

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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SACCARDI & SCHIFF, INC. : Index No. 12020/09
Plaintiff, :
- against - : ANSWER WITH COUNTERCLAIMS
SEVEN SPRINGS LLC, :
Defendant. :
----- x

FILED
AUG - 4 2009
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER



Defendant Seven Springs LLC ("Defendant"), by its attorney Alan G.

Garten, as and for its Answer with Counterclaims ("Answer") to the Complaint (the "Complaint") of plaintiff Saccardi & Schiff, Inc. ("Plaintiff") dated May 17, 2009, hereby alleges, as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "1" of the Complaint.
2. Admits the allegations contained in Paragraph "2" of the Complaint, except denies that Defendant has an office for the conduct of business in Westchester, County.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "3" of the Complaint, except denies that Plaintiff performed work, labor and services at the specific request of Defendant having a fair and reasonable value of \$162,549.34.
4. Denies the allegations contained in Paragraph "6" of the Complaint.¹

¹ Paragraphs "4" and "5" are omitted from the Complaint.

5. Denies the allegations contained in Paragraph "7" of the Complaint, except admits that no part of the sum of \$162,549.34 sought by Plaintiff herein has been paid by Defendant.

6. Denies the allegations contained in Paragraph "8" of the Complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "9" of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "10" of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "11" of the Complaint and states that the notice of lien speak for itself.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "12" of the Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "13" of the Complaint.

12. Denies the allegations contained in Paragraph "14" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. Defendant has been paid all amounts due and owing to Plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. Plaintiff is barred by the doctrines of good faith and fair dealing from recovering the relief requested herein.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. Plaintiff's claims are barred, in whole or in part, by the applicable Statute of Frauds.

AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE AND FIRST COUNTERCLAIM

17. Defendant repeats and realleges each and every allegation contained in Paragraphs "1" through "16" of this Answer as if fully set forth herein.

18. Defendant is a limited liability company duly organized and existing under the laws of the State of New York with an office for the conduct of business in New York, New York.

19. Upon information and belief, Plaintiff is a corporation organized and existing under the laws of the State of New York with an office for the conduct of business in Westchester County, New York.

20. In or about December 1995, Defendant purchased the property (the "Property") known as "Seven Springs" and consisting of approximately 213 acres located at the intersection of the Towns of New Castle, North Castle and Bedford (the "Towns").

21. In or about June 1996, Defendant submitted a planning application to the Towns requesting approval to develop a golf course at the Property.

22. In response to Defendant's application, the lead agency for the Towns issued an eighty-four (84) page scoping document, requiring Defendant to submit a

Draft Environmental Impact Statement (“**DEIS**”) to the Towns in accordance with the New York State Environmental Quality Review Act (“**SEQRA**”).

23. In or about 1997, Defendant engaged Plaintiff to coordinate Defendant’s submission of a DEIS.

24. In accordance with the Code of Ethics and Professional Conduct set forth by the American Institute of Certified Planners (“**AICP**”), by accepting such engagement, Plaintiff impliedly agreed to perform the services for which it had been hired by Defendant in good faith, in a professional matter and with reasonable skill, competence, care and diligence.

25. In or about June 1996, Defendant submitted a DEIS to the Towns.

26. In or about March 2004, Defendant revised its planning application to request the Town’s approval to construct a residential development instead of a golf course at the Property.

27. In or about June, 2004, the lead agency for the Towns issued a positive declaration in response to Defendant’s application and released a final, eighty four (84) page scoping document requesting information concerning many of the same issues raised in the prior scoping document.

28. Plaintiff either knew or should have known that, pursuant to the provisions of SEQRA, the Towns did not have the right to issue a final scoping without taking into account those issues previously resolved during the prior scoping.

29. Notwithstanding the foregoing, at no time did Plaintiff ever advise Defendant that the Towns did not have the right to ask for the same information in the

final scoping as it had requested in the prior scoping or that the second DEIS need only address those issues which had not been resolved during the prior scoping.

30. Instead, Plaintiff, acting on its own initiative, proceeded to spend the next four (4) years coordinating the preparation of another revised, five (5) volume, 5,000 plus page DEIS, the contents of which duplicated most, if not all, of the issues addressed in the prior DEIS.

31. Such conduct by Plaintiff constitutes, among other things, a material and flagrant violation of Plaintiff's duty under the AICP's Code of Ethics and Professional Conduct to "provide timely, adequate, clear and accurate information on planning issues to all affected persons and to government decision makers."

32. As a result of Plaintiff's acts and conduct, including, without limitation, Plaintiff's "churning" of the matter and performing services which were neither required nor appropriate under the circumstances, Defendant was forced to incur hundreds of thousands of dollars in unnecessary charges and expenses, above and beyond the more than \$1,500,000.00 in fees and expenses which Defendant had already paid to Plaintiff for its services.

33. In addition, because Plaintiff failed to advise Defendant that it was not required to prepare a completely new DEIS (and, in fact, need only address those limited issues not previously resolved), approval of Defendant's planning application was caused to be delayed by more than three (3) years, thereby, not only causing Defendant to have to wait unnecessarily to obtain SEQRA approval, but also causing Defendant to miss a "window of opportunity" to move forward with the development of the project at a time when both the real estate and financial markets were still strong.

