

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

J.F. ALLEN CORPORATION
a West Virginia Corporation

Plaintiff,

v.

CIVIL ACTION NO. 14-C-1182
JUDGE KAUFMAN

THE SANITARY BOARD OF
THE CITY OF CHARLESTON,
WEST VIRGINIA, and BURGESS AND
NIPLE, INC., an Ohio Corporation

Defendants.

BURGESS & NIPLE, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

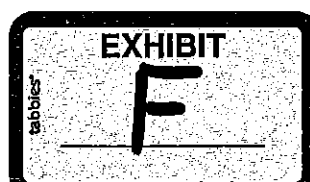
Now comes the defendant Burgess & Niple, Inc., by and through counsel, and without waiving any defenses, responds to the Complaint as follows:

FIRST DEFENSE

This Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in plaintiff's Complaint, reserves unto itself the affirmative defense that plaintiff's Complaint fails or may fail to state a claim against it upon which relief may be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

SECOND DEFENSE

The Complaint fails to allege any duty on the part of this Defendant toward the Plaintiff and further fails to allege the breach of any such duty which proximately resulted in damages or injury to the Plaintiff.



THIRD DEFENSE

This Defendant did not commit any acts of negligence proximately causing or contributing to the damages allegedly sustained by the Plaintiff.

FOURTH DEFENSE

If this Defendant was negligent, which negligence is denied, such negligence was not the proximate or contributing cause of the damages allegedly sustained by the Plaintiff.

FIFTH DEFENSE

Any alleged damages or injuries resulting to the Plaintiff are solely the result of the negligence of a party or parties other than this Defendant.

SIXTH DEFENSE

The incidents in question were unavoidable by this Defendant in the exercise of reasonable care.

SEVENTH DEFENSE

The injuries and damages alleged were caused by unforeseeable, superseding and/or intervening causes for which this Defendant is not liable.

EIGHTH DEFENSE

To the extent that various other Defendants, named or unnamed as parties herein, have concluded or may conclude settlement with the Plaintiff, the Defendant Burgess & Niple, Inc. is entitled to a set off for any amount paid or to be paid.

NINTH DEFENSE

The damages of which the Plaintiff complains were not the proximate result of any acts of omission or commission on the part of the Defendant.

TENTH DEFENSE

The Defendant Burgess & Niple, Inc. adopts and incorporates by reference all other affirmative defenses stated by any and all other Defendants, but not specifically enumerated herein.

ELEVENTH DEFENSE

This Defendant, not being fully advised of all the circumstances surrounding the allegations set forth in the Complaint, reserves unto itself the following affirmative defenses, as the same may prove applicable as discovery proceeds and the evidence is developed in this case: release, accord and satisfaction, estoppel, waiver, injury by fellow servant, laches, all affirmative defenses expressly set forth in Rule 8 of the *West Virginia Rules of Civil Procedure*, and failure to join an indispensable party under Rule 19 of the *West Virginia Rules of Civil Procedure*, as the same may prove applicable as discovery proceeds and the evidence is developed in this case.

TWELFTH DEFENSE

To the extent that the Plaintiff has received payment from any alleged joint tortfeasor in full satisfaction of any of the injuries and/or claims against any of the Defendants and/or other alleged joint tortfeasors, the Plaintiff's Complaint in each and

every count and cause of action alleged therein is barred by the defenses of payment and accord and satisfaction.

THIRTEENTH DEFENSE

This Defendant denies that it breached any duty owed to the plaintiff. Specifically, this Defendant denies any and all allegations contained in the several paragraphs and counts of the Complaint that allege or imply any negligence, intentional tort, unlawful act, violation of statute or other fault on the part of this defendant; that alleges or implies any responsibility, failure to meet a responsibility, or violation of duty with respect to this defendant; or that alleges or implies that this defendant violated any applicable common law, public policy, statutes, rules, regulations or standards whatsoever, as the same may prove applicable as discovery proceeds and the evidence is developed in this case.

FOURTEENTH DEFENSE

This Defendant asserts the right to have the percentage of fault in this matter allocated between and among all parties or entities to which there is any evidence to support a finding of fault and, further, asserts their right to the offset, contribution and/or indemnity from any such person or entity, as the same may be provided by law.

FIFTEENTH DEFENSE

Burgess & Niple, Inc., not being fully advised of all the circumstances surrounding the allegations set forth in the Complaint, reserves unto itself the affirmative

defense that the claims presented in the Complaint are or may be barred by reason of improper venue, lack of jurisdiction, insufficiency of process, and/or insufficiency of service of process, as the same may prove applicable as discovery proceeds and the evidence is developed in this case.

SIXTEENTH DEFENSE

If this Defendant was guilty of negligence, which negligence is denied, such negligence was not the proximate or contributing cause of the damages allegedly sustained by the Plaintiff.

SEVENTEENTH DEFENSE

All injuries and damages alleged by the Plaintiff were due solely to the negligence of the Plaintiff and not to any alleged acts or omissions on the part of this Defendant, and said Plaintiff is not entitled to indemnification and/or contribution for its own negligence and/or illegal acts.

EIGHTEENTH DEFENSE

The damages allegedly sustained by the Plaintiff were solely a result of the negligence of the Plaintiff itself.

NINETEENTH DEFENSE

This Defendant at no time offered any warranties, implied or express, to the Plaintiff for its claim.

TWENTIETH DEFENSE

No warranties, implied or express, existed at any time between the Plaintiff and this Defendant other than those expressly and specifically set out within the contract with Co-Defendant The Sanitary Board of The City of Charleston, West Virginia.

