

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

APR 05 2012

David J. Bradley, Clerk of Court

DAVE CAMPBELL and
CATRENIA "DAWN" CAMPBELL,

Plaintiffs;

v.

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

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.

MOTION TO VACATE/RESCIND ORDER OF DISMISSAL

COMES NOW PLAINTIFFS Dave and Dawn Campbell, pursuant to Federal Rules of Civil Procedure 60 (b)(3) and 60(d)(3) and showing Plaintiffs would be prejudiced in the sustaining of Defendants' Motion to Dismiss, which was brought with conflicting Affidavits [Exhibits 1 & 4] to defraud the Court, as follows:

I. POINTS FOR RESCINDING:

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." [EXHIBITS 4 & 1]

1. Using *Calder v. Jones* Test of "purposeful direction:" (a) Defendant, Deborah Clutter, did purposefully declare in her Sworn Affidavit [Exhibit 4], "*Woodland Lakes Trusteeship is a Missouri company that has never operated in Texas.*" (i) According to the currently-filed, last-amended Woodland Lakes Trust Indenture, the Woodland Lakes Trusteeship is the late R.L. Erkenbecker, who was a resident of McKinney, Texas [See Exhibit 1]. (b) Defendants did intentionally aim at a Texas citizen when declaring the Texan was the Trusteeship of Woodland Lakes. (c) Defendants knew that in placing the responsibility of their actions upon a deceased Texan, the brunt of their 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 [EXHIBIT 1]. 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.

1. Woodland Lakes' *'Amended Trust Indenture and Restrictive Covenants And Conditions Pertaining To A Subdivision of Land in Washington County, Missouri'* [Exhibit 1-A] *Indenture'* was last Amended April 09, 2011 and notarized by Defendant Debbie Clutter [Exhibit 1-C]. Said Indenture does state, **"KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, National Development Company Inc., a Texas Corporation, is the owner of certain real**

property located in Washington County, Missouri." [Exhibit 1-A]

2. Pursuant to the *Calder v. Jones Test* of "purposeful direction," (a) In drafting the latest Amended Trust Indenture, Defendants did intentionally state the real property is owned by a Texas Corporation. Granted, Defendants allege to have no involvement since 1996 with National Development Company, Inc., in Defendant, Debbie Clutter's Sworn Affidavit. The contact with its owner is irrelevant. The fact that Defendants are forever bound, through its terminology in its Trust Indenture is the important factor for consideration. (b) Defendants have alleged by Affidavit that National Development Company has not been associated with Woodland Lakes since 1996 [Exhibit 4-B, Line 10]. Defendants did expressly aim at Texas in declaring they were owned by a Texas Corporation. Possibly, Defendants made said false declaration in order to deceive Courts for jurisdictional reasons. Regardless, the action does prove Defendants intentionally aimed at Texas. By declaring in its Trust Indenture that a deceased Texan is the development's main trustee, the Trusteeship has aimed at Texas. (c) Defendants knew the brunt of any injuries arising from the Amended Trust Indenture would be felt in Texas. The Trustees of Woodland Lakes did make the declaration that the subdivision is owned by a Texas Corporation. The main Trustee is declared in the current Trust Indenture as being R.L. Erkenbeck, who was a resident of Collin County, Texas, until passing away in 2001. In fact, the late R.L. Erkenbeck was not a trustee at the time the Woodland Lakes Trusteeship last amended the Trust Indenture.
3. Texas is the only state listed in relationship to the owner of Woodland Lakes.

From its inception, Woodland Lakes has long been associated with a Texas Corporation, as witnessed by the signatures of their very own Trust Indenture, which is notarized by Defendant, Debbie Clutter, who is also the Registered Agent/Officer Manager for Woodland Lakes Trusteeship, Inc.

