

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen

SC Supreme Court

Civil Action No. 06-CP-07-866

16 Jade Street, LLC,

Respondent/Appellant,

vs

R Design Construction Co., LLC and Carl R. Aten, Jr.,
Individually and in his capacity as principal and agent of
R Design Construction Co., LLC, Catterson & Sons
Construction and Michael S. Catterson, Individually and
in his capacity as principal and agent of Catterson & Sons
Construction,

Defendants,

Of Whom, Carl R. Aten, Jr., is

Appellant,

and Michael S. Catterson, Individually and in
his capacity as principal and agent of
Catterson & Sons Construction, is

Respondent,

R Design Construction Co., LLC,

Third Party Plaintiffs,

vs

Kintz Electric,

Third Party Defendant

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
16 JADE STREET, LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO , LLC
and CARL K ATEN, JR ,
individually and in his
capacity as principal and
agent of R DESIGN CONSTRUCTION
CO , LLC, CATTERSON & SONS
CONSTRUCTION And MICHAEL S
CATTERSON, individually and in
his capacity as principal and
agent of CATTERSON & SONS
CONSTRUCTION,

Defendants

IN THE COURT OF COMMON PLEAS

CIVIL ACTION # 06-CP-07-866

SCANNED

SUMMONS

(Jury Trial Demanded)

2006 APR 12 AM 10:23
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, SC

TO ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff or its attorney(s), E Mitchell Griffith, of the firm, GRIFFITH, SADLER & SHARP, P A , 600 Monson Street Post Office Drawer 570, Beaufort, South Carolina, 29901, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint

GRIFFITH, SADLER & SHARP, P A

BY


E Mitchell Griffith
Michael D Freeman
600 Monson Street
Post Office Drawer 570
Beaufort, South Carolina 29901
(843) 521-4242
Attorneys for the Plaintiff

Beaufort, South Carolina

April __, 2006

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CIVIL ACTION # 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO , LLC
and CARL K ATEN, JR ,
individually and in his
capacity as principal and
agent of R DESIGN CONSTRUCTION
CO , LLC, CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, individually and in
his capacity as principal and
agent of CATTERSON & SONS
CONSTRUCTION,

Defendants

COMPLAINT

(Jury Trial Demanded)

2006 APR 12 AM 10:23
CLERK OF COURT
BEAUFORT, S.C.

TO ABOVE-NAMED DEFENDANTS:

Plaintiff complaining of the Defendants herein would allege
and show as follows:

1 Plaintiff is a Limited Liability Company, organized under
the laws of South Carolina, headquartered and doing business in the
County of Beaufort, State of South Carolina

2 Carl T Aten (hereinafter "Aten") is a principal and agent
of R Design Construction Co (hereinafter "R Design"), which is a
South Carolina Limited Liability Company, which owns property and
does business in Beaufort, South Carolina, and is engaged in the

construction industry as a general contractor. R Design provided
general contracting services on the Plaintiff's building

3 Michael S Catterson (hereinafter "Catterson"), is a principal and agent of Catterson & Sons, (hereinafter "Catterson & Sons"), which is a construction subcontractor doing business in Beaufort County, South Carolina, and is engaged in the construction industry as a framer. Catterson provided framing and masonry block services on the Plaintiff's property

FOR A FIRST CAUSE OF ACTION
(Negligence Against R Design and Aten)

4 Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 3, as if fully set forth herein verbatim

5 That Plaintiff entered into a contract with R Design to build four (4) family condominium residence at Lot 19, Celadon, 16 Jade Street, Lady's Island in Beaufort, South Carolina, according to plans and specifications

6 Thereafter, R Design engaged the services of various subcontractors, material suppliers and vendors

7 That upon information and belief, during the construction of the project, R Design, by and through Aten, entered into agreements with one or more subcontractors and material suppliers pursuant to which said subcontractors and material suppliers agreed to provide labor and materials for the application and installation of various products and components which became a part of and were incorporated into Plaintiff's condominium building which include,

but are not limited to, foundation, framing and masonry block work, and pursuant to which said subcontractors, material suppliers and vendors made express and implied warranties that their work would be of good quality without material defects and completed in accordance with the manufacturer's instructions and per plans and specifications

8 That the Defendants were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit

a) In knowingly erecting a residential condominium structure that was defective;

b) In violating numerous sections of the Standard Building Code, the National Electrical Code and the Standard Mechanical Code in the construction of the building in question,

c) In failing to properly supervise the construction of the building as well as utilizing poor workmanship, resulting in structural as well as cosmetic damages in connection with certain other portions of the condominium building, all of which would not have occurred if the Defendant had exercised reasonable care and prompt inspection and remediation in the construction of the structure;

d) In failing and omitting to use due care in the selection and management of the work and materials of sub-contractors

e) In failing to properly manage the project.

f) In failing to properly supervise the work of its employees and subcontractors

g) In allowing and permitting work which violates the local ordinances and standard building codes

h) In allowing and permitting the support structure of the building, including but not limited to the framing and masonry block work to be installed improperly

9 As a direct and proximate result of the aforesaid acts of negligence, recklessness, willfulness and wantonness and the conscious disregard for the Plaintiff on the part of the Defendants, through their agents and servants acting in the course and scope of their employment, Plaintiff's residential condominium building has not been completed, its market value has been greatly reduced, and the Plaintiff has lost their investment in the same Plaintiff has further been caused to expend monies for professional services to evaluate and seek methods of correction for the problems involved and will be required to spend future sums for such purposes and for the purposes of correction of the problems listed herein if such problems can be corrected, Plaintiff has further sustained inconvenience and annoyance and, further, the Plaintiff will lose the use of portions of their building for indeterminate periods of time in the future during corrective construction, all to the great damage of the Plaintiff including,

but not limited to, actual, special, incidental, consequential, and diminution in the market value of their property

FOR A SECOND CAUSE OF ACTION
(Breach of Implied Warranty of Good and Workmanlike Service against R Design and Aten)

10 Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 9, above, as if fully set forth herein verbatim

11 That R Design, by and through Aten, impliedly warranted as a matter of law that the work and services each supplied in the construction of the condominium building would be good and workmanlike

12 That R Design and Aten have breached their implied warranty of good and workmanlike services as is herein above more fully set forth

13 As a direct result of the breach of implied warranty by the Defendants, the Plaintiff has suffered damages including, but not limited to actual, special, incidental, consequential, and diminution in the market value of its property

FOR A THIRD CAUSE OF ACTION
(Negligence against Catterson & Sons and Catterson)

14 Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 13, above, as if fully set forth herein verbatim

15 Catterson & Sons, by and through Catterson, negligently constructed and installed the support structure for the building,

including but not limited to the framing and masonry block work in the following particulars, to wit

a) In failing to install the framing, support and masonry block work roof in conformance with the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry

b) In using and supplying defective materials, installing materials not in accordance with the plans and specifications, in installing materials in violation of manufacturer's instructions, or in performing work which violated applicable building codes,

c) In failing to properly supervise employees, agents, and subcontractors to assure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards

d) In accepting defective and/or non-conforming materials and/or labor,

e) In providing deficient and/or defective workmanship and/or materials without proper inspection to assure that the work was correct, in conformity with the applicable building standards, and in accordance with the plans, the specifications, and the manufacturer's instructions

16 As a direct result of the Defendants' negligence, the Plaintiff has suffered damages including, but not limited to, actual, special, incidental, consequential, and diminution in the market value of their property

FOR A FOURTH CAUSE OF ACTION**(Breach of Implied Warranty of Good and Workmanlike Service against Catterson & Sons and Catterson)**

17 Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 16, above, as if fully set forth herein verbatim

18 That Catterson & Sons, by and through Catterson, impliedly warranted as a matter of law that the work and services each supplied in the construction of the condominium building would be good and workmanlike.

19 That Defendants have breached their implied warranty of good and workmanlike services as is herein above more fully set forth

20. As a direct result of the breach of implied warranty by the Defendants, the Plaintiff has suffered damages including, but not limited to actual, special, incidental, consequential, and diminution in the market value of their property

FOR A FIFTH CAUSE OF ACTION**(Breach of Contract against R Design and Aten)**

21. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 20, above, as if fully set forth herein verbatim

22 Upon information and belief, Defendants R Design and Aten were hired to construct the house in compliance with applicable building codes according to plans and specifications and in a manner consistent with the normal standards within the construction industry

23 Defendants breached the aforementioned duties in one or more of the following particulars, to wit

a) by wrongfully and without cause abandoning the construction of the aforementioned structure by walking off the job on or about October 17, 2005

b) by failing to complete the building in a timely and workmanlike manner as per the written contract

c) In failing to inspect for defective or nonconforming construction work

d) In accepting defective or nonconforming construction work

e) In failing to design and insure construction in compliance with applicable building codes and acceptable building practices

f) In failing to properly specify appropriate materials to be used in the construction of the residence

24. That the statements and representations made in connection with the contract were material to the Plaintiff who relied upon the accuracy of them and who had a right to rely thereon.

25 That as a direct and proximate result of Defendants' breach of contract as alleged, the Plaintiff has sustained extensive and permanent damages in one or more of the following particulars, to wit:

a) incurring the cost of correcting the deficiencies in Defendant's work,

b) incurring the cost of completing the project,

c) incurring the added cost that the delay in completion has caused and will continue to cause until such time as the building is completed.

FOR A SIXTH CAUSE OF ACTION

(Damage to Property against R Design, Aten, Catterson & Sons and Catterson)

26. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 25, above, as if fully set forth herein verbatim.

27. As a result of the aforementioned acts and omissions, Plaintiff has additionally suffered property damage in the following particulars, to wit:

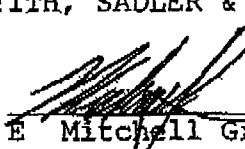
- a) Damage to the existing OSB flooring due to their continued exposure to the elements;
- b) Damage to the roof system due to its continued exposure to the elements;
- c) Damage to the exterior walls due to the failure to sheath or otherwise protectively cover them against continued exposure to the elements;
- d) Damage to all existing door and window units due to their continued exposure to the elements; and,
- e) Damage to the garage units due to their continued exposure to the elements.

WHEREFORE, Plaintiff prays for judgment against the Defendant, in an amount to be determined for actual, special, incidental, consequential, and diminution damages, and for punitive damages in

an amount to be determined, and for the costs of disbursements of
this action

GRIFFITH, SADLER & SHARP, P A

BY


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(843) 521-4242
Attorneys for the Plaintiff

Beaufort, South Carolina

April 11, 2006

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,)
)
Plaintiff,)
)
vs)
)
R DESIGN CONSTRUCTION CO ,) DEFENDANT R DESIGN
LLC, and CARL R ATEN, JR ,) CONSTRUCTION CO , LLC AND
Individually and in his capacity as) CARL K ATEN, JR INDIVIDUALLY
principal and agent of R DESIGN) AND IN HIS CAPACITY AS
CONSTRUCTION CO , LLC) PRINCIPAL AND AGENT OF R
CATTERSON & SONS) DESIGN CONSTRUCTION CO LLC
CONSTRUCTION and MICHAEL S) ANSWER TO PLAINTIFF'S
CATTERSON Individually and in his) COMPLAINT
capacity as principal and agent of)
CATTERSON & SONS)
CONSTRUCTION,)
)
Defendants)

2007 MAY 24 PM 11:11
BEAUFORT
CLERK OF COURT
BEAUFORT SC

The Defendant(s), R Design Construction Co LLC and Carl K Aten Jr
individually and in his capacity as principal and agent of R Design Construction
Co LLC , answering the Complaint of the Plaintiff(s) would allege unto this
Honorable Court as follows

FOR A FIRST DEFENSE

- 1 That each and every allegation contained in the Plaintiff(s) s Complaint not specifically admitted herein is denied, and strict proof demanded thereof
- 2 That upon information and belief, these Defendants admit paragraph 1 of Plaintiff's Complaint
- 3 That these Defendants admit paragraph 2 of Plaintiff's Complaint

- 4 That upon information and belief, these Defendants admit paragraph 3 of
Plaintiff's Complaint
- 5 Paragraph 4 of Plaintiff's Complaint fails to state an allegation of fact
against these Defendants, and accordingly, an Answer is not required To
the extent an allegation of fact is alleged these Defendants deny same
- 6 These Defendants admit paragraph 5 of Plaintiff's Complaint to the extent
that the allegation alleges that they entered into a contract with R Design
to supervise the construction of a two-story condominium residence with
four units at Lot 19, Celadon 16 Jade Street Lady's Island in Beaufort,
South Carolina according to plans and specifications
- 7 These Defendants admit paragraph 6 of Plaintiff's Complaint
- 8 These Defendants admit only so much of Paragraph 7 as alleges that they
entered into agreements with one or more subcontractors and material
suppliers pursuant to which said subcontractors and material suppliers
agreed to provide labor and materials for the application and installation of
various products and components which became a part of and were
incorporated into Plaintiff's condominium building which include but are
not limited to, foundation, framing and masonry block work These
Defendants are without sufficient known to form a belief as to the truth or
falsity contained in the remaining portion of Paragraph 7 of Plaintiff's
Complaint as it relates to express and implied warranties of materialmen
and subcontractors, and therefore denies same and demands strict proof
thereof

- 9 These Defendants deny paragraph 8 of Plaintiff's Complaint and demand strict proof thereof
- 10 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore, denies the allegations contained in paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof
- 11 Paragraph 10 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants and accordingly an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 12 These Defendants admit paragraph 11 of Plaintiff's Complaint
- 13 These Defendants deny paragraph 12 of Plaintiff's Complaint and demand strict proof thereof
- 14 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 13 of the Plaintiff's Complaint and demand strict proof thereof
- 15 Paragraphs 14 through 21 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 16 These Defendants deny paragraphs 22 and 23 of Plaintiff's Complaint and demand strict proof thereof

- 17 These Defendants deny paragraph 24 of Plaintiff's Complaint and demand strict proof thereof
- 18 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 25 of the Plaintiff's Complaint and demand strict proof thereof
- 19 Paragraph 26 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 20 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 27 of the Plaintiff's Complaint and demand strict proof thereof

FOR A SECOND DEFENSE
(Merger)

- 21 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 22 That these Defendant(s) would show that if any representations were made to the Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied then all representations merged into the contract between the parties

FOR A THIRD DEFENSE
(Statutes of Limitations)

23 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

24 That these Defendant(s) would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations

FOR A FOURTH DEFENSE

(Notice)

25 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

26 That these Defendant(s) would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which the Complaint, and nonetheless proceeded to purchase the subject property
Such circumstances constitute a complete bar to the Plaintiffs' claims

FOR A FIFTH DEFENSE

(Insufficient Facts to Constitute Cause of Action)

27 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

28 That these Defendant(s) would show that the allegations of the Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against these Defendant(s)

FOR A SIXTH DEFENSE

29 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

30 That these Defendant(s) would show that the Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the Defendant(s), which representations are hereby specifically denied

FOR A SEVENTH DEFENSE
(Parole Evidence)

31 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

32 That these Defendant(s) would show that any and all representations alleged made by these Defendant(s), which representations are hereby specifically denied, constitute parole evidence outside the terms of the contract for the sale and purchase of real estate, and therefore cannot serve to supplement the written contract

FOR AN EIGHTH DEFENSE
(Sole Negligence)

33 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

34 That these Defendant(s) would show that the damages alleged by the Complaint, which damages are hereby specifically denied were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendant(s)

FOR A NINTH DEFENSE
(Contributory Negligence)

- 35 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 36 That these Defendant(s) would show that the damages alleged by the Plaintiffs, which damaged are hereby specifically denied were due to and caused by the reckless willful wanton negligent careless and grossly negligent acts and conduct of the Plaintiffs which actions combined and concurred with any negligence on the part of these Defendant(s), which negligence is hereby specifically denied to produce such damages, without which the same would not have occurred

FOR A TENTH DEFENSE
(Comparative Negligence)

- 37 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 38 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs which injuries and damages are hereby specifically denied were due to and caused by the reckless, willful, wanton, negligent, careless and grossly negligent acts and conduct of the Plaintiffs which acts were greater than any acts of negligence on the part of these Defendant(s), which acts on the part of these Defendant(s) are hereby specifically denied, to produce such injury and/or damages, and without which the same would not have occurred

FOR AN ELEVENTH DEFENSE
(Doctrine of Laches)

- 39 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 40 That these Defendant(s) would show that the claims of the Plaintiffs are
barred by the doctrine of laches

FOR A TWELFTH DEFENSE
(Assumption of the Risk)

- 41 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 42 That these Defendant(s) would show that the Plaintiffs, by and through
their actions and/or inactions with regard to the subject alleged in the
Complaint, have assumed the risk and/or accepted all portions of any
damages alleged by the Plaintiffs and such assumption of risk and/or
acceptance is a bar to claims against these Defendant(s)

FOR A THIRTEENTH DEFENSE
(Failure to Mitigate)

- 43 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 44 That these Defendant(s) would show that the injuries and/or damages
alleged by the Plaintiffs which injuries and/or damages are hereby
specifically denied, were due to and caused by the Plaintiffs' failure to
mitigate, which failure is a complete bar to recovery by the Plaintiffs

FOR A FOURTEENTH DEFENSE
(Doctrine of Estoppel)

45 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

46 That these Defendant(s) would show that the Plaintiffs are barred by the
doctrine of estoppel from asserting claims against these Defendant(s)

FOR A FIFTEENTH DEFENSE
(Doctrine of Waiver)

47 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

48 That these Defendant(s) would show that the claims of the Plaintiffs are
barred by the doctrine of waiver

FOR A SIXTEENTH DEFENSE
(Economic Loss Rule)

49 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

50 That these Defendant(s) would show that the claims of the Plaintiffs are
barred by the economic loss rule

FOR A SEVENTEENTH DEFENSE
(Sole Negligence of Third Parties)

51 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

52 That these Defendant(s) would show that the injuries and/or damages
alleged by the Plaintiffs, which injuries and/or damages are hereby
specifically denied, would due to and were the proximate result of the sole
negligence and/or recklessness of third persons or parties, for whose
conduct these Defendant(s) are not liable

FOR A EIGHTEENTH DEFENSE
(Exclusion of Warranty)

- 53 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 54 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendant(s)

FOR A NINETEENTH DEFENSE
(Modification of Warranties)

- 55 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 56 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively modified by these Defendant(s)

FOR A TWENTIETH DEFENSE
(Limitation of Warranties)

- 57 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 58 That these Defendant(s) would show that any and all applicable warranties have been properly and effectively limited by these Defendant(s)

FOR A TWENTY-FIRST DEFENSE
(Excluded Remedies)

- 59 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

60 That these Defendant(s) would show that the available remedies have
been properly and effectively excluded by these Defendant(s)

FOR A TWENTY-SECOND DEFENSE
(Modification of Remedies)

61 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

62 That these Defendant(s) would show that all applicable remedies have
been properly and effectively modified by these Defendant(s)

FOR A TWENTY-THIRD DEFENSE
(Limitation of Remedies)

63 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

64 That these Defendant(s) would show that all available remedies have
been properly and effectively limited by these Defendant(s)

FOR A TWENTY-FOURTH DEFENSE
(Disclaimer of Warranties)

65 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

66 That these Defendant(s) would show that any and all applicable
warranties have been properly and effectively disclaimed by these
Defendant(s)

FOR A TWENTY-FIFTH DEFENSE
(Disclaimer of Remedies)

67 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

68 That these Defendant(s) would show that any and all available remedies have been properly and effectively disclaimed by these Defendant(s)

FOR A TWENTY-SIXTH DEFENSE
(Resolution by Arbitration)

69 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

70 That these Defendant(s) would show that the claims against these Defendant(s) are subject to resolution by arbitration and the instant action against these Defendant(s) should therefore be dismissed

FOR A TWENTY-SEVENTH DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

71 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

72 That these Defendant(s) would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Complaint which failure is a bar to all claims against these Defendant(s)

FOR A TWENTY-EIGHTH DEFENSE
(Failure to comply with Statutory Conditions Precedent)

73 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

74 That these Defendant(s) would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Complaint

FOR A TWENTY-NINETH DEFENSE
(Failure to give notice of breach of warranty)

- 75 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 76 That these Defendant(s) would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty which breach of warranty or warranties is hereby specifically denied

FOR A THIRTIETH DEFENSE
(Reservation and Non-Waiver)

- 77 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 78 That these Defendant(s) do not waive and hereby specifically reserves, any additional and/or further defenses the propriety of which may be indicated by additional information which may be acquired by these Defendant(s) or its/their counsel during the course of discovery or otherwise

FOR A THIRTY-FIRST DEFENSE
(Joint Tort Feasors Act)

- 79 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 80 That these Defendant(s) would show that in the event of a verdict rendered jointly against these Defendant(s) and the remaining Defendant(s), these Defendant(s) are entitled to contribution from said remaining Defendant(s), pursuant to the provisions of the South Carolina

Uniform Contribution Among Joint Tort Feasors Act and/or other provisions of law

FOR A THIRTY-SECOND DEFENSE
(Protections under Constitution(s))

81 That each and every allegation set forth in preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

82 That these Defendant(s) would show that the imposition of punitive damages is violative of protections afforded by the 5th, 8th and 14th and/or other amendments to the United States and/or South Carolina constitutions

FOR A THIRTY-THIRD DEFENSE
(Statutes of Repose)

