

DOCKET NO. FS1-FST-CV15-6024755-S : SUPERIOR COURT

SEAN McDEVITT, et al. : J.D. OF STAMFORD/NORWALK

VS. : AT STAMFORD

KAESER CONSTRUCTION COMPANY,
et al. : JUNE 30, 2015

**DEFENDANT, KAESER CONSTRUCTION
COMPANY'S ANSWER AND SPECIAL DEFENSES**

Defendant Kaeser Construction Company ("Kaeser"), as and for its answer to the Complaint filed by Sean M. McDevitt and Kelly L. McDevitt ("Plaintiffs"), dated February 27, 2015, hereby states as follows:

FACTS

1. Neither admits nor denies the allegations contained in Paragraph 1 of the Complaint, but leaves the Plaintiffs to their proof, and refers all questions of law to the Court for determination.
2. Admits the allegations contained in Paragraph 2 of the Complaint.
3. Neither admits nor denies the allegations contained in Paragraph 3 of the Complaint, but refers all questions of contract interpretation to the Court for determination.
4. Neither admits nor denies the allegations contained in Paragraph 4(a) through (f) of the Complaint, but refers all questions of contract interpretation to the Court for determination.
5. Admits the allegations contained in Paragraph 5 of the Complaint.
6. Neither admits nor denies the allegations contained in Paragraph 6 of the Complaint, but refers all questions of law to the Court for determination.

7. In response to Paragraph 7 of the Complaint, denies knowledge or information sufficient to form a belief as to the allegations contained therein and leaves the Plaintiffs to their proof.

8. In response to Paragraph 8 of the Complaint, denies the allegations contained therein, but states that Kaeser entered into a contract with Charney to perform electrical work on the Premises.

9. In response to Paragraph 9 of the Complaint, denies knowledge or information sufficient to form a belief as to the allegations contained therein and leaves the Plaintiffs to their proof.

10. In response to Paragraph 10 of the Complaint, denies the allegations contained therein, but states that Kaeser entered into a contract with Bloszko to perform the plumbing and heating work on the Premises.

11. In response to Paragraph 11 of the Complaint, admits that Plaintiffs closed on the purchase and were the first purchasers and occupants, but refers all questions of contract interpretation to the Court for determination.

12. In response to Paragraph 12 of the Complaint, denies the allegations contained therein.

13. In response to Paragraph 13 of the Complaint, denies the allegations contained therein.

14. In response to Paragraph 14 of the Complaint, denies knowledge or information sufficient to form a belief as to the allegations contained therein and leaves the Plaintiffs to their proof.

15. In response to Paragraph 15 of the Complaint, denies knowledge or information sufficient to form a belief as to the allegations contained therein and leaves the Plaintiffs to their proof.

16. In response to Paragraph 16 of the Complaint, denies the allegations contained therein.

17. In response to Paragraph 17 of the Complaint, denies the allegations contained therein.

18. In response to Paragraph 18(a) through (d) of the Complaint, denies the allegations contained therein and refers all questions of law to the Court for determination.

19. In response to Paragraph 19(a) through (i) of the Complaint, denies the allegations contained therein.

20. In response to Paragraph 20(a) through (d) of the Complaint, denies the allegations contained therein.

21. In response to Paragraph 21 of the Complaint, denies the allegations contained therein, except refers all questions of law to the Court for determination.

22. In response to Paragraph 22 of the Complaint, denies the allegations contained therein.

23. In response to Paragraph 23 of the Complaint, denies the allegations contained therein.

24. In response to Paragraph 24 of the Complaint, denies the allegations contained therein.

COUNT ONE

25. Repeats and reiterates each and every response previously presented in response to paragraphs 1 through 24 of the Complaint, as if set forth fully herein in response to Paragraph 25 of Count One of the Complaint.

26. Neither admits nor denies the allegations contained in Paragraph 26 of Count One of the Complaint, but refers all questions of law to the Court for determination.

27. In response to Paragraph 27(a) through (e) of Count One, denies the allegations contained therein, except refers all questions of law to the Court for determination.

28. In response to Paragraph 28(a) through (d) of Count One, denies the allegations contained therein.

29. In response to Paragraph 29 of Count One, denies the allegations contained therein.

COUNT TWO

30. Repeats and reiterates each and every response previously presented in response to Paragraphs 1 through 24 of the Complaint, as if set forth fully herein in response to Paragraph 30 of Count Two of the Complaint.

31. In response to Paragraph 31 of Count Two, denies the allegations contained therein, except refers all questions of law to the Court for determination.

32. In response to Paragraph 32 of Count Two, denies the allegations contained therein.

COUNT THREE

33. Repeats and reiterates each and every response previously presented in response to Paragraphs 1 through 24 of the Complaint and 30 through 32 of Count Two of the Complaint, as if set forth fully herein in response to Paragraph 33 of Count Three of the Complaint.

