

CAUSE NUMBER _____

JULIANNE MARIE BRAUN
Plaintiff,

V.

PROPERTY OWNERS
ASSOCIATION OF
TERLINGUA RANCH, INC
Defendant

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IN THE DISTRICT COURT

394th JUDICIAL DISTRICT

OF BREWSTER COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

WHEREAS all conditions precedent have been met, now comes JULIANNE MARIE BRAUN, Plaintiff herein, filing this petition pursuant to Texas Civil Practices and Remedies Code, and does herein state and allege and show the Court the following:

A. DISCOVERY CONTROL PLAN LEVEL

- 1. Plaintiff intends that discovery be conducted under Discovery Plan Level 2.

B. PARTIES AND SERVICE

- 2. Plaintiff, JULIANNE MARIE BRAUN, is an individual residing in Brewster County Texas, with a mailing address of HC 65 Box 255H, Alpine, TX 79830. Plaintiff has a justiciable interest in this suit and has capacity through legal authority of Texas Civil Practice and Remedies Code §12.003(a)(8), and §12.007.
- 3. Defendant PROPERTY OWNERS ASSOCIATION OF TERLINGUA RANCH, INC. (hereinafter referred to as POATRI), is a Texas Nonprofit Corporation with its principal place of business at 16000 Terlingua Ranch Road, with a mailing address of P.O. Box 638, Terlingua, TX 79852 in Brewster County, Texas.
- 4. Service may be made to the registered agent of POATRI. POATRI ByLaws, Article I Paragraph 1.01 state that “*POATRI’s Registered Agent is the serving General Manager, who is located at the principal office*” the ByLaws also state “*POATRI’s principal office is located 16 miles east, off of Highway 118 on Terlingua Ranch Road, Brewster County, Texas. The postal address is Post Office Box 638, Terlingua, Texas 79852*”. The serving General Manager is Alida Lorio.

C. JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this court.
6. This court has jurisdiction over the parties.
7. Venue in Brewster County is proper in this cause.

D. JURY DEMAND

8. Plaintiff invokes the right to a trial by jury.

E. FACTS CLAIMED

9. Plaintiff owns real property within an area in the southern portion of Brewster County, Texas known as Terlingua Ranch.
10. Plaintiff's property is affected by "TERLINGUA RANCH MAINTENANCE ASSOCIATION" agreement (hereinafter called TRMA).
11. The TRMA was originally recorded in the real property records of Brewster County on October 26, 1971 in Volume 173 Pages 213-227. Amendments to the TRMA have been filed in the real property records of Brewster County as follows (only the 1st page of each recorded amendment is referenced):
 - a. Vol 185, page 714
 - b. Vol 198, Pg 721
 - c. Vol. 217, page 195
 - d. Vol. 220, page 713
 - e. Vol. 260, page 618
 - f. Vol. 18, page 526
 - g. Vol. 127, page 299
 - h. Vol. 116, page 111
 - i. Vol. 186, Pg. 545
 - j. Vol. 186, Pg. 546
12. The document filed for the amendment to Section X of the TRMA contains the language "This amendment was approved by the Property Owners, in accordance with Section X of the Agreement, in a mailed ballot, duly called and conducted under the terms of Section X, and tabulated and finalized on July 14, 2005."

13. The document filed for the amendment to Section I of the TRMA contains the language “This amendment was approved by the Property Owners, in accordance with Section X of the Agreement, in a mailed ballot, duly called and conducted under the terms of Section X, and tabulated and finalized on July 22, 2005.”
14. The wording of Section X of the TRMA as it existed at the time immediately prior to the filing was:
“At any time, a majority of the Members in Good Standing of the Property Owners Association of Terlingua Ranch, Inc., a Texas nonprofit corporation (the “Association”) whose property on Terlingua Ranch is covered by this agreement, may amend this agreement in an election by mail, which must be duly called by the Board of Directors of the Association. The deadline for submitting ballots in a election by mail shall not be less than 45 days from the time the ballots are mailed to the members. After such vote, such amendment shall be effective upon the filing by a duly authorized officer of the Association of the sworn instrument containing such amendment in the office of the County Clerk of Brewster County, Texas, except that prior to the expiration of twenty years from November 1, 1970, no such amendment attempting to require the payment by Developer of any maintenance fee, charge or dues shall be binding upon Developer unless such amendment shall be joined by Developer.”
15. No other portion of the TRMA indicates any circumstances under which less than a majority of “members in good standing of the Property Owners Association of Terlingua Ranch, Inc.” (hereinafter called MIGS) can amend the TRMA, except that Section III provides the Administrator the rights to transfer duties to another entity or to reduce, waive, or abandon maintenance fees.
16. In a newsletter published by POATRI in July 2005, it is stated on page 4 that 926 yea votes and 221 nay votes and 25 abstentions were counted for the amendment to Section X of the TRMA and also that 624 yea votes and 358 nay votes and 21 abstentions were counted for the amendment to Section I of the TRMA. The newsletter further states on page 7 that 41% of eligible voters actually voted.

