

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

CASE NO.: 502016CA014473XXXXMB  
Division: AE

JOHN LEOPOLDO FIORILLA  
as trustee f/b/o JOHN LEOPOLDO  
FIORILLA TRUST U/A/D 06-25-2003,

Plaintiff,

vs.

KLAYMAN & TOSKES, P.A., a Florida  
Corporation; LAWRENCE L. KLAYMAN;  
and STEVEN D. TOSKES,

Defendants.

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KLAYMAN & TOSKES, P.A., a Florida  
Corporation,

Counter-Plaintiff,

vs.

JOHN LEOPOLDO FIORILLA,  
as trustee f/b/o JOHN LEOPOLDO  
FIORILLA TRUST U/A/D 06-25-2003,

Counter-Defendant.

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**KLAYMAN & TOSKES, P.A.'S REPLY TO  
COUNTER-DEFENDANTS' AFFIRMATIVE DEFENSES TO COUNTERCLAIM**

Defendant/Counter-Plaintiff, KLAYMAN & TOSKES, P.A. ("K&T"), hereby files its  
Reply to Plaintiff/Counter-Defendant's Affirmative Defenses to Counterclaim and states:

1. As to Plaintiff/Counter-Defendant JOHN LEOPOLDO FIORILLA as trustee f/b/o  
JOHN LEOPOLDO FIORILLA TRUST U/A/D 06-25-2003's ("Fiorilla") First Affirmative  
Defense regarding prior material breach, K&T asserts that Fiorilla authorized and consented to  
Settlement of the Arbitration matter as reflected in written email communications. In addition,

collateral estoppel and *res judicata* precludes Fiorilla from asserting that the settlement was made without his express consent since the New York courts have expressly determined that Fiorilla authorized the settlement of the Underlying Litigation, and that ruling is not subject to collateral attack in this proceeding.

2. As to Fiorilla's Second Affirmative Defense regarding statute of limitations, K&T asserts that the settlement of the underlying litigation was confirmed and appeals were exhausted in October 2015. As such, K&T's claim for unjust enrichment/quantum meruit was timely filed within the four-year statute of limitations.

3. As to Fiorilla's Third Affirmative Defense regarding express contract, K&T asserts that it has plead the Counterclaim in the alternative and, therefore, to the extent that the contract does not adequately govern the rights and obligations of the parties, K&T is entitled to compensation pursuant to unjust enrichment/quantum meruit.

4. As to Fiorilla's Fourth Affirmative Defense regarding unclean hands, K&T asserts that Fiorilla authorized and consented to Settlement of the Arbitration matter as reflected in written email communications. In addition, collateral estoppel and *res judicata* precludes Fiorilla from asserting that the settlement was made without his express consent since the New York courts have expressly determined that Fiorilla authorized the settlement of the Underlying Litigation, and that ruling is not subject to collateral attack in this proceeding. K&T denies that it breached any duties owed to Fiorilla and asserts that it abided by the terms of the parties contract and properly assessed the value of Fiorilla's case.

5. As to Fiorilla's Fifth Affirmative Defense regarding waiver, K&T asserts that Fiorilla authorized and consented to Settlement of the Arbitration matter as reflected in written

email communications. In addition, collateral estoppel and *res judicata* precludes Fiorilla from asserting that the settlement was made without his express consent since the New York courts have expressly determined that Fiorilla authorized the settlement of the Underlying Litigation, and that ruling is not subject to collateral attack in this proceeding. K&T denies that it breached any duties owed to Fiorilla and asserts that it abided by the terms of the parties contract and properly assessed the value of Fiorilla's case.

6. As to Fiorilla's Sixth Affirmative Defense regarding equitable estoppel, K&T asserts that Fiorilla authorized and consented to Settlement of the Arbitration matter as reflected in written email communications. In addition, collateral estoppel and *res judicata* precludes Fiorilla from asserting that the settlement was made without his express consent since the New York courts have expressly determined that Fiorilla authorized the settlement of the Underlying Litigation, and that ruling is not subject to collateral attack in this proceeding. K&T denies that it engaged in inequitable or bad faith conduct.

7. As to Fiorilla's Seventh Affirmative Defense regarding *in pari delicto*, K&T asserts that Fiorilla authorized and consented to Settlement of the Arbitration matter as reflected in written email communications. In addition, collateral estoppel and *res judicata* precludes Fiorilla from asserting that the settlement was made without his express consent since the New York courts have expressly determined that Fiorilla authorized the settlement of the Underlying Litigation, and that ruling is not subject to collateral attack in this proceeding.

8. As to Fiorilla's Ninth Affirmative Defense regarding failure to mitigate, K&T and Fiorilla entered into a contract which entitled K&T to recovery of funds based on settlement of the Arbitration Agreement or, in the alternative, is entitled to reasonable hourly rate for services

provided on behalf of Fiorilla. K&T had no duty to make reasonable efforts to attempt a resolution with Fiorilla or to reduce or minimize any damages, since the damages are based on contractual obligations or reasonable hourly rate for services previously provided. As such, this is in improper and insufficient Affirmative Defense.

WE HEREBY CERTIFY that on this 10th day of **May, 2017**, I electronically filed the foregoing with the Clerk of the Court by using the Florida Court's E-Filing Portal which will send a notice of electronic filing to all counsel on the attached Service List.

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