

DELMER LIMITED PARTNERSHIP)	IN THE
)	CIRCUIT COURT
Plaintiff,)	OF MARYLAND
)	FOR
v.)	BALTIMORE CITY
)	
RI MERGER CO. and)	CASE NO. 24-C-00-006126
GENERAL ROOFING SERVICES, INC.)	
)	
Defendants.)	

**ANSWER, AFFIRMATIVE DEFENSES AND NEGATIVE DEFENSES
OF DEFENDANT RI MERGER CO.**

COMES NOW Defendant RI MERGER CO. ("RIM"), by and through its attorneys, Jeffrey A. Wothers, Owen J. Curley, and Niles, Barton & Wilmer, L.L.C., and files this, its Answer, Affirmative Defenses and Negative Defenses to the Complaint filed by Plaintiff Delmer Limited Partnership ("Delmer") on or about December 15, 2000 and states as follows:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff is barred from maintaining this action against it by the statute of limitations. Md. Code Ann. Cts. & Jud. Proc. § 5-101.

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff's Negligence and Negligent Misrepresentation causes of action fail to state a cause of action upon which relief may be granted to the extent Plaintiff seeks recovery for economic damages.

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff is barred by maintaining this action against RIM by the statute of repose. Md. Code Ann. Cts. & Jud. Proc. § 5-108.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff is barred by maintaining Count VI of this action against RIM on the grounds that the alleged negligent misrepresentations made by Defendant Roofers, Incorporated f/k/a RI Merger Co. to Delmer concerned projections of future events.

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff is barred by maintaining Count V of this action against RIM on the grounds that it alleges a breach of the same document under which Plaintiff brings its breach of contract cause of action in Count IV of its Complaint.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff's recovery of damages, if any, is limited to the terms of the Roof Guarantee and Preventive Maintenance Program extended to Plaintiff by Roofers, Incorporated f/k/a RI Merger Co.

EIGHTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that any alleged conduct or omission by RIM was not the cause in fact or proximate cause of any damages alleged to have been suffered by Plaintiff.

NINTH AFFIRMATIVE DEFENSE

AS AND FOR A NINTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff's conduct operated as estoppel and waiver of any rights to file the action herein.

TENTH AFFIRMATIVE DEFENSE

AS AND FOR A TENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that any recovery by Plaintiff is barred by its failure to mitigate damages, or that any recovery must be reduced by those damages that Plaintiff failed to mitigate.

ELEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that to the extent Plaintiff seeks recovery for alleged misrepresentations, Plaintiff, by the exercise of ordinary care, could have avoided alleged damages and, on account thereof, Plaintiff is not entitled to any recovery against RIM.

TWELFTH AFFIRMATIVE DEFENSE

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that to the extent Plaintiff seeks recovery against RIM for alleged misrepresentations, the damages suffered by Plaintiff, if any, were the result of Plaintiff's negligence and failure to use reasonable diligence and, on account thereof, Plaintiff is not entitled to any recovery against RIM.

THIRTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff is barred from maintaining this action against RIM by the statute of frauds.

FOURTEENTH AFFIRMATIVE DEFENSE

AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that, to the extent Plaintiff alleges RIM had any obligation or duty as to which full performance had not been rendered or excused, not all conditions precedent to said duties or obligations occurred.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that to the extent Plaintiff alleges RIM had any obligation as to which full performance has not been rendered or excused, that obligation did not exist or otherwise was extinguished.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE, Defendant RIM alleges that Plaintiff's Negligent Misrepresentation cause of action is barred by the parole evidence rule.

NEGATIVE DEFENSES

Pursuant to Rule 2-323(f) of the Maryland Rules of Civil Procedure, Defendant RJM alleges that General Roofing Services, Inc. does not have the capacity to be sued in this litigation. Defendant General Roofing Services, Inc. is not a successor in interest to Roofers, Incorporated f/k/a RI Merger Co.

Defendant General Roofing Services, Inc. is not a proper party defendant to this litigation. During 1999, Defendant RI Merger Co. was created by General Roofing Services, Inc. At that time, General Roofing Services, Inc. was the sole shareholder in RI Merger Co. On or about November 1, 1999, Roofers, Inc., owned and operated by its President, was merged into RI Merger Co. The appropriate Articles of Merger were filed with the State of Maryland Department of Assessments and Taxation, Business Services and Finance Division on or about November 1, 1999.

