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6 *Attorneys for Plaintiff/Counter-Defendant*

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF LA PAZ**

9 RODNEY ELLWOOD SCHLESENER, an
unmarried man and Arizona resident
10 doing business as "HT4,"

11 Plaintiff/Counter-claimant,

12 vs.

13 LANDARIZONA/JAK LLC, an Arizona
limited liability company,

14 Defendant/Counterclaimant.
15

Case No.: S1500CV202400045

**PLAINTIFF/COUNTER-
DEFENDANT'S RESPONSE TO
DEFENDANT/COUNTERCLAIMANT'S
MOTION FOR SUMMARY
JUDGMENT RE FIRST AMENDED
COMPLAINT COUNTS ONE - FOUR**

(Assigned to the Honorable
Marcus Kelley)

(oral argument requested)

16
17 Pursuant to Rule 56(c)(2), Ariz. R. Civ. P., Plaintiff/Counter-Defendant Rodney
18 Ellwood Schlesener doing business as "HT4" ("HT4"), through undersigned counsel,
19 hereby submits his Response to Defendant/Counterclaimant LandArizona/JAK LLC's
20 ("LandArizona's") Motion for Summary Judgment Re Plaintiff's First Amended
21 Complaint Counts One through Four. As set forth in the following Memorandum of
22 Points and Authorities and Omnibus Controverting Separate Statement of Facts filed
23 simultaneously herewith ("OCSSOF"), LandArizona is not entitled to summary
24 judgment on any of the claims asserted by HT4 because there are genuine issues of
25 material fact before the Court. Those facts include: 1) whether the parties entered into
26 a verbal contract for work referred to herein as the "Pump House Contract work;" 2)
27 whether a document that purports to release lien and payment bond rights is an accord
28 and satisfaction of HT4's breach of contract and unjust enrichment claims when, by its

1 very terms, it is not; 3) whether LandArizona is liable for interest under the Prompt
2 Pay Act, A.R.S. § 32-1181, *et seq.*, when it paid HT4, in full, for work performed under
3 the first two (2) contracts and later developed offsets that it used to short HT4 on the
4 third contract; and 4) whether LandArizona benefitted from the work that HT4
5 performed-work for which LandArizona refuses to pay HT4.

6 MEMORANDUM OF POINTS AND AUTHORITIES

7 **I. Introduction**

8 Rather than leave it to the finder of fact, LandArizona asks this Court to try all
9 of the claims and defenses by motion and deny HT4 the \$20,245.70 in relief that it seeks
10 for work undisputedly performed at LandArizona's property in Quartzsite. To
11 support its claim that not one genuine issue of material fact is before the Court,
12 LandArizona devotes 108 pages of separate statements of fact, many of which are
13 solely or partially legal arguments, not facts (see ¶¶ 9, 16, 19, 20, 22-23). LandArizona
14 focuses on letters between counsel and other irrelevant banter instead of focusing on
15 the law and the facts needed to support its two Motions for Summary Judgment.

16 LandArizona does not claim that HT4 did not perform the work for which it
17 seeks payment. HT4, through its principal, Rodney Schlesener, testified that HT4
18 performed work that LandArizona's principal, James Kunisch, asked HT4 to perform
19 (the "Pump House Contract work" described below) (See Exhibit 1 to OCSO). His
20 testimony and the contracts between the parties prove that there were separate
21 contracts for four (4) separate scopes of work. LandArizona claims that the work for
22 which it refused payment "is encompassed by the three signed proposals" but never
23 alleges which of those proposals included that work. Mr. Schlesener testified that the
24 fourth contract was a verbal contract for work not included in any of the first three (3)
25 contracts. Accordingly, the Court must hear testimony on that issue before it may rule
26 on LandArizona's defenses.

27 LandArizona also admits that the California form of lien waiver that HT4 signed
28 (see Cal. Civ. Code § 8134 (West)) does not state that HT4 releases its breach of contract

1 and unjust enrichment claims but claims that there was an accord and satisfaction of
2 HT4's claim for the balances due under its contracts with LandArizona. In California,
3 the same language is, by civil code, never to work as an accord and satisfaction.
4 Beyond that, there are obvious factual deficiencies with this claim, as well.

