

I PARTIES AND SERVICE

1. The Plaintiffs JOSE RUBINDO GUERRA ACOSTA and SANDRA ASUCENA DIAZ FLORES are residents of Harris County whose address is 6913 BETHUNE DRIVE, HOUSTON, TEXAS 77091.
2. The Defendant, Jose Cruz Lozoya Noris, individually, resides in Harris County, Texas, and may be served with process by serving him at 24619 Tribeca LN, Katy, TX 77493.
3. The Defendant, Enna Marithza Gonzalez, individually, resides in Harris County, Texas, and may be served with process by serving her at 1990 Cypress Creek Parkway, West Houston, TX 77090.
4. The Defendant Zonidia Conitha Miller resides in Harris County, Texas, and may be served with process by serving her at 1010 Larks Trace Lane, Houston, TX 77090.
5. The Defendant Best Investors Properties LLC resides in Harris County, Texas, and may be served with process by serving them at 9900 Westpark Dr. Suite 337, Houston, Texas 77063.
6. The Defendant EMG Global Holdings LLC resides in Harris County, Texas, and may be served with process by serving them at 1990 Cypress Creek Parkway, West Houston, TX 77090.

II. DISCOVERY CONTROL PLAN LEVEL

7. The Plaintiff intends to conduct discovery in this cause of action in accordance with Rule 190.3 (Level Two (2)) of the Texas Rule of Civil Procedure.

JURISDICTION AND VENUE

8. Venue in Harris County, Texas is proper in this cause under Section 15.011 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to the claim occurred in Harris County, Texas.
9. The Agreement to Assign Contract for the Sale and Purchase made the basis of the lawsuit was negotiated and signed by the parties in Harris County, Texas. Further, the Defendants all reside in Harris County, Texas.

III. BACKGROUND FACTS

10. Plaintiff, and Defendants, Jose Cruz Lozoya Noris and Best Investors Property, LLC, entered into an executed agreement to purchase real estate (hereinafter referred to as the "Agreement") on February 2, 2021 for the real estate property located at 4011 Saratoga Drive., Houston TX 77088 (hereinafter referred as to the Property). A true and correct copy of the fully executed agreement is attached as "Exhibit A" and is incorporated by reference.
11. The Agreement included a clause that stated the following: "[W]hereas JOSE RUBINDO ACOSTA & SANDRA ASUCENA DIAZ FLORES (BUYERS) has entered into a Purchase and Sales Agreement with BEST INVESTORS PROPERTIES, LLC (SELLER) for the Purchase of the SUBJECT PROPERTY [4011 Saratoga Drive., Houston TX 77088].
12. Plaintiffs and Defendants agreed to buy the Property for a full and final price of an assignment fee of \$1,800. and the sales price of \$60,200.00. Plaintiffs fully performed and paid \$62,000.00 CASH for the subject property. A true and correct copy of the receipt of the cash payment is

attached as **“Exhibit B”** and is incorporated by reference.

13. On February 2, 2021, Plaintiffs handed the \$62,000.00 Cash payment to Defendant Enna Marithza Gonzalez, at her address located on her business card of 1990 Cypress Creek Parkway West, Houston, Texas 77090. A true and correct copy of the Defendant Enna Marithza Gonzalez’s business card is attached as **“Exhibit C”** and is incorporated by reference.
14. Defendant Enna Marithza Gonzalez provided to the Plaintiffs an instrument, the fully executed agreement to purchase real estate. Defendant Enna Marithza Gonzalez also acted as a Notary Public; however, upon later inspection of said instrument, it was noted that the notary seal used was under another person’s name, “ZONIDIA C. MILLER”, with a notary ID #125401199. A true and correct copy of the Defendant Enna Marithza Gonzalez’s notarized part of the agreement is attached as **“Exhibit D”** and is incorporated by reference.
15. After making the full payment agreed for the purchase of the Property, Defendants never contacted Plaintiffs again, they never responded to their phone calls and they never conveyed a deed to the property to the Plaintiffs. Later it was discovered that Defendants never had legal title to tender nor assign to Plaintiffs. A true and correct copy of the chain of title for said subject property is attached as **“Exhibit E”** and is incorporated by reference.
16. On or about October 19, 2022, Plaintiffs entered into a “Compromise and Settlement Agreement” in order to settle all claims that Plaintiffs would have against Defendants. A true and correct copy of the “Compromise and Settlement Agreement” for said subject property is attached as **“Exhibit F”** and is incorporated by reference.
17. Defendants only made one payment pursuant to this “Compromise and Settlement Agreement.” A true and correct copy of the one payment of \$3000.00 is attached as **“Exhibit G”** and is incorporated by reference. According to this “Compromise and Settlement Agreement,” any failure to [per]form shall be a material breach of the contract and Defendants shall be liable to Guerra for damages, including any reasonable necessary attorney fees incurred by Guerra in attempt to collect payment or in prosecuting a claim against Defendants.

