

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2013-CA-33457-XXXX-XX

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court,

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited liability
company,

Defendant.

BLUEGEM, LLC, a Florida limited liability
company,

Counter-Plaintiff,

vs.

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court,

Counter-Defendant.

ANSWER AND AFFIRMATIVE DEFENSES TO COUNTERCLAIM

Plaintiff/Counter-Defendant, SCOTT ELLIS, in his official capacity as Brevard County Clerk of Clerk of the Circuit Court (the "Clerk of Court"), by and through undersigned counsel, hereby files its Answer and Affirmative Defenses to the Counterclaim filed by Defendant/Counter-Plaintiff, BLUEGEM, LLC ("BlueGEM"), and states as follows:

GENERAL ALLEGATIONS

1. The Clerk of Court admits the allegations in Paragraph 1 of the Counterclaim for jurisdictional purposes only but denies that BlueGEM is entitled to the relief sought therein.
2. The Clerk of Court admits the allegations in Paragraph 2 of the Counterclaim.
3. The Clerk of Court admits the allegations in Paragraph 3 of the Counterclaim.
4. The Clerk of Court admits the allegations in Paragraph 4 of the Counterclaim.
5. The Clerk of Court denies the allegations in Paragraph 5 of the Counterclaim.

COUNT I BREACH OF CONTRACT

6. The Clerk of Court realleges and incorporates herein its prior answers to Paragraphs 1 through 5, above.
7. The Clerk of Court admits the allegations in Paragraph 7 of the Counterclaim..
8. The Clerk of Court admits the allegations in Paragraph 8 of the Counterclaim..
9. The Clerk of Court denies the allegations in Paragraph 9 of the Counterclaim.
10. The Clerk of Court denies the allegations in Paragraph 10 of the Counterclaim.
11. The Clerk of Court denies the allegations in Paragraph 11 of the Counterclaim.
12. The Clerk of Court denies the allegations in Paragraph 12 of the Counterclaim.
13. The Clerk of Court denies the allegations in Paragraph 13 of the Counterclaim.
14. The Clerk of Court denies the allegations in Paragraph 14 of the Counterclaim.
15. The Clerk of Court denies the allegations in Paragraph 15 of the Counterclaim.
16. The allegation in Paragraph 16 is immaterial and not relevant to the Counterclaim, and does not require a response; therefore the Clerk of Court moves to strike this allegation from the pleadings.

17. The allegation in Paragraph 17 is immaterial and not relevant to the Counterclaim, and does not require a response; therefore the Clerk of Court moves to strike this allegation from the pleadings.

18. The Clerk of Court denies the allegations in Paragraph 18 of the Counterclaim.

19. The Clerk of Court denies the allegations in Paragraph 19 of the Counterclaim.

20. The Clerk of Court denies the allegations in Paragraph 20 of the Counterclaim.

21. The Clerk of Court admits a letter and two separate complaints were served upon BlueGEM and RoseWare, LLC, respectively, as referenced in Paragraph 21 of the Counterclaim. The documents speak for themselves.

22. The Clerk of Court admits the allegations in Paragraph 22 of the Counterclaim.

23. The Clerk of Court denies the allegations in Paragraph 23 of the Counterclaim.

24. The Clerk of Court denies the allegations in Paragraph 24 of the Counterclaim.

25. The Clerk of Court denies the allegations in Paragraph 25 of the Counterclaim as to any threat but admits that the Clerk of Court filed suit against BlueGEM.

26. The Clerk of Court denies the allegations in Paragraph 26 of the Counterclaim.

27. The Clerk of Court denies the allegations in Paragraph 27 of the Counterclaim.

28. The Clerk of Court denies the allegations in Paragraph 28 of the Counterclaim.

29. The Clerk of Court denies the allegations in Paragraph 29 of the Counterclaim.

30. The Clerk of Court denies the allegations in Paragraph 30 of the Counterclaim.

31. The Clerk of Court denies the allegations in Paragraph 31 of the Counterclaim.

32. The Clerk of Court is without knowledge as to BlueGEM's obligation to pay for attorney services and, therefore denies, in part, the allegations in Paragraph 32 of the Counterclaim. The Clerk of Court admits that Paragraph 23 of the Scanning Contract and the

Amendment (the "Contract") provides for prevailing party expenses, costs and attorney fees.

33. The Clerk of Court hereby denies each and every allegation of the Counterclaim not specifically admitted above.

AFFIRMATIVE DEFENSES

First Affirmative Defense Failure to State a Cause of Action

BlueGEM fails to state a cause of action upon which the relief it has requested may be granted for the following reasons. To state a cause of action for Breach of Contract, BlueGEM must allege facts that establish (1) existence of a contract; (2) a material breach; and (3) resulting damages. First, BlueGEM fails to allege any facts demonstrating the necessary element of damages. This is because BlueGEM received payment in full for its services pursuant to the Contract, and therefore has suffered no damages. Secondly, BlueGEM fails to allege sufficient facts to support the necessary elements of a material breach. The material terms of the Contract afford BlueGEM the right to enforce payment from Clerk of Court, and afford the Clerk of Court the right to enforce BlueGEM's obligation to satisfactorily perform the service. The allegations that the volume of documents provided to BlueGEM has been relatively small are immaterial to the Counterclaim as BlueGEM received, in advance, full payment for the services specified in the Contract.

Second Affirmative Defense Payment

BlueGEM received, in advance, full payment for the services specified in the Contract

Third Affirmative Defense Unclean Hands

For the reasons set forth in the General Allegations of the Clerk of Court's Complaint, which are incorporated herein, BlueGEM's claims are barred by the doctrine of unclean hands.

**Fourth Affirmative Defense
Unconscionability**

For the reasons set forth in the General Allegations of the Clerk of Court's Complaint, which are incorporated herein, BlueGEM's claims are barred by the doctrine of unconscionability.

**Fifth Affirmative Defense
Prior Breach**

For the reasons set forth in the General Allegations of the Clerk of Court's Complaint, which are incorporated herein, BlueGEM's claims are barred by its own prior breach.

**Sixth Affirmative Defense
Rescission**

For the reasons set forth in the General Allegations of the Clerk of Court's Complaint, which are incorporated herein, BlueGEM's claims are barred by the doctrine of rescission.

**Seventh Affirmative Defense
Illegality**

For the reasons set forth in the General Allegations of the Clerk of Court's Complaint, which are incorporated herein, BlueGEM's claims are barred by the doctrine of illegality.

Demand for Attorneys' Fees

Clerk of Court has retained undersigned counsel and the law firm of GrayRobinson, P.A. to represent it in this matter and, as such, has incurred attorney's fees and costs. Clerk of Court is entitled to recover its reasonable attorneys' fees and costs in this action pursuant to Paragraph 23 of the "Standard Terms and Conditions for IT Services" of the "Scanning Contract."

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email this 17 day of May 2013 to: Michael Gay, Esq.: mgay@foley.com; Robert D. Rightmyer, Esq.: rrightmyer@foley.com.

GRAYROBINSON, P.A.

By:


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