5 LandArizona admits that, after it paid HT4 in full for the first two (2) contracts,
6 it claimed that HT4 was somehow responsible for additional material costs and
7 "offset" amounts due for the third contract (the Pump House Contract) with the
8 amount of those belated claims relating to the first two (2) contracts already paid in
9 full (See Exhibit I to Kunisch Declaration attached to LandArizona's Statement of Facts
10 as Exhibit 1). There are, therefore, no grounds for the Court to find that LandArizona
11 complied with the Prompt Payment Act because that Act prohibits precisely what
12 LandArizona did.

13 Finally, LandArizona claims that HT4 has neither a contract right nor an
14 equitable claim for unjust enrichment "because the parties have a contract, and
15 therefore HT4 has a remedy at law for its allegations . . .". (Motion at 16:8-9). But,
16 LandArizona argues that HT4 does not have a remedy at law because HT4's claim is
17 barred by the terms of one of the three written contracts between the parties. Again,
18 Mr. Schlesener testified that there was a fourth agreement for work and that the work
19 was an entirely separate scope of work just as the first three (3) contracts were for
20 separate scopes of work. Presumably, LandArizona will deny that such a contract
21 exists. Thus, the Court must decide whether LandArizona has been unjustly enriched
22 as a result of the work after resolving several issues of material fact.

23 **II. Facts**

24 While HT4 is an experienced general engineering contractor and holds a
25 General Dual KA Dual Engineering contractor's license, License Number ROC 319426,
26 it is a small company consisting only of Mr. Schlesener. Emma Poeling lives in Safford
27 and assists him with some of the paperwork but, for the most part, Mr. Schlesener
28 handles most all of the construction work and communications with his customers.

1 (OCSOOF ¶ 1).

2 Mr. Schlesener has known James Kunisch for several years. Prior to July of 2023,
3 he learned from Mr. Kunisch that his company, LandArizona/JAK, owned property in
4 Quartzsite (the "Property"). He understood that Mr. Kunisch was developing an RV
5 trailer campground and planned to sell lots within that campground. (OCSOOF ¶ 2).
6 Mr. Kunisch advised HT4 that he needed 350 feet of roadway to the Property, 1500
7 lineal feet of waterline to the Property line and two (2) site pads where he planned to
8 install two (2) RVs as models for prospective purchasers to view. (OCSOOF ¶ 3).

9 Mr. Kunisch told Mr. Schlesener that he wanted to supply some of the materials
10 himself to save money. The roadway required aggregate base course ("AB") and so
11 did the site pads. Mr. Kunisch told Mr. Schlesener to exclude AB from the scope of
12 HT4's work and promised to have it available when HT4 needed it. (OCSOOF ¶ 4). Mr.
13 Kunisch also agreed to have water available at the Property. From dust control to soil
14 and aggregate compaction, the work required an available source of water. Mr.
15 Kunisch told Mr. Schlesener that he had a pumphouse at the Property that would
16 supply the water that HT4 needed. (OCSOOF ¶ 5).

17 Messrs. Kunisch and Schlesener agreed that Tom Smith, a laborer whom
18 LandArizona was using at the Property, would perform certain work for HT4. Mr.
19 Schlesener agreed to track the hours that Mr. Smith worked. Mr. Kunisch agreed to
20 pay Mr. Smith for the hours that he worked for HT4. Both men agreed that the cost of
21 Mr. Smith's labor would be deducted from amounts otherwise due HT4. (OCSOOF ¶
22 6).

