

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-26-04842

Structural Waterproofing, LLC,)
)
Plaintiff,)

v.)

Tribune Holdings, LLC; South Hampton)
Property Owners Association, Inc.; Walter P)
Rawl & Sons Inc; Archibald Oil & Gas)
Operations Inc; J & M Smith Enterprises)
LLC; 705 South Hampton LLC; EMK)
Pennsylvania LLC; Jaybird LLC; JJVIV)
LLC; JTV Properties LLC; Kingston)
Partners 505 LLC; Kingston Plantation)
Master Association, Inc.; Kingston)
Properties V; Komax Properties LLC; Lyke)
Properties LLC; MACJ LLC; MBMB)
Properties LLC; Mchurley Enterprises LLC;)
MHK Properties, LLC; Ocean507 LLC;)
Ohio River Aggregate Inc; South Hampton)
606 LLC; South Hampton Properties LLC;)
Earl W. & Evelyn H. Spangler Family)
Limited Partnership; Under The Boardwalk)
LLC; William A Long & Susan B Long;)
Timothy L Wright & Lisa J Wright; Thomas)
N Braun & Catherine A Braun; Shawn R)
Dixon & Cary J Dixon; Richard I Letvak &)
Susan A Letvak; Ralph H Ashworth &)
Daphne A Ashworth; Peter R Leinenweber &)
Deborah S Leinenweber; Norman P Mccarter)
& Gayle G Mccarter; Michael J Radler &)
Judith M Radler; Melvyn R Berman & Anita)
Berman; Leonard M Gatti Revocable Trust;)
Kathrine E Radler & Lawrence E Radler; Jan)
R Niezing & Ursula F Niezing; Jack L Miller)
Jr & Jack L Miller III; Jack F Wright Jr &)
Barbara F Wright; Jack D Cox & Velda W)
Cox; Ira M Keen & Wanda K Keen; Hugh F)
Madden & Beverly K Madden; Henry P)
Gosiene & Joan F Gosiene; Harold C Dufour)
& Jennifer Q Dufour; G V Reddy & Prema)
Reddy; Frederick Talip & Analyn M Talip;

**STRUCTURAL WATERPROOFING,
LLC’S REPLY TO SOUTH HAMPTON
PROPERTY OWNERS ASSOCIATION,
INC.’S AMENDED ANSWER AND
COUNTERCLAIM**

Fred D Matheson & Patricia C Matheson;)
Frank L Taylor Jr & Deborah Kay Taylor;)
Francis E Devince & Diane Z Devince;)
Francis A Goad & Cynthia M Goad; Donald)
R Fishback & Denise B Fishback; Dimitrios)
Hrysikos & Maria D Hrysikos; Dileep S)
Karmarkar & Sushama D Karmarkar; Dennis)
M Boyd & Patricia J Boyd; Daniel W)
Simmons & Patricia M Simmons; Daniel W)
Pizzullo & Thelma D Pizzullo; Charles A)
Mckenzie & Leslie B Mckenzie; Robert)
Alger & Lynne Alger; Ronnie Allison &)
Shelba Allison Geddis; Ebtissam M Ammar;)
Dennis R Anderson Revocable Trust;)
Howard L Armistead Jr Revocable Trust;)
Bachner Living Trust; Jane S Baker; Gerald)
Baron & Stephanie Baron; Mark Barth;)
Marjory P Benson; William B Biddington;)
Carol M. Biddington; Patrick F Blois;)
Roderick C Broadway & Latonia Broadway;)
Mary Jo Ray Bryan Revocable Trust; &)
George Norman Bryan Jr Revocable Trust;)
Helen H Bryngelson Revocable Trust;)
William W Bunch III; George Edward Butler)
& Krista Mullins Butler; Greg L Callaway &)
William L Callaway; Bobby Clark Chatham;)
Curtis R. Britton, Jr & Kimberly M Britton;)
June R Clarke & Victor G. Clarke; Teresa G)
Cockerham; Greg Combs & Mary Alice)
Combs; Michael M Conley & Sylvia B.)
Conley; Robert E Dicks Jr; Teresa Jane)
Dodd; TPE Revocable Trust; John D Fisher)
Jr; Sherry L. Fisher; John R Fisher III Trust;)
Frizzell Living Trust; Brenda A Garrett &)
Samuel D. Garrett; Winnie B Gee; Julia Gee)
Muldrow; Adam R Geiss & Courtney E.)
Geiss; Gregory S Gianuzzi & Sharon B.)
Gianuzzi; James C Gordon; Vivian Graf &)
Rosaly Graf; Phillip A Hedrick; Karen L.)
Hedrick; Howard A Hedrick; Rebekah J.)
Hedrick; William H Herbert; James Michael)
Hopkins Sr; Jean H. Crocker; Randall K)
Horn; Jamie Sue Robinette; Angela S. Jones;)
Robert D Jones II; Matin M Khan & Marlene)
R. Khan; John C Largent Declaration of)
Trust; Thomas J Leonti Jr & Lynn Leonti;)

