

CV-0085390
CAUSE NO. _____

**KITTEN STRAHAN and LEOPOLD
SISTER PROPERTIES, LLC,**
Plaintiffs,

vs.

**PAUL RUEDA and HOME AT LAST
BUILDING CORPORATION,**
Defendants.

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IN THE COUNTY COURT

AT LAW NO. ____ OF

Galveston County - County Court at Law No. 2

GALVESTON COUNTY, TEXAS

ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs Kitten Strahan and Leopold Sister Properties, LLC, and file this Original Petition and Request for Disclosures, complaining of Defendants Paul Rueda and Home at Last Building Corporation (collectively the “Defendants”) and will respectfully show as follows:

I. DISCOVERY LEVEL

1. Plaintiffs intend to conduct discovery under Level 2 of TEXAS RULE OF CIVIL PROCEDURE 190.3 and affirmatively plead that this suit is not governed by the expedited-actions process in TEXAS RULE OF CIVIL PROCEDURE 169.

II. CLAIMS FOR RELIEF

2. Plaintiffs seek only monetary relief of \$100,000 of less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees pursuant to TEX. R. CIV. P. 47(a)(1). The damages sought are within the jurisdictional limits of the Court.

III. PARTIES

3. Plaintiff Kitten Strahan (“Strahan”) is an individual residing at at 919 18th Ave N., Texas City, Galveston County, Texas 77590.

4. Plaintiff Leopold Sister Properties, LLC (“Leopold”) is a Texas limited liability company with a principal location at 2715 Broadway Street, Galveston, Texas 77550.

5. Defendant Paul Rueda (“Rueda”) is an individual residing in Nueces County. Rueda may be served with citation at 4921 Chatfield Drive, Corpus Christi, Texas 78413, *or wherever he may be found*.

6. Defendant Home at Last Building Corporation (“Home at Last”) is a Texas corporation and may be served with citation by serving its registered agent, Kathleen Rueda, at 2600 S. South Shore Drive, League City, Texas 77573, *or wherever she may be found*.

IV. VENUE & JURISDICTION

7. Venue is proper in Galveston County under TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.002(1) because all or a substantial part of the events or omissions giving rise to the claim occurred in Galveston County, Texas.

8. Jurisdiction resides with the Court because this is a civil case and the amount in controversy is within the Court’s jurisdictional limits. *See* TEX. GOV. CODE § 25.0003.

V. BACKGROUND

9. On or about April 22, 2019, Kitten Strahan entered into a construction agreement with Home at Last. Generally, the construction agreement (the “Agreement”) was for the purpose of remodeling a beach home with the address 18001 San Luis Pass Road, Galveston, Texas (the “Property”). Strahan attaches a copy of the Agreement as Exhibit 1 and incorporates it by reference. Included in the remodel were new kitchen cabinets, perforated soffit roof, ductless HVAC units and many more items. Leopold is the record owner of the Property.

10. Given the work required, a \$150,000 remodel budget was agreed upon. Under the Agreement, Strahan and Leopold were to pay \$50,000 upon the Agreement’s execution; and Strahan and Leopold each tendered \$25,000 to Defendants.

11. Unbeknownst to the Plaintiffs, Defendant Rueda gutted the whole Property and absconded with the \$50,000. Defendants provided none of the work as required under the Agreement.

VI. CAUSES OF ACTION

A. Fraud (Paul Rueda)

12. Defendant Rueda represented that he would perform the remodeling work on the Property. Defendant Rueda's representation to Strahan, individually and as manager of Leopold, was material because, without such representation that he would remodel the Property, Plaintiffs would not have entered into the Agreement and given him \$50,000. Defendant Rueda's representation to Strahan was a false promise of future performance. Rueda intended or knew he would not complete the work as required and simply wanted Plaintiffs' money. Further, Rueda's conduct amounted to a false representation to Strahan.

