

CAUSE NO. DC-13-09969

JO N. HOPPER,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	44TH JUDICIAL DISTRICT
	§	
LAURA S. WASSMER and	§	
STEPHEN B. HOPPER,	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**DEFENDANTS' FIRST AMENDED ANSWER AND SPECIAL EXCEPTIONS
TO PLAINTIFF'S ORIGINAL PETITION FOR BREACH OF CONTRACT, SPECIFIC
PERFORMANCE, AND, ALTERNATIVELY, PARTITION OF PERSONAL
PROPERTY OR PROCEEDS FROM SALE**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Laura S. Wassmer and Stephen B. Hopper, defendants in the above referenced cause, and file their First Amended Answer and Special Exceptions to Plaintiff's Original Petition for Breach of Contract, Specific Performance, and Alternatively, Partition of Personal Property or Proceeds from Sale (the "Original Petition"), and in support thereof would respectfully show the Court the following:

**I.
GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants hereby generally deny every allegation in Plaintiff's Original Petition. Defendants demand strict proof of every allegation set forth in Plaintiff's Original Petition, and any supplement or amendment thereto, by a preponderance of the evidence or by clear and convincing evidence in accordance with the applicable standards of proof.

II.
AFFIRMATIVE DEFENSES

2. Defendants assert that Plaintiff's claims and allegations as set forth in her Original Petition are barred by Plaintiff's unclean hands.

3. Defendants assert that Plaintiff's claims and allegations as set forth in her Original Petition are barred by Plaintiff's failure to mitigate her damages.

4. Defendants assert that Plaintiff's claims and allegations as set forth in her Original Petition with respect to breach of contract are barred because no such contract exists between Plaintiff and the Defendants.

III.
SPECIAL EXCEPTIONS

5. Defendants specially except to Plaintiff's Original Petition, paragraphs no. V.4 and VI.3, and asks the Court to require Plaintiff to specify the maximum amount of damages that Plaintiff claims.

6. Defendants specially except to Plaintiff's Original Petition because the pleadings ask for attorney fees in paragraph No. D.2 with respect to Plaintiff's "other causes of action" but do not specify which statute makes them available in this type of suit.

7. Defendants specially except to Plaintiff's Original Petition, Section V—Count 1: Breach of Contract, because Plaintiff did not plead all elements of her cause of action for breach of contract. Specifically, the pleadings for breach of contract did not include the following elements: (a) that there is a valid, enforceable contract (*see, e.g., Petras v. Criswell*, 248 S.W.3d 471, 477 (Tex.App.—Dallas 2008, no pet.)); (b) that Plaintiff is a proper party to sue for breach of such contract (*see, e.g., Foley v. Daniel*, 346 S.W.3d 687, 690 (Tex.App.—El Paso 2009, no

pet.)); and (c) that Plaintiff performed, tendered performance of, or was excused from performing its contractual obligations (*see, e.g., Foley*, 346 S.W.3d at 690).

8. Defendants specially except to Plaintiff's Original Petition, Section VI—Count 2: Specific Performance, because such section sets forth merely a remedy and not a cause of action recognizable under Texas law.

9. Defendants specially except to the statement above Section II of Plaintiff's Original Petition that "All Facts Below are Uncontested or Incontestible."

10. For these reasons, Defendants ask the Court to set their special exceptions for hearing and, after the hearing, sustain their special exceptions and order Plaintiff to replead and cure her pleading defects and, if Plaintiff does not cure her defects, strike Plaintiff's pleading.

IV. EXEMPLARY DAMAGES

11. If either Defendant is found liable for exemplary damages, those damages must be capped under the Texas Damages Act and the Due Process Clause of the United States and Texas Constitutions.

V. REQUEST FOR DISCLOSURE

12. Under Texas Rule of Civil Procedure 194, Defendants request that Plaintiff disclose, within 30 days of the service of this request, the information or material described in Rule 194.2.

WHEREFORE, PREMISES CONSIDERED, Defendants ask the Court to dismiss Plaintiff's claims or render judgment that Plaintiff take nothing, assess costs against Plaintiff, and award all other relief to which Defendants are entitled.

Respectfully submitted,

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ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record in this matter in accordance with the Texas Rules of Civil Procedure on this the 3rd day of October 2013.



CHRISTOPHER M. MCNEILL