

STATE OF INDIANA
HAMILTON SUPERIOR COURT
ROOM 3
CAUSE 29D03-1807-PL-6595

STATE OF INDIANA,
Plaintiff

Vs.

MARK SELLERS, Individually and
Doing business as OLIVE LEAF
CONSTRUCTION,
Defendant

A N S W E R

Comes now the Defendant, Mark Sellers, individually and as allegedly doing business as Olive Leaf Construction (sic) by Brent Welke, his counsel, who, for his answer herein, states as follows:

1. Paragraph 1: This is a rhetorical paragraph and does not require a response.
2. Paragraph 2: Defendant admits the allegations in the first sentence of this Paragraph. He admits the allegations in the second Paragraph regarding agreeing to provide home improvements but denies that he did not do the work as agreed. In addition he states that certain of the claimants are estopped by their behavior to complain herein, and/ or that there was a failure of consideration herein. Defendant denies the allegations in sentence 3 of the Paragraph. Sentence 4 is too vague to respond to, although Defendant admits that certain of his written contracts

written by him were insufficient to meet the requirements of the Act. Defendant denies the allegations in the last sentence of this Paragraph.

3. Paragraph 3: Admitted.

4. Paragraph 4: Defendant Mark Sellers denies that he ever used the business name of Olive Leaf Construction. He admits the remaining allegations of the Paragraph.

5. Paragraph 5: All allegations concerning Olive Leaf Construction are denied. The paragraph does not identify the "representations" alleged with sufficient clarity for Defendant to affirm or deny them, and he therefore denies same.

6. Paragraphs 6 & 7: Admitted.

7. Paragraph 8: The Complaint does not plead sufficient facts for Defendant to identify which "projects" were not finished, and Defendant therefore has insufficient knowledge to affirm or deny the allegation, and so therefore denies same. However, he admits that he contracted to do home improvement work.

8. Paragraph 9: Admitted.

9. Paragraphs 10 & 11; Denied.

10. Paragraph 12: Defendant denies the date alleged, but admits the remainder of the paragraph.

11. Paragraph 13: This paragraph gives insufficient information for Defendant to affirm or deny and Defendant therefore denies same.

12. Paragraph 14: Defendant has insufficient knowledge to affirm or deny the allegations of this

Paragraph as he does not have a copy of the contract, which was drafted by Culnan. However, the Defendant gave Culnan his telephone number. Defendant had no agent concerning the matters alleged.

13. Paragraph 15: Admit.

14. Paragraph 16: Defendant has insufficient information to affirm or deny the date alleged in this Paragraph and therefore denies same. He admits the remaining allegations in the Paragraph.

15. Paragraph 17: Defendant has insufficient information to affirm or deny the amendment date alleged in this Paragraph and therefore denies same. Defendant admits the remaining allegations of this Paragraph.

16. Paragraph 18: Defendant has insufficient knowledge to affirm or deny the allegations in this Paragraph and therefore denies same.

17. Paragraph 19: Defendant denies that his installation of an I-beam was partial or that he did not complete the installation. He admits the remaining allegations of the Paragraph.

18. Paragraph 20: Denied.

19. Paragraph 21: Defendant has insufficient knowledge to affirm or deny the allegation regarding the date specified in the Paragraph and therefore denies same. He denies all other allegations of the Paragraph.

20. Paragraph 22: Defendant has insufficient knowledge to affirm or deny the date specified in the Paragraph and therefore denies same. Defendant admits Culnan contacted Defendant to terminate the contract. Defendant denies that the contract had been

breached. This breach of the contract by Culnan rendered further performance by Defendant impossible.

21. Paragraphs 23 & 24: Defendant has insufficient knowledge to affirm or deny the allegations in these two Paragraphs and therefore denies same.

22. Paragraph 25: Defendant denies that he used the name Olive Leaf Construction, and admits the remaining allegations of the Paragraph.

