

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 17 CVS 702

JACK O'NEILL RAMEY, EMMA LOU RAMEY,)
and TERRY RAMEY, INDIVIDUALLY AND IN)
HIS CAPACITY AS POWER OF ATTORNEY)
FOR JACK O'NEILL AND EMMA LOU RAMEY,)
Plaintiffs)

v.)

FOUR SEASONS REALTY GROUP, INC., LAURA)
HOLLAND, REVERSE MORTGAGE SOLUTIONS,)
INC. AND REO MANAGEMENT SOLUTIONS,)
LLC ,)
Defendants.)

**MOTION TO DISMISS AND
ANSWER OF DEFENDANTS FOUR
SEASONS REALTY GROUP, INC.
AND LAURA HOLLAND**

MOTIONS TO DISMISS

PRIOR TO answering the Complaint the Defendants, Four Seasons Realty Group, Inc. and Laura Holland plead the following Motions to Dismiss:

1. The Plaintiff's, Jack O'Neill Ramey and Emma Lou Ramey, fail to state a cause of action upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Rules of Civil Procedure, the Complaint should be dismissed.

2. The Plaintiff, Terry Ramey, in his individual capacity and as power of attorney for Jack and Emma Ramey, fails to state a cause of action upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Rules of Civil Procedure, the Complaint should be dismissed.

3. To the extent the Plaintiffs are alleging claims and causes of action against the Defendants, Four Seasons Realty Group, Inc. and Laura Holland, under their Third Claim for Relief, Conversion, then said claims and causes of action should be dismissed pursuant to rule 12(b)(6) of the Rules of Civil Procedure for failure to state a claim upon which relief can be granted. Specifically, the Complaint fails to identify or allege that any property was actually removed from Plaintiff's possession or control or that they were, in any way, deprived of the use of their property.

4. To the extent the Plaintiffs are alleging claims and causes of action against the Defendants, Four Seasons Realty Group, Inc. and Laura Holland, under their Fifth Claim for Relief, Prohibited Acts By Debt Collectors, then said claims and causes of action should be dismissed pursuant to N.C.G.S. §58-70-15(c)(6).

5. To the extent the Plaintiffs are alleging claims and causes of action against the Defendants, Four Seasons Realty Group, Inc. and Laura Holland, under their Sixth Claim for Relief, Fair Debt Collection Practices Act, then said claims and causes of action should be dismissed because these moving Defendants are not debt collectors as defined under N.C.G.S. §75-50, *Et. Seq.*

6. To the extent the Plaintiffs are alleging claims and causes of action against the Defendants, Four Seasons Realty Group, Inc. and Laura Holland, under their Seventh Claim for Relief, False Imprisonment, then said claims and causes of action should be dismissed because the Plaintiff has failed to plead with the requisite specificity all the elements of said claim, specifically, confinement.

7. The Plaintiff's claims or punitive damages should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted in that the pleading lacks the requisite specificity necessary for the pleading of a claim for punitive damages.

ANSWER

SUBJECT TO the foregoing Motions to Dismiss, the Defendants, Four Seasons Realty Group, Inc. and Laura Holland, and answer the Complaint of the Plaintiffs as follows:

1. Admitted, upon information and belief.
2. Upon information and belief, it is admitted that Terry Ramey is a Haywood County resident and that he is the son and stepson of Jack Ramey and Emma Lou Ramey respectively. This answering Defendant lacks sufficient information to form a belief as to the truthfulness of the allegation that Terry Ramey serves as Power of Attorney for Jack and Emma Lou Ramey and, therefore, that allegation is denied. It is denied that Terry Ramey is a proper party in this action.
3. The statements in this paragraph of the Complaint require no response from this answering Defendant.
4. Admitted.
5. Admitted.
6. Upon information and belief, the allegations in Paragraph 6 are admitted.
7. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 7 and the same are therefore denied..

UNDERLYING FACTS

8. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 7 of the Complaint as if fully set forth herein.

9. Denied.

10. It is denied that the Ramseys were the owners of all real property described in said deed at "all relevant times".

11. It is admitted that there is a double wide manufactured home located on the encumbered property at 146 Dakota Drive. However it is denied that there is a single wide manufactured home located on the property at 178 Dakota as that is just a shell and is not habitable. Any remaining allegations are denied.

