

CASE NO. 421-004SC

ROBERT A. WELLS,	§	IN THE JUSTICE COURT
	§	
Plaintiff,	§	
	§	
vs.	§	PRECINCT 4
	§	
STUART BRUCE SORGEN	§	
	§	
Defendant.	§	BURNET COUNTY, TEXAS

DEFENDANT’S MOTION TO DISMISS, ORIGINAL ANSWER
AND ORIGINAL COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW STUART BRUCE SORGEN (“Defendant”), defendant and counterclaimant herein, and files this his Motion to Dismiss, Original Answer and Original Counterclaim in connection with the Petition filed by Plaintiff ROBERT A. WELLS (“Plaintiff”) and would show the Court as follows.

Background

1. Defendant has been a party, directly or indirectly, to two (2) lawsuits seeking redress for financial and other misconduct by local elected officials. He has invested his own personal resources in an effort to restore honesty, integrity and accountability to the Board of the Windermere Oaks Water Supply Corporation. No one seriously disputes there has been misconduct involving former Director Dana Martin and her alter ego Friendship Homes and Hangars,¹ as well as blatant violations of the

¹ See legal analysis prepared by the WSC’s own attorneys attached hereto as Exhibit 1 and incorporated herein.

Texas Open Meetings Act. These acts and omissions have cost the WSC membership \$1 million or more in land and cash. Rate hikes and fee increases, including those of which Plaintiff complains, have been the result. Neither the Board nor the WSC itself have offered any legitimate explanation why a water supply corporation that had surplus land worth over \$1 million in 2016 has now placed itself and its member owners into such financial jeopardy.

2. The WSC's unfaithful fiduciaries apparently have emptied the company's coffers to pay the cost to defend their wrongful conduct. Ironically, they insist upon blaming the members, including Defendant, who seek to hold them accountable for their wrongful conduct.

3. In Cause No. 47531, *TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corporation*, the Court found as a matter of law that the WSC violated the Texas Open Meetings Act in connection with the challenged transaction. In the second lawsuit, Cause No. 48292, *Rene Ffrench et al. v. Friendship Homes and Hangars LLC et al.*, it has already been determined that Chapter 20 of the Texas Business Organizations Code encompasses the relief plaintiffs seek. Subject to constraints related to the COVID pandemic, the second case is set for trial in August 2021.

4. Plaintiff is a known associate and crony of former Director Martin who apparently would prefer that Martin's egregious misconduct and its devastating implications for the WSC and its members be swept under the rug. He was not a party to the *TOMA* case and is not a party to the pending lawsuit in Cause No. 48292.

Motion to Dismiss

5. Plaintiff has not alleged the elements of any cognizable claim for relief he is entitled to bring against Defendant, and there is none.

6. Challenges to the “bona fides” of a lawsuit may only be made under Rule 13, Tex. R. Civ. Proc., Chapters 9 or 10, Tex. Civ. Prac. & Rem. Code or in a suit for malicious civil prosecution. Only a party to the lawsuit is entitled to make such a challenge. Plaintiff is not a party to either of the two lawsuits about which he complains.

7. Otherwise, Defendant has absolute judicial immunity as a matter of law from all claims and causes of action in connection with the two lawsuits in which he has participated.

8. For these independent reasons, Plaintiff’s lawsuit must be dismissed with prejudice.

Original Answer

9. Subject to and without waiving his Motion to Dismiss, Defendant generally denies each and every, all and singular, the allegations of Plaintiff’s Petition and demands strict proof thereof by a preponderance of the credible evidence.

Original Counterclaim/Motion for Sanctions

10. Plaintiff’s conduct described herein violates Chapter 10, Tex. Civ. Prac. & Rem. Code. In particular, Plaintiff signed his Petition in violation of § 10.001(1), § 10.001(2) and § 10.001(3) of such Chapter. Defendant requests that he be awarded the reasonable expenses and attorney’s fees incurred in presenting this Original Counterclaim/Motion for Sanctions, as well as all other relief to which he may be entitled. Tex. Civ. Prac. & Rem. Code § 10.002.

11. Plaintiff's conduct violates Rule 13, Tex. R. Civ. Proc., in that his Petition is groundless and is brought in bad faith, is brought for purposes of harassment and was false when made. Defendant requests that Plaintiff's pleading be stricken and seeks to recover his reasonable expenses (including attorneys' fees) incurred because of the filing of the Petition.

12. In the alternative, Plaintiff's conduct violates § 9.011, Tex. Civ. Prac. & Rem. Code, in that his lawsuit is groundless, is brought in bad faith or for purposes of harassment and is brought for an improper purpose such as to cause unnecessary delay or expense. Defendant requests that Plaintiff's pleading be stricken and seeks to recover his reasonable expenses (including attorneys' fees) incurred because of the filing of the Petition.