23 The parties also agreed to divide the work into three (3) separate contracts and
24 treated each contract as a separate project. HT4 submitted three separate proposals
25 for three separate scopes of work: 1) roadwork to the Property (the "Roadwork
26 Contract"); 2) two (2) site pads (the "Site Pad Contract"); and 3) water line that would
27 supply water to the Property line (the "Waterline Contract"). (OCSOOF ¶ 7). Mr.
28 Kunisch signed all three proposals. They are attached to his Declaration as Exhibits

1 A, B and C. (OCSO § 8).

2 When HT4 arrived at the Property to perform the work, HT4 learned that the
3 pump house was not complete and operational because LandArizona did not yet have
4 the pump ready. LandArizona agreed to pay for the water that HT4 transported from
5 a Quartzsite location where Mr. Kunisch had an account and HT4 agreed to provide
6 the trucks and trailers to haul the water to the Property. Beginning on July 17, 2023
7 through July 31, 2023, HT4 used its trucks and its trailers to travel to the Quartzsite
8 water source, load water and haul it to the Property. (OCSO § 9). For 12 days, Mr.
9 Schlesener had to drive back and forth from Quartzsite to the Property to haul an
10 empty water trailer, pump it full of water and return to the site. (OCSO § 10).

11 The absence of available water and the delays caused by the hours spent
12 pumping and hauling water from the Quartzsite water source to the Property slowed
13 HT4's progress, increased its fuel costs and increased its equipment rental costs.
14 (OCSO § 11). In addition to asking HT4 to haul water for him, Mr. Kunisch asked
15 HT4 to supply a hose for his well site. HT4 purchased one for \$175.00 and left it at the
16 pump house. He also asked HT4 to level the ground around the pump house. It took
17 HT4 one (1) hour to do that and required that HT4 haul material from Mr. Kunisch's
18 friend's house. This work is referred to as the "Pump House Contract" work. (OCSO
19 § 12).

20 On September 12, HT4's laborer, Alonza Zapata, and Mr. Schlesener met with
21 Mr. Kunisch and his wife. Mr. Schlesener told Mr. Kunisch that he had tracked all of
22 the additional costs that HT4 incurred hauling water for him. Both Mr. Kunisch and
23 his wife confirmed their obligation to pay for HT4's time and costs. (OCSO § 13).

24 HT4 performed the roadwork first. Mr. Kunisch inspected its work, was aware
25 of all of the AB used for the road because he purchased it, and paid HT4 in full for the
26 work. His first payment of \$20,000 was made on August 18, 2023. It was an
27 overpayment of the \$18,523.00 owed for the roadwork. (OCSO § 14).

28 HT4 performed the site pad work second. Mr. Kunisch inspected its work, was

1 aware of all of the AB used for the site pads because he purchased it, and paid HT4 in
2 full for the work. On September 16, 2023, he paid \$23,000 which was \$267.30 less than
3 the price for the site pad work. (OCSOOF ¶ 15).

4 HT4 performed the waterline work last. Before HT4 completed that work, HT4
5 submitted Invoice #4 which is attached as Exhibit E to Mr. Kunisch's Declaration to
6 notify him of what would be due for the Waterline work after adjusting the
7 overpayment and underpayment and adding taxes. The title of that invoice was
8 "WATERLINE." It was sent just four (4) days after Mr. Kunisch and Mr. Schlesener
9 discussed the charges that he agreed to pay for the work that he asked HT4 to perform
10 and materials that he asked HT4 to supply relating to the pump house and the need
11 to import water. (OCSOOF ¶ 16).

12 In late September, Mr. Kunisch began accusing HT4 of overcharging him and
13 talking about lien waivers that he wanted Mr. Schlesener to sign. Mr. Schlesener
14 became worried that LandArizona would not pay for the waterline work that HT4 was
15 performing and asked him to provide the form of "conditional waiver and release"
16 that he wanted Mr. Schlesener to sign. That email is attached to Mr. Kunisch's
17 Declaration as Exhibit F. (OCSOOF ¶ 17).

18 In the industry, the project owner generally provides the form of lien waiver
19 that he wants the subcontractors to sign. Mr. Schlesener is not experienced with lien
20 waiver forms, has no training in preparing them and does not have forms to use.
21 Instead, he relies on the project owner to provide the desired form. When asked to
22 sign lien waivers, Mr. Schlesener signs the conditional forms before he receives the
23 check and signs the unconditional forms after the checks clear his bank. (OCSOOF ¶
24 18). Mr. Schlesener has always understood that the lien waiver form follows the
25 contract. If HT4 has three (3) contracts with an owner, there will be separate lien
26 waivers for each contract. (OCSOOF ¶ 19).

