

Cause No. 201910992

**NGAI HING WONG,**  
Plaintiff,

v.

**ROTO-ROOTER SERVICES  
COMPANY,**  
Defendant.

§ IN THE DISTRICT COURT  
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§  
§ OF HARRIS COUNTY, TEXAS  
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§  
§  
§  
§ \_\_\_\_\_ JUDICIAL DISTRICT

### **PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, **NGAI HING WONG**, by and through the undersigned attorney, files this his Original Petition against Defendant, **ROTO-ROOTER SERVICES COMPANY**, and alleges as follows:

#### **DISCOVERY-CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief over \$100,000.

#### **CLAIM FOR RELIEF**

2. Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000. Tex. R. Civ. P. 47(c)(3).

#### **PARTIES**

3. Plaintiff, Ngai Hing Wong (hereinafter "Plaintiff"), is an individual who resides in Harris County, Texas.
4. Defendant Roto-Rooter Services Company (hereinafter "Defendant", "Roto-Rooter", or "Roto-Rooter Services company"), a foreign corporation organized and existing under the laws of the State of Ohio, whose primary office is located at 255 E Fifth Street Ste 2600, Cincinnati, OH 45202-4726, may be served with process by delivering a copy of the petition and citation to C T CORPORATION SYSTEM, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136, as its agent for service.

### **JURISDICTION**

5. The Court has subject-matter jurisdiction over the lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

### **VENUE**

6. Venue is proper in Harris County under Texas Civil Practice & Remedies Code section 15.002 because all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County.

### **SUMMARY**

7. At all relevant times, Defendant was in the business of providing residential plumbing and water restoration services in Harris County, Texas. On or about November 18, 2018, Defendant was called to Plaintiff's house because a toilet had overflowed. Whereupon, through a series of false statements and deceptive actions, Defendant manufactured tens of thousands of dollars' worth of repair costs by damaging the interior and exterior of Plaintiff's house. For example, defendant extensively damaged the interior of the house and then falsely represented to Plaintiff's insurance carrier that a water heater had exploded in the house. When the insurance claim was denied, Defendant sought payment from Plaintiff. Similarly, Defendant falsely stated that there was a leak in a pipe and proceeded to dig deep, wide trenches throughout Plaintiff's yard. Plaintiff had to pay another company to repair the damages caused to his house by Defendant.

### **FACTS**

8. On or about November 18, 2018, an occupant at Plaintiff's house experienced a very unpleasant surprise; a toilet overflowed. Although unpleasant, this type of problem is quite common and can be fixed relatively easily and inexpensively by a competent plumber. The occupant of the house called Defendant Roto-Rooter Services Company to assist with this routine problem.

- 9.** Upon arriving to the house, which was located in Harris County at 7318 Heron Lakes Dr, Houston, TX 77064, the Roto-Rooter representative began making numerous false representations to the occupant and subsequently to Plaintiff, the homeowner. The representative falsely claimed that there was a water leak caused by a cracked pipe in the house that required extensive work, both inside and outside of the house. The representative also falsely claimed that a Plaintiff's homeowner insurance policy would cover the repairs inside the house and assured Plaintiff that Roto-Rooter would work directly with the insurance company for payment. Defendant assured Plaintiff that because he was covered by his insurance policy, he would not have to make any payments in connection with the repairs done to the inside of the house.
- 10.** The misrepresentation concerning insurance payment was likely intentional because Roto-Rooter, which claimed to have extensive experience working with insurance companies, would have known that an insurance company would likely be unwilling to pay to find and repair a leak. The Roto-Rooter representative was explicitly told at least three times by Plaintiff that no work should be done if the repair costs would not be covered by his insurance policy. Relying on Roto-Rooter's purported professional expertise and representations, Plaintiff signed several documents, including a document authorizing the work and, simultaneously, a document purporting that the work was completed satisfactorily.
- 11.** As to the interior of the house, Roto-Rooter embarked on an extensive, destructive, and wholly unnecessary project that involved unhinging doors, tearing down ceilings, cutting through walls, ripping out carpets, and other unnecessary and disruptive actions. On information and belief, Roto-Rooter engaged in these destructive activities to set the stage for a lucrative insurance claim against Plaintiff's policy. Roto-Rooter then falsely represented to Plaintiff's insurance carrier that the extensive damage to the interior of the house was due to the explosion of a water

