

CAUSE NO. 2018-25040

UMPHREY FAMILY LIMITED
PARTNERSHIP, et al
Plaintiffs

VS.

JOLYNE THOMPSON, JMT 2012
HOMESTEAD IRREVOCABLE
TRUST, et al
Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Plaintiffs Umphrey Family Limited Partnership and S.G. Umphrey and files this Original Petition against Defendants Jolyne Thompson, JMT 2012 Homestead Irrevocable Trust, and Harold N. May, asserting causes of action for, *inter alia*, fraud and constructive trust, in support of which Plaintiffs respectfully show the following:

I.

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4 and affirmatively plead that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because Plaintiffs seek monetary relief over \$100,000.

II.

CLAIM FOR RELIEF

2. Plaintiffs seek monetary relief over \$1,000,000.

III.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this controversy because the amount in dispute exceeds the minimum jurisdictional amount of the District Courts of Harris County, Texas.

4. Venue is proper in Harris County, Texas under Texas Civil Practice and Remedies Code §15.011 et seq and because this is a suit involving a title dispute over real property located in Harris County, Texas and because the Defendant, Jolyne Thompson resides in Harris County.

IV.

PARTIES

5. Plaintiff Umphrey Family Limited Partnership (“UFLP”) is a Texas limited partnership with its principal office in Jefferson County, Texas.

6. Plaintiff S.G. Umphrey (“SG”) is a Texas resident who resides in Jefferson County, Texas.

7. Defendant Jolyne Thompson (“Thompson”) is an individual residing in Texas. She may be served with process by delivering the citation and a copy of the petition to 6021 Glen Cove Street, Houston, Texas 77007, or wherever she may be found.

8. Defendant JMT 2012 Homestead Irrevocable Trust (the “Trust”) is a Texas trust. It may be served with process by delivering the citation and a copy of the petition to its Trustee, Jolyne Thompson, at JMT 2012 Homestead Irrevocable Trust, 6021 Glen Cove Street, Houston, Texas 77707, or wherever its Trustee may be found.

9. Defendant Harold “Hap” May (“May”) is an individual residing in Texas. He may be served with process by delivering the citation and a copy of the petition to Two Riverway, 15th Floor, Houston Texas, 77056, or wherever he may be found.

V.

FACTUAL ALLEGATIONS

10. Plaintiffs allege that at all times material hereto the Defendant, Thompson knew that Mr. Umphrey was a married man.

11. Plaintiffs allege the Defendant Thompson was first introduced to Mr. Umphrey sometime around 2008. Thereafter, she initiated and participated in an affair with Mr. Umphrey.

12. Plaintiffs allege that commencing in 2008 and continuing for many years thereafter, Defendant Thompson induced Mr. Umphrey to transfer significant property, assets, and monies belonging to Plaintiffs to and for the benefit of the Defendant Thompson as part and parcel of their affair.

13. In September 2008, Mr. Umphrey transferred \$24,000 to Thompson to enter a World Series of Poker event in Las Vegas. The Defendant Thompson quickly became accustomed to events such as this along with extravagant gifts.

14. In 2012, Mr. Umphrey began experiencing early onset Alzheimer's.

15. In July 2012, the Defendant Thompson's induced Mr. Umphrey to transfer \$175,000 to her.

16. In October 2012, at the Defendant Thompson's urging, Mr. Umphrey caused UFLP to wire transfer to the Trust the sum of \$1,500,000.00. The Trust was created by the Defendant May on or about the same day of the wire transfer. This was done for the sole purpose of purchasing the property at issue.

17. In October 2012, as directed by the Defendants Thompson and May, the Trust used the \$1,500,000.00 (from UFLP) to purchase that certain property located at 6021 Glen Cove Street, Houston, Texas 77007 (the "Property").

18. In January 2013, Mr. Umphrey was induced by the Defendant Thompson to issue a check payable to the Tax Assessor-Collector in the amount of \$30,218.14 for the Property's 2012 property taxes.