13. Rueda made the representation that he would complete the work knowing it was false. Rueda intended for Strahan to rely on the false representation. Strahan justifiably relied on Rueda's false representation when she signed the Agreement and paid Rueda the \$50,000 deposit. Rueda's false representation directly and proximately caused injury to Plaintiffs, which resulted in the following damages: the loss of \$50,000 and a completely gutted and empty house.

14. Exemplary damages. Plaintiffs' injury resulted from Rueda's actual fraud, gross negligence, or malice, which entitles Plaintiffs to exemplary damages under CIVIL PRACTICE & REMEDIES CODE § 41.003(a).

B. Breach of Contract

15. On April 22, 2019, Plaintiffs and Defendants entered into an Agreement for the remodel of the beach Property. The Agreement provided that Plaintiffs would pay Defendants \$150,000 for construction work. The Agreement provided that Defendants would:

Whole house:

House wrap, vinyl side entire home, perforated soffit roof overhang areas, paint entire deck to match the siding, entry stairs paint to match siding, stair kickers paint turquoise, front door paint turquoise, deck railings paint white, all corners white vinyl, ductless HVAC units per each floor.

2nd Floor:

Sliding glass doors (2), all new windows, new kitchen cabinets (shaker style), granite top, new vanity cabinets with tops (bathrooms), new tub, new toilets (2), new faucets, engineered flooring throughout common spaces and bedrooms, tile flooring in bathrooms, insulation, sheetrock, spackle and texture, paint, 6 panel interior door, front door moved and centered to stairs, trim for doors and floor (white), door handles (brushed nickel), electrical fixtures (standard), w/d hookups front utility room.

Roof top:

Replace stairs to roof, repair attachment point, demo room to outdoor sitting area, vinyl side inside roof wall area.

16. Plaintiffs performed by paying Defendants the \$50,000 deposit. Defendants breached the Agreement by failing to perform the work as required. Rueda simply gutted the interior of the Property and did no further work. Rueda's breach caused injury to Plaintiffs which resulted in the following damages: loss of \$50,000 and a house that needs to be updated from the ground up.

VII. ATTORNEY'S FEES

17. Plaintiffs are entitled to their reasonable and necessary attorneys' fees for bringing this breach of contract suit.

VIII. CONDITIONS PRECEDENT

18. All conditions precedent to Plaintiffs' claim for relief have been performed or have occurred.

IX. REQUEST FOR DISCLOSURES

19. Under TEXAS RULE OF CIVIL PROCEDURE 194, Plaintiffs requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

X. USE OF DOCUMENTS

20. Plaintiffs hereby gives notice to Defendants and all other parties that any and all documents produced during discovery may be used against Defendants and any other party at any pretrial proceeding and/or trial of this matter without the necessity of authenticating the document. This notice is given pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE.

REQUESTED RELIEF

For these reasons, Plaintiffs requests that the Defendants Paul Rueda and Home at Last Building Corporation be cited to appear and answer, and that the Court award Plaintiffs judgment against the Defendants for the following:

- a. FIFTY THOUSAND DOLLARS (\$50,000);
- b. Exemplary damages;
- c. Costs of court, including reasonable and necessary attorney's fees;
- d. Pre- and post-judgment interest; and
- e. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

Murray | Lobb, PLLC

By: /s/ Kyle L. Dickson

Kyle L. Dickson

State Bar No. 05841310

Philip J. Nolen

State Bar No. 24109529

700 Gemini, Suite 115

Houston, Texas 77058

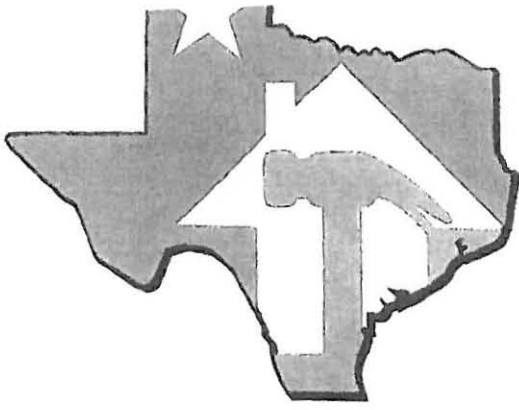
Tel: (281) 488-0630

Fax: (281) 488-2039

Email: *kdickson@murray-lobb.com*

pnolen@murray-lobb.com

ATTORNEYS FOR PLAINTIFFS
KITTEN STRAHAN AND LEOPOLD
SISTER PROPERTIES LLC



HOME at LAST *Building Corp*

Date: 04/22/2019
Attn: Kitten Strahan
Contact: 832-641-4261

RE: Remodel beach home

Whole house:

