

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

ROBERT FELNER,

Plaintiff,

- against -

BRYAN BANTRY,

Defendant.

Index No. 12826/12

**VERIFIED ANSWER &  
COUNTERCLAIMS**

Defendant, Bryan Bantry, by his attorneys, Eaton & Van Winkle LLP, as and for his Verified Answer & Counterclaims, states as follows:

1. Denies knowledge or information sufficient to form a belief concerning the truth of the allegations of paragraph 1 of the Complaint.
2. Admits the allegations of paragraph 2 of the Complaint.
3. Denies the allegations of paragraph 3 of the Complaint, except admits that the referenced premises was purchased on or about the indicated date.
4. Admits the allegations of paragraph 4 of the Complaint.
5. Admits the allegations of paragraph 5 of the Complaint.
6. Denies the allegations of paragraph 6 of the Complaint.
7. Denies the allegations of paragraph 7 of the Complaint, except admits that one or more loans have been obtained, secured by mortgages against the referenced property.
8. Denies the allegations of paragraph 8 of the Complaint.
9. Denies the allegations of paragraph 9 of the Complaint, except admits that

there is a dispute between the parties.

10. As and for his answer to the allegations of paragraph 10 of the Complaint, repeats and re-alleges his answers to paragraphs 1 through 9 of the Complaint.

11. Denies the allegations of paragraph 11 of the Complaint, except admits that plaintiff seeks a judgment of partition.

12. Denies the allegations of paragraph 12 of the Complaint.

13. Denies the allegations of paragraph 13 of the Complaint.

14. Denies the allegations of paragraph 14 of the Complaint, except admits that the property in question is improved by a single unit home and that the home contributes to the overall value of the property.

15. Denies the allegations of paragraph 15 of the Complaint.

16. Denies the allegations of paragraph 16 of the Complaint.

17. As and for his answer to the allegations of paragraph 17 of the Complaint, repeats and re-alleges his answers to paragraphs 1 through 16 of the Complaint.

18. Denies the allegations of paragraph 18 of the Complaint.

19. Denies the allegations of paragraph 19 of the Complaint.

20. Denies the allegations of paragraph 20 of the Complaint.

#### First Affirmative Defense

21. The Complaint fails to state a cause of action upon which relief can be granted.

#### Second Affirmative Defense

22. The Complaint is barred by plaintiff's unclean hands, because plaintiff has contributed no financial resources to the purchase, maintenance and operation of the

property, and has engaged in various unlawful and improper conduct designed to harass and intimidate defendant, real estate brokers, tenants and others, all of which activities have interfered with defendant's ability to maximize the income and minimize the expenses associated with the ownership, development, management and operation of the property.

#### Third Affirmative Defense

23. The property at issue is a multi-acre, high-end luxury home with unique features and a current value believed to be well in excess of \$10 million, and which defendant is actively attempting to sell. Even an ordinary private sale of the property is difficult to accomplish, due to the limited number of available purchasers for properties of such kind, the difficulty of showing the property while it is rented out to tenants, the extra due diligence normally performed by purchasers of properties of such kind, and other factors.

24. A judicially ordered auction or other forced sale of the property would be likely to result in a sale at a price which would be dramatically less than the price that will be generated in the normal course of marketing and selling properties of such kind at the highest end of the luxury market.

25. Partition cannot be effected without great prejudice to defendant, is therefore barred by the Real Property Actions and Proceedings Law and principles of equity.

#### Fourth Affirmative Defense

26. If and to the extent that plaintiff seeks a physical partition of the property such action is barred by local zoning.

#### Fifth Affirmative Defense

27. Plaintiff's claims are barred in whole or in part by plaintiff's laches.

#### Sixth Affirmative Defense

28. Partition is a statutory remedy available under Article 9 of the Real Property Actions and Proceedings Law only upon satisfaction of the statutory pre-conditions set forth therein, including without limitation a current right of possession of the real property at issue.

#### Counterclaims

##### Parties

29. Defendant, Bryan Bantry, is an individual residing in New York, New York.

30. Upon information and belief, plaintiff, Robert Felner, is an individual residing in New York, New York.

##### Facts Common to All Counterclaims

31. On or about August 24, 1989, defendant purchased the house and real property located at 30 Wainscott Stone Road, East Hampton, New York (the "Property") with his own personal funds, plus financing, secured by a mortgage upon the Property. Plaintiff did not contribute any personal funds toward the purchase of the Property.

