

Cause No. D-1-GN-20-001805

TOGETHER WE RISE CORPORATION	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ROSA SANTIS,	§	
<i>Defendant.</i>	§	98 th JUDICIAL DISTRICT

PLAINTIFF'S FOURTH AMENDED PETITION

Plaintiff Together We Rise Corporation (“TWR”) brings this action against Defendant Rosa Santis.

I. DISCOVERY LEVEL

1. Discovery is intended to be conducted under Level 3, as set out in Texas Rules of Civil Procedure 190.4, and Plaintiff affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief aggregating more than \$100,000. Plaintiff seeks monetary relief over \$1,000,000. Tex. R. Civ. P. 47(c)(4).

II. PARTIES

2. Plaintiff Together We Rise Corporation (“TWR”) is a California non-profit corporation doing business in Travis County.

3. Defendant Rosa Santis is an individual who works in Travis County and, on information and belief, resides in Travis County. Ms. Santis may be served at her place of business, 403 Springdale Rd., Austin, Texas 78702 or wherever she may be found. Ms. Santis has appeared in this action.

III. VENUE

4. Venue is proper in Travis County, Texas because this is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

IV. JURISDICTION

5. Plaintiff seeks damages within the jurisdictional limits of this Court. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

V. FACTS

6. This is a commercial landlord-tenant and breach of contract dispute. After the lease began, essential facilities in the building, including offices and restrooms, were demolished in the process of removing asbestos. The landlord, Rosa Santis, refused to reconstruct those facilities, resulting in a building that was completely unsuitable for its intended commercial purpose and could not legally be occupied.

7. TWR is a nonprofit corporation whose mission is to improve the lives of children in foster care. Founded in 2008, TWR provides has a variety of programs that improve the lives of children in foster care throughout the United States. In 2019, TWR helped about 100,000 kids in foster care and provided over \$1,000,000 in scholarships to aged-out foster youth.

8. TWR was interested in securing a location in Austin to be the headquarters for the non-profit's activities in Central Texas. In 2018, TWR leased a building located at 757 Shady Lane, Austin, Texas 78702 from Defendant Santis.¹

¹ Defendant argues that the lease was not with TWR but with Danny Mendoza, TWR's Founder/CEO, individually. This argument is incorrect for many reasons. The lease was "for the following purpose and no

9. Prior to leasing the property, Danny Mendoza, Founder/CEO of TWR, toured the property with an agent of Ms. Santis on the phone. Mr. Mendoza noticed pools of water scattered on the floor of the property. Ms. Santis's agent said that it was only a small leak and promised that they would send someone to fix it. Ms. Santis also promised to have the HVAC serviced prior to the beginning of the lease. Ms. Santis failed to disclose that the property contained asbestos, that the roof would frequently leak in multiple locations and had to be completely replaced, and that toilets were completely inoperable.

10. **TWR's Planned Use of the Space.** TWR anticipated doing a cosmetic remodel to the property which would render it suitable for an office and event space. The building already had a built in section of offices and restrooms, which, after some remodeling, would serve as the offices, restrooms, and meeting spaces for TWR. TWR budgeted about \$50,000 to remodel the space.

other: any and all work related to Together We Rise.” (Paragraph 9.A.) Mr. Mendoza signed as “Founder/CEO” and it does not make sense to be “Founder/CEO” of Mr. Mendoza. Exhibit A to the lease clearly identifies “Together We Rise” as the tenant. The Commercial Lease Addendum for Broker’s Fee also specifically identifies the tenant as “Together We Rise.” The payments were made by TWR, and Ms. Santis’ assistant frequently communicated with TWR staff regarding the lease. Finally, Ms. Santis did not raise this issue at any time during the lease or when initially responding to this lawsuit. In any event, in an abundance of caution, Mr. Mendoza has assigned any and all claims related to the lease to TWR.

11. Here is how the inside of the property looked at the beginning of the lease:



12. The structure on the left of the above photograph housed the offices and restrooms. TWR planned on using this existing structure, with some minor renovations.