12. It is admitted that the Ramseys own property commonly known as 142 Dakota Drive. Except as admitted, denied.

13. It is admitted that there was and is a single wide manufacture home located on property commonly known as 142 Dakota Drive. It is admitted, upon information and belief, that this single wide was, at some point in time situated on or across the property line separating the encumbered property from the property known as 142 Dakota Drive. As to the remaining allegations of this paragraph this answering Defendant lacks sufficient information to form a belief as to the truthfulness thereof and denies the same.

14. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 14 and the same are therefore denied.

15. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 15 and the same are therefore denied.

16. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 16 and the same are therefore denied.

17. It is admitted that a portion of the Ramseys' real property can be considered a "carve-out property". Except as admitted, denied.

18. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 18 and the same are therefore denied..

19. These Defendants lack sufficient information to form a belief as to the truthfulness of the allegations in Paragraph 19 and the same are therefore denied..

20. Admitted, upon information and belief.

21. Admitted, upon information and belief.

22. The allegations of Paragraph 22 do not pertain to these answering Defendants and, therefore, no response is necessary.

23. The allegations of Paragraph 23 do not pertain to these answering Defendants and, therefore, no response is necessary.

24. The allegations of Paragraph 24 do not pertain to these answering Defendants and, therefore, no response is necessary.

25. The allegations of Paragraph 25 do not pertain to these answering Defendants and, therefore, no response is necessary.

26. The allegations of Paragraph 26 do not pertain to these answering Defendants and, therefore, no response is necessary.

27. The allegations of Paragraph 27 do not pertain to these answering Defendants and, therefore, no response is necessary.

28. The allegations of Paragraph 28 do not pertain to these answering Defendants and, therefore, no response is necessary.

29. It is denied that these answering Defendants "took further actions to gain possession, control and occupancy of the encumbered property."

30. It is admitted that the Defendant, Four Seasons Realty Group, Inc., was engaged by RMS to market the encumbered property for sale and that there is a listing agreement to that end.. Except as admitted, denied.

31. It is admitted that the Defendant, Four Seasons Realty Group, Inc., by and through its employee, Laura Holland, performed occupancy checks on a weekly basis as part of its engagement by RMS. It is denied that "inspections" were performed. All remaining allegations of this paragraph are denied.

32. Denied. These Defendants never entered the property.

33. These Defendants lack sufficient information to identify a specific date when said clarification might have been sought but it is admitted that these answering Defendants did seek clarification as to what constituted the encumbered property.

34. Denied as to these answering Defendants.

35. Denied.

36. Denied.

37. The allegations of Paragraph 37 do not pertain to these answering Defendants and, therefore, no response is necessary.

38. Denied.

39. It is admitted that the Defendant, Four Seasons, was engaged by RMS to market the encumbered property and to observe, on behalf of RMS, the lock out process. Except as admitted, the remaining allegations of this paragraph are denied.

40. The allegations of Paragraph 40 do not pertain to these answering Defendants and, therefore, no response is necessary.

41. The allegations of Paragraph 41 do not pertain to these answering Defendants and, therefore, no response is necessary.

42. Denied as to these answering Defendants.

43. The allegations of Paragraph 43 do not pertain to these answering Defendants and, therefore, no response is necessary.

44. Admitted.

45. Denied. The locks were changed at the direction of the Sheriff before the Defendants got to 142 Dakota Drive and these answering Defendants never took possession of the single wide located at 142 Dakota Drive.

46. Denied as to these answering Defendants.

47. It is admitted that on March 21, 2017 a male individual arrived and, for the first time, presented Defendant Holland a Trustees Deed. Upon seeing the 142 Dakota Drive "carve-out" Defendant Holland immediately stopped the lock out process, gave Plaintiff's keys to the new locks, left Plaintiff in possession of said manufactured home and left the premises. Nothing was removed from the property. It is further stated and admitted that Defendant Holland took several photographs of the personal property contents inside the single wide (this was being done as part of her assignment from RMS to verify whether there was greater than \$500.00 in contents value inside the home) and that this was done before she had been shown the Trustee's Deed.

