

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BECK & LEE, P.A. d/b/a BECK & LEE
BUSINESS TRIAL LAWYERS,

CASE NO. 2015-005478-CA-01 (25)

Plaintiff,

v.

DEER VALLEY REALTY, INC.,

Defendant.

DEER VALLEY'S MOTION TO AMEND
SECOND AMENDED COUNTERCLAIM

COMES NOW Deer Valley Realty, Inc. (hereinafter referred to as "Deer Valley"), by and through its undersigned counsel, and hereby files this, its Motion to Amend Second Amended Counterclaim, and in support thereof, would respectfully show the Court as follows:

1. Deer Valley's Counterclaim against Beck & Lee pertains to its negligent representation in a lawsuit filed against Donald Trump, among others. Deer Valley was a purchaser of a unit in the Trump International Hotel & Tower Fort Lauderdale.

2. Beck & Lee represented approximately eleven (11) unit owners in at least three (3) separate lawsuits pertaining to the same core set of factual allegations.

3. It has recently come to the attention of Deer Valley that many of the other unit owners entered into an undisclosed settlement with the Corus Construction Ventures, LLC, during the pendency of the lawsuit filed by Beck & Lee on behalf of Deer Valley.

4. It is believed that many of the settling unit owners were represented by Beck & Lee, and that, at a minimum, Beck & Lee was aware of the settlements.

5. Beck & Lee failed to notify Deer Valley of these settlements and failed to name Corus Construction Ventures, LLC, as a party defendant in the litigation it filed on behalf of Deer Valley.

6. While paragraphs 11(g) and 19(f) of the Second Amended Counterclaim are broad enough to include allegations pertaining to failing to advise Deer Valley of these settlements, failing to advise Deer Valley to sue Corus Construction Ventures, LLC, and failing

to name Corus Construction Ventures in the lawsuit filed on behalf of Deer Valley, Deer Valley wishes to make clear of its intention to pursue damages suffered as a result of these allegations.

7. In furtherance of this effort to put Beck & Lee on notice of these allegations, Deer Valley has supplemented its Answers to Interrogatories and served them upon Beck & Lee.


8. In an abundance of caution, Deer Valley requests that the Court allow it to amend its Second Amended Counterclaim by interlineations to include specific factual allegations pertaining to the aforesaid failures on the part of Beck & Lee.

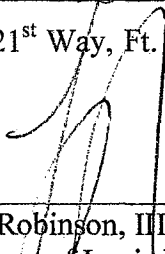
9. While the parties have exchanged interrogatory responses and documentation, no depositions have yet taken place. Consequently, the granting of this Motion will not prejudice Beck & Lee or result in undue delay.

10. A copy of the proposed Third Amended Counterclaim is attached hereto as Exhibit "A".

WHEREFORE, the Counterclaimant, Deer Valley Realty, Inc., respectfully requests that this Court enter an Order granting Deer Valley leave to amend its Second Amended Counterclaim, and for such other relief as the Court deems just and proper in the premises.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail this  day of July, 2017, to: Jared H. Beck, Esq., Elizabeth Lee Beck, Esq., Beck & Lee Trial Lawyers, 12485 S.W. 137th Avenue, Suite 205, Miami, Florida 33186 (jared@beckandlee.com; elizabeth@beckandlee.com; service@beckandlee.com; beckandlee@gmail.com); M. Stephen Smith, Esq., Rumberger, Kirk & Caldwell, P.A., Brickell City Tower, Suite 3000, 80 S.W. 8th Street, Miami, FL 33130 (ssmith@rumberger.com and ssmithsecy@rumberger.com); and and Cullin O'Brien, Esq., Cullin O'Brien Law, P.A., 6541 N.E. 21st Way, Ft. Lauderdale, FL 33108 (cullin@cullinobrienlaw.com).



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IN AND FOR MIAMI-DADE COUNTY, FLORIDA

BECK & LEE, P.A. d/b/a BECK & LEE
BUSINESS TRIAL LAWYERS,

CASE NO. 2015-005478-CA-01 (25)

Plaintiff,

v.

DEER VALLEY REALTY, INC.,

Defendant.

