

1 **RAI & BARONE, P.C.**
3033 North Central Avenue, Suite 500
Phoenix, Arizona 85012
2 PH: (602) 476-7100
3 FAX: (602) 476-7101
Shannon Huff, #025514
Shannon.Huff@raibarone.com
4 Samantha Egan, #035668
Samantha.Egan@raibarone.com

5 *Attorney for Third-Party Defendants Renco Roofing*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 GALLERY ASSOCIATION, an Arizona
9 non-profit corporation,

10 Plaintiff;

11 v.

12 K. HOVNANIAN AT GALLERY, LLC,
13 an Arizona limited liability company; K.
14 HOVNANIAN ARIZONA
15 OPERATIONS, LLC, an Arizona limited
16 liability company; K. HOVNANIAN
17 DEVELOPMENTS OF ARIZONA, INC.,
18 an Arizona corporation; K.
19 HOVNANIAN COMPANIES OF
20 ARIZONA, LLC, an Arizona limited
21 liability company; JOHN DOES I-X AND
22 JANE DOES I-X, WHITE
23 COPRPORTATIONS I-X ; BLACK
24 PARTNERSHIPS I-X; AND GRAY
25 LIMITED LIABILITY COMPANIES I-
X,

Defendants.

K. HOVNANIAN AT GALLERY, LLC,
an Arizona limited liability company; K.
HOVNANIAN ARIZONA
OPERATIONS, LLC, an Arizona limited
liability company; K. HOVNANIAN

NO. CV2020-008714

**THIRD-PARTY DEFENDANT RENCO
ROOFING'S ANSWER TO THIRD-
PARTY COMPLAINT**

(Assigned to the Honorable Michael Kemp)

1 DEVELOPMENTS OF ARIZONA, INC.,
an Arizona corporation; K.
2 HOVNANIAN COMPANIES OF
ARIZONA, LLC, an Arizona limited
3 liability company;

4 Third-Party Plaintiffs

5 v.

6 CHAS ROBERTS AIR
7 CONDITIONING, INC., an Arizona
corporation; DESERT VISTA, INC., an
8 Arizona corporation; GOTHIC
9 LANDSCAPING, INC., a California
corporation; HOME BUILDERS SITE
10 SERVICES OF ARIZONA, LLC an
Arizona limited liability company;
11 LEBLANC BUILDING CO., INC., an
Arizona corporation; LIBERTY
12 CONSTRUCTORS, LLC, an Arizona
limited liability company DBA LIBERTY
13 ARIZONA; RENCO LLC, an Arizona
limited liability company; dba RENCO
14 ROOFING; R/S SERVICE & SUPPLY,
15 INC., an Arizona corporation; SARGON
MASONRY CONSTRUCTION, LLC, an
16 Arizona limited liability company; and
DOES 1-50.

17
18 Third-Party Defendants.

19 Third-Party Defendant Renco Roofing (“Renco”) hereby Answers the Third-Party
20 Complaint brought by K.Hovnanian at Gallery, LLC., K. Hovnanian Arizona Operations,
21 LLC., K.Hovnanian Developments of Arizona, Inc., K. Hovnanian Companies of Arizona,
22 LLC. (collectively the “TPD”), and admits, denies, and alleges as follows:

23
24 **PARTIES**

25 1. Renco is without information or knowledge sufficient to form a belief as to the

1 truthfulness of the allegations contained in Paragraphs 1 through 12 and therefore denies those
2 allegations.

3 2. In response to Paragraph 13, Renco admits it was at all times material hereto a
4 limited liability company duly organized under the laws of the State of Arizona, and qualified
5 to conduct business in the State of Arizona.

6 3. Renco is without information or knowledge sufficient to form a belief as to the
7 truthfulness of the allegations contained in Paragraphs 14 through 16 and therefore denies
8 those allegations.
9

10 **JURISDICTION AND VENUE**

11 4. In response to Paragraph 17, Renco admits that it performed work at the Project
12 known as The Gallery located in Scottsdale, Arizona, Maricopa County, only, but denies the
13 remaining allegations.

