

Cause No. _____

WEST MEMORIAL CIVIC ASSOCIATION,
Plaintiff,

VS.

BRYAN C. POPP,
Defendant,

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, West Memorial Civic Association, in this lawsuit, would respectfully show the Court the following.

I. PARTIES; SERVICE OF PROCESS

Plaintiff is a non-profit corporation existing under and by virtue of the laws of the State of Texas with its principal office being located in Harris County, Texas.

Defendant, Bryan C. Popp, is a resident of Harris County, Texas, and may be served with process at 22703 Deville Drive, Katy, TX 77450 or wherever Bryan C. Popp may be found.

II. JURISDICTION AND VENUE

Pursuant to *Texas Civil Practice and Remedies Code*, jurisdiction and venue of this case properly lie in Harris County, Texas, in that Harris County is the county in which all or part of the property made the basis of this cause is located and/or is the county of Defendant's residence at the time the cause of action accrued.

This lawsuit seeks monetary relief of one hundred thousand dollars (\$100,000.00) or less and non-monetary relief. The damages sought are within the jurisdictional limits of the court.

III. DISCOVERY CONTROL PLAN

Discovery in this matter will be controlled by Discovery Control Plan Level 2 described in Rule 190.3 of the *Texas Rules of Civil Procedure*.

IV. RELEVANT RESTRICTIVE COVENANTS AND TYPE OF CAUSE OF ACTION

“Restrictive Covenant” means any covenant, condition, or restriction contained in a dedicatory instrument, whether mandatory, prohibitive, permissive, or administrative. TEX. PROP. CODE ANN. § 202.001(4) (Vernon 1995).

There are recorded certain *restrictive covenants* (Restrictions) providing for the creation of assessments and other charges to be paid to the Plaintiff that are the responsibility of the owner or owners of each lot under the jurisdiction of the Plaintiff. These Restrictions and amendments, if any, run with the land, are enforceable at law, and are recorded in the *Official Public Records of Real Property of Harris County, Texas*.

These Restrictions and amendments, if any, continue to be valid and enforceable against all properties under the jurisdiction of the Plaintiff.

These Restrictions constitute a legally binding and enforceable contract between the Plaintiff and Defendant. *Boudreaux Civic Ass’n v. Cox*, 882 S.W.2d 543, 547 (Tex. App. –Houston [1st Dist.] 1994, no writ); *See also Dunn v. Polly Ranch Homeowners Association*, 943 S.W.2d 906. Defendants’ failure to pay assessments to the Plaintiff constitutes a material breach of the contract. Defendants’ breach of the contract caused Plaintiff to suffer monetary damages in the form of unpaid assessments, interest, late fees, attorney’s fees, costs of court and other charges.

It has become necessary for the Plaintiff to bring this case to: (1) obtain a judgment for unpaid assessments and other charges legally due and owing to the Plaintiff; and (2) foreclose its lien for unpaid assessments and other charges legally due and owing to the Plaintiff that are secured by the Plaintiff’s lien on the property in question.

V. OWNERSHIP OF PROPERTY

According to a deed recorded in the office of the County Clerk of Harris County, Texas, Defendant is the owner of a tract of land described as *Lot 25, in Block 28, of the Second Partial Replat*

of West Memorial Section Three (3), a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 234, Page 41 of the Map Records of Harris County, Texas in Harris County, Texas (Property). The street address of the Property is 22703 Deville Drive, Katy, TX 77450. The Property is encumbered by the Restrictions and amendments, if any.

VI. PLAINTIFF'S AUTHORITY TO ENFORCE THE RESTRICTIVE COVENANTS

A property owners' association may initiate litigation affecting the enforcement of a restrictive covenant or the protection, preservation, or operation of the property covered by the dedicatory instrument. TEX. PROP. CODE ANN. § 202.004(b) (Vernon 1995).

VII. NOTICE OF RESTRICTIVE COVENANTS

An instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument. TEX. PROP. CODE ANN. § 13.002 (Vernon 1984).

The Restrictions have been properly recorded in the Official Public Records of Real Property of Harris County, Texas.

