

ELECTRONICALLY FILED
Craighead County Circuit Court in Jonesboro
Candace Edwards, Craighead Circuit Clerk
2018-May-25 08:47:44
16JCV-17-1164
C02D08 : 9 Pages

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
JONESBORO DISTRICT
CIVIL DIVISION

SAGE MEADOWS PROPERTY OWNERS
ASSOCIATION, INC.

PLAINTIFF

vs.

No. 16JCV-2017-1164

ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION
and LARRY WALTHER, DIRECTOR

DEFENDANTS

ANSWER TO FIRST AMENDED COMPLAINT

Comes the Arkansas Department of Finance and Administration and Larry Walther, Director, by his attorney and for his Answer to the First Amended Complaint, states as follows:

1. The allegations contained in Paragraph 1 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations contained in Paragraph 1 call for a response, the Defendant denies the allegations therein.

2. Defendant admits that the Plaintiff is registered to do business in Arkansas. The Department is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Plaintiff's Complaint.

3. The allegations contained in Paragraph 3 of Plaintiff's Complaint are admitted.

4. The allegations contained in Paragraph 4 consist of restatements or conclusions of law to which no response is required. The Department states affirmatively that Ark. Code Ann. § 26-18-406(c)(1) speaks for itself.

5. The allegations contained in Paragraph 5 consist of restatements or conclusions of law to which no response is required.

6. The allegations contained in Paragraph 6 consist of restatements or conclusions of law to which no response is required. The Defendant states affirmatively that Ark. Code Ann. § 16-60-103 speaks for itself.

7. Defendant admits the allegations contained in Paragraph 7 of Plaintiff's Complaint but states affirmatively that the audit periods commenced on January 1, 2010.

8. Defendant admits the allegations contained in Paragraph 8 of Plaintiff's Complaint but states affirmatively that the payment was made on or about May 4, 2015.

9. Defendant admits the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10. Defendant admits the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. The allegations contained in Paragraph 11 consist of restatements or conclusions of law to which no response is required. To the extent the allegations of Paragraph 11 of Plaintiff's Complaint call for a response, the Defendant denies the allegations contained therein. The Defendant states affirmatively that Ark. Code Ann. § 26-18-406 speaks for itself.

12. The Department is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13. Defendant admits the allegations contained in Paragraph 13 of Plaintiff's Complaint.

14. Defendant admits the allegations contained in Paragraph 14 of Plaintiff's Complaint.

15. Defendant denies the allegation contained in Paragraph 15 that the Defendant concluded that all sales had been reported and that tax had been paid on all sales. The remaining allegations contained in Paragraph 15 of Plaintiff's Complaint are admitted.

16. Defendant admits the allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. Defendant admits the allegations contained in Paragraph 17 to the extent the auditors used information provided by the bar manager to calculate estimated sales for the period under audit. Defendant is without knowledge or information sufficient to form a belief as to the truth of

the allegation concerning the employment dates of the bar manager, or what the bar manager could have known about the bar's operations prior to his employment with Plaintiff.

18. Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Complaint.

19. Defendant admits the allegations contained in Paragraph 19 to the extent Plaintiff allowed the auditors to review documents and records related to Plaintiff's purchase and resale of alcohol. Any and all remaining allegations contained in Paragraph 19 are denied. The Defendant states affirmatively that Ark. Code Ann. § 26-18-506(d) speaks for itself.

20. Defendant admits the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21. Defendant admits the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. Defendant admits the allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in Paragraph 23 concerning the example provided in the first sentence. Defendant admits the allegations contained in Paragraph 23 in so far that Defendant determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. Defendant admits the allegations contained in Paragraph 25 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. Defendant admits the allegations contained in Paragraph 26 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant

was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 26 of Plaintiff's Complaint.

27. Defendant admits the allegations contained in Paragraph 27 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendant admits the allegations contained in Paragraph 28 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendant admits the allegations contained in Paragraph 29 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 29 of Plaintiff's Complaint.

