

II. FACTUAL BACKGROUND

1. On or about May 23, 2022, Plaintiff, Enedelia Flores, filed her Petition¹ against Defendants for breach of contract, statutory fraud/fraud in the inducement, and common law fraud.

2. Defendant **BEST INVESTORS** is a Texas/Domestic Limited Liability Company. Service of process was completed upon BEST INVESTORS by delivering a copy of Plaintiff's *Original Petition* and its corresponding *Citation*, via personal service, by and through its registered agent, Jose Crus Lozoya Noris, at 24619 Tribeca Ln., Katy, Texas 77493 USA, on or about May 25, 2022. Proof of service is attached hereto as **Exhibit "B"** and incorporated herein by reference.

3. Defendant **NORIS** is an individual; and service of process was completed by delivering a copy of Plaintiff's *Original Petition* and its corresponding *Citation*, via personal service at 24619 Tribeca Ln., Katy, Texas 77493 USA, on or about May 25, 2022. Proof of service, is attached hereto as **Exhibit "C"** and incorporated herein by reference.

4. The citations and proof of service upon both Defendants have been on file with the Court for at least ten (10) days before this *Motion* was filed, excluding the date of filing and today's date, pursuant to Rule 107(h) of the Texas Rules of Civil Procedure.

5. The deadline for Defendants to file an answer was on **Monday, June 20, 2022**. However, as of the date of this filing, Defendants have not filed an answer or any other pleading constituting an answer or appearance in this matter.

6. Defendants' (individually and by and through its registered agent) last known addresses² are both 24619 Tribeca Ln., Katy, Texas 77493 USA.

¹ Plaintiff's Original Petition is attached hereto as **Exhibit "A"** and incorporated herein by reference.

² A true and correct copy of the certificate of Defendants' last known addresses is attached hereto as **Exhibit "D"** and incorporated by reference herein.

7. Defendant Best Investors is a Texas/Domestic Limited Liability Company and is thus ineligible for service in any branch of the United States Military. Defendant NORIS is not a member of the United States military.³

III. UNDERLYING FACTS

8. On or around March 17, 2021, Plaintiff (purchaser) and Defendants (seller) entered into two separate written contracts—herein attached as Exhibit “F” and “G” and incorporated by reference herein (“Contracts”)—for the purchase of the following real property located in Harris County:

- i. **Property No. 1:** 7639 Athlone Drive, Houston, Texas 77088, with an abbreviated legal description being: Lt. 10, Blk 10, Inwood Pines, Sec. 2, Harris County, Texas, USA (herein, the “7639 Athlone Drive” property). *Exhibit F* conveys the property of 7639 Athlone Drive.
- ii. **Property No. 2:** 6918 Bent Branch Dr., Houston, Texas 77088, with an abbreviated legal description being: Lt 1 & 2, Blk 5, Bayou Bend, Harris County, Texas, USA (herein, the “6918 Bent Branch” property). *Exhibit G* conveys the property of 6918 Bent Branch.

(7639 Athlone Drive and 6918 Bent Branch are collectively herein referred to as “**Properties**”).

9. Prior to these purchases (sometime before March 17, 2017), Defendants represented to Plaintiff, the following:

- i. that the Defendants had acquired the deeds (or their ownership interests) to the Properties through tax foreclosure auctions;
- ii. that the Defendants would be assigning their interests in the Properties, once fully acquired;
- iii. that there would be a “period of delay” for Plaintiff to obtain title to the Properties because of the prior-property-owners’ right of redemption (following

³ Attached hereto as **Exhibit “E”** is an affidavit regarding NORIS’s non-military status.

their tax foreclosure) (i.e., their redemption period), and because of the COVID-19 quarantines and ordinances; and

iv. that once the redemption periods were expired, the Properties would be deeded to Plaintiff by the County via a “Certificate of Deed.”

10. The Contracts memorialize these representations.

11. Section (4)(iii) of the Contracts, forbid Plaintiff’s disturbing of the tenants or individuals (at the time residing at the Properties) *until* the redemption periods were expired, and the Properties’ deeds were delivered to Plaintiff.

