

Velva L. Price
District Clerk
Travis County
D-1-GN-19-002051
Jessica A. Limon

CAUSE NO. **D-1-GN-19-002051**

RICHARD FITZPATRICK,
Plaintiff,

§ IN THE DISTRICT COURT OF

§

§

vs.

§

§

TRAVIS COUNTY, TEXAS

§

LAURA BRITT DESIGN, LLC,
Defendant.

§

§

§

345TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Richard Fitzpatrick files this Original Petition against Defendant Laura Britt Design and respectfully shows this Court the following:

I. PARTIES

1. Plaintiff Richard Fitzpatrick is an individual residing in Austin, Texas.
2. Defendant Laura Britt Design, LLC ("Laura Britt") is a Texas limited liability company whose home office is located at 911 W 29th Street, Austin, Texas 78705, and it may be served with process by serving its registered agent Laura Vivian Britt, at 911 W 29th Street, Austin, Texas 78705, or wherever she may be found.

II. DISCOVERY

3. Plaintiff intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

III. RELIEF

4. Plaintiff is seeking monetary relief of more than \$200,000 but less than \$1,000,000.

IV. JURISDICTION & VENUE

5. Jurisdiction is proper in this Court because the amount in controversy exceeds the minimum jurisdictional limits of this Court. This Court has personal jurisdiction over the Defendant, a Texas limited liability company with its principal place of business in Travis

County, Texas. Venue is proper in Travis County, Texas, because all or a substantial part of the events or omissions giving rise to the claims at issue occurred in Travis County. TEX. CIV. PRAC. & REM. CODE §§ 15.002(a)(1),(2), & (3).

V. FACTUAL BACKGROUND

6. On or about August 2, 2017, Fitzpatrick and Jamie Hanson (collectively, "Fitzpatrick") entered into a Design Services Agreement with Laura Britt to design and remodel Fitzpatrick's residence (the "DSA"). In inducing Fitzpatrick to enter into the DSA, Laura Britt advised that that it could manage the entire remodel, including the coordination of any trades.

7. Throughout the project, Fitzpatrick ran into a number of issues with Laura Britt's management of the project. It began when Laura Britt began ordering furnishings and delivering them to the residence while construction was ongoing. Laura Britt's contractor did not even cover the new furnishings delivered to the residence to protect them from the construction until it was specifically requested by Fitzpatrick. The ordering of the furnishings without any consideration of the current construction was the first potential warning that Laura Britt was not properly managing the project.

8. Fitzpatrick confirmed again his expectation that Laura Britt was responsible for hiring and managing the general contractor. Shortly thereafter, Laura Britt failed to notify Fitzpatrick when the general contractor resigned from the project. Fitzpatrick first learned that the general contractor quit several weeks after its departure during a meeting to discuss the work on the fireplace. Laura Britt employee Haifa Hammami, who Fitzpatrick understood was managing the project, claimed that Laura Britt was waiting on Fitzpatrick to hire a new contractor and that was why no work had taken place on the project for several weeks. Fitzpatrick reminded Ms. Hammami that Laura Britt had initially hired the contractor and he expected Laura Britt to find a replacement.

9. Trusting that Laura Britt was managing the project, Fitzpatrick requested that the approval process be moved to email and asked that face-to-face meetings be limited only when deemed necessary. Fitzpatrick continued to trust Laura Britt's representations that it was capable of managing the project.

10. Fitzpatrick met with the new general contractor for the project in early January 2018. But three months later, there still had not been any meaningful progress made on the project. Additionally, Ms. Hammami departed sometime in February/March of 2018 and apparently whatever existent project management services being provided by Laura Britt disappeared as well. On April 4, 2018, Fitzpatrick made Laura Britt aware of the lack of progress and requested a meeting to discuss the project. At that meeting, Laura Britt denied having any supervision over the general contractor and claimed it was only in charge of design.

11. As a result, Fitzpatrick brought in his own project manager in May 2018, and started paying RRS Designbuild to manage the project. Shortly thereafter, it became evident that the general contractor needed to be removed after substandard work was identified on the project. Subsequently, RRS Designbuild took over both the general contractor and project manager roles.

12. In addition to Laura Britt's failure to manage the project, it also failed to handle certain design matters. Fitzpatrick repeatedly dealt with design issues from doors not accounting for thickness of the residence's carpet and desks that would not work with lighting fixtures and electronics. Recently, a side table made of petrified wood that Fitzpatrick purchased from Laura Britt began to ooze and disintegrate onto an expensive rug because it was not properly sealed. But the perhaps the best example, is Laura Britt's handling of \$12,019.27 banquettes it procured for Fitzpatrick. Laura Britt advertised the banquettes as a custom made seating for Fitzpatrick's kitchen. Fitzpatrick paid for the banquettes, and it was delivered to White Glove for storage until

it was ready to be placed in the residence. The banquette sat in storage from April 20, 2018 until October 2018 without anyone from Laura Britt checking the banquette to make sure it conformed to specifications. After Fitzpatrick terminated Laura Britt, he determined upon inspection that the banquette was too big to fit into the doorway of the residence, which would require the disassembling of the \$12,000 piece of custom furniture. Additionally, there were other issues with the banquette's make and color that Laura Britt failed to identify with the furniture maker because it never inspected the piece.

