

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

LANCE STOCKHAUSEN,
LAURA STOCKHAUSEN, and
TODD STOCKHAUSEN,

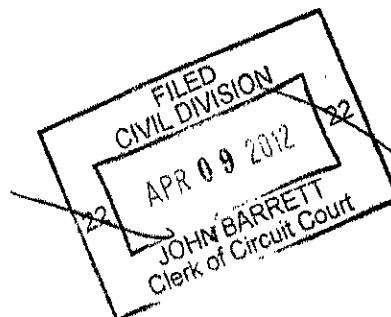
Case No: 12CV3239
Case Code: 30301

Plaintiffs,

v.

MICHAEL BLUMENFELD, and
PATRICE STARRETT BLUMENFELD,

Defendants.



**DEFENDANT MICHAEL BLUMENFELD'S ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM**

The Defendant, Michael Blumenfeld, by his attorneys, La Fleur Law Office, S.C., hereby answers the Plaintiffs' Complaint and affirmatively alleges as follows:

1. Answering Paragraph 1, upon information and belief, admits.
2. Answering Paragraph 2, upon information and belief, admits.
3. Answering Paragraph 3, denies that Michael Blumenfeld lives at the address alleged. Further answering Paragraph 3, admits that Michael Blumenfeld has previously provided legal services for the Plaintiffs but not related to the subject of this action and admits that Defendant was a mortgage banker/broker, but served as Chief Financial Officer of Waterstone Mortgage Corporation at all times material to the subject action. Defendant denies the remaining allegations contained therein.

4. Answering Paragraph 4, admits that Patrice Starrett Blumenfeld, n/k/a Patrice Ann Starrett, is an adult resident of Wisconsin but denies the remaining allegations contained therein.

FACTUAL ALLEGATIONS

5. Answering Paragraph 5, the Defendant realleges and incorporates herein by reference as though fully set forth herein paragraphs 1 through 4 of the Defendant's Answer.

6. Answering Paragraph 6, the Defendant admits that he has known the Plaintiffs previously and he has provided legal services for them through 2003. Further answering paragraph 6, admit that Defendant provided general estate planning and property division advice in 2006 and advice regarding a collection matter which Stockhausen Excavation had with Greene Brothers Construction. Defendant denies the remaining allegations contained therein and affirmatively alleges that the parties had no attorney-client relationship concerning the subject matter.

7. Answering Paragraph 7, the Defendant agreed to purchase Florida real estate, hereinafter the "subject property" through Stock Blue Properties, LLC (hereinafter "Stock Blue"). Defendant affirmatively alleges that he was offered to be included in Plaintiffs' purchase of the subject property. Defendant admits the remaining allegations.

8. Answering Paragraph 8, the Defendant denies the allegations contained therein.

9. Answering Paragraph 9, the Defendant admits that he is an attorney and he was a mortgage banker/broker. Further answering Paragraph 9, the Defendant admits that the Plaintiffs obtained a mortgage for the subject property. Further answering Paragraph 9, Michael Blumenfeld denies the remaining allegations contained therein and affirmatively alleges that he was a flat salaried employee at Waterstone Mortgage Corporation at the time the subject property

was purchased and, therefore, received no financial benefit from the origination of Plaintiffs' loan.

10. Answering Paragraph 10, the Defendant admits that he set up a limited liability company to hold the real estate, however, the Defendant affirmatively alleges that the entity known as Stock Blue never held the title to the subject property and never held any equitable interest in the property involved in this litigation. Defendant denies the remaining allegations contained therein.

11. Answering Paragraph 11, the Defendant denies the allegations contained therein and affirmatively alleges that the entity known as Stock Blue never held any interest, title, or otherwise in the subject property and therefore neither he nor Patrice Starrett Blumenfeld ever held an interest in the subject property.

12. Answering Paragraph 12, the Defendant admits that the closing date for the property in question was January 24, 2007.

13. Answering Paragraph 13, the Defendant denies knowledge or information sufficient to form a belief as to the allegations contained therein and therefore denies the same.

14. Answering Paragraph 14, the Defendant admits that he paid holding and maintenance costs directly to Plaintiffs upon their misrepresentation that Stock Blue held the subject property. Further answering Paragraph 14, the Defendant denies the remaining allegations contained therein.

