

CAUSE NO. C-1-CV-16-010376

MID-CONTINENT CASUALTY
COMPANY

VS.

MIKE CLEM, INDIVIDUALLY, AND
BELLA VITA CUSTOM HOMES, LLC

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§

IN THE COUNTY COURT

AT LAW NO. 1

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Mid-Continent Casualty Company, hereinafter referred to as Plaintiff, complaining of Mike Clem, Individually, and Bella Vita Custom Homes, LLC hereinafter referred to as Defendants, and for cause of action would show as follows:

I.

DISCOVERY LEVEL

Plaintiff affirmatively pleads that the aggregate monetary relief sought is \$50,000.00 or less, excluding costs, pre-judgment interest and attorney's fees. Therefore, Plaintiff intends discovery to be conducted under Level 1 of Rule 190.2 of the Texas Rules of Civil Procedure.

II.

PARTIES

Plaintiff is an insurance company authorized to engage in the business of insurance in Texas.

Defendant Mike Clem is Chief Financial Officer and Partner of Bella Vita Custom Homes, LLC and may be served at his place of business at 12400 Coit Rd., Suite 600, Dallas, Texas or wherever he may be found.

Defendant Bella Vita Custom Homes, LLC is a limited liability company licensed to do business in the state of Texas and may be served with citation by serving its registered agent, Michael S. Clem at 12400 Coit Rd., Suite 600, Dallas, Texas or wherever he may be found.

III.

VENUE

Venue is proper in Travis County since the Defendants entered into the contract subject of this matter in Travis County Texas.

IV.

FACTS

On September 14, 2014 Mid-Continent Casualty Company issued a commercial general liability insurance policy to Bella Vita Custom Homes, LLC. The policy provided coverage according to its terms from September 14, 2014 to April 10, 2015, being known as policy number GL-919974. Said policy of insurance was issued by Plaintiff for the purpose of providing coverage for Defendants in their custom home contracting business in Austin and Dallas. In exchange for issuance of the subject policy, Defendants agreed to pay Plaintiff an annual premium for the coverage dates set forth above. Despite Plaintiff providing insurance coverage and related services as set forth herein, Defendants have failed and refused to pay the required premium which is now due and owing.

V.

CAUSE OF ACTION

1. **Breach of Contract**

A. From the date Defendants engaged the services of Mid-Continent Casualty Company, notices for payment of premium were submitted by Mid-Continent Casualty Company

to Defendants. The notices reflected the customary and reasonable amount of premium due for the insurance coverage. Defendants have breached their agreement with Plaintiff to Plaintiff's substantial damage. Defendants have been unjustly enriched as a result of not paying the premium due Plaintiff.

B. Subsequent to Defendants incurring the debt subject of this matter Mike Clem individually and on behalf of Bella Vita Custom Homes, LLC entered into a Promissory Note where by Defendants agreed to pay the debt to Plaintiff through payments of \$4,611.83 per month commencing February 1, 2016. Defendants made one payment on February 1, 2016. Defendants made no further payments and defaulted in the obligations under the Promissory Note. Defendants are in breach of the Promissory Note with Plaintiff. A true and correct copy of the Promissory Note is attached to the affidavit of Plaintiff's officer attached hereto.

2. Suit on Sworn Account

Further, under Texas Rule of Civil Procedure 185, Plaintiff would show that this case involves a claim for a liquidated money demand based upon written contract or founded on business dealings between the parties, or is for personal services rendered, on which a systematic record has been kept, and is supported by the affidavit of Plaintiff, its agent or attorney, taken before an officer authorized to administer oaths to the effect that such claim is, within the knowledge of the affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed. The affidavit of Plaintiff, its agent or attorney is attached hereto and incorporated herein as if fully set forth. Therefore, pursuant to said rule, said claim should be taken as prima facie evidence of same. The verification of Plaintiff's officer and the Promissory Note marked as Exhibit "A" are attached hereto and incorporated herein as if fully set forth.

VI.