4. National Development is the owner of the Woodland Lakes Development. The Trust Indenture does state that National Development Company is a Texas Corporation. The Woodland Lakes Trusteeship is a subordinate of National Development Company. Therefore, the employees and trustees are subordinates of a Texas corporation, by their very own declaration. The Texas contact declared by the trusteeship in the Trust Indenture does prove personal jurisdiction for this Court.
5. The same officer manager and notary, Deborah Clutter, did sign the current Trust Indenture [Exhibit 1-C] and the current Affidavit [Exhibit 4-B] proclaiming to have "*never operated in Texas.*" Defendant, Deborah Clutter, also did deceive the Court by declaring that the Woodland Lakes Trusteeship has never authorized a P.O.A. website. Former Woodland Lakes Trustee, Bob Murphy, does dispute Ms. Clutter, because he clearly published, "*...the company we have been using for years, is closing this access. The Trustee's [sic] have authorized me to re-create this site with another web-host.*" [Exhibits 2-A, 2-C]

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]**

6. Using *Calder v. Jones Test* of "purposeful direction:"
- (a) Defendants did intentionally deceive the Court in filing an Affidavit that falsely swears the Woodland Lakes Trusteeship does not have a website [Exhibit 4-B, Line 9]. Mr. Murphy did make the following statement on the trusteeship's previous website [woodlandlakes.web.officelive.com/default.aspx] "*Microsoft Live the company we have been using for years, is closing this access. The Trustee's [sic] have authorized me to re-create this site with another web-host. Please visit our new site. Our new web address is 'woodlandlakes.net.'*" [Exhibits 2-A through 2-C] Defendants did intentionally mail Woodland Lakes promotional correspondence to Plaintiffs in Texas [Exhibit 8]. Defendant, Officer Tom Colyott, did intentionally call Plaintiffs' Texas telephone number to coerce Plaintiffs into surrendering Plaintiffs' property [Phone records available with notice].
- (b) In authorizing someone [a previous trustee who is currently seeking another term] to create a website deliberately to advertise the development of Woodland Lakes, the Woodland Lakes Trusteeship did expressly aim for the Woodland Lakes Development to be advertised in the State of Texas, as the Worldwide Web does include Texas. Woodland Lakes expressly mailed correspondence to Plaintiffs addressed to Texas [Plaintiffs' Exhibit].
- (c) In advertising the Woodland Lakes Development on the Internet, Defendants knew Texas residents would find Defendants' advertisements.

Defendants knew anything arising out of business transactions between Woodland Lakes and Texans, would be felt in Texas. Defendants knew their telephone, email and U.S.P.S. mailed business correspondence would be directed to residents in Texas.

7. Through Woodland Lakes Trusteeship, Inc.'s website, the trusteeship does have a "Contact" link that provides an avenue for communicating with potential buyers and present property owners who reside in Texas. Indeed, ownership in Woodland Lakes is open to people in all states and does include many states; including Texas.
8. On October 5 and October 6 of 2011, Plaintiffs did send a letter of due process to Defendants, using Plaintiffs' Missouri business address as correspondence address. Defendants' did use, from Defendant's database, Plaintiffs' Texas mailing address in Defendants' response, which does prove Defendants were aiming at Texas [Exhibits 7-B, 7-A & 6].
9. Plaintiffs have friends who purchased land in Woodland Lakes as a direct result of a Houston Texas Craigslist advertisement, having never visited Missouri beforehand. The Campbells own land in Woodland Lakes and are Texas residents. Woodland Lakes Trusteeship, Inc. has sent mail from Missouri, to the State of Texas, to Plaintiffs and Plaintiffs' aforesaid friends over, at least the last couple years, as a matter of conducting general business [Exhibit 8]. Defendants have done business, as a general practice in Texas, by at least three parties who are/were Texas residents, through the United States Mail, by electronic mail and by telephone communications. Plaintiffs were billed for annual property

assessments to Plaintiffs' address in Texas. Defendants did accept Plaintiffs Texas checks as payment. The Woodland Lakes office did issue Woodland Lakes window decals to many vehicles, from several property owners, with Texas vehicle registrations and drivers' licenses.