83 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

84 That these Defendant(s) would show that the Plaintiffs claims are barred by the applicable statute and/or statutes of repose

FOR A THIRTY-FOURTH DEFENSE
(Statute of Frauds)

85 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

86 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the Statute of Frauds

FOR A THIRTY-FIFTH DEFENSE
(Learned Intermedianes and Sophisticated User Doctrine)

87 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

88 Without admitting its products were installed on the subject structure, this
Defendant submits that the products installed on the structure were sold to
learned intermediaries or sophisticated users who in turn through the
exercise of their own knowledge and expertise, should have known and
appreciated the proper uses and requirements of the products and
therefore this Defendant pleads the Learned Intermediary and
Sophisticated User Doctrines as a complete defense to this action

FOR A THIRTY-SIXTH DEFENSE
(Spoliation of Evidence)

89 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

90 Without admitting that its products were installed on the subject structure,
this Defendant submits that repairs may have been made to the subject
structure and further, that the alleged defective products may have been
destroyed To the extent that this Defendant has not been afforded the
opportunity to inspect and examine the alleged defective products and/or
their components and therefore, this Defendant pleads the Spoliation of
Evidence Doctrine as a complete defense to this action

FOR A THIRTY-SEVENTH DEFENSE

91 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

92 That all claims against this Defendant, based on warranty or the Uniform Commercial Code, are barred because, among other considerations, the transaction at issue is a contract primarily for services rather than goods, and this Defendant's products once installed in improvements to real property cease to be goods

FOR A THIRTY-EIGHTH DEFENSE

93 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

94 That this Defendant would show that it has made no representations of warranties inducing the purchase for use of its products by Plaintiff or others except such warranties which may be express and in writing, and such express warranties are the only and best evidence of their content and legal effect and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose, and include limitations and responsibility to this Defendant This Defendant is not responsible for any warranties or representations of purchases and resellers of its products

FOR A THIRTY-NINETH DEFENSE

95 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

96 That the remedies of common law indemnity and contribution are mutually exclusive pursuant to the provisions of South Carolina Code Section 15-

38-20(f), 1976 as amended and the assertion of any right to indemnity bars the right to recover contribution

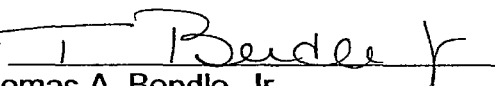
FOR A FORTIETH DEFENSE

97 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

98 That to the extent that the Plaintiff has failed to comply with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860) including the provision of the required notice to the Defendant, and the provisions to the Defendant of an opportunity to cure, the Plaintiff's action must be stayed and/or otherwise barred

WHEREFORE, having fully answered the Complaint of the Plaintiff(s), these Defendant(s) pray that the same be dismissed with costs to these Defendant(s)

HOWELL, GIBSON & HUGHES, P A

By 

Thomas A Bendle Jr

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for R Design Construction Co ,
LLC and Carl K Aten, Jr individually
and in his capacity as principal and
agent of R Design Construction Co
LLC

May 23, 2006
Beaufort South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels last known address on 23 day of May 2006

By I. Bender

2006 MAY 24 4:11 08
CLERK OF COURT
DEAFORD ST

9965
TB

May 29, 2007

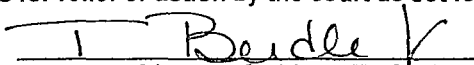
CLERK OF COURT OF COMMON PLEAS FOR BEAUFORT COUNTY

RE 16 Jade Street LLC vs R Design Construction Co , LLC and Carl K
Aten, Jr Catterson & Sons Construction and Michael S
Catterson

SUBJECT In accordance with Rule 26 of the Circuit Court Rules, the following
pleadings are attached for filing

_____	Affirmation
_____	Affidavit of Service
_____	Temporary Restraining Order
_____	Rule to Show Cause
_____	Lis Penden-No filing Fee
_____	Summons
_____	Summons (Complaint Not Served)
_____	Complaint
_____	Verification
_____	Answer
_____	Answer and Counterclaim
_____	Interrogatories
_____	Reply to _____
X _____	Motion to Amend Answer
_____	Notice of Right to Preseizure Hearing
_____	Demand for Preseizure Hearing
_____	Notice of Special Appearance & Demand
_____	Affidavit
_____	Bond
_____	Petition for _____
_____	Order _____
_____	Judgment
_____	Mechanic s Lien-No filing fee
_____	Order to End Case
_____	Affidavit (filing more than 10 days after service)
_____	Filing Fee for Initial Pleadings (\$100 00)
_____	Certificate of Mailing
_____	Notice of Deposition
_____	Motion Slip
_____	Other _____

JURY _____	NON-JURY _____
CASE # _____	06-CP-07-866
FROM	THOMAS A BENDLE JR
	HOWELL GIBSON AND HUGHES, P A
	POST OFFICE BOX 40
	BEAUFORT, SOUTH CAROLINA 29901-0040
Special instructions to Clerk Please return a clocked copy	

16 Jade Street LLC ☐ Plaintiff vs R Design Construction Co LLC and Carl Aten Jr ☐ Defendant Check box above indicating submitting party		Civil Action No 06-CP-07-866 MOTION INFORMATION FORM AND COVER SHEET	
Name SC Bar No and address of Plaintiff's/Opposing attorney E Mitchell Griffith Post Office Box 570 Beaufort SC 29901-0570 Thomas J Finn Post Office Box 6003 Hilton Head Island SC 29938-6003 (843) 521-4242		Name SC Bar No and address of Defendant's attorney Thomas A Bendle Jr SC Bar No 69561 P O Box 40 Beaufort SC 29901 hghpa@islc.net 843-522-2400 843-522-2429 fax	
☐ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III) ☐ FORM MOTION, NO HEARING REQUESTED (completed SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I Hearing Information Nature of Motion to Amend Answer Estimated Time Needed 15 minutes Court Reporter Needed No			
SECTION II Motion Type ☐ Written Motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached proposed order  Signature of Attorney for Plaintiff/Defendant May 29, 2007			
SECTION III Motion Fee ☐ PAID - AMOUNT \$25.00 ☐ EXEMPT ☐ Rule to Show Cause in child or spousal support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of Court, or, reduced in writing from motion made in open court per judge's instructions Name of Court Reporter _____ ☐ Other			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other		CODE _____ DATE _____	

CLERK'S VER FICATION

DATE FILED

Collected by _____
(print name)

☐ MOTION FEE COLLECTED _____

☐ CONTESTED – AMOUNT DUE _____

SCCA/233 (10/2004)

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION
COMPANY AND CARL R ATEN,
JR 'S NOTICE OF MOTION AND
MOTION TO AMEND ANSWER

01 MAY 31 PM 12:53
CLERK OF COURT
E. MITCHELL GRIFFITH

TO E MITCHELL GRIFFITH, ESQUIRE, ATTORNEY FOR PLAINTIFF(S)

The Defendant, R Design Construction Company, LLC and Carl R Aten, Jr, individual and in his capacity as principal and agent of R Design Construction Company, LLC , by and through its undersigned counsel, Howell, Gibson and Hughes, P A , will appear before the Beaufort Court of Common Pleas, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard and then and there move for an Order authorizing said Defendant(s) to file and serve an Amended Answer asserting those defenses as set forth in Exhibit "A" attached hereto and made a part hereof The within motion, made pursuant to the provisions of Rules 14 and 15 of the South

Carolina Rules of Civil Procedure, is premised upon the following grounds

a This Defendant(s) is informed and believes that the requested amendment will not prejudice any of the remaining parties and that such amendment is in the interest of justice

HOWELL, GIBSON & HUGHES, P A

By Thomas A Bendle Jr
Thomas A Bendle Jr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendant R Design
Construction Company LLC and Carl R
Aten, Jr , individual and in his capacity
as principal and agent of R Design
Construction Company, LLC

Beaufort, South Carolina
May 16, 2007

CERTIFICATE OF SERVICE

I certify that I served the foregoing Notice of Motion and Motion to Amend Answer upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels last known address on 29 day of May 2007

By Thomas A Bendle Jr
Thomas A Bendle Jr

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☐ I have consulted with opposing counsel and have been unable to resolve the matter
- ☐ Consultation with opposing counsel would serve no useful purpose or is not required
- ☐ Consultation with opposing counsel could not be timely held
- ☐ I certify that there is no duty of consultation for the attached motion (to dismiss for summary judgment for new trial for judgment NOV in real estate foreclosures or with pro se litigants)

EXHIBIT "A"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,

Plaintff,

vs

R DESIGN CONSTRUCTION CO
LLC and CARL R ATEN JR
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO
LLC and CARL R ATEN JR ,

Third Party Plaintiff

v

KINTZ ELECTRIC,

Third-Party Defendant

AMENDED ANSWER OF R
DESIGN CONSTRUCTION CO ,
LLC, AND CARL R ATEN, JR ,
BY WAY OF CROSS CLAIM AS
TO CATTERSON & SONS
CONSTRUCTION AND MICHAEL
S CATTERSON, AND BY WAY
OF THIRD PARTY COMPLAINT
AS TO KINTZ ELECTRIC

The Defendant(s), R Design Construction Co LLC and Carl Aten Jr ,
answering the Complaint of the Plaintiff(s), would allege unto this Honorable
Court as follows

FOR A FIRST DEFENSE

1 That each and every allegation contained in the Plaintiff(s)'s Complaint not
specifically admitted herein is denied, and strict proof demanded thereof

2 That upon information and belief, these Defendants admit paragraph 1 of
Plaintiff's Complaint

3 That these Defendants admit paragraph 2 of Plaintiff's Complaint

4 That upon information and belief, these Defendants admit paragraph 3 of
Plaintiff's Complaint

5 Paragraph 4 of Plaintiff's Complaint fails to state an allegation of fact
against these Defendants and accordingly an Answer is not required To
the extent an allegation of fact is alleged these Defendants deny same

6 These Defendants admit paragraph 5 of Plaintiff's Complaint to the extent
that the allegation alleges that they entered into a contract with R Design
to supervise the construction of a two-story condominium residence with
four units at Lot 19 Celadon 16 Jade Street Lady's Island in Beaufort,
South Carolina according to plans and specifications

7 These Defendants admit paragraph 6 of Plaintiff's Complaint

8 These Defendants admit only so much of Paragraph 7 as alleges that they
entered into agreements with one or more subcontractors and material
suppliers pursuant to which said subcontractors and material suppliers
agreed to provide labor and materials for the application and installation of
various products and components which became a part of and were
incorporated into Plaintiff's condominium building which include but are

not limited to, foundation, framing and masonry block work. These Defendants are without sufficient known to form a belief as to the truth or falsity contained in the remaining portion of Paragraph 7 of Plaintiff's Complaint as it relates to express and implied warranties of materialmen and subcontractors and therefore denies same and demands strict proof thereof.

9 These Defendants deny paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

10 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore, denies the allegations contained in paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.

11 Paragraph 10 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants and accordingly an Answer is not required. To the extent an allegation of fact is alleged these Defendants deny same.

12 These Defendants admit paragraph 11 of Plaintiff's Complaint.

13 These Defendants deny paragraph 12 of Plaintiff's Complaint and demand strict proof thereof.

14 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore denies the allegations contained in paragraph 13 of the Plaintiff's Complaint and demand strict proof thereof.

- 15 Paragraphs 14 through 21 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 16 These Defendants deny paragraphs 22 and 23 of Plaintiff's Complaint and demand strict proof thereof
- 17 These Defendants deny paragraph 24 of Plaintiff's Complaint and demand strict proof thereof
- 18 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore denies the allegations contained in paragraph 25 of the Plaintiff's Complaint and demand strict proof thereof
- 19 Paragraph 26 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 20 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore, denies the allegations contained in paragraph 27 of the Plaintiff's Complaint and demand strict proof thereof

FOR A SECOND DEFENSE
(Merger)

- 21 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

22 That these Defendant(s) would show that if any representations were made to the Plaintiffs during the course of negotiations between the parties, which representations are hereby specifically denied, then all representations merged into the contract between the parties

FOR A THIRD DEFENSE
(Statutes of Limitations)

23 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

24 That these Defendant(s) would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations

FOR A FOURTH DEFENSE
(Notice)

25 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

26 That these Defendant(s) would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which the Complaint and nonetheless proceeded to purchase the subject property
Such circumstances constitute a complete bar to the Plaintiffs' claims

FOR A FIFTH DEFENSE
(Insufficient Facts to Constitute Cause of Action)

27 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

28 That these Defendant(s) would show that the allegations of the Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against these Defendant(s)

FOR A SIXTH DEFENSE

- 29 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 30 That these Defendant(s) would show that the Plaintiffs had no right or entitlement to rely upon any representations allegedly made by the Defendant(s), which representations are hereby specifically denied

FOR A SEVENTH DEFENSE
(Parole Evidence)

- 31 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 32 That these Defendant(s) would show that any and all representations alleged made by these Defendant(s), which representations are hereby specifically denied, constitute parole evidence outside the terms of the contract for the sale and purchase of real estate, and therefore cannot serve to supplement the written contract

FOR AN EIGHTH DEFENSE
(Sole Negligence)

- 33 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 34 That these Defendant(s) would show that the damages alleged by the Complaint, which damages are hereby specifically denied, were the sole and proximate result of the intervening and/or superseding negligence and/or intervening and/or superseding willful acts and/or recklessness of third persons or parties, which intervening and/or superseding negligence

and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendant(s)

FOR A NINTH DEFENSE
(Contributory Negligence)

35 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

36 That these Defendant(s) would show that the damages alleged by the Plaintiffs, which damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton negligent careless and grossly negligent acts and conduct of the Plaintiffs which actions combined and concurred with any negligence on the part of these Defendant(s) which negligence is hereby specifically denied to produce such damages, without which the same would not have occurred

FOR A TENTH DEFENSE
(Comparative Negligence)

37 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

38 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and damages are hereby specifically denied, were due to and caused by the reckless willful wanton negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part

of these Defendant(s), which acts on the part of these Defendant(s) are hereby specifically denied to produce such injury and/or damages, and without which the same would not have occurred

FOR AN ELEVENTH DEFENSE
(Doctrine of Laches)

- 39 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 40 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the doctrine of laches

FOR A TWELFTH DEFENSE
(Assumption of the Risk)

- 41 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 42 That these Defendant(s) would show that the Plaintiffs, by and through their actions and/or inactions with regard to the subject alleged in the Complaint have assumed the risk and/or accepted all portions of any damages alleged by the Plaintiffs and such assumption of risk and/or acceptance is a bar to claims against these Defendant(s)

FOR A THIRTEENTH DEFENSE
(Failure to Mitigate)

- 43 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 44 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs, which injuries and/or damages are hereby

specifically denied, were due to and caused by the Plaintiffs' failure to mitigate which failure is a complete bar to recovery by the Plaintiffs

FOR A FOURTEENTH DEFENSE
(Doctrine of Estoppel)

45 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

46 That these Defendant(s) would show that the Plaintiffs are barred by the doctrine of estoppel from asserting claims against these Defendant(s)

FOR A FIFTEENTH DEFENSE
(Doctrine of Waiver)

47 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

48 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the doctrine of waiver

FOR A SIXTEENTH DEFENSE
(Economic Loss Rule)

49 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

50 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the economic loss rule

FOR A SEVENTEENTH DEFENSE
(Sole Negligence of Third Parties)

51 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

52 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs which injuries and/or damages are hereby specifically denied, would due to and were the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct these Defendant(s) are not liable

FOR A EIGHTEENTH DEFENSE
(Exclusion of Warranty)

53 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

54 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendant(s)

FOR A NINETEENTH DEFENSE
(Modification of Warranties)

55 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

56 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively modified by these Defendant(s)

FOR A TWENTIETH DEFENSE
(Limitation of Warranties)

57 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

58 That these Defendant(s) would show that any and all applicable
warranties have been properly and effectively limited by these
Defendant(s)

FOR A TWENTY-FIRST DEFENSE
(Excluded Remedies)

59 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

60 That these Defendant(s) would show that the available remedies have
been properly and effectively excluded by these Defendant(s)

FOR A TWENTY-SECOND DEFENSE
(Modification of Remedies)

61 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

62 That these Defendant(s) would show that all applicable remedies have
been properly and effectively modified by these Defendant(s)

FOR A TWENTY-THIRD DEFENSE
(Limitation of Remedies)

63 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

64 That these Defendant(s) would show that all available remedies have
been properly and effectively limited by these Defendant(s)

FOR A TWENTY-FOURTH DEFENSE
(Disclaimer of Warranties)

65 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

66 That these Defendant(s) would show that any and all applicable warranties have been properly and effectively disclaimed by these Defendant(s)

FOR A TWENTY-FIFTH DEFENSE
(Disclaimer of Remedies)

67 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

68 That these Defendant(s) would show that any and all available remedies have been properly and effectively disclaimed by these Defendant(s)

FOR A TWENTY-SIXTH DEFENSE
(Resolution by Arbitration)

69 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

70 That these Defendant(s) would show that the claims against these Defendant(s) are subject to resolution by arbitration and the instant action against these Defendant(s) should therefore be dismissed

FOR A TWENTY-SEVENTH DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

71 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

72 That these Defendant(s) would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Complaint, which failure is a bar to all claims against these Defendant(s)

FOR A TWENTY-EIGHTH DEFENSE

(Failure to comply with Statutory Conditions Precedent)

- 73 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 74 That these Defendant(s) would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Complaint

FOR A TWENTY-NINETH DEFENSE

(Failure to give notice of breach of warranty)

- 75 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 76 That these Defendant(s) would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty, which breach of warranty or warranties is hereby specifically denied

FOR A THIRTIETH DEFENSE

(Reservation and Non-Waiver)

- 77 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 78 That these Defendant(s) do not waive, and hereby specifically reserves, any additional and/or further defenses, the propriety of which may be indicated by additional information which may be acquired by these Defendant(s) or its/their counsel during the course of discovery or otherwise

FOR A THIRTY-FIRST DEFENSE

(Joint Tort Feasors Act)

79 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

80 That these Defendant(s) would show that in the event of a verdict
rendered jointly against these Defendant(s) and the remaining
Defendant(s), these Defendant(s) are entitled to contribution from said
remaining Defendant(s) pursuant to the provisions of the South Carolina
Uniform Contribution Among Joint Tort Feasors Act and/or other
provisions of law

FOR A THIRTY-SECOND DEFENSE
(Protections under Constitution(s))

81 That each and every allegation set forth in preceding paragraphs hereof is
hereby re-alleged and reiterated as fully as if set forth herein

82 That these Defendant(s) would show that the imposition of punitive
damages is violative of protections afforded by the 5th 8th and 14th and/or
other amendments to the United States and/or South Carolina
constitutions

FOR A THIRTY-THIRD DEFENSE
(Statutes of Repose)

83 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

84 That these Defendant(s) would show that the Plaintiffs' claims are barred
by the applicable statute and/or statutes of repose

FOR A THIRTY-FOURTH DEFENSE
(Statute of Frauds)

85 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

86 That these Defendant(s) would show that the claims of the Plaintiffs are
barred by the Statute of Frauds

FOR A THIRTY-FIFTH DEFENSE
(Learned Intermediaries and Sophisticated User Doctrine)

87 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

88 Without admitting its products were installed on the subject structure, this
Defendant submits that the products installed on the structure were sold to
learned intermediaries or sophisticated users who, in turn, through the
exercise of their own knowledge and expertise should have known and
appreciated the proper uses and requirements of the products and
therefore this Defendant pleads the Learned Intermediary and
Sophisticated User Doctrines as a complete defense to this action

FOR A THIRTY-SIXTH DEFENSE
(Spoliation of Evidence)

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hereof is hereby re-alleged and reiterated as fully as if set forth herein

90 Without admitting that its products were installed on the subject structure
this Defendant submits that repairs may have been made to the subject
structure and further, that the alleged defective products may have been
destroyed To the extent that this Defendant has not been afforded the
opportunity to inspect and examine the alleged defective products and/or

their components, and therefore this Defendant pleads the Spoliation of Evidence Doctrine as a complete defense to this action

FOR A THIRTY-SEVENTH DEFENSE

91 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

92 That all claims against this Defendant, based on warranty or the Uniform Commercial Code are barred because among other considerations the transaction at issue is a contract primarily for services rather than goods and this Defendant's products, once installed in improvements to real property cease to be goods

FOR A THIRTY-EIGHTH DEFENSE

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94 That this Defendant would show that it has made no representations of warranties inducing the purchase for use of its products by Plaintiff or others except such warranties which may be express and in writing and such express warranties are the only and best evidence of their content and legal effect, and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose and include limitations and responsibility to this Defendant This Defendant is not responsible for any warranties or representations of purchases and resellers of its products

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exclusive pursuant to the provisions of South Carolina Code Section 15-
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FOR A FORTIETH DEFENSE

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98 That, to the extent that the Plaintiff has failed to comply with the
requirements of the South Carolina Notice and Opportunity to Cure
Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860)
including the provision of the required notice to the Defendant and the
provisions to the Defendant of an opportunity to cure the Plaintiff's action
must be stayed and/or otherwise barred

**FURTHER ANSWERING THE COMPLAINT
AND AS A CROSS CLAIM AGAINST
CATTERSON & SONS CONSTRUCTION AND
MICHAEL S. CATTERSON, DEFENDANT
ALLEGES AND SAYS**

