

NO. CV2116673

COLONY RIDGE DEVELOPMENT, LLC	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
V.	§	OF LIBERTY COUNTY, TEXAS
	§	
LEEANN WALKER, MARYLOU SMITH, CARLY SAGER, BARBARA NORRIS, RONALD CULBERTH, DIANA CHUNN, AND DONALD ENLOE	§	
	§	
Defendants.	§	<u>253rd</u> JUDICIAL DISTRICT
	§	

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Colony Ridge Development, LLC, hereinafter Plaintiff, complaining of and about LeeAnn Walker, MaryLou Smith, Carly Sager, Barbara Norris, Ronald Culberth, Diana Chunn, and Donald Enloe, hereinafter Defendants, and for cause of action show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends that discovery be conducted under Discovery Level 3.

PARTIES AND SERVICE

Plaintiff, Colony Ridge Development, LLC, is a Texas Limited Liability Company. Its registered address is 301 Forest Lane, Huntsville, Texas 77340.

Defendants may be served with notice of this lawsuit at the following address:

1. LeeAnn Walker may be served with process at 1257 County Road 347 N, Cleveland, Texas 77327, or wherever she may be found.

2. MaryLou Smith may be served with process at 59 County Road 351, Cleveland, Texas 77327, or wherever she may be found.
3. Carly Sager may be served with process at 1325 County Road 347 N, Cleveland, Texas 77327, or wherever she may be found.
4. Barbara Norris may be served with process at 140 County Road 3430, Cleveland, Texas 77327, or wherever she may be found.
5. Ronald Culberth may be served with process at 8536 Plum Grove Road, Cleveland, Texas 77327, or wherever he may be found.
6. Diana Chunn may be served with process at 214 County Road 347 S, Cleveland, Texas 77327, or wherever she may be found.
7. Donald Enloe may be served with process at 881 Seth Boulevard, Cleveland, Texas 77328, or wherever he may be found.

JURISDICTION AND VENUE

The subject matter in controversy is within the jurisdictional limits of this court.

Plaintiffs seek:

- a. Monetary relief of over \$1,000,000.00, and a demand for judgment for all other relief to which the Plaintiff deems itself entitled.

This court has jurisdiction over Defendants, because said Defendants are Texas residents.

Venue in Liberty County is proper in this cause under Section 15.002 of the CPRC because Liberty County is the place where all or a substantial part of the events or omissions giving rise to the claim occurred.

FACTS

Plaintiff is a real estate developer operating in Liberty County, Texas. The City of Plum

Grove, Texas (hereinafter “the City”) is a small city located within Liberty County which neighbors several of Plaintiff’s real estate developments. Because of this close proximity of Plaintiff’s real estate developments and the City, Plaintiff also owns land within the City. Plaintiff has been harmed as a landowner because of the actions of the Defendants, and said ownership provides Plaintiff standing to bring this suit.

During the years that Plaintiff has been operating in Liberty County, its business has been met with significant hostility from the City through the actions of the former Mayor and City Council Members. The Defendants have all played a role in harassing or impeding Plaintiff’s business operations. Defendant, LeeAnn Walker, is the former Mayor of the City. Defendants, MaryLou Smith, Carly Sager, Barbara Norris, Ronald Culberth, Diana Chunn, are the City’s current Council Members. Defendant, Donald Enloe, has harassed and impeded Plaintiff’s business operations at the instruction of the former Mayor and the City Council Members.

**THE CITY OFFICIALS HAVE A FIDUCIARY DUTY TO THE
CITIZENS OF THE CITY OF PLUM GROVE, TEXAS**

All City officials owe a fiduciary duty to the electorate. This duty was clearly recognized by the 5th Circuit Court of Appeals in *Shushan v. United States* where the Court stated that “[n]o trustee has more sacred duties than a public official...”¹ “Because fiduciaries are difficult to monitor and have wide access to power over beneficiary resources and assets, fiduciaries are under rigorous obligations that ensure compliance with their role responsibilities.”² These duties include (1) the duty of care, (2) the duty of loyalty, (3) the duty of impartiality, (4) the duty of accountability, and (5) the duty to preserve the public’s trust in government.³

¹ *Shushan v. United States*, 117 F.2d 110, 115 (5th Cir. 1941)

² *Ponet & Leib*, 2011

³ *Id.*, *Natelson*, 2004, *Wechsler*, 2013

The duty of care requires public officials to carry out their sworn duties competently and faithfully. Among these duties includes exercising good judgment in managing treasury assets (e.g., City funds). The duty of loyalty requires public officials to put the public's interest over their own personal interest. The duty of impartiality requires City officials to treat all citizens fairly and free from any bias. The duty of accountability requires transparency of the City official's activities including access to a City's budget and all City expenditures. Lastly, the duty to maintain the public's trust in government is critical. Without public trust in government, governments will fail. In order to maintain the public's trust, City officials should avoid taking any actions that have even the slightest appearance of impropriety.

