

CAUSE NO. _____

3S Real Estate Investments, LLC,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
Richard Hernandez a/k/a Rick Hernandez,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Plaintiff, 3S Real Estate Investments, LLC, files this original petition and request for disclosure against Defendant, Richard Hernandez a/k/a Rick Hernandez, and alleges as follows:

A. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2 and affirmatively pleads that this suit is governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

B. RELIEF

2. Plaintiff seeks only monetary relief of \$100,000 or less, including damages of any kind, penalties, court costs, expenses, prejudgment interest, and attorney fees.

C. PARTIES

3. Plaintiff, 3S Real Estate Investments, LLC, is a limited liability company organized under the laws of the State of Texas.

4. Defendant, Richard Hernandez a/k/a Rick Hernandez, is an individual doing business at 2624A Yale Street, Houston, Texas 77008.

D. JURISDICTION

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court’s minimum jurisdictional requirements.

E. VENUE

6. Venue is proper in Harris County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County. Plaintiff remitted payment to Defendant by US Mail to an address in Harris County and Defendant operates his business in Harris County.

F. FACTS

7. On or about August 28, 2015, Plaintiff entered into a construction agreement with McDermott Gray Construction, LLC (“McDermott”) in which McDermott agreed to manage the construction of a residence at 914 Woodard St., Houston, TX 77009 (the “Residence”). *See Ex. A* (the “Construction Contract”).

8. The Construction Contract required McDermott to perform the work or oversee the work of subcontractors to complete the construction of the Residence. *Id.*

9. McDermott selected Defendant to install insulation into the Residence. On or about October 11, 2016, Stephen Gray, a principal of McDermott, directed Paul Sarver, manager of Plaintiff, to remit a \$6,959.00 check to Defendant as a prepayment in full that installation. The payment was sent to and cashed by Defendant on or about that date. *See Ex. B.*

10. On or about April 24, 2017, Plaintiff terminated the Construction Contract with McDermott. *See Ex. C.* Plaintiff engaged Justin Hurst, a new contractor, to complete the as-yet unfinished Residence.

11. At the time of that termination, the insulation for which Defendant had been prepaid had not yet been installed. On or about May 1, 2017, Plaintiff mailed Defendant a letter by certified mail, return receipt requested, requesting that Defendant contact Mr. Hurst to schedule the insulation installation or return the prepayment on or before May 12, 2017. *See Ex. D.* The return receipt indicating the letter was received by Defendant or a representative of Defendant was received by Plaintiff’s attorney. *Id.*

12. As of May 12, 2017, Defendant had not contacted Mr. Hurst or Plaintiff.

13. On or about May 12, 2017, Plaintiff’s attorney spoke by telephone to Defendant, who was again provided with Mr. Hurst’s contact and information and promised to contact him or return the funds.

14. As of the date of this filing, Defendant has not contacted Mr. Hurst, returned the \$6,959.00, or completed the installation job he was engaged to perform.

G. COUNT 1 – CONVERSION

15. Plaintiff alleges and incorporates paragraphs 1 through 14 of this Petition as if set forth herein in full.

16. Plaintiff owned the following personal property: \$6,959.

17. Defendant, who legally acquired possession of plaintiff’s personal property, wrongfully exercised dominion and control over the property by using it in a way that departed from the conditions under which it was received. Defendant was hired and paid to install installation at the Residence and has failed to do so. Further, Defendant has failed to return the property on Plaintiff’s demand.

18. Defendant's wrongful acts proximately caused injury to plaintiff, which resulted in the following damages: loss of use of the converted property.

19. Plaintiff seeks return of the converted property and damages within the jurisdictional limits of this Court.

H. COUNT 3 – BREACH OF CONTRACT

20. Plaintiff alleges and incorporates paragraphs 1 through 19 of this Petition as if set forth herein in full.

21. On or about October 11, 2016, either Plaintiff and Defendant entered into a valid and enforceable oral contract that provided that Defendant would install insulation at the Residence, or Plaintiff is the third-party beneficiary of Defendant's contract with McDermott to perform that installation.

22. Defendant breach the contract by not installing the insulation, not contacting the new contractor to schedule the insulation, and not returning the prepayment upon Plaintiff's demand.

23. Defendant's breach caused injury to the Plaintiff, which resulted in the following damages: the conversion of the \$6,959.00 prepayment.

24. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this suit is for breach of an oral contract. Plaintiff retained counsel who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 10 days after the claim was presented.

I. JURY DEMAND

25. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

J. CONDITIONS PRECEDENT

26. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

K. REQUEST FOR DISCLOSURE

27. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

L. OBJECTION TO ASSOCIATE JUDGE


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

M. PRAYER

28. For these reasons, Plaintiff asks that the Court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Actual damages.
- b. Return of the converted property.
- e. Prejudgment and postjudgment interest.
- f. Court costs.
- g. Attorney fees.
- h. All other relief to which plaintiff is entitled.

Respectfully submitted,

By:  _____

Barry M. Hammond, Jr.
Texas State Bar No. 24059883
barry@ruralroute3holdings.com
1302 Waugh Drive #539
Houston, Texas 77019
Tel. (832) 819-1020
Fax (832) 827-4280

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