

**IN THE STATE COURT OF BULLOCH COUNTY**  
**STATE OF GEORGIA**

  
 Heather Banks McNeal, Clerk  
 Bulloch County, Georgia

MO FLO, LLC d/b/a FLOORS OUTLET )  
 and BRIAN MCDONALD )

Plaintiffs / Counterclaim )  
 Defendants, )

v. )

WILHELMINA RANDTKE and )  
 EDWIN ALEXANDER )

**CIVIL ACTION FILE**  
**NO. STCV2022000202**

Defendants / Counterclaim )  
 Plaintiffs, )

AND )

MO FLO, LLC d/b/a FLOORS OUTLET, )

Plaintiff / Third-Party )  
 Plaintiff, )

v. )

S&T FLOOR COVERING, LLC, )

Third-Party Defendant. )

**PLAINTIFF BRIAN MCDONALD'S VERIFIED ANSWER AND AFFIRMATIVE**  
**DEFENSES TO DEFENDANTS' COUNTERCLAIMS**

COMES NOW BRIAN MCDONALD ("Mr. McDonald"), a Plaintiff in the above-styled  
 civil action, and hereby files his Verified Answer and Affirmative Defenses to the Defendants'  
 Counterclaims<sup>1</sup> showings this Court as follows:

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<sup>1</sup> Pursuant to O.C.G.A. § 9-11-12, a counterclaim by a defendant does not require an answer because all allegations automatically stand denied. Similarly, O.C.G.A. § 9-10-111 does not require that any answer, verified or otherwise, be filed in response to a verified counterclaim. By filing this Verified Answer, and paying costs to the Court pursuant to O.C.G.A. § 9-11-55, Mr. McDonald simply chooses to act out of an abundance of caution, address Defendants' allegations on the record, and provide a non-exhaustive list of available defenses for Mr. McDonald to use in this action.

**FIRST DEFENSE**

The Defendants' Counterclaims fail to state a claim against Mr. McDonald upon which relief can be granted.

**SECOND DEFENSE**

This Court lacks jurisdiction over the subject matter and jurisdiction over the parties named.

**THIRD DEFENSE**

Venue in this Court is improper.

**FOURTH DEFENSE**

Defendants' Counterclaims are barred as to Mr. McDonald because Defendants have failed to comply with O.C.G.A. §§ 9-11-4, 9-11-13, 9-11-14, 9-11-15, and/or 9-11-19 by not filing a Summons or Amended Counterclaims against Brian McDonald or properly serving same (as well as other pleadings) upon him.

**FIFTH DEFENSE**

Defendants' Counterclaims are barred as to Mr. McDonald because Mr. McDonald neither contracted with Defendants nor performed any of the work at issue.

**SIXTH DEFENSE**

Defendants' Counterclaims are barred by the affirmative defenses of payment, estoppel, failure of consideration, laches, release, and waiver.

**SEVENTH DEFENSE**

Neither Plaintiffs nor any agent acting on Plaintiffs' behalf breached the applicable professional standard of care.

**EIGHTH DEFENSE**

Neither Plaintiffs nor any agent acting on Plaintiffs' behalf violated any state, county, city, or municipal code, ordinance, rule, or regulation in connection with the construction work at issue.

**NINTH DEFENSE**

Defendants' alleged damages are not the proximate result of any act(s), omission(s), or breach(es) by either Plaintiffs or any agent acting on Plaintiffs' behalf.

**TENTH DEFENSE**

Plaintiffs and/or any agent acting on Plaintiffs' behalf fully complied with the terms and conditions of the contract that was in place with Defendants.

**ELEVENTH DEFENSE**

Defendants' alleged damages were proximately caused by their own acts or omissions and/or the acts or omissions of a person(s)/entity(ies) other than Plaintiffs.

**TWELFTH DEFENSE**

Defendants' Counterclaims are barred, in whole or in part, by the doctrine of comparative negligence and/or avoidable consequences.

**THIRTEENTH DEFENSE**

Defendants' claim for breach of contract is barred, pursuant to O.C.G.A. § 13-5-7, due to Defendants' implicit rescission of the contract by release when Defendant Wilhelmina Randtke refused to allow Plaintiffs to return to her home.

**FOURTEENTH DEFENSE**

Defendants' claim for breach of contract is barred, pursuant to O.C.G.A. § 13-4-23, due to any alleged nonperformance of the contract by Plaintiffs being caused by the conduct of Defendants.

**FIFTEENTH DEFENSE**

Defendants' Counterclaims are barred because Plaintiffs substantially complied with the contract.

**SIXTEENTH DEFENSE**

Defendants' Counterclaims are barred because they do not have the requisite expert testimony to prove their claims.

**SEVENTEENTH DEFENSE**

Defendants' Counterclaims are barred because they did not comply with O.C.G.A. § 8-2-38 et seq.

**EIGHTEENTH DEFENSE**

Recovery by Defendants may be barred, in whole or in part, by Defendants' failure to mitigate damages.

**NINETEENTH DEFENSE**

Plaintiffs asserts as a defense, credit, or set-off against the damages claimed by Defendants, the settlement (and any monies paid pursuant thereto) between Defendants and any other person or entity, and any monies paid to or on behalf of Plaintiffs for the alleged damages by any source.

**TWENTIETH DEFENSE**

Defendants' claims for attorneys' fees and costs of suit are barred as Plaintiffs have, at all times relevant to this action, acted in good faith, not been stubbornly litigious, and not caused Defendants unnecessary trouble or expenses.

**TWENTY-FIRST DEFENSE**

Defendants' claims for attorneys' fees and costs of suit are barred because the defenses and claims asserted by Plaintiffs do not lack substantial justification.

