

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR SARASOTA COUNTY

SARASOTA COUNTY, a political
subdivision of the State of Florida,

Plaintiff,

v.

CASE NO. 2016 CA 006035 NC

GILBANE BUILDING COMPANY, a
Rhode Island corporation d/b/a Mills Gilbane,

Defendant.

_____ /

**DEFENDANT, GILBANE BUILDING COMPANY'S, ANSWER AND DEFENSES TO
PLAINTIFF'S COMPLAINT**

Defendant, Gilbane Building Company ("Gilbane"), answers the Complaint filed in the above-styled cause by Plaintiff, Sarasota County, a political subdivision of the State of Florida ("the "County"), as follows:

1. Admitted.
2. Admitted.
3. Gilbane admits that the County has represented that it entered into a Memorandum of Understanding ("MOU") with the Baltimore Orioles (the "Orioles"), but such MOU has never been provided to Gilbane. Upon information and belief, the MOU is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.
4. It is admitted that W.G. Mills, Inc. entered into an Agreement for Construction Management Services for the Construction of Spring Training Facilities (the "CM Agreement"). The CM Agreement is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.

5. Gilbane admits that it entered into an Assumption Agreement with the County, a copy of which is attached as Exhibit B to the Complaint. The Assumption Agreement is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.
6. Gilbane admits only that Substantial Completion was certified as of February 24, 2011 and that Final Completion was certified as of April 19, 2013. All other allegations are denied.
7. Denied.
8. Denied as stated. It is admitted only that in accordance with Exhibit E to the CM Agreement, a submittal for the Methyl Methacrylate (“MMA”) work required by the CM Agreement was submitted to the Architect for the Architect’s review and approval.
9. Denied as stated. It is admitted only that the County issued an IFCA to add the MMA work to the scope required by the County. The IFCA is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.
10. Admitted that the CM Agreement contains the language described in the corresponding paragraph. The CM Agreement is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.
11. Denied as stated. The IFCA is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith. It is admitted, however, that Advanced Surfaces Corporation (“Advanced”) and BASF issued the warranties attached as Exhibit D to the Complaint.

12. Admitted in part and denied in part. It is admitted only that in the summer of 2013, the MMA floor covering installed in the concourse area started to show signs of bubbling and cracking. It is expressly denied that such bubbling and cracking revealed a latent defect in the material and/or workmanship by Gilbane or anyone for whom Gilbane was responsible.
13. Denied as stated. It is admitted only that Gilbane's subcontractor Advanced performed warranty work to repair and replace the MMA floor covering installed in the concourse area that had started to show bubbling and cracking.
14. Admitted.
15. Admitted in part. It is admitted only that the County sent the "Warranty Notice" attached to the Complaint as Exhibit E to Gilbane in January 2015. All other allegations in the corresponding paragraph are denied.
16. Denied as stated. It is admitted only that Gilbane's subcontractor Advanced performed warranty work to repair and replace the MMA floor covering installed in the concourse prior to the Orioles' 2015 Spring Training Season, and that certain problems with the MMA floor covering appeared after this warranty work was completed. All other allegations are denied.
17. Admitted in part and denied in part. It is admitted only that concrete floor and wall cracks have been discovered in the Restrooms of the Pavilion area in left field, and that cracking and settlement of the concrete stairways have been identified in the left field area. It is expressly denied that any such cracking or settlement reveals latent defects in material or workmanship by Gilbane or those for whom Gilbane is responsible. Gilbane further avers that the cracking in this area was first identified in early 2011, not 2015 as alleged.

18. Admitted upon information and belief.
19. Denied.
20. Admitted that on or about March 15, 2016 and April 8, 2016, the County sent the letters attached as Exhibit F to the Complaint to Gilbane. These letters are written documents that speak for themselves, and Gilbane denies all allegations characterizing their contents at variance therewith.
21. Admitted in part and denied in part. It is admitted only that Gilbane attempted in good faith to resolve this dispute through discussion of the dispute, that the matter proceeded to mediation, and that the parties were unable to resolve their disputes. All other allegations of the corresponding paragraph are denied, it being expressly denied that the County has attempted to resolve this matter in good faith through direct discussion and then mediation.
22. It is admitted that on or about November 4, 2016 the County sent the "Surety Notification" attached as Exhibit G to the Complaint to the Surety with a copy to Gilbane. This Surety Notification is a written document that speaks for itself, and Gilbane denies all allegations characterizing its contents at variance therewith.
23. Denied.

