

2020CI13647

CAUSE NO.

S.A.;

Plaintiff,

VS.

KENNETH CLOUD AND KEN
CLOUD ROOFING COMPANY,
L.L.C. D/B/A CLOUD ROOFING
Defendants.

卷之三

IN THE DISTRICT COURT OF

BEXAR COUNTY, TEXAS

225TH

____ th JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR
DISCLOSURE**

COMES NOW, S.A., complaining of Kenneth Cloud and Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing and would respectfully show the Court as follows:

I. DISCOVERY TRACK

1.1 Plaintiff pleads that this case should be assigned to Discovery Track Three pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and an Agreed Docket Control Order will be entered in this matter.

II. PARTIES

2.1 Plaintiff, S.A., is an individual citizen and resident of Bexar County, Texas. S.A. is a victim of sexual assault and her name is withheld to protect her identity as a sexual assault victim. She is bringing her claims for personal injury damages.

2.2 Defendant Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing is a Texas Corporation. Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing conducts substantial business in the State of Texas and derives substantial economic profits in the State of Texas. Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing maintains an office in State of Texas, maintains a registered agent for service of process in Texas, actively conducts business in Texas and, in fact, this action arises from Ken Cloud Roofing Company, L.L.C.'s, and its agents' and employees', conduct in Texas. Further, Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing maintains offices in Texas, recruits and hires Texas residents, seeks to serve residents of and businesses in the State of Texas, purposefully avails itself to the jurisdiction of Texas courts, and has numerous other direct contacts with Texas. Defendant Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing, therefore, can reasonably expect to be hauled into Texas courts, and can be served with process by serving its registered agent for service of process in Texas, Ken Cloud at 434 Breesport St., San Antonio, Texas 78216.

2.3 Defendant Kenneth Cloud is a resident and citizen of Bexar County, Texas. He may be served with process by serving him personally

at 130 S. Tower Dr., Hill Country Village, Texas 78232, or 434 Breesport St., San Antonio, TX 78216, or wherever he may be found.

III.
JURISDICTION AND VENUE

3.1 The amount in controversy far exceeds the minimal jurisdictional limits of this Court.

3.2 Venue in this case is proper in Bexar County, Texas, under the general venue rule of Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code, because it is a county where a substantial part of the events or omissions giving rise to this cause of action accrued and Section 15.002(a)(3) of the Texas Civil Practice and Remedies Code because it is a county of a Defendant's principal office/residence in Texas.

3.3 Plaintiff expressly disavows any claims are being made pursuant to federal law, treaties, or constitution. Although the amount in controversy exceeds \$75,000, any removal of this case would be improper since more than one of the properly joined defendants is a citizen of the State of Texas. Further, one or more of the properly joined and served Defendants are citizens of the state in which this action is brought. Any removal, or consent to removal, of this case to federal court would be improper.

IV. GENERAL ALLEGATIONS OF FACTS

4.1 On April 17, 2020, S.A. was asked by text if she was available to attend a job interview for a position with Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing on Breesport Rd. She had applied for the job through a listing on Craigslist.

4.2 Upon arriving, S.A. met with Mr. Kenneth Cloud, the owner of Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing. Mr. Cloud proceeded to pressure her to allow him to massage her. This resulted in Mr. Cloud getting her partially undressed and he attempted to get her to take all of her clothes off. When she refused, he ended the interview that had turned into a massage. The “interview” was never a real interview and was just an attempt to assault would-be applicants.

4.3 At all times relevant, Mr. Kenneth Cloud was an employee, agent, or vice-principal, and acting in the course and scope of that employment with Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing.

4.4 The injury in this case arises as a result of conduct that violates Section 22.011 of the Penal Code (sexual assault).

4.5 The acts of Defendants are a proximate cause of the injuries and damages to S.A..

CLAIMS FOR RELIEF

V.

