

23-CV-1323

CAUSE NO. _____

GREG RUIZ and KAREN RUIZ
PLAINTIFFS,

vs.

AUSTIN HUGHES and
MARIA HUGHES
DEFENDANTS

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§

IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS
Galveston County - 405th District Court

_____**JUDICIAL DISTRICT**

PLAINTIFFS' ORIGINAL PETITION

To the Honorable Judge of this Court:

COMES NOW, **Greg Ruiz and Karen Ruiz**, hereinafter referred to collectively as "Plaintiffs", and file this Original Petition against **Austin Hughes and Maria Hughes**, hereinafter referred to collectively as "Defendants", complaining of fraudulent or negligent misrepresentation in connection with the sale of a residential property. Plaintiffs would respectfully show the Court as follows:

DISCOVERY LEVEL

1. Plaintiffs intend to conduct discovery under a level 2 discovery control plan pursuant to Tex. R. Civ. P. 190.3.

CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief below \$250,000.00, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

PARTIES

3. Plaintiffs **Greg Ruiz and Karen Ruiz** are individuals residing in Galveston County at 6 Tradewinds Drive, Galveston, Texas 77554.

Status Conference set 11-16-23

4. Defendant **Austin Hughes**, an individual who is a resident of Texas, may be served with process in Walker County at 427 Elkins Lake, Huntsville, Texas 77340, or wherever defendant may be found.

5. Defendant **Maria Hughes**, an individual who is a resident of Texas, may be served with process in Walker County at 427 Elkins Lake, Huntsville, Texas 77340, or wherever defendant may be found.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court.

7. Venue is proper in Galveston County, Texas because a substantial part of the events giving rise to the claim occurred in Galveston County, Texas. Tex. Civ. Prac. & Rem. Code §15.002.

FACTS

8. On or about January 29, 2021, Plaintiffs purchased a residential property located at 6 Tradewinds Drive, Galveston, Texas 77554 ("Property") from Defendants. The disclosures associated with the sale were signed by Austin and Maria Hughes.

9. Defendants either negligently or intentionally misrepresented facts regarding the property. Plaintiffs relied on Defendants' representations in deciding to purchase the property.

10. Texas Property Code Section 5.008 requires sellers to disclose information regarding any defects, structural repairs, structural modifications, or other alterations or repairs made without necessary permits. However, in their disclosures, Defendants

expressly denied that any structural modifications or alterations made without necessary permits occurred at the property:

Section 8. Are you (Seller) aware of any of the following? (Mark Yes (Y) if you are aware. Mark No (N) if you are not aware.)

Y N
— ☒

Room additions, structural modifications, or other alterations or repairs made without necessary permits, with unresolved permits, or not in compliance with building codes in effect at the time.

11. Defendants knew that they performed structural work during their ownership of the property.

12. In fact, Defendants had performed structural modifications to the property including the removal of an interior structural wall. Additionally, the work was performed without a permit.

13. Furthermore, the support system added to replace the load-bearing wall was sub-standard and insufficient.

14. In January or February 2022, Plaintiffs discovered that the replacement beam was collapsing causing areas of the second-floor to become separated. Other damages include but are not limited to shifting of the second-floor resulting in flooring issues and separations in drywall and baseboards.

15. During subsequent remediation efforts, Plaintiffs discovered that the support beam placed by Defendants was insufficient to support the second-floor. Additionally, Plaintiffs discovered that the necessary and required permits to perform structural work were not obtained by Defendants.

16. Plaintiffs have incurred substantial costs associated with remedial engineering and construction work.

CAUSES OF ACTION

I. DTPA CLAIM

17. Plaintiffs are consumers under the DTPA because Plaintiffs are individuals who acquired goods by purchase.

18. Defendants are individuals that can be sued under the DTPA.

19. Defendants violated the DTPA when they engaged in false, misleading, or deceptive acts or practices that Plaintiffs relied on to Plaintiffs' detriment. Specifically, Defendants:

a. represented that goods were of a particular standard, quality, or grade, when they are another. Tex. Bus. & Com. Code §17.46(b)(7).

b. failed to disclose information concerning goods which were known at the time of the transaction and such failure to disclose information was intended to induce Plaintiffs into a transaction into which they would not have entered had the information been disclosed. Tex. Bus. & Com. Code §17.46(b)(24).

20. Specifically, Defendants represented that the house was structurally sound when in fact it was not. Defendants also performed sub-standard work which did not meet building codes. Further, Defendants knew that the work performed required permitting which they did not acquire. Defendants failed to disclose material information on the Seller's Disclosure Notice to Plaintiffs.

21. Plaintiffs gave Defendants notice as required by Texas Business & Commerce Code section 17.505(a). Attached as Exhibit A is a copy of the notice letter sent to Defendants, which is incorporated by reference. Defendants responded in a letter dated November 29, 2022.

