

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MAGNOLIA GROUP, LLC

PLAINTIFF/COUNTER-DEFENDANT

VERSUS

CIVIL ACTION NO. 1:13CV317LG-JMR

O'DWYER REALTY, LLC; MARY BUNCH,
AND INDIVIDUALLY; LLOYD NICAUD,
AN INDIVIDUAL; AND
GERALD RIGBY, AN INDIVIDUAL

DEFENDANTS

LNG INVESTMENTS, LLC

DEFENDANT/COUNTER-PLAINTIFF

DEFENSES AND ANSWER OF LNG INVESTMENTS, LLC,
LLOYD NICAUD, INDIVIDUALLY, AND GERALD RIGBY,
INDIVIDUALLY AND AND COUNTER-COMPLAINT OF LNG INVESTMENTS, LLC

COMES NOW, Defendants, LNG Investments, LLC; Lloyd Nicaud, individually; and Gerald Rigby, individually; and file this, their Defenses, Answer and Counter-Complaint against Magnolia Group, LLC, and in support thereof would respectfully state as follows, to-wit:

FIRST DEFENSE

Plaintiff herein has failed to state a claim upon which relief can be granted as to these Defendants, and therefore, this action should be dismissed as to these Defendants pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

These Defendants affirmatively plead all applicable statutes of limitation and repose as a bar to this suit.

THIRD DEFENSE

Plaintiff's causes of action may be barred by the doctrine of estoppel, where applicable.

FOURTH DEFENSE

The doctrines of payment, release, and accord and satisfaction, where applicable, may bar recovery sought by Plaintiff against these Defendants.

FIFTH DEFENSE

Plaintiff may have failed to join certain persons or entities in whose absent complete relief cannot be accorded among the parties.

SIXTH DEFENSE

These Defendants affirmatively plead contributory and/or comparative negligence.

SEVENTH DEFENSE

Plaintiff's damages, if any, were solely and proximately caused by the actions or omissions of others for whom these Defendants are neither liable nor responsible.

EIGHTH DEFENSE

Plaintiff herein may have waived its right to recover from these Defendants.

NINTH DEFENSE

If Plaintiff suffered any injury or damage as alleged, which is denied, the same resulted solely from the actions or omissions

of Plaintiff or entities other than Defendants, and for which these Defendants are no way liable, such acts or omissions on the part of others constituting independent, intervening, superseding, and sole proximate causes or proximate contributing causes of any damage. Plaintiff's damages should therefore be reduced by the percentage of causation attributed to the negligence or other fault of such other persons or entities.

TENTH DEFENSE

Plaintiff is not entitled to the recovery of punitive damages, because any activity of these Defendants of which Plaintiff complains does not come with the ambit of any applicable punitive damage statute or jurisprudence. Under the circumstances of this case, any award of punitive damages to Plaintiff would deny these Defendants due process of law and constitute a violation of the Constitutions of the United States of America and the State of Mississippi.

ELEVENTH DEFENSE

These Defendants adopt and incorporate any and all other defenses raised by any other Defendant in this litigation to the extent that said Defendant defenses are not inconsistent with the position of these Defendants.

TWELFTH DEFENSE

These Defendants will rely upon all defenses lawfully available to these Defendants at the time of trial and reserves

the right to amend this Answer and to supplement its Affirmative Defenses as additional information becomes available through discovery or otherwise.

GENERAL DENIAL AND ANSWER

These Defendants generally deny all the averments contained in the Complaint and each paragraph and/or subparagraph thereof, except such designated averments of said paragraphs and/or subparagraphs as are expressly set forth to the contrary more fully herein pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

I.

JURISDICTION

Jurisdiction is admitted.

II.

THE PARTIES

A. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

B. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

C. Admitted.

D. Admitted.

E. Admitted.

F. Admitted.

III.

FACTUAL CONSIDERATIONS

A. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

B. Admitted.

C. It is admitted that O'Dwyer Realty, LLC, listed the subject property; these Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations, and for these purposes must deny same.

