

IN THE CHANCERY COURT FOR DEKALB COUNTY, TENNESSEE

PRATIK PANDHARIPANDE, M.D.,)
)
 Plaintiff,)
)
 vs.)
)
 FSD CORPORATION,)
)
 Defendant.)

No. 2019 CV 60

FSD CORPORATION,)
)
 Counter-Plaintiff,)
)
 vs.)
)
 PRATIK PANDHARIPANDE, M.D.,)
)
 Counter-Defendant.)

ANSWER AND COUNTERCLAIM TO VERIFIED COMPLAINT

ANSWER

Comes now Defendant, FSD Corporation, by and through counsel and responds to Plaintiff's Verified Complaint in this Answer, as follows:

PARTIES

1. Admitted.
2. Admitted.

FACTS

3. Admitted, upon information and belief.
4. Admitted.

5. Admitted.
6. Admitted, upon information and belief.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.

11. FSD Corporation admits that Plaintiff acquired his property on November 18, 2015, upon information and belief. FSD Corporation is without sufficient information to form a belief as to the motivations for purchasers of property in the Center Hill Lake area. FSD Corporation is without sufficient information to form a belief as to Plaintiff's motivations for purchasing his property. FSD Corporation is without sufficient information to form a belief as to whether Center Hill Lake is a tourist destination for individuals in Tennessee, from other states and internationally. Upon information and belief, FSD Corporation admits that no restrictive covenants prevented Plaintiff from leasing his property on a short-term basis at the time he purchased it.

12. FSD Corporation is without sufficient information to form a belief as to what Plaintiff hoped to accomplish through the purchase of property or who he engaged to manage it. FSD Corporation admits that Plaintiff has leased the property on a short-term basis, but is without sufficient information to form a belief about the remaining allegations in this paragraph.

13. FSD Corporation admits that undersigned counsel sent three letters to various offenders, including Plaintiff, to explain that use of the property for short-term rentals violated the Declaration of Covenants, Conditions, and Restrictions as amended ("the Amended Declaration"). FSD Corporation admits the remaining allegations in this paragraph.

14. FSD Corporation admits the first sentence of paragraph 14. FSD Corporation admits that it did not include a copy of the duly recorded Amendment with this notice of violation. Plaintiff had actual knowledge that the Amendment had passed and was present for at least one meeting during which the Amendment was discussed.

15. The allegations of paragraph 15 are expressly denied and FSD Corporation demands strict proof of these allegations.

16. The allegations in the first sentence of paragraph 16 are admitted. FSD Corporation admits that Mr. Whelan leased his property in Four Seasons on a short-term basis prior to the passage of the Amendment. FSD Corporation is without sufficient information to form a belief about the remaining allegations in paragraph 16.

17. FSD Corporation is without sufficient information to form a belief as to the allegations in paragraph 17, and demands strict proof thereof.

18. The allegations in paragraph 18 are expressly denied and strict proof is demanded thereof.

19. The allegations in the first two sentences of paragraph 19 are admitted, upon information and belief. The allegations in the last sentence of paragraph 19 are expressly denied and FSD Corporation demands strict proof of these allegations.

COUNT 1: DECLARATORY JUDGMENT

20. FSD Corporation adopts and incorporates its responses to paragraphs 1-19, as stated above.

21. Paragraph 21 is a prayer for relief from this honorable Court and does not require a response from FSD Corporation. To the extent that a response is required, FSD Corporation denies the allegations.

22. The allegations in paragraph 22 are denied.

COUNT 2: INJUNCTIVE RELIEF

23. FSD Corporation adopts and incorporates its responses to paragraphs 1-22, as stated above.

24. FSD Corporation expressly denies the allegations in paragraph 24 and demands strict proof thereof.

25. FSD Corporation expressly denies the allegations in paragraph 25 and demands strict proof thereof.

26. The remaining allegations in the Verified Complaint are merely prayers for relief which merit no response. To the extent that a response is required, the allegations are denied.