27 In the industry, a project owner may not decide to backcharge a contractor after
28 paying the subcontractor in full. Any objections to the contractor's work must be made

1 before final payment. (OCSOOF ¶ 20).

2 On October 4, 2023, Mr. Schlesener signed the Conditional Waiver and Release
3 on Final Payment attached to Mr. Kunisch's Declaration as Exhibit G. When he signed
4 the form, Mr. Schlesener believed that Mr. Kunisch had provided the form to Ms.
5 Poeling and understood that the payment was specific to the Site Pad Contract.
6 (OCSOOF ¶ 21).

7 On October 11, 2023, Mr. Kunisch sent the letter attached to his Declaration as
8 Exhibit I. Even though he had approved and paid for the roadwork nearly two (2)
9 months prior, he accused HT4 of somehow increasing his AB costs. He never provided
10 any documentation of those increased costs and Mr. Schlesener never understood how
11 HT4 could have caused him to spend more on AB than necessary. Mr. Kunisch
12 claimed that HT4 owed him a credit of \$2,457.50 for the roadwork and \$1,497.20 for
13 the site pads that he had approved and paid for, in full, the month prior. Mr. Kunisch
14 also claimed that HT4 owed him \$2,025.00. He deducted all of these amounts from
15 what he owed HT4 for the waterline. (OCSOOF ¶ 22).

16 Mr. Schlesener believes that Mr. Kunisch miscalculated the amount of AB that
17 he needed for the work that HT4 was performing. Mr. Kunisch also believed that the
18 equipment supplier, Empire, had recorded a lien against the Property when it had not.
19 Instead, Empire had served the standard 20-Day Preliminary Notice that contractors
20 have to serve in Arizona to preserve their right to lien. The Notice is not a lien.
21 (OCSOOF ¶ 23).

22 Mr. Schlesener did not believe that the Conditional Waiver and Release form
23 released HT4's right to file a lien for: 1) the amount that Mr. Kunisch deducted from
24 the roadwork contract **after** he had already paid HT4 for it; 2) the amount that Mr.
25 Kunisch deducted from the site work contract **after** he had already paid HT4 for it; or
26 3) the additional work that HT4 had not billed for yet. Mr. Schlesener signed the
27 Conditional Waiver and Release believing that HT4 was waiving its lien rights but
28 only to the extent of the payment on the waterline work. (OCSOOF ¶ 24).

1 On October 16, 2023, HT4 sent its bill for the Pump House work that Mr.
2 Kunisch asked HT4 to perform. That bill is attached to Mr. Kunisch's Declaration as
3 Exhibit M and includes HT4's objection to Mr. Kunisch's belated offset to the
4 Roadwork and Site Pad Work. HT4 also objected to the amount that Mr. Kunisch
5 claims that he paid Mr. Smith. Its records show that the hours that he worked and
6 they calculated out at \$375.00 less than what Mr. Kunisch paid him. That billing shows
7 what was shown on the meters at the Quartzsite water supply, calculates the truck
8 time spent, the two (2) weeks of extra rental time on the equipment, the cost of the
9 pump hose that HT4 supplied and HT4's additional labor costs. In total and with tax,
10 Mr. Schlesener believes that LandArizona owes HT4 \$20,245.70. Mr. Schlesener
11 offered to sign an Unconditional Lien release when HT4 received payment in that
12 amount. (OCSSOF ¶ 25).

13 Mr. Kunisch refused to pay HT4 so, on November 21, 2023, HT4 recorded a
14 \$20,245.70 Mechanics Lien against the Property. (OCSSOF ¶ 26). Mr. Kunisch objected
15 to the Mechanics' Lien, claiming that HT4 could not record it because of the
16 Conditional Waiver and Release that Mr. Schlesener had signed on October 11, 2025.
17 (OCSSOF ¶ 27).

18 Thereafter, Mr. Schlesener learned that the October 11, 2023 Conditional Waiver
19 and Release form was not the form required by Arizona law. HT4 retained an attorney
20 who wrote the May 2, 2024 letter to Mr. Kunisch that is attached to his Declaration as
21 Exhibit R. Because the form does not meet the requirements of Arizona law and
22 because Mr. Schlesener did not believe it to be a waiver of HT4's right to be paid in
23 full for the Roadwork, Site Pad and Pump Work, he refused to release the Mechanics'
24 Lien. (OCSSOF ¶ 28).

