

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

BERNARD H. LINNEY,)
)
Plaintiff,)

Civil Action No.: 2016-CP-10-3681

v.)

GLADDEN CONSTRUCTION, LLC,)
DANIEL L. ROGERS, Individually and)
d/b/a ROGERS ROOFING COMPANY)
a/k/a DAN ROGERS ROOFING, LLC,)
EAST COAST FRAMING OF)
CHARLESTON, INC. a/k/a EAST COAST)
FRAMING, MICHAEL L. ATKINS,)
Individually and d/b/a A&A TILE CO.,)
INC., AMERICAN RESIDENTIAL)
SERVICES, LLC d/b/a ARS SERVICE)
EXPRESS, ESTATE OF ANTHONY)
FRONTIERO d/b/a TONY FRONTIERO)
PAINT CONTRACTOR, MICHAEL)
GIANELLI d/b/a GIANELLI)
HARDWOOD, JACK BALLENGER,)
Individually and d/b/a BALLENGER)
ALUMINUM a/k/a BALLENGER)
ALUMINUM, INC., STEVE C. DUPRIEST)
and CELIA DUPRIEST,)

Defendants.)

GLADDEN CONSTRUCTION, LLC,)

Third-Party Plaintiff,)

v.)

LOW COUNTRY RENOVATIONS, LLC,)

Third-Party Defendant.)

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BY

**ANSWER OF DEFENDANT MICHAEL L. ATKINS, Individually and d/b/a A&A TILE
CO., INC. TO ANSWER TO THIRD AMENDED COMPLAINT AND CROSSCLAIMS
OF DEFENDANT GLADDEN CONSTRUCTION, LLC**

NOW COMES Defendant Michael L. Atkins, Individually and d/b/a A&A Tile Co., Inc. (hereinafter “A&A”), specifically reserving all of its rights to make jurisdictional, Rule 12, or other motions and in answer to the Answer to Third Amended Complaint and Crossclaims of Defendant Gladden Construction, LLC (hereinafter “Gladden”) would respectfully show unto the Court that:

FOR A FIRST DEFENSE

1. A&A denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

2. Paragraphs 1 through 75 of the Crossclaims comprise a portion of Gladden’s Answer to the Plaintiff’s Complaint and do not contain any allegations as to A&A and, therefore, no responsive pleading is required. To the extent that paragraphs 1 through 75 can be read to contain any allegations as to A&A they are denied.

3. A&A admits the allegations of Paragraph 76 of the Crossclaims.

4. Paragraph 77 of the Crossclaims does not contain any allegations as to A&A and, therefore, no responsive pleading is required. To the extent that Paragraph 77 can be read to contain any allegations as to Ridgill it is denied.

5. A&A states that the allegations in Paragraph 78 of the Crossclaims state a legal conclusion and, therefore, no responsive pleading is required.

6. A&A denies the allegations in Paragraph 79 of the Crossclaims.

7. A&A is without sufficient information to either admit or deny the allegations of Paragraphs 80 and 81 of the Crossclaims.

8. A&A admits the allegations of Paragraph 82 of the Crossclaims to the extent that it installed the tile in the bathrooms, kitchen, and on three outside decks.

9. A&A is without sufficient information to either admit or deny the allegations of

Paragraphs 83 through 86 of the Crossclaims.

10. Paragraphs 87 and 88 of the Crossclaims do not contain any allegations as to A&A and, therefore, no responsive pleading is required. To the extent that Paragraphs 87 and 88 can be read to contain any allegations as to A&A they are denied.

11. To the extent the allegations of Paragraph 89 relate to A&A, A&A objects to the same to the extent those allegations state a legal conclusion concerning duties owed. Without waiving this objection, A&A admits that it owed only those duties that are required by law and not otherwise waived.

12. A&A admits Paragraphs 90 and 91 of the Crossclaims.

13. A&A denies Paragraph 92 of the Crossclaims.

14. As to Paragraph 93, A&A repeats its answers in paragraphs 1 through 13 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

15. A&A denies Paragraphs 94 through 96 of the Crossclaims.

16. As to Paragraph 97, A&A repeats its answers in paragraphs 1 through 15 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

17. A&A denies Paragraphs 98 through 100 of the Crossclaims.

18. As to Paragraph 101, A&A repeats its answers in paragraphs 1 through 17 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

19. A&A denies Paragraphs 102 through 104 of the Cross-Claims.

20. As to Paragraph 105, A&A repeats its answers in paragraphs 1 through 19 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

21. A&A denies Paragraphs 106 and 107 of the Crossclaims.

22. As to Paragraph 108, A&A repeats its answers in paragraphs 1 through 21 above,

as if fully repeated herein, to the extent that they are consistent with the following answers.