12. Further, Contracts stipulate that if the deeds on the Properties were not obtained (such as if the prior-property-owners redeemed their property), the Plaintiff would receive a refund of the “purchase price fee funds” plus a ten percent (10%).

13. **7639 Athlone Drive.** Pursuant to the contract for the 7639 Athlone Dr. property (**Exhibit “F”**), Plaintiff paid Defendants a total of SIXTY-ONE THOUSAND, EIGHT HUNDRED AND 00/100 US DOLLARS (\$61,800.00)⁴.

Check No.	Purpose	Amount
9814162433	Purchase price	\$60,000.00
9814162332	Assignment fee	\$1,800.00

14. **6918 Bent Branch.** Pursuant to the contract for the **6918 Bent Branch** property (**Exhibit “G”**), Plaintiff paid Defendants a total of FORTY-TWO THOUSAND, FOUR HUNDRED AND 00/100 US DOLLARS (\$42,400.00)⁵. Further, Plaintiff was scheduled to make

⁴ Comprising of the SIXTY THOUSAND AND 00/100 US DOLLARS (\$60,000.00) paid for the purchase price of the property, *plus* the ONE THOUSAND EIGHT HUNDRED AND 00/100 US DOLLARS (\$1,800.00) paid for the assignment fee. Payment of these amounts is attached hereto as **Exhibit “H”** and incorporated by reference herein.

⁵ Comprising of the FORTY THOUSAND AND 00/100 US DOLLARS (\$40,000.00) paid for the first portion of the purchase price of the property, *plus* the TWO THOUSAND, FOUR HUNDRED AND 00/100 US DOLLARS (\$2,400.00) paid for the assignment fee. Payment of these amounts is attached hereto as Exhibit “H” and incorporated by reference herein.

a second payment of \$40,000 for the balance of the purchase price of the property “within 30 to 60 days from the date of execution” of the contract; however, Plaintiff was unable to communicate with or find the Defendants to make the second and final payment.

Check No.	Purpose	Amount
9814162334	Purchase price	\$40,000.00
9814162332	Assignment fee	\$2,400.00

15. After hiring the undersigned counsel, Plaintiff learned through her Undersigned-Counsel’s pre-suit investigation that Defendants never owned the properties. To date, Defendants have acquired no conveyable interest in the Properties.

16. Where possible, Plaintiff has already performed its obligations under the Contracts. Defendants have failed or refused to perform their contractual obligations by failing to convey the Properties and/or failing to refund the amounts paid/stipulated in the Contracts.

IV. LIABILITY AND DAMAGES

A. Default Judgment

17. At any time after the appearance deadline, Plaintiff may take judgment on liability and damages by default against any defendant who has not filed an answer in the lawsuit. Tex. R. Civ. P. 239. If a defendant is defaulted against, the plaintiff’s claims (and causes of action) are conclusively established and admitted—including Plaintiff’s breach of contract, statutory fraud/fraud in the inducement, and common law fraud.⁶ Plaintiff is entitled to a default judgment against Defendants on its breach of contract, statutory fraud/fraud in the inducement, common law fraud, exemplary damages, and reasonable attorney’s fees.

⁶ *Norton v. Martinez*, 935 S.W.2d 898, 901 (Tex. App.—San Antonio 1996, no writ). *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 731 (Tex. 1984); *Stra, Inc. v. Seafirst Commercial Corp.*, 727 S.W.2d 591 (Tex. App.—Houston [1st Dist.] 1987, no writ).

B. Texas Business and Commerce Code § 27.01

18. Plaintiff elects her remedy under Section 27.01 of the Texas Business and Commerce Code, requiring: (1) fraud in a real estate transaction, (2.1) a false representation of a past or existing material fact for the purpose of inducing that plaintiff to enter into a contract and plaintiff's reliance on the false representations in entering the contract; or (2.2) a false promise to do a material act, made with the intention of not fulfilling it and made to induce plaintiff to enter into a contract; and plaintiff's reliance on the false promise in entering into that contract. When proven, a plaintiff may recover actual damages, exemplary damages if the tortfeasor acts with actual awareness, and reasonable and necessary attorney's fees and costs of court.