15. Answering Paragraph 15, the Defendant denies the allegations contained therein and affirmatively alleges that the Plaintiffs chose to hold the property for themselves while misrepresenting to Defendants that Stock Blue held the subject property.

16. Answering Paragraph 16, the Defendant denies the allegations contained therein.

- 17. Answering Paragraph 17, the Defendant denies the allegations contained therein.
- 18. Answering Paragraph 18, the Defendant denies the allegations contained therein.
- 19. Answering Paragraph 19, the Defendant denies the allegations contained therein.
- 20. Answering Paragraph 20, the Defendant denies the allegations contained therein.
- 21. Answering Paragraph 21, the Defendant denies the allegations contained therein.

FIRST CAUSE OF ACTION AGAINST MICHAEL BLUMENFELD AND PATRICE STARRETT BLUMENFELD

Breach of Contract

22. Answering Paragraph 22, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein paragraphs 1 through 21 of the Defendant's Answer.

23. Answering Paragraph 23, the Defendant denies the allegations contained therein.

24. Answering Paragraph 24, the Defendant denies knowledge or information sufficient to form a belief as to unpaid holding and maintenance costs and therefore denies the same. Further answering Paragraph 24, the Defendant denies that he ever had a duty to make a capital contribution to Stock Blue for holding and maintenance costs as the Plaintiffs intentionally failed to comply with the Resolutions completed by the Members of Stock Blue and moreover, there is no obligation of Defendant as to Stock Blue or the Plaintiffs under the terms of the Stock Blue Operating Agreement or Member Resolution.

25. Answering Paragraph 25, the Defendant denies the allegations contained therein.

26. Answering Paragraph 26, the Defendant denies the allegations contained therein.

27. Answering Paragraph 27, the Defendant denies the allegations contained therein.

28. Answering Paragraph 28, the Defendant denies the allegations contained therein.

**SECOND, AND ALTERNATIVE, CAUSE OF ACTION AGAINST MICHAEL
BLUMENFELD AND PATRICE STARRETT BLUMENFELD**

Unjust Enrichment

29. Answering Paragraph 29, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 28 of the Defendant's Answer.

30. Answering Paragraph 30, the Defendant denies the allegations contained therein.

31. Answering Paragraph 31, the Defendant denies the allegations contained therein.

32. Answering Paragraph 32, the Defendant denies the allegations contained therein.

33. Answering Paragraph 33, the Defendant denies the allegations contained therein and affirmatively alleges that the Defendants never received an interest in the subject property.

THIRD CAUSE OF ACTION AGAINST MICHAEL BLUMENFELD

Negligent Misrepresentation

34. Answering Paragraph 34, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 33 of the Defendant's Answer.

35. Answering Paragraph 35, the Defendant denies the allegations contained therein and affirmatively alleges that the Plaintiffs owned numerous properties in the subject area of Florida at the time of the purchase of the subject property and maintained a previous and consistent contractual relationship with the Broker for the property.

36. Answering Paragraph 36, the Defendant denies the allegations contained therein.

37. Answering Paragraph 37, the Defendant denies the allegations contained therein.

38. Answering Paragraph 38, the Defendant denies the allegations contained therein.

39. Answering Paragraph 39, the Defendant denies the allegations contained therein.

FOURTH CAUSE OF ACTION AGAINST MICHAEL BLUMENFELD

Intentional Misrepresentation

40. Answering Paragraph 40, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 39 of the Defendant's Answer.

41. Answering Paragraph 41, the Defendant denies the allegations contained therein.

42. Answering Paragraph 42, the Defendant denies the allegations contained therein and affirmatively alleges that there was no attorney-client relationship with the Plaintiffs concerning the subject property and further affirmatively alleges that the Plaintiffs owned numerous properties in the subject area of Florida at the time of the purchase of the subject property and maintained a previous and consistent contractual relationship with the Broker for the property.

43. Answering Paragraph 43, the Defendant denies the allegations contained therein.

44. Answering Paragraph 44, the Defendant denies the allegations contained therein and affirmatively alleges that the alleged damages the Plaintiffs claim to have suffered, if any, resulted from a failure to mitigate their own damages.

