

IN THE CIRCUIT COURT OF THE
9th JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

CIVIL DIVISION

FONTANA ESTATE COMMUNITY
HOMEOWNERS ASSOCIATION INC.
A Florida not-for-profit corporation,

Case No: 2022-CA-004568-O
Div.:

Plaintiff,

vs.

SHIH-CHIEH CHEN, YANG LIU,

Defendants.

_____ /

**DEFENDANT'S ANSWER AND AFFIRMATIVED DEFENSES TO PLAINTIFF'S
SECOND AMENDED COMPLAINT & COUNTERCLAIMS**

COMES NOW, Defendants, Shih-Chieh Chen and Yang Liu, by and through their undersigned attorney, and hereby files this Answer and Affirmative Defenses and Counterclaims in response to Plaintiff's Second Amended Complaint and in support thereof states as follows:

1. Complaint speaks for itself and therefore no response is required;
2. Admit for jurisdictional purposes.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit.
9. Admit.

10. Document speaks for itself and therefore no response is required;
11. Document speaks for itself and therefore no response is required;
12. Documents speaks for itself and therefore no response is required;
13. Defendants restate and incorporate their responses in paragraphs 1 – 12 as if fully stated herein.
14. DENIED and demand strict proof thereof.
15. Admit to extent the letter dated August 10, 2021 is attached to the Complaint and purported to be Exhibit B; DENIED that such letter demanded correction of alleged violations.
16. DENIED; admit to extent of Exhibit C attached to the complaint.
17. Admit.
18. DENIED.
19. DENIED.
20. Without knowledge and therefore Denied.
21. DENIED.
22. Defendants restate and incorporate their responses in paragraphs 1 – 12 as if fully stated herein.
23. DENIED and demand strict proof thereof.
24. Admit to extent that Exhibits are attached to the complaint, DENY all other allegations..
25. DENIED.
26. DENIED.
27. DENY that any amounts are due to the association.
28. DENIED and demand strict proof thereof.
29. Admit.

30. DENIED.

31. Without knowledge and therefore Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

32. As Defendants first affirmative defense, the Defendants assert the defense of compliance with the Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community (“Declaration”).

33. Defendant states and affirms that they have maintained the subject Property and have timely corrected each of the alleged violations in the purported notices that Plaintiff has attached to the Second Amended Complaint.

34. As a result, Plaintiff has failed to state a cause of action for which relief can be granted.

35. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Second Affirmative Defense

36. As Defendants’ second affirmative defense, the Defendants assert the defense of Plaintiff’s failure of condition precedent.

37. Defendant specifically states that Plaintiff has failed to comply with Article XIV Section 4 of the Declaration, which specifically state in pertinent part:

(a) Notice: The Association shall notify the Owner in writing of the non-compliance. Included in the notice shall be the date and time of the next meeting at which the noncompliance will be heard and considered. The notice of the non-compliance to the Owner shall provide, at a minimum, at least fourteen (14) days notice prior to the meeting.

38. Plaintiff has failed to comply with the requirements of the Notice provision pursuant to the Declaration, specifically that each notice shall include a date a time of the next meeting to which the alleged non-compliance will be heard and considered.

39. Plaintiff additionally failed to comply with the requirement of the Notice provision pursuant to the to the Declaration, specifically that each notice shall include at least a fourteen (14) day notice prior to the meeting.

40. As Plaintiff has failed to comply with the required notice provisions, Plaintiff has brought this action prematurely and does not have a cause of action until it can show compliance with the Notice provisions of the Declaration.

41. The notices Plaintiff attached to its Second Amended Complaint as composite Exhibit “B” fail to comply with the Notice provisions of the Declaration.

42. Accordingly, the Court can determine that the Plaintiff has no cause of action for its failure to comply with the Declaration and should refuse this action and dismiss this action with prejudice.

Third Affirmative Defense

43. As Defendants’ third affirmative defense, the Defendants assert the defense of Plaintiff’s waiver to bring any such action for its failure to perform a condition precedent.

44. Defendants incorporate by reference herein their Second Affirmative Defense.

45. As Plaintiff has failed to comply with the required provisions of the Declaration as stated herein, Plaintiff has waived its right to the relief requested in its Second Amended Complaint.

46. Specifically, Plaintiff has waived its right to bring any such action for violation of the Declaration for its failure to comply with the notice provisions as required in the Declaration.

47. Additionally, Plaintiff has waived its right to impose any fines against the Defendants for continued violation as Plaintiff has failed to provide an initial proper notice of any such violation pursuant to the Declaration.

48. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Fourth Affirmative Defense

49. As Defendants' fourth affirmative defense, Defendants assert the defense of estoppel.

50. Defendants assert that they have complied with the Declaration and have corrected any of the purported and alleged violations of the Declaration; specifically, Defendants affirm and assert they have maintained the landscape of the subject Property.

51. Furthermore, Defendants, subsequent to the purported notices, have notified the Plaintiff's property management, Associa Community Management Professionals Inc. ("Agent"), of such correction and compliance and despite such knowledge and notification by Defendant, Plaintiff continues to allege, accuse and pursue the purported violations; said notice to the Plaintiff's Agent and confirmation from the Agent was on or about August 5, 2021, and again on November 10, 2021.

52. Plaintiff is therefore barred, in whole or in part, from the recovery and relief it requests to the extent that Plaintiff and or its Agent have made statements to Defendants or taken action which estop the Plaintiff from asserting the claims as alleged.

53. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Fifth Affirmative Defense

54. As the fifth affirmative defense, Defendants assert selective enforcement of the Declaration by the Plaintiff.

55. The Plaintiff's selective enforcement of the Declaration within the community and singling out the Defendants is a complete bar to the enforcement of the Declaration and allegations against the Defendants.

56. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Sixth Affirmative Defense

57. As the sixth affirmative defense, Defendants assert that Plaintiff comes to this Court with unclean hands.

58. The doctrine of unclean hands stands for the proposition that one who comes into equity must do so with clean hands. One who seeks equity must do equity. He who seeks equity must come to court with clean hands. Snyderburn v. Bantock, 625 So.2d 7 (Fla. 5th DCA 1993).

59. Plaintiffs who seek a remedy in equity with unclean hands, which does not require the commission of a crime but only acts “condemned by honest and reasonable” persons, will be denied relief. Roberts v. Roberts, 84 So.2d 717 (Fla. 1956).

60. In the instant case, examples of Plaintiff’s conduct are as follows:

- Plaintiff failed to comply with the required notice provision of the Declaration;
- Plaintiff has waived its right to pursue the relief requested for its failure to comply with the condition precedent to bringing such action;
- Plaintiff and or its Agent had knowledge of and notification from Defendant of compliance and correction of the alleged violation and yet has still pursued this action;
- Plaintiff’s conduct and actions have selectively attempted to enforce the Declaration against the Defendants;

61. Taken as a whole, it is plain that Plaintiff has engaged in a pattern of behavior and activity which can only be classified as deceitful and inequitable. If only one of the acts listed above were true, then it might be plausible to believe that the Plaintiff simply made a mistake. However, the Plaintiff’s repeated behavior at every step of this matter shows a systemic pattern of inequitable conduct.

62. The Plaintiff comes to the Court with unclean hands and is prohibited by reason thereof from obtaining the equitable relief it requests from this Court. The Plaintiff’s unclean hands result from the Plaintiff’s intentional and continued conduct all as described herein above. As a matter

of equity, this Court should refuse this action because the relief requested would be inequitable, unjust, and the circumstances of this cause render the requested relief unconscionable. The Court should deny the injunctive relief and fines because Plaintiff has waived its rights or is estopped from doing so because and Plaintiff's failure to comply with and unfulfilled conditions precedent.

63. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Seventh Affirmative Defense

64. As the seventh affirmative defense, Defendants assert that Plaintiff's claims are fraudulent.

65. Defendant incorporates by reference their Affirmative Defenses 1 through 6 above and restates them as set forth herein.

66. Plaintiff has engaged in conduct and behavior that demonstrates a deliberate failure to fully and faithfully perform its duties to the detriment of the Defendants.

67. As a result of Plaintiff's fraudulent conduct and behavior, Plaintiff is therefore not entitled to any relief it seeks in its Second Amended Complaint.

68. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Eighth Affirmative Defense

69. As the eighth affirmative defense, Defendant states that Plaintiff intentionally failed to act in good faith or to deal fairly with the Defendants by failing to follow the applicable duties and standards of the Association, the Declaration, and as further described in these Affirmative Defenses; thereby subjecting Defendant to defend this action despite Plaintiff's illegal behavior.

70. Accordingly, the Court should refuse this action and dismiss the instant action with prejudice.

Reservation of Right to Supplement Defenses

71. Defendants expressly reserve the right to amend and/or add additional defenses as facts are developed through discovery and continued litigation and/or the withdrawal of any defense.

