

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

RECORDED IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2015-CP-18-1575

2015 NOV 5 PM 12:27
CLERK OF COURT
DORCHESTER COUNTY

2016-CP-18-1881

Southern Magnolia Homeowners'
Association,

THIRD PARTY SUMMONS

Plaintiff,

v.

Tammy C. Richardson,

JURY TRIAL DEMANDED

Defendant(s).

✓ Tammy C. Richardson,

Third-Party Plaintiff,

v.

Halcyon Real Estate Services, LLC;
McCabe, Trotter, & Beverly, P.C.

Third-Party Defendant's


TO: ALL NAMED THIRD PARTY DEFENDANTS:

YOUR ARE HEREBY SUMMONED and required to answer the Third-Party Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Third-Party Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

[SIGNATURE BLOCK TO FOLLOW]

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold, Esquire
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, South Carolina 29464
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Attorney for Third Party Plaintiff

October 21, 2015

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

2015 NOV -5 PM 12:27
CHERYL BRYAN
CLERK OF COURT
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2015-CP-18-1575
2016-CP-18-1001

Southern Magnolia Homeowners
Association,

Plaintiff,

v.

Tammy C. Richardson,

Defendant(s).

**AMENDED
ANSWER AND COUNTERCLAIM
AND THIRD-PARTY COMPLAINT**
(Breach of Contract and Fair
Debt Collection Practice)

Tammy C. Richardson,

Third-Party Plaintiff,

v.

Halcyon Real Estate Services, LLC;
McCabe, Trotter, & Beverly, P.C.

Third-Party Defendant's

JURY TRIAL DEMANDED

TO: STEPHANIE C. TROTTER, ATTORNEY FOR PLAINTIFF:

The Defendant, Tammy C. Richardson (hereinafter "Defendant"), answers the Plaintiff, Southern Magnolia Homeowners' Association (hereinafter "Plaintiff"), Complaint as follows:

1. Defendant denies each and every allegation set forth in Plaintiff's Complaint not specifically herein admitted, qualified, or explained and demands strict proof thereof.
2. Defendant admits the allegations of Paragraph 1.
3. Defendant lacks sufficient information to form an opinion and belief as to the allegations of Paragraph 2 and therefore denies the same and demands strict proof thereof.
4. Defendant admits the allegations of Paragraph 3.

5. Defendant admits so much of the allegations of Paragraph 4 as allege there are homeowners association covenants which may have an impact upon the real property which is the subject of this action, but deny the remainder of the allegations of Paragraph 4 and demand strict proof thereof.

6. Defendant admits so much of the allegations of Paragraph 5 as allege that the covenants may have impact upon the real property and may provide for certain assessments but deny the remainder of the allegations of Paragraph 5 and demand strict proof thereof.

7. The allegations of Paragraph 6 constitute conclusions of law which Defendant is required neither to admit nor deny. Further to the extent the allegations of Paragraph 6 do not constitute conclusions of law Defendant denies the same and demands strict proof thereof.

8. Defendant denies the allegations of Paragraph 7 and demands strict proof thereof. Further upon information and belief Defendant would assert that Plaintiff's corporate directors were not properly and/or duly elected.

9. In response to the allegations of Paragraph 8, Defendant craves reference to said document mentioned therein and the documents and public records of Dorchester county and denies any allegations inconsistent with the terms and records contained therein.

10. Defendant denies the allegations of Paragraphs 9, 10, and 11 and demand strict proof thereof. **FURTHER PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT DEFENDANT IS PROVIDING NOTICE THAT DEFENDANT IS DISPUTING THE DEBT AND THE AMOUNT CLAIMED OWED, AND WOULD REQUEST PLAINTIFF OR ITS COLLECTING AGENT SEND DEFENDANT A VERIFICATION OF THE DEBT.**

**FOR AND AS A FIRST DEFENSE
(Failure to State a Claim)**

11. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action.

**FOR AND AS A SECOND DEFENSE
(Waiver)**

12. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from maintaining this action by the doctrine of waiver.

**FOR AND AS A THIRD DEFENSE
(Estoppel)**

13. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff is barred from is barred from maintaining this action by the doctrine of estoppel.

**FOR AND AS A FOURTH DEFENSE
(Failure to Mitigate)**

14. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff has failed to mitigate its damages and is barred from maintaining this action.

