

STATE OF INDIANA) HAMILTON SUPERIOR COURT 2
) SS:
COUNTY OF HAMILTON) CAUSE NO. 29D02-1602-CT-1262

HOOSIER CONTRACTORS, LLC,)
)
Plaintiff,)
)
v.)
)
SEAN GARDNER,)
)
Defendant,)
)
DR. SEAN GARDNER,)
)
Counter-Plaintiff,)
)
v.)
)
HOOSIER CONTRACTORS, LLC,)
)
Counter-Defendant.)

**ANSWER, DEFENSES AND COUNTERCLAIM
TO COMPLAINT FOR DAMAGES**

Sean Gardner (the “Defendant”), for his answer and defenses to the Plaintiff’s
Complaint for Damages states as follows:

1. Hoosier Contractors, LLC (“Hoosier”) is a registered Limited Liability Company of Indiana, located in Hendricks County, Indiana. Plaintiff has a Hendricks County address of 1551 N. Green St., Ste. F, Brownsburg, IN 46112.

ANSWER: Defendant is without sufficient information to admit or deny this allegation, which is therefore denied.

2. Defendant Sean Gardner (“Mr. Gardner”) upon information and belief is a resident of Marion County, Indiana residing at 7226 Spring Ridge Drive, Indianapolis, IN 46278.

ANSWER: Admit.

3. This Court has jurisdiction over this matter pursuant to Indiana Trial Rule 75 is set in Hamilton County per the venue clause set on the contract. The Defendant resides in Marion County and the amount in controversy exceeds \$6,000.00.

ANSWER: Defendant admits that the contract requires venue in Hamilton County, but is without sufficient information to admit or deny the remaining allegations in Paragraph 3, which are therefore denied.

4. On or about December 12, 2015, a representative from Hoosier met with Mr. Gardner at his home.

ANSWER: Admit.

5. On December 12, 2015, Mr. Gardner signed a contract with Hoosier to complete the work his insurance approved a claim for the property loss. See Exhibit A, First Contract.

ANSWER: Defendant admits he signed a document on December 12, 2015, but denies that it is valid contract and denies the remaining

allegations in Paragraph 5.

6. On or about December 22, 2015, Mr. Gardner signed an updated contract as the claim he presented to Hoosier was over two years old and he had changed his insurance provider. See Exhibit B, Updated Contract.

ANSWER: Defendant denies the allegations in Paragraph 6.

7. On December 22, 2015, Hoosier contacted Mr. Gardner's Insurance, Cincinnati Insurance Company, to open a new claim.

ANSWER: Defendant denies the allegations in Paragraph 7.

8. A representative from Hoosier met with Mr. Gardner's insurance adjuster on January 6, 2016, and got a claim approved for the roof, all of the gutters and downspouts, two garage doors, painting for interior damage, an AC comb and miscellaneous personal items.

ANSWER: Defendant is without sufficient information to admit or deny the allegation in Paragraph 8, which is therefore denied.

9. Mr. Gardner repeatedly asked representatives from Hoosier to cover his deductible when he realized his deductible was \$5,000.00.

ANSWER: Defendant denies that he asked Hoosier to "cover his deductible." He asked Hoosier if it was possible for him to not pay any costs out of pocket, and Hoosier representatives repeatedly told him

they would check. Defendant admits his deductible is \$5,000.

10. Representatives from Hoosier informed Mr. Gardner that under IC §24-5-11, they are not allowed to wave or pay any part.

ANSWER: Defendant denies the allegations in Paragraph 10.

11. Hoosier has not yet been allowed to schedule the work to be conducted on Mr. Gardner's home in accordance with the insurance scope of repair.

ANSWER: Defendant lacks sufficient information to admit or deny the allegations in Paragraph 11, which are therefore denied.

COUNT 1: Breach of Contract

12. Plaintiff restates and reaffirms the preceding paragraphs as if the same were wholly set out herein.

ANSWER: Defendant restates and reaffirms the answers to the preceding allegations.

13. Hoosier has a valid contract with the Defendant.

ANSWER: Defendant denies the allegation in Paragraph 13.

14. Hoosier has not be [sic] allowed to conduct the work on Defendant's home in accordance with the contract.

ANSWER: Defendant denies the allegations in Paragraph 14.

15. Hoosier has on multiple occasions attempted to schedule the work to be completed on Defendant's home.

ANSWER: Defendant, to the extent he understands the allegations in Paragraph 15, denies the same.

