

1 Shorall McGoldrick Brinkmann
1232 east missouri avenue
2 phoenix, az 85014-2912
602.230.5400
3 602.230.5432 (fax)
smb@smbattorneys.com

4 Tom Shorall Jr., #010456
5 Jason J. Boblick, #026507
tomshorall@smbattorneys.com
6 jasonboblick@smbattorneys.com
7 Attorneys for Third Party Defendant
Liberty Constructors

8 Superior Court of Arizona

9 Maricopa County

11 Gallery Community Association, an
12 Arizona non-profit corporation,

13 Plaintiff,

14 vs.

15 K. Hovnanian at Gallery, LLC, an Arizona
16 limited liability company; et al.

17 Defendants.
18

19
20 And related third-party claims.
21

No. CV2020-008714

**Third Party Defendant Liberty
Constructors, LLC's Answer to the
Third-Party Complaint**

(Honorable Michael Kemp)

22 Third Party Defendant Liberty Constructors, LLC, and through undersigned counsel,
23 answers the Third-Party Complaint as follows:
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Parties

1. Answering Paragraphs 1 through 10, Liberty Constructors is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

2. Answering Paragraph 11, Liberty Constructors admits the allegations.

3. Answering Paragraphs 12 through 16, Liberty Constructors is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

Jurisdiction and Venue

4. Answering Paragraphs 17 through 18, Liberty Constructors is without knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

General Allegations

5. Answering Paragraphs 19 through 20, Liberty Constructors admits that it performed some work at the subject property. Liberty Constructors is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and, therefore, denies the same.

6. Answering Paragraph 21, Liberty Constructors denies the allegations to the extent any are alleged against it. Liberty Constructors is without knowledge or information

1 information sufficient to form a belief as to the truth of the remaining allegations and,
2 therefore, denies the same.

3
4 **Count Two**
5 **(Breach of Implied Warranty)**

6 12. Answering Paragraph 31, Liberty Constructors re-alleges and incorporates the
7 foregoing averments.

8 13. Answering Paragraphs 32 through 33, Liberty Constructors is without knowledge
9 or information sufficient to form a belief as to the truth of the allegations and, therefore,
10 denies the same.
11

12 14. Answering Paragraphs 34 through 37, Liberty Constructors denies the allegations
13 to the extent any are alleged against it. Liberty Constructors is without knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations and,
15 therefore, denies the same.
16

17
18 **Count Three**
19 **(Breach of Contract)**

20 15. Answering Paragraph 38, Liberty Constructors re-alleges and incorporates the
21 foregoing averments.

22 16. Answering Paragraphs 39 through 41, Liberty Constructors denies the allegations
23 to the extent any are alleged against it. Liberty Constructors is without knowledge or
24
25
26

1 information sufficient to form a belief as to the truth of the remaining allegations and,
2 therefore, denies the same.

3
4 **Count Four**
5 **(Negligence)**

6 17. Answering Paragraph 42, Liberty Constructors re-alleges and incorporates the
7 foregoing averments.

8 18. Answering Paragraphs 43 through 46, Liberty Constructors denies the allegations
9 to the extent any are alleged against it. Liberty Constructors is without knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegations and,
11 therefore, denies the same.
12

13
14 **Count Five**
15 **(Common Law Implied Indemnity)**

16 19. Answering Paragraph 47, Liberty Constructors re-alleges and incorporates the
17 foregoing averments.

18 20. Answering Paragraph 48, Liberty Constructors is without knowledge or
19 information sufficient to form a belief as to the truth of the allegations and, therefore, denies
20 the same.
21

22 21. Answering Paragraph 49, Liberty Constructors denies the allegations to the
23 extent any are alleged against it. Liberty Constructors is without knowledge or information
24
25
26

1 sufficient to form a belief as to the truth of the remaining allegations and, therefore, denies
2 the same.

3
4 **Count Six**
5 **(Contractual Indemnity)**

6 22. Answering Paragraph 50, Liberty Constructors re-alleges and incorporates the
7 foregoing averments.

8 23. Answering Paragraph 51, Liberty Constructors is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations and, therefore, denies
10 the same.

11
12 24. Answering Paragraphs 52 through 54, Liberty Constructors denies the allegations
13 to the extent any are alleged against it. Liberty Constructors is without knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations and,
15 therefore, denies the same.
16

17
18 **Count Seven**
19 **(Declaratory Relief – Duty to Defend)**

20 25. Answering Paragraph 55, Liberty Constructors re-alleges and incorporates the
21 foregoing averments.