25 Mr. Kunisch insisted that HT4 provided the form of Unconditional Waiver and
26 Release. In October of 2024, Mr. Schlesener reviewed his files and worked with his
27 counsel to make a number of phone calls to find out if the lien service or someone else
28 may have given HT4 a form. Ms. Poeling recalled that she may have found the form

1 on the internet. (OCSSOF ¶ 29).

2 While Mr. Schlesener believes that LandArizona, as the owner, is responsible
3 for obtaining the required statutory waiver and release forms for the work that he and
4 other subcontractors perform on the Property, he believed that releasing the lien was
5 the right thing to do because Ms. Poeling had provided the form. Mr. Schlesener was
6 also hopeful that, given that the dispute is a small one-\$20,245.70- Mr. Kunisch may
7 agree to negotiate a settlement if the Mechanics' Lien was released. (OCSSOF ¶ 30).
8 Days later, undersigned counsel was instructed to record the Release of Mechanic's
9 and Materialman's Lien attached as Exhibit 2 to LandArizona's Statement of Facts.
10 (OCSSOF ¶ 31).

11 Unfortunately, Mr. Kunisch insists on further litigating this dispute and on
12 seeking damages from HT4 because it recorded a valid Mechanics' Lien that Mr.
13 Schlesener believed that he had every right to record at the time that he recorded it.
14 (OCSSOF ¶ 32). LandArizona repeatedly states that HT4 "knew" that the Mechanic's
15 Lien was groundless when it neither proves that the Mechanics' Lien was groundless
16 nor provides evidence of what HT4 "knew." Indeed, Mr. Schlesener testified that, at
17 all time, he believed that the Mechanics' Lien was valid because he never signed a
18 form of Arizona lien waiver that stated that he was waiving his rights to lien for any
19 of the work that he performed.

20 **III. LandArizona is Not the Prevailing Party on the Mechanics' Lien Foreclosure**
21 **Claim that HT4 Voluntarily Dismissed**

22 This argument is a duplicate of that asserted in LandArizona's Motion for
23 Summary Judgment on its Counterclaims and has no place in the Motion regarding
24 HT4's claims. HT4 incorporates by reference, the opposition to this argument within
25 its Response to the Motion for Summary Judgment on LandArizona's Counterclaims.

26 **IV. There are Issues of Fact Regarding HT4's Breach of the Oral Contract for the**
27 **Pump House Contract Work**

28 The Pump House Contract was not a change to any of the other three (3)

1 contracts. It involved an entirely separate scope of work related solely to
2 LandArizona's need to obtain water. LandArizona failed to complete the Pump
3 House prior to the commencement of HT4's work and commissioned HT4 to provide
4 that water, purchase the pump hose and level where it sat. (OCSOOF ¶ 9). Mr. Kunisch
5 and his wife agreed to pay for the work. (OCSOOF ¶ 13).

6 LandArizona misquotes *Savoca Masonry Co. v. Homes & Son Const. Co.*, 112 Ariz.
7 392, 395 (1975). That decision is on page 392 of volume 112, not on page 312. More
8 importantly, *Savoca Masonry* has nothing to do with HT4's claim to amounts due for
9 the Pump House Contract. Instead, Savoca held that sufficient mutual understanding
10 as to all the terms of the purported contract did not exist and that, therefore, the
11 subcontractor's bid did not amount to a binding contract with the general contractor.
12 *Id.*

13 **V. There is No Evidence of an Accord and Satisfaction**

14 Recognizing that the California lien waiver form is not binding in Arizona,
15 LandArizona asks the Court to find an accord and satisfaction even though the
16 unenforceable California form upon which it relies not once states that HT4 is waiving
17 its right to payment for work performed. There are four elements to an accord and
18 satisfaction: (1) a proper subject matter; (2) competent parties; (3) an assent or meeting
19 of the minds of the parties; and (4) consideration. *Flagel v. Sw. Clinical Psychiatrists, P.C.*,
20 157 Ariz. 196, 200 (Ct. App. 1988).