19. In December 2013, Mr. Umphrey was again induced by the Defendant Thompson to issue a check payable to the Tax Assessor-Collector in the amount of \$42,143.86 for the Property's 2013 property taxes.

20. In January 2015, Mr. Umphrey was again induced to issue a wire transfer from UFLP to the Trust in the amount of \$52,952.08 for the Property's 2014 property taxes.

21. In concert, the Defendants acted willfully, maliciously, and with the deliberate intent to conspire, defraud, injure, and damage Plaintiffs by obtaining and receiving money and assets known by Defendants to be the property of Plaintiffs and Mr. Umphrey with the knowledge that Mrs. Umphrey had not joined in the transfer of said money and assets to Defendants.

22. The full extent, nature, and amount of money and assets swindled by the Defendant Thompson without authorization, knowledge, or consent of Plaintiffs is presently unknown to Plaintiffs. Plaintiffs did not consent to the transfer of funds, assets, money, or property to Defendants at any time in any amounts whatsoever. By this Petition, Plaintiffs seek to recover all property, funds and/or assets and the profits therefrom fraudulently transferred to Defendants.

VI.

CONDITIONS PRECEDENT

23. All conditions precedent to Plaintiff's recovery have been performed, have occurred, have been waived, or are excused by law.

VII.

FIRST & SECOND CAUSES OF ACTION

(Common-Law Fraud: (i) fraudulent misrepresentation, and (ii) fraudulent inducement)

24. Plaintiffs incorporate herein by reference all preceding paragraphs.

25. Defendants defrauded Plaintiffs by inducing the principal officer of UFLP, Mr. Umphrey, to transfer money from UFLP to purchase the Property. The Defendant Thompson misrepresented to Mr. Umphrey that the home would be “our home” when in fact, the Defendant Thompson (who was well aware of Mr. Umphrey’s dementia) intended to take title to the Property in a Trust wholly owned by her. The Trust (a homestead trust) did in fact take title to the Property and was specifically designed (by the Defendant May) to shield the property from claims of creditors—including Mr. Umphrey and Plaintiffs.

THIRD CAUSE OF ACTION

(Statutory Fraud)

26. Plaintiffs incorporate herein by reference all preceding paragraphs.

FOURTH, FIFTH, & SIXTH CAUSES OF ACTION

(Aiding & Abetting: (i) Assisting or Encouraging, (ii) Assisting and Participating, and (iii) Civil Conspiracy)

27. Plaintiffs incorporate herein by reference all preceding paragraphs.

28. The Defendants Thompson and May defrauded Plaintiffs by convincing the principal officer of UFLP to siphon and use partnership funds to purchase the Property. The Defendant May had knowledge of the Defendant Thompson’s fraudulent scheme. The defendant May also intended to facilitate the fraudulent transaction by coming up with the idea for the Trust vehicle. Indeed, the Defendant May not only encouraged the Defendant Thompson to use the Trust, he assisted in the fraudulent conduct by drafting the Trust agreement that eventually took title to the

Property. The Defendant May's involvement, experience, and expertise—as a CPA and real estate attorney—were a substantial factor in defrauding Plaintiffs.

SEVENTH CAUSE OF ACTION

(To Set Aside Transfer of Property Without Spousal Consent)

29. Plaintiffs incorporate herein by reference all preceding paragraphs.

30. Defendants are wrongfully in possession of said funds and property as well as all assets purchased with said funds and have converted said funds and assets for their own use. Plaintiffs did not consent, have knowledge of, or join in the transfer of any such funds, assets, and/or property to Defendants at any time in any amounts whatsoever.

31. Defendants fraudulently and wrongfully caused title to the Property to vest in the name of the Trust. Defendants are wrongfully in possession of the Property and have converted the Property and the funds used to purchase the Property by their wrongful acts.

32. Plaintiffs request that the Court set aside all transfers to the Defendants made without the consent or authorization of Plaintiffs as alleged above, deem Defendants constructive trustees of such property, and require Defendants to return all such property and all assets acquired with such property, and all profits and rents therefrom, to Plaintiffs.

