

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**WEST PALM BEACH DIVISION**

**CASE NO.: 9:16-80353-cv-MARRA**

**SILVER CREEK FARMS, LLC,  
an Oklahoma limited liability company,**

**Plaintiff,**

**v.**

**MAGGIE FULLINGTON,**

**Defendant.**

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**PLAINTIFF'S ANSWER TO DEFENDANT'S AMENDED COUNTERCLAIM**

Plaintiff, Silver Creek Farms, LLC, by and through their undersigned counsel submit their answer and affirmative defenses to the amended counterclaim (the "Amended Counterclaim") filed by Defendant, Maggie Fullington, and states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

**ALLEGATIONS COMMON TO ALL COUNTS**

5. Denied.
6. Denied.
7. Denied.

8. Denied.

9. Denied.

10. Plaintiff can neither confirm nor deny the allegations of Paragraph 10 and therefore leaves Defendant to her proofs.

11. Denied.

12. Plaintiff can neither confirm nor deny the allegations of Paragraph 12 and therefore leaves Defendant to her proofs.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Plaintiff can neither confirm nor deny the allegations of Paragraph 17 and therefore leaves Defendant to her proofs.

18. Plaintiff can neither confirm nor deny the allegations of Paragraph 18 and therefore leaves Defendant to her proofs.

19. Denied.

20. Denied.

21. Denied.

22. Admitted.

**COUNT I – FRAUDULENT INDUCEMENT**

23. Plaintiff repeats and incorporates its responses set forth in Paragraphs 1 through and including Paragraph 22 above.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

**COUNT II – NEGLIGENT MISREPRESENTATION**

29. Plaintiff repeats and incorporates its responses set forth in Paragraphs 1 through and including Paragraph 22 above.

30. Denied.

31. Denied.

32. Denied.

33. Plaintiff can neither confirm nor deny the allegations of Paragraph 33 and therefore leaves Defendant to her proofs.

34. Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**(failure to state a cause of action)**

As to all Counts, the Defendant has failed to state a claim upon which relief may be granted because Defendant has not set forth and cannot set forth a factual basis upon which Defendant has established reliance on any alleged representations made by Plaintiff Silver Creek Farms. To plead fraudulent inducement, Defendant Fullington must plead 1) a false statement concerning a material fact, 2) knowledge by the person making the statement that the representation is false, 3) intent by the person making the statement that the representation will induce another to act upon it, and 4) reliance on the representation to the injury of the other

party. *Mettler, Inc. v. Ellen Tracy, Inc.*, 648 So.2d 253 (Fla. 2d DCA 1994). Under Florida law, to plead negligent misrepresentation, Defendant Fullington must plead 1) a misrepresentation of material fact, 2) knowledge by the representor as to the truth or falsity of the representation, or that the representation was made under circumstances in which the representor ought to have known of its falsity, 3) intent by the representor that the representation induce another to act on it, and 4) injury to the party as a result of acting in justifiable reliance on the misrepresentation. *C & J Sapp Publishing Co. v. Tandy Corp.*, 585 So.2d 290, 292 (Fla. 2nd DCA 1991). Defendant Fullington has not set forth with any specificity the factual bases upon which Defendant claims Defendant has established Defendant's reliance on any alleged misrepresentations made by Plaintiff Silver Creek Farms.

## **SECOND AFFIRMATIVE DEFENSE**

### **(lack of reliance)**

As to all Counts, Defendant's claims are barred because the September 25, 2014 contract between the parties contains a disclaimer of warranties clause which included the language that "[s]eller [Silver Creek Farms] makes no representations, warranties, or guaranties concerning the health, fitness, degree of training, vices, behavior temperament, or suitability for Purchaser's [Maggie Fullington] expressed intended use." The Bill of Sale entered into between Plaintiff Silver Creek Farms and Defendant Fullington further included a clause addressing prior statements which in its entirety stated:

All representations, statements, and agreements heretofore made between the parties are merged into this agreement, which alone fully and completely expresses their respective obligations, and this Agreement is entered into by each party after opportunity for full inspection and examination of horse, neither party relying on any statements or representations not embodied in this Agreement, made by the other or on his/her behalf. Any alterations or amendments to this Agreement shall be made in writing and attached and made a part hereof.

The Bill of Sale also precludes Defendant's claims due to the following inspection clause which in its entirety stated:

Purchaser [Defendant Fullington] further agrees and acknowledges that he has been afforded by Seller [Silver Creek Farms] the opportunity to make a full and complete inspection of the horse, at Purchaser's expense, including arranging any veterinarian's prepurchase exam, and is freely satisfied with and aware of the physical conditions and limitations of said horse, and has executed this Agreement based upon his independent knowledge and not in any way in reliance upon representations or statements made by or on behalf of the Seller, his agents or employees, with respect thereto, except as contained herein.