**FOR AND AS A FIFTH DEFENSE
(Unclean Hands)**

15. Further answering the Complaint and for a further defense thereto Defendant alleges the Plaintiff comes to this action with unclean hands and is therefore precluded from recovering a deficiency judgment in this action.

**FOR AND AS A SIXTH DEFENSE
(Unconscionability)**

16. Further answering the Complaint and for a further defense thereto Defendant alleges that Plaintiff has acted unconscionably and therefore this action should be precluded.

**FOR AND AS A SEVENTH DEFENSE
(Equitable Defense)**

17. Plaintiff comes to this court seeking foreclosure of an equitable lien, in seeking an equitable remedy a party is bound to follow all tenants of equity. Plaintiff has failed to act equitably in its actions concerning and related to this matter, and therefore this action should be dismissed.

**FOR AND AS A EIGHTH DEFENSE
(Forfeiture)**

18. Plaintiff comes to this court seeking forfeiture by Defendant of their real property. Forfeiture is an extreme remedy which should be used sparingly. Given the facts and circumstances of this matter, forfeiture is improper and therefore this action should be dismissed.

**FOR AND AS A NINTH DEFENSE
(Affirmative Defenses)**

19. Further answering said Complaint and for a further defense thereto Defendant specifically pleads as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, negligence, duress, fraud, illegality, laches, statute of limitations, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration, failure to mitigate, unclean hands or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this action progresses.

**FOR AND AS A TENTH DEFENSE
(Reservation and Non-Waiver)**

20. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

**FOR AND AS A ELVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting)**

21. Defendant incorporates all preceding paragraphs as though fully set forth herein.

22. Defendant is entitled to an accounting from Plaintiff detailing all payments made, when received, when applied, how applied, assessments imposed, interest charged, fees assessed and incurred including late fees, other charges, costs and attorney's fees and all other matters relating to the amount claimed owed.

**FOR AND AS AN TWELETH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract and of Good Faith and Fair Dealing)**

23. Defendant incorporates all preceding paragraphs as though fully set forth herein.

24. The Declaration of Covenants and/or by-laws under which Plaintiff maintains its right to initiate this action constitutes a contract between Plaintiff and Defendant, which the parties entered into when Defendant took title to the subject property.

25. There exists in every agreement an implied covenant of good faith and fair dealing.

26. Plaintiff has breached the agreement and its duty to act in good faith and fair dealing in regard to Defendant by failing to properly notice Defendant of charges and fees it was accessing to Defendant's property and by imposing interest, charges, fees, expenses, and/or attorney's fees not authorized by contract or law; by failing to provide written annual assessment notices; by failing to provide written notice of annual and/or special meetings; by upon information and belief failing to keep accurate records of all meetings and actions taken by Plaintiff and/or Plaintiff's board acting on its behalf; upon information and belief by failing to properly vote as required upon actions taken by or which should have been taken by Plaintiff and/or its board acting on Plaintiff's behalf; by misrepresenting to Defendant that the Plaintiff association had been extinguished and then seeking to collect assessments and/or placing liens upon Defendant for unpaid assessments for the same period of time; and for filing a lien against

Defendant's property in the register of deeds for Dorchester County without providing notice of said lien to Defendant's.

27. As a result of the breach of Plaintiff, Defendant has suffered damages including, but not limited to, damage to credit history, excess charges, improper charges and fees, improper interest, impair of property and/or threat of foreclosure resulting in losing the benefit and use of the subject property as well as any equity established in the subject property, and the cost and expense of having to hire an attorney to defendant this action.

28. Defendant is informed and believes she are entitled to actual, consequential, incidental, and expectation damages against Plaintiff in the appropriate amount, costs, and attorney's fees, prejudgment interest, and such other and further relief as the court deems just and proper.

**FOR AND AS A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)**

29. Defendant incorporates all preceding paragraphs as though fully set forth herein.

30. Plaintiff has been unjustly enriched at the expense of and to the detriment of Defendant by failing to act in good faith and a commercially reasonable manner, including but not limited to, imposing improper charges, fees, expenses, interest and/or attorney's fees not authorized by contract or law.