When City officials fail to uphold their fiduciary duties, it is the public over which they govern that suffers. Because of the power vested in City officials, they must be held to the highest standard and they must be held accountable for their actions when they fall below this standard.

**THE CITY OFFICIALS HAVE BREACHED THEIR FIDUCIARY DUTY
TO THE CITIZENS OF THE CITY OF PLUM GROVE, TEXAS**

The Defendant City officials have breached their fiduciary duties to the public. The Defendants have breached their duty of care to the citizens of the City of Plum Grove, Texas. They have not acted prudently regarding expenditures they have authorized the City to make. Examples of these expenditures include filing a different lawsuit against Plaintiff in which they alleged wastewater violations. The Plaintiff was not the appropriate party and not responsible for any of the alleged wastewater violations. The City officials approved to expend City funds to hire Wayne Dolcefino in an attempt to smear the reputation of Plaintiff. This action was not taken with the public's best interest in mind. It was taken as a calculated and vindictive action in an attempt to harm Plaintiff.

Their smear tactic was not successful. The City officials have also taken action and expended funds to close roads for the purpose of harassing Plaintiff. Defendants claimed that the road closures were necessary due to road damage that needed to be fixed. However, the road closures were eventually removed, and as of the time of this petition the roads have not been repaired. The Defendant's vindictive actions have depleted the City's funds and the City is now without sufficient funds to fix the roads or fulfill other basic duties.

The above vindictive actions by the Defendant City officials are also a clear breach of their duty of loyalty to the citizens of the City. The citizens continue to suffer because of the City's failing infrastructure. Rather than expend funds to maintain the City, the Defendants wasted the City's funds on their own personal vendetta against Plaintiff. The Defendant's actions were a complete waste of City funds and yielded absolutely no benefits to the citizens of the City.

The Defendants have treated Plaintiff, a citizen of the City, unfairly which is a breach of their duty of impartiality. This is shown by the above-described actions taken by the Defendants against Plaintiff. The Defendants, through their actions and words, have made it very clear that they do not like Plaintiff. Whatever feelings the Defendants have against Plaintiff, it does not justify the Defendant's targeting and unfair treatment towards Plaintiff, a citizen of the City.

The Defendants have failed to account for the amount of funds wasted on their personal vendetta against Plaintiff, which is a breach of their duty of accountability to the citizens of the City. The City must be required to disclose the amount of funds they have expended for the above-described actions taken against Plaintiff. The taxpaying citizens deserve to see how the Defendants have wasted the City funds rather than use those funds to maintain and benefit the City.

The City officials have not taken any action to make improvements to City infrastructure, which is in desperate need of repair. Defendants have even refused assistance from Plaintiff to repair damaged infrastructure. The Defendant's actions make clear what their interests are, and it has nothing to do with what is in the best interest of the public.

**DEFENDANTS DO NOT HAVE OFFICIAL IMMUNITY
AND ARE JOINTLY AND SEVERALLY LIABLE**

Government officials usually enjoy governmental or official immunity for actions taken while in office. This immunity prevents public officials from being personally liable for their performance of (1) discretionary acts (2) taken in good faith (3) within the scope of their authority.⁴ The Texas Municipal League (“TML”) handbook explains that a discretionary act, as opposed to a ministerial act, is one that involves the personal judgment of the actor. The actions taken by the Defendant City officials were discretionary acts because these acts were not required by the role of the Defendants, but rather were actions taken based on the Defendant's reasoned judgment. It is undisputed that these actions were within the scope of their authority. The crux of their liability is grounded in the fact that they took these decisive actions in bad faith because of their ill will towards Plaintiff. To determine whether actions were done in good faith, courts ask “whether a reasonably prudent official, under the same or similar circumstances, could have believed that his conduct was justified based on the information he possessed when the conduct occurred.”⁵

As mentioned above, the actions taken by defendant did nothing to benefit the citizens of the City, but rather hurt them by diverting City funds that should have been used on much

