

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DANIEL KRAMER,

Plaintiff,

- against -

ARA HOVNANIAN, RACHEL LEE HOVNANIAN,
AUTUN CONTRACTORS, WILLIAM F. O'NEILL
ARCHITECTS, GILSANZ MURRAY STEFICEK LLP,
PILLORI ASSOCIATES, PA, SIGNATURE INTERIOR
DEMOLITION, INC., JG CONSTRUCTION OF
QUEENS INC. SUPER JC CONSTRUCTION
CORPORATION, and MITCHELL IRON WORKS,

Defendants.
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:
: **ANSWER TO SECOND**
: **AMENDED COMPLAINT**

:
: Index No. 157527/2013

Pillori Associates, PA ("PA"), by its attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, as and for its verified answer, alleges as follows:

1. Denies the allegations contained in paragraphs "1", "2", "3", "31", "53", "54", "60", "61", "62", "67", "68", "69", "71", "74", "75", "78", "79", "83" through "88", "91" and "92" of the complaint to the extent they are directed at PA; otherwise, PA denies knowledge or information sufficient to form a belief as to such allegations; and refers to PA's agreements for the project at issue for their complete terms.

2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "4", "5", "6", "7", "8", "10" through "19", "21" through "27", "30", "32" through "52", "70", "72", "73", "76", "77", "80", "81", "82", "89", "90" and "93" through "106" of the complaint; except admits that the Adjacent Premises is a landmarked building.

3. Admits the allegations contained in paragraphs "9", "20", "28" and "29" of the complaint.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “55”, “56”, “57”, “58”, “59”, “63”, “64”, “65”, and “66” of the complaint; and respectfully refers the Court to the Permit, the TPPN and the License Agreement for their complete terms, and refers all questions of law to the Court.

AS AND TO THE FIRST CAUSE OF ACTION

5. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “106” of the complaint with the same force and effect as if fully set forth at length herein

6. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “108” through “112”, “114”, “117” through “122”, “124” through “131”, “133” and “135” through “144” of the complaint; and respectfully refers to the License Agreement, and TPPN 10/88 for their complete terms.

7. Denies the allegations contained in paragraphs “113”, “115”, “116”, “123”, “132” and “134” to the extent they are directed at PA; otherwise PA denies knowledge or information sufficient to form a belief as to such allegations and refers all questions of law to the Court.

AS AND TO THE SECOND CAUSE OF ACTION

8. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “144” of the complaint with the same force and effect as if fully set forth at length herein

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “146” through “155” of the complaint and refers all questions of law to the Court.

AND TO THE THIRD CAUSE OF ACTION

10. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “155” of the complaint with the same force and effect as if fully set forth at length herein.

11. Denies the allegations contained in paragraphs “157” through “168” of the complaint to the extent they are directed at PA and refers to PA’s contract for the project for its complete terms; otherwise, PA denies knowledge or information sufficient to form a belief as to such allegations; and refers all questions of law to the Court.

AS AND TO THE FOURTH CAUSE OF ACTION

12. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “168” of the complaint with the same force and effect as if fully set forth at length herein

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “170” through “173” of the complaint and refers all questions of law to the Court.

AND TO THE FIFTH CAUSE OF ACTION

14. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “173” of the complaint with the same force and effect as if fully set forth at length herein.

15. Denies the allegations contained in paragraphs “175” through “184” of the complaint to the extent they are directed at PA. Otherwise, PA denies knowledge or information

sufficient to form a belief as to such allegations; refers to the License Agreement, the Permit and TPPN 10/88 for their complete terms; and refers all questions of law to the Court.

AND TO THE SIXTH CAUSE OF ACTION

16. Repeats, reiterates and realleges each and every response to the allegations contained in paragraphs “1” through “184” of the complaint with the same force and effect as if fully set forth at length herein.

17. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs “186” through “205” of the complaint and refers all questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. Any damages that may have been sustained by the plaintiff were contributed to, in whole or in part, by the culpable conduct of the plaintiff, pursuant to Article 14-A of the CPLR.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Pursuant to CPLR § 4545(c), if it is determined or established that the plaintiff has received or shall receive the loss of earnings or other economic loss, and that same shall be replaced or indemnified in whole or in part from any collateral source, CPLR § 4545(c) applies.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. There is no contractual privity between PA and PA performed its work in accordance with its contract.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. The complaint fails to state a cause of action against PA; PA performed all of its contractual obligations; and plaintiff has failed to mitigate damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. PA has defenses based on documentary evidence.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Upon information and belief, the injuries and damages alleged in the complaint were caused by the culpable conduct of some unidentified third person or persons over whom PA exercised no control.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. The claims are barred by the statute of limitations.