DAMAGES

Despite numerous demands by Mid-Continent Casualty Company and its representatives upon Defendants for payment, Defendants have refused and failed to pay the outstanding premium to Plaintiff's damage in the sum of \$23,059.17.

VII.

ATTORNEY'S FEES

Prior to filing this Petition, Plaintiff presented Defendants with the account described herein, the non-payment of which ultimately resulted in the subject litigation. Plaintiff has also exhausted its other remedies for collection. All conditions precedent have been performed, occurred or have been waived. Defendants are in breach of their agreement to pay Plaintiff the balance due for the insurance coverage afforded by Plaintiff to Defendants. In this connection, Plaintiff seeks reasonable attorney's fees which will be shown at the time of trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Mid-Continent Casualty Company requests that Mike Clem, Individually, and Bella Vita Custom Homes, LLC be cited to appear and answer and that upon final hearing, Plaintiff have judgment against Defendants, jointly and severally, for \$23,059.17 plus interest before and after judgment at the highest rate provided by law, reasonable attorney's fees, court costs, and such other and further relief to which Plaintiff Mid-Continent Casualty Company is justly entitled.

RESPECTFULLY SUBMITTED,

CHAMBERLAIN ♦ McHANEY
301 CONGRESS AVE., 21ST FLOOR
AUSTIN, TEXAS 78701
512/474-9124
512/474-8582 (fax)
GMCHANEY@CHMC-LAW.COM

BY: 

J. GORDON McHANEY
STATE BAR NO. 13670190
ATTORNEYS FOR PLAINTIFF

Mid-Continent Casualty Company

v.

Mike Clem, Individually, and Bella Vita Custom Homes, LLC

VERIFICATION

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared J. Gordon McHaney, known by me to be the person whose name and signature are subscribed hereto who, being first duly sworn and cautioned by me, did depose and state on his oath as follows:

“My name is J. Gordon McHaney. I am an adult person over the age of twenty-one (21) years. I have never been convicted of a felony or any crime involving moral turpitude. I am mentally competent and qualified give this affidavit. All statements made herein are true, correct and from my own personal knowledge.

I represent Mid-Continent Casualty Company as their attorney. My responsibilities include serving as counsel to the custodian of records for documents related to policy number GL-919974 with a policy period of September 14, 2014 to April 10, 2015, being a commercial general liability policy of insurance issued to Bella Vita Custom Homes, LLC in the above-referenced matter.

Bella Vita Custom Homes, LLC purchased from Mid-Continent Casualty Company the aforementioned policy of commercial general liability insurance. As part of the transaction, it agreed to pay a premium for the policy. The insurance was provided by Mid-Continent Casualty Company. Defendants received the insurance as described in the policy. However, Defendants have not paid the premium that is owed.

In connection with the aforementioned policy of insurance, Defendants executed a Promissory Note on January 15, 2016, where by Defendants agreed to pay the debt to Plaintiff through payments of \$4,611.83 per month commencing February 1, 2016. Attached is as Exhibit “A” and incorporated herein is a true and correct copy of the Promissory Note where by Defendants agreed to pay \$27,671.00 in equal installments of \$4,611.83 on or before the 1st of each month by the Defendants. Defendants made one payment on February 1, 2016. After all credits and payments have been allowed, the balance owed by the Defendants is \$23,059.17.

This claim is for a liquidated money demand based on written contract or founded on business dealings between the parties, or is for personal services rendered, on which a systematic record has been kept. The claim is within my knowledge just and true, it is due, and all just and lawful offsets, payments and credits have been allowed.

Further Affiant sayeth not.

J. Gordon McHaney
J. GORDON MCHANEY
ATTORNEY
MID-CONTINENT CASUALTY COMPANY

28th SUBSCRIBED AND SWORN TO before me by the said J. Gordon McHaney on this the
day of October, 2016.

