

2.2 Defendant Royce Homes, L.P. is a foreign limited partnership who at all times relevant to this suit, was authorized to conduct business in the State of Texas, and which maintained its principal place of business in Harris County, Texas. This Defendant may be served with process by and through its registered agent for service, John Speer, at 16427 Telge Road, Cypress, Texas 77429.

2.3 Defendant Royce Builders, Inc. is a foreign corporation who at all times relevant to this suit, was authorized to conduct business in the State of Texas, and which maintained its principal place of business in Harris County, Texas. This Defendant may be served with process by and through its registered agent for service, John Speer, at 16427 Telge Road, Cypress, Texas 77429.

2.4 Defendant John Speer is an individual who at all times relevant to this suit, was a resident of Harris County, Texas. This Defendant may be served with process at 16427 Telge Road, Cypress, Texas 77429.

III.

JURISDICTION AND VENUE

3.1 Plaintiff would show that it has been damaged in a sum in excess of the minimum jurisdictional limits of this Court. Moreover, Plaintiff's causes of action accrued less than two years ago. Hence, the Court has personal jurisdiction over the parties and subject matter jurisdiction over the controversy in question pursuant to the provisions of V.T.C.A., Civ. Prac. & Rem. Code §§ 16.003(a), 16.004(a), 16.051, and 38.001.

3.2 Venue is appropriate herein by virtue of V.T.C.A., Civ. Prac. & Rem. Code §§ 15.002(a), and 15.005.

3.3 All conditions precedent to the filing of this lawsuit have occurred or taken place.

IV.

BACKGROUND

4.1 Texas Colonial Foundation for Youth was a non-profit corporation founded on February 19, 1999. Its stated purpose was to provide scholarships and mentoring to the youth of the greater Houston/Galveston area. It achieved that purpose by raising funds through various charity events held throughout the year, and thereafter providing scholarships to deserving young men and women to continue their education at the school of higher learning of their choice.

4.2 Like most start-up charitable foundations, Texas Colonial Foundation for Youth found the going tough early on to raise funds for its mission statement. In late 2002 and early 2003, the directors of Texas Colonial Foundation for Youth were approached by Defendant John Speer, who proposed a new entity to help fund the scholarship activities of Texas Colonial Foundation for Youth. Toward that end, Defendant Speer proposed to take over and head up two charitable events to be held throughout the year: the first would be a golf tournament held in the Spring of each year, and the second would be a sporting clays shooting tournament held in the Fall of each year. The tournaments would be sponsored by Defendant Speer through two of his business entities, Defendant Royce Homes, L.P., and Defendant Royce Builders, Inc.

4.3 Defendant Speer proposed that the funds derived from these two charitable events were to be paid over by the Royce Defendants to the Plaintiff, who would thereafter hold a benefits dinner in the late Fall of each year to award scholarships to deserving young men and women from the Houston/Galveston area. In addition, the Royce Defendants would also make an annual donation to the foundation to supplement the proceeds derived from the golf and sporting clays tournaments. Finally, Defendant Speer proposed that the charitable activities of the Plaintiff would be promoted

on the website for the Royce Defendants, as well as in the Defendants' advertising to the general public, in order to solicit donations from the Defendants' customers, with the Defendants matching those donations up to the limited amount of \$100 per house. Under these proposals, the total yearly amount which the Defendants expected to contribute to the Plaintiff was about \$315,000.00.

4.4 On February 8, 2003, the Board of Directors for Texas Colonial Foundation for Youth voted to accept Defendant Speer's proposal. Thereafter, on April 25, 2003, the articles of incorporation for Texas Colonial Foundation for Youth were amended to change the name of the foundation to Royce Homes Foundation for Youth, the entity which is the Plaintiff in this case.

4.5 Beginning in 2007, the Royce Defendants failed to make their yearly contributions to the Plaintiff, and also failed to render an accounting and to turnover funds derived from the 2007 golf tournament, the 2007 sporting clays shooting tournament, and the 2008 golf tournament (the 2008 sporting clays shooting tournament was cancelled due to the Royce Defendants going out of business). On information and belief, Defendant Speer utilized those funds to help prop up his ailing business enterprises, Defendant Royce Homes and/or Defendant Royce Builders, which were forced to go out of business in the Fall of 2008 after being challenged by numerous customers and vendors over questionable real estate transactions and improper construction of newly built homes.

4.6 The Plaintiff sent written demands for an accounting from the Defendants on two separate occasions in 2008, and a final question in April of 2009. All three of these requests were ignored by the Defendants. On information and belief, the Plaintiff submits that the Defendants have converted, usurped, and/or wrongfully misappropriated close to \$400,000.00 in funds which rightfully belong to the Plaintiff, and for which Defendant Speer, acting in his individual capacity, as well as Defendants Royce Homes and Royce Builders have failed to account for.

V.