104 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

105 That this Defendant is informed and believes that Catterson & Sons
Construction (Catterson & Sons"), for whom Michael S. Catterson
(Catterson") is principal and agent, exists under the law of the State of

South Carolina and is engaged in the business of subcontractor labor and was retained to perform such at the subject property to this litigation

106 That Catterson & Sons and Catterson have been subject to suit as a party Defendant, by the Plaintiff, 16 Jade Street, LLC, seeking compensation for damages allegedly occasioned by defects in the services and/or materials provided in connection with construction of the subject project The specific allegations against Catterson & Sons and Catterson are set forth in that certain Complaint 16 Jade Street, LLC, dated April 11, 2006, and designated in the Court of Common Pleas for Beaufort County South Carolina by Civil Action number 06-CP-07-866, the contents of which Complaint (subject to the defenses set forth herein) are fully incorporated herein by reference

107 That R Design Construction Co , LLC by its within Answer has specifically denied the material allegations of the Complaint and asserted relative affirmative defenses

**FOR A FIRST CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S CATTERSON**

108 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

109 That to the extent, if any, that R Design Construction Co , LLC, is held liable to the Plaintiff in this action such liability would be a direct and proximate result of the wrongful acts, omissions, negligence and/or representations of Catterson & Sons and Catterson in this action which

have damaged R Design Construction Co , LLC, as R Design Construction Co , LLC, has been subjected to liability, and it has incurred consequential damages in having to expend attorney's fees and costs in defending this action

110 That to the extent if any, that the subject residence any of its component parts, the specifications and/or installation instructions provided by Catterson & Sons and Catterson, or other materials and/or services were defective or deficient in design, engineering materials, manufacture, or otherwise, and/or were not merchantable and/or fit for their particular and/or prospective purposes, and/or were not of compliance with purported representations and/or warranties such defects and/or deficiencies would be the result of the breach of the express and implied contractual obligations and/or warranties that Catterson & Sons and Catterson provided, damaging R Design Construction Co LLC as R Design Construction Co LLC, has been subjected to liability, and has incurred consequential damages in having to expend attorney's fees and costs in defending this action

111 That as R Design Construction Co , LLC, is entitled to full indemnification from Catterson & Sons and Catterson for any liability which as R Design Construction Co LLC is found to have to the plaintiff and/or to others in this action and as R Design Construction Co , LLC, is entitled to damages for Catterson & Sons' and Catterson's negligence as aforesaid and Catterson & Sons' and Catterson's breach of express and/or implied

warranties, and/or for Catterson & Sons and Catterson's breach of contract, and/or for Catterson & Sons' and Catterson's damage to property entitling as R Design Construction Co , LLC to recover Catterson & Sons and Catterson those attorneys fees, costs and other expenses incurred by as R Design Construction Co , LLC, in defending against the Plaintiff's action, and entitling as R Design Construction Co , LLC, to recover from Catterson & Sons and Catterson any sums for which it may be held liable to the Plaintiff and/or to others, whether by judgment, settlement, or otherwise

**FOR A SECOND CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S CATTERSON**

- 112 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 113 The Defendant R Design Construction Co , LLC by its within Answer has denied the material allegations of the Complaint To the extent however that such allegations may be established, such would indicate that Catterson & Sons and Catterson were negligent careless, and reckless in the design, manufacture supervision inspection and/or supplying of services and/or products as outlined hereinabove and including those provided in conjunction with construction of the subject residence, and incorporated into the Plaintiff's building
- 114 That as a direct and proximate result of such negligence, carelessness, and recklessness, R Design Construction Co , LLC, has been damaged in

the amount of many monies it is adjudged to owe to the Plaintiff or to others in this action, by which it pays the Plaintiff and/or others is settlement of the Plaintiff's claims, or the claims of others plus the costs of investigation and defense of this action, including but not limited to attorneys' fees

**FOR A THIRD CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S CATTERSON**

115 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

116 The Defendant, R Design Construction Co LLC by its within Answer, has denied the material allegations of the Complaint To the extent, however, that such allegations may be established such would indicate Catterson & Sons and Catterson, expressly and/or impliedly warranted that its products used in construction of the subject residence would be of the highest quality and in performance with generally accepted standards of the building components architecture and/or construction industries and that the materials, specifications instructions, etc would comply with generally accepted principals in the industries Catterson & Sons and Catterson expressly and/or impliedly warranted that the materials they provided were suitable and fit for use in construction of the subject residence were merchantable, and/or otherwise appropriate for use in construction of the residence The Plaintiff by its Complaint, has alleged

that Catterson & Sons and Catterson breached these express and/or implied warranties

117 That to the extent that it is established that the materials provided by Catterson & Sons and Catterson were not merchantable fit, or otherwise as warranted such showing would establish a breach of the said warranties by Catterson & Sons and Catterson As a result of any such breaches of warranties, R Design Construction Co LLC, has incurred damages in the amount of any monies that is adjudged to owe to the Plaintiff or others, or which it pays the Plaintiff or other parties in settlement of the Plaintiff's claims or those of other entities plus the costs of investigation on the defense of this claim, including attorneys' fees

118 That upon information or belief, R Design Construction Co , LLC is entitled to judgment against Catterson & Sons and Catterson in the amount of any monies that is adjudged to owe to the Plaintiff or others, or which it pays the Plaintiff or other parties in settlement of the Plaintiff's claims, or the claims of others, as well as costs and fees incurred in investigation defense and/or settlement of this claim

**FOR A FOURTH CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S CATTERSON**

119 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

120 That R Design Construction Co , LLC is informed and believes that if it is found liable to the Plaintiff or to others then and in that event that

Catterson & Sons and Catterson are joint tortfeasors and R Design Construction Co LLC is entitled to contribution from Catterson & Sons and Catterson, jointly or separately, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint-Tortfeasors Act, Section 15-38-10 et seq, South Carolina Code of Laws 1976, as amended

**FOR A FIFTH CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S CATTERSON**

- 121 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 122 That heretofore R Design Construction Co, LLC entered into an agreement with Catterson & Sons and Catterson whereby Catterson & Sons and Catterson agreed, in consideration of payment by R Design Construction Co LLC to provide various services to be used in conjunction with construction of the subject property, which services would be in accordance with the plan's specifications industry standards, code requirements, contract documents, and otherwise suitable for use in conjunction with the contemplated construction
- 123 That R Design Construction Co, LLC paid Catterson & Sons and Catterson the consideration required under the aforesaid contract
- 124 That the Plaintiff, by its Complaint, has alleged that the services provided by Catterson & Sons and Catterson were not in accordance with the requirements of said contract To the extent that the allegations of the

Complaint may be established Catterson & Sons and Catterson is in material breach of its contract with R Design Construction Co , LLC

125 That it is the result of the aforesaid breach and/or breaches of contract and/or warranty that R Design Construction Co , LLC, has incurred damages in the amount of any monies that is adjudged to owe to the Plaintiff and/or to others, and/or which it pays to the Plaintiff and/or others in settlement of the Plaintiff's claims, or the claims of others plus the costs of investigation and the costs of defense of this claim including attorneys' fees

126 That upon information and belief R Design Construction Co , LLC is entitled to judgement against Catterson & Sons and Catterson in the amount of any monies it is adjudged to owe to the Plaintiff and/or to others and/or which it pays to the plaintiff and/or others in settlement of such claims as well as costs and fees incurred in investigation defense, and/or settlement of this claim, including attorneys' fees

**FURTHER ANSWERING THE COMPLAINT
AND AS A THIRD PARTY COMPLAINT AGAINST
KINTZ ELECTRIC, THE THIRD-PARTY
PLAINTIFF ALLEGES AND SAYS**

127 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

128 That the Third-Party Plaintiff is informed and believes that Third-Party Defendant Kintz Electric (Kintz) is an entity organized under the laws of the State of South Carolina and is engaged in the business of providing services relating to the installation of electrical goods in structures This

Third-Party Plaintiff contracted with Kintz to perform duties at the subject property. Plaintiff has sued Third-Party Plaintiff R Design claiming damages due to the alleged defective work performed by Third-Party Defendant. A copy of the Plaintiff's Complaint is attached hereto and is incorporated herein by reference as Exhibit 1.

- 129 This Third-Party Plaintiff has denied all substantive allegations against it which were made by the Plaintiff.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

- 130 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff R Design Construction Co. LLC, such liability is because Kintz was negligent, careless and reckless in the design, supervision, construction, inspection or supplying of the work or material incorporated into the subject building.

- 130 As a direct and proximate result of such negligence, carelessness and recklessness, Third-Party Plaintiff has been damaged in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim.

- 131 Upon information and belief, Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims, as well as the fees and costs incurred in the investigation, defense and settlement of this claim.

**FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)**

- 132 Kintz expressly and impliedly warranted to Third-Party Plaintiff that all work performed by it would be performed in a careful, diligent and workmanlike manner, that any materials and/or services designed, supplied or sold by it for use on the project would be merchantable and fit for their intended or specific purpose
- 133 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff R Design Construction Co , LLC, such liability is because Kintz breached his implied and/or express warranties of merchantability workmanlike service and/or fitness for a particular intended purpose in the construction of the project
- 134 As a result of these breaches of warranties Third-Party Plaintiff has incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims plus the cost of investigating and defending this claim
- 135 Upon information and belief, Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation defense and settlement of this claim

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

136 Upon information and belief, Third-Party Plaintiff R Design Construction Co , LLC, contracted with Kintz to perform work related to the electrical systems in the subject building in a careful, diligent and workmanlike manner, and that any materials and/or services designed supplied or sold by it for use on the project would be merchantable and fit for their intended or specific purpose

137 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff, R Design Construction Co , LLC, such liability is because Kintz breached his contract with R Design Construction Co LLC

138 As a result of this breach of contract of Third-Party Plaintiff has incurred damages in the amount of any money that they are adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim

139 Upon information and belief, Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense and settlement of this claim

WHEREFORE, having fully answered the Complaint of the Plaintiff 16 Jade Street, LLC, and having cross-claimed against Catterson & Sons Construction and Michael S Catterson, R Design Construction Co , LLC, prays that the court inquire into the matters in fact set forth herein and issue its order in the following particulars

- A) That the Complaint be dismissed as to the Defendant R Design Construction Co , LLC,
- B) For judgment in favor of , R Design Construction Co LLC, and against the Plaintiffs,
- C) For an award in favor of the Defendant, R Design Construction Co LLC on its cross-claims for the amount of costs, inclusive of attorneys' fees, defending against the claims of the Plaintiff and/or others in this action, or alternatively
- D) Should the Defendant R Design Construction Co LLC be found liable to the plaintiff and/or to others or should R Design Construction Co , LLC consent to an amicable settlement of the claims of the Plaintiffs and/or others, then and in that event for judgment in the amount of such award or settlement together with costs and fees including attorneys fees, against cross-claim Defendants, or alternatively
- E) That, R Design Construction Co , LLC obtain contribution from the cross-claim Defendants in the event that they are found liable to the Plaintiff and/or to others,
- F) For judgment against the cross-claim Defendants in the amount of any liability which R Design Construction Co , LLC is found to have to the plaintiff and/or to others in this action, and/or to which R Design Construction Co , LLC may be bound to pay as a result of any judgment and/or settlement, and R Design Construction Co LLC

further prays for judgment against the cross-claim Defendants, requiring said Defendants to defend, and R Design Construction Co LLC, against any liability to which R Design Construction Co , LLC may be subjected to the Plaintiff and/or to others in this action, specifically to include all attorneys' fees costs, and/or other expenses incurred in conjunction with the instant litigation

HOWELL, GIBSON & HUGHES, P A

By _____
Thomas A Bendle, Jr
Post Office Box 40
Beaufort SC 29901
(843) 522-2400
Attorney for R Design Construction Co
LLC

Beaufort, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,

Third Party Plaintiffs

vs

KINTZ ELECTRIC,

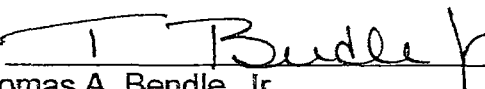
Third Party Defendant

THIRD PARTY SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Third Party
Complaint in this action, a copy of which is hereby served upon you, and to serve
a copy of your Answer to said Third Party Complaint on the subscriber hereto at

his office at 25 Rue Du Bois, Lady's Island P O Box 40, Beaufort, South Carolina, 29901-0040, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Third Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third Party Complaint

HOWELL, GIBSON & HUGHES, P A

By 
Thomas A Bendle Jr
Post Office Box 40
Beaufort SC 29901
(843) 522-2400
Attorney for Defendant/Third Party
Plaintiff

Beaufort, South Carolina

September 10, 2007

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS

)

) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET LLC

Plaintiff

vs

R DESIGN CONSTRUCTION CO ,
LLC and CARL R ATEN JR
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO LLC
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION

Defendants

R DESIGN CONSTRUCTION CO
LLC and CARL R ATEN JR

Third Party Plaintiff

v

KINTZ ELECTRIC

Third-Party Defendant

AMENDED ANSWER OF R
DESIGN CONSTRUCTION CO ,
LLC, AND CARL R ATEN JR,
BY WAY OF CROSS CLAIM AS
TO CATTERSON & SONS
CONSTRUCTION AND MICHAEL
S CATTERSON, AND BY WAY
OF THIRD PARTY COMPLAINT
AS TO KINTZ ELECTRIC

The Defendant(s), R Design Construction Co LLC and Carl Aten Jr
answering the Complaint of the Plaintiff(s), would allege unto this Honorable
Court as follows

FOR A FIRST DEFENSE

- 1 That each and every allegation contained in the Plaintiff(s)'s Complaint not
specifically admitted herein is denied and strict proof demanded thereof
- 2 That upon information and belief these Defendants admit paragraph 1 of
Plaintiff's Complaint
- 3 That these Defendants admit paragraph 2 of Plaintiff's Complaint
- 4 That upon information and belief these Defendants admit paragraph 3 of
Plaintiff's Complaint
- 5 Paragraph 4 of Plaintiff's Complaint fails to state an allegation of fact
against these Defendants, and accordingly an Answer is not required To
the extent an allegation of fact is alleged these Defendants deny same
- 6 These Defendants admit paragraph 5 of Plaintiff's Complaint to the extent
that the allegation alleges that they entered into a contract with R Design
to supervise the construction of a two-story condominium residence with
four units at Lot 19 Celadon, 16 Jade Street, Lady's Island in Beaufort,
South Carolina according to plans and specifications
- 7 These Defendants admit paragraph 6 of Plaintiff's Complaint
- 8 These Defendants admit only so much of Paragraph 7 as alleges that they
entered into agreements with one or more subcontractors and material
suppliers pursuant to which said subcontractors and material suppliers
agreed to provide labor and materials for the application and installation of
various products and components which became a part of and were
incorporated into Plaintiff's condominium building which include but are

not limited to, foundation framing and masonry block work. These Defendants are without sufficient known to form a belief as to the truth or falsity contained in the remaining portion of Paragraph 7 of Plaintiff's Complaint as it relates to express and implied warranties of materialmen and subcontractors and therefore denies same and demands strict proof thereof.

9 These Defendants deny paragraph 8 of Plaintiff's Complaint and demand strict proof thereof.

10 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore denies the allegations contained in paragraph 9 of the Plaintiff's Complaint and demand strict proof thereof.

11 Paragraph 10 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required. To the extent an allegation of fact is alleged these Defendants deny same.

12 These Defendants admit paragraph 11 of Plaintiff's Complaint.

13 These Defendants deny paragraph 12 of Plaintiff's Complaint and demand strict proof thereof.

14 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore denies the allegations contained in paragraph 13 of the Plaintiff's Complaint and demand strict proof thereof.

- 15 Paragraphs 14 through 21 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 16 These Defendants deny paragraphs 22 and 23 of Plaintiff's Complaint and demand strict proof thereof
- 17 These Defendants deny paragraph 24 of Plaintiff's Complaint and demand strict proof thereof
- 18 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and, therefore denies the allegations contained in paragraph 25 of the Plaintiff's Complaint and demand strict proof thereof
- 19 Paragraph 26 of Plaintiff's Complaint fails to state an allegation of fact against these Defendants, and accordingly, an Answer is not required To the extent an allegation of fact is alleged these Defendants deny same
- 20 These Defendants lack sufficient information as to the nature and extent of the Plaintiff's injuries to form a belief and therefore denies the allegations contained in paragraph 27 of the Plaintiff's Complaint and demand strict proof thereof

FOR A SECOND DEFENSE
(Merger)

- 21 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

22 That these Defendant(s) would show that if any representations were made to the Plaintiffs during the course of negotiations between the parties which representations are hereby specifically denied, then all representations merged into the contract between the parties

FOR A THIRD DEFENSE
(Statutes of Limitations)

23 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

24 That these Defendant(s) would show that all claims asserted by the Plaintiffs are barred by the applicable statute and/or statutes of limitations

FOR A FOURTH DEFENSE
(Notice)

25 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

26 That these Defendant(s) would show that the Plaintiffs had constructive knowledge and/or actual knowledge of those conditions of which the Complaint and nonetheless proceeded to purchase the subject property
Such circumstances constitute a complete bar to the Plaintiffs claims

FOR A FIFTH DEFENSE
(Insufficient Facts to Constitute Cause of Action)

27 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

28 That these Defendant(s) would show that the allegations of the Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against these Defendant(s)

FOR A SIXTH DEFENSE

29 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

30 That these Defendant(s) would show that the Plaintiffs had no right or
entitlement to rely upon any representations allegedly made by the
Defendant(s) which representations are hereby specifically denied

FOR A SEVENTH DEFENSE
(Parole Evidence)

31 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

32 That these Defendant(s) would show that any and all representations
alleged made by these Defendant(s), which representations are hereby
specifically denied, constitute parole evidence outside the terms of the
contract for the sale and purchase of real estate and therefore cannot
serve to supplement the written contract.

FOR AN EIGHTH DEFENSE
(Sole Negligence)

33 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

34 That these Defendant(s) would show that the damages alleged by the
Complaint which damages are hereby specifically denied, were the sole
and proximate result of the intervening and/or superseding negligence
and/or intervening and/or superseding willful acts and/or recklessness of
third persons or parties, which intervening and/or superseding negligence

and/or willful acts and/or other actions are a bar to the causes of action asserted against these Defendant(s)

FOR A NINTH DEFENSE
(Contributory Negligence)

35 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

36 That these Defendant(s) would show that the damages alleged by the Plaintiffs which damaged are hereby specifically denied were due to and caused by the reckless, willful wanton negligent, careless and grossly negligent acts and conduct of the Plaintiffs, which actions combined and concurred with any negligence on the part of these Defendant(s) which negligence is hereby specifically denied to produce such damages without which the same would not have occurred

FOR A TENTH DEFENSE
(Comparative Negligence)

37 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

38 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs which injuries and damages are hereby specifically denied, were due to and caused by the reckless, willful, wanton, negligent careless and grossly negligent acts and conduct of the Plaintiffs, which acts were greater than any acts of negligence on the part

of these Defendant(s), which acts on the part of these Defendant(s) are hereby specifically denied, to produce such injury and/or damages and without which the same would not have occurred

FOR AN ELEVENTH DEFENSE
(Doctrine of Laches)

- 39 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 40 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the doctrine of laches

FOR A TWELFTH DEFENSE
(Assumption of the Risk)

- 41 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 42 That these Defendant(s) would show that the Plaintiffs, by and through their actions and/or inactions with regard to the subject alleged in the Complaint, have assumed the risk and/or accepted all portions of any damages alleged by the Plaintiffs and such assumption of risk and/or acceptance is a bar to claims against these Defendant(s)

FOR A THIRTEENTH DEFENSE
(Failure to Mitigate)

- 43 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 44 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs which injuries and/or damages are hereby

specifically denied were due to and caused by the Plaintiffs' failure to mitigate which failure is a complete bar to recovery by the Plaintiffs

FOR A FOURTEENTH DEFENSE
(Doctrine of Estoppel)

45 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

46 That these Defendant(s) would show that the Plaintiffs are barred by the doctrine of estoppel from asserting claims against these Defendant(s)

FOR A FIFTEENTH DEFENSE
(Doctrine of Waiver)

47 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

48 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the doctrine of waiver

FOR A SIXTEENTH DEFENSE
(Economic Loss Rule)

49 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

50 That these Defendant(s) would show that the claims of the Plaintiffs are barred by the economic loss rule

FOR A SEVENTEENTH DEFENSE
(Sole Negligence of Third Parties)

51 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

52 That these Defendant(s) would show that the injuries and/or damages alleged by the Plaintiffs which injuries and/or damages are hereby specifically denied would due to and were the proximate result of the sole negligence and/or recklessness of third persons or parties, for whose conduct these Defendant(s) are not liable

FOR A EIGHTEENTH DEFENSE
(Exclusion of Warranty)

53 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

54 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively excluded by these Defendant(s)

FOR A NINETEENTH DEFENSE
(Modification of Warranties)

55 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

56 That these Defendant(s) would show that any and/or all applicable warranties have been properly and effectively modified by these Defendant(s)

FOR A TWENTIETH DEFENSE
(Limitation of Warranties)

57 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

58 That these Defendant(s) would show that any and all applicable
warranties have been properly and effectively limited by these
Defendant(s)

FOR A TWENTY-FIRST DEFENSE
(Excluded Remedies)

59 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

60 That these Defendant(s) would show that the available remedies have
been properly and effectively excluded by these Defendant(s)