⁴ *Franka v. Velasquez*, 332 S.W.3d 367 (Tex. 2011); *Texas Municipal League: 2019 Handbook for Mayors and Councilmembers*, 79 (2019)

⁵ *Ballantyne v. Champion Builders, Inc.*, 144 S.W.3d 417, 426 (Tex. 2004)

needed infrastructure maintenance but was instead used to fund their personal vendetta against Plaintiff. It is clear that the vindictive actions taken by the Defendants were not done in good faith. In *Telthorster v. Tennell*, the Texas Supreme Court held that “when an officer exceeds the bounds of reasonableness, good faith cannot be shown, and the officer will not enjoy official immunity’s protection.”⁶ Because of their failure to act in good faith they do not qualify for official immunity and should be held personally liable for their actions.

VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT

The Defendants have violated, and continue to violate, the Texas Open Meetings Act (hereinafter “the Act”). The “Act generally applies when a quorum of a governmental body is present and discusses public business, or a quorum of a governmental body is present and the governmental body is receiving information from or providing information to a third party.”⁷ The Defendants have knowingly violated the Act by engaging in prohibited conversations with the Defendant, and former Mayor, LeeAnn Walker without adhering to the rules under the Act.

These prohibited conversations have occurred over a series of communications between all Defendants in this case. Government Code Section 551.143 statutorily prohibits this type of conduct and states that “a member of a governmental body commits an offense if the member:

“(1) Knowingly engages in at least one communication among a series of communications that each occur outside of a meeting authorized by this chapter and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum of members but the members engaging in the series of communications constitute a quorum of members; and,

(2) knew at the time the member engaged in the communication that the series of communications:

⁶ *Telthorster v. Tennell*, 92 S.W.3d 457, 465 (Tex. 2002)

⁷ Tex. Gov’t Code Ann. § 551.001(6); id. § 551.001(3); § 551.001(4)(A); § 551.001(4)(B); *Texas Municipal League: Texas Open Meetings Act Laws Made Easy*, 1 (2017)

- (A) involved or would involve a quorum; and
- (B) would constitute a deliberation once a quorum of members engaged in the series of communications.”⁸

Defendant, LeeAnn Walker, was replaced as Mayor by Mary Arrendell in October of 2020. However, she has continued to control the City council through these secret meetings and communications. She was even quoted by Bluebonnet News saying:

“...Nothing is going to change when I leave. Nothing. You are going to have five members who all [have] my ideology – five – and Mary Arrendell. I don’t think Ms. Arrendell has any idea how much work is involved. She won’t be able to do anything. She is not going to be able to negotiate anything. She is not going to be able to get rid of any lawsuits, any attorneys or make the council do anything because you will have five members who are in agreement with each other.”⁹

Defendant, LeeAnn Walker, has seen to it personally that nothing has been done. In *Asgeirsson v. Abbot*, the 5th Circuit affirmed a trial court’s decision which emphasized the Act’s “time, place and manner restriction.”¹⁰ The trial court further explained that the Act does not limit what City officials say, but rather limits where they can say it.¹¹

The communications made by Defendants in violation of the Act have damaged the Plaintiff and all citizens of the City. Pursuant to Government Code Section 551.141, all City decision conducted in this manner should deemed voidable. While not pursued in this litigation, Plaintiff also intends to assist in having the Defendants criminally charged in the hope that they will be subject to the criminal penalties enumerated under Section 551.143(b), including, (1) a fine of not less than \$100 and not more than \$500, (2) confinement in the county jail for not less than one month or more than six months, or (3) both the fine and confinement.

⁸ Tex. Gov’t Code Ann. § 551.143

⁹ Bluebonnet News, City of Plum Grove planning to install speed bumps (Sept. 18, 2020), <https://bluebonnetnews.com/2020/09/18/city-of-plum-grove-planning-to-install-speed-bumps/>

¹⁰ *Asgeirsson v. Abbott*, 696 F.3d 454, 460 (5th Cir. 2012)

¹¹ *Id.*

**CIVIL AIDING AND ABETTING, TRESPASS, TORTIOUS
INTERFERENCE WITH AN EXISTING CONTRACT**

Defendant, Donald Enloe, is involved in this case because of his connection and collusion with the City in carrying out its breach of fiduciary duty to the citizens of the City. Plaintiff also brings claims against him for wrongful actions he has committed against Plaintiff including (1) trespass onto Plaintiff's property, (2) his negligent development of his land which have resulted in a diversion of water onto Plaintiff's property causing damage, and (3) engaging in activities which interfere with Plaintiff's existing contracts with its customers.

