

2011-CI-16542

073RD JUDICIAL DISTRICT COURT

CRAIG W CLARK ET AL VS JPMORGAN CHASE B

CAU: DATE FILED: 10/11/2011



CRAIG WILLIAM CLARK AND
RICHARD BURNS CLARK

vs.

JPMORGAN CHASE BANK, N.A.,
INDIVIDUALLY AND CORPORATELY
AND AS TRUSTEE OF THE BURNS
IRREVOCABLE TRUST AND THE
BURNS TESTAMENTARY TRUST,
AND PATRICIA SCHULTZ-ORMOND

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

CRT
PROCESS DEPT

JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

BY

11 OCT 11 4:30
K. J. [Signature]

FILED
DISTRICT CLERK
BEXAR CO. TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Craig William Clark and Richard Burns Clark, Plaintiffs, complaining of JPMorgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond, and for cause of action would respectfully show the following:

Discovery Plan

1. Plaintiffs intend to conduct discovery in this case under Tex. R. Civ. Pro. 190.4 (Level 3).

Parties

2. Plaintiff, Craig W. Clark, is an individual residing in Aransas County, Texas.

3. Plaintiff, Richard B. Clark, is an individual residing in Bexar County, Texas.

4. Defendant, JPMorgan Chase Bank, N.A. ("JPMorgan"), is a national banking association and may be served with process by serving its registered agent, CT Corporation System at 350 N. St. Paul, Suite 2900, Dallas, Texas 75201-4234.

5. Defendant, Patricia Schultz-Ormond ("Ormond"), is an individual residing in San Antonio, Bexar County, Texas, and may be served with process at 15035 Miss Ellie, San Antonio, Texas 78247.

Jurisdiction and Venue

6. This Court has jurisdiction of this cause pursuant to Section 115.001 of the Texas Property Code and because Plaintiffs' damages exceed the minimum jurisdictional limits of this Court.

7. Venue is proper in Bexar County under and pursuant to Section 15.002 of the Texas Trust Code because Defendant, JPMorgan, is a corporate trustee, and Bexar County is the situs of administration of the trusts, and because two of the Defendants reside in Bexar County, Texas. Venue is also proper pursuant to Section 15.001 *et seq.* of the Texas Civil Practice & Remedies Code, because (i) JPMorgan has offices, and transacts business, in Bexar County; (ii) Patricia Schultz-Ormond was a resident of Bexar County, Texas, at the time the causes of action accrued; and (iii) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Bexar County.

Conditions Precedent

8. All conditions precedent to the assertion of the claims herein and the prosecution of this lawsuit have been performed or fulfilled.

Nature of Suit

9. This suit arises from the actions and inactions of JPMorgan and Ormond in the management of the Burns Ranch. It is a suit for breach of fiduciary duties, waste, negligence, mismanagement, improper accounting, incompetence, overcharging of fees, commissions and expenses, and oppression.

Plaintiff's Title and Ownership in the Burns Ranch

10. Plaintiffs are the owners of legal and beneficial interests in approximately 29,958 acres of land, more or less, in Frio and La Salle Counties, Texas, known as the Burns Ranch, which was founded by their great grandfather, Hugh Burns, early in the twentieth century.

11. The Burns Ranch is a cattle ranch, and has produced oil and gas income and grazing and hunting rentals.

12. Plaintiffs' interests in the Burns Ranch were largely subject to two trusts:

- (a) The "Irrevocable Trust", created by T.E. Burns pursuant to written trust agreement dated May 1, 1961; and
- (b) The "Testamentary Trust" under the will of T.E. Burns, deceased, dated July 25, 1962 which was probated in Bexar County, Texas.

13. Under both trusts, Plaintiffs' mother, Patricia Burns Clark Dailey, was the income beneficiary, and Plaintiffs and their siblings were the owners of the remainder, free of trust, upon the death of their mother.

14. Patricia Burns Clark Dailey died on August 5, 2011, whereupon Plaintiffs' interests in the Burns Ranch which were subject to the trusts vested in them.

15. Pursuant to partitions and agreements between and among Plaintiffs and other interest owners, and following the death of their mother, Richard Clark is the owner of the surface estate in 2,940 acres of land, and Craig Clark is the owner of the surface estate in 3,075 acres of land, both out of what is known as the "Middle Tract" of the Burns Ranch.

16. Pursuant to previous gifts by their mother, and following her death, under her Will and under the terms of the Testamentary Trust and the Irrevocable Trust, (1) Richard Clark is the owner of a .12500 mineral interest in 29,297.65 acres of the Burns Ranch in depths below the Georgetown formation ("deep rights") and a .10833 mineral interest above the base of the Georgetown formation ("shallow rights"), and a .20000 interest in a 639.26 acre tract out of the ranch known as "the Farm"; and (2) Craig Clark is the owner of a .12222 interest in the deep rights, a .10000 interest in the shallow rights, and a .20000 interest in the Farm.

17. Because of Mrs. Dailey's incapacity, Defendant, JPMorgan acted as the sole trustee under both trusts at all times relevant hereto.

18. Pursuant to the trusts, JPMorgan managed and administered a 50% undivided interest in the oil, gas and mineral estate in the Burns Ranch except for a 639 acre tract (the "Farm") for which it manages 100% of the minerals; 100% of the surface estate in 10,245 acres known as the "Middle Tract"; and a 56.13% undivided

interest in the surface estate of 8,770 acres out of what is known as the "East Tract." Two-thirds of JPMorgan's mineral interest in the East Tract, Middle Tract, and West Tract was vested in the Testamentary Trust and one-third in the Irrevocable Trust. Its mineral interest in the Farm Tract was vested in the Testamentary Trust.

