

CASE NUMBER: 2024-87786

ANDREW LEHMAN, SR. § **IN THE DISTRICT COURT**
§
VS § **189TH JUDICIAL OF**
§
DEL ANGEL TRAILER RENTAL, LLC § **HARRIS COUNTY, TEXAS**

DEFENDANT'S COUNTERCLAIM AGAINST
ANDREW LEHMAN, SR.

To The Honorable Judge of Said Court:

COMES NOW Del Angel Trailer Rental, LLC ("Del Angel"), Defendant and now counterplaintiff, complaining of plaintiff and now counterdefendant Andrew Lehman Sr. and would show the Court the following.

I. FACTS

1.0 Counterdefendant, along with third party defendant Monica Kay Riley, rented a trailer from Del Angel and signed a written agreement. They breached the agreement by:

- A. Keeping the trailer two days longer than she contracted for, and causing \$320.00 worth of damage thereby, as the daily rate was \$160.00, and causing \$800 worth of damage in repossession costs.
- B. Damaging the trailer or being in possession of the trailer at the time it was damaged and failing to pay the damage amount of \$2,500.00 as agreed;
- C. Failing to maintain the trailer clean, causing \$500.00 worth of damage pursuant to paragraph seven of the agreement.

1.1 Additionally, TPD agreed to indemnify and hold harmless Del Angel from any and all claims and losses resulting from the repossession of the trailer:

2. Rental, Indemnity and Warranties. This is a contract for rental of the Trailer. We may repossess the Trailer at your expense without notice to you, if the Trailer is abandoned or used in violation of law or this Agreement. You agree to indemnify us, defend us and hold us harmless from all claims, liability, costs and attorney fees we incur resulting from, or arising out of, this rental and your use of the Trailer. **We make no warranties, express, implied or apparent, regarding the Trailer, no warranty of merchantability and no warranty that the Trailer is fit for a particular purpose.** Initial Here AK

1.2 In addition, the agreement, in paragraph 7, requires payment of Del Angel's attorney fees:

7. Charges. You agree to pay us on demand for all charges due us under this Agreement, including, but not limited to: (a) time, and mileage (if applicable), for the period you keep the Trailer; (b) applicable taxes; (c) all traffic, toll or parking violations, fines, penalties, citations, forfeitures, court costs, towing and storage charges and other expenses involving the Trailer assessed against us or the Trailer; if you fail to pay a traffic or toll charge to the charging authority, you will pay us all fees owed to the charging authority plus our administrative fee of \$100 for each such charge; (d) all costs we incur recovering the Trailer if you fail to return it as agreed above; (e) all costs, including pre- and post-judgment attorney fees, we incur collecting payment from you or otherwise enforcing our rights under this Agreement; (f) a 5% late payment fee on all amounts paid past the due date; (g) \$100 or the maximum amount permitted by law, whichever is greater, if you pay us with a check returned unpaid for any reason; and (h) a reasonable fee not to exceed \$500 to clean the Trailer, if returned substantially less clean than when rented. We will not refund any of the time or mileage charges if you return the Trailer earlier than the date or time due in.

Initial Here AK

1.3 Counterdefendant did not sign the agreement, but claims rights under the contract, and is estopped from denying contractual liability under the theory of direct benefits estoppel. He is additionally bound to the contract through the theory of joint enterprise. Del Angel was required to retain the services of Chavana Law, PLLC, an office of duly licensed attorneys in Texas. Del Angel sent a demand letter to the counterdefendant, but the counterdefendant did not comply with the demand. Del Angel incurred reasonable and necessary attorney's fees in prosecuting this case. Pursuant to the contract, Chavana Law, made a demand for immediate payment to TPD by mail on around February 19, 2025, but TPD did not immediately pay.

II. CAUSES OF ACTION

Counterplaintiff incorporates all factual allegations in this pleading into the following paragraphs.

2.0 Breach of Contract

The elements of an action for breach of contract are the following:

1. There is a valid, enforceable contract; 2. The plaintiff is a proper party to bring suit for breach of the contract; 3. The plaintiff performed, tendered performance of, or was excused from performing its contractual obligations; 4. The defendant breached the contract; 5. The defendant's breach caused the plaintiff injury.

2.1 Negligence

Counterdefendant had a duty to refrain from damaging the trailer, Counterdefendant breached that duty, and that breach caused Del Angel's injury.

2.2 Trespass to chattels

To recover damages for trespass to real property, a plaintiff must prove that (1) the plaintiff owns or has a lawful right to possess real property, (2) the defendant entered the plaintiff's land and the entry was physical, intentional, and voluntary, and (3) the defendant's trespass caused injury to the plaintiff.

III. Damages

3.0 In addition to damages recognized at common law for negligence and trespass to chattels, Del Angel is entitled to the damages described above pursuant to the written agreement.

3.1 Therefore, under the contract, Del Angel is entitled to recover those sums mentioned above.

3.2 Additionally and alternatively, under a common law negligence theory, Del Angel is entitled to recover the difference between the value of the trailer immediately before and after the damage or repairs.

3.3 Additionally and alternatively, under a common law theory of trespass to chattels, Del Angel is entitled to recover loss of use damages (the value of the rental of its chattel), *J & D Towing, LLC v. Am. Alternative Ins. Corp.*, 478 S.W.3d 649, 656 (Tex. 2016), and pursuant to general contract damages, including, Del Angel is entitled to recover lost profits. The sums equate to \$320.00

3.4 Additionally, Del Angel is entitled to recover indemnification damages in the form of attorney fees and costs (as well as attorney fees and costs for her own breach).

IV. OTHER ITEMS

4.0 Del Angel gives notice that any and all documents produced during discovery may be used at any pre-trial proceeding or trial of this matter without necessity of authenticating the documents. This notice is given pursuant to Rule 193.7 of the Texas Rules of Civil Procedure.

4.1 All conditions precedent to Del Angel's recovery have been satisfied.

4.2 All contradictory facts or law should be construed as alternative pleadings, and not as a judicial admission.

4.3 A jury trial is demanded.

V. PRAYER

5.0 Wherefore, Del Angel prays and demands that the Court require and award the following:

- A. that Defendant be cited and required to appear in this Court;
- B. general damages;
- C. the damages and sums set out in this petition;
- D. reasonable and necessary attorney's fees pursuant to the written agreement and pursuant to Chapter 38 of the Texas Practice and Remedies Code, prejudgment interest where applicable, post judgment interest and costs of court;

Respectfully Submitted,

Chavana Law, PLLC:

/s/ Alejandro Cortez

Alejandro Cortez

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State Bar of Texas Number 24140334

/s/ Hector Chavana Jr.

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Certificate of Service

This is to certify that counterdefendant was served with this pleading on March 27, 2025 through the EFC.

/s/ Hector Chavana Jr.

Hector A. Chavana Jr.

hector@chavana.lawyer

State of Texas Bar Number 24101382

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Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|------------------|-----------|--------------------------|----------------------|--------|
| Andrew Lehman Sr | | lehmanlaw2002@gmail.com | 3/27/2025 3:07:39 PM | SENT |
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