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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

DALIA MONHEIT,

CASE NO.

Plaintiff,

vs.

HOME DEPOT U.S.A. INC.,

Defendant.

_____ /

COMPLAINT

COMES NOW the Plaintiff, DALIA MONHEIT, by and through undersigned counsel and sue the Defendant HOME DEPOT U.S.A. INC. (hereinafter "HOME DEPOT"), and allege as follows:

1. This is an action for damages pursuant to Fla. Statutes Sec. 501.201, et.al., otherwise known as the Florida Deceptive and Unfair Trade Practices Act (hereinafter "FDUTPA"), and for breach of contract.
2. This is an action in which the amount in controversy does not exceed \$30,000.00 exclusive of interest, costs, and attorney fees, and thus jurisdiction in the County Court of Broward County, Florida is proper.
3. Plaintiff is a resident of the State of Florida, is over the age of 18 and is otherwise sui juris, and is a senior citizen as defined by Fla.Stat. Sec. 501.2077.
4. Defendant HOME DEPOT is a Florida corporation registered in the State of Florida, and is authorized and doing business in Broward County, Florida.
5. At all times material hereto, HOME DEPOT was in the business of selling and installing kitchens and countertops, by and through its authorized contractors.

6. On or about February 26, 2021, Plaintiff and Defendant entered into a contract for installation of new windows at Plaintiff's home in Palm Beach County, Florida (A copy of the contract is attached as "Exhibit A").
7. At the time of installation, the installer hired by HOME DEPOT committed acts of sexual advances and other acts of sexual harassment against Plaintiff, who is an elderly woman, and caused Plaintiff to suffer humiliation, fear, and mental anguish.
8. After these windows were installed, they failed to properly open, thus creating a dangerous condition at Plaintiff's home.
9. Plaintiff complained numerous times to HOME DEPOT about the installer and the windows failing to open properly. However, HOME DEPOT, never did anything to remedy these issues with Plaintiff.
10. To date, HOME DEPOT never attempted to fix the windows.
11. As Plaintiff was selling her home, Plaintiff was forced to hire another contractor to repair the windows and pay that contractor \$800.00 to make those repairs prior to the closing on her home.

COUNT I
BREACH OF CONTRACT

Plaintiff re-alleges the allegations contained in paragraphs one (1) through eleven (11) and further alleges as follows:

12. Plaintiff and Defendants entered into a contract for installation of windows in Plaintiff's home.
13. In breach of said Contract, Defendants refused to provide the goods and services paid and contracted for by Plaintiffs and refused to return any portion of the amounts paid by

Plaintiffs for those goods and services.

14. As a direct and proximate result of said breach, Plaintiffs suffered damages, including the amount paid to HOME DEPOT of \$3,303.15, and \$800.00 paid to a contractor to fix the windows.

15. As a direct and proximate result of said breach, Plaintiffs were required to retain the services of the undersigned law firm and are obligated to pay a reasonable fee.

WHEREFORE, Plaintiffs respectfully requests this Court to enter judgment against Defendants, HOME DEPOT U.S.A. INC., for compensatory damages, consequential damages, attorney fees pursuant to the contract between the parties or other Florida law, interest, taxable costs, and any other relief that this Court deems just and proper and demands a trial by jury of all issues so triable.

COUNT II
DECEPTIVE AND UNFAIR TRADE PRACTICES

Plaintiffs re-allege the allegations contained in paragraphs one (1) through eleven (11) and further alleges as follows:

16. This is an action for damages pursuant to Fla. Statutes Sec. 501.201, et.al., otherwise known as the Florida Deceptive and Unfair Trade Practices Act (hereinafter “FDUTPA”).

17. At all times material hereto, Defendant, HOME DEPOT, was in the business of home and kitchen remodeling, which constitutes a trade or commerce as defined in FDUTPA.

18. At all times material hereto, Plaintiff was a consumer as defined by FDUTPA, and a senior citizen as defined by Fla. Stat. Sec. 501.2077.

