

CAUSE NO: 2010-CI-00497

BRADLEY L. CROFT, CHERIE CROFT,
WILLIAM CLARK, BROOKS CLARK,
JASON RIGGIN and TAMARA RIGGIN, Derivatively on behalf of: Shavano Rogers Ranch Swim
Club, Inc., a Non-Profit Texas Corporation
Plaintiffs

v.

AMS SA MANAGEMENT, LLC and
JEANETTE BARBARA LOWRY, Individually
Defendants

IN THE DISTRICT COURT

288th JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

VERIFIED MEMBER
DERIVATIVE COMPLAINT

Now comes Bradley L. Croft, Cherie Croft, William Clark, Brooks Clark, Jason Riggan and Tamara Riggan, hereinafter collectively referred to as Members, by and through their attorney, files this Verified Member Derivative Complaint. This is a member's derivative action brought for the benefit of Shavano Rogers Ranch Swim Club, Inc., a Texas Non-Profit Corporation, to protect and benefit its members. This cause of action is against AMS SA MANAGEMENT, LLC and JEANETTE BARBARA LOWRY, hereinafter collectively referred to as LOWRY.

CAUSE OF ACTION

This is a member derivative action brought by members of Shavano Rogers Ranch Swim Club, Inc., on behalf of the corporation, against the management agent of the corporation seeking to remedy defendants' mismanagement, breach of fiduciary duties, fraud, negligent misrepresentation, constructive fraud, and breach of contract. By reason of Defendants' position as the management company for the Swim Club, and because of the Defendants' ability to control the business and financial affairs of the corporation, the Defendants' owed the corporation and its members the duty to exercise due care and diligence in the management of the affairs of the corporation and in the use and preservation of its property and assets. Further, Defendants owed a duty to the corporation to insure that the corporation operated in compliance with all applicable federal and state laws, rules and regulations.

The conduct of the Defendants complained herein involves knowing violations of their duties as the manager of the corporation and the absence of good faith on their part has caused serious risk to the corporation and monetary loss caused by their negligence and fraud.

Defendants' wrongful course of conduct, as described herein, has exposed the corporation to regulatory liability, judicial fines, irreparable monetary damage and caused substantial losses to the corporation.

I. Discovery Control Plan

1. Plaintiffs requests entry of a Scheduling Order under Level 3 as provided by Rule 190.4 of the Texas Rules of Civil Procedure.

II. Parties

2. Plaintiffs reside in the community of Shavano Rogers Ranch Falling Brook and are members in good standing in the Shavano Rogers Ranch Swim Club, Inc. a Texas Non-Profit Corporation doing business in Bexar County, Texas. Plaintiffs have standing to bring this derivative complaint pursuant to the Texas Business Organization Code. Plaintiffs have standing to assert these claims on behalf of the corporation and will fairly and adequately protect the interest of the corporation and its other members.

3. Defendant AMS SA MANAGEMENT, LLC, dba Association Management Services, is the management company retained by the Shavano Rogers Ranch Swim Club, Inc. and does business at: 1600 NE Loop 410, Suite 202, San Antonio, Texas 78209. Its registered agent is Jeanette Barbara Lowry.

Defendant Jeanette Barbara Lowry, individually, controls AMS and does business at: 1600 NE Loop 410, Suite 202, San Antonio, Texas 78209.

III. Jurisdiction and Venue

4. The Court has jurisdiction to hear this cause in that the damages are in excess of the minimum jurisdictional limits of the Court.

5. All or a substantial part of the events and transactions giving rise to the causes of action stated herein occurred in Bexar County, Texas, making venue proper in Bexar County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

6. At the time of the events and transactions giving rise to the causes of action all parties resided in Bexar County, Texas, and thus, venue is proper as to all parties in Bexar County, pursuant to Tex. Civ. Prac. & Rem. Code §15.005.

IV. Facts

7. Plaintiffs are members in good standing with the Shavano Rogers Ranch Swim Club, Inc., a Texas Non-Profit corporation, located in Bexar County, Texas.

