

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

CSPS HOTEL INC,

Plaintiff,

Case No: 20-CA-003636

vs.

LFG ACQUISITIONS LLC,
210 FOWLER TAMPA HOLDINGS LLC, and
FIDELITY NATIONAL TITLE INSURANCE CO.,

Division: “ K ”

Defendants /

LFG ACQUISITIONS LLC,

Plaintiff,

Case No: 20-CA-003842

vs.

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

Division: “ K ”

Defendants /

**CSPS HOTEL’S RESTATED ANSWER TO
COMPLAINT IN CASE NO: 20-CA-003842
INCLUDING COUNT III, AND
AFFIRMATIVE DEFENSES**

COMES NOW CSPS Hotel, Inc., Plaintiff in Case No: 20-CA-003636 and Defendant in Case No: 20-CA-003842, hereinafter “CSPS”, by and through its undersigned Attorney, and it hereby answers the Complaint filed by LFG Acquisitions, LLC, Defendant in Case No: 20-CA-003636 and Plaintiff in Case No: 20-CA-003842, hereinafter “LFG”, filed in Case No: 20-CA-003842, 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, and denied as to Count III which is a suit for specific performance. This Court has jurisdiction of Count I and II because the issue to be resolved is entitlement to a sum in excess of 30,000.00; as well as because Counts I and III are based upon the same facts as those plead in Count II.

2. Admitted.

CSPS Hotel’s Restated Answer to
Complaint in Case No: 20-CA-003842 and
Affirmative Defenses

Page 1 of 12

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

8. Admitted.

9. Denied. CSPS was formerly the owner.

10. Admitted.

11. Admitted.

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

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

14. Admitted.

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

16. Admitted.

17. Denied that LFG 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 LFG, in its March 12, 2020 letter (Complaint Exhibit C), alleged that CSPA 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 CSPA as CSPA Hotel, **Inc.**; and with the signature page, page 22, which states that the Seller is "CSPA 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 CSPA was ever in breach of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

27. Admitted.

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

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

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

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

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

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

34. Denied that 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 LFG. All other allegations in this paragraph are denied.

35. Admitted.

COUNT I – DECLARATORY JUDGMENT

36. 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.

CSPA Hotel's Restated Answer to
Complaint in Case No: 20-CA-003842 and
Affirmative Defenses

Page 4 of 12

37. Admitted.

38. Admitted.

39. Denied that LFG 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 LFG and CSPS' agreement.

40. Admitted.

41. Admitted.

42. Denied.

WHEREFORE, the premises considered, CSPS 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 LFG's ability to complete the mail away closing on the date when it was scheduled.

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

c. CSPS 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 CSPS; and the Court should enter Judgment for CSPS and against LFG for the amount of said costs and fees, for which execution should issue.

e. LFG must pay CSPS' 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 CSPA and against LFG in the amount of the fees and costs determined by the Court, for which execution should issue.

COUNT II – BREACH OF CONTRACT

43. 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 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. 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 LFG's mail away closing of the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

51. 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.

denied.

52. Denied.

53. Denied.

54. CSPS denies that it breached the Purchase Agreement (Complaint Exhibit A). All other allegations in this paragraph are denied.

55. Denied.

WHEREFORE, the premises considered, CSPS respectfully prays that this Honorable Court will enter a judgment holding for CSPS and against LFG, and will award Attorney's fees and costs to 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.

COUNT III

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

57. Admitted.

58. Denied.

59. Admitted that CSPS refused to delay the sale of the Property. Denied that COVID-19, whether or not a Force Majeure, government regulations or other causes beyond LFG's or CSPS' reasonable control "reasonably interfered" with the closing g date. All other allegations in this paragraph are denied.

60. Denied.

61. Denied.

62. CSPS rejects LFGs offer to pay the purchase price; denies hat COVID-19 interfered with the mail-away closing; even if COVID-19 did interfere with the closing, denies that the closing could be delayed until COVID-19 no longer interfered, in accordance with the terms of the Purchase Agreement. All other allegations in this paragraph are denied.

WHEREFORE, the premises considered, CSPS respectfully prays that this Honorable Court will enter a judgment holding for CSPS and against LFG, and will award Attorney's fees and costs to 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

63. LFG's refusal to close and its termination of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA--003842), as evidenced by LFG's March 12, 2020 letter (Complaint Exhibit C in Case No: 20-CA--003842), constitutes a material breach of the Purchase Agreement.

SECOND AFFIRMATIVE DEFENSE

64. LFG breached the Contract/Agreement for Purchase prior to a breach by CSPS.

THIRD AFFIRMATIVE DEFENSE

65. 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 in Case No: 20-CA--003842), which is a scrivener's error, is not a material breach of the Purchase Agreement.

66. The first paragraph of the Purchase Agreement (Complaint Exhibit A in Case No: CSPS Hotel's Restated Answer to Complaint in Case No: 20-CA-003842 and Affirmative Defenses

20-CA--003842) clearly demonstrates that the parties knew that CSPS was a Florida corporation, by naming the Seller “CSPS HOTEL INC.”

67. The signature page of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA--003842) also clearly shows that CSPS was a Florida corporation, by again naming the Seller “CSPS HOTEL INC.”

