

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE
JAMES R. CAPUTO,

Index No.: E2024000703

Plaintiff,

-against-

ANSWER WITH CROSS-CLAIMS

NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION, ROBERT T. HOULE, HOULE SALES CONSULTING INC., DONALD CHENEY, ESQ., CHENEY LAW FIRM PLLC, ABAR ABSTRACT CORPORATION, MONROE COUNTY CLERK'S OFFICE,

Defendant.

Defendants NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION and ABAR ABSTRACT CORPORATION ("Answering Defendants"), by and through its attorneys Relin, Goldstein & Crane, LLP as and for an Answer to Plaintiff's Complaint dated January 11, 2024, hereby alleges the following:

1. Answering Defendants DENY the allegations contained in paragraphs marked and numbered: 2, except admits that Defendants Nathan Hold and Owen Billet are the current homeowners of 4 Chambord Drive, Mendon, NY 14506, 3, 8, 9, 28-31, 64, 66, 73.
2. Answering Defendants LACK knowledge or sufficient information to form a belief as to the allegations contained in paragraphs marked and numbered: 1, 4-7, 10-27, 32-63,65, 67- 69, 71, 72, 113-132.
3. Defendant DENIES each and every other allegation not heretofore either specifically admitted or denied.

AS TO THE FIRST CAUSE OF ACTION
(Against Defendants, NATHAN HOLT and OWEN BILLET)

4. Answering Defendants, DENY the truth of the allegations contained in paragraphs 74-76.

AS TO THE SECOND CAUSE OF ACTION
(Against Defendants, Premium Mortgage Corporation)

5. Answering Defendants, DENY the truth of the allegations contained in paragraphs 77-79.

AS TO THE THIRD CAUSE OF ACTION
(Against Defendants, Robert T. Houle and Houle Sales Consulting, Inc.)

6. Answering Defendants, Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation are not named in Plaintiff's Third Cause of Action and therefore no response is required for Paragraphs 80-92 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Against Defendants, Donald Cheney, Esq. and Cheney Law Firm, PLLC)

7. Answering Defendants, Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation are not named in Plaintiff's Fourth Cause of Action and therefore no response is required for Paragraphs 93-104 of the Complaint.

AS TO THE FIFTH CAUSE OF ACTION
(Against Defendants, Robert T. Houle and Houle Sales Consulting, Inc.)

8. Answering Defendants LACK knowledge or sufficient information to form a belief as to the allegations contained in paragraphs marked and numbered: 106
9. Answering Defendants, DENY the truth of the allegations contained in paragraphs 107-108.

AS TO THE SIXTH CAUSE OF ACTION
(Against Defendant, Monroe County Clerk's Office)

10. Answering Defendants, Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation are not named in Plaintiff's Sixth Cause of Action and therefore no response is required for Paragraphs 109-112 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. The Court lacks jurisdiction over the Answering Defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. Plaintiff's Mechanic's Lien is defective as it is improperly filed, willfully exaggerated in violation of section 39 of the New York Lien Law and fails to comply with the requirements of the lien law and therefore should be cancelled.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Pursuant to § 17 of the Lien Law of New York Plaintiff's mechanic's lien mechanic's lien lapsed by operation of law. Plaintiff did not obtain a Court Order extending the mechanic's lien but instead improperly filed a notice of extension.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. Plaintiff lacks standing to sue for the relief requested in the Complaint.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. The causes of action set forth in the Complaint against Answering Defendants are barred, in whole or in part, by Plaintiff's failure to comply with one of more condition precedent.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. Plaintiff's Complaint is barred in whole or in part by the applicable statute of limitations.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

18. Plaintiff's claims are barred due to lack of privity and/or existence of a fiduciary duty between Plaintiff and Answering Defendants. There are no express or implied agreements between Plaintiff and Answering Defendants to pay the Plaintiff.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

19. Damages, if any, alleged to have been sustained by the Plaintiff was caused, in whole or in part, by his own breach of contract and/or defective, incomplete and/or improperly performed services, by reason thereof, the Plaintiff has unclean hands. Plaintiff has failed to mitigate its damages.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

20. Damages, if any, sustained by Plaintiff were caused by the acts and/or omissions of third-parties.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

21. Answering Defendants possesses a defense based upon documentary evidence.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

22. Answering Defendants hereby give notice that it intends to rely upon any other and additional defenses that are now or may become available during or as a result of the discovery proceedings in this action, and hereby reserves their right to amend this pleading to assert such defenses.