Within the Articles of Merger, and concurrent with the merger of Roofers, Inc. into RI Merger Co., RI Merger Co. was renamed Roofers, Incorporated. General Roofing Services, Inc. is the sole shareholder of Roofers, Incorporated, formerly known as RI Merger Co., and, as sole shareholder of defendant RI Merger Co. n/k/a Roofers, Incorporated (hereinafter referred to as "Roofers"), does not have the capacity to be sued in this litigation.

ANSWER

1. Defendant Roofers is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 1 of the Complaint and, therefore, the same is denied.

2. Defendant Roofers admits the allegations contained in paragraph 2 of the Complaint.

3. Defendant Roofers admits that General Roofing Services, Inc. is a Florida corporation. The remaining allegations contained in paragraph 3 of the Complaint are denied.

4. Defendant Roofers denies the allegations contained in paragraph 4 of the Complaint.

5. Defendant Roofers admits the allegations contained in paragraph 5 of the Complaint.

6. Defendant Roofers denies that Roofers' express warranty guaranteed that it would pay for the cost of any repairs necessary to the Roof for a period of 10 years. Defendant Roofers admits that Roofers, Inc. extended an express warranty to Delmer, the terms of which speak for themselves. To the extent the remaining allegations contained in paragraph 6 of the Complaint conflict with the terms of the warranty, the same are denied.

1. Defendant Roofers expressly denies that General Roofing Services, Inc. is a successor-in-interest of Roofers.

2. Defendant Roofers denies the allegations contained in paragraph 8 of the Complaint.

3. Defendant Roofers denies the allegations contained in paragraph 9 of the

Complaint.

4. Defendant Roofers admits that leaks and problems with the roof were reported by Plaintiff between 1991 and 1993 and that Roofers repaired such leaks.

5. Defendant Roofers denies the allegations contained in paragraph 11 of the Complaint.

6. Defendant Roofers denies the allegations contained in paragraph 12 of the Complaint.

7. Defendant Roofers admits that Delmer agreed to purchase the Preventive Maintenance Program. Defendant Roofers is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 13 of the Complaint and, therefore, the same are denied.

8. Defendant Roofers admits that leaks and problems with the roof were reported by Plaintiff.

9. Defendant Roofers admits that Roofers told the Plaintiff in December, 1999, that the roof at that time was an excellent candidate for replacement. The remaining allegations contained in paragraph 15 of the Complaint are denied.

10. Defendant Roofers denies that the roof was originally installed by Roofers improperly. Defendant Roofers is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16 of the Complaint and, therefore, the same is denied.

11. Defendant Roofers admits that Roofers received correspondence from Delmer dated August 11, 2000, the contents of which speaks for itself. To the extent the contents of Delmer's correspondence dated August 11, 2000, conflict with the remaining allegations contained in paragraph 17 of the Complaint, the same are denied.

12. Defendant Roofers admits that Roofers submitted correspondence to Delmer dated September 1, 2000, the contents of which speaks for itself. To the extent the contents of Roofers' correspondence dated September 1, 2000, conflict with the remaining allegations contained in paragraph 18 of the Complaint, the same are denied.

13. Defendant Roofers is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 19 of the Complaint and, therefore, the same is denied.

COUNT I
(Breach of Contract)

20. Defendant Roofers denies the allegations contained in paragraph 20 of the Complaint which have not previously been admitted herein above.

21. Defendant Roofers denies the allegations contained in paragraph 21 of the Complaint.

22. Defendant Roofers denies the allegations contained in paragraph 22 of the Complaint.

COUNT II
(Breach of Express Warranty)

23. Defendant Roofers denies the allegations contained in paragraph 23 of the Plaintiff's Complaint which have not previously been admitted herein above.

24. Defendant Roofers admits that Roofers extended a warranty to Delmer,

the contents of which speaks for themselves. To the extent the remaining allegations contained in paragraph 24 of the Complaint conflict with the terms of the warranty, the same are denied.

25. Defendant Roofers admits that Roofers submitted correspondence to Delmer in approximately December 1999, the contents of which speaks for themselves. To the extent the remaining allegations contained in paragraph 25 of the Complaint conflict with the contents of correspondence submitted to Delmer by Roofers in December, 1999, the same are denied.

26. Defendant Roofers admits Roofers has refused to pay Delmer to have the Roof replaced. Defendant Roofers denies the remaining allegations contained in paragraph 26 of the Complaint.

27. Defendant Roofers denies the allegations contained in paragraph 27 of the Complaint.

28. Defendant Roofers denies the allegations contained in paragraph 28 of the Complaint.

COUNT III
(Negligence)

29. Defendant Roofers denies the allegations contained in paragraph 29 of the Plaintiff's Complaint which have not previously been admitted herein above.