Tina Logan & Brendan Logan; Douglas E)
 Macdonald & Elsa B. Macdonald; Brian K)
 Macken & Jacqueline F. Macken; Terri S)
 Madigan; Richard E Daum; Robert R Mager)
 & Wendy S Mager; Barbara S Lang; Mary)
 Alice Maier; Donald R Maxfield; Thomas P)
 McCartney; Devoe-McLean Family)
 Revocable Living Trust; Michael D)
 Mercadante & Denise Castellucci)
 Mercadante; Brigitte Morgan & Samuel G)
 Morgan; Patrick Murray & Melonie Murray;)
 Mitchell S Needle & Lisa A Needle; Kristie)
 Nystedt & Patrik Nystedt; Craig Peddicord &)
 Keith Peddicord; Antionette Pedicone;)
 George R Perkins Jr; Donna A Phipps; Pituch)
 Barnes Revocable Trust; Michele A Polcer;)
 David L Query; Lawrence E Radler; Jeffrey)
 D Rhodes; Linda S Rhodes; Bryan J Robie;)
 Penny Lee White Robie; John D Rose;)
 William M Rudolph; Christine A Rudolph;)
 Tammy Leigh Ryan; Ronald Scott; Joseph C)
 Rynn; Rosemary L Rynn; David R)
 Saggiomo; Maria Saggiomo; Michael A)
 Scarfia; Jean M Scarfia; Rick A Schirmer;)
 Helen M Schirmer; Michael T Sheehan;)
 David Sherman; Diana L Creamer; Elaine S)
 Shirley; Cole Shorter; Jamie Shorter; Arthur)
 F Steingraber; Kathleen M Steingraber;)
 Linda A Storch; Stuart J Strickland Sr;)
 Catherine N Strickland; Robert Sturey; Mary)
 Ann Sturey; Timothy Summers; Kelli)
 Summers; Kevin Bahr; Christy Bahr; Thode)
 Family Trust; Todd B Thorp; Deirdre)
 Gallahue Thorp; Barry H Traub Living Trust;)
 Jonathan W Tucker; Courtney M. Tucker,)
)
 Defendants.)
)
 _____)

Now comes Plaintiff, Structural Waterproofing, LLC (hereinafter “Structural Waterproofing”), and hereby responds to the Amended Answer of South Hampton Property Owners Association, Inc. and Counterclaim, filed on November 1, 2020 (hereinafter “Amended Answer and Counterclaims”), as follows:

FOR A FIRST DEFENSE

(Answer to South Hampton Property Owners Association, Inc.'s Amended Answer and Counterclaims)

The allegations contained in Paragraphs 1 through 13 of South Hampton Property Owners Association, Inc. (hereinafter "South Hampton")'s Amended Answer and Counterclaims contain South Hampton's Amended Answer to Plaintiff's Complaint; therefore, no response is required. To the extent that a response is required, or to the extent that the allegations could be construed to allege liability on the part of Structural Waterproofing, the allegations contained in Paragraphs 1 through 13 are denied.

1. Responding to the allegations contained in Paragraph 14 of the Amended Answer and Counterclaims, Structural Waterproofing realleges and incorporates by reference its answers to the allegations contained in Paragraphs 1-13 of South Hampton's Amended Answer and Counterclaims as if fully restated herein.

2. Responding to the allegations contained in Paragraphs 15 and 16 of the Amended Answer and Counterclaims, Structural Waterproofing denies the allegations and demands strict proof thereof.

