

CAUSE NO. 2024-77480

**JASON BROWN and
CHRISTY BROWN**

v.

PUSHPA PATEL DUBEY

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

61st JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jason Brown and Christy Brown, Plaintiffs herein, filing this their Motion For Summary Judgment against Defendant under Rule 166(a)(b) of the Texas Rules of Civil Procedure and would respectfully show the Court as follows:

RELEVANT FACTS

1. The subject matter of this lawsuit is an enforceable lease agreement (the "Lease") between Jason and Christy Brown ("Plaintiff") and Pushpa Patel Dubey ("Defendant") for the real property and the improvements thereon located 9142 Bronco Drive, Houston, TX 77055 (the "Property").
2. Plaintiff and Defendant executed the above referenced lease on December 18, 2023 – a true and correct copy of said lease is attached hereto as Exhibit 1 and incorporated herein for all purposes. The Lease was scheduled to begin on January 5, 2024 and expire on December 31, 2024.
3. Everything seemed to be going fine between Plaintiff and Defendant throughout the course of most of the lease term. There had been a few minor issues with the Property for which Plaintiff came by the house, each and every time with permission from Defendant, to fix the issue. There were no complaints from Defendant.

4. Unfortunately, Defendant attempted to terminate the lease early in July 2024 by simply sending a notice of early termination to Plaintiff - a true and correct copy of the Early Termination is attached hereto as Exhibit 2 and incorporated herein for all purposes. This is in complete disregard with the provisions in the Lease for procedure/options for early termination which clearly state that in order to terminate the lease prior to its expiration by the terms, there must be a written agreement OF THE PARTIES – page 13, Section 28, iii. NOTE: it does not say by agreement of one party. The tenant CAN NOT self-terminate without permission of the landlord.

5. Simultaneously with the faulty termination of lease letter Defendant sent to Plaintiff, Defendant filed a frivolous lawsuit in the Justice Court against Plaintiff alleging that Plaintiff defaulted on their obligations to maintain a livable environment without danger – although in the suit, Defendant only provides conclusory statements not backed by any evidence what so ever.

6. After Plaintiff received the notice from Defendant, they immediately reached out to her to inform her that her attempted termination was invalid and, as such, a new agreement that is agreed to by BOTH parties would need to be executed. Defendant refused. Accordingly, Plaintiff sent Defendant a Demand Letter dated August 4, 2024 (the first month that Defendant failed to pay her rent) for August 2024 rent as well as other matters of neglect - a true and correct copy of the Demand Letter is attached hereto as Exhibit 3 and incorporated herein for all purposes. The letter was ignored by Defendant and she proceeded to move out of the Property.

7. Defendant filed a frivolous lawsuit in the Justice Court against Plaintiff alleging that Plaintiff defaulted on their obligations to maintain a livable environment without danger – although in the suit, Defendant only provides conclusory statements not backed by any evidence

what so ever. This case has been dismissed by the Justice Court. It is important to note that at the hearing in which the court dismissed the action, plaintiff in that matter, Defendant here, failed to provide on single piece of evidence to support a breach of contract on the part of Plaintiff (in this matter) that would allow her to unilaterally terminate the lease.

8. These actions committed by Defendant are clear breaches of the Lease terms and, as such, carry with them damages to Plaintiff for which Defendant is liable.

9. Accordingly, Plaintiff alleges that Defendant breached the Lease agreement entered into between the parties.

STANDARD OF REVIEW

10. Texas Rules of Civil Procedure 166a govern procedural requirements for motions for summary judgment. The usual and primary purpose of the summary judgment rule is to obtain prompt disposition of a case involving “patently unmeritorious claims and untenable defenses.” *Casso v. Brand*, 776 S.W.2d 551, 556 (Tex. 1989). Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Gulbenkian v. Penn*, 252 S.W.2d 929, 931 (1952). An issue is genuine if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. *Id.* at 932. A fact is material when it is relevant or necessary to the ultimate conclusion of the case.

11. Rule 166a places the initial burden on the moving party to identify those portions of the record, which it believes demonstrate the absence of a genuine issue of material fact. *King v. Rubinsky*, 241 S.W.2d 220, 224 (Tex. Civ. App. - Waco 1951, no writ). The movant’s burden is only to point out the absence of evidence supporting the non-movant’s case. *Id.* When the

