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PATY BAKER CLERK

Case Number 2010-5793CD

Plaintiff Mike Farnsworth

Defendant: Terri F. Arnold

DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT

NOW COMES the Defendant, Terri F. Arnold, and files this Motion for Summary Judgment based on the following facts:

1. Plaintiff has filed false Affidavit for Writ of Dispossession a second time and has shown wrongful conduct in doing so, nullifying any claim for judgment against the Defendant;
2. Plaintiff fails to establish a basis for claim of this or any action against Defendant in accordance to GA Code 44-7 and has conducted himself in a manner with total and blatant disregard to the State of Georgia Landlord Tenant Laws 44-7 as if he is immune from any effects thereof.
3. Plaintiff has committed wrongful acts to expose Defendant and her children to the elements of insecurity and deprived them of: peaceful privacy and certain implied rights pertaining to Landlord Tenant Relationships; and, during the month of July even deprived them from water in refusing to repair an emergency break to water lines on the outside of the home; and
4. Plaintiff attempted a constructive eviction by refusing to repair the water main break that occurred on July 22<sup>nd</sup>. He instructed Defendant to turn off the water and offered information of the location he had repaired himself prior to Defendant's tenancy. Plaintiff did not attempt to repair the pipe, nor did he acknowledge any responsibility to provide Defendant with alternate assistance. Defendant and her baby had to leave premises and stay with a friend until neighbors and friends worked to get the pipe secured properly.

5. Plaintiff denied each of Defendant's request for his address in order to provide proper notification of Defendant's request for repair and deduct and other correspondence for notice as stated on Paragraph 18 in Lease Agreement between parties;
6. On July 27, 2010 Defendant's request for Plaintiff's address for Defendant need to provide proper Notice of Intent to Withhold Rent, according to (implied valid) Lease, specified in No. 18 thereof, resulted in the Plaintiff accusing Defendant of being "uncooperative" to the terms set forth in the lease with regards to "repairs" and insisted that Defendant surrender property and keys on August 1, 2010 at 2pm;
7. Plaintiff has shown disregard of the laws he is bound by as a Georgia Landlord by avoiding the urgent repair of water main break; then demanding possession of the property, without proper authority, notice or cause, on July 27<sup>th</sup>; with a later attempt to self help eviction; and, in a final attempt to avoid due process as stated in GA Landlord Tenant Laws Plaintiff knowingly signed a false affidavit - not just once but twice!
8. Plaintiff has prevented Defendant and her children the ability to enjoy quiet peace and rights of privacy; Plaintiff has put the family jeopardy by sharing private matters of the collection and payments in the Landlord Tenant Relationship with a severed party of this Dispossessionary who has been found guilty of violent crimes against Defendant and her children.
9. Plaintiff's actions in coming to the Defendant's home unannounced after being asked not to do so; and, on multiple occasions asked to leave are extreme, outrageous, and intolerable; and because Defendant's allegations are sufficient to support a claim for consumer fraud since tenants are given consumer protection in Georgia and the Plaintiff's implied promises to follow Georgia law at the time he tendered the lease to Defendant are misrepresentations covered by the Consumer Fraud Act. In support of this response, Defendant states as follows:

## ii. SUMMARY OF FACTS

1. In November of 2009 "Mike"(herein Plaintiff) tendered a lease to Mr. Bobby Arnold (Severed Party)and Mrs. Terri F. Arnold(Defendant). Defendant signed this lease to reside at 104 Village Court, Woodstock, GA in a home "presumably" owned, controlled, operated, and

managed by Plaintiff . Severed Party, Defendant and her two children resided in this home from November, through and including today's date.

2. Defendant has paid each and every rent due from the date of inception to date, on time; Before Severed Party had left the home; Plaintiff always utilized a respectful courtesy of a phone call before coming to collect the rent. Plaintiff has shown implications that he is discriminating against her for being a victim of Domestic Violence and has conspired with the perpetrator of that crime to have Defendant evicted.

3. On or about June 14<sup>th</sup>, 2010 Severed Party left the home under the instruction of local Sheriff Deputies while Defendant awaited Family Violence Paperwork;

4. On June 18<sup>th</sup> Plaintiff informed Defendant that Severed Party contacted him and offered to maintain the Lease Agreement and terms thereof but only on the condition that Plaintiff evicted Defendant and her children. Plaintiff was at that time made aware of the Protective Order and the violations thereof by Mr.Arnold contacting Plaintiff. Police report made on this incident.