FOR A TWENTY-SECOND DEFENSE
(Modification of Remedies)

61 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

62 That these Defendant(s) would show that all applicable remedies have
been properly and effectively modified by these Defendant(s)

FOR A TWENTY-THIRD DEFENSE
(Limitation of Remedies)

63 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

64 That these Defendant(s) would show that all available remedies have
been properly and effectively limited by these Defendant(s)

FOR A TWENTY-FOURTH DEFENSE
(Disclaimer of Warranties)

65 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

66 That these Defendant(s) would show that any and all applicable warranties have been properly and effectively disclaimed by these Defendant(s)

FOR A TWENTY-FIFTH DEFENSE
(Disclaimer of Remedies)

67 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

68 That these Defendant(s) would show that any and all available remedies have been properly and effectively disclaimed by these Defendant(s)

FOR A TWENTY-SIXTH DEFENSE
(Resolution by Arbitration)

69 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

70 That these Defendant(s) would show that the claims against these Defendant(s) are subject to resolution by arbitration, and the instant action against these Defendant(s) should therefore be dismissed

FOR A TWENTY-SEVENTH DEFENSE
(Failure to Comply with Contractual Conditions Precedent)

71 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

72 That these Defendant(s) would show that the Plaintiffs have failed properly to comply with contractual conditions precedent to the assertion of those claims set forth in the Complaint which failure is a bar to all claims against these Defendant(s)

FOR A TWENTY-EIGHTH DEFENSE

(Failure to comply with Statutory Conditions Precedent)

- 73 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 74 That these Defendant(s) would show that the Plaintiffs have failed to comply with the statutory conditions precedent to the assertion of claims set forth in the Complaint

FOR A TWENTY-NINETH DEFENSE

(Failure to give notice of breach of warranty)

- 75 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 76 That these Defendant(s) would show that the Plaintiffs have failed to give reasonable notice of any alleged breach of any applicable warranty which breach of warranty or warranties is hereby specifically denied

FOR A THIRTIETH DEFENSE

(Reservation and Non-Waiver)

- 77 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 78 That these Defendant(s) do not waive and hereby specifically reserves any additional and/or further defenses the propriety of which may be indicated by additional information which may be acquired by these Defendant(s) or its/their counsel during the course of discovery or otherwise

FOR A THIRTY-FIRST DEFENSE

(Joint Tort Feasors Act)

79 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

80 That these Defendant(s) would show that in the event of a verdict
rendered jointly against these Defendant(s) and the remaining
Defendant(s), these Defendant(s) are entitled to contribution from said
remaining Defendant(s) pursuant to the provisions of the South Carolina
Uniform Contribution Among Joint Tort Feasors Act and/or other
provisions of law

FOR A THIRTY-SECOND DEFENSE
(Protections under Constitution(s))

81 That each and every allegation set forth in preceding paragraphs hereof is
hereby re-alleged and reiterated as fully as if set forth herein

82 That these Defendant(s) would show that the imposition of punitive
damages is violative of protections afforded by the 5th 8th and 14th and/or
other amendments to the United States and/or South Carolina
constitutions

FOR A THIRTY-THIRD DEFENSE
(Statutes of Repose)

83 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

84 That these Defendant(s) would show that the Plaintiffs' claims are barred
by the applicable statute and/or statutes of repose

FOR A THIRTY-FOURTH DEFENSE
(Statute of Frauds)

85 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

86 That these Defendant(s) would show that the claims of the Plaintiffs are
barred by the Statute of Frauds

FOR A THIRTY-FIFTH DEFENSE

(Learned Intermediaries and Sophisticated User Doctrine)

87 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

88 Without admitting its products were installed on the subject structure this
Defendant submits that the products installed on the structure were sold to
learned intermediaries or sophisticated users who, in turn through the
exercise of their own knowledge and expertise, should have known and
appreciated the proper uses and requirements of the products and
therefore this Defendant pleads the Learned Intermediary and
Sophisticated User Doctrines as a complete defense to this action

FOR A THIRTY-SIXTH DEFENSE

(Spoliation of Evidence)

89 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

90 Without admitting that its products were installed on the subject structure,
this Defendant submits that repairs may have been made to the subject
structure and further that the alleged defective products may have been
destroyed To the extent that this Defendant has not been afforded the
opportunity to inspect and examine the alleged defective products and/or

their components and therefore this Defendant pleads the Spoliation of Evidence Doctrine as a complete defense to this action

FOR A THIRTY-SEVENTH DEFENSE

91 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

92 That all claims against this Defendant, based on warranty or the Uniform Commercial Code are barred because among other considerations, the transaction at issue is a contract primarily for services rather than goods and this Defendant's products, once installed in improvements to real property cease to be goods

FOR A THIRTY-EIGHTH DEFENSE

93 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

94 That this Defendant would show that it has made no representations of warranties inducing the purchase for use of its products by Plaintiff or others, except such warranties which may be express and in writing and such express warranties are the only and best evidence of their content and legal effect, and include lawful disclaimers of implied warranties of merchantability and fitness for a particular purpose, and include limitations and responsibility to this Defendant. This Defendant is not responsible for any warranties or representations of purchases and resellers of its products

FOR A THIRTY-NINETH DEFENSE

95 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

96 That the remedies of common law indemnity and contribution are mutually
exclusive pursuant to the provisions of South Carolina Code Section 15-
38-20(f), 1976, as amended, and the assertion of any right to indemnity
bars the right to recover contribution

FOR A FORTIETH DEFENSE

97 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

98 That, to the extent that the Plaintiff has failed to comply with the
requirements of the South Carolina Notice and Opportunity to Cure
Construction Dwelling Defects Act (Section 40-59-810 through 40-59-860)
including the provision of the required notice to the Defendant, and the
provisions to the Defendant of an opportunity to cure, the Plaintiff's action
must be stayed and/or otherwise barred

**FURTHER ANSWERING THE COMPLAINT
AND AS A CROSS CLAIM AGAINST
CATTERSON & SONS CONSTRUCTION AND
MICHAEL S. CATTERSON, DEFENDANT
ALLEGES AND SAYS**

104 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

105 That this Defendant is informed and believes that Catterson & Sons
Construction ("Catterson & Sons"), for whom Michael S. Catterson
("Catterson") is principal and agent, exists under the law of the State of

South Carolina and is engaged in the business of subcontractor labor and was retained to perform such at the subject property to this litigation

106 That Catterson & Sons and Catterson have been subject to suit as a party Defendant, by the Plaintiff, 16 Jade Street, LLC, seeking compensation for damages allegedly occasioned by defects in the services and/or materials provided in connection with construction of the subject project. The specific allegations against Catterson & Sons and Catterson are set forth in that certain Complaint 16 Jade Street, LLC dated April 11, 2006 and designated in the Court of Common Pleas for Beaufort County, South Carolina by Civil Action number 06-CP-07-866, the contents of which Complaint (subject to the defenses set forth herein), are fully incorporated herein by reference.

107 That R Design Construction Co., LLC, by its within Answer, has specifically denied the material allegations of the Complaint and asserted relative affirmative defenses.

**FOR A FIRST CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S. CATTERSON:**

108 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein.

109 That to the extent, if any, that R Design Construction Co., LLC, is held liable to the Plaintiff in this action, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence and/or representations of Catterson & Sons and Catterson in this action, which

have damaged R Design Construction Co LLC as R Design Construction Co , LLC has been subjected to liability and it has incurred consequential damages in having to expend attorney's fees and costs in defending this action

- 110 That to the extent if any, that the subject residence, any of its component parts the specifications and/or installation instructions provided by Catterson & Sons and Catterson or other materials and/or services were defective or deficient in design engineering materials, manufacture, or otherwise and/or were not merchantable and/or fit for their particular and/or prospective purposes and/or were not of compliance with purported representations and/or warranties, such defects and/or deficiencies would be the result of the breach of the express and implied contractual obligations and/or warranties that Catterson & Sons and Catterson provided damaging R Design Construction Co , LLC, as R Design Construction Co LLC, has been subjected to liability and has incurred consequential damages in having to expend attorney's fees and costs in defending this action
- 111 That as R Design Construction Co , LLC, is entitled to full indemnification from Catterson & Sons and Catterson for any liability which as R Design Construction Co LLC, is found to have to the plaintiff and/or to others in this action, and as R Design Construction Co LLC, is entitled to damages for Catterson & Sons' and Catterson's negligence as aforesaid and Catterson & Sons and Catterson's breach of express and/or implied

warranties, and/or for Catterson & Sons' and Catterson's breach of contract, and/or for Catterson & Sons' and Catterson's damage to property, entitling as R Design Construction Co , LLC, to recover Catterson & Sons and Catterson those attorneys' fees, costs and other expenses incurred by as R Design Construction Co LLC in defending against the Plaintiff's action and entitling as R Design Construction Co , LLC, to recover from Catterson & Sons and Catterson any sums for which it may be held liable to the Plaintiff and/or to others whether by judgment settlement, or otherwise

**FOR A SECOND CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S. CATTERSON**

112 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

113 The Defendant, R Design Construction Co LLC by its within Answer has denied the material allegations of the Complaint. To the extent however, that such allegations may be established, such would indicate that Catterson & Sons and Catterson were negligent careless and reckless in the design manufacture supervision inspection and/or supplying of services and/or products as outlined hereinabove, and including those provided in conjunction with construction of the subject residence, and incorporated into the Plaintiff's building

114 That as a direct and proximate result of such negligence, carelessness, and recklessness R Design Construction Co , LLC has been damaged in

the amount of many monies it is adjudged to owe to the Plaintiff, or to others in this action by which it pays the Plaintiff and/or others is settlement of the Plaintiff's claims, or the claims of others plus the costs of investigation and defense of this action, including but not limited to attorneys' fees

**FOR A THIRD CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S. CATTERSON:**

- 115 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 116 The Defendant, R Design Construction Co LLC by its within Answer, has denied the material allegations of the Complaint. To the extent, however, that such allegations may be established such would indicate Catterson & Sons and Catterson, expressly and/or impliedly warranted that its products used in construction of the subject residence would be of the highest quality and in performance with generally accepted standards of the building components architecture and/or construction industries and that the materials specifications, instructions etc would comply with generally accepted principals in the industries Catterson & Sons and Catterson expressly and/or impliedly warranted that the materials they provided were suitable and fit for use in construction of the subject residence were merchantable, and/or otherwise appropriate for use in construction of the residence. The Plaintiff, by its Complaint, has alleged

that Catterson & Sons and Catterson breached these express and/or implied warranties

117 That to the extent that it is established that the materials provided by Catterson & Sons and Catterson were not merchantable, fit, or otherwise as warranted, such showing would establish a breach of the said warranties by Catterson & Sons and Catterson. As a result of any such breaches of warranties, R Design Construction Co, LLC, has incurred damages in the amount of any monies that is adjudged to owe to the Plaintiff or others, or which it pays the Plaintiff or other parties in settlement of the Plaintiff's claims or those of other entities, plus the costs of investigation on the defense of this claim including attorneys fees

118 That upon information or belief, R Design Construction Co LLC, is entitled to judgment against Catterson & Sons and Catterson in the amount of any monies that is adjudged to owe to the Plaintiff or others or which it pays the Plaintiff or other parties in settlement of the Plaintiff's claims, or the claims of others as well as costs and fees incurred in investigation defense and/or settlement of this claim

**FOR A FOURTH CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S. CATTERSON:**

119 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein

120 That R Design Construction Co LLC is informed and believes that if it is found liable to the Plaintiff, or to others, then and in that event that

Catterson & Sons and Catterson are joint tortfeasors, and R Design Construction Co , LLC, is entitled to contribution from Catterson & Sons and Catterson jointly or separately, pursuant to the provisions of the South Carolina Uniform Contribution Among Joint-Tortfeasors Act, Section 15-38-10 et. seq , South Carolina Code of Laws 1976, as amended

**FOR A FIFTH CAUSE OF ACTION AS
AGAINST DEFENDANTS CATTERSON & SONS
CONSTRUCTION AND MICHAEL S. CATTERSON-**

- 121 That each and every allegation set forth in the preceding paragraphs hereof is hereby re-alleged and reiterated as fully as if set forth herein
- 122 That heretofore, R Design Construction Co LLC entered into an agreement with Catterson & Sons and Catterson whereby Catterson & Sons and Catterson agreed, in consideration of payment by R Design Construction Co , LLC to provide various services to be used in conjunction with construction of the subject property which services would be in accordance with the plan's specifications industry standards, code requirements contract documents and otherwise suitable for use in conjunction with the contemplated construction
- 123 That R Design Construction Co LLC paid Catterson & Sons and Catterson the consideration required under the aforesaid contract.
- 124 That the Plaintiff by its Complaint, has alleged that the services provided by Catterson & Sons and Catterson were not in accordance with the requirements of said contract. To the extent that the allegations of the

Complaint may be established Catterson & Sons and Catterson is in
material breach of its contract with R Design Construction Co , LLC

125 That it is the result of the aforesaid breach and/or breaches of contract
and/or warranty that R Design Construction Co , LLC has incurred
damages in the amount of any monies that is adjudged to owe to the
Plaintiff and/or to others, and/or which it pays to the Plaintiff and/or others
in settlement of the Plaintiff's claims or the claims of others plus the costs
of investigation and the costs of defense of this claim, including attorneys'
fees

126 That upon information and belief R Design Construction Co , LLC, is
entitled to judgement against Catterson & Sons and Catterson in the
amount of any monies it is adjudged to owe to the Plaintiff and/or to
others and/or which it pays to the plaintiff and/or others in settlement of
such claims as well as costs and fees incurred in investigation defense
and/or settlement of this claim including attorneys fees

**FURTHER ANSWERING THE COMPLAINT
AND AS A THIRD PARTY COMPLAINT AGAINST
KINTZ ELECTRIC, THE THIRD-PARTY
PLAINTIFF ALLEGES AND SAYS.**

127 That each and every allegation set forth in the preceding paragraphs
hereof is hereby re-alleged and reiterated as fully as if set forth herein

128 That the Third-Party Plaintiff is informed and believes that Third-Party
Defendant Kintz Electric ("Kintz") is an entity organized under the laws of
the State of South Carolina and is engaged in the business of providing
services relating to the installation of electrical goods in structures This

Third-Party Plaintiff contracted with Kintz to perform duties at the subject property Plaintiff has sued Third-Party Plaintiff R Design, claiming damages due to the alleged defective work performed by Third-Party Defendant. A copy of the Plaintiff's Complaint is attached hereto and is incorporated herein by reference as Exhibit 1

- 129 This Third-Party Plaintiff has denied all substantive allegations against it which were made by the Plaintiff

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

- 130 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff R Design Construction Co , LLC, such liability is because Kintz was negligent, careless and reckless in the design, supervision, construction, inspection or supplying of the work or material incorporated into the subject building
- 130 As a direct and proximate result of such negligence, carelessness and recklessness, Third-Party Plaintiff has been damaged in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim
- 131 Upon information and belief Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims as well as the fees and costs incurred in the investigation, defense and settlement of this claim

**FOR A SECOND CAUSE OF ACTION
(Breach of Warranty)**

- 132 Kintz expressly and impliedly warranted to Third-Party Plaintiff that all work performed by it would be performed in a careful diligent and workmanlike manner that any materials and/or services designed supplied or sold by it for use on the project would be merchantable and fit for their intended or specific purpose
- 133 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff R Design Construction Co LLC such liability is because Kintz breached his implied and/or express warranties of merchantability workmanlike service and/or fitness for a particular intended purpose in the construction of the project.
- 134 As a result of these breaches of warranties Third-Party Plaintiff has incurred damages in the amount of any money that it is adjudged to owe Plaintiff, or which it pays Plaintiff in settlement of Plaintiff's claims plus the cost of investigating and defending this claim
- 135 Upon information and belief Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation defense and settlement of this claim

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

- 136 Upon information and belief Third-Party Plaintiff R Design Construction Co , LLC, contracted with Kintz to perform work related to the electrical systems in the subject building in a careful, diligent and workmanlike manner, and that any materials and/or services designed supplied or sold by it for use on the project would be merchantable and fit for their intended or specific purpose
- 137 If Plaintiff is successful in proving liability on the part of Third-Party Plaintiff, R Design Construction Co , LLC such liability is because Kintz breached his contract with R Design Construction Co LLC
- 138 As a result of this breach of contract of Third-Party Plaintiff has incurred damages in the amount of any money that they are adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, plus the cost of investigating and defending this claim
- 139 Upon information and belief Third-Party Plaintiff is entitled to judgment for actual damages against Kintz in the amount of any monies it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation defense and settlement of this claim

WHEREFORE having fully answered the Complaint of the Plaintiff 16 Jade Street LLC, and having cross-claimed against Catterson & Sons Construction and Michael S Catterson R Design Construction Co , LLC prays that the court inquire into the matters in fact set forth herein, and issue its order in the following particulars

-
- A) That the Complaint be dismissed as to the Defendant R Design Construction Co , LLC,
- B) For judgment in favor of , R Design Construction Co , LLC and against the Plaintiffs,
- C) For an award in favor of the Defendant, R Design Construction Co LLC, on its cross-claims, for the amount of costs inclusive of attorneys fees defending against the claims of the Plaintiff and/or others in this action or alternatively
- D) Should the Defendant, R Design Construction Co LLC be found liable to the plaintiff and/or to others or should R Design Construction Co LLC consent to an amicable settlement of the claims of the Plaintiffs and/or others then and in that event for judgment in the amount of such award or settlement, together with costs and fees including attorneys fees, against cross-claim Defendants or alternatively
- E) That R Design Construction Co LLC obtain contribution from the cross-claim Defendants in the event that they are found liable to the Plaintiff and/or to others,
- F) For judgment against the cross-claim Defendants in the amount of any liability which R Design Construction Co , LLC is found to have to the plaintiff and/or to others in this action and/or to which R Design Construction Co LLC may be bound to pay as a result of any judgment and/or settlement and R Design Construction Co LLC,

further prays for judgment against the cross-claim Defendants, requiring said Defendants to defend, and R Design Construction Co LLC against any liability to which R Design Construction Co , LLC may be subjected to the Plaintiff and/or to others in this action specifically to include all attorneys' fees, costs and/or other expenses incurred in conjunction with the instant litigation

HOWELL GIBSON & HUGHES P.A

By 
Thomas A Bendle Jr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for R Design Construction Co
LLC

Beaufort South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC)

Plaintiff,)

vs)

R DESIGN CONSTRUCTION CO)
LLC, and CARL R ATEN, JR ,)
Individually and in his capacity as)
principal and agent of R DESIGN)
CONSTRUCTION CO LLC)
CATTERSON & SONS)
CONSTRUCTION and MICHAEL S)
CATTERSON, Individually and in his)
capacity as principal and agent of)
CATTERSON & SONS)
CONSTRUCTION,)

Defendants)

CONSENT ORDER ALLOWING
AMENDMENT OF R DESIGN
CONSTRUCTION CO , LLC and
CARL R ATEN, JR 'S ANSWER

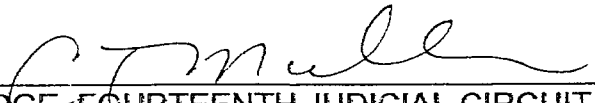
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CLERK OF COURT
BEAUFORT SC

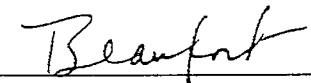
This matter comes before me upon motion by Howell, Gibson and Hughes, P A , attorneys for the Defendant, R Design Construction Company, LLC and Carl R Aten, Jr individually and in his capacity as principal and agent of R Design Construction Company LLC and with the consent of E Mitchell Griffith attorney(s) for the Plaintiff(s), and Thomas J Finn, attorney for Catterson & Sons Construction and Michael S Catterson for an Order allowing Defendant(s) to amend his/her/its Answer in the above captioned matter for the purpose of asserting a cross-claim as to Catterson & Sons, as

well as a Third Party Complaint against Kintz Electric Accordingly, it is hereby

ORDERED, ADJUGED AND DECREED that the Defendant(s) is allowed thirty (30) days from the filing of this court Order within which to amend its Answer to the Plaintiff(s)'s Complaint, and

IT IS SO ORDERED


JUDGE, FOURTEENTH JUDICIAL CIRCUIT

, South Carolina

August 4, 2007

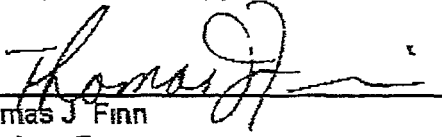
Sept

WE MOVE

By _____
Thomas A. Bendie, Jr.
Howell Gibson & Hughes P.A.
Attorney for Defendant R Design
Construction Company, LLC and
Carl R. Aten, Jr., individual and in his
capacity as principal and agent of
R Design Construction Company, LLC

WE CONSENT

By _____
E. Mitchell Griffith
Griffith, Sadler & Sharp
Attorney for Plaintiff(s)

By  _____
Thomas J. Finn
Finn Law Firm
Attorney for Catterson & Sons Construction
and Michael S. Catterson individually and in
his capacity as principal and agent of Catterson
& Sons Construction

WE MOVE

By T. Bendle Jr
Thomas A Bendle Jr
Howell Gibson & Hughes, P.A
Attorney for Defendant R Design
Construction Company, LLC and
Carl R Aten, Jr , individual and in his
capacity as principal and agent of
R Design Construction Company LLC

WE CONSENT

By E. Mitchell Griffith
E Mitchell Griffith
Griffith Sadler & Sharp
Attorney for Plaintiff(s)

By _____
Thomas J Finn
Finn Law Firm
Attorney for Catterson & Sons Construction
and Michael S Catterson, individually and in
his capacity as principal and agent of Catterson
& Sons Construction

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

16 JADE STREET, LLC,

Plaintiff,

v

R DESIGN CONSTRUCTION CO , LLC,
CARL R ATEN, JR , individually and in his
capacity as principal and agent of R
Design Construction Co , LLC,
CATTERSON & SONS CONSTRUCTION
and MICHAEL S CATTERSON,
individually and in his capacity as principal
and agent of Catterson & Sons
Construction

Defendants

R DESIGN CONSTRUCTION CO , LLC
and CARL R ATEN, JR

Third-Party Plaintiffs,

v

KINTZ ELECTRIC,

Third-Party Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE 14TH JUDICIAL CIRCUIT
) CASE NO 2006-CP-07-866

SCANNED

**ANSWER OF MICHAEL S
CATTERSON**

(Jury Trial Demanded)

The Defendant, Michael S Catterson (hereinafter Catterson), answering the Complaint of the Plaintiff dated April 11, 2006 would allege and show unto this Honorable Court

1 That Catterson admits the allegations of paragraphs 1 and 2 of the Plaintiff's Complaint

2 That Catterson admits the allegations of paragraph 3 of the Plaintiff's Complaint save and except the allegations that Catterson provided framing and 'masonry block services and would show that the block installed was not masonry block, but rather was a proprietary product known as "ACC Block" or Hebel Block"

3 That Catterson is not required to admit or deny the truth of the allegations of paragraphs 4 through 13 of the Plaintiff's Complaint because, upon information and belief, such allegations are not intended to state a claim against Catterson. If and to the extent that such allegations are later held or taken to state a claim against Catterson then such allegations together with all inferences to be derived therefrom are denied

4 That answering the allegations of paragraph 14 Catterson would re-allege its answers to the allegations of paragraphs 1 through 13 above as fully as if the same were here set forth verbatim

5 That Catterson denies the allegations of paragraphs 15 and 16 of the Plaintiff's Complaint

6 That answering the allegations of paragraph 17, Catterson would re-allege its answers to the allegations of paragraphs 1 through 16 above as fully as if the same were here set forth verbatim

7 That the allegations of paragraph 18 constitute a conclusion of law which Catterson is not required to admit or deny

8 That Catterson denies the allegations of paragraphs 19 and 20 of the Plaintiff's Complaint

9 That Catterson is not required to admit or deny the truth of the allegations of paragraphs 21 through 25 of the Plaintiff's Complaint because, upon information and

belief, such allegations are not intended to state a claim against Catterson. If and to the extent that such allegations are later held or taken to state a claim against Catterson then such allegations together with all inferences to be derived therefrom are denied.

