

III.

Pleading further, Third-Party Defendant would affirmatively show that Plaintiff and/or Third-Party Plaintiff failed to use the degree of care that a reasonably prudent property owner and/or general contractor and/or construction manager would use under the same or similar circumstances, and said failure caused and/or contributed to the occurrence in question.

IV.

Pleading further, Third-Party Defendant would affirmatively show that the occurrence in question was caused, in whole or in part, by the acts and/or omissions of a third party over whom this Third-Party Defendant has no control and for which this Third-Party Defendant has no liability.

V.

Third-Party Defendant reserves the right to submit issues of comparative causation or comparative negligence against the other parties to this lawsuit and any other alleged tortfeasors or settling parties. If Plaintiff and/or Third-Party Plaintiff settles this cause of action with any other party to this lawsuit or any alleged tortfeasors, then this Third-Party Defendant will be entitled to a settlement credit pursuant to the laws of the State of Texas.

VI.

Pleading further, Third-Party Defendant would show that in the event of recovery of damages from Third-Party Defendant in this case, any award of pre- and/or post-judgment interest is limited by the provisions of §§ 304.103, 304.1045 and 304.003 of the Texas Finance Code.

VII.

Pleading further, Third-Party Defendant would show that Plaintiff and/or Third-Party Defendant is barred from recovery for failure to mitigate its damages or losses, if any.

VIII.

Pleading further, Third-Party Defendant asserts it substantially performed under any applicable contract.

IX.

Third-Party Defendant would further show that Plaintiff's and/or Third-Party Plaintiff's damages were caused by a new and independent cause not reasonably foreseeable by Third-Party Defendant. Such new and independent cause became the immediate and efficient cause of injury. Any acts or omissions alleged by Plaintiff and/or Third-Party Plaintiff as to Third-Party Defendant, if any, are wholly remote and non-causative of Plaintiff's and/or Third-Party Plaintiff's damages.

X.

Pleading further, Third Party Defendant asserts Plaintiff's and/or Third-Party Plaintiff's causes of action are barred by the economic loss rule and commercial loss doctrines.

XI.

Plaintiff and/or Third-Party Plaintiff requested, directed, inspected, approved, and accepted the work performed by Third Party Defendant. Plaintiff and/or Third-Party Plaintiff did not reject any of the work performed by Third Party Defendant. Plaintiff and/or Third-Party Plaintiff are bound by those actions.

XII.

Plaintiff's and/or Third-Party Plaintiff's alleged damages were caused by events and/or conditions beyond the scope of Third Party Defendant's control.

XIII.

All goods and/or services provided by Third Party Defendant complied with the Project designs, specifications, manufacturer and industry standards.

XIV.

Pleading further, Third Party Defendant would show that Plaintiff's and/or Third-Party Plaintiff's claims are barred by the Parol Evidence Rule.

XV.

Pleading further, Plaintiff and/or Third-Party Plaintiff cannot establish a causal relationship between Third Party Defendant's performance and the events and circumstances upon which Plaintiff and/or Third Party Plaintiff base their claims and alleged damages, if any.

XVI.

Plaintiff's and/or Third-Party Plaintiff's alleged damages, in whole or in part, constitute improvements or betterments that exceed the scope of Third Party Defendant's work, for which Plaintiff and/or Third Party Plaintiff cannot recover.

XVII.

Pleading further, Third Party Defendant would plead failure to comply with all conditions precedent.

XVIII.

Third Party Defendant pleads that Plaintiff and/or Third-Party Plaintiff and their representatives or agents had the full opportunity to inspect the work at issue before accepting it, and then voluntarily approved, accepted, and paid for the work performed by Third Party Defendant. Plaintiff and/or Third-Party Plaintiff are therefore barred, estopped, and/or have waived their right to assert claims or seek damages against Third-Party Defendant.

XIX.

In the unlikely event the trier of fact finds in favor of Plaintiff and/or Third-Party Plaintiff and awards monetary damages, Third Party Defendant specially reserves any and all rights it has for contribution against third persons, both parties and non-parties, and reserves its rights and remedies under Chapters 32 and 33 of the Texas Civil Practice and Remedies Code.

XX.

Pleading further, Third Party Defendant would show that Plaintiff's and/or Third-Party Plaintiff's claims and alleged damages are barred by the applicable statutes of limitations and/or repose.

XXI.

Pleading further, Third Party Defendant would show that the claim for breach of contract asserted against it by Third Party Plaintiff is barred by the doctrine of accord and satisfaction.

