

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

THE ASHFORD CONDOMINIUM)
ASSOCIATION, INC.,)
)
Plaintiff,) CIVIL ACTION
)
v.) FILE NO. _____
)
CHARLES SURESH MORAIS AND)
KIMBERLY DAWN JAMES MORAIS,)
)
Defendants.)

COMPLAINT FOR MONEY OWED

This is an action for money owed pursuant to the Georgia Condominium Act, O.C.G.A. § 44-3-70, et seq., (hereinafter referred to as the "Act").

1.

Plaintiff is an incorporated condominium association responsible for the management and maintenance of the common elements of The Ashford Condominium development, in accordance with the Act and the duly recorded Declaration of Condominium for The Ashford Condominium (the "Declaration").

2.

Defendants are the owners of a condominium unit at The Ashford Condominium development, that unit being: 241 Ashford Circle, Dunwoody, Dekalb County, Georgia 30338.

3.

Defendant Kimberly Dawn James Morais is subject to the jurisdiction of this Court. Service of Summons and a copy of the Complaint may be served on Defendant Kimberly Dawn James Morais at her residence, which address is: 241 Ashford Circle, Dunwoody, Dekalb County, Georgia 30338.

4.

Defendant Charles Suresh Morais is subject to the jurisdiction of this Court. Service of Summons and a copy of the Complaint may be served on Defendant Charles Suresh Morais at his place of business, which address is: 3003 Summit Boulevard, 14th Floor, Atlanta, Dekalb County, Georgia 30319.

5.

As owners of the Unit, Defendants are subject to all terms, conditions, and requirements of the Declaration.

6.

Pursuant to the Declaration and the Act, Defendants are required to pay assessments to Plaintiff as their share of the common expenses for maintenance and operation of the development and other charges as are more particularly set forth in the Declaration.

7.

Defendants have failed and refused to pay timely the lawful assessments incurred pursuant to the Declaration of Condominium and the Act. Consequently, the Association has accelerated through December 31, 2009, all assessments due. Defendants are indebted to Plaintiff in the principal amount of Six Thousand Six Hundred Ninety Nine and 75/100 Dollars (\$6,699.75).

8.

In accordance with the Declaration of Condominium, Plaintiff is authorized to institute suit to collect past due maintenance assessments, along with all costs of collection, a late charge, interest at the rate of ten percent (10%) per annum from the date the same was first due and payable, reasonable attorney's fees actually incurred, and any other amounts allowed for by the Act.

9.

Pursuant to O.C.G.A. § 44-3-109, a lien is created against the Unit for the above stated charges.

WHEREFORE, Plaintiff demands:

- (a) Judgment against Defendants Charles Suresh Morais and Kimberly Dawn James Morais in the amount of \$6,699.75, plus costs of this proceeding, any and all future assessments and charges owing to Plaintiff herein accruing after the date of this Complaint which remain unpaid through the date of judgment, interest at the rate of ten (10%) per annum from the date of the assessment was first due and payable and reasonable attorney's fees actually incurred;

- (b) Such other and further relief as this Court may deem just and proper.

This 12th day of February, 2009.

Respectfully Submitted,

WEINSTOCK & SCAVO, P.C.

BY: _____

Steven M. Winter
State Bar No. 764206
Elizabeth A. Frey
State Bar No. 276899

3405 Piedmont Road, N.E.
Suite 300
Atlanta, Georgia 30305
404/231-3999

COPY

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

THE ASHFORD CONDOMINIUM)
ASSOCIATION, INC.,)

Plaintiff,)

vs.)

CHARLES SURESH MORAIS and)
KIMBERLY DAWN JAMES MORAIS,)

Defendants.)

CIVIL ACTION
FILE NO. 09-CV-2479-1

ANSWER, DEFENSES, AND COUNTERCLAIM OF CHARLES S. MORAIS

COMES NOW, Charles Morais, Defendant in the above-styled action, and responds to the Plaintiff The Ashford Condominium Association, Inc. Complaint for Money Owed (“Complaint”) as follows:

FIRST DEFENSE

The Plaintiff’s Complaint fails to set forth a claim for which relief can be granted.

