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Liberty Constructors

8 Superior Court of Arizona

9 Maricopa County

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11 Gallery Community Association, an Arizona
12 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 And related third-party claims.
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No. CV2020-008714

**Third-Party Defendant Liberty
Constructors' Separate Statements of Fact
in Support of Its Motion for Summary
Judgment**

(Honorable Katherine Cooper)

21 Third-Party Defendant Liberty Constructors ("Liberty") hereby submit its Separate
22 Statement of Facts in support of their Motion for Summary Judgment.
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1 1. Plaintiff Gallery Community Association is the property owners’ association of
2 The Gallery Complex of townhomes located at 3124 North 71st Street, Arizona (the
3 “Project”). (See Plaintiff’s Complaint, filed on July 27, 2020, at ¶ 1).

4 2. K. Hovnanian Arizona Operations, LLC acted as the general contractor for the
5 construction of the Project; K. Hovnanian at Gallery, LLC acted as the developer and owed the
6 Project before conveying it to Plaintiff. (See KHov’s Answer to Complaint, filed on September
7 22, 2020, at p. 2).

8 3. On August 13, 2013, Liberty signed a Master Subcontractor Agreement with K.
9 Hovnanian Great Western Building Company, LLC and K. Hovnanian Building Company,
10 LLC to provide labor and materials relating to the concrete foundations and certain flatwork.
11 (See **Exhibit A**, Declaration of Jason J. Boblick, at **Exhibit 1**, Liberty’s Master Subcontract
12 Agreement)

13 4. On August 25, 2016, Liberty signed a Work Agreement with K. Hovnanian
14 Great Western Building Company, LLC, to perform concrete foundation and flatwork at the
15 Project. (See **Exhibit A**, Declaration of Jason J. Boblick, at **Exhibit 2**, Liberty’s Work
16 Agreement)

17 5. On July 24, 2020, Plaintiff filed a Complaint against KHov in Maricopa County
18 Superior Court asserting causes of action related to construction defects at the Project. (See
19 generally Complaint, filed on July 27, 2020)

20 6. Plaintiff filed a Certificate of Expert Testimony pursuant to A.R.S. § 12-2602
21 which provided “expert testimony will be required to prove the standard of care and establish
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1 liability against defendants.” (See Plaintiff’s Certificate of Expert Testimony, filed on July 27,
2 2020)

3 7. On October 6, 2020, KHov filed its Third-Party Complaint against Liberty and
4 other various subcontractors who were associated with the Project alleging multiple causes of
5 action: (1) Breach of Express Warranty; (2) Breach of Implied Warranty; (3) Breach of
6 Contract; (4) Negligence; (5) Common Law Implied Indemnity; (6) Contractual Indemnity; (7)
7 Declaratory Relief – Re: Duty to Defend; (8) Declaratory Relief – Re: Duty to Indemnify; (9)
8 Declaratory Relief – Re: Contractual Duties; and (10) Contribution. (See Third-Party
9 Complaint, filed on October 6, 2020).
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11 8. On March 18, 2021, Liberty filed its Answer to KHov’s Third-Party Complaint
12 generally denying liability. (See Liberty’s Answer to Third-Party Complaint, filed on March
13 18, 2021)
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15 9. On March 18, 2021, Liberty filed its Certificate of Expert Testimony pursuant to
16 A.R.S. § 12-2602 certifying that KHov required expert testimony to prove its claims against
17 Liberty. (See Liberty’s Certificate Regarding Expert Witness Opinions, filed on March 18,
18 2021)
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20 10. The Court issued a Scheduling Order on May 25, 2021, pursuant to which
21 KHov’s deadline for liability expert reports and opinions was July 23, 2021 and their cost of
22 repair expert reports and opinions were due August 23, 2021. (See Scheduling Order).
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1 11. Two weeks after KHov’s July 23, 2021 report deadline, Plaintiff’s counsel
2 advised that Plaintiff and KHov agreed to extend KHov’s expert report deadline until August
3 11, 2021.

4 12. On August 11, 2021, KHov disclosed its liability expert reports including a
5 Geotechnical Engineering Report by Peterson Geotechnical Group (“PGG”) dated August 10,
6 2021, and a Defense Response Report by Bert L. Howe & Associates, Inc. (“BHA”). (See
7 **Exhibit A**, Declaration of Jason J. Boblick, at **Exhibit 3** and **Exhibit 4**)

8 13. The PGG report did not include opinions or conclusions as to the cause of the
9 alleged defects or the identity of the responsible party for the defects. (See **Exhibit 3**)
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11 14. The BHA report did not include opinions or conclusions as to the cause of the
12 alleged defects or the identity of the responsible party for the defects. (See **Exhibit 4**)
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14 15. On August 23, 2021, KHov disclosed a BHA Preliminary Defense Costs of
15 Defense Scope Estimate report, which did not include opinions or conclusions as to the cause
16 of the alleged defects or the identity of the responsible party for the defects. (See **Exhibit A**,
17 Declaration of Jason J. Boblick, at **Exhibit 5**)
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19 16. Liberty disclosed the expert report of Shelton Consulting Group on January 31,
20 2022. (See **Exhibit A**, Declaration of Jason J. Boblick, at **Exhibit 6**)
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22 17. The report specifically stated that Liberty Constructors should not be allocated
23 any responsibility for any of the alleged defects or for any associated cost of repair. (See *id.*)

24 18. KHov did not disclose a rebuttal expert report in response to the Shelton
25 Consulting Group report.
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Certificate of Service

The foregoing filed with AZTurboCourt and copies served upon all via email on September 30, 2022, to:

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