- heater. The insurance claim was denied because an exploding water heater was not a peril covered under the applicable insurance policy.
- 12.** As to the exterior of the house, Roto-Rooter made the ridiculous claim that the erosion caused by water running off the roof of the house was actually a sign that there was a broken pipe buried in the ground. To remedy this “problem” Roto-Rooter dug a trench, touching the foundation of the house, only to find, unsurprisingly, that no pipes were present. Defendant rightly represented to Plaintiff that his insurance company would not cover repairs to the exterior of the house and instead encouraged Plaintiff to apply for a loan from a bank to pay for the “repairs”.
  - 13.** Upon seeing the destruction to his house and realizing that a blocked toilet was unlikely to have required such extensive “repairs”, Plaintiff sought a second opinion. It was determined that there was no basis for concluding that there was a leak and that Roto-Rooter’s destructive hunt for a leak was completely improper. It was also determined that an overflown toilet would not have necessitated the type of damage seen on the inside of the house.
  - 14.** Although Plaintiff signed documents purporting to authorize work on his house, he did not waive any of his rights under the Texas Deceptive Trade Practices Act in any of the documents he was asked to sign during the transaction at issue.
  - 15.** Pursuant to Section 17.42 of the Texas Deceptive Trade Practices Act,
    - (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:
      - (1) the waiver is in writing and is signed by the consumer;
      - (2) the consumer is not in a significantly disparate bargaining position; and
      - (3) the consumer is represented by legal counsel in seeking or acquiring the goods or services.

16. Therefore, notwithstanding any claim by Defendant that Plaintiff agreed for work to be done on his house, Plaintiff is protected when such agreement was secured through the deceptive behaviors of Defendant through its agents.

### **Claims**

17. Roto-Rooter's actions constituted one or more violations of the DTPA. *Inter alia*, the Texas Deceptive Trade Practices Act ("DTPA"), Texas Business and Commerce Code, Section 17.41 et seq, prohibits a merchant from engaging in the following conducts:

#### ***Misrepresenting the need for repairs:***

18. A merchant may not "knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service". Texas Business and Commerce Code Sec. 17.46(13). Roto-Rooter violated this section by falsely claiming that there was evidence of a leak, which required expensive repairs. Defendant also violated this section by extensively damaging the inside of the house, thereby necessitating extensive and unnecessary repairs, and falsely claiming that such repairs were necessary.

#### ***Misrepresenting the quality of service:***

19. A merchant is prohibited from "representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another". Texas Business and Commerce Code Sec. 17.46(7). Roto-Rooter violated this section when it misrepresented that its services were professional and competent, yet it could not tell the difference between erosion caused by roof runoff and an underground leak.

#### ***Misrepresenting that the work was complete:***

20. A merchant is also prohibited from "representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced". Texas Business and Commerce Code Sec. 17.46(7). By presenting Exhibit A to Plaintiff for his

signature, Roto-Rooter misrepresented that the work was complete, likely in an attempt to receive premature payment from the bank that had agreed to finance the transaction.

***Failing to disclose information:***

- 21.** A merchant also prohibited from “failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed”. Texas Business and Commerce Code Sec. 17.46(7). Defendant failed to disclose that it had intended to file a false claim to Plaintiff’s insurance carrier in order to induce Plaintiff to enter into the transaction.

***Unconscionable action:***

- 22.** A merchant may not engage in an unconscionable action or course of action. Texas Business and Commerce Code Sec. 17.50(3). "Unconscionable action or course of action" means an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree. Texas Business and Commerce Code Sec. 17.45(5). Roto-Rooter, knowing that Plaintiff lacked the knowledge of plumbing, house repair, and homeowner’s insurance required to competently evaluate the situation himself, exaggerated, falsified, and even created problems with the goal of maximizing the repair costs. Such a course of action is in clear violation of the DTPA because it is unconscionable.

**Economic Damages.**

- 23.** The violations described above were the producing causes of the following damages. The cost of repairing the damage caused to the interior and exterior of the house at issue is estimated was \$38,093.18. Attached is Exhibit B, which is a declaration of cost of service and business records pertaining damages at issue, which is being served pursuant to Texas Civil Practice and Remedies Code Section Sec. 18.001(d). Also see Texas Civil

Practice and Remedies Code Sec. 132.001. Furthermore, while the repairs were being conducted, Plaintiff was unable to use a part or all of the house and is therefore entitled to loss of use damages as well, which is estimated at over \$15,000.

