

NO. 1243077JERRY LEIGH, INDIVIDUALLY AND
D/B/A OUTDOOR ACCENTS

§

IN THE COUNTY COURT

§

§

VS.

§

AT LAW NUMBER _____ OF

§

ESTATE OF

§

SHIRLEY MAE HOUSTON, A PERSON,

§

A/K/A SHIRLEY MAE GORDON HOUSTON

§

DECEASED

§

AND RICHARD WALKER GRAY, III

§

HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

Jerry Leigh ("Leigh"), individually and d/b/a Outdoor Accents, Plaintiff files this Petition complaining against the **Estate of Shirley Mae Houston, A Person a/k/a Shirley Mae Gordon Houston (the "Estate")**, and **Richard Walker Gray, III**, individually and as the Independent Administrator with Will Annexed for the **Estate ("Gray")**, Defendants and states the following:

I. Parties

1. **Leigh** is an individual residing in Sugar Land, Fort Bend County, Texas.
2. The **Estate of Shirley Mae Houston, a/k/a Shirley Mae Gordon Houston** may be served with citation and this Plaintiff's Original Petition by serving the Independent Administrator with Will Annexed for the **Estate, Richard Walker Gray, III** at 3706 Ascot Lane, Houston, Texas 77092.
3. **Gray**, individually and as the Independent Administrator with Will Annexed for the **Estate** may be served with citation and Plaintiff's Original Petition by serving him at 3706 Ascot Lane, Houston, Texas 77092.

II. Jurisdiction and Venue

1. This Court has jurisdiction over the persons and subject matter of this cause under the common law and by statute.

2. **Shirley Mae Houston AKA Shirley Mae Gordon Houston (“Houston”)** died on November 13, 2023 in Houston, Harris County, Texas.

3. The jurisdiction of this Court over Defendants is proper.

4. Pursuant to General Venue Statutes, venue is proper in Harris County, Texas.

III. Jury/Conditions Precedent

1. **Leigh** requests a bench trial.

2. All conditions precedent necessary to maintain this action have been performed and/or have occurred.

IV. Discovery Level

1. Discovery conducted in this case is intended to be conducted under Level 1 of Rule 190 of the Texas Rules of Civil Procedure.

V. Notice that Documents Will Be Used

1. Pursuant to Rule 193.7 of the TRCP, **Leigh** gives notice that any documents produced by Defendants, in any original, supplemental, or amended responses to any discovery request filed by **Leigh** may be used by **Leigh** in any trial proceeding.

VI. Facts

1. **Leigh** provides residential landscaping services to homeowners in Harris County, Texas and specifically provided landscaping services to **Houston** at her home 5026 Cedar Creek, Houston, Texas before her demise.

2. **Leigh** relied on all of **Houston's** representations that he would be paid for his services. **Leigh** relying on all of **Houston's** representations provided specific landscaping services at **Houston's** home in **Houston**, Harris County, Texas.

3. Prior to **Houston's** demise, **Houston** paid **Leigh** with two checks. A copy of the checks are attached hereto, marked Exhibit 3 and incorporated. The checks (Ex. "3") were paid to **Leigh** for the landscaping services. **Leigh** received the two (2) checks in November 2023 from **Houston**, one in the amount of \$4,755.00 and the second one in the amount of \$1,250.00. Both checks (Ex. "3") were for residential landscaping services provided by **Leigh** to **Houston** at her request and before her death. The endorsement on the checks was cancelled upon **Houston's** death. The amount of \$6,005.00 is due and owing after all offsets and credits.

4. **Houston** failed to pay **Leigh** for the labor performed and materials provided and breached her contracts, agreements and sworn account verified by **Leigh** as set out in Exhibit 1 attached hereto and incorporated. The charges were according to the parties' agreement and were reasonable and customary for these services. **Gray** as Independent Administrator with Will Annexed for **Houston's Estate** evidently denied the claim and failed to pay **Leigh** after the claim was made against the **Estate**.

