

CAUSE NO. 2022-52190

MAPLE RESIDENTIAL, LTD., MYSTIC ENERGY, INC., STALLONES HOLDING, INC., and TOMBALL GATEWAY, LTD.,	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiffs,	§	HARRIS COUNTY, TEXAS
v.	§	
	§	
TRICIA LUGO,	§	
	§	
Defendant.	§	113 TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

Maple Residential, Ltd. (“Maple”), Mystic Energy, Inc. (“Mystic”), Stallones Holding, Inc. (“SHI”) and Tomball Gateway, Ltd. (“Tomball”) (collectively “Plaintiffs”) complain of Tricia Lugo (“Lugo” or “Defendant”) as follows:

Discovery Control Plan – Level Two (2)

1. Discovery should be conducted pursuant to Discovery Control Plan Level 2.

Rule 47 Claim for Relief

2. This is a cause of action brought for the misappropriation of funds from the Plaintiffs by the Defendant. The damages sought are within the jurisdictional limits of this court. Pursuant to Tex. R. Civ. P. 47 Plaintiff seeks monetary relief of \$250,000.00 or less and non-monetary relief. Additionally, Plaintiff seeks a judgment for all other relief to which the party deems itself entitled.

Parties

3. Maple Residential, Ltd. is a Texas limited partnership doing business in Harris County.
4. Mystic Energy, Inc. is a Texas corporation doing business in Harris County, Texas.

5. Stallones Holding, Inc. is a Texas corporation doing business in Harris County, Texas.

6. Tomball Gateway, Ltd. is a Texas limited partnership doing business in Harris County.

7. Tricia Lugo is an individual residing in Harris County, Texas. Lugo has appeared and answered.

Venue

8. Venue has been established as proper in Harris County, Texas.

Nature of the Case

9. This is a suit to recover amounts misappropriated from the Plaintiffs by Lugo.

10. At all relevant times herein, Lugo acted as an independent contractor engaged by Maple, Mystic and Tomball to perform bookkeeping functions such as maintaining the Plaintiffs' general ledger, balancing the checkbook, preparing the invoices to send to Plaintiffs' tenants, and paying the invoices of vendors that performed services at the properties.

11. Lugo maintained SHI's checkbook and general ledger, but SHI owned no property and there were no other functions for Lugo to perform for SHI.

12. Maple, Mystic, SHI and Tomball's principal owner is Jeff Stallones ("Jeff"). Lugo would regularly sign Jeff's names to checks she had prepared for the payment of Plaintiffs' expenses.

13. In October of 2021, Jeff requested that his sister, Melissa Knippa ("Melissa") meet with Lugo to review the books and records of Maple, Mystic, SHI and Tomball as well as other entities for which Lugo was performing the bookkeeping. Melissa met with Lugo on October 21, 2021. At that meeting Lugo provided Melissa a written statement of "loans" that Lugo had taken from Maple, Mystic, SHI and Tomball. However, the money that Lugo took from the Plaintiffs

were not loans. No loan documents exist. Jeff did not approve of any such “loans.” The money taken by Lugo from the Plaintiffs was simple misappropriation.

14. Lugo was provided with wide ranging authority by the Plaintiffs to handle the Plaintiffs’ financial affairs. Lugo had custody of the Plaintiffs’ checkbooks. Lugo had on-line access to the Plaintiffs’ bank accounts. Jeff authorized Lugo to sign his name to checks that were prepared by Lugo to pay Plaintiffs’ bills. Jeff placed a high degree of trust and confidence in Lugo.

15. Lugo rewarded Jeff’s placement of a high degree of trust and confidence in her by misappropriating the following amounts from the following Plaintiffs:

Maple	\$52,634.02
Mystic	\$31,048.84
SHI	\$37,000.00
Tomball	\$837.81
Total	\$121,520.67

A true and correct copy of the document entitled “Tricia’s Loans” is attached hereto as Exhibit 1.

16. On March 28, 2022, five months after Lugo admitted to Melissa that she had taken “loans” from the Plaintiffs, Lugo wrote a check on Maple’s account payable to her father, Bud Moline, in the amount of \$50,000 without authorization. Lugo forged Jeff’s signature on the check. The \$50,000.00 forgery brought the total amount misappropriated from Plaintiffs by Lugo to \$171,520.67. A true and correct copy of the forged check is attached hereto as Exhibit 2.