II. Fraudulent Inducement

22. Alternatively, Plaintiffs were fraudulently induced by Defendants to purchase the property.

23. The elements of fraudulent inducement include: (1) defendant making a representation to the plaintiff; (2) the representation was material; (3) the representation was false; (4) when the representation was made, defendant knew the representation was false or made the representation recklessly, as a positive assertion, and without knowledge of its truth; (5) the defendant made the representation with the intent that the plaintiff act on it; (6) the plaintiff relied on the representation; and (7) the representation caused the plaintiff injury.

24. Defendants fraudulently induced the sale of the property. They made material misrepresentations to the Plaintiffs that were either made recklessly or known to be false. Additionally, the representations were intended to secure Plaintiffs' reliance which caused Plaintiffs' injury.

III. Statutory Fraud

25. Alternatively, Defendants committed statutory fraud in a real estate transaction.

26. The elements of an action for statutory fraud include: (1) a transaction involving real estate or stock; (2) during the transaction, the defendant made a false representation of fact, promise, or benefited by not disclosing that a third party's representation or promise was false; (3) the false representation or promise was made for the purpose of inducing the plaintiff to enter into a contract; (4) the plaintiff relied on the false representation or promise by entering into the contract; and (5) the reliance caused the plaintiff injury. Tex. Bus. & Com. Code §27.01(a).

27. Defendants committed fraud in a real estate transaction. They made material and false representations to Plaintiffs in order to induce them to purchase the property. Plaintiffs relied on those misrepresentations and entered into the contract for purchase.

DAMAGES

28. Plaintiffs are entitled to recover as follows:

a. the reasonable cost of repairs necessary to cure any construction defect and the damage therefrom;

b. the reasonable and necessary engineering and consulting fees under Tex. Bus. & Com. Code §27.01;

c. mental-anguish damages due to Defendants' acting knowingly. Tex. Bus. & Com. Code §17.50(b)(1);

d. treble economic damages due to Defendants' acting knowingly. Tex. Bus. & Com. Code §17.50(b)(1);

e. attorney fees under Tex. Bus. & Com. Code §27.01 and Chapter 38 of the Texas Civil practice and Remedies Code;

f. exemplary damages under Tex. Bus. & Com. Code §27.01;

g. any other damages recoverable at law or in equity.

JURY DEMAND

29. Plaintiffs demand a jury trial and tenders the appropriate fee with this petition.

CONDITIONS PRECEDENT

30. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

PRAYER

31. For these reasons, Plaintiffs ask that the Court issue citation for Defendants to appear and answer, and that Plaintiffs be awarded a judgment against Defendants for the following:

- a. Actual damages.
- b. Exemplary and treble damages.
- c. Mental anguish.
- d. Prejudgment and postjudgment interest.
- e. Court costs.
- f. Attorney fees.
- f. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

MCLEOD, ALEXANDER, POWEL & APFFEL,
A Professional Corporation



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ATTORNEYS FOR PLAINTIFFS,
GREG RUIZ AND KAREN RUIZ

Exhibit A



MCLEOD, ALEXANDER, POWEL & APFFEL, P.C.

Douglas W. Poole
Michael B. Hughes
James B. Galbraith
Anthony P. Brown
David P. Salyer
Genevieve Bacak McGarvey
Bryan R. Lasswell

Lee A. Mencacci
John W. Drewry, Jr.
Kurt A. Gonzalez
Jennifer A. Moynahan
Kierra J. Vogel

Of Counsel:
Fredrick J. Bradford
David E. Cowen
M. Edwin Prudhomme
Susan K. Musch

V.W. McLeod (1914-1977)
Robert W. Alexander (1920-2017)
Benjamin R. Powell (Retired)
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Direct Extension No. 135
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November 17, 2022

Re: 6 Tradewinds Dr Galveston, Texas 77554

Austin & Maria Hughes
10327 San Luis Pass Rd Unit 208
Galveston, Texas 77554

Via CMRRR 7017 2620 0000 1083 2814

Austin & Maria Hughes
427 Elkins Lake
Huntsville, Tx 77340

Via CMRRR 7017 2620 0000 1083 2807

Dear Mr. and Mrs. Hughes,

I represent Greg and Karen Ruiz who have hired me to assist them in resolving claims involving your failure to disclose required information on the Seller's Disclosure Notice regarding structural and construction defects from the work you performed at 6 Tradewinds Dr., Galveston, Texas 77554.

Section 5.008 of the Texas Property Code requires a seller of residential property to deliver a Seller's Disclosure Notice to a buyer. The Notice is a disclosure of your knowledge of the condition of the property. As the seller, you were required to provide information regarding any defects, structural repairs, and/or structural modifications; or other alterations or repairs made without necessary permits. You failed to do so.

You knew that you removed an interior load-bearing wall that contained a support beam necessary for the second floor of the house. However, you expressly denied that you were aware of any structural modifications, or other alterations or repairs made without necessary permits. You also denied that there were defects to floors, interior walls, ceilings, or other structural components.