LIABILITY FOR ACTS OF VICE-PRINCIPALS

5.1 At all times relevant hereto, Defendant Kenneth Cloud was a vice principal of Defendant Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing. *See Hammerly Oaks, Inc. v. Edwards*, 958 S.W.2d 387, 391 (Tex. 1997) (defining “vice-principal” as including “those who have authority to employ, direct, and discharge servants of the master” and “those engaged in the performance of nondelegable or absolute duties of the master). Every employer owes its employees a primary, continuing, and nondelegable duty to use ordinary care in providing a reasonably safe workplace. *See Farley v. M M Cattle Co.*, 529 S.W.2d 751, 754 (Tex. 1975). “Accordingly, an employer may not place an employee in an unreasonably dangerous work environment without taking appropriate precautions.” *W. Star Transp., Inc. v. Robison*, 457 S.W.3d 178, 186 (Tex. App.—Amarillo 2015, pet. denied). Ken Cloud Roofing Company, L.L.C. knew or had reason to know that it was placing S.A. in a position with an unreasonable and foreseeable risk of harm. Because Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing did not use ordinary care or take appropriate cautions to ensure that S.A. had a workplace/interview space free of sexual assault—by, for example, failing to have security cameras in key areas of

the offices, failing to supervise and train its employees/owners, and turning a blind eye to multiple incidents of sexual assault preceding that of S.A.—it is vicariously liable for the actions of Kenneth Cloud.

VI. **RATIFICATION**

6.1 Upon information and belief, S.A. was one of many victims lured into Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing under the guise of a “job interview” to then be assaulted by Kenneth Cloud.

6.2 S.A. was injured by Kenneth Cloud when he was acting as an agent for Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing. S.A. was meeting with Kenneth Cloud as she was lured into the offices by a fake job posting.

6.3 Kenneth Cloud acting as an employee, agent or vice-principal for Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing created the fake interview on behalf of the company he owned, Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing.

6.4 Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing, by allowing these fake interviews to continue to occur at their corporate headquarters, by act and / or omission approved the acts of Kenneth Cloud.

6.5 Ken Cloud Roofing Company, L.L.C.'s act and/or omission in approving of Kenneth Cloud's fake interviews intended to approve of his actions.

VII.
SEXUAL ASSAULT

7.1 Defendant Cloud individually and/or acting in a conspiracy sexually assaulted S.A..

7.2 Defendant Kenneth Cloud intentionally or knowingly made contact with S.A. that he knew or should have known was harmful, offensive, sexual and an intentional invasion of S.A.'s person. Mr. Cloud was clearly performing these acts for some sort of gratification.

7.3 The assault of S.A. was a proximate cause of her injuries and damages.

VIII.
NEGLIGENCE

8.1 S.A. would show that Defendants' actions and omissions constitute negligence and such negligence was a proximate cause of the injuries sustained by S.A.. Kenneth Cloud was an employee, agent, and vice-principal of Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing. Defendants accepted responsibility for the well-being of S.A. a prospective employee when she arrived for her "interview". Defendant

Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing in employing Kenneth Cloud directly and in allowing Kenneth Cloud to interact with and interview prospective female candidates while knowing or with reason to know of his criminal perversions accepted the risk of him harming women.

8.2 S.A. would show that the kind of conduct engaged in by Kenneth Cloud was foreseeable, both before and after his conduct was brought to the attention of the Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing, including but not limited to Defendants in this case. At some time during Kenneth Cloud's continuing sexual predation, Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing knew or should have known of his actions of luring women into the offices under the false pretenses of a "job interview". Regardless of the fact that he continued to have women into his office for fake "job interviews" nobody within Ken Cloud Roofing Company, L.L.C. spoke up to protect the women and stop his criminal behavior. Upon information and belief, there were many instances that track the same fact pattern as above and led to the assault of other women, which would have placed a reasonable Defendant on notice of the dangerous situations Kenneth Cloud was creating.

8.3 Defendants Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing breached numerous duties and those breaches, individually or collectively, were a proximate cause of the injuries sustained by S.A..

