

CAUSE NO. 02CV0305

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| BRIAN AUZSTON, ROXANNE | § | IN THE DISTRICT COURT OF |
| CASAS, BRENDA DARTEZ BALE, | § | |
| CRYSTAL DAVIS, DONNA C. GUICE, | § | |
| WILLIAM CHAD HUNT, DONNA | § | |
| IVEN, BRENDA RODRIGUEZ, TRACY | § | |
| WADE, and AMANDA WILLIAMS | § | |
| | § | |
| VS. | § | GALVESTON COUNTY, TEXAS |
| | § | |
| | § | |
| CHARLENE ELDER dba ALPHA- | § | |
| BARNES REAL ESTATE SERVICES, | § | |
| THE VESTCOR COMPANIES, INC., | § | |
| dba BAY COLONY APARTMENTS | § | |
| and VESTCOR DEVELOPMENT | § | |
| CORPORATION, INC. dba BAY | § | |
| COLONY APARTMENTS | § | 122 nd JUDICIAL DISTRICT |

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE COURT:

BRIAN AUZSTON, CATHY BARB, BRIAN & TONI BORNE, ROXANNE CASAS, MELVIN CRAWFORD, JR., BRENDA DARTEZ BALE, LELA CHANEY, CHARLOTTE DAVIS, CRYSTAL DAVIS, CLIFFORD DOUGLAS, SHANNAN FRAZIER, KIM GERMAN, DONNA C. GUICE, YOLANDA HAMPTON, KELLY HAYES, SHERYL HILL, WILLIAM CHAD HUNT, DONNA IVEN, BRANDI JONES, ROBERT KING, TONYA LAYMANCE, LaSHONDA LEMONS, CYNTHIA MATAMORAS, JACQUELINE POMIER, BRENDA RODRIGUEZ, PRISELLA SMITH, SANDRA SNIDER, LISA ANN SWANSON, TRACY WADE, AMANDA WILLIAMS, DEDRA WILLIAMS, and WILLIE WILLIAMS, Plaintiffs, files this their Second Amended Original Petition and complains of Defendants, CHARLENE ELDER dba ALPHA-BARNES REAL ESTATE SERVICES, THE VESTCOR COMPANIES,

INC., VESTCOR DEVELOPMENT CORPORATION, INC. and **BAY COLONY LIMITED PARTNERSHIP, A FLORIDA LIMITED PARTNERSHIP** and for cause of action shows:

I. Selection of Discovery Level

Plaintiffs affirmatively plead that they seek monetary and other relief in excess of \$2,000,000,000 and discovery is intended to be conducted under Level 2 under Rule 190.3.

II. Parties and Service of Citation

BRIAN AUZSTON, CATHY BARB, BRIAN & TONI BORNE, ROXANNE CASAS, MELVIN CRAWFORD, JR., BRENDA DARTEZ BALE, LELA CHANEY, CHARLOTTE DAVIS, CRYSTAL DAVIS, CLIFFORD DOUGLAS, SHANNAN FRAZIER, KIM GERMAN, DONNA C. GUICE, YOLANDA HAMPTON, KELLY HAYES, SHERYL HILL, WILLIAM CHAD HUNT, DONNA IVEN, BRANDI JONES, ROBERT KING, TONYA LAYMANCE, LaSHONDA LEMONS, CYNTHIA MATAMORAS, JACQUELINE POMIER, BRENDA RODRIGUEZ, PRISELLA SMITH, SANDRA SNIDER, LISA ANN SWANSON, TRACY WADE, AMANDA WILLIAMS, DEDRA WILLIAMS, and WILLIE WILLIAMS are residents of Galveston County, Texas.

Defendant, CHARLENE ELDER dba ALPHA-BARNES REAL ESTATE SERVICES has been served and entered an appearance in this cause.

Defendant, THE VESTCOR COMPANIES, INC. is a Florida corporation, doing business in Galveston County, Texas, with its principal place of business in Jacksonville,

Florida. Defendant, THE VESTCOR COMPANIES, INC. has been served and entered an appearance in this cause.

Defendant, VESTCOR DEVELOPMENT CORPORATION INC. is a Florida corporation, doing business in Galveston County, Texas, with its principal place of business in Jacksonville, Florida. Defendant, VESTCOR DEVELOPMENT CORPORATION INC. has been served and entered an appearance in this cause.

Defendant, **BAY COLONY LIMITED PARTNERSHIP, A FLORIDA LIMITED PARTNERSHIP** is a Florida corporation, doing business in Galveston County, Texas, with its principal place of business in Jacksonville, Florida. Service of citation may be made on their attorney, Willard Tinsley, Funderburk and Funderburk, 1000 Riviana Building, 2777 Allen Parkway, Houston, Texas 77019-2178 by certified mail, return receipt requested.

