

RECORDER'S MEMORANDUM
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P-141

NO. 2005-61451

447882

STEPHEN A. MENDEL
Plaintiff

V.

DAWN R. BRADLEY
Defendant

&

INVESTORS RESIDENTIAL
SERVICES, L.L.C. &
CHELSEA OAKS, INC.
Intervenors

V.

DAWN R. BRADLEY
Defendant

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IN THE DISTRICT COURT OF

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HARRIS COUNTY, TEXAS
FILED
CHARLES B. PROSSER
DISTRICT CLERK

HARRIS COUNTY, TEXAS

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ENTERED	NEM
VERIFIED	

215TH JUDICIAL DISTRICT

Original Petition in Intervention

TO THE HONORABLE JUDGE OF SAID COURT:

Intervenors/plaintiffs, Investors Residential Services, L.L.C. and Chelsea Oaks, Inc., file their original petition in intervention, and in support thereof, would respectfully show the Court as follows:

I. Discovery Control Plan – Level 3

Intervenors/plaintiffs request that discovery be conducted under Level 3, as set forth under TEX R. CIV. P. 190.4.

II. Parties

2.01. Intervenor, Investors Residential Services, L.L.C. ("Investors Residential"), is a Texas limited liability company that conducts business in Harris County, Texas, and seeks to join the above

entitled and numbered cause as a plaintiff and will hereinafter refer to itself as a plaintiff. All pleas, pleadings, motions, discovery, and other instruments may be served on Investors Residential through its attorney of record, who is Bradley E. Featherston, with The Mendel Law Firm, L.P., 1155 Dairy Ashford, Suite 104, Houston, TX 77079, tel: 281-759-3213, fax: 281-759-3214.

2.02. Intervenor, Chelsea Oaks, Inc., is a Texas corporation that conducts business in Harris County, Texas and seeks to join the above entitled and numbered cause as a plaintiff and will hereinafter refer to itself as a plaintiff. All pleas, pleadings, motions, discovery, and other instruments may be served on Chelsea Oaks through its attorney of record, who is Bradley E. Featherston, with The Mendel Law Firm, L.P., 1155 Dairy Ashford, Suite 104, Houston, TX 77079, tel: 281-759-3213, fax: 281-759-3214.

2.03. Plaintiff Stephen A. Mendel is an individual who resides in Harris County, Texas. A copy of this petition need not be forwarded to Mr. Mendel's attorney, because the law firm for the plaintiff and intervenors is the same.

2.04. Defendant, Dawn R. Bradley ("Ms. Bradley"), is an individual who resides in Polk County, Texas. Service of citation on Ms. Bradley can be made at her home, which is 353 Harmon Street, Livingston, TX 77351, or such other place as she may be found in the State of Texas.

IV. The Original Lawsuit

On September 27, 2005, Mr. Mendel sued Ms. Bradley for breach of contract and unjust enrichment. Ms. Bradley has not yet been served nor filed an answer. There is commonality between the original lawsuit and this intervention in that Mr. Mendel and Ms. Bradley will be witnesses as to the issues regarding Mr. Mendel's claims and intervenors' claims, and because the Encore bank loan involved in Mr. Mendel's claims was, at one time, part of the consideration for the claims asserted by intervenors.

V. Jurisdiction

5.01. This intervention involves causes of action for breach of contract, quantum meruit, fraud, breach of fiduciary duty, promissory estoppel, negligent misrepresentation, and seeks specific performance as one of its remedies.

5.02. Jurisdiction is proper pursuant to Article 5, § 16 of the Texas Constitution, and the TEX. GOV'T CODE ANN. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

VI. Venue

Venue is mandatory in Harris County as provided under the TEX. CIV. PRAC. & REM. CODE ANN. §§ 15.011 & 15.0115, as Investors Residential's causes of involves damage to real property and a landlord-tenant claim. Venue is also proper in Harris County as provided by TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(a)(1), as plaintiffs' causes of action arose in whole or in substantive part in Harris County, Texas.

VII. Facts

7.01. Plaintiffs, Investors Residential and Chelsea Oaks, are companies managed by Stephen A. Mendel. Investors Residential is the landlord for several single family homes in the Katy area. In addition to being a tenant of Investors Residential, Ms. Bradley handled the accounting and provided make-ready services for Investors Residential, and handled tenant related issues regarding occasional problems at the rental properties.

7.02. In or around October 2003, Ms. Bradley entered into a lease agreement with Investors Residential for a home located at 21615 Park Villa, Katy, TX 77450 (the "Park Villa home"). The original lease term was one year and then month to month thereafter. The original monthly rent

pursuant to the lease was \$1,595.00, but was later reduced to \$1,350.00. There was no security deposit.