27. Any allegations in the Verified Complaint that have not been admitted or denied are hereby denied as if they had been specifically denied and strict proof is demanded thereof.

AFFIRMATIVE DEFENSES

28. FSD Corporation avers and alleges that the Verified Complaint fails to state a claim for which relief can be granted, and should therefore be dismissed.

29. FSD Corporation affirmatively avers that Plaintiff is bound by the Third Amendment to the Declaration, which was duly recorded in Book 431, Page 19 of the DeKalb County Register of Deeds Office.

30. FSD Corporation affirmatively avers that Plaintiff has and continues to violate the Third Amendment to the Declaration.

31. FSD Corporation affirmatively avers that it has at all times taken action in accordance with its business judgment and consistently with its obligations under the Amended Declaration and By-Laws.

32. Plaintiff has no legal grounds to support his claim for attorneys' fees.

WHEREFORE, having fully answered the Verified Complaint filed against it in this cause, including all subparts and prayers for relief, Defendant, FSD Corporation, prays that this action filed against it be dismissed, or in the alternative, a jury of twelve be impaneled to try this cause.

COUNTERCLAIM

Comes now Counter-Plaintiff, FSD Corporation, by and through counsel and for this cause of action against Counter-Defendant, would state as follows:

PARTIES

1. FSD Corporation is a for-profit corporation formed under Tennessee law, with a principal business address of 351 Marina Drive, Smithville, Tennessee 37166.
2. Pratik Pandharipande is an adult citizen and resident of Williamson County, Tennessee.

JURISDICTION AND VENUE

3. The declaratory judgment and injunctive relief requested by FSD Corporation arises from a dispute over the applicability of duly recorded covenants, conditions and restrictions governing property in DeKalb County and therefore, jurisdiction is proper in this Court pursuant to Tenn. Code Ann. §§ 16-11-101, *et seq.*

4. Venue is proper in this Court pursuant to Tenn. Code Ann. § 16-11-114.

FACTS

5. Counter-Defendant purchased property at 181 July Drive, Smithville, Tennessee 37166 on November 18, 2015.

6. This property was purchased subject to a Declaration of Covenants, Conditions and Restrictions by FSD Corporation (“the Declaration”), which was recorded in Book A-6, Page 893 in the Register of Deeds Office for DeKalb County, Tennessee.

7. Pursuant to Article XIII, Section 2 of the Declaration, FSD Class “A” Shareholders are given the right to amend the Declaration after an affirmative vote in person or by proxy by the majority of the shareholders.

8. On July 23, 2018, the majority of the shareholders exercised this right under the Declaration and voted to approve the Third Amendment to the Declaration of Covenants, Conditions and Restrictions Involving Leasing (“the Amendment”). **See Exhibit A.**

9. The Amendment was recorded as Instrument No. 183832 in the Register of Deeds Office for DeKalb County, Tennessee at Book 431, Page 19 on July 24, 2018.

10. This Amendment specifically prohibits the leasing of homes owned by FSD Corporation shareholders for less than 30 consecutive days.

11. The language of the Amendment prohibits leasing unless the stipulations in the Amendment are followed.

12. One such stipulation is that at least 10 days prior to the first date of the lease the owner must provide identifying information about the lessee so that FSD Corporation can conduct a background check of the lessee.

13. Another stipulation is that the owner shall require the lessee to sign a document certifying that the lessee has read and agrees to comply with all FSD Corporation covenants, conditions, restrictions, by-laws, rules and regulations.

14. The Amendment was clear from the very first stipulation in the entire Amendment that no leases for a duration of fewer than 30 consecutive days would be permitted.

15. Despite these clear and unambiguous mandates in the duly recorded Third Amendment to the Declaration, Counter-Defendant has persisted in listing his property for lease on various short-term rental company websites.