13. All conditions precedent to Defendant's right to recover herein have occurred or have been fulfilled.

WHEREFORE, Defendant respectfully requests that Plaintiff's Petition be dismissed with prejudice or, alternatively, that upon trial hereof Defendant receive judgment that Plaintiff take nothing and that Defendant recover judgment as aforesaid and such other and further relief, at law or in equity, to which he may show himself justly entitled.

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Respectfully Submitted,

THE LAW OFFICE OF KATHRYN E. ALLEN,
PLLC

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By: /s/ Kathryn E. Allen
Kathryn E. Allen
State Bar ID No. 01043100
Email: kallen@keallenlaw.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served via mail to Plaintiff at 722 Coventry Road, Spicewood, Texas 78699 on this 10th day of February 2021.

/s/ Kathryn E. Allen
Kathryn E. Allen

Mr. de la Fuente's Direct Line: (512) 322-5849
Email: jdelafuente@lglawfirm.com

January 25, 2019

***Via Email: mollym@abdmlaw.com
and Via USPS Regular Mail***

Molly Mitchell
ALMANZA, BLACKBURN, DICKIE & MITCHELL, LLP
2301 S. Capital of Texas Highway, Bldg. H
Austin, Texas 78746

Re: Friendship Homes & Hangars, LLC purchase of real property interests
from Windermere Oaks Water Supply Corporation

Dear Molly,

I am writing to you on behalf of my client, the Windermere Oaks Water Supply Corporation ("WOWSC") in connection with real property transactions by Friendship Homes & Hangars, LLC ("Friendship Homes") relating to approximately 10.85 acres of property located on Piper Lane in Spicewood, Texas ("the property"). This letter is sent to you as counsel for Dana Martin and Friendship Homes as a matter of professional courtesy; if you contend that it should be addressed directly to Ms. Martin and/or Friendship Homes, please let me know and we will re-send it as instructed.

As you know, by a contract for sale dated January 19, 2015, closing in early 2016, and continuing until final addendum on February 16, 2017, Friendship Homes purportedly acquired two separate real property interests from WOWSC: 1) title in fee simple to approximately 3.86 acres along the west side of Piper Lane, in Spicewood, Texas, and 2) a "right of first refusal" to purchase an additional approximately 7.01 acres immediately to the west of the purchased property (collectively, "the transactions"). The total price paid by Friendship Homes to WOWSC for both interests was \$203,000.

The circumstances surrounding the transactions are problematic for several reasons.

Self-interested transaction: First and foremost, the managing member of Friendship Homes is Dana Martin. At all times relevant to the transactions, Ms. Martin also was a member of the board of the seller, WOWSC. While she purportedly recused herself from the ultimate vote on a portion of the transaction on December 19, 2015, at all times she remained a member of the board, and by virtue of that office had a fiduciary duty and a duty of loyalty to WOWSC, which requires that there be no conflict between duty and self-interest.

Actions taken in violation of the Texas Open Meetings Act: As a WOWSC Board member, Ms. Martin is charged with knowledge of the requirements of the Texas Open Meetings Act, and knowing that the meeting notice for the December 19, 2015 meeting was legally insufficient, did not speak up or note for the remainder of the Board that the meeting notice did not meet the requisite legal standard. Instead, she allowed her self-interest to be paramount, so that the meeting could go forward and she could enter into a contract for sale of the property. Further, Ms. Martin was surely aware that the purported “right of first refusal” was not mentioned in the meeting notice, and thus could not be considered or acted upon by the WOWSC Board at that meeting without violating the Texas Open Meetings Act. Again, Ms. Martin allowed her self-interest to be paramount, so that the meeting could go forward and she could obtain that right of first refusal, paying no additional consideration for that real property interest. These matters have been litigated, and are the subject of a final judgment in Cause No. 47531, *TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corporation*, in the 33rd District Court of Burnet County, Texas.

Actions regarding improper appraisal: Prior to the transactions, on information and belief, Ms. Martin worked with Jim Hinton to present what was purported to be an objective appraisal of the property to the WOWSC Board (“the Hinton appraisal”) on or about September 1, 2015. This was done so that the WOWSC Board could consider the market value of the property and determine whether to sell the property, and under what price and other terms such transaction should be conducted.

The Hinton appraisal represented that it was intended to comply with all applicable rules and standards, and that its conclusion as to value was to be based on the “Highest and Best Use.” The Hinton appraisal concluded that the present use of the property was “vacant land,” and further concluded that remained the “highest and best use” for the property. The three comparable properties that were analyzed to determine the open market valuation were likewise “vacant land” properties.