3. Responding to the allegations contained in Paragraph 17 of the Amended Answer and Counterclaims, Structural Waterproofing realleges and incorporates by reference each of its answers to the allegations contained in Paragraphs 1-16 of South Hampton's Amended Answer and Counterclaims as if fully restated herein.

4. Responding to the allegations contained in Paragraphs 18, 19, and 20 of the Amended Answer and Counterclaims, Structural Waterproofing denies the allegations and demands strict proof thereof.

5. Responding to the allegations contained in the first paragraph labeled as Paragraph 21 of South Hampton's Amended Answer and Counterclaims, Structural Waterproofing realleges and incorporates by reference each of its answers to the allegations contained in Paragraphs 1-20 of South Hampton's Amended Answer and Counterclaims as if fully restated herein.

6. Responding to the allegations contained in Paragraph 22, Structural Waterproofing denies the allegations and demands strict proof thereof.

7. Responding to the allegations contained in the second paragraph labeled as Paragraph 21 of South Hampton's Amended Answer and Counterclaims, but which is actually the 23rd paragraph, Structural Waterproofing denies the allegations and demands strict proof thereof.

FOR A SECOND DEFENSE
(General Denial)

8. Structural Waterproofing denies all allegations not expressly admitted above, including those contained in South Hampton's prayer for relief. Structural Waterproofing expressly denies that South Hampton is entitled to any relief of any kind from Structural Waterproofing.

FOR A THIRD DEFENSE
(Failure to State a Cause of Action)

9. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, South Hampton's Amended Answer and Counterclaims against Structural Waterproofing fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Contract Terms)

10. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing pleads the terms, provisions, and conditions of all contracts allegedly entered into between South Hampton and any other parties as a complete bar to South Hampton's claims, so as to preclude recovery from Structural Waterproofing.

FOR A FIFTH DEFENSE
(Failure to Satisfy a Condition Precedent)

11. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges that South Hampton's claims are barred, in

whole or in part, by failing to fulfill a condition precedent to filing this lawsuit and should therefore be dismissed.

FOR A SIXTH DEFENSE
(Sole Negligence of South Hampton)

12. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that the injuries and damages sustained by South Hampton, if any, were due to, caused by, and were a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, and/or wantonness of South Hampton, so as to preclude recovery from Structural Waterproofing.

FOR A SEVENTH DEFENSE
(Sole Negligence or Negligent Acts of Third Parties)

13. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that if Structural Waterproofing was negligent, which it denies, then the injuries and damages sustained by South Hampton, if any, were due to, caused by, and were the direct and proximate result of the intervening and superseding negligence, gross negligence, carelessness, willfulness, and/or wantonness of others, so as to preclude recovery from Structural Waterproofing.

FOR AN EIGHTH DEFENSE
(Intervening and Superseding Acts of Third Parties)

14. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that if it was negligent, which it denies, the injuries and damages sustained by South Hampton, if any, were due to, caused by, and were the direct and proximate result of the intervening and superseding negligence, gross negligence, carelessness, willfulness, and wantonness of others, so as to preclude recovery from Structural Waterproofing.

FOR A NINTH DEFENSE
(Causation)

15. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that no act or omission on its part was the cause of any damage to South Hampton, so as to preclude recovery from Structural Waterproofing.

FOR A TENTH DEFENSE
(Comparative Negligence)

16. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, without admitting, and while specifically denying all allegations of negligence on its part, Structural Waterproofing alleges and shows that if it was negligent as alleged in the Amended Answer and Counterclaims, then South Hampton was comparatively negligent in an amount which exceeded that of Structural Waterproofing, so as to preclude recovery against Structural Waterproofing. Alternatively, Structural Waterproofing alleges and shows that even if it was negligent as alleged in Amended Answer and Counterclaims, in an amount equal to or greater than the negligence of South Hampton, which is specifically denied, then Structural Waterproofing is entitled to a reduction in the amount awarded to South Hampton in the amount equal to the percentage of South Hampton's own negligence.

FOR AN ELEVENTH DEFENSE
(Estoppel, Release, and Waiver)

17. Further answering the Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton's claims are barred by the doctrines of estoppel, release, and/or waiver, so as to preclude recovery from Structural Waterproofing.

