

IN THE CIRCUIT COURT OF THE 7TH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.

2009-14792 CIDL
01

JURY TRIAL DEMANDED

DEBARY PLANTATION COMMUNITY
ASSOCIATION, INC., a Florida not-for-profit
corporation,

Plaintiff,

v.

SUTHERLAND MANAGEMENT, INC.
and THERESA SUTHERLAND,

Defendants.

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CLERK OF THE CIRCUIT
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FILED

COMPLAINT

COMES NOW, the Plaintiff, DEBARY PLANTATION COMMUNITY ASSOCIATION, INC., a not-for-profit organization ("DEBARY PLANTATION") and sues the Defendants, SUTHERLAND MANAGEMENT, INC. ("SUTHERLAND MANAGEMENT") and THERESA SUTHERLAND ("SUTHERLAND"), an individual, and in support thereof states unto the Court as follows:

GENERAL ALLEGATIONS

1. This is an action for Temporary and Permanent Injunctive Relief, Conversion and Accounting to recover corporate records and money belonging to DEBARY PLANTATION, which have been wrongfully converted by the Defendants, SUTHERLAND MANAGEMENT and SUTHERLAND, and are currently being unlawfully held by Defendants at this time.

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2. DEBARY PLANTATION is a Florida not-for-profit corporation organized and existing pursuant to Chapter 617, Florida Statutes, and governed by Chapter 720, Florida Statutes, and is charged with operating, administering, and maintaining the Homeowners Association community known as DEBARY PLANTATION, located in Volusia County, Florida.

3. At all times material hereto, Defendant, SUTHERLAND MANAGEMENT, resided and conducted business in Orange County, Florida, as a management company for the community association.

4. At all times material hereto, Defendant, SUTHERLAND, was doing business in Volusia County, Florida and was the manager for the community association in Volusia County, Florida.

5. Defendants, SUTHERLAND MANAGEMENT and SUTHERLAND, were hired to perform management tasks on behalf of DEBARY PLANTATION at all pertinent times. Attached hereto as incorporated herein as Exhibit "A" is a true and correct copy of the Management Contract between Plaintiff and Defendants.

6. Defendants, SUTHERLAND MANAGEMENT and SUTHERLAND, as part of their management duties, maintained custody of the corporate books and records, including the corporate financial records and money for the Plaintiff, DEBARY PLANTATION.

7. Defendant, SUTHERLAND MANAGEMENT, terminated its employment with DEBARY PLANTATION pursuant to the terms of the contract.

8. Upon termination, SUTHERLAND MANAGEMENT and SUTHERLAND were to return all of the Association's corporate documents, books, records and money. Verbal and

written demands were made upon SUTHERLAND to turn over Association records and money, but she refused.

9. On July 30, 2009 and again on August 19, 2009, written demands were made upon SUTHERLAND MANAGEMENT and SUTHERLAND by DEBARY PLANTATION'S undersigned counsel for the return of DEBARY PLANTATION'S property, including records, and for an accounting of the funds that were not properly accounted for by SUTHERLAND and/or were missing.. True and correct copies of the demands are attached hereto and incorporated herein as Composite Exhibit "B".

10. The records and money are rightfully and solely the property of DEBARY PLANTATION and DEBARY PLANTATION'S members, and the Association is required by statute to maintain records and pay bills for the Association pursuant to Florida Statute, Chapter 720 and DEBARY PLANTATION'S own governing documents. The Defendants have not properly accounted for over \$15,000.00 which renders this claim within the jurisdiction of the Circuit Court. These funds belong to the Plaintiff Association, which represents the dues and fees that property owners have paid to the Plaintiff and the Plaintiff cannot operate without that money.

11. Defendants, SUTHERLAND MANAGEMENT and SUTHERLAND, were acting as agents of the Association by controlling the records and money. As such, by not returning the property to the Association, the Defendants have willfully and intentionally, without any legal reason or authority, illegally converted Plaintiff's property for their own use.

COUNT I - INJUNCTIVE RELIEF

12. Plaintiff, DEBARY PLANTATION, incorporates herein by reference the allegations contained in Paragraphs 1 through 11 as if fully recited herein.

13. Defendants, SUTHERLAND MANAGEMENT and SUTHERLAND, have never asserted any contractual, statutory right or other lien upon or to DEBARY PLANTATION'S property.

14. SUTHERLAND MANAGEMENT and SUTHERLAND have willfully, intentionally and wrongfully retained the Association's property; to wit, DEBARY PLANTATION'S records and funds.

15. DEBARY PLANTATION is without an adequate remedy at law and damages will not provide a sufficient remedy at this time for the failure to turn over possession of the official books and records. DEBARY PLANTATION is entitled to an accounting of the funds which were received, disbursed and held by SUTHERLAND.