23. Paragraph 26: Defendant has insufficient knowledge to affirm or deny the date specified in said Paragraph, but otherwise admits the allegations therein.

24. Paragraph 27: Defendant has insufficient knowledge to affirm or deny the allegation in this Paragraph and therefore denies same. Defendant denies that he had an agent.

25. Paragraphs 28-30: Defendant has insufficient knowledge to affirm or deny the allegations in these Paragraphs and therefore denies them.

26. Paragraph 31: Admitted.

27. Paragraph 32: Denied.

28. Paragraph 33: Defendant denies the allegation that Goode purchased windows or oak boards for the project. Defendant is unfamiliar with the term "wall panels" and therefore denies the allegations concerning same. Defendant admits the remainder of the allegations of this Paragraph.

29. Paragraph 34: Admit, due to the fact that Goode diverted the labourers to other matters not covered by the contract.

30. Paragraph 35: Defendant has insufficient knowledge to affirm or deny the allegations of this Paragraph and therefore denies same.

31. Paragraph 36: Denied.

32. Paragraph 37: Defendant admits that he and Goode spoke. He has insufficient knowledge to affirm or deny the remaining allegations of this Paragraph and therefore denies same.

33 Paragraphs 38-40: Defendant has insufficient knowledge to affirm or deny the allegations in these Paragraphs and therefore denies same.

34. Paragraph 41: Defendant has insufficient knowledge to affirm or deny the date stated in this Paragraph. Defendant admits the remaining allegations of this Paragraph.

35. Paragraph 42: Defendant has insufficient knowledge to affirm or deny the allegations in this Paragraph and therefore denies same.

36. Paragraph 43: Admit, due to the diversion of Defendant's workers to other projects by Goode.

37. Paragraphs 44 & 45: Defendant has insufficient knowledge to affirm or deny the date alleged in these Paragraphs. Defendant admits the remaining allegations of these Paragraphs.

38. Paragraph 46: Defendant did not have an agent. He affirms that Prince had his telephone number. Defendant has insufficient knowledge to affirm or deny the remaining allegations of this Paragraph.

39. Paragraph 47: Admitted.

40. Paragraphs 48-50: Denied.

41. Paragraph 51: Defendant denies that he stopped showing up for the project, but admits all other allegations in the Paragraph.

42. Paragraph 52: Defendant denies that his workers stopped showing up. Defendant has insufficient knowledge to affirm or deny whether or not his workers complained to Prince. Defendant admits not paying his men, because Prince had made them do extra and changed work not covered in the contract.

43. Paragraph 53: Denied.

44. Paragraph 54: Defendant has insufficient knowledge to affirm or deny the allegations in this Paragraph and therefore denies same.

45. Paragraphs 55 & 56: Admitted.

46. Paragraph 57: Defendant has insufficient knowledge to affirm or deny the allegations in this Paragraph and therefore denies same.

47. Paragraphs 58-63: Admitted, as the contract was prepared by Slabaugh.

48. Paragraph 64: Admitted. However, the failure of completion was due to the failure of Slabaugh to pay Defendant.

49. Paragraph 65: Admitted.

50. Paragraphs 66-8: Defendant has insufficient knowledge to affirm or deny the correctness of the dates in said Paragraphs and therefore denies same. Defendant admits the other allegations of the Paragraphs.

51. Paragraph 69: Admitted.

52. Paragraph 70: Denied.

53. Paragraph 71: The contract contained the email address of Defendant, who did not have an agent. Otherwise, the allegations of the Paragraph are admitted.

54. Paragraph 72: Admitted.

55. Paragraph 73: Denied.

56. Paragraph 74: The Defendant denies the date alleged in this Paragraph but admits the other allegations therein.

57. Paragraph 75: Defendant has insufficient knowledge to affirm or deny the truth of the allegations of this Paragraph and therefore denies same.

58. Paragraph 76: Denied.

59. Paragraph 77: Defendant has insufficient knowledge to affirm or deny the allegations concerning the date specified. He otherwise admits the allegations of this Paragraph.

