

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

Andrea Miller-Clark,)
Plaintiff,)

vs.)

Charles McNair and Ryan T. Cunningham)
d/b/a Dimension Builders,)
Defendant.)

and)

Ryan T. Cunningham d/b/a Dimension)
Builders,)
Cross-claim Plaintiff,)

vs.)

Charles McNair,)
Cross Claim Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
Case No.: 2012-CP-13-758

AMENDED ANSWER
AND CROSS-CLAIMS

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The Defendant, Ryan T. Cunningham d/b/a Dimension Builders, amending his Answer to the Complaint of Andrea Miller-Clark and preserving unaltered the cross-claims against Third Party Defendant, would respectfully show unto this honorable Court as follows:

1. Defendant Ryan T. Cunningham is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint, and therefore Defendant denies these allegations.
2. Defendant Ryan T. Cunningham admits Paragraph 2.
3. Defendant Ryan T. Cunningham admits Paragraph 3.
4. Defendant Ryan T. Cunningham admits Paragraph 4 but notes that said contract was not attached to the complaint served on Defendant Ryan T. Cunningham.
5. Defendant Cunningham denies Paragraph 5 of the Plaintiff's Complaint in that said Paragraph implies that Defendant Cunningham permitted Charles McNair to use the construction permit in the manner in which it was used. Defendant Cunningham further alleges that Charles McNair operated well outside of the scope of his agreement with Defendant Cunningham.
6. Paragraph 6 does not require a response. To the extent a response is required, Defendant Cunningham denies the same.
7. Defendant Ryan T. Cunningham denies the allegations contained in Paragraph 7 in that it implies that Ryan T. Cunningham had a contract with the Plaintiff, and in that it implies that Ryan T. Cunningham agreed with the work done by Charles McNair.

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8. Paragraph 8 does not require a response. To the extent a response is required, Defendant Cunningham denies the same.
9. Defendant Ryan T. Cunningham denies Paragraph 9 of Plaintiff's Complaint in that it implies that Defendant Cunningham was paid any money for this job, in which, in fact, he was not. Mr. Cunningham asserts that Charles McNair was a rogue contractor, lying at every turn about his relationship with Mr. Cunningham to Plaintiff. Mr. McNair acted as if he was working under Mr. Cunningham's license, when in fact he was taking all of the money and working on his own without the permission of Mr. Cunningham.
10. Defendant Ryan T. Cunningham denies any knowledge or involvement with the allegations contained in Paragraph 10.
11. Paragraph 11 does not require a response. To the extent a response is required, Defendant Cunningham denies the same.
12. Defendant Cunningham denies the allegations contained in Paragraph 12 that he has failed to act in any means or manner to remediate the problems when in fact in November of 2007, after spending three months along with Plaintiff and Plaintiff's attorney trying to get Charles McNair to repair the house, Mr. Cunningham reported Mr. McNair to the county inspector, Keith Denton. Mr. Cunningham also put a stop work order in at this time. In December, Mr. Cunningham put felt over the exposed windows of the house in order to stop rain. Mr. Cunningham also tried on numerous occasions, unsuccessfully, to contact Plaintiff regarding the needed remediation throughout the winter.
13. Defendant Cunningham denies Paragraphs 13 and 14 of Plaintiff's Complaint.

**FOR A FIRST DEFENSE
(Unclean Hands)**

14. Defendant Cunningham reaffirms and reiterates all of the paragraphs contained in this Answer, and Third Party Complaint herein as fully as if repeated verbatim.
15. Plaintiff's causes of action are barred by the doctrine of unclean hands.
16. Ryan T. Cunningham alleges that that Plaintiff knew that Charles McNair was not a licensed general contractor. Plaintiff paid Mr. McNair in installments of \$5,000 so as to structure the payments in order to not violate a provision of the law that unlicensed contractors shall only receive jobs under \$5,000. Plaintiff knew that Ryan T. Cunningham d/b/a Dimension Builders had no working relationship with Charles McNair because Plaintiff attempted to contract with Mr. Cunningham to remediate the faulty workmanship on the house and to complete the construction. Furthermore, Plaintiff even used Defendant Ryan T. Cunningham's construction permit improperly and without the consent of Mr. Cunningham by instructing Plaintiff's Uncle-in-law to construct two brick curtain retainer walls alongside the driveway of the subject property. This is another reason Mr. Cunningham pulled a stop work order on the property.

