

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,
WILLIAMS F. O'NEILL ARCHITECTS,
GILSANZ MURRAY STEFICEK, LLP,
PILLORI ASSOCIATES, PA and SIGNATURE
INTERIOR DEMOLITION, INC.,

Defendants.

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Index No.:157527/2013

**ANSWER TO
SECOND AMENDED
VERIFIED COMPLAINT**

Defendant Gilsanz Murray Steficek LLP ("GMS"), by its attorneys Babchik & Young, LLP, for its answer to the complaint herein, upon information and belief:

1. Denies the allegations contained in paragraphs 1, 2 and 3 as to answering defendant and denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants.
2. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 4, 5, 6, 9, 10, 11, 12 and 13.
3. Admits the allegations contained in paragraphs 7, 8 and 20.
4. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 14, 15, 16 and 17, except admits answering defendant conducts business in New York County.

5. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 46, 48, 49, 50, 51, 52, 55, 56 and 57.

6. Denies the allegations contained in paragraph 29.

7. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraph 37, except admits GMS performed a pre-construction survey and took pre-construction photographs of the adjacent premises.

8. Denies the allegations contained in paragraphs 45, 47, 53, 54, 60 and 63 as to answering defendant and denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants.

9. With respect to paragraphs 58, 59 and 61, begs leave to refer to the permit at the trial of this action, leaves all issues of law for the Court and otherwise denies the allegations.

10. Denies the allegations contained in paragraphs 62, 67, 71, 72, 73 and 74 and begs leave to refer to the vibration monitoring reports and permit(s) at the trial of this action; specifically denies that the monitors were insufficient or misplaced as plaintiff's own engineer from Exponent Engineering P.C., agreed to the number and placement of the monitors; that Exponent and others were aware the monitors were not working for a short time and, upon information and belief, there was no excavation work during that time.

11. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 64, 65, 66, 68, 69, 70, 76, 77, 79, 80 and 89.

12. Denies the allegations contained in paragraphs 75, 78, 81, 82, 83, 84, 85, 86, 87, 88, 90, 91 and 92 as to answering defendant, denies knowledge or information thereof sufficient

to form a belief as to the truth of any of the allegations as to the other defendants and begs leave to refer to the monitoring reports at the trial of this action

13. Denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106.

TO THE FIRST CAUSE OF ACTION

14. Admits or denies as above each and every allegation incorporated by reference in paragraph 107.

15. Denies the allegations contained in paragraphs 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142 and 143 as to answering defendant, denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants and begs leave to refer to the referenced documents at the trial of this action.

16. Denies the allegations contained in paragraph 144.

TO THE SECOND CAUSE OF ACTION

17. Admits or denies as above each and every allegation incorporated by reference in paragraph 145.

18. Denies the allegations contained in paragraphs 146, 147, 148, 149, 150, 151, 152, 153 and 154 as to answering defendant, denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants and begs leave to refer to the referenced documents at the trial of this action.

19. Denies the allegations contained in paragraph 155.

TO THE THIRD CAUSE OF ACTION

20. Admits or denies as above each and every allegation incorporated by reference in paragraph 156.

21. Denies the allegations contained in paragraphs 157, 158, 159, 160, 161, 162, 163, 164, 165, 166 and 167 as to answering defendant, denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants, begs leave to refer to all documents referenced therein and leaves all issues of law for the Court at the trial of this action.

22. Denies the allegations contained in paragraph 168.

TO THE FOURTH CAUSE OF ACTION

23. Admits or denies as above each and every allegation incorporated by reference in paragraph 169.

24. Denies the allegations contained in paragraphs 170, 171 and 172 as to answering defendant, denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants and leaves all issues of law for the Court at the trial of this action.

25. Denies the allegations contained in paragraph 173.

TO THE FIFTH CAUSE OF ACTION

26. Admits or denies as above each and every allegation incorporated by reference in paragraph 174.

27. Denies the allegations contained in paragraphs 175, 176, 177, 178, 179, 180, 181 and 182 as to answering defendant and denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants.

28. Denies the allegations contained in paragraphs 183 and 184.

TO THE SIXTH CAUSE OF ACTION

29. Admits or denies as above each and every allegation incorporated by reference in paragraph 185.

30. Denies the allegations contained in paragraphs 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204 and 205 as to answering defendant and denies knowledge or information thereof sufficient to form a belief as to the truth of any of the allegations as to the other defendants.

