

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

2015 APR -3 AM 10:43

IN THE COURT OF CLAIMS OF OHIO

TRANSAMERICA BUILDING)
COMPANY, INC.,)

Plaintiff,)

v.)

OHIO SCHOOL FACILITIES)
COMMISSION,)

Defendant/Third-Party)
Plaintiff,)

v.)

STEED HAMMOND PAUL, INC. d/b/a)
SHP LEADING DESIGN,)

Third-Party Defendant,)

and)

LEND LEASE (US) CONSTRUCTION,)
INC.,)

Third-Party Defendant/)
Third-Party (Fourth-Party))
Plaintiff,)

v.)

G. STEPHENS, INC.,)

Third-Party (Fourth-Party))
Defendant.)

CASE NO. ²⁰¹³~~2014~~-00349

REFEREE SAMUEL WAMPLER

**SEPARATE ANSWER OF FOURTH-PARTY DEFENDANT G. STEPHENS, INC. TO
THE COMPLAINT OF THIRD-PARTY DEFENDANT/FOURTH-PARTY PLAINTIFF
LEND LEASE (US) CONSTRUCTION, INC.**

(Jury Demand Endorsed Hereon)

Now comes Fourth-Party Defendant G. Stephens, Inc., by and through counsel, and in answer to the Complaint against it, states as follows:

FIRST DEFENSE

1. In response to the allegations set forth in Paragraph 1 of the Fourth-Party Complaint, G. Stephens, Inc. admits that it is a company licensed to do business in the State of Ohio, but denies all remaining allegations set forth in Paragraph 1 of the Fourth-Party Complaint, as stated.

2. G. Stephens, Inc. denies the allegations set forth in Paragraph 2 of the Fourth-Party Complaint as it lacks information or knowledge sufficient to form a belief as to their truth or falsity.

3. G. Stephens, Inc. denies the allegations set forth in Paragraph 2 of the Fourth-Party Complaint as it lacks information or knowledge sufficient to form a belief as to their truth or falsity.

4. In response to Paragraph 4 of the Fourth-Party Complaint, G. Stephens, Inc. admits entering into a Subconsultant Agreement with Bovis Lend Lease, Inc., effective April 26, 2010, attached as Exhibit A. G. Stephens, Inc states that the written contract speaks for itself, and denies any allegations set forth in Paragraph 4 of the Fourth-Party Complaint inconsistent with the exhibit attached hereto. Further, to the extent that Fourth-Party Plaintiff alleges that it is a successor or other assignee of the contract attached hereto, G. Stephens, Inc explicitly denies such an allegation.

5. In response to Paragraph 5 of the Fourth-Party Complaint, G. Stephens, Inc. admits that it provided services in accordance with the contract attached as Exhibit A hereto, and

denies any remaining allegations set forth in Paragraph 5 of the Fourth-Party Complaint inconsistent with such contract.

6. G. Stephens, Inc. denies all allegations set forth in Paragraph 6 of the Fourth-Party Complaint.

7. In response to the allegations set forth in Paragraph 7 of the Fourth-Party Complaint, G. Stephens, Inc. states that the contract speaks for itself, and denies any remaining allegations inconsistent with the language of said contract. Furthermore, G. Stephens, Inc. states that some or all actions and/or omissions alleged by Plaintiff and Third-Party Plaintiff as against Fourth-Party Plaintiff constitute professional obligations as described in Paragraph 4 of the contract attached hereto.

8. In response to the allegations set forth in Paragraph 8 of the Fourth-Party Complaint, G. Stephens, Inc. acknowledges that Fourth-Party Plaintiff denies liability to Third-Party Plaintiff, and denies all remaining allegations set forth in Paragraph 8 of the Fourth-Party Complaint.

9. G. Stephens, Inc. denies all allegations set forth in Paragraph 9 of the Fourth-Party Complaint.

10. G. Stephens, Inc. restates and reavers Paragraphs 1 through 9 of its Answer to the Fourth-Party Complaint as if fully rewritten herein.

11. In response to Paragraph 11 of the Fourth-Party Complaint, G. Stephens, Inc. denies that it breached its Subconsultant Agreement, and denies that it failed to conform to a professional standard of care. G. Stephens, Inc. denies all remaining allegations set forth in Paragraph 11 of the Fourth-Party Complaint as speculative and premature.

12. G. Stephens, Inc denies all allegations set forth in Paragraph 12 of the Fourth-Party Complaint.

AFFIRMATIVE AND OTHER DEFENSES
AFFIRMATIVE DEFENSES INVOKED ON BEHALF OF OFCC

13. The allegations of Plaintiff Transamerica Building Company, Inc. (“Transamerica”) fail to state a claim upon which relief can be granted.