21 LandArizona's actions refute any claim to an accord and satisfaction. First,
22 LandArizona paid HT4 in full for the Roadwork Contract and the Site Pad Contract
23 and, **after payment was made**, decided that it had overpaid HT4 on both contracts and
24 short-paid the Waterline Contract. LandArizona never received HT4's assent to its
25 belated offsets against work earlier found to be acceptable.

26 Second, LandArizona took a number of liberties with the amounts due for the
27 Waterline Contract work and never once received HT4's agreement to the discounts
28 claimed. Third, LandArizona had HT4 sign an earlier California form of lien waiver

1 and never once claimed that it amounted to an accord and satisfaction. After signing
2 the first lien waiver, HT4 billed LandArizona for the work performed for the Waterline
3 Contract work and not once did LandArizona argue that HT4's claim had been waived
4 in the first signed California form.

5 Finally, the very language of the California form has been held by California
6 courts not to operate as an accord and satisfaction. The document upon which
7 LandArizona relies expressly limits its application to lien rights and payment bond
8 rights:

9 **NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT**
10 **NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT.**
11 **A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT**
THE CLAIMANT HAS RECEIVED PAYMENT.

12 This language comes from California law which requires:

13 **NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND**
14 **RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND**
15 **RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE**
16 **BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS**
ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE
NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
CONDITIONAL WAIVER AND RELEASE FORM.

17 (emphasis added) Cal. Civ. Code § 8134 (West). By statute, California waiver and
18 releases act as **lien waivers, only**, and do not operate as an accord and satisfaction of
19 the owner's obligation to the contractor. Cal. Civ. Code § 8130 (West). The document
20 upon which LandArizona relies does not include any language that would put HT4
21 on notice that it was waiving its right to collect on the Pump House Contract work,
22 whether through a breach of contract claim or an unjust enrichment claim. Issues of
23 fact abound regarding LandArizona's claim to the contrary.

24 **VI. LandArizona's Post-Final Payment Offsets to the Roadwork Contract and the**
25 **Site Pad Contract Violated the Prompt Pay Act.**

26 The Prompt Pay Act requires that project owners make progress payments to
27 prime contractors within seven (7) days after the date the contractor's billing or
28 estimate is certified and approved (§ 32-1182(D)). Its original goal was to promote

1 timely payments on construction projects to make sure that owners and contractors
2 pay their debts on time. Prompt Pay sets forth a procedure for: 1) billing; 2)
3 approving and disapproving contractor payment applications; and 3) paying
4 contractors. It provides, at subsection (K), that, on final completion of the work, a
5 contractor is to submit a billing for final payment that will be “deemed certified and
6 approved” fourteen (14) days after the owner receives the billing unless, **before that**
7 **time**, the owner issues a written statement detailing the reasons why the billing was
8 not approved. Prompt Pay puts teeth into its provisions at subsection (Q) wherein it
9 states that, if an owner fails to timely pay a contractor without first issuing the required
10 written explanation of the reasons for nonpayment, the owner must pay interest at the
11 rate of 18% per year.

12 LandArizona failed to raise the issue about the amount of AB that it claims to
13 have purchased within fourteen (14) days after it received HT4’s invoices for the
14 Roadwork and Site Pad Contract. It failed to provide any documentation of any of the
15 offsets that it improperly imposed. LandArizona approved HT4’s work and paid for
16 it. Later, it manufactured reasons to take a discount claiming that it had “offsets” for
17 the Roadwork and Site Pad Contracts and shorted HT4 on the Waterline Contract in
18 clear violation of the Prompt Pay Act.

19 LandArizona’s analysis of the Prompt Pay Act appears hopelessly misguided.
20 In violation of Supreme Court Rule 111(c)(1) (setting forth limited circumstances for
21 citation to memorandum decisions, which are not present here), it cites to two (2)
22 unreported cases. LandArizona was not at liberty to pay HT4 and later attempt to
23 “unpay” by offsetting amounts due for the Waterline Contract when LandArizona
24 never objected to any of that work with a “written statement detailing the reasons why
25 the billing was not approved.” In short, there are no facts to support LandArizona’s
26 defenses to the application of the Prompt Pay Act.