EIGHTH CAUSE OF ACTION

(For Conversion of Funds)

33. Plaintiffs incorporate herein by reference all preceding paragraphs.

34. Plaintiffs have suffered and continue to suffer damages in an amount to be proven at the time of trial which is in excess of \$2,000,000.

35. At the time of each conversion, Plaintiffs had the immediate right to possess the funds and property.

36. As a direct and proximate result of Defendants wrongful acts, Plaintiffs have suffered and will continue to suffer damages in an amount to be proven at the time of trial which exceeds \$2,000,000.

NINTH CAUSE OF ACTION

(For Imposition of a Constructive Trust)

37. Plaintiffs incorporate herein by reference all preceding paragraphs.

38. The facts alleged above require the imposition of a constructive trust against Defendants with respect to the Property because Plaintiffs have an ownership interest in the Property that was subverted by the transfer of funds to Defendants without Plaintiffs consent, knowledge, or authorization, or alternatively, by reason of Defendants acts in wrongfully and/or fraudulently causing title to the Property to vest in Trust's name. By engaging in such a scheme, Defendants wrongfully acquired title to the Property by fraud, undue influence, and other wrongful acts, and are not entitled to ownership of the Property or of any of the assets in their possession acquired with Plaintiffs' property.

39. Plaintiffs are the true equitable owners of the Property which was purchased with funds of Plaintiffs and Mr. Umphrey, as alleged above, and are the true owners of all of the funds and assets—and items purchased therewith—wrongfully transferred to Defendants.

40. By virtue of Defendants wrongful acts, they hold the Property and all assets in their possession and under their control acquired with the property of Plaintiffs as constructive trustees for the benefit of Plaintiffs.

41. Upon information and belief, Plaintiffs allege that Defendants will transfer or conceal funds and assets unless a constructive trust is imposed. Imposition of a constructive trust is fair and

equitable as between the parties in view of the unauthorized swindling of Plaintiffs property by Defendants.

TENTH CAUSE OF ACTION

(For Property Had and Received)

42. Plaintiffs incorporate herein by reference all preceding paragraphs.

43. Defendants became indebted to Plaintiffs in the sum of more than \$2,000,000.00 for property, funds, and/or assets taken from Plaintiffs which were thereafter used to purchase the Property and to pay expenses associated with the maintenance of said Property.

44. No payment has been made by Defendants to Plaintiffs, and there is now due and owing the sum of at least \$2,000,000.00 with interest on that amount at the current legal rate from the date each unauthorized transfer of property, funds, and/or assets were made.

ELEVENTH CAUSE OF ACTION

(For Unjust Enrichment)

45. Plaintiffs incorporate herein by reference all preceding paragraphs.

46. Defendants have taken the aforementioned funds and assets from Plaintiffs without their consent, knowledge, or authorization and have wrongfully converted those funds for their own personal use. Defendants wrongfully used the aforementioned funds to purchase the Property in the name of the Defendant Trust. Defendants have converted additional funds provided by Mr. Umphrey, also without the consent, knowledge, or authorization of Plaintiffs, to pay their own expenses and to acquire assets in their own names.

47. Defendants are thus unjustly retaining the benefit of funds and assets that Defendants induced Mr. Umphrey to transfer to or for the benefit of Defendants without the consent or authorization of Plaintiffs.

48. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiffs have suffered, and will continue to suffer, damages in an amount to be proven at the time of trial which exceeds \$2,000,000.

TWELFTH CAUSE OF ACTION

(For an Accounting)

49. Plaintiffs incorporate herein by reference all preceding paragraphs.

50. The exact amounts of property wrongfully transferred to Defendants and/or expended by Defendants for their own personal use are unknown to Plaintiffs and can be determined only by an accounting. Plaintiffs seek an accounting of all funds and assets transferred or paid to Defendants, including an accounting of all real property and person property, vehicles, jewelry, furniture, art, clothing, and other items acquired with ill-gotten funds, and the profits and rents therefrom.