Demand for Trial by Jury

72. Defendants hereby demand a trial by jury as to all issues so triable herein.

COUNTERCLAIMS

COUNT I: DECLARATORY AND INJUNCTIVE RELIEF

1. Defendant/Counter-Plaintiff, Shih-Chieh Chen ("CHEN") and Yang Liu ("LIU"), incorporates, reasserts and alleges all of the Affirmative Defenses stated above and comes now under Rule 1.170 of the Florida Rules of Civil Procedure and states as follows:

2. This is an action for declaratory and injunctive relief against the Plaintiff/Counter-Defendant Fontana Estates Community Homeowners Association Inc. ("ASSOCIATION").

3. CHEN and LIU, are individuals, each over the age of eighteen(18) and, at all times relevant hereto, are residents of Orange County, Florida.

4. At all times relevant hereto, CHEN and LIU owned the real property located within the community known as Fontana Estates Community.

5. By virtue of their ownership of the real property as set forth above, CHEN and LIU automatically became members of the ASSOCIATION as membership in the ASSOCIATION is mandatory.

6. The membership to the ASSOCIATION is governed by Florida Statutes §720 et. seq. and subject to the Declaration of Covenants, Conditions and Restrictions of Fontana Estates Community ("Declaration"), as recorded in Official Records Book 10215, Page 4871, of the Public Records of Orange County, Florida, as amended. A complete copy of the Declaration and its

amendments are incorporated by reference herein and have been attached to the Plaintiff's Second Amended Complaint as Exhibit "A".

7. ASSOCIATION is a Florida corporation doing business in Orange County, Florida and organized under Florida Statutes §720 et. seq.

8. As a homeowners association the ASSOCIATION is bound by the express provisions of Florida Statutes §720 et. seq. and the Declaration.

9. CHEN and LIU have standing to bring this Counterclaim pursuant to Florida Statutes §720.305.

10. Florida Statutes §720.305 provides in pertinent part, that:

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

11. As members of the Fontana Community Homeowners Association, CHEN and LIU bring this action against ASSOCIATION and the directors and officers of ASSOCIATION pursuant to Florida Statutes §720.305.

12. Pursuant to Florida Statutes §720.305, the prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

13. During the period of June 2021 and continuing through the present, ASSOCIATION by and through its board and agents unlawfully and illegally charged CHEN and LIU for fines and attorney fees for alleged violations of the Declaration.

14. The ASSOCIATION has engaged in a concentrated campaign to harass CHEN and LIU that included threats of and the imposition of fines, costs, expenses, and attorney fees.

15. ASSOCIATION has sent multiple purported violations notices to CHEN and LIU alleging violations of the Declaration, copies of which are attached hereto as composite Exhibit “B”.

16. ASSOCIATION’s violation notices have failed to comply with the requisite provisions of the Declaration, specifically Article XIV Section 4 of the Declaration, which specifically state in pertinent part:

(a) Notice: The Association shall notify the Owner in writing of the non-compliance. Included in the notice shall be the date and time of the next meeting at which the noncompliance will be heard and considered. The notice of the non-compliance to the Owner shall provide, at a minimum, at least fourteen (14) days notice prior to the meeting.

17. ASSOCIATION has failed to comply with the requirements of the Notice provision pursuant to the Declaration, specifically that each notice shall include a date a time of the next meeting to which the alleged non-compliance will be heard and considered.

18. ASSOCIATION additionally failed to comply with the requirement of the Notice provision pursuant to the to the Declaration, specifically that each notice shall include at least a fourteen (14) day notice prior to the meeting.

19. ASSOCIATION cannot pursue its cause of action unless and until ASSOCIATION demonstrates compliance with the requisite notice provisions of the Declaration.

20. NONE, *emphasis added*, of the ASSOCIATION’s notices of the alleged violations comply with the requisite notice provisions of the governing Declaration; and therefore ASSOCIATION is precluded from filing any such action or requesting the relief requested in its Second Amended Complaint until it complies with the provisions of the Declaration.

21. Additionally, CHEN and LIU have, subsequent to the purported notices, have notified the Plaintiff’s property management, Associa Community Management Professionals Inc. (“Agent”),

of such correction and compliance and despite such knowledge and notification by CHEN and LIU, ASSOCIATION continues to allege, accuse and pursue the purported violations; said notice to the ASSOCIATION's Agent and confirmation from the Agent was on or about August 5, 2021, and again on November 10, 2021.

22. Despite the notification to the ASSOCIATION's Agent, ASSOCIATION has continued its unlawful and illegal actions against CHEN and LIU.