23. A&A denies Paragraph 109 of the Crossclaims.

24. Paragraphs 110 through 137 of the Crossclaims comprise Gladden's Third-Party Complaint and do not contain any allegations as to A&A and, therefore, no responsive pleading is required. To the extent that paragraphs 110 through 137 can be read to contain any allegations as to A&A they are denied.

25. Paragraphs 138 and 139 of the Crossclaims comprise a portion of Gladden's Answer to the Plaintiff's Complaint and do not contain any allegations as to A&A and, therefore, no responsive pleading is required. To the extent that paragraphs 138 and 139 can be read to contain any allegations as to A&A they are denied

FOR A SECOND DEFENSE

26. A&A repeats its answers in paragraphs 1 through 25 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

27. The allegations contained in the Crossclaims fail to set forth sufficient facts to constitute a cause of action as to A&A and, therefore, the Crossclaims must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

28. A&A repeats its answers in paragraphs 1 through 27 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

29. The Crossclaims are barred by the economic loss doctrine.

FOR A FOURTH DEFENSE

30. A&A repeats its answers in paragraphs 1 through 29 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

31. Gladden has failed to mitigate its damages and to the extent any damages could have been mitigated by the exercise of due care, Gladden cannot recover those damages from A&A.

FOR A FIFTH DEFENSE

32. A&A repeats his answers in paragraphs 1 through 31 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

33. Gladden's Crossclaims are barred by the equitable doctrines of waiver, estoppel, and laches.

FOR AN SIXTH DEFENSE

34. A&A repeats its answers in paragraphs 1 through 33 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

35. The damages alleged by Gladden were the result of and were proximately caused by the actions of another entity or party for which A&A cannot be held liable.

FOR A SEVENTH DEFENSE

36. A&A repeats its answers in paragraphs 1 through 35 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

37. Whatever damages, if any, that were sustained by Gladden were due to, caused solely or partly by, and were the direct and proximate result of the negligence of Gladden and therefore Gladden's recovery, if any, should be barred, or reduced in proportion to the amount of its own negligence.

FOR AN EIGHTH DEFENSE

38. A&A repeats its answers in paragraphs 1 through 37 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

39. That whatever damages, if any, which may have been sustained by Gladden in this action were the result of, were due solely to, caused solely by, and were the direct and proximate result of the intervening, superseding, and unforeseeable negligence of others over whom A&A had no control or which occurred after A&A had performed under its work so as to bar any recovery by Gladden.

FOR A NINTH DEFENSE

40. A&A repeats its answers in paragraphs 1 through 39 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

41. Gladden knew or should have known of any alleged defects in the work of A&A and accepted the same with such knowledge; and A&A pleads acceptance upon completion as a defense to this action.

FOR A TENTH DEFENSE

42. A&A repeats its answers in paragraphs 1 through 41 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

43. Any warranties, whether express or implied, have expired according to their terms or because of the lapse of the period of the warranty and, therefore, Gladden's claims for breach of warranty should be dismissed.

FOR A ELEVENTH DEFENSE

44. A&A repeats its answers in paragraphs 1 through 43 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

45. Gladden's claims are barred by the doctrine of unclean hands.

FOR A TWELFTH DEFENSE

46. A&A repeats its answers in paragraphs 1 through 45 above, as if fully repeated

herein, to the extent that they are consistent with the following answers.

47. A&A pleads the law and doctrine of comparative negligence and alleges the negligence and recklessness of Gladden was greater than the negligence, if any, which might be established against A&A and, therefore, Gladden is barred from any recovery in this action. A&A further alleges any injury and damage sustained by Gladden was due to and caused by the negligence and/or willfulness of Gladden combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of A&A and, therefore, any amount of recovery awarded to Plaintiff for the injuries and damages alleged in the Crossclaims shall be reduced by the Court by the percentage of negligence and/or willfulness attributed to Gladden.