PLAINTIFF'S CAUSES OF ACTION

5.1 Breach of Contract

Defendants Speer, Royce Homes, and/or Royce Builders are in breach of their express and/or implied agreement to fund the Plaintiff's charitable activities. Plaintiff and Defendants were in privity, and Plaintiff performed its obligations under the agreement. All conditions precedent required of Plaintiff before raising this cause of action have been met. Defendants breached their obligations under the agreement to fund the Plaintiff's charitable endeavors and as a result thereof, Plaintiff suffered damages of about \$400,000.00, as well as been sustaining additional damages in terms of attorney's fees, costs of court, and interest on its economic losses.

5.2 Breach of Fiduciary Duty

Plaintiff owned or had a right to possession of funds approximating \$400,000.00 in charitable donations held in trust by Defendants Speer, Royce Homes, and/or Royce Builders for the benefit of the Plaintiff. Those funds were the Plaintiff's personal property, and the Defendants misappropriated and/or wrongfully exercised dominion or control over those funds, and that as a result of Defendants' breach of their fiduciary duties to the Plaintiff, those funds were either lost or converted by the Defendants for their own personal use. Based upon that breach of fiduciary duties, the Plaintiff now sues for its actual damages caused by the breach (an amount of about \$400,000.00), as well as for an accounting of all monies owed, as well as for punitive damages as punishment to the fiduciary for their knowing breach and intentional conduct, together with interest thereon, attorney's fees, expenses and costs of court.

5.3 Fraud

A. Common Law Fraud

The actions by Defendants Speer, Royce Homes, and/or Royce Builders constitute common law fraud, including, but not limited to, fraud in the inducement, fraud in the transaction, conspiracy to defraud, and aiding and abetting a fraud. The Defendants made specific representations to Plaintiff; and the representations made were both material and false. At the time Defendants made the representations, they knew the representations were false or, alternatively, made the representations recklessly, as positive assertions and without knowledge of their truth. Defendants made the representations with the intent that Plaintiff rely upon them, and Plaintiff did rely upon said representations to his detriment. In ignorance of the false and misleading statements, and due in part to the nature of the representations described in Section IV above, Plaintiff relied upon, to its detriment, the truth of the statements made by Defendant Speer, and all of Plaintiff's funds in the Defendants' possession were misappropriated, converted, and/or lost in the fraudulent transfer or conveyance of funds to the Defendants. As a result of Defendants' fraudulent conduct, Plaintiff sues for its damages caused as a result of such fraud as well as for punitive damages.

B. Uniform Fraudulent Transfer Act

On information and belief, Defendant Speer wrongfully transferred funds and other assets held in trust for the Plaintiff to Defendants Royce Homes and/or Royce Builders. The corporate Royce Defendants received such assets knowing that the transfers were made without them paying and without Defendant Speer receiving a reasonably equivalent value in exchange for the transfer of assets which was made. The Defendants knew that the idea for the transfer, and the actual transfer itself, was made in an effort to deprive Plaintiff of its rightful claim to the charitable contributions

made by various donors through the golf tournaments, sporting clays shooting tournament, and other donations submitted throughout the year to the Defendants, which were to be held in trust for the Plaintiff. Such transfers are violations of §24.005 of the Texas Business and Commerce Code.

5.4 Conversion

The Plaintiff had the right to possess all charitable contributions made to the Defendants as a result of the agreement entered into between the parties in 2003. Those funds clearly constituted personal property which belonged to the Plaintiff, and on information and belief, the Defendants wrongfully exercised dominion or control over those charitable donations which were to be held in trust for the Plaintiff and segregated from the Defendants' other funds, thereby converting them to their own benefit. As such, the Plaintiff suffered damages in the amount of about \$400,000.00., funds which rightfully belonged to the Plaintiff.

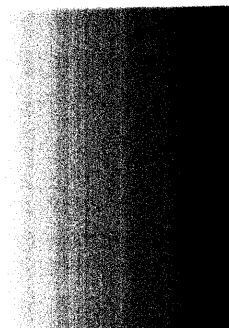
5.5 Alternative Claims in Equity

A. Money Had and Received

Plaintiff brings an equitable action "for money had and received." Such an action in equity is allowed to prevent a defendant from unjustly enriching himself in circumstances where defendant holds money that in equity and good conscience belongs to the Plaintiff.

B. Quantum Valebant

As another means of preventing the unjust enrichment of the Defendants, Plaintiff seeks damages under its claim for quantum valebant against the Defendants, inasmuch as the Defendants accepted charitable donations from various donors knowing that the Plaintiff reasonably expected to receive those funds. Instead, the Defendants utilized that money for the development and benefit of themselves, fully knowing at the time that the funds were remitted to the Defendants that it was



money to be held in escrow for the benefit of the Plaintiff, and which were wrongfully converted by the Defendants for their own personal use. Plaintiff has suffered substantial damage as a result of these actions for which it now sues.