AS A FIRST DEFENSE

31. The complaint fails to state a cause of action against answering defendant.

AS A SECOND DEFENSE

32. GMS did not perform construction work on the site.

AS A THIRD DEFENSE

33. GMS did not perform underpinning on this project.

AS A FOURTH DEFENSE

34. GMS along with plaintiff's engineer from Exponent Engineering together agreed on the number and placement of the monitors. To the extent plaintiff claims the monitors were too few or were installed in the wrong places, plaintiff must look to its own retained engineer from Exponent for relief.

AS A FIFTH DEFENSE

35. There is no privity between answering defendant and plaintiff.

AS A SIXTH DEFENSE

36. At all times answering defendant was an agent for a disclosed principal for this project.

AS A SEVENTH DEFENSE

37. Answering defendant performed its work pursuant to its contract for the project.

AS AN EIGHTH DEFENSE

38. Answering defendant's liability, if any, was limited by its contract for services rendered.

AS A NINTH DEFENSE

39. Answering defendant's work was limited by its contract for services rendered.

AS A TENTH DEFENSE

40. If plaintiff was damaged as alleged in the complaint, such damage was caused, in whole or in part, or was contributed to, by reason of the carelessness, negligence, want of care, breach of contract and/or culpable conduct on the part of the plaintiff without any carelessness, negligence, want of care and/or culpable conduct on the part of the answering defendant contributing thereto; and if the carelessness, negligence, want of care, breach of contract and/or culpable conduct other than that of the plaintiff caused or contributed to such alleged damage, it was the carelessness, negligence, want of care, breach of contract and/or culpable conduct on the part of some other party or person, firm or corporation, his, its or their agents, servants or employees over whom the answering defendant had no control and for whose carelessness, negligence, want of care and/or culpable conduct the answering defendant was not and is not responsible or liable.

AS AN ELEVENTH DEFENSE

41. Upon information and belief, during the period when the monitors were disabled, no vibration producing work was being performed.

AS A TWELFTH DEFENSE

42. Answering defendant was not responsible for means and methods of construction or for safety.

AS A FIRST CROSS-CLAIM

43. If plaintiff was damaged as alleged, the damages were caused in whole or in part or were contributed to by reason of the carelessness, recklessness, negligence, breach of contract and/or culpable conduct of co-defendant(s), their agents, servants, and/or employees, with the negligence, if any, on the part of answering defendant being secondary and/or derivative only.

44. By reason of the foregoing, co-defendant(s) will be liable to answering defendant in the event a judgment is recovered, in the amount of said judgment, or in an amount equal to the excess over and above answering defendant's equitable share of said judgment. The equitable shares of any judgment recovered are to be determined in accordance with the relative culpability of answering defendant and all other parties.

AS A SECOND CROSS-CLAIM

45. Pursuant to contract, GMS' client agreed to indemnify it against loss, judgment and cost whatsoever.

46. As a result whereof, GMS tenders the defense and indemnity of this matter to its client.

AS A FIRST COUNTERCLAIM

47. Plaintiff retained Exponent Engineering as a consultant to, among other things, work with GMS to determine the number and placement of the vibration monitors.

48. Exponent on plaintiff's behalf agreed to the number of monitors and their placement.

49. Plaintiff claims at paragraphs 54 and elsewhere, the monitors:

“repeatedly violated TPPN 10/88, and in turn violated the Permit, throughout the entire construction process up until the present. Defendants failed to install a monitoring program in a timely fashion, the monitoring program was disabled for a period of almost two weeks, and Defendants repeatedly surpassed the maximum peak particle velocity of 0.5 inches per second. Additionally, Defendants failed to place sufficient monitors through the Adjacent Premises to monitor vibrations and movement. Further, as a result of the Defendants' work at the Project Premises, the Adjacent Premises has settled, causing significant property damage”.

50. Exponent was immediately aware that the monitors were disabled.

51. Exponent selected with GMS the number and placement of the monitors.

52. Exponent, acting as plaintiff's agent, bound plaintiff to the agreement on the system of monitors including their number and placement.

53. As a result whereof, plaintiff has no claim against GMS yet has caused GMS to expend attorneys' fees to defend this claim.

54. GMS demands reimbursement for all its costs, disbursements and attorneys' fees in defending this matter.

ATTORNEY VERIFICATION

Jack Babchik hereby affirms the following under the penalties of perjury:

He has read the foregoing answer and knows the contents thereof. The same are true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true. The grounds of his belief as to all matters therein stated upon information and belief are investigations made concerning the subject matter of the said action and information acquired in connection with such investigation.

This verification is not made by defendant because the defendant does not have offices within the county where counsel has his office.

/s/

Jack Babchik