

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 2018-CP-10-3825
)	
K-CON, INC.,)	
)	
Plaintiff,)	
)	
vs.)	<u>KING STREET ENTERPRISES, LLC</u>
)	<u>AND OHIO IMAGING ASSOCIATES,</u>
)	<u>INC.'S AMENDED ANSWER,</u>
)	<u>AFFIRMATIVE DEFENSES AND</u>
)	<u>COUNTERCLAIMS TO PLAINTIFF'S</u>
)	<u>COMPLAINT</u>
KING STREET ENTERPRISES, LLC)	
and OHIO IMAGING ASSOCIATES INC.)	
)	
)	
Defendants.)	
)	

Comes now Defendants, King Street Enterprises, LLC (hereinafter, "KSE") and Ohio Imaging Associates Inc. (hereinafter, "OIA") (alternatively, KES and OIA collectively referred to as, "Defendants"), by and through its undersigned attorneys and Answers the allegations of Plaintiff's Complaint filed on or about August 1, 2018, asserting certain Affirmative Defenses and Counterclaims and states the following:

1. Defendants admit the allegations of Paragraphs 1 and 2.
2. Defendants admit only so much of Paragraph 3 that KSE was so organized and is the owner of the premises as alleged, and deny the remainder of the allegations including all statements made in Exhibit "A".
3. Defendants admit only so much of Paragraph 4 that OIA entered into a contract with the Plaintiff, and deny the remainder of the allegations including all statements made in Exhibits "A" and "B".
4. The Defendants deny the allegations of Paragraph 5.

2018 SEP 21 PM 2: 22
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 JEFFREY J. ARMSTRONG
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 58

5. The Defendants deny the allegations of Paragraph 6.

6. The Defendants deny the allegations of Paragraph 7.

7. Although no response is required to Paragraph 8, the Defendants deny all preceding allegations of the Complaint and incorporated those denials herein and below.

8. The Defendants deny the allegations of Paragraph 9.

9. The Defendants deny the allegations of Paragraph 10.

10. The Defendants deny the allegations of Paragraph 11.

11. Although no response is required to Paragraph 12, the Defendants deny all preceding allegations of the Complaint and incorporated those denials herein and below.

12. The Defendants admit only so much of Paragraph 13 that the Plaintiff provided labor and materials to the property, but deny that Defendants were “conferred a benefit” to them beyond what was contractually bargained for between the parties.

13. The Defendants deny the allegations of Paragraph 14.

14. The Defendants deny the allegations of Paragraph 15.

15. Although no response is required to Paragraph 16, the Defendants deny all preceding allegations of the Complaint and incorporated those denials herein and below.

16. The Defendants are presently unaware and therefore deny the allegations of Paragraph 17 that Plaintiff “duly filed” its mechanic’s lien.

17. The Defendants deny the allegations of Paragraph 18.

18. The Defendants deny any and all Paragraphs of Plaintiff's Complaint not specifically enumerated herein, including the demands of its Wherefore clause.

FOR A FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

19. The Complaint, in whole or in part, should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim against the Defendant.

FOR A SECOND AFFIRMATIVE DEFENSE

(Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing)

20. Any failure on the part of the Defendants to perform as agreed under any contract with the Plaintiff, although specifically denied, was excused because of the Plaintiff's breaches of the parties' Contract and Addenda and Plaintiff's breaches of the express or implied covenant of good faith and fair dealing, express warranties, in such particulars as the evidence will show.

FOR A THIRD AFFIRMATIVE DEFENSE

(First Material Breach)

21. Plaintiff's claims are barred in whole or part because the Plaintiff was the first to materially breach the Contract in such particulars as the evidence will show.

FOR A FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands/Laches)

22. Plaintiff's claims are barred in whole or part by the doctrine of unclean hands and laches.

FOR A FIFTH AFFIRMATIVE DEFENSE

(Waiver)

23. Plaintiff's claims are barred in whole or part by the doctrine of waiver due to its own failures to perform, comply with, and/or conform with the terms of the parties' Contract and Addenda in such particulars as the evidence will show.

FOR A SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

24. Plaintiff's claims are barred in whole or part by the doctrine of estoppel due to their own failures to perform, comply with, and/or conform with the terms of the parties' Contract and Addenda in such particulars as the evidence will show.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

(Set-Off /Recoupment)

25. To the extent that the Defendants are found liable to the Plaintiff, which liability is expressly denied, the claims alleged in the Complaint should be reduced under the doctrines of set-off, and/or recoupment for monies owed by the Plaintiff to the Defendant.

