

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

APR 05 2012

DAVE CAMPBELL and
CATRENIA "DAWN" CAMPBELL,

Plaintiffs;

v.

NATIONAL DEVELOPMENT COMPANY, INC.,
WOODLAND LAKES TRUSTEESHIP, INC.
CLYDE W. ENGLE, CRAIG KINMANN,
CHERYL DAVIS, FRANCIS OSCAR DARIAN, JR.,
ARTHUR HURLBURT, RUSSELL RICHARDS,
DEBORAH CLUTTER, PATRICIA EDGAR,
CRYSTAL KALLANSRUD, SIMONE HATTON,
LARRY ANDERSON, LAWRENCE DEIS,
LINDA WADE, and THOMAS LEON COLYOTT.

Defendants.

David J. Bradley, Clerk of Court

C.A. NO. 4:12-cv-00165

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION TO VACATE/RESCIND ORDER OF DISMISSAL**

May it please the Court:

This is not newly-discovered evidence.

I. STATEMENT OF THE NATURE AND STAGE OF PROCEEDING:

This case was dismissed on March 29th, 2012, as a result of Plaintiffs being unable, at the time, to show Defendants indeed have sufficient contacts with Texas. After regrouping, reviewing evidence from this case, and receiving a better comprehension of this case, Plaintiffs are urged to motion this Court in order to prevent an injustice.

II. STATEMENT OF ISSUES FOR THE COURT TO RULE UPON:

The evidence shows, Defendants are still under the authority of a Texas

corporation and therefore jurisdiction in this court is proper, so the Order sustaining Defendants' Motion to Dismiss should be rescinded or vacated.

III. ARGUMENT:

POINT I. DEFENDANTS HAVE COMMITTED FRAUD UPON THE COURT IN ITEM 7 OF DEFENDANT, DEBORAH CLUTTER'S, AFFIDAVIT BECAUSE ACCORDING TO THE TRUST INDENTURE, "R.L. ERKENBECK, IS THE TRUSTEE OF THE WOODLAND LAKES TRUSTEESHIP, AND THE LATE R.L. ERKENBECK WAS FROM TEXAS."

In the Trust Indenture, Woodland Lakes Trusteeship, does verify that the Woodland Lakes Development's owner, National Development Company, Inc., is a Texas Corporation. [Exhibit 1 Page 1]

The Amended Trust Indenture, filed on May 23, 2011 does state, "*WHEREAS, this amended indenture ...by and between National Development Company, Inc., party of the first part, hereinafter called "Grantor", and R.L. Erkenbeck, party of the second part, hereinafter referred to as "Trustee" being the Trustee of Woodland Lakes Trusteeship.*"

According to a McKinney, Texas Newspaper on-line obituary, Richard Laverne Erkenbeck, from Texas, passed away May 21, 2001. [Exhibits 1-A & 1-B]

If indeed National Development Company, Inc. were no longer affiliated with "*Woodland Lakes Trusteeship [sic]*" as sworn by Affiant Deborah Clutter in Defendants' Motion to Dismiss, then Woodland Lakes should not have verified in the "Amended Trust Indenture" that National Development Company, Inc. is the owner and is also a Texas Corporation. Why would Defendant include that information to property owners if it weren't true, unless it were done so in order to deceive. In creating this deception, Defendants did expressly aim at Texas as being the target for Defendants' scheme. By

intentionally setting out to deceive, Defendants knew the brunt of Defendants' actions would be felt in Texas.

POINT II. DEFENDANTS HAVE SIGNIFICANTLY MORE THAN MINIMUM CONTACTS WITH TEXAS, AS INDICATED IN THE WOODLAND LAKES TRUST INDENTURE, WHICH DOES DECLARE THE OWNER OF PLAINTIFFS' REAL PROPERTY IN MISSOURI IS A TEXAS CORPORATION [NATIONAL DEVELOPMENT COMPANY, INC.] FORMED UNDER THE LAWS OF A TEXAS CORPORATION. DEFENDANTS CANNOT HAVE THIS ACTION DISMISSED BASED ON THE LACK OF CONTACT WITH TEXAS AND DEFENDANT IS DECEIVING THE COURT BY SAYING THE WOODLAND LAKES TRUSTEESHIP HAS HAD NO CONTACT WITH NATIONAL DEVELOPMENT COMPANY SINCE 1996 WHEN ON 5/23/11 DEFENDANT DID FILE THE TRUST INDENTURE WHICH IS CONTRARY TO MS. CLUTTER'S AFFIDAVIT.