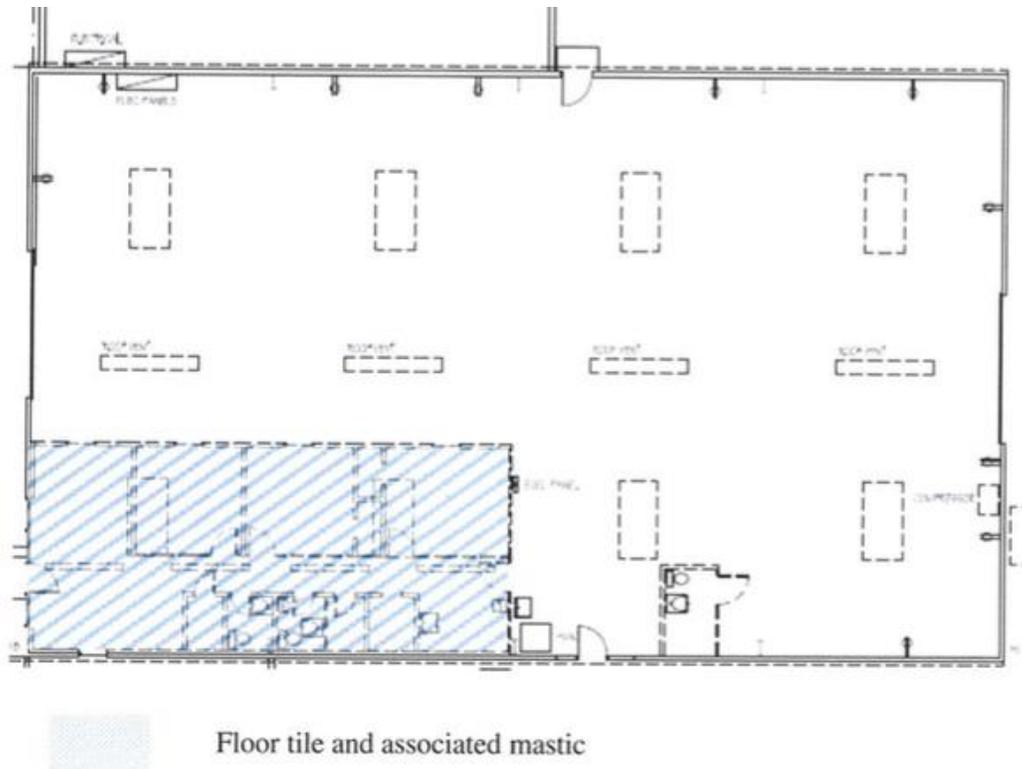
13. The property would be used as an office for TWR in Austin as well as a community space and event space for other non-profits and community partners to use.

14. For TWR, a material feature of the property was the already-existing offices and restrooms that could be inexpensively updated to a more modern appearance. Without the offices and restrooms, TWR would not have agreed to lease the property.

15. The lease term was set to begin May 15, 2018. The lease required that Ms. Santis, as the landlord, “maintain and repair” all structural components, the roof, electrical and mechanical systems, and all other items and systems not specifically identified as the tenant’s responsibility. (Paragraph 15.C.) Further, the lease provided that, as to those items designated as the landlord’s responsibility, “If a governmental regulation or order requires a modification to any of the specified items, [the landlord] must complete and pay the expense of the modification.” (*Id.*, see also Paragraph 16.C.) Ms. Santis was required to make repairs within a reasonable period of time after receiving notice. (Paragraph 10.H.)

16. **Asbestos is Discovered.** There were problems from the beginning of the term that prevented TWR from ever occupying the property. The City of Austin refused to issue a certificate of occupancy without a certification that the building did not contain asbestos. TWR asked Ms. Santis for such documentation, but Ms. Santis did not have any. Thus, the building had to be inspected for asbestos.

17. The presence, or possible presence, of asbestos was never disclosed to TWR by Ms. Santis or her agents. However, the asbestos inspection in June 2018 revealed that the building did contain asbestos throughout the floor area of the offices and restrooms.



18. This was a major setback for TWR, as the nonprofit was hoping to be able to start remodeling so that they could start using the facilities to help Austin-area foster children as soon as possible.

19. Mr. Mendoza emailed Ms. Santis' assistant, Nellie Tehnet,

The report came back and there is asbestos in the black mastic used to hold the tiles down and in some of the walls. Do you have a company you worth with to safely do the removal or should I go ahead and get some quotes to get it all done? The report company said they have to be licensed in asbestos removal. We are trying to have this done by the end of the week to stay on schedule.

20. Ms. Tehnet responded, "I do not believe we have ever had occasion to remove asbestos. So it would be best for you to go ahead and get the quotes and let Ms. Santis decide."