VI.

ALTER EGO

6.1 The total dealings between the defendant corporations and defendant individual demonstrate that Defendants Royce Homes and Royce Builders were organized and operated as mere tools or business conduits of Defendant Speer. Defendant Speer retained sole financial interest, ownership, and control over Defendants Royce Homes and Royce Builders. Defendant Speer used Defendants Royce Homes and Royce Builders for personal purposes. Defendant Speer exercised control over and manipulated the corporate form of both Defendants Royce Homes and Royce Builders to his own benefit, ends and purposes, rather than the legitimate ends of their respective corporate entities. Further, on information and belief, Defendants failed to keep corporate and individual property separate. Hence, Plaintiff seeks to pierce the corporate veil of the corporate Royce Defendants and hold Defendant Speer responsible in his individual capacity.

VII.

JOINT and SEVERAL LIABILITY

7.1 The actions and omissions of each defendant as engaged in by each defendant is conduct described in one or more of the several enumerated sections of the Texas Penal Code set forth below. As such, each defendant is jointly and severally liable for the actual damages to the Plaintiff, as found by the jury. Moreover, each defendant is also jointly and severally liable for all of the punitive or exemplary damages as found by the jury, and the "cap" on punitive damages is

inapplicable. In addition, each defendant is jointly and severally liable for payment of the attorney fees and costs and expenses as found by the jury.

7.2 All of the acts and/or omissions of each defendant in the furtherance of the scheme, which cost Plaintiff about \$400,000.00, were committed with an intent to do harm as defined in Section 33.013 of the Civil Practice and Remedies Code. Each Defendant was aware of the scheme to separate the Plaintiff from its money. They were aware of the unlawful methods used to misappropriate, convert, and/or divert fiduciary property from a *bona fide* charitable use. They had a specific intent to cause substantial injury to Plaintiff as principles in the scheme. In the alternative, they were conspirators, and in the further alternative, they were aiders and abettors.

7.3 Plaintiff's harm resulted from criminal acts as described in Section 33.013(b)(2)(J) of the Civil Practices and Remedies Code, thereby imposing joint and several liability and, under Section 41.008 (c)(10), eliminating the statutory cap routinely placed on punitive damages.

VIII.

DAMAGES and ATTORNEY'S FEES

8.1 General and Special Damages

Plaintiff seeks all actual damages, general and special, legal and equitable, as allowed by law; all in an amount in excess of the minimum jurisdictional limits of this Court.

8.2 Incidental and Consequential Damages

In the alternative, Plaintiff seeks all incidental and consequential damages arising out of the breaches of both an express and implied contract in amounts which replace either, (i) the lost value of Plaintiff's assets, (ii) provide the Plaintiff with the benefit of its bargain, or (iii) provides Plaintiff with the difference between what was paid, and what was owed by the Defendants.

8.3 Punitive Damages

The conduct described herein was performed fraudulently, maliciously, wantonly, and in utter disregard of Plaintiff's rights. Plaintiff therefore seeks punitive damages in an amount sufficient to punish Defendants for this conduct and to serve as an example to others so they will be deterred from the same or similar acts.

8.4 Attorney's Fees

By virtue of V.T.C.A., Civ. Prac. & Rem. Code § 38.001, Plaintiff hereby seeks to recover its reasonable attorney's fees.

IX.

PRE- AND POST-JUDGMENT INTEREST

9.1 Plaintiff hereby pleads for pre-judgment interest at the maximum rate allowed by law.

9.2 Plaintiff hereby pleads for post-judgment interest at the maximum rate allowed by law.

X.

COSTS OF COURT AND OUT-OF-POCKET EXPENSES

10.1 Plaintiff hereby pleads for all costs of court and out-of-pocket expenses incurred during the course of its prosecution of the instant lawsuit.

XI.

JURY DEMAND

11.1 In accordance with the provisions of Tex. R. Civ. P. 216(a), Plaintiff hereby requests a trial by jury on all issues of fact asserted herein.

XII.

PRAYER

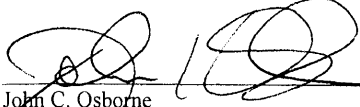
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for the Court to render judgment against Defendants, jointly and severally, and award Plaintiff the following in this proceeding:

- a. All actual and special damages;
- b. All incidental and consequential damages;
- c. Punitive and exemplary damages to the full extent provided by law;
- d. Attorneys' fees and legal expenses, including expert witness fees and costs of depositions;
- e. Pre- and Post-judgment interest as provided by law;
- f. Costs of court and out of pocket expenses; and
- g. All other relief, either general or specific, at law or in equity, to which Plaintiff may show itself justly entitled to receive.

Respectfully submitted this 18th day of May, 2009.

LAW OFFICES OF JOHN C. OSBORNE, P.L.L.C.

By:


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