

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA CIVIL DIVISION

LFG ACQUISITIONS LLC,

Plaintiff,

Case No: 20-CA-003842

vs.

CSPS HOTEL INC., and
FIDELITY NATIONAL TITLE INS. CO.

Division: “ A ”

Defendants /

**CSPS HOTEL’S
ANSWER TO COMPLAINT COUNTS I AND II AND
AFFIRMATIVE DEFENSES**

COMES NOW Defendant CSPS Hotel, Inc., Hereinafter “Defendant CSPS”, by and through its undersigned Attorney, and it hereby answers the Complaint filed in the above styled cause and as to each correspondingly numbered paragraph it alleges:

1. Admitted as to Count II. Denied as to Count I which is a suit for declaratory judgment. This Court has jurisdiction of Count I because the issue to be resolved is entitlement to a sum in excess of 30,000.00; as well as because Count I is based upon the same facts as those plead in Count II.

2. Admitted.

3. Admitted.

4. Denied that Suresh B. Shukla is a third party to this action. The other allegations of this paragraph are admitted.

5. Admitted.

6. Admitted.

7. Defendant CSPS has no knowledge regarding this allegation, and therefore denies the same and demands strict proof thereof.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Denied that Plaintiff was entitled to invoke the Force Majeure provision of the Purchase Agreement. Admitted that Plaintiff attempted to invoke said provision. All other allegations in this paragraph are admitted.

13. Denied that Plaintiff was entitled to invoke the Force Majeure provision of the Purchase Agreement. Admitted that Plaintiff attempted to invoke said provision. All other allegations in this paragraph are admitted.

14. Admitted.

15. Denied that Plaintiff was entitled to invoke the Force Majeure provision of the Purchase Agreement. Admitted that Plaintiff attempted to invoke said provision. Denied that COVID-19, government regulations or other causes beyond Plaintiff's or CSPS' reasonable control "reasonably interfered" with the closing date. All other allegations in this paragraph are denied.

16. Admitted.

17. Denied that Plaintiff was entitled to invoke the Force Majeure provision of the Purchase Agreement. All other allegations in this paragraph are denied.

18. Admitted that there are representations and warranties in the purchase agreement, and that they were required to be true as of the date of closing. Denied that there were any additional representations and warranties.

19. Admitted that Plaintiff, in its March 12, 2020 letter (Complaint Exhibit C),

alleged that Defendant CSPS was in breach of Purchase Agreement sections 10(a)(1), 14(a)(7)(c), and 14(a)(10)(b). All other allegations in this paragraph are denied.

20. Admitted that there is a scrivener's error in section 14(a)(1) of the Purchase Agreement (Complaint Exhibit A), which is in conflict with page one of said Purchase Agreement which names Defendant CSPS as CSPS Hotel, **Inc.**; and with the signature page, page 22, which states that the Seller is "CSPS HOTEL, **INC.**, a Florida **corporation**", and which is executed by "SURESH B. SHUKLA, **President**", NOT Mr. Shukla as an LLC Manager (Building and underlining added for emphasis).

21. Admitted.

22. Denied.

23. Denied.

24. Admitted.

25. Whether or not the bookings declined, there was no material adverse change in the physical property. All other allegations in this paragraph are denied.

26. Denied that Defendant CSPS was ever in breach of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

27. Admitted.

28. Denied that Defendant CSPS ever refused or failed to fulfil the obligations of section 10(a) of the Purchase Agreement (Complaint Exhibit A).

29. Admitted that Defendant CSPS insisted on maintaining the closing date. Also admitted that Plaintiff terminated the Purchase Agreement (Complaint Exhibit A). Further admitted that Plaintiff sought return of the deposit. All other allegations in this paragraph are denied.

30. Denied that Defendant CSPA was in breach of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are admitted.

31. Admitted that Plaintiff terminated the Purchase Agreement (Complaint Exhibit A) in its (Plaintiff's) March 12, letter (Complaint Exhibit C). Also admitted that Defendant CSPA demanded the deposit, and instructed the escrow agent not to give the deposit to Plaintiff. All other allegations in this paragraph are denied.

32. Defendant CSPA has no knowledge regarding this allegation, and therefore denies the same and demands strict proof thereof.

