

CAUSE NO. A-23-0059-CV-C

JASON MARTINEZ

IN THE DISTRICT COURT

Plaintiff,

v.

343RD JUDICIAL DISTRICT

HOLIDAY BEACH PROPERTY OWNERS
ASSOCIATION, [REDACTED],
[REDACTED]

Defendants.

ARANSAS COUNTY, TEXAS

Settlement Agreement and Release

Plaintiff Jason Martinez and Defendant Holiday Beach Property Owners Association enter into this Settlement Agreement and Release on the Effective Date.

Definitions

“Agreement” means this Settlement Agreement and Release.

“Board” means the POA’s Board of Directors.

“Bylaws” mean the POA’s Bylaws dated April 26, 2022.

“Community” means the Holiday Beach subdivision.

“Election” means the POA’s July 16, 2022 election of directors to the POA Board.

“Effective Date” means the last date either Party signed this Agreement.

“Martinez” means Plaintiff Jason Martinez.

“Martinez Parties” means Martinez together with his (as applicable) agents, representatives, administrators, attorneys, and fiduciaries.

“Lawsuit” means the above-captioned lawsuit.

“Parties” means Martinez and POA.

“Party” means Martinez or POA.

“Petition” means Plaintiff’s Original Petition filed in the Lawsuit on March 14, 2023.

“POA” means Defendant Holiday Beach Property Owners Association.

“POA Parties” means POA together with its (as applicable) parent, subsidiary, and related corporations, affiliates, predecessors, successors, and all of its past and present officers, directors, partners, members, managing members, shareholders, employees, agents, representatives, administrators, insurers, reinsurers, and fiduciaries.

[REDACTED] are excluded from the definition of POA Parties.

“Settled Claims” means all claims, complaints, losses, expenses, and damages, past or present, known or unknown, that Martinez has or may have had in the past, whether asserted in the Lawsuit or not, related to the Board, the Bylaws, the Causes of Action, the Election, the Lawsuit, the Petition, the Requested Remedies, and all other matters put at issue or that could have put at issue in the Lawsuit.

Any claims Martinez, [REDACTED], and/or [REDACTED] may have against each other are excluded from the definition of Settled Claims.

“Settlement Amount” means \$5,000.

Recitals

WHEREAS, Martinez owns a home in the Community;

WHEREAS, the POA manages and maintains the Community;

WHEREAS, the POA acts through its Board;

WHEREAS, Martinez filed the Lawsuit against the POA and alleged that the Election was not conducted pursuant to the POA’s Bylaws, the Texas Property Code, and the Texas Business Organizations Code (the “Allegations”);

WHEREAS, Martinez asserted causes of action in the Lawsuit against the POA for breach of fiduciary duty, breach of restrictive covenants and Bylaws, and violations of the Texas Property Code (the “Causes of Action”);

WHEREAS, Martinez seeks injunctive relief and monetary damages from the POA in the Lawsuit (the "Requested Remedies");

WHEREAS, the POA filed an answer in the Lawsuit denying Martinez's Causes of Action and asserting affirmative defenses;

WHEREAS, there are bona fide disputes between the Parties about the Election and the Settled Claims;

WHEREAS, the Parties now desire to avoid the further expense and inconvenience of litigation and to resolve the claims by and between them asserted or that could have been asserted in the Lawsuit;

NOW, THEREFORE, in consideration of the recitals set forth above and the consideration, representations, covenants, and obligations in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

No Admission of Liability

1. The Parties understand and agree that the execution of this Agreement, and any and all acts taken pursuant to or in connection with this Agreement are intended to be, and are, being made solely for the purpose of compromising and settling disputed claims which one Party might have against the other. Any action taken pursuant to this Agreement is not to be construed or considered as an admission of liability or fault by any Party.

Monetary Consideration

2. POA shall pay the Settlement Amount to Martinez.
3. POA's insurer shall issue a check for the Settlement Amount to Martinez within 30 days after the receipt of (i) a fully executed copy of this Agreement; and (ii) any necessary tax forms, including Form W-9s, for the issuance of the checks.
4. POA and/or its insurer shall send the check to Martinez's counsel at:

Sherer & Associates, PLLC
Attn: Eric D. Sherer
18756 Stone Oak Parkway, Suite 200
San Antonio, Texas 78258