48. It is admitted that Defendant Holland entered 142 Dakota Drive and took photographs as stated above. Except as admitted, denied.

49. It is admitted that the locks were changed and that the Defendant Holland took photographs of the personal property contents inside the home. It is denied that Plaintiffs were evicted from their home or that these answering Defendants exercised control over the home or over any of the Plaintiff's personal property. No personal property was removed and the Plaintiff's were never asked to leave the home because the Defendants, Holland and Four Seasons, put a stop to the lock out process once the Trustee's Deed was presented to Holland.

50. Denied.

51. Denied as to these answering Defendants. In fact, Defendant, Holland, relied upon the Trustee's Deed presented to her by a male individual at the lock out to put a stop to the lock out at 142 Dakota Drive.

52. It is admitted that Defendant Holland had the process stopped upon learning of the "carve-out" per the Trustee's Deed. Except as admitted the remaining allegations are denied.

53. The allegations of Paragraph 53 do not pertain to these answering Defendants and, therefore, no response is necessary.

54. Denied.

FIRST CLAIM FOR RELIEF
(Trespass to Real Property Owned by Mr. Ramey and Ms. Ramey)

55. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 54 of the Complaint as if fully set forth herein.

56. Admitted, upon information and belief.

57. Denied.

58. Denied.

59. Denied.

SECOND CLAIM FOR RELIEF
(Trespass to Chattels Owned By All Plaintiffs)

60. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 59 of the Complaint as if fully set forth herein.

61. Admitted, upon information and belief.

- 62. Denied as to these answering Defendants.
- 63. Denied as to these answering Defendants.
- 64. Denied.

THIRD CLAIM FOR RELIEF
(Conversion Of Property Owned By All Plaintiffs)

65. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 64 of the Complaint as if fully set forth herein.

- 66. Denied as to these answering Defendants.
- 67. Denied as to these answering Defendants.
- 68. Denied as to these answering Defendants.
- 69. Denied.

FOURTH CLAIM FOR RELIEF
(Breach Of Contract With the Senior Rameys And/Or
Breach Of Duty Of Good Faith and Fair Dealing by RMS and REO)

70. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 69 of the Complaint as if fully set forth herein.

71. The allegations of Paragraph 71 do not pertain to these answering Defendants and, therefore, no response is necessary.

72. The allegations of Paragraph 72 do not pertain to these answering Defendants and, therefore, no response is necessary.

73. The allegations of Paragraph 73 do not pertain to these answering Defendants and, therefore, no response is necessary.

74. The allegations of Paragraph 74 do not pertain to these answering Defendants and, therefore, no response is necessary.

75. The allegations of Paragraph 75 do not pertain to these answering Defendants and, therefore, no response is necessary.

76. The allegations of Paragraph 76 do not pertain to these answering Defendants and,

therefore, no response is necessary.

FIFTH CLAIM FOR RELIEF
(Prohibited Acts By Debt Collectors (N.C.G.S. §58-70-90, Et Seq.)
Committed Against the Senior Rameys)

77. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 76 of the Complaint as if fully set forth herein.

78. Denied as to these answering Defendants.

79. Denied as to these answering Defendants.

80. Denied as to these answering Defendants.

81. Denied.

SIXTH CLAIM FOR RELIEF
(Violation Of the Senior Rameys' Rights Under The Fair Debt Collection Practices Act
(N.C.G.S. §75-50, Et Seq.))

82. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 81 of the Complaint as if fully set forth herein.

83. Denied as to these answering Defendants.

84. Denied as to these answering Defendants.

85. Denied as to these answering Defendants.

86. Denied.

SEVENTH CLAIM FOR RELIEF
(False Imprisonment of Mr. Ramey and Ms. Ramey)

87. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 86 of the Complaint as if fully set forth herein.

88. Denied as to these answering Defendants.

89. Denied as to these answering Defendants.

90. Denied.

EIGHTH CLAIM FOR RELIEF
(Negligence Against All Defendants)

91. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 90 of the Complaint as if fully set forth herein.

