgia Bar No. 358183

John M. McCall, Esq.

Georgia Bar No.: 778954

Attorneys for Defendant PM Residential

The Peachtree – Suite 300
1355 Peachtree Street, N.E.
Atlanta, Georgia 30309
Tel: 404-874-8800
Fax: 404-888-6199
Rebecca.strickland@swiftcurrie.com
jack.mccall@swiftcurrie.com

STATE COURT OF
DEKALB COUNTY, GA.
4/7/2022 10:29 AM
E-FILED
BY: Mundy Jackson

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed PM RESIDENTIAL MANAGEMENT, LLC'S ANSWER AND AFFIRAMTIVE DEFENSES upon all parties to this matter by e-filing same using the Odyssey E-FileGA System which will automatically send e-mail notification of said filing to the following attorneys of record:

James E. Butler, III, Esq.
Thomas A. Giannotti, Esq.
Butler Law Firm
10 Lenox Pointe
Atlanta, GA 30324
jeb@butlerfirm.com
tom@butlerfirm.com
Attorneys for Plaintiff

This 7th day of April, 2022.

Respectfully submitted,

SWIFT CURRIE MCGHEE & HIERS, LLP

/s/ John M. McCall _____

Roger E. Harris
Georgia Bar No. 331302
Rebecca E. Strickland, Esq.
Georgia Bar No. 358183
John M. McCall, Esq.
Georgia Bar No.: 778954
Attorneys for Defendant PM Residential

The Peachtree – Suite 300
1355 Peachtree Street, N.E.
Atlanta, Georgia 30309
Tel: 404-874-8800
Fax: 404-888-6199
Rebecca.strickland@swiftcurrie.com
jack.mccall@swiftcurrie.com