7.03. In late June or early July 2005, Investors Residential learned that Ms. Bradley did not pay rent on the Park Villa home for the months of April, May, and June 2005, and that she lacked the funds to pay her July 2005 rent, for a total rent owed of \$5,400.00. Investors Residential also learned that Ms. Bradley intended to immediately vacate the premises.

7.04. Ms. Bradley kept her failure to pay rent a secret from Investors Residential because she handled and was responsible for Investors Residential's accounting. During the months of April through June 2005, Investors Residential's manager directly and specifically asked Ms. Bradley if all Investors Residential tenants were current in their rent obligations. On multiple occasions, Ms. Bradley represented that all rent was paid and all tenants were current.

7.05. In reliance on Ms. Bradley's misrepresentations, Investors Residential secured a cash infusion that would not have been necessary, or certainly would have been substantially reduced, if Ms. Bradley had timely paid her rent, and/or disclosed the truth as to her delinquent payment status.

7.06. Ms. Bradley also warranted and represented to Investors Residential that upon her move-out, the Park Villa home would be left in good condition and repair. She also promised to remove all trash and debris including, but not limited to, an old refrigerator. Ms. Bradley failed to honor her representations, which in turn required Investors Residential to expend additional funds on the Park Villa home.

7.07. In or about June 2005, Ms. Bradley represented that she made certain properties ready for leasing. The subject properties were located at 5314 Tallowpine Terrace and 5338 Tallowpine Terrace. These properties were not made ready for leasing to the extent represented. In reliance on Ms. Bradley's misrepresentations, Investors Residential paid Ms. Bradley for services not rendered

or poorly rendered, and was forced to spend additional funds to perform such work.

7.08. On or about March 8, 2005, Mr. Mendel, who was a trustee under a deed of trust for the benefit of Ms. Bradley, foreclosed on the following real property:

All of lot ten (10), block two (2), section one (1), of Nugent's Cove, a subdivision in Polk County, Texas, described in the plat of records of said subdivision in Volume 3, Page 21 of the plat records of Polk County, Texas, and all improvements thereon, and which is more commonly known as 353 Harmon St., Livingston, Texas (hereinafter "the Lake House").

7.09. Two days later, on March 10, 2005, Chelsea Oaks offered to sell the Lake House, apply the sale's proceeds to legal fees owed The Mendel Law Firm, L.P., and split the balance, if any, with Ms. Bradley. Ms. Bradley accepted the offer and conveyed the property to Chelsea Oaks.

7.10. On or about April 5, 2005, Ms. Bradley asked that the Lake House be reconveyed to her, as she wanted to control the sale and distribution of the proceeds pursuant to the parties original agreement. Chelsea Oaks executed a deed in Ms. Bradley's favor. Thereafter, Ms. Bradley repeatedly represented that the Lake House would be sold and the proceeds distributed pursuant to her agreement with Chelsea Oaks.

7.11. As previously indicated, in late June or early July 2005, Investors Residential learned that Ms. Bradley did not pay \$5,400.00 in rent owed for the Park Villa home for the months of April, May, June, and July 2005. Ms. Bradley told Mr. Mendel that she intended to immediately vacate the Park Villa home and move to the Lake House. Ms. Bradley stated that she would seek financing on the Lake House to pay Investors Residential and The Mendel Law Firm, as well as numerous other creditors to whom she owed money. She also implied that she did not intend to honor her agreement with Chelsea Oaks, and therefore, a dispute arose between the parties.

7.12. In order to settle the dispute, Chelsea Oaks offered to assume a majority of Ms. Bradley's debt obligations, including, but not limited to, the legal fees Ms. Bradley owed The Mendel Law Firm and the rent owed Investors Residential, in exchange for the Lake House and Ms. Bradley's assistance preparing the Lake House for sale and retaining a local agent to list and show the Lake House. After a couple of lengthy discussions regarding the offer, including setting aside a small allowance to bring the Lake House into marketing conditioning, Ms. Bradley accepted the offer and the dispute was settled.

7.13. After the settlement, Investors Residential sent Ms. Bradley to the Lake House over the July 4TH weekend to get the Lake House cleaned up to show one or more real estate brokers, and so that the Lake House would be in good condition to show to prospective buyers.

7.14. During the course of the July 4TH weekend, Ms. Bradley called Mr. Mendel to discuss who might be retained to list and show the Lake House and to discuss the listing agreement. Ms. Bradley offered to sign the listing agreement in an attorney-in-fact capacity, but Mr. Mendel, on Chelsea Oaks' behalf, said that he preferred to review the listing agreement and make any changes he deemed necessary. Ms. Bradley said she would bring the listing agreement to Houston on Tuesday, July 5, 2005. During the course of the weekend, Ms. Bradley kept Chelsea Oaks informed as to the status of the clean up.

