

CAUSE NO. 2022-05493

**CHARLES R. MARTIN &
ASSOCIATES, LTD.,**

Plaintiff

v.

**ACERO BELLA, INC., ACE SCAPES,
INC., ALKUSARI STONE OF
HOUSTON, INC., ET AL.**

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

190TH JUDICIAL DISTRICT

DEFENDANT, DORO UNIQUE FLOORING, INC.’S
FIRST AMENDED ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Doro Unique Flooring, Inc., a “Defendant” in above entitled and numbered cause, and files this its First Amended Answer, and in support thereof would respectfully show this Honorable Court the following:

I. GENERAL DENIAL

1. Defendant denies generally and specially each and all of the allegations contained in Plaintiff’s Original Petition on file herein and demands strict proof thereof.

II. AFFIRMATIVE AND OTHER DEFENSES

2. Defendant pleads the defense of proportionate responsibility pursuant to Chapter 33 of the Texas Civil Practice and Remedies Code and states that Plaintiff’s alleged damages, if any, were caused in whole or in part by the acts and omissions, comparative negligence, and/or contributory negligence of Plaintiff, and other parties relating to the project now made the basis of this lawsuit.

3. Defendant further pleads that the damages alleged in Plaintiff's Petition were proximately and solely caused by the negligence of third-parties, including but not limited to Plaintiff, as well as other defendants in this case whom this Defendant has not, and cannot, exercise control over.

4. Defendant alleges that Plaintiff's own acts or omissions caused or contributed to its alleged damages, if any.

5. Defendant further pleads that Defendant was not an actual producing cause to any alleged damages or injuries alleged by Plaintiff.

6. Defendant further pleads that Plaintiff's claims are barred in whole or in part because Plaintiff cannot meet its burden of proving that the alleged damages at issue were proximately caused by the alleged actions of Defendant.

7. Defendant further pleads that Plaintiff's damages, if any, are limited by the economic waste doctrine.

8. Defendant further pleads that the economic loss rule limits Plaintiff's recovery of damages, if any, because said alleged damages arise from contract rather than tort.

9. Defendant further pleads that Plaintiff, failed to mitigate its alleged damages, if any, by failing to exercise reasonable care and diligence to avoid loss that are the subject of this lawsuit.

10. Defendant further pleads that Plaintiff's claims and causes of action are barred by the applicable statute of limitations.

11. Defendant pleads the "independent contractor rule" as a defense regarding Plaintiff's claims and causes of action and the event made the basis of this lawsuit.

12. Defendant pleads the "one satisfaction rule" whereby there may be no double recovery for a single injury.

13. Defendant further pleads that Plaintiff's claims and causes of action are barred by the equitable doctrines of laches, waiver, collateral estoppel, estoppel, and quasi-estoppel.

14. Defendant further pleads that Plaintiff and other third-parties retained by Plaintiff have made changes, alterations, and/or modifications to the work performed by Defendant, and said conduct discharges Defendant from any liability to Plaintiff or other defendants.

15. Failure of Contract: Defendant says that if any contracts, obligations or agreements as alleged in the complaint have been entered into, any duty or performance of this answering Defendant is excused by reason of failure of consideration, waiver, breach of condition precedent, breach by Plaintiff, impossibility of performance, prevention by Plaintiff, frustration of purpose and/or acceptance by Plaintiff.

16. Adhesion: Defendant says that any purported contracts were contracts of adhesion and any ambiguities in the terms and condition of said contract must be resolved against Plaintiff and in favor of this answering Defendant.

17. Discharge: Defendant says that Plaintiff and other persons and entities retained by Plaintiff, have made changes, alterations, and/or modifications to the work performed by this answering Defendant, which conduct discharges Defendant from any liability.

18. Termination: Defendant alleges that any and all express indemnity clauses contained in the contract(s) at issue, by the express language contained therein, did not survive the termination of the contract(s); and that this answering Defendant completed the work called for in the contract(s), and that said contract(s) were not intended to impose liability for damage occurring after the work under the contract(s) were completed.

19. Offset/Credit: Third-Party Defendant claims offset and credit for all settlement monies paid to Defendant/Third-Party Plaintiff, if any.

III. PAID OR INCURRED

20. Defendant asks that evidence concerning economic damages be limited to the amount actually paid or incurred by or on behalf of Plaintiff, in compliance with Texas Civil Practice & Remedies Code §41.0105.

IV. ATTORNEYS FEES

21. Defendant further pleads that the award of attorney's fees to Plaintiff, if any, that Plaintiff alleges it is owed, must be reasonable in accordance with the requirements of Chapter 38 of the Texas Civil Practice and Remedies Code.

V. INTEREST

23. Subject to, and without waiving, Defendant's general denial and affirmative defenses, Defendant pleads that provisions of Texas Finance Code Chapter 304 limit and restrict the recovery of pre-judgment and post-judgment interest sought by Plaintiff.

VI. RULES 193.7 NOTICE

24. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendant hereby give actual notice to Plaintiff and all other defendants that any and all documents produced may be used against them as the parties producing the documents at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents. *See* Tex. R. Civ. P. 193.7.

VII. SUPPLEMENT/AMEND

25. Defendant specifically reserves the right to supplement or amend this Answer and assert such other and additional defenses, denials, counterclaims, cross-claims and/or third-party claims as may be warranted by discovery in accordance with the Texas Rule of Civil Procedure 92.

VIII. JURY DEMAND

26. Third-Party Defendant hereby demand a trial by jury and tender the appropriate fee.

VIX. PRAYER

27. For the above stated reasons, Defendant, Doro Unique Flooring, Inc., prays that Plaintiff Charles R. Martin & Associates, Ltd., takes nothing by this suit and that Defendant recovers its costs herein. Defendant further prays for such other and further relief, general and special, at law and/or in equity, to which it is justly entitled.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Ann E. Knight

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**ATTORNEYS FOR DEFENDANT
DORO UNIQUE FLOORING, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on each attorney of record in accordance with the Texas Rules of Civil Procedure on this the 3rd day of October, 2022.

/s/ Ann E. Knight

Ann E. Knight

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