14 5. In response to Paragraph 18, Renco admits the allegations for jurisdiction and
15 venue purposes, only.
16

17 **GENERAL ALLEGATIONS**

18 6. In response to Paragraphs 19 and 20, Renco admits that it performed work on
19 the subject property pursuant to a written contract and the language of the contract speaks for
20 itself. Renco is without information or knowledge sufficient to form a belief as to the
21 truthfulness of the remaining allegations contained in Paragraphs 19 and 20 and therefore
22 denies those allegations.

23 7. Renco is without information or knowledge sufficient to form a belief as to the
24 truthfulness of the allegations contained in Paragraphs 21 through 22 and therefore denies
25 those allegations.

1 property pursuant to a written contract and the language of the contract speaks for itself. Renco
2 is without information or knowledge sufficient to form a belief as to the truthfulness of the
3 remaining allegations contained in Paragraph 33 and therefore denies those allegations.

4 16. Renco denies the allegations in Paragraphs 34 through 36 as they relate to Renco,
5 only.

6 17. In response to Paragraph 37, Renco denies the allegations and further denies
7 TPD's entitlement to all fees, costs, and expenses listed there. Renco affirmatively asserts it is
8 entitled to attorneys' fees and costs incurred as a result of the underlying action brought by
9 TPDs.
10

11 **COUNT THREE**
12 **(Breach of Contract)**

13 18. Renco incorporates Paragraphs 1 through 17 of its Answer as if set forth fully.

14 19. Renco denies the allegations in Paragraphs 39 through 40 as they relate to Renco,
15 only.

16 20. In response to Paragraph 41, Renco denies the allegations and further denies
17 TPD's entitlement to all fees, costs, and expenses listed there. Renco affirmatively asserts it is
18 entitled to attorneys' fees and costs incurred as a result of the underlying action brought by
19 TPDs.
20

21 **COUNT FOUR**
22 **(Negligence)**

23 21. Renco incorporates Paragraphs 1 through 20 of its Answer as if set forth fully.

24 22. In response to Paragraphs 43 and 44, Renco does not contest that such a duty
25 may have existed, but affirmatively asserts that it performed all its work in conformance with
any such duty and denies any breach of duty.

COUNT SEVEN

(Declaratory Relief – Re: Duty to Defend)

30. Renco incorporates Paragraphs 1 through 29 of its Answer as if set forth fully.

31. In response to Paragraphs 56 and 61, Renco admits that it performed work on the subject property pursuant to a written contract and the language of the contract speaks for itself. Renco is without information or knowledge sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraphs 56 and 61, and therefore denies those allegations.

COUNT EIGHT

(Declaratory Relief – Re: Duty to Indemnify)

32. Renco incorporates Paragraphs 1 through 31 of its Answer as if set forth fully.

33. In response to Paragraphs 63 and 65, Renco admits that it performed work on the subject property pursuant to a written contract and the language of the contract speaks for itself. Renco is without information or knowledge sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraphs 63 and 65, and therefore denies those allegations.

COUNT NINE

(Declaratory Relief – Re: Contractual Duties)

34. Renco incorporates Paragraphs 1 through 33 of its Answer as if set forth fully.

35. In response to Paragraphs 67 and 68, Renco admits that it performed work on the subject property pursuant to a written contract and the language of the contract speaks for itself. Renco denies the remaining allegations.

COUNT TEN

(Contribution)

36. Renco incorporates Paragraphs 1 through 35 of its Answer as if set forth fully.

37. In response to Paragraph 68, Renco admits that it performed work on the subject

1 property pursuant to a written contract and the language of the contract speaks for itself. Renco
2 denies the remaining allegations.

3 **AFFIRMATIVE DEFENSES**

4 1. Renco affirmatively alleges that the Complaint, in each and every portion
5 thereof, fails to set forth facts sufficient to constitute any viable cause of action against Renco,
6 and must therefore be dismissed pursuant to Arizona Rule of Civil Procedure 12(b)(6).