FIFTH CAUSE OF ACTION AGAINST MICHAEL BLUMENFELD

Theft: Violation Wis. Stat. §§ 895.446 and 943.20

45. Answering Paragraph 45, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 44 of the Defendant's Answer.

46. Answering Paragraph 46, the Defendant denies the allegations contained therein.

47. Answering Paragraph 47, the Defendant denies the allegations contained therein.

48. Answering Paragraph 48, the Defendant denies the allegations contained therein.

49. Answering Paragraph 49, the Defendant denies the allegations contained therein.

50. Answering Paragraph 50, the Defendant denies the allegations contained therein and affirmatively alleges that the alleged damages the Plaintiffs claim to have suffered, if any, resulted from their failure to mitigate their own damages.

SIXTH CAUSE OF ACTION AGAINST MICHAEL BLUMENFELD

Negligence

51. Answering Paragraph 51, the Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 50 of the Defendant's Answer.

52. Answering Paragraph 52, the Defendant denies the allegations contained therein.

53. Answering Paragraph 53, the Defendant denies the allegations contained therein.

54. Answering Paragraph 54, the Defendant denies the allegations contained therein.

55. Answering Paragraph 55, the Defendant denies the allegations contained therein.

56. Answering Paragraph 56, the Defendant denies the allegations contained therein and affirmatively alleges that alleged damages the Plaintiffs claim to have suffered, if any, resulted from their failure to mitigate their own damages.

AFFIRMATIVE DEFENSES

The Defendant, Michael Blumenfeld, as and for his affirmative defenses, affirmatively alleges as follows:

1. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
2. The Plaintiffs failed to mitigate their own alleged damages, if any.
3. The Plaintiffs failed to join necessary parties under Wis. Stat. § 803.03.
4. The court may lack subject matter jurisdiction over this matter.
5. The Plaintiffs' intentional fraud bars them recovery in this action.
6. The Plaintiffs' complaint may violate the requirements of Wis. Stat. §802.05.

7. The Plaintiffs may be barred from recovery by the doctrine of "unclean hands."
8. The Plaintiffs' alleged damages, if any, may be caused in whole or in part by intervening and/or superseding causes.
9. The Plaintiffs breached the implied duty of good faith in performing the contract.
10. Plaintiffs failure to transfer the subject property to Stock Blue frustrated the purpose of the contract such that defendants have no duty to perform.
11. As a result of Plaintiffs' misconduct, they are equitably estopped from seeking relief from Defendants.

COUNTERCLAIM

The Defendant, Michael Blumenfeld, by his attorneys, La Fleur Law Office, S.C., as and for a counterclaim against the Plaintiffs, hereby alleges as follows:

1. The Defendant re-alleges and incorporates by reference as though fully set forth herein, the Plaintiffs' Complaint, except as modified by the foregoing Answers, Affirmative Allegations, and Affirmative Defenses of the Defendant.
2. That prior to purchasing the subject property, the Plaintiffs owned a total of four principal residences and at least three vacant land properties in the subject area of Florida.
3. That in their previous dealings with real estate purchases in Florida, the Plaintiffs became acquainted with a Florida real estate agent named Brett Hendricks.
4. That Mr. Hendricks assisted the Plaintiffs with rental matters for their Florida properties.
5. That in 2006, Mr. Hendricks suggested to the Plaintiffs that they purchase the subject property, Unit C-401 at Hacienda Del Mar.

6. That Mr. Hendricks conveyed to the Plaintiffs that Unit C-401 at Hacienda Del Mar could be purchased for significantly below the market value and that the deposits made by the original contract buyer of the property, more than \$200,000 would be credited to the Plaintiffs.
7. That Mr. Hendricks further assured the Plaintiffs that he could immediately list the subject property and create a profit for them.
8. That Mr. Hendricks convinced the Plaintiffs to purchase the condominium.
9. That, after discussing the purchase of the condominium with Mr. Hendricks, the Plaintiffs met with Michael Blumenfeld in the Fall of 2006 regarding their purchase of the subject property.
10. That neither Michael Blumenfeld nor Patrice Starrett Blumenfeld ever visited the Hacienda Del Mar property prior to Plaintiffs' purchase of the subject property.
11. That Plaintiffs had difficulty obtaining a mortgage for the property.
12. Plaintiffs contacted Blumenfeld for assistance in obtaining a mortgage for the property when he was employed by Waterstone Mortgage Corporation.
13. That Blumenfeld worked with the assigned loan officer at Waterstone Mortgage Corporation, who assisted Plaintiffs in securing a mortgage for the subject property.
14. That Plaintiffs, as a result of Defendant finding a Buyer for them for their lake property residence in Washington County, after Plaintiffs had failed to sell the property through their real estate broker, asked Defendants if they wanted to be included in holding the property until it was sold to both share in expense and profit.