5. Plaintiff has been more and more forceful in his tactics to collect the rent since being informed by the Severed Party that Defendant has been left to pay the rent on her own. Plaintiff pounds on the front door for extended times to ensure if anyone in the house is asleep - little promise of remaining asleep and if no one comes to the door - Plaintiff simply comes back every 5 to 30 minutes until someone talks to him. Plaintiff has on several occasions demanded rent in front of Defendant's neighbors and people stopping by to buy something Defendant was trying to sell on Craigslist. Plaintiff has NO boundaries when it comes to his money and the collection thereof. Plaintiff even so much as entered the home of Defendant while her two children were home alone. Plaintiff actually looked through Defendant's kitchen for a check her son thought she had written.

6. Plaintiff has no problem demanding that Defendant fulfill her obligations of the Lease Agreement, however, has made it clear that it is unwarranted for Defendant to request his

fulfillment of Landlord obligations. Plaintiff has actually made it clear to Defendant that he did not have to fulfill certain requests by disregarding her all together.

7. On or about July 22<sup>nd</sup>, 2010 Plaintiff made it clear to Defendant that he refused to repair a water main break located on the outside of the home. Plaintiff's only instruction was to point out the pipe he believed may be the culprit (as he'd previously repaired it himself) and have Defendant turn off the water to avoid damage to the house.

8. Defendant had to leave the premises with her two year old baby or be exposed to unsanitary, uninhabitable, and dangerous housing conditions. Defendant has reason to believe Plaintiff intentionally refused to assist her in fixing the water main in order to force her into finding alternate housing for her and the children.

9. Plaintiff began his collection of August rent early, due to Defendants request for assistance with the water situation. Plaintiff's collection tactics included pounding on Defendants door at all hours to demand a conversation to discuss Plaintiff's request for address to provide formal written notice of his failure to repair. Plaintiff came by only to discuss his refusal to repair and not to assist in the repairs whatsoever; Even after being asked not to come by unannounced to discuss the situation Plaintiff and his wife became aggressive in the pursuit of face to face confrontation and maintained that it was Defendant's responsibility to repair the water main as stated in the lease. The interruptions and demands for confrontation in person began on or about June 27<sup>th</sup>, after repairs had been made by others; The first request for Plaintiff not to come onto property without notice began on this date and continued until Plaintiff filed his first Writ of Disposessory on September 11, 2010. Plaintiff has come onto the property on no less than 10 occasions without calling and after being warned he would be harassing. Plaintiff's disregard of that is evident in an email offered to this Court by him during the hearing on September 30, 2010.

10. Plaintiff has gained access into Defendant's home while minor children were home alone. When asked not to come by with collection issues or any other matter, without written notice, or without calling; on several occasions Plaintiff stated to Defendant that he could drop by whenever he wanted without notice according to the Lease.

11. Defendant accused Plaintiff of Harassment and asked that he not come by unannounced (even if the lease stated that he could) as she is a single mother and was uncomfortable with Plaintiff demanding her to open the door - waking up the children and yelling at her. Plaintiff has utilized "bullying" Defendant on several occasions recently and stood with his foot in the door even after being asked to leave. Plaintiff went as far as to demand that she get dressed and drive with him to the bank - before being notified of the NSF Check or even having a copy of it.

12. As a direct result of Plaintiff's actions, Defendant and her children have suffered the following damages: severe mental anguish, physical exhaustion in a continued effort to communicate with Plaintiff while being followed around yard, bullied and threatened. Plaintiff's continuous demands finally ceased after several requests from the Defendant to stop coming to her home with threats and anger around her children or she would call Cherokee County Sheriff. Plaintiff refused to provide her with the necessary demand for payment or his address in order for her to obtain assistance; as she begged for financial assistance from others without formal demand from Plaintiff, packed belongings, and worried about whether her and her children would be left on the road with their personal property and no transportation while attempting to manage her and her family's affairs. Plaintiff's tactics and demeanor was so much like those of her abusive husband and his manipulative control that she didn't have the strength to get out of bed some days but had to think about the costs for moving her things into a storage facility and whether or not her son would have a place to live - the shelters won't allow teenage boys, and she suffered severe hardship and inconvenience, and severe and extreme emotional distress.

