

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

, PLAINTIFFS

V. CAUSE NO.

, DEFENDANTS

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

COMES NOW, Defendants, and , by and through their attorney, and file this Answer and Affirmative Defenses in response to Plaintiffs' Complaint.

ANSWER

For its answer, Defendants responded to the allegations in the Complaint with like numbered paragraphs. All allegations not expressly admitted herein are denied. Defendants' admissions are confined to the exact language in this Answer and to the extent Defendants' responses vary from the wording of and allegations, those allegations are denied.

Parties and Venue

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph one of the Complaint and therefore deny same.
2. Admitted.
3. The allegations contained in paragraph three of the Complaint call for a legal conclusion and therefore no responsive pleading is required. To the extent a response is required, Defendants deny said allegations.

Facts

4. Defendants admit the first sentence of paragraph of the Complaint, except that the project was between and in , Mississippi. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph of the Complaint and therefore deny same. The allegations contained in the third sentence of paragraph of the Complaint are denied.
5. Defendants admit that Exhibit "A" to the Complaint is a copy of the Letter Agreement executed on or about , by . To the extent the remaining allegations contained in the first sentence of paragraph of the Complaint differ from the express provisions of the referenced agreement, such allegations are denied. Defendants admit

that on or about _____, _____, and _____ entered into the Limited Partnership Agreement attached to the Complaint as Exhibit "B". All allegations of paragraph _____ of the Complaint not expressly admitted are denied.

6. To the extent the allegations contained in paragraph _____ of the Complaint differ from the express terms of the Limited Partnership Agreement, such allegations are denied.

7. Denied.

8. Denied.

9. Denied.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph ten of the Complaint and therefore deny same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first, second, fourth, fifth, sixth and seventh sentences of paragraph _____ of the Complaint and therefore said allegations are denied. The allegations contained in the third sentence of paragraph _____ of the Complaint are denied.

12. Denied.

13. Denied.

COUNT I

Breach of Contract

14. To the extent the allegations contained in the first sentence of paragraph _____ of the Complaint differ from the express terms of the Letter Agreement and Limited Partnership Agreement, such allegations are denied. Moreover, to the extent the allegations contained in the first sentence of paragraph _____ of the Complaint call for a legal conclusion, no responsive pleading is required. To the extent a responsive pleading is required, the allegations contained in the first sentence of paragraph _____ of the Complaint are denied consistent with the first sentence of paragraph _____ of this Answer and Affirmative Defenses. The allegations contained in the second and third sentences of paragraph _____ of the Complaint are denied. All allegations not expressly admitted are denied.

In response to the unnumbered paragraph on page _____ (_____) of the Complaint which begins "Wherefore", Defendants deny that _____ is entitled to recover anything whatsoever from Defendants.

COUNT II

Intentional Tort

15. Denied.

COUNT III

Breach of Fiduciary Duty

16. The allegations contained in the first sentence of paragraph call for a legal conclusion and therefore no responsive pleading is required. To the extent a responsive pleading is required, the allegations of the first sentence of paragraph of the Complaint are denied. The allegations contained in the second sentence of paragraph are denied.

COUNT IV

Damages and Indemnity for Curative Work

17. Denied.

In response to the unnumbered paragraph on page () which begins "Wherefore", Defendants deny that and are entitled to any relief whatsoever from Defendants.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims, or parts thereof, are barred by the doctrine of waiver and estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims, or parts thereof, are barred by the doctrine of accord and satisfaction.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, or parts thereof, are barred by the Release entered into by and , in which released from any cause of action arising out of or relating to the Letter Agreement attached to the Complaint as Exhibit "A" and the Limited Partnership Agreement attached to the Complaint as Exhibit "B".

FIFTH AFFIRMATIVE DEFENSE

The claim of fails claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

The claim of _____ for indemnity is barred due to the fact that _____ did not have a contract with Defendants and _____ had no right to rely on the alleged representations made by Defendants.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims, or parts thereof, are barred due to fact that there is no causation between the alleged presence construction debris and the damages sought in the Complaint. Instead, the alleged damage, if any, to Plaintiffs' property was caused by other factors.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for an alleged intentional tort, asserted under Count II of the Complaint, is barred by the applicable statute of limitations.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred due to the fact that _____ substantially completed the work required under the Limited Partnership Agreement. Moreover, _____ work was accepted, without reservation, by Plaintiffs and therefore Plaintiffs' claims are barred.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' entitlement to damages, if any, is limited by paragraph 3.07 of the Limited Partnership Agreement to the amount of _____ capital contribution to the Partnership, as agreed to by _____ and _____.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against _____ and _____ fail to state a claim upon which relief can be granted or are barred due to the fact that at all times relevant to this action, _____ and _____ were acting within the scope of their respective employment as authorized agents of _____.

WHEREFORE, having answered the allegations of the Complaint, Defendants deny that Plaintiffs are entitled to the relief prayed for, and Defendants pray that this honorable Court will dismiss the Complaint of _____ and _____ herein, with prejudice, taxing all cost to _____ and _____ and that Defendants be awarded their attorneys fees incurred as a result of this action and that Defendants be granted such other and further relief in law or in equity to which it may be entitled in the premises.

This the _____ day of _____, 20_____.

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for

CERTIFICATE OF SERVICE

I, _____, attorney for _____, _____ and _____, hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing Answer and Affirmative Defenses to _____.

This the _____ day of _____, 20____.
