

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

PYRAMID ROOFING,  Plaintiff,  Vs.  RYAN DEBOLT,  Defendants,  Vs.  COREY LUETTICKE, KYLE LUETTICKE, JOE BROUSEAU, and GARY LUETTICKE.  Third-Party Defendants.	CASE NO. CI 14-7112  <b>DEFENDANT'S ANSWER AND COUNTERCLAIM</b>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------

COMES NOW Defendant, Ryan DeBolt, by and through his counsel of record Frank Younes of Thomas, High & Younes, LLC., and hereby submits his Answer to Plaintiff Pyramid Roofing's Complaint, Counterclaim against Plaintiff.

For Defendant's Answer to Plaintiff and Counterclaim against Plaintiff, Defendant states and alleges, as follows:

1. Defendant admits the allegations contained within paragraphs 1 and 2 of Plaintiff's Complaint.
2. Defendant denies the allegations contained within paragraphs 3, 4, and 5 of Plaintiff's Complaint.
3. Defendant admits the allegations contained within paragraph 6 of Plaintiff's Complaint only to the extent that Defendant received a letter dated July 18, 2014 from Michael

O'Bradovich. Defendant denies the remaining allegations contained within paragraph 6 of Plaintiff's Complaint.

4. Defendant denies the allegations contained within paragraphs 7 and 8 of Plaintiff's Complaint and states that the Exhibit reference therein as Exhibit A speaks for its self.
5. The Exhibit referenced in paragraph 9 of Plaintiff's Complaint speaks for itself and paragraph 9 does not call for a response.
6. Defendant denies the allegations contained within paragraphs 10, 11, 12, 13, 14, and 15 of Plaintiff's Complaint.
7. Defendant admits the allegations contained within paragraph 16 and 17 of Plaintiff's Complaint.
8. Defendant denies the allegations contained within paragraphs 18, 19, 20.
9. Defendant denies each and every allegations set forth in Plaintiff's Complaint except those expressly admitted herein.

#### **AFFIRMATIVE DEFENSES**

Defendant asserts the following additional and affirmative defenses to the allegations set forth in Plaintiff's Complaint, but in so doing does not concede that it bears the burden of proof on any of these defenses. Defendant states that until he avails himself of his rights to discovery, he cannot determine which, if any, of the following defenses will be asserted at trial. These defenses are pled in order to preserve Defendant rights to assert them at trial and to give notice of his intention to assert these defenses and to avoid waiver of any defense.

10. Defendant hereby incorporates paragraphs 1 through 9 of this Answer and Counterclaim to this section as if fully set forth herein.
11. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

12. Plaintiff's Complaint may be barred, in whole or in part, by estoppel, waiver, payment, fraud, and/or failure of consideration.
13. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed to satisfy its duty to mitigate its alleged damages.
14. Defendant expressly denies that Plaintiff has been damaged in any form or amount.
15. Defendant has not made any false, libelous, or slanderous statement regarding Plaintiff.
16. Statements by Defendant regarding Plaintiff, if any, have been true and non-slanderous or threatening.
17. Defendant deserves the right to add any other affirmative or additional defenses as may be discovered during the course of this litigation.
18. Defendant asserts the affirmative defense that Plaintiff's has acted with unclean hands.
19. Defendant asserts the affirmative defense that Defendant has acted with no malice.

#### COUNTERCLAIM

20. Defendant hereby incorporates paragraphs 1 through 19 of this Answer and Counterclaim to this section as if fully set forth herein.
21. Defendant was employed by Plaintiff as an Independent Sales Person until April 2014.
22. In Defendant's role as an Independent Sales Person he was beholden to Plaintiff and worked at the direction and instruction of Plaintiff.
23. Defendant also worked with other sales representatives for Plaintiff on jobs, and at times commissions were split.
24. Plaintiff's business is construction and roofing.
25. Defendant's duties included selling and contracting property owners to have construction and roof work performed by Plaintiff.