House wrap
Vinyl side entire home
Perforated soffit roof over hang areas
Paint entire deck to match the siding
Entry stairs paint to match siding
Stair kickers paint turquoise
Front door paint turquoise
Deck railings paint white
All corners white vinyl (not lower pilings)
Ductless HVAC units per each floor

2nd floor:

Sliding glass doors (2)
All new windows
New kitchen cabinets (shaker style)
Granite Top
New vanity cabinets w tops(bathrooms)
New Tub
New Toilets (2)
New faucets
Engineered flooring through out common spaces and bedrooms
Tile flooring in bathrooms
Insulation
Sheetrock
Spackle and texture
Paint

EXHIBIT 1

6 panel interior doors
Front door moved and centered to stairs
Trim for doors and floor (white)
Door handles (brushed nickel)
Electrical fixtures (standard)
W/D Hookups front utility room

Roof top:

Replace stairs to roof
Repair stair attachment point
Demo room to outdoor sitting area
Vinyl side inside roof wall area

NOTES:

Thank you,

Paul Rueda
(281)913-9222

CONSTRUCTION CONTRACT AGREEMENT

This Construction Contract Agreement (this "Agreement") is made as of the 22 day of April, 2019 by and between Kitten Strahan, an individual located at 18001 Termimi San Luis Pass Rd , Galveston, TX 77550 ("Owner") and Home at Last Building Corporation, a Texas corporation located at 2715 Broadway ST, Galveston, TX 77550 with contractor's license number _____ ("Contractor"). Owner and Contractor may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties agree as follows:

1. Description of Work. Contractor shall perform the following described work at 18001 Termini San Luis Rd, Galveston, TX 77550 (the "Property"), in accordance with Owner's contract plans and specifications, attached as Exhibit A, this Agreement and any Change Order, as defined herein, (collectively, the "Contract Documents"): Remodel 2nd floor of home, install vinyl siding and correct piling issues (the "Work").

2. Contract Price and Payments. Owner agrees to pay Contractor the total amount of \$150,000.00 (the "Contract Price"). Payment of this amount is subject to additions or deductions in accordance with any mutually agreed to changes and/or modifications in the Work. Payment will be made by personal check, according to the following schedule:

- \$50,000.00 deposit, due upon the execution of this Agreement.
- \$50,000.00 due upon windows installed.
- \$35,000.00 due upon siding installed.
- \$15,000.00 balance due upon completion of the Work.

3. Certificate of Completion. Work under this Agreement shall begin on April 22, 2019, and shall be completed by August 02, 2019. Upon completion of the Work, Contractor shall notify Owner that the Work is ready for final inspection and acceptance and Owner shall make the final payment within five (5) days after final inspection.

4. Materials and Labor. Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of Owner. In addition, the Contract Price shall include the fixtures as described in Exhibit B

5. Licenses and Permits. Contractor shall obtain all licenses and permits necessary for proper completion of the Work. Contractor is responsible for the cost of any necessary permits or licenses.

6. Laws and Regulations. Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, and any safety requirements of Owner (the "Applicable Laws"). Contractor shall promptly notify Owner upon discovery of any variance between the Applicable Laws and the Construction Documents.