13. Because the Plaintiff's false Affidavit questions the legal sufficiency of the face of the Agreement and Complaint, Defendant files this Motion for Summary Judgment under Georgia Code of Civil Procedure. All well-plead facts are admitted and any reasonable inferences which may be drawn from these facts must be taken as true for the purposes of this Counterclaim; and Defendant's claims should not be dismissed on the pleadings unless it clearly appears that

no set of facts can be proved which will entitle her to recover. *Quake Construction Inc. v. American Airlines, Inc.*, 152 Ill. Dec. 308, 31-2 (Ill. S. Ct. 1990).

14. Plaintiff knew that Defendant and her children were victims of Domestic Violence and utilized her vulnerability to neglect his responsibilities and force Defendant to pay rent despite his refusals to cooperate.

15. Defendant alleges that Plaintiff took it upon himself to force Defendant into face to face confrontation instead of giving her the address she requested and respecting her request not to come to the home unannounced. Plaintiff without Court authorization and without permission from Defendant, who was in possession of Defendant's home, on countless occasions came onto property without notifying the Defendant, as requested. These allegations have been incorporated into Defendant's claims for trespass, constructive eviction, self-help eviction, conversion, and punitive damages because Plaintiff's unlawful actions with disregard of Defendant's requests not to come unannounced.

16. "A wrongful trespasser is liable for all the detriment caused by his trespass." *RUCKER V. WYNN* 212GA 69, 441 The landlord's failure to repair water main break in a timely manner was the "natural or usual result" of Plaintiff's constructive eviction of Defendant. *John Munic Meat Company v. H. Gattenberg & Co.*, 9 Ill. Dec. 360, 365 (1st Dist. 1977). which is the punitive damages claim the allegation is made not for the purposes of direct compensation for the Plaintiff's disregard for Defendant's rights to privacy and peace. Plaintiff's actions tend to support the other allegations, such as that Plaintiff acted "defiantly, irresponsibly, and with malice," and with "total disregard for Defendant's rights."

17. The following elements are essential to sustain a cause of action for intentional infliction of emotional distress:

(1) Extreme and outrageous conduct by the Plaintiff;

(2) Intent by the Plaintiff to cause, or a reckless disregard of the probability of causing emotional distress;

- (3) Severe or extreme emotional distress suffered by the Defendant;
- (4) An actual and proximate causation of emotional distress by the Plaintiff's outrageous conduct.

### iii. SUMMARY OF CLAIM

#### 1.

Defendant maintains that Plaintiff has filed a false Affidavit to this Honorable Court for a second time (2010-5425CD - Affidavit for Writ of Disposessory on September 11, 2010) and, in doing so has committed a second offense of knowingly and willingly making a false statement in an Affidavit to the Court and could be found guilty of a misdemeanor in accordance with GA.

#### 2.

Plaintiff did knowingly withhold pertinent information from the onset of Lease Agreement failing to provide Defendant disclosure of his legal name, address and contact information as stated in OCGA 44-7-3 in order to establish a landlord tenant relationship with responsibilities to pay rent, and/or notify landlord of pertinent details and requests pertaining to the maintenance of property.

#### 3.

Plaintiff contacted the Defendant to let her know that he was informed by Mr. Bobby Arnold that he was no longer residing at the address and stated that Defendant would not be able to fulfill the obligations of payment of rent and if Plaintiff would be willing evict Defendant - he would ensure the payment of rent.

#### 4.

Plaintiff contacted Defendant on June 18, 2010 to ensure she would be paying the rent. Plaintiff also informed Defendant that Mr. Arnold asked that Plaintiff evict Defendant and her children, as Defendant had no car, job or means of support and would be unable to pay rent. Defendant informed Plaintiff of the Family Violence Order 10-CV-1689-S and let him know that

communications of this nature were in direct violation of the Order. Defendant also contact the Cherokee County Sheriff's Department to report the violation Incident # 10-58726.

5.

Plaintiff, after being fully aware of the Defendant's need for protection of the court, maintained contact with the perpetrator, listed on the Family Violence Ex Parte Protective Order, giving him specific details of matters concerning payment and collection of rents. Defendant believes that Plaintiff had selfish, malicious motives for exposing such private information and proved a total disregard for the privacy, safety, and well being of the Defendant and her children; therefore deliberately putting the lives and security of Victims of Family Violence in danger for selfish motives in order to avoid any lapse in rental payments, should Defendant be unable to pay.

6.

Defendant believes that Plaintiff's admitted communications with the perpetrator in case number 10-CV-1689-5 led to the circumstances of this eviction in order for Plaintiff to rest assured that he would be paid without concern for the protection of the Defendant and children.

