

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO
7325 S. Potomac St.
Centennial, CO 80112

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CASE NUMBER: 2018CV32126

Plaintiff: THE SOUTHPARK OWNERS
ASSOCIATION, INC., a Colorado non-profit
corporation;

v.

Defendants: TRIPLE J ARMORY, INC., a Colorado
corporation; PARKLANE BUSINESS PARK, an
unincorporated association; RHR INVESTMENT, LLC,
a Colorado limited liability company; and SOUTHPARK
LANE, LLC, a Colorado limited liability company.

and

Counterclaimant and Third-Party Plaintiff: TRIPLE
J ARMORY, INC., a Colorado corporation;

v.

Counter Defendant: THE SOUTHPARK OWNERS
ASSOCIATION, INC., a Colorado non-profit
corporation;

Third-Party Defendant: CUSTOM MANAGEMENT
GROUP, LLC, a Colorado limited liability company.

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Case No. 18CV32126

Division/Courtroom:

**TRIPLE J ARMORY, INC.'S VERIFIED ANSWER,
COUNTERCLAIMS, AND THIRD-PARTY COMPLAINT**

Defendant, Counterclaimant, and Third-Party Plaintiff Triple J Armory, Inc. (“Triple J”), by and through counsel, Polsinelli PC, answers the Verified Complaint of The SouthPark Owners Association and asserts affirmative defenses, pleads counterclaims against The SouthPark Owners Association, and asserts a Third-Party Complaint against Custom Management Group, LLC as follows:

INTRODUCTION

Triple J seeks damages as well as declaratory relief against Plaintiff and Counterclaim Defendant The SouthPark Owners Association (“SPOA”) arising from SPOA’s refusal to honor its prior written agreement to allow Triple J to construct and operate a retail store and shooting range in the SouthPark Business Park. In reliance on SPOA’s prior approvals, Triple J leased a building and invested substantial amounts to remodel the interior of the building. Months later, after some unidentified person(s) circulated an anonymous flyer objecting to the gun store, SPOA reversed course and tried to renege on its prior approvals. This lawsuit is the SPOA’s latest attempt to go back on its earlier promises.

ANSWER

1. Triple J admits The SouthPark Owners Association (“SPOA”) is a Colorado non-profit corporation in good standing and charged with certain duties of management, maintenance and care of the Association’s property and charged with the duty of performing the obligations as set forth in the Second Amended and Restated Declaration of Covenants of The SouthPark Owners Association, as amended. Triple J is without sufficient information and knowledge to admit or deny recording details for the aforementioned Declaration, and therefore denies the same. Exhibits 1 and 2 to SPOA’s Verified Complaint, as well as “all of the Association’s recorded governing documents and documents identified on the Association’s website, particularly the Campus Guidelines,” are written documents that speak for themselves.

2. Triple J admits the allegations in paragraph 2 of the Verified Complaint, except to the extent SPOA alleges any change of use or improvement construction constitutes a valid basis for this action.

3. The allegations of paragraph 3 of the Verified Complaint are not directed toward Triple J, and thus no response is required. To the extent a response is required, Triple J is without sufficient information and knowledge to admit or deny the allegations in paragraph 3 of the Verified Complaint and therefore denies the same.

4. The allegations of paragraph 4 of the Verified Complaint are not directed toward Triple J, and thus no response is required. To the extent a response is required, Triple J is without sufficient information and knowledge to admit or deny the allegations in paragraph 4 of the Verified Complaint and therefore denies the same.

5. The allegations of paragraph 5 of the Verified Complaint are not directed toward Triple J, and thus no response is required. To the extent a response is required, Triple J is without

sufficient information and knowledge to admit or deny the allegations in paragraph 5 of the Verified Complaint and therefore denies the same.

6. Triple J admits jurisdiction is proper in this Court.

7. Triple J admits venue is proper in this Court.

8. Triple J admits the allegations in paragraph 8 of the Verified Complaint.

9. The Declaration, particularly as it pertains to the Architectural Development Control Committee (“ADCC”), is a written document that speaks for itself. To the extent SPOA alleges the ADCC is governed by “policies and procedures approved by the Board of Directors for the Association,” Triple J is without sufficient information and knowledge to admit or deny this allegation, and therefore denies the same.