19. The acts and/or omissions described herein constitute unfair methods of competition, unconscionable acts or practices, and unfair and deceptive acts or practices in the conduct of any trade or commerce as defined in FDUTPA, and therefore unlawful.

20. Defendant has committed such acts and/or omissions against Plaintiff and others with such frequency to constitute a business practice.

21. Defendant engages in these business practices to gain profits at the public's expense, including Plaintiff.

22. As a direct and proximate result of Defendant's deceptive and unfair trade practices, Plaintiff suffered actual damages of \$3,803.15, exclusive of attorney fees, costs, and interest.

23. Defendant's actions are also a violation of Fla.Stat. Sec. 501.2077, as a Defendant is willfully using, or has willfully used, a method, act, or practice in violation of Fla. Stat. Sec. 501.201, et.al., which victimizes or attempts to victimize a senior citizen

24. As a direct and proximate result of Defendants' actions, Plaintiffs were required to retain the services of the undersigned law firm and are obligated to pay a reasonable fee.

WHEREFORE, Plaintiff, DALIA MONHEIT, respectfully requests this Court to enter judgment against Defendant, HOME DEPOT, for compensatory damages, punitive damages after a proper proffer has been made, attorney fees pursuant to Fla.Stat. Sec. 501.2105, the subject contract, or other Florida law, interest, taxable costs, and any other relief that this Court deems just and proper and demands a trial by jury of all issues so triable.



Home Improvement Agreement: Page 1

Home Depot License #'s - For the most current listing visit www.Homedepot.com/LicenseNumbers

FL: EC0001440, CGC1514813, CRC046858, CAC1813767, CFC1426021, CFC1427642, 22640, CAC 1818831, CCC1331113, CCC1331130

Nigel Harris

Salesperson Name

Registration # (Req. in CA,CT,ME,MD,MI,NJ,DC)

Home Depot U.S.A.,Inc.("Home Depot") or Authorized Service Provider named below will furnish, install and/or service the equipment listed below at the price, terms and conditions as outlined on this form.

1. Service Provider Contact Information

The Home Depot

Service Provider Contact Name

(754) 224-2090

Phone #

The Home Depot

Service Provider Company Name

Service Provider License #(s)

2. Customer Information

Monheit

Customer Last Name

Dalia

Customer First Name

Ft Pierce

Store # / Branch Name

1-1V8T63MB

Customer Lead/ PO#

5454 Firenze Drive UNIT "F"

Customer Address

Boynton Beach

City

FL

State

33437

Zip

Home Phone#

Work Phone#

(561) 757-1703

Cell Phone#

daliameyer@yahoo.com

Customer Email Address

3. NOTICE OF RIGHT TO CANCEL

YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR OBLIGATION BY CONTACTING THE SERVICE PROVIDER OR STORE DIRECTLY; EMAILING SERVICE PROVIDER AT:

customercancellationsouth@homedepot.com

OR DELIVERING WRITTEN NOTICE TO HOME DEPOT AT:

1250 Linton Blvd

Address

Delray

City

FL

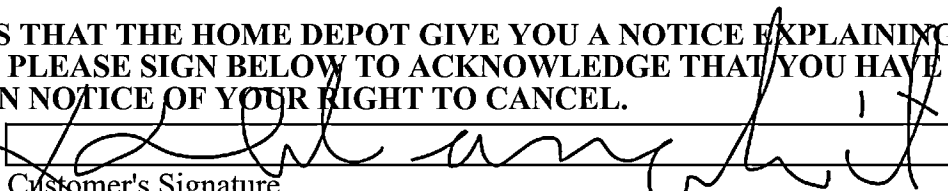
State

33444

Zip

BY MIDNIGHT ON THE THIRD BUSINESS DAY AFTER SIGNING, UNLESS THE STATE SUPPLEMENT PROVIDES A DIFFERENT CANCELLATION PERIOD. THE STATE SUPPLEMENT CONTAINS A FORM TO USE IF ONE IS SPECIFICALLY PRESCRIBED BY LAW IN YOUR STATE. YOUR PAYMENT(S) WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS AFTER HOME DEPOT'S RECEIPT OF YOUR NOTICE. YOU MUST MAKE AVAILABLE FOR PICKUP BY HOME DEPOT OR SERVICE PROVIDER, AT YOUR SERVICE ADDRESS, AND IN SUBSTANTIALLY THE SAME CONDITION AS WHEN DELIVERED, ANY MERCHANDISE OR MATERIALS DELIVERED TO YOU. OR YOU MAY CONTACT HOME DEPOT FOR INSTRUCTIONS REGARDING RETURN SHIPMENT AT HOME DEPOT'S EXPENSE.

THE LAW REQUIRES THAT THE HOME DEPOT GIVE YOU A NOTICE EXPLAINING YOUR RIGHT TO CANCEL. PLEASE SIGN BELOW TO ACKNOWLEDGE THAT YOU HAVE BEEN GIVEN ORAL AND WRITTEN NOTICE OF YOUR RIGHT TO CANCEL.

Acknowledged by: 

Customer's Signature

02/26/2021

Date



Home Improvement Agreement: Page 2

4. Description of Work to be Performed

A detailed description of the work to be performed is included in the paragraph entitled Scope of Work, Specification, Customer Summary Sheet, Quote Form, Estimate, Invoice or Measure which is included in this Agreement.

5. Anticipated Delivery Date / Installation Schedule

Approximate Start Date: Approximate Finish Date: All dates are approximate and subject to change based on unforeseen events including inclement weather, permitting delays, and delays in confirming insurance coverage of Your claim for any repair, if applicable.

6. Electronic Records Authorization

You are entitled to a paper copy of this Agreement if you choose. If you consent to an e-mailed copy, your consent applies to this Agreement and all subsequent documents and written communications related to this Agreement. By contacting your Service Provider, you may update your email address, withdraw your consent, or obtain a paper copy of the Agreement or related documents at no charge. By providing your consent and verifying your email address above, you confirm that you have access to a computer that can receive and open emails and PDF documents.

7. Contract Price and Payment Schedule

Payment of the Contract Price is due upon signing unless a different payment schedule is required by law, specified below or in a payment addendum.

Contract Price: \$ Includes all applicable taxes. Excludes finance charges.*

Sales Tax: \$ (If applicable, total amount of taxes included in Contract Price)

**Maximum deposit ONLY applicable in MD, MA, ME (33%), NJ, WI (99%)*

Deposit % Deposit Amount \$ Remaining Balance \$

8. Finance Charges

Any interest payments or other finance charges will be determined by Customer's separate cardholder or loan agreement, to which Home Depot is NOT a party, and will be in addition to Customer's payment under this Agreement. Customer is subject to the terms and conditions of the cardholder or loan agreement, as applicable. No funds should be made payable to Service Provider; however, Service Provider may collect Customer's payments made payable to Home Depot.

Insurance proceeds will will not be used to pay some or all of the total amount of sale.

9. Acceptance and Authorization

By signing below, you authorize Home Depot to: (a) arrange for Service Provider to perform any Services or (b) order and arrange for the delivery of special order merchandise, including special order merchandise that may be custom made, as specified in this Agreement. Do not sign if blank or incomplete. (Service Provider's or permitting information may need to be provided to You later.) By signing, you acknowledge that: (i) You have read, understand, and accept this Agreement in its entirety, including the General Conditions and State Supplement, if any; (ii) You are receiving a complete copy of this Agreement; (iii) all rights and interests under this Agreement are solely vested in the person listed as "Customer" above; and (iv) Electronic signatures will be deemed originals for all purposes.