XXII.

Pleading further, Third Party Defendant would show that Third Party Plaintiff's claims are barred, in whole or in part, by the doctrines of ratification and release.

XXIII.

Third-Party Defendant would further show that pre-existing and/or subsequent site conditions are the proximate cause or causes of the damages about which Plaintiff and/or Third - Party Plaintiff complains.

XXIV.

Third-Party Defendant would further show that its conduct, goods and/or services provided on the subject project conformed to the applicable plans, specifications, contract documents, express and/or implied warranties, standards of care, and/or industry standards. Third-Party Defendant denies committing any act, omission or breach of contract that would create any liability for any claims asserted by Plaintiff and/or Third-Party Plaintiff, or any counterclaims or cross-claims asserted by any other party against Third Party Defendant.

XXV.

Third-Party Defendant would further show that Third-Party Plaintiff is not entitled to the recovery of attorney's fees under Texas Civil Practice & Remedies Code §37.009, or under any other statute, court rule, or contractual agreement.

XXVI.

Third-Party Defendant further pleads the affirmative defense of the economic waste doctrine.

XXVII.

Third Party Defendant further pleads that Plaintiff's and/or Third-Party Plaintiff's damages, if any, are limited by the One Satisfaction Rule.

XXVIII.

Pleading further and, in the alternative, Third Party Defendant asserts that Plaintiff and/or Third-Party Plaintiff should be made to elect between remedies (and damages) in the event of favorable findings for them on more than one cause of action.

XXIX.

Pleading further and, in the alternative, Third Party Defendant would show that it owed no legal duty to Plaintiff and/or Third-Party Plaintiff under these facts, has not breached any alleged duty, and is not the legal cause of Plaintiff's and/or Third Party Plaintiff's alleged damages.

XXX.

Third Party Defendant would show that Plaintiff's and/or Third-Party Plaintiff's damages, if any, do not include costs of litigation consultants and/or experts.

XXXI.

Pleading further, Plaintiff's and/or Third Party Plaintiff's claims and damages, if any, are barred, in whole or part, due to the acceptance and adoption of the goods and/or services provided by Third Party Defendant by Plaintiff and/or Third Party Plaintiff and subsequent contractors and/or the acceptance and adoption of the goods and/or services provided by Third Party Defendant by engineers, architects and/or owners on the Project.

XXXII.

Plaintiff and/or Third-Party Plaintiff are not entitled to recover attorneys' fees because Plaintiff and/or Third-Party Plaintiff have not provided proper notice of their claims pursuant to Chapter 38 of the Texas Civil Practice & Remedies Code.

XXXIII.

Plaintiff and/or Third-Party Plaintiff's claims and alleged damages are barred as a result of their failure to comply with all applicable product and/or manufacturer warranties and/or instructions.

XXXIV.

Pleading further, Third Party Defendant would show it is not liable for Plaintiff's and/or Third-Party Plaintiff's alleged damages as said damages were not reasonably foreseeable, and therefore too remote or speculative with respect to any conduct or action on the part of Third Party Defendant.

XXXV.

Third Party Defendant incorporates by reference herein for all purposes any and all defenses asserted by any other party.

XXXVI.

Third Party Defendant hereby gives notice that it intends to rely upon such other defenses, denials, or cross and/or counter actions as may become available or known through discovery, investigation or otherwise, and reserves the right to amend its Answer to assert such matters.

WHEREFORE, PREMISES CONSIDERED, Third-Party Defendant Custom Floors Unlimited, Inc. prays that upon final trial and hearing hereof that no recovery be had from it, that it go hence without delay and recover its costs, and for such other and further relief to which it may be justly entitled and will ever pray.

[SIGNATURE ON NEXT PAGE]

Respectfully submitted,

WALTERS, BALIDO & CRAIN, LLP

By /s/ Jerry L. Ewing

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**ATTORNEYS FOR THIRD PARTY DEFENDANT
CUSTOM FLOORS UNLIMITED, INC.**

CERTIFICATE OF SERVICE

This is to certify that on this 7th day of September 2023, a true and correct copy of the foregoing was served upon all counsel of record in accordance with the TEXAS RULES OF CIVIL PROCEDURE.

/s/ Jerry L. Ewing

JERRY L. EWING

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Filing Code Description: Answer/ Response / Waiver

Filing Description: Original Answer - Custom Floors

Status as of 9/7/2023 4:36 PM CST

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