

Cause No. _____

MKHH LLC,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
LCW REALTY LLC,	§	
Defendants	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff MKHH LLC files this Original Petition ("the "Petition") against LCW Realty LLC and for causes of action, Plaintiff would respectfully show this Court the following:

I. DISCOVERY LEVEL

1. Plaintiff intends to conduct discovery under Discovery Control Plan-Level 2 pursuant to Tex. R. Civ. P. 190.3.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties to this lawsuit because all parties reside in Texas and/or conduct business in Texas, and the amount of damages in controversy is within this Court's jurisdictional limits.

3. Venue in Harris County is proper in this cause under Tex. Civ. P. & Rem. Code 15.011 as this is an action arising out of a dispute regarding real property located in Harris County, Texas, and all of the events giving rise to this suit occurred in Harris County, Texas. Additionally, all Defendants reside in or conduct business in Harris County, Texas.

III. CLAIM FOR RELIEF

4. Plaintiff seeks monetary relief between \$250,000 and \$1,000,000 and non-monetary relief pursuant to TRCP 47(c)(2).

IV. PARTIES

5. Plaintiff MKHH LLC ("the Plaintiff") is a Texas limited liability company doing business in Harris County, Texas and can be reach through its' undersigned attorney of record.

6. Defendant LCW Realty LLC ("the Defendant") is a Texas limited liability company who can be served through its registered agent Cheung Lui at 150 Gessner Rd., Apt. 4D, Houston, TX, 77024, or wherever he may be found.

V. FACTUAL BACKGROUND

7. On or about June 21, 2023, Cheung Wan Lui, as Seller, and Charles Shook, as Buyer, completed negotiations and executed an earnest money contract for the purchase and sale of the Property (identified below). Subsequently, the earnest money contract was amended and assigned by the respective parties to the current Plaintiff as Buyer and current Defendant as Seller. The earnest money contract, subsequent amendments, and the assignment together form the entirety of the contract (the "Contract").

8. Upon or near the closing date for the transaction, the Defendant Seller informed the Plaintiff Buyer that it would need to pay money at closing and it had not previously anticipated this and was not willing to make the necessary payment to close the transaction. Defendant Seller asked Plaintiff to pay the difference. Plaintiff did not agree and demanded that Defendant fulfill its obligations under the contract and close the deal. This lawsuit involves a real estate transaction for the purchase of a residential condominium property located at 150 Gessner Rd. Unit 5D, Houston, TX 77024 ("the Property").

9. Plaintiff fully tendered performance as per the contract. Specifically, the Plaintiff wired all amounts due from it, executed all documents required of it, and fully performed all other conditions of underlying earnest money contract. The Defendant has however failed to completely perform under the contract and specifically failed to pay the amounts required of it to

close the transaction.

10. A demand letter seeking specific performance was sent to the Defendant via certified mail on August 8, 2023 (*See Exhibit 1*) but Defendant has not complied with and fails to respond to Plaintiff's attempts at communication. Seller never terminated the Contract.

VI. BREACH OF CONTRACT

11. The elements for an action for breach of contract are as follows: (i) the existence of a valid, enforceable contract; (ii) under which Plaintiffs are a proper party to bring suit for breach of contract; (iii) Plaintiffs performed, tendered performance of or was otherwise excused from performing its contractual obligations; (iv) defendant breached the contract; and (v) defendant's breach caused the Plaintiff injury. *Mustang Pipeline Co. v. Driver Pipeline Co.*, 134 S.W.3d 195, 198-99 (Tex.2004).

12. The Plaintiff has fully tendered performance of the above-described transaction and underlying earnest money contract between itself as the Buyer and the Defendant as the Seller. Specifically, the Buyer wired all amounts due from it, executed all documents required of it, and fully performed all other conditions of underlying Contract. However, the Defendant has failed to completely perform under the Contract and has specifically failed to pay the amounts required of it to close the transaction. The Plaintiff has not been able to obtain possession or title to the property due to the Defendant's breach to its detriment.

13. Under the Contract, Defendant's breach was without a legal excuse, and Defendant's breaches were material breaches of the agreements between the parties. A breach is material when the defendant does not substantially perform a material obligation or duty required under the contract. See, e.g., *Cowman v. Allen Monuments, Inc.*, 500 S.W.2d 223, 226-27 (Tex.App. Texarkana 1973, no writ).

14. As a result of the Defendant's breach and failures, Plaintiff has sustained losses to its financial interest, credit, and other harm, including but not limited to attorney's fees, storage related expenses, alternative housing, and other delay related expenses.

15. Paragraph 15 of the Contract, provides that, if Seller fails to comply with the Contract for any reason, other than Buyer's breach, Seller will be in default and Buyer may enforce specific performance, seek such other relief as may be provided by, or both. Plaintiff requests that the Court require specific performance for the sale of the Property. A court may order specific performance of a contract involving real estate when the seller breaches the contract and the buyer insists on performance. See *Scott v. Sebree*, 986 S.W.2d 364, 369-70 (Tex. App. –Austin 1999, pet. denied.).

VII. CONDITIONS PRECEDENT

16. All conditions precedent to Plaintiff's claims have been performed or have occurred.

VIII. ATTORNEY'S FEES

17. As a result of Defendant's acts and omissions as set forth herein, Plaintiff has retained the undersigned attorney to prosecute this suit on their behalf and have agreed to pay the undersigned counsel reasonable and necessary attorney's fees, expenses and costs of suit for collection of the damages alleged herein against Defendant. Plaintiff hereby seeks to recover such attorney's fees, expenses and costs of suit from Defendant. Plaintiff is entitled to recover from Defendant attorney's fees and costs of court pursuant to Section 38.001, et seq. of the TEXAS CIVIL PRACTICE AND REMEDIES CODE and Tex. R. Civ. P. 131 & 141, as well as pursuant to any other applicable statute and/or common law. 30. Further, Plaintiff is entitled to the recovery fees in accordance with Paragraph 17 of the Contract, which provides that the prevailing party in any legal proceeding brought under the Contract is entitled to the recovery of