10 That answering the allegations of paragraph 26, Catterson would re-allege its answers to the allegations of paragraphs 1 through 25 above as fully as if the same were here set forth verbatim.

11 That Catterson denies the allegations of paragraph 27 of the Plaintiff's Complaint.

12 That Catterson denies each and every allegation of the Plaintiff's Complaint not specifically admitted or qualified above.

**FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)**

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

**FOR A SECOND AFFIRMATIVE DEFENSE
(Statute of Repose)**

14 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 A THIRD AFFIRMATIVE DEFENSE
(Estoppel By Conduct)**

15 That Plaintiff by actions, conduct, words or silence which amounts to a representation or other concealment of material facts, has caused Catterson to alter its

position to its prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims

**FOR A FOURTH AFFIRMATIVE DEFENSE
(Failure to Maintain)**

16 That Plaintiff was obligated to maintain the structure against normal wear, tear and deterioration due to age and the 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 FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)**

17 That Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage 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 SIXTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)**

18 That the primary evidence and proof of the facts alleged has been destroyed, altered, or otherwise lost to the prejudice and detriment of Catterson That Plaintiff knew or should have known of the importance of such evidence and had a duty to preserve same and such constitutes a complete defense to all claims

**FOR A SEVENTH AFFIRMATIVE DEFENSE
(Status as Mere Officer)**

19 That the actions and/or conduct of which Plaintiff complains are the activities of the corporate defendant Catterson & Sons Construction, and the individual defendant,

is not personally liable for the torts of the corporation or corporate agents or employees merely as a result of his/her standing as an officer of the corporation, and such constitutes a complete defense to all claims as to the individual defendant, Catterson

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Sole Negligence)**

20 That the injury or damage sustained by Plaintiff, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Plaintiff or of others over whom Catterson had no control in the following particulars, to wit

- (a) In failing to maintain the property against normal wear, tear and deterioration due to age and the elements,
- (b) In failing to take prompt and reasonable action under the circumstances to mitigate damages,
- (c) In the particulars alleged in the Plaintiff's Complaint as to other parties,
- (d) In the particulars alleged in the Third-Party Complaint as to other parties,
- (e) In furnishing drawings and specifications which were not sufficient for the purpose in view,
- (f) In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper construction of the project,
- (g) In failing to properly coordinate the work of all trades on the job site,
- (h) In failing to properly coordinate all materials in the field,
- (i) In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery,

and such constitutes a complete defense to any claims for negligence

**FOR A NINTH AFFIRMATIVE DEFENSE
(Comparative Negligence)**

21 That the injury or damage suffered by Plaintiff, if any, was due to, caused by and was 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 such negligence as provided by law That Plaintiff was comparatively negligent in one or more of the particulars set forth in paragraph 20 above

**FOR A TENTH AFFIRMATIVE DEFENSE
(No Duty Under Trade Usage and Standard Industry Practice)**

22 That the duties and obligations alleged to exist were not obligations imposed upon Catterson within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Duties Alleged Beyond Scope of Services)**

23 That the duties and obligations alleged are not within the scope of services which were provided by Catterson , and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence

**FOR A TWELFTH AFFIRMATIVE DEFENSE
(Primary Implied Assumption of Risk)**

24 That when Plaintiff undertook to develop the project and engaged R Design Construction Co , LLC and Carl K Aten, Jr to act as general contractor and engaged others to design the structure, Plaintiff impliedly assumed the risks that are inherent in such activity and therefore the duty of care owed by Catterson does not encompass the risks involved therein, and such constitutes a complete and absolute defense to all claims for negligence

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Intervening & Superseding Cause)**

25 That the injury or damage suffered by Plaintiff, if any, was due to and caused by and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of Plaintiff or of others over whom Catterson 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 FOURTEENTH AFFIRMATIVE DEFENSE
(Completion and Acceptance)**

26 That the work completed by Catterson on the project was previously accepted by the owner as complete and in full compliance with the contract documents putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for breach of warranty

**FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(Notice and Opportunity to Correct Workmanship)**

27 That Plaintiff failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship

**FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)**

28 That the claim of Plaintiff in its Sixth Cause of Action alleging damage to property fails to state facts sufficient to constitute a cause of action under any theory and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6)

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Strike Allegations)**

29 That the allegations of paragraphs 26 and 27 contain Plaintiff's Sixth Cause of Action if they state any claim at all, which is denied, are redundant and are subsumed in the claims for negligence and warranty of workmanship stated elsewhere in the Complaint and should therefore be struck pursuant to the provisions of SCRPC Rule 12(f)

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Termination Prior to Completion)**

30 That Catterson was directed to stop all work on the project at a point in time when portions of Catterson's work were incomplete and therefore has no liability whatsoever for work not accomplished. Additionally, upon information and belief, other trades which were to follow Catterson whose work would have protected the existing components from the elements were also not allowed to finish and therefore the responsibility for any damage rests with those who directed Catterson and the other trades to stop work.

**FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional - Procedural Due Process)**

31 That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Catterson to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

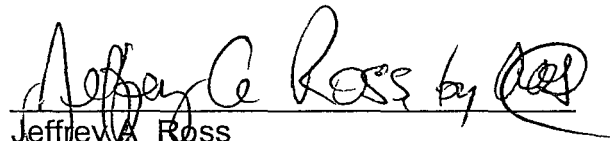
**FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional - Substantive Due Process)**

32 That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Catterson to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina

WHEREFORE, having fully set forth its Answer to the Plaintiff's Complaint, Catterson prays

- 1 That the Complaint of the Plaintiff be dismissed and that Catterson be awarded costs against the Plaintiff, or in the alternative,
- 2 For a trial by jury of all issues joined herein so triable, and
- 3 For such other and further relief as this Honorable Court shall deem just and equitable

CLAWSON & STAUBES, LLC

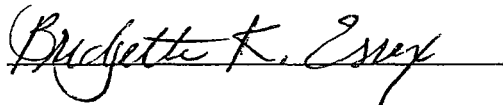

Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for Michael S. Catterson

Charleston, South Carolina Nov. 28, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 29th day of November 2007



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

16 JADE STREET, LLC,

Plaintiff,

v

R DESIGN CONSTRUCTION CO , LLC,
CARL R ATEN, JR , individually and in his
capacity as principal and agent of R
Design Construction Co , LLC,
CATTERSON & SONS CONSTRUCTION
and MICHAEL S CATTERSON,
individually and in his capacity as principal
and agent of Catterson & Sons
Construction

Defendants

R DESIGN CONSTRUCTION CO , LLC,
and CARL R ATEN, JR

Third-Party Plaintiffs,

v

KINTZ ELECTRIC,

Third-Party Defendant

) IN THE COURT OF COMMON PLEAS
) FOR THE 14TH JUDICIAL CIRCUIT
) CASE NO 2006-CP-07-866

SCANNED

**ANSWER OF MICHAEL S
CATTERSON TO CROSS-CLAIM OF R
DESIGN CONSTRUCTION CO , LLC
AND CARL R ATEN, JR**

(Jury Trial Demanded)

The Defendant, Michael S Catterson (hereinafter "Catterson"), answering the Cross-claims of R Design Construction Co , LLC and Carl R Aten, Jr (hereinafter "R Design"), would allege and show unto this Honorable Court

1 That Catterson is not required to admit or deny the truth of the allegations of paragraphs 1 through 98 of the Answer and Cross-claims of R Design because, upon

information and belief, such allegations are not intended to state a claim against Catterson. If and to the extent that such allegations are later held or taken to state a claim against Catterson, then such allegations together with all inferences to be derived therefrom are denied.

2 That answering the allegations of paragraph 104 (sic), Catterson would re-allege its answers to the allegations of paragraphs 1 through 98 above as fully as if the same were here set forth verbatim.

3 That Catterson admits the allegations of paragraph 105 of the Cross-claims of R Design.

4 That answering the allegations of paragraphs 106 and 107, Catterson would crave reference to the pleadings referenced and deny each and every allegation of paragraphs 106 and 107 inconsistent therewith and would further specifically deny any incorporated allegations concerning the work of Catterson.

5 That answering the allegations of paragraph 108, Catterson would re-allege its answers to the allegations of paragraphs 1 through 107 above as fully as if the same were here set forth verbatim.

6 That Catterson denies the allegations of paragraphs 109, 110, and 111 of the Cross-claims of R Design.

7 That answering the allegations of paragraph 112, Catterson would re-allege its answers to the allegations of paragraphs 1 through 111 above as fully as if the same were here set forth verbatim.

8 That Catterson denies the allegations of paragraphs 113 and 114 of the Cross-claims of R Design.

9 That answering the allegations of paragraph 115, Catterson would re-allege its answers to the allegations of paragraphs 1 through 114 above as fully as if the same were here set forth verbatim

10 That Catterson denies the allegations of paragraphs 116, 117, and 118 of the Cross-claims of R Design

11 That answering the allegations of paragraph 119, Catterson would re-allege its answers to the allegations of paragraphs 1 through 118 above as fully as if the same were here set forth verbatim

12 That Catterson denies the allegations of paragraph 120 of the Cross-claims of R Design

13 That answering the allegations of paragraph 121, Catterson would re-allege its answers to the allegations of paragraphs 1 through 120 above as fully as if the same were here set forth verbatim

14 That answering the allegations of paragraph 122, Catterson would crave reference to the agreement between the parties for its terms and conditions and deny each and every allegation of paragraph 122 inconsistent therewith

15 That Catterson denies the allegations of paragraphs 123, 124, 125, and 126 of the Cross-claims of R Design

16 That Catterson is not required to admit or deny the truth of the allegations of paragraphs 127 through 139 of the Cross-claims of R Design because, upon information and belief, such allegations are not intended to state a claim against Catterson. If and to the extent that such allegations are later held or taken to state a claim against Catterson then such allegations together with all inferences to be derived therefrom are denied

17 That Catterson denies each and every allegation of the Cross-claims of R Design not specifically admitted or qualified above

**FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)**

18 That R Design has failed to commence this action within the time required by the applicable Statute of Limitations, and the failure to timely commence the action constitutes a bar and complete defense to all claims

**FOR A SECOND AFFIRMATIVE DEFENSE
(Statute of Repose)**

19 That R Design 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 A THIRD AFFIRMATIVE DEFENSE
(Status as Mere Officer)**

20 That the actions and/or conduct of which R Design complains are the activities of the corporate defendant, Catterson & Sons, Construction, and the individual defendant Michael S Catterson, is not personally liable for the torts of the corporation or corporate agents or employees merely as a result of his/her standing as an officer of the corporation, and such constitutes a complete defense to all claims as to the individual defendant Michael S Catterson

**FOR A FOURTH AFFIRMATIVE DEFENSE
(Sole Negligence)**

21 That the injury or damage sustained by R Design, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness

and wantonness of R Design or of others over whom Catterson had no control in the following particulars, to wit

- (a) In failing to maintain the property against normal wear, tear and deterioration due to age and the elements,
- (b) In failing to take prompt and reasonable action under the circumstances to mitigate damages,
- (c) In the particulars alleged in the Plaintiff's Complaint as to other parties,
- (d) In the particulars alleged in the Third-Party Complaint as to other parties,
- (e) In furnishing drawings and specifications which were not sufficient for the purpose in view,
- (f) In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper construction of the project,
- (g) In failing to properly coordinate the work of all trades on the job site,
- (h) In failing to properly coordinate all materials in the field,
- (i) In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery,

and such constitutes a complete defense to any claims for negligence

**FOR A FIFTH AFFIRMATIVE DEFENSE
(Comparative Negligence)**

22 That the injury or damage suffered by R Design, if any, was due to, caused by and was the direct and proximate result of the negligence, carelessness, recklessness, willfulness and wantonness of R Design, and recovery should be barred or reduced in proportion to such negligence as provided by law That R Design was comparatively negligent in one or more of the particulars set forth in paragraph 21 above

**FOR A SIXTH AFFIRMATIVE DEFENSE
(No Duty Under Trade Usage and Standard Industry Practice)**

23 That the duties and obligations alleged to exist were not obligations imposed upon Catterson within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence

**FOR A SEVENTH AFFIRMATIVE DEFENSE
(Duties Alleged Beyond Scope of Services)**

24 That the duties and obligations alleged are not within the scope of services which were provided by Catterson, and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Primary Implied Assumption of Risk)**

25 That when R Design undertook to act as general contractor for the project, it impliedly assumed the risks that are inherent in such activity and therefore the duty of care owed by Catterson does not encompass the risks involved therein, and such constitutes a complete and absolute defense to all claims for negligence

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

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

**FOR A TENTH AFFIRMATIVE DEFENSE
(No Warranty Expressed)**

27 That the agreement between the parties contains no such warranty as is alleged by R Design and such constitutes a complete defense to all claims for breach of express warranty

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Warranty of Limited Duration)**

28 That the express warranty contained in the agreement between the parties is limited in time from the date of completion and acceptance of the project by the owner as will more fully appear by reference to the terms of the agreement That R Design failed to give notice of any alleged deficiency within the required time frame, and such constitutes a complete defense to all claims for breach of warranty

**FOR A TWELFTH AFFIRMATIVE DEFENSE
(Limitation of Warranty Obligations)**

29 That Catterson has contractually limited its warranty obligations to R Design and has excluded liability for many elements of the claim which are barred in whole or in part

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Completion and Acceptance)**

30 That the work undertaken by Catterson on the project was completed and such work was previously accepted by the owner as complete and in full compliance with the contract documents putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for breach of warranty

**FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Notice and Opportunity to Correct Workmanship)**

31 That R Design failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship

**FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(UCC Not Applicable - Subcontract for Construction Services)**

32 That the predominant factor, thrust or purpose of the alleged subcontract agreement was one for the delivery of services accompanied by the acquisition and furnishing of the necessary materials and it is therefore not a contract for the purchase and sale of goods in which the warranties of merchantability and fitness for a particular purpose may be implied, and such constitutes a complete defense to all claims for breach of implied warranty

**FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(Warranty of Fitness Not Applicable - No Reliance)**

33 That upon information and belief R Design placed no reliance upon the skill or judgement of Catterson in selecting and furnishing the materials which became incorporated in the construction, but rather, relied upon the judgment, skill and approval of others as to the selection and suitability of such materials, and such constitutes a complete defense to the claims for breach of warranty of fitness for use

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)**

34 That the Fourth Cause of Action in paragraphs 119 and 120 fails to state facts sufficient to constitute a cause of action for contribution because there is no

allegation that R Design has paid any amount in settlement of the Plaintiff's claims and such constitutes a full defense for any claim for contribution

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Extinguishment Requirement)**

35 That R Design is not entitled to seek contribution from Catterson unless the liability of Catterson has first been extinguished, and such constitutes a complete defense to any claim for contribution

**FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Indemnity and Contribution Mutually Exclusive)**

36 That the remedies of common law indemnity and contribution are mutually exclusive pursuant to the provisions of S C Code Ann § 15-38-20(F) (1976, as amended) and the assertion of any right to indemnity bars the right to recover contribution

**FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Contribution Claim Defeated By Intentional Acts)**

37 That the damage or injury giving rise to the underlying claim resulted from the intentional acts of R Design in directing Catterson to stop work and such constitutes a complete defense to any claim for contribution

**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE
(Contractual Responsibility Limited By Scope Of Agreement)**

38 That the conditions and deficiencies alleged to exist are not within the scope of services which were requested of Catterson, whose responsibility is limited only to those conditions and deficiencies, if any, which are within the scope of services described in the agreement, and such constitutes a complete defense to all claims for breach of contract

**FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Final Payment as Waiver or Release)**

39 That the owner of the project has previously made final payment to Catterson for all work performed pursuant to the agreement between the parties and such final payment, according to the terms of the agreement and the customs of the industry, constitutes a waiver and release of all claims of the nature set forth herein, and therefore such final payment constitutes a defense to all claims for breach of contract

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Estoppel By Contract)**

40 That the claims of R Design are contrary to the plain language of the agreement, and R Design is therefore estopped by the terms and provisions of the agreement from asserting the claims and matters set forth in its pleadings

**FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Indemnity Not Allowed Between Joint Tortfeasors)**

41 That R Design was negligent, grossly negligent, willful, wanton, and reckless in the particulars set forth elsewhere in the pleadings herein, and the damages sustained by the plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of R Design, combining and concurring with the alleged negligence of Catterson (the existence of which is expressly denied), and therefore R Design is at best a joint tortfeasor, and such constitutes a complete defense to any claim for indemnity

**FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

42 That to the extent that R Design was negligent, grossly negligent, willful, wanton and reckless, resulting in the damages allegedly sustained, R Design comes to

Court with unclean hands and such inequitable conduct on the part of R Design constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity

**FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Laches)**

43 That R Design neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Catterson who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims

**FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional - Procedural Due Process)**

44 That to the extent that R Design seeks punitive or exemplary damages, such claims violate the right of Catterson to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina

**FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional - Substantive Due Process)**

45 That to the extent that R Design seeks punitive or exemplary damages, such claims violate the right of Catterson to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina

WHEREFORE, having fully set forth its Answer to the Cross-claims of R Design, Catterson prays

- 1 That the Cross-claims of R Design be dismissed and that Catterson be awarded costs against R Design, or in the alternative,
- 2 For a trial by jury of all issues joined herein so triable, and

- 3 For such other and further relief as this Honorable Court shall deem just and equitable

CLAWSON & STAUBES, LLC



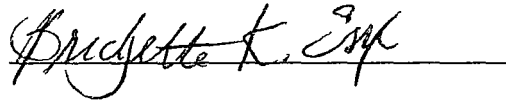
Jeffrey A. Ross
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
(843) 577-2026

Attorney for Michael S. Catterson

Charleston, South Carolina, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 29th day of November 2007



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,
Plaintiff,

vs
R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Third Party Plaintiffs

vs
KINTZ ELECTRIC,
Third Party Defendant

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT FOR CARL R
ATEN, JR

2007 NOV 30 AM 11 23
CLERK OF COURT
BEAUFORT, SC

TO E MITCHELL GRIFFITH, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Carl R Aten,
Jr , will move on the tenth day after service hereof, or as soon thereafter as

counsel may be heard, for an Order of this Court granting Summary Judgment upon the following claims raised by the Plaintiff

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and upon the grounds that there are no genuine issues as to any material facts involving the allegations of Plaintiff and as such, Mr Aten is entitled to judgment as a matter of law Pursuant to South Carolina Code § 33-44-303(a), an LLC is solely responsible for the debts, obligations, or liabilities of that LLC, whether arising in tort, contract, or otherwise This section further states that an individual is not personally liable for the debts, obligations, or liabilities of that LLC solely by being a member or manager of that LLC It is neither alleged nor can it be shown that Mr Aten acted outside the scope of his role as a member of R Design Construction Company Consequently, Mr Aten cannot be held personally liable for the alleged injuries in this matter and must be dismissed

This motion shall be based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings, affidavits and discovery documents exchanged herein

HOWELL, GIBSON & HUGHES, P A

By Thomas A Bendle, Jr
Thomas A Bendle, Jr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Carl Aten
Bar No 69561

Beaufort, South Carolina

November 29, 2007

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels last known address on 29 day of November 2007

By Thomas A Bendle Jr
Thomas A Bendle Jr

2007 NOV 30 AM 11 28
U.S. DISTRICT COURT
BEAUFORT SC

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 06-CP-07-866**

**ANSWER OF CATTERSON & SONS
CONSTRUCTION
(JURY TRIAL DEMANDED)**

**ANSWER OF CATTERSON & SONS
CONSTRUCTION
(JURY TRIAL DEMANDED)**

(JURY TRIAL DEMANDED)

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(JURY TRIAL DEMANDED)

(JURY TRIAL DEMANDED)

(JURY TRIAL DEMANDED)

(JURY TRIAL DEMANDED)

2 That Catterson & Sons admits the allegations of paragraph 3 of the Plaintiff's Complaint and save and except the allegations that Catterson & Sons provided framing and "masonry block" services and would show that the block installed was not a masonry block, but rather was a proprietary product known as "ACC Block" or "Hebal Block"

3 That Catterson & Sons is not required to admit or deny the truth of the allegations of paragraphs 4 through 13 of the Plaintiff's Complaint because, upon information and belief, such allegations are not intended to state a claim against Catterson & Sons. If and to the extent that such allegations are later held or taken to state a claim against Catterson & Sons then such allegations together with all inferences to be derived therefrom are denied.

