

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 9:16-cv-80353-KAM

SILVER CREEK FARMS, LLC,

Plaintiff,

v.

MAGGIE FULLINGTON,

Defendant.

**DEFENDANT MAGGIE FULLINGTON'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S COMPLAINT**

Defendant, Maggie Fullington ("Fullington"), by and through her undersigned counsel and pursuant to Fed. R. Civ. P. 7 and 12, responds to the allegations contained in the Complaint [ECF #1] filed by Plaintiff, Silver Creek Farms, LLC ("Silver Creek"), as follows:

1. Fullington admits the allegations contained in paragraph 1 of the Complaint for venue purposes only. Fullington is without knowledge as to the citizenship of Silver Creek and, as such, denies the allegations contained in paragraph 1 for jurisdictional purposes. Fullington denies the allegations contained in paragraph 1 of the Complaint in all other respects.

2. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 2 of the Complaint.

3. Fullington admits the allegations contained in paragraph 3 of the Complaint.

4. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 4 of the Complaint.

5. Fullington admits the allegations contained in paragraph 5 of the Complaint.

6. Fullington admits the allegations contained in paragraph 6 of the Complaint.

7. Fullington admits the allegations contained in the first sentence of paragraph 7 of the Complaint. Fullington is without knowledge as to and, as such, denies the allegations contained in the remainder of paragraph 7 of the Complaint.

8. Fullington denies the allegations contained in paragraph 8 of the Complaint.

9. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 9 of the Complaint.

10. Fullington admits the allegations contained in paragraph 10 of the Complaint.

11. Fullington admits the allegations contained in paragraph 11 of the Complaint.

12. Fullington admits the allegations contained in paragraph 12 of the Complaint.

13. In response to paragraph 13 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 13 of the Complaint in all other respects.

14. In response to paragraph 14 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 14 of the Complaint in all other respects.

15. In response to paragraph 15 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 15 of the Complaint in all other respects.

16. In response to paragraph 16 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 16 of the Complaint in all other respects.

17. In response to paragraph 17 of the Complaint, Fullington states that the Bill of

Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 17 of the Complaint in all other respects.

18. Fullington admits the allegations contained in paragraph 18 of the Complaint.

19. Fullington denies the allegations contained in paragraph 19 of the Complaint.

20. Fullington admits the allegations contained in paragraph 20 of the Complaint.

21. Fullington admits that she has not yet made any payments, but denies that she is obligated to do so under the circumstances. Fullington denies the allegations contained in paragraph 21 of the Complaint in all other respects.

22. Fullington admits that the letter attached to the Complaint as Exhibit B was sent to her in or about July 2015. Fullington further states that the letter speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 22 of the Complaint in all other respects.

23. Fullington admits that she has not provided adequate assurances and has not yet made payments, but denies that she is obligated to do so under the circumstances. Fullington denies the allegations contained in paragraph 23 of the Complaint in all other respects.

24. Fullington admits that a meeting was held in Wellington, Florida, in or around January 2016. Fullington is without knowledge as to and, as such, denies the remainder of the allegations contained in paragraph 24 of the Complaint.

25. Fullington admits that she met with Summer Stoffel in Florida in or around January 2016. Fullington denies the remainder of the allegations contained in paragraph 25 of the Complaint.

26. Fullington denies that she made the representations upon which Silver Creek claims it relies. Fullington admits the remainder of the allegations contained in paragraph 26 of

the Complaint, but denies that Silver Creek was entitled to “pick up the Horse” or that Fullington was obligated to “return the Horse to Plaintiff.”

27. Fullington denies the allegations contained in paragraph 27 of the Complaint.

28. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 28 of the Complaint.

Count I – Anticipatory Repudiation

29. Fullington realleges her responses to paragraphs 1 through 28 of the Complaint above as if more fully set forth herein.

30. In response to paragraph 30 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 30 of the Complaint in all other respects.

31. Fullington denies the allegations contained in paragraph 31 of the Complaint.

32. Fullington admits the allegations contained in paragraph 32 of the Complaint.

33. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 33 of the Complaint.

34. Fullington denies that she repudiated her agreement or that she was obligated to provide adequate assurances. Fullington is without knowledge as to and, as such, denies the remainder of the allegations contained in paragraph 34 of the Complaint.

35. Fullington admits that she has not provided adequate assurances, but denies that she is obligated to do so under the circumstances.

36. Fullington denies the allegations contained in paragraph 36 of the Complaint.

Count II – Breach of Contract

37. Fullington realleges her responses to paragraphs 1 through 28 of the Complaint

above as if more fully set forth herein.

38. In response to paragraph 38 of the Complaint, Fullington states that the Bill of Sale that she executed speaks for itself and is the best evidence of the terms thereof. Fullington denies the allegations contained in paragraph 38 of the Complaint in all other respects.

