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Mariyana T. Spyropoulos
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,)
)
Plaintiff,)
)
v.)
BRANDON MCGIVERN,)
)
Defendant.)

Case No. **2025CH05527**

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT AND
COUNTERCLAIM**

TO THE HONORABLE COURT:

NOW COMES Brandon McGivern ("Defendant"), appearing pro se, and for his Answer to Plaintiff's Complaint states as follows:

PRELIMINARY STATEMENT

1. This case involves a licensed real estate agent who fabricated evidence, concealed property damage for five months, operated an undisclosed rental enterprise, and violated fundamental Illinois real estate law by pursuing claims based on an oral real estate contract that is void under Illinois Statute of Frauds (740 ILCS 80/1). Plaintiff Kyle Hadley's misconduct has transformed what he characterizes as a contract dispute into a case about professional fraud, property waste, and unjust enrichment where Defendant is clearly the victim.

2. The timeline of Plaintiff's retaliatory litigation reveals calculated forum shopping and bad faith conduct. On May 20, 2025, Defendant filed an eviction case after Plaintiff's illegal holdover following proper 60-day notice. On May 21, 2025, at 9:14

FILED DATE: 6/23/2025 7:53 AM 2025CH05527

AM, Defendant notified Plaintiff's counsel of the eviction case filing. Within three hours, at 12:24 PM on May 21, 2025, Plaintiff filed this Chancery action and immediately demanded Defendant "voluntarily withdraw" the eviction case - demonstrating Plaintiff's strategy to circumvent landlord-tenant law through fabricated equity claims in this Court.

3. Plaintiff's misconduct has escalated to parallel litigation, with the eviction trial scheduled for July 21, 2025, while simultaneously pursuing equitable relief in this Court based on fabricated evidence. This tactical maneuver violates fundamental principles of judicial efficiency and represents an abuse of process designed to leverage fabricated claims against legitimate property owner rights.

4. On June 5, 2025, this Court granted Defendant emergency access to the property after recognizing Plaintiff's pattern of concealment and obstruction. On June 6, 2025, professional inspection revealed extensive grout deterioration, compromised water barrier, and likely significant wall damage behind tiles requiring complete tile removal - confirming that Plaintiff's five-month concealment of water damage exponentially increased repair costs from an estimated \$2,000-5,000 to \$15,000-30,000.

5. As a licensed real estate professional, Plaintiff had heightened knowledge that: (a) oral real estate contracts are void under Illinois law; (b) property modifications require owner consent; (c) concealing property damage violates fiduciary duties to property owners; and (d) fabricating evidence violates professional ethics standards. Plaintiff's professional misconduct in pursuing claims he knew were legally baseless while concealing substantial property damage represents a fundamental breach of his fiduciary obligations and professional duties.

6. This Court should recognize that Plaintiff's fabricated evidence, documented in

Defendant's pending Motion to Strike with undisputed Google Docs timeline proof, combined with his strategic property damage concealment and retaliatory litigation tactics, bars any equitable relief and establishes Defendant as the true victim entitled to substantial damages and professional sanctions against Plaintiff.

GENERAL DENIAL

7. Defendant denies each and every allegation contained in Plaintiff's Complaint not specifically admitted herein, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

8. **FIRST AFFIRMATIVE DEFENSE - STATUTE OF FRAUDS.** Plaintiff's claims are barred by the Illinois Statute of Frauds (740 ILCS 80/1), which renders oral real estate contracts void and unenforceable as a matter of law. Plaintiff, as a licensed real estate professional, had heightened knowledge that any alleged agreement for the sale of real estate must be in writing and signed by the parties to be legally enforceable. Plaintiff's professional reliance on an alleged oral agreement constitutes professional misconduct and renders his claims legally baseless from inception.

9. **SECOND AFFIRMATIVE DEFENSE - FABRICATED EVIDENCE AND RULE 137 VIOLATIONS.** Plaintiff's claims are barred by his presentation of fabricated evidence to this Court in violation of Illinois Supreme Court Rule 137. Plaintiff's Exhibit B contains demonstrably false entries dated months after Defendant ceased tracking and after Plaintiff's document access was revoked, as established by undisputed Google Docs version history. This fabricated evidence forms the foundation for 62% of Plaintiff's claimed damages and bars any relief under principles of judicial integrity and

professional ethics.

10. **THIRD AFFIRMATIVE DEFENSE - UNCLEAN HANDS.** Plaintiff's equitable claims are barred by the doctrine of unclean hands based on his pattern of misconduct: (a) fabrication of documentary evidence; (b) five-month concealment of substantial water damage from January 6 through June 5, 2025; (c) strategic denial of property owner access documented by police body camera footage on May 10, 2025; (d) operation of undisclosed rental enterprise generating substantial profits; (e) professional misconduct as a licensed real estate agent pursuing legally baseless claims; and (f) retaliatory forum shopping by filing this action within three hours of being notified of the eviction proceeding.