DEER VALLEY'S
THIRD AMENDED COUNTERCLAIM

COMES NOW Deer Valley Realty, Inc. (hereinafter referred to as "Deer Valley"), by and through its undersigned counsel and hereby sues Beck & Lee, P.A. d/b/a Beck & Lee Business Trial Lawyers (hereinafter referred to as "Beck & Lee"), and alleges as follows:

1. This is an action for damages that exceed \$15,000.00, exclusive of interest, court costs and attorneys' fees.
2. Deer Valley is a New Jersey corporation with its principal place of business in Trenton, New Jersey.
3. Beck & Lee is or was at all times material a Florida corporation incorporated and existing under the laws of the State of Florida, and operating as a law firm of attorneys engaged in the practice of law in the courts of Florida.
4. Beck & Lee was retained to represent Deer Valley in litigation taking place in Broward County, Florida.
5. Venue is proper in Broward County, Florida, as the legal services to be performed were to be in Broward County, Florida.
6. In 2012, 2013, 2014 and continuing into 2015, Beck & Lee were hired and retained for a fee as attorneys and counsel for Deer Valley to represents its interests in connection with litigation styled *Deer Valley Realty, Inc. v. SB Hotel Associates LLC*, Case No. 12-10560-CACE-07 filed in the Seventeenth Judicial Circuit in and for Broward County, Florida (hereinafter referred to as the "Trump Litigation").

7. Beck & Lee represented the interests of Deer Valley through the inception of the lawsuit through and including trial and post-trial motions in the Trump Litigation.

8. At all times material, Beck & Lee held themselves out as attorneys with specialized knowledge, skill and training and possessing a level of experience and skill in the field of business litigation and in the trial of business litigation matters not generally enjoyed by other attorneys practicing in the field and locale.

COUNT I - PROFESSIONAL NEGLIGENCE

9. Deer Valley realleges each and every allegation in paragraph 1 through 8, inclusive, as set forth therein.

10. By undertaking legal representation of Deer Valley, Beck & Lee undertook and owed a duty to provide zealous and effective legal representation to Deer Valley to the best of its ability, skill and training, and with that degree of care, competence and diligence as can be expected of a similarly trained and qualified attorney under the same or similar circumstances.

11. Beck & Lee acting through its officers, directors, shareholders, attorneys, employees and agents held themselves out as attorneys possessing special skill and knowledge in the area of business litigation, and breached their duty of care by negligently representing the interests of Deer Valley in the Trump Litigation, and such acts or omissions included but were not limited to:

- a. failing to research and present applicable governing law to the trial court;
- b. failing to present available and beneficial documentary, tangible or testimonial evidence in the trial;
- c. failing to object to objectionable evidence during trial or through pretrial motions;
- d. calling unfavorable witnesses to testify;
- e. failing to offer or locate witnesses to offer testimony in support of those issues for which Deer Valley in the underlying litigation bore the burden of proof, or in failing to offer witnesses to offer testimony to rebut witnesses offering testimony on the issues for which the opposing party bore the burden of proof;
- f. failing to use requisite legal knowledge and trial skill;

- g. failing to make necessary and timely recommendations to Deer Valley before, during and after trial concerning foreseeable liability and damages and otherwise providing negligent advice and representation, all of which was relied upon by Deer Valley to its detriment;
- h. Beck & Lee appeared disorganized and unprepared, and very ineffective as trial lawyers;
- i. Beck & Lee failed to make a contemporaneous objection to Donald Trump's counsel's improper *Fabre* ("empty chair") argument during Trump's closing argument, after Beck & Lee successfully argued against *Fabre* arguments by motion *in limine*. Once again, no contemporaneous objection was made;
- j. The advertising and promotional materials for this project (unlike other projects where Donald Trump only licenses his name and is not the actual developer) did not include a disclaimer stating this. This issue was never brought up or pointed out to the jury;
- k. Beck & Lee should have moved *in limine* to prevent Trump from arguing disclaimers in the purchase contract because Trump was not a party to the purchase contract, and under Florida law could not rely or assert those disclaimers as a non-party.
- l. Beck & Lee failed to advise Deer Valley that Corus Construction Ventures, LLC, had paid substantial sums in order to settle allegations against it for claims of an equitable lien against the subject property. It is believed that Beck & Lee's settled with Corus Construction Ventures, LLC, on behalf of other clients including Mr. Taglieri and other clients in the Trilogy Property LLC case. Beck & Lee failed to advise Deer Valley to sue Corus Construction Ventures, LLC, and Beck & Lee failed to include Corus Construction Ventures, LLC, as a defendant in the lawsuit it filed on behalf of Deer Valley.

