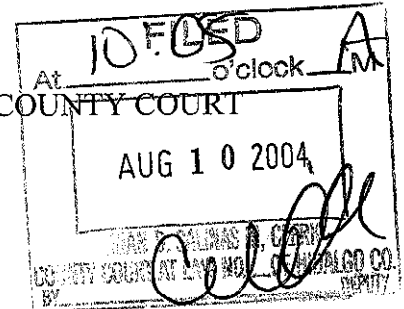


ORIGINAL

CAUSE NO. CL-41,658-B



MANUEL SUERO AND MARIA QUESADA, Individually AND AS NEXT FRIEND OF JOSE DE JESUS HERNANDEZ AND LAURA QUESADA, MINOR CHILDREN

IN THE COUNTY COURT

VS.

AT LAW NO. 2

KENT SWEEZY AND PAULINE SWEEZY, Individually AND D/B/A SWEEZY APARTMENTS AND DR. LESTER MINTO

HIDALGO COUNTY, TEXAS

**DEFENDANTS', KENT SWEEZY AND PAULINE SWEEZY, INDIVIDUALLY AND D/B/A SWEEZY APARTMENTS' FIRST AMENDED ORIGINAL ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendants, KENT SWEEZY AND PAULINE SWEEZY, INDIVIDUALLY AND D/B/A SWEEZY APARTMENTS', in the above-entitled and numbered cause, and files this, Defendants' First Amended Original Answer in response to Plaintiffs' Original Answer, and for such answer would show the following:

I.

GENERAL DENIAL

Subject to such stipulations and admissions as may hereinafter be made, Defendants assert a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court require the Plaintiffs to prove the charges and allegations made against these Defendants by a preponderance of the evidence as it is required by the Constitution and the laws of the State of Texas.

## II.

### AFFIRMATIVE DEFENSES

1. The Defendant affirmatively alleges that on the occasion in question, Plaintiffs were themselves guilty of acts, wrongs, and omissions, each of which constituted negligence, negligence per se and comparative responsibility, and each of which was the sole cause, and alternatively, a proximate cause of the occurrence in question and the alleged damages.
2. Pleading in the alternative, should such be necessary, the Defendant would state that the occurrence in question and Plaintiffs' damages, if any, were solely caused by various acts, omissions, and other conditions and persons over which the Defendant had no control.
3. Pleading in the alternative, should such be necessary, the Defendant would allege that the acts or omissions of other third parties were a new and independent cause of the incident and injuries complained of in this lawsuit; therefore, the Defendant is not responsible.
4. Pleading in the alternative, should such be necessary, the Defendant affirmatively alleges that the act or omission of a person other than the Defendant was a sole proximate cause of the incident in question; therefore, the Defendant is not responsible.
5. Pleading in the alternative, should such be necessary, the Defendant would state that the incident in question was the result of and solely caused by persons, factors, instrumentalities, circumstances and conditions over which the Defendant had no control or right of control; therefore, the Defendant are not responsible.
6. Pleading in the alternative, should such be necessary, the Defendant affirmatively alleges that Plaintiffs' claims or injuries, if any, are the result of a pre existing and/ or a subsequent condition not related to the incident made the basis of this lawsuit; therefore, the Defendant is not responsible.

7. Pleading in the alternative, should such be necessary, Plaintiffs' injuries and damages, if any, have been made worse by Plaintiffs' failure to mitigate their damages.

8. Pleading in the alternative, should such be necessary, the Plaintiffs' prayer for pre-judgment interest, insofar as it includes interest on any future damages beyond the time of the verdict, is barred by Art. 1, Sec. 19, of the Texas Constitution, the due process clause of the Fourteenth Amendment, and also the excessive fines and penalties clause of the Eighth Amendment to the Constitution of the United States of America, as such prayer allows Plaintiffs to recover interest on unaccrued damages during a period of time when such damages are not yet due. Therefore, such prayer is arbitrary, unreasonable, and constitutes the imposition of a penalty.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that upon a final hearing hereof, that Plaintiffs recover nothing of and from the Defendant and that they go hence without day with all costs of Court.

Respectfully submitted,

**GRIFFITH, SULLIVAN,  
OCHOA & GARZA, L.L.P.**

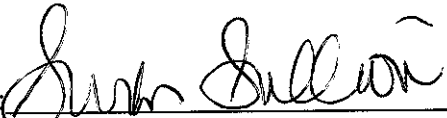
One Park Place, Suite 500

100 Savannah Avenue

McAllen, Texas 78503

Tel. No. (956) 971-9446

Fax. No. (956) 971-9451

BY: 

SUSAN R. SULLIVAN

Texas Bar No. 11546700

**ATTORNEYS FOR DEFENDANTS**

**KENT SWEEZY AND PAULINE**

**SWEEZY, INDIVIDUALLY AND D/B/A**

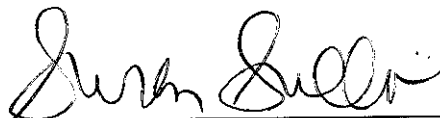
**SWEEZY APARTMENTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on <sup>9th</sup> ~~30th~~ <sup>August</sup> day of ~~July~~, 2004, a true and correct copy of the above and foregoing Defendants' First Amended Original Answer has been sent by certified mail, return receipt requested, postage prepaid, to:

Stephen C. Haynes  
**LAW OFFICES OF STEPHEN C. HAYNES**  
P.O. Box 6207  
McAllen, Texas 78502-6207

**ATTORNEY FOR PLAINTIFFS**



\_\_\_\_\_  
SUSAN R. SULLIVAN