**TWENTY-SECOND DEFENSE**

Plaintiffs raise all other affirmative defenses set forth in O.C.G.A. §§ 9-11-8 and 9-11-12 that may apply in this case.

**TWENTY-THIRD DEFENSE**

Responding to the individually numbered paragraphs of Defendants' Counterclaims, Mr. McDonald responds as follows:

97.

Mr. McDonald denies the allegations contained in Paragraph No. 97 as stated.

98.

Mr. McDonald denies the allegations contained in Paragraph No. 98 as stated.

99.

Mr. McDonald denies the allegations contained in Paragraph No. 99 as stated.

100.

Mr. McDonald admits that he and Prince Preston are business partners with respect to Plaintiff Mo Flo, LLC d/b/a Floors Outlet ("Floors Outlet"). Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 100.

101.

Mr. McDonald admits the allegations contained in Paragraph No. 101 but denies that Prince Preston would be a proper party to this lawsuit (which the Court agreed with in its February 13, 2023 Order).

102.

Mr. McDonald denies the allegations contained in Paragraph No. 102 as stated.

103.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 103 and denies that Randy Childs would be a proper party to this lawsuit (which the Court agreed with in its February 13, 2023 Order).

104.

Mr. McDonald denies the allegations contained in Paragraph No. 104 as stated.

105.

Paragraph No. 105 sets forth legal conclusions and questions of law to which no response is required. To the extent a response is deemed necessary, Mr. McDonald denies the allegations contained in Paragraph No. 105 as stated.

106.

Mr. McDonald denies the allegations contained in Paragraph No. 106.

107.

Mr. McDonald denies the allegations contained in Paragraph No. 107 as stated.

108.

Mr. McDonald denies the allegations contained in Paragraph No. 108.

109.

Paragraph No. 109 sets forth legal conclusions and questions of law to which no response is required. To the extent a response is deemed necessary, Mr. McDonald denies the allegations contained in Paragraph No. 109 as stated.

110.

Mr. McDonald denies the allegations contained in Paragraph No. 110.

111.

Mr. McDonald denies the allegations contained in Paragraph No. 111.

112.

Mr. McDonald denies the allegations contained in Paragraph No. 112.

113.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 113 concerning the average comparative costs for removing tile. Mr. McDonald denies the remaining allegations contained in Paragraph No. 113.

114.

Mr. McDonald admits that the tile received was Happy Feet Eternity in Almond color. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 114.

115.

Mr. McDonald admits Floors Outlet entered a contract with Defendants. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 115.

116.

Mr. McDonald denies the allegations contained in Paragraph No. 116.

117.

Mr. McDonald denies that Defendants need to vacate their home for any reason. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 117.

118.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 118.

119.

Mr. McDonald denies that Defendants need to use PODs storage for any reason. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 119.

120.

Mr. McDonald denies the allegations contained in Paragraph No. 120.

121.

Mr. McDonald denies the allegations contained in Paragraph No. 121.

122.

Mr. McDonald admits that Floors Outlet subcontracted the work under the contract. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 122.



123.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 123.

124.

Mr. McDonald denies the allegations contained in Paragraph No. 124.

125.

Mr. McDonald denies that Floors Outlet unhooked any appliances in Defendants' home or causing damage by allegedly doing so. Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 125.

126.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 126.

127.

Mr. McDonald is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph No. 127.

128.

Mr. McDonald denies the allegations contained in Paragraph No. 128 as stated.

129.

Mr. McDonald denies the allegations contained in Paragraph No. 129 as stated.

130.

Mr. McDonald admits that Defendants have not paid \$8,159.52 that Floors Outlet is entitled to under the contract. Mr. McDonald denies the remaining allegations contained in Paragraph No. 130.

131.

Mr. McDonald denies the allegations contained in Paragraph No. 131 as stated.

132.

Mr. McDonald admits that claims in excess of \$15,000 should be transferred from a Magistrate Court. However, Mr. McDonald denies that a genuine claim in excess of \$15,000 has been pled by Defendants in this action.

133.

Mr. McDonald denies the allegations contained in Paragraph No. 133.

134.


Mr. McDonald denies the allegations contained in Paragraph No. 134.

Mr. McDonald further denies each and every prayer for relief, allegation, and claim in Defendants' Answer and Counterclaim not specifically responded to above.

WHEREFORE, Mr. McDonald prays for the following:

- (1) That the Defendants' Counterclaims be dismissed in their entirety with prejudice and judgment entered in favor of Mr. McDonald on all counts;
- (2) That all costs of this action be cast upon Defendants;
- (3) Trial by a jury of twelve persons as to all issues properly triable by a jury; and
- (4) For such further and other relief as the Court deems just and proper.

Respectfully submitted this 31<sup>st</sup> day of March, 2023.



**R. MATT SHOEMAKER**

State Bar No. 339367

*Attorney for Plaintiffs Mo Flo, LLC*

*d/b/a Floors Outlet and Brian McDonald*

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**CERTIFICATE OF SERVICE**

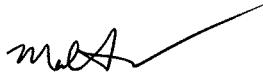
I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **PLAINTIFF BRIAN MCDONALD'S VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANTS' COUNTERCLAIMS** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to all parties and counsel of record as follows:

Wilhelmina Randtke  
Edwin Alexander  
204 Highland Road  
Statesboro, GA 30458

Shannon Warren  
S&T Floor Covering, LLC  
330 Satilla Church Road  
Jesup, GA 31545

Christopher R. Gohagan  
Taulbee, Rushing, Snipes, Marsh & Hodgin, LLC  
P.O. Box 327  
Statesboro, Georgia 34059

This 31<sup>st</sup> day of March, 2023.



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**R. MATT SHOEMAKER**  
State Bar No. 339367  
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Outlet and Brian McDonald*

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