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

17. Defendant Cunningham reaffirms and reiterates all of the paragraphs contained in this Answer, and Third Party Complaint herein as fully as if repeated verbatim.
18. The claims of the Plaintiff are the direct and proximate result of the negligence and actions of the Plaintiff and/or Defendant McMair.
19. Defendant Cunningham is entitled to an apportionment of liability and damages attributable to the above described comparative fault.

FOR A THIRD DEFENSE

(Failure to State a Claim)

20. Defendant Cunningham reaffirms and reiterates all of the paragraphs contained in this Answer, and Third Party Complaint herein as fully as if repeated verbatim.
21. Further answering the Complaint and as a further defense, Defendant alleges the Plaintiff has failed to state a claim upon which relief can be granted.

FOR A FOURTH DEFENSE

(Statute of Limitations)

22. Defendant Cunningham reaffirms and reiterates all of the paragraphs contained in this Answer, and Third Party Complaint herein as fully as if repeated verbatim.
23. All of the Plaintiff's claims are barred by the statute of limitations.

CROSS-CLAIM

Cross-claimant Ryan T. Cunningham d/b/a Dimension Builders, by and through his undersigned counsel, and pursuant to Rule 13(g) of the South Carolina Rules of Civil Procedure, cross-claims against the Defendant Charles McNair, and alleges as follows:

FIRST CAUSE OF ACTION

(Fraudulent Misrepresentation)

24. Cross-claimant Ryan T. Cunningham incorporates his previous responses consistent herewith as if set forth herein verbatim.
25. A representation was made between Charles McNair and Ryan T. Cunningham that Ryan T. Cunningham would be the general contractor on the property to be constructed that is the subject of this lawsuit. Mr. McNair further represented that he would do certain subcontractor work under the construction permit of Mr. Cunningham.
26. This representation was false because Mr. McNair, in fact, had represented to Ms. Andrea Miller-Clark that Mr. McNair was the general contractor on the job and did not disclose that he would be working under Mr. Cunningham's permit, it being that Mr. Cunningham is a licensed contractor in the State of South Carolina. Mr. McNair apparently desired to use Mr. Cunningham's permit, disobey Mr. Cunningham's instructions, and take all of the money from Ms. Miller-Clark.
27. This representation is material because Mr. Cunningham would not have decided to undertake this job if he knew that Mr. McNair was feigning to be the general contractor to

- Ms. Miller-Clark. Nor would he have undertaken the job if he knew that Mr. McNair would disobey Mr. Cunningham's orders regarding construction of the house.
28. Mr. McNair knew of the falsity of this representation because he gave a different assessment of his relationship with Mr. Cunningham to Ms. Miller-Clark than he did to Mr. Cunningham.
 29. Mr. McNair intended that the representation be acted upon because he convinced Mr. Cunningham to pull a construction permit, while representing that Mr. Cunningham would have control over the project.
 30. Mr. Cunningham was ignorant of the falsity of the representation because he proceeded in the earliest stage to give Mr. McNair particular instructions on the building of the house regarding the framing and the roofing. These instructions were not followed by Mr. McNair.
 31. Mr. Cunningham relied on the truth of the representation in that he allowed a construction permit to be pulled under his name.
 32. Mr. Cunningham had a right to rely on the representation of Mr. McNair because he had a speciality license and Mr. Cunningham assumed he could perform the duties of subcontractor.
 33. As a consequent and proximate injury resulting from Mr. Cunningham's reliance on Mr. McNair's representation, Mr. Cunningham is a Defendant in this lawsuit because of Mr. McNair's actions, and faces damages resulting from that suit.
 34. Pursuant to Rule 13(g) of the South Carolina Rules of Civil Procedure, Mr. Cunningham claims that Mr. McNair is liable to Mr. Cunningham for all of the claims asserted in the action by Ms. Miller-Clark against Ryan T. Cunningham d/b/a Dimension Builders.
 35. Ryan T. Cunningham d/b/a Dimension Builders respectfully request this Court to direct Charles McNair to be liable for any awards against Ryan T. Cunningham d/b/a Dimension Builders as a result of this action.