Importantly, the property was (and still is) located amidst multiple hangar facilities at a private airport, Spicewood Airport, and had significant frontage on a taxiway for Spicewood Airport. In such circumstances, and considering the factors of legal permissibility, physical possibility, financial feasibility, and maximum

productivity, the actual highest and best use of the property is for division into multiple airport hangar lots, not simply to be used as "vacant land." Notably, the Hinton appraisal did not take into account any comparable sales of hangar lots in the area. Its improper characterization of the highest and best use of the property, and selection of comparable properties consistent with that improper characterization, resulted in a significant under-valuation of the property. Upon information and belief, these defects violate applicable USPAP standards and render the Hinton appraisal fraudulent, and it was presented to fraudulently induce the WOWSC Board into taking action contrary to the best interests of WOWSC.

The WOWSC Board received the Hinton appraisal for the purpose of evaluating and conducting a potential sale of the property. On information and belief, Ms. Martin was aware of this purpose and intended use when the Hinton appraisal was provided to WOWSC. Also on information and belief, Ms. Martin conferred with Mr. Hinton regarding the appraisal before it was submitted to the WOWSC Board, knew that the actual market value of the property was well above the value presented in the Hinton appraisal, and failed to disclose that information to the WOWSC Board. Upon further information and belief, she was aware that the most likely buyer of the property was an enterprise that she had yet to form, Friendship Homes.

The resulting improper and unfair transactions: In reliance on the appraisal, the WOWSC Board elected to sell approximately 3.86 acres of the property for a price of \$203,000 to Ms. Martin's enterprise, Friendship Homes, realizing a value of just over \$52,000 per acre. In reality, based on the proper highest and best use of airport hangar lots, the value of the 3.86 acres of the property sold was \$700,000, yielding a true value of approximately \$181,000 per acre. In addition, in further reliance on the under-valuation of the property contained in the appraisal, the WOWSC Board also transferred a "right of first refusal" to Ms. Martin's enterprise for the remaining 7.01 acres of the property for no additional consideration, with that transaction being completed on February 16, 2017.

Thus, as a result, the WOWSC Board at the very least sold property with a proper market value of \$700,000 for a price of \$203,000, a difference of \$497,000. As a result of the actions related to the Hinton appraisal, material facts as to the transaction were not disclosed to, and upon information and belief, purposefully concealed from, the WOWSC Board. The resulting transaction, being for a price significantly lower than the proper market value at the time, was not fair to WOWSC. The circumstances above would constitute a breach of Ms. Martin's fiduciary duty to WOWSC as a member of the WOWSC Board. Further, to the extent that the actions of Ms. Martin and Friendship Homes relating to the Hinton appraisal were committed in concert with and with the knowledge of Mr. Hinton, they may give rise to an action for civil conspiracy.

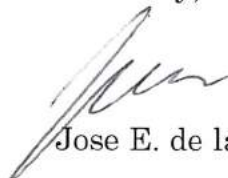
Finally, pursuant to the Unimproved Property Contract and as consideration for the transactions, Friendship Homes agreed to grant a 50-foot easement to run from Piper Lane to the west property line of the 3.86 acres that Friendship Homes acquired in fee simple. An inspection of the Burnet County property records finds no such valid and enforceable easement that has been created or granted to WOWSC, indicating that Friendship Homes has failed to perform this contract obligation. The absence of such easement significantly reduces the value of the remaining property. This works to Friendship Homes' significant advantage; absent an easement, the current market value of the remaining property is quite low, and if WOWSC attempts to sell it for its current reduced market value, Friendship Homes can execute its right of first refusal and acquire that portion of the property for a fraction of its potential value. Friendship Homes can then extend an easement through the property it currently owns, which will dramatically increase the value of the remaining property. Thus, by virtue of actions solely within Ms. Martin's and Friendship Homes' control, they will realize a significant appreciation in value on the property which value properly belongs to WOWSC.

This letter is the WOWSC's Board's notice and demand that you 1) preserve all documents, correspondence, records, and communications (including emails, text messages, and phone records) that you have had with Mr. Hinton or with any past or current member of the WOWSC Board regarding the property, the Hinton appraisal, or the transactions, and 2) to meet and confer promptly with WOWSC through its legal counsel to discuss WOWSC's claims against Ms. Martin and Friendship Homes, and a proper resolution thereof.

Please reply in writing indicating that you understand WOWSC's demands and will preserve all information described above, and will agree to meet and confer with WOWSC through its legal counsel within the next thirty days. In the event that you fail to do so, WOWSC will have no choice but to pursue all available avenues of relief, including pursuing litigation against Ms. Martin and Friendship Homes.

We look forward to your prompt response to this correspondence.

Sincerely,



Jose E. de la Fuente

JEF:cad