THIRTEENTH CAUSE OF ACTION

(To Quiet Title)

51. Plaintiffs incorporate herein by reference all preceding paragraphs.

52. Plaintiffs are the true equitable owners of the Property located at 6021 Glen Cove Street, Houston, Texas 77007. The legal description of the Property is: LT 16 GLEN COVE .3890 AC, Harris County, Texas.

53. Plaintiffs right to title in the Property is based on the fact that the Property was purchased with funds wrongfully taken by Defendants. Plaintiffs would not have consented to or authorized the use of funds for any purchase of the Property for Defendants.

54. Plaintiffs seek to quiet title against Defendants, and all persons unknown who claim legal or equitable title, right or interest in the Property, as of October 26, 2012, the time legal title was taken in the Trust's name.

FOURTEENTH CAUSE OF ACTION

(Reformation of Deed)

55. Plaintiffs incorporate by reference all preceding paragraphs.

56. Plaintiffs are informed and believe Defendants wrongfully caused legal title to the Property to vest in the name of the Defendant Trust.

57. Defendants did not provide any consideration for the purchase of the Property. The purchase money was provided by Plaintiff UFLP. This constitutes a failure of consideration and fraud by the Defendants with respect to the deed to the Property and constitutes a purchase money resulting trust. The recordation of the deed was grossly unfair and unconscionable as to Plaintiffs.

58. Plaintiffs will suffer substantial and irreparable harm if the deed to the Property is not reformed. Plaintiffs will be deprived of the normal rights and benefits of ownership of the Property and will be unable to exercise its rights to sell the Property.

59. Plaintiffs hereby demand that the deed to the Property be reformed to correctly name UFLP as the true owner.

FIFTEENTH CAUSE OF ACTION

(Declaratory Relief)

60. Plaintiffs incorporate by reference all preceding paragraphs.

61. A dispute has arisen and now exists between Plaintiffs and Defendants in that Plaintiffs contend that Plaintiff UFLP owns the Property. Plaintiff's desire a judicial determination of their rights and a declaration that equitable title to the Property vests in Plaintiff UFLP and that such title is superior to any interest claimed by Defendants.

62. A judicial determination is necessary and appropriate at this time under the circumstances in order that Plaintiffs may ascertain their rights in the Property.

VIII.

REQUEST FOR DISCLOSURE

63. Pursuant to Rule 194, Texas Rules of Civil Procedure, Defendants are required to disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

IX.

DISCOVERY RULE

64. Plaintiffs affirmatively plead the Discovery Rule.

X.

JURY DEMAND

65. Plaintiffs respectfully demand a jury trial and have tendered the appropriate fee.

XI.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully requests a jury trial and that Defendants be cited to appear and answer herein; and that upon final trial of this cause, that Plaintiffs have the following:

1. Actual damages;
2. Exemplary damages;
3. The set aside and return of all property and assets wrongfully obtained by Defendants, and all items acquired by Defendants with such funds, including without limitation, the Property;
4. For damages according to proof, including general, special, and compensatory damages, in the amount of the value of the funds and assets converted by Defendants, believed to be in excess of \$2,000,000;

5. For the imposition of a constructive trust and/or purchase money resulting trust and for Defendants to return the Property to Plaintiffs;
6. For an accounting and for an Order for payment to Plaintiffs of the amount found to be due Plaintiffs as a result of the accounting and interest thereon at the legal rate;
7. To quiet title to the Property such that Plaintiffs be recognized as the true owners of the Property with full rights of ownership and possession;
8. For the deed to the Property to be reformed to recognize Plaintiffs as the true and equitable owners of the Property;
9. For reasonable attorney's fees and costs;
10. For all costs of court; and
11. For such other and further relief, special or general, legal or equitable, as Plaintiffs may show themselves to be justly entitled to receive.

Respectfully submitted,



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