14. The claims of Transamerica for equitable relief are barred by the equitable doctrine of unclean hands.

15. The damages claimed by Transamerica against Defendant Ohio School Facilities Commission (“OFCC”) are caused by persons other than OFCC and cannot be recovered from OFCC.

16. Transamerica has failed to provide statutorily required and contractually required notices and substantiation of its claim in a timely fashion.

17. Transamerica has breached the contract with OFCC, and that breach bars its recovery against OFCC.

18. Transamerica’s claims against OFCC are barred by the applicable statute of limitations.

19. G. Stephens, Inc. incorporates each of the defenses and affirmative defenses raised by OFCC in its answer to the Amended Complaint of Transamerica.

AFFIRMATIVE AND OTHER DEFENSES INVOKED ON BEHALF OF LEND LEASE
(US) CONSTRUCTION, INC.

20. The Third-Party Complaint fails to state a claim upon which relief can be granted.

21. The Third-Party Complaint is barred by the equitable doctrines of unclean hands, laches, and estoppel.

22. With regard to the claim for contribution among joint tort feors, the Third-Party Complain fails to state a claim upon which relief can be granted due to the application of the Economic Loss Doctrine; Lend Lease owes no duty to Transamerica, cannot be held liable to Transamerica in negligence, and therefore, cannot be a joint tort feor with OFCC from whom contribution can be obtained by OFCC.

23. The Third-Party Complaint's claim for indemnity fails to state a claim upon which relief can be granted due to the absence of an allegation in the underlying Plaintiff's Complaint of bodily injury, personal injury, sickness, disease or death of any person, or damage to or destruction of property which is the proximate cause of Plaintiff's claimed damages.

24. Third-Party Plaintiff has breached the duty of good faith and fair dealing implied in the Lend Lease Contract, which breach bars OFCC's right to recovery.

25. The damages for which Third-Party Plaintiff claims recovery from Lend Lease are the result of errors and omission of other parties to this action and/or non-parties to this action, and not the direct and proximate result of any action or inaction of Lend Lease.

26. Third-Party Plaintiff's comparative negligence or fault is of a degree compared to that of other parties that Lend Lease's liability is barred or reduced.

27. Third-Party Plaintiff has failed to mitigate its damages for which indemnity and contribution are sought from Lend Lease.

28. At all times relevant herein, Lend Lease acted in good faith performance of its duties.

29. The claims of Third-Party Plaintiff against Lend Lease are barred by the applicable statutory and/or contractual limitation periods.

AFFIRMATIVE DEFENSES OF FOURTH-PARTY DEFENDANT G. STEPHENS, INC.
TO FOURTH-PARTY COMPLAINT OF LEND LEASE

30. The Fourth-Party Complaint is barred, in whole or in part, as it fails to state a claim upon which relief can be granted.

31. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of laches and/or statute of limitations.

32. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of waiver.

33. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of estoppel.

34. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of unclean hands.

35. The Fourth-Party Plaintiff has failed to join all necessary and/or indispensable parties for judge adjudication.

36. The Fourth-Party Complaint is barred, in whole or in part, by the lack and/or failure of consideration.

37. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of consent.

38. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of estoppel by performance.

39. Any and all actions or omissions of G. Stephens, Inc. were done with the full knowledge, acquiescence, and agreement of Fourth-Party Plaintiff, and its claims are barred by release.

40. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of acquiescence.

41. The Fourth-Party Complaint is barred, in whole or in part, by the doctrine of accord and satisfaction.

42. The Fourth-Party Complaint is barred, in whole or in part, by the existence of a valid specific contract between the parties.

43. The Fourth-Party Complaint is barred, in whole or in part, by the lack of any duty or breach of duty by G. Stephens, Inc.

44. The Fourth-Party Complaint is barred, in whole or in part, by frustration of purpose.

45. The Fourth-Party Complaint is barred, in whole or in part, by impracticability of performance.

46. The Fourth-Party Complaint is barred, in whole or in part, by failure to perform conditions precedent.

47. The Fourth-Party Complaint is barred, in whole or in part, by mutual and/or unilateral mistake of fact.

48. The Fourth-Party Complaint is barred, in whole or in part, by the economic loss doctrine.

49. The damages allegedly sustained by Plaintiff were caused by the acts and omissions by persons and/or entities other than G. Stephens, Inc., and over whose conduct G. Stephens, Inc. had no control or right to control.

50. The damages allegedly sustained by Third-Party Plaintiff were caused by the acts and omissions by persons and/or entities other than G. Stephens, Inc., and over whose conduct G. Stephens, Inc. had no control or right to control.

