

**IN THE COUNTY COURT OF THE FIFTH JUDICIAL CIRCUIT
IN AND FOR SUMTER COUNTY, FLORIDA**

SUMTER COUNTY, FLORIDA, a political subdivision of the State of Florida,

Plaintiff,

v.

CASE NO.: 2023-CC-730

THE ESTATE OF RICKEY LEE JENKINS; THE UNKNOWN SPOUSE OF RICKEY LEE JENKINS N/K/A LOUELLA JENKINS; DANNY RAY JENKINS; TERRY JENKINS; JUDY ANN COLE; DOLORES SMITH; UNKNOWN TENANT OR TENANTS IN POSSESSION N/K/A TIMOTHY SMITH; ALL OTHER PARTIES OCCUPYING OR IN POSSESSION; if the above Defendants are alive and if one or more of said Defendants are dead, their unknown spouses, heirs, devisees, assignees, grantees, creditors, or other parties claiming by, through, under or against said defendants, and all unknown parties claiming interests by, through, under or against a named defendant to this action, or having or claiming to have any right, title, or interest in the property herein described, sued herein as **JOHN DOE**,

Defendants.

_____ /

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT,
DELORES SMITH'S ANSWER AND AMENDED ANSWER OR IN THE
ALTERNATIVE A MOTION FOR A MORE DEFINITE STATEMENT**

COMES NOW, Plaintiff, **SUMTER COUNTY, FLORIDA**, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners (hereinafter, the "County"), pursuant to Florida Rule of Civil Procedure 1.110(c), Florida Rule of Civil Procedure

1.140(f), and Florida Rule of Civil Procedure 1.140(e), and files this Motion to Strike Defendant, **DELORES SMITH'S** Answer and Amended Answer or in the Alternative a Motion for A More Definite Statement, and in furtherance thereof, states as follows:

1. On July 11, 2023, the County filed its Complaint for Foreclosure, Summons, and Notice of Lis Pendens.

2. The Clerk of the Court issued a Summons to Defendant, Delores Smith (hereinafter the "Defendant") on July 12, 2023.

3. The Defendant was served with the Summons and a copy of the Complaint for Foreclosure on August 1, 2023.

4. The County filed a Return of Substitute Service to Timothy Smith for Delores Smith on August 7, 2023, under Filing Number: 179026062.

5. On August 11, 2023, the Defendant timely filed an Answer to the Complaint for Foreclosure.

6. Subsequently again on August 11, 2023, the Defendant filed an Amended Answer to the Complaint for Foreclosure.

7. Within the Answer and the Amended Answer, the Defendant alleges three paragraphs responding to the three counts of the Complaint. The Defendant responded accordingly:

- i. "Count 1: is without knowledge."
- ii. "Count 2: is denied."
- iii. "Count 3: is without knowledge."

8. Furthermore, in the Answer under the second paragraph, the Defendant states, "Comments: Please see Defendants Exhibit "A" Letter from Plaintiff with receipts Compliant with said letter."

9. Additionally, in the Amended Answer under the second paragraph, the Defendant added an additional sentence, “Exhibit “B” page 5 paragraph 22 compliance with original Lien.” The sentence referenced in Paragraph 8 is still included in the Amended Answer.

10. Florida Rule of Civil Procedure 1.110(c) requires that “In the answer a pleader shall state in short and plain terms the pleader’s defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies.” *Fla. R. Civ. P. 1.110(c)*.

11. Allegations that are not denied are deemed admitted. *Fla. Rule Civ. P. 110(e)*.

12. Florida courts require that “the responsive pleadings should admit or deny or explain the petition’s material allegations and should assert any affirmative defenses.” *In re, Forfeiture of One 1976 Chevrolet Corvette, VIN 1Z37L6541240*, 442 So. 2d 307 (Fla. 5th DCA 1983).

13. Defendant has failed to respond to each paragraph of the Complaint for Foreclosure as required by *Fla. R. Civ. Pro. 1.110(c)*. Particularly, the Defendant has failed to respond to the Jurisdiction, Parties, Property, and General Allegations sections of the Complaint for Foreclosure. By failing to respond to those allegations of the Complaint, the Defendant is deemed to have admitted to the specific paragraphs in those sections pursuant to *Fla. R. Civ. Pro. 1.110(e)*.

14. Even though the Defendant has attempted to respond to the Complaint’s three counts, the Defendant again fails to comply with *Fla. R. Civ. Pro. 1.110(c)*, by responding to each of the three counts in their entirety instead of specifically to each paragraph within each of the Complaint’s three counts. As such, the Defendant by default admits to the allegations within those counts.

15. As additional grounds for a motion to strike, *Fla. R. Civ. Pro. 1.140(f)* allows a party to strike “redundant, immaterial, impertinent, or scandalous matter from any pleading at

anytime. *Fla. R. Civ. Pro. 1.140(f)*.

