

CAUSE NO. 22-CV-2062

APRIL VAUGHAN	§	IN THE DISTRICT COURT
	§	Galveston County - 10th District Court
VS.	§	
	§	JUDICIAL DISTRICT
	§	
GULF COAST	§	
AEROBIC SERVICES	§	GALVESTON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

NOW COMES Plaintiff, MS. APRIL VAUGHAN, complaining of Defendant, GULF COAST AEROBIC SERVICES, and for cause of action would show the Court the following:

Discovery Control Plan

1. As provided in Rule 190, Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery under Level 2.

Plaintiff

2. This Petition is filed by April Vaughan, Plaintiff, an individual whose address is 1509 FM 646 N., Santa Fe, Texas 77510. The last three digits of Plaintiff's driver's license number are **419**. The last three digits of Plaintiff's Social Security number are **459**.

Defendant

3. This Court has jurisdiction over Gulf Coast Aerobic Services because said Defendant is a resident, and registered business, of Texas.

Venue

4. Venue is proper in this county in that the events giving rise to this cause of action occurred within Galveston County at the Plaintiff's domicile of 1509 FM 646 N., Santa Fe, Texas 77510.

Jurisdiction

5. The damages sought in this suit are within the jurisdictional limits of the Court. As required by Rule 47, Texas Rules of Civil Procedure, Plaintiff states that Plaintiff seeks monetary relief of \$11,467.93.

Notice of Claim

6. Plaintiff delivered written notice of this claim to Defendant, Gulf Coast Aerobic Services, on or about October 11, 2021, advising Defendant in reasonable detail of the specific complaint made the subject of this action and the amount and nature of the damages and expenses sought. Said letter is attached as Exhibit 1.

Facts

7. On June 8, 2021, Plaintiff and Defendant entered into an agreement and executed a written contract ("the contract" herein) for the installation of an aerobic septic system at Plaintiff's real property, located at 1509 FM 646 N., Santa Fe, Texas 77510. A copy of said contract is marked "Exhibit 2" and incorporated herein for all purposes.

8. The contract is a residential home improvement contract, regulated under TX Property Code § 41.007(b).

9. The scope of work to be performed by Defendant for the benefit of Plaintiff is detailed in the attached contract.

10. The original contract price was \$9,800.

11. The contract agreement was that Plaintiff would pay the above amount for Defendant's installation of a new aerobic septic system.

12. Defendant failed to perform the entirety of the work agreed to in a competent and satisfactory manner.

13. Per the contract, Defendant was to replace the existing damaged septic system on the residential property of Plaintiff with a complete aerobic septic system which properly served the entire home

14. Defendant's installation work was incomplete and defective.

15. The contract executed between Plaintiff and Defendant states in pertinent part: "All material is guaranteed to be as specific & the above work to be performed in accordance with the drawings and specifications submitted & completed in a substantial manner."

16. Defendant did not complete the work in a substantial manner. Defendant stopped installation before completion, leaving work unfinished where there is a septic tie in that is purposed to serve the other side of the house.

17. Owed to the work left incomplete by Defendant, Plaintiff thereafter had serious drainage problems in her backyard. Water leaked through the laundry and kitchen drainage line and created pools of stagnant water which posed a health risk.

18. On or about August 23, 2021, in an attempt to seek redress of the water leakage problem, Plaintiff contacted Defendant.

19. On or about August 24, 2021, Defendant sent two employees to the work site, Plaintiff's residential property, to assess the matter. Defendant, however, thereafter never fixed the problem and left the Work incomplete and defective.

20. In connection with the conduct and/or omissions described above, Defendant engaged in an "unconscionable action or course of action" by taking advantage of the lack of knowledge, ability, experience or capacity of Plaintiff to a grossly unfair degree.

21. In accordance with Section 17.505 of the Texas Deceptive Trade Practices – Consumer Protection Act, notice of such conduct and/or omission, and request to be made whole, was provided to Defendant via demand letter dated October 11, 2021. See Exhibit 1.

Defective and Incomplete Work

22. Because of the health risk associated with stagnant water buildup in the backyard of her residential property, Plaintiff hired another plumbing company to fix and complete the work left defective and unfinished by Defendant.

23. On November 12, 2021, Plaintiff secured an estimate from On The Way Plumbing for the repair work needed due to Defendant's defective and unfinished work.