Non-Monetary Consideration

5. POA shall establish an election committee pursuant to Article VI, Section 6 of the Bylaws. The Board shall assign the election committee with making recommendations to the Board about: (a) the adoption of a standard operating procedure for conducting membership elections of the POA's directors and officers; and (b) the adoption of a ballot template to be used in membership elections of the POA's directors.
6. POA shall ensure that a list of property owners eligible to vote in POA director elections is maintained to reflect an accurate list of the eligible property owners for a particular election.
7. The POA shall maintain a list of eligible property owners that vote in an election of the POA Board. The list shall identify each voting property owner but shall not state who the owner(s) voted for.
8. POA shall ensure that the list of the eligible property owners is available for inspection by any property owner in connection with a valid request pursuant to Article IX, Section 1 of the Bylaws.
9. POA shall complete items 5-8 by the POA's July 2024 annual meeting.
10. POA shall add the "consideration of amending the Bylaws" as an agenda item for the POA's July 2024 annual meeting. The POA shall prepare draft amendments to the Bylaws addressing Items 5-8 above, as well as any other needed changes to the Bylaws, to the membership for voting at the July 2024 annual meeting. Any amendment of the Bylaws must comply with the Bylaws, any governing documents, and Texas law.

Finality of Monetary and Non-Monetary Consideration

11. The Parties understand and agree that the obligations created by, and the covenants and agreements contemplated in Paragraphs 2-9 of this Agreement will be in full satisfaction of the Settled Claims and that Martinez shall not be entitled to any compensation or consideration from POA with respect to the Settled Claims other than as set forth in this Agreement.

Dismissal of the Lawsuit With Prejudice

12. Martinez shall sign the Motion to Dismiss With Prejudice attached hereto as Exhibit 1 and provide to the POA contemporaneously with his providing the POA with an executed copy of this Agreement.

13. Upon delivery of the check for the Settlement Amount to Martinez's counsel, POA's counsel may file the Motion to Dismiss With Prejudice in the Lawsuit.
14. The Parties agree to cooperate to execute any other documents reasonably required to dismiss the Lawsuit with prejudice.

Release

15. The Martinez Parties release, relinquish, waive, acquit, and forever discharge the POA Parties from any and all causes of action, agreements, awards, damages, judgments, garnishments, claims, debts, covenants, executions and demands of any kind whatsoever that the Martinez Parties now have or may have had in the past against the POA Parties arising out of, relating to, or in connection with the Settled Claims.
16. The POA Parties release, relinquish, waive, acquit, and forever discharge the Martinez Parties from any and all causes of action, agreements, awards, damages, judgments, garnishments, claims, debts, covenants, executions and demands of any kind whatsoever that the POA Parties now have or may have had in the past against the Martinez Parties arising out of, relating to, or in connection with the Settled Claims.
17. The releases in this Agreement are intended to include, without limitation, a release of any and all claims, demands, and causes of action of any nature whatsoever by Parties, whether arising by statute, regulation, in contract, in tort, or based upon negligence, negligence per se, gross negligence, gross negligence per se, strict liability, conversion, breach of warranty (express or implied), fraud, fraud in the inducement of this Agreement, misrepresentation, negligent misrepresentation, constructive fraud, breach of contract, breach of the Bylaws, breach of any POA or Community governing documents, breach of the duty of good faith and fair dealing, promissory estoppel, bad faith, violation of the Texas Property Code, violation of the Texas Deceptive Trade Practices Act, actual, compensatory, punitive, or exemplary damages, wanton or willful conduct, civil conspiracy, piercing the corporate veil, single business enterprise, joint enterprise, alter ego, fraudulent transfer, constructive trust, action for accounting, unjust enrichment, money had and received, attorneys' fees, declaratory judgment, respondeat superior or any other theory of recovery, known or unknown, presently existing or which existed in the past arising out of, relating to, or in connection with the Settled Claims.

Entire Agreement

18. This Agreement sets forth the entire agreement pertaining to the subject matter hereof and supersedes any and all prior agreements and

understandings of the Parties. This Agreement is intended to be a fully integrated statement of the Parties' agreements concerning all matters referenced herein.

19. No Party has expressed any facts, representations, express or implied warranties to include the execution of this Agreement except as expressly contained in this Agreement.
20. Each Party represents and warrants that (i) he or it is not relying on any statement or representation of any opposing Party; (ii) he or it is relying on his or its own judgment and that of his or its legal counsel, and (iii) he or it read this Agreement and fully understands the terms of this Agreement.
21. This Agreement shall not be modified or amended except in a writing signed by the Parties.