23. CHEN and LIU have a right to injunctive relief to prevent ASSOCIATION from the continued harassment, illegal behavior and imposition of costs, fees, and attorney fees as stated herein.

24. CHEN and LIU have no other available remedy at law.

25. ASSOCIATION is seeking relief from the Court despite its failure to comply with the requisite provisions of the Declaration; such action would cause CHEN and LIU irreparable harm absent injunctive relief from this Court.

26. CHEN and LIU have retained the undersigned and Steffens Law Firm PLLC to represent them in this action and has agreed to pay the law firm a reasonable fee for its services.

WHEREFORE, Defendants/Counter-Plaintiffs, CHEN and LIU, respectfully request this Court issue a final judgment in the form of an injunction ordering ASSOCIATION to:

- A. Dismiss ASSOCIATION's Second Amended Complaint;
- B. To retract and remove all amounts claimed due from CHEN and LIU's account related to the ASSOCIATION's purported claims of violations of the Declaration;
- C. Award CHEN and LIU all costs, expense and attorney's fees in bringing this action;
- D. Such other and further relief as the Court, in its discretion, deems just, appropriate and equitable.

COUNT II: BREACH OF FIDUCIARY DUTY

27. CHEN and LIU hereby restates and incorporates by reference paragraphs 1 through 22 of this Counterclaim as if fully stated herein.

28. ASSOCIATION owes CHEN and LIU a fiduciary duty and obligation under Florida Statutes §720 et. seq. and the Declaration.

29. ASSOCIATION has failed, refused and/or neglected to carry out its fiduciary obligations owed to CHEN and LIU, as members of the Association, in connection with the governing and administration of the Fontana Estates Community.

30. Specifically, ASSOCIATION has failed to comply with the notice requirements of the Declaration pertaining to Article XIV Section 4 of the Declaration which specifically state in pertinent part:

(a) Notice: The Association shall notify the Owner in writing of the non-compliance. Included in the notice shall be the date and time of the next meeting at which the noncompliance will be heard and considered. The notice of the non-compliance to the Owner shall provide, at a minimum, at least fourteen (14) days notice prior to the meeting.

31. ASSOCIATION has sent multiple purported violations notices to CHEN and LIU alleging violations of the Declaration, copies of which are attached hereto as composite Exhibit "B".

32. ASSOCIATION has breached its fiduciary duty of care in its intentional or negligent enforcement of the Declaration against CHEN and LIU; specifically the ASSOCIATION has a duty to ensure its actions comply with the provisions of the Declaration when attempting to enforce the covenants, conditions and restrictions therein.

33. ASSOCIATION has and continues to demonstrate its intentional or negligent behavior in its prosecution of its Second Amended Complaint despite the known deficiencies and failure of conditions precedent in pursuing this action.

34. As a result of ASSOCIATION's intentional or negligent actions the ASSOCIATION has breached its fiduciary duty owed to CHEN and LIU, which have suffered and continue to suffer damages.

35. CHEN and LIU have retained the undersigned and Steffens Law Firm PLLC to represent them in this action and has agreed to pay the law firm a reasonable fee for its services.

Demand For Trial by Jury

36. Defendants/Counter-Plaintiffs, CHEN and LUI, hereby demand a trial by jury on all triable issues.

WHEREFORE, Defendants/Counter-Plaintiffs, CHEN and LIU, respectfully request this Court issue a final judgment ordering ASSOCIATION to:

- A. Dismiss ASSOCIATION's Second Amended Complaint;
- B. To retract and remove all amounts claimed due on from CHEN and LIU's account related to the ASSOCIATION's purported claims of violations of the Declaration;
- C. Award actual, statutory or compensatory damages to CHEN and LIU, whichever is greater for the ASSOCIATION's breach of fiduciary duty; and for all costs, expense and attorney's fees in bringing this action;
- D. Such other and further relief as the Court, in its discretion, deems just, appropriate and equitable.

STEFFENS LAW FIRM PLLC
1540 International Pkwy
Suite 2000
Lake Mary, FL 32746
T: 407-492-8660

s/ Erick P. Steffens
Erick P. Steffens Esq.
FBN: 059553
Primary Email: Erick@steffens-law.com
Counsel for Defendants/Counter-Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that on the 18th day of July, 2023, a true copy of the foregoing has been filed with the Clerk of Court via the e-portal and served via email to the service list therein and to Counsel for Plaintiff, Thomas R. Slaten Jr. at: Tslaten@larsenslaten.com .