24. Plaintiff paid On The Way Plumbing a total amount of \$5,659.15 to carry out the repair work needed after Defendant left the work defective and unfinished.

25. The work performed by On The Way Plumbing included installation of a sump pump for the sewer line that was never connected to the septic system by Defendant. "The sewer

line for kitchen sink and laundry room were run into a makeshift yard line that was filled with mud, the makeshift line went directly into ground and never tied into a septic system.”.

Breach of Contract

26. Defendant failed to perform the work promised as per the executed contract with Plaintiff.

Breach of Express Warranty

27. The contract contained an express warranty of timely and workmanlike manner. Defendant breached said warranty by not finishing the work and not performing the full work in a workmanlike manner.

Breach of Implied Warranty of Fitness for a Particular Purpose

28. The contract contained an implied warranty of fitness for a particular purpose under Section 2.315, Texas Business and Commerce Code. Defendant breached said warranty by not providing work suitable for use.

Breach of Implied Warranty of Merchantability

29. The contract contained an implied warranty of merchantability under Section 2.314, Texas Business and Commerce Code. Defendant breached said warranty by providing sub-standard work.

Economic Damages

30. As a result of Defendant's conduct, Plaintiff suffered economic damages as defined in Section 41.001, Texas Civil Practice and Remedies Code in the amount of \$11, 467.93, for which Plaintiff requests judgment.

Attorney's Fees and Costs

31. Plaintiff requests judgment for reasonable attorney's fees and costs under Sections 37.009 and 38.001, Texas Civil Practice and Remedies Code.

Alternative Pleadings

32. As provided in Rule 48, Texas Rules of Civil Procedure, claims for relief made in this petition are presented in the alternative when necessary to preserve such claim.

Jury Demand

33. Plaintiff hereby requests a jury trial.

Request for Disclosure

34. As provided in Rule 194, Texas Rules of Civil Procedure, Plaintiff requests disclosure of all items listed in Rule 194.2, Texas Rules of Civil Procedure.

Prayer

Plaintiff prays that citation be issued commanding Defendant to appear and answer herein and that Plaintiff be awarded judgment against Defendant for the relief requested herein and for all other relief to which Plaintiff is entitled both in equity and at law.

Respectfully submitted,

/s/ Terry W. Vanderpool

Terry W. Vanderpool

TX Bar No. 24048855

VANDERPOOL LAW, P.C.

835 Yale St.

Houston, TX 77007

Phone: (346) 543-6854

Cell: (281) 408-0701

E-mail: terryvlaw@gmail.com

Attorney for Plaintiff,

April Vaughan



VANDERPOOL & BROWN, LLP
ATTORNEYS AT LAW

TERRY W. VANDERPOOL***
terry@vandblaw.com
RODNEY A. BROWN*
rodney@vandblaw.com

Wells Fargo Building
13201 Northwest Freeway, Suite 702
Houston, Texas 77040

www.vandblaw.com
Office: 281-974-3538
Fax: 281-974-3518

*** Licensed in TX, CO, OK; * Licensed in TX;

October 5, 2021

Gulf Coast Aerobic Services
P.O. Box 1684
Santa Fe, TX 77610

*Re: Notice of Claim; Texas Deceptive Trade Practices Act ("DTPA") for breach
of contract regarding installation of septic services at 1509 FM 646 N., Santa
Fe, TX 77510*

Dear Sir / Madam

Please be advised that this law firm has been retained by Ms. April Vaughan to pursue a claim against your company for breach of contract for the aerobic septic system work you performed at the above described property. Ms. Vaughan entered into a contract with your company on June 8, 2021 for installation of an aerobic septic system at her property at 1509 FM 646 N., Santa Fe, TX 77510. The work included installation of new tanks.

The work you performed was defective and incomplete. You have violated the common-law implied warranty of good and workmanlike performance of services.

At this time, my client continues to have drainage problems in her backyard from the laundry room, as well as from the kitchen drainage line. This causes a large buildup of stagnant water. Although contact was made with your company and two of your employees showed up at my client's home to speak with her about it, the problem was not addressed by your company. This was part of the job and was never completed.