21. **Asbestos Abatement.** TWR spent considerable time and effort locating contractors and getting bids to remove the asbestos. Essentially TWR was serving as an unpaid general contractor for Ms. Santis.

22. The contractor that was ultimately selected to remove the asbestos submitted a proposal to TWR, and TWR passed it along to Ms. Santis for approval. Ms. Santis approved the proposal. Ms. Santis gave TWR one month of rent credit to reimburse TWR for paying for the abatement.

23. Asbestos abatement took place in August 2018. Because there was asbestos in the flooring underneath the walls in the office and restroom area, the entire office and restroom area had to be demolished. All structures, walls, flooring, electrical, mechanical, plumbing -- literally everything in the area -- was removed. After abatement, there was no A/C, no heat, no power (except for a couple outlets), and no toilets anywhere on the property. There were no offices and no restrooms. The premises were completely unsuitable in that form and the building was merely an unfinished, empty shell, as shown below:



Existing



Existing

TWR 0

24. **Rebuilding the Offices and Restrooms.** At this point, the building no longer held the offices and restrooms that were in the building when the lease began. It was no longer feasible for TWR to be able to remodel the office area as planned with the \$50,000 budget. To rebuild the office and restroom area would cost many multiples of the \$50,000 TWR had budgeted for remodeling.

25. TWR attempted to meet with Ms. Santis and discuss possible solutions to this problem. When TWR had agreed to lease the building, it had included an office area and restrooms that were integral to TWR's remodeling and operational plans. Because no certificate of occupancy would be issued without verification that the building did not contain asbestos, TWR could not legally occupy the building before abatement. After abatement, the building was completely unsuitable and would require construction to rebuild the office and restroom area, and restore the building to at least the condition it was at the beginning of the lease -- and with the same facilities.

26. Paragraph 3.B. the lease provides, in relevant part: "If Tenant is unable to occupy the lease premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete ..., Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant any amounts paid to Landlord by Tenant." TWR attempted multiple times to seek Ms. Santis' help in completing the required construction that would have allowed for occupancy. As it had done before, TWR was more than willing to help Ms. Santis make improvements to the property, and tried to get estimates and quotes to help rebuild

the building and reconstruct the necessary facilities. However, Ms. Santis refused to meet with TWR and refused to discuss these issues with TWR.

27. Ms. Santis used her assistant, Nellie Tehnet, as a bulwark and firewall to prevent TWR from communicating with her. The evidence is replete with requests by TWR staff to set up phone calls and meetings with Ms. Santis, only to be completely rebuffed and put off by Ms. Tehnet. Here TWR was attempting to improve Ms. Santis' property and make it suitable for use, and Ms. Santis would not take a few minutes out of her schedule to discuss the issues with TWR. Ms. Tehnet incorrectly told TWR that reconstructing the offices and restrooms was solely TWR's responsibility.

28. TWR staff made repeated efforts over the next several months to find solutions to the problem they faced. They took Ms. Tehnet at her word when she said -- incorrectly -- that reconstructing the building was TWR's responsibility. They did not have the benefit of counsel. TWR tried to find contractors and get quotes to reconstruct the offices and restrooms and fix the numerous other issues that plagued the property. Given the construction and remodeling market in Austin at the time, and the fact that TWR is a non-profit and budget-conscious, it would sometimes take several weeks to get contractors to come see the property, and another several weeks to receive an estimate.

29. TWR thought that it could maybe spend its \$50,000 remodeling budget on other improvements to make the space usable. However, from the quotes that TWR was able to attain, it would take an amount in the range of \$400,000 or more to restore the building's offices and restrooms.

30. In March 2019, TWR was notified by the City of Austin that it would have to secure a building permit because of the extensive demolition that had been required to

remediate the asbestos. The City noted, “this property owner needs to submit a full set of plans for review and building permit.” TWR notified Ms. Santis and again asked for her help as the building owner to secure the necessary permits to complete construction.

31. Despite Ms. Santis’s obligation to ensure the building was made into a suitable condition after the extensive asbestos abatement, she refused responsibility for securing building permits and completing construction. TWR repeatedly emailed Ms. Tehnet requesting information and asking for Ms. Santis’ assistance with getting construction completed so TWR could finally occupy and use the property. Tellingly, Ms. Tehnet and Ms. Santis were fully able to email TWR when a rent payment was due, but virtually always ignored TWR’s repeated and desperate requests that Ms. Santis comply with her obligations under the lease.