The elements for civil aiding and abetting are (1) the primary wrongdoer (the City officials) committed a wrongful act that harmed the Plaintiff; (2) the Defendant (Donald Enloe) was generally aware of the primary wrongdoer's breach of duty; (3) the Defendant had the intent to assist the primary wrongdoer in committing the act; (4) the Defendant provided the primary wrongdoer with substantial assistance or encouragement in the breach of duty; and (5) the harm that occurred was within the scope of the risk created by breaching the duty of which the defendant was aware.¹²

Defendant, Donald Enloe, lives and operates a business in the surrounding area. At the request of City officials, he has harassed and impeded Plaintiff from operating by wrongfully blocking Plaintiff's roadways or by conducting other similar acts with the intent to harm Plaintiff's business. By reference and incorporation of the above-described acts carried out by the Defendant City officials, the first element for civil aiding and abetting is satisfied. Because of his relationship with the Defendant City officials, he was well aware of the actions they were taking against Plaintiff; ipso facto this shows that he was generally aware of their breach.

¹² Nathan I. Combs, *Civil Aiding and Abetting Liability*, 58 *Vanderbilt Law Review* 241 (2019)

Defendant Donald Enloe's actions showed that he intended to assist the City officials in carrying out their breach, and he did in fact provide substantial assistance and encouragement to the Defendant City officials in carrying out their breach of fiduciary duty. He has colluded with the City officials as part of a quid pro quo relationship. Because of his collusion with the City officials, they have rewarded him with special benefits. He has acted as an extension of the Defendant City officials and thus further perpetuated their breach of fiduciary duty to the citizens of the City.

As stated above, Plaintiff also brings causes of action against Defendant, Donald Enloe, for trespass, diversion of water onto Plaintiff's property, and for engaging in activities which interfere with Plaintiff's existing contracts with its customers.

Defendant, Donald Enloe, has knowingly trespassed on Plaintiff's tract on a number of occasions. He is currently developing his land in a way which is causing water to be diverted onto Plaintiff's land and is causing damage. The building of the structure was approved by the City officials. This approval by the City officials is one example of a benefit he has received for assisting the City officials in carrying out their vindictive actions against Plaintiff. Defendant, Donald Enloe, has also interfered with the contracts between Plaintiff and Plaintiff's clients by harassing and blocking roadways.

DAMAGES

Plaintiff requests that the City officials be required to account for all funds expended in the above-described acts which constitute a breach of their fiduciary duties to the citizens of the City of Plum Grove, Texas. This disclosure is required to fully ascertain the extent of damages incurred. As joint tortfeasors in this cause of action, Plaintiff requests that all Defendants be held jointly and severally liable for the damages pursuant to Section 33.013(b) of the Civil Practice

and Remedies Code. In the alternative, Plaintiff requests that Defendants be held individually liable for damages equal to their percentage of responsibility pursuant to Section 33.013(a) of the Civil Practice and Remedies Code. Plaintiff urges the Court to follow the Wisconsin Doctrine, cited in *Burns v. Essling*, which would require the public officers to repay the City for the funds that they wrongfully paid out.¹³

For the violations under the Texas Open Meetings Act, Plaintiff requests that the Court deem these actions voidable, as allowed by statute. Because of the Defendant's powerful position and their gross disregard for the law, Plaintiff also seeks punitive damages to the fullest extent allowed by law.

With regard to the additional causes of action brought against Defendant, Donald Enloe, Plaintiff seeks all economic and actual damages available at law and equity.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 30 days of service of this request, the information or material described in Rule 194.2.

The disclosures must be signed in accordance with Texas Rules of Civil Procedure, Rule 191.3, and delivered to the undersigned attorney. If you fail to comply with the requirements above, the Court may order sanctions against you in accordance with the Texas Rules of Civil Procedure.

¹³ *Burns v. Essling*, 163 Minn. 57, 63 (Minn. 1925)

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Colony Ridge Development, LLC, respectfully prays that the Defendants, LeeAnn Walker, MaryLou Smith, Carly Sager, Barbara Norris, Ronald Culberth, Diana Chunn, And Donald Enloe, be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against the Defendants, jointly and severally, for the economic and actual damages requested hereinabove in an amount in excess of the minimum jurisdictional limits of the Court, together with pre-judgment and post-judgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,
Beard & Lane, P.C.

By: /s/ Brent A. Lane

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