51. The damages allegedly sustained by Fourth-Party Plaintiff were caused by the acts and omissions by persons and/or entities other than G. Stephens, Inc., and over whose conduct G. Stephens, Inc. had no control or right to control.

52. The Fourth-Party Complaint is barred, in whole or in part, by Plaintiff's destruction and/or spoliation of evidence.

53. The Fourth-Party Complaint is barred, in whole or in part, by Third-Party Plaintiff's destruction and/or spoliation of evidence.

54. The Fourth-Party Complaint is barred, in whole or in part, by Fourth-Party Plaintiff's destruction and/or spoliation of evidence.

55. The Fourth-Party Complaint is barred, in whole or in part, by Plaintiff's failure to mitigate its damages.

56. The Fourth-Party Complaint is barred, in whole or in part by, Third-Party Plaintiff's failure to mitigate its damages.

57. The Fourth-Party Complaint is barred, in whole or in part by, Fourth-Party Plaintiff's failure to mitigate its damages.

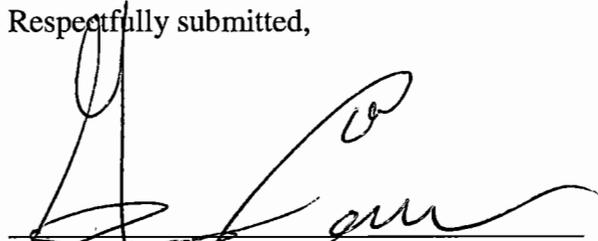
58. Any liability and/or damages in this case must be apportioned to non-parties, as set forth in Ohio R.C. § 2307.23.

59. G. Stephens, Inc. affirmatively alleges, in the alternative, that Plaintiff, Third-Party Plaintiff, and Fourth-Party Plaintiff's claims are barred or limited to the provisions of R.C. §§ 2315.18 *et seq.* and 2315.35 *et seq.*

60. G. Stephens, Inc. respectfully reserves the right to amend its Answer to add such additional affirmative defenses, cross-claims, counterclaims, and/or third-party complaints as may be disclosed during the course of discovery in the captioned matter.

WHEREFORE, G. Stephens, Inc. prays that the Fourth-Party Complaint against it be dismissed, that judgment be entered in its favor, and that it be awarded all costs, expenses, attorney's fees related to the defense of this action, and any other relief that justice may require.

Respectfully submitted,



STEVEN G. JANIK (0021934)

GEORGE H. CARR (0069372)

JANIK LLP

9200 South Hills Boulevard, Suite 300

Cleveland, Ohio 44147-3521

Phone: 440-838-7600 ♦ Fax: 440-838-7601

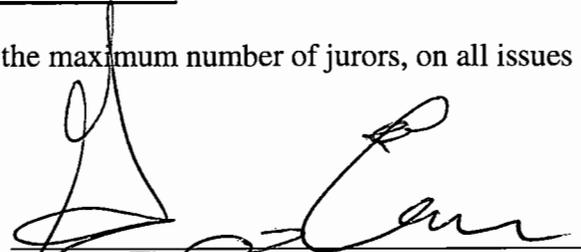
Email: Steven.Janik@Janiklaw.com

George.Carr@Janiklaw.com

*Counsel for Fourth-Party Defendant
G. Stephens, Inc.*

JURY DEMAND

G. Stephens, Inc. demands a trial by the maximum number of jurors, on all issues so triable.



GEORGE H. CARR (0063972)

*Counsel for Fourth-Party Defendant G. Stephens,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by regular U.S. Mail, postage prepaid, on this 30 day of March, 2015, upon:

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

*Counsel for Plaintiff TransAmerica
Building Company, Inc.*

William C. Becker
Craig Barclay
David Beals
Assistant Attorneys General
Mike DeWine
Ohio Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

*Counsel for Defendant/Third-Party
Plaintiff Ohio School Facilities
Commission*

David M. Rickert
Dunlevey Mahan & Furry
110 North Main Street
Dayton, Ohio 45402-1738

*Counsel for Third-Party Defendant and
Fourth-Party Plaintiff Steed Hammond
Paul, Inc. d/b/a SHP Leading Design*

Craig B. Paynter
James D. Abrams
Celia M. Kilgard
Taft Stettinius & Hollister, LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

*Counsel for Third-Party
Defendant/Third-Party (Fourth-
Party) Plaintiff Lend Lease (US)
Construction, Inc.*

Michael J. Kelley
Lane, Alton & Horst, LLC
Two Miranova Place, Suite 500
Columbus, Ohio 43215-7052

*Counsel for Fourth-Party Defendant
Berardi Partners, Inc.*


STEVEN G. JANIK (0021934)
GEORGE H. CARR (0069372)
JANIK LLP

*Counsel for Fourth-Party Defendant
G. Stephens, Inc.*