4 That answering the allegations of Paragraph 14, Catterson & Sons would re-allege its answers to the allegations of paragraphs 1 through 13 above as fully as if the same were here set forth verbatim.

5 That Catterson & Sons denies the allegations of paragraphs 15 and 16 of the Plaintiff's complaint.

6 That answering the allegations of paragraph 17, catterson would re-allege its answers to the allegations of paragraphs 1 through 16 above as fully as if the same were here set forth verbatim.

7 That the allegations of paragraph 18 constitute a conclusion of law which Catterson & Sons is not required to admit or deny.

8 That Catterson & Sons denies the allegations of paragraphs 19 and 20 of the Plaintiff's Complaint.

9 That Catterson & Sons Construction is not required to admit or deny the truth of the allegations of paragraphs 21 through 25 of the Plaintiff's Complaint because, upon information and belief, such allegations are not intended to state a claim against Catterson & Sons Construction. If and to the extent that such allegations are later held or taken to state a claim against Catterson & Sons Construction then such allegations together with all inferences to be derived therefrom are denied.

10 That answering the allegations of paragraph 26, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 25 above as fully as if the same were here set forth verbatim.

11 That Catterson & Sons Construction denies the allegations of paragraph 27 of the Plaintiff's Complaint.

12 The Catterson & Sons Construction denies each and every allegation of the Plaintiff's Complaint not specifically admitted or qualified above.

**FOR A FIRST AFFIRMATIVE DEFENSE
(Statue of Limitations)**

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

**FOR A SECOND AFFIRMATIVE DEFENSE
(Statue of Repose)**

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

FOR A THIRD AFFIRMATIVE DEFENSE
(Estoppel By Conduct)

15 That Plaintiff by actions, conduct, words, or silence which amounts to a representation or other concealment of material facts, has caused Catterson & Sons Construction to alter its position to its prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims

FOR A FOURTH AFFIRMATIVE DEFENSE
(Failure to Maintain)

16 That Plaintiff was obligated to maintain the structure against normal wear, tear and deterioration due to age and the 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 FIFTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

17 That Plaintiff has failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage 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 SIXTH AFFIRMATIVE DEFENSE
(Spoliation of Evidence)**

18 That the primary evidence and proof of the facts alleged has been destroyed, altered, or otherwise lost to the prejudice and detriment of Catterson & Sons Construction. That Plaintiff knew or should have known of the importance of such evidence and had a duty to preserve same and such constitutes a complete defense to all claims.

**FOR A SEVENTH AFFIRMATIVE DEFENSE
(Status as Mere Officer)**

19 That the actions and/or conduct of which Plaintiff complains are the activities of the corporate defendant Catterson & Sons Construction, and the individual defendant, is not personally liable for the torts of the corporation or corporate agents or employees merely as a result of his/her standing as an officer of the corporation, and such constitutes a complete defense to all claims as to the individual defendant Catterson & Sons Construction.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Sole Negligence)**

20 That the injury or damage sustained by Plaintiff, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Plaintiff or of others over whom Catterson & Sons Construction had no control over the following particulars, to wit:

- (a) In failing to maintain the property against normal wear, tear and deterioration due to age and the elements,
- (b) In failing to take prompt and reasonable action under the circumstances to mitigate damages,

- (c) In the particulars alleged in the Plaintiff's Complaint as to other parties,
- (d) In the particulars alleged in the Third-Party Complaint as to other parties,
- (e) In furnishing drawings and specifications which were not sufficient for the purpose in view,
- (f) In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper constructions of the project,
- (g) In failing to properly coordinate the work of all trades on the job site,
- (h) In failing to properly coordinate all materials in the field,
- (i) In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery,

and such constitutes a complete defense to any claims for negligence

**FOR A NINTH AFFIRMATIVE DEFENSE
(Comparative Negligence)**

21 That the injury or damage suffered by Plaintiff, if any, was due to, caused by and was 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 such negligence as provided by law That Plaintiff was comparatively negligent in one or more of the particulars set forth in paragraph 20 above

FOR A TENTH AFFIRMATIVE DEFENSE
(No Duty Under Trade Usage and Standard Industry Practice)

22 That the duties and obligations alleged to exist were not obligations imposed upon Catterson & Sons Construction within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Duties Alleged Beyond Scope of Services)

23 That the duties and obligations alleged are not within the scope of services which were provided by Catterson & Sons Construction, and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence

FOR A TWELTH AFFIRMATIVE DEFENSE
(Primary Implied Assumptions of Risk)

24 That when Plaintiff undertook to develop the project and engaged R Design Construction Co , LLC and Carl K. Aten, Jr. to act as general contractor and engaged others to design the structure, Plaintiff impliedly assumed the risks that are inherent in such activity and therefore the duty of care owed by Catterson & Sons Construction does not encompass the risks involved therein, and constitutes a complete and absolute defense to all claims for negligence

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Intervening & Superseding Cause)**

25 That the injury or damage suffered by Plaintiff, if any, was due to and caused by and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of Plaintiff or of others over whom Catterson & Sons Construction 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 FOURTEENTH AFFIRMATIVE DEFENSE
(Completion and Acceptance)**

26 That the work completed by Catterson & Sons Construction on the project was previously accepted by the owner as complete and in full compliance with the contract documents putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for breach of warranty

**FOR FIFTEENTH AFFIRMATIVE DEFENSE
(Notice and Opportunity to Correct Workmanship)**

27 That Plaintiff failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship

**FOR SIXTEENTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)**

28 That the claim of Plaintiff in its Sixth Cause of Action alleging damage to property fails to state facts sufficient to constitute a cause of action under any theory and should be dismissed pursuant to the provisions of SCRCR Rule 12(b)(6)

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Strike Allegations)**

29 That the allegations of paragraphs 26 and 27 contain Plaintiff's Sixth Cause of Action, if they state any claim at all, which is denied, are redundant and are subsumed in the claims for negligence and warranty of workmanship stated elsewhere in the Complaint and should therefore be struck pursuant to the provisions of SCRCR Rule 12(f)

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
(Terminations Prior to Completion)**

30 That Catterson & Sons Construction was directed to stop all work on the project at a point in time when portions of Catterson & Sons Construction's work were incomplete and therefore has no liability whatsoever for work not accomplished. Additionally, upon information and belief, other trades which were to follow Catterson & Sons Construction whose work would have protected the existing components from the elements were also not allowed to finish and therefore the responsibility for any damages rests with those who directed Catterson & Sons Construction and the other trades to stop work.

FOR A NINETEENTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional – Procedural Due Process)

31 That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Catterson & Sons Construction to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the South Carolina

FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional – Substantive Due Process)

32 That to the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of Catterson & Sons Construction to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitutions and the Constitution of South Carolina

WHEREFORE, having fully set forth its Answer to the Plaintiff's Complaint, Catterson & Sons Construction prays

- 1 That the Complaint of the Plaintiff be dismissed and that Catterson & Sons Construction be awarded costs against the Plaintiff, or in the alternative,
- 2 For a Trial by jury of all issues joined herein so triable, and
- 3 For such other and further relief as this Honorable Court shall deem just and equitable

- FINN LAW FIRM, PC -

By 
Thomas J Finn
Post Office Box 6003
Hilton Head Island, S C 29938

Hilton Head Island, South Carolina

December 20th, 2007

CERTIFICATE OF SERVICE

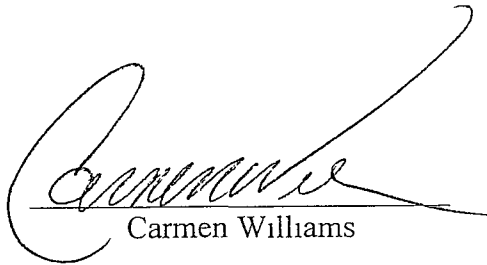
The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 20th day of December 2007

Jeffrey A Ross, Esquire
Clawson & Staubes
126 Seven Farms Drive, Suite 200
Charleston, S C 29492-8144

E Mitchell Griffith Esquire
Griffith Sadler & Sharp
Post Office Drawer 570
Beaufort, S C 29901

James J Wegmann Esquire
Widner & Wegmann LLC
6 Professional Village Cn
Beaufort, S C 29902-1569

Thomas A Bendle, Jr, Esquire
Howell, Gibson & Hughes, P A
Post Office Box 40
Beaufort, S C 29901



Carmen Williams

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs

AFFIDAVIT OF CARL ATEN

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,

Third Party Plaintiffs

vs

KINTZ ELECTRIC,

Third Party Defendant

2009 JUN 25 AM 11 20
CLERK OF COURT
BEAUFORT SC

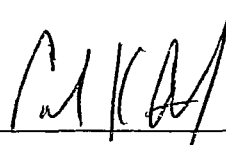
PERSONALLY APPEARED BEFORE ME, Carl Aten, who, being first duly
sworn, deposes and says as follows

1 That my name is Carl Aten and I am over the age of 18

2 I am a resident of Beaufort County in the State of South Carolina

- 3 That I was a member of R Design Construction Company, LLC
- 4 That I did not consent to being held personally liable for actions undertaken by, or on behalf of, R Design Construction, LLC
- 5 That the Articles of Organization for R Design Construction, LLC, do not contain a provision that would cause me to be held personally liable for actions by, or on behalf of, R Design Construction LLC
- 6 That in my capacity as a member of R Design Construction Company, LLC, I negotiated and reached an agreement with 16 Jade St LLC, regarding the supervision of construction at the Celadon Project on Lady s Island Beaufort County, South Carolina
- 7 That in my capacity as a member of R Design Construction Company, LLC I signed a contract reflecting the agreement reached between R Design Construction Company, LLC, and 16 Jade Street, LLC, for the supervision of the construction of the Celadon Project
- 8 That I did not make any personal representations to 16 Jade Street, LLC, or its members or managers, outside the scope of my status as a member of R Design Construction Company LLC
- 9 That I am of sound mind and competent to testify to the matters set out hereinabove

FURTHER THIS AFFIANT SAYETH NAUGHT



Carl Aten

Sworn to before me this 2 day
of January, 2008



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires 7/23/09

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,)
)
)

Plaintiff,)

Vs)
)

R DESIGN CONSTRUCTION CO)
LLC, CARL R ATEN, JR ,)
Individually and in his capacity as)
Principal and agent of R Design)
Construction Co , LLC,)
CATTERSON & SONS)
CONSTRUCTION and MICHAEL)
S CATTERSON, individually and)
In his capacity as principal and)
Agent of Catterson & Sons)
Construction)
)

Defendant(s))
)

R DESIGN CONSTRUCTION CO)
LLC and CARL R ATEN, JR)
)

Third Party Plaintiffs,)

v)

KINTZ ELECTRIC)

Third Party Defendant)
)

SCANNED

ANSWER OF CATTERSON & SONS
TO CROSS-CLAIM OF R DESIGN
CONSTRUCTION CO , LLC AND
CARL R ATEN, JR

The Defendant, Catterson & Sons Construction, answering the Cross-claims of R Design Construction Co , LLC and Carl Aten, Jr (hereinafter "R Design"), would allege and show unto this Honorable Court

1 That Catterson & Sons Construction is not required to admit or deny the truth of the allegations of paragraphs 1 through 98 of the Answer and Cross-claims of R Design because, upon information and belief, such allegations are not intended to state a claim against Catterson & Sons Construction If and to the extent that such allegations

are later held or taken to state a claim against Catterson & Sons Construction then such allegations together with all inferences to be derived therefrom are denied

2 That answering the allegations of paragraph 104 (sic), Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 98 above as fully as if the same were here set forth verbatim

3 That Catterson & Sons Construction admits the allegations of paragraph 105 of the Cross-claims of R Design

4 That answering the allegations of paragraphs 106 and 107, Catterson & Sons Construction would crave reference to the pleadings referenced and deny each and every allegation of paragraphs 106 and 107 inconsistent therewith and would further specifically deny any incorporated allegations concerning the work of Catterson & Sons Construction

5 That answering the allegations of paragraph 108, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 107 above as fully as if the same were here set forth verbatim

6 That Catterson & Sons Construction denies the allegations of paragraphs 109, 110 and 111 of the Cross claims of R Design

7 That answering the allegations of paragraph 112, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 111 above as fully as if the same were here set forth verbatim

8 That Catterson & Sons Construction denies the allegations of paragraphs 113 and 114 of the Cross-claim of R Design

9 That answering the allegations of paragraph 115, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 114 above as fully as if the same were here set forth verbatim

10 That Catterson & Sons Construction denies the allegations of paragraphs 116, 117, and 118 of the Cross Claims of R Design

11 That answering the allegations of paragraph 119, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 118 above as fully as if the same were here set forth verbatim

12 That Catterson & Sons Constiuction denies the allegations of paragraph 120 of the Cross-claims of R Design

13 That answering the allegations of paragraph 121, Catterson & Sons Construction would re-allege its answers to the allegations of paragraphs 1 through 120 above as fully as if the same were here set forth verbatim

14 That answering the allegations of paragraph 122, Catterson & Sons Construction would crave reference to the agreement between the parties for its terms and conditions and deny each and every allegation of paragraph 122 inconsistent therewith

15 That Catterson & Sons Construction denies the allegations of paragraphs 123, 124, 125, and 126 of the Cross-claims of R Design

16 That Catterson & Sons Construction is not required to admit or deny the truth of the allegations of paragraphs 127 through 139 of the Cross-claims of R Design because, upon information and belief, such allegations are not intended to state a claim against Catterson. If and to the extent that such allegations are later held or taken to state a claim against Catterson & Sons Construction then such allegations together with all inferences to be derived therefrom are denied

17 That Catterson & Sons Construction denies each and every allegation of the Cross-claims of R Design not specifically admitted or qualified above

**FOR A FIRST AFFIRMATIVE DEFENSE
(Statute of Limitations)**

18 That R Design 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 A SECOND AFFIRMATIVE DEFENSE
(Statute of Repose)

19 That R Design 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 A THIRD AFFIRMATIVE DEFENSE
(Status as Mere Officer)

20 That the actions and/or conduct of which R Design complains are the activities of the corporate Defendant, Catterson & Sons Construction, and the individual defendant Michael S Catterson, is not personally liable for the torts of the corporation or corporate agents or employees merely as a result of his/her standing as an officer of the corporation, and such constitutes a complete defense to all claims as to the individual defendant Michael S Catterson

FOR A FOURTH AFFIRMATIVE DEFENSE
(Sole Negligence)

21 That the injury or damage sustained by R Design, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of R Design or of others over whom Catterson & Sons Construction had no control in the following particulars, to wit

(a) In failing to maintain the property against normal wear, tear and deterioration due to age and the elements,

(b) In failing to take prompt and reasonable action under the circumstances to mitigate damages,

- (c) In the particulars alleged in the Plaintiff's Complaint as to other parties,
 - (d) In the particulars alleged in the Third-Party Complaint as to other parties,
 - (e) In furnishing drawings and specifications which were not sufficient for the purpose in view,
 - (f) In furnishing drawings and specifications which did not fully and accurately disclose all information necessary for the proper construction of the project
 - (g) In failing to properly coordinate the work of all trades on the job site,
 - (h) In failing to properly coordinate all materials in the field,
 - (i) In otherwise failing to act with due and reasonable care, caution and prudence under the circumstances then and there prevailing in such further particulars as shall be determined through discovery,
- and such constitutes a complete defense to any claims for negligence

**FOR A FIFTH AFFIRMATIVE DEFENSE
(Comparative Negligence)**

22 That the injury or damage suffered by R Design, if any, was due to, caused by and was the direct and proximate result of the negligence, carelessness, and recklessness, willfulness and wantonness of R Design, and recovery should be barred or reduced in proportion to such negligence as provided by law That R Design was comparatively negligent in one or more of the particulars set forth in paragraph 21 above

**FOR A SIXTH AFFIRMATIVE DEFENSE
(No Duty under Trade Usage and Standard Industry Practice)**

23 That the duties and obligations alleged to exist were not obligations imposed upon Catterson & Sons Construction within the usage of the trade at the time of construction and were not imposed upon it under the usual and customary practices of the industry at the time of construction, and such constitutes a complete defense to all claims for negligence

**FOR A SEVENTH AFFIRMATIVE DEFENSE
(Duties Alleged Beyond Scope of Services)**

24 That the duties and obligations alleged are not within the scope of services which were provided by Catterson & Sons Construction and such duties and obligations lie beyond the scope of services provided and such constitutes a complete defense to all claims for negligence

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Primary Implied Assumption of Risk)**

25 That when R Design undertook to act as general contractor for the project, it impliedly assumed the risks that are inherent in such activity and therefore the duty of care owed by Catterson & Sons Construction does not encompass the risks involved therein, and such constitutes a complete and absolute defense to all claims for negligence

**FOR A NINTH AFFIRMATIVE DEFENSE
(INTERVENING & SUPERSEDING CAUSE)**

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

**FOR A TENTH AFFIRMATIVE DEFENSE
(No Warranty Expressed)**

27 That the agreement between the parties contains no warranty as is alleged by R Design and such constitutes a complete defense to all claims for a breach of express warranty

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Warranty of Limited Duration)**

28 That the express warranty contained in the agreement between the parties is limited in time from the date of completion and acceptance of the project by the owner as will more fully appear by reference to the terms of the agreement That R Design failed to give notice of any alleged deficiency within the required time frame, and such constitutes a complete defense to all claims for breach of warranty

**FOR A TWELFTH AFFIRMATIVE DEFENSE
(Limitation of Warranty Obligations)**

29 That Catterson & Sons Construction has contractually limited its warranty obligations to R Design and has excluded liability for many elements of the claim which are barred in whole or in part

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(Completion and Acceptance)**

30 That the work undertaken by Catterson & Sons Construction on the project was completed and such work was previously accepted by the owner as complete and in full compliance with the contract documents putting an end to all further obligations pursuant to the contract and such completion and acceptance constitutes a complete defense to all claims for breach of warranty

**FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Notice and opportunity to Correct workmanship)**

31 That R Design failed to give any reasonable and meaningful notice as to the existence of the alleged breach and failed to give a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to all claims for breach of warranty of workmanship

**FOR A FIFTEENTH AFFIRMATIVE DEFENSE
(UCC Not Applicable-Subcontract for Construction Services)**

32 That the predominant factor, thrust or purpose of the alleged subcontract agreement was one for the delivery of services accompanied by the acquisition and furnishing of the necessary materials and it is therefore not a contract for the purchase and sale of goods in which the warranties of merchantability and fitness for a particular purpose may be implied, and such constitutes a complete defense to all claims for breach of implied warranty

**FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(Warranty of Fitness Not Applicable –No Reliance)**

33 That upon information and belief R Design placed no reliance upon the skill or judgment of Catterson & Sons Construction in selecting and furnishing the materials which became incorporated in the construction, but rather, relied upon the judgment, skill and approval of others as to the selection and suitability of such materials, and such constitutes a complete defense to the claims for breach of warranty of fitness for use

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to State Facts Sufficient)**

34 That the Fourth Cause of Action in paragraphs 119 and 120 fails to state facts sufficient to constitute a cause of action for contribution because there is no allegation that R Design has paid any amount in settlement of the Plaintiff's claims and such constitutes a full defense for any claim for contribution

**FOR AN EIGHTEENTH CAUSE OF ACTION
(Extinguishment Requirement)**

35 That R Design is not entitled to seek contribution from Catterson & Sons Construction unless the liability of Catterson & Sons Construction has first been extinguished, and such constitutes a complete defense to any claim for contribution