“VESTCOR”, when used herein, shall include THE VESTCOR COMPANIES, INC. and VESTCOR DEVELOPMENT CORPORATION INC., its agents and employees in their capacity of representatives of VESTCOR.

“BAY COLONY” when used herein, shall include BAY COLONY LIMITED PARTNERSHIP, A FLORIDA LIMITED PARTNERSHIP, its agents and employees in their capacity of representatives of BAY COLONY.

“CHARLENE”, when used herein, shall include CHARLENE ELDER dba ALPHA-BARNES REAL ESTATE SERVICES, it agents and employees in their capacity of representatives of ALPHA-BARNES REAL ESTATE SERVICES and CHARLENE ELDER, individually.

III. Mandatory Venue

Venue is mandatory in this county as this is a suit to recover real property located in Galveston County, Texas as well as a suit between a landlord and tenants arising under a lease to real property located in Galveston County.

IV. Landlord-Tenant Relationship

Plaintiffs leased residential properties located in Dickinson, Galveston County, Texas from BAY COLONY, VESTCOR and CHARLENE, Defendants, pursuant to written lease agreements.

V. Constructive Eviction

Plaintiffs' obligations as to the lease terms essentially terminate because the fundamental reason for the lease's existence has been destroyed by Defendants' conduct to-wit:

1. Plaintiffs' can no longer enjoy the premises for which they leased;
2. Defendants, or those acting on behalf of Defendants or with Defendants' permission committed a material act or omission which substantially interfered with use and enjoyment of the premises for their leased purpose;
3. Defendants' acts or omissions permanently deprived the Plaintiffs' of the use and enjoyment of the leased premises; and
4. Plaintiffs' abandoned the premises within a reasonable period of time after the act or omission by Defendants.

Defendants were placed on notice numerous times by Plaintiffs and Plaintiffs' counsel that the units in which Plaintiffs lived were infested with a mold that posed a

serious health hazard to the occupants which interfered with the use and enjoyment of the leased premises.

Defendants failed and refused and continue to fail and refuse to make the necessary repairs, i.e. remediation efforts of the unit themselves and remediation of the contents belonging to Plaintiffs, thereby subjecting the Plaintiffs to personal injury.

Defendants, made repeated and continuous demands to the Plaintiffs with the willful intent to harass Plaintiffs. The Defendants threatened to take actions that were prohibited by Texas Law and the Defendants threatened that the nonpayment of the alleged debt would result in the seizure and/or repossession of Plaintiffs, leased property (and Plaintiffs' personal property within) without proper court proceedings.

Defendants filed and attempted to prosecute a suit in the Justice of Peace Court under cause no. JC00101591 against Plaintiff, WILLIAM C. HUNT even though Defendants were put on notice of a "Constructive Eviction" and the Plaintiff vacated the premises in January 2002. The Forcible Detainer suit was dismissed on March 13, 2002. Defendants brought this suit in bad faith and for purposes of harassment and are liable to Plaintiff, WILLIAM C. HUNT under §92.004 V.T.C.A. Property Code.

VI. Plaintiff's Full Performance

The Plaintiffs have fully performed all conditions, covenants, and promises under the residential lease agreement to be performed on the Plaintiffs' part. In the event that Plaintiffs have failed to perform any part of the contract, said failure is excused by the Defendants' breach of the contract and negligence.

VII. Defendant's Breach of Contract

As stated herein, the Defendants have repeatedly and intentionally violated and breached the terms of the lease agreements in ways too numerous to list. Those violations include, but are not limited to Defendants' failure to give the Plaintiffs due notice as required by the contract, Defendants failure to provide for Plaintiffs' peaceful possession of the property, demanding sums not due, requiring payment prior to the due date, and depriving Plaintiffs of the benefit of their bargain in that they have been locked out and/or threatened to be lock out of their leased property without the proper court proceedings.

VIII. Trespass

Defendants and/or their employees, agents or representatives, intruded upon Plaintiffs' property without legal right, authorization or consent. As a direct and proximate result thereof, Defendants' actions constituted trespass.

IX. Conversion

Defendants and/or their employees, agents or representatives, intruded upon Plaintiffs' property without legal right, authorization or consent and interfered with the Plaintiffs' rights of possession in personal property. As a direct and proximate result thereof, Defendants' actions constituted conversion.

X. Deceptive Trade Practices

Plaintiffs incorporate by reference all facts set out above in Sections IV - V of this pleading.