5. A copy of the invoices for the service rendered are attached hereto, marked Exhibit 2 and incorporated. The account invoices accurately set forth the services **Leigh** provided to **Houston**, the dates of performance, and the cost of the services **Leigh** provided. The invoices represent a record of the transactions that **Leigh** systematically kept in the ordinary course of business.

6. This claim is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed. **Leigh's** affidavit verifies these facts.

7. **Leigh** made demand upon Defendants for payment of the amount owed more than thirty (30) days prior to the filing hereof.

8. Defendants became bound and obligated to pay **Leigh** such sums of money, and the total thereof and though requested to do so, Defendants failed and refused to pay said sum of money in the amount of \$6,005.00 for which **Leigh** now sues. The \$6,005.00 is a preferred debt secured by a lien against the real property known as 5026 Cedar Creek, Houston, Harris County, Texas 77056 pursuant to Section 403.052 of the Texas Estates Code. Leigh is entitled to foreclose on the real property pursuant to Section 403.054 of the Texas Estate Code.

9. The checks were cancelled and the monies are still overdue and unpaid to **Leigh**.

10. Thereafter, an **Estate** was opened under Cause No. 521980 in Probate Court No. 2 of Harris County, Texas styled In the Estate of Shirley Mae Houston, a person a/k/a Shirley Mae Gordon Houston, Deceased. A Will was submitted to Probate. The Will was determined of no force and effect. On or about April 11, 2024, a claim was filed against the **Estate** for the outstanding \$6,0005.00. ("Claim") An Administration was opened by the only heir, **Gray. Gray**, individually was appointed the Independent Administrator with Will Annexed for the **Estate**. **Gray's** attorney represented the Claim would be paid in due course.

11. **Gray**, individually and the **Estate** are represented by an attorney, Robert D. Franks. ("Franks") The Claim was not confirmed, acknowledged nor honored by **Gray**.

12. Franks represented the Claim would be honored by the **Estate** but in fact it was not. Franks requested more time to get matters resolved when all along **Gray** never intended to formally confirm **Leigh's** Claim and get it paid.

13. **Gray** closed the Estate on or about September 27, 2024. To date, **Leigh** has not been paid by the **Estate** or **Gray**.

14. Because of Defendants' failure to pay **Leigh**, **Leigh** has been damaged.

VII. Causes of Action

A. First Cause of Action – Breach of Contract

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. The checks are contracts to pay. Stop payment was placed on the checks and Defendants breached the contracts.

3. Defendants failed to compensate **Leigh** for the \$6,005.00 and breached their representation to acknowledge and honor the Claim and get it paid.

4. **Houston** and the **Estate** are bound and obligated to compensate **Leigh** and though requested to do so, both **Houston** and the **Estate** have failed and refused to pay **Leigh** the monies due.

B. Second Cause of Action – Sworn Account

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. Defendants failed to pay **Leigh** for the labor performed and materials provided and breached their contracts, agreements and sworn account/verified by **Leigh** as set out in Exhibit 1 attached hereto and incorporated. The charges were according to **Houston's** agreement and were reasonable and customary for these services.

3. The record of the invoices and the required affidavit are incorporated herein by reference. (Exs. "1 and 2") The accounts accurately set forth the services **Leigh** provided to **Houston**, the dates of performance, and the cost of the services **Leigh** provided. The invoices

represent a record of the transactions that **Leigh** systematically kept in the ordinary course of business.

4. This claim is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed. **Leigh's** affidavit verifies these facts.

5. **Leigh** made demand upon Defendants for payment of the amount owed more than thirty (30) days prior to the filing hereof.

6. Defendants became bound and obligated to pay **Leigh** such sums of money, and the total thereof and though requested to do so, Defendants have failed and refused to pay said sum of money in the amount of \$6,005.00 for which **Leigh** now sues.