FOR AN NINTH AFFIRMATIVE DEFENSE

(Reservation of Additional and Further Defenses and Non-Waiver)

26. Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and

investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

FOR AN TENTH AFFIRMATIVE DEFENSE

(Fraudulent Lien)

27. Defendants assert that Plaintiff has liened for labor and/or materials that were never provided or furnished and as such it has asserted a fraudulent lien as that term is defined in the common law.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE AND BY WAY OF
A FIRST COUNTERCLAIM AGAINST THE PLAINTIFF**

(Breach of Contract)

28. Defendants readopt and incorporate by reference as if fully set forth herein their answers to the allegations contained in the Plaintiff's Complaint.

29. The Plaintiff and OIA entered into a Contract.

30. The Contract and Addenda contain mutually dependent obligations by and between the Plaintiff Contractor and OIA. Each party's performance of its obligations under the terms of the Contract and Addenda is a condition precedent to that party's enforcement of the terms and provisions of the Contract and Addenda.

31. Notwithstanding the above-referenced Contract and Addendum, and the full and continued performance on the part of OIA, Plaintiff has materially breached the terms and provisions of the parties' Contract and Addenda as stated herein by, *inter alia*:

- a) failing to complete the project according to the Contract, plans, specifications, course of dealing, and change orders;
- b) implementing cost over-runs;
- c) causing foreseeable lost profits to OIA, invoking the liquidated damages provision through Plaintiff's delays in completing the job as agreed on a time of the essence basis;
- d) causing foreseeable lost profits and consequential damages to KSE;
- e) causing damages to the commercial project office suite through inattentive, sloppy, untidy and unprofessional operations; and
- f) necessitating OIA to pay others to fix Plaintiff's defective or incomplete work which should have been performed under the Contract;

32. As a direct and proximate result of the Plaintiff's breaches of the Contract and Addenda described above, Defendants have been damaged in an amount to be determined by the trier of fact, specifically including liquidated damages as to OIA for Plaintiff's delay occasioned through no fault of OIA or KSE, and consequential damages as to KSE occasioned through no fault of OIA or KSE.

FOR A TWELFTH DEFENSE AND BY WAY OF
A FOURTH COUNTERCLAIM AGAINST THE PLAINTIFF
(Breach of Express Warranty as to Plaintiff)

33. Defendants hereby incorporates the allegations of the foregoing Paragraphs as if fully restated herein.

34. Plaintiff expressly warranted all workmanship performed and materials furnished would be of good and workmanlike quality and expressly

warranted its work for a period of one year.

35. Plaintiff breached this express warranty by constructing the building in a defective manner as set forth above.

36. As a direct, foreseeable and proximate result of the Plaintiff's breach of express warranties, the Defendants have damage to the building, as well as diminution in its value and loss of use. The Defendants have further been damaged in that they have spent, and will continue to expend, large sums of money in order to determine the extent of the damage to the structure and to repair it.

WHEREFORE, the Defendant pray this Honorable Court inquire into the matters set forth herein and award judgment in favor of the Defendants against the Plaintiff, as follows:

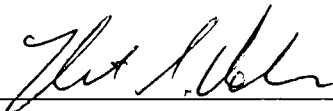
1. For all actual and consequential damages against the Plaintiff as to KSE, in an amount to be shown at trial;
2. For all actual and liquidated damages against the Plaintiff as to OIA, in an amount to be shown at trial;
3. For prejudgment interest;
4. For all attorneys fees and costs associated with investigating and prosecuting this action; and
5. For all other relief this Honorable Court deems just and proper.

Respectfully submitted,

DEMAND FOR JURY TRIAL

Defendants demand a jury trial on all legal counts stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994).

Brent Souther Halversen, LLC

By: 

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9/20, 2018.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Amended Answers, Affirmative Defenses and Counterclaims to Plaintiff's Complaint upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the counsel's last known address on this 26th day of September, 2018.

Brent Souther Halversen, LLC

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9/20, 2018.
Mount Pleasant, South Carolina

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*ALSO ADMITTED IN FLORIDA

September 20, 2018

VIA U.S. MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Ste 106
Charleston, SC 29401-2258

Re: K-Con, Inc. v. King Street Enterprises, LLC and Ohio Imaging Associates, Inc.; Case No. 2018-CP-10-3825

Dear Ms. Armstrong,

Enclosed please find the Defendants Amended Answer, Affirmative Defenses, and Counterclaims to Plaintiff's Complaint.

Please file the original and return a clocked in, file stamped copy in the enclosed self-addressed stamped envelope.

If you have any questions or comments, please do not hesitate to me.

Sincerely yours,



Brent S. Halversen

BSH/ak
Enclosure(s)