31. Defendant is informed and believes that she is entitled to recover from Plaintiff all monies, and any benefit received by Plaintiff as a result, consequence, and/or incidentally related to Plaintiff's actions as alleged above.

**FOR AND AS A FOURTEENTH DEFENSE AND BY WAY OF
COUNTERCLAIM
(Violation of Unfair Trade Practices Act)**

32. Defendant incorporates all preceding paragraphs as though fully set forth herein.

33. Plaintiff is engaged in the business of managing a neighborhood association, providing services, and charging its members assessments as well as levying for compensation fines, fees, interest and/or charges for alleged deficiencies of payment or conduct.

34. Plaintiff, has engaged in unfair or deceptive acts or practices in the conduct of commerce which is unlawful and in violation of the Unfair Trade Practices Act of South Carolina, upon information and belief by engaging in unfair and deceptive acts and practices including but not limited to by failing to properly notice Defendant of charges and fees it was accessing to Defendant's property and by imposing interest, charges, fees, expenses, and/or attorney's fees not authorized by contract or law; by failing to provide written annual assessment notices; by failing to provide written notice of annual and/or special meetings; by upon information and belief failing to keep accurate records of all meetings and actions taken by Plaintiff and/or Plaintiff's board acting on its behalf; upon information and belief by failing to properly vote as required upon actions taken by or which should have been taken by Plaintiff and/or its board acting on Plaintiff's behalf; by misrepresenting to Defendant that the Plaintiff association had been extinguished and then seeking to collect assessments and/or placing liens upon Defendants for unpaid assessment the same period of time; and for filing a lien against Defendant's property in the register of deeds for Dorchester County without providing notice of said lien to Defendant's.

35. Plaintiff's unfair and deceptive acts or practices have an impact on the public interest of consumers of this State and have the potential for repetition.

36. On information and belief, Plaintiff has engaged in similar acts and practices in the past and is likely to engage in such illegal activities in the future.

37. As a direct result of Plaintiff's actions Defendant has been damaged including, but not limited to, damage to credit history, excess charges, improper charges and fees, improper interest and/or threat of foreclosure resulting in losing the benefit and use of the subject property as well as any equity established in the subject property.

38. Defendant believes she is entitled to have the damages awarded by the trier of fact trebled because of the conduct described herein was willful.

39. Defendant believes that she is entitled to an award of attorney's fees and expenses of this litigation, along with actual damages, compensatory damages, incidental damages, punitive damages and all other appropriate damages to be considered by the trier of fact.

FOR AND AS A THIRD-PARTY COMPLAINT

40. Upon information and belief, Halcyon Real Estate Services, LLC (hereinafter "Halcyon"), is incorporated in the state of South Carolina with its principle place of business in Irmo, South Carolina and provides outsource management and services for home owners association in the enforcement of home owners association covenants and by-laws.

41. Upon information and belief, McCabe, Trotter, & Beverly, P.C., (hereinafter "McCabe") is a law firm incorporated in the state of South Carolina, with its principle place of business in Columbia, South Carolina who collects debts for homeowners associations

FOR AND AS A FIFTEENTH DEFENSE AND BY WAY OF THIRD PARTY COMPLAINT AGAINST MCCABE AND HALCYON (Accounting)

42. Defendant incorporates all preceding paragraphs as though fully set forth herein.

43. Defendant is entitled to an accounting from McCabe and Halcyon detailing all payments made defendant, when received, when applied, how applied. As well as the amount and date of all assessments imposed, interest charged, fees assessed and incurred including late

fees, other charges, costs and attorney's fees charges to Defendant's homeowner's association account or ledger. Finally all costs and charges actually billed and charged to the Homeowner's Association by Halcyon and/or McCabe with regard to collection and/or enforcement of the covenants and bi-laws against Defendant and all other matters relating to the amount claimed owed.

**FOR AND AS A SIXTEENTH DEFENSE AND BY WAY OF THIRD-PARTY
COMPLAINT AGAINST MCCABE AND HALCYON
(Violation of Unfair Trade Practices Act)**

44. Defendant incorporates all preceding paragraphs as though fully set forth herein.

45. McCabe and/or Halcyon have engaged in the business of collecting assessments, fees, charges, and interest for homeowners' as well as levying for compensation fines, fees, interest and/or charges for alleged deficiencies of payment or conduct with regard to homeowners association covenants and by-laws.