FOR A TWELFTH DEFENSE
(Laches)

18. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton was negligent in providing notice of alleged defects for an unreasonable and unexplained length of time. Structural Waterproofing has been prejudiced by said negligence, and the resulting prejudice constitutes a complete equitable defense to all claims, so as to preclude recovery from Structural Waterproofing.

FOR A THIRTEENTH DEFENSE
(Unclean Hands)

19. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton's claims are barred by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE
(Statute of Limitations)

20. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton's claims are barred by the statute of limitations, so as to preclude recovery from Structural Waterproofing.

FOR A FIFTEENTH DEFENSE
(Statute of Repose)

21. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton's claims are barred by the statute of repose, so as to preclude recovery from Structural Waterproofing.

FOR A SIXTEENTH DEFENSE
(Failure to Mitigate)

22. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton has failed to mitigate its damages by taking prompt and reasonable action under the circumstances to avoid the occurrence of additional damages. Such failure to mitigate damages precludes recovery from Structural Waterproofing as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of South Hampton.

FOR A SEVENTEENTH DEFENSE
(Spoilation of Evidence)

23. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that it has not been afforded the opportunity to inspect and examine the alleged defective workmanship and/or alleged defective products and/or components, and if the property which is the subject of this litigation has been modified and/or repaired and/or destructively tested in any manner, Structural Waterproofing alleges such constitutes spoliation of evidence and is a complete defense to South Hampton's claims, so as to preclude recovery from Structural Waterproofing.

FOR AN EIGHTEENTH DEFENSE
(Compliance with Standards)

24. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that any work performed by Structural Waterproofing at the property which is the subject of this litigation was completed in conformity with all industry customs, practices, and standards, in conformity with all applicable building codes, in conformity with any manufacturer's specifications and instructions, and in conformity with any training received from said manufacturers, so as to preclude recovery from Structural Waterproofing.

FOR A NINETEENTH DEFENSE
(Compliance with Plans and Specifications)

25. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that any work performed by it at the subject property was performed in accordance with the plans and specifications provided to it by others, and such adherence is pled as a complete defense to the claims asserted by South Hampton, so as to preclude recovery from Structural Waterproofing. Further, the kind, type, and brand of hardware and materials used at the subject property were selected and approved by others, thereby relieving Structural Waterproofing of any liability or responsibility for said materials that may not have been suitable for incorporation into the subject property, so as to preclude recovery from Structural Waterproofing.

FOR A TWENTIETH DEFENSE
(No Warranty)

26. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that it provided no such warranty as alleged by South Hampton, and such constitutes a complete defense to South Hampton's claim for breach of implied warranty of good workmanship, so as to preclude recovery from Structural Waterproofing.

FOR A TWENTY-FIRST DEFENSE
(Completion and Acceptance)

27. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that final completion and acceptance of any work it performed at the property which is the subject of this litigation constitutes a complete defense to South Hampton's claims, so as to preclude recovery from Structural Waterproofing.

FOR A TWENTY-SECOND DEFENSE
(Modification and/or Change in the Condition)

28. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that after completion of its work, and without its knowledge or approval, the products used and/or the work performed were modified, altered, or subjected to treatment that substantially changed the character and condition, and further that the damages and defects alleged by South Hampton, and any damages suffered by South Hampton as a result thereof, resulted from said modification, alteration, treatment, or other change of the products used or the work performed after Structural Waterproofing relinquished possession and control, and not from any act or omission on the part of Structural Waterproofing, so as to preclude recovery from Structural Waterproofing.

FOR A TWENTY-THIRD DEFENSE
(Set-Off)

29. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows any recovery by South Hampton must be set off by amounts owed to Structural Waterproofing for labor and materials furnished at the subject property, as well as by any amounts South Hampton has received or recovered or will receive or recover from others for the injuries and/or damages alleged in the Amended Answer and Counterclaims.

FOR A TWENTY-FOURTH DEFENSE
(Beneficial Use)

30. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton's alleged damages must be reduced by an amount proportionate to the value of the beneficial use of any products supplied and/or installed by Structural Waterproofing, so as to limit or preclude recovery from Structural Waterproofing.