Despite notice of the Restrictions, Defendant is violating the Restrictions by failing to pay to Plaintiff the assessments and other charges authorized by the Restrictions or applicable law.

VIII. REQUEST FOR JUDGMENT ON ALL AMOUNTS DUE TO PLAINTIFF

The Restrictions obligate the owner or owners of each lot under the jurisdiction of the Plaintiff to pay to the Plaintiff assessments and other charges. Subsequent to the date the Restrictions were filed in the *Official Public Records of Real Property of Harris County, Texas*, the Defendant obtained an ownership interest in the Property. Upon the Defendant obtaining an ownership interest in the Property, the Defendant became obligated to pay to the Plaintiff assessments and other charges, all as set forth in the Restrictions.

Defendant has been mailed statements from Plaintiff requesting payment of the amount due and owing to the Plaintiff but, despite such requests, Defendant has failed and refused, and continues to fail and refuse to pay such amount. Attached as Exhibit A is a breakdown of the amount owed as of the date of filing this Original Petition. The breakdown does not reflect the total amount of attorney's fees owed as a result of the collection of assessments and other charges owed. Interest will continue to accrue on the principal balance until the total amount due is paid in full.

For the above-described reasons, the Defendant is obligated to pay to the Plaintiff the balance due for unpaid assessments and other charges authorized by the Restrictions or applicable law together with court costs and reasonable attorney's fees.

Plaintiff requests judgment against the Defendant for all amounts that are legally due and owing to Plaintiff.

IX. REQUEST FOR FORECLOSURE OF PLAINTIFF'S LIEN ON AMOUNTS SECURED BY PLAINTIFF'S LIEN ON THE PROPERTY

The Restrictions reserve to Plaintiff a lien on the Property to secure the payment of assessments and certain other charges due and owing on the assessment account of the Property.

Plaintiff is entitled to foreclose its lien on the portion of the total amount due and owing to the Plaintiff that is secured by the Plaintiff's lien on the Property.

X. ATTORNEY'S FEES AND COSTS

Plaintiff is entitled to recover attorney's fees pursuant to the Restrictions.

In addition, and/or in the alternative, in an action based on breach of a restrictive covenant pertaining to real property, the Court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim. TEX. PROP. CODE ANN. § 5.006 (Vernon 1984).

In the alternative, Plaintiff is entitled to recover its reasonable attorney's fees and costs pursuant to Section 38.001 of the Civil Practice & Remedies Code for a breach of contract.

Plaintiff designates the undersigned attorneys as expert witnesses on reasonable and necessary attorney's fees and costs of litigation incurred by the Plaintiff in connection with this suit.

XI. CONDITIONS PRECEDENT

All conditions precedent have been performed or have occurred. TEX. R. CIV. P. 54.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays that the Defendant be cited to appear and answer this Petition and, that on a full and final hearing on this cause, that:

1. The Plaintiff have judgment against Defendant for all charges legally due and owing to the Plaintiff on the assessment account of the Property that are not secured by the Plaintiff's lien on the Property together with any additional unsecured charges that may accrue prior to judgment;
2. The Plaintiff have judgment against Defendant for all charges legally due and owing to Plaintiff on the assessment account of the Property that are secured by the Plaintiff's lien on the Property together with any additional charges that are secured by the Plaintiff's lien on the Property that may accrue prior to judgment;
3. The Plaintiff be awarded reasonable attorney's fees (plus additional reasonable post-judgment attorney fees and expenses) and costs pursuant to the terms of the Restrictions and/or the *Texas Property Code*;
4. The Plaintiff have foreclosure of its lien created by the provisions of the Restrictions on the amounts awarded for numbers 2 and 3 above on the following described Property owned by the Defendant:

Lot 25, in Block 28, of the Second Partial Replat of West Memorial Section Three (3), a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 234, Page 41 of the Map Records of Harris County, Texas more commonly known as 22703 Deville Drive, Katy, TX 77450;
5. An *Order of Sale* shall issue to any sheriff or any constable within the State of Texas, directing the sheriff or constable to seize and sell the Property the same as under execution, in satisfaction of the final judgment in this cause subject to any superior liens provided for in the Restrictions or at law, if any;