30. Defendant admits the allegations contained in Paragraph 30 in so far that Defendant correctly determined that Plaintiff's alcoholic beverage sales were underreported and that Defendant was required to calculate and estimate the assessment of tax due on the underreported sales. Defendant denies any and all remaining allegations contained in Paragraph 30 of Plaintiff's Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint.

33. Defendant admits the first sentence contained in Paragraph 33 of Plaintiff's Complaint but states affirmatively that the proposed assessment was issued on April 20, 2015. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 33 of Plaintiff's Complaint.

34. Defendant admits the allegations contained in Paragraph 34 of Plaintiff's Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of Plaintiff's Complaint.

36. Paragraph 36 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations contained in paragraph 36 call for a response, Defendant denies all allegations contained therein. Defendant states affirmatively that Exhibit A speaks for itself.

37. Paragraph 37 of Plaintiff's Complaint contains allegations to which no response is required. The Defendant states affirmatively that Ark. Code Ann. §§ 26-52-301, 26-52-302, and 26-52-306 speak for themselves.

38. The allegations contained in Paragraph 38 consist of restatements or conclusions of law to which no response is required. The Defendant states affirmatively that Ark. Code Ann. § 3-9-213 speaks for itself.

39. The allegations contained in Paragraph 39 consist of restatements or conclusions of law to which no response is required. The Defendant states affirmatively that Ark. Code Ann. §§ 26-74-101 *et seq.*, and 26-75-101 *et seq.* speak for themselves.

40. The allegations contained in Paragraph 40 consist of restatements or conclusions of law to which no response is required. The Defendant states affirmatively that Ark. Code Ann. § 26-18-313(a) speaks for itself.

41. The allegations contained in Paragraph 41 consist of restatements or conclusions of law to which no response is required.

42. Defendant denies the allegations contained in Paragraph 42 of the Plaintiff's Complaint.

43. Defendant denies the allegations contained in Paragraph 43 of the Plaintiff's Complaint.

44. Defendant denies the allegations contained in Paragraph 44 of the Plaintiff's Complaint.

45. The allegations contained in Paragraph 45 consist of restatements or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 45 of the Plaintiff's Complaint. The Defendant states affirmatively that Ark. Code Ann. § 26-18-506 speaks for itself.

46. Defendant denies the allegations contained in Paragraph 46 of the Plaintiff's Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of the Plaintiff's Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of the Plaintiff's Complaint.

49. The allegations contained in Paragraph 49 consist of restatements or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations contained in Paragraph 49 of the Plaintiff's Complaint. The Defendant states affirmatively that Ark. Code Ann. § 26-18-406 speaks for itself.

50. Defendant denies the allegations contained in Paragraph 50 of the Plaintiff's Complaint.

51. Defendant denies the allegations contained in Paragraph 51 of the Plaintiff's Complaint.

52. Defendant denies the allegations contained in Paragraph 52 of the Plaintiff's Complaint. The Defendant states affirmatively that the appeal of this matter to circuit court does not authorize a trial by jury.

53. The allegations contained in Paragraph 53 of Plaintiff's Complaint contains allegations to which no response is required. To the extent the allegations contained in Paragraph 53 call for a response, the Defendant denies the allegations therein.

54. The Defendant denies each and every allegation of the Plaintiff's Complaint that was not specifically admitted herein.

55. The Defendant denies the allegations and relief sought in the WHEREFORE clause of the Plaintiff's Complaint.

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed; that Plaintiff's claim for court costs and all other relief be denied; and for any and all other relief to which Defendant is or may become entitled.

LARRY WALTHER, DIRECTOR
DEPT. OF FINANCE AND ADMINISTRATION
STATE OF ARKANSAS

BY: /s/ Michael J. Wehrle
MICHAEL J. WEHRLE, ABN 92036
Office of Revenue Legal Counsel
P. O. Box 1272 (Rm. 2380)
Little Rock, AR 72203
(501) 682-7030
Mike.Wehrle@dfa.arkansas.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2018, I electronically filed the foregoing Answer with the Clerk of the Court using the CM/ECF system, which shall send notification of such filing to Wade Bowen, Attorney for the Plaintiff.

/s/ Michael Wehrle
MICHAEL J. WEHRLE