46. McCabe and/or Halcyon, have engaged in unfair or deceptive acts or practices in the conduct of commerce which is unlawful and in violation of the Unfair Trade Practices Act of South Carolina, upon information and belief by engaging in unfair and deceptive acts and practices including but not limited to by failing to properly notice Defendant of charges, fees, and interest McCabe and/or Halcyon were attempting to collect from Defendant; by failing to notice Defendant of the filing a notice of lien upon Defendant's property; by attempting to collect from Defendant interest, charges, fees, expenses, and/or attorney's fees not authorized by contract or law; by attempting to collect costs not incurred or charged to the homeowner's association in the course of enforcing the covenants and/or by-laws; and by violating the Fair Debt Collection Practices Act.

47. McCabe and/or Halcyon's unfair and deceptive acts or practices have an impact on the public interest of consumers of this State and have the potential for repetition.

48. On information and belief, McCabe and/or Halcyon have engaged in similar acts and practices in the past and is likely to engage in such illegal activities in the future.

49. As a direct result of McCabe and/or Halcyon actions Defendant has been damaged including, but not limited to, damage to credit history, excess charges, improper charges and fees, improper interest and/or threat of foreclosure resulting in losing the benefit and use of the subject property as well as any equity established in the subject property.

50. Defendant believes she is entitled to have the damages awarded by the trier of fact trebled because of the conduct described herein was willful.

51. Defendant believes that she is entitled to an award of attorney's fees and expenses of this litigation, along with actual damages, compensatory damages, incidental damages, punitive damages and all other appropriate damages to be considered by the trier of fact.

CLASS ACTION ALLEGATIONS

52. Class action allegations are asserted pursuant to Rule 23, SCRPC as to the Seventeenth and Eighteenth Causes of Action.

53. This action is maintained as a class action on behalf of following described class: All homeowners in the state of South Carolina who live in neighborhoods or communities which have a homeowners association whom McCabe in its capacity as a debt collector and as agent for the homeowners association sought to collect or collected from homeowners attorneys' fees, costs, collection fees or interest. Defendant may subsequently refine the class definition in light of discovery.

54. The class is so numerous that it is impracticable to bring all Homeowners before this Honorable Court. The exact number of Homeowners is unknown, but is believed to include over 200 homeowners. The exact number and identity can be determined from McCabe's records. In many instances, class members either are unaware that their claims exist or have sustained individual damages too small to economically justify the attorney fees and other costs of maintaining individual lawsuits. When aggregated, however, individual damages are sufficiently large to justify this class action.

55. Upon information and belief McCabe has followed a standardized procedural framework in which to collect assessments, fees, and charges, including the standardization of fees, charges, attorney's fees, charged to homeowner's as well as the computation of interest upon alleged delinquent amounts claimed owed.

56. Common questions of law and fact exist and predominate over any individual questions of law or fact and include, but are not limited to, the following:

a. Did McCabe collect from homeowner's and/or represent to homeowners in the course of collecting alleged homeowner association fees that pursuant to covenants homeowners owed fees, charges, court charges, filing charges, lien charges, and attorney's fees, greater than the cost of the fees, charges, and attorney's fees actually incurred, owed or paid by the homeowner's association to McCabe's for collection actions performed to enforce the alleged covenant's on behalf of the homeowner's association.

b. Did McCabe collect from homeowner's and represent to homeowners in the course of collecting homeowner association debt that pursuant to the covenants

homeowners owed more and/or greater fees than those authorized to be charged by the covenants.

c. Did McCabe collect from homeowner's and represent to homeowners in the course of collecting homeowner association debt that pursuant to the covenants homeowners owed more and/or greater interest than that authorized to be charged by the covenants.

57. Defendant's claims are identical or at least typical to the class claims. Defendant and the class of Homeowner's have sustained virtually identical types of damages and their claims arise from identical or virtually identical procedures employed by McCabe, and are based on identical legal theories. Damages can be mechanically and mathematically determined from McCabe's business records.

58. Defendant will assure adequate representation of members of the Homeowner class. Defendant's economic interest and the interests of the class members are squarely aligned. Ms. Richardson's claims are typical of the class's claims and they have no conflict with class members in the maintenance of this action, and their interests are antagonistic.