A copy of the *'Amended Trust Indenture and Restrictive Covenants And Conditions Pertaining To A Subdivision of Land in Washington County, Missouri,'* is filed with Plaintiff's original Petition. The above *'Amended Trust Indenture'* was last Amended April 09, 2011 and notarized by Defendant Debbie Clutter and declares that Woodland Lakes is owned by a Texas Corporation [Plaintiffs have a certified copy on hand].

Determination of "minimum contacts" standards vary in each case. Where the action arises out of or is related to the defendant's contacts with the state, the quantity of contacts necessary to establish personal jurisdiction may be minimal. In such circumstances the nature and quality of the contact become the determining factors.

In 1945, a "minimum contacts" test was announced by the US Supreme court in the *International Shoe Company v. Washington* case to establish personal jurisdiction over a corporation. The Court held that courts could constitutionally exercise jurisdiction over a nonresident defendant if the defendant had sufficient contacts with the state.

Jurisdiction shall be exercised in such a way that forcing the person to litigate in that forum did not offend the traditional notions of fair play and substantial justice. The court stated that, with the advancement of modern communication and transportation, it is usually not unfair to require a party to defend itself in a state in which it conducts some business activity. Plaintiffs argue that modern communications and transportation in the year 2012, over the year 1945, 66 years ago, is much more advanced.

The Woodland Lakes Trusteeship is attempting to have it both ways in claiming National Development is its owner, yet swearing by Affidavit not to have had any association with National Development Company, Inc., since. In court proceedings Defendants did state otherwise. Defendants are fraudulently doing business as a Texas corporation, National Development Company, Inc., while denying it in order to deceive the Court and prejudice Plaintiffs of Texas jurisdiction.

Defendants have purposefully aimed at Texas in executing Defendants' deceptions, which means Defendants knew their actions would be felt in Texas.

POINT III. DEFENDANTS HAVE BUSINESS CONTACTS WITH TEXAS VIA WWW.WOODLANDLAKES.NET [WHERE DEFENDANT'S LAST NEWSLETTER IS POSTED]. DEFENDANTS DID COMMIT FRAUD UPON THE COURT IN SWEARING BY AFFIDAVIT THAT WOODLAND LAKES TRUSTEESHIP DOES NOT HAVE A WEBSITE WHEN INDEED, THE TRUSTEESHIP ADVERTISES ON THE WEB BY AUTHORIZING A FORMER TRUSTEE WHO'S AGAIN RUNNING FOR TRUSTEESHIP, TO CREATE AND MAINTAIN A WEBSITE FOR THE WOODLAND LAKES TRUSTEESHIP FOR YEARS, ACCORDING TO HIM. [EXHIBITS 3-E, 4-B, 2-A & 2-C]

The general rule emerging is that operation of an active website, where one actually transacts business through the website, is sufficient to confer "general jurisdiction." The theory of general jurisdiction is that the defendant is constructively

present in the state by reason of doing business with that state's citizens, albeit from a distant locale [Exhibit 8 -- Envelopes].

By stating on the record at the March 29, 2012 hearing, Defendant, was obviously in error when stating Defendant, "Woodland Lakes Trusteeship" had never had business contact with Texas. The Woodland Lakes Trusteeship's aforesaid website does display the trusteeship's newsletter, which was mailed to Plaintiffs in Texas.

Defendants have corresponded with Plaintiffs via email. Plaintiffs and Defendants have engaged in business transactions over email, telephone and mail. Defendant did not inform Plaintiffs years ago, at the onset of Defendant's business transactions with Plaintiffs, Defendant could not or would not conduct business in Texas. To the contrary, even when Plaintiffs did send business correspondence to Defendant listing Plaintiffs' Missouri business address, Defendant's respond by purposefully addressing the correspondence to Plaintiffs at their Texas address [Exhibit 6, 7-A-B].

