

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE AT BANGOR

SHANA SANDLER,)
)
 Plaintiff)
)
 v.)
)
 MIA CALCAGNI,)
 RALPH CALCAGNI,)
 MAUREEN CALCAGNI,)
 PETER MARS,)
 and)
 BOOKSURGE, LLC,)
)
 Defendants.)

Case No. 07-CV-00029-GZS

REPLY OF DEFENDANT BOOKSURGE, LLC
TO CROSSCLAIM OF RALPH
CALCAGNI AND MAUREEN CALCAGNI

Defendant BOOKSURGE, LLC (“BookSurge”), through its attorneys, Kirkpatrick & Lockhart Preston Gates Ellis, LLP, answers the Crossclaim filed against it by Defendants Ralph Calcagni and Maureen Calcagni as follows:

1. Answering Paragraph 1 of the Crossclaim, BookSurge is without sufficient knowledge to answer the allegations contained in Paragraph 1 of the Crossclaim, which shall have the effect of a denial.
2. Answering Paragraph 2 of the Crossclaim, BookSurge denies the same.
3. Answering Paragraph 3 of the Crossclaim, BookSurge admits the same.
4. Answering Paragraph 4 of the Crossclaim, BookSurge admits the same.
5. Answering Paragraph 5 of the Crossclaim, BookSurge denies the same.

6. Answering Paragraph 6 of the Crossclaim, BookSurge denies the same.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof as to any affirmative defense, which burden BookSurge expressly disclaims, BookSurge states as affirmative defenses the following:

1. Failure to State a Claim. Defendants Ralph Calcagni and Maureen Calcagni's Crossclaim fails to state a claim upon which relief may be granted.
2. Failure to Mitigate Damages. Defendants Ralph Calcagni and Maureen Calcagni's damages, if any, are reduced or barred by their failure to mitigate damages.
3. Waiver, Laches and Estoppel. Defendants Ralph Calcagni and Maureen Calcagni's Crossclaim is barred by their own conduct, including acts constituting waiver, laches and/or estoppel.
4. Statute of Limitations. Defendants Ralph Calcagni and Maureen Calcagni's Crossclaim is barred by applicable statutes of limitations.
5. Untimely Filed. Defendants Ralph Calcagni and Maureen Calcagni's November 9, 2007 Crossclaim is untimely because the Court's August 14, 2007 Scheduling Order set October 30, 2007 as the deadline for filing amended pleadings.
6. Unclean Hands. Defendants Mia Calcagni, Ralph Calcagni and Maureen Calcagni have unclean hands and are not entitled to the relief requested in the November 9, 2007 Crossclaim.
7. BookSurge incorporates the affirmative defenses set forth in response to the Second Amended Complaint filed against it by Shana Sandler as if fully set forth herein.

REQUEST FOR RELIEF

WHEREFORE, BookSurge prays for the following relief:

1. Defendants Ralph Calcagni and Maureen Calcagni's Crossclaim be dismissed with prejudice;
2. Booksurge be awarded its costs and reasonable attorneys' fees under all applicable statutes, court rules and recognized grounds of equity; and
3. BookSurge be awarded such other and further relief as the Court may deem just and equitable.

BOOKSURGE, LLC

By its attorneys,

/s/ Steven P. Wright

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December 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2007, I electronically filed the Reply of Defendant BookSurge, LLC to Crossclaim of Ralph Calcagni and Maureen Calcagni with the Clerk of Court using the CM/ECF system which will send notification of such filings to the following counsel of record:

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