17. It is not possible that a majority of MIGS did “amend this agreement in an election by mail” if only 41% of MIGS voted, therefore, the amendments are not “in accordance with Section X of the Agreement” as it existed prior to filing of this amendment.
18. The two most recent amendments to the TRMA filed by the Defendant and recorded in the real property records of Brewster County in August of 2005 contain false statements concerning their validity and are fraudulent.
19. Plaintiff has made payments to POATRI the amounts of which were calculated based on the 2005 amendments to the TRMA.
20. Plaintiff has been deceived by Defendant to pay maintenance fees calculated based on the recorded fraudulent amendments, which are greater than the maintenance fees authorized to be assessed by previously existing amendments to the TRMA.
21. Plaintiff’s payments to Defendant for maintenance fees were not made with “effective consent” and hence constitute theft by Defendant under Texas Penal Code §31.03(b)(1).
22. The TRMA constitutes an interest in the real property extant in Terlingua Ranch which is subject to maintenance fees, including the real property owned by Plaintiff.
23. POATRI had knowledge of the language of the existing TRMA Section X at the time of the recording.
24. POATRI had knowledge prior to the time of recording that only 41% of MIGS voted to amend the TRMA.
25. POATRI had knowledge that the amendment at the time of filing for recording was not “in accordance with Section X of the Agreement”.
26. The action of POATRI in filing a fraudulent document for recording in the Brewster County records constitutes the making and presentation of a document or other record with knowledge that the document or other record is a fraudulent interest in real property.
27. POATRI had the intent that the document or other record be given the same legal effect as a document of a court evidencing a valid interest in real property.

28. POATRI has charged and collected maintenance fees from property owners who are subject to the TRMA in the amounts specified in the 2005 amendment to Section I of the TRMA.
29. POATRI has filed liens on property owners for failure to pay fees assessed in the amounts specified in the 2005 amendment to Section I of the TRMA.
30. POATRI's filing of the document or other record was made with the intent to cause another person to suffer financial injury.
31. Fees calculated in accordance with the previously existing Section I of the TRMA were based on \$4.25/property owner per month plus \$0.04/acre per month.
32. Fees calculated in accordance with the recorded 2005 amendment to Section I of the TRMA were based on \$142 per owner per year plus annual cost of living adjustments, without regard to acreage owned.
33. For all property owners who own less than 189 acres, including Plaintiff, this constitutes an increase in fees on an annual basis.
34. On the basis of the previously existing Section I of the TRMA, Plaintiff would be subject to a maintenance fee of \$70.20 per year on her 40 acres.
35. On the basis of the 2005 recorded amendment to Section I of the TRMA, Plaintiff would be subject to maintenance fees equal to or greater than \$142 per year (due to the cost of living adjustments made annually).
36. The fraudulent recording of Section I of the TRMA results in more than a 100% increase to Plaintiff in annual maintenance fees assessed over those fees authorized by the previously existing TRMA which constitutes financial injury.
37. The combination of facts presented in Paragraphs 9 through 36 create a liability for POATRI under Texas Civil Practice and Remedies Code §12.002.

F. PRAYER

38. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the following relief be awarded to Plaintiff:

A. the relief provided by the liability created by Texas Civil Practice and Remedies Code §12.002 including:

- 1) \$10,000,
- 2) court costs; and
- 3) exemplary damages in an amount determined by the court.

B. for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

Julianne M. Braun
Plaintiff, pro se
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