26. Defendant would earn a commission at the time a sale is booked.
27. Defendant would be paid a commission at the time payment is received on a sale he made.
28. Defendant performed his job well and up to all standards while employed with Plaintiff.
29. In April of 2014 Defendant's employment relationship with Plaintiff ended.
30. Plaintiff has not paid Defendant for numerous sales made by Defendant for Plaintiff.
31. Plaintiff currently owes Defendant payment of commissions for projects that Plaintiff has received payment on.
32. Plaintiff has failed and refused to make payment to Defendant on these sales signed by Defendant.
33. Plaintiff owes Defendant for a project sold by Defendant for the property located at 4547 Mayberry Street, Omaha, Nebraska.
34. Plaintiff owes Defendant for a project sold by Defendant for a project located near 90th and Center Streets in Omaha, Nebraska now known as the Loveland Shopping Center.
35. Plaintiff owes Defendant for several other jobs and Defendant reserves the right to include and add any jobs sold by Defendant on which Defendant has not received payments which may be discovered in litigation.
36. Following the end of Defendant's employment with Plaintiff, Plaintiff and its employees, agents, and principals began and have continued to stalk, harass, and assault Defendant.
37. The following employees, agents, and principals of Plaintiff has harassed and assaulted Defendant and Defendant's wife, a former employee of Plaintiff:
  - a. Corey Luetticke; Gary Luetticke's son and employee of Plaintiff;
  - b. Joe Brouseau - employee of Plaintiff;

- c. Kyle Luetticke - Gary Luetticke's son and employee of Plaintiff; and
- d. Gary Luetticke - owner of Plaintiff.

38. Plaintiff and its employees, agents, and principals have spread false comments about Defendant and his wife.

39. Plaintiff and its employees, agents, and principals have assaulted and harassed Defendant and Defendant's wife.

40. Plaintiff and its employees, agents, and principals have showed up at Defendant's home where they yelled at Defendant, threatened Defendant, attempted to fight Defendant, made Defendant fear for his safety and the safety of his wife, and assaulted Defendant.

41. Plaintiff and its employees, agents, and principals have sent insulting and threatening messages to Defendant and his wife cause Defendant and his wife to be harassed and fear for their safety.

42. Plaintiff and its employees, agents, and principals have approached Defendant in public places, snooped through Defendant's vehicle, and made threatening comments and gestures to Defendant and his wife.

43. Kyle Luetticke has sent naked pictures of himself to Defendant's wife and yelled into a public store at which Defendant often does business that Defendant and his wife have herpes, which is false.

#### CAUSE OF ACTION NO. 1 - ASSAULT

44. Defendant hereby incorporates paragraphs 1 through 43 of this Answer and Counterclaim to this section as if fully set forth herein.

45. Plaintiff and its employees, agents, and principals have intentionally made comments to Defendant with an intention to cause Defendant to have apprehension of harmful or offensive contact.

46. Plaintiff and its employees, agents, and principals have intentionally acted in a manner toward Defendant to intend to cause Defendant to have apprehension of harmful or offensive contact.

47. Plaintiff and its employees, agents, and principals acts indeed caused Defendant to experience apprehension of imminent harm and feel in danger and unsafe in his own home.

48. Plaintiff and its employees, agents, and principals assault on Defendant has damaged Defendant.

#### CAUSE OF ACTION NO. 2: HARRASMENT

49. Defendant hereby incorporates paragraphs 1 through 19 of this Answer and Counterclaim to this section as if fully set forth herein.

#### CAUSE OF ACTION NO. 3: INJUNCTION

50. Defendant hereby incorporates paragraphs 1 through 19 of this Answer and Counterclaim to this section as if fully set forth herein.

51. Defendant seeks that this Court enter an injunction against Plaintiff and its employees, agents, and principals to prevent them from contacting Defendant, harassing Defendant, discussing Defendant with any third Party, and making slanderous and libelous statements about Defendant to any third party.