TWENTY-FIRST DEFENSE

There is no privity between the Plaintiff and this Defendant. Such lack of privity precludes any adjudication of this Complaint and warrants dismissal of the same.

TWENTY-SECOND DEFENSE

This Defendant complied with or exceeded the requirements of the terms of the contract with Co-Defendant The Sanitary Board of The City of Charleston, West Virginia at issue and completed all of its obligations in a workmanlike manner and within industry standards.

TWENTY-THIRD DEFENSE

This Defendant denies that it is indebted to or liable to the Plaintiff for any sum whatsoever.

TWENTY-FOURTH DEFENSE

The Plaintiff is barred by the doctrine of waiver from asserting any claim or claims against this Defendant.

TWENTY-FIFTH DEFENSE

This Defendant responds to the specific allegations set forth in the Complaint as follows:

General Allegations

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph No. 1 of the Complaint and, therefore, denies the same and demands strict proof thereof.
2. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph No. 2 of the Complaint and, therefore, denies the same and demands strict proof thereof.
3. This Defendant admits the allegations set forth in Paragraph No. 3 of the Complaint.
4. The allegations set forth in Paragraph No. 4 of the Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the same and demands strict proof thereof.

Factual Background

5. Upon information and belief, this Defendant admits the allegations set forth in Paragraph No. 5 of the Complaint.
6. This Defendant admits the allegations set forth in Paragraph No. 6 of the Complaint.
7. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph No. 7 of the Complaint and, therefore, denies the same and demands strict proof thereof.

8. This Defendant denies the allegations set forth in Paragraph No. 8 of the Complaint and demands strict proof thereof.
9. Upon information and belief, this Defendant admits plaintiff was awarded the contract as set forth in Paragraph No. 9 of the Complaint. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph No. 9 of the Complaint and, therefore, denies the same and demands strict proof thereof.
10. The contract is a document of independent legal significance and, therefore, speaks for itself. To the extent this Defendant is required to respond to the allegations set forth in Paragraph No. 10 of the Complaint, this Defendant denies the same and demands strict proof thereof.
11. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph No. 11 of the Complaint, including subparts (a), (b), and (c), and, therefore, denies the same and demands strict proof thereof.
12. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph No. 12 of the Complaint and, therefore, denies the same and demands strict proof thereof.
13. This Defendant denies the allegations set forth in Paragraph No. 13 of the Complaint.

COUNT I: BREACH OF CONTRACT AGAINST DEFENDANT, THE SANITARY
BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA

14. In response to Paragraph No. 14 of the Complaint, this Defendant reiterates as if set forth verbatim herein its foregoing responses to Paragraph Nos. 1 through 14 thereof.

15. The allegations set forth in Paragraph Nos. 15 through 19 of the Complaint do not pertain to this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the same and demands strict proof thereof.

COUNT II: UNJUST ENRICHMENT AGAINST DEFENDANT, THE SANITARY BOARD OF THE CITY OF CHARLESTON, WEST VIRGINIA

16. In response to Paragraph No. 20 of the Complaint, this Defendant reiterates as if set forth verbatim herein its foregoing responses to Paragraph Nos. 1 through 19 thereof.

17. The allegations set forth in Paragraph Nos. 21 through 24 of the Complaint do not pertain to this Defendant and therefore no response is required. To the extent a response is required, this Defendant denies the same and demands strict proof thereof.

COUNT III: NEGLIGENCE AGAINST DEFENDANT, BURGESS AND NIPLE, INC.

18. In response to Paragraph No. 25 of the Complaint, this Defendant reiterates as if set forth verbatim herein its foregoing responses to Paragraph Nos. 1 through 24 thereof.

19. The allegations set forth in Paragraph No. 26 of the Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the same and demands strict proof thereof.

20. In response to Paragraph No. 27 of the Complaint, this Defendant denies that it was negligent and/or that it breached any duty that may be owed to plaintiff. This Defendant further denies the allegations contained in subparts (a) through (e) in Paragraph No. 27.

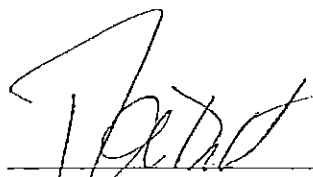
21. The allegations set forth in Paragraph No. 28 of the Complaint contain conclusions of law to which no response is required. To the extent a response is required, this Defendant denies the same and demands strict proof thereof.

22. This Defendant denies the allegations set forth in Paragraph No. 29 of the Complaint and demands strict proof thereof.

Burgess & Niple denies that plaintiff is entitled to the relief and damages set forth in the concluding "WHEREFORE" paragraph of its Complaint.

WHEREFORE, Defendant Burgess & Niple, Inc. denies any and all liability for any damages alleged in the complaint and prays that it have judgment awarded in its favor and be awarded such reasonable costs, expenses, and attorney fees occurred in the defense of this action, together with such other and further relief as this Court may deem appropriate.

BURGESS & NIPLE, INC.
By counsel,



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CERTIFICATE OF SERVICE

I, Peter T. DeMasters, hereby certify that I served the foregoing "BURGESS & NIPLE, INC.'S ANSWER TO PLAINTIFF'S COMPLAINT" upon the following counsel of record on the 31st day of July, 2014, by mailing a true copy thereof, United States mail. Postage prepaid, to the following addresses:

Charles M. Johnstone, II, Esq.
Madeline G. George, Esq.
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*Counsel for The Sanitary Board of
The City of Charleston, West Virginia*

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AUG 04 2014



Peter T. DeMasters, Esquire