60. Paragraph 78: Defendant denies that he did not return to Duncan's home. He has insufficient knowledge to affirm or deny the correctness of the date specified in said Paragraph and therefore denies same. He admits that he has not finished the job, but only because Duncan has prevented his performance.

61. Paragraphs 79 & 80: Defendant has insufficient knowledge to affirm or deny the allegations in these Paragraphs, and therefore denies same.

62. Paragraph 81: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

63. Paragraphs 82-4: Admitted.

64. Paragraphs 85-9: Said paragraphs do not provide enough information as to which contracts are referred to for Defendant to affirm or deny and therefore denies same.

65. Paragraph 90: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

66. Paragraph 91-3: Admitted.

67. Paragraphs 94-100: Said Paragraphs do not provide enough information as to which contracts are referred to for Defendant to affirm or deny and he therefore denies same. In addition, oral contracts are specifically allowed for by the Home Improvement Contracts Act, Section 4, so Defendant denies any violation of said Act as to them.

68. Paragraph 101: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

69. Paragraphs 102-3: Admitted.

70. Paragraph 104: Denied.

71. Paragraph 105: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

72. Paragraph 106: Said Paragraph does not provide enough information as to which home improvements

are referred to for Defendant to affirm or deny and Defendant therefore denies same.

73. Paragraph 107: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

74. Paragraph 108: Plaintiff's complaint does not allege fraud and deception with specific factual allegations as required by the Trial Rules. Defendant therefore requests that this count be dismissed and/or stricken in accordance with the Trial Rules. In addition, to the extent that said legislation conflicts with the Trial Rules as to pleading it is void. Finally, this Paragraph does not provide sufficient factual allegations for Defendant to affirm or deny and Defendant therefore denies same.

75. Paragraph 109: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

76. Paragraph 110: Denied.

77. Paragraph 111: Said Paragraph is rhetorical and does not assert facts which are required to be affirmed or denied.

78. Paragraph 112: Denied.

79. Paragraphs 113-119: Said Paragraphs are rhetorical and do not assert facts which are required to be affirmed or denied. Defendant denies that the Plaintiff is entitled to any relief.

80. The Complaint does not state any claim for which an injunction may issue. The Consumers all have remedies and liabilities addressable in law.

81. The Indiana Home Improvements Act is unconstitutional under the Federal and State constitutions as it impairs the ability of consumers to contract with home improvement contractors by drafting their own contracts.

82. The Indiana Home Improvements Act or at least code section 24-5-11-10 thereof is unconstitutional or unenforceable as it is duplicitous and vague and it punishes specifically lawful conduct, to-wit, oral home improvement contracts, which are specifically provided for in I. C. 24-5-11-4.

83. The Indiana Deceptive Consumer Sales Act is either unconstitutional either on its face or as applied in that it punishes lawful conduct, to-wit, oral contracts for home improvements.

84. The State of Indiana is entitled to no relief to the extent it is attempting to punish lawful efforts to contract between consenting parties.

85. This case needs to be dismissed for failure to join necessary parties. Consumers Goode and Prince diverted Defendant's men to other jobs of their choosing and did not compensate Defendant or make adjustments to the contract. Slabaugh also did not pay Defendant. Duncan & Culnan wrongfully prevented Defendant's performance of his contract without compensation. The case as now postured leaves Defendant open to claims for double liability while being unable to assert counterclaims against the above, so he cannot receive complete relief versus the above without their joinder.

WHEREFORE, Defendant herein requests that the Complaint be dismissed, and for all other just and appropriate relief.

Respectfully submitted,

/s/ Brent Welke
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CERTIFICATE OF SERVICE

I certify that on December 1, 2018 I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on December 1, 2018 the foregoing document was served upon the following persons via the Indiana Electronic Filing System:

Michelle Alyea
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Tamara Weaver
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/s/ Brent Welke
Brent Welke