According to the City of Galveston's Building Codes, this work required permits from the city and likely would have required engineered plans and city inspections. You failed to obtain any permits or provide the city with plans for the work. Your misrepresentations and failure to provide adequate notice has caused my clients damages.

Additionally, the support system added to replace the load bearing wall was sub-standard and insufficient. The replacement beam began to collapse and caused areas of the second floor to become separated. The damages to the property include but are not limited to the second floor shifting causing separations in drywall, baseboards, and flooring issues.

The Ruiz's have incurred substantial costs associated with remedial engineering and construction work with the replacement of the support beam. The remediation work was completed in several phases due to the nature of the harm to their property.

Your failure to disclose the work constitutes false, misleading, or deceptive acts and practices prohibited by Section 17.46 of the TEXAS BUSINESS & COMMERCE CODE (the Texas Consumer Protection – Deceptive Trade Practices Act or "DTPA") including but not limited to, the following:

1. Representing that goods are of a particular standard, quality, or grade, when they are another, TEXAS BUSINESS & COMMERCE CODE §17.46(b)(7); Specifically, you represented that the house was structurally sound when in fact it was not. Additionally, you performed sub-standard work which did not meet building codes.
2. Failing to disclose information concerning goods or services which were known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, TEXAS BUSINESS & COMMERCE CODE § 17.46(b)(24). Specifically, you knew that you performed work that required permitting without obtaining the necessary permits. Additionally, you failed to disclose that information on the Seller's Disclosure Notice to the Ruizes.

The foregoing omissions were committed knowingly and intentionally, and the Ruizes relied on your representations, acts, and omissions to their damage and detriment.

In addition to constituting numerous violations of the Texas Consumer Protection – Deceptive Trade Practices Act, the above-described acts and omissions constituted, among other things: misrepresentation; fraud by nondisclosure; fraud in real estate transactions; and breach of contract.

As a direct result of your wrongful acts and omissions, the Ruizes have been compelled to retain the services of this firm to seek redress for the damages they have suffered.

Accordingly, the Ruizes claim for damages has a current value of \$ 19,329.17. Further, at

this time, my clients have incurred reasonable attorney fees in the amount of \$ 3,000.00. In the event of litigation, which we hope will not be necessary, these amounts will be adjusted upward to reflect any additional damages, as well as additional time and expense incurred.

Pursuant to Texas Business and Commerce Code §17.505, you have sixty (60) days to make an offer of settlement. If no settlement is offered, my client will proceed to bring their claims against you for negligence, breaches of implied and express warranties, and under the above cited statutes, seeking damages and attorneys' fees, including up to three times their actual damages in accordance with the DTPA.

DEMAND

In a good faith effort to resolve this issue without having to resort to the legal system, the Ruizes are willing to settle this matter for **\$ 22,329.17** inclusive of my fees.

Greg and Karen are very reasonable people who are only seeking to recoup costs directly associated with the sub-par, unpermitted, and undisclosed work performed during your ownership of the home. Greg and Karen are not seeking anything above the cost of the repairs plus any reasonable legal fees. I believe that they are entitled to such reimbursement. It is our hope that we can come to a resolution without further expense.

This letter constitutes notice that unless we receive a certified check, cashier's check, or money order within 60 days of receiving this demand letter made payable to **Greg and Karen Ruiz** in the amount of **\$ 22,329.17**, this firm has been instructed to take whatever steps are necessary to protect our client's interests. In such event, the Ruizes have authorized and instructed us to file and prosecute a lawsuit against you.

In connection with such litigation, we have been directed to pursue all proper legal remedies and to seek all available relief including, but not limited to, direct and consequential damages, penalties as provided by the Texas Consumer Protection – Deceptive Trade Practices Act, interest, court costs, and such additional punitive damages as may be legally appropriate. **Please note: under the Deceptive Trade Practices Act, you may be liable for treble damages and reasonable and necessary attorney fees.**

Please do not hesitate to contact me to discuss this matter further. I look forward to hearing from you.

Sincerely,



Bryan R. Lasswell

cc: Greg and Karen Ruiz

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Rachell Smith on behalf of Bryan Lasswell

Bar No. 784450

rsmith@mapalaw.com

Envelope ID: 78660094

Filing Code Description: Original Petition - OCA (1-10 plaintiffs)

Filing Description: Plaintiffs' Original Petition and Jury Demand-No service requested or paid for at this time

Status as of 8/18/2023 8:34 AM CST

Associated Case Party: Greg Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Bryan Lasswell		brlasswell@mapalaw.com	8/17/2023 5:01:55 PM	SENT
Kurt A.Gonzalez		kagonzalez@mapalaw.com	8/17/2023 5:01:55 PM	SENT
Rachell Smith		rsmith@mapalaw.com	8/17/2023 5:01:55 PM	SENT
Amber DAtkins		adatkins@mapalaw.com	8/17/2023 5:01:55 PM	SENT