8.4 The facts will show that Defendants Ken Cloud Roofing Company, L.L.C.'s negligence includes, but is not limited to, the following:

- a. Failing to properly investigate and screen individuals like Kenneth Cloud and others by identifying their dangerous propensities towards children;
- b. Failing to properly monitor Kenneth Cloud for a sufficient amount of time so as to identify his dangerous propensities towards women;
- c. Failing to manage and control the actions of Kenneth Cloud and his interaction with women lured into the office under the guise of "job interviews";
- d. Placing women in his office without adequately screening, training, supervising and or managing his behavior;
- e. Providing Kenneth Cloud an opportunity to victimize women;
- f. Failing to fully investigate allegations against Kenneth Cloud;
- g. Failing to exercise due care in hiring and / or contracting with Kenneth Cloud;

- h. Failing to inquire into the criminal, social, or other background risk factors prior to placing Kenneth Cloud with women;
- i. Failing to train, or failure to exercise due care in training, those employees who would be in close contact with women like Kenneth Cloud;
- j. Failing to monitor and/or supervise, or failure to exercise due care in monitoring and/or supervising, staff working with and around women like Kenneth Cloud;
- k. Retaining and training Kenneth Cloud; and
- l. Entrusting a Kenneth Cloud with the care and safety of women applicants.

8.5 S.A. suffered serious injuries as a proximate result of the wrongful acts of the conspirators.

IX. MALICE

9.1 Defendant Kenneth Cloud committed malice, which was a proximate cause of the injuries and damages of the Plaintiff, and for which Plaintiff is entitled to recover punitive damages, pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code.

9.2 Specifically, Defendant Kenneth Cloud acted with specific intent to cause substantial harm or injury to S.A. by sexually assaulting her.

X.
GROSS NEGLIGENCE

10.1 Defendants committed gross negligence, which was a proximate cause of the injuries and damages of the Plaintiff, and for which Plaintiff is entitled to recover punitive damages, pursuant to Chapter 41 of the Texas Civil Practice and Remedies Code.

10.2 Specifically, Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing knew that there was a substantial risk of harm associated with allowing females to be left alone with a Kenneth Cloud whom they knew or should have known was a sexual predator.

10.3 Further, ignoring this subjective knowledge of the risk associated with allowing Kenneth Cloud to be alone with underage girls like S.A., Ken Cloud Roofing Company, L.L.C., allowed S.A. to be alone with a predator.

10.4 Pursuant to Art. 16 Section 26, Texas Constitution and Chapter 41 of the Texas Civil Practice and Remedies Code, the Defendant, Ken Cloud Roofing Company, L.L.C., is guilty of gross negligence as that term is defined, due to its heedless and reckless disregard for the safety of the Plaintiff; said conduct resulting in severe and permanent injury to the Plaintiff. As a result of the Defendant's, Ken Cloud Roofing Company, L.L.C.'s, gross negligence and the conscious indifference to the Plaintiff and

those similarly situated, Ken Cloud Roofing Company, L.L.C. is liable for exemplary damages. These damages should be assessed and awarded to prevent the Defendant from committing the same type of heedless and reckless conduct, to warn and deter others from engaging in any similar conduct and to increase the safety of persons similarly situated with the Plaintiff and the Bexar County community in general.

XI.
VICARIOUS LIABILITY/RESPONDEAT SUPERIOR

11.1 Defendants Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing employed and/or controlled Defendant Kenneth Cloud, who acted on their behalf and/or under their supervision and direction. At the time of facts giving rise to this lawsuit, Defendant Kenneth Cloud was acting within the course and scope of his employment for Defendant Ken Cloud Roofing Company, L.L.C. D/B/A Cloud Roofing and/or under their supervision, direction, and control. Therefore, Plaintiff invokes the doctrine of *respondeat superior*.