15. That based upon Plaintiffs' longstanding success in the Florida real estate market, Blumenfeld agreed to enter into an agreement to hold the property and created the Stock Blue limited liability company documents for the purpose of holding the subject property.
16. That the Plaintiffs and Defendants signed the Stock Blue operating agreement on December 2nd, 2006.
17. That Stock Blue was meant to hold the title to Unit C-401 at Hacienda Del Mar.
18. That the agreement called for the Defendants to provide \$500.00 each, which both parties paid directly to Plaintiffs.
19. That section 2.02 of the operating agreement established that members of Stock Blue would not have to contribute additional funds to the company.
20. That following a refinance of the loan in September, 2007, when the subject property appraised at more than \$1,000,000 and a rental contract for the subject property had been executed, Laura Stockhausen began to send to Defendants the Payment Plan Allocation of the Stock Blue Loan.
21. That, in fact, there never was a Stock Blue Loan.
22. That on numerous occasions, Lance Stockhausen would call Michael Blumenfeld and request payment for the Stock Blue property, all such payments requested to be made directly to Lance and Laura Stockhausen.
23. That the subject property has never been titled as owned by Stock Blue.
24. That Todd Stockhausen, through his silence, affirmed and ratified the misrepresentations of Lance Stockhausen and Laura Stockhausen concerning the subject property.

25. That the Plaintiffs have, at all times material hereto, held the property as their own either through Stockhausen Investments, LLC or the Plaintiffs individually.
26. That Plaintiffs have misrepresented to their accountant for income tax preparation purposes, the existence of Stock Blue.
27. That during Plaintiffs' ownership of the subject property, they subsequently refinanced the mortgage through Macquarie Mortgage as a means to recover expenses they incurred in improving the Hacienda Del Mar property, outside of the Stock Blue Operating Agreement.
28. That Plaintiffs intentionally failed to transfer the property to Stock Blue.
29. That Stock Blue does not own and has never owned or maintained any assets, specifically, the subject property.
30. That Stock Blue has never had a bank account to hold initial capital contributions, has not been a party to any lease or rental agreement with regard to the subject property, and has never been identified as an owner to the Condominium Association or the Utility Companies servicing the property.
31. That the subject property was and has always been titled in the name of the Plaintiffs.
32. That all leases and rental agreements for the property, managed by and through Mr. Hendricks, were in the name of the Stockhausens or Stockhausen Investments, LLC only.
33. That the purpose of purchasing the property was to immediately re-sell it for a profit based upon the recommendations of Plaintiffs and Mr. Hendricks.
34. That the property did not sell for the price chosen by Plaintiffs and Mr. Hendricks.

35. That, as property value continued to decrease in Florida, the Plaintiffs continued to list the subject property well in excess of the market value.
36. That Defendants attempted to persuade the Plaintiffs to lower the asking price to sell the condominium.
37. That the Plaintiffs received offers to purchase the condominium but refused to accept them.
38. That based upon the misrepresentations of the Plaintiffs that Stock Blue existed and did hold title to the property, Defendants made payments directly to Plaintiffs of \$43,551 for the subject property.
39. That Plaintiffs defrauded Defendants into making the payments to them because Defendants never held any interest in the subject property
40. That Defendants are entitled to the return of the \$43,551.00 paid to Plaintiffs along with interest.

BREACH OF CONTRACT

41. The Defendant re-alleges and incorporates by reference as though fully set forth herein Paragraphs 1 through 40 of the Defendant's Counterclaim.
42. That the Defendants and Plaintiffs entered into an agreement to hold and re-sell the subject property through Stock Blue.
43. That Plaintiffs breached the contract to hold and re-sell the subject property through Stock Blue by failing to transfer the subject property to Stock Blue.
44. That Defendants honored the Stock Blue Properties LLC by making payments directly to Plaintiffs for the subject property when, in fact, the Plaintiffs had breached the agreement.

- 45. That the breach of contract by Plaintiffs has caused damage to Defendants in the amount of the payments they made, loss of interest, and other expenses.