16. Prior to commencement of the original Complaint, Counter-Defendant was notified several times in writing by FSD Corporation's attorney that Counter-Defendant was violating the covenants that he had agreed to be bound by when he purchased his property.

17. Despite these violation notices, Counter-Defendant asserts that these covenants, conditions and restrictions with respect to short-term rentals do not apply to him.

VIOLATIONS OF DECLARATION AND BY-LAWS

18. FSD Corporation incorporates paragraphs 1-17 of this Counterclaim.

19. This is an action by FSD Corporation to enforce the provisions of the Association's Declaration of Covenants, Conditions, and Restrictions, and By-Laws and enjoin the Counter-Defendant's continuing breach thereof.

20. Pursuant to the Declaration, recorded in in Book A-6, Page 893 in the Register of Deeds Office for DeKalb County, Tennessee, Article XIII, Section 2 provides "...this Declaration may be amended only by the affirmative vote (in person or by proxy) of a majority of the Class "A" Stockholders. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Register's Office of DeKalb County, Tennessee, *and shall be effective when recorded* unless otherwise provided therein." (*emphasis added*)

21. On July 23, 2018, FSD Corporation obtained an affirmative vote of the majority of the Class "A" Stockholders to pass the following Third Amendment to the Declaration:

“Leasing homes owned by FSDC shareholders shall be allowed with the following stipulations:

- i. The length of the lease must be for a minimum of 30 consecutive days.
- ii. At least 10 days in advance of the beginning date for the lease, the owner must provide the full legal name(s), date(s) of birth, driver’s license number(s), and \$25.00 to Four Seasons Development Corporation for the purpose of FSDCs conducting a background check(s) of the lessee(s).
- iii. At or before the commencement of the lease period, the owner shall require the lessee(s) to sign a document that the lessee(s) has read and agrees to comply with all FSDC covenants, conditions, and restrictions, all by-laws as well as all rules and regulations of FSDC.
- iv. A copy of the fully executed lease as well as the signed document by the lessee(s) (referred to in iii above) shall be submitted to the FSDC resident manager within 10 days of the beginning date of the lease
- v. Access to amenities will be available to lessee(s) thru FSDC as long as all FSDC rules, regulations and other governing documents are followed.
- vi. Any owner may lease only one property, at any given time.
- vii. Leasing agencies may arrange leases between an owner and his lessee under the above provisions as long as all FSDC rules, regulations and other governing documents are followed. In all cases, subletting of the property(ies) is strictly prohibited.
- viii. Failure by the owner’s lessee(s) to abide by FSDC declaration of covenants, conditions and restrictions, by-laws as well as rules and regulations shall result in forfeiture of the lessee’s access to FSDC amenities.
- ix. Any owner engaged in leasing or subleasing activities as of the date of this amendment shall be allowed to continue leasing or subleasing activities until the expiration of the term of said lease or said lot is sold or conveyed to a third party. No lease or sublease term extensions are permitted. In order to ascertain the expiration date of current leases, any owner who is leasing as of the date of this Third Amendment shall provide a copy of the lease to the FSDC Board’s secretary within two weeks of the date this Third Amendment is filed with the DeKalb County Register of Deeds’ office.
- x. Owners shall remain responsible for all activities of their lessees.
- xi. Lessees, who rent property from Lessors who own property outside FSDC, but who also own an unimproved Class A lot(s) within the FSDC properties, are not entitled to the use of the FSDC common areas and amenities.”

22. This Third Amendment was duly recorded and became effective as Instrument

No. 183832 in the Register of Deeds Office for DeKalb County, Tennessee at Book 431, Page 19

on July 24, 2018

23. While the Amendment did contain a grandfathering provision, it does not apply to Counter-Defendant because the leasing activities that he was engaged in during July 2018 have expired.

24. In an effort to avoid the necessity of filing this action and incurring expenses in connection therewith, FSD Corporation through its attorney notified Counter-Defendant of his violations of the Declaration and requested that he cure the violations, via various letters.