Defendants were aware all business correspondence would be delivered to a Texas resident. Even though Defendant, Deborah Clutter did file a wooly Affidavit swearing the Woodland Lakes Trusteeship does not have a website, in actuality, the Woodland Lakes Trusteeship does have an "authorized" P.O.A. website; www.WoodlandLakes.net. Woodland Lakes Trusteeship, Inc. is listed with the Missouri Secretary of State as being a P.O.A.

The Woodland Lakes Trusteeship Inc.'s website [www.WodlandLakes.net] states:

- A. *"At present, our web site is still under construction. We are making an effort to present you with our entire spectrum as soon as possible. The emphasis of our site is on the Property Owner and Information.*

This topic is certainly of interest to you. Check this site later, please."

B. *"In the meantime you can reach us at the above number or fax. We are looking forward to hearing from you. You can also contact us at our e-mail address."*

C. *"If you are not familiar with us and your first contact with us is online: We would be pleased to hear from you! Please let us know what your needs and questions are, we will be more than happy to help. Feel free to give us a call "*

D. The address listed at WoodlandLakes.net is 12 Woodland Lakes in Sullivan, Missouri. The phone number advertised at Woodland Lake's website is (573) 468-6505. The fax number advertised is (573) 468-2576. The email advertised is woodland@fidnet.com. All of the just-mentioned information belongs to the Woodland Lakes Trusteeship.

POINT IV. ALL DEFENDANTS HAVE A PERSONAL CONTACT WITH TEXAS BECAUSE EACH DEFENDANT HAS TEXAS LEGAL COUNSEL.

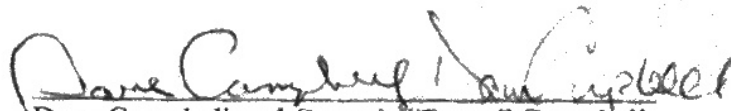
Casey Wallace and Katharine David appeared for all Defendants in this case. Our certificate of service on the opposition to Motion to Dismiss clearly did indicate Counsels Wallace and David were representatives for National Development Company. Neither counsel objected or indicated, they did not represent National Development Company. National Development Company was served with citation, which was accepted by the corporation's registered agent. National Development Company, Inc. did appear in this case through legal counsel. When the case was called on March 29, 2012, "National Development Company, Inc. was called as the Defendant. Rather than objecting to being

counsel for National Development Company, Inc., Defendants' legal counsel did stand and did represent National Development Company, Inc.

IV. SHORT CONCLUSION OF PRECISE RELIEF SOUGHT:

Rather than show this Court how they would suffer by having to litigate this action in Texas, Defendants have chosen to defraud the Court by lying about Defendants' real contacts with Texas. Plaintiffs pray this Honorable Court will, therefore, find for Plaintiffs and rescind the Order sustaining Defendants' Motion to Dismiss, and sustain Plaintiffs' Motion for Leave of Court to Amend Plaintiff's Petition, with proper time allowed to Defendants to answer Plaintiffs' Petition.

Respectfully Submitted,


Dave Campbell and Catrenia "Dawn" Campbell
109 Rainbow Drive #921
Livingston, TX 77399
Campbell@CampbellSales.com
(936) 239-7747

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of:
**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION TO VACATE/RESCIND ORDER OF DISMISSAL**
has been served upon the opposing party by hand-delivering said copy to Defendants in
care of their attorneys of record, as follows:

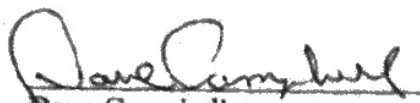
Defendants:

Woodland Lakes Trusteeship, Inc., National Development Company, Inc., Clyde W.
Engle, Francis Oscar Darian, Jr., Lawrence Deis, Craig Kinmann, Arthur Hurlburt,
Russell Richards, Deborah Clutter, Patricia Edgar, Crystal Kallansrud, Simone Hatton,
Linda Wade, Larry Anderson and Thomas Leon Colyott.

ATTORNEY OF RECORD:

Woodland Lakes Trusteeship, Inc., et al
ATTN: Casey T. Wallace
% Haynes Boone, Attorneys and Counselors
1221 McKinney Street, Suite 2100
Houston, Texas 77010-2007
(713) 547-2516

Signed and hand-delivered this 5th day of April, 2012


Dave Campbell


Dawn Campbell