32. This situation dragged on for months and months, with TWR continuing to pay rent and attempting to find ways to make the property useable within its budget (which proved impossible), and Ms. Santis continuing to ignore TWR’s increasingly urgent pleas for her to comply with her obligations under the lease. Mr. Mendoza repeatedly tried to meet with Ms. Santis to discuss these issues, and was repeatedly rebuffed.

33. When TWR leased the space, it included offices and restrooms. TWR relied on having those spaces as the starting-point for its remodel. Ms. Santis directed TWR to find someone to remove the asbestos and approved of the contractors TWR found. After the asbestos was removed, the entire office space and restroom area was gone. Ms. Santis was obligated to, at the very least, reconstruct the premises to the condition they were at the beginning of the lease, with the same facilities and features.

34. **Other Issues.** In addition to the issues stemming from the asbestos, there were many other problems with the building. When the lease first began, TWR noticed that the HVAC did not work, which would leave the property scorching hot during the Texas summer. In addition, toilets were inoperable. When Mr. Mendoza and other TWR staff would visit the property, they would have to go down the street to Dan's Hamburgers, a restaurant, to use the toilet. The property was infested with rats and birds. Instead of being able to work out of the property, TWR employees were forced to work at a coffee shop or other location. Water would leak from the roof and would drip down close to electrical components, creating serious risk of shock. The building was completely unsuitable for commercial use.

35. When TWR requested that Ms. Santis repair the roof, Ms. Santis's representative basically told TWR that it was TWR's own responsibility and repeatedly ignored TWR's requests for repair. (To the contrary, the lease specified that Ms. Santis was responsible for repair and maintenance of the roof, and Ms. Santis's representative had specifically promised they would fix it before the lease was signed and as an inducement to signing.) At some point Ms. Santis sent her handyman to take a look at the roof. He could not repair it and stated that the entire roof needed to be replaced instead. Another contractor refused to even bid on repairing the roof, noting that it needed to be replaced. Other contractors were unwilling to install insulation because of potential mold and health issues because of the leaks. TWR repeatedly asked Ms. Santis to fix the roof, but she refused to do so.

36. **TWR Invokes the Lease Termination and Refund Provision.** On February 17, 2020, TWR wrote to Ms. Santis's representative, invoking paragraph 3.B. of the lease:

We have been trying for a few months to meet with Rosa [Santis] and it is really putting at a strain here. We can't get a certificate of occupancy without the needed changes and we need to get them approved. Some of the items require the landlord to sign off and fix it as they are part of the original lease agreement. None of the contractors we have spoken to want to do the work because the roof is in such bad shape and they cannot warranty it without a new roof. The asbestos demolition has put us in a bad position and we are in need of some assistance going forward as we haven't been able to legally occupy the property since the start of our lease.

Can we please set up a phone call with Rosa? We need to delay the occupancy as part of the lease agreement until all of these issues are resolved or the original structure can be built back to what we originally leased it at.

37. In response, Ms. Santis's representative said she was available, but when the time came for the phone call, Ms. Santis was a no-show. For TWR, this was the final straw after months and months of Ms. Santis's inaction while TWR dutifully continued to pay rent and attempted to get Ms. Santis's cooperation. TWR retained counsel.

38. On March 17, 2020, Ms. Santis received a letter from TWR's counsel notifying Ms. Santis that TWR was exercising its right under Paragraph 3.B. of the lease to terminate the lease effective immediately and request refund of all amounts paid. Paragraph 3.B. the lease provides, in relevant part: "If Tenant is unable to occupy the lease premises after the 90th day after the Commencement Date because of construction on the leased premises to be completed by Landlord that is not substantially complete ..., Tenant may terminate this lease by giving written notice to Landlord before the leased premises become available to be occupied by Tenant and Landlord will refund to Tenant

any amounts paid to Landlord by Tenant.” TWR also described other breaches by Ms. Santis. TWR demanded a refund of all amounts paid within seven days. As of the date of filing the original petition, no refund or communication from Ms. Santis had been received.