XII.
COMPENSATORY DAMAGES

12.1 As a result of her injuries, S.A. seeks monetary damages to compensate her for the following elements of damages:

- (a) Reasonable and necessary medical care and expenses in the past;
- (b) Reasonable and necessary medical care and expenses that will, in reasonable probability, be incurred in the future;
- (c) Physical pain and suffering in the past;
- (d) Physical pain and suffering that will, in reasonable probability, be incurred in the future;
- (e) Physical impairment in the past;
- (f) Physical impairment that will, in reasonable probability, be suffered in the future;
- (g) Mental anguish in the past;
- (h) Mental anguish that will, in reasonable probability, be suffered in the future;
- (i) Disfigurement in the past;
- (j) Disfigurement that will, in reasonable probability, be suffered in the future;
- (k) Loss of wage earning capacity in the past; and
- (l) Loss of wage earning capacity that will, in reasonable probability, be incurred in the future.

XIII.

PUNITIVE DAMAGES

13.1 Because Defendants are guilty of gross negligence and malice, they should have punitive damages assessed against them, as a deterrent to such future bad conduct and as a punishment for its bad acts, in an amount to be determined by the jury.

13.2 Because Defendants individually and as a conspiracy knowingly or intentionally violated one or more of the following Texas Penal Code provision, Section 22.011 (sexual assault), the limitation on exemplary damages will not apply pursuant to Texas Civil Practice and Remedies Code Section 41.008(c)(14).

XIV.

PRE-JUDGMENT AND POST-JUDGMENT INTEREST

14.1 Plaintiff seeks pre-judgment and post-judgment interest as provided by law.

XV. **RESERVATION OF RIGHTS**

15.1 Plaintiff reserves the right to prove the amount of damages at trial. Plaintiff reserves the right to amend her petition and add additional counts and / or parties as discovery continues.

XVI. **CONDITIONS PRECEDENT**

16.1 All conditions precedent to Plaintiff's right to recover and Defendants' liability have been performed or have occurred.

XVII.
JURY DEMAND

17.1 Plaintiff requests a trial by jury.

XVIII.
REQUEST FOR DISCLOSURES

18.1 Pursuant to Rule 194 of the Texas Rules of Civil Procedure, all parties named herein as Defendants are to disclose, within fifty (50) days of service of this request, the information and material described in the Texas Rules of Civil Procedure 194.2(a)-(1).

XIX.
DOCUMENT AUTHENTICATION

19.1 The Plaintiff gives actual notice that any documents produced by the Defendants during discovery may be used against the Defendants at any pre-trial proceeding and/or trial without the necessity of authenticating the document. This notice is provided pursuant to Rule 193.7 of the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff pray that Defendants be cited to appear and answer herein, that this cause be set

down for trial before a jury, and that Plaintiff recovers judgment of and from Defendants for their actual and exemplary damages, in such amount as the evidence shows and the jury determines to be proper, together with pre-judgment interest and post-judgment interest, costs of suit, and such other and further relief to which Plaintiff may show herself to be entitled, whether at law or in equity.

Dated this 27th day of July 2020.

Respectfully submitted,

HILL LAW FIRM

By:



Justin A. Hill
State Bar No. 24057902
Steven Lopez
State Bar No. 24071894
HILL LAW FIRM
445 Recoleta Road
San Antonio, Texas 78216
Phone: (210) 960-3939
Fax: (844) 404-4455
Email: justin@jahlf.com
Email: steven@jahlf.com

DESIGNATED EMAIL FOR SERVICE:
service@jahlf.com

AND

/s/ Lawrence Morales II
LAWRENCE MORALES II
The Morales Firm P.C.
State Bar No. 24051077
Allison S. Hartry
State Bar No. 24083149
6243 W. Interstate 10, Suite 132
San Antonio, Texas 78201
Telephone No. (210) 225-0811
Telecopier No. (210) 225-0821
Email: lawrence@themoralesfirm.com
Email: ahartry@themoralesfirm.com

ATTORNEYS FOR PLAINTIFF