8. LOWRY is the owner and operator of AMS SA MANAGEMENT, LLC, dba Associated Management Services which manages the Shavano Rogers Ranch Swim Club, Inc. pursuant to a Management Certificate for Homeowners Association and an Association Management Agreement. LOWRY is also the Registered Agent of the Swim Club Association.

9. Plaintiff Bradley L. Croft, hereinafter referred to as CROFT, pursuant to a Writ of Mandamus, requested that he be allowed to inspect all of the books and records of the Swim Club pursuant to the covenants, conditions and restrictions of said corporation and pursuant to TEX. REV. CIV. STAT. ANN. Art. 1396-2.23; the TEX. PROP. CODE ANN. Chapter 207; and, the Texas Business Organizations Code Sec.A22.351. LOWRY had refused to allow CROFT the right to inspect said Books and Records which necessitated the filing of the Writ of Mandamus.

10. After reviewing the financial records provided by LOWRY, CROFT and his agent found that there were accounting irregularities, fraudulent management practices, money laundering, kickbacks concerning contracts with vendors, comingling of funds with other HOA communities and misappropriations of funds. LOWRY has refused to provide any further copies of documentation concerning questionable transactions by LOWRY. CROFT notified the Board of Directors and Officers of the Swim Club of these claims and demanded that the Corporation take appropriate action against LOWRY. The Board of Directors has notified CROFT that they refuse to litigate this matter.

Several members have requested CROFT to proceed in this derivative suit and wish to participate in a Class Action against LOWRY. It is CROFT's intention to solicit all members of the Shavano Rogers Ranch Swim Club, Inc. to participate and intervene in this Derivative Action.

11. LOWRY has charged for services rendered which were not performed and/or were not authorized by the Association or its members pursuant to the Management Agreement. LOWRY has fraudulently reimbursed and/or paid her company for services rendered and materials purchased that were not authorized or approved by the members of the Association pursuant to the Management Agreement.

12. LOWRY has received and used Gift Cards that were not authorized under the Management Agreement with the Association. These Gift Cards were used to purchase materials alleged to be for the Association. These purchases were then submitted to the Association for reimbursement by LOWRY. LOWRY refused to provide verification of who purchased said Gift Cards and documentation as to the source of funds used to purchase the Gift Cards. LOWRY has a fiduciary and legal responsibility to provide documented evidence of expenditures made by LOWRY, for the benefit of the Swim Club, which were reimbursed by the Swim Club.

13. LOWRY has utilized certain vendors and self-owned companies to provide services for the members of the Association. Amounts paid to these entities exceed the amounts provided under contract and contain amounts for chemicals that could not have been utilized for the Swim Club facility without eminent harm to the members.

14. As a signatory on the Association's Operating Account, Reserve Accounts and the Management Company Account, LOWRY has used these accounts to further her own financial gains at the expense of members of the Association. LOWRY has used ghost accounts to transfer funds from reserve accounts and operating accounts. LOWRY controls millions of dollars in HOA funds.

15. The actions of LOWRY are willful, negligent, malicious, illegal and unauthorized conduct. LOWRY has breached her fiduciary responsibility to the members of the Association. LOWRY has used member funds to pay for legal services relating to lawsuits filed by a member of the Association against the Defendant for negligent acts of the Defendant. The Association is not a named party to any lawsuit. These fees were paid to attorneys who represent the Plaintiffs as a member of the Association. The fees are being used to defend the actions of the Defendant which constitutes a conflict of interest between the parties. The attorneys are protecting the actions of the Defendant against the members who are paying their fees. These attorneys represent all of the HOA communities managed by the Defendant.

16. Further, LOWRY failed to properly deduct employee payroll taxes and issue these employees W-2 forms as required by the Internal Revenue Code. The failure of LOWRY to properly report the employees income has caused the members to be liable for penalties, fines, and past due taxes.

V. Fraud

17. All previous allegations are incorporated herein by reference.

18. Defendant knowingly and recklessly made false and material misrepresentations. Defendant omitted material facts from annual accounting which made her representations fraudulent and misleading. Defendant knew that her representations were false when they were made, and/or made these misrepresentations recklessly. Defendant has committed fraud in the performance of the agreements of the parties.