16. Florida courts have stricken pleadings under *Fla. R. Civ. Pro. 1.1140(f)* if the material is “wholly irrelevant, can have no bearing on the equities and no influence on the decision.” *McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. 2nd DCA 1998).

17. Defendant’s comments under Paragraph 2 of the Answer and Amendment Answer attempt to state an affirmative defense appearing to challenge the lien or deny that costs and daily fines are owed.

18. Defendant cannot challenge the incompliance of the lien as Defendant is not the property owner of record and lacks the appropriate standing to challenge the lien. *See generally Section 162.09(3), Florida Statutes*.

19. To the best knowledge available, the Defendant is a squatter on the property. The title to the property is in the name of Rickey Lee Jenkins. Defendant lacks all rightful claims to title in the property. Defendant admitted to this in the Answer and Amended Answer when she failed to respond to specific allegations in the Complaint dereigning who the appropriate title owner was.

20. Furthermore, by failing to respond to the General Allegations of the Complaint, Defendant admitted that the property has fallen back out of compliance with the Sumter County Code.

21. Finally, Defendant cannot deny that costs and daily fines are owed in Count 2 of the Complaint. Count 2 is exclusively against another named defendant and not Defendant. In other words, Defendant cannot challenge that costs and daily fines are still owed since it is alleged that Defendant, The Estate of Rickey Lee Jenkins owes the money.

22. Thus, Defendant's Amended Answer should be stricken as it fails to respond to each paragraph and allegation of the Complaint and any attempted affirmative defense is immaterial as Defendant lacks standing to challenge the lien and the County is seeking to recover costs and the daily fines from a different defendant.

23. In the unlikely event the Court rules Defendant's Answer and Amended Answer is sufficient, the County in the alternative moves for a More Definite Statement as required under *Fla. R. Civ. P. 1.140(e)*.

24. Under *Florida R. Civ. P. 1.140(e)*, "if a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing a responsive pleading." *Fla. R. Civ. P. 1.140(e)*.

25. Additionally, Florida is a "fact pleading" jurisdiction. *Deloitte & Touche v. Gencor Industries*, 929 So. 2d 678, 681 (Fla. 5th DCA 2006). Florida's pleadings rules force a pleader to recognize the elements of their causes of action or defenses and "determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort." *Horowitz v. Laske*, 855 So. 2d 169, 172-173 (Fla. 5th DCA 2003).

26. Defendant has failed to identify any affirmative defenses to the Complaint. Additionally, the Defendant has failed to plead the necessary elements and supportive facts of any elements of a defense.

27. Defendant's attempted assertion of a defense is a short statement that makes general legal conclusions referencing attached exhibits. Defendant does not state the supportive facts for those general legal conclusions.

28. Due to the Defendant's failure, the County cannot decipher specifically what the Defendant is responding to in the Complaint to sufficiently form a reply to appropriately respond to any defense that the Defendant is asserting to avoid liability as provided in the Complaint.

29. As such, the County is entitled to move for a more definite statement before it replies to the Defendant's Amended Answer.

WHEREFORE, the Plaintiff, **SUMTER COUNTY, FLORIDA**, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners, respectfully requests this Honorable Court to enter an Order striking the Defendant, **DELORES SMITH'S**, Answer and Amended Answer and to file an amended answer within ten (10) days from the date of such order, or in the alternative, enter an Order requiring Defendant, **DELORES SMITH**, file an amended answer consistent with the Florida Rules of Civil Procedure within ten (10) days from the date of such order, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted this 31st day of August 2023.

/s/ Jarrod D. Prater, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Plaintiff's Motion to Strike Defendant, Delores Smith's Answer and Amended Answer or in the Alternative a Motion for a More Definite Statement* has been filed this 31st day of August, 2023, via the State of Florida E-Portal system and mailed by regular U.S. Mail to:

The Estate of Rickey Lee Jenkins
4916 W. Bertha Street
Indianapolis, IN 46241

The Unknown Spouse of Rickey Lee Jenkins
N/K/A Louella Jenkins
4916 W. Bertha Street
Indianapolis, IN 46241

Danny Ray Jenkins
4918 W. Bertha Street
Indianapolis, IN 46241

Terry Jenkins
4916 W. Bertha Street
Indianapolis, IN 46241

Judy Ann Cole
4916 W. Bertha Street
Indianapolis, IN 46241

Delores Smith
8703 CR-626
Bushnell, FL 33513

The Unknown Tenants or Tenants in Possession
N/K/A Timothy Smith
8703 CR-626
Bushnell, FL 33513

/s/ Jarrod D. Prater

JARROD D. PRATER, ESQ.