

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----x Index No. 620847/2017
GRACA FERNANDES,

Plaintiff,

**VERIFIED
ANSWER WITH
COUNTERCLAIMS**

-against-

MARIA FERNANDES, AUGUSTO FERNANDES
and HORSEBLOCK HOLDING ASSOC.,

Defendants,

MANUEL FERNANDES and
CLASSIC CONCRETE ASSOCIATES, INC.,

Counterclaim Defendants.

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The defendants, Maria Fernandes, Augusto Fernandes and Horseblock Holding Association s/h/a Horseblock Holding Assoc. ("Horseblock"), for their answer to the complaint with counterclaims allege as follows upon information and belief:

1. Admits the allegations in paragraphs 2 and 3 of the complaint.
2. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph 1 of the complaint.
3. Denies the allegations in paragraph 4 of the complaint except admits that Horseblock is a partnership.

4. Denies the allegations in paragraphs 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34 and 35 of the complaint.

5. Denies the allegations in paragraph 8 of the complaint except admits that Augusto Fernandes is the managing agent for Horseblock and the attorney in fact for Maria Fernandes in connection with matters relating to Horseblock Holding Association, Horseblock Holding Associates and/or premises known as 2074 Horseblock Road, Medford, NY.

6. Denies the allegations in paragraph 9 of the complaint and refers to the deed for the contents thereof.

7. Denies the allegations in paragraphs 12, 21 and 27 of the complaint to the same extent previously denied.

For a First Affirmative Defense

8. Laches.

For a Second Affirmative Defense

9. Statute of Limitations.

For a Third Affirmative Defense

10. Failure to state a cause of action.

For a Fourth Affirmative Defense

11. Lack of capacity to sue.

For a Fifth Affirmative Defense

12. A partner cannot sue another partner for damages until there has been an accounting.

13. The causes of action are premature.

For a Sixth Affirmative Defense

14. A partner cannot bring a direct claim against the partnership for damages to the partnership.

For a Seventh Affirmative Defense

15. Any losses to the partnership caused by the act of a partner and/or a third-party, is shared equally by all partners.

For an Eighth Affirmative Defense

16. Unclean hands.

For a Ninth Affirmative Defense

17. Ratification.

For a Tenth Affirmative Defense

18. Waiver.

For an Eleventh Affirmative Defense

19. Release.

For a Twelfth Affirmative Defense

20. Justification.

For a Thirteenth Affirmative Defense

21. Payment.

For a Fourteenth Affirmative Defense

22. Unjust enrichment.

For a Fifteenth Affirmative Defense

23. In pari delicto.

For a Sixteenth Affirmative Defense

24. Statute of frauds.

For a Seventeenth Affirmative Defense

25. Estoppel.

For an Eighteenth Affirmative Defense

26. The plaintiff's claims are barred in whole or in part by the doctrine of accord and satisfaction.

For a Nineteenth Affirmative Defense

27. Defendants reserve the right to rely upon any and all additional affirmative defenses as discovery progresses in the within litigation.

For a Twentieth Affirmative Defense

28. Failure to mitigate damages.

For a Twenty-First Affirmative Defense

29. Impossibility.

For a Twenty-Second Affirmative Defense

30. Any and all damages, if any, sustained by plaintiff were not caused in fact or proximately by defendants.

31. Any damages sustained were the result of plaintiff's own actions or omissions and/or the actions or omissions of third parties over whom defendants had no control.

For a Twenty-Third Affirmative Defense

32. Plaintiff's claims are barred, in whole or in part, by the parole evidence rule.

For a Twenty-Fourth Affirmative Defense

33. Plaintiff's claims are barred by its failure to join necessary and indispensable parties.

For a Twenty-Fifth Affirmative Defense

34. Lack of privity.

For a Twenty-Sixth Affirmative Defense

35. Lack of standing.

For a Twenty-Seventh Affirmative Defense/First Counterclaim

36. That at all times hereinafter mentioned, Graca Fernandes ("Graca") resides in New York.

37. That at all times hereinafter mentioned, Manuel Fernandes ("Manuel") resides in New York.

38. That at all times hereinafter mentioned, Graca and Manuel are married.

39. That at all times hereinafter mentioned, Maria Fernandes ("Maria") resides in New York.

40. That at all times hereinafter mentioned, Augusto Fernandes ("Augusto") resides in New York.

41. That at all times hereinafter mentioned, Maria and Augusto are married.

42. That Manuel and Augusto are brothers.

43. That Jose Fonseca ("Jose") is the brother of both Manuel and Augusto.

44. That at all times hereinafter mentioned, Classic Concrete Associates, Inc. ("Classic Concrete"), was a corporation organized and existing under the laws of the State of New York.

45. That at all times hereinafter mentioned, Manuel was the President of Classic Concrete.

46. That in January 2006, Graca and Maria owned the 2074 Horseblock Road, Medford, NY premises ("premises").

47. That in July 2006, Graca and Maria transferred the premises to Horseblock.

48. That Horseblock is a 50/50 partnership between Graca and Maria.

49. That the premises consists of five, later four rental units and two storage yards.

50. That the premises has a coin-operated washer and dryer in the basement for use by the tenants.

51. That at all times hereinafter mentioned, Augusto was the managing agent for Horseblock, responsible for, inter alia, collecting rents, collecting money from the coin-operated washer and dryer, maintaining the property, maintaining the bank account, paying the bills and filing the tax returns for Horseblock.