MISREPRESENTATION: INTENTIONAL DECEIT

- 46. The Defendant re-alleges and incorporates by reference herein Paragraphs 1 through 45 of the Defendant's Counterclaim.
- 47. That the Plaintiffs made a representation of fact to the Defendants that the purchase of the subject property was a wise and profitable financial investment.
- 48. That the Plaintiffs owned four homes and several vacant lots in the area of the subject condominium and represented to the Defendants that their knowledge of the area market would assist the parties in selling the condominium for a profit.
- 49. That Laura Stockhausen represented in writing that Stock Blue existed.
- 50. That Lance Stockhausen represented verbally that Stock Blue existed.
- 51. That Todd Stockhausen, through his silence, ratified and confirmed that Stock Blue existed.
- 52. That Plaintiffs' representations of fact were untrue.
- 53. That the Plaintiffs made these representations of fact knowing they were untrue or recklessly without caring if their representations were true or false.
- 54. That the Plaintiffs made these representations of fact with the intent to deceive the Defendants into participating in the purchase of the subject property to their pecuniary damage.
- 55. That the Defendants believed the representations of the Plaintiffs to be true and relied on them to their detriment.

NEGLIGENT MISREPRESENTATION

56. Defendant re-alleges and incorporates by reference as though fully set forth herein paragraphs 1 through 55 of Defendant's counterclaim.
57. The Plaintiffs made representations of fact to Defendants concerning the viability and profitability of purchasing the subject property and selling it for profit in addition to the existence of Stock Blue.
58. The Plaintiffs' representations of fact were untrue.
59. The Plaintiffs were negligent in making these recommendations to the Defendants.
60. The Defendants relied on Plaintiffs' representations as true and relied upon them to their detriment.

MISREPRESENTATION: STRICT RESPONSIBILITY

61. Defendant re-alleges and incorporates by reference as though fully set forth herein paragraphs 1 through 60 of Defendant's counterclaim.
62. Plaintiffs made representations of fact to the Defendants concerning the viability and profitability of purchasing the subject property and selling it for profit in addition to the existence of Stock Blue.
63. Plaintiffs' representations of fact were untrue.

64. Plaintiffs collected and requested funds from Defendants personally and collected the money personally at the same time they knew Defendants had no legal ownership interest in the property.
65. Plaintiffs made the representations as facts on their own personal knowledge, or in circumstances in which they ought to have known the truth or untruth of their statements.
66. The Plaintiffs had an economic interest in the purchase and sale of the subject property, or in other words, Plaintiffs stood to make a financial gain if Defendants entered into the transaction.
67. The Defendants believed the representations to be true and relied upon them to their detriment.

FRAUDULENT MISREPRESENTATION: WIS. STAT. SEC. 895.446

68. Defendant re-alleges and incorporates by reference as though fully set forth herein paragraphs 1 through 67 of Defendant's Counterclaim.
69. The Plaintiffs made false representations to the Defendants concerning the viability and profitability of purchasing the subject property and selling it for a profit in addition to the existence of Stock Blue LLC.
70. Plaintiffs knew their representations were false.
71. The Plaintiffs made the representations with the intent to deceive and defraud the Plaintiff.
72. The Defendants were deceived by the representations.
73. The Defendants were defrauded by the representations.

74. The Plaintiffs obtained money from Defendants based upon their misrepresentations.

UNJUST ENRICHMENT

75. The Defendant re-alleges and incorporates herein by reference as though fully set forth herein Paragraphs 1 through 74 of the Defendant's Counterclaim.

76. That the Plaintiffs received a benefit by Defendants' payments to them.

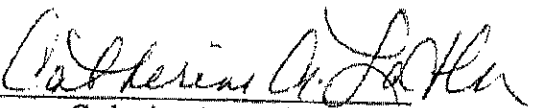
77. That the Plaintiffs had knowledge of the payments and the benefits they received therefrom as a result of Defendants' payments made directly to them.

78. That the Plaintiffs' acceptance and retention of the benefit from Defendants is inequitable under the circumstances and Plaintiffs are liable to Defendants for the amounts wrongfully received from them.

WHEREFORE, the Defendant, Michael Blumenfeld, demands judgment dismissing the Plaintiffs' Complaint and for judgment on his counterclaim as well as for all reasonable costs, disbursements and actual attorney's fees as determined by the court.

Dated this 7th day of April, 2012.

LA FLEUR LAW OFFICE, S.C.
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Michael Blumenfeld,

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