

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 16-012676

PATRICIA YOUNG, individually and
ROBERTO YOUNG, his husband, and
PATRICIA YOUNG, as Parent and
Natural Guardian of D.W., a minor, and
PATRICIA YOUNG, as Parent, and
Natural Guardian of A.Y., a minor, and
PATRICIA YOUNG, as Parent, and
Natural Guardian of L.Y., a minor,

Plaintiff,

v.

SILVER SHORES MASTER ASSOCIATION INC., and
KW PROPERTY MANAGEMENT LLC.,

Defendant.

**DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES
DEMAND FOR JURY TRIAL AND NOTICE OF APPEARANCE**

Defendants, SILVER SHORES MASTER ASSOCIATION INC., and KW PROPERTY
MANAGEMENT LLC., by and through undersigned counsel, pursuant to Florida Rule of Civil
Procedure 1.110, hereby serve an Answer, Affirmative Defenses, and Demand for Jury Trial to
Plaintiff's Complaint.

ANSWER

1. Admitted for jurisdictional purposes only. All remaining allegation sof this
paragraph are denied.
2. Defendant is without sufficient information to admit or deny, and therefore denies
the allegations of this paragraph.
3. Admitted.

4. Admitted.

5. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

6. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

7. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

8. Denied.

9. Admitted for jurisdictional purposes only. All remaining allegation sof this paragraph are denied.

Facts Common to all Counts

10. Denied, as phrased.

11. Denied, as phrased.

12. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

13. Denied, as phrased.

14. Denied, as phrased.

15. Denied.

16. Denied.

17. Denied.

18. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

19. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

20. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

Count I- Negligence Against Silver Shores

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

- 21. Admitted.
- 22. Denied.
- 23. Denied.
- 24. Denied.
- 25. Denied as phrased.
- 26. Denied.
- 27. Denied.
- 28. Denied.
- 29. Denied, including all subparts.
- 30. Denied.
- 31. Denied.

Count II- Negligence Against KW Property Management

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

- 32. Admitted.
- 33. Denied.
- 34. Denied.
- 35. Denied.

36. Denied as phrased.
37. Denied.
38. Denied.
39. Denied.
40. Denied, including all subparts.
41. Denied.
42. Denied.

Count III- Derivative Claim of Roberto Young Against Silver Shores

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

43. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

44. Denied.

Count IV- Derivative Claim of Roberto Young Against KW Property Management

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

45. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

46. Denied.

Count V- Derivative Claim of D.W. Against Silver Shores

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

47. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

48. Denied.

49. Denied.

Count VI- Derivative Claim of D.W. Against KW Property Management

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

50. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

51. Denied.

52. Denied.

Count VII- Derivative Claim of A.Y.. Against Silver Shores

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

53. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

54. Denied.

55. Denied.

Count VIII- Derivative Claim of A.Y. Against KW Property Management

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

56. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

57. Denied.

58. Denied.

Count IX- Derivative Claim of L.Y.. Against Silver Shores

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

59. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

60. Denied.

61. Denied.

Count X- Derivative Claim of L.Y. Against KW Property Management

Defendants incorporate and re-state their responses to Paragraphs 1-20 above

62. Defendant is without sufficient information to admit or deny, and therefore denies the allegations of this paragraph.

63. Denied.

64. Denied.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim for which relief may be granted.
2. The Plaintiff failed to timely file the Complaint within the applicable statute of limitation.
3. Any recovery should be reduced or barred by Plaintiff's failure to mitigate the damages alleged.
4. At the time and place set forth in the Complaint, the Plaintiff was guilty of negligence, which negligence was either the sole or proximate cause of the event described in the Complaint, or, in the alternative, contributed thereto and Plaintiff is therefore, either barred from recovery or, in the alternative, any damages awarded Plaintiff against Defendant(s) should be reduced pursuant to the Rule of Comparative Negligence.
5. Pursuant to the holding in Fabre vs. Marin, 623 So.2d 1182 (Fla. 1993), defendant(s) is/are entitled to apportion liability to all other individuals, corporations or other parties that have liability for the damages alleged in the complaint. However, insufficient discovery has occurred at this time to state with specificity those individuals, corporations or other parties that may have liability for the damages alleged. Defendant reserves the right to amend this affirmative defense.