34. Furthermore, though Plaintiff had been engaged by Defendant to, among other things, coordinate and direct the large group of consultants, engineers and other professionals hired by Defendant to perform various studies with respect to the Property, Plaintiff, upon information and belief, also failed to adequately and thoroughly review their work prior to submitting each revision of the DEIS, resulting in, among other things, the inclusion of certain unnecessary and irrelevant information left over from the first DEIS. All of the errors and omissions by Plaintiff had to be corrected by Defendant in the drafting of the Final Environmental Impact Statement (“FEIS”) at considerable cost and delay to Defendant.

35. By reason of the foregoing, Defendant demands judgment against Plaintiff in an amount to be determined at the time of trial, but believed to be in excess of \$1,000,000.00.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE AND SECOND COUNTERCLAIM

36. Defendant repeats and realleges each and every allegation contained in Paragraphs “1” through “35” of this Answer as if fully set forth herein.

37. Pursuant to Paragraph “10” of the Complaint, Plaintiff alleges that, on or about October 30, 2008, Plaintiff filed a notice of lien against the Property for certain work, labor and services Plaintiff claims to have provided to Defendant.

38. Upon information and belief, none of the work, labor or services allegedly performed by Plaintiff constitute an “improvement” as that term is defined under the New York State Lien Law (“Lien Law”).

39. Upon information and belief, at the time the lien was filed, Plaintiff knew that none of the work, labor or services allegedly performed by Plaintiff constituted an "improvement" under the Lien Law.

40. Pursuant to § 39-a of the Lien Law, where a court shall have declared a lien to be void on account of willful exaggeration, the person filing such notice of lien shall be liable to the owner for, *inter alia*, damages in an amount equal to the difference by which the amount claimed in the lien exceeds the amount actually due or to become due thereon.

41. By reason of the foregoing, Defendant demands judgment against Plaintiff in an amount to be determined at the time of trial, but believed to be in excess of \$162,549.34.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE AND THIRD COUNTERCLAIM

42. Defendant repeats and realleges each and every allegation contained in Paragraphs "1" through "41" of this Answer as if fully set forth herein.

43. There is implied into every agreement a covenant of good faith and fair dealing.

44. Upon information and belief, Plaintiff acted in bad faith and violated the covenant of good faith and fair dealing by, among other things, failing to advise Defendant that it was not required to respond to a duplicate scoping which it had previously provided responses to and by "churning" the matter, charging Defendant and causing Defendant to be charged by others for services which were not necessary to obtain the Town's approval of its application.

45. By reason of the foregoing, Defendant demands judgment against Plaintiff in an amount to be determined at the time of trial, but believed to be in excess of \$1,000,000.00.

WHEREFORE, Defendant demands judgment against Plaintiff, as follows: (i) dismissing the Complaint with prejudice; (ii) on the first counterclaim, awarding damages in an amount to be determined at trial, but believed to be in excess of \$1,000,000.00; (iii) on the second counterclaim, awarding damages in an amount to be determined at trial, but believed to be in excess of \$162,549.34; (iv) on the third counterclaim, awarding damages in an amount to be determined at trial, but believed to be in excess of \$1,000,000.00; and (v) for such other further and different relief as this Court deems just and proper.

Dated: New York, New York
July 31, 2009



ALAN G. GARTEN, ESQ.
c/o The Trump Corporation
725 Fifth Avenue, 26th Floor
New York, New York 10022
(212) 836-3203

Attorney for Defendant

Index No. Year
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AFFIDAVIT OF SERVICE BY MAIL
STATE OF NEW YORK } S.S.:
COUNTY OF WESTCHESTER }

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the _____ day of _____ 20____
deponent served the within
upon _____

attorney(s) for
in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within New York State.

Sworn to before me
this _____ day of _____ 20____

NOTICE OF ENTRY OR SETTLEMENT
(Check and complete appropriate box and section)

Sir(s):

PLEASE TAKE NOTICE that a

of which the within is a (true) (certified) copy
 NOTICE OF ENTRY
was duly entered in the within named court
on _____ 20____

NOTICE OF SETTLEMENT

will be presented for settlement to the Hon.

one of the judges of the within named court at
the Courthouse at

on _____ 20____

at _____ o'clock _____ M.

Dated: _____ Yours, etc.

ALAN G. GARTEN, ESQ.

Attorney(s) for
Office and Post Office Address
c/o The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
(212) 832-2000

To
Attorney(s) for

SACCARDI & SCHIFF, INC.,

Plaintiff,

- against -

SEVEN SPRINGS LLC,

Defendant.

ANSWER WITH COUNTERCLAIMS

ALAN G. GARTEN, ESQ.

Attorneys for
Office and Post Office Address

c/o The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
(212) 832-2000

To

Attorneys for

Service of a copy of the within

is hereby admitted,

2009

Dated,

Attorneys for