#### CAUSE OF ACTION NO. 4: BREACH OF CONTRACT

52. Defendant hereby incorporates paragraphs 1 through 51 of this Answer and Counterclaim to this section as if fully set forth herein.

53. Defendant and Plaintiff entered into a contract regarding Defendant's employment with Plaintiff.

54. Pursuant to that contract Defendant was to be paid certain sums of money for his services.

55. Plaintiff failed to pay Defendant for his services.

56. Plaintiff failed to pay Defendant commissions for numerous sales.

57. The Defendant is entitled to recover the amount of commission and salary agreed upon which has not been paid to Defendant.

#### CAUSE OF ACTION NO. 5: UNJUST ENRICHMENT

58. Defendant hereby incorporates paragraphs 1 through 57 of this Answer and Counterclaim to this section as if fully set forth herein.

59. Plaintiff's have received payment for contracts obtained for Plaintiff by Defendant's services.

60. Defendant provided Plaintiff with these services.

61. Plaintiff has not paid Defendant for his services.

62. Defendant demands payment for his services from Plaintiff.

#### CAUSE OF ACTION NO. 6: LIBEL, SLANDER, DEFAMATION

63. Defendant hereby incorporates paragraphs 1 through 62 of this Answer and Counterclaim to this section as if fully set forth herein.

64. Plaintiff and its employees, agents, and principals have made untrue comments and written statements about Defendant and his wife, with whom he works.

65. The untrue statements and writings made by Plaintiff and its employees, agents, and principals have caused Defendant to lose business and money.

66. The untrue statements and writings made by Plaintiff and its employees, agents, and principals has caused Defendant and his wife to experience embarrassment.

67. Defendant has experienced damages in an amount to be proven at trial from the untrue statements and writings made by Plaintiff and its employees, agents, and principals.

CAUSE OF ACTION NO. 7: VICARIOUS LIABILITY

68. Defendant hereby incorporates paragraphs 1 through 67 of this An Answer and Counterclaim to this section as if fully set forth herein.

69. Third-Party Defendants are all employees, agents, and/or principals of Plaintiff.

70. Third-Party Defendants act on behalf of and at the behest of Plaintiff.

71. Third-Party Defendants are liable to Defendant.

72. Third-Party Defendants actions were taken in the scope of their employment/agency with Plaintiff.

73. Third-Party Defendants' actions against Defendant are set forth in the Third-Party Complaint below.

74. Third-Party Defendants' actions against Defendant are set forth in Counterclaims 1, 2, 3, and 6 herein.

75. Third-Party Defendants actions at the behest and in the scope of their employment/agency with Plaintiff have caused Defendant damages.


76. JURY DEMAND

77. Defendant requests a trial by jury.



WHEREFORE Defendant Ryan DeBolt, respectfully requests that this Court dismiss Plaintiff's Complaint, with prejudice, at Plaintiff's costs, for attorney's fees and costs, for frivolous pleadings against Defendant, and otherwise according to law, and for such other and further relief as the Court deems just and equitable.

RYAN DEBOLT, DEFENDANT:

BY:   
Francis Younes, 24779  
THOMAS, HIGH & YOUNES, LLC.  
661 N 50th Street  
Omaha, NE 68132  
Telephone: 402-933-3345  
Facsimile: 402-933-3020  
Email: frank@thylaw.com  
*Attorney for Defendant*

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the parties hereto by causing same to be mailed First Class United States Mail, postage prepaid on this 16th day of October, 2014, to:

Michael J. O'Bradovich  
7701 Pacific Street, Suite 205  
Omaha, NE 68114  
(402)551-8583  
*Attorney for Plaintiff*



## Certificate of Service

I hereby certify that on Friday, October 17, 2014 I provided a true and correct copy of the Answer to the following:

Pyramid Roofing represented by Michael J O'Bradovich (Bar Number: 16628) service method: First Class Mail

Signature: /s/ Francis E Younes (Bar Number: 24779)