

ORIGINAL

IN THE COURT OF CLAIMS
STATE OF OHIO

2014 NOV 26 AM 10: 52

**GRAND VALLEY LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION,
et al.**

Plaintiffs,

v.

**BUEHRER GROUP ARCHITECTURE
& ENGINEERING, INC., et al.**

Defendants.

) **CASE NO. 2014-00469**

) **JUDGE PATRICK M. MCGRATH**

) **THIRD-PARTY ANSWER OF**
) **J. WILLIAM PUSTELAK, INC. TO**
) **THIRD-PARTY COMPLAINT OF**
) **DEFENDANT JACK GIBSON**
) **CONSTRUCTION CO.**

Now comes J. William Pustelak, Inc. ("Pustelak"), by and through undersigned counsel, and for its Third-Party Answer to the Third-Party Complaint of Jack Gibson Construction Co. states as follows:

Facts Common to All Claims

1-2. Denies for want of knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2 of the Third-Party complaint.

3. Admits that Pustelak was a for-profit corporation organized and existing under the laws of the State of Pennsylvania but is now a defunct corporation in bankruptcy.

4. Denies for want to knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5-6. Admits the allegations contained in Paragraphs 5 and 6 of the Third-Party Complaint.

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7. Admits that Pustelak entered into a contract with Third-Party Plaintiff, but denies as specifically stated the remaining allegations contained in Paragraph 7 of the Third-Party Complaint.

8-11. Admits the allegations contained in Paragraphs 8 through 11, inclusive, of the Third-Party Complaint.

12. Admits that the agreement entered into between Pustelak and Third-Party Plaintiff contained some general terms and conditions, but denies as specifically stated the remaining allegations and all subparts contained in Paragraph 12 of the Third-Party Complaint.

13. Denies the allegations contained in Paragraph 13 of the Third-Party Complaint.

14. Paragraph 14 of the Third-Party Complaint does not require a response from this answering Defendant and therefore it is denied.

**Claim One
Breach of Contract**

15. Answering Paragraph 15 of the Third-Party Complaint this answering Defendant realleges and incorporates its previous admissions and denials as if fully rewritten herein.

16. Denies the allegations contained in Paragraph 16 of the Third-Party Complaint.

17. Admits the allegations contained in Paragraph 17 of the Third-Party Complaint.

18-19. Denies the allegations contained in Paragraphs 18 and 19 of the Third-Party Complaint.

**Claim Two
(Negligence)**

20. Answering Paragraph 20 of the Third-Party Complaint, this answering Defendant realleges and incorporates its previous admissions and denials as if fully rewritten herein.

21. Admits the allegations contained in Paragraph 21 of the Third-Party Complaint.

22. Denies the allegations contained in Paragraph 22 of the Third-Party Complaint.

**Claim Three
Indemnity**

23. Answering Paragraph 23 of the Third-Party Complaint, this answering Defendant realleges and incorporates its previous admissions and denials as if fully rewritten herein.

24-25. Denies the allegations contained in Paragraphs 24 and 25 of the Third-Party Complaint.

**Claim Four
Contribution**

26. Answering Paragraph 26 of the Third-Party Complaint, this answering Defendant realleges and incorporates its previous admissions and denials as if fully rewritten herein.

27-28. Denies the allegations contained in Paragraphs 27 and 28 of the Third-Party Complaint.

**Claim Five
Breach of Express and Implied Warranties**

29. Answering Paragraph 29 of the Third-Party Complaint, this answering Defendant realleges and incorporates its previous admissions and denials as if fully rewritten herein.

30-32. Denies the allegations contained in Paragraphs 30 through 32, inclusive, of the Third-Party Complaint.

33. Denies each and every allegation contained in the Complaint, save and except those expressly admitted herein to be true.

Further and Additional Defenses

1. The Third-Party Complaint fails to state a claim upon which relief can be granted against this answering Defendant.

2. Superseding and intervening causes.
3. To the extent that any entities sustained damages, if any, those damages were caused or contributed to by the action or inaction of others over whom this answering Defendant had no control, jurisdiction, or right to control.
4. To the extent that others have suffered damages, they have failed to mitigate their alleged damages.
5. The comparative and/or contributory negligence of others over whom this answering Defendant had no control, jurisdiction, or right to control was the direct and proximate result of any damages, if any.
6. Third-Party Plaintiff has failed to join all necessary and indispensable parties to this action.
7. This answering Defendant is entitled to a set-off of any such funds recovered from other parties.
8. To the extent that Third-Party Plaintiff or others have failed to preserve evidence in this matter, such evidence has been spoliated to the prejudice of this answering Defendant.
9. To the extent that the defenses or doctrines of waiver, estoppel, set-off, accord and satisfaction, acquiescence, compromise and settlement, release, statute of frauds, substantial performance, avoidable consequences, res judicata, statute of limitations, and mistakes are applicable any relief to which Third-Party Plaintiff or others might otherwise be entitled, which entitlement is denied, is barred or limited thereby.
10. Third-Party Plaintiff's claims are barred by the doctrine of laches.

11. This answering Defendant had no responsibility for the roofing system, and therefore any water infiltration "related to improper installation of the roofing system" is not the responsibility of this answering Defendant.

12. Third-Party Plaintiff's claim for contractual indemnity is barred as against public policy.

13. To the extent that this answering Defendant's work has been changed, modified, altered, repaired or in any way changed, this answering Defendant is not responsible for the results of any such change, modification, alteration or repair.

14. To the extent that any alleged defects are the result of improper maintenance, such defects are not the responsibility of this answering Defendant.

15. This answering Defendant was denied an opportunity to reasonably cure any alleged errors or defects, which errors and defects are expressly denied, and therefore Third-Party Plaintiff's claims are barred.

16. At all times this answering Defendant performed its contractual obligations in accordance with the contract documents, as amended and modified.

17. Any alleged damages are the direct and proximate result of Third-Party Plaintiff's own failure to properly supervise and coordinate the work in question.

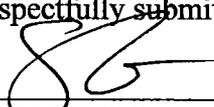
18. This answering Defendant expressly reserves the right to amend and supplement its defenses herein, to assert additional defenses upon completion and further investigation in discovery.

Wherefore, having fully answered the Third-Party Complaint, this answering Defendant prays as follows:

1. That the Third-Party Complaint be dismissed with prejudice;
2. That judgment be entered in favor of this answering Defendant;

3. That this answering Defendant be permitted to recover its costs, fees, and attorney fees; and
4. That this answering Defendant be awarded all other relief that is just and equitable.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014 a copy of the foregoing served via First Class U.S. Mail on the following:

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PLEASE RESPOND TO CLEVELAND OFFICE

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November 25, 2014

Ohio Judicial Center
Court of Claims
65 South Front Street
Third Floor
Columbus, Ohio 43215

2014 NOV 26 AM 10:52

FILED
COURT OF CLAIMS
OF OHIO

Re: **Grand Valley Local School District Board of Education, et al. v.
Buehrer Group Architecture & Engineering, Inc., et al.**
Court of Claims
Case No. 2014-00469 PR
Our File No. 96106-123498

Clerk:

Enclosed for filing please find *Third-Party Answer of J. William Pustekak, Inc. to Third-Party Complaint of Defendant Jack Gibson Construction*. Please return a date stamped copy in the attached self addressed stamped envelope. Thank you for your assistance.

Very truly yours,

P. Kohl Schneider

P. Kohl Scheider
PKS/cmp
Enclosure

cc: All counsel