92. Denied as to these answering Defendants.

93. Denied as to these answering Defendants.

94. Denied as to these answering Defendants.

95. Denied.

NINTH CLAIM FOR RELIEF
(Claims for Unfair And Deceptive Commercial Practices
(N.C.G.S. §75-16, *Et Seq.*) By All Plaintiffs Against All Defendants

96. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 95 of the Complaint as if fully set forth herein.

97. Denied as to these answering Defendants.

98. Denied as to these answering Defendants.

99. Denied as to these answering Defendants.

100. Denied as to these answering Defendants.

101. Denied as to these answering Defendants.

102. Denied as to these answering Defendants.

103. Denied.

TENTH CLAIM FOR RELIEF
(Punitive Damages for All Plaintiffs)

104. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 103 of the Complaint as if fully set forth herein.

105. Denied as to these answering Defendants.

106. Denied as to these answering Defendants.

107. Denied as to these answering Defendants.

108. Denied.

ELEVENTH CLAIM FOR RELIEF
(Civil Conspiracy)

109. These answer Defendants restate and incorporate by reference their answers to Paragraphs 1 through 108 of the Complaint as if fully set forth herein.

110. Denied as to these answering Defendants.

111. Denied as to these answering Defendants.

112. Denied as to these answering Defendants.

113. Denied.

114. Denied.

FIRST ANSWER AND DEFENSE
(No Actual Damages)

Plaintiffs cannot demonstrate that they have sustained any actual damages as is necessary to recover under all claims alleged, including the N.C.G.S. §75-1.1 claim.

SECOND ANSWER AND DEFENSE
(Punitive Damages Unconstitutional)

Under the circumstances of this case, any award of punitive damages violates the United States Constitution and the North Carolina Constitution.

THIRD ANSWER AND DEFENSE
(Bona Fide Error)

Should it be determined that these answering Defendants did violate any rule of law, which is again denied, then in that event it can be shown by a preponderance of the evidence that any such violation was not intentional and resulted from a bona fide error.

FOURTH ANSWER AND DEFENSE
(No Confinement)

As a defense to the Plaintiffs' Seventh Claim for Relief these answering Defendants plead that none of the Plaintiffs were subjected to "confinement".

FIFTH ANSWER AND DEFENSE
(No Deprivation of Personal Property)

As a defense to the Plaintiffs' Second and Third Claims for Relief these answering Defendants plead that at no relevant time were the Plaintiffs ever deprived of possession, ownership or control of personal property nor was any personal property ever removed from the home of the Plaintiffs.

SIXTH ANSWER AND DEFENSE
(Not a "Debt Collector")

As a defense to the Plaintiffs' Fifth Claim for Relief these answering Defendants plead that they are not "debt collectors" as shown in N.C.G.S. §58-70-15(c)(6).

SEVENTH ANSWER AND DEFENSE
(Not "Collection Agency")

As a defense to the Plaintiffs' Sixth Claim for Relief these answering Defendants plead that they are not a "Collection Agency" and, therefore, not subject to N.C.G.S. §75-50, *Et. Seq.*

EIGHTH ANSWER AND DEFENSE
(Actions of Others)

To the extent the Plaintiffs have sustained any damages as a result of any wrongful actions, which is again denied, then and in that event any such damages were occasioned and proximately caused by the actions of others outside the control of these answering Defendants.

WHEREFORE, the Defendants,, Four Seasons Realty Group, Inc. and Laura Holland, pray the Court as follows:

1. That the Plaintiffs have and recover nothing of these answering Defendants.
2. That the costs of this action be taxed to the Plaintiffs.
3. For a trial by jury on all issues of fact.
4. For such other and further relief as the Court deems just and proper.

THIS the 14 day of September, 2017.

BRAZIL & BURKE, P.A.



W.O. BRAZIL, III

Attorney for Defendants, Four Seasons Realty Group,
Inc. and Laura Holland

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has this date served this Motion to Dismiss and Answer of Defendants Four Seasons Realty Group, Inc. and Laura Holland in the above-entitled action upon all parties to this cause by depositing a copy hereof in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney or attorneys for said parties.

THIS the 14 day of September, 2017.



W.O. BRAZIL, III