

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STEVE AARON, et al,

Plaintiffs,

vs.

Case No. 8:09-cv-2493-SDM-TGW

THE TRUMP ORGANIZATION, INC., a
New York Corporation, and DONALD J.
TRUMP, and individual,

Defendants.

**THE TRUMP ORGANIZATION, INC.'S AND DONALD J. TRUMP'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFFS' COMPLAINT**

The Defendants, The Trump Organization, Inc. (“The Trump Organization”) and Donald J. Trump (“Mr. Trump” and, together with The Trump Organization, “the Defendants”), through their undersigned counsel, hereby answer and defend against the amended complaint herein (“the Complaint”), as follows:

Answering the Complaint by correspondingly numbered paragraphs, the Defendants state as follows:

1. Denied.
2. Denied.
3. Denied, except that the Defendants (a) are without knowledge or information sufficient to form a belief as to the truth of the allegation that the “Plaintiffs all purchased units of various sizes with the understanding that they were buying a Trump development,” and therefore deny the same; (b) admit that “Trump and Trump Co. were not partners or developers in Trump Tower” to the extent that the Defendants believe the Plaintiffs are attempting to use

those terms in these allegations, and, in that regard, state further that the License Agreement, being a written document, is the best evidence of its content, and sets forth the extent and nature of Mr. Trump's participation in the referenced development, and therefore deny any part of this allegation to the extent that such allegation is inconsistent or in conflict with the actual terms of the License Agreement; and (c) admit that the "project [was] developed by SimDag-Robel, LLC."

4. Denied, except admitted only that (a) the Plaintiffs purport to bring actions under the referenced Act; and (b) assert jurisdiction pursuant to 28 U.S.C. § 1331. Without limitation of the foregoing general denial, the Defendants specifically deny that (a) the Complaint adequately sets forth any cause of action under the referenced Act, and (b) the Plaintiffs are entitled to any relief from or against either of the Defendants.

5. Admitted.

6. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny the same.

7. Denied, except admitted only that Mr. Trump is a resident of the State of New York.

8. Denied, except admitted only that Trump Co. is a foreign corporation.

9. Denied.

10. Denied.

11. Denied, except admitted only that "the real property that is the subject of the action is situated in Hillsborough County, Florida."

12. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny the same.

13. Denied, except admitted only that at certain times and at certain places Mr. Trump made statements regarding the Trump Tower development and his association with that development.

14. Denied.

15. Denied, in that the Defendants have no information upon which to determine the authenticity of the referenced document, and, in any event, deny the Plaintiffs' characterization of the document.

16. Denied, in that the Defendants have no information upon which to determine the authenticity of the referenced document, and, in any event, deny the Plaintiffs' characterization of the document.

17. Denied, except admitted only that at certain times and at certain places Mr. Trump made statements regarding the Trump Tower development and his association with that development.

18. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny same.

19. Denied, except that the Defendants (a) believe, upon information and belief, that SimDag encountered difficulties with its "financing plans and fundamental timeline for construction," but are not sufficiently informed regarding the specifics of those matters to admit or deny them in full; and (b) admit that the Trump Tower has not been completed.

20. Admitted only that Mr. Trump filed a lawsuit against SimDag and others on or about May 25, 2007. The allegation that "The Defendants participated in the development only through the licensing of 'Trump' name," is denied, except admitted only that the License Agreement, being a written document, is the best evidence of its content, and sets forth the extent

and nature of Mr. Trump's "participat[ion]" in the referenced development. Accordingly, the Defendants deny any and all of that allegation to the extent that such allegation is inconsistent or in conflict with the actual terms of the License Agreement. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny the same.

21. Denied, except admitted only that the referenced lawsuit and License Agreement, being written documents, are the best evidence of their content. Accordingly, the Defendants deny any and all of the allegations set forth in this paragraph to the extent that such allegations are inconsistent or in conflict with the actual terms of said lawsuit and License Agreement.

22. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that the referenced License Agreement "was made public by the media on or about May 30, 2007," and therefore deny same. With respect to the remaining allegations of this paragraph, and without limitation of the foregoing, the Defendants state that the License Agreement, being a written document, is the best evidence of its content. Accordingly, the Defendants deny any and all of the allegations set forth in this paragraph to the extent that such allegations are inconsistent or in conflict with the actual terms of the License Agreement.