SECOND DEFENSE

The Plaintiff’s claims are barred to its own tortious actions, the damages of which exceed any amount owed by Defendant Charles Morais.

THIRD DEFENSE

The Doctrine of Setoff bars the recovery sought by the Plaintiff.

FOURTH DEFENSE

The Co-Defendant Charles Morais responds to the individually-numbered Paragraphs set forth in the Plaintiff’s Complaint as follows:

1.

The Defendant Charles Morais admits the averments set forth in Paragraph 1 of Plaintiff's Complaint.

2.

The Defendant Charles Morais admits only that he is the owner of the referenced condominium unit.

3.

The Defendant Charles Morais admits only that, if properly served, Defendant Kimberly Dawn James Morais is subject to the jurisdiction of this Court.

4.

The Defendant Charles Morais admits that jurisdiction and venue are proper as to him in this matter.

5.

The Defendant Charles Morais lacks knowledge sufficient to form a belief as to the truth of the averments set forth in Paragraph 5 of Plaintiff's Complaint, which averments therefore stand denied.

6.

The Defendant Charles Morais lacks knowledge sufficient to form a belief as to the truth of the averments set forth in Paragraph 6 of Plaintiff's Complaint, and further lacks knowledge as to the requirements purportedly established through the Declaration. Said Defendant requires strict proof as to all such claims.

7.

The Defendant Charles Morais admits only that the Defendants have failed to pay “all assessments due.” Said Defendant lacks knowledge sufficient to form a belief as to the truth of the remaining averments set forth in Paragraph 7 of Plaintiff’s Complaint.

8.

The Defendant Charles Morais lacks knowledge sufficient to form a belief as to the truth of the averments set forth in Paragraph 8 of Plaintiff’s Complaint, which averments therefore stand denied.

9.

No response is required from this Defendant with respect to the legal conclusions set forth in Paragraph 9 of Plaintiff’s Complaint.

10.

All remaining averments of liability set forth in the Plaintiff’s Complaint not specifically responded to herein are hereby expressly denied.

WHEREFORE, the Defendant Charles Morais, having fully responded to the Plaintiff’s Complaint, hereby respectfully petitions this Honorable Court to dismiss same, and to award all costs incurred in responding.

II. COUNTERCLAIM

COMES NOW, Charles Morais, Plaintiff in Counterclaim herein, and shows the Court in support of this, his Counterclaim against The Ashford Condominium Association, Inc. as follows:

1.

Plaintiff The Ashford Condominium Association, Inc. is subject to the jurisdiction and venue of this Court by virtue of the filing of its Complaint in the above-styled action.

2.

The Plaintiff The Ashford Condominium Association, Inc. filed its Complaint in this Court on or about February 19, 2009.

3.

While the Complaint was filed in February 2009, the Plaintiff did not personally serve Charles Morais until January 28, 2010.

4.

Through their efforts to obtain personal service upon Charles Morais, The Ashford Condominium Association, Inc., through its current Board of Directors, committed multiple tortious actions for which it is liable to Charles Morais for damages.

5.

On or about January 28, 2010, Charles Morais was at the Property, at his condominium unit and on common property, visiting his son and ex-wife, Kimberly Morais. Upon information and belief, one or more members of Board of Directors for The Ashford Condominium Association, Inc. witnessed Mr. Morais and thereafter contacted the DeKalb County Police Department.

6.

The Ashford Condominium Association, Inc., by and through its Board of Directors, falsely reported to the DeKalb County Police Department that Charles Morais was on the premises in violation of a restraining order. In fact, no such restraining order exists.

7.

In response to The Ashford Condominium Association, Inc.'s report, a DeKalb County Police Officer arrived at the scene and based solely upon the Association's report unlawfully detained Charles Morais.

8.

The Ashford Condominium Association, Inc. falsely reported the incident to the DeKalb County Police Department with the specific intent to have Charles Morais detained. During the detention, the Association contacted its private process server, who thereafter arrived at the Property and served Charles Morais.

