

CAUSE NO. JP2-CV1900141

DARREN G. YANCY, SR. AND CAROL A. YANCY	§	IN THE JUSTICE COURT
Plaintiffs,	§	
VS.	§	PRECINCT 2, PLACE 1
THE BURLESON MAGNOLIA FARMS HOMEOWNERS ASSOCIATION BOARD OF DIRECTORS, CHARLES DUELLO, INDIVIDUALLY	§	
Defendants.	§	JOHNSON COUNTY, TEXAS

**COUNTER-PLAINTIFF/DEFENDANT THE BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION, INC.'S FIRST AMENDED COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

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

I. DISCOVERY LEVEL

1. Counter-plaintiff/Defendant 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/Plaintiffs 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/Plaintiffs 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/Plaintiffs 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/Plaintiffs 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/Defendant 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.

C. BREACH OF CONTRACT/FAILURE TO ROAD REPAIR ASSESSMENT

20. At a duly called and properly noticed Annual Meeting in 2019, the owners approved a road repair assessment in the amount of \$200.00 per lot. Each lot owner's payment was due on July 31, 2019. Counter-defendants/Plaintiffs did not pay the road repair assessment when due. Counter-defendants/Plaintiffs own two lots and owe \$400.00 for the road repair assessment. The fee is overdue. All conditions precedent have occurred.

VI. PRAYER

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

- a. Economic damages in the amount of \$1,875.00 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/Defendant may be entitled.

Respectfully Submitted,

/s/ Charles K. Aris

CHARLES K. ARIS
State Bar No. 00793276
caris@bcallp.net
JANICE A. WOLFF
State Bar No. 21865650
jwolff@bcallp.net
SHILA A. FLETCHER
State Bar No. 00785867
sfletcher@bcallp.net
BYRNE, CARDENAS & ARIS, LLP
5468 La Sierra Drive
Dallas, Texas 75231
(972) 371-5250
(972) 371-5270 (Facsimile)

**ATTORNEYS FOR DEFENDANT/
COUNTER-PLAINTIFF
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 Counter-defendants/Plaintiffs, pro se, as listed below, on the 16th day of September, 2019.

Via email and CMRRR: 7013 0600 0002 0776 9141

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