7 2. Renco affirmatively alleges that Plaintiffs and TPD have failed to make
8 reasonable efforts to mitigate their damages, if any, in whole or in part.

9 3. Renco affirmatively alleges that at or about the time and place referenced in the
10 Complaint, if TPD suffered any injury or damages, which Renco denies, that any such injury
11 or damage was proximately and legally caused and contributed to by the negligence and fault
12 of TPD, and that said negligence and fault of TPD reduces, *pro rata*, any recovery otherwise
13 available to TPD.
14

15 4. Renco affirmatively alleges and without admitting TPD has suffered, or will
16 suffer, any damages or injuries as a result of conduct alleged in the Complaint, that any
17 damages or injuries which were or will be sustained by TPD cause in whole or in part, by the
18 negligence and/or tortuous acts, omissions and/or conduct of persons, parties or entities other
19 than Renco. Any damages recoverable by TPD must be diminished in proportion to the
20 amount of fault attributable to said other persons, parties or entities.
21

22 5. Renco affirmatively alleges that the resulting injuries and damages, if any
23 sustained by TPD were not proximately caused by any acts or omissions of Renco. Renco is
24 informed and believes that the damages and injuries, if any, which were or will be sustained
25

1 by TPD were proximately caused by the action and/or inaction of third parties, and that, by
2 virtue of said action and/or inaction, Renco has no legal liability to TPD.

3 6. Renco affirmatively alleges that if Renco is found to have made an express
4 warranty, then TPD are limited in any recovery to said warranty.

5 7. Renco affirmatively alleges that the Complaint and causes of action against
6 Renco fail to set forth acts sufficient to give rise to exemplary or punitive damages.

7 8. Renco affirmatively alleges that the Complaint fails to set forth acts sufficient to
8 give rise to stigma damages.

9 9. Renco affirmatively alleges that the Complaint has failed to state any claim that
10 entitles TPD to attorneys' fees, costs or other damages.

11 10. Renco incorporates any and all affirmative defenses of any and all parties hereto.

12 11. Although Renco does not presently have specific facts in support of the
13 remaining defenses, it wishes to put TPD on notice that it hereby raises the following defenses,
14 which through subsequent discovery, may indeed be supported by facts: accord and
15 satisfaction, comparative and contributory fault, accepted work, arbitration and award,
16 assumption of risk, estoppel, failure to mitigate damages, failure to minimize damages, laches,
17 unclean hands, lack of jurisdiction, payment, economic loss rule, economic waste doctrine,
18 release, *res judicata*, collateral estoppel, statute of limitations, statute of repose, settlement and
19 release, and waiver.

20 12. Renco denies all allegations not expressly admitted.

21 13. Renco hereby reserves the right to plead further affirmative defenses including
22 but not limited to, those affirmative defenses set forth in Arizona Rules of Civil Procedure 8(c)
23
24
25

1 **COPY** of the foregoing e-delivered
2 This 5th day of April, 2021, to:

3 The Honorable Michael Kemp
4 Maricopa County Superior Court
5 **East Court Building – 711**
6 101 W Jefferson
7 Phoenix, AZ 85003

8 **COPIES** of the foregoing e-mailed/ mailed
9 This 5th day of April, 2021, to:

10 Dennis Wilenchik
11 Matthew Moosbrugger
12 **WILENCHIK & BARTNESS**
13 2810 N. Third St.
14 Phoenix, AZ 85004
15 admin@wb-law.com
16 *Attorneys for Defendants/Third-Party Plaintiffs*

17 Craig Nuss
18 Penny Manship
19 **BURG SIMPSON ELDREDGE HERSH & JARDINE, P.C.**
20 8310 South Valley Highway
21 Suite 270
22 Englewood, CO 80112
23 pmanship@burgsimpson.com
24 azcourt@burgsimpson.com
25 *Attorneys for Plaintiff*

By: /s/ Kristin Matysek