**Statutory Damages.**

- 24.** Because Roto-Rooter's actions were knowing or intentional, Plaintiff seeks treble damages as authorized by Texas Business and Commerce Code Section 17.50(b)(1). For example, Defendant intentionally damaged the house and then falsely told Plaintiff's insurance carrier that the house was damaged by an exploding water heater.

**Attorney Fees.**

- 25.** Plaintiff has incurred, and will continue to incur, legal fees in the prosecution of this matter. Plaintiff seeks reasonable and necessary attorney fees as authorized by Texas Business and Commerce Code Section 17.50(d).
- 26. Conditions Precedent:** All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

**PRAYER**

- 27.** For these reasons, Plaintiff asks that Defendant be cited to appear and answer. In addition, Plaintiff asks to court to render judgment in his favor and award the following damages:
- a. Actual damages.
  - b. Prejudgment and postjudgment interest.
  - c. Statutory damages and interest pursuant to the Texas Deceptive Trade Practices Act.
  - d. Court costs.
  - e. Attorney fees.
  - f. All other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ Leroy Scott  
Leroy B. Scott, Ph.D.  
Texas Bar No. 24083824

Scott Law, PLLC  
5100 Westheimer Road Ste 200  
Houston, Texas 77056

Mailing Address:  
PO Box 420453  
Houston, TX 77242-0453

Tel (713) 588-4416  
Fax (713) 583-1158  
Email: [lscott@scottesq.com](mailto:lscott@scottesq.com)

ATTORNEY FOR PLAINTIFF



**Declaration of Records Custodian**

STATE OF TEXAS §

§

COUNTY OF HARRIS §

"My name is HUNG NGUYEN ("Declarant"). I am of sound mind and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

I am the person in charge of business records of A.W.S (hereinafter "Business"). Attached to this declaration are records that provide an itemized statement of the services and the charges for the services that Business provided to the customer listed in the attached invoice ("Customer") on the dates stated in the documents. The attached records are a part of this declaration.

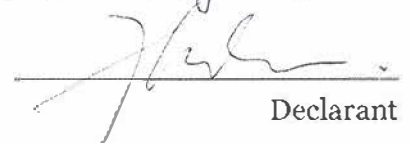
The attached records are kept by me in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by Business or an employee or representative of Business who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original.

The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

This action is for labor or materials furnished, of which a systematic record was kept.

The principal balance is as stated in the attached records and is due on the account. That amount is just and true, it is due, and all just and lawful offsets, payments, and credits have been allowed."

My name is Hung Nguyen, my date of birth is 4-17-1974 and my address is P.O. Box 691342 Houston, TX 77269. I declare under penalty of perjury that the foregoing is true and correct. Executed in HARRIS County, State of Texas, on the 8 day of February, 2019.

  
Declarant

**A.W.S.**

P.O. Box 691342  
Houston, TX 77269  
(832) 228-2686  
awsdrain@gmail.com

**ADDRESS**

Ngai Hing Wong  
7318 Heron Lake Dr.  
Houston, TX 77064

**ESTIMATE 1811020**

**DATE 11/20/2018**

ACTIVITY	AMOUNT
1. remove and cleaning all the debris left over from the previous contractor.	500.00
2. estimate to remove the damage floor tile in the hallway bathroom (cost by previous contractor whenever they're cut off the Sheetrock wall and baseboard). replace new floor tile.	1,400.00
3. replace the Sheetrock wall surround the game room second floor , bathroom second floor, kids bathroom. Match the texture, and painting include.	1,800.00
4. install missing door (remove from previous contractor) install new door casing, install new door lock, install baseboard, painting all wood area.	1,600.00
5. install missing carpet in game room, hall way, kids bedroom and the stairs approximately.	3,300.00
6. replace damage engineer wood floor in front entry, hall way and garage entry approximately.	3,325.00
7. replace damage Sheetrock wall in Laundry room, dining room, entry room, guest bathroom, kitchen and living room, replace ceiling Sheetrock in living room, matching all texture, all materials include painting.	5,500.00
8. install carpet for living room, dinning room, study room, 2 closet, pantry and the hall way, approximately.	4,125.00
9 install missing garage door (metal door) & casing, guest bathroom door and casing (1st floor) install all missing baseboard in the first floor, all materials and labor include.	1,800.00
10. back fill tunnel dirt below the concrete slap (the tunnel has been created by previous contractor) apply the concrete porch below the slap to support and prevent the collapse foundation.	3,200.00
11. backfill the hole creates by previous contractor 2 feet wide, 3-4 feet deep and 60 feet long, using the compact to compacted the dirt, replace damage plan and grass.	1,500.00
- 30% advanced pay for supply.	0.00
- 50% payment upon jobs complete.	
- Balance payment after final walk .	
<b>SUBTOTAL</b>	<b>28,050.00</b>
<b>TAX (8.25%)</b>	<b>2,314.13</b>

