

CAUSE NO. 2023-76005

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|----------------------------|---|-------------------------|
| LOVETT CUSTOM HOMES, INC., | § | IN THE DISTRICT COURT |
| <i>Plaintiff,</i> | § | |
| | § | |
| vs. | § | HARRIS COUNTY, TEXAS |
| | § | |
| FARM DIRT, LLC, | § | |
| <i>Defendant.</i> | § | 152nd JUDICIAL DISTRICT |

PLAINTIFF’S AMENDED PETITION

Plaintiff, **LOVETT CUSTOM HOMES, INC.**, (“Plaintiff” and “Lovett Custom Homes”) herein), files this lawsuit against Defendant **FARM DIRT, LLC** (“Defendant”), and for cause of action would show the Court as follows:

DISCOVERY LEVEL

1. Plaintiff asserts that this case will be governed by Discovery Control Plan Level Three (3) under Texas Rule of Civil Procedure 190.

PARTIES

2. Plaintiff, Lovett Custom Homes, Inc., is a Texas corporation. Plaintiff is represented by the undersigned counsel.

3. Defendant Farm Dirt, LLC is a Texas limited liability company who may be served with process by service upon its registered agent, Daniel Wilson, Jr., at 6231 Carson Road, Houston, Texas, 77048, or wherever he may be found.

JURISDICTION AND VENUE

4. Plaintiff seeks monetary relief of more than \$250,000.00, as well as non-monetary relief.

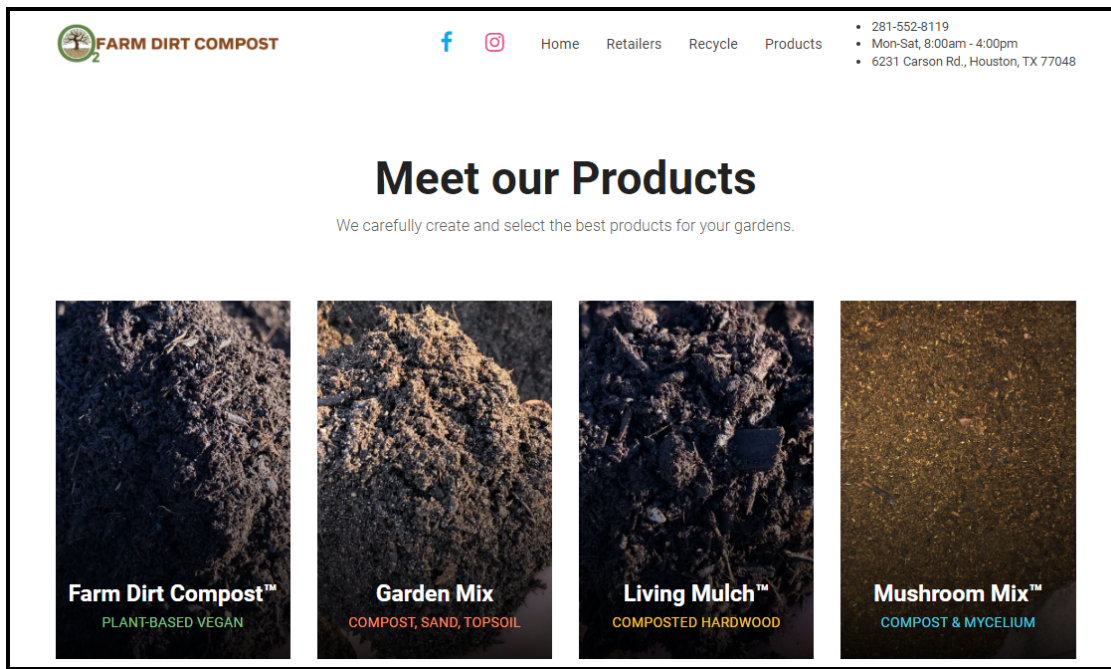
5. This Court has jurisdiction over this action pursuant to Article 5, Sec. 8 of the Texas Constitution. The amount in controversy in this case exceeds the minimum jurisdictional limits of the Court. Jurisdiction is also proper in this Court under Section 65.021 of the Texas Civil Practice and Remedies Code.

6. Venue properly lies in Harris County, Texas under Section 15.002 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events giving rise to this case occurred in Harris County, and because Harris County is the county in which the property at issue is located.

FACTS

A. Farm Dirt leases the property from Kemp Smith Investments

7. Farm Dirt is a Houston-based composting company that provides composting material to the local market. An image from Farm Dirt's website (farmdirtcompost.com) appears below:



8. Farm Dirt leased a 28-acre tract of real property in the vicinity of Emnora Road and Hammerly Boulevard (the “Property”).

9. At the time FARM DIRT, LLC entered into the lease, the Property was owned by Kempspring Investments, Ltd. Kempspring Investments, Ltd. conveyed the Property to Plaintiff in December of 2021 and, as a result, Plaintiff became the assignee of the lease.

B. Farm Dirt fails to remove wood from the Property

10. While leasing the Property, Farm Dirt was responsible for removing wood waste material from the Property.

11. Consistent with the foregoing, in connection with termination of the lease, Farm Dirt was to grind and haul much of the remaining wood waste material from the Property.

12. Farm Dirt did not remove all remaining piles of wood waste material from the Property and, on or about October 30, 2023, the mulch and wood matter ignited.

13. The cause of the fire is unknown and it is the subject of an active investigation by the Houston Fire Department (“HFD”).

14. HFD provided the initial response. Thereafter, Plaintiff engaged three firms (US Fire Pump, Precision Land Clearing, and Sosa Construction) to put out the fire, monitor the conditions on the Property, and remove wood waste material.

15. Plaintiff has incurred significant expenses in connection with its response to the fire. Plaintiff is also facing additional expenses associated with handling and removal of the wood waste Farm Dirt left on the Property.

CAUSES OF ACTION

Breach of Contract

16. The foregoing paragraphs are incorporated by reference.

17. Farm Dirt has breached the terms of its lease arrangement with Plaintiff.

18. Plaintiff has made demand on Farm Dirt to comply; however, Farm Dirt, despite such demand, has failed to comply with the terms of the agreement.

19. Accordingly, Plaintiff sues Farm Dirt for breach of contract and requests damages as well as an award of attorney's fees under Chapter 38 of the Texas Civil Practices & Remedies Code

Indemnity

20. The foregoing paragraphs are incorporated by reference.

21. Under the parties' lease agreement, Farm Dirt is required to indemnify Plaintiff from any costs, damages, expenses, and liabilities arising out of Farm Dirt's use of the Property.

22. Plaintiff has incurred costs, damages, and expenses arising out of Farm Dirt's use of the Property and requests reimbursement under the indemnity provisions of the parties' lease agreement.