SPOA’s First Claim for Relief

10. To the extent the allegations in paragraph 10 of the Verified Complaint are directed at Triple J, they are denied.

11. Triple J denies that the “Cease and Desist Letter” dated August 2, 2018 was addressed to Triple J, but admits that it has subsequently received a copy of the letter that was addressed to Defendant SouthPark Lane. The letter speaks for itself. Triple J denies the remaining allegations in paragraph 11 of the Verified Complaint.

12. Triple J admits that SPOA sent Triple J an initial email dated October 26, 2017, which stated that Triple J’s proposed use of the building as a retail gun store/shooting range was a permitted use. To the extent the remaining allegations in paragraph 12 of the Verified Complaint are directed at Triple J, they are denied.

13. To the extent the allegations in paragraph 13 of the Verified Complaint are directed at Triple J, they are denied.

14. To the extent the allegations in paragraph 14 of the Verified Complaint are directed at Triple J, they are denied.

15. To the extent the allegations in paragraph 15 of the Verified Complaint are directed at Triple J, they are denied.

16. To the extent the allegations in paragraph 16 of the Verified Complaint are directed at Triple J, they are denied.

SPOA’s Second Claim for Relief

17. The allegations of paragraph 17 of the Verified Complaint are not directed toward Triple J, and thus no response is required. To the extent a response is required, the Reciprocal

Agreement is a written document that speaks for itself, and Triple J is without sufficient information and knowledge to admit or deny the allegations in paragraph 17 of the Verified Complaint and therefore denies the same.

18. The allegation in the first sentence of paragraph 18 of the Verified Complaint is not directed toward Triple J, and thus no response is required. To the extent a response is required, Triple J is without sufficient information and knowledge to admit or deny the allegation and therefore denies them. With respect to the second sentence of paragraph 18, Triple J admits that it has a property interest in the subject of this litigation. To the extent a response is required to the remaining allegations in the second sentence of paragraph 18, Triple J is without sufficient information and knowledge to admit or deny those allegations and therefore denies them.

19. To the extent the allegations in paragraph 19 of the Verified Complaint are directed at Triple J, they are denied.

20. To the extent the allegations in paragraph 20 of the Verified Complaint are directed at Triple J, they are denied.

21. To the extent the allegations in paragraph 21 of the Verified Complaint are directed at Triple J, they are denied.

22. To the extent the allegations in paragraph 22 of the Verified Complaint are directed at Triple J, they are denied.

23. To the extent the allegations in paragraph 23 of the Verified Complaint are directed at Triple J, they are denied.

SPOA's Third Claim for Relief

24. To the extent the allegations in paragraph 24 of the Verified Complaint are directed at Triple J, they are denied.

25. The Declaration is a written document that speaks for itself.

26. To the extent the allegations in paragraph 26 of the Verified Complaint are directed at Triple J, Triple J is without sufficient information and knowledge to admit or deny the allegations in paragraph 17 of the Verified Complaint and therefore denies the same.

General Denial

27. Any allegation of the Verified Complaint not specifically admitted in the foregoing paragraphs is denied.

Affirmative Defenses

The Rules of Civil Procedure require every defendant to plead potential Affirmative Defenses at the time the Answer is filed, or risk a determination that the potential Affirmative Defenses are waived, even though no disclosures have been exchanged, and no right of discovery exists, at the time the Answer is filed. Therefore, the following Affirmative Defenses are necessarily pled based only on information and belief. Defendant reserves the right to seek leave to add, withdraw, and/or modify Affirmative Defenses once disclosures are exchanged, discovery is received, or other information is obtained. In identifying the following as “Affirmative Defenses,” defendant does not imply that the burden of proof or of going forward with evidence has shifted, as that is a matter for Court determination.

1. SPOA’s Complaint fails to state a claim upon which relief can be granted.
2. SPOA’s claims are limited or barred by the doctrines of waiver, estoppel, and/or laches. SPOA, by and through its manager, Third-Party Defendant Custom Management Group, LLC, represented to Triple J on October 26, 2017 that its proposed use was approved and that ADCC review would not be triggered unless Triple J planned to alter the exterior of the improvement(s). By this representation, SPOA waived its right to now reverse course and require submission for approval of the use, and to seek an injunction requiring the same. SPOA should be estopped from requiring Triple J to submit for approval of its use when it already did so and its use was approved. Finally, SPOA waited too long to assert its alleged right to require re-submittal to the detriment of Triple J; accordingly its claim is barred by laches.
3. Triple J reserves the right to list additional affirmative defenses following discovery and investigation.