6. Any disability, disfigurement or injury claims alleged by Plaintiffs, are a result of a pre-existing condition or were caused by a subsequent injury or injuries and were not caused or aggravated by any alleged acts of negligence of third parties.

7. Plaintiff has failed to mitigate damages because the medical bills are not reasonable and/or necessary; the billing is excessive; the treatment and/or billing was not causally related to the accident; the medical providers have engaged in conduct (excessive billing or treatment) which was not reasonably foreseeable; Plaintiff had health insurance and treated under a Letter of Protection which is void against public policy and Defendant is entitled to a write-down or setoff pursuant to §641.3154, Fla. Stat. and *Marion v. Orlando*, 2009 W.L. 7582985 (Fla. Cir. Ct. 2009); Plaintiff is a Medicare beneficiary, then Defendant is entitled to a write-down or setoff under the Medicare fee schedule. Plaintiff's medical bills were not reasonable and/or necessary or the billing is excessive. Additionally or alternatively, the treatment and/or billing was not casually related to the accident, and/or was a result of medical providers engaging in fraudulent or excessive billing and/or treatment that was not reasonably foreseeable.

8. Plaintiff has failed to mitigate damages to the extent that he failed to follow the instructions/advice of his treating doctor(s), or failed to minimize damages by not undertaking reasonable and necessary medical care.

9. Defendants assert that the Plaintiffs' past and future damages are reduced or offset by the amount of any governmental or charitable benefits available and further, that the defendant is entitled to an offset by any and all payments which have been made or will be made to the Plaintiffs as a result of the injuries alleged in the Complaint.

10. Defendants assert that they are entitled to a set off of any contractual discount of medical bills or expenses, negotiated write off of medical bills or expenses or negotiated agreement

to pay medical bills or other expenses in the future pursuant to the law of collateral source setoffs and *Goble v. Frohman*, 901 So.2d 830 (Fla. 2005). Alternatively, Plaintiffs are not entitled to claim bills, costs or expenses incurred but waived or not actually incurred by the Plaintiffs.

11. Any recovery should be reduced or barred by all amounts paid or payable to or for the benefit of Plaintiff(s) under any collateral source as enumerated by Florida Law.

12. Any recovery should be reduced or barred by any settlement, judgment, or payment of any kind by any individual or entity in connection with the subject matter of the incident described in the Complaint.

13. Any recovery should be reduced or barred on the grounds that Plaintiff mischievously or carelessly provoked the animal alleged to have inflicted the damages alleged.

14. Any recovery should be barred as the Plaintiff alleged to have been bitten was not lawfully on the property where the incident alleged in the Complaint occurred.

15. Any recovery should be reduced or barred by the application of Florida Statute §768.81.

16. At the time and place complained of, the negligence of other individuals, corporations, entities or parties caused in whole or in part the damages alleged by Plaintiff, and said negligence constituted an independent intervening cause of any negligence on the part of this Defendant.

17. At the time and place complained of Defendant had no knowledge that that the subject animal was present on the subject property and thereby Defendant had no notice of any dangerous condition on the property.

DEMAND FOR JURY TRIAL

Defendant demands a jury trial on all issues so triable.

WHEREFORE, Plaintiff should take nothing by this action and the Defendant should go hence without day.

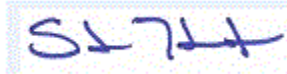
CERTIFICATE OF SERVICE

The document contains no confidential or sensitive information or that any such confidential or sensitive language has been properly protected by complying with the provisions of Rule 2.420 and 2.425.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic filing to: Walter G. Campbell, Jr., Esq., pleadings-wgc@krupnicklaw.com on this 23rd day of September 2016.

Law Offices of Patricia E. Garagozlo

Attorney for Defendants, Silver Shores Master Association, Inc., and KW Property Management, LLC
8151 Peters Road, Suite 2005
Plantation, Florida 33324
(954) 473-8433 Fax: (855)234-8544
Primary: PLTNMAIL@nationwide.com



By: _____

STEVEN HEMMERT, ESQ
FLORIDA BAR NO. 560863
Steven.Hemmert@nationwide.com
PLTNMAIL@nationwide.com