STEFFENS LAW FIRM PLLC
1540 International Pkwy
Suite 2000
Lake Mary, FL 32746
T: 407-492-8660

s/ Erick P. Steffens
Erick P. Steffens Esq.
FBN: 059553
Primary Email: Erick@steffens-law.com
Counsel for Defendants/Counter-Plaintiffs

EXHIBIT “A”

Declaration of Covenants, Conditions and Restrictions
Of Fontana Estates Community

(see Plaintiff's Second Amended Complaint Exhibit “A”)

Fontana Estates Community Homeowners Association, Inc.
c/o Associa Community Management Professionals, Inc.
An Associa Member Company
4700 Millenia Blvd., Suite 515
Orlando, Florida 32839

June 9, 2021

Shih-Chieh Chen
3137 Fontana Estates Drive
Orlando, FL 32820

Re: 3137 Fontana Estates Drive

Dear Shih-Chieh Chen:

On our recent inspection of the community, we find that you have failed to bring your home into compliance with the deed restrictions of Fontana Estates Community Homeowners Association, Inc. governing documents. You have been sent a first and second notice regarding this matter.

Per the governing documents, The Association shall ...as a final measure prior to pursuing legal remedies, have the authority to Fine a homeowner for violations of the deed restrictions any fines are considered a Special Assessment to your property.

As the homeowner you will need to participate in a phone call into the hearing if you do not satisfy the violation before the arranged date hearing date. Once the meeting is scheduled it cannot be changed this is your final notice before that date is scheduled.

Lawn - Shrubs in need of trimming



The meeting will not be rescheduled and therefore, it is important that you show up for the hearing. Failure to show up for this hearing will result in a mandatory fine of \$100.00 a day up to \$1000.00 for the violation listed above. If the Association must go beyond the fine process, all costs associated with the legal action will also be Special Assessed to your property. All questions or concerns need to be in writing via email to your association manager at orivera@community-mgmt.com or by mail.

Sincerely,

Oscar Rivera Association Manager.
For Fontana Estates

Fontana Estates Community Homeowners Association, Inc.

Fontana Estates Community Homeowners Association, Inc.
c/o Associa Community Management Professionals, Inc.
An Associa Member Company
4700 Millenia Blvd., Suite 515
Orlando, Florida 32839
Fax: (407) 903-9234

First Violation Notice

August 30, 2021

Shih-Chieh Chen
3137 Fontana Estates Drive
Orlando, FL 32820

Re: 3137 Fontana Estates Drive

Dear Shih-Chieh Chen:

As the Managing Agent for your association, Fontana Estates Community Homeowners Association, Inc., we are working on your behalf to make the Community an enjoyable and attractive place to live. One of the ways to achieve this is to remind residents of the Restriction, Rules and Regulations of their community.

Upon inspection of the property, it has come to our attention that the following violation was observed:

Lawn - Total Lawn Maintenance



Please contact us in writing by mail, email at orivera@community-mgmt.com within 30 (thirty) days from the date of this letter so we can let the association know your plans for taking care of this violation.

If you believe that you have received this notice in error or have questions concerning it, please do not hesitate to contact us.

Sincerely,

Oscar Rivera Association Manager
For Fontana Estates

Fontana Estates Community Homeowners Association, Inc.
c/o Associa Community Management Professionals, Inc.
An Associa Member Company
4700 Millenia Blvd., Suite 515
Orlando, Florida 32839
Fax: (407) 903-9234

Second Violation Notice

December 2, 2021

Shih-Chieh Chen
3137 Fontana Estates Drive
Orlando, FL 32820

RE: 3137 Fontana Estates Drive

Dear Shih-Chieh Chen:

As the Managing Agent for your association, Fontana Estates Community Homeowners Association, Inc., our records indicate that you have been previously notified of the following covenant violation.

The violation observed and still not rectified is:

Lawn - Shrubs in need of trimming



Corrective action needs to take place immediately upon receipt of this letter. The association is obligated to pursue this issue until it is resolved. The enforcement of the Governing Documents and the Rules and Regulations is necessary to maintain the property value and the integrity of the Association you have invested. We are requesting that you be in compliance within 30 (Thirty) days after receiving this notice.

Please respond in writing by mail, email at orivera@community-mgmt.com or phone 321-697-9969 immediately to provide a time frame in which this non-compliance issue will be corrected.

Sincerely,

Oscar Rivera Association Manager.
For Fontana Estates

cc: Homeowner File