22 26. Answering Paragraph 56, Liberty Constructors is without knowledge or
23 information sufficient to form a belief as to the truth of the allegations and, therefore, denies
24 the same.
25
26

1 4. Liberty Constructors affirmatively alleges that some or all of Plaintiff's and/or
2 Defendants/Third-Party Plaintiffs' claims may be barred by statute and Arizona law.

3 5. Liberty Constructors affirmatively alleges that the economic loss doctrine bars
4 Defendants/Third-Party Plaintiffs' negligence cause of action.
5

6 6. Liberty Constructors affirmatively alleges that some or all of Third-Party
7 Plaintiff's claims may be subject to dismissal for lack of compliance with A.R.S. § 12-2602.
8

9 7. Liberty Constructors affirmatively alleges that Defendants/Third-Party
10 Plaintiffs' claims may be barred in whole or part by waiver, estoppel, release, laches, and/or
11 assumption of the risk.

12 8. Liberty Constructors affirmatively alleges a failure by Plaintiff and/or
13 Defendants/Third-Party Plaintiffs to make reasonable efforts to mitigate damages, if any,
14 in whole or in part, and/or by the doctrine of economic waste.
15

16 9. Liberty Constructors affirmatively alleges that it was the failure of others to
17 competently perform their responsibilities with respect to the subject property that are the
18 true, proximate and actual, and/or intervening/superseding causes of the injuries alleged.
19

20 10. Other parties and non-parties, either through their acts, omissions or breaches
21 of warranty or contract, are responsible for the damages claimed by Plaintiff and an
22 allocation of fault and legal responsibility should be attributed to those other parties and
23 non-parties.
24

1 B. Awarding Liberty Constructors its attorneys' fees and costs pursuant to Ariz.
2 Rev. Stat. Ann. § 12-341, 12-341.01, 12-349, any other applicable statutes, and/or contract;

3 C. Awarding Liberty Constructors its costs incurred herein pursuant to Ariz. Rev.
4 Stat. Ann. § 12-341 and/or contract; and
5

6 D. Awarding Liberty Constructors such other and further relief as this Court deems
7 just and equitable.

8 Dated on March 18, 2021.

9
10 Shorall McGoldrick Brinkmann

11 By /s/ Jason Boblick

12 Tom Shorall

13 Jason J. Boblick

14 Attorneys for Third Party Defendant

15 Liberty Constructors

16 Mailing Certificate

17 The foregoing filed with AZTurboCourt
18 And copies emailed and mailed on March 18, 2021, to:

19 Craig S. Nuss, Esq.
20 Panny J. Manship, Esq.
21 Burg Simpson Eldredge Hersh & Hardine, PC
22 3310 S. Valley Highway, Suite 270
23 Englewood, Colorado 80112
24 pmanship@burgsimpson.com
25 azcourt@burgsimpson.com
26 *Attorneys for Plaintiff*

///

1 Dennis I. Wilenchik, Esq.
2 Matthew V. Moosbrugger, Esq.
3 Wilenchik & Bartness
4 2810 N. Third Street
5 Phoenix, Arizona 85004
6 admin@wb-law.com

7 *Attorneys for Defendant/Third Party Plaintiffs*
8 *K. Hovnanian Art Gallery, LLC, K. Hovnanian Arizona*
9 *Operations, LLS, K. Hovnanian Developments of Arizona, Inc., and*
10 *K. Hovnanian Companies of Arizona, LLC*

11 Teresa Wales, Esq.
12 Welsh Law Group, PLC
13 11811 N. Tatum Blvd., Suite P125
14 Phoenix, Arizona 85028-1691
15 twales@welshlawgroup.com

16 *Attorneys for Third Party Defendant*
17 *Chas Roberts Air Conditioning, Inc.*

18 Amanda Hough, Esq.
19 Jaburg Wilk
20 3200 N. Central Avenue
21 Phoenix, Arizona 85012-2440
22 aah@jaburgwilk.com

23 *Attorneys for Third Party Defendant*
24 *Gothic Landscaping, Inc.*

25 Stephen F. Best, Esq.
26 Jones Skelton & Hochuli
40 N. Central Ave., Suite 2700
Phoenix, Arizona 85004-4498
sbest@jshfirm.com

Attorneys for Third Party Defendant
Leblanc Building Co., Inc.

///

1 Leonard T. Fink, Esq.
2 Springel & Fink
3 9075 W. Diablo Drive, Suite 302
4 Las Vegas, Nevada 89148-7604
5 lfink@springelfink.com
6 *Attorneys for Third Party Defendant*
7 *Sargon Masonry Construction, LLC*

8 By: /s/Roselyn Mosbrucker