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10 Building Co., Inc.

11
12 **SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **COUNTY OF MARICOPA**

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

16 Plaintiff,

17 v.

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

Defendants.

NO. CV2020-008714

**THIRD-PARTY DEFENDANT LEBLANC
BUILDING CO. INC.'S REPLY IN
SUPPORT OF JOINDER IN THIRD-
PARTY DEFENDANTS DESERT VISTA,
INC. AND RENCO, LLC'S JOINT
MOTION FOR SUMMARY JUDGMENT**

(Assigned to the Honorable Michael Kemp)

1 K. HOVNANIAN AT GALLERY, LLC, an
2 Arizona limited liability company; K.
3 HOVNANIAN ARIZONA OPERATIONS,
4 LLC, an Arizona limited liability company;
5 K. HOVNANIAN DEVELOPMENTS OF
6 ARIZONA, INC., an Arizona corporation; K.
7 HOVNANIAN COMPANIES OF
8 ARIZONA, LLC, an Arizona limited liability
9 company,

10 Third-Party Plaintiffs,

11 v.

12 CHAS ROBERTS AIR CONDITIONING,
13 INC., an Arizona corporation; DESERT
14 VISTA, INC., an Arizona corporation;
15 GOTHIC LANDSCAPING, INC., a
16 California corporation; HOME BUILDERS
17 SITE SERVICES OF ARIZONA, LLC, an
18 Arizona limited liability company;
19 LEBLANC BUILDING CO., INC., an
20 Arizona corporation; LIBERTY
21 CONSTRUCTORS, LLC, an Arizona limited
22 liability company DBA LIBERTY
23 ARIZONA; RENCO LLC, an Arizona
24 limited liability company dba RENCO
25 ROOFING; R/S SERVICE & SUPPLY,
26 INC., an Arizona corporation; SARGON
MASONRY CONSTRUCTION, LLC, an
Arizona limited liability company; and DOES
1-50,

Third-Party Defendants.

Third-Party Defendant LeBlanc Building Co., Inc. (LeBlanc”), hereby submits its
Reply in support of its Motion for Summary Judgment.

I. KHOV CANNOT CREATE A FACT ISSUE BASED ON PLAINTIFFS’ EXPERT’S UNSUPPORTED CLAIMS

KHov attempts to distract this Court from the core issue entitling LeBlanc to
summary judgment; that is KHov cannot meet its burden of proof to show the allege defects were
caused by the deficient or negligent work of LeBlanc. In its response, KHov relies on the fact that
a defect exists and various competing expert opinions to survive summary judgment. However,

1 KHov's reliance is misplaced because the question is not whether the experts can testify to what
2 the standard of care is in this case or whether a defect exists. The question is whether KHov can
3 show the alleged defects attributed to LeBlanc were caused by LeBlanc and in this case, it simply
4 cannot because it lacks the necessary expert opinions to do so. Therefore, summary judgment is
5 appropriate.

6 **A. There is no evidence to support improperly buckled steel strap and missing**
7 **exterior wood sheathing impacted the structural integrity of the buildings**

8 KHov first relies on Fronapfel's allegations that the structural integrity of one of
9 the buildings is likely reduced because of an improperly buckled steel strap and missing exterior
10 wood sheathing at unit 3111. However, no investigation was performed to determine if the
11 structural integrity of the building was compromised due to the defects. Furthermore, allegations
12 involving structural defects, such as the structural integrity of the building, require opinions from
13 a structural engineering expert who can make a determination as to whether the integrity of the
14 structure was affected by the defect. As acknowledge by KHov's own expert, Plaintiffs conducted
15 no investigation nor offered any opinions to establish *how* the structure is affected by the
16 improperly buckled steel strap and missing exterior wood sheathing. It does not make sense for
17 KHov to rely on Plaintiff's expert report to create a factual issue when its own expert, BHA, expert
18 BHA acknowledged Fronapfel lacked the necessary evidence to establish the structure is not
19 performing. Notwithstanding KHov's misplaced reliance, KHov has the burden to prove that the
20 alleged defect, in this case, structural integrity of the building, was caused by the deficient or
21 negligent work of LeBlanc, which KHov cannot do because it lacks the necessary expert evidence.

22 **B. Non-Complaint Slope of Deck**

23 Next, KHov cites to the fact Fronapfel identified the non-compliant slope of deck,
24 alleging the slope edge was inadequate to promote positive drainage and allow ponding of water.
25 Notably, Fronapfel testified during his deposition that the issues with the slope of the deck was
26 an edge condition and not a framing issue. (CSOF ¶1-2). Further, KHov's own expert inspected
the decks and did not observe any evidence the decks were unsafe or deteriorating prematurely.

1 KHov's arguments that competing testimony exists fail because Fronapfel is unable to offer any
2 testimony to support the allegations imputed to LeBlanc's scope of work *caused* a defect.

3 **II. SUMMARY JUDGMENT IS APPROPRIATE BECAUSE KHOV LACKS**
4 **EVIDENCE TO SUPPORT ITS CLAIMS AGAINST LEBLANC**

5 **A. KHov cannot meet its burden of proof to establish LeBlanc's indemnity**
6 **obligation**

7 As previously stated in LeBlanc's Joinder, the express indemnity provision limits
8 LeBlanc's indemnity obligations to the proportion of losses or damages stemming from the defects
9 that were caused by LeBlanc. KHov lacks any evidence to support LeBlanc's work impacted the
10 structural integrity of the building. Even if there was evidence that the structural integrity of the
11 building was impacted, there is no evidence to support LeBlanc's work, was the cause. Structural
12 integrity can be impacted by soils issues, or could be the fault of KHov or engineers who worked
13 on the Project. There is no way to know which entity caused the alleged defects because of the
14 lack of expert opinions establishing the same. The lack of evidence means KHov cannot prove
15 any damages were caused by LeBlanc; without this evidence KHov cannot prevail on this cause
16 of action. Therefore, LeBlanc is entitled to summary judgment.

17 **B. KHov cannot meet its burden of proof on breach of contract claims**

18 KHov's breach of contract claims are contingent upon LeBlanc failing to perform
19 in compliance with its expressed and implied warranties and other contractual terms including
20 workmanship. The septately pled causes of action against the subcontractors are not independent
21 causes of action but rather based on contingent and derivative liability. Moreover, KHov cannot
22 prove LeBlanc breached the contract by failing to provide labor and materials at the Project in a
23 workmanlike manner, free from defect from negligence because it lacks expert opinions to support
24 the allegations. Therefore, LeBlanc is entitled to summary judgment on KHov's Contract and
25 Warranty Claims.
26

1 **III. CONCLUSION**

2 KHov cannot carry its burden of proof on either of the defects imputed to LeBlanc's
3 work because of the lack of investigation conducted by KHov and/or Plaintiffs experts. There is
4 no evidence to establish the defects were caused by LeBlanc and not homeowner negligent, lack
5 of maintenance, or subsequent work by the subcontractors. The only facts KHov can offer is that
6 the defect exists, which is insufficient to prove the proportion of losses or damages that can be
7 attributed to LeBlanc. Without the necessary evidence, KHov cannot meet its burden of proof.
8 Therefore, LeBlanc respectfully requests this Court grant its Motion for Summary Judgment on
9 all of KHov's claims. LeBlanc also requests this Court award its attorney's fees and costs pursuant
10 to A.R.S. § 12-341 and 341.01.

11 DATED this 28th day of November, 2022.

12 JONES, SKELTON & HOCHULI P.L.C.

13 By /s/ Michael A. Ludwig

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17 ORIGINAL of the foregoing electronically filed
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