11. **FOURTH AFFIRMATIVE DEFENSE - PLAINTIFF'S FIRST AND MATERIAL BREACH.** Plaintiff materially breached any alleged agreement first and repeatedly: (a) failing to close after his condominium sale in October 2023, instead purchasing an expensive automobile with funds designated for property purchase; (b) explicit repudiation in October 9, 2024 text messages stating "Sell the house. I'll move out" and "I'm over it" while demanding return of "all the money I have sent"; (c) anticipatory repudiation via February 14, 2025 email acknowledging inability to purchase and demanding fund return; (d) pattern of extended non-communication including 23-day silence periods; and (e) aggressive, profane conduct including hostile text message sent April 15, 2025.

12. **FIFTH AFFIRMATIVE DEFENSE - PROFESSIONAL MISCONDUCT AND BREACH OF FIDUCIARY DUTY.** As a licensed real estate professional, Plaintiff owed heightened duties of care and professional conduct that he systematically

violated: (a) pursuing claims he knew were legally void under Illinois Statute of Frauds; (b) concealing property damage from the property owner; (c) operating unauthorized rental business without disclosure; (d) denying property owner access for inspection and maintenance; and (e) making unauthorized property modifications without owner consent. These professional violations bar any recovery and expose Plaintiff to professional licensing consequences.

13. SIXTH AFFIRMATIVE DEFENSE - WAIVER, ESTOPPEL, AND LACHES. Plaintiff waived any rights under any alleged agreement and is estopped from asserting such rights by: (a) operating an undisclosed rental business generating substantial profits inconsistent with purchase intent; (b) concealing property damage while claiming beneficial ownership; (c) denying property owner access rights; (d) unreasonable delay in asserting claims; and (e) conduct inconsistent with any purchase agreement.

14. SEVENTH AFFIRMATIVE DEFENSE - FAILURE TO STATE A CLAIM. Plaintiff's Complaint fails to state claims upon which relief can be granted because: (a) no valid enforceable contract exists under Illinois law; (b) Plaintiff lacks standing due to material breaches and professional misconduct; (c) Plaintiff cannot demonstrate irreparable harm necessary for injunctive relief when Defendant has no intention to sell the property; and (d) Plaintiff's fabricated evidence undermines the factual and legal basis of all claims.

15. EIGHTH AFFIRMATIVE DEFENSE - ABUSE OF PROCESS, FORUM SHOPPING, AND EXPLOITATION OF PRO SE STATUS. Plaintiff's filing of this Chancery action constitutes abuse of process, improper forum shopping, and calculated

exploitation of Defendant's pro se status. Plaintiff, a licensed real estate professional represented by counsel (Mason Cole, Cole Sadkin LLC), filed this retaliatory action within three hours of being notified of the eviction proceeding and explicitly demanded that Defendant "voluntarily withdraw" the eviction case. This demonstrates calculated litigation tactics designed to leverage professional and legal advantages against an unrepresented defendant who lacks the financial resources to hire counsel.

16. The misconduct includes: (a) strategic timing of filing within three hours of eviction notice to create litigation pressure; (b) using professional real estate knowledge to craft legally baseless claims knowing Defendant lacks legal expertise to immediately identify Statute of Frauds violations; (c) presenting fabricated evidence to an unrepresented defendant hoping to overwhelm pro se capabilities; (d) leveraging attorney representation to pursue complex equity claims against a defendant proceeding without counsel due to financial constraints; (e) forum shopping to avoid landlord-tenant law where Plaintiff's holdover status is clear; and (f) abusing the Court's equity jurisdiction to circumvent legitimate eviction proceedings through fabricated claims requiring extensive legal research and response.

17. This conduct violates fundamental principles of fair dealing and constitutes litigation abuse designed to exploit the inherent disadvantage faced by pro se defendants when confronted with professionally crafted but legally baseless claims backed by fabricated evidence.

RESPONSE TO SPECIFIC COUNTS

18. **COUNT I - BREACH OF CONTRACT (§§ 15-18).** Defendant denies all allegations and affirmatively states: (a) no valid enforceable contract exists under Illinois

Statute of Frauds; (b) any alleged agreement was materially breached first by Plaintiff in October 2023 and repeatedly thereafter; (c) Plaintiff explicitly repudiated any agreement multiple times, including October 9, 2024 and February 14, 2025; (d) 62% of Plaintiff's claimed damages depend on fabricated evidence subject to Defendant's pending Motion to Strike; (e) Plaintiff's professional misconduct as a licensed real estate agent bars contract-based recovery; and (f) Plaintiff was unjustly enriched through below-market housing and undisclosed rental profits exceeding documented damages.

