

CAUSE NO. 2023-02103

MANHATTAN LOFT, INC., 600	§	IN THE DISTRICT COURT
TOWER LLC, MAIN SB LLC and 5 TH	§	
ST. LOFT, LLC	§	
	§	
VS.	§	234 TH JUDICIAL DISTRICT
	§	
	§	
PINEY POINT APARTMENTS LP	§	HARRIS COUNTY, TEXAS
	§	

DEFENDANT’S ORIGINAL ANSWER

Defendant Piney Point Apartments, LP (“PPA”) files this Original Answer to Plaintiffs’ Original Petition as follows:

I. GENERAL DENIAL

1.01 Defendant generally denies all allegations contained in Plaintiff’s Petition and demands strict proof of Plaintiff’s allegations by preponderance of the evidence.

II. AFFIRMATIVE DEFENSES AND RESPONSIVE PLEADINGS

2.01 The claims in the Petition fail because Plaintiff’s rights were defined and limited, in whole or in part, by the express terms of the Agreement, and these terms apply to all causes of action as a matter of law. *See, e.g., Fox Elec. Co. v. Tone Guard Sec., Inc.*, 861 S.W.2d 79, 82–83 (Tex.App.-Fort Worth 1993, no writ).

2.02 The claims in the Petition fail to the extent Plaintiff failed to reasonably mitigate its damages.

2.03 By its actions, Plaintiff waived its rights to recovery under the Agreement and under any of its other legal theories.

2.04 The claims in the Petition fail to the extent performance was impossible or impracticable.

2.05 The claims in the Petition fail to the extent liability attaches instead to third parties based on their breaches of duty, including third parties effectively under the control of Plaintiff.

2.06 The claims in the Petition under any cause of action besides breach of contract fail because of the admitted existence of a written and integrated contract governing the same subject matter.

2.07 The claims in the Petition under Texas Business and Commerce Code § 17.46 (the “DTPA”) fail because failure to perform a term of a contract is not a violation of the DTPA. *Crawford v. Ace Sign, Inc.*, 917 S.W.2d 12, 13–14 (Tex.1996).

2.08 The claims in the Petition under the DTPA fail because the transaction or conduct in question is subject to the statutory exemptions of §§ 17.49(c) & (d), to the extent the representations in question constituted or resulted from the exercise of professional advice, judgment, or opinion from Defendant and/or its agent.

2.09 The claims in the Petition under the DTPA fail because the transaction or conduct in question is subject to the statutory exemption of § 17.49(f), as Plaintiff was represented by counsel and the transaction is alleged at Petition ¶ 9 to have been

one hundred times larger than the maximum for a “consumer” claim cognizable under the statute in that context.

2.10 The claims in the Petition under the DTPA fail because the transaction or conduct in question is subject to the statutory exemption of § 17.49(f), as the transaction is alleged at Petition ¶ 9 to have been fifty times larger than the maximum for a “consumer” claim cognizable under the statute under any circumstances.

2.11 All claims in the Petition fail under the doctrines of laches and unclean hands.

2.12 The claims in the petition fail because they lack any basis in law or fact, given the language of the Agreement, the duty of Plaintiff to investigate before closing, and the failure even to allege actionable false statements.

2.13 Plaintiff’s claims for the DTPA, common law fraud, fraud in a real estate transaction, and negligent misrepresentation fail because Plaintiff’s own acts or omissions proximately caused or contributed to Plaintiff’s injury.

2.14 Defendant specifically denies that Plaintiff performed all of its terms and conditions pursuant to the the agreement between the parties in timely fashion, including conditions precedent to its recovery in this case. Accordingly, Defendant’s performance was excused because Plaintiff breached its obligations under the Agreement.

2.15 Defendant invokes Chapter 33 of the Texas Civil Practice and Remedies Code and asks that the trier of fact determine the percentage of responsibility attributable to Plaintiff, any settling party, each defendant, and each responsible third party designated under Tex. Civ. Prac. & Rem. Code §33.004, and that Defendant's liability, if any, be determined under Tex. Civ. Prac. & Rem. Code §33.013.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Piney Point Apartments, LP prays that Plaintiffs take nothing by this suit and that Defendant recover from Plaintiffs its attorney's fees, costs and such other relief, at law or in equity, to which it shows itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served on the following counsel of record via the Electronic Service Manager on February 13, 2023:

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/s/ David Jed Williams
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