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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON |) | |
| |) | |
| Toler's Cover Homeowner's Association, Inc., |) | DEFENDANTS PELLA WINDOW & |
| |) | DOOR, LLC'S, AND PELLA WINDOWS |
| Plaintiff, |) | AND DOORS, INC.'S |
| |) | AMENDED ANSWER |
| v. |) | TO PLAINTIFF'S |
| |) | AMENDED COMPLAINT |
| Hill Construction Corporation of |) | |
| Charleston, Wash Hatem Nelson |) | |
| Architects, P.A., Pella Window & Door, |) | C.A. NO.: 2018-CP-10-2983 |
| LLC, Pella Windows and Door, Inc., Pella) |) | |
| Corporation, M&M Siding of Aiken, Inc.,) |) | |
| And St. Paul Fire and Marine Insurance |) | (JURY TRIAL DEMANDED) |
| Company, |) | |
| |) | |
| Defendants. |) | |
| |) | |

Defendants, Pella Window & Door, LLC, and Pella Windows and Doors, Inc. (hereinafter collectively referred to as "Defendants"), answering the Amended Complaint of Plaintiff, Toler's Cover Homeowner's Association, Inc. (hereinafter "Plaintiff"), will respectfully show unto this court as follows:

FOR A FIRST DEFENSE

1. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 1. Therefore, the allegations of Paragraph 1 are denied and strict proof demanded thereof.

2. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 2. Therefore, the allegations of Paragraph 2 are denied and strict proof demanded thereof.

3. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 3. Therefore, the allegations of Paragraph 3 are denied and strict proof demanded thereof.

4. Responding to Paragraph 4 of the Amended Complaint, Defendants admit only that Pella Window & Door, LLC is a limited liability company organized in the State of South Carolina. Defendants further admit only that Pell Window & Door, LLC supplied certain products that were installed in the buildings at Toler's Cove. Each and every allegation of Paragraph 4 which is not specifically admitted herein is denied with strict proof demanded thereof.

5. Paragraph 5 is denied.

6. Responding to Paragraph 6 of the Amended Complaint, Defendants admit only that Pella Corporation did manufacture certain products that were installed at the buildings at Toler's Cove. Each and every allegation of Paragraph 6 which is not specifically admitted herein is denied with strict proof demanded thereof.

7. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 7. Therefore, the allegations of Paragraph 7 are denied and strict proof demanded thereof.

8. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 8. Therefore, the allegations of Paragraph 8 are denied and strict proof demanded thereof.

9. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 9. Therefore, the allegations of Paragraph 9 are denied and strict proof demanded thereof.

10. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 10. Therefore, the allegations of Paragraph 10 are denied and strict proof demanded thereof.

11. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 11. Therefore, the allegations of Paragraph 11 are denied and strict proof demanded thereof.

12. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 12. Therefore, the allegations of Paragraph 12 are denied and strict proof demanded thereof.

13. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 13. Therefore, the allegations of Paragraph 13 are denied and strict proof demanded thereof.

14. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 14. Therefore, the allegations of Paragraph 14 are denied and strict proof demanded thereof.

15. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 15. Therefore, the allegations of Paragraph 15 are denied and strict proof demanded thereof.

16. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 16. Therefore, the allegations of Paragraph 16 are denied and strict proof demanded thereof.

17. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 17. Therefore, the allegations of Paragraph 17 are denied and strict proof demanded thereof.

18. Responding to Paragraph 18 of the Amended Complaint, Defendants state that they do not contest jurisdiction. Any allegations of Paragraph 18 unrelated to jurisdiction is denied with strict proof demanded thereof.

19. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 19. Therefore, the allegations of Paragraph 19 are denied and strict proof demanded thereof.

20. Paragraph 20 is denied with strict proof demanded thereof.

21. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 21. Therefore, the allegations of Paragraph 21 are denied and strict proof demanded thereof.

22. Paragraph 22, including all subparagraphs of Paragraph 22, is denied.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Responding to the allegations of Paragraph 25, Defendants reiterate and re-allege the above paragraphs as though set forth herein verbatim.

26. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 26. Therefore, the allegations of Paragraph 26 are denied and strict proof demanded thereof.

27. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 27. Therefore, the allegations of Paragraph 27 are denied and strict proof demanded thereof.

