

NO. 202269025

ELIZABETH OLSEN, and
ERIC OLSEN,

Plaintiffs,

v.

DUCKTAPE VENTURES, LLC; and
THE MODERN BUNGALOW CO., LLC

Defendants.

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IN THE DISTRICT COURT

234TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFFS' FIRST AMENDED PETITION

Plaintiffs Elizabeth Olsen and Eric Olsen (collectively, "Plaintiffs") file this *First Amended Petition* against Defendants Ducktape Ventures, LLC and The Modern Bungalow Co., LLC (collectively, "Defendants") and would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of the Texas Rules of Civil Procedure 190.4.

II. CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief over \$250,000 but not more than \$1,000,000. Plaintiffs further demand judgment for all the other relief to which they are justly entitled.

III. PARTIES

3. Plaintiff Elizabeth Olsen is an individual residing in the State of Texas whose address is 935 Highland Street, Houston, Texas 77009. Her SSN ends in 661 and Texas DL ends in 916. She may be served through the undersigned counsel of record.

4. Plaintiff Eric Olsen is an individual residing in the State of Texas whose address is 935 Highland Street, Houston, Texas 77009. His SSN ends in 948 and his Texas DL ends in 109. He may be served through the undersigned counsel of record.

5. Defendant Ducktape Ventures, LLC (“Defendant Ducktape Ventures”) is a Texas limited liability company whose registered office address is 1363 Arlington Street, Houston, Texas 77008. Pursuant to Tex. Bus. Orgs Code § 5.251(1)(B), Defendant Ducktape Ventures may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Room 105, Austin, Texas 78701, as its agent for service because Defendant Ducktape Ventures’ registered agent, Courtney Leppard, cannot with reasonable diligence be found at the registered office of the entity. The Secretary of State may forward process to Defendant at the registered office address, Defendant Ducktape Ventures, LLC, 1363 Arlington Street, Houston, Texas 77008.

6. Defendant The Modern Bungalow Co., LLC (“Defendant Modern Bungalow”) is a Texas limited liability company whose registered office address is 4545 Mt. Vernon, Houston, Texas 77006. Pursuant to Tex. Bus. Orgs Code § 5.251(1)(B), Defendant Modern Bungalow may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Room 105, Austin, Texas 78701, as its agent for service because Defendant Modern Bungalow’s registered agent, James C. Mulder, cannot with reasonable diligence be found at the registered office of the entity. The Secretary of State may forward process to Defendant at the registered office address, Defendant The Modern Bungalow Co., LLC, 4545 Mt. Vernon, Houston, Texas 77006.

IV. JURISDICTION AND VENUE

7. The Court has subject-matter jurisdiction over this dispute because the amount in controversy exceeds the Court’s minimal jurisdictional requirements.

8. Venue is proper in Harris County because all or a substantial part of the events or omissions giving rise to the claims herein occurred in Harris County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1). In addition, Defendants' principal offices are located in Harris County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(3).

V. FACTS

9. On or around April 10, 2020, Plaintiffs Elizabeth Olsen and Eric Olsen contracted with Defendant Ducktape Ventures for the construction and purchase of a single-family home ("Contract"), located at 935 Highland Street, Houston, Texas ("Property"). The Contract is attached as **Exhibit A** and incorporated herein by reference. Defendant Ducktape Ventures agreed to complete all improvements to the Property with due diligence and in accordance with the Construction Documents through its affiliate, Defendant Modern Bungalow. Defendants further represented that they would properly perform all the required work for this construction project and that the services and materials furnished would be of the quality described in construction documents.

10. Various electrical, plumbing, and HVAC-related construction defects, however, have become apparent in the work performed by Defendant Modern Bungalow and the Property sold to Plaintiffs by Defendant Ducktape Ventures, including but not limited to:

- 20A non-arc-fault breaker on a 15A circuit that has more than a 10% voltage drop between the panel and outlet;
- Undersized 15 Amp AFCI/GFCI single pole circuit breakers;
- Oversized 20 Amp breaker (wiring is 14/2 which requires a 15-Amp breaker);
- Inadequate electrical surge protection;
- Improper installation of drawer outlet in master bath;

- Loose connections at electrical termination points;
- Insufficient number of HVAC air returns;
- Insufficient HVAC dehumidification;
- Incorrectly installed HVAC sub-plenum and piping; and
- “Knocking” sounds that emanate from the walls when the plumbing is used (believed to be caused by improperly sized plumbing pipes, fittings, and/or chases).