34. In response to Paragraph 34(a) through (c) of Count Three, denies the allegations contained therein, except refers all questions of law to the Court for determination.

35. In response to Paragraph 35 of Count Three, denies the allegations contained therein.

COUNT FOUR

36. Repeats and reiterates each and every response previously presented in response to Paragraphs 1 through 24 of the Complaint and 30 through 32 of Count Two of the Complaint, as if set forth fully herein in response to Paragraph 36 of Count Four of the Complaint.

37. Neither admits or denies the allegations contained in Paragraph 37(a) through (d) of Count Four of the Complaint but refers all questions of law to the Court for determination.

38. Neither admits or denies the allegations contained in Paragraph 38(a) through (c) of Count Four of the Complaint but refers all questions of law to the Court for determination.

39. In response to Paragraph 39 of Count Four, denies the allegations contained therein.

COUNT FIVE

40. Repeats and reiterates each and every response previously presented in response to Paragraphs 1 through 24 of the Complaint and 30 through 32 of Count Two of the Complaint, as if set forth fully herein in response to Paragraph 40 of Count Five of the Complaint.

41. In response to Paragraph 41 of Count Five, Kaeser admits that the Town of New Canaan Building Department issued a certificate of occupancy.

42. Neither admits nor denies the allegations contained in Paragraph 42 of Count Five of the Complaint and refers all questions of law to the Court for determination.

43. Neither admits nor denies the allegations contained in Paragraph 43 of Count Five of the Complaint and refers all questions of law to the Court for determination.

44. In response to Paragraph 44 of Count Five, denies knowledge or information sufficient to form a belief as to the allegations contained therein and leaves the Plaintiffs to their proof.

45. In response to Paragraph 45 of Count Five, denies the allegations contained therein except refers all questions of law to the Court for determination.

46. In response to Paragraph 46 of Count Five, denies the allegations contained therein.

COUNT SIX

47. Repeats and reiterates each and every response previously presented in response to paragraphs 1 through 24 of the Complaint and 30 through 32 of Count Two of the Complaint, as if set forth fully herein in response to Paragraph 47 of Count Six of the Complaint.

48. In response to Paragraph 48(a)-(c) of Count Six, denies the allegations contained therein, except refers all questions of law to the Court for determination.

49. In response to Paragraph 49 of Count Six, denies the allegations contained therein, except refers all questions of law to the Court for determination.

50. In response to Paragraph 50 of Count Six, denies the allegations contained therein.

51. In response to Paragraph 51 of Count Six, denies the allegations contained therein.

52. In response to Paragraph 52(a) through (d) of Count Six, denies the allegations contained therein.

COUNT SEVEN

53. Repeats and reiterates each and every response previously presented in response to Paragraphs 1 through 24 of the Complaint, Paragraphs 30 through 32 of Count Two of the Complaint, Paragraphs 33 through 35 of Count Three of the Complaint, Paragraphs 36 through 39 of Count Four of the Complaint, Paragraphs 40 through 46 of Count Five and Paragraphs 47 through 52 of Count Six, as if set forth fully herein in response to Paragraph 53 of Count Seven of the Complaint.

54. In response to Paragraph 54 of Count Seven, denies the allegations contained therein, except refers all questions of law to the Court for determination.

55. In response to Paragraph 55 of Count Seven, denies the allegations contained therein.

56. In response to Paragraph 56 of Count Seven, denies the allegations contained therein.

COUNT EIGHT

57. – 60. Kaeser provides no response as these allegations are not addressed to it.

COUNT NINE

61. – 65. Kaeser provides no response as these allegations are not addressed to it.

SPECIAL DEFENSES

FIRST SPECIAL DEFENSE

To the extent that Plaintiffs have already received compensation from a third-party for any injuries or damages claimed in this action, Plaintiffs are not entitled to recovery for those same amounts from Kaeser.

SECOND SPECIAL DEFENSE

Plaintiffs failed to provide timely notice of alleged defects in work performed by or on behalf of Kaeser and thus are barred from claiming a remedy for same under the New Home Warranty Act.

THIRD SPECIAL DEFENSE

Plaintiffs are barred from claiming a remedy under the New Home Warranty Act for those alleged defects in workmanship which were open and obvious at the time that they closed on the Premises.

FOURTH SPECIAL DEFENSE

Plaintiffs failed to provide to Kaeser an opportunity to cure alleged defects in workmanship.

FIFTH SPECIAL DEFENSE

The doctrine of economic waste bars the Plaintiffs from recovery of the remedy sought for alleged defects in work performed by or on behalf of Kaeser.

SIXTH SPECIAL DEFENSE

Plaintiffs failed to mitigate their damages by making timely repairs to alleged defects or offering Kaeser timely opportunity to cure the alleged defects.

DEFENDANT
Kaeser Construction Company

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CERTIFICATE OF SERVICE

I certify that a copy of the above was immediately be mailed or delivered electronically on June 30, 2015 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were immediately electronically served, as follows:

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