**FOR A SECOND CAUSE OF ACTION
(Promissory Estoppel)**

36. Cross-claimant Ryan T. Cunningham incorporates his previous responses consistent herewith as if set forth herein verbatim.
37. A promise, unambiguous in its terms, was made between Charles McNair and Ryan T. Cunningham d/b/a/ Dimension Builders that Ryan T. Cunningham would be the general contractor on the property to be constructed that is the subject of this lawsuit. Mr. McNair further promised that he would do certain subcontractor work under the construction permit of Mr. Cunningham.
38. Mr. Cunningham reasonably relied on the promise.
39. Mr. Cunningham's reliance was expected and foreseeably by Mr. McNair.
40. Mr. Cunningham was injured in reliance on the promise in that Mr. Cunningham is a defendant in this Lawsuit because of Mr. McNair's actions and faces damages resulting from that suit.

41. Pursuant to Rule 13(g) of the South Carolina Rules of Civil Procedure, Mr. Cunningham claims that Mr. McNair is liable to Mr. Cunningham for all of the claims asserted in the action by Ms. Miller-Clark against Ryan T. Cunningham d/b/a Dimension Builders.
42. Ryan T. Cunningham d/b/a Dimension Builders respectfully request this Court to direct Charles McNair to be liable for any awards against Ryan T. Cunningham d/b/a Dimension Builders as a result of this action.

FOR A THIRD CAUSE OF ACTION
(Attorney's Fees and Suit Money)

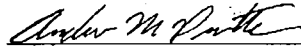
43. Cross-claimant Ryan T. Cunningham incorporates his previous responses consistent herewith as if set forth herein verbatim.
44. As a result of the actions of Charles McNair, Ryan T. Cunningham d/b/a Dimension Builders was required to retain the services of counsel
45. Ryan T. Cunningham d/b/a Dimension Builders respectfully request this Court to order Charles McNair to pay attorney's fees and suit money in this matter.

WHEREFORE, Defendant Ryan T. Cunningham d/b/a Dimension Builders respectfully request the following relief:

- A. A judgment in favor of Ryan T. Cunningham d/b/a Dimension Builders denying Plaintiff all relief requested in her Complaint in this action against Ryan T. Cunningham d/b/a Dimension Builders and dismissing Plaintiff's Complaint against Ryan T. Cunningham d/b/a Dimension Builders with prejudice;
- B. This Honorable Court to direct Charles McNair to be liable for any awards against Ryan T. Cunningham d/b/a Dimension Builders as a result of the action brought by Plaintiff Andrea Miller-Clark against Ryan T. Cunningham d/b/a Dimension Builders;
- C. The Cross-claimant Ryan T. Cunningham d/b/a Dimension Builders be awarded his cost of this action, including attorney's fees and suit money; and
- D. That Defendant and Cross-claimant Ryan T. Cunningham d/b/a Dimension Builders be awarded such further legal and equitable relief as this Honorable Court may deem just and proper.

[Signature on Following Page]

COCKRELL LAW FIRM, PC



M.W. Cockrell, III

S.C. Bar # 69417

Sarah C. Campbell

S.C. Bar # 100581

Andrew M. Privette

S.C. Bar # 100978

159 Main St.

Chesterfield, SC 29709

Telephone: 843-623-5911

Chesterfield, South Carolina

April 15, 2015