X Customer's Signature

Date

X /s/ The Home Depot The Home Depot Digital Signature

Date

For questions related to your installation, contact Service Provider at
For any other concerns, contact The Home Depot at 1-800-466-3337

(754)



Scope of Work

Monheit Dalia Ft Pierce 1-1V8T63MB
 Customer Last Name Customer First Name Store # / Branch Name Lead #

Job #: (Internal Reference)	Products:	Spec Sheet(s) #:	Project Amount
1-1V8T63MB	✓ Windows Entry Doors	1-1V8T63MB	3303.15
	Windows Entry Doors		
	Windows Entry Doors		
	Windows Entry Doors		
	Windows Entry Doors		
Sales Tax			0.00
Total Contract Amount			3303.15

Notes:

Warranty:
 The warranty on the work identified above is listed in the General Terms and Conditions, or if applicable, specified in the following documents:

Warranty Name(s):



The Home Depot General Terms & Conditions

- DEFINITIONS:** “Agreement” means the Home Improvement Agreement between You and Home Depot, plus (a) any Change Orders; (b) the State Supplement, if any; (c) these General Terms and Conditions (“General Conditions”) and any documents referenced in or attached to any of the foregoing. “Defect” means any Services that are found not to be as warranted. “Home” means the real property, fixtures and any physical improvements where the Services are performed. “Services” means (I) the delivery and furnishing of goods, equipment, materials, and hardware; and (II) any related labor and services, including without limitation, construction, consultation, fabrication, erection, installation, inspection, maintenance, repair, and testing. “Service Provider” means an independent contractor, authorized by Home Depot, and its employees, agents, and subcontractors. “Work Area” means any property, buildings, or structures necessary for the staging, temporary storing and performance of the Services. “You”/“Your” means the customer identified in the Agreement.
- HOME DEPOT’S RESPONSIBILITIES:** Home Depot or Service Provider will complete the Services in a workmanlike manner and in accordance with applicable law without causing damage to Your Home, *provided, however,* that Home Depot or Service Provider will not start or continue with any Services upon discovery of any condition at Your Home that Home Depot or Service Provider deems in its sole discretion to be hazardous, unsafe or, materially changes the Scope of Work. Unless specifically contracted to do so, neither Home Depot nor Service Provider is obligated to repair such pre-existing hazardous or unsafe conditions.
- ASSIGNMENT/SUBCONTRACTING:** Home Depot and Service Provider may assign this Agreement, or any right herein, or any monies due or to become due hereunder, and may delegate or subcontract any obligations or Services hereunder without Your consent. This Agreement will not be assigned by You without first receiving Home Depot’s written consent, which may be denied in Home Depot’s sole discretion.
- YOUR RESPONSIBILITIES:** (a) **Payment:** You agree to pay Home Depot in full for the Services pursuant to the terms of this Agreement. (b) **Safe Access:** You agree to provide Home Depot and Service Provider Safe Access to Your Home. Safe Access means safe and complete access to the Work Area, including, without limitation: (1) obtaining in advance of the Services consent, permission, or relief from any covenants, easements, restrictions, or other legal encumbrances affecting the Work Area; (2) providing the location of utilities, whether underground, concealed, overhead or visible, to Home Depot or Service Provider; (3) removing from the Work Area physical impediments, hazards, and building code or zoning violations that affect directly or indirectly the Work Area; (4) removing unsafe working conditions and hazardous materials, including environmental hazards, from the Work Area; (5) providing sanitary facilities to Home Depot or Service Provider convenient to the Work Area (or, alternatively, paying for the rental costs of such facilities); (6) providing all utilities, including without limitation, power, water, ventilation and climate control, in and for the Work Area; (7) removing from and protecting against minors, pets, guests and visitors in the Work Area; (8) keeping permits, if required, visible at all times; (9) disengaging, suspending or terminating any security systems protecting the Work Area; (10) providing adequate temporary storage space as needed for Home Depot’s or Service Provider’s performance of the Services; and (11) not interfering, impeding, impacting or otherwise disrupting the Work Area at any time during Home Depot’s or Service Provider’s performance of the Services. (c) **No Performance:** Services are to be performed by Home Depot or Service Provider. If You attempt to perform or assist with the Services in any way, You assume all risk for property damage and for injury to Yourself and others.
- MODIFICATIONS AND CHANGE ORDERS:** Without invalidating this Agreement, You may authorize Home Depot or Service Provider to perform Services beyond the scope of the Agreement (“**Change Order**”). A Change Order will be issued by Home Depot or Service Provider on behalf of Home Depot, which You may accept by signing. Upon Your signing of the Change Order, it will become part of this Agreement, subject to all of the terms of the Agreement. Change Order may also result from Home Depot or Service Provider encountering conditions at the Work Area that impact, impede or otherwise interfere with the performance of the Services, requiring an increase in cost, time, or both. Following the discovery of any conditions that impact, impede or otherwise cause the Work Area not to have Safe Access, Home Depot may immediately ask for a Change Order or discontinue the Services without further obligation to You. If You decline a Change Order request, You or Home Depot may terminate this Agreement.