39. Fullington denies the allegations contained in paragraph 39 of the Complaint.

40. Fullington admits the allegations contained in paragraph 40 of the Complaint.

41. Fullington denies the allegations contained in paragraph 41 of the Complaint.

42. Fullington is without knowledge as to and, as such, denies the allegations contained in paragraph 42 of the Complaint.

43. Fullington denies the allegations contained in paragraph 43 of the Complaint.

Count III – Breach of Contract

44. Fullington realleges her responses to paragraphs 1 through 28 of the Complaint above as if more fully set forth herein.

45. Fullington admits that she met with Summer Stoffel in Florida in or around January 2016. Fullington denies the remainder of the allegations contained in paragraph 25 of the Complaint.

46. Fullington admits the allegations contained in paragraph 46 of the Complaint, but denies that Silver Creek was entitled to “pick up the Horse” or that Fullington was obligated to “return the Horse to Plaintiff.”

47. Fullington denies the allegations contained in paragraph 47 of the Complaint.

Count IV – Unjust Enrichment and Disgorgement

48. Fullington realleges her responses to paragraphs 1 through 28 of the Complaint above as if more fully set forth herein.

49. Fullington denies the allegations contained in paragraph 49 of the Complaint.

50. Fullington denies the allegations contained in paragraph 50 of the Complaint.

51. Fullington denies the allegations contained in paragraph 50 of the Complaint.

Count V – Writ of Replevin

52. Fullington realleges her responses to paragraphs 1 through 28 of the Complaint above as if more fully set forth herein.

53. Fullington admits that Silver Creek seeks replevin, but denies that it is entitled to said remedy.

54. Fullington admits the allegations contained in paragraph 54 of the Complaint.

55. Fullington denies the allegations contained in paragraph 55 of the Complaint.

56. Fullington admits the allegations contained in paragraph 56 of the Complaint.

57. Fullington admits the allegations contained in paragraph 57 of the Complaint.

58. Fullington denies the allegations contained in paragraph 58 of the Complaint.

Affirmative Defenses

First Affirmative Defense

As and for her First Affirmative Defense, Fullington states that Silver Creek does not have standing to maintain this action, as the Bill of Sale upon which this action has been brought states that it is between and was executed by Summer Stoffel (“Stoffel”) and Fullington.

Second Affirmative Defense

As and for her Second Affirmative Defense, Fullington states that the action is barred as a result of fraudulent misrepresentations because Stoffel, individually and/or as the representative of Silver Creek, with the intent to induce Fullington to purchase Apiro, made material misrepresentations about Apiro’s breeding history that Stoffel knew were untrue, and Fullington

reasonably relied upon those representations to her detriment.

Third Affirmative Defense

As and for her Third Affirmative Defense, Fullington states that the action is barred as a result of negligent misrepresentations because Stoffel, individually and/or as the representative of Silver Creek, with the intent to induce Fullington to purchase Apiro, made material representations to Fullington about the breeding history of Apiro without knowing whether they were true or under circumstances in which she should have known they were false, and Fullington reasonably relied upon those representations to her detriment.

Fourth Affirmative Defense

As and for her Fourth Affirmative Defense, Fullington states that Counts I and II of the Complaint are repugnant to paragraph 27 and Count III of the Complaint, which alleges the existence of a novation, and, as such, Counts I and II of the Complaint must fail. Specifically, paragraph 27 of the Complaint alleges that there was an oral settlement agreement and Count III of the Complaint seeks damages for breach of that purported oral settlement agreement. Count V of the Complaint also seeks a writ of replevin, in part, based upon an alleged breach of the purported settlement agreement. Accordingly, based upon Silver Creek's own allegation of a new contract, Counts I and II of the Complaint must fail.

Fifth Affirmative Defense

As and for her Fifth Affirmative Defense, Fullington states that Count V must fail because the Complaint has not been verified and it is not supported by a separate Affidavit of the petitioner. Moreover, Silver Creek has not alleged, nor can it allege, that Fullington has engaged in or is about to engage in conduct that may place Apiro "in danger of destruction, concealment, waste, removal from the state, removal from the jurisdiction of the court, or transfer to an

innocent purchaser during the pendency of this action. Finally, Silver Creek has not posted, nor offered to post, a bond in the amount of twice the value of Apiro. Accordingly, Silver Creek has completely failed to comply with any of the requirements for obtaining a pre-judgment writ of replevin.

WHEREFORE, Defendant, Maggie Fullington, demands entry of Final Judgment in her favor and against Plaintiff, Silver Creek Farms, LLC, in all respects, an award of costs, and such other and further relief as is just and proper.

DATED this 25th day of April, 2016.

Respectfully Submitted,

By: s/. David A. Greene
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2016, I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will provide copies to counsel of record who are registered to receive CM/ECF notifications and others in the manner specified.

s/. David A. Greene
Attorney

SERVICE LIST

*Silver Creek Farms, LLC v. Maggie Fullington
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