27 **VII. There are Issues of Fact that Preclude Summary Judgment on the Unjust**
28 **Enrichment Claim**

1 The rationale for restitutionary relief, stating that restitution through an
2 implied-in-law contract or quasi-contract is available “as a matter of reason and justice
3 from the acts and conduct of the parties and circumstances surrounding the
4 transactions, ... and [is] imposed for the purpose of bringing about justice without
5 reference to the intentions of the parties.” *Murdock-Bryant Const., Inc. v. Pearson*, 146
6 Ariz. 48, 53 (1985). The duty to compensate for unjust enrichment is an obligation
7 implied by law without reference to the intention of the parties. *Id.* An owner that
8 receives a benefit must pay restitution simply because the work performed by the
9 contractor conferred a benefit which equity will not allow him to retain without
10 payment. *Id.* 146 Ariz. at 55.

11 There is no dispute that HT4 supplied the work and materials for which it
12 asserts a right to payment. Rather, LandArizona asserts a number of claims and
13 defense because it does not wish to pay for that work even though it clearly benefitted
14 therefrom. Because of HT4’s work, LandArizona has a functioning roadway to its
15 property, two (2) site pads for RVs, a waterline and an operational pump house
16 complete with a finished grade and pump hose. Nevertheless, LandArizona claims
17 that there are no remedies available to HT4- none in law and none in equity.
18 LandArizona is wrong, by its own admission.

19 First, LandArizona claims that HT4 does not have a contract right to payment
20 because none of the written contracts permit HT4 to recover for the Pump House
21 Contract work that it performed. The absence of a remedy in contract is precisely what
22 an award of restitution is designed to provide. While it is true that a subcontractor
23 may not recover for unjust enrichment if it has a contract with the defendant, it is also
24 true that it may recover from an owner if the owner received a benefit from the
25 subcontractor’s work for which it did not pay. *Advance Leasing & Crane Co., Inc. v. Del*
26 *E. Webb Corp.*, 117 Ariz. 451, 452-53 (App.1977). The crux of HT4’s unjust enrichment
27 claim is that, if the Court finds that there was no contract between HT4 and
28 LandArizona for the Pump House Contract work, HT4 may recover the reasonable

1 value of that work if: 1) LandArizona was benefitted by that work; and 2) it would be
2 unjust for LandArizona to retain that benefit.

3 **VIII. Conclusion**

4 LandArizona's Motion for Summary Judgment is heavy on the rhetoric and
5 light on the facts. It fails to address the Pump House Contract and the work that HT4
6 performed at Mr. Kunisch's request choosing, instead, to find waiver, accord and
7 satisfaction and other excuses for receiving work for which it has not paid HT4. HT4
8 is entitled to bring its claim to this Court for a resolution of the many genuine issues
9 of disputed material facts and to this Court's decision as to whether, under the facts
10 presented, HT4 is entitled to all or some of the relief requested. LandArizona's
11 decision to choose expensive motions that miscite and wrongfully cite to inapposite
12 authorities and ignore and dodge the facts and the law is unfortunate. HT4
13 respectfully requests that the Court deny LandArizona's Motion for Summary
14 Judgment and exercise its discretion under § 12-341.01 to award HT4 is reasonable
15 attorneys' fees and costs.

16 RESPECTFULLY SUBMITTED this 5th day of May, 2025.

17 **WHEELER LAW GROUP, PLLC**

18 /s/ Julianne C. Wheeler
19 Julianne C. Wheeler
20 Attorneys for Plaintiff/Counter-Defendant

21 **ORIGINAL** of the foregoing **e-filed**
22 this 5th day of May, 2025,
23 via TurboCourt with:

24 The Clerk of the Court
25 **LA PAZ COUNTY SUPERIOR COURT**
1316 Kofa Ave., Suite 607
Parker, Arizona 85344

26 **COPY** of the foregoing **e-mailed**
27 this same day, to:
28

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