IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

LARRY LOVINS, D/B/A APPALACHIAN HOME CENTER, a Kentucky Business and TRI-STATE HOTELS, LLC, a Kentucky Limited Liability Company

Civil Action No. 13-C-1796
The Honorable Charles E. King

Plaintiffs,

v.

JAI SAI, LLC, a West Virginia Limited Liability Company; NATIONAL REPUBLIC BANK OF CHICAGO; RIVER CITIES GLASS & CONSTRUCTION, LLC, a Kentucky Limited Liability Company

DOLATRAI PATEL'S AND AMK, LLC'S ANSWER TO THE AMENDED COUNTERCLAIM OF DEFENDANT JAI SAI, LLC

COMES NOW Counterclaim Defendants Dolatrai Patel and AMK, LLC, by and through counsel, J. Philip Fraley and the law firm of Litchfield Cavo, LLP, and in response to Jai Sai, LLC's "Amended Counterclaim" hereby states as follows:

FIRST DEFENSE

Nature of Action

1. Paragraph 1 of the Amended Counterclaim does not require a response. To the extent a response is deemed required, Counterclaim Defendants deny the same and demand strict proof thereof.

Parties

2. AMK, LLC and Dolatria Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 11 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

3. Dolatrai Patel admits the allegations set forth in Paragraph 3 of the Amended Counterclaim.

4. Dolatrai Patel denies the allegations set forth in Paragraph 4 of the Amended Counterclaim.

5. AMK LLC, admits the allegations set forth in Paragraph 5 of the Amended Counterclaim.

Jurisdiction and Venue

6. Doltrai Patel and AMK, LLC deny the allegations set forth in Paragraph 6 of the Counterclaim, including all subparagraphs, and demand strict proof thereof.

Operative Facts

7. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 7 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

8. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 8 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

9. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 9 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

10. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 10 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

11. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 11 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 11 of

the Amended Counterclaim and demands strict proof thereof.

12. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 12 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

13. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 13 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

14. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 14 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

15. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 15 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 15 of the Amended Counterclaim and demands strict proof thereof.

16. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 16 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits that a discussion was held as to the purchase of the property but does not recall the dates or who initiated the discussion.

17. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 17 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits that a discussion was held as to the purchase of the property but does not recall the specifics of the discussion.

18. AMK, LLC is without sufficient information to form a belief as the truth of the

allegations set forth in Paragraph 18 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 18 of the Amended Counterclaim and demands strict proof thereof.

19. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 19 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

20. Doltrai Patel and AMK, LLC are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 20 of the Amended Counterclaim and, therefore, denies the same and demand strict proof thereof.

21. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 21 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 21 of the Amended Counterclaim and demands strict proof thereof.

22. AMK, LLC and Dolatri Pateal are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 22 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

23. AMK, LLC and Dolatri Pateal are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 23 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

24. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 24 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 24 of the Amended Counterclaim and demands strict proof thereof.

25. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 25 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 25 of the Amended Counterclaim and demands strict proof thereof.

26. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 26 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 26 of the Amended Counterclaim, but states this was pursuant to agreement with the members as Dolatrai and/or Tri-State Hotels, LLC had to fund the preliminaries of the project, including a wage bond and workers' compensation insurance.

27. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 27 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 27 of the Amended Counterclaim.

28. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 28 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 28 of the Amended Counterclaim.

29. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 29 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

30. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 30 of the Amended Counterclaim and, therefore, denies the same

and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 30 of the Amended Counterclaim and demands strict proof thereof.

31. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 31 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 31 of the Amended Counterclaim and demands strict proof thereof.

32. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 32 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 32 of the Amended Counterclaim and demands strict proof thereof.

33. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 33 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

34. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 34 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Upon information and belief Dolatrai Patel admits the allegations set forth in Paragraph 34.

35. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 35 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

36. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 36 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 36 of

the Amended Counterclaim and demands strict proof thereof.

37. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 37 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 37 of the Amended Counterclaim and demands strict proof thereof.

38. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 38 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

39. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 39 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

40. AMK, LLC and Dolatrai Patel are without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 40 of the Amended Counterclaim and, therefore, deny the same and demands strict proof thereof.

41. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 41 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 41 of the Amended Counterclaim and demands strict proof thereof.

42. AMK, LLC is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 37 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 42 of the Amended Counterclaim.

Count I - Fraud Against Tri-State, Dolatrai and AMK

43. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference their answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

44. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 44 of the Amended Counterclaim.

45. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 45 of the Amended Counterclaim.

46. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 46 of the Amended Counterclaim.

47. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 47 of the Amended Counterclaim.

48. AMK, LLC and Dolatrai Patel deny denies the allegations set forth in Paragraph 48 of the Amended Counterclaim.

49. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 49 of the Amended Counterclaim.

50. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 50 of the Amended Counterclaim.

51. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 51 of the Amended Counterclaim.

Count II – Negligent Misrepresentation against Tri-State, Dolatrai and AMK

52. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference their answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

53. The allegations set forth in Paragraph 53 of the Amended Counterclaim calls for a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, AMK, LLC and Dolatrai Patel deny the same and demands strict proof thereof.

54. The allegations set forth in Paragraph 54 of the Amended Counterclaim calls for a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, AMK, LLC and Dolatrai Patel deny the same and demands strict proof thereof.

55. The allegations set forth in Paragraph 55 of the Amended Counterclaim calls for a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, AMK, LLC and Dolatrai Patel deny the same and demands strict proof thereof.

56. The allegations set forth in Paragraph 56 of the Amended Counterclaim calls for a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, AMK, LLC and Dolatrai Patel deny the same and demands strict proof thereof.

57. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 57 of the Amended Counterclaim.

Count III – Tortious Interferenace of Contract against Tri-State, Dolatrai and AMK

58. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference its answer to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

59. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 59 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 59 of the Amended Counterclaim.

60. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 60 of the Amended Counterclaim.

61. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 61of the Amended Counterclaim.

Count IV – Unjust Enrichment against Tri-State, Dolatrai and AMK

62. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference their answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

63. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 63 of the Amended Counterclaim.

64. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 64of the Amended Counterclaim.

65. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 65 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 65 of the Amended Counterclaim.

66. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 66 of the Amended Counterclaim.

Count V – Abuse of Process against Tri-State

67. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference their answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

68. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 68 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 68 of

the Amended Counterclaim.

69. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 59 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel denies the allegations set forth in Paragraph 69 of the Amended Counterclaim.

70. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 70 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 70 of the Amended Counterclaim.

71. AMK, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 71 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof. Dolatrai Patel admits the allegations set forth in Paragraph 71 of the Amended Counterclaim.

Count VI - Joint Venture against Tri-State, Dolatrai and AMK

72. AMK, LLC and Dolatrai Patel hereby adopt and incorporate by reference their answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

73. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 73 of the Amended Counterclaim.

74. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 74 of the Amended Counterclaim.

75. AMK, LLC and Dolatrai Patel deny the allegations set forth in Paragraph 75 of the

Amended Counterclaim.

SECOND DEFENSE

Plaintiffs state that their liens were filed pursuant to W.Va. Code §§ 38-2-1 - 38-2-2 and are valid under said statutes.

THIRD DEFENSE

Plaintiffs state that the Counterclaim should be dismissed, at least in part if not in whole, as it fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

Plaintiffs assert the defense of the doctrine of unclean hands.

FIFTH DEFENSE

Defendant has no cause of action for alleged exemplary or punitive damages since the same is an inappropriate remedy under the facts and circumstances of this case and Defendants cause of action, if any, for exemplary or punitive damages fails for lack of insufficient allegations, in particularly, and with specificity.

SIXTH DEFENSE

Defendant's claim for punitive damages is a violation of the due process of law clause of the Fourteenth Amendment of the United States Constitution, is a violation of the Eighth Amendment prohibition of ex post facto laws and laws impairing the obligations of contracts contained in Section 10, Paragraph 1, of Article 1 of the United States Constitution and is a violation of Article 3, Section 10, of the West Virginia Constitution.

SEVENTH DEFENSE

To the extent it may considered a defense, Plaintiffs reassert and incorporate by reference their Complaint against Jai Sai, LLC as if fully restated verbatim herein.

SEVENTH DEFENSE

Plaintiffs assert the defenses of accord and satisfaction, acquiescence and acceptance.

EIGHTH DEFENSE

Plaintiffs assert the defense of waiver.

NINTH DEFENSE

Defendant's Counterclaim is barred by the Statute of Frauds.

TENTH DEFENSE

Defendant consented to the acts of which it complains in its Counter-Claim.

ELEVENTH DEFENSE

Any claim for punitive damages is prohibited pursuant to W.Va. Code Section 55-7-29.

