

**N THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS**

FILED  
SEBASTIAN DIST.

2010 SEP 9 AM 11 21

*Duhall*  
CIR. CLERK SEB. CO.

**STEVEN A. BRIGANCE, as personal representative of the Estate of DOROTHY BRIGANCE, deceased; and on behalf of the wrongful death beneficiaries of DOROTHY BRIGANCE**

**PLAINTIFF**

v.

**CASE NO.: CV-2010-1365**

**THE BROOKFIELD AT FIANNA OAKS, LLC, d/b/a THE BROOKFIELD AT FIANNA OAKS; ROBERT "BOB" BROOKS; and MITZI BAILEY**

**DEFENDANTS**

**ANSWER TO FIRST AMENDED COMPLAINT**

Comes now the Defendants, The Brookfield at Fianna Oaks, LLC, d/b/a The Brookfield at Fianna Oaks ("Brookfield") and Mitzi Bailey, by and through their attorneys, Kutak Rock LLP, and for their Answer to the Plaintiff's First Amended Complaint, do state and allege as follows:

1. Defendants generally and specifically deny all allegations contained in the First Amended Complaint including the Plaintiff's prayer for relief, unless specifically admitted herein.

2. Defendants states that Exhibit "A," attached to the First Amended Complaint, speaks for itself. However, the Defendants are without sufficient information upon which to confirm that Stephen A. Brigance has been properly appointed the personal representative of the Estate of Dorothy Brigance, deceased, and thus, the Defendants deny the same and demand strict proof thereof.



\*CU-201001365-A-F\*

4847-8876-7495.1



\*00090\*

3. Defendants are without sufficient information to admit or deny paragraph 2 of the Plaintiff's First Amended Complaint, and therefore deny the same and demand strict proof thereof.

4. Defendants admit paragraph 3 of the Plaintiff's First Amended Complaint.

5. Defendants deny paragraph 4 of the Plaintiff's First Amended Complaint.

6. Defendants admit that the Brookfield at Fianna Oaks, LLC is an Arkansas limited liability company with its principal place of business at 2300 Fianna Oaks, Fort Smith, Arkansas 72908, that it operated an assisted living facility at said location, and that Dorothy Brigance resided therein. Defendants deny all other allegations contained in paragraph 5 of the Plaintiff's First Amended Complaint.

7. Defendants admit that Robert Brooks was the manager of The Brookfield at Fianna Oaks, LLC during the residency of Dorothy Brigance at The Brookfield at Fianna Oaks. Defendants deny all other allegations contained in paragraph 6 of the Plaintiff's First Amended Complaint.

8. Defendants admit that Mitzi Bailey was the administrator of The Brookfield at Fianna Oaks, LLC during the residency of Dorothy Brigance at The Brookfield at Fianna Oaks and that Ms. Bailey is a resident of Oklahoma. Defendants deny all other allegations contained in paragraph 6 of the Plaintiff's First Amended Complaint.

9. Defendants admit that this Court has jurisdiction over the subject matter and that venue is proper in this Court. Defendants deny all other allegations contained in paragraph 8 of the Plaintiff's First Amended Complaint.

10. Defendants admit paragraph 9 of the Plaintiff's First Amended Complaint.

11. In response to paragraph 10 of the Plaintiff's First Amended Complaint, Defendants state that the medical records of Dorothy Brigance speak for themselves, and deny all allegations that are not proven by the medical records.

12. Defendants deny paragraphs 11, 12, and 13 of the Plaintiff's First Amended Complaint.

13. In response to paragraph 14 of the Plaintiff's First Amended Complaint, Defendants state that the medical records of Dorothy Brigance speak for themselves, and deny all allegations that are not proven by the medical records.

14. Defendants deny paragraph 15 of the Plaintiff's First Amended Complaint.

15. Paragraph 16 of the Plaintiff's First Amended Complaint states a legal conclusion and does not require a response from the Defendants. To the extent a response may be required, the allegations in paragraph 16 are denied.

16. Defendants deny paragraphs 17, 18, 19, and 20 of the Plaintiff's First Amended Complaint and all subparagraphs therein.

17. In response to paragraph 21 of the Plaintiff's First Amended Complaint, the Defendants incorporate by reference their responses made in paragraphs 1 through 16 herein.

18. Defendants deny paragraphs 22 and 23 of the Plaintiff's First Amended Complaint and all subparagraphs therein.

19. In response to paragraph 24 of the Plaintiff's First Amended Complaint, the Defendants incorporate by reference their responses made in paragraphs 1 through 23 herein.

20. Defendants deny paragraphs 25, 26, 27, and 28 of the Plaintiff's First Amended Complaint.

21. Paragraph 29 of the Plaintiff's First Amended Complaint does not require a response from the Defendants. To the extent a response may be required, the allegations in paragraph 29 are denied.

22. Defendants deny paragraphs 30 and 31 of the Plaintiff's First Amended Complaint.

23. Pleading affirmatively, the Defendants deny that the Plaintiff has suffered damages in the nature, extent and degree alleged in the Plaintiff's First Amended Complaint.

24. Pleading affirmatively, the Defendants state that the Plaintiff's First Amended Complaint should be dismissed pursuant to, and the Defendants reserve all objections with respect to, insufficiency of process, insufficiency of service of process, failure to state a claim and failure to join an indispensable party under Rule 19.

