

FILED  
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

2013/10/21 PM 12:22  
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

**PLAINTIFFS APPALACHIAN HOME CENTER'S AND TRI-STATE HOTELS, LLC'S  
ANSWER TO THE COUNTER-CLAIM OF DEFENDANT JAI SAI, LLC**

COMES NOW Larry Lovins, d/b/a Appalachian Home Center (hereinafter referred to as "Appalachian Home Center") and Tri-State Hotels, LLC (hereinafter referred to as "Tri-State Hotels"), by and through their counsel, J. Philip Fraley and the law firm of Orndorff Hatfield & Fraley, and in respond to the "Counter-Claim of Defendant Jai Sai, LLC Against Plaintiffs' [sic] Larry Lovins, d/b/a Appalachian Home Center, a Kentucky Business and Tri-State Hotels, LLC a Kentucky Limited Liability Company" hereby states as follows:

**FIRST DEFENSE**

1. Appalachian Home Cetner admits the allegations set forth in Paragraph 1 of the Counter-Claim.
  2. Tri-State Hotels, LLC admits the allegations set forth in Paragraph 2 of the Counter-Claim.
  3. Paragraph three of the Counter-Claim does not require a response. To the extent a response is deemed required, Plaintiffs herein, upon information and belief, admit the allegations set forth in Paragraph 3 of the Counter-Claim.
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4. Tri-State Hotels, LLC admits the allegations set forth in Paragraph 4 of the Counter-Claim.

5. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 5 of the Counter-Claim, including all subparagraphs, and demands strict proof thereof.

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.

7. Plaintiffs deny the allegations set forth in Paragraph 7 of the Counter-Claim and demand strict proof thereof.

8. Plaintiffs deny the allegations set forth in Paragraph 8 of the Counter Claim and demand strict proof thereof.

9. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 9 of the Complaint, demands strict proof thereof, and states that its lien is filed pursuant to the W.Va. Code § 38-2-1, not W.Va. Code § 38-2-32.

10. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 10 of the Complaint, demands strict proof thereof, and states that its lien is filed pursuant to the W.Va. Code § 38-2-1, not W.Va. Code § 38-2-32.

11. Plaintiffs deny the allegations set forth in Paragraph 11 of the Counter-Claim and demand strict proof thereof.

12. Appalachian Home Center denies the allegations set forth in Paragraph 12 of the Complaint, demands strict proof thereof, and states that its lien is filed pursuant to the W.Va. Code § 38-2-1, not W.Va. Code § 38-2-32.

13. Appalachian Home Center denies the allegations set forth in Paragraph 13 of the Complaint, demands strict proof thereof, and states that its lien is filed pursuant to the W.Va. Code

§ 38-2-1, not W.Va. Code § 38-2-32.

14. Appalachian Home Center denies the allegations set forth in Paragraph 14 of the Counter Claim and demands strict proof thereof.

15. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 15 of the Counter-Claim and demands strict proof thereof.

16. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 16 of the Counter-Claim and demands strict proof thereof.

17. Plaintiffs deny the allegations set forth in Paragraph 17 of the Counter-Claim and demand strict proof thereof.

18. Plaintiffs deny the allegations set forth in Paragraph 18 of the Counter-Claim and demand strict proof thereof.

19. Tri-State Hotels, LLC deny the allegations set forth in Paragraph 19 of the Counter-Claim and demands strict proof thereof.

20. Tri-State Hotels, LLC denies the allegations set forth in Paragraph 20 of the Counter-Claim and demands strict proof thereof.

### **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 Counter-Claim 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 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 Counter-Claim is barred by the Statute of Frauds.

#### **TENTH DEFENSE**

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

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

a. Judgement against Jai Sai, LLC in the amount of Twenty Three Thousand One Hundred Seventy-Seven Dollars a (\$23,177.00), plus pre-judgment and post-judgement interest in favor of Appalachian Home Products;

b. 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;

c. 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;

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

e. 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;

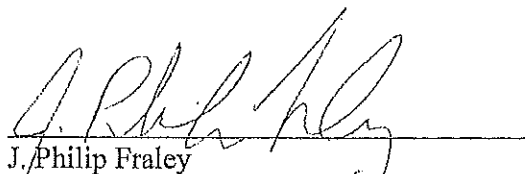
g. Plaintiffs be awarded damages for aggravation, annoyance and inconvenience;

h. Dismissal of the "Counter-Claim of Defendant Jai Sai, LLC Against Plaintiffs' [sic] Larry Lovins, d/b/a Appalachian Home Center, a Kentucky Business and Tri-State Hotels, LLC a Kentucky Limited Liability Company;"

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

LARRY LOVINS, D/B/A APPALACHIAN HOME  
CENTER AND TRI-STATE HOTELS, LLC

BY COUNSEL

A handwritten signature in dark ink, appearing to read "J. Philip Fraley", is written over a horizontal line.

J. Philip Fraley

West Virginia State Bar No. 9454

ORNDORFF HATFIELD & FRALEY

Village Professionals Building

99 Cracker Barrel Drive, Suite 100

Barboursville, WV 25504

Telephone: (304) 302-0500

Facsimile: (304) 302-0504

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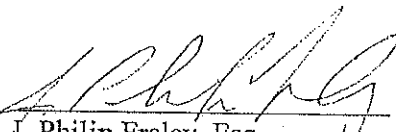
v.

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CERTIFICATE OF SERVICE

The undersigned counsel for Plaintiffs Larry Lovins, d/b/a Appalachian Home Center and Tri-State Hotels, LLC, hereby states that on the 19<sup>th</sup> day of November 2013, a true and exact copy of the foregoing "*Plaintiffs Appalachian Home Center's and Tri-State Hotels, LLC's Answer to the Counter-claim of Defendant Jai Sai*" was served via regular U.S. Mail, postage prepaid, as follows:

Jeff C. Woods  
The Law Offices of Jeff C. Woods  
600 Prestige Park, Suite D  
Hurricane, WV 25526

  
J. Philip Fraley, Esq.

W.Va. State Bar No. 9454