

Marissa Pittman

DC-16-14212  
Cause No. \_\_\_\_\_

ALLEN CASHIN AND CATHERINE CASHIN	§	IN THE DISTRICT COURT
	§	
Plaintiffs,	§	
	§	_____ JUDICIAL DISTRICT
v.	§	
BELLA VITA CUSTOM HOMES, LLC, STEVEN A. CLEM, AND MICHAEL S. CLEM	§	DALLAS COUNTY, TEXAS
Defendants.	§	
	§	
	§	

**PLAINTIFFS' ORIGINAL PETITION**

Plaintiffs, Allen Cashin and Catherine Cashin (the “Cashins”) file this Original Petition against Defendants, Bella Vita Custom Homes, LLC, Steven A. Clem, and Michael S. Clem and respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Discovery is to be conducted under Level 2 of Texas Rules of Civil Procedure 190.3.

**II. CLAIM FOR RELIEF**

2. Plaintiffs seek monetary relief over \$200,000 but no more than \$1,000,000.00 pursuant to Texas Rule of Civil Procedure 47(c)(4).

**III. PARTIES**

3. Plaintiffs, Allen Cashin and Catherine Cashin are husband and wife who reside in Dallas County, Texas.

4. Defendant, Bella Vita Custom Homes, LLC (“Bella Vita”) is a Texas limited liability company that may be served with process through its registered agent, Michael S. Clem

at 810 Hesters Crossing Road, Suite 200, Round Rock, Texas 78681 or wherever it may be found.

5. Defendant, Michael S. Clem is an individual residing in Travis County who may be served with process at 1200 Brophy Drive, Pflugerville, Texas 78660 or wherever he may be found.

6. Defendant, Steven A. Clem is an individual residing in Dallas County who may be served with process at 3705 Hanover, Dallas, Texas 75225 or wherever he may be found.

#### IV. JURISDICTION AND VENUE

7. The amount in controversy is within the jurisdictional limits of the Court. The Court has personal jurisdiction over Defendants because they reside in Texas, are doing business in Texas, and have breached a contract that was to be performed in Texas.

8. Venue is proper in Dallas County because it is the county in which all, or a substantial part, of the events or omissions giving rise to Plaintiffs' claims occurred. TEX. CIV. PRAC. & REM. CODE S. 15.002.

#### V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

9. On or about September 24, 2015, the Cashins entered into a Residential Construction Contract – Fixed Price (“**Contract**”) with Bella Vita for Bella Vita to serve as the general contractor for the construction of the Cashins' home located at 6467 Tulip Lane, Dallas, Texas 75230.

10. The Contract between the Cashins and Bella Vita is valid and enforceable. The Cashins performed their obligations under the Contract by tendering the amounts due thereunder to Bella Vita for labor and materials for the construction of their home. Bella Vita defaulted on, and breached, its obligations under the Contract by failing to tender the Cashins construction

funds to the subcontractors who supplied the labor and materials for the construction of their home.

11. Bella Vita's breach has caused injury to the Cashins, which has resulted in the Cashins suffering damages in an amount in excess of the jurisdictional limits of the Court.

12. The Cashins are entitled to recover their reasonable and necessary attorney's fees under the terms of the Contract and pursuant to Texas Civil Practice and Remedies Code Section 38.001.

13. All conditions precedent to the Cashins filing this suit and recovering hereunder have been performed, have occurred, or have been waived.

**VI. SECOND CAUSE OF ACTION: VIOLATION OF TEXAS PROPERTY CODE CHAPTER 162**

14. The Cashins incorporate each of the foregoing paragraphs as if stated in full herein.

15. As stated above, Defendants acted as the general contractor providing construction services for the Cashins. Defendants received construction funds from the Cashins for use in paying various subcontractors who providing labor and/or materials for the construction of the Cashins' home. As a result, pursuant to Texas Property Code Section 162.001, *et seq.*, the Cashins' construction payments became trust funds held by Defendants for the benefit of the Cashins.

16. Defendants intentionally defrauded the Cashins from their construction payments by using the funds for their own personal benefit and to the detriment of the Cashins. The Cashins now seek recovery of those payments held in trust for their benefit.

## VII. PRAYER

Plaintiffs respectfully request that this Court enter Judgment against Defendants as follows:

- a. Plaintiffs be awarded actual damages in an amount within the jurisdictional limits of this Court;
- b. Plaintiffs be awarded their reasonable and necessary attorney's fees;
- c. Plaintiffs be awarded interest at the highest legal rate allowed by law;
- d. Plaintiff be granted judgment for all costs of court;
- e. Plaintiffs be granted all further relief to which they may be entitled.

Respectfully submitted,



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