COUNTERCLAIMS AND THIRD-PARTY COMPLAINT

Background

1. Triple J seeks damages as well as declaratory and mandamus relief against Plaintiff and Counterclaim Defendant The SouthPark Owners Association (“SPOA”) arising from SPOA’s refusal to honor its prior written agreement to allow Triple J to operate a retail store and shooting range in the SouthPark Business Park. In reliance on SPOA’s approval, Triple J leased a building and invested substantial amounts to remodel the interior of that building. Months later, after some unidentified person(s) circulated an anonymous flyer objecting to the gun store, SPOA reversed course and reneged on its prior written approvals.
2. Triple J seeks a declaration that it is in compliance with SPOA’s Declaration and an award of damages against SPOA caused by SPOA’s wrongful actions.
3. Triple J also seeks damages from SPOA’s manager, Custom Management Group, LLC (“CMG”), for representing that SPOA had approved using the site for a retail store and shooting range, causing Triple J to rely on that representation.

Parties

4. Triple J Armory, Inc. is a Colorado corporation in good standing. Triple J is a family-owned and operated, federally licensed, firearm dealer and retailer that has been in operation in the Littleton area since February 2014.

5. Third-Party Defendant CMG is a Colorado limited liability company that has operated a property management, leasing and real estate consulting business for approximately 25 years in Aurora, Colorado. CMG provides management services to SPOA. The Colorado Secretary of State's website lists CMG's status as delinquent as of April 1, 2018 for failure to file a Periodic Report.

General Allegations **SouthPark Business Park**

6. SouthPark Business Park ("SouthPark") is a mixed-use business park located in Littleton, Colorado and consisting of 483 acres including retail, office, research facilities and industrial. Among other uses, SouthPark contains breweries, motorcycle shops, and auto-repair facilities. In the past, SouthPark has also included at least one retail gun store.

7. SouthPark is governed by a certain Declaration of Covenants, Conditions, and Restrictions dated October 14, 1981, as amended (the "Declaration"). A copy of the operative Second Amended and Restated Declaration is attached as **Exhibit A**.

8. The Declaration envisioned that the original owner of the property (the Declarant) would sell raw land (defined as "Building Sites"), on which would be constructed building and other physical improvements. The Declaration defined an "Improvement" to include building and other physical structures or changes made to the land. **Exhibit A**, ¶¶ 1.1 and 1.4.

9. Section 2.2 of the Declaration lists permitted uses that could be made of those Building Sites including "wholesale and retail sales," and "recreation clubs."

10. Article 4 of the Declaration created an Architectural and Development Control Committee ("ADCC"). The ADCC's charge is to approve plans for construction of Improvements, or the alteration of the exterior of any Improvements. The purpose of the ADCC is to assure that "Improvements conform and harmonize with all other existing or proposed Improvements with respect to external design." *See* Section 4.2.

11. "Any and all powers and duties granted to the ADCC by the Declaration may also be exercised and performed by the Owners Association." *See* **Exhibit B**, First Amendment to the Second Amended and Restated Declaration at ¶ 1.

12. Counterclaim Defendant SPOA is the owners' association for SouthPark. According to SPOA's Bylaws, any action taken by a majority of the directors present at a SPOA Board Meeting is considered an act of the Board of Directors and is binding on the Association.

SPOA Approves Triple J's Proposed Gun Store and Range

13. Triple J has operated a retail gun store in Arapahoe County since approximately 2013.

14. In approximately 2015, Triple J began exploring a new location for its business because it wanted to expand its offerings and better serve its community. Among other options, Triple J looked into purchasing land in the SouthPark Business Park and constructing a new building, but ultimately did not pursue that option due to financing issues.

15. In 2017, Triple J entered into discussions with SPOA about the possibility of relocating its business to an existing building in the SouthPark Business Park located at 8152 SouthPark Lane in Littleton, Colorado (the "Site"). The prior tenant of the Site had used the Site for light industrial, manufacturing, and office space.

16. Under the Littleton zoning code, the Site can be used for a retail store/shooting range as a use-by-right.

17. In October 2017, CMG instructed Triple J to send a letter to the Board of SPOA asking for approval to use the Site for a gun shop/shooting range.

