



Kelam, Vishnu Kelam, Wei Zheng Mai, Ashley Marchand, Zackary Marchand, Antony Metral, Wendy Miles, Nikoleta Mirotic, Elizabeth Molina, Collin Moore, Pius Odioko, Joseph Ortiz, Rania Rabie, Melanie Saelee, Jayden Salufrania, LaShonda Singleton, Zack Trobbe, Jahnvi Udaikumar, and Shelby Wood, hereinafter called Plaintiffs, by and through their attorneys of record Zeke Fortenberry, FORTENBERRY FIRM PLLC, 18333 Preston Rd, Ste. 375, Dallas, Texas 75252, and Mark Underwood, UNDERWOOD LAW OFFICE, 2530 W. White Ave, Suite 200, McKinney, TX 75071 file this Original Petition complaining about DD Frisco/Pod B, LLC d/b/a Cortland at Stonebriar, hereinafter called Defendant, and for causes of action show unto the Court the following:

**I.**

**DISCOVERY CONTROL PLAN LEVEL**

1.1 Plaintiffs intend that discovery be conducted under Discovery Level 2.

**II.**

**PARTIES AND SERVICE**

2.1 Jasmine Bedi is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #260.

2.2 Vernor Bruce is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #453.

2.3 Srikanth Chagnanti is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #229.

2.4 Bangaruswamy Chandramouli is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #324.

2.5 Udayathara Chandramouli is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #324.

2.6 Johnny Chang is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #402.

275 Andres Cruz is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #411.

2.8 Rosetta Cruz is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #411.

2.9 Samer Dahshi is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #118.

2.10 Priya Duggirala is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #326.

2.11 Suman Duggirala is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #326.

2.12 Adrian Flores is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #441.

2.13 Neal Hayden is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #439.

2.14 Raja Sekhar Reddy Kelam, is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #254.

2.15 Vishnu Kelam is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #254.

2.16 Wei Zheng Mai is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #261.

2.17 Ashley Marchand is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #160.

2.18 Zackary Marchand is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #160.

2.19 Antony Metral is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #161.

2.20 Wendy Miles is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #316.

2.21 Nikoleta Mirotic is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #261.

2.22 Elizabeth Molina is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #161.

2.23 Collin Moore is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #361.

2.24 Pius Odioko is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #454.

2.25 Joseph Ortiz is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #361.

2.26 Rania Rabie is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #308.

2.27 Melanie Saelee is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #402.

2.28 Jayden Salufrania is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #361.

2.29 LaShonda Singleton is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #453.

2.30 Zack Trobbe is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #401.

2.31 Jahnvi Udaikumar is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #229.

2.32 Shelby Wood is an Individual and resident of the Cortland at Stonebriar apartment complex, 9779 Gaylord Pkwy, Frisco, TX unit #441.

2.33 Defendant DD Frisco/Pod B, LLC d/b/a Cortland at Stonebriar (“Defendant”) is a foreign limited liability company in the state of Georgia. Defendant regularly conducts business in the State of Texas and County of Collin by operating and owning apartment complexes. Defendant has a duty to and does in fact control the operations, customs and policies of the Cortland at Stonebriar apartment complex located at 9779 Gaylord Parkway, Frisco, TX 75035. Defendant may be served with process by serving its registered agent Corporation Services Company d/b/a CSC- Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> St. Suite 260, Austin, TX 78701. ***Issuance of Citation is Requested at this time.***

### III.

### JURISDICTION AND VENUE

- 3.1 The subject matter in controversy is within the jurisdictional limits of this county.
- 3.2 Plaintiffs seek monetary relief in excess of \$1,000,000.00.
- 3.3 Venue in Collin County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

#### **IV.**

#### **BACKGROUND FACTS**

- 4.1 Cortland at Stonebriar is a 260-unit apartment complex in Frisco, Collin County, Texas that is owned and operated by the Defendant.
- 4.2 Cortland at Stonebriar apartment complex has smoke alarms installed in each unit and in the common areas.
- 4.3 Cortland at Stonebriar apartment complex has a fire suppression sprinkler system installed throughout the complex.
- 4.4 In the early morning hours on Wednesday, February 17, 2021, a fire broke out in the Cortland at Stonebriar apartment complex and spread throughout the complex.
- 4.5 One or more smoke alarms at the Cortland at Stonebriar did not work properly to adequately warn Plaintiffs of the fire.
- 4.6 The fire suppression sprinkler system did not properly activate to protect Plaintiffs from the fire.
- 4.7 The Frisco Fire Department responded to the fire, and had the assistance of Fire Departments from Allen, Plano, Prosper and McKinney due to the severity of the blaze. It took over thirty-six (36) hours to bring the fire under control.
- 4.8 Plaintiffs evacuated their apartment homes through the smoke and fire.
- 4.9 In total, at least sixty-two (62) units were damaged by the fire.
- 4.10 As a result of the fire, Plaintiffs have been kept from their apartment homes and not allowed to return to obtain all of their remaining personal property.
- 4.11 As a result of the fire, Plaintiffs have suffered injuries and property damage.