VI. CONDITIONS PRECEDENT

39. Pursuant to Tex. R. Civ. P. 56, all conditions precedent have been performed or have occurred.

VII. CAUSES OF ACTION

1. BREACH OF CONTRACT

40. Plaintiff incorporates by reference all previous paragraphs of this Petition.

41. Plaintiff and Defendant had a valid contract -- a commercial lease.

42. By the act and omissions described herein, Defendant breached the contract in multiple and various ways.

43. Defendant breached the contract by failing to reconstruct the offices and restrooms that were removed as a result of abatement. The offices and restrooms were integral and important features of the property when the space was advertised and the lease was signed. The offices and restrooms were a material part of the leasehold and essential for Plaintiff to carry out its purpose of the lease. The lease noted that Together We Rise maintained operating hours during the workweek with “some events held in evening and weekends.” Without offices and restrooms, Together We Rise could not operate in that location and could certainly not host events.

44. The express purpose of the lease was for the business of Together We Rise; removal -- without replacement -- of the offices and restrooms destroyed the subject

of the contract and breached the lease. *See, e.g., Weber v. Domel*, 48 S.W.3d 435, 437 (Tex. App.—Waco 2001, no pet.) (“Although there was no express covenant in the lease for the landowner to preserve the grass, because the express purpose of the lease was for grazing, destruction of the subject of the contract by the landowner would be a breach of the lease.”)

45. In addition to the foregoing, Defendant’s breaches of contract also include but are not limited to:

- Failing to promptly repair a condition in need of repair that is caused, either intentionally or negligently, by Defendant, Defendant’s agents, or Defendant’s contractors (paragraph 15.B.);
- Failing to repair and maintain in clean and good operable condition (a) the foundation, exterior walls, roof, and other structural components, (b) electrical systems and mechanical systems, (c) HVAC system replacement, and (d) all other items and systems not specifically allocated to tenant under the lease (paragraph 15.C.);
- Failing to make repairs for which the landlord was responsible within a reasonable period of time after written notice (paragraph 15.H.); and
- Failing to refund all amounts paid to Defendant upon demand pursuant to paragraph 3.B.

46. Plaintiff fully performed its contractual obligations under the contract. (In the alternative, Plaintiff substantially performed, tendered performance, and/or was excused from performing.)

47. Defendant breached the contract, causing injury to Plaintiff, which resulted in actual damages and consequential damages.

48. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court. Because Defendant failed to comply with the lease, Defendant is liable to Plaintiff for damages resulting from the failure. Tex. Prop. Code § 91.004(a).

49. Attorney's fees. Plaintiff is entitled to recover reasonable and necessary attorney's fees and costs under Texas Civil Practice & Remedies Code § 38.001(8).

2. BREACH OF IMPLIED WARRANTY OF SUITABILITY

50. Plaintiff incorporates by reference all previous paragraphs of this Petition.

51. Plaintiff pleads breach of the implied warranty of suitability.

52. Defendant impliedly warranted that at the inception of the lease there were no latent defects in the facilities that were vital to the use of the premises for their intended purpose and that these essential facilities would remain in a suitable condition. *See, generally, Davidow v. Inwood N. Profl Group--Phase I*, 747 S.W.2d 373, 377 (Tex. 1988).

53. The latent defects were in the nature of a physical or structural defect which the landlord had the duty to repair.

54. The latent defects existed at the inception of the lease, the facilities were vital to the use of the premises for the intended purpose, and the lessor failed to repair the defects.

55. Defendant failed to ensure that the essential facilities were in, and remained in, suitable condition.

56. As a result, Plaintiff suffered injury.

57. By the acts and omissions described herein, Defendant breached the implied warranty of suitability.

58. Plaintiff seeks rescission and unliquidated damages within the jurisdictional limits of this court. Rescission of a commercial lease is a proper remedy for breach of the implied warranty of suitability, as is claim for damages to restore lessee to the position it would have been in absence of lessor's breach of warranty.

59. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

3. BREACH OF THE COVENANT OF QUIET ENJOYMENT BY CONSTRUCTIVE EVICTION

60. Plaintiff incorporates by reference all previous paragraphs of this Petition.

61. Plaintiff pleads breach of the covenant of quiet enjoyment.

62. Defendant intended that Plaintiff no longer enjoyed the premises.

63. Defendant committed a material act (or acts) that substantially interfered with the intended use and enjoyment of the premises by Plaintiff.

64. Defendant's act (or acts) permanently deprived Plaintiff of the use and enjoyment of the premises, causing Plaintiff injury.