33. Admitted that Plaintiff is seeking Attorney's fees and costs but denied that Plaintiff is entitled to either.

34. Denied that Defendant CSPA repudiated the Purchase Agreement (Complaint Exhibit A). Admitted that it (CSPA) has refused to authorize the escrow agent to pay the escrow deposit to Plaintiff. All other allegations in this paragraph are denied.

35. Admitted.

COUNT I – DECLARATORY JUDGMENT

36. Defendant CSPA realleges and reavers each of its answers to paragraphs 1 through 34, in haec verba, as if said answers were fully set forth herein.

37. Admitted.

38. Admitted.

39. Denied that Plaintiff is substantially and irreparably injured by this controversy. Admitted that the escrow agent, Fidelity, will not release the Escrow Deposit without a Court Order or Plaintiff and Defendant CSPA's agreement.

40. Admitted.

41. Admitted.
42. Denied.

WHEREFORE, the premises considered, Defendant CSPA respectfully prays that this Honorable Court will enter a declaratory judgment holding:

- a. COVID-19, whether or not a Force Majeure, did not prevent or reasonably interfere with Plaintiff's ability to complete the mail away closing on the date when it was scheduled.
- b. Plaintiff's refusal to close and its termination of the Purchase Agreement (Complaint Exhibit A), as evidenced by Plaintiff's March 12, 2020 letter (Complaint Exhibit C), constitutes a material breach of the Purchase Agreement.
- c. Defendant CSPA is entitled to the deposit, in accordance with section 19 of the Purchase Agreement (Complaint Exhibit A).
- d. Defendant Fidelity, the Escrow Agent, shall deliver the deposit less its costs and Attorney's fees in this matter to Defendant CSPA; and the Court should enter Judgment for Defendant CSPA and against Plaintiff for the amount of said costs and fees, for which execution should issue.
- e. Plaintiff must pay Defendant CSPA's Attorney's reasonable Attorney's fees plus the cost of this action; and reserve jurisdiction to determine the amount of fees and costs.
- f. Upon a subsequent hearing to determine the amount of fees and costs, to enter Judgment for Defendant CSPA and against Plaintiff in the amount of the fees and costs determined by the Court, for which execution should issue.

COUNT II – BREACH OF CONTRACT

43. Defendant CSPA realleges and reavers each of its answers to paragraphs 1 through 34, in haec verba, as if said answers were fully set forth herein.

44. Admitted.

45. Denied.

46. Admit.

47. Denied.

48. Admitted that the representations and warranties in the Purchase Agreement were to be true at the time of closing. Denied that Defendant CSPA failed to do so. All other allegations in this paragraph are denied.

49. Admit that section 10(a)(1) of the Purchase Agreement (Complaint Exhibit A) required that Seller's representations and warranties in the Agreement were true in all material respects as of the closing. All other allegations in this paragraph are denied.

50. Defendant CSPA denies that it refused to confirm said representations. It denies that COVID-19, whether or not a Force Majeure, prevented or reasonably interfered with Plaintiff's mail away closing of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

51. Defendant CSPA denies that it refused, failed or was unable to comply with said sections of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

52. Denied.

53. Denied.

54. Defendant CSPA denies that it breached the Purchase Agreement (Complaint

Exhibit A). All other allegations in this paragraph are denied.

55. Denied.

WHEREFORE, the premises considered, Defendant CSPS respectfully prays that this Honorable Court will enter a judgment holding for Defendant CSPS and against Plaintiff, and will award Attorney's fees and costs to Defendant CSPS, reserving jurisdiction to determine the amount of said Attorney's fees and costs, and upon determining said Attorney's fees and costs that this Honorable Court enter judgment for said costs and fees for which execution shall issue.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

56. Plaintiff's refusal to close and its termination of the Purchase Agreement (Complaint Exhibit A), as evidenced by Plaintiff's March 12, 2020 letter (Complaint Exhibit C), constitutes a material breach of the Purchase Agreement.