18. Defendants violated the Agreement under Texas law, and Plaintiffs are owed the total amount \$62,000 (sixty-two thousand and no/100).

IV. CAUSES OF ACTION AGAINST DEFENDANTS

The above stated facts give rise to the following causes of action against Defendants:

A. Conversion

19. On February 2, 2021, Plaintiffs, entered into an Agreement to purchase a property from Defendants, in which Sellers were to sell the property to Plaintiffs the subject property for the cost of \$62,000 (sixty-two thousand and no/100).
20. On or about February 2, 2021, Plaintiffs gave to Defendants cash for the total amount of 62,000 (sixty-two thousand and no/100).
21. Plaintiffs fulfilled all of their contractual and financial obligations under the Agreement, however, Defendants never conveyed a Deed for the property to Plaintiffs, nor refunded the money they paid for the Property.
22. Defendants willfully converted the entire \$62,000.00 given by Plaintiffs to Defendants in order to pay the full price for the Property.
23. Defendants, with an intent to defraud plaintiff, represented that they would sell a property that they did not own and willfully converted the entire \$62,000.00 that was paid by Plaintiffs.
24. Plaintiffs suffered actual damages of \$62,000.00 dollars. Plaintiffs request that Defendants be held jointly and severally liable for the damages sustained by Plaintiffs. *Ojeda v. Wal- Mart Stores, Inc.*, 956 S.W.2d 704, 707 (Tex.App.-San Antonio 1997, pet. denied).

B. Money Had and Received

C. A claim for money had and received arises when the defendant obtains money that in equity and good conscience belongs to the plaintiff. It is an equitable doctrine applied to prevent unjust enrichment. *Hunt v. Baldwin*, 68 S.W.3d 117, 132 (Tex. App.-Houston [14th Dist.]

2001, no pet.). A cause of action for money had and received is not based on wrongdoing but, instead, “looks only to the justice of the case and inquires whether the defendant has received money that rightfully belongs to another.” *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 164 (Tex. App.-El Paso 1997, no writ). The question, in an action for money had and received, is to which party the money, in equity, justice, and law, belongs. All plaintiffs need to show is that defendant holds money which in equity and good conscience belongs to him. *Stoats v. Miller*, 150 Tex. 581, 584, 243 S.W.2d 686, 687 (1951).

D. Here, Defendants received money which belongs to Plaintiffs. Defendants did not comply with their obligation to provide a deed for the Property, nor did they refund the money given by Plaintiffs.

V. D.T. P. A. Fraudulent Misrepresentation

25. Plaintiffs are consumers who sought the expertise of Defendants to purchase real estate property. *Chastain v. Koonce*, 700 S.W.2d 579, 582 (Tex. 1985).

26. Defendants are merchants providing services for the sale of real estate property.

27. Defendants intentionally and fraudulently misrepresented the fact that they would sell the Property to Plaintiffs or refund the money they paid for the Property.

28. Defendants' unconscionable actions caused Plaintiffs harm in the amount of \$62,000.00 being the cost of the money given to pay for the Property, plus 10% interest.

E. BREACH OF CONTRACT

29. Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

30. On or about February 2, 2021, Plaintiffs and Defendants entered into a valid and enforceable contract for the sale of the Property, supported by valuable consideration.

31. Defendants failed to perform their obligations under the Contract.

32. All conditions precedent have been performed by Plaintiff or have occurred. Plaintiffs paid Defendant the full purchase price agreed by the parties.

33. Defendants failed to convey clean title and possession of the Property.

34. Defendants further refused to refund the purchase price paid by the Plaintiff for the Property pursuant to the Compromise and Settlement Agreement executed on October 19, 2022. Only one payment of \$3,000.00 was made by Defendants.

35. By failing to convey title to the property and failing to refund the complete amount owed to Plaintiff, Defendants are thereto are in breach of both contracts.

E. FRAUD

Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

36. The representations by Defendants were false and were known by Defendants to be false at the time the representations were made in that the Defendants, given at the time of the representations, Defendants had no intent to purchase the property or return Plaintiffs money.
37. Plaintiffs believed and reasonably relied on the representations made by Defendants, who were a fiduciary at the time the representations were made.
38. Given the Defendants were hired by Plaintiffs to secure the real estate transaction, a fiduciary relationship did exist between Plaintiffs and Defendants at the time of the representations.
39. By virtue of the misrepresentations by Defendants, and the transaction transferring the money of the purchase of the Property to Defendants, Defendants fraudulently obtained secret profits, which were unknown to Plaintiffs.
40. The acts of Defendants in perpetrating the fraud described above were committed wantonly, oppressively, and maliciously, and Plaintiffs are therefore entitled to an additional award of punitive damages.

