

CAUSE NO. \_\_\_\_\_

**3S REAL ESTATE INVESTMENTS, LLC,** § **IN THE DISTRICT COURT**  
**Plaintiff,** §  
§  
**v.** § **OF HARRIS COUNTY, TEXAS**  
§  
**THIRD COAST DEVELOPMENT, LLC,** §  
**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, Third Coast Development, LLC, 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, Third Coast Development, LLC, is a limited liability company organized under the laws of the State of Texas, whose registered agent for purposes of service is Dennis Follis, and whose registered address is 2348 Sperber Lane, Houston, Texas 77003.

**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 Defendant, a limited liability company, maintains its principal office in Texas 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 construct the driveway and sidewalk at the Residence. On or about December 5, 2016, Stephen Gray, a principal of McDermott, directed Paul Sarver, manager of Plaintiff, to remit a \$9,000.00 check to Defendant as a prepayment in full. 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 driveway and sidewalk for which Defendant had been prepaid had not yet been constructed. On or about May 1, 2017, Plaintiff mailed Defendant a letter by first class and certified mail, return receipt requested, requesting that Defendant contact Mr. Hurst to schedule the construction or return the prepayment on or before May 12, 2017. *See* Ex. D.

12. 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

13. Plaintiff alleges and incorporates paragraphs 1 through 12 of this Petition as if set forth herein in full.

14. Plaintiff owned the following personal property: \$9,000.

15. 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.

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

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

### **H. COUNT 3 – BREACH OF CONTRACT**

18. Plaintiff alleges and incorporates paragraphs 1 through 17 of this Petition as if set forth herein in full.

19. On or about December 5, 2016, either Plaintiff and Defendant entered into a valid and enforceable oral contract that provided that Defendant would construct the sidewalk and driveway at the Residence, or Plaintiff is the third-party beneficiary of Defendant's contract with McDermott to perform that construction.

20. Defendant breach the contract by not constructing the driveway and sidewalk, not contacting the new contractor to schedule the construction, and not returning the prepayment upon Plaintiff's demand.

21. Defendant's breach caused injury to the Plaintiff, which resulted in the following damages: the conversion of the \$9,000.00 prepayment.

22. 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**

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

### **J. CONDITIONS PRECEDENT**

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

### **K. REQUEST FOR DISCLOSURE**

25. 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**

26. 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**

27. 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:  \_\_\_\_\_

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