moving party has carried its burden of demonstrating the absence of a genuine issue of material fact, the nonmoving party bears the burden to “point out the evidence produced which establishes that a question of fact exists.” *Robinson v. Warner-Lambert*, 998 S.W.2d 407, 410 (Tex. App. - Waco 1999, no pet.) When considering a motion for summary judgment, “the trial court’s duty is to determine [whether] there are any material fact issues to try, not to weigh the evidence or determine its credibility and try the case on affidavits.” *Richardson v. Parker*, 903 S.W.2d 801, 803 (Tex. App. - Dallas 1995, no writ); *see also Spencer v. City of Dallas*, 819 S.W.2d 612, 615 (Tex. App. - Dallas 1991, no writ). All inferences drawn from the factual record must be viewed in the light most favorable to the nonmoving party. *Wal-Mart Stores, Inc. v. Rodriguez*, 92 S.W.3d 502, 506 (Tex. 2002). However, the non-movant may not rest on the mere allegations or denials of its pleadings, but must respond by setting forth specific facts indicating a genuine issue for trial. *Deer Creek Ltd. v. N. Am. Mortg. Co.*, 792 S.W.2d 198, 200-01 (Tex. App. - Dallas 1990, no writ) (noting when the mortgage company sufficiently pleaded and proved release, the burden shifted to debtor to raise a fact issue concerning a legal justification for setting aside the release).

12. The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Isquith for & on Behalf of Isquith v. Middle S. Utilities, Inc.* 847 F.2d 186, 199-200 (5th Cir. 1988). Rule 166a does not impose a duty on the court to sift through the summary judgment record to see if there are other issues of law or fact that could have been raised by the non-movant, but were not. *Holmes v. Dallas Intern. Bank*, 718 S.W.2d 59, 60 (Tex. App. - Dallas 1986, writ ref’d n.r.e.). *In re Mohawk Rubber Co.*, 982 S.W.2d 494, 498 (Tex. App. - Texarkana 1998, no pet.).

ARGUMENT

9. Plaintiff has alleged a cause of action against Defendant for breach of contract for which Plaintiff now seeks Summary Judgment.

A. BREACH OF CONTRACT

To prevail on a breach-of-contract claim, a plaintiff must prove (1) a valid contract existed between the plaintiff and the defendant, (2) the plaintiff tendered performance or was excused from doing so, (3) the defendant breached the terms of the contract, and (4) the plaintiff sustained damages as a result of the defendant's breach. *West v. Triple B Servs., LLP*, 264 S.W.3d 440, 446 (Tex. App.-Houston [14th Dist.] 2008, no pet.).

Here, there is no dispute that elements 1-4. Element 1: Exhibit 1 establishes that there was a contract – the lease agreement. Element 2: Plaintiffs have testified in this case that they had fulfilled their obligations as landlord under the lease agreement, which was conversely argued by Defendant at the JP court hearing for which she was unable to produce one shred of evidence to support her claim. At which point, the judge dismissed the case. Accordingly, Element 2 is conclusively established by the testimony of Plaintiffs. Element 3: Defendant attempted to unilaterally terminate the lease agreement and assign herself a termination date (breach 1) upon which she would move out of the Property, which she did. Defendant then failed to submit her full rent for the month that she determined to be the termination date, as well as all other rental payments for the remaining months (breach 2). Plaintiff's sent Defendant a demand letter noting this which is conclusively established by Exhibit 2. Finally, Element 4: conclusively established by Exhibit 2 in which Plaintiff's provide Defendant with a myriad of damages suffered due to her breach of the lease agreement which includes, but not limited to, lost rent (Exhibit 2 was sent in August 2024 prior to Defendant's move out so in addition to the amount shown, there was another 4 months of rental fees at \$5,500.00 per month that were defaulted on and owed by Defendant)

and damage to the Property. Plaintiff was also forced to move out of their condo so that they would not become in default on the mortgage for the subject property which move out cost over \$10,000. Furthermore, Plaintiffs have now spent more than \$10,000.00 in attorney fees in fighting frivolous lawsuits filed by Defendant as well as the current action.

CONCLUSION

In conclusion, in order to sustain a cause of action for breach of contract, a plaintiff must prove (1) a valid contract existed between the plaintiff and the defendant, (2) the plaintiff tendered performance or was excused from doing so, (3) the defendant breached the terms of the contract, and (4) the plaintiff sustained damages as a result of the defendant's breach. Here, as shown above, Plaintiff has conclusively proved that each element. Thus, Plaintiff's Motion for Summary Judgment should be granted.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the court enter the attached order GRANTING Plaintiff's Motion for Summary Judgment and for such other and further relief to which Plaintiff is entitled.

Respectfully Submitted by,

Law Office of Erick DeLaRue, PLLC

By: /s/ Erick DeLaRue

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been provided to all counsel of record via hand delivery, certified mail, return receipt requested, regular mail and/or facsimile transmission in accordance with the Texas Rules of Civil Procedure on this the 9th day of April, 2021.

/s/ Erick DeLaRue
ERICK DELARUE

Unofficial Copy Office of Marilyn Burgess District Clerk