19. **COUNT II - QUANTUM MERUIT (§§ 19-22).** Defendant denies all allegations and affirmatively states: (a) Plaintiff was unjustly enriched, not Defendant, through below-market housing valued at \$2,800-3,200 monthly versus payments of \$1,880-2,080; (b) Plaintiff operated undisclosed rental enterprise generating documented profits of \$6,400, with additional profits subject to ongoing discovery; (c) any alleged benefits to Defendant are offset by substantial property damage concealed by Plaintiff; (d) Plaintiff's professional misconduct and fabricated evidence bar equitable recovery; and (e) Plaintiff's unauthorized property modifications were done without consent and for Plaintiff's benefit.

20. **COUNT III - CONSTRUCTIVE TRUST (§§ 23-27).** Defendant denies all allegations and affirmatively states: (a) Plaintiff's fabricated evidence and professional misconduct bar any equitable relief; (b) Plaintiff's unclean hands through property damage concealment and denial of access defeat trust claims; (c) any constructive trust should be imposed on Plaintiff's rental profits for Defendant's benefit; (d) Plaintiff lacks substantial contribution to property value when his concealment caused exponential damage increase; and (e) Plaintiff's claim depends on fabricated equity calculations that

are the subject of pending sanctions proceedings.

21. **COUNT IV - INJUNCTIVE RELIEF (¶¶ 28-32).** Defendant denies all allegations and affirmatively states: (a) Plaintiff cannot demonstrate irreparable harm when Defendant has no intention to sell the property, as established by Defendant's sworn affidavit; (b) Defendant's business plan involves converting the property to rental investment generating positive cash flow of \$720-1,120 monthly; (c) Plaintiff lacks likelihood of success on claims based on fabricated evidence and legally void oral agreements; (d) Plaintiff's unclean hands through documented misconduct bars injunctive relief; (e) balance of equities favors Defendant as record title holder with legitimate property rights; and (f) Plaintiff's retaliatory litigation tactics demonstrate abuse of process rather than legitimate equity claims.

COUNTERCLAIMS

Defendant brings the following Counterclaims against Plaintiff:

COUNT I - WASTE AND PROPERTY DAMAGE

22. Defendant incorporates all previous allegations as if fully set forth herein.

23. On January 6, 2025, Plaintiff reported significant water damage to the property via WhatsApp message to Defendant.

24. Despite knowing of this damage, Plaintiff concealed it from Defendant for over five months, denying Defendant access to assess and repair his own property.

25. On May 10, 2025, when Defendant arrived with police to inspect the

property, Plaintiff strategically exited through the rear door to avoid allowing inspection of the water damage, as documented by police body camera footage (Event #2513009537).

26. During the May 10, 2025 denial of inspection, Plaintiff told police he was planning to move out but failed to provide a specific date, further evidencing his lack of good faith intent to perform any alleged agreement.

27. Plaintiff's concealment and denial of access has caused the water damage to exponentially increase, requiring extensive mold remediation and structural repairs.

28. During the court-ordered emergency inspection conducted June 7, 2025, Plaintiff revealed to a contractor that the water damage had been further compromised when "a contractor friend of his came to look at it," creating additional damage that was never reported to Defendant.

29. Plaintiff's failure to report his contractor friend's additional damage to the property demonstrates continued concealment and waste of Defendant's property.

30. Plaintiff's systematic denial of property access has prevented Defendant from conducting comprehensive inspection of the property and approximately \$40,000 in furnishings owned by Defendant that were to remain with the property.

31. Due to Plaintiff's obstruction, Defendant cannot assess the full extent of damage to his furnishings, personal property, and other areas of the property beyond the water damage until Plaintiff vacates.

32. Defendant reserves the right to seek additional damages for undiscovered property damage, damage to furnishings, conversion or theft of personal property, and any other damage that becomes apparent only after full access to the property is restored.

33. As a result of Plaintiff's waste, concealment, and unauthorized contractor access, Defendant has suffered damages in the amount of \$15,000 to \$30,000 for property restoration, mold remediation, and structural repairs, plus additional undetermined damages to furnishings and personal property that cannot be assessed until Plaintiff's vacation of the premises.

34. WHEREFORE, Defendant demands judgment against Plaintiff for damages in the amount of \$15,000 to \$30,000, plus additional undetermined damages to furnishings and personal property that cannot be assessed until Plaintiff's vacation, plus costs and fees.