23. Denied, except admitted only that the License Agreement, being a written document, is the best evidence of its content. Accordingly, the Defendants deny any and all of the allegations set forth in this paragraph to the extent that such allegations are inconsistent or in conflict with the actual terms of the License Agreement.

24. Denied, except admitted only that the referenced counterclaim, being a written document, is the best evidence of its content. Accordingly, the Defendants deny any and all of

the allegations set forth in this paragraph to the extent that such allegations are inconsistent or in conflict with the actual terms of the counterclaim.

25. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny the same.

26. Denied, in that the Defendants deny completely that the Plaintiffs have any cause of action against either of the Defendants. Accordingly, no "conditions precedent" as described in this paragraph have been performed or have been waived.

27. The Defendants restate and incorporate by reference their responses to paragraphs 1 through 26 above.

28. Paragraph 28 of the Complaint is the Plaintiffs' characterization of their purported action, to which no response is required. To the extent that it is deemed an allegation of fact, it is hereby denied. Without limitation of the foregoing, the Defendants deny specifically that (a) the Complaint adequately alleges or sets forth the purported action described in this paragraph, and (b) the Plaintiffs are entitled to any recovery or relief from or against either of the Defendants.

29. Paragraph 29 of the Complaint is the Plaintiffs' characterization of the referenced Act, to which no response is required. To the extent that it is deemed an allegation of fact, it is hereby denied. Without limitation of the foregoing, the Defendants state further that the referenced Act, and cases decided pursuant to the Act, being written documents, are the best evidence of their content. Accordingly, the Defendants deny any and all of the allegations set forth in this paragraph to the extent that such allegations are inconsistent or in conflict with the actual terms of the Act and cases decided pursuant to the Act.

30. Denied, except admitted only that at certain times and at certain places Mr. Trump made statements regarding the Trump Tower development and his association with that development.

31. Denied, except admitted only that (a) at certain times and at certain places Mr. Trump made statements regarding the Trump Tower development and his association with that development; and (b) the License Agreement gave Mr. Trump certain authority related to matters regarding the development, which authority is set forth in the License Agreement

32. Denied, except admitted only that the License Agreement gave Mr. Trump certain authority related to matters regarding the development, which authority is set forth in the License Agreement.

33. Denied.

34. Denied.

35. Because the Plaintiffs fail to identify specifically the time, place, and content of the “material representations” that are the subject of the allegations of this paragraph of the complaint, it is impossible for the Defendants to respond to those allegations. Accordingly, the allegations are denied, but the Defendants admit only that at certain times and at certain places Mr. Trump made statements regarding the Trump Tower development and his association with that development. Without limitation of the foregoing, the Defendants specifically deny that any such statements constituted a misrepresentation of any matter.

36. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, and therefore deny the same. Without limitation of the foregoing, the Defendants specifically deny that they undertook any action which could be characterized as “lur[ing]” any person to do anything.

37. Denied.

38. Denied.

39. The Defendants (a) deny that the Plaintiffs are entitled to recover their attorneys' fees and costs pursuant to 15 U.S.C. § 1709(c); and (b) are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph, and therefore deny the same.

WHEREFORE, the Defendants deny that the Plaintiffs are entitled to the relief requested in their unnumbered *ad damnum* paragraph, or to any relief whatsoever. The Defendants have retained the services of the undersigned attorneys and are obligated to pay the undersigned a reasonable fee for their services. Accordingly, the Defendants respectfully request that this Court enter its Order (a) denying the Plaintiffs' claim in its entirety; (b) awarding the Defendants their attorneys' fees and costs pursuant to 15 USC § 1709(c); and (c) granting such other and further relief as this Court deems proper.