F. PLAINTIFFS' CONSPIRACY CLAIM

Plaintiff incorporates by reference the factual allegations contained in the preceding paragraphs.

41. The elements of a claim for conspiracy are: (a) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as a proximate result. *Juhl v. Arlington*, 936 S. W. 2d

640, 644 (Tex.1996). The agreement may be tacit and can be alleged and proven by circumstantial evidence. *See Bradt v. Sebek*, 14 S.W. 3d 756, 766 (Tex. App. –Houston (1st Dist.) 2000, pet. Denied).

42. In the case at bar, the Defendants (more than two persons), had the scheme to defraud Plaintiffs into believing that in exchange of Plaintiffs paying a certain sum of money to Defendants, Plaintiffs would receive the title for the subject property. The Defendants and each of them had a meeting of the minds to achieve their fraudulent scheme. The Defendants participated in one or more overt acts in furthering their fraudulent scheme, including but not limited to the fraudulent misrepresentation of material facts to Defendants, and the fraudulent acceptance of Plaintiffs' payments for the subject property, which Defendants knew would never happen since Defendants were not the legal owners of said subject property.

43. The acts of Defendants in perpetrating the civil conspiracy and fraudulent scheme described above were committed wantonly, oppressively, and maliciously, and Plaintiffs are therefore entitled to an additional award of punitive damages.

CONDITIONS PRECEDENT

44. All conditions precedent to Plaintiffs' claim for relief have been performed or have occurred.;
R. Civ. P. 54.

45. ALTERNATIVE CLAIMS FOR RELIEF

46. Plaintiff hereby gives notice that allegations and claims made herein are made in the

alternative. Tex. R. Civ. P. 48.

VII. NO WAIVER

47. Plaintiffs reserve their right to prosecute and defend all claims which may entitle them to any relief whatsoever; Plaintiffs expressly reserves all their rights and waive none.

VIII. RELIEF SOUGHT

48. Plaintiffs would also show that Plaintiffs are entitled to the following damages at law:

Actual Damages

49. Plaintiffs incurred actual damage for the purchase of the Property in the amount of \$62,000.00 minus the \$3,000.00 refund payment made by Defendants, for an amount of \$59,000.00 due and payable by Defendants to Plaintiffs.

Exemplary Damages

50. Because of the nature of the claims herein, Plaintiffs are entitled to punitive and exemplary damages. Such actions were taken knowing, recklessly, intentionally, willfully, and/or with gross negligence. Plaintiff prays for punitive or exemplary damages in an amount assessed by the finder of fact to adequately punish Defendants, jointly and severally, for these actions. Accordingly, Plaintiffs seek, and are statutorily entitled to recover, exemplary damages against Defendants pursuant to Chpt. 41, et seq. of the Tex. Civ. Prac. & Rem. Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant Plaintiffs'

Judgment against the Defendants, jointly and severally as follows:

For citation to issue against **JOSE CRUZ LOZOYA NORIS, ENNA MARITHZA GONZALEZ, ZONIDIA COINTHA MILLER, and BEST INVESTORS PROPERTIES LLC; and EMG GLOBAL HOLDINGS LLC:**

(a) For all recoverable actual, additional, exemplary, and/or special damages as pleaded herein;

- (b) For all equitable relief as pleaded and requested herein;
- (c) For attorneys' fees as pleaded herein;
- (d) For pre- and post-judgment interest as pleaded herein;
- (e) For costs of court as pleaded herein; and
- (f) For any and all other such relief to which this Court deems justly entitled under law and equity.

My name is JOSE RUBINDO GUERRA ACOSTA. My date of birth is 05/22/1984. My name is SANDRA ASUCENA DIAZ FLORES. My date of birth is 6/16/1981. Our address is 6913 BETHUNE DRIVE, HOUSTON, TEXAS 77091. We declare under penalty of perjury that every statement in the foregoing Plaintiffs' Original Petition is within our personal knowledge and is true and correct.

Jose Guerra 2/13/23
Jose Rubindo Guerra Acosta

Sandra Diaz 2/13/23
Sandra Asucena Diaz Florres

CERTIFICATE OF SERVICE

I hereby certify that on _____, a true and correct copy foregoing document has been sent to all known counsel of record by certified mail, return receipt requested or facsimile pursuant to the Texas Rules of Civil Procedure.

Jose Cruz Lozoya Noris
24619 Tribeca LN Katy, Texas
77493

**ENNA MARITHZA
GONZALEZ**

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West Houston, TX 77090

Best Investors Properties LLC
Attn: Ana D. Quintana Garcia
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EMG Global Holdings LLC

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