68. Further, the signature page of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA--003842) also clearly shows that CSPS was a corporation, by showing that the person authorized to sign for CSPS Hotel Inc. was its “President”, rather than a Manager.

FOURTH AFFIRMATIVE DEFENSE

69. CSPS stands by its position and belief that LFG terminated the Purchase Agreement when it sent the March 12, 2020 letter to CSPS and to the Escrow Agent stating that:

“Buyer hereby notifies you that it is electing to terminate this Agreement” [Complaint Exhibit C in Case No: 20-CA-003842]

70. CSPS also stands by its position and belief that COVID-19, whether or not a Force Majeure, did not prevent or reasonably interfere with the scheduled mail-away closing.

71. In the event that the Court disagrees with those positions and agrees with LFG’s position, i.e. that COVID-19 constitutes a Force Majeure and that it (LFG) properly invoked the Force Majeure provision, then CSPS hereby terminates this Agreement in accordance with paragraph 36 of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA-003842).

72. Paragraph 36 of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA-003842), the Force Majeure provision, says in pertinent part:

“..... if the force majeure event shall cause the day or period appointed herein to be delayed by more than ninety (90) days, then the other party may, in its sole and absolute discretion, terminate

this Agreement.”

73. LFG claims that it properly invoked the Force Majeure provision on account of COVID-19 in its March 5, 2020 letter to CSPS (Complaint Exhibit A in Case No: 20-CA-003842).

74. This date, October 3, 2020, is 212 days past March 5, 2020. That is more than twice the applicable 90-day period.

75. Since LFG invoked the Force Majeure provision, CSPS is clearly the “other party” as that term is used in Paragraph 36 of the Purchase Agreement (Complaint Exhibit A in Case No: 20-CA-003842).

76. Since CSPS has, in its in its sole and absolute discretion, terminated the Purchase Agreement; there is no Purchase Agreement that the Court may enforce.

77. In addition, on this same date, October 3, 2020, CSPS sent written notice to LFG in accordance with the Purchase Agreement, stating that if LFG is correct and COVID-19 does constitute a Force Majeure that prevented or reasonably interfered with LFG’s closing of its purchase under the Purchase Agreement, then CSPS Terminated the Purchase Agreement. A copy of said notice is Attached hereto as Exhibit A.

78. The Court may not enter an Order Specifically Enforcing a properly terminated contract/purchase agreement.

WHEREFORE, the premises considered, CSPS respectfully prays that this Honorable Court will enter a judgment holding for CSPS and against LFG, and will award Attorney’s fees and costs to 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 ALLEGATIONS

79. 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).

80. 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, 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 LFG's ability to complete the mail away closing on the date when it was scheduled.
- b. LFG's refusal to close and its termination of the Purchase Agreement (Complaint Exhibit A), as evidenced by LFG's March 12, 2020 letter (Complaint Exhibit B), constitutes a material breach of the Purchase Agreement.
- c. 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 CSPA; and the Court should enter Judgment for CSPA and against LFG for the amount of said costs and fees, for which execution should issue.
- e. LFG must pay 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 CSPS and against LFG 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
CSPS 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 3rd day of October 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 LFG, 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

Exhibit A

Exhibit A



LAW OFFICE OF
SHERMAN BROD, P.A.

304 S. PLANT AVE.
TAMPA, FLORIDA 33606

e-mail: brod@usa.com

PLEASE REPLY TO:

TRIAL PRACTICE
BUSINESS, ESTATES
PERSONAL INJURY
GENERAL PRACTICE

P.O. BOX 18877
TAMPA, FLORIDA 33679-8877

PHONE: (813) 251-4389
CELL: (813) 295-8080
FAX: (866) 520-4125

October 3, 2020

Certified Mail No: 7017 0190 0000 7468 9515

Robert Beyer, Manager
LFG Acquisitions, LLC
8230 210th St. South, Ste. 2
Boca Raton, FL 33433

And Via Email to: rb@aptsuites.com

Re: Provisional Notice of Termination of the Purchase and Sale Agreement wherein:
Seller is: CSPS HOTEL, INC.
Buyer is: LFG ACQUISITIONS, LLC
Property being Sold: 210 E. Fowler Ave., Tampa, FL

Dear Beyer:

As you know, I represent CSPS Hotel, Inc.

In the event that COVID-19 does constitute a Force Majeure and that it prevented or reasonably interfered with your closing of your purchase of the property located at 210 E. Fowler Ave., Tampa, FL, CSPS Hotel Inc., and therefore your letter of March 5, 2020 to CSPS Hotel, Inc. postponing the closing was effective under paragraph 36 of the above described Purchase and Sale Agreement; then CSPS Hotel, Inc. hereby terminates said Purchase and Sale Agreement in accordance with said paragraph 36 because the alleged Force Majeure has lasted for more than ninety (90) days.

If you have any questions, please call your Attorney. The Rules of the Florida Bar Association prevent me from talking to you without your Attorney's presence or consent.

Sincerely,

Sherman M. Brod

SMB/sg

cc: Scott M. Wellikoff, Attorney, 1300 N. Federal HWY., Ste. 107, Boca Raton, FL 33498
and via email to swellikoff@adwellgroup.com and aadler@adwellgroup.com.