10. Without a doubt, the property owners with lots advertised FSBO are desirous of Texans to view their postings. Additionally, on www.WoodlandLakes.net, there is a link advertising Woodland Lakes lots for sale. Plaintiffs have visited Defendants website from the State of Texas.
11. Defendants have committed fraud upon the Court in trying to have it both ways. By Defendant's own "Trust Indenture" Defendants declared in a court of law, the Woodland Lakes Development is owned by National Development Company, Inc., which is declared by Defendants as being a Texas Corporation. In order to avoid jurisdiction in this instance, Defendants have changed their declaration to a sworn statement that Defendants have not had involvement with National Development Company, Inc., since 1996 [Exhibit 4-B, Line 10].
12. Defendants did willfully and deliberately egregiously commit a substantive misconduct by lying about pertinent facts directly relating to Defendants' case. Defendants knew Woodland Lakes has had a web page for years. To witness, in Exhibit 4-B, Line 9, it is obvious Defendants have a website, however has authorized another person to maintain such website [Exhibit 2-A & 2-C]. WoodlandLakes.net is written in the first-person format, with the Woodland Lakes Trusteeship's office, email, fax and telephone number being advertised, and with an invitation to contact the "Woodland Lakes Trusteeship" by email

[Exhibit 3A-C].

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

13. Using *Calder v. Jones Test* of "purposeful direction:" (a) By retaining the representation of a Texas law firm, Defendants did know they were making business contacts in Texas. (b) Defendants did expressly aim for legal defense in Texas. Defendants have legal counsel in Missouri and were not restricted to Texas counsel. (c) Defendants knew actions arising from legal representation would be felt in Texas.

II. EFFECT OF SERVICE OF PROCESS:

14. Dendant National Development Company, who is the owner of Woodland Lakes Pursuant to the Woodland Lakes Trust Indentures, was served upon its Registered Agent. Additionally, Counsels, Mr. Wallace and Ms. David did appear on National Development Company Inc.'s behalf when this case was called on March 29, 2012. Because National Development Company, Inc. is declared by Woodland Lakes Trustship Inc., as being a Texas Corporation, Defendants cannot have this action dismissed.
15. National Development Company, Inc., did make an appearance by counsel in this case. Defendants' Motion to Dismiss does state, "*Plaintiffs concede National Development Company, Inc. is a North Carolina corporation.*" In said motion, Counsel Wallace did not object or stipulate that he was not the legal representation for the corporation who own the development in Missouri; National Development Company. It is irrelevant that said corporation is a also

a North Carolina corporation, since corporations can have more than one citizenship.

16. Counsels, Mr. Casey Wallace and Ms. Katharine David did appear on behalf of National Development Company, Inc., on March 29, 2012. When called for appearance, neither counsel objected (on the record) or clarified that they did not represent National Development Company, Inc. To the contrary, when the name "National Development Company, Inc." was summoned, both counsels stood and announced they were ready to defend said defendant, et al.

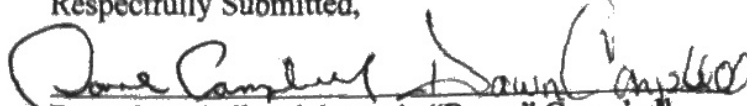
III. DISMISSING THIS CASE OFFENDS TRADITIONAL NOTIONS OF FOUL PLAY AND SUBSTANTIAL JUSTICE BECAUSE DEFENDANTS HAVE NOT DEMONSTRATED THAT THEY WOULD SUFFER AS A RESULT OF DEFENDING THIS CASE IN TEXAS, VERSUS MISSOURI.

17. Defendants have not shown that litigating this case in Texas offends the traditional notions of foul play and substantial justice.
18. In today's world of electronics and gadgets, Defendants can appear in this case without traveling to Texas by ways of teleconferencing and video appearances.
19. Defendants have not shown cause that would indicate Defendants would suffer in litigating this case in Texas. To the contrary, Defendants have shown they now have personal contacts with a Texas attorney.

IV. PRAYER FOR RELIEF:

20. Plaintiffs hereby pray this Honorable Court will 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

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy 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:

National Development Company, Inc., Woodland Lakes Trusteeship, 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

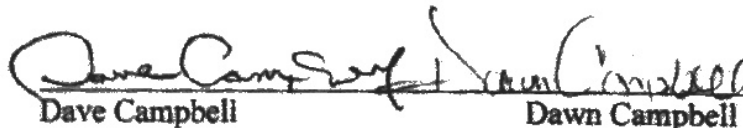
% Haynes Boone, Attorneys and Counselors

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



Dave Campbell

Dawn Campbell