AS AND FOR A FIRST CROSS-CLAIM AGAINST ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS

25. If Plaintiff recovers a judgment against PA for the injuries and damages alleged in the complaint, any such liability therefore imposed on PA will have been caused and brought about by reason of the primary and active negligence, carelessness, recklessness, breach of contract, breach of warranty, fraud and/or other acts of omission or commission and/or intentional tortious conduct of the co-defendants, ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, and/or their agents, servants and/or employees, in permitting,

causing and creating the alleged conditions set forth in the plaintiff's complaint without active or primary negligence and/or intentional conduct on the part of PA contributing thereto.

26. By reason of the foregoing, PA is entitled to common law indemnification from, and to judgment over and against, the co-defendants, ARA HOVNIANIAN, RACHEL LEE HOVNIANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, for all or part of any verdict or judgment which Plaintiff may recover against PA, together with costs, disbursements and attorneys' fees.

AS AND FOR A SECOND CROSS-CLAIM AGAINST ARA HOVNIANIAN, RACHEL LEE HOVNIANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS

27. Upon information and belief, if and in the event that Plaintiff sustained the injuries and damages complained of, such injuries and damages were caused in whole or in part by reason of the wrongful conduct of the co-defendants, ARA HOVNIANIAN, RACHEL LEE HOVNIANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, there being no active or primary wrongdoing on the part of PA contributing thereto.

28. By reason of the foregoing, PA is entitled to full contribution from, and to judgment over and against, the co-defendants, ARA HOVNIANIAN, RACHEL LEE

HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, for all or part of any verdict or judgment which plaintiff may recover against PA, together with costs, disbursements and attorneys' fees.

AS AND FOR A THIRD CROSS-CLAIM AGAINST ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS

29. If plaintiff recovers a judgment against PA for the injuries and damages alleged in the complaint, any such liability therefore imposed on PA will have been caused and brought about by reason of the primary and active negligence, carelessness, recklessness, breach of contract, breach of warranty, fraud and/or other acts of omission or commission and/or intentional tortious conduct of the co-defendants, ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, and/or their agents, servants and/or employees, in permitting, causing, and creating the alleged conditions set forth in the plaintiff's complaint, without active or primary negligence and/or intentional conduct on the part of PA contributing thereto.

30. By reason of the foregoing, PA is entitled to contractual indemnification from, and to judgment over and against, the co-defendants, ARA HOVNANIAN, RACHEL LEE

HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS, for all or part of any verdict or judgment which plaintiff may recover against PA, together with costs, disbursements and attorneys' fees.

AS AND FOR A FOURTH CROSS-CLAIM AGAINST ARA HOVNANIAN, RACHEL LEE HOVNANIAN, AUTUN CONTRACTORS, WILLIAM F. O'NEILL ARCHITECTS, GILSANZ MURRAY STEFICEK LLP, SIGNATURE INTERIOR DEMOLITION, INC., JG CONSTRUCTION OF QUEENS INC., SUPER JC CONSTRUCTION CORPORATION, and MITCHELL IRON WORKS


31. That co-defendants entered into agreements to procure insurance for the benefit of PA concerning the performance of services on the project at issue, including but not limited to a comprehensive general liability policy of insurance naming PA as an additional insured on said policy for any injury, damage or loss in connection with the performance of their services or the work at the property. Co-defendants breached said duty to procure insurance on behalf of PA and failed to name PA as an additional insured on said policy of insurance.

32. As a result of said breaches and failures to name PA as an additional insured, the co-defendants are obligated to indemnify PA in the entirety for any loss recovered against it, and/or fees incurred by PA in this action and/or any fees, premiums or other costs associated with the procurement of insurance on behalf of PA.

WHEREFORE, Pillori Associates, P.A. demands judgment dismissing the verified complaint, together with the costs and disbursements incurred in defending this action.

Dated: White Plains, New York
August 24, 2016

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