19. Defendant intended that Plaintiffs would act on her misrepresentations and omissions.

20. Plaintiffs relied on the foregoing misrepresentations to the detriment of the Plaintiffs, and Defendant has benefited from Plaintiffs' reliance.

21. All of the foregoing acts of common law fraud are continuing in nature.

22. As a result of the foregoing common law fraud by the Defendants, Plaintiffs is entitled to rescission of all transactions, and to the return of all consideration paid to the Defendant.

23. In the alternative, as a result of the foregoing common law fraud by the Defendant, Plaintiffs has sustained actual damages in excess of the minimum jurisdictional limits of this Court.

VI. Breach of Fiduciary Duty

24. Plaintiffs reallege and incorporates by reference the preceding paragraphs for all purposes the same as if set forth herein verbatim.

25. Defendant owed Plaintiffs fiduciary duty. The duty was owed, among other reasons, because of a contractual relationship with Plaintiffs based upon their membership in the Association and confidence that included a trust that Plaintiffs' funds would be properly manage and that Defendant would not profit by way of fraud or willful misconduct. Defendant breached and betrayed that trust.

26. Defendant breached her fiduciary duties to the Plaintiffs. As a direct and proximate result of that breach, Plaintiffs have been injured and suffered damages within the jurisdictional limits of this Court.

VII. Negligent Misrepresentation

27. All previous allegations are incorporated herein by reference.

28. Plaintiffs would show that Defendant has made negligent misrepresentations to Plaintiffs.

29. In the course of her business, Defendant made representations to Plaintiffs in which she supplied false information.

30. Defendant made these false representations for the guidance of Plaintiffs, and Plaintiffs justifiably relied on these false representations.

31. Defendant did not exercise reasonable care of competence in obtaining and communicating the false information to Plaintiffs.

32. Defendant's negligence has proximately caused damage to Plaintiffs in excess of the minimum jurisdictional limits of this Court.

VIII. Constructive Fraud

33. All previous allegations are incorporated herein by reference.

34. Defendant committed constructive fraud when she misrepresented material facts and failed to disclose material facts, including her conflicts of interest as described above.

35. As a result of the foregoing constructive fraud by the Defendant, Plaintiffs are entitled to the return of all fraudulent consideration paid.

36. In the alternative, as a result of the constructive fraud by Defendant, Plaintiffs are entitled to actual damages in excess of the minimum jurisdictional limits of this Court.

37. In addition to the foregoing remedies, Plaintiffs are also entitled to the equitable remedy of disgorgement of all compensation and other benefits received by Defendant in the course of her duties to Plaintiffs.

IX. Breach of Contract

38. All previous allegations are incorporated herein by reference.

39. Plaintiffs would show that defendant has breached a contract or contracts with Plaintiffs as a member of the Association.

40. Plaintiffs have been damaged by Defendant's material breaches of contract and will continue to be damaged by Defendant's wrongful acts. Plaintiffs are therefore entitled to actual damages in excess of the minimum jurisdictional limits of this Court.

X. Exemplary and Punitive Damages

41. All previous allegations are incorporated herein by reference.

42. The harm to Plaintiffs from Defendant's tortious conduct resulted from Defendant's fraud, malice, negligence, illegal and unauthorized conduct.

43. As permitted by Chapter 41 of the Texas Civil Practice & Remedies Code, Plaintiffs ask that the Court and Jury award exemplary and punitive damages in an amount sufficient to punish the Defendant and to set an example that will deter others from committing similar acts in the future.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, prays for the following:

- a. that Defendant be enjoined from transferring or encumbering funds under Defendant's control that may be required to compensate the Plaintiffs for its damages; Plaintiffs will be irreparably damage without the Order of this Court.
- b. that a constructive trust be imposed on all funds at issue;
- c. that Defendant be cited to appear and answer;
- d. that, upon trial by jury on the merits, Plaintiffs recover actual damages;
- e. that, upon trial by jury on the merits, Plaintiffs recover exemplary and punitive damages, and
- f. that, upon trial by jury on the merits, Plaintiffs recover attorney fees, prejudgment interest, post judgment interest, costs of court, and such other and further relief to which Plaintiffs may be justly entitled.

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