UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PK STUDIOS, INC.,

Plaintiff,

v. Case No: 2:15-cv-389-FtM-99CM

R.L.R. INVESTMENTS, LLC, EAGLES LANDING VILLAS AT GOLDEN OCALA, LLC, GOLDEN OCALA GOLF & EQUESTRIAN CLUB MANAGMENT, LLC, STOCK DEVELOPMENT, LLC, and BRIAN STOCK,

Defendants.

OPINION AND ORDER

This matter comes before the Court on Plaintiff's Motion to Strike Defendants' Affirmative Defenses (Doc. #57) filed on March 3, 2016. Defendants filed a Response in Opposition (Doc. #61) on March 21, 2016. Also before the Court is Plaintiff's Motion to Dismiss Defendants' Counterclaims (Doc. #55) filed on February 24, 2016, to which Defendants filed a Response in Opposition (Doc. #60) on March 18, 2016. For the reasons stated and as set forth below, Plaintiff's Motion to Strike is granted in part and denied in part, and Plaintiff's Motion to Dismiss is granted.

I.

Plaintiff PK Studios, Inc. (Plaintiff) filed suit on June 29, 2015 against R.L.R. Investments, LLC, Eagles Landing Villas at Golden Ocala, LLC, and Golden Ocala Golf & Equestrian Club

Management, LLC (collectively, Golden Ocala Defendants or Defendants), and also against Stock Development, LLC (Stock Development) and Brian Stock (Mr. Stock) (collectively Stock Defendants). The three-count Complaint (Doc. #1) asserts a claim of copyright infringement against all five defendants, and claims of breach of contract and declaratory relief against Stock Defendants. Plaintiff contends that Golden Ocala Defendants have been utilizing Plaintiff's copyrighted architectural plans for commercial gain without Plaintiff's permission, and in violation of the limited future-use license granted in a Release Agreement that Plaintiff entered into with Stock Defendants.

On February 5, 2016, Golden Ocala Defendants filed an Answer (Doc. #54) to the Complaint, which also asserts thirty affirmative defenses, seven declaratory-judgment counterclaims (the Counterclaim Complaint), and four crossclaims against Stock Defendants.[1] Plaintiff now moves to strike twenty-three of the affirmative defenses and dismiss six of the counterclaims. The Court will first resolve the Motion to Strike and then decide the Motion to Dismiss.

[1] Mr. Stock and Stock Development each filed an Answer and Affirmative Defenses to the Complaint (Docs. ##28, 29), and they jointly filed an Answer and Affirmative Defenses to Golden Ocala Defendants' crossclaims (Doc. #56).

II.

A. Plaintiff's Motion to Strike Twenty-Three of Golden Ocala Defendants' Affirmative Defenses

The Federal Rules require defendants to "affirmatively state any avoidance or affirmative defense." Fed. R. Civ. P. 8(c). "An affirmative defense is generally a defense that, if established, requires judgment for the defendant even if the plaintiff can prove his case by a preponderance of the evidence." Wright v. Southland Corp., 187 F.3d 1287, 1303 (11th Cir. 1999). Pursuant to Rule 12(f), courts may strike "insufficient defense[s]" from a pleading upon a motion so requesting or sua sponte. Fed. R. Civ. P. 12(f).

The recurring argument throughout Plaintiff's Motion to Strike is that Golden Ocala Defendants' affirmative defenses are bare-bones, conclusory statements that fail to provide Plaintiff adequate notice of the grounds upon which each rests. In response, Defendants contend that they are not required to plead facts in support of the affirmative defenses and point to select case law in which judges in this District have declined to apply the heightened Twombly/Iqbal standard when determining the pleading adequacy of affirmative defenses.[2]

[2] Defendants also argue that denial of the Motion to Strike is warranted because Plaintiff failed to comply with its obligation under Local Rule 3.01(g) to meet and confer prior to filing. Although such failure can serve as grounds for a denial, the Court finds good cause to address the merits of Plaintiff's Motion.

1) Pleading Standard for Affirmative Defenses

As this Court recently discussed in some detail, affirmative defenses must comply with two separate pleading requirements. First, the defense, as plead, must contain "some facts establishing a nexus between the elements of an affirmative defense and the allegations in the complaint," so as to provide the plaintiff fair notice of the grounds upon which the defense rests. Daley v. Scott, No: 2:15-cv-269-FtM-29DNF, 2016 WL 3517697, at *3 (M.D. Fla. June 28, 2016).[3] Boilerplate pleading – that is, merely listing the name of the affirmative defense without providing any supporting facts – is insufficient to satisfy Rule 8(c), because it does not provide notice sufficient to allow the plaintiff to rebut or properly litigate the defense.[4] Id. (citing Grant v. Preferred Research, Inc., 885 F.2d 795, 797 (11th Cir. 1989); Hassan v. U.S. Postal Serv., 842 F.2d 260, 263 (11th Cir. 1988)). Requiring defendants to allege some facts linking the defense to the plaintiff's claims "streamlines the pleading stage, helps the parties craft more targeted discovery requests, and reduces litigation costs." Id. (citations omitted).

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[3] Daley was decided after the parties briefed the Motion to Strike.

[4] This pleading requirement does not "unfairly subject defendants to a significant risk of waiving viable defenses for which they do not yet have supporting facts," since courts routinely grant filing extensions and freely afford leave to amend pleadings. Daley, 2016 WL 3517697, at *3. Often, it is even deemed sufficient "notice" to raise the affirmative defense in a dispositive motion or in the pretrial statement or order. Id.

Second, a defendant must avoid pleading shotgun affirmative defenses, viz., "affirmative defenses [that] address[] the complaint as a whole, as if each count was like every other count." Byrne v. Nezhat, 261 F.3d 1075, 1129 (11th Cir. 2001), abrogated on other grounds as recognized by, Nurse v. Sheraton Atlanta Hotel, 618 F. App'x 987, 990 (11th Cir. 2015); see also Paylor v. Hartford Fire Ins. Co., 748 F.3d 1117, 1127 (11th Cir. 2014). Rather, each defense must address a specific count or counts in the complaint or clearly indicate that (and aver how) the defense applies to all claims. See Byrne, 261 F.3d at 1129; see also Lee v. Habashy, No. 6:09–cv–671–Orl–28GJK, 2009 WL 3490858, at *4 (M.D. Fla. Oct. 27, 2009). District courts have a sua sponte obligation to identify shotgun affirmative defenses and strike them, with leave to replead. See Paylor, 748 F.3d at 1127; Morrison v. Executive Aircraft Refinishing, Inc., 434 F. Supp. 2d 1314, 1318 (S.D. Fla. 2005). With these two pleading requirements in mind, the Court turns to the twenty-three challenged affirmative defenses.

2) Affirmative Defenses One, Three, Five, and Twenty-Four

Golden Ocala Defendants' first, third, fifth, and twenty-forth affirmative defenses allege, respectively: that Plaintiff has failed to state viable causes of action; that Plaintiff's copyright registration is invalid and/or does not contain copyrightable materials; that Counts I (copyright infringement) and II (breach of contract) are barred because Plaintiff has not

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