COUNT II - UNJUST ENRICHMENT

35. Defendant incorporates all previous allegations as if fully set forth herein.

36. Plaintiff has operated an undisclosed rental enterprise from Defendant's property, collecting rent from multiple tenants without Defendant's knowledge or consent.

37. Bank records document Plaintiff received at least \$6,400 in rental payments during 2024-2025 from tenant Timothy Lenihan.

38. Upon information and belief, Plaintiff has maintained additional roommates since September 2024, collecting approximately \$1,000 per month in rent, totaling approximately \$9,000 from September 2024 through June 2025.

39. Upon information and belief, Plaintiff has possibly collected additional rental income from unknown tenants that will be revealed through discovery of Plaintiff's bank records.

40. Plaintiff paid below-market rent to Defendant while subletting rooms at market rate, creating an unjust rental arbitrage of approximately \$720-1,120 per month

over 10 months, totaling \$7,200-11,200.

41. Plaintiff's total unjust enrichment amounts to no less than \$22,600, with additional amounts to be proven through discovery.

42. WHEREFORE, Defendant demands judgment against Plaintiff for unjust enrichment in the amount of \$22,600 to \$26,600 plus additional amounts revealed through discovery.

COUNT III - CONVERSION AND PROFESSIONAL MISCONDUCT

43. Defendant incorporates all previous allegations as if fully set forth herein.

44. Plaintiff, without authorization, disposed of functioning appliances and made unauthorized modifications to Defendant's property.

45. As a licensed real estate agent, Plaintiff owed heightened professional duties and was required to know that oral real estate contracts are void under Illinois law.

46. Plaintiff's pursuit of claims based on a void oral contract, fabrication of evidence, and concealment of property damage constitute professional misconduct warranting professional licensing investigation.

47. Defendant has suffered damages from unauthorized property disposal and professional misconduct in the amount of \$5,000 to \$10,000.

48. WHEREFORE, Defendant demands judgment against Plaintiff for conversion and professional misconduct in the amount of \$5,000 to \$10,000.

COUNT IV - HOLDOVER TENANCY DAMAGES

49. Defendant incorporates all previous allegations as if fully set forth herein.

50. Defendant properly served Plaintiff with 60-day Notice to Vacate on March

18, 2025, requiring vacation by May 17, 2025.

51. Plaintiff has unlawfully held over beyond the termination date, constituting statutory holdover tenancy subject to double damages under Illinois law.

52. Plaintiff's holdover has caused Defendant damages at the rate of \$166.67 per day from May 18, 2025, continuing daily until vacation.

53. As of June 23, 2025, Plaintiff owes \$6,166.79 in holdover damages, with additional damages accruing daily.

54. WHEREFORE, Defendant demands judgment against Plaintiff for holdover tenancy damages in the amount of \$6,166.79 as of June 23, 2025, plus \$166.67 per day until Plaintiff vacates the property.

COUNT V - ATTORNEYS' FEES AND COSTS

55. Defendant incorporates all previous allegations as if fully set forth herein.

56. Plaintiff's misconduct, including fabrication of evidence and property concealment, necessitated these legal proceedings and Defendant's pro se representation.

57. Defendant has expended over 90 hours in pro se representation at the reasonable rate of \$250 per hour, totaling \$22,500.

58. Defendant has incurred additional costs including filing fees, process service, and expert consultations totaling approximately \$1,300.

59. Plaintiff's professional misconduct warrants award of attorneys' fees and costs under applicable law.

60. WHEREFORE, Defendant demands judgment against Plaintiff for attorneys' fees and costs in the amount of \$23,800.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests that this Court:

- A. Deny Plaintiff's Complaint in its entirety;
- B. Strike any fabricated evidence from Plaintiff's filings;
- C. Award Defendant judgment on his Counterclaims in the total amount of \$72,566 to \$96,567, plus additional undetermined damages to furnishings and personal property that cannot be assessed until Plaintiff vacates the property;
- D. Award Defendant continuing daily damages of \$166.67 until Plaintiff vacates the property;
- E. Order discovery of Plaintiff's complete bank records to determine full scope of rental income;
- F. Refer Plaintiff's professional misconduct to the Illinois Department of Financial and Professional Regulation;
- G. Award Defendant his costs and reasonable attorneys' fees;
- H. And grant such other relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon Plaintiff's counsel by electronic mail to mcole@colesadkin.comcounsel on June 23, 2025.

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Pro Se
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VERIFICATION

I, Brandon McGivern, being first duly sworn on oath, state that I have read the foregoing Answer and Counterclaim, know the contents thereof, and that the same is true to the best of my knowledge, information, and belief.

/s/ Brandon McGivern

Brandon McGivern, Pro Se