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9 *Attorneys for Defendants/Third-Party Plaintiffs K. Hovnanian*
10 *at Gallery, LLC and K. Hovnanian Arizona Operations, LLC*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
12 **IN AND FOR THE COUNTY OF MARICOPA**

14 GALLERY COMMUNITY ASSOCIATION, an
Arizona non-profit corporation,

15 Plaintiff,

16 v.

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

24 Defendants.

25 K. HOVNANIAN AT GALLERY, LLC, an
Arizona limited liability company; K.
HOVNANIAN ARIZONA OPERATIONS, LLC,
26 an Arizona limited liability company; K.
HOVNANIAN DEVELOPMENTS OF ARIZONA,
27 INC., an Arizona corporation; K. HOVNANIAN
COMPANIES OF ARIZONA, LLC, an Arizona
28

Case No. CV2020-008714

**DEFENDANTS'/THIRD-PARTY
PLAINTIFFS' RESPONSE TO
THIRD-PARTY DEFENDANT
LEBLANC'S JOINDER IN THIRD-
PARTY DEFENDANTS DESERT
VISTA, INC. AND RENCO LLC dba
RENCO ROOFING'S JOINT
MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable Katherine
Cooper)

1 limited liability company;
2
3 Third-Party Plaintiffs,
4 v.
5 CHAS ROBERTS AIR CONDITIONING, INC., an
6 Arizona corporation; DESERT VISTA, INC., an
7 Arizona corporation; GOTHIC LANDSCAPING,
8 INC., a California corporation; HOME BUILDERS
9 SITE SERVICES OF ARIZONA, LLC, an Arizona
10 limited liability company; LEBLANC BUILDING
11 CO., INC., an Arizona corporation; LIBERTY
12 CONSTRUCTORS, LLC, an Arizona limited
13 liability company, dba LIBERTY ARIZONA;
14 RENCO LLC, an Arizona limited liability company,
15 dba RENCO ROOFING; R/S SERVICE &
16 SUPPLY, INC., an Arizona corporation; SARGON
17 MASONRY CONSTRUCTION, LLC, an Arizona
18 limited liability company; and DOES 1-50.
19
20 Third-Party Defendants,

21 COME NOW Defendants/Third-Party Respondents K Hovnanian at Gallery, LLC and K.
22 Hovnanian Arizona Operations, LLC (“Hovnanian”), by and through undersigned counsel, hereby
23 submits their Response to Third-Party Defendants LeBlanc Building Co., Inc.’s, (“LeBlanc”)
24 Joinder in Third-Party Defendants Desert Vista, Inc. and Renco, LLC’s dba Renco Roofing’s Joint
25 Motion for Summary Judgment. The motion should be denied because there is sufficient evidence
26 from Plaintiff’s experts, Hovnanian’s experts, LeBlanc’s expert, and fact witnesses to support
27 potential liability of Hovnanian’s derivative claims against LeBlanc. Hovnanian’s Response is
28 supported by the following Memorandum or Points and Authorities, and Controverting Statement
of Facts (“CSOF”) and Separate Statement of Facts (“SOF”) submitted herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

LeBlanc has argued that evidence is not sufficient to establish that its work is defective or that it fell below the standard of care. LeBlanc have ignored the fact that the claims at issue are Third-Party claims for indemnity, defense, and other derivative liability. The claims arise from allegations by Plaintiff Gallery Community Association (“Plaintiff”) against Hovnanian. Plaintiff alleges that construction of the residential property at issue was defective and performed

1 inconsistently with applicable standards of care. In support of its claims, Plaintiff has produced
2 opinion evidence from its experts regarding specific components of the property they claim were
3 constructed defectively, below the standard of care, and which have caused damages, including
4 cost of repair. That work includes framing work performed by Movant. Hovnanian’s expert has
5 generally disagreed with Plaintiff’s opinions. Hovnanian’s expert opined that most items, but not
6 all, were performed consistently within the scope of work and standard of care. There is evidence
7 by Plaintiff’s expert that can establish the applicable standard of care for those elements and a
8 breach of those standards. The evidence is mostly disputed but can support liability claims against
9 Hovnanian if the jury agrees with Plaintiff’s expert. The evidence further shows which of these
10 conditions were constructed by LeBlanc and were in the scope of its contractual obligations. The
11 evidence includes contracts, fact witness testimony, as well as testimony by the Movant’s expert.

12 Hovnanian’s experts do not agree that the construction fell below the standards of care as
13 claimed by Plaintiff’s expert. There is conflicting evidence over whether the work by LeBlanc
14 met the applicable standards. This is simply not the same as the lack of evidence as argued
15 LeBlanc.

16 LeBlanc cites to *Woodward v. Chirco Constr. Co., Inc.*, 141 Ariz. 520, 521-2 (App. 1984)
17 for the proposition that “standards prescribed by law and prevailing in the industry” are outside
18 the knowledge of the average lay person. The evidence does include opinions by Plaintiff’s
19 construction expert as to the standards of care to be followed and how failure was a breach. If
20 Plaintiff’s expert is permitted to testify against Hovnanian, he will provide opinions on the
21 applicable legal standards. Hovnanian’s expert Terry Ingo and LeBlanc’s expert have also
22 provided opinions in their reports and testimony regarding the applicable standards of care and
23 whether they were breached. Standards of care may be a complicated issue requiring expert
24 explanation, and the record does include expert opinion evidence on that topic. As far as who
25 actually performed the work that breached the work at issue, this is a factual issue which is not in
26 dispute.