7.15. When Ms. Bradley returned on Tuesday, July 5, 2005, she notified Chelsea Oaks that she had no intention of conveying the Lake House to Chelsea Oaks and notified Investors Residential that she was immediately vacating the Park Villa home.

7.16. A demand was made to Ms. Bradley more than thirty (30) days before the filing of this suit, in compliance with TEX. CIV. PRAC. & REM. CODE ANN. § 38.001, *et. seq.* All conditions precedent have been performed or have occurred as required by TEX. R. CIV. P. 54.

VIII. Breach of Agreement to Convey the Lake House

8.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

8.02. Ms. Bradley agreed to convey the Lake House to Chelsea Oaks, but then refused to do so. Ms. Bradley breached the parties' agreement by, among other things, failing to convey the Lake House to Chelsea Oaks.

8.03. Chelsea Oaks was damaged as a result of Ms. Bradley's breach, and seeks specific performance of the parties agreement.

IX. Fraud as to the Lake House

9.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

9.02. Ms. Bradley promised and/or represented, among other things, that she would sign the documents necessary to convey the Lake House to Chelsea Oaks. Ms. Bradley's promises and/or representations were material to Chelsea Oaks in that Chelsea Oaks relied upon the promises and/or representations in making its decision to continue with the transaction.

9.03. Ms. Bradley's promises and/or representations were false in that Ms. Bradley did not convey title to the Lake House to Chelsea Oaks. Ms. Bradley made these representations knowing that they were false, or alternatively, as positive assertions of fact without knowledge of their truth.

9.04. Chelsea Oaks justifiably relied to its detriment on Ms. Bradley's promises and/or representations and suffered damages as a result of Ms. Bradley's misrepresentations. Ms. Bradley's conduct constitutes common law fraud and statutory fraud.

9.05. Ms. Bradley's conduct was recklessly, willfully, wantonly, intentionally, and/or

knowingly done. Accordingly, Chelsea Oaks seeks exemplary damages as allowed by law.

X. Promissory Estoppel

10.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

10.02. Ms. Bradley promised and/or represented, among other things, that she would convey the Lake House to Chelsea Oaks. Ms. Bradley's representations were false or the promises were made without the intent to perform them. Ms. Bradley knew the representations and/or promises were false when made or made the representations and/or promises in reckless disregard of whether or not they were true.

10.03. Ms. Bradley could reasonably foresee that Chelsea Oaks would rely on the representations and/or promises. Chelsea Oaks justifiably relied on the representations and/or promises and incurred damages proximately caused by such reliance. As such, Chelsea Oaks is entitled to recover under the doctrine of promissory estoppel.

10.04. Ms. Bradley's conduct was willful, wanton, intentional, and maliciously done. Accordingly, Chelsea Oaks seeks exemplary damages as allowed by law.

XI. Negligent Misrepresentation

11.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

11.02. Ms. Bradley promised and/or represented, among other things, that she would sign a written agreement to sell and convey the Lake House. The representations were made by Ms. Bradley for the guidance of Chelsea Oaks and with the intent that Chelsea Oaks rely on them.

11.03. Ms. Bradley did not exercise reasonable care or competence when she made the

foregoing representations. As such, Ms. Bradley is liable to Chelsea Oaks under the doctrine of negligent misrepresentation.

11.04. Ms. Bradley's conduct was more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, her conduct represents such an entire want of care as to establish that her acts and/or omissions were the result of actual conscious indifference to the rights, welfare, or safety of the persons affected by her conduct. In other words, Ms. Bradley was grossly negligent. Accordingly, Chelsea Oaks seeks exemplary damages as allowed by law.

XII. Breach of Lease

12.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

12.02. Under the October 2003 lease regarding the Park Villa home, Ms. Bradley agreed to pay the sum of \$1,350.00 per month. Ms. Bradley failed to pay rent for the months of April through July 2005, and which sum totals \$5,400.00.

12.03. Under the lease agreement, Ms. Bradley was also liable for repair costs incurred by Investors Residential and real estate commissions necessary to relet the Park Villa home.

12.04. Investors Residential made demand for the balance due. Despite her repeated promises to pay Investors Residential, Ms. Bradley has failed and refuses to pay what is due. Ms. Bradley conducts constitute breach of contract, and which breach caused harm to Investors Residential.

XIII. Quantum Meruit

13.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

13.02. If, in the alternative, there is not a valid contract on which to maintain a breach of contract action, then Investors Residential is entitled to recover under the doctrine of quantum meruit. Investors Residential rendered valuable services, which Ms. Bradley knowingly accepted and used, and for which Ms. Bradley knew that Investors Residential expected to be paid and was not.

XIV. Fraud as to the Lease

14.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

14.02. Ms. Bradley promised and/or represented to Investors Residential, among other things, that she would pay Investors Residential all that it was due.