28. Paragraph 28, including all subparagraphs of Paragraph 28, is denied.

29. Paragraph 29 is denied.

30. Responding to the allegations of Paragraph 30, Defendants reiterate and re-allege the above paragraphs as though set forth herein verbatim.

31. Paragraph 31 of the Amended Complaint is denied with strict proof demanded thereof.

32. Paragraph 32, including all subparagraphs of Paragraph 32, is denied.

33. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 33. Therefore, the allegations of Paragraph 33, including all subparagraphs of Paragraph 33, are denied and strict proof demanded thereof.

34. Paragraph 34, including all subparagraphs of Paragraph 34, is denied.

35. Paragraph 35, including all subparagraphs of Paragraph 35, is denied.

36. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 36. Therefore, the allegations of Paragraph 36, including all subparagraphs of Paragraph 36, are denied and strict proof demanded thereof.

37. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 37. Therefore, the allegations of Paragraph 37, including all subparagraphs of Paragraph 37, are denied and strict proof demanded thereof.

38. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 38. Therefore, the allegations of Paragraph 38, including all subparagraphs of Paragraph 38, are denied and strict proof demanded thereof.

39. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 39. Therefore, the allegations of Paragraph 39, including all subparagraphs of Paragraph 39, are denied and strict proof demanded thereof.

40. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 40. Therefore, the allegations of Paragraph 40, including all subparagraphs of Paragraph 40, are denied and strict proof demanded thereof.

41. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 41. Therefore, the allegations of Paragraph 41, including all subparagraphs of Paragraph 41, are denied and strict proof demanded thereof.

42. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 42. Therefore, the allegations of Paragraph 42, including all subparagraphs of Paragraph 42, are denied and strict proof demanded thereof.

43. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 43. Therefore, the allegations of Paragraph 43, including all subparagraphs of Paragraph 43, are denied and strict proof demanded thereof.

44. Paragraph 44 is denied.

45. Responding to the allegations of Paragraph 45, Defendants reiterate and re-allege the above paragraphs as though set forth herein verbatim.

46. Paragraph 46 of the Amended Complaint is denied with strict proof demanded thereof.

47. Paragraph 47 is denied.

48. Paragraph 48 is denied.

49. Responding to the allegations of Paragraph 49, Defendants reiterate and re-allege the above paragraphs as though set forth herein verbatim.

50. Paragraph 50 is denied.

51. Paragraph 51 is denied.

52. Paragraph 52 is denied.

53. Paragraph 53 is denied.

54. Paragraph 54 is denied.

55. Paragraph 55 is denied.

56. Paragraph 56 is denied.

57. Responding to the allegations of Paragraph 57, Defendants reiterate and re-allege the above paragraphs as though set forth herein verbatim.

58. Paragraph 58 is denied with strict proof demanded thereof.

59. Paragraph 59 is denied with strict proof demanded thereof.

60. Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 60. Therefore, the allegations of Paragraph 60 are denied and strict proof demanded thereof.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied.

63. All allegations of Plaintiff's Amended Complaint which are not specifically admitted herein are denied with strict proof demanded thereof.

FOR A SECOND DEFENSE
(COMPARATIVE NEGLIGENCE)

64. The allegations of the preceding defense are re-alleged and incorporated by reference insofar as they are consistent.

65. Defendants plead comparative negligence as a complete bar, or in the alternative, a reduction in recovery to the claims of Plaintiff.

FOR A THIRD DEFENSE
(ASSUMPTION OF RISK)

66. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

67. The injuries or damages suffered by the Plaintiff, if any, were due to or caused by and were the direct and proximate result of Plaintiff's conduct, and the Plaintiff knew of the danger or should have known of the danger and understood and appreciated the risk of harm and nevertheless voluntarily exposed themselves to the danger and thereby assumed the risk in connection with the damages alleged to have given rise to the present claims, and such constitutes a complete defense to the claims of the Plaintiff.

FOR A FOURTH DEFENSE
(FAILURE TO MITIGATE DAMAGES)

68. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

69. Without admitting liability or that Plaintiff has suffered damages, to the extent that Plaintiff has suffered damages, Plaintiff has failed to properly and timely mitigate their damages. Defendants plead this failure to mitigate damages as a complete bar to this action, or in the alternative, a reduction in recovery to the claims of Plaintiff.