SECOND AFFIRMATIVE DEFENSE

57. Plaintiff breached the Contract prior to a breach by Defendant CSPS.

THIRD AFFIRMATIVE DEFENSE

58. Defendant CSPS' representation that it was a limited liability company rather than a corporation, in section 14(a)(1) of the Purchase Agreement (Complaint Exhibit A), which is a scrivener's error, is not a material breach of the Purchase Agreement.

59. The first paragraph of the Purchase Agreement (Complaint Exhibit A) clearly demonstrates that the parties knew that Defendant CSPS was a Florida corporation, by naming the Seller "CSPS HOTEL INC."

60. The signature page of the Purchase Agreement (Complaint Exhibit A) also clearly shows that Defendant CSPA was a Florida corporation, by again naming the Seller “CSPA HOTEL INC.”

61. Further, the signature page of the Purchase Agreement (Complaint Exhibit A) also clearly shows that Defendant CSPA was a corporation, by showing that the person authorized to sign for CSPA Hotel Inc. was its “President”, rather than a Manager.

WHEREFORE, the premises considered, Defendant CSPA respectfully prays that this Honorable Court will enter a judgment holding for Defendant CSPA and against Plaintiff, and will award Attorney’s fees and costs to Defendant CSPA, reserving jurisdiction to determine the amount of said Attorney’s fees and costs, and upon determining said Attorney’s fees and costs that this Honorable Court enter judgment for said costs and fees for which execution shall issue.

AFFIRMATIVE ALLEGATIONS

62. Section 22 of the Purchase Agreement (Complaint Exhibit A) provides that the prevailing party shall be awarded all reasonable attorney’s fees and costs incurred to interpret or enforce said Purchase Agreement (Complaint Exhibit A).

63. Defendant CSPA has obligated itself to pay a reasonable Attorney’s fee to its undersigned Attorney for his services in this action.

WHEREFORE, the premises considered, Defendant CSPA respectfully prays that this Honorable Court will enter a declaratory judgment holding:

- a. COVID-19, whether or not a Force Majeure, did not prevent or reasonably interfere with Plaintiff’s ability to complete the mail away closing on the date when it was scheduled.

b. Plaintiff's refusal to close and its termination of the Purchase Agreement (Complaint Exhibit A), as evidenced by Plaintiff's March 12, 2020 letter (Complaint Exhibit B), constitutes a material breach of the Purchase Agreement.

c. Defendant CSPA is entitled to the deposit, in accordance with section 19 of the Purchase Agreement (Complaint Exhibit A).

d. Defendant Fidelity, the Escrow Agent, shall deliver the deposit less its costs and Attorney's fees in this matter to Defendant CSPA; and the Court should enter Judgment for Defendant CSPA and against Plaintiff for the amount of said costs and fees, for which execution should issue.

e. Plaintiff must pay Defendant CSPA's Attorney's reasonable Attorney's fees plus the cost of this action; and reserve jurisdiction to determine the amount of fees and costs.

f. Upon a subsequent hearing to determine the amount of fees and costs, to enter Judgment for Defendant CSPA and against Plaintiff in the amount of the fees and costs determined by the Court, for which execution should issue.

LAW OFFICE OF SHERMAN BROD, P.A.

/s/ Sherman M. Brod

SHERMAN M. BROD, Attorney for Defendant
CSPA HOTEL, INC.

Physical Address: 304 S. Plant Ave., Tampa, FL 33606

Mailing Address: P.O. Box 18877, Tampa, FL 33679-8877

Phone: (813) 295-8080 / Fax: (866) 520-4125

Primary email: brod@usa.com /

Secondary email: brod2nd@gmail.com

Fla. Bar # 106815

I HEREBY CERTIFY that on the 29th day of May 2020, the foregoing was filed by e-mail in the Florida State Court Filing Portal, and the Portal was directed to serve a copy by e-mail on:

Scott M. Wellikoff, Attorney, Adler Wellikoff, PLLC, Attorneys for Plaintiff, LFG Acquisitions, LLC, 1300 N. Federal Highway, Suite 107, Boca Raton, FL 33498, (561) 508-9591, at swellikoff@adwellgroup.com, and sadler@adwellgroup.com.

LAW OFFICE OF SHERMAN BROD, P.A.

/S/ Sherman M. Brod

SHERMAN M. BROD, Attorney