

CAUSE NO. 2019-33415

ABEL AND NANCY VERA, et al.,	§	IN THE DISTRICT COURT
<i>Plaintiffs</i>	§	
VS.	§	
	§	OF HARRIS COUNTY, TEXAS
FIGURE FOUR PARTNERS, LTD.,	§	
PSWA, INC., and	§	
REBEL CONTRACTORS, INC.	§	
<i>Defendants</i>	§	234TH JUDICIAL DISTRICT

CONSOLIDATED WITH

CAUSE NO. 2019-34366

JEFFREY ATWOOD, et al.	§	IN THE DISTRICT COURT
<i>Plaintiffs</i>	§	
VS.	§	
	§	OF HARRIS COUNTY, TEXAS
FIGURE FOUR PARTNERS, LTD.,	§	
PSWA, INC., and	§	
REBEL CONTRACTORS, INC.	§	
<i>Defendants</i>	§	11TH JUDICIAL DISTRICT

CONSOLIDATED WITH

CAUSE NO. 2019-36139

JENNIFER BECKER, et al.	§	IN THE DISTRICT COURT
<i>Plaintiffs,</i>	§	
VS.	§	
	§	OF HARRIS COUNTY, TEXAS
FIGURE FOUR PARTNERS, LTD.,	§	
PSWA, INC., and REBEL	§	
CONTRACTORS, INC.	§	
<i>Defendants</i>	§	164TH JUDICIAL DISTRICT

TEXASITE LLC'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Texasite LLC (“Defendant Texasite”) files this Original Answer in response to Plaintiffs’ Third Amended Petition.

I.

Defendant Texasite files this general denial of all of the allegations and causes of action asserted by the Plaintiffs in the captioned action pursuant to Texas Rules of Civil Procedure Rule 92.

II.

Defendant Texasite further asserts that if Plaintiffs suffered injuries as a result of the incident made the basis of this lawsuit, which Defendant Texasite expressly denies, that said injuries were caused in whole or in part by Plaintiffs’ own negligence or responsibility. Accordingly, Defendant Texasite asserts all rights, privileges and remedies afforded or available to them pursuant to Chapter 33 of the Texas Civil Practice and Remedies Code.

III.

Defendant Texasite further pleads, in the alternative, and without waiving the foregoing, that the incident in question was proximately caused or solely proximately caused by the negligent and/or wrongful conduct of third-parties outside the control of this Defendant Texasite.

IV.

Pleading further and without waiving the foregoing, Defendant Texasite specifically reserves the right to amend this Answer in accordance with the Texas Rules of Civil Procedure.

V.

Defendant would submit to this Honorable Court that the incident in question was an Act of God, as that term is known and understood in the law.

VI.

For further answer, this Defendant invokes its legal right to a reduction of any dollar verdict which may be rendered in this cause by credit for payments made by other persons or entities, or by percentage reductions to which this Defendant would be entitled as a result of jury findings against other persons or entities. In this regard, this Defendant reserves the right to submit issues against parties who may be present in the case, settling parties who are absent from the case, or designated Responsible Third Parties, at the time the matter is submitted to the jury for fact determinations.

VII.

Defendant also invokes §18.091 of the Texas Civil Practice and Remedies Code and requests that to the extent that Plaintiffs seek recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or a loss of inheritance, that the evidence to prove such loss must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability. Defendant further requests that the Court instruct the jury as to whether any recovery for compensatory damages sought by Plaintiffs is subject to federal income taxes.

VIII.

Defendant would submit that the incident complained of was the result of a new and intervening and/or superseding cause.

IX.

Defendant avers that Defendant has generally failed to mitigate its damages.

X.

Defendant would show that Plaintiffs' damages were proximately caused as a result of intervening or superceding acts of persons or instrumentalities over which and whom this Defendant had no control and/or responsibility.

XI.

Defendant invokes Chapters 32 and 33 of the Texas Civil Practice and Remedies Code and to the extent Intervenor sustained any damages, which is denied, Defendant is entitled to contribution and/or indemnity from such other parties whose negligence was a proximate cause of said damages as well as submission to the jury regarding the responsibility of other parties.

XII.