65. Plaintiff abandoned the premises within a reasonable time after the commission of the act (or acts).

66. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

4. DECEPTIVE TRADE PRACTICES ACT

67. Plaintiff incorporates by reference all previous paragraphs of this Petition.

68. Plaintiff is a consumer under the DTPA because Plaintiff is a corporation who sought and acquired goods (real property) by lease. Tex. Bus. & Com. Code § 17.45(4); 17.45(1).

69. Defendant violated the DTPA when Defendant engaged in false, misleading, or deceptive acts or practices that Plaintiff relied on to Plaintiff's detriment. Specifically, and without limitation, Defendant:

- Represented that the property had characteristics it did not have (Tex. Bus. & Com. Code § 17.46(b)(5));
- Represented that the property was of a particular standard, quality, or grade, when it was not (Tex. Bus. & Com. Code § 17.46(b)(7));
- Failed to disclose information about the property that was known at the time of the transaction if the failure to disclose was intended to induce the consumer to enter into a transaction that the consumer would not have entered into if the information had been disclosed (Tex. Bus. & Com. Code § 17.46(b)(24));
- Breached the implied warranty of suitability² (Tex. Bus. & Com. Code § 17.50(a)(2)); and
- Committed unconscionable acts or practices described herein (Tex. Bus. & Com. Code § 17.50(a)(3)).

70. Information about the property that was known at the time of the transaction and was not disclosed (as mentioned above), includes, but is not limited to the

² See, e.g., *Marinecorp Int'l, Ltd. v. Chopper Group, LLC*, 01-14-00707-CV, 2016 WL 1382168, at *4 (Tex. App.—Houston [1st Dist.] Apr. 7, 2016, pet. denied) (breach of the implied warranty of suitability of leased commercial property is actionable under the DTPA).

following: that Ms. Santis did not intend to fix the roof, that the roof leak was not minor, that the roof would need complete replacing, that the HVAC was not fixed, and that toilets were inoperable.

71. It was impracticable for Plaintiff to give Defendant written notice under Tex. Bus. & Com. Code § 17.505(a) because Plaintiff needed, in an abundance of caution, to file this suit to prevent the expiration of the statute of limitations. Therefore, written notice was not required.

72. Defendant's wrongful conduct was a producing cause of Plaintiff's injury, which resulted in the following damages: economic damages, including out-of-pocket damages, benefit-of-the-bargain damages, lost profits, costs of mitigation, and lost time, and mental anguish.

73. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

74. Mental-anguish damages. Defendant acted knowingly or intentionally, which entitles Plaintiff to recover mental-anguish damages under Texas Business & Commerce Code § 17.50(b)(1).

75. Additional damages. Defendant acted knowingly, which entitles Plaintiff to recover treble economic damages under Texas Business & Commerce Code § 17.50(b)(1).

76. Additional damages. Defendant acted intentionally, which entitles Plaintiff to recover treble economic and mental-anguish damages under Texas Business & Commerce Code § 17.50(b)(1).

77. Attorney's fees. Plaintiff is entitled to recover reasonable and necessary attorney's fees for prosecuting this suit under Texas Business & Commerce Code § 17.50(d).

5. DECLARATORY JUDGMENT

78. Plaintiff hereby incorporates all previous allegations as if fully set forth herein.

79. There exists a real controversy between and among the parties in this action, which is justiciable in nature, and relief is necessary to preserve the rights of the parties, which might otherwise be impaired.

80. Plaintiff seeks relief pursuant to Texas Civil Practices & Remedies Code Chapter 37, also known as the Uniform Declaratory Judgments Act.

81. Plaintiff properly terminated the contract and is owed refund of all money paid to Defendant. Plaintiff owes no money to Defendant.

82. Plaintiff seeks a declaratory judgment of this Court declaring the rights, status, and legal relations of the parties.

83. Pursuant to Section 37.009 of the Uniform Declaratory Judgments Act, Plaintiff requests that this Court award Plaintiff reasonable attorneys' fees and Court costs incurred in preparing and pursuing this Declaratory Judgment action.

6. STATUTORY FRAUD

84. Plaintiff hereby restates and incorporates all previous allegations as if fully set forth herein.

85. Plaintiff and Defendant were parties to a transaction involving real estate.

86. During the transaction, Defendant made a false promise to Plaintiff with the intent not to fulfill it, and the promise was material to the transaction. Specifically, Defendant promised to repair the leaking roof.