14.03. The foregoing representations, promises, and/or admissions by Ms. Bradley were false or the promises were made without the intent to perform the promises. Ms. Bradley knew the representations, promises, and/or admissions were false when made or made the representations, promises, and/or admissions in reckless disregard of whether or not they were true. Investors Residential justifiably and reasonably relied on the representations, promises, and/or admissions and incurred damages proximately caused by such reliance.

14.04. Ms. Bradley's conduct constitutes fraud and was recklessly, willfully, wantonly, intentionally, maliciously, and knowingly done. Accordingly, Investors Residential seeks exemplary damages as allowed by law.

XV. Breach of Fiduciary Duty

15.01. Plaintiffs incorporate by reference paragraphs 7.01-7.16 as though set forth in full herein.

15.02. Ms. Bradley owed Investors Residential a fiduciary duty to act fairly, honestly, in utmost good faith, with undivided loyalty, and with full disclosure of all material information. Ms. Bradley breached such duties, and the breach of such duties includes, but is not limited to the following, when she:

- A. Failed to disclose the true financial condition of Investors Residential;
- B. Misrepresented that she had paid rent when she had not;
- C. Failed to properly account for Investors Residential's funds; and/or
- D. Failed to put Investors Residential's interest ahead of her own.

15.03. Ms. Bradley's conduct proximately caused damage to Investors Residential, and such conduct was willful, wanton, intentional, and maliciously done. Therefore, in addition to its actual damages, Investors Residential seeks exemplary damages as allowed by law.

XVI. Attorneys' Fees

16.01. Plaintiffs incorporate by reference paragraphs 7.01-15.03 as though set forth in full herein.

16.02. As a result of Ms. Bradley's conduct, plaintiffs found it necessary to file this lawsuit and obtain legal counsel regarding same. Plaintiffs seek to be reimbursed their reasonable attorneys' fees as permitted by TEX. CIV. PRAC. & REM. CODE ANN. § 38.001.

XVII. Prayer

Plaintiffs request that Ms. Bradley be cited to appear and answer and that on final hearing the Court declare plaintiff, Chelsea Oaks, the fee simple owner of the Lake House that is, in part, the

subject of this dispute, and that all of the plaintiffs receive their actual damages, exemplary damages, prejudgment and post-judgment interest as allowed by law, attorneys' fees, costs of court, and such other and further relief, general or special, legal or equitable, to which they may be entitled.

Respectfully submitted,



Stephen A. Mendel (13930650)

Bradley E. Featherston (24038892)

The Mendel Law Firm, L.P.

1155 Dairy Ashford, Suite 104

Houston, Texas 77079

Tel: 281-759-3213

Fax: 281-759-3214

Attorneys for the Intervenors & Plaintiff

Unofficial Copy Office of Marilyn Buck, District Clerk



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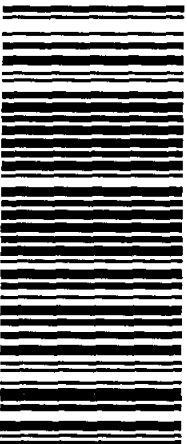
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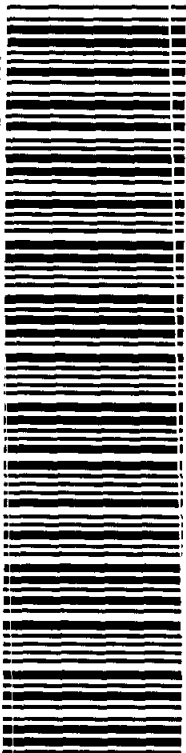
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THE MENDEL LAW FIRM, L.P. DEPUTY

E-Mail Address:
steve@mendellawfirm.com

Attorneys & Counselors
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

Tel: 281-759-3213
Fax: 281-759-3214

2005 SEP 29 PM 12:04
FILED
CHARLES BACARISSE
DISTRICT CLERK
HARRIS COUNTY, TEXAS

VIA LONE STAR DELIVERY

September 28, 2005

Re: C.A. No. 2005-61451; *Stephen A. Mendel, Plaintiff v. Dawn R. Bradley, Defendant & Chelsea Oaks, Inc. & Investors Residential Services, L.L.C., Intervenors v. Dawn R. Bradley, Defendant*; In the 215TH District Court of Harris County, Texas.

Mr. Charles Bacarisse
District Clerk
Harris County Courthouse
301 Fannin
Houston, TX 77002

Dear Mr. Bacarisse:

We forward for filing in the above referenced matter the Original Petition in Intervention of Chelsea Oaks, Inc. and Investors Residential Services, L.L.C., as well as our firm's check to cover the cost of this matter.

Please acknowledge receipt and filing of these documents in your usual manner. Thank you for you customary courtesy. Please call me if you have any questions.

Very truly yours,



Stephen A. Mendel

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