13. After months of disappointing results and lack of progress, on September 7, 2018, Fitzpatrick sent written notice of termination of the DSA. On September 13, 2018, Mr. Capra, on behalf of Laura Britt Design, forwarded a release and waiver to Fitzpatrick falsely claiming that an executed release was required "to reverse the agreement signed with the DSA and the scope of work at the commencement of the project." The release, which certainly was not required, also contained a non-disparagement clause in violation of the Consumer Review Fairness Act. Fitzpatrick refused to sign the release and, on September 14, 2018, Laura Britt Design confirmed the termination of the DSA via email and advised White Glove that all future storage fees should be billed to Fitzpatrick directly.

14. Despite demand, Laura Britt failed and refused to refund Fitzpatrick for the faulty banquette. As a result, Fitzpatrick brings this suit to recover against Laura Britt for all the damages he has suffered due to Laura Britt's conduct.

VI. CAUSES OF ACTION

A. Breach of Contract

15. Fitzpatrick and Laura Britt entered into the DSA. Laura Britt breached the DSA by failing to provide the services promised under the contract and overcharging Fitzpatrick for the work it was responsible for completing. Laura Britt's breach of the DSA resulted in

monetary damages to Fitzpatrick in an amount to be determined at trial. Fitzpatrick paid over a \$500,000 to Laura Britt for furniture and services that did not meet the high standards claimed by Laura Britt. Despite previous demand, Laura Britt failed to reimburse Fitzpatrick for even a small portion of the damage it caused. Fitzpatrick seeks recovery for the amounts he has been damaged by Laura Britt's breaches of the DSA, together with interest, late fees, expenses and any other amounts payable under the contract.

B. Violations of the DTPA

16. Fitzpatrick is a consumer under the DTPA because he is an individual who sought to purchase goods and services from Laura Britt. Laura Britt violated the DTPA when it engaged in false, misleading, or deceptive acts or practices that Fitzpatrick relied upon to his detriment. Specifically, Laura Britt claimed her services included project management that it ultimately failed to provide. Additionally, Laura Britt represented that its goods and services were of a particular standard, quality, or grade, for which they were not. This is evidence in part by Laura Britt's failure to timely inspect furnishing purchased to make sure they conformed to the residence.

17. Laura Britt also engaged in an unconscionable course of conduct in an attempt to take advantage of Fitzpatrick's lack of knowledge and experience when it attempted to get Fitzpatrick to sign a release that included a non-disparagement provision as a condition for terminating the DSA. Laura Britt's conduct listed above was a producing cause of Fitzpatrick's injuries, and has resulted in economic damages to Fitzpatrick.

18. Additionally, Laura Britt's conduct was committed knowingly and intentionally, which entitles Fitzpatrick to recover treble damages under Texas Business and Commerce Code Section 17.50(b)(1).

C. Attorneys' Fees

19. As a result of the breach of the contract, Fitzpatrick was required to employ the undersigned attorneys to represent him in the preparation, filing, trial and appeal, if necessary, of this cause. In accordance with the provisions of Chapter 38 of the Texas Civil Practice and Remedies Code, Fitzpatrick seeks recovery of all reasonable and necessary attorneys' fees and costs incurred by it in the prosecution its claims under the DSA.

D. Conditions Precedent

20. All conditions precedent to Fitzpatrick's right to recover against Laura Britt have been met, satisfied, or waived.

VII. PRAYER

Richard Fitzpatrick respectfully requests that Defendant Laura Britt Design, LLC be cited to appear and answer herein. Richard Fitzpatrick also requests that upon trial of this cause he recover judgment and relief against Laura Britt Design, LLC for the following:

- All damages incurred for Laura Britt's breach of the Design Services Agreement;
- All damages incurred for Laura Britt's violations of the Texas Deceptive Trade Practices Act;
- Treble damages for Laura Britt's knowing and intentional violations of the DTPA
- Attorneys' fees, expenses, collection costs and costs of court;
- Pre- and post-judgment interest; and
- Any other relief to which Richard Fitzpatrick may be justly entitled.

Respectfully submitted.

WINSTEAD PC

/s/ Andrew J. Schumacher

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**ATTORNEY-IN-CHARGE FOR PLAINTIFF
RICHARD FITZPATRICK**

General Information

Court	Texas District Court, Travis County
Docket Number	D-1-GN-19-002051
Status	OPEN