

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

PYRAMID ROOFING, Plaintiff, Vs. RYAN DEBOLT, Defendants,	CASE NO. CI 14-7112 DEFENDANT'S AMENDED ANSWER AND COUNTERCLAIM
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COMES NOW Defendant, Ryan DeBolt, by and through his counsel of record Frank Younes of Thomas, High & Younes, LLC., and hereby submits his Amended Answer to Plaintiff Pyramid Roofing's Complaint, Counterclaim against Plaintiff.

For Defendant's Amended 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 referenced 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 of Plaintiff's Complaint.
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 Amended 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 non-threatening, and not made in malice.
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 Amended 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 by Plaintiff on a sale that Defendant 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. Employees, agents, and principals of Plaintiff has harassed, assaulted, and invaded the privacy of Defendant.
38. Employees, agents, and principals of Plaintiff has harassed, assaulted, and invaded the privacy of Defendant at the direction of Plaintiff and its principals.

39. Plaintiff and its employees, agents, and principals have spread false comments about Defendant which are humiliating, embarrassing, and degrading to Defendant.
40. Plaintiff and its employees, agents, and principals have assaulted and harassed Defendant.
41. 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, embarrassed Defendant, humiliated Defendant, and assaulted Defendant.
42. Plaintiff and its employees, agents, and principals have sent insulting and threatening messages to Defendant which cause Defendant to be harassed and fear for his safety.
43. 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.
44. Plaintiff's agents has yelled into a public store at which Defendant often does business that Defendant has herpes, which is false, and which humiliated Defendant and degraded Defendant's character.

CAUSE OF ACTION NO. 1 - ASSAULT

45. Defendant hereby incorporates paragraphs 1 through 44 of this Amended Answer and Counterclaim to this section as if fully set forth herein.
46. 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.

47. 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.

48. 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.

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

CAUSE OF ACTION NO. 2: INJUNCTION

50. Defendant hereby incorporates paragraphs 1 through 49 of this Amended 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. 3: BREACH OF CONTRACT

52. Defendant hereby incorporates paragraphs 1 through 51 of this Amended 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. 4: UNJUST ENRICHMENT

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

59. Plaintiff has 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. 5: LIBEL, SLANDER, DEFAMATION

63. Defendant hereby incorporates paragraphs 1 through 62 of this Amended 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. 6: VICARIOUS LIABILITY

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

69. Plaintiff's agents, employees, and principals acted on behalf of and at the behest of Plaintiff.

70. Plaintiff's agents, employees, and principals actions were done in the scope of their employment/agency with Plaintiff.

71. Plaintiff is liable to Defendant for the actions of its agents, employees, and principals.

72. Plaintiff's agents, employees, and principals actions against Defendant are set forth above.

73. Plaintiff's agents, employees, and principals actions at the behest and in the scope of their employment/agency with Plaintiff have caused Defendant damages for which Plaintiff should be held liable.

CAUSE OF ACTION NO. 7: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

74. Defendant hereby incorporates paragraphs 1 through 73 of this Amended Answer and Counterclaim to this section as if fully set forth herein.

75. Plaintiff and its agents, employees, and principals engaged in the conduct described above.

76. Plaintiff and its agents, employees, and principals intentionally harassed Defendant.

77. Plaintiff and its agents, employees, and principals intentionally assaulted Defendant.

78. Plaintiff and its agents, employees, and principals intentionally embarrassed Defendant.

79. Plaintiff and its agents, employees, and principals intentionally caused Defendant emotional distress.

80. Plaintiff and its agents, employees, and principals conduct was so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and is atrocious and intolerable.

81. Plaintiff and its agents, employees, and principals conduct caused Defendant to emotional distress.

82. Plaintiff and its agents, employees, and principals conduct was a proximate cause of damage to Defendant.

83. Defendant has been damaged.

CAUSE OF ACTION NO. 8: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

84. Defendant hereby incorporates paragraphs 1 through 83 of this Amended Answer and Counterclaim to this section as if fully set forth herein.

85. Plaintiff and its agents, employees, and principals engaged in the conduct described above.

86. Plaintiff and its agents, employees, and principals negligently caused Defendant emotional distress.

87. Plaintiff and its agents, employees, and principals conduct was so outrageous in character and extreme in degree as to go beyond all possible bounds of decency and is atrocious and intolerable.

88. Plaintiff and its agents, employees, and principals conduct caused Defendant to emotional distress.

89. Plaintiff and its agents, employees, and principals conduct was a proximate cause of damage to Defendant.

90. Defendant has been damaged.


JURY DEMAND

91. 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. Further Defendant Ryan DeBolt respectfully requests that

this Court enter an Order against Plaintiff and award damages to Defendant in an amount to be proven at trial, plus costs, attorney's fees, and for such other and further relief this Court deems just and equitable. Also, Defendant requests that this Court enter an injunction against Plaintiff to prevent Plaintiff and Plaintiff's agents, employees, and principals from assaulting, defaming, making libelous statements about, and slandering Defendant.

RYAN DEBOLT, DEFENDANT:

BY: 
Francis Younes, 24779
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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 12 day of January, 2015, 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 Monday, January 12, 2015 I provided a true and correct copy of the Amended Answer to the following:

Pyramid Roofing represented by Michael J O'Bradovich (Bar Number: 16628) service method: Electronic Service to mike@oblaw.org

Luetticke,Gary, service method: First Class Mail

Luetticke,Kyle, service method: First Class Mail

Brouseau,Joe, service method: First Class Mail

Luetticke,Corey, service method: First Class Mail

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