FOR A THIRTEENTH DEFENSE

48. A&A repeats its answers in paragraphs 1 through 47 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

49. Gladden's claims for damages are barred by the applicable statutes of limitations.

FOR A FOURTEENTH DEFENSE

50. A&A repeats its answers in paragraphs 1 through 49 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

51. At all times relevant to the acts referred to in the Crossclaims, Gladden was not in privity of contract with A&A and said lack of privity bars any recovery by Gladden upon any warranty theory and any oral warranties alleged in the Crossclaims are inadmissible because of the provisions of the Statute of Frauds.

FOR A FIFTEENTH DEFENSE

52. A&A repeats its answers in paragraphs 1 through 51 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

53. A&A would show that to the extent there is a claim of Gladden for punitive damages, it cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of this action has been found will violate A&A's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

54. A&A would show that to the extent there is a claim of Gladden for punitive damages, it cannot be had because any award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate A&A's due process rights guaranteed by the United States Constitution and the South Carolina Constitution, and would violate the common law and public policy of the State of South Carolina.

55. A&A would show that to the extent there is a claim of Gladden for punitive damages, it cannot be had because an award of punitive damages under South Carolina law by jury that is not:

- a. Provided with sufficient clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on invidiously discriminatory characteristics of A&A is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines

with reasonable clarity the actions of A&A upon which an award of punitive damages may be based; and

- e. Subjected to judicial review at both the trial and appellate court level under objected standards for determining appropriateness and reasonableness

would violate A&A's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

FOR AN SIXTEENTH DEFENSE

56. A&A repeats its answers in paragraphs 1 through 55 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

57. A&A reserves any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as is consistent with the South Carolina Rules of Civil Procedure.

FOR AN SEVENTEENTH DEFENSE

58. A&A repeats his answers in paragraphs 1 through 57 above, as if fully repeated herein, to the extent that they are consistent with the following answers.

59. A&A incorporates by reference any and all affirmative defenses not adverse to it that were asserted by any other Defendant in this action as though the same were fully set forth verbatim herein.

WHEREFORE, having fully answered the Crossclaims of Gladden, A&A prays for the dismissal thereof and for other such and further relief as the Court deems just and proper.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,

DOUGALL & COLLINS

A handwritten signature in black ink, appearing to read "Thomas F. Dougall", written over a horizontal line.

Thomas F. Dougall

William A. Collins, Jr.

Michal Kalwajtys

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Attorneys for Michael L. Atkins, Individually and
d/b/a A&A Tile Co., Inc.

July 6, 2018
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the foregoing Defendant Michael L. Atkins, Individually and d/b/a A&A Tile Co., Inc.'s Answer to Answer to Third Amended Complaint and Crossclaims of Defendant Gladden Construction, LLC was served to all known counsel in the above-referenced case by depositing a copy of the same in the United States mail; postage prepaid, on this the 6th day of July, 2018 addressed as follows:

<u>COUNSEL SERVED:</u>	Heath M. Stewart, III, Esquire McAngus Goudelock & Courie LLC Post Office Box 12519 Columbia, SC 29211 heath.stewart@mgclaw.com <i>Counsel for Defendant Gladden Construction, LLC</i> <i>(via U.S. Mail and e-mail)</i> All Other Counsel via Electronic Mail
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William A. Collins, Jr.

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DOUGALL & COLLINS
ATTORNEYS AND COUNSELORS AT LAW

THOMAS F. DOUGALL
ALSO ADMITTED IN TEXAS
CERTIFIED MEDIATOR IN SC

WILLIAM A. COLLINS, JR.
MICHAL KALWAJTYS

ADELAIDE DENNIS KLINE
OF COUNSEL

July 6, 2018

The Honorable Julie J. Armstrong
Clerk of Court for Charleston County
100 Broad St., Ste. 106
Charleston, SC 29401

Re: Bernard H. Linney v. Gladden Construction, LLC, et al.;
Civil Action No. 2016-CP-10-3681

Dear Madame Clerk:

Enclosed please find for filing the original and one copy of Defendant Michael L. Atkins, Individually and d/b/a A&A Tile Co., Inc.'s Answer to Answer to Third Amended Complaint and Crossclaims of Defendant Gladden Construction, LLC in the above-referenced matter. Please file this pleading in your usual course and return clocked-in copy to me in the return envelope provided for your convenience.

With kind regards, I am

Sincerely,

DOUGALL & COLLINS



William A. Collins, Jr.

WAC,JR/mew
Enclosures

cc: Heath M. Stewart, III, Esquire (via U.S. Mail and email)
All Other Counsel of Record (via email)