32. Defendant and plaintiff agreed that plaintiff would have an undivided twenty-five percent (25%) interest in the Property, as tenants in common, provided and so long plaintiff covered his twenty-five percent share of all of the liabilities, costs, and expenses associated with the ownership, development, management and operation of the Property, after collection of any rental or other income generated from the ownership of the Property.

33. Defendant assumed primary or sole responsibility for the management and operation of the Property with plaintiff's knowledge and consent.

34. Among the many responsibilities so assumed and performed, or arranged to be performed, by defendant on both named owners' behalf were: (a) researching and hiring rental agents, (b) vetting prospective tenants, (c) negotiating and executing leases, (d) securing appropriate insurance coverage, (e) performing exterior and interior maintenance, repairs and upgrades, (f) hiring and overseeing household staff, (g) purchasing supplies, (h) paying bills, including payroll expenses, insurance, brokerage fees and property taxes, (i) collecting rental income, and (j) performing all of the other tasks normally associated with the ownership, development, management and operation of a high-end luxury rental residential property.

35. In most or all years from the date of purchase of the Property to date, the cost of ownership, development, management and operation of the Property has exceeded the income generated from the Property. The accumulated net loss from the ownership, development, management and operation of the Property is in the many millions of dollars.

36. Plaintiff has never paid or reimbursed to defendant his allocable share of the expenses incurred from year to year in respect of the purchase, development, management and operation of the Property.

37. Over the years, plaintiff has used the Property on many occasions for his own personal enjoyment and the enjoyment of his guests, and has not paid any of the increased staff, food, cleaning and other expenses incurred as a result of his use of, and wear and tear on, the Property.

38. Despite the lack of profits from the ownership of the Property, and despite plaintiff's lack of contributions toward the purchase, development, management and operation of the Property, defendant has advanced to plaintiff or caused to be advanced to plaintiff an aggregate amount well into the millions of dollars, and paid or caused to be paid numerous personal expenses on his behalf, in anticipation of future profits, all without any corresponding consideration from plaintiff, and with the mutual understanding and expectation that defendant would be repaid or reimbursed.

39. In order to meet and withstand the net losses from the ownership, development, management and operation of the Property, as well as the additional very substantial advances made to plaintiff and personal expenses paid on his behalf, defendant, acting with plaintiff's consent, has obtained one or more loans or replacement loans, secured by mortgages upon the Property.

40. The proceeds from the loans secured by mortgages upon the Property have only partially defrayed the substantial costs and expenses associated with the ownership, development, management and operation of the Property, as well as the additional substantial advances made to plaintiff and the personal expenses paid by defendant on behalf of plaintiff.

41. In addition, the debt obligations associated with the mortgages so taken out for plaintiff's benefit, and with his knowledge and consent, have added to the annual expenses associated with the ownership, development, management and operation of the Property, and increased the overall net loss from the ownership, development, management and operation of the Property.

42. Upon information and belief, the current accumulated net loss from the

ownership, development, management and operation of the Property well exceeds \$12 million, plaintiff's twenty five percent (25%) share of which well exceeds \$3 million, none of which has been paid to defendant.

43. Upon information and belief, the additional advances made to plaintiff or caused to be advanced to plaintiff, and personal expenses paid or caused to be paid on his behalf, well exceeds \$500,000, none of which has been repaid to defendant.

44. Defendant has no adequate remedy at law.

As and for a First Counterclaim  
(Declaratory Judgment)

45. Defendant repeats and re-alleges each of the allegations of paragraphs 1 through 44 above as if set forth at length herein.

46. A dispute has arisen between the parties concerning their respective rights and obligations with respect to (a) the equitable ownership of the Property, (b) the costs, expenses and liabilities associated with the ownership, management and operation of the Property, (c) the advances made to plaintiff, (d) the personal expenses paid on plaintiff's behalf, (e) plaintiff's failure to reimburse defendant for the amounts referred to in (b), (c) and (d) above, and (f) the income lost as a result of plaintiff's conduct.