30. Defendant Roofers admits the allegations contained in paragraph 30 of the Complaint.

31. Defendant Roofers denies the allegations contained in paragraph 31 of the Complaint.

32. Defendant Roofers denies the allegations contained in paragraph 32 of the Complaint to the extent such allegations conflict with the terms of the contract between Roofers and Delmer.

33. Defendant Roofers denies the allegations contained in paragraph 33 of the Complaint.

34. Defendant Roofers denies the allegations contained in paragraph 34 of the Complaint.

COUNT IV
(Breach of Contract - Preventive Maintenance Program)

35. Defendant Roofers denies the allegations contained in paragraph 35 of the Plaintiff's Complaint which have not previously been admitted herein above.

35. Defendant Roofers denies the allegations contained in paragraph 36 of the Complaint.

36. Defendant Roofers admits that Delmer agreed to enter into a preventive maintenance agreement. The remaining allegations contained in paragraph 37 of the Complaint are denied.

37. Defendant Roofers denies the allegations contained in paragraph 38 of the Complaint.

38. Defendant Roofers denies the allegations contained in paragraph 39 of the Complaint.

39. Defendant Roofers denies the allegations contained in paragraph 40 of the

Complaint.

COUNT V
(Breach of Express Warranty - Preventive Maintenance Program)

41. Defendant Roofers denies the allegations contained in paragraph 41 of the Plaintiff's Complaint which have not previously been admitted herein above.

42. Defendant Roofers denies the allegations contained in paragraph 42 of the Complaint.

43. Defendant Roofers denies the allegations contained in paragraph 43 of the Complaint.

44. Defendant Roofers denies the allegations contained in paragraph 44 of the Complaint.

45. Defendant Roofers admits refusing to pay Delmer to have the roof replaced. The remaining allegations contained in paragraph 45 of the Complaint are denied.

46. Defendant Roofers denies the allegations contained in paragraph 46 of the Complaint.

47. Defendant Roofers denies the allegations contained in paragraph 47 of the Complaint.

COUNT VI
(Negligent Misrepresentation)

48. Defendant Roofers denies the allegations contained in paragraph 48 of the Plaintiff's Complaint which have not previously been admitted herein above.

49. Defendant Roofers denies the allegations contained in paragraph 49 of the

Complaint to the extent such allegations conflict with the terms of the contract between Roofers, Inc. and Delmer.

50. Defendant Roofers denies the allegations contained in paragraph 50 of the Complaint.

51. Defendant Roofers denies the allegations contained in paragraph 51 of the Complaint.

52. Defendant Roofers denies the allegations contained in paragraph 52 of the Complaint.

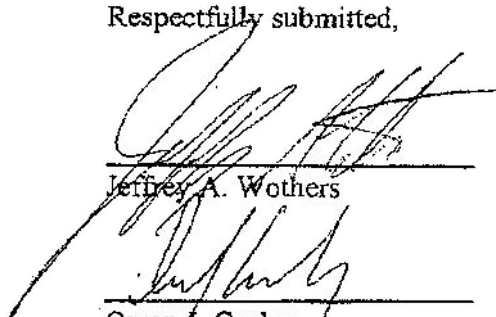
53. Defendant Roofers denies the allegations contained in paragraph 53 of the Complaint.

54. Defendant Roofers denies the allegations contained in paragraph 54 of the Complaint.

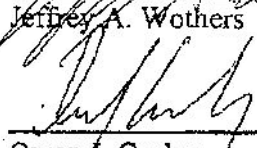
PRAYER

WHEREFORE, Defendant Roofers prays, after final trial and hearing hereof, Plaintiff take nothing of this suit and that Defendant Roofers be awarded its reasonable costs of court expended, including but not limited to its attorneys' fees, and all such other relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,



Jeffrey A. Wothers

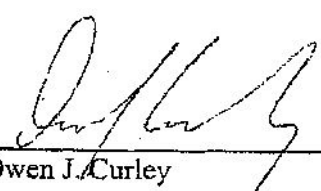


Owen J. Curley
Niles, Barton & Wilmer, L.L.C.
111 S. Calvert Street
Suite 1400
Baltimore, Maryland 21202
(410) 783-6300

CERTIFICATE OF SERVICE

I certify that on this 27th day April, 2001, a copy of Defendant RJ Merger Co's Answer, Affirmative Defenses and Negative Defenses was sent, via first class mail, postage prepaid, to:

Charles S. Hirsch
Ballard Spahr Andrews & Ingersoll LLP
300 East Lombard Street
19th Floor
Baltimore, MD 21202



Owen J. Curley