25. Pleading affirmatively, the Defendants plead all defenses available to them pursuant to the Civil Justice Reform Act of 2003, Act 649.

26. Pleading affirmatively, the Defendants state that the claim for punitive damages asserted by the Plaintiff cannot be sustained because any award of punitive damages without providing the jury meaningful standard which limit their discretion would violate the Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and similar applicable provision of the Arkansas Constitution.

27. Pleading affirmatively, the Defendants state that the claim for punitive damages asserted by the Plaintiff cannot be sustained because any claim for punitive damages without providing adequate standards of post-trial and appellate review would violate the Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and similar applicable provision of the Arkansas Constitution.

28. Pleading affirmatively, the Defendants state that the claim for punitive damages asserted by the Plaintiff cannot be sustained because any claim for punitive damages required to be established by a standard requiring a mere preponderance of the evidence as opposed to clear and convincing evidence would violate the Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and similar applicable provision of the Arkansas Constitution.

29. Pleading affirmatively, the Defendants state that the claim for punitive damages asserted by the Plaintiff cannot be sustained because any claim for punitive damages without bifurcating the trial as to all punitive damages issues would violate the Defendants' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and similar applicable provision of the Arkansas Constitution.


30. The Defendants demand trial by jury on all issues.

31. The Defendants reserve the right to plead further, by amendment, third party practice, or otherwise, pending further investigation and discovery.

WHEREFORE, Defendants, The Brookfield at Fianna Oaks, LLC, d/b/a The Brookfield at Fianna Oaks ("Brookfield") and Mitzi Bailey, pray the Court dismiss the Plaintiff's First Amended Complaint with prejudice and award the Defendants their costs and attorneys' fees expended herein, and to all other proper relief to which they are entitled.

Respectfully submitted,

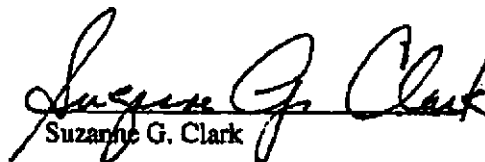
**ATTORNEYS FOR DEFENDANTS,  
THE BROOKFIELD AT FIANNA  
OAKS, LLC, D/B/A THE  
BROOKFIELD AT FIANNA OAKS;  
ROBERT A. BROOKS; AND MITZI  
BAILEY**

By:   
Mark W. Dossett, AR 95174  
Suzanne G. Clark, AR 2008126  
Jeff M. Fletcher, AR 2005129  
**KUTAK ROCK LLP**  
The Brewer Building, Suite 400  
234 East Millsap Road  
Fayetteville, AR 72703-4099  
(479) 973-4200 Telephone  
(479) 973-0007 Facsimile

**CERTIFICATE OF SERVICE**

I, Suzanne G. Clark, state that I have served a copy of the foregoing document upon all counsel on this 9<sup>th</sup> day of September, 2010, by United States mail, postage prepaid.

Mr. Rex Chronister  
CHRONISTER, FIELDS. & FLAKE, PLLC  
P.O. Box 66  
Fort Smith, AR 72902

  
Suzanne G. Clark

**KUTAK ROCK LLP**

SUITE 400  
294 EAST MILLSAP ROAD

FAYETTEVILLE, ARKANSAS 72703-4009

479-673-4200  
FACSIMILE 479-673-0007

www.kutakrock.com

ATLANTA  
CHICAGO  
DENVER  
DES MOINES  
IRVINE  
KANSAS CITY  
LITTLE ROCK  
LOS ANGELES  
OKLAHOMA CITY  
OMAHA  
PHILADELPHIA  
RICHMOND  
SCOTTSDALE  
WASHINGTON  
WICHITA

LITTLE ROCK OFFICE  
SUITE 2000  
124 WEST CAPITOL AVENUE  
LITTLE ROCK, ARKANSAS 72201-3708  
501-975-9900

SUZANNE G. CLARK  
suzanne.clark@kutakrock.com  
(479) 673-4200

September 9, 2010

VIA FACSIMILE (479) 784-1580

Ms. Cindy Gilmer  
Sebastian County Circuit Clerk  
P.O. Box 1179  
Fort Smith, AR 72902-1179

Re: *Steven A. Brigance, as personal representative of the Estate of Dorothy  
Brigance, Deceased, et al. vs. The Brookfield at Fianna Oaks, LLC, et al.*  
Sebastian County Circuit Court Case No.: CV-2010-1365

Dear Ms. Gilmer:

Enclosed please find an Answer to First Amended Complaint on behalf of Defendants, The Brookfield at Fianna Oaks, LLC, d/b/a The Brookfield at Fianna Oaks and Mitzi Bailey for fax filing in the above-referenced matter. Please file the Answer and return the file marked face page to this office via facsimile so that I may document in my file that the Answer has been filed of record. By copy of this letter to Mr. Rex Chronister, the attorney for the Plaintiffs, I am providing him with a copy of the Answer. Thank you for your courtesy and attention to this matter.

Sincerely,

  
Suzanne G. Clark

SGC/kw

Enclosure

cc: Mr. Rex Chronister

4833-3485-3639.1