

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-10-1685

JOHN C. BRACY and REBECCA L.  
BRACY

Plaintiffs,

v.

VAUGHN HOMES, INC.; TIDAL CREEK  
BUILDERS, INC.; OLD CHARLESTON  
BUILDERS, LLC; THURLOW  
CONSTRUCTION, LLC; AMERICAN  
ROOFING CONCEPTS N/K/A AMERICO  
ROOFING CONCEPTS, INC; EDWARD  
MOORE; BUILDERS FIRSTSOURCE  
SOUTHEAST GROUP, LLC; OLDE  
TOWNE HEARING & AIR, LLC; WW  
PETEIRA CONSTRUCTION, LLC AND  
JOSE DIAS RODRIGUES

Defendants.

**ANSWER OF JOSE DIAS RODRIGUES TO  
THE SECOND AMENDED COMPLAINT**

(Jury Trial Demanded)

COMES NOW the Defendant, Jose Dias Rodrigues by and through undersigned  
Counsel and hereby responds to the allegation of the Second Amended Complaint as follows:

R Rodrigues lacks sufficient information upon which to form a belief as to the truth of the  
allegations regarding the other parties, and, accordingly denies the same.

1. Rodrigues lacks sufficient information upon which to form a belief as to the truth  
of the allegations regarding the other parties, and, accordingly denies the same.

2. Rodrigues lacks sufficient information upon which to form a belief as to the truth  
of the allegations regarding the other parties, and, accordingly denies the same.

3. Rodrigues lacks sufficient information upon which to form a belief as to the truth  
of the allegations regarding the other parties, and, accordingly denies the same.

4. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

5. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

6. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

7. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

8. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

9. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

10. Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

11. It is admitted that Rodrigues is a resident of the State of South Carolina but it is denied that he is a resident of Charleston County. Otherwise, denied for lack of information sufficient upon which to form a belief as to the truth of the allegations.

### **JURISDICTION**

12. That the allegations of paragraph 12 contain conclusions of law, and the Defendant Jose Dias Rodrigues is not required to answer the same. To the extent a response is later required, it is admitted that this court has subject matter jurisdiction but jurisdiction over all the parties is denied for lack of information sufficient upon which to form a belief as to the truth of the allegations.

### **FACTUAL BACKGROUND**

13. Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Denied as to this Defendant, Jose Dias Rodrigues, as he lacks sufficient information upon which to form a belief as to whether or not he performed work on the Plaintiff's residence.

14. Defendant lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Otherwise, denied.

15. Defendant lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Otherwise, denied.

16. Defendant lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Otherwise, denied.

### **FOR A FIRST CAUSE OF ACTION (Brach of Contract – Vaughn Homes, Inc.)**

17. In response to the allegations contained in paragraph 17, the Defendant Jose Dias Rodrigues hereby realleges and incorporates by reference the prior paragraphs as fully and effectively as if set forth herein verbatim.

18. The allegations contained in Paragraph 18 of the Second Amended Complaint are directed to a party other than Jose Dias Rodrigues and, accordingly, no response from Jose Dias Rodrigues is required. To the extent a response is later required, denied for lack of information sufficient to support a belief as to the truth of the allegations.

19. The allegations contained in Paragraph 19 of the Second Amended Complaint are directed to a party other than Jose Dias Rodrigues and, accordingly, no response from Jose Dias Rodrigues is required. To the extent a response is later required, denied for lack of information sufficient to support a belief as to the truth of the allegations.

20. The allegations contained in Paragraph 20 of the Second Amended Complaint are directed to a party other than Jose Dias Rodrigues and, accordingly, no response from Jose Dias Rodrigues is required. To the extent a response is later required, denied for lack of information sufficient to support a belief as to the truth of the allegations.

21. The allegations contained in Paragraph 21 of the Second Amended Complaint are directed to a party other than Jose Dias Rodrigues and, accordingly, no response from Jose Dias Rodrigues is required. To the extent a response is later required, denied for lack of information sufficient to support a belief as to the truth of the allegations.

**FOR A SECOND CAUSE OF ACTION  
(Negligence/Gross Negligence All Defendants)**

22. In response to the allegations contained in paragraph 22, the Defendant Jose Dias Rodrigues hereby realleges and incorporates by reference the prior paragraphs as fully and effectively as if set forth herein verbatim.

23. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to whether he performed work at the Plaintiff's residence and accordingly denies the allegations to the extent they pertain to work performed by him, if any. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

24. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

25. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief

as to whether he performed work at the Plaintiff's residence and accordingly denies the allegations to the extent they pertain to work performed by him, if any.

26. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

27. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

28. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

29. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

30. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

31. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same.

32. Defendant lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Denied as to this Defendant.

**THIRD CAUSE OF ACTION**  
**(Breach of Warranties- All Defendants)**

33. In response to the allegations contained in paragraph 33, the Defendant Jose Dias Rodrigues hereby realleges and incorporates by reference the prior paragraphs as fully and effectively as if set forth herein verbatim.

34. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to whether he performed work at the Plaintiff's residence and accordingly denies the allegations to the extent they pertain to work performed by him, if any.

35. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to whether he performed work at the Plaintiff's residence and accordingly denies the allegations to the extent they pertain to work performed by him, if any.

36. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations regarding the other parties, and, accordingly denies the same. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to whether he performed work at the Plaintiff's residence and accordingly denies the allegations to the extent they pertain to work performed by him, if any.

**FOURTH CAUSE OF ACTION**  
**(Unfair Trade Practices- All Defendants)**

37. In response to the allegations contained in paragraph 37, the Defendant Jose Dias Rodrigues hereby realleges and incorporates by reference the prior paragraphs as fully and effectively as if set forth herein verbatim.

