

19-CV-2170

CAUSE NO. _____

CHERYL ALLEN

PLAINTIFF,

V.

RANDY JONES D/B/A RYNO
BUILDERS

DEFENDANT.

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IN THE DISTRICT COURT

Galveston County - 10th District Court

____ JUDICIAL DISTRICT

GALVESTON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

COMES NOW Plaintiff, Cheryl Allen (“**Plaintiff**”), and files this *Original Petition and Request for Disclosure* complaining of Defendant, Randy Jones D/B/A Ryno Builders (“**Defendant**”), and would respectfully show the court as follows:

I.

DISCOVERY CONTROL PLAN

1. Plaintiff intend that discovery be conducted under Level Three of the Discovery Control Plan of Rule 190, *et seq.*, of the TEXAS RULES OF CIVIL PROCEDURE.

II.

PARTIES

2. Plaintiff is an individual who resides in Galveston County, Texas.
3. Defendant Randy Jones is an individual conducting business in Galveston County, Texas. Defendant may be served in this matter at 1002 6th Street, San Leon, Texas 77539, or wherever else he may be found.

III.

VENUE & JURISDICTION

4. Jurisdiction is proper in this court as the damages sought by Plaintiff are within the jurisdictional limits of the court.

5. Venue is proper pursuant to Section 15.001 & 15.002 of the TEXAS CIVIL PRACTICE & REMEDIES CODE because Galveston County is the location where the contract which form the basis of this dispute was entered into and *partially* performed.

IV.
SUMMARY OF RELEVANT FACTS

6. Plaintiff retained Defendant to serve as the General Contractor for the construction of her residence located at 731 4th Street, Dickinson, Texas 77539 (the “**Project**” and/or “**Property**”). Defendant agreed and/or represented that he would perform all of the work necessary to construct the residence in accordance with the plans and specifications, that all systems would be in good working order, and that all work would be completed in a workmanlike manner in compliance with all applicable national, state, and local building codes and laws.

7. Plaintiff paid Defendant all amounts due and owing to Defendant for completion of the construction at the Property. Despite this, Defendant failed to properly perform, manage and oversee the Project leaving behind construction defects for which Plaintiff now sues. The Property is suffering from substantial water damage due to a number of factors including a defective HVAC unit, defective insulation, and failure to properly insulate the home. Signs of problems are widespread at the Property including the HVAC vents and components sweating, water infiltrating the duct work, and damaged flooring. Plaintiff discovered that the air conditioning condensation drain line as well as the line set was condensating and sweating in the wall at a very high rate. This has caused the humidity in the home to be extremely high, exposed the residence to mold problems, and caused significant damage to the flooring system. The ducting in the wall is infiltrated with water, mildewed and undersized. Upon removal of the soffit, Plaintiff also discovered that there were no floor joists under the dining room wall, and that consequently, the dining room floor was being supported by a rotten subfloor due to condensation. Additionally, the exterior wall in the living room only has approximately a ½ inch of support from floor joists. The Tyvek was also not properly sealed which is a contributing factor to these defects and damages.

8. After being placed on notice by Defendant and despite representing that the construction was completed properly at the outset, Defendant set forth minimal effort to cure the issues. Other than a mobilization to visually inspect the Property, Defendant generally remained non-responsive to Plaintiff’s requests for a cure. Each day that passes, the problems become more prevalent. Plaintiff has been left to deal with an uninhabitable residence full of construction deficiencies despite remitting payment of substantial sums to Defendant.

9. Due to the ongoing construction deficiencies at the Property and Defendant’s unwillingness to properly cure, Plaintiff was forced to retain counsel and issued a formal notice of the construction defects pursuant to Chapter 27 of the TEXAS PROPERTY CODE. Defendant failed

to make a timely reasonable offer of settlement or respond at all.

10. Despite Plaintiff's repeated requests and notice in accordance with Chapter 27 of the TEXAS PROPERTY CODE, the construction defects remain uncured by Defendant. As a direct and sole result of Defendant's conduct and failures to cure, Plaintiff has and will continue to suffer damages including accrued interest, attorneys' fees and costs of which she seeks to recover through this lawsuit.

V.
COUNT ONE
VIOLATION OF THE DTPA

11. All factual allegations set forth elsewhere in this pleading are incorporated by reference in support of this cause of action.

12. Plaintiff is a consumer under Section 17.01, *et seq.*, of the TEXAS BUSINESS AND COMMERCE CODE (the "**DTPA**"), because she acquired services and goods from Defendant by purchase. The DTPA forbids the use or employment by any company of a false, misleading, or deceptive act or practice that is relied upon by a consumer to the consumer's detriment. It further forbids sellers of goods and services from breaching their express and implied warranties. Plaintiff will show that Defendant violated at least one provision of the DTPA by: (1) misrepresenting that the quality of the work and repairs that would be performed at the Property; (2) failing to disclose certain information regarding the quality of construction work and status of repairs at the Property; and/or (3) breaching express and implied warranties for his work. Plaintiff relied upon these misrepresentations and/or non-disclosures to her detriment.

13. Through this cause of action, Plaintiff would show that she is entitled to recover her economic damages and treble damages under the DTPA because Defendant's actions were committed intentionally and/or knowingly, reasonable attorneys' fees, court costs, and interest as further alleged below.