WHEREFORE, Plaintiffs respectfully request this Court enter judgement as follows:

a. Judgement against Jai Sai, LLC in the amount of Six Hundred Thirty Thousand Dollars ($630,000.00), plus pre-judgment and post-judgement interest in favor of Tri-State Hotels, LLC;

b. Declaring Plaintiffs' liens to apply to all property as identified in their respective claims of mechanics liens, including all buildings, attachments and/or improvements thereto;

c. The Court prioritize the liens asserted and determine the rights of all lien holders;

d. Direction by the Court that the property at issue be sold and that the proceeds, less costs and expenses related to the sale, be used to satisfy the liens asserted against the property, including Plaintiffs' liens;

e. An award of damages against Jai Sai, LLC, for its breach of contract and/or unjust enrichment;

f. Plaintiffs be awarded their costs and reasonable attorney's fees in this matter,

including the costs of filing and recording their lien;

g. Plaintiffs be awarded damages for aggravation, annoyance and inconvenience;

h. Dismissal of the "Amended Counterclain"

i. Such other relief as this Court deems just and appropriate.

AMK, LLC AND DOLATRAI PATEL

BY COUNSEL

for R. L. Hamilton #8552

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West Virginia State Bar No. 9454
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

LARRY LOVINS, D/B/A APPALACHIAN HOME CENTER, a Kentucky Business and TRI-STATE HOTELS, LLC, a Kentucky Limited Liability Company

Civil Action No. 13-C-1796
The Honorable Charles E. King

Plaintiffs,

v.

JAI SAI, LLC, a West Virginia Limited Liability Company; NATIONAL REPUBLIC BANK OF CHICAGO; RIVER CITIES GLASS & CONSTRUCTION, LLC, a Kentucky Limited Liability Company

CERTIFICATE OF SERVICE

I, hereby certify that on the 18th day of November, 2016, a true and correct copy of the foregoing ***"Dolatrai Patel's and AMK, LLC's Answer to the Amended Counterclaim of Defendant Jai Sai, LLC"*** was served via Regular U.S. Mail, postage prepaid, as follows:

Kenneth E. Webb, Jr.(WVSB# 5560)
Patrick C. Timony (WVSB# 11717)
BOWLES RICE, LLP
600 Quarrier Street
P.O. Box 1386
Charleston, WV 25325
Counsel for Jai Sai, LLC

#8552

for J. Philip Fraley, Esquire
W.Va. State Bar No.: 9454
LITCHFIELD CAVO, LLP
Village Professionals Building
99 Cracker Barrel Drive; Suite 100
Barboursville, West Virginia 25504
Telephone: (304) 302-0500
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Plaintiff: LARRY LOVINS, D/B/AAPPALACHIAN HOME CENTER, a Kentucky Business and TRI-STATE HOTELS, LLC, a Kentucky Limited Liability **Defendants:** JAI SAI, LLC, a West Virginia Limited Liability Company; NATIONAL REPUBLIC BANK OF CHICAGO; RIVER CITIES GLASS & CONSTRUCTION, LLC, a Kentucky Limited Liability Company; Civil Action No.: 13-C-1796

TYPE OF CASE:

TORTS	OTHER CIVIL	OTHER CIVIL
* Asbestos	Adoption	Appeal from Magistrate Court
Professional Liability	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	Misc. Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

JURY DEMAND: Yes

CASE WILL BE READY FOR TRIAL BY (Month/Year): unknown

DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? No
IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
Interpreter or other auxiliary aid for the hearing impaired
Reader or other auxiliary aid for the visually impaired
Spokesperson or other auxiliary aid for the speech impaired
other: _____

Attorney: J. Phillip Fraley

Firm: Litchfield Cavo, LLC *Representing: PPG Industries, Inc.*

Address: 99 Cracker Barrel Dr., Suite 100, Barboursville, WV 25504

Telephone: (304) 302-0500

Dated: 11-18-16

Signature

LITCHFIELD CAVO LLP
Attorneys at Law

11-21-16P01:55 RCVD

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J. Philip Fraley
Email: fraley@litchfieldcavo.com

November 18, 2016

RE: *Tri-State Hotels, LLC v. Jai Sai, LLC, et al.*
Circuit Court of Kanawha County, West Virginia
Civil Action No. 13-C-1796

Cathy S. Gatson
Kanawha County Circuit Clerk
111 Court Street
Charleston, WV 25301

Dear Ms. Gatson:

Enclosed for filing you will find an original *"Dolatrai Patel's and AMK, LLC's Answer to the Amended Counterclaim of Defendant Jai Sai, LLC"* By copy of this letter all parties have been served with this filing.

Thank you for your assistance.

Very truly yours,

for J. Philip Fraley

Enclosure

cc: Kenneth E. Webb, Jr., Esq.
Patrick C. Timony, Esq.

JPF/hmj