38. Denied as Jose Dias Rodrigues as he lacks sufficient information upon which to form a belief as to whether he performed work at the subject residence, and, accordingly he denies the allegations of paragraph 38 to the extent they pertain to him . Otherwise, denied.

39. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations of paragraph 39, and, accordingly denies the same.

40. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations of paragraph 39, and, accordingly denies the same.

41. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations of paragraph 39, and, accordingly denies the same.

42. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations of paragraph 39, and, accordingly denies the same.

43. Defendant Jose Dias Rodrigues lacks sufficient information upon which to form a belief as to the truth of the allegations of paragraph 39, and, accordingly denies the same.

**FOR A FIRST DEFENSE  
(Comparative Negligence)**

That, upon best information and belief, the injuries and damages sustained by Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Plaintiff, and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law.

**FOR A SECOND DEFENSE  
(Waiver, Estoppel, Unclean Hands, & Laches)**

That, upon best information and belief, the claims of Plaintiff are barred by the doctrines of waiver, estoppel, unclean hands, and laches.

**FOR A THIRD DEFENSE  
(Failure to Maintain)**

That the Plaintiff were obligated to maintain the structure against normal wear, tear and deterioration due to age and elements and failed to do so and such is the direct and proximate cause of the damages suffered and, therefore, constitutes a complete defense to all claims.

**FOR A FOURTH DEFENSE  
(Failure to Mitigate Damages)**

That the Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages to the structure and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action.

**FOR A FIFTH DEFENSE  
(Notice and Opportunity to Correct)**

That even if the Defendant impliedly warranted the habitability and fitness of the structure (which is expressly denied); and even if the Defendant breached such implied warranty (which is also expressly denied), the Plaintiff failed to give any reasonable opportunity to correct such alleged defects, and such failure to give notice constitutes a complete defense of the claims of the Plaintiff for the breach of the warranty of workmanship and habitability.

**FOR A SIXTH DEFENSE  
(Statute of Limitations)**

That, upon information and belief, the Plaintiff has failed to commence this action within the time required by the Applicable Statute of Limitations, and the failure of the Plaintiff to timely commence this action constitutes a bar and complete defense to the claims of the Plaintiff.



**FOR A SEVENTH DEFENSE  
(Statute of Repose)**

That Plaintiff has failed to commence this action within the time required by the applicable Statute of Repose, and the failure to timely commence the action constitutes a bar and complete defense to all claims.

**FOR AN EIGHTH DEFENSE  
(Bifurcated Trial & Cap on Punitive)**

To the extent punitive damages are claimed, this Defendant demands a bifurcated jury trial pursuant to South Carolina Code Ann. § 15-32-520 and that said damages, if any, are limited to three times the amount of compensatory damages, or the sum of \$500,000, whichever is greater, if any.

**FOR A NINTH DEFENSE  
(Intervening & Superseding Cause)**

That the injury or damage suffered by Plaintiff, if any, was due and caused by and was due to and caused by and was the direct and proximate result of the intervening and superseding negligence, willfulness, and wantonness and recklessness of others over whom the Defendant had no control, resulting directly and proximately in the damage of which Plaintiff complains and such constitutes a complete defense to all claims for negligence.

**FOR A TENTH DEFENSE  
(Statutory Defenses)**

That this Defendant incorporates by reference as if fully pled herein all statutory defenses available under South Carolina law including, but not limited to S.C. Code Ann. § 15-38-15.

**FOR AN ELEVENETH DEFENSE  
(Improper Process)**

That, upon best information and belief, the process issued in the within action is insufficient and, therefore, the within action should be dismissed pursuant to the provisions of Rule 12(b)(4) of the South Carolina Rules of Civil Procedure.

**FOR A TWELFTH DEFENSE  
(Improper Service of Process)**

That, upon best information and belief, the service of process was insufficient within this action and, therefore, the within action should be dismissed pursuant to the provisions of Rule 12(b)(5) of the South Carolina Rules of Civil Procedure.

**FOR A THIRTEENTH DEFENSE**

Defendant asserts and relies upon any and all defenses, limitations on liability and/or benefits codified in the South Carolina Tort Claims Act, S.C. Code Ann. §15-78-10 et seq. as may be applicable to Jose Dias Rodrigues and the South Carolina Contribution Among Tortfeasors Act, S.C. Code Ann. §15-38-15 et seq., including the right to have a jury apportion fault among any named defendants or any other party whether or not named.

**FOR A FOURTEENTH DEFENSE  
(Statute of Frauds)**

That all or part of Plaintiff's claims are barred by the statute of frauds.

**FOR A FIFTEENTH DEFENSE  
(Incorporation of Other Defenses)**

Defendants hereby incorporate by reference all those defenses asserted by any other Defendant in their Answer to the Second Amended Complaint or Motion to Dismiss the Amended Complaint.

**FOR A SIXTEENTH DEFENSE  
(Duties Alleged Beyond the Scope of Services)**

That the duties and obligations alleged are not within the scope of goods/services, if any, which were provided by the Defendant, and such duties and obligations lie beyond the scope of goods/services provided by the Defendants, and such constitutes a complete defense to the claims of the Plaintiff for negligence.

**FOR A SEVENTEENTH DEFENSE  
(Set-Off)**

Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will receive from others for the same injuries claimed in this lawsuit.

WHEREFORE having fully answered the Second Amended Complaint of the Plaintiff, this Defendant, Jose Dias Rodrigues prays for at trial by jury and that the Plaintiff's claims be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

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January 15, 2021

Charlotte, NC

