

DISTRICT COURT, DENVER COUNTY STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	DATE FILED: November 4, 2019 3:38 PM FILING ID: F5331C2C93ECF CASE NUMBER: 2019CV33374
<p><b>Plaintiff:</b> Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.</p> <p>v.</p> <p><b>Defendants:</b> Russell Becker, Joseph J. Peirce, and Ken Stoltzfus.</p>	
<p>Attorneys for Defendant, Ken Stoltzfus:</p> <p>Douglas W. Brown, Atty. Reg. No. 10429          David C. Walker, Atty. Reg. No. 36551          Rachel H. Connor, Reg. No. 50831          BROWN DUNNING WALKER PC          2000 South Colorado Blvd.          Tower Two, Suite 700          Denver, Colorado 80222          Telephone: 303-329-3363          Facsimile: 303-393-8438          E-Mail: dbrown@bdwfirm.com; dwalker@bdwfirm.com;          rconnor@bdwfirm.com</p>	<p>Case Number:          2019CV33374</p> <p>Division/Courtroom:</p>
<p><b>ANSWER</b></p>	

The Defendant, Ken Stoltzfus (“Stoltzfus”), hereby submits the following Answer to the Plaintiff’s Complaint (“Complaint”), as follows:

**I. Parties**

1. Stoltzfus affirmatively states that the Receivership Order speaks for itself and denies all remaining allegations contained in Paragraphs 1 through 3 of the Complaint.

2. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 4 of the Complaint, and therefore, denies same.

3. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 5 of the Complaint, and therefore, denies same.

4. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 6 of the Complaint, and therefore, denies same.

5. Stoltzfus admits the allegation set forth in Paragraph 7 of the Complaint.

## **II. Jurisdiction and Venue**

6. Stoltzfus specifically denies the allegation set forth in Paragraph 8(c) of the Complaint, and otherwise has insufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 8 of the Complaint, and therefore, denies same.

7. Stoltzfus has insufficient knowledge or information to admit or deny the allegations set forth in Paragraph 9 of the Complaint, and therefore denies the same.

## **III. General Allegations**

8. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 10 through 32 of the Complaint, and therefore, denies same.

9. To the extent the allegation in Paragraph 33 applies against Stoltzfus, such allegation is denied. Stoltzfus has insufficient knowledge or information to admit or deny the allegations as pertaining to the remaining defendants and therefore, denies same.

## **IV. Claims against Russell Becker First Claim for Relief v. Becker (Turnover)**

10. Stoltzfus realleges its responses set forth in Paragraphs 1 through 33 of the Complaint as if fully restated herein.

11. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 35 and 36 of the Complaint, and therefore, denies same.

12. Stoltzfus affirmatively states that the Receivership Order speaks for itself and denies all remaining allegations contained in Paragraph 37 of the Complaint.

13. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 38 of the Complaint, and therefore, denies same.

## **Second Claim for Relief v. Becker (Actual Fraud – COLO. REV. STAT. § 38-8-105(1)(a))**

14. Stoltzfus realleges its responses set forth in Paragraphs 1 through 38 of the Complaint as if fully restated herein.

15. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 40 through 41 of the Complaint, and therefore, denies same.

16. Paragraphs 42 and 43 of the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Stoltzfus is without sufficient information to admit or deny the allegations contained in Paragraphs 42 and 43 of the Complaint, and therefore, denies the same.

**Third Claim for Relief v. Becker**  
**(Constructive Fraud – COLO. REV. STAT. § 38-8-105(1)(b))**

17. Stoltzfus realleges its responses set forth in Paragraphs 1 through 43 of the Complaint as if fully restated herein.

18. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 45 through 48 of the Complaint, and therefore, denies same.

19. Paragraph 49 of the Complaint sets forth a legal conclusion and question of law to which no response is required. To the extent a response is required, Stoltzfus is without sufficient information to admit or deny the allegations contained in Paragraphs 49 of the Complaint, and therefore, denies the same.

**Fourth Claim for Relief v. Becker**  
**(Unjust Enrichment)**

20. Stoltzfus realleges its responses set forth in Paragraphs 1 through 49 of the Complaint as if fully restated herein.

21. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 51 of the Complaint, and therefore, denies same.

**V. Claims against Joseph J. Peirce**  
**First Claim for Relief v. Peirce**  
**(Turnover)**

22. Stoltzfus realleges its responses set forth in Paragraphs 1 through 51 of the Complaint as if fully restated herein.

23. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 53 through 54 of the Complaint, and therefore, denies same.

24. Stoltzfus affirmatively states that the Receivership Order speaks for itself and denies all remaining allegations contained in Paragraph 55 of the Complaint.

25. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 56 of the Complaint, and therefore, denies same.

**Second Claim for Relief v. Peirce**  
**(Actual Fraud – COLO. REV. STAT. § 38-8-105(1)(a))**

26. Stoltzfus realleges its responses set forth in Paragraphs 1 through 56 of the Complaint as if fully restated herein.

27. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 58 and 59 of the Complaint, and therefore, denies same.