The Home Depot General Terms & Conditions

6. **TITLE AND RISK OF LOSS:** The title to and risk of loss for any materials or goods provided to You that originate from Home Depot will pass to You when paid in full by (1) You or (2) the Service Provider as part of the Services. Title to any other materials or goods provided by Service Provider will pass to You upon completion of the Services.
7. **WARRANTY LIMITATION ON WARRANTIES AND DAMAGES:** (a) **Warranty:** Unless otherwise stated in the Agreement, Home Depot warrants for 1 year from the completion date that all Services will (i) be performed with good workmanship and (ii) conform to the requirements of the Agreement. During the warranty period and within a reasonable time after receiving notice from You of a warranty claim, Home Depot may, at its sole option (i) correct or replace each Defect, or (ii) remove each Defect and refund the full purchase price thereof to You; *provided, however*, that all warranties are voided if (1) anyone other than Home Depot or Service Provider performs work upon or otherwise modifies any materials or Services provided under this Agreement, or (2) You fail to pay Home Depot as provided in this Agreement. (b) **Limitation on Warranties:** THE WARRANTIES PROVIDED IN THIS AGREEMENT ARE STRICTLY LIMITED TO THE FOREGOING EXPRESS WARRANTIES CONTAINED IN THIS PARAGRAPH IN THE WARRANTY SECTION OF THE AGREEMENT, IF ANY. YOU ACKNOWLEDGE AND AGREE THAT NO OTHER WARRANTIES ARE MADE OR GIVEN BY HOME DEPOT OR SERVICE PROVIDER, INCLUDING ANY WARRANTY FOR FITNESS OF PURPOSE, WARRANTY OF MERCHANTABILITY, OR ANY OTHER ORAL, EXPRESS OR IMPLIED WARRANTIES. HOME DEPOT'S EXPRESS WARRANTIES ARE VOIDED FOR ANY DEFECT CAUSED BY ABUSE, MISUSE, NEGLIGENCE, ACTS OF GOD, LACK OF PRESCRIBED OR STANDARD MAINTENANCE, OR IMPROPER CARE/CLEANING. ANY MANUFACTURER'S WARRANTIES PROVIDED FOR GOODS, MATERIALS, OR EQUIPMENT WILL BE PASSED THROUGH BY HOME DEPOT TO YOU, AND YOU AGREE TO LOOK SOLELY TO SUCH MANUFACTURER FOR REMEDY OF ANY DEFECT IN SUCH GOODS, MATERIALS, AND EQUIPMENT. HOME DEPOT MAY ASSIST YOU WITH WARRANTY CLAIMS AGAINST MANUFACTURERS. (c) **Limitation on Damages.** Home Depot will not be liable to YOU for indirect, incidental, special, punitive or consequential damages RESULTING FROM PERFORMANCE OF THE SERVICES, including, BUT NOT LIMITED TO, damages for lost opportunities, OR lost profits.
8. **TERMINATION:** This Agreement may be terminated by Home Depot for its convenience, and by either party for cause if the other party fails to correct a material breach within ten (10) days after receiving notice from the non-breaching party identifying the breach. In the event Home Depot terminates this Agreement because You fail to provide Safe Access to perform the Services, or if either party terminates the Agreement because You decline a Change Order request resulting from unforeseen, hazardous, or unsafe conditions or conditions that materially changes the Scope of Work, then You will pay Home Depot for Services provided through the date of termination plus any costs or expenses incurred by Home Depot or Service Provider as a result of the termination.
9. **CHOICE OF LAW; SEVERABILITY:** This Agreement will be governed by and interpreted in accordance with the laws of the State where the Project is physically located. The parties intend for the terms and conditions in the Agreement to be complementary, consistent, and enforceable under applicable laws. In the event any term or condition in the Agreement violates applicable law, such term or condition will be severed from the Agreement, but only to the extent necessary to avoid such violation, without invalidating any other terms and conditions of the Agreement.
10. **ENTIRE AGREEMENT:** This Agreement is the final, integrated, and exclusive expression of the parties' understanding, which supersedes all prior offers, orders, understandings, representations, proposals, confirmations, and negotiations between the parties, whether oral or written. No course of dealing, usage of trade, course of performance, course of conduct, or any other evidence of additional or different terms will be admissible to contradict or vary any term in the Agreement.