Thus, the Property sold was not constructed in accordance with the construction documents and falls below the minimum quality standards set forth in the Contract and Texas law.

11. In addition to Defendants’ failure to perform the work in a good and workmanlike manner, Defendants have failed to timely identify, disclose, and perform remedial work as required in the builder’s warranty and Contract. The builder’s warranty is attached as **Exhibit B** and incorporated herein by reference. Because of their failure to identify, disclose, and correct the defective and deficient work, Plaintiffs were/will be forced to investigate and self-perform corrective work and seek damages for same.

12. Moreover, Defendants deceptively installed/sold nonconforming goods in violation of the Contract and Plaintiffs’ rights. For example, Plaintiffs’ investigations revealed that Defendants substituted the specified HVAC equipment specified for inferior products.

13. Plaintiffs provided Defendants notice of their claims and provided an opportunity to inspect the Property. Defendants inspected the Property and alleged defects on September 14, 2022. Plaintiffs contend that they did not receive a reasonable offer of settlement and/or repair from Defendants pursuant to Texas Property Code Chapter 27.¹

¹ Plaintiffs do not intend to waive their right to respond to any RCLA offer in writing by filing this *Original Petition*.

VI. CAUSES OF ACTION

14. Each cause of action is pleaded in the alternative as permitted by Tex. R. Civ. P. 48.

A. Breach of Contract (Defendant Ducktape Ventures)

15. Plaintiffs allege and incorporate herein by reference the allegations set forth above.

16. Plaintiffs entered into the Contract with Defendant Ducktape Ventures. Plaintiffs fully performed their obligations under the Contract. Defendant Ducktape Ventures, however, materially breached the Contract by, among other things: (i) failing to construct all improvements to the Property in accordance with the Construction Documents; (ii) failing to timely correct/remedy the construction defects at the Property; and (iii) substituting materials, equipment, and/or appliances specified in the Construction Documents for those of a lower, noncomparable quality.

17. As a result of Defendant Ducktape Ventures' breaches of the Contract, Plaintiffs suffered actual damages. Accordingly, Plaintiffs are entitled to recover all damages suffered as a result of the breaches.

18. Pursuant to Texas Civil Practice & Remedies Code § 38.001, Plaintiffs are entitled to recover all attorney's fees incurred in connection with prosecution of this matter. Per the terms of the Contract, Plaintiffs are entitled to recover reasonable attorney's fees and all costs from Defendant Ducktape Ventures.

B. Negligence (Defendant Modern Bungalow)

19. Plaintiffs allege and incorporates herein by reference the allegations set forth above.

20. Defendant Modern Bungalow had a duty to use ordinary care regarding the construction and/or improvements to the Property. Defendant Modern Bungalow and/or its agents failed to exercise ordinary care when constructing the Property. Defendant Modern Bungalow failed to

perform the work in a good and workmanlike manner and in compliance with the plans and specifications, and furthermore failed to abide by its express and implied warranties. Defendant Modern Bungalow's breaches of its duty proximately caused—and will continue to cause—Plaintiffs to incur damages, including actual damages and the costs associated with repairing the Property and correcting the defective work.

C. DTPA (Defendants)

21. Plaintiffs allege and incorporates herein by reference the allegations set forth above.

22. Plaintiff are consumers under the DTPA because Plaintiffs are individuals who sought/acquired goods/services by purchase. Defendants are legal entities that can be sued under the DTPA.

23. Defendants knowingly violated the DTPA when they: (i) breached an express/implied warranty; (ii) engaged in an unconscionable action or course of action that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, ability, experience, or capacity to a grossly unfair degree; and (iii) engaged in false, misleading, or deceptive acts or practices that Plaintiffs relied on to Plaintiffs' detriment. Defendants passed off goods as those of another, caused confusion or misunderstanding as to affiliation/certification of the goods, and/or represented that goods were original or new when they were not. Further, Defendants failed to disclose information concerning goods or services in order to induce the Plaintiffs to enter into a transaction which Plaintiffs would not have otherwise entered.