Ruth Cloves
Notary Public in and for the State of Texas

My Commission Expires: April 19, 2018



Claim#
Adj REP

Policy# GL 919974

Policy Term Effective: 9/14/2014 Expiration: 4/10/2015

PROMISSORY NOTE

In the County of TRAVIS, State of TEXAS, on this day of JANUARY 2016. For items received, I, we or either of us promise to agree and pay to the order of Mid-Continent Casualty Co. the sum of Twenty-Seven Thousand Six Hundred Seventy-One and 0/100 dollars, (\$27,671.00), in equal installments of Four Thousand Six Hundred Eleven and 83/100 dollars, (\$4,611.83), to be paid on or before the 1st day of each month. If any installment becomes delinquent for fifteen, (15), days, the entire unpaid balance shall at once become due and payable at the option of the holder. First payment due February 1, 2016.

Payable to: Mid-Continent Casualty Co.
PO Box 1409
Tulsa, OK 74101
ATTN: HOC REP

IT IS FURTHER UNDERSTOOD AND AGREED that a down payment of N/A and /100 dollars, (), will be due and payable upon return of this agreement.

IT IS FURTHER UNDERSTOOD AND AGREED that the makers and endorsers hereby severally waive presentment of payment, notice of nonpayment, protest and notice of protest, and agree that extensions of time for payment may be granted by the holders hereof without notice.

IT IS FURTHER UNDERSTOOD AND AGREED in case of legal proceedings to collect this Note, it is handed to an attorney for collection, I, we, or either of us, agree to pay reasonable attorney fees for collection of the Note. Maker shall have the right to pay any multiple of the installment at any installment payment date.

DATED THIS 15th of January, 2016.

X

[Signature]

Mike Clem, Individually
P.O. Box 2569
Pflugerville, TX 78691

X

[Signature]

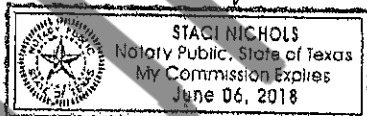
BELLA VITA CUSTOM HOMES, LLC

Subscribed and sworn before me this 15th day of January, 2016

[Signature]

Notary Public

My commission expires: June 6, 2019



Mid-Continent Casualty Co.

[Signature]

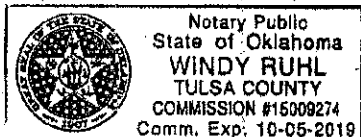
Ray Phillips, MCG Authorized Signature

Subscribed and sworn before me this 21st day of January, 2016

[Signature]

Notary Public

My commission expires: 10/5/19



Copy of Original

form16.dot

EXHIBIT "A"

CHAMBERLAIN ♦ MCHANEY
ATTORNEYS AT LAW

Reply to: Austin Office
301 Congress Avenue, 21ST Floor
Austin, Texas 78701
(512) 474-9124
Fax (512) 474-8582
WRITER'S EMAIL: rkonderla@chamberlainmchaney.com

San Antonio Office:
310 South St. Mary's, Suite 1815
San Antonio, Texas 78205
(210) 227-3331
Fax (210) 227-3334

October 28, 2016

VIA eFile ProDoc

Dana DeBeauvoir
P.O. Box 149325
Austin, Texas 78714-9325

RE: Cause No. _____; *Mid Continental Casualty Company v. Mike Clem, Individually, and Bella Vita Custom Homes, LLC*; In County Court at Law No. ____
at Travis County, Texas

Dear Ms. DeBeauvoir:

Please file mark the attached Plaintiff's Original Petition, Verification, and Promissory Note for the subject matter referenced above with the Travis County Clerk's office.

In addition please prepare two citations for Mike Clem, Individually, and Registered Agent, Michael S. Clem for Bella Vita Custom Homes, LLC for service at 12400 Coit Rd., Suite 600, Dallas, Texas or wherever he may be found. Please provide electronic citations and petition for private process service.

Thank you for your service with the Travis County Clerk's office.

Sincerely,
/s/ Ruth Konderla

Ruth Konderla, Paralegal to
J. Gordon McHaney
Attorney for Plaintiff
Mid Continent Casualty Company

Encl. (As stated)