

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**

**TRI-STATE HOTELS, LLC'S ANSWER TO THE AMENDED
COUNTERCLAIM OF DEFENDANT JAI SAI, LLC**

COMES NOW d Tri-State Hotels, LLC (hereinafter referred to as "Tri-State Hotels"), by and through its counsel, J. Philip Fraley and the law firm of Orndorff Hatfield & Fraley, and in response to the 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, Tri-State Hotels, LLC, denies the same and demands strict proof thereof.

Parties

2. Upon information and belief, Tri-State Hotels, LLC admits the allegations set forth in Paragraph 2 of the Amended Counterclaim.

3. Tri-State Hotels, LLC admits the allegations set forth in Paragraph 3 of the Amended Counterclaim.

4. Upon information and belief, Tri-State Hotels, LLC, denies the allegations set forth

in Paragraph 4 of the Amended Counterclaim.

5. Upon information and belief, Tri-State Hotels, LLC, admits the allegations set forth in Paragraph 5 of the Amended Counterclaim.

Jurisdiction and Venue

6. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 6 of the Counter-Claim, including all subparagraphs, and demands strict proof thereof.

Operative Facts

7. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

8. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

9. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

10. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 10 of the Amended Counterclaim.

11. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 11 of the Amended Counterclaim.

12. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

13. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

14. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

15. Tri-State Hotels, 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.

16. Tri-State Hotels, 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.

17. Tri-State Hotels, 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.

18. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 18 of the Amended Counterclaim.

19. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

20. Tri-State Hotels, LLC, is 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 demands strict proof thereof.

21. Tri-State Hotels, 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.

22. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 22 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

23. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 23 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

24. Tri-State Hotels, 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.

25. Tri-State Hotels, 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.

26. Tri-State Hotels, 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.

27. Tri-State Hotels, 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.

28. Tri-State Hotels, 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.

29. Tri-State Hotels, 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.

30. Tri-State Hotels, 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.

31. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 31 of the Amended Counterclaim.

32. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 32 of the Amended Counterclaim.

33. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 33 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

34. Tri-State Hotels, 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.

35. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 35 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

36. Tri-State Hotels, 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.

37. Tri-State Hotels, 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.

38. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 38 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

39. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 39 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

40. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 40 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

41. Tri-State Hotels, 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.

42. Tri-State Hotels, LLC, is without sufficient information to form a belief as the truth of the allegations set forth in Paragraph 42 of the Amended Counterclaim and, therefore, denies the same and demands strict proof thereof.

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

43. Tri State Hotels, LLC hereby adopts and incorporates by reference its answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

44. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 44 of the Amended Counterclaim.

45. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 45 of the Amended Counterclaim.

46. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 46 of the Amended Counterclaim.

47. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 47 of the Amended Counterclaim.

48. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 48 of the Amended Counterclaim.

49. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 49 of the Amended Counterclaim.

50. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 50 of the Amended Counterclaim.

51. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 51 of the Amended Counterclaim.

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

52. Tri-State Hotels, LLC hereby adopts and incorporates by reference its 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, Tri-State Hotels, LLC, denies 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, Tri-State Hotels, LLC, denies 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, Tri-State Hotels, LLC, denies 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, Tri-State Hotels, LLC, denies the same and demands strict proof thereof.

57. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 57 of the Amended Counterclaim.

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

58. Tri-State Hotels, LLC hereby adopts and incorporates by reference its answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

59. Tri-State Hotels, 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.

60. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 60 of the Amended Counterclaim.

61. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 61 of the Amended Counterclaim.

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

62. Tri-State Hotels, LLC hereby adopts and incorporates by reference its answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

63. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 63 of the Amended Counterclaim.

64. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 64 of the Amended Counterclaim.

65. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 65 of the Amended Counterclaim.

66. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 66 of the Amended Counterclaim.

Count V – Abuse of Process against Tri-State

67. This Defendant hereby adopts and incorporates by reference its answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

68. Tri-State Hotels, LLC admits the allegations set forth in Paragraph 68 of the Amended Counterclaim.

69. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 69 of the Amended Counterclaim.

70. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 70 of the Amended Counterclaim.

71. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 70 of the Amended Counterclaim.

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

72. Tri-State Hotels, LLC hereby adopts and incorporates by reference its answers to all of the allegations contained in preceding paragraphs as if fully restated verbatim herein.

73. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 73 of the Amended Counterclaim.

74. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 74 of the Amended

Counterclaim.

75. Tri-State Hotels, LLC denies 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 particular, 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 be 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-judgment 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;

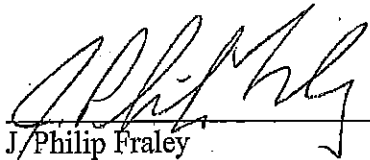
g. Plaintiffs be awarded damages for aggravation, annoyance and inconvenience;

h. Dismissal of the "Amended Counterclaim"

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

TRI-STATE HOTELS, LLC

BY COUNSEL



J. Philip Fraley

West Virginia State Bar No. 9454

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99 Cracker Barrel Drive, Suite 100

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LARRY LOVINS, D/B/A
APPALACHIAN HOME CENTER,
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Civil Action No. 13-C-1796
The Honorable Charles E. King

Plaintiffs,

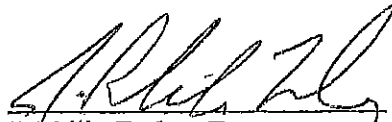
v.

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

The undersigned counsel for Plaintiff Tri-State Hotels, LLC, hereby states that on the 31st day of October 2016, a true and exact copy of the foregoing "*Tri-State Hotels, 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.
Patrick C. Timony
BOWLES RICE, LLP
P.O. Box 1386
Charleston, WV 25325


J. Philip Fraley, Esq.
W.Va. State Bar No. 9454

LITCHFIELD CAVO LLP

Attorneys at Law

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(304) 302-0504 (Fax)

J. Philip Fraley
Email: fraley@litchfieldcavo.com

October 31, 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 "*Tri-State Hotels, 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,


J. Philip Fraley

Enclosure

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

JPF/

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