

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2023-CP-10-00854
	)	
COMMUNITY FIRST LAND TRUST,	)	
	)	
Plaintiff,	)	
v.	)	DEFENDANT DWELL IN CHARLESTON,
	)	LLC'S ANSWER TO PLAINTIFF'S
DWELL IN CHARLESTON, LLC and	)	COMPLAINT
JOHN DOES 1-15,	)	
	)	(JURY TRIAL DEMANDED)
Defendants.	)	
	)	

COMES NOW Defendant Dwell in Charleston, LLC (hereinafter "Dwell" or "this Defendant"), by and through the undersigned counsel, and hereby responds to the Complaint of Plaintiff Community First Land Trust (hereinafter "Plaintiff"). Except where admitted herein, each and every allegation of the Plaintiff's Complaint is expressly denied.

FOR A FIRST DEFENSE

To the extent Plaintiff's Complaint fails to state a cause of action upon which relief may be granted, the Complaint should be dismissed pursuant to Rule 12(b)(6).

FOR A SECOND DEFENSE

The acts or omissions of parties other than Dwell constitute intervening and superseding causes of Plaintiff's alleged injuries/damages, such that recovery from Dwell is barred.

FOR A THIRD DEFENSE

The work and services provided by Dwell were at all times applicable to the subject project in conformity with the industry standards/standard of care for that time.

FOR A FOURTH DEFENSE

Some or all of Plaintiff's claims are or may be barred by Plaintiff's failure to mitigate damages.

FOR A FIFTH DEFENSE

Plaintiff's claims against Dwell are or may be barred due to lack of proper standing.

FOR A SIXTH DEFENSE

At all times relevant to the allegations in the Complaint, Dwell has in no way acted in violation or contravention of any applicable state, local, and/or federal laws or regulations, nor did it perform any acts or fail to perform any acts in bad faith, in any malicious manner, or with corrupt motives.

FOR A SEVENTH DEFENSE

To the extent that Dwell has not been afforded the opportunity to inspect and examine the alleged defects and deficiencies at the subject project and to the extent that the subject project has been modified, repaired, and/or destructively tested without affording Dwell the opportunity to inspect or examine, such actions constitute a spoliation of evidence and act as a complete bar to recovery against Dwell and/or an adverse inference against Plaintiff.

FOR AN EIGHTH DEFENSE

Plaintiff's alleged injuries/damages were not proximately caused by any act or omission of Dwell.

FOR A NINTH DEFENSE

Plaintiff's tort claim(s) are or may be barred by the Economic Loss Rule.

FOR A TENTH DEFENSE

Plaintiff's claims are or may be barred in whole or in part to the extent Dwell has contractually limited its obligations, liability, and/or exposure per its contract(s).

FOR AN ELEVENTH DEFENSE

The injuries and damages sustained by Plaintiff, if any, may have been partially attributable to acts/omissions of the Plaintiff, and any recovery should thus be reduced in proportion to Plaintiff's comparative fault as provided by law.

FOR A TWELFTH DEFENSE

Any claims alleged by Plaintiff for breach of warranty should be barred to the extent that Plaintiff failed to give proper notice of any alleged breach of any warranty.

FOR A THIRTEENTH DEFENSE

Some or all of the Plaintiff's claims are or may be barred by the Plaintiff's failure to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damages, and such failure to mitigate damages constitutes a complete defense to that portion of damages which could have been otherwise avoided by reasonable and prompt actions by Plaintiff.

FOR A FOURTEENTH DEFENSE

Plaintiff's claims are barred to the extent that the damages sought constitute a betterment.

FOR A FIFTEENTH DEFENSE

Plaintiff's warranty claims are or may be barred by contract.

FOR A SIXTEENTH DEFENSE

Plaintiff's claims for any special, indirect, incidental or consequential damages of any kind are barred by the doctrine of waiver.