C. Third Cause of Action – Quantum Meruit

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. Further, in the event **Leigh** is not entitled to recovery pursuant to the stopped paid checks, the Agreement or his verified account as stated herein, and only in that event, **Leigh** accordingly presents this alternative plea to recover upon quantum meruit. The **Estate** with full knowledge and consent, received the benefit of the labor, services and materials performed and provided by **Leigh** to the **Estate. Houston** by her own acts of issuing the checks acknowledged she was being charged for the labor, services and materials for the work performed and provided.

3. Accordingly, by implication the **Estate** agreed to pay a reasonable value for the work performed by **Leigh** for the **Estate** in the total sum of \$6,005.00 set out in Exhibits "1 and 2" and for which amount **Leigh** now sues.

D. Fourth Cause of Action – Monies Had and Received – Gray and the Estate

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. To the extent Defendants received or removed monies from **Leigh** to which they were not entitled, they have retained said monies to their own use and benefit and continue to be unjustly enriched. Defendants have taken steps to frustrate Plaintiff's interest in **Houston's Estate**. Defendants concealed and retained monies for their personal benefit to Plaintiff's detriment, which caused Plaintiff damages.

E. Fifth Cause of Action – Negligent Misrepresentation – Gray and the Estate

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. Defendants made representations to **Leigh** negligently and/or carelessly without regard for the truth or falsity of said representations and **Leigh** relied on the misrepresentations which were a proximate cause of **Leigh's** damages.

F. Sixth Cause of Action – Fraud by Nondisclosure

1. **Leigh** incorporates by reference the allegations of paragraphs I through VI, and the fact allegations of paragraph VI one (1) through nine (9).

2. These facts regarding payment by **Gray** and the **Estate** to **Leigh** were material.

3. Defendants knew **Leigh** relied on these facts as represented. **Leigh** didn't have an equal opportunity to discover the Defendants' misrepresentations.

4. Defendants were deliberately silent when they had a duty to speak the truth.

5. Defendants by failing to disclose the facts intended to induce **Leigh** to accept the situation and not be able to take any action.

6. **Leigh** relied on the Defendants' representations.
7. **Leigh** sustained injuries as a result of not having the knowledge of the undisclosed facts.

VIII. Damages

1. **Leigh** is entitled to damages from the **Estate** in the sum of not less than \$6,005.00 and any additional miscellaneous expenses and the cost to cover the non-payment of checks.
2. **Leigh** is also entitled to damages from the Defendants in the amount of \$25,000.00 for Defendants' fraud and negligent misrepresentations.
3. **Leigh** is entitled to recover his reasonable and necessary attorney's fees and additional out of pocket expenses for the protection of its interests against the parties as provided by law, Chapter 38 TCPRC.

IX. Foreclosure Remedy

1. Judicial Foreclosure against the real property known as 5026 Cedar Creek, Houston, Harris County, Texas 77056 (the "Property") based on the lien upon the Property pursuant to Section 403.054 of the Texas Estates Code.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, **Leigh** prays the **Estate** and **Gray**, Defendants be cited to appear and answer herein and upon final trial of this cause, **Leigh** does have and recover of and from the Defendants, jointly and severally, the following relief:

1. A money judgment in the amount of \$6,005.00 for compensatory damages, together with prejudgment interest from date of nonpayment until date of judgment;
2. A money judgment for any additional miscellaneous expenses incurred by Plaintiff in excess of \$100.00;

3. Judicial foreclosure of the \$6,005.00 lien.
4. A money judgment for \$25,000.00 for Defendants' fraud and negligent misrepresentation;
5. Reasonable and necessary attorney's fees and costs of court as allowed by law;
6. Post judgment interest on the entire amount of judgment until paid; and
7. All such other and further relief, both general and special, at law or in equity, to which **Leigh** may show himself to be justly entitled.

Respectfully submitted,

ENGELHARDT LAW, PLLC

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