9.

Thereafter, the Police Officer determined that Mr. Morais was not subject to any restraining order and that the complaint contained false information. Mr. Morais was then released.

10.

The Ashford Condominium Association, Inc.'s actions towards Charles Morais resulted in the false imprisonment of Mr. Morais as defined by O.C.G.A. § 51-7-20. The Association and its individual Board of Directors are liable to Mr. Morais for damages as a result of their violation of O.C.G.A. § 51-7-20, and as set forth in O.C.G.A. § 51-7-22, in an amount to be proven at trial.

11.

The Ashford Condominium Association, Inc.'s false statements to the DeKalb County Police Department constitute a criminal violation of O.C.G.A. § 16-10-24, which violation amounts to negligence *per se*. As a result of the Association's negligence, Charles Morais was proximately damaged in an amount to be proven at trial.

12.

The Ashford Condominium Association, Inc.'s actions constitute bad faith as set forth in O.C.G.A. § 13-6-11, and therefore, Charles Morais is entitled to an award of attorney's fees and expenses of litigation in an amount to be proven at trial.

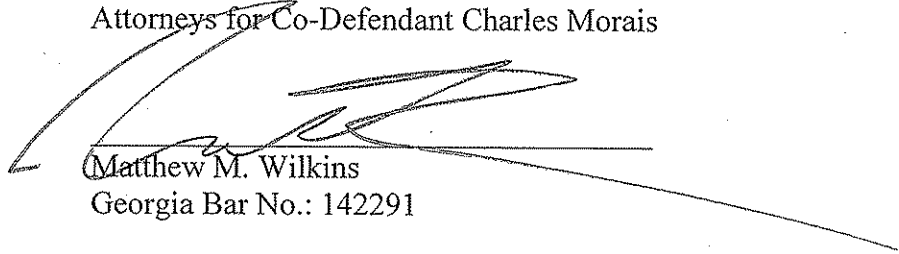
WHEREFORE, the Defendant Charles Morais respectfully petitions this Honorable Court for the following relief:

- (a) For a jury trial;
- (b) That the Co-Defendant Charles Morais have judgment and recover damages against The Ashford Condominium Association, Inc. for false imprisonment;
- (c) That the Co-Defendant Charles Morais have judgment and recover damages against The Ashford Condominium Association, Inc. for its negligence;
- (d) That the Co-Defendant Charles Morais have judgment and recover damages against The Ashford Condominium Association, Inc. for attorney's fees and costs of litigation; and,
- (e) For all such other and further relief as this Court deems just and proper.

This 26th day of February, 2010.

KING & YAKLIN, L.L.P.

Attorneys for Co-Defendant Charles Morais

A large, stylized handwritten signature in black ink, appearing to read 'Matthew M. Wilkins', is written over the text below it.

Matthew M. Wilkins

Georgia Bar No.: 142291

840 Roswell Street
Marietta, Georgia 30060
(770) 424-9235
(770) 424-9239

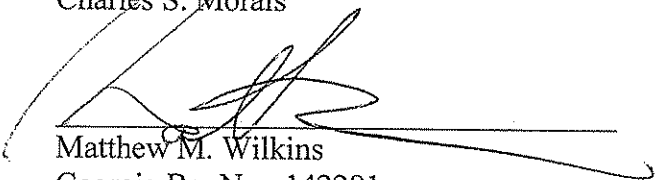
CERTIFICATE OF SERVICE

This is to certify that I have this day served upon those persons listed below a copy of the **ANSWER, DEFENSES, AND COUNTERCLAIM OF CHARLES S. MORAIS** by depositing a copy of same in the United States Mail in a properly addressed envelope with sufficient postage thereon to insure delivery to:

Steven M. Winter, Esq.
Weinstock & Scavo, P.C.
3405 Piedmont Rd., N.E.
Suite 300
Atlanta, GA 30305

This 26th day of February, 2010.

KING & YAKLIN, LLP
Attorneys for Defendant
Charles S. Morais



Matthew M. Wilkins
Georgia Bar No.: 142291

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