18. In response, SPOA's manager, CMG, sent an email to Triple J (with a copy to a majority of SPOA's Board of Directors present at the October 2017 Board Meeting), informing Triple J:

"The SouthPark Owners Association has no objection to the proposed use of the building in question, as a retail gun sale/shooting range. The use would fall within the permitted uses at SouthPark."

See Exhibit C, October 26, 2017 email.

19. The October 26, 2017 email also instructed Triple J that "if any proposed work will alter/change any exterior element(s) of the property" Triple J "may" need to submit for review to the ADCC. The email emphasized that:

"The ADCC [sic] is not concerned with interior aspects of any alterations, unless that interior alteration necessarily affects the exterior – for example, any required exhausting/exchange of air for a gun range may require a new exterior HVAC system. This may trigger an ADCC review. Same with any alteration of a parking lot, landscaping, painting, etc."

See Exhibit C, October 26, 2017 email.

20. In March 2018, JD and Dennis Murphree of Triple J called Channing Odell, whose company CMG served as SPOA's agent and manager, to ask him if anything had changed since SPOA sent the October 26, 2017 email. Mr. Odell told them that their proposed use as a gun store/shooting range was still a permitted use. In reliance on that phone call, the October 26, 2017 email, and other discussions with SPOA, Triple J leased the Site from Defendant SouthPark Lane, LLC pursuant to a ten (10) year lease with three five-year options. With SPOA's full knowledge, Triple J then began renovating the interior of the building to make it usable as a retail store/shooting range. To date, those renovations have cost nearly \$350,000. In addition, Triple J has been paying rent and utilities for several months, and has contractual commitments to suppliers and materialmen.

21. In May 2018, at SPOA's request, Triple J met with SPOA's Board and CMG to discuss the ongoing project. The only issue raised at that meeting was whether or not there would be sufficient parking for the proposed use. It was agreed at the meeting that Triple J had sufficient parking to satisfy both SPOA and the City's requirements. At that meeting, SPOA was fully supportive of Triple J's project, was aware of the planned renovations Triple J was making to the building, and made no mention of the need for any further approval of the planned use for a gun store/gun range.

22. Following that meeting, Triple J continued to renovate the interior of the building, one portion of which will serve as a retail store and the other portion as a shooting range. The renovations are extensive and include sound-proofing, security, and interior changes to convert the former warehouse into a shooting range.

SPOA Reneges

23. On or about June 14, 2018, someone began anonymously distributing a flyer to neighbors of the Site. The flyer discussed murders allegedly associated with Triple J and was apparently intended to scare the neighborhood into opposing Triple J's legitimate and approved business. *See Exhibit D.*

24. Shortly after the distribution of the anonymous flyer, SPOA sent a letter to Triple J's landlord indicating for the first time that SPOA "reserves the right to review the planned change in use." The letter amounted to a complete reversal of the October 2017 email. SPOA then instructed Triple J's landlord to submit a change-of-use application to SPOA. *See Exhibit E, June 22, 2018 letter.*

25. Although Triple J did not believe SPOA had the authority under the Declaration to require a change-of-use application, Triple J nevertheless submitted, as a courtesy, construction plans to SPOA, which plans addressed the issues of concern to SPOA including parking, noise, and security. *See Exhibit F, July 19, 2018 and Exhibit G, August 8, 2018 letter.*

26. Nevertheless, on August 2, 2018, SPOA sent a "cease and desist" letter to Triple J's landlord compelling Triple J to "immediately cease all occupancy and operations" at the Site. *See Exhibit H, cease and desist letter.*

27. As a result, to date, Triple J has not opened a retail store or shooting range at the Site. As a result of the “cease and desist” letter, Triple J is accruing damages on a daily basis including rent payments, interest payments, construction costs, and lost revenues. Triple J estimates that its total damages to date are over \$8M.

28. To the extent Triple J intends to modify the exterior of any of the building, Triple J has submitted and plans to submit its proposed plans to SPOA. For example, on September 10, 2018, Triple J submitted its plans for a new sign at the Site. SPOA refused to process that application. *See Exhibit I*, Letter from Max Minnig dated September 13, 2018.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment - Enforcement of Declaration Against SPOA)

29. The allegations of the above paragraphs are re-alleged and incorporated by this reference.

30. Article 2 of the Declaration states that wholesale and retail sales and customarily associated uses, along with recreation clubs, are allowed uses on the Site.

31. In its October 26, 2017 correspondence to Triple J, SPOA confirmed that Triple J’s proposed use of the Site for a retail gun store/shooting range was an allowed use.