FOR A TWENTY-FIFTH DEFENSE
(Economic Loss Rule)

31. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing asserts the economic loss doctrine as a complete bar to South Hampton's claims.

FOR A TWENTY-SIXTH DEFENSE
(Apportionment, Abatement, and Reduction of Damages)

32. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that justice requires that any judgement in favor of South Hampton be apportioned, abated, and reduced by the amount of damages caused by defects which South Hampton had actual or constructive knowledge of, so as to limit or preclude recovery from Structural Waterproofing.

FOR A TWENTY-SEVENTH DEFENSE
(Act of God)

33. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that the property that is the subject of this litigation has sustained injuries and damages from various hurricanes and named storms, and that such injuries and damages were caused by Acts of God over which Structural Waterproofing had no control and for which it is not responsible, so as to preclude recovery from Structural Waterproofing.

FOR A TWENTY-EIGHTH DEFENSE
(Failure to Give Notice and Opportunity to Cure)

34. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that to the extent required pursuant to S.C. Code Ann. § 40-59-810 et seq. (South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act), South Hampton failed to give meaningful, timely, or reasonable notice to Structural Waterproofing as to the existence of the alleged defects, which are

denied, and failed to give it a reasonable opportunity to correct the same. Such failures to give notice constitute a complete defense to the claims asserted by South Hampton, so as to preclude recovery from Structural Waterproofing, and the remainder of South Hampton's claims should be stayed until such time as South Hampton has satisfied the statutory requirements.

FOR A TWENTY-NINTH DEFENSE
(Rule 8(c), SCRPC)

35. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, to the extent applicable, Structural Waterproofing raises all affirmative defenses required by Rule 8(c) of the South Carolina Rules of Civil Procedure.

FOR A THIRTIETH DEFENSE
(Judicial Estoppel)

36. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing asserts the doctrine of judicial estoppel as an affirmative defense to South Hampton's claims to the extent South Hampton and/or its officers, directors, managers, property managers, members, representatives, and/or agents take or have taken positions in this litigation inconsistent with other positions they have taken in this litigation, or in related or other litigation or judicial proceedings.

FOR A THIRTY-FIRST DEFENSE
(Lack of Standing)

37. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, South Hampton lacks standing to bring the Counterclaims asserted, and Structural Waterproofing pleads South Hampton's lack of standing as a complete bar to South Hampton's claims.

FOR A THIRTY-SECOND DEFENSE
(Real Party in Interest)

38. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing alleges and shows that South Hampton is not the real party in interest to prosecute the claims against Structural Waterproofing, as required by Rule 17 of the South Carolina Rules of Civil Procedure and/or South Hampton failed to join parties necessary for just adjudication pursuant to Rule 19 of the South Carolina Rules of Civil Procedure. Accordingly, the Counterclaims against Structural Waterproofing should be dismissed and/or the appropriate parties should be joined or substituted in this action.

FOR A THIRTY-THIRD DEFENSE
(Reservation of Rights)

39. Further answering the Amended Answer and Counterclaims, and as a further defense thereto, Structural Waterproofing reserves and does not waive any additional or further defenses as may be revealed by additional information acquired through discovery or otherwise.

WHEREFORE, Plaintiff Structural Waterproofing, LLC, having fully answered South Hampton's Amended Answer and Counterclaims, respectfully prays the Court for the following relief:

1. That South Hampton's action against Structural Waterproofing be dismissed;
2. That South Hampton have and recover nothing of Structural Waterproofing;
3. That the costs of this action, including reasonable attorneys' fees, be taxed against South Hampton, or some other party in this litigation;
4. FOR A TRIAL BY JURY on all matters and claims related to this litigation; and
5. For such other and further relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

HAMLET & ASSOCIATES, PLLC

s/H. Mark Hamlet

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Attorneys for Structural Waterproofing, LLC

December 31, 2020
Wilmington, North Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **STRUCTURAL WATERPROOFING, LLC'S REPLY TO SOUTH HAMPTON PROPERTY OWNERS ASSOCIATION, INC.'S AMENDED ANSWER AND COUNTERCLAIM** upon all parties in this action by mail and/or electronic mail to their respective counsel of record at the address listed below:

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December 31, 2020
Wilmington, North Carolina