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August 9, 2019

Via USPS:

Clerk of Court
Justice Court, Johnson County, Texas
Precinct 2, Place 1
247 Elk Drive, Suite 107
Burleson, Texas

Re: Cause No.: JP2-CV1900141; *Darren G. Yancy, Sr. and Carol A. Yancy v. The Burleson Magnolia Farms Homeowners Association Board of Directors, Charles Duello, Individually*, In the Justice Court, Precinct 2, Place 1, Johnson County, Texas.

Dear County Clerk:

Enclosed for filing with the Court is *Counter-Plaintiff/Defendant Burleson Magnolia Farms Homeowners Association, Inc. 's Counterclaim* and the filing fee of \$66.00.

Please file the counterclaim and return a file-stamped copy to me in the enclosed, self-addressed stamped envelope.

Should you have any question, please contact our office.

Best regards,

Shila Fletcher

Shila A. Fletcher

CKA:vmc
Enclosure

cc:

Via email and CMRRR: 70160600000051679006

Darren G. Yancy, Sr.
233 Sherry Lance

Burleson, Texas 76028
devancy@ntunwired.com

CAUSE NO. JP2-CV1900141

DARREN G. YANCY, SR. AND
CAROL A. YANCY

Plaintiffs,

VS.

THE BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION BOARD
OF DIRECTORS, CHARLES DUELLO,
INDIVIDUALLY

Defendants.

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IN THE JUSTICE COURT

PRECINCT 2, PLACE 1

JOHNSON COUNTY, TEXAS

**DEFENDANT BURLESON MAGNOLIA FARMS HOMEOWNERS
ASSOCIATION, INC.'S COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Counter-plaintiff/Defendant THE BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION and files this Counterclaim against Counter-
Defendants/Plaintiffs DARREN G. YANCY, SR. AND CAROL A. YANCY.

I. DISCOVERY LEVEL

1. Counter-plaintiff intends for discovery to be conducted under Level 1 of the
Texas Rules of Civil Procedure.

II. PARTIES

2. Counter-plaintiff/Defendant THE BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION, INC. ("BMFHOA") is a duly formed Texas non-profit
corporation.

3. Counter-defendants Darren G. Yancy and Carol A. Yancy (hereinafter referred to

collectively as "Yancys") are individuals residing at 233 Sherry Lane, Burleson, TX 76028.

III. JURISDICTION AND VENUE

4. The court has jurisdiction over the Counter-defendants because the Yancys reside in Johnson County, Texas.

5. The court has jurisdiction over the subject matter because the amount sought is within the jurisdictional limits of the court and the debt was incurred in Johnson County, Texas.

IV. FACTS

6. BMFHOA is a homeowners' association that is responsible for collecting and enforcing payment of assessments from the members of the homeowners' association.

7. Members of homeowners association must pay an assessment annually.

8. The Yancys are members of the homeowners' association, and they failed to pay \$200.00 of their annual assessment in 2018.

9. BMFHOA charges late fees of \$3.00 per day from the last day of April each year until the assessment is paid. Late fees have accrued in the amount of \$1,275.00 as of July 30, 2019. Counter-defendants owe BMFHOA a total of \$1,475.00 for the unpaid assessments and late fees, plus attorneys' fees.

V. CAUSES OF ACTION

A. BREACH OF CONTRACT/FAILURE TO PAY ANNUAL ASSESSMENT

10. BMFHOA has properly recorded a Replacement Dedication and Declaration of Covenants, Conditions and Restrictions ("Declaration") in the land records of Johnson County, Texas.

11. The Declaration provides that any owner in the subdivision automatically become a member of homeowners' association. (Article 3.01 of the Declaration).

12. The Declaration provides that every owner agrees to pay the homeowner's association regular assessment or charges for maintenance. (Article 6.01(a) of the Declaration)

13. The regular assessment for each owner in BMFHOA is \$300.00 per year per lot, and late fees accrue at \$3.00 per day. The Yancys own two lots and owe \$600.00 per year for regular assessments.

14. Counter-defendants did not pay the 2018 assessment in full when due despite proper demand. Late fees have accrued in the amount of \$1,275.00 as of July 30, 2019.

15. Counter-plaintiff has incurred legal fees and costs in the amount of at least \$1,750.00 in order to prepare and present this counterclaim which fees continue to accrue.

B. BREACH OF FIDUCIARY DUTY

16. While serving as an officer of BMFHOA, Darren Yancy established a website using the name of the association with the avowed purpose of conveying information about BMFHOA and facilitating communication between the members of the association.

17. As an officer and director of the association, Darren Yancy owed to the association and to the members of BMFHOA the fiduciary duties of loyalty, complete candor and to avoid self-dealing.

18. When establishing the website, Darren Yancy placed ownership and control of the website in his individual name, instead of BMFHOA. He continues to control and operate the website in his own name and to control the website for his individual benefit.

19. As a direct and proximate cause of Darren's Yancy's violation of his fiduciary duties, BMFHOA has been damaged, such damages include damage to the reputation of BMFHOA by the publication by of information with specific intent to harm that serves Mr. Yancy's personal position.

PRAYER

For these reasons, Counter-plaintiff prays for judgment against Counter-defendants for:

- a. Economic damages in the amount of \$1,275.00 plus additional late fees which continue to accrue;
- b. Economic damages in an amount to be determined by the court for damages due to Darren Yancy's breach of fiduciary duties;
- c. An order requiring Darren Yancy to terminate the website with the domain name of bmfhao.org and to cease operating any website using the name of the BMFHOA;
- d. Reasonable and necessary attorneys' fees;
- e. Costs of suit; and
- f. Such other relief to which Counter-plaintiff may be entitled.

Respectfully Submitted,

/s/ Charles K. Aris

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**ATTORNEYS FOR DEFENDANT
BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION, INC.**

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been served on Plaintiff/counter-defendants, pro se, as listed below, on the ____th day of August, 2019.

Via email and CMRRR:

Darren G. Yancy, Sr.
233 Sherry Lance
Burleson, Texas 76028
dgyancy@ntunwired.com
817-360-2452

/s/ Charles K. Aris

CHARLES K. ARIS
SHILA A. FLETCHER

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



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08/09/2019
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