#### **CAUSES OF ACTION**

#### **V.**

## NEGLIGENCE

5.1 Plaintiffs hereby incorporate by reference the facts set forth above into each of the causes of action set forth below.

5.2 Defendant is liable to Plaintiffs for negligence.

5.3 Defendant is the owner and operator of the Cortland at Stonebriar apartment complex, Frisco, Texas, where Plaintiffs were invitees, lessees, and residents. Defendant trained, supervised, and employed people to maintain the premises and safety equipment in order to ensure a safe environment for all invitees, lessees, and residents.

5.4 As an owner and operator in the business of attracting customers and providing them with a safe place to stay and sleep, Defendant owed Plaintiffs a legal duty to exercise ordinary care and a duty to provide a safe environment to stay.

5.5 Defendant breached their duty to Plaintiffs in at least, but not limited to, one or more of the following particulars, acts, and omissions:

- a. Failing to maintain a safe premise and living environment for the residents of the apartment complex;
- b. Failing to adequately inspect and test the fire alarms;
- c. Failing to provide, maintain, and operate a sufficient fire sprinkler system;
- d. Failing to provide, maintain, and operate a sufficient fire suppression system;
- e. Failing to provide, maintain, and operate a sufficient fire warning system;
- f. Failing to ensure all fire alarms were in working condition;
- h. Failing to adequately inspect and test fire prevention or warning systems;
- i. Failing to promulgate and implement adequate safety protocols, policies, and procedures;
- j. Failing to warn of the dangerous hazards at the apartment complex;
- k. Failing to provide sufficient safety equipment;
- l. Failing to follow applicable local and state rules, regulations, and ordinances in the operation and maintenance of the apartment complex;
- m. Failing to properly screen, hire, train, and supervise employees and contractors.

5.6 Other various acts and/or omissions constituting negligence which will be specified in detail at the time of trial.

5.7 The breach proximately caused Plaintiffs' damages and injuries.

## **VI.**

### **GROSS NEGLIGENCE**

6.1 The acts/omissions of Defendant, when viewed objectively from the standpoint of Defendant at the time of the occurrence, involved an extreme risk, considering the probability, magnitude and potential harm to others.

6.2 Defendant had actual, subjective awareness of the risks involved but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of the public, and Plaintiffs.

6.3 Gross Negligence can be imputed to Defendant because: the grossly negligent acts were committed by Defendant's employees and/or agents and/or Defendant was reckless in hiring and/or retaining incompetent employees and/or agents.

6.4 Prior to the fire on February 17, 2021, Defendant knew not all smoke alarms were in proper working condition.

6.5 Prior to the fire on February 17, 2021, Defendant knew not all fire sprinkler and fire suppression systems were in proper working condition.

6.6 This grossly negligent conduct was a proximate cause of the occurrence in question and the resulting injuries and damages of Plaintiffs.

## **VII.**

### **NEGLIGENCE PER-SE**

7.1 Both federal and state laws impose duties and obligations on landlords and property managers such as Defendant. Failure to comply with these regulations constitutes negligence as a matter of law.

7.2 City of Frisco adopted the 2012 International Fire Code and implemented through city ordinances mandates for Automatic Sprinkler Systems and Fire Alarm Systems to be installed and in working order for residential facilities such as Cortland at Stonebriar.

7.3 Defendant knew or should have known that its inspection, maintenance, services, modification, installation, repair or other work on the premises was unsafe and created a dangerous premise for Plaintiffs and the other residents.

7.4 Plaintiffs did not know or have reason to know of the risk involved, and Defendant knew or had reason to know of the condition of the Automatic Sprinkler Systems and Fire Alarm Systems and realized or should have realized the risk and had reason to know that the lessees would not discover the condition of the Automatic Sprinkler Systems and Fire Alarm Systems or recognize the risk.

7.5 These acts and omissions were a proximate cause of the occurrence in question and the resulting injuries and damages of Plaintiffs.

## **VIII. PREMISES LIABILITY**

8.1 As residents of Cortland at Stonebriar, owned and operated by Defendant, Plaintiffs were “invitees” as that term is legally defined under Texas Law.

8.2 Defendant owed Plaintiffs a legal duty to exercise reasonable care to protect them from unreasonably dangerous conditions on the premises that are known or discoverable.

8.3 Defendant had actual and/or constructive knowledge of the unreasonably dangerous condition of the apartment complex due to the lack of adequate fire prevention equipment, fire alarms, fire safety policies, and fire suppression sprinkler system.

8.4 Defendant nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs and others.

8.5 Plaintiffs’ injuries and damages occurred on Defendant’s property and Defendant breached the duty of care it owed to Plaintiffs as invitees and residents on its premises by failing to adequately warn Plaintiffs of the condition and failing to make the condition reasonably safe.