17. The misappropriation identified herein constitutes fraud and defalcation while acting in a fiduciary capacity

Causes of Action

A. Money Had and Received

18. Plaintiffs re-allege the allegations set forth above.

19. Lugo holds money that in equity and good conscience belongs to Plaintiffs.

20. Lugo took money that did not belong to her under the guise of loans and by writing checks without authorization. At no time did Lugo request permission from Plaintiffs to take the funds that she misappropriated. At no time did Plaintiffs give Lugo permission to take the funds misappropriated from the Plaintiffs. Lugo simply took the money without permission, hoping that she would never be caught. Once Lugo was asked to review the books and records of the Plaintiffs with Melissa, Lugo characterized the amounts that she took from the Plaintiffs without permission as “loans.”

21. Plaintiffs seek recovery of the amounts misappropriated by Lugo and exemplary damages.

B. Breach of Fiduciary Duty

22. Plaintiffs re-allege the allegations set forth above.

23. At all times herein, Lugo owed a fiduciary duty to the Plaintiffs as Plaintiffs’ agent and due to the nature of their relationship that involved a high degree of trust and confidence cultivated over many years.

24. Lugo breached her fiduciary duties to Plaintiffs by taking money that did not belong to her under the guise of loans and by writing checks without authorization. At no time did Lugo request permission from Plaintiff to take the funds that she misappropriated. At no time did Plaintiffs give Lugo permission to take the funds misappropriated from the Plaintiffs. Lugo simply took the money without permission, hoping that she would never be caught. Once Lugo was asked to review the books and records of the Plaintiffs with Melissa, Lugo characterized the amounts that she took from the Plaintiffs without permission as “loans.” Lugo’s taking of the funds constitutes a breach of her fiduciary duty to the Plaintiffs.

25. Lugo's breach proximately caused injury to Plaintiffs and resulted in a benefit to Lugo by unjustly enriching Lugo with the amounts misappropriated.

26. Plaintiffs seek recovery of the amounts taken by Lugo in breach of her fiduciary duty to Plaintiffs and exemplary damages.

C. Unjust Enrichment

27. Plaintiffs re-allege the allegations set forth above.

28. At all times herein, Lugo owed a fiduciary duty to the Plaintiffs as Plaintiffs' agent and due to the nature of their relationship that involved a high degree of trust and confidence cultivated over many years.

29. At no time did Lugo request permission from Plaintiff to take the funds that she misappropriated. At no time did Plaintiffs give Lugo permission to take the funds misappropriated from the Plaintiffs. Lugo simply took the money without permission, hoping that she would never be caught. Once Lugo was asked to review the books and records of the Plaintiffs with Melissa, Lugo characterized the amounts that she took from the Plaintiffs without permission as "loans." Lugo's taking of the funds that did not belong to her in breach of her fiduciary duty constitutes unjust enrichment.

30. Plaintiffs seek recovery of the amounts by which Lugo has been unjustly enriched and exemplary damages.

Conclusion

Accordingly, Plaintiffs request that Tricia Lugo be cited to appear and answer herein, and that after final trial, Plaintiffs be awarded judgment against Lugo as follows:

- a. Actual damages in an amount in excess of the jurisdictional limits of this court;
- b. Monetary relief of less than \$250,000 and non-monetary relief;
- c. Exemplary damages;

- d. Prejudgment interest at the highest rate allowed by law;
- e. Reasonable and necessary attorney's fees; and
- f. Post judgment interest.

Dated: June 22, 2023

Respectfully submitted,

/s/ Justin P. Tschoepe

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ATTORNEYS FOR PLAINTIFFS AND THIRD-PARTY
DEFENDANTS

Certificate of Service

I hereby certify that on this 22nd day of June, 2023, the foregoing was served by email and/or by electronic filing service on all counsel of record.

/s/ Justin P. Tschoepe

Justin P. Tschoepe

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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Envelope ID: 76861665
Filing Code Description: Amended Filing
Filing Description: Plaintiffs' First Amended Original Petition
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