

CAUSE NO. JP2-CV1900141

FILED
8:20 AM
September 18, 2019
Judge Jeff Monk - JP 2
By: Daniel, Melissa

CAROL A AND DARREN G YANCY, SR, § **IN THE JUSTICE COURT**
 Plaintiffs §
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 v. § **2ND PRECINCT**
THE BURLESON MAGNOLIA FARMS §
HOMEOWNERS ASSOCIATION BOARD OF §
DIRECTORS §
 Defendants §
 §
 §
 § **JOHNSON COUNTY,**
TEXAS

PLAINTIFF'S RESPONSE AND MOTION TO DISMISS DEFENDANTS AMENDED
COUNTERCLAIMS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES CAROL AND DARREN G YANCY, SR., ("Plaintiffs"), who files this Response and Motion to Dismiss Counter-Plaintiffs/Defendants Amended Counter Claims

COUNTER-DEFENDANTS/PLAINTIFFS RESPONSE TO COUNTER-
PLAINTIFF/DEFENDANTS COUNTERCLAIMS

Counter-Defendants/Plaintiffs general deny all Counter-Plaintiffs/Defendants Counterclaims.

MOTION TO DISMISS COUNTER CLAIMANT AS CREDITOR

CLAIM OF BREACH OF CONTRACT/FAILURE TO PAY ROAD ASSESSMENT

In Counter-Defendants/Plaintiffs response to Counter-Plaintiffs/Defendants original Counter Claims, Counter-Defendants/Plaintiffs addressed the Court in its Prayer for Relief to be excluded in the recovery of any special assessments that may come forth from suit. Counter-

Defendants/Plaintiffs were required to file suit to force Counter-Plaintiffs/Defendants to perform their duties on behalf of the Homeowners Association and have incurred cost.

However, this counter claim violate the following Texas Laws:

Texas Property Code 209.0051 (h) where a public meeting must be held and notice must be given to the party for which the fine and/or enforcement action is to be taken. While a meeting was held September 15, 2019 by the current Board, no notice was given to Counter-Defendant/Plaintiff of intent to attach a claim for a special assessment to lawsuit.

Texas Property Code 209.006 Required Notice Before Action. No notice was given to Counter-Defendant/Plaintiff, no offer of hearing was granted as per Texas Property Code 209.007 or opportunity to cure as prescribed in 209.006 (c).

Texas Rules of Civil Procedure 63 for Amendments & Responsive Pleadings: Any amended or responsive pleadings must be submitted to court 7 days before trial date. As per violations stated above, to allow this amendment 2 days before trial would be classified as a surprise and prejudicial on its face. *See Chapin v. Chapin, Inc. v. Texas Sand & Gravel Co.*, 844 S.W.2d 664, 665 (Tex. 1992).

1. PRAYER for RELIEF and REMEDIES SOUGHT

1.1 Plaintiff's pray that the Court will take the evidence presented and judge Defendants to be in violation of **Business Organizations Code, Nonprofit Section 22.204 and Texas Property Code 209.0051(h)(13)** by operating without a Board Secretary from May 15, 2018 through June 3, 2019.

2.1 Plaintiff's pray that the Court will direct any and all communications, directives, or any other actions against Plaintiffs during this period to be unauthorized, invalid, and void.

3.1 Plaintiff's pray that the Court will take the evidence presented and judge Defendants in multiple violation of the **Texas Property Code 209.0051** for holding close meetings without proper notice to Members.

4.1 Plaintiff's pray that the Court will take the evidence presented and judge Defendants in multiple violation of the **Texas Property Code 209.005** and direct Defendants to fully comply with the request.

5.1 Plaintiff's pray that the Court will find the Defendants in breach of their agreement to take over the HOA website in June 2017 and direct acceptance of payment of dues in April 2018 with deductions of related costs as appropriate.

6.1 Plaintiff's pray that they be excluded in any recover of cost from Petition against Defendants in any special assessment that may come forth as a result of suit.

7.1 Plaintiff's pray that the Court will take the evidence presented regarding the lack of enforcement of the Burleson Magnolia Farms HOA Covenant, Conditions, & Restrictions as filed with Johnson County on April 4, 2008 and judge Defendants in breach of their legal duties when in an authorized capacity.

8.1 Plaintiff's pray that the Court will direct Defendants, as well as elected Boards that follow to enforce the Burleson Magnolia Farms HOA Covenant, Conditions, & Restrictions as filed with Johnson County on April 4, 2008 without prejudice or discriminatory enforcement against Plaintiffs or other Members, and to seek competent legal counsel in any matter of dispute on enforcement.

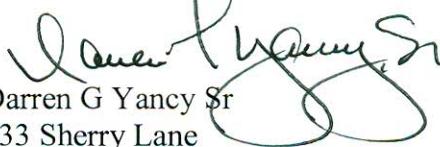
9.1 Plaintiff's pray that the Court will direct Defendants, as well as elected Boards that follow to comply will all state laws regarding the Burleson Magnolia Farms HOA and to seek competent

legal counsel in any matter of dispute on enforcement.

10.1 Plaintiffs' pray that the Court will deny Counter-Claimant/Defendants claims by granting Counter-Defendant/Plaintiff's Motions To Dismiss, and that they take nothing in return.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully request that the Court render judgment in favor of Counter-Defendant/Plaintiffs; that Counter-Defendant/Plaintiffs recover from Counter-Plaintiff/Defendant's damages available pursuant to law or equity, reasonable and necessary attorney's fees, costs, and such other relief to which plaintiffs may show themselves justly entitled.

Respectfully Submitted,
Plaintiff's Pro Se


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