28. Paragraphs 60 and 61 of the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Stoltzfus is without sufficient information to admit or deny the allegations contained in Paragraphs 60 and 61 of the Complaint, and therefore, denies the same.

**Third Claim for Relief v. Peirce**  
**(Constructive Fraud – COLO. REV. STAT. § 38-8-105(1)(b))**

29. Stoltzfus realleges its responses set forth in Paragraphs 1 through 61 of the Complaint as if fully restated herein.

30. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 63 through 66 of the Complaint, and therefore, denies same.

31. Paragraph 67 of the Complaint sets forth a legal conclusion and question of law to which no response is required. To the extent a response is required, Stoltzfus is without sufficient information to admit or deny the allegations contained in Paragraphs 67 of the Complaint, and therefore, denies the same.

**Fourth Claim for Relief v. Peirce**  
**(Unjust Enrichment)**

32. Stoltzfus realleges its responses set forth in Paragraphs 1 through 67 of the Complaint as if fully restated herein.

33. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 69 of the Complaint, and therefore, denies same.

**VI. Claims against Ken Stoltzfus**  
**First Claim for Relief v. Stoltzfus**  
**(Turnover)**

34. Stoltzfus realleges its responses set forth in Paragraphs 1 through 69 of the Complaint as if fully restated herein.

35. Stoltzfus denies the allegations set forth in Paragraphs 71 and 72 of the Complaint.

36. Stoltzfus affirmatively states that the Receivership Order speaks for itself and denies all remaining allegations contained in Paragraph 73 of the Complaint.

37. Stoltzfus denies the allegation set forth in Paragraph 74 of the Complaint.

**Second Claim for Relief v. Stoltzfus**  
**(Actual Fraud – COLO. REV. STAT. § 38-8-105(1)(a))**

38. Stoltzfus realleges its responses set forth in Paragraphs 1 through 74 of the Complaint as if fully restated herein.

39. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 76 of the Complaint, and therefore, denies same.

40. Stoltzfus denies the allegation set forth in Paragraph 77 of the Complaint.

41. Paragraphs 78 and 79 of the Complaint set forth legal conclusions and questions of law to which no response is required. To the extent a response is required, Stoltzfus denies the allegations contained in Paragraphs 78 and 79 of the Complaint.

**Third Claim for Relief v. Stoltzfus**  
**(Constructive Fraud – COLO. REV. STAT. § 38-8-105(1)(b))**

42. Stoltzfus realleges its responses set forth in Paragraphs 1 through 79 of the Complaint as if fully restated herein.

43. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraph 81 of the Complaint, and therefore, denies same.

44. Stoltzfus denies the allegation set forth in Paragraph 82 of the Complaint.

45. Stoltzfus has insufficient knowledge or information to admit or deny the allegations contained in Paragraphs 83 and 84 of the Complaint, and therefore, denies same.

46. Paragraph 85 of the Complaint sets forth a legal conclusion and question of law to which no response is required. To the extent a response is required, Stoltzfus is without sufficient information to admit or deny the allegations contained in Paragraphs 85 of the Complaint, and therefore, denies the same.

**Fourth Claim for Relief v. Stoltzfus**  
**(Unjust Enrichment)**

47. Stoltzfus realleges its responses set forth in Paragraphs 1 through 85 of the Complaint as if fully restated herein.

48. Stoltzfus denies the allegation set forth in Paragraph 87 of the Complaint.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a claim against Stoltzfus upon which relief can be granted.

2. Plaintiff's claims are barred by the statute of limitations and/or laches.

3. Plaintiff's claims are barred by the doctrine of unclean hands.

4. Stoltzfus has not been unjustly enriched, as he has not engaged in improper conduct.

5. Plaintiff's claims for Actual Fraud and Constructive Fraud cannot continue as such claims have not been particularly pled as required by C.R.C.P. 9(b), and the claims fail to allege any knowing or willful wrongdoing by Stoltzfus.

6. Plaintiff's claims against Stoltzfus are groundless, frivolous and/or vexatious and as such, Stoltzfus is entitled to recover his attorneys' fees and costs incurred to defend against such claims. See: C.R.S. 13-17-102.

7. Stoltzfus reserves the right to add such other and additional affirmative defenses as may be disclosed in the course of discovery, trial preparation, or otherwise.

WHEREFORE, having answered the Plaintiff's Complaint, Stoltzfus requests that Plaintiff's Complaint be dismissed and that Stoltzfus be awarded his fees and costs, and such further relief as the Court deems just and proper in the premises.

DATED this 4<sup>th</sup> day of November, 2019.

Respectfully submitted:

BROWN DUNNING WALKER PC

*s/ Douglas W. Brown*

Douglas W. Brown, Atty. Reg. No. 10429

David C. Walker, Atty. Reg. No. 36551

Rachel H. Connor, Reg. No. 50831

*Attorneys for Defendant, Ken Stoltzfus*

Defendant's Address:

3730 Country Lane

Gordonville, PA 17529