

**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA**

DEEPGULF, INC. and  
TOKE OIL AND GAS, S.A.

Plaintiffs,

vs.

MARC M. MOSZKOWSKI

Defendant.

Case No.: 2018 CA 000543

Division: "E"

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION  
TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSES**

COMES NOW Defendant, Marc Moszkowski, and states as follows in his Response in Opposition to Plaintiff's Motion to Strike Defendant's Affirmative Defenses, which Plaintiff entered on March 11<sup>th</sup>, 2025:

**I. INTRODUCTION**

Plaintiff's Motion to Strike Affirmative Defenses is procedurally defective and should be denied. The Motion lacks a Memorandum of Law in support, failing to provide any legal basis for striking Defendant's Affirmative Defenses. Moreover, motions to strike are disfavored under Florida law, as Courts prefer to resolve cases on the merits rather than by eliminating defenses.

## II. LEGAL STANDARD

Motions to Strike are governed by Florida Rule of Civil Procedure 1.140(f), which allows a party to move to strike redundant, immaterial, impertinent, or scandalous matters. However, Courts routinely hold that Affirmative Defenses should only be stricken where they are clearly insufficient as a matter of law and where their presence would cause prejudice to the moving party. See *Bay Colony Office Bldg. Joint Venture v. Wachovia Mortg. Co.*, 342 So. 2d 1005 (Fla. 4th DCA 1977), to the effect that motions to strike are not favored and will rarely be granted absent a showing of prejudice.

Further, Courts recognize that pleadings should be construed liberally in favor of allowing defenses to remain unless they are legally insufficient on their face. See *Fladell v. Palm Beach Cty. Canvassing Bd.*, 772 So. 2d 1240, 1242 (Fla. 2000), which supports the principle that affirmative defenses should not be stricken unless "completely irrelevant or insufficient as a matter of law".

### **III. ARGUMENT**

**A.** Plaintiff's Motion fails to provide a legal basis for striking Affirmative Defenses.

Plaintiff's Motion does not contain any citations to case law or legal authority justifying the relief requested. Florida Courts have held that a motion without proper legal support is facially insufficient and should be denied.

**B.** Affirmative Defenses should be liberally construed and not stricken lightly.

Florida Courts generally disfavor striking affirmative defenses, particularly where the defenses provide notice of potentially valid legal arguments. See *Alhambra Homeowners Ass'n v. Asad*, 943 So. 2d 316, 318 (Fla. 4th DCA 2006), which supports the principle that where there is any doubt as to the sufficiency of a defense, the court should err on the side of allowing it to proceed.

**C.** Plaintiff has not demonstrated any prejudice.

To warrant striking an affirmative defense, the moving party must demonstrate prejudice when seeking to strike pleadings. See *Gables Ins. Recovery, Inc. v. Citizens Prop. Ins. Corp.*, 261 So. 3d 613, 620

(*Fla. 3d DCA 2018*). Plaintiff has made no such showing, and there is no indication that allowing the defenses to remain would cause any undue hardship.

**D.** If any Defenses are found insufficient, Defendant should be granted Leave to Amend.

Even if the Court finds that certain Affirmative Defenses are insufficiently pled, the proper remedy is leave to amend, not striking them outright, unless amendment would be futile. See *Criswell v. Best W. Int'l, Inc.*, 636 So. 2d 562 (*Fla. 3d DCA 1994*).

#### **IV. CONCLUSION**

For the foregoing reasons, Defendant respectfully requests that this Court:

1. Deny Plaintiff's Motion to Strike Affirmative Defenses in its entirety;
2. Alternatively, grant Defendant leave to amend any affirmative defense found to be insufficient; and
3. Grant any other relief the Court deems just and proper.

Respectfully submitted this 13<sup>th</sup> day of March, 2025

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A handwritten signature in blue ink, reading "M. Moszkowski".

### **CERTIFICATE OF SERVICE**

I hereby certify that, on this 13<sup>th</sup> day of March, 2025, a copy of this motion has been furnished to Braden K. Ball, Jr., attorney for the plaintiffs, through the Florida Courts E-Filing Portal.

A handwritten signature in blue ink, reading "M. Moszkowski".