FOR A FIFTH DEFENSE
(UNCLEAN HANDS)

70. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

71. Plaintiff does not have clean hands with regard to the allegations in Plaintiff's Amended Complaint. Defendants plead the doctrine of unclean hands as a complete bar to this action.

FOR A SIXTH DEFENSE

72. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

73. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted against Defendants. Therefore, Plaintiff's Amended Complaint should be dismissed with prejudice.

FOR A SEVENTH DEFENSE
(INTERVENING/SUPERSEDING NEGLIGENCE)

74. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

75. Defendants allege that any injuries or damages alleged in the Amended Complaint were due to, occasioned by, or caused by intervening acts or omissions on the part of someone or some entity other than Defendants, without such acts and/or omissions Plaintiff would not have sustained any injuries or damages as set forth in Plaintiff's Amended Complaint. All of which Defendants plead as a complete bar to this action, or in the alternative, a reduction in the recovery to the claims of Plaintiff.

FOR AN EIGHTH DEFENSE
(WAIVER)

76. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

77. By and through their conduct prior to and after bringing this lawsuit, Plaintiff waived its rights against Defendants. Therefore, Defendants plead the doctrine of waiver as a complete bar to this action.

FOR A NINTH DEFENSE
(ESTOPPEL)

78. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

79. By and through their conduct prior to and after bringing this lawsuit, Plaintiff should be estopped from asserting their claims against Defendants. Therefore, Defendants plead estoppel as a complete bar to this action.

FOR A TENTH DEFENSE
(ACCEPTANCE)

80. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

81. Defendants will show that Plaintiff and/or Plaintiff's agent(s) inspected, approved and ratified all work performed by Defendants. Furthermore, Plaintiff knew or should have known if any of Defendants' work was not in conformance with the plans and specifications and/or if Defendants' work was performed in a workmanlike manner before accepting said work. Accordingly, Defendants plead acceptance as a complete defense to all claims of Plaintiff.

FOR AN ELEVENTH DEFENSE
(EXPIRATION OF EXPRESS WARRANTY)

82. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

83. Any express warranty allegedly provided by Defendants has expired.

FOR A TWELFTH DEFENSE
(SOLE NEGLIGENCE, NEGLIGENT ACTS AND OMISSIONS OF THIRD-PARTIES)

84. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

85. Defendants assert that any injuries or damages sustained by Plaintiff were due to and caused by the sole and negligent acts or omissions of some person/entity or persons/entities other than Defendants, over whom Defendants exercised no authority or control, and for that reason, Defendants are not liable to Plaintiff in any sum whatsoever.

FOR A THIRTEENTH DEFENSE
(COMPLIANCE WITH INDUSTRY STANDARDS)

86. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

87. Defendants will show that the materials and workmanship of Defendants, at all times and in all manners relevant to this litigation, met applicable plans, specifications, building code requirements, and industry standards and that Defendants are, therefore, not liable to Plaintiff in any sum whatsoever.

FOR A FOURTEENTH DEFENSE
(EXPIRATION OF WARRANTIES-OUTSIDE WARRANTY PERIOD)

88. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

89. Defendants will show that any warranties provided by Defendants have expired and no claims were made to Defendants during the applicable warranty period(s).

FOR A FIFTEENTH DEFENSE
(DUTIES ALLEGED BEYOND SCOPE OF SERVICES)

90. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

91. Defendants will show that the duties and obligations alleged as to Defendants are not within the scope of services which were provided by Defendants and such duties and obligations lie beyond the scope of services provided by Defendants and such constitutes a complete defense to all claims for negligence alleged against Defendants.

FOR A SIXTEENTH DEFENSE
(ELECTION OF REMEDIES)

92. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

93. Defendants will show that Plaintiff should be required to elect between causes of action for negligence, breach of contract, and breach of warranties, because said causes of action are mutually exclusive and are dependent upon differing alleged sources of any alleged duties owed by Defendants to Plaintiff.