12. The various acts, errors, or omissions of Beck & Lee, including those set forth above, separately or collectively, constitute a breach of the duty of care and skill owed, and as a result of Beck & Lee's actions, Deer Valley sustained an adverse monetary judgment, costs and expenses, which could have been avoided in whole or in part, but for the negligence of Beck & Lee.

13. As a proximate and foreseeable result of the negligence of Beck & Lee, Deer Valley was damaged by virtue of the adverse judgment, as well as by the entry of a judgment requiring Deer Valley to pay the attorneys' fees and expenses of the opposing party. The

attorneys' fees portion was reversed, however, attorneys' fees and expenses were incurred in pursuing the action and in prosecuting the appeal.

14. As a result, Deer Valley incurred attorneys' fees and expenses.

WHEREFORE, the Defendant/Counterclaimant, Deer Valley Realty, Inc., seeks judgment for the aforementioned damages, as well as the attorneys' fees and expenses paid to the Plaintiff/Counter-Defendant, Beck & Lee, P.A. d/b/a Beck & Lee Business Trial Lawyers, and for costs, pre-judgment and post-judgment interest, and such other relief as the Court deems just and proper in the premises, including attorneys' fees and costs incurred in this case.

COUNT II - BREACH OF FIDUCIARY DUTY

15. Deer Valley realleges each and every allegation in paragraph 1 through 8, inclusive, as set forth therein.

16. Deer Valley placed trust and care in Beck & Lee which was accepted by them in connection with the representation and defense of Deer Valley's legal and monetary interests.

17. Beck & Lee undertook the responsibility to provide legal services under circumstances where Beck & Lee enjoyed greater knowledge, control, or expertise, and Deer Valley's justifiably placed trust and confidence in them.

18. Under these circumstances a fiduciary relationship arose between Deer Valley and Beck & Lee, wherein Beck & Lee undertook the responsibility to represent their client with the utmost degree of candor, loyalty, skill and diligence in the discharge of all manner of fiduciary obligations owed to Deer Valley.

19. Beck & Lee acting through its officers, directors, shareholders, attorneys, employees and agents breached their fiduciary duty to Deer Valley by committing acts, errors, or omissions in violation of the trust and confidence reposed in them. Such acts, errors or omissions included:

- a. failing to research and present applicable governing law to the trial court;
- b. failing to present available and beneficial documentary, tangible or testimonial evidence in the trial;
- c. failing to object to objectionable evidence during trial or through pretrial motions;
- d. calling unfavorable witnesses to testify;

- e. failing to timely and candidly consult with Deer Valley before making strategic decisions during trial which were different than the client expected or reasonably assumed based upon prior communications and discussions;
- f. failing to make necessary and timely recommendations to Deer Valley before, during and after trial concerning foreseeable liability and damages;
- g. failing to provide forthright and candid advice and counsel concerning the developments during trial, evidentiary problems, and other factors which would affect the valuation of the case, Deer Valley's willingness to settle, and the settlement value of the claim;
- h. failing to appear organized and prepared and effective as trial lawyers;
- i. failing to make a contemporaneous objection to Donald Trump's counsel's improper *Fabre* ("empty chair") argument during Trump's closing argument, after Beck & Lee successfully argued against *Fabre* arguments by motion *in limine*. Once again, no contemporaneous objection was made;
- j. failing to introduce evidence and/or argue to the jury that the advertising and promotional materials for this project (unlike other projects where Donald Trump only licenses his name and is not the actual developer) did not include a disclaimer stating this. This issue was never brought up or pointed out to the jury;
- k. failing to move *in limine* to prevent Trump from arguing disclaimers in the purchase contract because Trump was not a party to the purchase contract, and under Florida law could not rely or assert those disclaimers as a non-party;
- l. overcharging Deer Valley for legal services.
- m. Beck & Lee failed to advise Deer Valley that Corus Construction Ventures, LLC, had paid substantial sums in order to settle allegations against it for claims of an equitable lien against the subject property. It is believed that Beck & Lee's settled with Corus Construction Ventures, LLC, on behalf of other clients including Mr. Taglieri and other clients in the Trilogy Property LLC case. Beck & Lee failed to advise Deer Valley to sue Corus Construction Ventures, LLC, and Beck & Lee failed to include Corus Construction Ventures, LLC, as a defendant in the lawsuit it filed on behalf of Deer Valley.