16. Defendant attempted to convince Hoosier violate IC §24-5-11 by requesting Hoosier pay for Defendant's deductible.

ANSWER: Defendant denies the allegations in Paragraph 16.

17. Hoosier repeatedly informed Defendant they could not pay his deductible.

ANSWER: Defendant denies the allegations in Paragraph 17.

18. Defendant has breached his contract with Hoosier because they would not pay Defendant's deductible.

ANSWER: Defendant denies the allegations in Paragraph 18.

19. Now Defendant wants to void the contract with Hoosier to solicit another contractor to cover his deductible.

ANSWER: Defendant admits the contract is void, but denies the remaining allegations in Paragraph 19.

20. Hoosier has suffered damages related to the breach committed by Defendant.

ANSWER: Defendant denies the contract was breached, and is without sufficient information to form a belief as to the truth of the allegations in Paragraph 20, which are therefore denied.

DEFENSES

1. Plaintiff's claim should be barred because it fails to state a claim.
2. Plaintiff's claim should be barred because the claim is not yet ripe.
3. Plaintiff's claim should be barred by the doctrine of waiver.
4. Plaintiff's claim should be barred by the doctrine of estoppel.
5. Plaintiff's claim should be barred by the doctrine of unclean hands.

WHEREFORE, the Defendant, Mr. Gardner, prays this Court deny the Plaintiff's request for damages and for all other relief is just and proper in the premises.

COUNTERCLAIM

COUNTERCLAIM PLAINTIFF, Dr. Sean Gardener, asserts the following counterclaim for a violation of Indiana law governing deceptive practices:

1. Hoosier was hired for the express purpose of inspecting Dr. Gardner's roof to see if there was a need for repairs. Dr. Gardner was told he needed to sign the document attached to the Complaint as Exhibit A in order for Hoosier to do that.

2. Hoosier also represented it would “work with” Dr. Gardner on his deductible, including representing to Dr. Gardner that it “would check” on whether or not it could make certain Dr. Gardner could keep his deductible.

3. Hoosier did this, upon information and belief, in a scheme to induce Dr. Gardner to be recorded in certain phone conversations, without his consent, so Hoosier could threaten him with litigation if Dr. Gardner did not hire Hoosier to fix his roof.

4. The document Hoosier purports to be a contract does not comply with Indiana law in at least the following respects:

- a. It does not contain the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed.
- b. It does not provide a reasonably detailed description of the proposed home improvements.
- c. It does not contain the approximate starting and completion dates of the home improvements or the number of days elapsed from the date when sufficient approval of the insurance carrier terms allowing for adequate repair or restoration is obtained.
- d. It does not contain a statement of any contingencies that would materially change the approximate completion date.
- e. It does not contain the home improvement contract price.
- f. It does not contain signature lines for the home improvement supplier or the supplier's agent.

- g. It is not in a form that each consumer who is a party to it can reasonably read and understand.
- h. It does not contain a description, completion dates, and statement of contingencies to the extent that the damage, loss, or expense is reasonably known by the home improvement supplier.
- i. It does not contain a statement that the subject real estate will be repaired or restored to the same condition in which the real estate existed before the damage, loss, or expense occurred, or to a comparable condition.

5. Indeed, the purported contract on its face states that it is to determine whether damage even exists on the property, so it cannot satisfy the requirements of Indiana Code section 24-5-11-10.

6. These deficiencies are actionable under Indiana Code 24-5-0.5-4, and Dr. Gardner expressly reserves his right, during the course of discovery, to amend this complaint and seek to be a representative of a class for these violations of Indiana Law.

7. Because the contract is executed and Hoosier seeks to enforce it in Court, the deceptive act is incurable under Indiana Code section 24-5-0.5-5.

8. Hoosier's attempt to use this invalid and illegal document and enforce it in Court also constitutes an abuse of process.

WHEREFORE, as a result of these deceptive acts, Dr. Gardner seeks rescission of any contract the Court finds valid between Dr. Gardner and Hoosier, as well as reasonable attorney fees, civil and statutory damages, as well as pre-

judgment interest at the statutory rate, where applicable.

Respectfully submitted on this the 7th day of March 2016,

/s/ Paul L. Jefferson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via first-class mail, postage prepaid, to the following on this the 7th day of March 2016:

David E. Miller

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/s/ Paul L. Jefferson

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