The Home Depot General Terms & Conditions

11. **SECURITY INTERESTS; LIENS:** If You make all payments as required under this Agreement, no security interest will be placed against Your property by Home Depot. If a security interest is placed on Your property, it creates a lien, mortgage, or other claim against Your property to secure payment and may cause a loss of Your property if You fail to pay as requested. After paying on any completed phase of the Services and before making any further payments, You should request from Home Depot or Service Provider a signed, unconditional release from, or waiver of, any right to place any claim against Your property applicable to the work then completed. You may ask an attorney about Your rights to discharge security interests.
12. **RETURNS:** Custom order merchandise (i.e., goods that are custom made, uniquely altered, colormatched, shaped, sized, or otherwise uniquely designed or fitted to the requirements of a particular space) is non-returnable, and its purchase price cannot be refunded unless Home Depot or Service Provider (1) incorrectly ordered item, or (2) damaged item beyond repair. Special or custom order merchandise may be returned, and a refund for all or part of the purchase price provided, in the discretion of Home Depot. Please contact The Home Depot for additional details concerning returns.
13. **AGREEMENT/SERVICE ORDER COMMUNICATION PREFERENCES:** You can visit www.homedepot.com > In-Store Special Orders at any time to access Your account for the following: (1) Update Your Agreement/Service Order Communication Preferences (email, text, Auto Call); (2) Contact Home Depot for order assistance; (3) View latest order status; or (4) Take action to schedule pickup for Your Service Orders. To stop any of the following communications You may visit www.homedepot.com > In-Store Special Orders to access Your account to update Your Agreement/Service Order Communication Preferences, contact The Home Depot, and take action on orders. If You signed up to receive updates about Your Agreement/Service Order(s) via: (a) **Text Message Communications**, You may receive multiple messages per order (including current and future orders) via automated technology to the mobile phone number You provided. The total number of messages received depends on the number of orders placed and order activity. Standard message and data rates apply. Not all carriers covered. You can text STOP to 97710 to stop (You will be sent a confirmation message). Call 1-877-467-2581 or 1-800-466-3337 for help; (b) **Electronic voice communications (Auto Call)**, You may receive multiple pre-recorded phone calls per order (including current and future orders) via automated technology to the phone number You provided. The total number of calls received depends on the number of orders placed and order activity. You can press 9 during a call to opt out or call 800-HOME-DEPOT for help; or (c) **Email Communications**, You may receive multiple Emails per order (including current and future orders) via automated technology to the Email address You provided. The total number of Emails received depends on the number of orders placed and order activity.
14. **LEAD PAINT:** Homes built prior to 1978 may require additional testing to determine if lead paint is present, and additional precautions if lead paint is present. You will be informed by Your Service Provider of any additional costs resulting from lead paint requirements prior to performing the Work. For additional information, visit www.epa.gov/lead/renovation-repair-and-painting-program.