

**ORIGINAL**

FILED  
COURT OF CLAIMS  
OF OHIO

2013 AUG 20 PM 3: 12

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING COMPANY  
INC.,

Plaintiff,

v.

Case No. 2013-00349

OHIO SCHOOL FACILITIES  
COMMISSION,  
nka Ohio Facilities Construction Commission

Defendant.

ANSWER AND COUNTERCLAIM

Now comes the Defendant, the Ohio School Facilities Commission (nka Ohio Facilities Construction Commission (“OFCC”) per complaint by and through counsel, and for its Answer to Plaintiff’s Amended Complaint, states the following:

FIRST DEFENSE

1. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 1 of Plaintiff’s Amended Complaint and therefore denies the same.

2. Defendant denies the allegations in Paragraph 2 of Plaintiff’s Amended Complaint as they call for legal conclusions.

3-4. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraphs 3 and 4 of Plaintiff’s Amended Complaint and therefore denies the same.

**ON COMPUTER**

5-6. Defendant denies the allegations in Paragraphs 5 and 6 of Plaintiff's Amended Complaint as they call for legal conclusions.

7-9. Defendant admits the allegations set forth in Paragraphs 7, 8, and 9 of Plaintiff's Amended Complaint.

10. Defendant denies the allegations set forth in Paragraph 10 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

11-12. Defendant admits the allegations set forth in Paragraphs 11 and 12 of Plaintiff's Amended Complaint.

13. Defendant denies the allegations set forth in Paragraph 13 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

14. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 14 of Plaintiff's Amended Complaint and therefore denies the same.

15-16. Defendant denies the allegations set forth in Paragraphs 15 and 16 of Plaintiff's Amended Complaint.

17. Defendant admits the allegations set forth in Paragraph 17 of Plaintiff's Amended Complaint.

18. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 18 of Plaintiff's Amended Complaint and therefore denies the same.

19-21. Defendant denies the allegations set forth in Paragraphs 19, 20, and 21 of Plaintiff's Amended Complaint as they call for legal conclusions.

22. Defendant denies the allegations set forth in Paragraph 22 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

23. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 23 of Plaintiff's Amended Complaint and therefore denies the same.

24. Defendant denies the allegations set forth in Paragraph 24 of Plaintiff's Amended Complaint as they call for legal conclusions.

25. Defendant denies the allegations set forth in Paragraph 25 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

26. Defendant denies the allegations set forth in Paragraph 26 of Plaintiff's Amended Complaint as they call for legal conclusions.

27. Defendant denies the allegations set forth in Paragraph 27 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

28. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 28 of Plaintiff's Amended Complaint and therefore denies the same.

29. Defendant denies the allegations set forth in Paragraph 29 of Plaintiff's Amended Complaint.

30. Defendant denies the allegations set forth in Paragraph 30 of Plaintiff's Amended Complaint.

31. Defendant denies the allegations set forth in Paragraph 31 of Plaintiff's Amended Complaint.

32. Defendant denies the allegations set forth in Paragraph 32 of Plaintiff's Amended Complaint.

33-34. Defendant denies the allegations set forth in Paragraphs 33 and 34 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegations, has not attached the source documents, and/or has only partially referenced the documents.

35. Defendant admits the allegations set forth in Paragraph 35 of Plaintiff's Amended Complaint.

36. Defendant denies the allegations set forth in Paragraph 36 of Plaintiff's Amended Complaint.

37-40. Defendant denies the allegations set forth in Paragraphs 37, 38, 39, and 40 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegations, has not attached the source documents, and/or has only partially referenced the documents.

41. Defendant denies the allegations set forth in Paragraph 41 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

42. Defendant denies the allegations set forth in Paragraph 42 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

43. Defendant denies the allegations set forth in Paragraph 43 of Plaintiff's Amended Complaint.

44-45. Defendant denies the allegations set forth in Paragraphs 44 and 45 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegations, has not attached the source documents, and/or has only partially referenced the documents.

46. Defendant denies the allegations set forth in Paragraph 46 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

47-48. Defendant admits the allegations set forth in Paragraphs 47 and 48 of Plaintiff's Amended Complaint.

49-50. Defendant denies the allegations set forth in Paragraphs 49 and 50 of Plaintiff's Amended Complaint.

51. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 51 of Plaintiff's Amended Complaint and therefore denies the same.

52. Defendant denies the allegations set forth in Paragraph 52 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegation, has not attached the source document, and/or has only partially referenced the document.

53. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 53 of Plaintiff's Amended Complaint and therefore denies the same.

54. Defendant denies the allegations set forth in Paragraph 54 of Plaintiff's Amended Complaint.

55. Defendant denies the allegations set forth in Paragraph 55 of Plaintiff's Amended Complaint.

56. Defendant denies the allegations set forth in Paragraph 56 of Plaintiff's Amended Complaint.

57. Defendant denies the allegations set forth in Paragraph 57 of Plaintiff's Amended Complaint.

58. Defendant denies the allegations set forth in Paragraph 58 of Plaintiff's Amended Complaint as they call for legal conclusions.

59. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

60. Defendant denies the allegations set forth in Paragraph 60 of Plaintiff's Amended Complaint as they call for legal conclusions.

61-64. Defendant denies the allegations set forth in Paragraphs 61, 62, 63, and 64 of Plaintiff's Amended Complaint.

65. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

66. Defendant denies the allegations set forth in Paragraph 66 of Plaintiff's Amended Complaint as they call for legal conclusions.

67-68. Defendant denies the allegations set forth in Paragraphs 67 and 68 of Plaintiff's Amended Complaint.

69. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

70. Defendant denies the allegations set forth in Paragraph 70 of Plaintiff's Amended Complaint as they call for legal conclusions.

71-72. Defendant denies the allegations set forth in Paragraphs 71 and 72 of Plaintiff's Amended Complaint.

73. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

74-75. Defendant denies the allegations set forth in Paragraphs 74 and 75 of Plaintiff's Amended Complaint.

76. Defendant denies the allegations set forth in Paragraph 76 of Plaintiff's Amended Complaint as they call for legal conclusions.

77-78. Defendant denies the allegations set forth in Paragraphs 77 and 78 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to the allegations, has not attached the source documents, and/or has only partially referenced the documents.

79-80. Defendant denies the allegations set forth in Paragraphs 79 and 80 of Plaintiff's Amended Complaint.

81-82. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraphs 81 and 82 of Plaintiff's Amended Complaint and therefore denies the same.

83. Defendant denies the allegations set forth in Paragraph 83 of Plaintiff's Amended Complaint as they call for legal conclusions.

84. Defendant denies the allegations set forth in Paragraph 84 of Plaintiff's Amended Complaint.

85. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

86-87. Defendant denies the allegations set forth in Paragraphs 86 and 87 of Plaintiff's Amended Complaint.

88-89. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraphs 88 and 89 of Plaintiff's Amended Complaint and therefore denies the same.

90. Defendant denies the allegations set forth in Paragraph 90 of Plaintiff's Amended Complaint as they call for legal conclusions.

91-92. Defendant denies the allegations set forth in Paragraphs 91 and 92 of Plaintiff's Amended Complaint.

93. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

94. Defendant denies the allegations set forth in Paragraph 94 of Plaintiff's Amended Complaint for lack of knowledge, as Plaintiff has not provided the context to

the allegation, has not attached the source document, and/or has only partially referenced the document.

95-97. Defendant denies the allegations set forth in Paragraphs 95, 96, and 97 of Plaintiff's Amended Complaint.

98. Defendant denies the allegations set forth in Paragraph 98 of Plaintiff's Amended Complaint as they call for legal conclusions.

99. Defendant denies the allegations set forth in Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendant denies the allegations set forth in Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendant is without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in Paragraph 101 of Plaintiff's Amended Complaint and therefore denies the same.

102. Defendant denies the allegations set forth in Paragraph 102 of Plaintiff's Amended Complaint.

103. Defendant restates the responses set forth in the preceding Paragraphs of this Answer as if fully rewritten.

104. Defendant denies the allegations set forth in Paragraph 104 of Plaintiff's Amended Complaint as they call for legal conclusions.

105. Defendant denies the allegations set forth in Paragraph 105 of Plaintiff's Amended Complaint as they call for legal conclusions.

106. Defendant denies the allegations set forth in Paragraph 106 of Plaintiff's Amended Complaint.

107. Defendant denies the allegations set forth in Paragraph 107 of Plaintiff's Amended Complaint.

108. Defendant denies the allegations set forth in Paragraph 108 of Plaintiff's Amended Complaint.

#### SECOND DEFENSE

109. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

#### THIRD DEFENSE

110. Plaintiff's Amended Complaint is beyond the statute of limitations.

#### FOURTH DEFENSE

111. The damages alleged in Plaintiff's Amended Complaint were not caused by the Defendant.

#### FIFTH DEFENSE

112. Plaintiff failed to provide the statutorily and contractually mandated notice and presentation of its claim.

#### COUNTERCLAIM

Now comes the Defendant, the State of Ohio, by and through the Ohio School Facilities Commission (OSFC) which brings this counterclaim against Plaintiff.

1. Plaintiff breached its contract in this case, in the following, but not limited to, ways:

- a. Performing defective work.
- b. Delaying project completion.
- c. Exceeding project budget.
- d. Impacting other contractors.

2. As a direct and proximate cause of this breach, the State of Ohio, by and through the OSFC has been damaged in the following, but not limited to, ways:

- a. Correcting defective work.
- b. Increased operating costs.
- c. Increased A/E and C/M fees and costs.
- d. Paying claims of other contractors due to Plaintiff's impacts.

WHEREFORE, Defendant, the State of Ohio, by and through the OSFC, seeks from the Plaintiff, by way of its counterclaim, damages in excess of \$25,000.00, pre and post judgment interest, attorney fees, costs, and any other damages, fees and costs recognized by law.

FURTHER, Defendant having fully answered Plaintiff's Amended Complaint, respectfully requests that this Court dismiss the Amended Complaint in its entirety at Plaintiff's costs.

Respectfully submitted,

MIKE DEWINE  
Attorney General of Ohio

*wcBecker*

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(614) 466-7447

COUNSEL FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Defendant's Answer and Counterclaim was sent by regular U.S. mail, postage prepaid, this 20 day of August, 2013 to:

Donald W. Gregory  
Michael J. Madigan  
Kegler Brown Hill & Ritter Co., LPA  
65 East State Street, Suite 1800  
Columbus, Ohio 43215



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WILLIAM C. BECKER  
Assistant Attorney General