40. The Defendants restate and incorporate by reference their responses to paragraphs 1 through 26 above.

41. Paragraph 41 of the Complaint is the Plaintiffs' characterization of their purported action, to which no response is required. To the extent that it is deemed an allegation of fact, it is hereby denied. Without limitation of the foregoing, the Defendants deny specifically that (a) the Complaint adequately alleges or sets forth the purported action described in this paragraph, and (b) that the Plaintiffs are entitled to any recovery or relief from or against either of the Defendants.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

WHEREFORE, the Defendants deny that the Plaintiffs are entitled to the relief requested in their unnumbered *ad damnum* paragraph, or to any relief whatsoever. The Defendants have retained the services of the undersigned attorneys and are obligated to pay the undersigned a reasonable fee for their services. Accordingly, the Defendants respectfully request that this Court enter its Order (a) denying the Plaintiffs' claim in its entirety; (b) awarding the Defendants their attorneys' fees and costs as permitted by law; and (c) granting such other and further relief as this Court deems proper.

46. The Defendants restate and incorporate by reference their responses to paragraphs 1 through 26 above.

47. Paragraph 47 of the Complaint is the Plaintiffs' characterization of their purported action, to which no response is required. To the extent that it is deemed an allegation of fact, it is hereby denied. Without limitation of the foregoing, the Defendants deny specifically that (a) the Complaint adequately alleges or sets forth the purported action described in this paragraph, and (b) that the Plaintiffs are entitled to any recovery or relief from or against either of the Defendants.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

WHEREFORE, the Defendants deny that the Plaintiffs are entitled to the relief requested in their unnumbered *ad damnum* paragraph, or to any relief whatsoever. The Defendants have

retained the services of the undersigned attorneys and are obligated to pay the undersigned a reasonable fee for their services. Accordingly, the Defendants respectfully request that this Court enter its Order (a) denying the Plaintiffs' claim in its entirety; (b) awarding the Defendants their attorneys' fees and costs as permitted by law; and (c) granting such other and further relief as this Court deems proper.

52. The Defendants restate and incorporate by reference their responses to paragraphs 1 through 26 above.

53. Paragraph 53 of the Complaint is the Plaintiffs' characterization of their purported action, to which no response is required. To the extent that it is deemed an allegation of fact, it is hereby denied. Without limitation of the foregoing, the Defendants deny specifically that (a) the Complaint adequately alleges or sets forth the purported action described in this paragraph, and (b) that the Plaintiffs are entitled to any recovery or relief from or against either of the Defendants.

54. Denied.

55. Denied.

56. Denied.

WHEREFORE, the Defendants deny that the Plaintiffs are entitled to the relief requested in their unnumbered *ad damnum* paragraph, or to any relief whatsoever. The Defendants have retained the services of the undersigned attorneys and are obligated to pay the undersigned a reasonable fee for their services. Accordingly, the Defendants respectfully request that this Court enter its Order (a) denying the Plaintiffs' claim in its entirety; (b) awarding the Defendants their attorneys' fees and costs as permitted by law; and (c) granting such other and further relief as this Court deems proper.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Plaintiffs' claims against the Defendants are barred by the express provisions of the Purchase Agreement, the Property Report, the Prospectus, and the marketing materials for the Trump Tower Project.

Second Affirmative Defense

Any reliance by the Plaintiffs upon any of the Defendant's purported representations were rendered unreasonable and/or unjustifiable by the express provisions of the Purchase Agreement, the Property Report, the Prospectus, and the marketing materials for the Trump Tower Project.

Third Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted against either of the Defendants in that all Counts of the Complaint fail to allege ultimate facts sufficient to establish liability of either of the Defendants under the theories of liability upon which those Counts rely.

Fourth Affirmative Defense

The attempted joinder of the several Plaintiffs in this single action is improper.

Fifth Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted against either of the Defendants because the Plaintiffs have failed to allege with sufficient particularity the fraudulent conduct which allegedly forms the basis of all Counts of the Complaint.

/s/ Christopher L. Griffin
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Certificate of Service

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court on February 2, 2010, by using the CM/ECF system, which will send a notice of electronic filing to J. Daniel Clark, Esq., Clark & Martino, P.A., 3407 W. Kennedy Boulevard, Tampa, Florida 33609 and to Kenneth G. Turkel, Esq. and V. Stephen Cohen, Esq., Williams Schifino Mangione & Steady, P.A., 201 N. Franklin Street, Suite 3200, Tampa, Florida 33602.

/s/ Christopher L. Griffin
Attorney