

IN THE STATE COURT OF BULLOCH COUNTY  
STATE OF GEORGIA

*Heather Banks McNeal*  
Heather Banks McNeal, Clerk  
Bulloch County, Georgia

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

Plaintiff,

v.

WILHELMINA RANDTKE and EDWIN  
ALEXANDER,

Defendants.

**CIVIL ACTION FILE  
NO. STCV2022000202**

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**PLAINTIFF MO FLO, LLC d/b/a FLOORS OUTLET'S ANSWER AND AFFIRMATIVE  
DEFENSES TO DEFENDANTS' COUNTERCLAIMS**

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COMES NOW MO FLO, LLC d/b/a/ FLOORS OUTLET ("Floors Outlet"), Plaintiff in the above-styled civil action, and hereby files its Answer and Affirmative Defenses to the Defendants' Counterclaims<sup>1</sup> showings this Court as follows:

**FIRST DEFENSE**

The Defendants' Counterclaims fail to state a claim against Floors Outlet 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.

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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 non-verified Answer, Floors Outlet simply chooses to address Defendants' allegations on the record and provide a non-exhaustive list of available defenses for Floors Outlet to use in this action.

**FOURTH DEFENSE**

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

**FIFTH DEFENSE**

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

**SIXTH DEFENSE**

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

**SEVENTH DEFENSE**

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

**EIGHTH DEFENSE**

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

**NINTH 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 Floors Outlet.

**TENTH DEFENSE**

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

**ELEVENTH 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 Floors Outlet to return to her home.

**TWELFTH 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 Floors Outlet being caused by the conduct of Defendants.

**THIRTEENTH DEFENSE**

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

**FOURTEENTH DEFENSE**

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

**FIFTEENTH DEFENSE**

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

**SIXTEENTH DEFENSE**

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

**SEVENTEENTH DEFENSE**

Floors Outlet 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 Floors Outlet for the alleged damages by any source.

**EIGHTEENTH DEFENSE**

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

**NINETEENTH DEFENSE**

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

**TWENTIETH DEFENSE**

Floors Outlet raises 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-FIRST DEFENSE**

Responding to the individually numbered paragraphs of Defendants' Counterclaims, Floors Outlet responds as follows:

97.

Floors Outlet denies the allegations contained in Paragraph No. 97 as stated.

98.

Floors Outlet denies the allegations contained in Paragraph No. 98 as stated.

99.

Floors Outlet denies the allegations contained in Paragraph No. 99 as stated.

100.

Floors Outlet admits that Prince Preston and Brian McDonald are business partners with respect to Floors Outlet. Floors Outlet is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph No. 100.

101.

Floors Outlet admits the allegations contained in Paragraph No. 101 but denies that Prince Preston would be a proper party to this lawsuit.

102.

Floors Outlet denies the allegations contained in Paragraph No. 102 as stated.

103.

Floors Outlet 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.

104.

Floors Outlet 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, Floors Outlet denies the allegations contained in Paragraph No. 105 as stated.

106.

Floors Outlet denies the allegations contained in Paragraph No. 106.

107.

Floors Outlet denies the allegations contained in Paragraph No. 107 as stated.

108.

Floors Outlet 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, Floors Outlet denies the allegations contained in Paragraph No. 109 as stated.

110.

Floors Outlet denies the allegations contained in Paragraph No. 110.

111.

Floors Outlet denies the allegations contained in Paragraph No. 111.

112.

Floors Outlet denies the allegations contained in Paragraph No. 112.

113.

Floors Outlet 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. Floors Outlet denies the remaining allegations contained in Paragraph No. 113.

114.

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

115.

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

116.

Floors Outlet denies the allegations contained in Paragraph No. 116.

117.

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

118.

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

119.

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

120.

Floors Outlet denies the allegations contained in Paragraph No. 120.

121.

Floors Outlet denies the allegations contained in Paragraph No. 121.

122.

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

123.

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

124.

Floors Outlet denies the allegations contained in Paragraph No. 124.

125.

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

126.

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

127.

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

128.

Floors Outlet denies the allegations contained in Paragraph No. 128 as stated.



129.

Floors Outlet denies the allegations contained in Paragraph No. 129 as stated.

130.

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

131.

Floors Outlet denies the allegations contained in Paragraph No. 131 as stated.

132.

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

133.

Floors Outlet denies the allegations contained in Paragraph No. 133.

134.

Floors Outlet denies the allegations contained in Paragraph No. 134.

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

WHEREFORE, Floors Outlet prays for the following:

- (1) That the Defendants' Counterclaims be dismissed in their entirety with prejudice and judgment entered in favor of Floors Outlet 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 5th day of October, 2022.



**R. MATT SHOEMAKER**

State Bar No. 339367

*Attorney for Plaintiff Mo Flo, LLC*

*d/b/a Floors Outlet*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing **PLAINTIFF MO FLO, LLC d/b/a FLOORS OUTLET'S 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

This 9<sup>th</sup> day of October, 2022.



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