47. Defendant is entitled to a declaratory judgment that plaintiff has no rights in or to the Property, shall execute a quitclaim deed in favor of defendant with respect to plaintiff's alleged twenty-five percent (25%) interest in the Property, and that plaintiff is liable for and shall pay to defendant an amount equal to: twenty-five percent (25%) of all of the staff, maintenance, repair, mortgage, tax, and other costs, liabilities and expenses

associated with or related to the ownership, development, management and operation of the Property, less rental income derived from the Property; plus the advances made to plaintiff; plus the personal expenses paid on his behalf; plus income lost and expenses incurred as a result of plaintiff's conduct.

As and for a Second Counterclaim  
(Unjust Enrichment)

48. Defendant repeats and re-alleges each of the allegations of paragraphs 1 through 47 above as if set forth at length herein.

49. Plaintiff was and continues to be unjustly enriched at defendant's expense because he has received from defendant many hundreds of thousands of dollars in advances against anticipated profits, and payment of personal expenses, all without fair consideration from plaintiff.

50. Plaintiff has also failed and refused to assume responsibility for any of the millions of dollars of expenses and liabilities associated with the ownership, development, management and operation of the Property, after applying proceeds collected from any rental or other income generated from the ownership of the Property.

51. Defendant is entitled to a judgment in an amount to be determined at trial, but believed to be in excess of \$3.5 million.

As and for a Third Counterclaim  
(Injunctive Relief)

52. Defendant repeats and re-alleges each of the allegations of paragraphs 1 through 51 above as if set forth at length herein.

53. Plaintiff is engaged in a pattern of harassment and intimidation of defendant and other individuals connected with the Property, including rental agents

and tenants.

54. Plaintiff's harassing and intimidating conduct includes a specific threat to a one of the real estate agents involved in the marketing and rental of the Property that he "will ... not permit ... any occupancy of the premises" unless he is paid certain amounts which he claims to be owed, and warning the rental agent that she must "insure that [his] demands are met" because he has personally orchestrated evictions in a way which was "very direct and personal" and "extremely unpleasant" for those affected.

55. Upon information and belief, such pattern of harassment and intimidation has also included frightening and angering rental tenants at the Property by entering the Property, or arranging for others to do so, at a time when the rental tenants would reasonably be expected to be asleep, and loudly demanding to see defendant, even though plaintiff knew or had reason to know that defendant was not at the Property.

56. Defendant is being irreparably harmed by plaintiff's conduct and has no adequate remedy at law.

57. By reason of the foregoing, defendant is entitled to an order (a) enjoining plaintiff from harassing, intimidating or coercing, or instructing any person to harass, intimidate or coerce, any real estate agent or other person connected with the letting, management or operation of the Property, (b) enjoining plaintiff from contacting and from instructing or authorizing others to contact defendant or any tenants or the invitees of any tenants at the Property, and (c) enjoining plaintiff from attempting to manage or operate the Property in any manner whatsoever.

WHEREFORE, defendant demands judgment:

- (a) dismissing the Complaint in its entirety with prejudice;
- (b) on the First Counterclaim, a declaration that plaintiff has no rights in or to the Property, ordering him to execute a quitclaim deed in favor of defendant with respect to plaintiff's alleged twenty-five percent (25%) interest in the Property, and directing that plaintiff is liable to and shall pay to defendant an amount equal to: twenty-five percent (25%) of all of the maintenance, repair, mortgage, tax, and other costs, liabilities and expenses associated with the ownership, development, management and operation of the Property, less income collected from the use of the Property; plus the advances made to plaintiff; plus the personal expenses paid or caused to be paid by defendant on plaintiff's behalf; plus the income lost and expenses incurred as a result of plaintiff's conduct; plus interest;
- (c) on the Second Counterclaim, a money judgment in an amount to be determined at trial but believed to be in excess of \$3.5 million;
- (d) on the Third Counterclaim, an order temporarily and permanently enjoining plaintiff from (i) harassing, intimidating or coercing, or instructing any person to harass, intimidate or coerce, any real estate agent or other person connected with the letting, management or operation of the Property, (ii) contacting and from instructing or authorizing others to contact defendant or any tenants or the invitees of any tenants at the Property, and (iii) attempting to manage or operate the Property in any manner whatsoever; and
- (e) granting such other and further relief as is just, fair and proper.

Dated: New York, New York  
July 30, 2012

EATON & VAN WINKLE LLP

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