20. The various acts, errors, or omissions of Beck & Lee, including those set forth above, separately or collectively, constitute a breach of the fiduciary duty, and as a result of Beck & Lee's actions, Deer Valley sustained two adverse monetary judgments, costs and expenses, which could have been avoided in whole or in part, but for the breach of fiduciary duty of Beck & Lee. Additionally, Deer Valley overpaid for the legal services of Beck & Lee.

21. As a proximate and foreseeable result of the breach of fiduciary duty of Beck & Lee, Deer Valley was also damaged by virtue of the adverse judgment.

22. As a result, Deer Valley incurred attorneys' fees and costs in pursuing the action and in prosecuting the appeal.

WHEREFORE, the Defendant/Counterclaimant, Deer Valley Realty, Inc., seeks judgment for the aforementioned damages, as well as the attorneys' fees and expenses paid to the Plaintiff/Counter-Defendant, Beck & Lee, P.A. d/b/a Beck & Lee Business Trial Lawyers, and for costs, pre-judgment and post-judgment interest, and such other relief as the Court deems just and proper in the premises, including attorneys' fees and costs incurred in this case.

COUNT III - RECOUPMENT

23. Deer Valley realleges each and every allegation in paragraph 1 through 8, inclusive, as set forth therein.

24. Beck & Lee charged a grossly excessive legal fee due to over billing.

25. Many of the legal services for which the fees were charged were unreasonable and unnecessary and provided little or no benefit to Deer Valley.

26. Beck & Lee are not entitled to benefit from their own overcharging.

27. Excessive charges were paid by Deer Valley and should be repaid by Beck & Lee.

28. Deer Valley has been damaged by the amount of the excessive charges.

29. This is an action for damages that exceed Fifteen Thousand Dollars (\$15,000.00).

WHEREFORE, the Defendant/Counterclaimant, Deer Valley Realty, Inc., seeks judgment for damages against the Plaintiff/Counter-Defendant, Beck & Lee, P.A. d/b/a Beck & Lee Business Trial Lawyers, for costs, pre-judgment and post-judgment interest, repayment of the overcharges and such other relief as the Court deems just and proper in the premises.

COUNT IV - UNJUST ENRICHMENT

30. Deer Valley realleges each and every allegation in paragraph 1 through 8, inclusive, as set forth therein.

31. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00).

32. Beck & Lee have issued grossly excessive legal bills to Deer Valley which constitute fees for services which are inflated, unreasonable and unnecessary, and provided little or no benefit to Deer Valley.


33. In addition to the outstanding invoices, earlier invoices contained excessive legal charges for which Beck & Lee were paid.

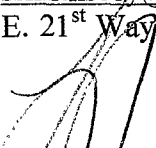
34. The circumstances are such that it will be inequitable to allow Beck & Lee to retain the benefit of these payments to Beck & Lee.

35. It would also be inequitable to require Deer Valley to pay for unnecessary and unreasonable services and for services which provided little or no value.

WHEREFORE, the Defendant/Counterclaimant, Deer Valley Realty, Inc., seeks judgment for damages against the Plaintiff/Counter-Defendant, Beck & Lee, P.A. d/b/a Beck & Lee Business Trial Lawyers, for costs, pre-judgment and post-judgment interest, repayment of the overcharges and such other relief as the Court deems just and proper in the premises.

CERTIFICATE OF SERVICE

 I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail this day of July, 2017, to: Jared H. Beck, Esq., Elizabeth Lee Beck, Esq., Beck & Lee Trial Lawyers, 12485 S.W. 137th Avenue, Suite 205, Miami, Florida 33186 (jared@beckandlee.com; elizabeth@beckandlee.com; service@beckandlee.com; beckandlee@gmail.com); M. Stephen Smith, Esq., Rumberger, Kirk & Caldwell, P.A., Brickell City Tower, Suite 3000, 80 S.W. 8th Street, Miami, FL 33130 (ssmith@rumberger.com and ssmithsecy@rumberger.com); and and Cullin O'Brien, Esq., Cullin O'Brien Law, P.A., 6541 N.E. 21st Way, Ft. Lauderdale, FL 33108 (cullin@cullinobrienlaw.com).


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