In connection with the conduct and/or omissions described above, you engaged in an "unconscionable action or course of action" by taking advantage of the lack of knowledge, ability, experience, or capacity of my client to a grossly unfair degree. Notice is hereby given under Section 17.505 of the Texas Deceptive Trade Practices - Consumer Protection Act that my client has sustained economic damages in the approximate amount of **\$11,467.93**, plus inconvenience costs, attorney's fees, and other miscellaneous monetary damages to be determined at the close of this matter. Reasonable

and necessary attorney's fees alone may amount to thousands of dollars, if this matter does not reach resolution soon.

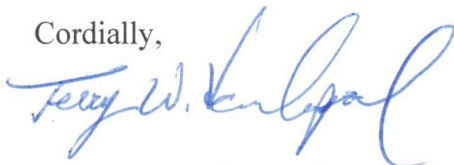
Demand is therefore made pursuant to the DTPA for the amount of **\$11,467.93** in the form of a money order or cashier's check, payable to this law firm, Vanderpool & Brown, LLP, Trustee.

If payment to my client in the total amount of **\$11,467.93**, as requested herein above, is not forthcoming within the time provided by law, suit will be filed against you in a court of competent jurisdiction.

Please be advised that under the DTPA an award of court costs and reasonable and necessary attorney's fees is mandatory to a consumer who prevails in such a lawsuit. Please be further advised that treble damages (three times the amount of economic damages) may be awarded at trial in the event that the trier of fact finds that actionable conduct was committed "knowingly."

Should you have questions please feel free to contact me. I urge you to give this matter your immediate attention.

Cordially,

A handwritten signature in blue ink, appearing to read "Terry W. Vanderpool". The signature is fluid and cursive, with a large, stylized "V" at the end.

Terry W. Vanderpool/cs

cc: April Vaughan

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gulf Coast Aerobic Syst.
PO Box 1684
Santa Fe, TX 77510



9590 9402 6922 1104 4613 56

2. Article Number (Transfer from service label)

7021 0350 0001 5476 4975

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Alton R. Forrest* ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Alton R. Forrest

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

OCT 18 2021

PS 77510

3. Service Type

- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Exh. 2

Gulf Coast Aerobic Services

13205 Highway 6 Santa Fe, TX 77510
P.O. Box 1684 Santa Fe, TX 77510
(409) 925-2534

Proposal/Contract

Date: June 4, 2021
Submitted To: April Vaughan
Site Address: 1509 FM 646 N
Santa Fe, Texas 77510
Phone #: 21 | 281-728-2230

We hereby propose to furnish the materials & labor necessary for the completion of:
Installation of a new aerobic septic system with surface irrigation.

- Replace existing system, damaged beyond repair.
- **ROUGH GRADE FINISH**
- Settlement of soil around tanks is NORMAL & all future backfill is the responsibility of the homeowner.
OWNER AGREES: AV (INITIAL HERE)
- County & State permits & a 2-year Maintenance Contract are **INCLUDED**.
- Electrical must be brought to the stub out on a 30-amp breaker by the homeowner. There will be an additional charge for more than one stub out.
- All material is guaranteed to be as specified & the above work to be performed in accordance with the drawings & specifications submitted & completed in a substantial manner.
- In the event we are prevented from backfilling due to inclement weather or wet muddy job site conditions, customer will pay balance due, less \$400.00 when the system is operational. The \$400.00 withheld by customer will be paid when the job site is able to be dressed up.
- Customer is responsible for locating & exposing all underground utilities. Gulf Coast Aerobic Services will notify Texas One Call before excavation.
- Customer is responsible for boring & sleeves to accommodate flow lines.
- Customer is responsible for bringing in sand & removal of spoils. Gulf Coast Aerobic Services will take care of this for an additional cost if needed.

TOTAL COST:

\$9,800.00

\$2,000.00

Down Payment (Required to begin)

\$3,900.00

Due with tanks are delivered.

\$3,900.00

Due upon completion of job.

***** DESIGN & PERMIT FEES ARE NON-REFUNDABLE *****
(3.5% FEE WILL BE ADDED FOR ALL CREDIT CARD PAYMENTS)

Respectfully submitted,

[Signature]
This bid may be withdrawn by Gulf Coast Aerobic Services if not accepted within thirty (30) days. Prices subject to change due to an increase in material if applicable. The above price, specifications & conditions are satisfactory & are hereby accepted. Customer agrees to make payments as outlined. Any additional work is to be contracted separately. By signing this contract, you agree to all the above provisions.

[Signature]
Customer's Signature

6/8/21
Date