Defendants' actions violate § 17.46 (b) of the Texas Deceptive Trade Practices

Act. Specifically,

- (4) Using deceptive representations in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or qualities, which they do not have...;

Plaintiffs relied on the representations of Defendants and their expertise.

Defendants engaged in an unconscionable action or course of action as specified above, including but not limited to:

- (1) Breach of an express or implied warranty.
- (2) There is a gross disparity between the amount paid by Plaintiffs and the consideration received.

§ 17.50(a)(1)-(3) of the Texas Deceptive Trade Practices Act.

Defendants' conduct was committed knowingly. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which plaintiffs complain. (See 17.50(b) of the Texas Deceptive Trade Practices Act)

Furthermore, as a direct result of the Defendants' knowing and intentional misconduct as described in this petition, the Plaintiffs suffered mental anguish. In particular, Plaintiffs suffered intense feelings of humiliation and belittlement, an abnormal sense of inferiority and accompanying panic attacks, and loss of sleep and appetite, all of which commenced on the date that Plaintiffs learned of the Defendants' knowing misconduct and all of which have continued through this date. Accordingly, Defendants are liable to Plaintiffs for mental anguish damages suffered by Plaintiffs and

additional damages of up to three times the amount of economic damages as permitted by the Deceptive Trade Practices-Consumer Protection Act.

XI. Damages

In addition to all of the damages mentioned above, as a proximate and foreseeable result of the Defendants' actions, including but not limited to the wrongful eviction, the Plaintiffs have lost the benefit of the lease contract. All things considered, the Plaintiffs have suffered actual and consequential damages in an amount not to exceed Two Million Dollars (\$2,000,000.00). Plaintiff seeks recovery of said sum, which is within the jurisdictional limits of the Court.

Mental Anguish

Defendants' campaign of harassment outlined above was conducted willfully with the deliberate intention of inflicting injury upon Plaintiffs and with knowledge of the probable results of that campaign. Alternatively, Plaintiffs allege that Defendants' campaign of harassment was conducted with action conscious indifference to the Plaintiffs rights, welfare, and safety. As a direct result of the Defendants' wrongful acts referred to above, Plaintiffs have suffered headaches, nausea, vomiting, nervousness, loss of sleep, as well as mental anguish, and humiliation, and will in reasonable medical probability suffer the same for the balance of their natural lives.

Exemplary Damages

Defendants' wrongful acts were done in a malicious manner with intent to injure Plaintiffs or with actual subjective awareness of the risk involves and in conscious indifference to the rights, safety, or welfare of others, including Plaintiffs. Plaintiffs are therefore, entitled to punitive or exemplary damages in an amount not to exceed One

Million Five Hundred Thousand Dollars (\$1,500,000), jointly and severally, and sue for such damages.

XII. Attorney's Fees

As a result of Defendant's actions, Plaintiffs have been forced to retain an attorney to represent them. Plaintiffs are entitled to fees for breach of contract specifically described above and/or as part of statutory and common law punitive and exemplary damages made the basis of this suit.

Plaintiffs' legal fees are expected to be in excess of \$500,000 in the trial court, \$100,000 in the Court of Appeals, \$50,000 upon application of writ of error to the Texas Supreme Court, and \$50,000 upon acceptance of writ by the Texas Supreme Court.

WHEREFORE, the Plaintiffs request that the Defendants be cited to appear and answer, and that on final hearing the Plaintiffs have:

1. Actual and consequential damages which Plaintiffs anticipate not to exceed \$2.0 million dollars;
2. Prejudgment and post judgment interest;
3. Judgment for Plaintiff, WILLIAM C. HUNT for one month's rent plus \$100.00 as set forth in §92.004 V.T.C.A. Property code;
4. Attorney's fees in a total sum (for trial and appeal) not to exceed \$600,000;
5. By reason of the Defendants' knowing and intentional conduct, additional damages as allowed by Section 17.50(b)(1) of the Business and Commerce Code;
6. By reason of Defendants' knowing and/or intentional misconduct, mental anguish damages in an amount within the jurisdictional limits of the Court but not to exceed the \$1.5 Million set forth above;
7. Exemplary damages against Defendants in a sum determined by the trier of fact but not to exceed \$1,500,000.00;

8. Cost of court; and
9. Such other and further relief at law or in equity to which the Plaintiff may be justly entitled.

Respectfully submitted,

LAW OFFICES OF ROBERT D.
CLEMENTS, JR. & ASSOCIATES

BY: ROBERT D. CLEMENTS, JR.
SBOT #04369600

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(281) 388-2224 (Telephone)
(281) 388-2520 (Telecopy)

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been delivered to all parties and/or counsel of record in accordance with the Texas Rules of Civil Procedure on July 15, 2003.

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