Construction

22. This Agreement is entered into in Texas and shall be construed and interpreted in accordance with Texas law.
23. Venue for any dispute arising out of, relating to, or in connection with this Agreement shall be exclusively in the state courts of Aransas County, Texas.
24. This Agreement shall not be construed against any Party as having been drafted by any Party. The Parties had equal access to and input in the terms and conditions of this Agreement.

Miscellaneous

25. The terms of this Agreement are contractual and not merely recitals.
26. Waiver of any breach of this Agreement shall not be deemed a waiver of any other breach of this Agreement.
27. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be severable and there shall be added a provision similar to such illegal, invalid, or unenforceable provision as may be possible, legal, and enforceable.
28. The Parties each represent and warrant that (i) no other person or entity has any interest in the Settled Claims, (ii) they have the sole right and exclusive authority to enter into this Agreement, (iii) no consent, approval, authorization, or order of any court, governmental authority, person or entity

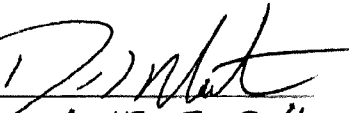
is required for the execution, delivery, or performance of this Agreement, and (iv) they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the Settled Claims.

29. This Agreement may be executed in multiple counterparts. Any executed counterpart shall constitute an original of this Agreement and all counterparts together shall constitute the same Agreement. Counterparts may be delivered by email (including scanned or pdf signature or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and shall suffice with the same force and effect as an original signature.

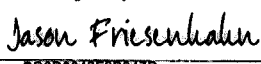
30. The Parties acknowledge and agree that each has consulted or had the opportunity to consult an attorney of his or its choosing regarding the terms of this Agreement before signing this Agreement.

AGREED:

Jason Martinez

By: 
Date: 1-17-2024

Holiday Beach Property Owners Association

DocuSigned by:
By: 
Name: Jason Friesenhahn
Title: President
Date: January 19, 2024 | 12:07 PM PST

[Exhibit 1]

CAUSE NO. A-23-0059-CV-C

JASON MARTINEZ

IN THE DISTRICT COURT

Plaintiff,
v.

343RD JUDICIAL DISTRICT

HOLIDAY BEACH PROPERTY OWNERS
ASSOCIATION, [REDACTED]

Defendants.

ARANSAS COUNTY, TEXAS

PLAINTIFF'S PARTIAL MOTION TO DISMISS WITH PREJUDICE

Plaintiff Jason Martinez files this Partial Motion to Dismiss With Prejudice.

1. The claims by and between Plaintiff Jason Martinez and Defendant Holiday Beach Property Owners Association have settled.


2. Plaintiff requests the court to dismiss his claims against Defendant Holiday Beach Property Owners Association with prejudice.

3. Plaintiff does not dismiss his claims against Defendants [REDACTED] and [REDACTED] and those claims survive this requested dismissal.

[Intentionally Blank]

Respectfully submitted,

SHERER & ASSOCIATES, PLLC

By: 
/s/ Eric D. Sherer

Eric D. Sherer
Texas Bar No. 18237890
Email: esherer@sherer.legal
18756 Stone Oak Parkway,
Suite 200
Tel: (210) 696-6645
Fax: (866) 305-5823

**ATTORNEYS FOR PLAINTIFF JASON
MARTINEZ**

CERTIFICATE OF SERVICE

I certify this document was served on all parties and/or counsel or record
by electronic service on February _____, 2023.

/s/ Christopher M. Raney
CHRISTOPHER M. RANEY

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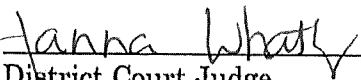
ARANSAS COUNTY, TEXAS

ORDER

The court considered the Partial Motion to Dismiss filed by Plaintiff Jason Martinez (the "Motion"). The Motion is granted. The court orders that Plaintiff's causes of action asserted against Defendant Holiday Beach Property Owners Association are dismissed with prejudice. Plaintiff and Holiday Beach shall bear their own costs and fees.

This order does not affect Plaintiff's claims against Defendants [REDACTED] and [REDACTED] which claims remain pending.

Signed on this 14 day of February 2024.


District Court Judge

FILED

14TH DAY OF FEBRUARY 2024 AT 11:51 AM
Pam Heard, District Clerk
Dist. Court, Aransas County, Texas

By  Deputy

Digitally signed
by Jaime
Blackburn
Date:
2024.02.21
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