D. Admitted except to the extent that the extensions were at the instance of Mary Bunch, and that there existed any "scheme" as described in the Complaint, and same is denied.

E. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

F. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

G.

1. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation,

and for these purposes must deny same.

2. Denied, except to the extent that it is admitted that LNG Investments, LLC did not own the property as of May 1, 2012.

3. These Defendants lack knowledge or information sufficient to form a belief as to the truth of this allegation, and for these purposes must deny same.

4. Admitted.

5. Admitted.

6. Denied, except to the extent that these Defendants lack knowledge or information sufficient to form a belief about any communication between Mary Bunch and Plaintiff, or any disclosure of the relationship between Defendants Mary Bunch and Defendant Lloyd Nicaud, and for these purposes must deny same.

7. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation.

8. Denied.

9. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

IV.

LIABILITY

A. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation,

and for these purposes must deny same.

B. Denied.

C. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

D. These Defendants deny that Mary Bunch acted in the best interest of Lloyd Nicaud and Gerald Rigby; these Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations, and for these purposes must deny same.

E. These Defendants lack knowledge or information sufficient to form a belief about the truth of this allegation, and for these purposes must deny same.

F. Denied.

V.

DAMAGES

A. Denied.

B. Denied.

COUNTER-COMPLAINT

AND NOW, having answered the Complaint exhibited against it by Magnolia Group, LLC, in this matter, comes now, LNG Investments, LLC, and files this, its Counter-Complaint against Plaintiff, Magnolia Group, LLC, and in support thereof would show

unto this Honorable Court the following, to-wit:

I.

On June 8, 2012, William C. Washburn, Jr., as managing member of Magnolia Group, LLC executed a Promissory Note in favor of LNG Investments, LLC, in the amount of \$11,946.96. A copy of said Promissory Note is attached hereto and incorporated herein for all purposes.

II.

Pursuant to the terms of the Promissory Note, the note amount was due and payable upon demand. By correspondence dated June 25, 2013, Magnolia Group, LLC, by and through William C. Washburn, Jr., was presented with a demand note from John R. Santa Cruz, Esq., demanding payment in full of said note, a copy of said correspondence being attached hereto and incorporated herein.

III.

Plaintiff/Counter-Defendant, Magnolia Group, LLC, has willfully and without cause refused to pay said amounts under said Promissory Note.

IV.

Said Plaintiff/Counter-Defendant is in breach of contract under the terms of said Promissory Note, and Defendant/Counter-Plaintiff LNG Investments, LLC is entitled to the amount of the Promissory Note, \$11,946.96 plus any and all penalties, interest,

and attorney's fees as provided for in said note.

WHEREFORE, PREMISES CONSIDERED, these Defendants pray that this Defenses, Answer and Counter-Complaint be received and filed; and that upon a hearing hereon, that this Court will enter a judgment dismissing the Complaint against these Defendants; further, Defendant, LNG Investments, LLC, hereby prays that upon a hearing hereon, judgment should be entered in favor of LNG Investments, LLC, against Magnolia Group, LLC, in the amount of \$11,946.96 plus any and all penalties, interest and attorney's fees as provided for in said Promissory Note, or otherwise allowed by law. And if these Defendants have prayed for wrong or insufficient relief, these Defendants pray for such relief which they may be entitled, both in law and equity.

RESPECTFULLY SUBMITTED, this the 27th day of August, 2013.