25. Counter-Defendant refuses to cure the violations and refuses to align his property with the Amended Declaration, and therefore has diminished other homeowners' ability to enjoy their own property.

CLAIM FOR INJUNCTIVE RELIEF

26. FSD Corporation incorporates paragraphs 1-25 of this Counterclaim.

27. FSD Corporation respectfully requests that this honorable Court enjoin Counter-Defendant from continuing to lease on a short-term basis in violation of the FSD Corporation governing documents.

28. Pursuant to Tennessee Rule of Civil Procedure 65.04(2), a Court is authorized to grant an injunction "if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual."

29. FSD Corporation asserts that the Counter-Defendant's continued violation of the governing documents is and will continue to cause immediate and irreparable injury due to either the appearance of selective enforcement or the appearance of non-enforcement of the duly

recorded Third Amendment and potential for other FSDC Shareholders to lose faith in the validity of this binding use restriction.

30. FSD Corporation further asserts that it is very likely to be successful on the merits of its request for declaratory judgment because the Declaration provides the Shareholders with the ability to amend the Declaration with an affirmative vote of the majority in Article XIII, Section 2.

31. Furthermore, FSD Corporation recorded the Third Amendment on July 24, 2018 in the DeKalb County Register of Deeds Office, rendering it effective on that date.

32. The language of the Amendment clearly restricts short-term rentals and does not provide shelter to Shareholders under a grandfathering provision after a current lease has expired.

33. Finally, the irreparable harm for FSD Corporation if this injunction is not granted far outweighs any injury to Counter-Defendant, based on the fact that Counter-Defendant does not live at the property that he is renting on a short-term basis, and this is not his sole source of income, as the Verified Complaint touted his various current medical practices, affiliations and honors.

WHEREFORE, and in consideration of the above, **FSD CORPORATION PRAYS AS FOLLOWS:**

1. That this Counterclaim be served, and that Counter-Defendant be required to answer within the time allowed by law;

2. That a declaratory judgment be entered pursuant to T.C.A. §29-14-101, *et seq.* and Rule 57, Tennessee Rules of Civil Procedure, declaring that Counter-Defendant is in

violation of the Amended Declaration through the conduct herein alleged, and declaring the rights and obligations of the parties pursuant thereto;

3. That the Court order a speedy hearing of this action and advance it on the calendar, pursuant to Rule 57 of the Tennessee Rules of Civil Procedure;

4. Following a hearing to be scheduled as soon as practicable, that a mandatory injunction be entered ordering Counter-Defendant to take appropriate remedial action to abate the continued violations of the prohibition against short-term rentals, to bring the property into compliance with the Amended Declaration; that Counter-Defendant be restrained and enjoined from continuing to breach the Amended Declaration through the wrongful acts described herein; and that such injunctive relief be made permanent pursuant to Rule 65.01 of the Tennessee Rules of Civil Procedure;

5. That a judgment be awarded for all costs and expenses incurred by FSD Corporation in enforcing the Declaration, including court costs and reasonable attorney's fees and other fees and expenses, and that such award be charged to and assessed against Counter-Defendant and be added to and deemed a part of his respective share of the common expenses and that the Association shall have a lien for the same, as provided in the Declaration;

6. That the costs of this action, including discretionary costs, be taxed against the Counter-Defendant; and

7. That FSD Corporation has such further general and equitable relief as the court deems just and proper.

Respectfully submitted,

ORTALE KELLEY LAW FIRM



Gerald C. Wigger (#13463)

Emmie Futrell (#36803)

Attorneys for Defendant

330 Commerce Street, Suite 110

Nashville, Tennessee 37219-9895

(615) 256-9999

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via US Mail, postage pre-paid, to:

Ben M. Rose
Joshua D. Arters
Rose Arters, PLLC
P.O. Box 1108
Brentwood, TN 37024

on this the 15th day of August, 2019.