8.6 Defendant’s breach directly and proximately caused Plaintiffs’ injuries and damages.

## **IX. RESPONDEAT SUPERIOR**



9.1 Defendant is liable for the negligence of its employees, agents, and/or representatives inclusive of pursuant to the doctrine of respondeat superior because the employees, agents, and/or representatives were acting in the course and scope of their respective employments or engagements with Defendant.

9.2 In the alternative, Defendant is liable for the negligence of its employees, agents, and/or representatives because the employees, agents, and/or representatives were acting as borrowed servants of Defendant.

9.3 At all time relevant to this lawsuit, Defendant, acting by and through its employees, managers, representatives, agents, ostensible agents, and/or agents by estoppel, committed certain acts and/or omissions constituting negligence and/or gross negligence as set forth in this Petition and, therefore, is liable to Plaintiffs under the doctrine of respondeat superior for the acts and/or omissions committed by its employees, managers, representatives, agents, ostensible agents, and/or agents by estoppel.

## **X.**

### **NEGLIGENT HIRING, RETENTION AND SUPERVISION**

10.1 Defendant is liable for the negligence of its employees, agents, and/or representatives because it did not use ordinary care in hiring, supervising, training, and retaining them and their supervisors, and the breach of the applicable standards by these employees, agents, and/or representatives and their supervisors as described above proximately caused injuries and damages to Plaintiffs.

## **XI.**

### **BREACH OF CONTRACT**

11.1 Defendant is liable to Plaintiffs for breach of contract.

11.2 Each individual Plaintiff entered in a valid enforceable contract with Defendant for the purpose of leasing an apartment home.

11.3 Each individual Plaintiff performed, tendered performance, or was excused from performing its contractual obligations.

11.4 The “Apartment Lease Contract” each individual Plaintiff entered into with the Defendant contained the following language:

“24.3 Alarm and Detection Devices.

(A) What we’ll do. We’ll furnish smoke alarms or other detection devices required by law or city ordinance. We may install additional detectors not so required. We’ll test them and provide working batteries when you first take possession of your apartment. Upon request, we’ll provide, as required by law, a smoke alarm capable of alerting a person with a hearing-impairment disability.”

11.5 Defendant breached its contract with each individual Plaintiff in at least, but not limited to, one or more of the following particulars, acts, and/or omissions:

- a. Failing to provide functioning smoke alarms;
- b. Failing to repair and maintain smoke alarms in proper working condition;
- c. Failing to ensure that all apartment residents did not disable smoke alarms.

11.6 The Defendant’s breach caused Plaintiffs injuries and damages.

**XII.**

**BREACH OF IMPLIED WARRANTY OF HABITABILITY**

12.1 Defendant is liable to Plaintiffs for breach of implied warranty of habitability.

12.2 Defendant owned and operated a residential apartment complex known as Cortland at Stonebriar.

12.3 Defendant leased out individual apartment units to individual Plaintiffs, and each Plaintiff paid a monetary sum each month.

12.4 Defendant at all times was in charge of operating and maintaining the fire suppression sprinkler system.

12.5 On February 17, 2021, when a fire broke out at Cortland at Stonebriar apartment complex, the fire suppression sprinkler system was defective and did not engage.

12.6 The defect in the fire suppression sprinkler system was a latent defect that Plaintiffs’ were not aware of.

12.7 The defective fire suppression sprinkler system made the premises uninhabitable by materially affecting the health or safety of ordinary persons.

12.8 As a result, Plaintiffs were injured and suffered damages.

### **XIII.**

#### **PLAINTIFFS' INJURIES AND DAMAGES**

13.1 As a result of Defendant's acts and omissions, Plaintiffs suffered extensive injuries and damages. Plaintiffs suffered the following:

- a. Property damage;
- b. Loss of use;
- c. Medical expenses in the past and future;
- d. Lost wages in the past and future;
- e. Physical pain and suffering in the past and future;
- f. Mental anguish in the past and future;
- g. Physical impairment in the past and future;
- h. Exemplary damages;
- i. All other relief in law and equity, to which Plaintiffs may be entitled.

13.2 By reason of the above and foregoing, Plaintiffs have been damaged in a sum within the jurisdictional limits of this court, for which Plaintiffs hereby sue in an amount to be determined by the sole discretion of the jury.

### **XIV.**

#### **REQUEST FOR DISCLOSURE**

14.1 Pursuant to Rule 194.1 of the Texas Rules of Civil Procedure, Defendant is requested to disclose the initial disclosures described in Rule 194.2(b).

### **XV.**

#### **JURY TRIAL REQUEST**

15.1 Plaintiffs further hereby formally request a trial by jury and as such requests that this cause be placed upon this Court's Jury Docket.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs respectfully pray that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and as allowed by Sec. 41.008, Chapter 41, Texas Civil Practice and Remedies Code, together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law, specifically including, but not limited to:

- a) A judgment in excess of the jurisdictional limits of this Court;
- b) Pre-judgment interest;
- c) Post-judgment interest;
- d) Costs and Expenses;
- e) Attorney's Fees; and

All such relief, whether at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

By: /s/ Zeke O. Fortenberry

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