COUNT I – Breach of Contract

24. Gilbane repeats and realleges the allegations in its responses to Paragraphs 1-23 above.
25. The corresponding paragraph is conclusion of law to which neither an admission nor a denial is required.
26. Admitted. The Contract is a written document that speaks for itself, and Gilbane denies all allegations at variance therewith.

27. Denied.

28. Denied.

COUNT II – Breach of Implied Warranty

29. Gilbane repeats and realleges the allegations in its responses to Paragraphs 1-23 above.

30. The corresponding paragraph is conclusion of law to which neither an admission nor a denial is required.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

COUNT III – Negligence

35. Gilbane repeats and realleges the allegations in its responses to Paragraphs 1-23 above.

36. The corresponding paragraph is conclusion of law to which neither an admission nor a denial is required.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. All allegations not specifically admitted above are denied.

DEFENSES

Gilbane, having answered each and every allegation of the Complaint, asserts the following defenses:

I

42. The County's claims and each count thereof, fail to state a cause of action upon which relief can be granted against Gilbane.

II

43. The County's claims against Gilbane are barred by the Statute of Limitations.

III

44. The County's damages are caused by defects in the design, and not any breach by Gilbane or those for whom Gilbane is responsible.

IV

45. Any damages that may have been suffered by the County are the result of intervening or superseding events, factors, occurrences, or conditions, which were in no way caused by Gilbane and for which Gilbane is not responsible or liable.

V

46. The County has failed to satisfy all conditions precedent to the filing of this action by failing to attempt to resolve these issues in good faith through direct negotiations or in mediation.

VI

47. Gilbane is entitled to a set-off for any amounts recovered by the County from any third parties, either under warranty or otherwise, or any sums received by the County from any collateral source.

VII

48. The County's claims for breach of implied warranty are barred by the existence of express warranties in the CM Agreement.

VIII

49. Gilbane has satisfied its express warranty obligations with respect to the MMA flooring by performing repairs beyond the two year period described in Paragraph 10 of the Complaint.

IX

50. The County's claims for negligence are barred as Gilbane's duties with respect to performance of the work, including selection and supervision of subcontractors and selection and installation of materials were defined by the contract.

X

51. The County's claims for negligence are barred in whole or in part by the doctrine of comparative negligence.

XI

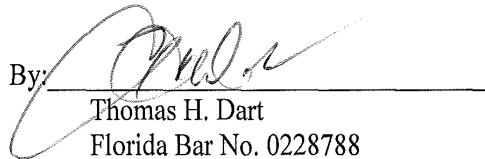
52. The County's claims are barred, in whole or in part, by Plaintiff's failure to mitigate any injuries and damages they allegedly suffered.

XII

53. Any damage that may have been suffered by the County was the due to the acts or omissions of third parties.

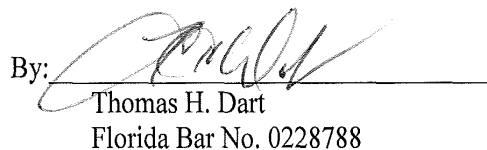
WHEREFORE, Defendant, Gilbane Building Company, respectfully requests that the claims of Plaintiff, Sarasota County, be dismissed and that it be granted judgment against the Plaintiff, Sarasota County, and awarded its costs and reasonable attorneys' fees.

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document on December 22, 2016 with the Clerk of Court using the Florida Courts E-Filing Portal, which will send a notice of electronic filing to: Milan Brkich, Assistant County Attorney, 1660 Ringling Blvd., Second Floor, Sarasota, Florida 34236 at mbrkich@scgov.net, Counsel for Plaintiff.

By: 
Thomas H. Dart
Florida Bar No. 0228788