**AS AND FOR A FIRST CROSS-CLAIM AGAINST DEFENDANTS, ROBERT T. HOULE,
HOULE SALES CONSULTING INC., DONALD CHENEY, ESQ., AND CHENEY
LAW FIRM PLLC**

23. That if Plaintiff sustained damages in the manner alleged in the Complaint, all of which have been denied by the Answering Defendants, then such damages were caused entirely by the acts of negligence, culpable conduct, and/or breach of contract of the co-defendants Robert T. Houle, Houle Sales Consulting Inc., Donald Cheney, Esq., and Cheney Law Firm PLLC, above named.

24. That by reason of the foregoing, if the Plaintiff should recover judgment against the Answering Defendants, then Answering Defendants are entitled to full or partial common law or contractual

indemnity for any judgment which any party to this action may recover against the Answering Defendants in such amounts as a jury or court may direct.

AS AND FOR A SECOND CROSS-CLAIM AGAINST DEFENDANTS, ROBERT T. HOULE, HOULE SALES CONSULTING INC., DONALD CHENEY, ESQ., AND CHENEY LAW FIRM PLLC

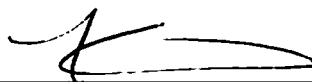
25. That if Plaintiff sustained damages in the manner alleged in the Complaint, all of which have been denied by the Answering Defendants, then such damages were caused entirely by the acts of negligence, culpable conduct, and/or breach of contract of the co-defendants Robert T. Houle, Houle Sales Consulting Inc., Donald Cheney, Esq., and Cheney Law Firm PLLC, above named.
26. That by reason of the foregoing, if the Plaintiff should recover judgment against the Answering Defendants, then Answering Defendants are entitled to contribution from and/or judgment over and against the above-named co-defendants due to their actions, or those of its agents, in an amount to be determined at trial.

WHEREFORE, Answering Defendants, NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION and ABAR ABSTRACT CORPORATION, respectfully request judgment as follows:

- a. dismissing Plaintiff's Complaint as against Answering Defendants NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION and ABAR ABSTRACT CORPORATION;
- b. on the First Cross-Claim against co-defendants, Robert T. Houle, Houle Sales Consulting Inc., Donald Cheney, Esq., and Cheney Law Firm PLLC, for indemnification and a judgment in an amount to be determined at trial; or in the alternative

- c. on the Second Cross-Claim against co-defendants, Robert T. Houle, Houle Sales Consulting Inc., Donald Cheney, Esq., and Cheney Law Firm PLLC, for contribution and a judgment in an amount to be determined at trial;

Dated: January 31, 2024



RELIN, GOLDSTEIN & CRANE, LLP
Kathryn E. Assini, Esq.
Attorneys for Plaintiff
28 East Main Street, Suite 1800
Rochester, New York 14614

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

I, the undersigned, am an attorney admitted to practice in the courts of the State of New York and say that I am the attorney of record or of counsel with the attorney(s) of record, for Defendants, Nathan Holt, Owen Billet, Premium Mortgage Corporation and Abar Abstract Corporation. I have read the annexed Answer, know the contents thereof and the same are true to me knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon the following: Conversations with the Defendants.

The reason I make this affirmation instead of Defendants is because deponent is one of the attorneys for said Defendants.

I affirm that the foregoing statements are true under penalties of perjury.

Dated: January 31, 2024



Kathryn E. Assini