6. The Plaintiff be allowed all such writs and processes as may be necessary to enforce and collect the final judgment in this cause, including all reasonable attorney's fees incurred in any such proceedings, and that execution issue for the judgment; and
7. The Plaintiff be awarded post-judgment interest on the entire amount awarded, including attorney's fees, at the interest rate authorized in the Restrictions or, where applicable, at the highest rate allowed by law, from the date of judgment until fully paid, together with all costs of court, and all such other and further relief, special or general, at law or in equity, to which Plaintiff may show itself justly entitled or as the Court may deem just.

Respectfully submitted

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC

/s/ Hisamitsu Shinoda

Hisamitsu Shinoda

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sshinoda@rmwvbh.com

2800 Post Oak Boulevard, Suite 5777

Houston, Texas 77056

(713) 780-4135

Attorneys for Plaintiff

HS/HHC/HHC - 13240-00090

ITEMIZATION OF AMOUNT DUE

("S" = Secured; "U" = Unsecured)

Year	Type	Amount
2020	Assessments (S)(A)	\$491.00
2021	Assessments (S)(A)	\$505.00
2021	Assoc. Collection Costs (U)(A)	\$50.00
2022	Assessments (S)(A)	\$520.00
2022	Assoc. Collection Costs (U)(A)	\$25.00
2022	Assoc. Deed Restriction Letters (U)(A)	\$50.00
2022	Late Fees (U)(A)	\$10.00
2022	RMWBH Collection Attorney Fees (U)(A)	\$630.00
2023	Assessments (S)(A)	\$536.00
2023	Prior DRV Attorney Fees (U)(A)	\$35.00
2023	RMWBH Collection Attorney Fees (U)(A)	\$148.00
Total		\$3,000.00

*** The Total Amount Due does not include attorney's fees and court costs related to the preparation and filing of this lawsuit, additional assessments and other charges that may accrue on your assessment account prior to a final judgment, and interest on unpaid assessments that may accrue prior to judgment. Please contact the attorney for the full balance to satisfy this matter.**

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Marilyn Burgess

HARRIS COUNTY DISTRICT CLERK

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-927-5800 | www.hcdistrictclerk.com

2/13/2023 2:41:53 PM
Marilyn Burgess - District Clerk
Harris County
Envelope No: 72709439
By: ABRAM, DERRICK A
Filed: 2/13/2023 2:41:53 PM

Request for Issuance of Service

CASE NUMBER: _____ CURRENT COURT: _____

Name(s) of Documents to be served: Plaintiff's Original Petition

FILE DATE: _____ Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: Bryan C. Popp

Address of Service: 22703 Deville Drive

City, State & Zip: Katy, TX 77450

Agent (if applicable) _____

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- Citation Citation by Posting Citation by Publication Citations Rule 106 Service
- Citation Scire Facias Newspaper _____
- Temporary Restraining Order Precept Notice
- Protective Order
- Secretary of State Citation (\$12.00) Capias (not by E-Issuance) Attachment (not by E-Issuance)
- Certiorari Highway Commission (\$12.00)
- Commissioner of Insurance (\$12.00) Hague Convention (\$16.00) Garnishment
- Habeas Corpus (not by E-Issuance) Injunction Sequestration
- Subpoena
- Other (Please Describe) _____

(See additional Forms for Post Judgment Service)

SERVICE BY (check one):

- ATTORNEY PICK-UP (phone) _____
- MAIL to attorney at: _____
- CONSTABLE
- CERTIFIED MAIL by District Clerk
- E-Issuance by District Clerk
(No Service Copy Fees Charged)
*Note: The email registered with EfileTexas.gov must be used to retrieve the E-Issuance Service Documents.
Visit www.hcdistrictclerk.com for more instructions.*
- CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____
- OTHER, explain _____

Issuance of Service Requested By: Attorney/Party Name: Hisamitsu Shinoda Bar # or ID 24029865

Mailing Address: 2800 Post Oak Blvd., Suite 5777, Houston, TX 77056

Phone Number: 713.780.4135