VI.
COUNT TWO
BREACH OF CONTRACT

14. All factual allegations set forth elsewhere in this pleading are incorporated by reference in support of this cause of action as if specifically alleged herein.

15. Plaintiff entered into a valid and enforceable contract with Defendant for the construction of the residence at the Property. Plaintiff fully complied with her contractual obligations. However, Defendant unjustifiably breached the contract by negligently performing

his work, breaching his warranties, and refusing to correct his mistakes and/or omissions. The breaches are material because the proper construction of the house and full completion of repairs were material obligations of the parties' agreement.

16. Plaintiff has been, and will continue to be injured by Defendant's failure to perform his contractual obligations. Defendant's breaches are the direct and sole cause of Plaintiff's injuries, which were natural, probable, and foreseeable consequences since the terms of the contract were negotiated and anticipated.

17. Plaintiff would further show that under this theory of recovery, she is entitled to recover her reasonable attorneys' fees, expert fees, costs, and interest.

VII.
COUNT THREE
NEGLIGENCE

18. All factual allegations set forth elsewhere in this Petition are incorporated by reference in support of this cause of action as if specifically set forth herein.

19. Defendant was under a legal duty to exercise reasonable care to avoid a foreseeable risk of injury while performing his work at the Property. Despite that, Defendant failed to exercise reasonable care in performing his work at the Property and addressing repairs resulting in construction defects as outlined herein. Additionally, the defects left behind by Defendant have caused resultant damage at the Property.

20. As a direct and proximate result of Defendant's breach of his duty, Plaintiff has and will continue to incur costs and expenses and suffer actual, direct, indirect, consequential, economic, and non-economic damages to cure the damages suffered as a result of Defendant's actions.

VIII.
COUNT FOUR
BREACH OF WARRANTY

21. All factual allegations set forth elsewhere in this Petition are incorporated by reference in support of this cause of action as if specifically set forth herein.

22. Defendant expressly and/or impliedly warranted that he would properly perform all required work and repairs at the Property in accordance with the generally accepted practices in the residential construction industry and any codes and regulations governing his work. As set forth above, Defendant failed to properly perform his work, perform proper repairs at the

Property and failed to cure known defects. Defendant's failure is a breach of his express and implied warranties given to Plaintiff and/or the implied warranties of habitability and good and workmanlike performance. Plaintiff has been, and will continue to be injured by Defendant's breaches as set forth herein. Defendant's breaches are the direct and sole cause of Plaintiff's injury. Plaintiff would further show that under this theory of recovery, she is entitled to recover all costs and expenses incurred as a result of Defendant's breaches, as well as her reasonable attorneys' fees, expert fees, costs, and prejudgment interest at the highest rate allowed by law.

IX.
CONDITIONS PRECEDENT

23. All conditions precedent for Plaintiff to bring and file these claims against Defendant have been performed, have occurred, or have been waived or excused.

X.
DAMAGES

24. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 47, Plaintiff seek monetary damages between \$200,000.00 and \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees, which is within the jurisdictional limits of this court.

XI.
ATTORNEYS' FEES

25. Plaintiff employed Lovein Ribman, P.C., licensed attorneys, to represent her and pursue recovery of her damages. Pursuant to the Texas statutory law, the common law, and the contract at issue, Plaintiff is entitled to recover her costs and reasonable and necessary attorneys' fees, as are equitable and just. Plaintiff will show that her fees and costs will be no less than \$50,000.00 if this cause requires a trial in this court; an additional fee in the event of an appeal of this cause to the Texas Court of Appeals in the sum of at least \$15,000.00; an additional fee in the event a petition for writ of error to the Texas Supreme Court is filed in the sum of at least \$10,000.00; and an additional fee of \$10,000.00 in the event such petition is granted.

XII.
INTEREST

26. Plaintiff would show that if she is allowed to recover under any theory in this cause, she is entitled to prejudgment interest on such amount at the highest rate allowed by law. Further, Plaintiff would show that she is allowed to recover under any theory in this cause, then

she is entitled to post-judgment interest at the highest rate allowed by law from the date of judgment until the satisfaction of same.

XIII.
REQUEST FOR DISCLOSURE

27. Pursuant to TEXAS RULES OF CIVIL PROCEDURE 194, Plaintiff hereby requests Defendant to disclose, within 50 days of service of this request, the information or material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE.

XIV.
PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against the Defendant for each of the following:

1. upon any of the theories, actions, or causes of action or accounts pled above against Defendant for an amount within the jurisdictional limits of the court, and for judgment against Defendant for all relief enumerated (whether generally or specifically) in this Petition and prayer;
2. Plaintiff's reasonable attorneys' fees, and if this cause requires a trial, for her reasonable attorneys' fees in the prosecution of same; and an additional sum (or sums) if this cause is appealed as specified more fully above;
3. all prejudgment interest to which Plaintiff is entitled at the highest rate allowed by law;
4. all post-judgment interest to which Plaintiff is entitled at the highest rate allowed by law;
5. all costs of court;
6. such orders and judgments affecting the obligations of Defendant and the rights of Plaintiff as this Honorable Court may find appropriate under the circumstances; and
7. such other relief, both general and special, at law or in equity, to which Plaintiff may show themselves justly entitled.

Respectfully Submitted,
LOVEIN | RIBMAN, P.C.

By: /s/ Zak Presley
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