52. That as payment for his services as such managing agent, it was agreed that Horseblock would pay Augusto 5% of the gross receipts.

53. That Augusto entered upon the performance of his duties as managing agent and continues to perform his duties as managing agent.

54. That Horseblock agreed that Manuel and Classic Concrete could rent one of the two storage yards.

55. That Manuel and Classic Concrete paid rent for one of the two storage yards until on or about 2013 when they stopped paying rent.

56. That Manuel and Classic Concrete stopped paying rent for the storage yard with the knowledge and consent of Graca but without the consent of Maria and Augusto.

57. That Augusto demanded that Manuel and Classic Concrete resume paying the rent for the storage yard to Horseblock but they have refused to do so.

58. That Manuel and Classic Concrete owe Horseblock \$53,035.36 for back rent for the storage yard through September 12, 2017 and such rent continues to accrue.

For a Twenty-Eighth Affirmative Defense/Second Counterclaim

59. That the defendants repeat and reallege the allegations in paragraphs 1 to 58 of the answer.

60. That Manuel and Classic Concrete, with the knowledge and consent of Graca, but without the knowledge and consent of Maria and Augusto, rented the second storage yard to Jose.

61. That Graca, Manuel and Classic Concrete have converted the rent received from Jose for their own use and benefit and have not turned over the rent from Jose to Horseblock.

For a Twenty-Ninth Affirmative Defense/Third Counterclaim

62. That the defendants repeat and reallege the allegations in paragraphs 1 to 61 of the answer.

63. That Graca, Manuel and Classic Concrete owe Augusto for his 5% management fee due from the monies diverted from Horseblock for their own use and benefit in an amount to be determined.

WHEREFORE, the defendants seeks judgment as follows:

a. Dismissing the complaint with costs and disbursements;

b. On the twenty-seventh affirmative defense/first counterclaim that Horseblock recover against Graca, Manuel and Classic Concrete in an amount of \$53,035.36 for back rent for the storage yard through September 12, 2017 and such rent continues to accrue with interest;

c. On the twenty-eighth affirmative defense/second counterclaim that Horseblock recover against Graca, Manuel and Classic Concrete in an amount to be determined representing the rent collected from Jose for the second storage yard with interest;

d. On the twenty-ninth affirmative defense/third counterclaim that Augusto recover against Graca, Manuel and

Classic Concrete in an amount to be determined representing his 5% management fee due from the monies diverted from Horseblock for their own use and benefit with interest;

e. For such other and further relief is just and proper together with the costs and disbursements of this action.

Dated: Farmingville, NY

November 15, 2017

/s/
PAULA J. WARMUTH
STIM & WARMUTH, P.C.
Attorneys for Defendants
2 Eighth Street
Farmingville, NY 11738
631-732-2000

TO:

RICHARD STAFFORD, ESQ.
Attorney for Plaintiff
One Corporate Drive
Suite 103
Bohemia, NY 11716
631-589-7999

VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

MARIA FERNANDES, being duly sworn, deposes and says:

- 1. I am a defendant in this action.
- 2. I have read the foregoing answer and know the contents and the same are true to my own knowledge, except as to matters herein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

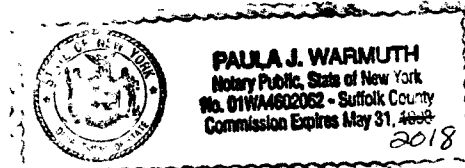
Maria Fernandes

MARIA FERNANDES

Sworn to before me this
15th day of November, 2017

Paula J. Warmuth

NOTARY PUBLIC



VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

MARIA FERNANDES, being duly sworn, deposes and says:

1. I am a partner of Horseblock Holding Association s/h/a Horseblock Holding Assoc., a defendant in this action.

2. I have read the foregoing answer and know the contents and the same are true to my own knowledge, except as to matters herein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

3. I further state that the reason this verification is made by me, and not the defendant, is because the defendant is a partnership of which I am a partner.

Maria Fernandes

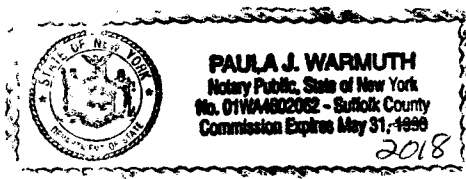
MARIA FERNANDES

Sworn to before me this

15th day of November, 2017

Paula J. Warmuth

NOTARY PUBLIC



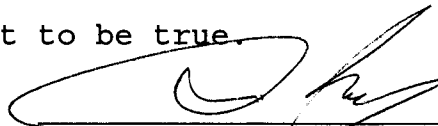
VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF SUFFOLK)

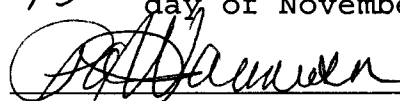
AUGUSTO FERNANDES, being duly sworn, deposes and says:

1. I am a defendant in this action.

2. I have read the foregoing answer and know the contents and the same are true to my own knowledge, except as to matters herein stated to be alleged upon information and belief, and as to those matters I believe it to be true.


AUGUSTO FERNANDES

Sworn to before me this
^{15th} day of November, 2017


NOTARY PUBLIC