ORTALE KELLEY LAW FIRM



Gerald C. Wigger

Prepared by: ATTORNEY

GERRY WIGGEN

7/23/2018

NASHVILLE, TENNESSEE

IN WITNESS WHEREOF, the Secretary of the Corporation, being authorized to do so, certifies that, as of the day and year first above written, this Third Amendment was approved by the requisite number of Owners of the Corporation.

CORPORATION:

FSD Corporation, a Tennessee corporation

By: Sally Bynum
FSDC, Secretary

STATE OF TENNESSEE
COUNTY OF DEKALB }

I, JOE P. BINKLEY JR., a Notary Public of said State and County, do hereby certify that SALLY BYNUM personally appeared before me and acknowledged that he/she is the Secretary of FSD Corporation, a Tennessee corporation, and that by authority duly given and on behalf of the Corporation, the foregoing instrument was voluntarily signed in its name by him/her as its Secretary for the purposes therein expressed.

Witness my hand and official stamp or seal, this the 23rd day of JULY, 2018.

Joe P. Binkley Jr.
Notary Public

My Commission Expires: 1/3/2022

(SEAL)



Record Book 431 Page 19



**THIRD AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
INVOLVING LEASING**

ARTICLE XII OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL BE AMENDED BY ADDING THE FOLLOWING SECTION I(u) TO THE END OF SECTION 1

Leasing homes owned by FSDC shareholders shall be allowed with the following stipulations:

- i. The length of the lease must be for a minimum of 30 consecutive days.
- ii. At least 10 days in advance of the beginning date for the lease, the owner must provide the full legal name(s), date(s) of birth, driver's license number(s), and \$25.00 to Four Seasons Development Corporation for the purpose of FSDC s conducting a background check(s) of the lessee(s).
- iii. At or before the commencement of the lease period, the owner shall require the lessee(s) to sign a document that the lessee(s) has read and agrees to comply with all FSDC covenants, conditions and restrictions, all by-laws as well as all rules and regulations of FSDC.
- iv. A copy of the fully executed lease as well as the signed document by the lessee(s) (referred to in iii above) shall be submitted to the FSDC resident manager within 10 days of the beginning date of the lease.
- v. Access to amenities will be available to lessee(s) thru FSDC as long as all FSDC rules, regulations and other governing documents are followed.
- vi. Any owner may lease only one property, at any given time.
- vii. Leasing agencies may arrange leases between an owner and his lessee under the above provisions as long as all FSDC rules, regulations and other governing documents are followed. In all cases, subletting of the property(ies) is strictly prohibited.
- viii. Failure by the owner's lessee(s) to abide by FSDC declaration of covenants, conditions and restrictions, by-laws as well as rules and regulations shall result in forfeiture of the lessee's access to FSDC amenities.
- ix. Any owner engaged in leasing or subleasing activities as of the date of this amendment shall be allowed to continue leasing or subleasing activities until the expiration of the term of said lease or said lot is sold or conveyed to a third party. No lease or sublease term extensions are permitted. In order to ascertain the expiration date of current leases, any owner who is leasing as of the date of this Third Amendment shall provide a copy of the lease to the FSDC Board's secretary within two weeks of the date this Third Amendment is filed with the DeKalb County Register of Deeds' office.
- x. Owners shall remain responsible for all activities of their lessees.
- xi. Lessees, who rent property from Lessors who own property outside FSDC, but who also own an unimproved Class A lot(s) within the FSDC properties, are not entitled to the use of the FSDC common areas and amenities.

Jeffrey L. McMillen, Register
DeKalb County

Rec #:	123594	Instrument #:	183832
Rec'd:	10.00	Recorded:	
State:	0.00	7/24/2018 at 10:41 AM	
Clerk:	0.00	in Record Book	
Other:	7.00	431	
Total:	17.00	Page 19-20	