**FOR A NINETEENTH CAUSE OF ACTION
(Indemnity and Contribution Mutually Exclusive)**

36 That the remedies of common law indemnity and contribution are mutually exclusive pursuant to the provisions of S C Code Ann 15-38-20(F)(1976, as amended) and the assertion of any right to indemnity bars the right to recover contribution

**FOR A TWENTIETH AFFIRMATIVE DEFENSE
(Contribution Claim Defeated By Intentional Acts)**

37 That the damage or injury giving rise to the underlying claim resulted from the intentional acts of R Design in directing Catterson & Sons to stop work and such constitutes a complete defense to any claim for contribution

**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE
(Contractual Responsibility Limited By Scope of Agreement)**

38 That the conditions and deficiencies alleged to exist are not within the scope of services which were requested of Catterson & Sons, whose responsibility is limited to those conditions and deficiencies, if any, which are within the scope of services described in the agreement, and such constitutes a complete defense to all claims for breach of contract

**FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
(Final Payment as Waiver or Release)**

39 That the owner of the project has previously made final payment to Catterson & Sons for all work performed pursuant to the agreement between the parties and such final payment, according to the terms of the agreement and the customs of the industry, constitutes a waiver and release of all claims of the nature set forth herein, and therefore such final payment constitutes a defense to all claims for breach of contract

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
(Estoppel by Contract)**

40 That the claims of R Design are contrary to the plain language of the agreement, and R Design is therefore estopped by the terms and provisions of the agreement from asserting the claims and matters set forth in the pleadings

**FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Indemnity Not Allowed Between Joint Tortfeasors)**

41 That R Design was negligent, grossly negligent, willful, wanton, and reckless in the particulars set forth elsewhere in the pleadings herein, and the damages sustained by the Plaintiff, if any, were due to and caused by and were the direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of R Design, combining and concurring with the alleged negligence of Catterson & Sons (the existence of which is expressly denied), and therefore R Design is at best a joint tortfeasor, and such constitutes a complete defense to any claim for indemnity

**FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

42 That to the extent that R Design was negligent, grossly negligent, willful, wanton and reckless, resulting in the damages allegedly sustained, R Design comes to Court with unclean hands and such inequitable conduct on the part of R Design constitutes a bar and complete defense to any claim for equitable relief in the form of indemnity

**FOR A TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Laches)**

43 That R Design neglected for an unreasonable and unexplained length of time to provide notice of any alleged deficiencies to Catterson & Sons who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitutes a complete defense to all claims

**FOR A TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional –Procedural Due Process)**

44 That to the extent that R Design seeks punitive or exemplary damages, such claims violate the right of Catterson & Sons to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina

**FOR A TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Punitive Damages Unconstitutional-Substantive Due Process)**

45 That to the extent that R Design seeks punitive or exemplary damages, such claims violate the right of Catterson & Sons to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina

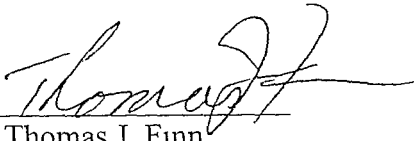
WHEREFORE, having fully set forth its Answers to the Cross-claims of R Design, Catterson & Sons pray

1 That the Cross-claims of R Design be dismissed and Catterson & Sons be awarded costs against R Design, or in the alternative,

2 For a trial by jury of all issues joined herein so triable, and

3 For such other and further relief as this Honorable Court shall deem just and equitable

FINN LAW FIRM, PC

By 

Thomas J Finn

Post Office Box 6003

Hilton Head Island, S C 29938

(843) 682-3555

Attorney for Catterson & Sons

CERTIFICATE OF COUNSEL

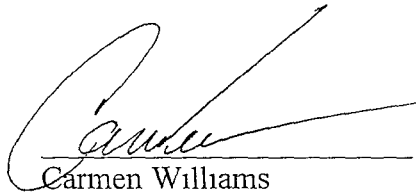
The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed hereto on this 28th day of January, 2008

Jeffrey A. Ross, Esquire
Clawson & Staubes
126 Seven Farms Drive, Suite 200
Charleston, S C 29492-8144

E. Mitchell Griffith, Esquire
Griffith Sadler & Sharp
Post Office Drawer 570
Beaufort, S C 29901

James J. Wegmann, Esquire
Widner & Wegmann, LLC
6 Professional Village Cir
Beaufort, S C 29902-1569

Thomas A. Bendle, Esquire
Howell Gibson & Hughes
Post Office Box 40
Beaufort, S C 29901



Carmen Williams

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NUMBER 06-CP-07-00866

16 JADE STREET, et al,)
Plaintiffs,)
vs) ORDER DENYING MOTION FOR
R DESIGN CONSTRUCTION CO LLC, et al) SUMMARY JUDGMENT
Defendants)

2006 FEB 26 PM 3:23
CLERK OF COURT
BEAUFORT

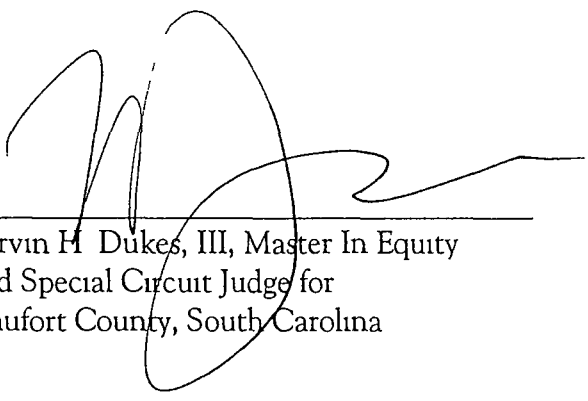
This matter is before the Court upon a Motion for summary judgment filed by Defendant/Third party Plaintiff Carl R Aten, Jr ("Aten") Aten seeks summary judgment because he alleges that, at all time relevant, his actions were those only of a manager of R Design Construction Co , LLC and that he is therefore personally shielded by application of SC Code of Laws §33-44-303

Under Rule 56, S C R C P , summary judgment is proper only where there no genuine issues of material fact present In addition, all the evidence and the inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party *Charleston Lumber Co v Miller Housing Corp* , 318 S C 471, 458 S E 2d 431 (S C App 1995)

Although SC Code of Laws §33-44-303 does provide protection for managers and members, in SC Code of Laws §40-59-400(6), the legislature appears to have created personal responsibility in the "qualified registrant" Although I note that personal responsibility and legal liability may not necessarily be the same thing, it is clear that the legislature desired for one person to have responsibility as a qualified registrant In this case, as Aten was the qualified registrant, I find that summary judgment is not appropriate at this time

It is therefore Ordered that the Motion for Summary Judgment of the Defendant is hereby denied

IT IS SO ORDERED



Marvin H. Dukes, III, Master In Equity
And Special Circuit Judge for
Beaufort County, South Carolina

Beaufort, South Carolina

February 25, 2008

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,
Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,

Third Party Plaintiffs

vs

KINTZ ELECTRIC,

Third Party Defendant

R DESIGN CONSTRUCTION
CO , LLC AND CARL R ATEN,
JR 'S NOTICE OF MOTION AND
MOTION TO RECONSIDER

FILED
CLERK
2008 MAR -5
AM 10 42

TO E MITCHELL GRIFFITH, ESQUIRE,
ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendant, R Design
Construction Co , LLC and Carl Aten, Jr , by and through his undersigned

Counsel, Howell, Gibson and Hughes, P A , will appear before the Presiding Judge, Beaufort County Court of Common Pleas, on the tenth (10th) day after service hereof, or at such other time and place as may be directed by the Court, and then and there move for reconsideration and appropriate alteration and/or amendment of the Court's Order of February 25, 2008

The within motion, made pursuant to the provisions of the statutory and common laws of the State of South Carolina and Rules 52 and 59, South Carolina Rules of Civil Procedure, is based upon the grounds that

That the Order signed by Judge Dukes indicates that Carl Aten, individually, was more than a mere member manager and that he was a "qualified resident" pursuant to South Carolina Code Section 40-59-400, and therefore was professionally responsible, individually, for the construction of the subject building This Defendant concedes that Carl Aten was a "qualified registrant" and that Carl Aten assumed professional responsibility for the project, however, he did so as a managing member of R Design, LLC The code section cited in the Order clearly contemplates a qualified registrant holding the license for an LLC to engage in the type of construction practices that R Design was hired to perform If anything, the Code section encourages "firms", including LLC's, to be able to engage in construction practices that require individuals to hold licenses on behalf of the firms At all times, Carl Aten acted within the scope of his position as a member manager of his LLC In accordance with South Carolina Code Section 40-59-410 an LLC may offer residential home building services An LLC cannot apply for a South Carolina Residential Home

Builder's License A license must be obtained and filed by an individual, on behalf of a "firm" (or LLC) The professional responsibility that the qualified registrant has, is also that of the "firm" when the qualified registrant is a member of the LLC An LLC is a unique animal in the law that affords protections to individual, licensed members of the LLC These protections from liability can not be ignored, nor do I believe that they are, within the relevant code sections cited or otherwise, within the Order of this Court To hold Carl Aten individually liable due to the professional responsibility requirements of the cited code section in the Order is to ignore the legislative intent and purpose for the liability protections afforded to individual members under the Uniform Limited Liability Company Act of 1996

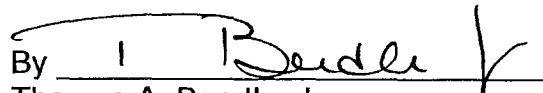
In an e-mail transmission from this Court to opposing Counsel, sent on February 12, 2008, instruction was given to Plaintiff's Counsel, Worth Lipfert, to draft an order denying the Defendants motion as to three of the four causes of action This Court had also indicated in the e-mail that the Defendant's, Carl Aten's, motion to dismiss for the breach of contract action was granted based upon the fact that the contract was between the Plaintiff and R Design, not Carl Aten, individually Mr Lipfert was to prepare the Order However, this Court at some point sent out it's own Order which essentially denies Defendant's Motion in its entirety, and as to all four (4) of the Plaintiff's causes of action As such, clarification is needed with regard to Defendant, Carl Aten's, motion as to the breach of contract claim If the Court mistakenly denied the Defendant, Aten's, motion as to the breach of contract claim in its most recent Order, then the

Defendant would also need clarification for the denial of the motion as to the Plaintiff's breach of warranty claim. The only warranty given to the Plaintiff is contained in the contract between the parties, a contract that Carl Aten, individually, is not a party to.

Furthermore, the Plaintiff relies upon all applicable provisions of the Uniform Limited Liability Company Act of 1996 which shields individual managing members from liability when those individual members act within the course and scope of their positions as member managers.

For the reasons set forth above, along with oral and written argument, the Defendant, Carl Aten, respectfully requests that reconsideration of his motion to be released from this action, as an individual, be granted as to all causes of action. In addition, this Defendant respectfully requests that clarification be given with regard to the Court's initial decision with regard to the dismissal of the Plaintiff's breach of contract claim against the Defendant, Aten.

HOWELL, GIBSON & HUGHES, P A

By 

Thomas A. Bendle, Jr.
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for R. Design Construction
Company and Carl R. Aten, Jr.

Beaufort, South Carolina
March 4, 2008

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Protective Order upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels last known address on 5th day of March 2008

By Thomas A Bendle Jr
Thomas A Bendle Jr

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

- ☐ I have consulted with opposing counsel and have been unable to resolve the matter
- ☒ Consultation with opposing counsel would serve no useful purpose or is not required
- ☐ Consultation with opposing counsel could not be timely held
- ☐ I certify that there is no duty of consultation for the attached motion (to dismiss for summary judgment for new trial for judgment NOV in real estate foreclosures or with pro se litigants)

2008 MAR -5 AM 10 42
FILED
BEAUFORT COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,
Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,
Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Third Party Plaintiffs

vs

KINTZ ELECTRIC,
Third Party Defendant

MEMORANDUM IN SUPPORT
OF MOTION TO RECONSIDER

2008 MAR 19 PM 1:12
CLERK OF COURT
C. H. GAST S C

This matter comes before the Court on the Motion of the Defendant, Carl R Aten, Jr , for Reconsideration of his Motion for Summary Judgment and appropriate alteration and/or amendment of the Order filed February 26, 2008, denying the Motion Pursuant to Rules 52 and 59, South Carolina Rules of Civil

Procedure, Aten requests that this Court reconsider its denial of his Motion for Summary Judgment and grant Summary Judgment for Aten for the reasons set forth below

The Plaintiff filed suit against Aten, his construction company, R Design Construction, LLC, and others, alleging negligence, breach of warranty, breach of contract, and damage to property relating to construction of the Jade Quarters Condominiums at Celadon on Lady's Island. Aten subsequently filed a Motion for Summary Judgment as to all causes of action, on the basis that he was not party to the contract, did not make any warranties to the Plaintiff, and is insulated from personal liability through his Limited Liability Company.

The Order signed and filed by the Court denies all grounds for Summary Judgment (See Order Attached as Exhibit). However, in an email sent to all counsel, the Court informed the parties that the Motion for Summary Judgment as to the breach of contract action would be granted (See Email Attached as Exhibit). Mr. Aten is not a party to the contract and there is no evidence that he entered into a contract with the Plaintiff (See Agreement Attached as Exhibit). Additionally, Mr. Aten is properly noted on the contract as signing the agreement in his capacity of authorized member of R Design Construction, LLC—not in his individual capacity. Consequently, Aten respectfully requests that the Order be amended to reflect the dismissal of the breach of contract claim.

The Court denied the Summary Judgment Motion as to the other causes of action (See Order Attached as Exhibit). However, the only evidence of warranties having been made are those included in the executed agreement.

between R Design Construction, LLC and 16 Jade St , LLC (See Agreement Attached as Exhibit) There is no evidence that Aten, as an individual, made any warranties to the Plaintiff Consequently, because there is no evidence Aten made any warranties, there is no evidence of a breach, and the breach of warranty claim against Aten should be dismissed

Finally, this Court denied the Motion for Summary Judgment as to the claims for negligence and damage to property on the basis that Aten, on the basis that Aten was the "qualified registrant" for R Design Construction, LLC

This Court correctly states that the South Carolina Code §40-59-400(6) designates an individual to be "personally responsible" under the residential homebuilder's licensing standard However, there is no indication that the legislative intent was to remove the corporate veil from residential home builders The same statutory section cited by this Court also contemplates that an LLC will be in the business of residential home construction S C Code Ann §40-59-400(3) (2007) In subsection (3), among the entities listed by the legislature in defining a "firm" is a limited liability company S C Code Ann §40-59-400(3) (2007) Additionally, subsection (5) of the same section notes that a "resident licensee" (which this Court noted as Mr Aten's status in the attached email) is responsible for, among other things, "applying for permits for the firm " S C Code Ann §40-59-400(5) (2007) Moreover, §40-59-410(F) states

Nothing in this section may be construed to prohibit firms from joining together to offer residential home building, residential specialty contracting, or home inspecting services to the public, **if each separate entity providing the services in this State otherwise meets the requirements of this section**

S C Code Ann §40-59-410(F)(2007)(Emphasis Added)

The definitions in §40-59-400 and the passage quoted above clearly demonstrate that the legislature encouraged, contemplated, and intended for entities such as corporations, partnerships, and LLCs to engage in the business of residential home building. Section 40-59-400(5) recognizes that LLCs cannot apply for permits—there must be an individual who signs the documents, just as Mr. Aten signed the contract with the Plaintiff on behalf of R Design. The “requirements” referenced in the passage includes that at least one employee from each entity holds a residential builder license. See S C Code Ann §40-59-410(B)(3). Taking the above-referenced provisions together, it is clear that the legislature intended for individuals to be able to hold a license on behalf of a firm without giving up the corporate protections. Had the legislature intended to impute personal liability on licensed residential builders, some provision of the same would be included. The absence of such a provision is a clear indication that the legislature intended for the general liability protections afforded in the Uniform LLC Act (S C Code Ann §33-44-101 et seq.) to remain in effect for residential home builders. In the absence of any evidence that Carl Aten acted individually or outside the scope of his role as member-manager of R Design Construction, LLC, this Motion should be granted.

Finally, it appears that the Court may have been inclined to decide this matter using a “one or the other” approach. This Defendant would respectfully submit that the provisions of the Uniform LLC Act (S C Code Ann §33-44-101 et seq.) and those provisions of the Residential Home Builders statutes (S C

Code Ann § 40-59-5 et seq) may be taken together without conflict, in that an individual may be “professionally responsible” without that person also being personally liable for actions undertaken as part of that person’s role as member-manager of that LLC. It is important to note that the Residential Home Builders statutes do not, in any way, create a right to a cause of action against an individual who holds a license for a firm (as defined in S C Code Ann §40-59-400(3)). The use of the term “professional responsibility” does not equate to ‘personal liability,’ and had the legislature intended for the two phrases to be used interchangeably, they almost certainly would have stated so. Moreover, because the legislature did not include such a statement or provision equating the two phrases, and because the legislature did not specifically create personal liability for the residential builder license holder, it must be inferred that the legislature intended the phrase “professional responsibility” to mean something other than “personally liable.” To link “professional responsibility” to “personal liability” destroys all corporate protection for all residential homebuilders. In light of no evidence that the legislature intended this result, it must be found that the individual license holder for an LLC performing work as a residential home builder remains protected under the Uniform LLC Act.

For the reasons set forth above, this Defendant, Carl R. Aten, Jr., respectfully requests that this Court revisit the issues raised in this Memorandum and grant Summary Judgment as to all causes of action.

HOWELL, GIBSON & HUGHES, P A

By W. T. V. FOR
Thomas A. Bendle, Jr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Carl R. Aten, Jr
Bar No 69561

Beaufort, South Carolina

March 6, 2008

9965
TB

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,
Individually and in his capacity as
principal and agent of R DESIGN
CONSTRUCTION CO , LLC,
CATTERSON & SONS
CONSTRUCTION and MICHAEL S
CATTERSON, Individually and in his
capacity as principal and agent of
CATTERSON & SONS
CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
LLC, and CARL R ATEN, JR ,

Thrd Party Plaintiffs

vs

KINTZ ELECTRIC,

Thrd Party Defendant

SUPPLEMENT TO
MEMORANDUM IN SUPPORT
OF MOTION TO RECONSIDER

2008 APR 19 PM 1:12
CLERK OF COURT
BEAUFORT CO. SC

Defendant Carl Aten has previously filed with the Court a Memorandum in support of his Motion for Reconsideration Defendant Aten respectfully submits the following Supplement to the aforementioned Memorandum

South Carolina Code §33-44-201 states "a limited liability company is a legal entity distinct from its members" In its comment to this section, the legislature states the following "[M]embers are not proper parties to suits against the company unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company ' The lawsuit filed by 16 Jade Street, LLC seeks to accomplish neither of these objectives Consequently, an action against a member of an LLC is barred by statute, and Aten should be dismissed from this lawsuit

HOWELL, GIBSON & HUGHES, P A

By 
Thomas A Bendle, Jr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Carl Aten
Bar No 69561

Beaufort, South Carolina

March 17, 2008

Code 1976 § 33 44-201

C

Code of Laws of South Carolina 1976 Annotated Currentness

Title 33 Corporations Partnerships and Associations (Refs & Annos)

Chapter 44 Uniform Limited Liability Company Act of 1996

Article 2 Organization (Refs & Annos)

→ § 33-44 201 Limited liability company as legal entity

Except as provided in Section 12 2-25 for single member limited liability companies, a limited liability company is a legal entity distinct from its members

HISTORY 1996 Act No 343 § 2 1997 Act No 91 § 2

COMMENT

A limited liability company is legally distinct from its members who are not normally liable for the debts, obligations, and liabilities of the company. See Section 33-44.303. Accordingly, members are not proper parties to suits against the company unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company.

