

CAUSE NO. 2019-33415

ABEL AND NANCY VERA, ET AL.,	§	IN THE DISTRICT COURT OF
<i>Plaintiffs,</i>	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
FIGURE FOUR PARTNERS, LTD., et al.,	§	
<i>Defendants.</i>	§	234 TH JUDICIAL DISTRICT

DEFENDANT PERRY HOMES, LLC'S ORIGINAL ANSWER

Defendant Perry Homes, LLC (“Defendant”) files its Original Answer to Plaintiffs’ Sixth Amended Petition, and respectfully shows the Court the following:

A. General Denial

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the material allegations contained in Plaintiffs’ Sixth Amended Petition, and any amendments thereto. Defendant states that said allegations are not true, in whole or in part, and demands strict proof thereof.

B. Defenses and Reservation of Rights

2. Defendant asserts the following defenses that are required to be pled by Texas Rule of Civil Procedure 94, and expressly identifies other limitations to Plaintiffs’ claims for which Defendant does not bear the burden of proof.

3. Pleading further, and in the alternative, and without waiving the foregoing, the damages alleged are the result of prior or pre-existing conditions in the premises at issue over which Defendant had no control and did not cause.

4. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs’ alleged damages are the result of an Act of God and not acts or omissions of Defendant.

5. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs' alleged damages were the result of new, independent, intervening, and superseding causes for which Defendant is not legally responsible.

6. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs' alleged damages were caused by the acts, omissions, or negligence of third parties or instrumentalities that were not connected with Defendant and over which Defendant had no control or right of control.

7. Pleading further, and in the alternative, and without waiving the foregoing, Defendant invokes the provisions of Chapter 33 of the Texas Civil Practices and Remedies Code, as it pertains to proportionate responsibility, comparative fault, contributory negligence, assumption of risk, contribution, indemnity, and settlement credits. Chapter 33 specifically mandates, among other things, the reduction of damages for the negligence, liability, responsibility, or other conduct alleged, which is attributable to any other party, including Plaintiffs, other defendants, contribution defendants, settling persons, and/or responsible third parties. Alternatively, Defendant invokes the provisions of Chapter 32 of the Texas Civil Practice and Remedies Code.

8. Pleading further, and in the alternative, and without waiving the foregoing, some or all of Plaintiffs' claims are or may be barred because Defendant acted with due care and complied with applicable statutory, regulatory, and common law requirements provides by federal, state, and local law.

9. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs' claims and causes of action are barred, in whole or in part, because Plaintiffs assumed the risk that resulted in Plaintiffs' alleged damages.

10. Pleading further, and in the alternative, and without waiving the foregoing, to the extent discovery in this case shows a failure to mitigate Plaintiffs' alleged damages, Plaintiffs' claims and causes of action may be barred, in whole or in part, to that extent.

11. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs have not fulfilled all conditions precedent necessary to maintain this lawsuit.

12. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiffs' recovery, if any, on its causes of action in this lawsuit is subject to the one satisfaction rule.

13. Pleading further, and in the alternative, and without waiving the foregoing, Defendant further alleges that Plaintiffs' claim for pre-judgment interest is limited by the dates and amounts set forth in Chapter 304 of the Texas Finance Code.

14. Pleading further, and in the alternative, and without waiving the foregoing, Defendant affirmatively pleads the damage limitations and all available defenses set forth in Chapter 41 of the Texas Civil Practice and Remedies Code.

15. Pleading further, and in the alternative, and without waiving the foregoing, Defendant denies that any act or omission giving rise to Plaintiffs' alleged damages justify a claim for exemplary or punitive damages. An award of exemplary or punitive damages against Defendant would violate the Fifth and Fourteenth Amendments to the United States Constitution, and Article 1, Sections 3 and 19 of the Texas Constitution in that such claims are arbitrary, unreasonable, and in violation of Defendant's rights to due process and equal protection under the law. Plaintiffs' claims are unconstitutionally vague to the extent that any of the claims against Defendant should be proven beyond a reasonable doubt under the Sixth Amendment of the United States Constitution, as opposed to a mere preponderance of the evidence. Defendant would further

assert that any claim for punitive damages in a civil matter constitutes an excessive fine in violation of the Eighth Amendment of the United States Constitution.

REQUEST FOR DISCLOSURE

Defendant requests that Plaintiffs provide the disclosures required under Rule 194 of the Texas Rules of Civil Procedure within thirty (30) days from the date of service.

PRAYER

Therefore, Defendant respectfully requests the Court:

- a. Enter a judgment that Plaintiffs take nothing by their claims; and
- b. Any such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

GRAY REED

By: /s/ Andrew K. York

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was duly furnished to the following counsel of record (1) electronically through the electronic filing manager (www.efiletexas.gov), and (2) via e-mail on this 13th day of July, 2020:

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