59. A class action provides the only known fair and efficient method of adjudicating this controversy. The substantive claims of the class are virtually identical in all material respects, and will require evidentiary proof of the same kind and application and interpretation of the same or nearly identical contractual language and procedures. Since McCabe has treated and is treating members of the class in an identical or virtually identical manner, declaratory and injunctive relief (under the Cause of Action for Violation of FDCPA) in addition to damages is appropriate.

**FOR AND AS A SEVENTEENTH DEFENSE AND BY WAY OF THIRD-PARTY
COMPLAINT AGAINST MCCABE**

(Unjust Enrichment)

60. Defendant incorporates all preceding paragraphs as though fully set forth herein.

61. McCabe has been unjustly enriched at the expense of and to the detriment of Defendant by failing to act in good faith and a commercially reasonable manner, including but not limited to by collecting from homeowners improper charges, fees, and/or expenses which were not incurred or charged to the Homeowner's association in process enforcing homeowners association covenants.

62. Defendant is informed and believes that she and the class members are entitled to recover from McCabe all monies, and any improper benefit received by McCabe as a result, consequence, and/or incidentally related to McCabe's actions as alleged above.

**AND AS A EIGHTEENTH DEFENSE AND BY WAY OF THIRD-PARTY
COMPLAINT AGAINST MCCABE
(Fair Debt Collection Practices Act)**

63. Defendant incorporates all preceding paragraphs as though fully set forth herein.

64. Defendant is a consumer as defined in 15 U.S.C. § 1692a(3).

65. McCabe is a debt collector as defined in 15 U.S.C. § 1692a(4).

66. McCabe violated the Fair Debt Collection Practices Act ("FDCPA"), 15. U.S. C.

§1692, such violations include, but are not limited to the following:

(a) False, Misleading, Deceptive, or Unfair Practice/Unauthorized Charges

McCabe violated 15 U.S.C §1692e(2)(A), 15 U.S.C. §1692e(10), and 15 U.S.C. §1692(f)(1), by falsely representing the character, amount, and/or legal status of the debt Plaintiff claims Defendant owes, including asserting Defendant owed greater and/or larger fees, charges, interest, and attorney's fees pursuant to the covenants and/or by law when the greater fees, charges, interest, and/or attorney's fees are not authorized by the covenants and/or law.

(b) False, Misleading, Deceptive or Unfair/False Representations of Obligations on Account.

McCabe violated 15 U.S.C §1692e and 15 U.S.C §1692f by using deceptive means to attempt to collect a debt, namely by falsely representing that Defendant

was obligated to pay Plaintiff certain fees, expenses, and/or attorney's fees and thereafter attempting to collect the debt when in fact the Plaintiff was precluded from enforcing the debt by contract and operation of law.

(c) False, Misleading, or Deceptive Validation/Notice of Right to Collect and Ownership of Debt Obligation.

McCabe violated 15 U.S.C §1692g and 15 U.S.C §1692j by failing to validate the amount of debt, the interest to be charged upon the debt, the fees charged upon the debt, and failing to properly notice consumer within five days after the initial communication in connection with collection of the debt.

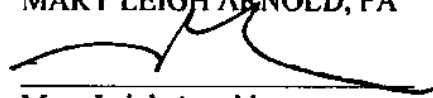
70. As a result of the above violations of the FDCPA, the McCabe is liable to Defendant and the class members for actual damages, statutory damages, costs and attorney's fees and costs.

JURY TRIAL DEMANDED.

WHEREFORE, having fully answered the Complaint of Plaintiff herein, Defendant prays the same be dismissed and that she be awarded costs, legal interest, prejudgment interest, actual damages, consequential damages, incidental damages, punitive damages, statutory damages, attorney's fees and costs, and for such other and further relief as the court may deem just and proper.

RESPECTFULLY SUBMITTED:

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
Phone: 843-971-6053
Facsimile 843-971-6055
sammie@maryarnoldlaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on this 2 day of October, 2015, a copy of the within Amended Answer and Counterclaim and Third-Party Complaint of Defendant was placed in the United States Mail postage pre-paid, addressed to opposing counsel as follows:

Stephanie C. Trotter
McCabe Trotter & Beverly, PC
P.O. Box 212069
Columbia, SC 29211

MARY LEIGH ARNOLD, PA