TOTAL

\$30,364.13

Accepted By

Accepted Date

**A.W.S.**

P.O. Box 691342

Houston, TX 77269

(832) 708 8688

## Invoice 1812220

**BILL TO**

Ngai Hing Wong

7318 Heron Lake Dr.

Houston, TX 77064

DATE  
12/20/2018

PLEASE PAY  
**\$38,093.18**

DUE DATE  
12/20/2018

ACTIVITY	QTY	RATE	AMOUNT
1. remove and cleaning all the debris left over from the previous contractor.	1	700.00	700.00
2. estimate to remove the damage floor tile in the hallway bathroom (cost by previous contractor whenever they're cut off the Sheetrock wall and baseboard). replace new floor tile.	1	1,400.00	1,400.00
3. replace the Sheetrock wall surround the game room second floor , bathroom second floor, kids bathroom. Match the texture, and painting include.	1	2,800.00	2,800.00
4. install missing door (remove from previous contractor) install new door casing, install new door lock, install baseboard, painting all wood area.	1	2,300.00	2,300.00
5. install missing carpet in game room, hall way, kids bedroom and the stairs approximately.	1,200	3.70	4,440.00
6. replace damage engineer wood floor in front entry, hall way and garage entry approximately.	350	9.50	3,325.00
7. replace damage Sheetrock wall in Laundry room, dining room, entry room, guest bathroom, kitchen and living room, replace ceiling Sheetrock in living room, matching all texture, all materials include painting.	1	5,500.00	5,500.00
8. install carpet for living room, dinning room, study room, 2 closet, pantry and the hall way, approximately.	1,500	2.75	4,125.00
9 install missing garage door (metal door) & casing, guest bathroom door and casing (1st floor) install all missing baseboard in the first floor, all materials and labor include.	1	2,600.00	2,600.00
10. back fill tunnel dirt below the concrete slab (the tunnel has been created by previous contractor) apply the concrete porch below the slab to support and prevent the collapse foundation.	1	4,800.00	4,800.00
11. backfill the hole creates by previous contractor 2 feet wide, 3-4 feet deep and 60 feet long, using the compact to compacted the dirt, replace damage plan and grass.	1	3,200.00	3,200.00
- 30% advanced pay for supply.	1	0.00	0.00
- 50% payment upon jobs complete.			
- Balance payment after final walk .			

SUBTOTAL	35,190.00
TAX (8.25%)	2,903.18
TOTAL	38,093.18

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TOTAL DUE	<b>\$38,093.18</b>
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THANK YOU.

## **A.W.S. Service**

P.O. Box 691342

Houston, TX 77269

Phone: 832-228-2686

Email: [awsdrain@gmail.com](mailto:awsdrain@gmail.com)

I Mike Nguyen a professional plumber from AWS service the neighbor of 7318 Heron Lakes Dr., Houston, TX 77064, I did the inspection for the main sewer line of this property (using the camera) and the conclusion.

1. The main reason caused this backup is the tampons inside caused the clogged. The tenant flushed tampons inside the toilet, tampons are not supposed to flush into the toilet, the solution for clear the line with Hydro jet approximate up to \$500, there are no broken pipe underneath of the house, it does not need to reroute or replace the new sewer line, below the kitchen sink drain line and guest haft bath (first floor) main line. Unnecessary dug approximately 5-7 feet down to the ground and 20 feet from the left side of the house, to below the kitchen sink and haft bathroom touch the foundation and build the tunnel. For the reroute the pipe from the cleanout to the city tab \$2500 that is the most cost for this. Not \$9000 as roto rooter said.
2. Unnecessary ribs out all the carpet, damage engineer wood floor, baseboard downstairs & upstairs, 4 doors upstairs, 3 doors downstairs, tile floor in the bathroom upstairs, surround baseboard, ceiling light, ceiling sheetrock, approximately 30 thousand damage inside.
3. Cost damage outside repairs approximately up to 10 thousand.



Signature

Date 12/14/18

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