FOR A SEVENTEENTH DEFENSE
(FAILURE TO GIVE AND LACK OF NOTICE; FAILURE TO GIVE NOTICE TO CURE)

94. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

95. Defendants will show that Plaintiff failed to give any reasonable, meaningful, and/or timely notice to Defendants as to the existence of any alleged breach(es) by Defendants. Plaintiff further failed to give Defendants a reasonable opportunity to correct any alleged defects pertaining to the work of Defendants, the existence of which is denied, and such failure to give notice and an opportunity to cure to Defendants constitute a complete defense to all claims of Plaintiff against Defendants.

FOR AN EIGHTEENTH DEFENSE
(SPOILIATION OF EVIDENCE)

96. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

97. Defendants will show that it has not been afforded the opportunity to inspect and examine the alleged defective workmanship and/or alleged defective products and/or components and that the property has been modified and/or repaired and/or destructively tested without giving Defendants the opportunity to inspect and examine, and Defendants allege that such constitutes spoliation of evidence as a complete defense to the claims of Plaintiff.

FOR A NINETEENTH DEFENSE
(ECONOMIC LOSS RULE)

98. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

99. Defendants will show that Plaintiff's claims for damages against Defendants are barred in whole or in part by the economic loss rule.

FOR A TWENTIETH DEFENSE
(SUBSTANTIAL COMPLIANCE)

100. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

101. Defendants will show that Defendants substantially performed all requirements and standards, contractual or otherwise, in a reasonable and workmanlike manner.

FOR A TWENTY-FIRST DEFENSE
(SET-OFF)

102. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

103. Defendants will show that Defendants are entitled to a set-off in the amount(s) of any and all settlement proceeds or other monies/compensation obtained by Plaintiff from any other party or source related to this litigation.

FOR A TWENTY-SECOND DEFENSE
(BETTERMENT)

104. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

105. Defendants will show that Plaintiff is not entitled to recover for repairs/renovations which will put Plaintiff in a better position than they would have been in if all contracts/warranties had been properly performed and fulfilled, and their damages must be reduced by the amount of betterments made or to be made to the property.

FOR A TWENTY-THIRD DEFENSE
(NON-ECONOMIC DAMAGES)

106. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

107. Defendants will show that to the extent applicable, Defendants plead South Carolina Code Annotated, §15-32-520 and §15-32-530.

FOR A TWENTY-FOURTH DEFENSE
(STATUTE OF LIMITATIONS)

108. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

109. Defendants submit that Plaintiff's Amended Complaint, in whole or in part, is or may be barred by the applicable statute(s) of limitations.

FOR A TWENTY-FIFTH DEFENSE
(STATUTE OF REPOSE)

110. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

111. Defendants submit that Plaintiff's Amended Complaint, in whole or in part, is or may be barred by the applicable statute(s) of repose.

FOR A TWENTY-SIXTH DEFENSE
(UNCONSTITUTIONALITY OF PUNITIVE DAMAGES)

112. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

113. Defendants allege that the imposition and awarding of punitive damages in this case denies Defendants Due Process of Law and is unconstitutional and a denial of Defendants' constitutional rights and is contrary to the Fifth, Eighth, and Fourteenth Amendments of the Constitution of the United States of America and Article I, Sections 3, 13, and 15 of the Constitution of the State of South Carolina.

FOR A TWENTY-SEVENTH DEFENSE
(State of the Art)

114. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

115. Plaintiff's claims are barred because Defendants' products conform to industry standards and are state of the art products.

FOR A TWENTY-EIGHTH DEFENSE
(Beneficial Use)

116. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

117. Plaintiff's claims are barred or reduced in value by the beneficial use doctrine.

FOR A TWENTY-SEVENTH DEFENSE
(PUNITIVE DAMAGES CAPS)

118. The allegations of the preceding defenses are re-alleged and incorporated by reference insofar as they are consistent.

119. Defendants asserts all protections set forth in S.C. Code Ann. §§ 15-32-520 and 15-32-530 and Defendants further asserts any and all additional statutory caps and limitations to punitive damages as laid out pursuant to South Carolina statutory law and caselaw.

WHEREFORE, Defendants, having fully answered the Amended Complaint of Plaintiff, prays that this Court:

1. Dismiss Plaintiff's Amended Complaint as to Defendants with prejudice;
2. Award Defendants the costs of defending this action; and
3. Award Defendants such other and further relief as the Court deems just and proper.

THE WARD LAW FIRM, P.A.
Attorneys for Defendants Pella Window &
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