

**CAUSE NO. 2018-42734**

<b>ABG General Construction, Plaintiff,</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
	§	
<b>v.</b>	§	<b>OF HARRIS COUNTY, TEXAS</b>
	§	
<b>3S Real Estate Investments, LLC – Series 3 Defendant.</b>	§	<b>269th JUDICIAL DISTRICT</b>

**DEFENDANT’S ORIGINAL ANSWER**

Defendant, 3S Real Estate Investments, LLC – Series 3, files this original answer to Plaintiff ABG General Construction’s original petition.

**GENERAL DENIAL**

1. Defendant generally denies the allegations in Plaintiff’s original petition.

**VERIFIED PLEAS REGARDING THE SUIT ON SWORN ACCOUNT**

2. Defendant denies the account on which Plaintiff files suit because the claim is not due. Defendant contracted with United Drywall & Texture for the services that form the basis of Plaintiff’s lawsuit and fully and completely paid for those services prior to receiving Plaintiff’s notices of demand or lawsuit.

3. Defendant denies the account on which Plaintiff files suit because Plaintiff has not credited Defendant’s account with all just and lawful offsets, payments, and other credits. Plaintiff files suit for a total of \$4,000 but does not credit Defendant’s account for amounts Defendant remitted to the general contractor for satisfaction of this account.

4. Defendant denies the account on which Plaintiff files suit because the amount Plaintiff claims is due is incorrect. The total amount due for the services rendered was \$2,500, agreed upon between Plaintiff and United Drywall & Texture, for which Plaintiff remitted complete payment to United Drywall & Texture prior to receiving Plaintiff’s notices of demand or lawsuit. Either the account for which Plaintiff sues should be reduced by the amount already remitted or the account should be considered paid in full.

5. Defendant denies the account on which Plaintiff files suit because Plaintiff charged Defendant prices for the goods and services that are not in accordance with the parties’ agreement and are unreasonable. Plaintiff entered into an agreement with United Drywall & Texture to complete the services required – applying stucco to an outdoor barbecue grill – for a sum totaling \$2,500. Defendant’s demand is for nearly twice that amount, was not the agreed upon amount, and is unreasonable for the work performed.

6. Defendant denies the account on which Plaintiff files suit because no systematic record was kept of amounts due on the account. The only record which Defendant has received regarding an “account” with Plaintiff is a “Provisionary Invoice” that accompanied Plaintiff’s January 9, 2017 demand letter after the project was complete.

7. Defendant denies the account on which Plaintiff files suit because Defendant has never had an open account with Plaintiff, a written or oral contract with Plaintiff for goods or services, or any business dealings with Plaintiff on which an account could be founded. Defendant did not know of Plaintiff’s existence until Defendant’s January 19, 2017 receipt of Plaintiff’s demand letter. Defendant has never had any business dealings, an open account, or a written or oral contract with Plaintiff.

8. Defendant denies the account on which Plaintiff files suit because any account that existed was with United Drywall & Texture.

9. Defendant denies Plaintiff’s allegation that all conditions precedent have been performed or have occurred. Plaintiff has presented Defendant with a true and correct statement of account prior to filing its lawsuit.

#### **VERIFIED PLEAS REGARDING THE BREACH OF CONTRACT CLAIM**

10. Defendant denies that Defendant executed the agreement as Plaintiff claims. There was not and is not an agreement between Plaintiff and Defendant, either written or oral.

11. Defendant denies Plaintiff’s allegation that all conditions precedent have been performed or have occurred. Defendant has not been provided with notice of breach of contract including proof of the existence of a contract or its terms.

12. Defendant is not liable to Plaintiff because of a unilateral mistake of fact. Defendant contracted with a third party for the services allegedly rendered by Plaintiff as a subcontractor, and Defendant was and is apparently and unilaterally mistaken as to the total amount due as payment for that project.

13. Defendant is not liable to Plaintiff for the amount of damages claimed because Defendant is entitled to an offset. Plaintiff fails to credit Defendant for its payment on the account for services rendered.

#### **OTHER DEFENSES**

14. Defendant is not liable to Plaintiff because Plaintiff was not a party to the original transaction.

15. Defendant is not liable to Plaintiff because Plaintiff lacks standing to sue. Plaintiff was not a party to the transaction now was Plaintiff an intended third party beneficiary and as such has not suffered a legally cognizable loss that can form the basis of standing for its suit.

**JURY DEMAND**

16. Defendant demands a jury trial and tenders the appropriate fee with this answer.

**REQUEST FOR DISCLOSURE**

17. Under Texas Rule of Civil Procedure 194, Defendant requests that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

**OBJECTION TO ASSOCIATE JUDGE**

18. Defendant objects to the referral of this case to an associate judge for hearing a trial on the merits or presiding at a jury trial.

**PRAYER**

For these reasons, Defendant asks the Court to dismiss this suit, render judgment that Plaintiff take nothing, award reasonable and necessary attorney fees to Defendant, assess costs against Plaintiff, and award Defendant all other relief to which Defendant is entitled.

Respectfully submitted,

By:  \_\_\_\_\_

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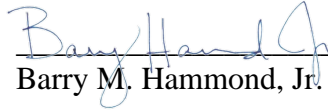
**ATTORNEY FOR DEFENDANT 3S  
REAL ESTATE INVESTMENTS,  
LLC**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been served upon the following as outlined below on this 23rd day of July 2018.

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*Via e-file*

  
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Barry M. Hammond, Jr.