16. As a result of the conversion and unlawful retention of DEBARY PLANTATION'S records and funds by SUTHERLAND MANAGEMENT and SUTHERLAND, DEBARY PLANTATION is currently at a severe disadvantage in attempting to conduct business and is effectively hindered in its ability to operate or administer the Association.

17. As a result of the conversion of DEBARY PLANTATION'S property by SUTHERLAND MANAGEMENT and SUTHERLAND, Defendants have and will continue to cause irreparable harm to DEBARY PLANTATION and to the general membership of DEBARY PLANTATION.

18. The damage and harm sustained by DEBARY PLANTATION and its general membership, as a direct result of Defendants' wrongful conduct as aforesaid, is irreparable and impossible to measure. Thus, DEBARY PLANTATION has no adequate remedy at law for SUTHERLAND MANAGEMENT's refusal to return the records.

19. DEBARY PLANTATION has a clear legal right to the relief sought in this Complaint. There is a substantial likelihood that DEBARY PLANTATION will prevail on the merits of its claim against SUTHERLAND MANAGEMENT and SUTHERLAND, as they have no legal or equitable right to retain the records.

20. The injury and potential harm caused by Defendants' refusal to return the records outweigh the harm, if any, that an Injunction would cause SUTHERLAND MANAGEMENT and SUTHERLAND.

21. The issuance of the requested Injunction will serve the public interest of the unit owners, as well as DEBARY PLANTATION as a whole, by upholding Florida law and enforcing the Homeowners Act insofar as it requires the Association to maintain these records.

22. DEBARY PLANTATION is entitled to an Injunction requiring SUTHERLAND MANAGEMENT and SUTHERLAND to return the Association's records.

23. DEBARY PLANTATION has retained BECKER & POLIAKOFF, P.A. to represent it in this action and is obligated to pay them a reasonable fee to do so. Upon prevailing in this matter, DEBARY PLANTATION is entitled to an award of attorney's fees and costs from SUTHERLAND MANAGEMENT and SUTHERLAND, pursuant to the attached Management Contract, Sections 720.305, 57.105 and 57.041, Fla. Stat. (2009).

WHEREFORE, the Plaintiff, DEBARY PLANTATION COMMUNITY ASSOCIATION, INC., respectfully requests that this Honorable Court grant the following relief:

- A. Take jurisdiction over this controversy and the parties hereto; and
- B. Enter a Temporary and Permanent Injunction against the Defendants, SUTHERLAND MANAGEMENT, INC. and THERESA SUTHERLAND, requiring them to

immediately return all of DEBARY PLANTATION'S corporate books and records and funds;
and

C. Order that the Defendants be required to provide an accounting of all funds they received, disbursed and/or held for the Association or its members; and

D. Enter an award of attorney's fees and costs in favor of DEBARY PLANTATION and against SUTHERLAND MANAGEMENT and SUTHERLAND; and

E. Grant any other and further relief as this Court deems just and appropriate.

COUNT II - CONVERSION

24. Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 23 as if fully recited herein.

25. SUTHERLAND MANAGEMENT and SUTHERLAND'S unauthorized retention of Plaintiff's money and corporate records constitutes a conversion of DEBARY PLANTATION'S assets.

26. Plaintiff has suffered damages as a direct and proximate result of Defendants' conversion of its property.

WHEREFORE, Plaintiff, DEBARY PLANTATION COMMUNITY ASSOCIATION, INC., requests that this Honorable Court grant the following relief:

A. Take jurisdiction of these parties and the subject matter hereof; and

B. Determine the amount of damages which have been suffered by Plaintiff as a result of Defendants' conversion, and enter judgment in favor of Plaintiff and against Defendants, SUTHERLAND MANAGEMENT, INC. and THERESA SUTHERLAND, for that amount and pre-judgment interest; and

- C. Award Plaintiff its attorneys fees pursuant to the Management Contract, Sections 720.305, 57.105 and its taxable costs pursuant to Section 57.041, Fla. Stat. (2009); and
- D. Grant any further relief, though not specifically prayed for, which this Court deems just and appropriate under the circumstances.

COUNT III – ACCOUNTING

27. Plaintiff incorporates herein by reference the allegations contained in Paragraphs 1 through 23 as if fully recited herein.

28. Plaintiff is entitled to an accounting from SUTHERLAND MANAGEMENT and SUTHERLAND to determine the full extent to which Plaintiff's money has been wasted, mismanaged and diverted.

WHEREFORE, Plaintiff demands judgment against the Defendants, SUTHERLAND MANAGEMENT, INC. and THERESA SUTHERLAND, for the following relief:

- A. For entry of judgment in favor of Plaintiff; and
- B. For an accounting of all revenues, expenditures; and
- C. Grant any other and further relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

The Plaintiff hereby requests a Trial by Jury for all issues so Triable.

Dated this 23rd day of October, 2009.

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