

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

ROBERT RAUSCHENBERG,

CASE NO.: 07-CIV-846, FM 34DNF
CIVIL ACTION

Plaintiff,

vs.

ROBERT FRANCIS MONTGOMERY
a/k/a ROBERT FONTAINE,

Defendant.

_____ /

ANSWER AND AFFIRMATIVE DEFENSES

Defendant ROBERT FRANCIS MONTGOMERY, hereby answers Plaintiff ROBERT RAUSCHENBERG's complaint and asserts the following affirmative defenses.

To wit:

PARTIES, JURISDICTION & VENUE

1. The allegations contained in paragraph 1 are hereby Admitted.
2. The allegations contained in paragraph 2 are hereby Denied.
3. The allegations contained in paragraph 3 are hereby Admitted.
4. The allegations contained in paragraph 4 are hereby Admitted.
5. The allegations contained in paragraph 5 are hereby Admitted.

GENERAL ALLEGATIONS

6. The allegations contained in paragraph 6 are hereby Denied.
7. The allegations contained in paragraph 7 are hereby Denied.
8. The Defendant is without knowledge to admit or deny the allegations contained in paragraph 8 and therefore the allegations contained in paragraph 8 are hereby Denied.
9. The allegations contained in paragraph 9 are hereby Admitted.

10. The allegations contained in paragraph 10 are hereby Admitted.

COUNT I - VARA CLAIM

11. The allegations contained in paragraph 11 are hereby Admitted and Denied, respectively.

12. The allegations contained in paragraph 12 are hereby Denied..

13. The allegations contained in paragraph 13 are hereby Denied.

14. The allegations contained in paragraph 14 are hereby Admitted.

15. The allegations contained in paragraph 15 are hereby Denied.

AFFIRMATIVE DEFENSES

AND NOW, having answered Rauschenberg's complaint, Defendant Montgomery sets forth his affirmative defenses as follows:

First Affirmative Defense

(No Violation of VARA - Attribution is Accurate)

Each and every claim of Rauschenberg's complaint is barred because Rauschenberg is the author of the material which is the subject of his complaint.

Second Affirmative Defense

(Waiver)

Each and every claim of Rauschenberg's complaint is barred by the doctrine of waiver.

Third Affirmative Defense

(Comparative/Contributory Negligence)

Each and every claim of Rauschenberg's complaint is barred because, if Robert Rauschenberg did sustain damages, such damages are attributable to Robert Rauschenberg's own reckless, negligent, or culpable conduct and Robert Rauschenberg's claims are barred by comparative and/or contributory negligence.

Fourth Affirmative Defense

(No Damages)

Each and every claim of Rauschenberg's complaint is barred because Robert Rauschenberg has suffered no damages.

Fifth Affirmative Defense

(Abandonment)

Each and every claim of Rauschenberg's complaint is barred because Rauschenberg has abandoned and/or relinquished any "moral right of attribution" he may have had in the subject matter of the instant action.

Sixth Affirmative Defense

(Reservation of Rights)

Defendant Montgomery hereby gives notice that he intends to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserves his right to amend this Answer to assert such defenses.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the above and foregoing document has been furnished via U.S. mail and electronic filing this 14th day of February, 2008, to LAWRENCE H. KOLIN, Alvarez, Sambol, Winthrop & Madson, P.A., 100 South Orange Avenue, Suite 200, Orlando, Florida.

Respectfully Submitted,

/s/Yale T. Freeman
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