19. Actual awareness may be inferred, where objective manifestations indicate that a person acted with actual awareness.

20. The underlying transaction was for the conveyance of Properties. Properties are real property. For the two Properties subject to this suit, Plaintiff paid Defendants ONE HUNDRED FOUR THOUSAND, TWO HUNDRED AND 00/100 US DOLLARS (\$104,200.00).

C. False representations or false promises

21. **Defendants represented to Plaintiff that they had a conveyable interest in the Properties.** This is a false representation or false promise by Defendants because—as established by Plaintiff's investigations, Defendants did not and do not have a conveyable interest to the Properties that could be conveyed to Plaintiff, pursuant to the Contacts.

22. **Defendants stated that the Properties would be conveyed to Plaintiff after the redemption period.** This is a false representation or false promise by Defendants because—as established by Plaintiff's investigations, there was no applicable redemption period as represented

by Defendants. Further, even if the redemption periods were legitimate, they have since expired and Defendants have not yet conveyed the Properties to Plaintiff.

23. **Defendants represented to Plaintiff that Plaintiff would be refunded her purchase money, along with a ten percent (10%) gain on those funds if the conveyance was unsuccessful.** This is a false representation or false promise by Defendants because—as established by Defendants actions or omission, Defendants never intended to refund Plaintiff her purchase money (and the 10%) because it has been over a year since the Contracts were executed and Plaintiff has received neither.

24. **Defendants intentionally included a provision in the Contracts that prohibited Plaintiff from disturbing the tenants or individuals residing in the properties.** This is a false representation or false promise by Defendants because—Defendants knew Plaintiff was ignorant of these fraudulent-facts and Defendants ensured Plaintiff did not discover these facts by including the *do not disturb current tenants or individuals clause* in the Contract; where, but for the clause, Plaintiff would have been able to discover the Defendants' false representations of ownership of the Properties.

25. As showed by their lack of occurrence, the Defendants must have intended to not fulfilling their promises.

26. Further as demonstrated by the causes of actions in the lawsuit mentioned below, Defendants' underlying activities, their false, misleading, or deceptive practices, that of conveying unowned real property to others, is common practice (or alternatively, not a mistake):

- a. **Cause No.: 2020-55386; Ramos Javier vs. Best Investors Properties LLC**, 129th Judicial District Court, Harris County, Texas.
- b. **Cause No.: 2020-52120; Bardomiano Gonzalez Pineda vs. Best Investors Properties LLC**, 11th Judicial District Court, Harris County, Texas.
- c. **Cause No.: 2021-43234; Jose Barajas vs. Jose Cruz Lozoya Noris**; 333rd Judicial District Court, Harris County, Texas.

- d. **Cause No.: 1160997**; *Adrian Amezcuita vs. Best Investors Properties LLC, J Cruz Lozoya Nores, Ana D Quintana*; County Court at Law No. 2, Harris County, Texas.

D. Past or existing material fact

27. The above false representations or false promises” are of a past or existing material fact because, would have Defendants disclosed them, Plaintiff would not have entered the Contracts, nor paid the consideration paid.

E. Inducement | Reliance | Intent

28. Defendant made the above representations or false promises to induce Plaintiff to enter the Contracts as showed by the Parties’ subsequent execution of the Contracts.

29. Plaintiff entered into the Contracts in reliance of the above representations or false promises.

30. To that extent, Defendants intended (or must have intended) to induce Plaintiff to take some action or refrain from acting. Plaintiff relied on Defendants’ representations, to her detriment.

F. Actual Damages

31. Plaintiff is entitled to ONE HUNDRED FOUR THOUSAND, TWO HUNDRED ANO/100 US DOLLARS (\$104,200.00), the amount Plaintiff paid to Defendants, in actual damages. Further, under the terms of the contract, Plaintiff is entitled to a complete refund of the amounts paid, plus the ten percent (10%) gain on the purchase price funds.

32. The damages in Plaintiff’s *Petition* are liquidated, proved by written instrument and may be accurately calculated; therefore, no damages hearing is necessary.