7.

Plaintiff knowingly conspired to manipulate the eviction of the Defendant by refusing to make repairs that the Defendant was incapable of and could not live without; thereby attempting to push a constructive eviction in an emergency situation; Mr. Arnold was strangely aware of the water main break during the time Defendant and her two year old daughter were forced to stay with friends;

8.

Plaintiff gave no reason for his refusal to fix the water main break and instructed Defendant to turn off main water valve at the road. Plaintiff also advised Defendant as to the probable location of the burst pipe; however, did not so much as offer to repair the problem;



On the third day after attempts of neighbors to repair the pipe with nominal expense, Defendant contacted the Plaintiff to ask if he would be willing to reimburse a neighbor if he were to pick up the supplies needed to fix the problem efficiently. Plaintiff responded "absolutely NOT".

10.

Plaintiff did not acknowledge the water problem at all and proceeded to send an email on July 25<sup>th</sup> stating that he could like to meet me on August 2<sup>nd</sup> to pick up the rent and discuss the "issues". Plaintiff refused to acknowledge Defendants reply and request for his address on July 27<sup>th</sup> instead, Plaintiff stated he would "be by on August 1<sup>st</sup> at 2pm to do a walk through and collect the keys". Thereby, attempting to intimidate Defendant with a threat of self-help eviction!

11.

Plaintiff has showed willful misconduct, malice, fraud, wantonness, oppression and consciously put the Defendant and her family in jeopardy and harm;

12.

Plaintiff knowingly and intentionally attempted aggressive collection tactics and willful acts to deprive Defendant of her rights in order to maintain a fair landlord/tenant relationship; Plaintiff also conspired with a person who committed violent crimes and Acts of Family Violence against Defendant and her family to manipulate selfish motives in future collection of rents inso putting their lives and wellbeing in jeopardy;

SEAN R. WHITWORTH

Attorney-at-Law

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October 12, 2010

Ferri Arnold  
104 Village Court  
Woodstock, Georgia 30188

RE: Notice to vacate

Dear Ms. Arnold:

On October 4, 2010, you received a notice from your landlord asking that you vacate the property for violation of the lease. You have now been given ample time to remedy these violations and you continue to refuse to correct the situation.

As you know this matter has been moved to state court, which is a far more serious forum than Magistrate Court. On behalf of my client, I must ask you to immediately vacate the premises and pay all unpaid rents due under the lease. Your frivolous and unwarranted counter-claim in the amount of \$45,000.00 has caused my client to accrue additional legal expenses and court costs which you will be asked to pay.

Furthermore, you are facing criminal charges for writing fraudulent checks and we fully intend to prosecute this matter to the fullest extent of the law.

Please feel free to call my office.

Sincerely,



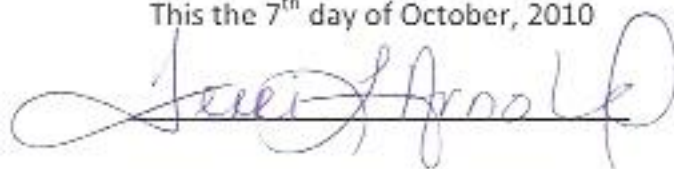
Sean R. Whitworth

cc: Mike Farnsworth

Wherefore Defendant Prays this Honorable Court provide Defendant and her children:

- a) punitive damages in the amount of \$15,000 for Terri F. Arnold;
- b) punitive damages in the amount of \$15,000 for Charles T. Franssen (Defendant's minor son);
- c) punitive damages in the amount of \$15,000 for Peyton Sofia Arnold (Defendant's minor daughter);
- b) actual damages to equal no less than \$30,073.00 - see Actual Damages Attached hereto.
- c) Damages and Sanctions sought herein are respectfully requested to deter the Plaintiff from future wrongful conduct of this nature; and
- d) This court allow Defendant adequate time to relocate and restrain Plaintiff from malicious behavior while he may be allowed to file proper dispossessory proceedings within the guidelines of GA Landlord Tenant Codes no sooner than 60 days after the Final Judgment and Decree of this hearing.; and
- e) Any other relief as this court deems just and fair;

This the 7<sup>th</sup> day of October, 2010

A handwritten signature in black ink, appearing to read "Terri F. Arnold". The signature is written in a cursive style with a large, decorative flourish at the beginning.

Terri F. Arnold, Pro Se Defendant