32. Triple J is entitled to a declaration that its proposed use is allowed under the Declaration as approved by SPOA in the October 26, 2017 correspondence.

33. Triple J is entitled to its reasonable attorney’s fees under Section 6.3 of the Declaration.

SECOND CLAIM FOR RELIEF
(Estoppel Against SPOA)

34. The allegations of the above paragraphs are re-alleged and incorporated by this reference.

35. SPOA told Triple J in writing that Triple J could use the Site for a retail store/shooting range.

36. SPOA should have reasonably expected that Triple J would take action based on SPOA’s representation.

37. Triple J reasonably relied on SPOA’s representation by leasing the property and renovating the interior of the building.

38. SPOA’s representation must be enforced to prevent injustice.

THIRD CLAIM FOR RELIEF
(Breach of Contract Against SPOA)

39. The allegations of the above paragraphs are re-alleged and incorporated by this reference.

40. SPOA and Triple J had numerous meetings and communications concerning Triple J relocating to SouthPark. As part of those meetings, SPOA repeatedly told Triple J that SPOA wanted Triple J to re-locate to SouthPark.

41. SPOA told Triple J that its proposed use of the Site as a retail gun store/shooting range was an allowed use and represented that SPOA approved that use.

42. In reliance on SPOA's promises, Triple J leased the Site and remodeled the interior of the building.

43. SPOA then reneged on its promise and has tried to prevent Triple J from relocating its business to SouthPark, including the filing of this lawsuit.

44. Triple J has suffered damages caused by SPOA's actions.

FOURTH CLAIM FOR RELIEF
(Mandamus Under 106(a)(2) against SPOA)

45. The allegations of the above paragraphs are re-alleged and incorporated by this reference.

46. Article IV of the Declaration requires SPOA to review any submittals for changes to the exterior of an Improvement.

47. As required by Article IV, on September 10, 2018, Triple J submitted a request to install a new sign at the Site.

48. SPOA refused to review the signage submittal on the grounds that Triple J did not have approval for a retail store/gun range.

49. Triple J is entitled to an order requiring SPOA to review and approve Triple J's signage submittal because:

- a. Triple J has a clear right under the Declaration to have its signage submittal reviewed;
- b. SPOA has a clear duty under the Declaration to review Triple J's signage submittal; and
- c. No other remedy is available by which Triple J can obtain review

of its signage submittal.

THIRD-PARTY COMPLAINT

FIRST CLAIM FOR RELIEF
(Negligent Misrepresentation Against CMG)

50. The allegations of the above paragraphs are re-alleged and incorporated by this reference.

51. SPOA's manager, CMG, told Triple J that SPOA had no objection to using the building as a retail gun store/shooting range. It also told Triple J that SPOA was not concerned with alterations to the interior aspects of the building.

52. Now, SPOA tells Triple J that it objects to using the building as a retail store/shooting range and that Triple J must obtain approvals for interior changes to the building.

53. To the extent CMG's statements to Triple J were false, CMG gave false information to Triple J.

54. CMG provided that information to Triple J intending Triple J to rely on it.

55. CMG failed to exercise reasonable care and was negligent in obtaining or communicating information and gave the information with the intent, or knowing, that Triple J would act or decide not to act in reliance on the information.

56. Triple J reasonably and justifiably relied on the information supplied by CMG and, as a direct and proximate result, has suffered damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Triple J Armory, Inc. prays for judgment in its favor and against the Counterclaim and Third-Party Defendants as follows:

- (A) Dismissing SPOA's claims with prejudice,
- (B) Entering judgment in its favor,
- (C) For damages in an amount to be proven at trial.
- (D) For a Declaration that Triple J may use the Site as a retail store/shooting range as an allowed use under the Declaration and SPOA rules and that SPOA is estopped from preventing such use.
- (E) Order SPOA to promptly process and approve Triple J's application for new exterior signage at the Site.

(F) Award Triple J its reasonable attorney's fees and costs under Section 6.3 of the Declaration, any applicable statute, and any other basis available to Triple J.

(G) Order such other and further relief as this Court may deem just and appropriate.

Dated this 19th day of September 2018.

Respectfully submitted,

By: s/ Colin C. Deihl
Colin C. Deihl

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September 2018, a true and correct copy of the foregoing was served on all counsel of record via Colorado Courts E-filing.

s/ Colin C. Deihl