FOR A SEVENTEENTH DEFENSE

While Dwell denies that Plaintiff is entitled to punitive damages, to the extent applicable, Dwell asserts all protections set forth in S.C. Code Ann. §§ 15-32-520 and 15-32-530, and further asserts any and all additional statutory caps and limitations to punitive damages pursuant to South Carolina statutory law and case law. Additionally, Dwell asserts that any award of punitive

damages for Plaintiff would violate constitutional safeguards provided to Dwell by the United States and South Carolina Constitutions.

FOR AN EIGHTEENTH DEFENSE

The claim(s), if any, for punitive damages are subject to the limitations set forth in South Carolina Code §15-32-530 and are subject to bifurcation.

FOR A NINETEENTH DEFENSE

Plaintiff had notice or constructive notice of the facts upon which they base their claims and therefore Plaintiff's claims in the Complaint are not timely filed and/or are further barred under the equitable doctrine of laches due to Plaintiff's knowledge and delay and the resulting prejudice to Dwell.

FOR A TWENTIETH DEFENSE

Plaintiff's recovery, if any, must be set off or reduced, abated, or apportioned to the extent that any other party's actions caused or contributed to the damages.

FOR A TWENTY-FIRST DEFENSE

The allegations of the Complaint fail to state a claim for which any prejudgment interest or attorneys' fees may be granted.

FOR A TWENTY-SECOND DEFENSE

Some or all of the Plaintiff's claims are or may be barred due to anticipatory breach.

FOR A TWENTY-THIRD DEFENSE

Plaintiff's claims against Dwell are barred to the extent Plaintiff is in breach of the contract(s).

FOR A TWENTY-FOURTH DEFENSE

Some or all of the Plaintiff's claims are or may be barred by the Plaintiff's breach of contract in failing to allow Dwell access to the Properties to complete Dwell's scope of work pursuant to Dwell's contract(s)/agreement(s).

FOR A TWENTY-FIFTH DEFENSE

Plaintiff's recovery, if any, must be set off or reduced, abated, or apportioned to the extent that Plaintiff owes Dwell monetary compensation pursuant to the contract(s).

FOR A TWENTY-SIXTH DEFENSE

Dwell has not had the opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiff's allegations. Dwell intends to act as best it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Plaintiff as alleged in the claims, and gives notice of its intent to assert any further affirmative defense or claims that its information-gathering process may indicate is supported by fact and law. Dwell reserves the right to amend this Answer and assert such defenses and claims.

FOR A TWENTY-SEVENTH DEFENSE

Each allegation contained in Plaintiff's Complaint not specifically admitted herein is denied. To the extent any allegations contained in Plaintiff's Complaint could be construed as suggesting or implying liability on the part of Dwell, those allegations are expressly denied. Dwell responds to the individually numbered paragraphs of Plaintiff's Complaint as follows:

(1) Responding to Paragraph 1 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

(2) Responding to Paragraph 2 of Plaintiff's Complaint, Dwell admits only that it is a South Carolina entity and was engaged to perform, and did perform, certain work in Charleston County, South Carolina.

(3) Responding to Paragraph 3 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

(4) Responding to Paragraph 4 of Plaintiff's Complaint, Dwell does not contest that jurisdiction and venue are proper.

(5) Responding to Paragraph 5 of Plaintiff's Complaint, Dwell realleges and incorporates all previous responses as if restated verbatim herein.

(6) Responding to Paragraphs 6 and 7 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

(7) Responding to Paragraph 8 of Plaintiff's Complaint, Dwell admits that it entered into an agreement with Plaintiff on or about December 8, 2020. Dwell would crave reference to the terms of the Construction Contract, and denies any allegations inconsistent therewith.

(8) Responding to Paragraph 9 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same.

(9) In response to Paragraph 10 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(10) Responding to Paragraph 11 of Plaintiffs' Complaint, Dwell admits only such duty owed and undertaken as required by law and denies any allegations inconsistent therewith. Dwell

further admits only that its scope of work was performed pursuant to and in accordance with its contract(s)/agreement(s), and denies any allegations inconsistent therewith.