24. Defendants' wrongful conduct was a producing cause of Plaintiffs' injury, which resulted in economic damages and mental anguish. Plaintiffs further seek reasonable attorneys' fees.

D. Fraudulent Misrepresentation (Defendants)

25. Plaintiffs allege and incorporates herein by reference the allegations set forth above.

26. Defendants Ducktape Ventures and Modern Bungalow made numerous misrepresentations to Plaintiffs that were relied upon by Plaintiffs. Defendants have accepted benefits under the Contract, including all payments paid by Plaintiffs. Their statements constituted fraud because:

- a. a material representation or promise was made;
- b. it was false;
- c. when it was made, they knew it was false or made it without any knowledge of its truth and as a positive assertion;
- d. the representation was made with the intention that it should be acted upon by Plaintiffs;
- e. Plaintiffs acted in reliance upon the representation; and
- f. as a result, Plaintiffs suffered injury and seek all damages legally available to it as a remedy for their acts, including direct, general and consequential damages.

27. Plaintiffs seek recovery of exemplary damages to the extent its damages result from fraud.

E. Fraudulent Non-Disclosure (Defendants)

28. Plaintiffs allege and incorporates herein by reference the allegations set forth above.

29. Defendants concealed or failed to disclose material information related to their transactions with Plaintiffs. Defendants' failure to disclose constituted fraud because:

- a. they concealed or failed to disclose material facts to Plaintiffs;
- b. they had a duty to disclose the facts to Plaintiffs;
- c. they knew that Plaintiffs were ignorant of the facts and that Plaintiffs did not have an equal opportunity to discover the facts;
- d. they were deliberately silent when they had a duty to speak;
- e. they intended for Plaintiffs to act or not to act in reliance on their silence;
- f. Plaintiffs acted in reliance upon their nondisclosure; and

- g. Plaintiffs suffered injury as a result of acting or failing to act in reliance on their nondisclosure and seeks all damages legally available as a remedy, including direct, general and consequential damages.

30. Plaintiffs seek recovery of exemplary damages to the extent its damages result from fraud.

F. Breach of Express Warranty (Defendants)

31. Plaintiffs allege and incorporate herein by reference the allegations set forth above.

32. Plaintiffs and Defendants entered into valid and enforceable contracts, wherein Defendants provided Plaintiffs with express warranties regarding construction of the Property. Plaintiffs notified Defendants of substantial construction defects in the Property, but Defendants have failed to cure the defects. Defendants breached the warranties provided to Plaintiffs. Plaintiffs have been forced to hire separate contractors to investigate and repair warranty issues that Defendants have been unwilling and neglected to repair. Due to said breaches, any and all future warranty work required at the Property will result in additional damages to Plaintiffs.

33. As a direct and proximate result of Defendants' breaches, Plaintiffs have suffered damages and will continue to suffer damages, including but not limited to property damage, repair costs, mitigation costs, attorney's fees, and other damages.

G. Breach of Implied Warranty (Defendants)

34. Plaintiffs allege and incorporates herein by reference the allegations set forth above.

35. Defendants did not perform their services in a good and workmanlike manner, which constitutes a breach of the implied warranty. As a direct and proximate result of Defendants' breaches, Plaintiffs have suffered damages and will continue to suffer damages, including but not limited to property damage, repair costs, mitigation costs, attorney's fees, and other damages.

VII. CONDITIONS PRECEDENT

36. All conditions precedent have been performed or have occurred as required by Texas law.

VIII. REQUEST FOR RELIEF

Plaintiffs request that Defendants be cited to appear and answer. Furthermore, Plaintiffs request that, on final trial, Plaintiffs be granted the following relief against Defendants:

- a. actual damages, including repair/replacement costs and/or diminution in market value;
- b. exemplary damages;
- c. mental-anguish damages;
- d. costs, including but not limited to, costs of court;
- e. reasonable attorney's fees;
- f. expert witness fees, including engineering and consulting fees;
- g. pre-judgment and post-judgment interest as provided by law; and
- h. such other and further relief as the Court may deem appropriate, including general relief.

Respectfully submitted,

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/s/ Patrick S. Fang

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Lisa Crook on behalf of Patrick Fang
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Status as of 11/9/2022 2:48 PM CST

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