LNG INVESTMENTS, LLC;
LLOYD NICAUD, INDIVIDUALLY; AND
GERALD RIGBY, INDIVIDUALLY

BY: s/Donald E. Hinton, Jr.
Their Attorney, MSB #10369

BY: s/Christopher M. Howdeshell
Their Attorney, MSB #10688

Pittman, Howdeshell,
Hinton & Hightower, PLLC
Post Office Drawer 17138
Hattiesburg, MS 39404-7138
Telephone: (601) 264-3314
Facsimile: (601) 261-3411

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2013, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following: Ben F. Galloway, Esq., and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: None.

s/Christopher M. Howdeshell

Promissory Note

\$ 11,946.96 plus penalties and interest

Bay St. Louis, Mississippi

June 8, 2012

FOR VALUE RECEIVED, **MAGNOLIA GROUP, LLC, An Illinois Limited Liability Company**, promises to pay to the order of **LNG INVESTMENTS, LLC, A Mississippi Limited Liability Company**, the sum of Eleven Thousand Nine Hundred and Forty-Six & .96/100 Dollars, plus penalties and interest as stated herein, due and payable as stated hereinafter, said principal sum to be paid on the dates and in the manner following, to-wit:

Due and payable on Demand.

This Promissory Note is to secure the payment of the 2011 Ad Valorem Taxes which are to be paid by Magnolia Group, LLC prior to 180 days from June 8, 2012 for Tax Parcel Numbers: 149F-0-29-271.000, 149F-0-29-270.000 & 149F-0-29-268.000. Payment of all taxes including penalties and interest shall satisfy this Promissory Note, in full.

There shall be a 10% late charge assessed for any payment made more than 10 calendar days after Demand. The loan shall not be assumed or transferred without the prior written consent of the lender.

It is hereby agreed that if default be made in the payment of the principal sum above mentioned or any installment thereof, or any interest thereon, as above provided, or if default be made in the performance of or compliance with the covenants and conditions of the deed of trust security agreement, then, in any or all such events, the entire amount of the principal of this note with all interest then accrued shall, at the option of the holder of this note, become and be due and collectible on the conditions as expressly provided in said deed of trust and security agreement, time being of the essence of this agreement. It is agreed that the interest rate shall be Eighteen (18.00%) per centum per annum on any sum payable hereunder (including installment of interest) after the same becomes due and collectible and until paid, together with attorney's fee of thirty-three (33%) per cent in case of default in payment at maturity, if placed in the hands of an attorney for collection, plus all costs and expenses including Court cost.

The signers, endorsers and sureties hereby severally waive presentment for payment, demand protest, and notice of protest and non-payment of this note.

This note is payable at 724 Dunbar Avenue, Bay St. Louis, Mississippi 39520.

WITNESS:

MAGNOLIA GROUP, LLC



By: 
WILLIAM C. WASHBURN, JR.,
MANAGING MEMBER

SANTA CRUZ LAW FIRM, PLLC

718 Dunbar Avenue, Suite 1A
Bay St. Louis, Mississippi 39520
Telephone: 228.467.8484
Facsimile: 228.467.8485
Email: Randy@SantaCruzLawFirm.net

JOHN R. SANTA CRUZ
Member, Mississippi Bar Association
Member, Louisiana State Bar Association
Member, Texas Bar Association

June 25, 2013

CERTIFIED MAIL-RRR

Mr. William C. Washburn, Jr.
Magnolia Group, LLC
619 Rollingwood Drive
Shorewood, IL 60404

Re: Promissory Note Dated June 2, 2012 - \$11,946.96

Dear Mr. Washburn:

Please be advised that I have been retained to represent LNG Investments, LLC, with regard to the above referenced matter. We request that you please direct all future communications to our firm on behalf of LNC Investments, LLC concerning this matter.

On June 8, 2012, you executed a Promissory Note in the amount of \$11,946.96 on behalf of Magnolia Group, LLC, as its managing member. A copy of said Promissory Note is attached hereto. Pursuant to the terms of the Promissory Note, the note amount is due and payable upon demand. Accordingly, demand is hereby made on behalf of LNG Investments, LLC upon Magnolia Group, LLC for payment of the Promissory Note amount of \$11,946.96 which is now due and payable per the terms of the Note.

Failure to pay all amounts due pursuant to the terms of the Note will result in collection of penalties, interest and attorney's fees as provided for in the Note.

Very truly yours,


John R. Santa Cruz

JRS/slr
Enclosure