LIBRARY REFERENCES

Limited Liability Companies 6

Westlaw Topic No 241E

LAW REVIEW AND JOURNAL COMMENTARIES

Control Provisions of the South Carolina Code Corporations Versus Limited Liability Companies 51 SC Law Rev 721 (Summer 2000)

Limited Liability Companies are Off and Running *Historic Charleston Holdings LLC v Mallon* Accountings and Derivative Actions in LLC Litigation 57 SC L Rev 441 (Spring 2006)

Code 1976 § 33 44-201 SC ST § 33-44 201

Current through End of 2007 Reg Sess

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END OF DOCUMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

16 Jade Street LLC

☐ Plaintiff

V

R Design Construction Co LLC et al

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO 2006-CP-07 866

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Co-Def's Attorney Thomas A Bendle Jr

Bar No

Address

Howell Gibson & Hughes P A
P O Box 40
Beaufort SC 29901

Phone 843-522 2400

Fax 843 522 2429

email

Other

Defendant's Attorney Jeffrey A Ross

Bar No

Address

CLAWSON & STAUBES LLC
126 Seven Farms Drive Suite 200
Charleston SC 29492-8144

Phone 843 577 2026

Fax 843 722 2867

email

Other

☒ MOTION HEARING REQUESTED (Attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion Motion for Summary Judgment

Estimated Time Needed 30 Minutes

Court Reporter Needed ☒ YES ☐ NO

SECTION II Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date Submitted

SECTION III Motion Fee

☒ PAID AMOUNT \$25.00

☐ EXEMPT

(Check Reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v Indigent Party

☐ Sexually Violent Predator Act ☐ Post Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69 SCRPC)

☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter

☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order

☐ Other

JUDGE

CODE

Date

CLERK'S VERIFICATION

Collected by (Print Name)

DATE FILED

☐ MOTION FEE COLLECTED

☐ CONTESTED AMOUNT DUE

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE 14TH JUDICIAL CIRCUIT
CASE NO 2006-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

v

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

R DESIGN CONSTRUCTION CO , LLC,
CARL R ATEN, JR individually and in
his capacity as principal and agent of
R Design Construction Co , LLC,
CATTERSON & SONS CONSTRUCTION
and MICHAEL S CATTERSON,
individually and in his capacity as principal
and agent of Catterson & Sons
Construction

Defendants

R DESIGN CONSTRUCTION CO LLC,
and CARL R ATEN, JR ,

Third-Party Plaintiffs,

v

KINTZ ELECTRIC

Third-Party Defendant

TO E MITCHELL GRIFFITH, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendant, Michael S Catterson, individually, through his undersigned attorney, will move before the presiding Judge of the Fourteenth Judicial Circuit in the Beaufort County Courthouse, Beaufort, South Carolina, on the tenth (10th) day after service hereof or at such other time and place as shall be convenient to the Court and counsel for an Order granting summary judgment in favor of the Michael

Catterson, individually, in the above-captioned matter upon the grounds that Michael Catterson had no involvement in this project in his individual capacity but rather was only involved with the project as a corporate officer for Catterson & Sons Construction, Inc , the corporation with whom R Design contracted to perform certain services upon the project that is the subject of this lawsuit Therefore, with respect to Michael Catterson individually, there exists no genuine issue as to any material fact and that Michael Catterson is entitled to judgment as a matter of law

This Motion is based upon the pleadings in the within action the Affidavits attached hereto and which will be served prior to the hearing upon the Memorandum in support of this Motion and attachments thereto upon Rule 56 of the South Carolina Rules of Civil Procedure and upon such additional law and argument as shall be appropriate

CLAWSON & STAUBES, LLC



Jeffrey A. Ross
CLAWSON & STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

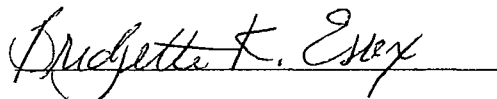
Attorneys for Michael S. Catterson

Charleston, South Carolina

May 13, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 13th day of May 2008



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

16 Jade Street LLC

☐ Plaintiff

v

R Design Construction Co LLC et al

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO 2006-CP 07 866

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Plaintiff's Attorney E Mitchell Griffith Bar No Address Griffith Sadler & Sharp PA P O Drawer 570 Beaufort SC 29901 Phone 843 521 4242 Fax 943-521 4247 email Other	Defendant's Attorney Jeffrey A Ross Bar No Address CLAWSON & STAUBES LLC 126 Seven Farms Drive Suite 200 Charleston SC 29492-8144 Phone 843-577 2026 Fax 843-722 2867 email Other
☒ MOTION HEARING REQUESTED (Attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I Hearing Information	
Nature of Motion Motion for Summary Judgment	
Estimated Time Needed 30 Minutes	Court Reporter Needed ☒ YES ☐ NO
SECTION II Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant	Date Submitted
SECTION III Motion Fee	
☒ PAID - AMOUNT \$25.00	
☐ EXEMPT ☐ Rule to Show Cause in Child or Spousal Support (Check Reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69 SCRPC) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter _____ ☐ Other	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order ☐ Other	JUDGE _____ CODE _____ Date _____
CLERK'S VERIFICATION	
Collected by _____ DATE FILED _____ (Print Name)	
☐ MOTION FEE COLLECTED _____ ☐ CONTESTED - AMOUNT DUE _____	

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOR THE 14TH JUDICIAL CIRCUIT
CASE NO 2006-CP-07-866

16 JADE STREET, LLC)

Plaintiff)

v)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

R DESIGN CONSTRUCTION CO LLC)
CARL R ATEN, JR , individually and in)
his capacity as principal and agent of)
R Design Construction Co , LLC,)
CATTERSON & SONS CONSTRUCTION)
and MICHAEL S CATTERSON,)
individually and in his capacity as principal)
and agent of Catterson & Sons)
Construction)

Defendants)

R DESIGN CONSTRUCTION CO LLC,)
and CARL R ATEN, JR ,)

Third-Party Plaintiffs,)

v)

KINTZ ELECTRIC)

Third-Party Defendant)

**TO THOMAS A BENDLE, JR , ATTORNEY FOR CO-DEFENDANT AND THIRD-
PARTY PLAINTIFF, R DESIGN**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Michael S Catterson individually,
through his undersigned attorney, will move before the presiding Judge of the Fourteenth
Judicial Circuit in the Beaufort County Courthouse, Beaufort, South Carolina on the tenth
(10th) day after service hereof or at such other time and place as shall be convenient to

the Court and counsel for an Order granting summary judgment in favor of the Michael Catterson, individually, in the above-captioned matter upon the grounds that Michael Catterson had no involvement in this project in his individual capacity but rather was only involved with the project as a corporate officer for Catterson & Sons Construction, Inc , the corporation with whom R Design contracted to perform certain services upon the project that is the subject of this lawsuit Therefore, with respect to Michael Catterson, individually there exists no genuine issue as to any material fact and that Michael Catterson is entitled to judgment as a matter of law

This Motion is based upon the pleadings in the within action the Affidavits attached hereto and which will be served prior to the hearing, upon the Memorandum in support of this Motion and attachments thereto, upon Rule 56 of the South Carolina Rules of Civil Procedure, and upon such additional law and argument as shall be appropriate

CLAWSON & STAUBES, LLC



Jeffrey A Ross
CLAWSON & STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston SC 29492-8144
(843) 577-2026

Attorneys for Michael S Catterson

Charleston South Carolina

May 13, 2008

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed and with sufficient postage affixed thereto on this 13th day of May 2008

Bridgette L. Enix

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

16 Jade Street, et al ,

Plaintiffs,

vs

R Design Construction Co , LLC, et al ,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO 2006-CP-07-00866

ORDER DENYING MOTION
FOR RECONSIDERATION

2008 MAY 13 PM 3 53
CLERK OF COURT
BEAUFORT, SC

☐ **JURY VERDICT** This action came before the court for a trial by jury The issues have been tried and a verdict rendered

☐ **DECISION BY THE COURT** This action came to trial or hearing before the court The issues have been tried or heard and a decision rendered

☐ **ACTION DISMISSED** ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC, (Vol Non-suit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other

☐ **ACTION STRICKEN** ☐ Rule 40(j) SCRPC, ☐ Bankruptcy, ☐ Binding Arbitration subject to right to restore, to confirm, vacate or modify arbitration award, ☐ Other

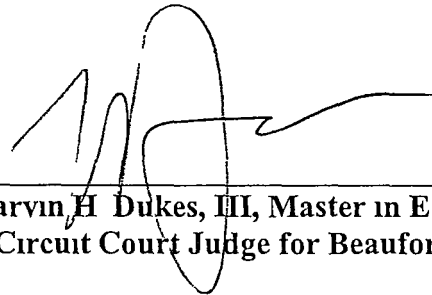
IT IS ORDERED AND ADJUDGED ☒ Statement of Judgment by the Court

On February 25, 2008, Judge Dukes issued an Order Denying Defendant/Third party's, Carl R Aten, Jr , Summary Judgment Motion

Defendant, R Design Construction Co , LLC, and Defendant/Third party, Carl R Aten, Jr , filed a Motion to Reconsider on March 5, 2008, which Judge Dukes heard April 10, 2008, at 10 00 a m

It is therefore Order Defendant's, R Design Construction Co , LLC, and Defendant/Third party's', Carl R Aten, Jr , Motion to Reconsider is denied

Beaufort, South Carolina, the 13th day of May, 2008



Hon Marvin H Dukes, III, Master in Equity
Special Circuit Court Judge for Beaufort County

This judgment was entered on the ____ day of _____ 2008, and copy mailed first class the
____ day of _____ 2008 to attorneys of record or the pro-se parties as follows

E Mitchell Griffith

Attorney(s) for the Plaintiff(s)

Thomas A Bendle, Jr , Jeffrey A Ross,
Thomas J Finn, Brent M Boyd

Attorney(s) for the Defendant (s)

CLERK OF COURT

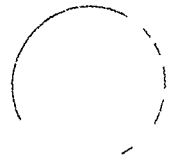
06-866



MASTER IN EQUITY

Post Office Drawer 1228
Beaufort, South Carolina 29901 1228

(843) 470-5297
Fax (843) 470 5298



May 16, 2008

Elizabeth Smith
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

Re 16 Jade Street, et al vs R Design Const Co , LLC,
et al
Case No 2006-CP-07-00866

Dear Elizabeth

Enclosed, you will find an original Order in connection with the above captioned case Please make this Order a part of your file on this action I forwarded a copy of this letter, as well as a copy of the Order to all counsel of record This letter shall serve as their notice of filing I am,

Sincerely,

Heather R H McLeod
Judicial Assistant to
Hon Marvin H Dukes, III
Beaufort County Master In Equity
(843) 470-5297

HRHM/mhd
Enclosures

cc E Mitchell Griffith, Esq
Thomas A Bendle, Jr , Esq
Jeffrey A Ross, Esq
Thomas J Finn, Esq
Brent M Boyd, Esq

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO 2006-CP-07-00866

16 Jade Street, et al ,

Plaintiffs,

vs

R Design Construction Co , LLC, et al ,

Defendants

AMENDED
ORDER ON MOTION
FOR RECONSIDERATION

CLERK OF COURT
BEAUFORT, S.C.

2008 MAY 16 PM 4:53

This Order amends that certain Order denying reconsideration dated May 13th, 2008 On February 25th, 2008, I issued an Order denying Carl R Aten Jr's summary judgment motion On March 5th, 2008, I heard a motion to reconsider on that same motion, which resulted in an Order denying said Motion dated May 13th, 2008 The Order denying the motion to reconsider should have reflected that the February 25th, 2008 Order failed to include a dismissal of the breach of contract causes of action against Carl R Aten, Jr This Order is to amend and clarify that the Defendant Carl R Aten Jr's motions are denied, except for the breach of contract cause of action, which was dismissed

Beaufort, South Carolina, the 16th day of May, 2008

Marvin H Dukes, III, Master in Equity

This judgment was entered on the ____ day of _____ 2008, and copy mailed first class the ____ day of _____ 2008 to attorneys of record or the pro-se parties as follows

E Mitchell Griffith

Attorney(s) for the Plaintiff(s)

Thomas A Bendle, Jr , Jeffrey A Ross,
Thomas J Finn, Brent M Boyd

Attorney(s) for the Defendant (s)

CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO 06-CP-07-866

16 JADE STREET, LLC,

Plaintiff,

vs

R DESIGN CONSTRUCTION CO ,
 LLC, and CARL R ATEN, JR ,
 Individually and in his capacity as
 principal and agent of R DESIGN
 CONSTRUCTION CO , LLC,
 CATTERSON & SONS
 CONSTRUCTION and MICHAEL S
 CATTERSON, Individually and in his
 capacity as principal and agent of
 CATTERSON & SONS
 CONSTRUCTION,

Defendants

R DESIGN CONSTRUCTION CO ,
 LLC, and CARL R ATEN JR ,

Third Party Plaintiffs

vs

KINTZ ELECTRIC,

Third Party Defendant

MEMORANDUM IN SUPPORT
OF MOTION FOR DIRECTED
VERDICT

Defendant Carl Aten respectfully submits a Memorandum in Support of his
 Motion for Directed Verdict

In ruling on directed verdict motions, the trial court is required to view the
 evidence and the inferences that reasonably can be drawn therefrom in the light

most favorable to the party opposing the motions Steinke v South Carolina Dep't of Labor, Licensing and Regulation, 336 S C 373, 520 S E 2d 142 (1999) If the evidence before the court provides for only one inference, a directed verdict in favor of the moving party is proper Staples v Duell, 329 S C 503, 494 S E 2d 639 (Ct App 1997) The determination of legislative intent is a matter of law Charleston County Parks & Recreation Com'n v Somers, 319 S C 65, 67, 459 S E 2d 841, 843 (1995) When the statute in question is clear and unambiguous, a court must apply the statute according to its literal meaning Miller v Aiken, 364 S C 303 307, 613 S E 2d 364 366 (2005) Consequently it is the responsibility of this Court to determine whether Defendant Carl Aten, as an individual, can be held personally liable for alleged construction deficiencies performed by his LLC, R Design Construction For the following reasons, the law clearly in answers that question in the negative

To determine who may be liable for alleged torts committed by an LLC, one must first examine the Uniform Limited Liability Company Act (S C Code Ann §33-44-101 *et seq*) Section 33-44-201 of the Uniform LLC Act states 'a limited liability company is a legal entity distinct from its members' In its comment to this section, the legislature states the following "[M]embers are not proper parties to suits against the company unless an object of the proceeding is to enforce members' rights against the company or to enforce their liability to the company" The comment is reinforced in §33-44-302, which states that an LLC "is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or

manager acting in the ordinary course of business of the company or with authority of the company ”

Section 33-44-303 addresses the liability of members and managers of a Limited Liability Company The Section reads as follows

- (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager
- (b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company
- (c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if
 - (1) a provision to that effect is contained in the articles of organization, and
 - (2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision

S C Code Ann §33-44-303 (2006) Thus, the general rule is that a member or manager of an LLC cannot be held personally liable for actions of the LLC

As indicated in the above-referenced Code Section, the exception to this rule of liability is that a member or manager of an LLC can be held personally liable for the acts of the LLC if the requirements set forth in sub-section (c) are

met. Additionally, the comment to this section indicates that a member or manager may be held liable if he acted outside the scope of his duties as a member or manager of an LLC.

The statutory sections above clearly demonstrate that a member of an LLC cannot be held liable for the actions of the LLC. The plain language of §33-44-302 and §33-44-303 clearly indicate that a member/manager of an LLC is not personally liable for acts of the LLC, except in those limited circumstances when the member/manager acted outside the scope of his capacity as a member/manager. Moreover, the comment to §33-44-201 contemplates the exact instance in this suit, where a member is named in an action that should be brought solely against the LLC. Because this action is not seeking to enforce members' rights against the company or to enforce their liability to the company, Aten should not be named as a party to this action.

Additionally, Aten should be granted a directed verdict because the Plaintiff neither alleged nor shown that Aten acted outside the scope of his duties as a member of R Design. Such a showing would potentially allow the exception to 33-44-303(c) to apply. The Plaintiff alleges R Design was negligent and breached an implied warranty of good and workmanlike service "by and through Aten." The final cause of action asserted against Aten, for "damage to property," also alleges that Aten is personally liable. However, the Plaintiff has failed to allege or show that Aten acted as an individual outside the scope of his duties as member of R Design. Consequently, because the Plaintiff has failed to meet its

burden in demonstrating Aten is personally liable, he should be granted a directed verdict

The Plaintiff, in arguing that Aten is personally liable, directs the Court's attention to the Residential Home Builders section of the South Carolina Code (40-59-5 *et seq*) The Plaintiff relies on language in this section that requires an individual to hold the residential builders' permit as being instructive that the legislature intended that person to be personally liable Specifically, the Plaintiff relies on §§ 40-59-410(B)(3) & (H), and 40-59-400 of the South Carolina Code in supporting its contention that an individual member of an LLC may be held liable for the alleged torts committed by the LLC

Section 40-59-410(B)(3) states that a firm (defined in §40-59-400 as "a business entity functioning as a limited liability company which offers or provides building services through licensed residential builders, residential specialty contractors, or home inspectors ") may not hold a residential home builders permit Subsection (H) establishes that a person holding a residential home builders permit is the "responsible charge" for a firm engaged in the business of residential home building According to S C Code §40-59-400(6), the "responsible charge" is defined as "the direction of building services by a residential builder to the extent that successful completion of the building services is dependent on the personal supervision, direct control, and final decisions by the qualified registrant to the extent that the qualified registrant assumes professional responsibility for the building services " The Plaintiff argues that such "professional responsibility" as a "responsible charge" is

sufficient to impose personal liability on an individual member of an LLC. This argument is without merit.

First, such an argument is in direct conflict with the Uniform LLC Act, which clearly provides an individual protection through the LLC entity. Although the Plaintiff contends the legislature intended to confer personal liability on a member of an LLC, nowhere is such an intent reflected within the residential home builders section. Moreover, the same section cited by the Plaintiffs in support of its notion demonstrates that the legislature contemplated various entities, including LLCs and corporations working in the business of residential home building. S.C. Code Ann. §§40-59-400, 40-59-410 (2006). Therefore, if the legislature had intended personal liability to attach to a person holding a residential home builders permit, it could have easily stated as much within this section. However, nowhere within this section did the legislature either confer personal liability on a residential home builder or create a cause of action against the residential home builder. Therefore, the most applicable statutory section in determining personal liability is that of the Uniform LLC Act. Consequently, there can be no personal liability against Carl Aten and he should be granted a directed verdict.

Additionally, the Plaintiff's argument that "professional responsibility" is the same as personal liability ignores both other code sections and numerous examples in other professions where the two terms are independent of one another. Section 40-59-20 of the Code establishes the South Carolina Residential Builders Commission. This commission is responsible for the

licensing of residential home builders S C Code Ann §40-59-70 (2006) However, the commission is also responsible for disciplining license holders S C Code Ann §40-59-90 (2006) According to §40-59-410(E), the commission may also discipline firms Consequently, the “professional responsibility” charged to a license holder is responsibility so common among professionals, including lawyers A lawyer, while he may face punishment from the Supreme Court, does not become liable in tort simply because he violates a rule of professional conduct Likewise, a residential home builder who violates his professional responsibility may be subject to discipline by the Commission, but is not personally liable for acts or omissions by the LLC in the ordinary course of business

Moreover, the legislature clearly acknowledges the basic idea that an LLC must act through its members Just as Carl Aten signed, on behalf of R Design, the contract for supervision of work between R Design and 16 Jade Street, LLC, so too can an individual take out a residential home builders permit only to work under an LLC The legislature acknowledges as much in several areas of the residential home builders statute, including §40-59-410(B) (“The practice or offer to practice residential home building as defined in this chapter by an individual residential home builder through a firm is authorized ”), §40-59-410(F) (“Nothing in this section may be construed to prohibit firms from joining together to offer residential home building ”) §40-59-410(G) (“If the requirements of this section are met, the commission shall issue a residential business certificate of authorization to the firm, and the firm may engage or offer to engage in the

business of residential home building ”), and §40-59-410(H) (“Residential home builders engaged in practice through firms involving the practice of residential building may maintain branch offices as well as a principal place of business ”) Based on these sections, the legislature not only encouraged LLCs and similar corporate bodies to engage in residential building, it encouraged them to do so

Finally, to adopt the Plaintiff’s view of the residential home builders statute would completely abrogate the corporate protections afforded to a builder who has formed an LLC or corporation There would be no protection for any individual holding a residential home builders license and each person would then be personally liable for all tortious acts or omissions committed by the LLC or corporation Such a result cannot be what the legislature intended by using the term “professional responsibility” Therefore, Carl Aten must be granted a directed verdict

CONCLUSION

For the reasons set forth above, Defendant Carl Aten should be granted a directed verdict as to all causes of action and dismissed from this lawsuit According to the Uniform LLC Act, an individual cannot be held liable for the acts of an LLC when the person acted within the scope of his duties as a member of the LLC The Plaintiff has failed to demonstrate that Aten acted outside the scope of those duties Consequently, Aten is entitled to a directed verdict

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May 23, 2008

CERTIFICATE OF SERVICE

I certify that I served the foregoing Memorandum in Support of Directed Verdict upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels last known address on _____ day of May 2008

By _____
Thomas A Bendle Jr

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T Mullen

Civil Action No 06-CP-07-866

16 Jade Street, LLC

Respondent/Appellant,

vs

R Design Construction Co , LLC and Carl R Aten, Jr , Individually and in his capacity as principal and agent of R Design Construction Co , LLC, Catterson & Sons Construction and Michael S Catterson, Individually and in his capacity as principal and agent of Catterson & Sons Construction,

Of Whom

Carl R Aten, Jr is

Appellant/Respondent,

And

Michael S Catterson, Individually and in his capacity as principal and agent of
Catterson & Sons Construction is Respondent,

R Design Construction Co, LLC and Carl R Aten, Jr

Third Party Plaintiffs,

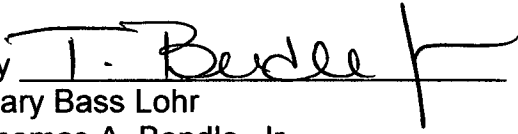
Kintz Electric

Third Party Defendant

CERTIFICATE OF COUNSEL

The undersigned certified that this Supplemental Record on Appeal
complies with Rule 211 (b), SCACR

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October 11, 2011

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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The Honorable Carmen T Mullen

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Of Whom

Carl R Aten, Jr is

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And

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Catterson & Sons Construction is Respondent,

R Design Construction Co, LLC and Carl R Aten, Jr

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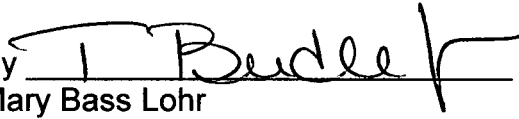
Kintz Electric

Third Party Defendant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Supplemental Record on Appeal has been reviewed and redacted (where necessary) and complies with the Supreme Court's Order of August 13, 2007

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October 11, 2011