Plaintiffs are not entitled to recover exemplary or punitive damages because, to the extent Plaintiffs seek punitive damages for an alleged act or omission by Defendant, no act or omission was malicious, fraudulent, oppressive, willful, intentional, wanton, reckless, or grossly negligent. Intervenor therefore fail to state a claim upon which relief can be granted for punitive or exemplary damages, and any award of punitive damages is barred.

XIII.

Plaintiffs' claims for punitive or exemplary damages are barred in whole or in part under both the Texas and the United States Constitutions. Permitting recovery of punitive or exemplary damages in this action would contravene Defendant's rights as reserved by the Fourth, Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the United States Constitution and Article 1, Sections 9, 10, 13, 14, and 19 of the Texas Constitution.

XIV.

Any award of punitive or exemplary damages against Defendant is barred to the extent that it is inconsistent with the standards and limitations set forth in, among other cases, *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). Defendant specifically incorporates by reference any and all standards or limitations regarding the determination or enforceability of punitive or exemplary damages awards as announced in those cases and any others under Texas or federal law.

XV.

Any claim for exemplary damages is limited under Texas Civil Practice & Remedies Code §41.008. Defendant asserts all defenses and limitation of punitive damages contained in Texas Civil Practice & Remedies Code Chapter 41.

XVI.

For further answer, without waiver of the foregoing, Defendant would show that the connection between the Defendant and the Intervenors' injuries are simply too attenuated to constitute legal cause. *See Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 776 (Tex.1995). The elements of proximate cause cannot be established by mere conjecture, guess, or speculation. *McClure v. Allied Stores of Tex., Inc.*, 608 S.W.2d 901, 903 (Tex.1980); *Farley v. MM Cattle Co.*, 529 S.W.2d 751, 755 (Tex.1975). The test for cause in fact is whether the negligent "act or omission was a substantial factor in bringing about injury," without which the harm would not have occurred. *Prudential*, 896 S.W.2d at 161 (citing *McClure*, 608 S.W.2d at 903); *see Havner v. E-Z Mart Stores, Inc.*, 825 S.W.2d 456, 458-59 (Tex.1993); *Brown v. Edwards Transfer Co.*, 764 S.W.2d 220, 223 (Tex.1988). Cause in fact is not shown if the defendant's negligence did no

more than furnish a condition which made the injury possible. See *Bell v. Campbell*, 434 S.W.2d 117, 120 (Tex.1968). Foreseeability requires more than someone, viewing the facts in retrospect, theorizing an extraordinary sequence of events whereby the defendant's conduct brings about the injury. See RESTATEMENT (SECOND) OF TORTS § 435(2) (1965).

XVII.

Defendant will further show that it has complied with all legally owed duties.

XVIII.

Defendant will further show that it did not create a diversion and/or impoundment of the natural flow of surface water.

XIX.

Defendant will further show that if pre-judgment interest is recoverable in this case, it is limited in accordance with Tex. Fin. Code Ann. §304.101 *et seq.*

XX.

Defendant will further show that if post-judgment interest is recoverable in this case, it is limited in accordance with Tex. Fin. Code Ann. §304.003(c).

XXI.

Defendant would further show that it is entitled to all caps and limitations on damages pursuant to the Texas Civil Practice & Remedies Code.

XXII.

For further answer, if such be necessary, Defendant would show that Plaintiffs lack standing to assert their claims against this Defendant because their claimed damages are not fairly traceable to any act or omission of this Defendant.

XXIII.

For further answer, if such be necessary, Defendant would show that Plaintiffs' alleged damages to their properties were caused by flood water, but the State of Texas has the exclusive duty to control flood water, and private parties, such as this Defendant, have no duty to control flood water. Accordingly, Defendant owes no legal duty to any of the Intervenor related to flood water damage.

WHEREFORE PREMISES CONSIDERED, Defendant Texasite respectfully prays that upon final hearing hereof, Plaintiffs take nothing against it, that it recover its costs, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

MEHAFFY WEBER, P.C.

BY: /s/ Kyle D. Weynand

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to the following known counsel of record in accordance with the Texas Rules of Civil Procedure on this 28th day of October, 2019:

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