(11) In response to Paragraph 12 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(12) Responding to Paragraph 13 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(13) Responding to Paragraph 14 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(14) Responding to Paragraph 15, including all subparts, of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(15) Responding to Paragraph 16 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(16) Responding to Paragraph 17 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and

therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(17) Responding to Paragraph 18 of Plaintiffs' Complaint, Dwell admits only such representations made as required by law and which arise under its contract and denies any allegations inconsistent therewith. Dwell further admits only that its scope of work was performed pursuant to and in accordance with its contract(s)/agreement(s) and industry standards, and denies any allegations inconsistent therewith.

(18) In response to Paragraph 19 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph.

(19) In response to Paragraph 20 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph.

(20) Responding to Paragraph 21 of Plaintiff's Complaint, Dwell realleges and incorporates all previous responses as if restated verbatim herein.

(21) Responding to Paragraph 22 of Plaintiff's Complaint, Dwell admits only such duty owed and undertaken as required by law and denies any allegations inconsistent therewith. Dwell further admits only that its scope of work was performed pursuant to and in accordance with its contract(s)/agreement(s) and industry standard, and denies any allegations inconsistent therewith.

(22) In response to Paragraph 23, including all subparts, of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(23) In response to Paragraph 24, including all subparts, of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(24) In response to Paragraph 25 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(25) Responding to Paragraph 26 of Plaintiff's Complaint, Dwell is currently without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore denies the same. Further responding, to the extent that this Paragraph states or implies liability on behalf of Dwell, those allegations are denied and Dwell demands strict proof thereof.

(26) In response to Paragraph 27 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(27) Responding to Paragraph 28 of Plaintiff's Complaint, Dwell realleges and incorporates all previous responses as if restated verbatim herein.

(28) Responding to Paragraph 29 of Plaintiff's Complaint, Dwell admits only such warranties owed as required by law and denies any allegations inconsistent therewith. Dwell denies the remaining allegations in this Paragraph.

(29) In response to Paragraph 30 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(30) In response to Paragraph 31 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(31) In response to Paragraph 32 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph as they pertain to Dwell.

(32) Responding to Paragraph 33 of Plaintiff's Complaint, Dwell realleges and incorporates all previous responses as if restated verbatim herein.

(33) Responding to Paragraph 34 of Plaintiff's Complaint, Dwell admits that it entered into an agreement with Plaintiff on or about December 8, 2020. Dwell would crave reference to the terms of the Construction Contract, and denies any allegations inconsistent therewith. Further responding, Dwell denies that it breached said agreement and demands strict proof thereof.

(34) In response to Paragraph 35 of Plaintiff's Complaint, Dwell denies the allegations in this Paragraph.

(35) As to the last unnumbered Paragraph beginning with "WHEREFORE," following Paragraph 35 of Plaintiff's Complaint, this Paragraph contains a prayer for relief, which requires no response. However, to the extent a response is required, Dwell denies all allegations directed against it and further denies that Plaintiffs are entitled to any recovery from Dwell.

WHEREFORE, having fully responded to the allegations of Plaintiff's Complaint, Dwell prays for a judgment in its favor and a dismissal with prejudice of all claims against it, for costs and fees associated with defending this action, for a trial by jury on all issues so triable, and for any such further relief as this Court may find just and proper.

Respectfully submitted,

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	)	CERTIFICATE OF SERVICE
Plaintiff,	)	
v.	)	
	)	
DWELL IN CHARLESTON, LLC and	)	
JOHN DOES 1-15,	)	
	)	
Defendants.	)	
_____	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Defendant Dwell in Charleston, LLC's Answer to Plaintiff Community First land Trust's Complaint*** upon all parties to this matter via electronic and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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Counsel for Plaintiff

This _____ day of May, 2023.

s/Caroline Wolfe
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