Reliance on oral representations in light of disclaimer in a written contract is not justifiable reliance and thus there can be no actionable fraud. *Federal Deposit Ins. Corp. v. High Tech Medical Systems, Inc.*, 574 So.2d. 1121 (Fla. 4th DCA 1991). Further, "[a] party may not recover in fraud for an alleged oral misrepresentation which is adequately dealt with in a later written contract." *Englezios v. Batmasian*, 593 So.2d 1077, 1078 (Fla. 4th DCA 1992). Defendant Fullington, in freely entering into the Bill of Sale with Plaintiff Silver Creek Farms negates Defendant Fullington's ability to claim she relied on any alleged representations provided by Silver Creek Farm's agents. Defendant Fullington fails to establish the requisite element of reliance necessary in all counts.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(parol evidence rule)**

As to all Counts, Defendant's claims are barred by the parol evidence rule. Defendant Fullington entered into a valid contract with Plaintiff Silver Creek Farms on or about September 25, 2014 which included the following language:

All representations, statements, and agreements heretofore made between the parties are merged into this agreement, which alone fully and completely expresses their respective obligations, and this Agreement is entered into by each party after opportunity for full inspection and examination of horse, neither party relying on any statements or representations not embodied in this Agreement,

made by the other or on his/her behalf. Any alterations or amendments to this Agreement shall be made in writing and attached and made a part hereof.

The parol evidence rule provides that a contemporaneous oral agreement may not be used to vary the terms of a written agreement unless there is ambiguity as to the meaning of the contract. *Madsen, Sapp, Mena, Rodriguez & Co., P.A. v. Palm Beach Polo Holdings, Inc.*, 899 So.2d 435, 436 (Fla. 4th DCA 2005) (quoting *Applebaum v. Appel*, 82 So.2d 738 (Fla. 1955)). The parol evidence rule is not merely an evidentiary rule, but rather a fundamental rule of substantive law. *Id.* See also *Fla. Bar v. Frederick*, 756 So.2d 79, 85 n. 2 (Fla. 2000); *Schwartz v. Zaconick*, 68 So.2d 173, 175 (Fla. 1953). Parol evidence rule precludes evidence of understandings, parol or otherwise which preceded a final integration of the parties' contract. Therefore, any and all representations by Plaintiff Defendant Fullington alleges she relied on are barred by the parol evidence rule.

#### **FOURTH AFFIRMATIVE DEFENSE**

##### **(lack of due diligence)**

As to Count II negligent misrepresentation, Defendant Fullington's claims are barred by Defendant's failure to exercise due diligence. "Under Florida law, even though justifiable reliance is required, a recipient of information does not have to investigate every piece of information furnished, but instead is responsible for investigating that information which 'a reasonable person in the position of the recipient would be expected to investigate.'" *Specialty Marine & Industrial Supplies, Inc. v. Venus*, 66 So.3d 306, (Fla. 1st DCA 2011) (quoting *Gilchrist Timber Co. v. ITT Rayonier, Inc.*, 696 So.2d 334 (Fla. 1997); see also *Newbern v. Mansbach*, 777 So.2d 1044, 1045-46 (Fla. 1st DCA 2001). Defendant Fullington, through her farm's website claims "[w]e are very experienced in all aspects of breeding, stallion collection, broodmare management, foaling & new born care." As a very experienced individual in the

equine breeding industry, Defendant had adequate notice and opportunity to investigate all aspects of the stallion, Apero's, health and ability to reproduce. The Bill of Sale Defendant Fullington freely entered into with Plaintiff Silver Creek Farms on or about September 25, 2014, likewise provides:

Purchaser [Defendant Fullington] further agrees and acknowledges that he has been afforded by Seller [Silver Creek Farms] the opportunity to make a full and complete inspection of the horse, at Purchaser's expense, including arranging any veterinarian's prepurchase exam, and is freely satisfied with and aware of the physical conditions and limitations of said horse, and has executed this Agreement based upon his independent knowledge and not in any way in reliance upon representations or statements made by or on behalf of the Seller, his agents or employees, with respect thereto, except as contained herein.

Because Defendant Fullington failed to exercise the requisite and reasonable due diligence, Defendant Fullington fails to establish the necessary elements of reliance.

Respectfully Submitted,

*Avery S. Chapman*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19th day of May, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system, which will then serve all counsel of record or pro se parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by the CM/ECF system or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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*Avery S. Chapman*

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