G. Exemplary Damages

33. Plaintiff is entitled to exemplary damages under Section 27.01 of the Texas Business and Commerce Code and Section 41.003(a) of the Texas Civil Procedure and Remedies

Code, because Plaintiff's damages incurred and sustained resulted from Defendants' actual fraud, gross negligence, or malice, where the representations-listed-above must have been made with actual awareness of their truth and falsity, or objectively manifested with the intention to deliberately conceal or misrepresent, or made knowingly, intentionally, maliciously, wantonly, and in reckless and callous disregard to the Plaintiff's legitimate rights as to justify the imposition of exemplary damages, including the reasonable and necessary attorneys' fees incurred.⁷

H. Attorney's Fees and Costs

34. Plaintiff is entitled to exemplary damages under Sections 38.001 and 41.003(a) of the Texas Civil Procedure and Remedies Code.

35. By failing to answer, Defendants admit that Plaintiff is entitled to reasonable attorney's fees and costs of Court. Thus, Plaintiff requests reasonable and necessary attorneys' fees pursuant to Rule 38.001 of the Texas Civil Practice and Remedies Code in the amount of \$5,862.50, as this is a claim for breach of a written contract; and has attached, **Exhibit "J"**, an affidavit proving attorney's fees in this case. Additionally, Plaintiff seeks reimbursement of Court costs and fees in the amount of \$773.21 (\$605.21 on filing fees and \$168.00 on service of process costs) and other fees as specified in Exhibit J.

I. Defendants' joint and several liability; pre/post-judgment interest

36. Plaintiff further seeks a finding by the Court that Defendants are equally (jointly and severally) liable under the legal doctrines of respondeat superior and vicarious liability, as pled in Plaintiff's *Original Petition*.

37. Plaintiff is entitled to pre-judgment and post-judgment interest at a rate of 6% per annum. Tex. Fin. Code §§ 302.001, 302.002.

⁷ Accordingly, to prove up Plaintiff's damages and the casual nexus, attached hereto is **Exhibit "I"** and incorporated by reference herein.

V. CONCLUSION

38. Plaintiff is entitled to a default judgment for the reasons asserted in this motion. Plaintiff filed suit against Defendants for breach of contract, statutory fraud/fraud in the inducement and common law fraud. Plaintiff further pled for exemplary damages and pled the legal doctrines of respondeat superior and vicarious liability. Defendants were properly served with the citations and Plaintiff's Original Petition. Defendants failed to answer or file anything that can be considered an answer.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Enedelia Flores respectfully requests that the Court grant the relief requested herein and enter a Default Judgment in favor of Plaintiff and against Defendants, jointly and severally, declaring the following relief:

- i. any and all actual damages;
- ii. exemplary damages;
- iii. prejudgment and post judgment interest;
- iv. attorney's fees;
- v. any and all costs of court;
- vi. and any other relief at law or in equity that Plaintiff is entitled under the causes of action.

Respectfully submitted,

GUERRA DAYS LAW GROUP, PLLC

By: /s/ Ricardo Guerra

Ricardo Guerra
State Bar No. 24074331
Email: service@guerradays.com
515 N Sam Houston Pkwy E, Ste. 250
Houston, Texas 77060
Tel: (281) 760-4295
Fax: (866) 325-0341

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on September 1, 2022, a true and correct copy of the foregoing *Motion* was served on all counsel of record and/or parties in accordance with the Texas Rules of Civil Procedure.

Via Regular Mail and CM/RRR: **7019 1640 0001 2192 7275**

JOSE CRUZ LOZOYA NORIS, *individually*

24619 Tribeca Ln.

Katy, Texas 77493

Via Regular Mail and CM/RRR: **7019 1640 0001 2192 7275**

BEST INVESTORS PROPERTIES, LLC,

c/o Jose Cruz Lozoya Noris, Registered Agent

24619 Tribeca Ln.

Katy, Texas 77493

/s/ Ricardo Guerra _____

Ricardo Guerra

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.

Michael Zamora on behalf of Ricardo Guerra

Bar No. 24074331

michael@guerradays.com

Envelope ID: 67884202

Status as of 9/1/2022 12:11 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Ricardo Guerra	24074331	service@guerradays.com	9/1/2022 11:56:31 AM	SENT