87. Defendant made the false promise for the purpose of inducing Plaintiff to enter into the lease.

88. Plaintiff justifiably relied on Defendant's false promise by entering into the lease.

89. Defendant's false promise proximately caused injury to Plaintiff, which resulted in actual and consequential damages.

90. Plaintiff seeks damages within the jurisdictional limits of the Court.

91. Exemplary damages. Defendant violated Tex. Bus. & Com. Code § 27.01, which is the basis of this claim, with actual awareness of the falsity of Defendant's promise, which entitles Plaintiff to exemplary damages under Section 27.01(c).

92. Attorney's fees and other costs. Plaintiff is entitled to recover reasonable and necessary attorney's fees, expert-witness fees, court costs, and costs for copies of depositions under Tex. Bus. & Com. Code § 27.01(e).

7. COMMON-LAW FRAUD

93. Plaintiff hereby incorporates all previous allegations as if fully set forth herein.

94. To induce Plaintiff to enter into the lease with Defendant, Defendant represented that the roof leak was minor and promised to Plaintiff that Defendant would repair the leaking roof.

95. Defendant's representation that the leak was minor was false because the roof was in such bad shape, with so many leaks, that it required replacement.

96. Defendant's promise of future performance was false because Defendant made the promise with no present intention of performing.

97. Defendant made the false representation and promise knowing they were false. Alternatively, Defendant made the representation and promise "recklessly," without any knowledge of its truth and made as a positive assertion of fact.

98. Defendant intended that Plaintiff rely on the false representation/promise.

99. Plaintiff justifiably relied on the representation/promise in entering into the lease.

100. Defendant's false representation/promise directly and proximately caused injury to Plaintiff, which resulted in the following damages: actual and consequential damages.

101. Plaintiff seeks damages within the jurisdictional limits of this Court.

102. Exemplary damages. Plaintiff's injury resulted from Defendant's actual fraud, gross negligence, or malice, which entitled Plaintiff to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

8. RESCISSION BASED ON MUTUAL MISTAKE

103. In the alternative, Plaintiff pleads for rescission based on mutual mistake.

104. The absence of asbestos was a basic assumption of the lease. Both parties acted under the same misunderstanding of the same material fact.

105. The court should set aside the lease and award judgment for Plaintiff to avoid unjust enrichment. Based on mutual mistake and to avoid unjust enrichment, the

lease should be rescinded and Plaintiff should be awarded judgment for a refund of rent paid to Defendant as damages.

VIII. DAMAGES

106. Plaintiff incorporates by reference all previous paragraphs of this Petition.

107. Plaintiff seeks recovery for damages including but not limited to actual damages, consequential damages, economic damages, mental anguish, treble damages, and exemplary damages.

108. Plaintiff's damages include, but are not limited to: refund of all amounts paid to Ms. Santis; out-of-pocket damages; reliance damages; benefit of the bargain damages; lost profits; lost donations; moving costs; and other damages.

IX. ATTORNEY'S FEES

109. Plaintiff seeks costs and reasonable and necessary attorney's fees as are equitable and just. Tex. Civ. Prac. & Rem. Code § 38.001(8) (oral or written contract); Tex. Bus. & Com. Code § 27.01(e); Tex. Civ. Prac. & Rem. Code § 37.009.

X. REQUEST FOR DISCLOSURE

110. Plaintiff has previously requested that Defendant disclose the information or material described in Rule 194.2. Plaintiff reiterates this request. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

XI. AUTHENTICATION

111. Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby serves notice that Defendant's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial.

XII. CONCLUSION AND PRAYER

WHEREFORE, Plaintiff prays that citation issues and that Plaintiff have and recover judgment against Defendant in all respects. Plaintiff further prays for: an award of actual damages, consequential damages, exemplary damages, economic damages, mental anguish, and treble damages as described herein; reasonable and necessary attorneys' fees; court costs; and pre- and post-judgment interest. In the alternative, Plaintiff prays for rescission and an award of actual damages and consequential damages. Plaintiff also seeks all other relief, at law or in equity, to which it may show itself to be entitled.

Dated: March 12, 2021

Respectfully submitted,

/s/ John R. McConnell

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure using the Efile.txcourts.gov efileing and eservice system on the March 12, 2021.

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/s/ John R. McConnell _____

John R. McConnell

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Melanie Wade on behalf of John McConnell
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Status as of 3/15/2021 5:35 PM CST

Associated Case Party: Together We Rise Corporation

Name	BarNumber	Email	TimestampSubmitted	Status
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