7. Supervision of Construction. Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

8. Record Documents. Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to Owner upon completion of the Work.

9. Utilities. Owner shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. Owner shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

10. Hazardous Materials. Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify Owner and may cease working until the material or substance has been rendered harmless. Owner shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work resulting in bodily injury, illness or death, or injury or property damage, *provided* such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

11. Warranty. Contractor warrants that the Work shall be in accordance with the Contract Documents and free from material structural defects. Contractor shall redo or repair any Work not in accordance with the Contract Documents or any defects caused by faulty materials, equipment or workmanship for a period of one (1) year(s) from the date of completion of the Work.

12. Condition of the Property. Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas

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contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by Owner.

13. Inspection. Owner shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

14. Right to Stop Work. If Contractor fails to correct any defective Work or repeatedly fails to perform the Work in accordance with the Contract Documents, Owner shall have the right to order Contractor to stop performing the Work, or any portion thereof, until the cause for such order is eliminated.

15. Subcontracts. Contractor shall furnish to Owner a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom Owner reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

16. Work Changes. Owner reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by Owner and Contractor, which shall be incorporated by reference herein.

17. Other Contractors. Owner reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded, and shall give them access to the Property as necessary to perform their contracts.

18. Indemnification. Contractor agrees to defend, indemnify and hold harmless Owner and its agents and employees, from and against all claims, actions, liabilities, suits, demands, injuries, obligations, damages, losses, settlements, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising out of any negligent act or omission by Contractor, a subcontractor or anyone directly or indirectly employed by them in the performance of the Work resulting in bodily injury, illness or death, or for property damage, including loss of use, unless caused by the sole negligence or willful misconduct of Owner.

19. Contractor's Insurance. Contractor agrees to maintain at its own expense during the entire period of construction at the Property:

A. General Liability Insurance. Such general liability insurance as will protect Contractor from claims for property damage and bodily injury, with limits of liability not less than \$1,000,000.00 for each occurrence.

Contractor shall name Owner as an additional insured. Proof of such insurance shall be filed by Contractor with Owner within a reasonable time after execution of this Agreement.

20. Waiver of Subrogation. Owner and Contractor each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by any insurance required under this Agreement. Owner and Contractor shall cause each insurance policy carried by Owner or Contractor relating to the Property to include or allow a full waiver of any subrogation claims.

21. Time of Essence. All times stated in this Agreement or in the Contract Documents are of the essence. Contractor agrees that such times are reasonable for performing and completing the Work.

22. Extension of Time. The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

23. Early Termination for Breach of Contract.

A. Contractor's Termination. Contractor may, on five (5) days' written notice to Owner, terminate this Agreement before the completion of the Work when for a period of five (5) days after a progress payment is due, through no fault of Contractor, Owner fails to make the payment. On such termination Contractor may recover from Owner payment for all Work completed and for any loss sustained by Contractor for materials, equipment, tools or machinery to the extent of actual loss thereon, plus loss of a reasonable profit.

B. Owner's Termination. Owner may, on five (5) days' notice to Contractor, terminate this Agreement before the completion of the Work, and without prejudice to any other remedy Owner may have when Contractor defaults in the performance of any provision of this Agreement, or fails to carry out performance of the Work in accordance with the provisions of the Contract Documents. If the unpaid balance on the Contract Price at the time of the termination exceeds the expense of finishing the Work, Owner shall pay such excess to Contractor.

24. Disputes. Any dispute arising from this Agreement shall be resolved through mediation. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

25. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.

26. Headings. The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

27. Notices. Any notice or communication given or made to any Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail,
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return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

28. Assignment. No Party hereto shall have the right to assign its rights or delegate its duties hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

29. Binding Effect. This Agreement shall be binding and enure to the benefit of the Parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

30. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions.

31. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

32. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

33. Amendments. This Agreement may not be amended or modified except by a written agreement signed by the all of the Parties.

34. Waiver. No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

35. Other. All payments are non refundable. Homeowner or anyone not associated with Home at Last builders cannot enter the property during work hours. The responsibility of trespassers will of said property will be the responsibility of the homeowner

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.



Owner Signature

Kitten Strahan

Owner Full Name

Home at Last Building
Corporation

Contractor Full Name



Contractor

Paul Rueda
CEO

Contractor Representative Name and