27 ///

28 ///

1 **II. Evidence Can Show That LeBlanc Failed to Meet Its Standard of Care for Work it**
2 **Agreed to Perform and Did Perform**

3 Plaintiff has identified Ed Fronapfel of SBSA as its expert for its liability claims. Mr.
4 Fronapfel identified opinions in his report concerning components of the Gallery Association
5 property that he believes are defective and require repair. For each of those he identifies the
6 particular standards of care for construction for those items.

7 All parts of the repair cost opinions set forth by Plaintiff's expert Stefen Gustafson of
8 Nautilus are based on the repair recommendations by Mr. Fronapfel. (SOF ¶ 1.)

9 **A. Issue A.2.a. Non-Compliant Lateral Force Resisting System (LFRS)**

10 Mr. Fronapfel in his report addressed the LFRS generally and the applicable code
11 standards, industry standard, and project-specific standard, including those standards that are set
12 forth in the Hovnanian' project specifications. (SOF ¶ 2.) Mr. Fronapfel identified an area on unit
13 3111 of building D where he identified a buckled steel strap and missing exterior wood sheathing.
14 He stated that responsibility for the condition, among others, falls on the subcontractors who
15 performed the work. (*Id.*)

16 LeBlanc's expert was asked whether LeBlanc constructed the shear wall panel correctly.
17 He testified that it was not constructed consistently with the plans. He testified it was possible
18 there was a conflict or that LeBlanc was excused from constructing the condition but did not have
19 evidence or information that would support this. (SOF ¶ 3.) LeBlanc's expert testified as to
20 possible causes for the buckling of the strap but acknowledged that he did not respond to Plaintiff's
21 expert's position that the strap was improperly nailed. (SOF ¶ 4.)

22 **B. Issue 4.0.A Non-Compliant Slope of Deck**

23 Plaintiff's expert provided opinions regarding the slope of the deck, in which he addressed
24 the applicable code standards, industry standard, and project specific standard including those set
25 forth in the project specifications. Mr. Fronapfel identified decks that were defective and did not
26 meet the applicable standards, in which he assigns liability to subcontractors who performed the
27 work. (SOF ¶ 5.)
28

1 Defense expert Terry Ingo reported and testified regarding his own opinions on the
2 applicable standards and tolerances, and whether the decks required repair. (SOF ¶ 6.)

3 LeBlanc’s expert testified that he understood the allegations and that he believed based on
4 his inspection that the condition had been installed per the architect’s detail. (SOF ¶ 7.)

5 Renco’s expert MC Consultants Chad Polivka also opined on the issue of the non-
6 compliant slope. He stated the slope was to be provided by framing. (SOF ¶ 8.)

7 **III. Evidence Shows That LeBlanc Agreed to Construct and Did Construct Each of**
8 **These Components Which Plaintiff’s Expert Claims to be Defective and in Breach of**
9 **Standards**

10 Evidence supporting this comes from the contract, fact witness testimony. It is also
11 supported by testimony from the experts about what work was actually performed by LeBlanc as
12 the framers according to its contract and according to custom and practice.

13 Movant entered into a Work Agreement with K. Hovnanian on May 6, 2015, that detailed
14 the responsibilities, obligations, liabilities, and duties in the performance of the work. Its scope of
15 work included the following:

- 16 a. “Install wood framing making proper provisions for work of other trades.”
- 17 b. “Provide wood backing, furring, stripping or blocking indicated of required for
18 installation and attachment of the work of the other trades.”
- 19 c. “To install ridge and eave blocking, etc., as required by approved construction
20 documents to insure a rigid roof construction.”
- 21 d. “Crickets and mop boards installed per approved construction document and all
22 applicable codes and specifications.” (SOF ¶ 9.)

23 Per the evidence and testimony LeBlanc’s framing work included installation of the shear
24 walls and framing straps that are at issue in Plaintiff’s claims regarding the LFRS and the balcony
25 framing components that are at issue in Plaintiff’s claims regarding improperly sloped balconies.

26 **IV. Individual Causes of Action**

27 LeBlanc’s Joinder repeats various arguments from Desert Vista and Renco’s Joint Motion
28 for Summary Judgment. Hovnanian incorporates by reference its Response to Desert Vista and
Renco’s Joint Motion for Summary Judgment.

1 **V. Conclusion**

2 LeBlanc performed framing work at the Gallery community and that work is the subject of
3 Plaintiff's claims regarding defective workmanship and materials. Plaintiff's expert identified
4 applicable standards of care for the work. Experts for Hovnanian, LeBlanc, and others responded
5 regarding their own opinions on the applicable standards and whether repairs are required. The
6 evidence shows that the work that is the subject of certain of those defect claims was LeBlanc's
7 work. Claims for contractual indemnity, defense, and other claims by Hovnanian are supported,
8 and therefore LeBlanc's request for relief in its Joinder should be denied.

9 Dated: November 7, 2022

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25 Original of the foregoing e-filed
26 this 7th day of November, 2022 with:

27 Clerk of the Court
28 Maricopa County Superior Court
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1 COPY of the foregoing emailed this
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