

CAUSE NO. 1243065

TW MECHANICAL, LLC	§	IN THE COUNTY CIVIL
	§	
v.	§	COURT AT LAW # _____
	§	
TM HOU LLC d/b/a TOCA MADERA	§	
HOUSTON	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, TW MECHANICAL, LLC ("TW Mechanical"), and files this Original Petition complaining of Defendant, TM HOU LLC, d/b/a TOCA MADERA HOUSTON ("Toca Madera") and for cause of action respectfully showing the Court the following:

I. DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 1 in accordance with Rule 190.2 of the Texas Rules of Civil Procedure because this suit is governed by the expedited actions process in Texas Rule of Civil Procedure 169 as Plaintiff seeks monetary relief of less than \$250,000.

II. CLAIM FOR RELIEF

2. Plaintiff seeks monetary relief of less than \$250,000.00, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs pursuant to Texas Rule of Civil Procedure 47.

III. VENUE

3. Venue is proper in Harris County pursuant to Section 15.002 of the Texas Civil Practice and Remedies Code because a substantial part of the events giving rise to the claims occurred in Harris County.

IV. PARTIES

4. Plaintiff, TW Mechanical, LLC (“TW Mechanical”), is a domestic limited liability company authorized to transact business in Texas, and its physical and mailing address is 1005 Airline Drive, Suite A, Katy, Texas 77493.

5. Defendant, TM HOU LLC, d/b/a Toca Madera Houston (“Toca Madera”), is a domestic limited liability company doing business in the State of Texas and may be served with process by serving its registered agent Registered Agents Inc., 5900 Balcones Drive, Suite 100, Austin, Texas 78731.

V. FACTS

6. TW Mechanical, LLC (“TW Mechanical”) entered into a construction contract with TM Hou LLC (“Toca Madera”) to perform construction work on the Toca Madera Houston restaurant located at 1755 Allen Parkway, Unit 101, Houston, TX 77019 (the “Project”). Toca Madera is the owner of the Project.

7. TW Mechanical performed and completed its work on the Project in a timely manner, but Toca Madera failed to pay TW Mechanical in full for all labor, materials, and equipment provided to the Project. There is no dispute as to the completion or quality of TW Mechanical’s work.

8. TW Mechanical gave timely notice of its unpaid claim to Toca Madera. In total, Toca Madera owes TW Mechanical \$3,792.92 (“Contract Balance”).¹ To date, TW Mechanical has not received payment.

¹ Exhibit A – TW Mechanical, LLC’s Demand for Payment.

VI. CAUSES OF ACTION

A. COUNT 1 – BREACH OF CONTRACT

9. TW Mechanical performed or, alternatively, substantially performed all of its obligations under its contract with Toca Madera. Toca Madera materially breached the contract by failing to pay TW Mechanical the Contract Balance. Toca Madera's material breach of the contract is the proximate cause of TW Mechanical's damages.

B. COUNT 2 – QUANTUM MERUIT

10. In the alternative to the above, and without waiving the foregoing, TW Mechanical seeks to be compensated for its services under a theory of *quantum meruit*. TW Mechanical furnished Toca Madera valuable labor and materials. Defendant accepted and took advantage of those goods and services in completing the Project. Toca Madera had reasonable notice that TW Mechanical expected compensation, and they continue to benefit from TW Mechanical's work.

11. As a consequence of Defendant's non-payment, TW Mechanical has been damaged and seeks, therefore, to recover \$3,792.92, the reasonable value of the labor and services that it provided, but for which Defendant has failed to pay TW Mechanical.

C. COUNT 3 – PROMPT PAY VIOLATION

12. Toca Madera's failure to timely pay TW Mechanical violates Chapter 28 of the Texas Property Code, otherwise known as the "Prompt Payment Act." As a result, TW Mechanical is entitled to recover, in addition to the Contract Balance, interest on the unpaid balance in the amount of one and one-half percent (1.5%) per month or eighteen percent (18%) per annum.

D. COUNT 2 – SUIT ON SWORN ACCOUNT

13. TW Mechanical sold labor and materials to Toca Madera. The prices charged were just and true because they were according to the terms of the Contract. TW Mechanical kept a

systematic record of the transaction. All lawful offsets, payments, and credits have been applied to the account. The account remains unpaid and TW Mechanical is owed \$3,792.92 in liquidated damages. An affidavit in support of this claim is attached hereto as **Exhibit B**.

VII. DAMAGES

14. TW Mechanical seeks to recover a sum not less than \$3,792.92 representing the unpaid balance for work performed on the Project, in addition to pre and post judgment interest, Prompt Payment interest, attorney's fees and costs.

VIII. CONTROL GROUP

15. Whenever in this pleading it is alleged that any Defendant did any act or thing, it is meant that the Defendant and or, their agents, servants, or representatives did such act or thing, and that at the time such act or thing was done, it was done with the Defendants' full authorization and ratification, or was done in the normal and routine course of employment with Defendant and/or its agents, servants, or representative, whether actual or apparent.

IX. ATTORNEYS' FEES

16. TW Mechanical is entitled to and does hereby seek to recover its attorneys' fees and costs incurred in connection with this suit pursuant to Section 28 of the Texas Property Code, Texas Civil Practice & Remedies Code Chapter 38, and all applicable laws. Accordingly, TW Mechanical respectfully requests and seeks herein recovery of TW Mechanical's reasonable and necessary attorneys' fees.

X. PRAYER

17. For these reasons, Plaintiff TW MECHANICAL, LLC, asks that the Court issue citation for Defendant, TM HOU LLC d/b/a TOCA MADERA HOUSTON, to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:

- a. TW Mechanical, LLC's actual damages set forth above;
- b. Reasonable and necessary attorneys' fees;
- c. Prompt pay interest pursuant to the Texas Prompt Payment Act;
- d. Pre-judgment and post-judgment interest, and costs as allowed by law; and
- e. All other relief, in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

PECKAR & ABRAMSON, P.C.

By: /s/ Denis G. Ducran
DENIS G. DUCRAN
Texas Bar No. 24035540
dducran@pecklaw.com
FRANK LANDER
Texas Bar No. 24132064
flander@pecklaw.com
1717 West Loop South, 1400
Houston, Texas 77027
Telephone: (713) 568-1500
Facsimile: (713) 568-1490

**ATTORNEYS FOR PLAINTIFF, TW
MECHANICAL, LLC**

Automated Certificate of eService

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Susan Smith on behalf of Denis Ducran
Bar No. 24035540
ssmith@pecklaw.com
Envelope ID: 96348011
Filing Code Description: Petition
Filing Description: with Exhibits
Status as of 1/17/2025 3:10 PM CST

Associated Case Party: TW Mechanical, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Denis G.Ducran		dducran@pecklaw.com	1/17/2025 11:06:07 AM	SENT
Melanie Diskin		mdiskin@pecklaw.com	1/17/2025 11:06:07 AM	SENT
Susie Smith		ssmith@pecklaw.com	1/17/2025 11:06:07 AM	SENT
Frank Lander		flander@pecklaw.com	1/17/2025 11:06:07 AM	SENT