19. Defendant, Patricia Schultz-Ormond, was Vice President and Senior Property Manager for Specialty Assets, Oil and Gas Management, for JPMorgan at the time of the execution of the option to lease its oil and gas interest in the Burns Ranch as more fully described below. She was responsible for management of the trusts' oil, gas and mineral interest including leasing transactions. She actively participated with and aided and abetted JPMorgan in certain of its wrongful acts and omissions, more fully described below.

First Cause of Action: Breach of Fiduciary Duty

Negligence and Mismanagement of the Mineral Estate

20. The Burns Ranch has been productive of oil and gas, and is located in an area of south Texas that is known to be highly prospective and productive. Mineral income, including bonuses for execution of leases, rentals and royalties have been a major source of income to the Burns Ranch and its owners.

21. In 2008, the Burns Ranch was not subject to any oil and gas lease, with the exception of certain productive well units covering approximately 5,000 acres, and was open for leasing.

22. During and about the year 2008, a well known oil and gas play was in progress across south Texas. This was known as the Eagle Ford Shale trend. La

Salle and Frio Counties were and are at the center of this trend. Bonus consideration paid for oil and gas leases in the area had markedly increased and were continuing to increase. These were facts well known in the oil and gas industry, and among reasonably well informed mineral owners in the south Texas area.

23. On November 8, 2009, JPMorgan gave an option to lease the mineral interest to BB-II Operating, LP ("BB-II") for a bonus consideration of \$125.00 per acre. On or about February 1, 2010, BB-II exercised its option and acquired the oil and gas lease from JPMorgan.

24. A \$125.00 per acre bonus was greatly below the market price and unreasonable in late 2009. Plaintiffs were not notified of the option or lease until well after the fact, and were never consulted regarding the BB-II option or lease.

25. In fact, within a few short months following JPMorgan's lease to BB-II, the owners of the other one-half interest in the minerals in the Burns Ranch leased their interest to Chesapeake Exploration, LLC, for \$1,300.00 per acre.

26. By leasing the Burns Ranch oil and gas for a bonus of \$125.00 per acre, a consideration which was greatly below the market and far less than should have been realized, and by failure to negotiate additional provisions in the lease which would have provided additional consideration to the Plaintiffs, JPMorgan and Ormond were negligent, guilty of mismanagement and maladministration, failed to reasonably investigate market conditions, failed to exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence exercise in the management of their own affairs, failed to properly make reasonable and

prudent decisions in managing the mineral estate, and demonstrated a lack of basic competency and knowledge in administering the trusts' mineral interests.

As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Second Cause of Action: Breach of Trust – TEX. PROP. CODE § 114.001

Breach of Trust

27. Section 114.001(c) of the Texas Property Code provides that a trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust.

29. JPMorgan's conduct, including leasing the Burns Ranch for below the market value and without performing adequate and reasonable due diligence, constitutes a violation of the statutory duty JPMorgan owed to the Burns Trust.

30. As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Third Cause of Action: Breach of Fiduciary Duty

Failure to Disclose

31. As trustee of the trusts, JPMorgan and Ormond have at all times had the fiduciary duty to make full and complete disclosure to the Plaintiffs and other beneficiaries of all material facts concerning the assets, management, administration and accounting of the trusts.

32. Ormond had a continuing fiduciary duty, before and after her departure, to disclose certain material facts to Plaintiffs consistent with her ongoing fiduciary

duties of loyalty and fidelity and to refrain from acts of self dealing. In breach and violation of their fiduciary duty, JPMorgan and Ormond have failed to disclose and/or been secretive, vague and tardy in their limited and inadequate disclosures. By way of example only, and without limiting the generality of these allegations, Plaintiffs requested on more than one occasion that JPMorgan provide copies of the BB-II option and lease, and correspondence concerning them, but JPMorgan refused any such disclosure, despite Plaintiffs' clear rights.

33. Because of JPMorgan's and Ormond's failure to disclose, Plaintiffs are presently uncertain of the full extent to which JPMorgan has breached its duties and responsibilities as trustee, and reserve the right to seek additional relief.

34. JPMorgan's and Ormond's failure to disclose has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fourth Cause of Action: Breach of Fiduciary Duty

Unreasonable Fees and Expenses

35. JPMorgan has charged and collected unreasonable and excessive fees and commissions as trustee of the trusts, and paid unreasonable and excessive expenses, in breach of its fiduciary obligations.

36. The charging of such excessive and unreasonable fees, commissions and expenses has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fifth Cause of Action: Breach of Fiduciary Duty

Waste

37. On or about February 1, 2009, JPMorgan granted and executed a grazing/farming lease, as lessor, to Billy Applewhite, as lessee, covering and including the Middle Tract of 10,245 acres.

38. JPMorgan permitted and allowed the surface to be severely overstocked and over-grazed to the point that it is depleted of grasses and reduced to a desert like condition. It now bears no resemblance to the conditions of a properly managed ranch.

39. JPMorgan, although clearly empowered to do so, and despite repeated complaints and requests by Plaintiffs, have wholly failed in any effective respect to manage the surface estate of the Middle Tract.

40. JPMorgan's conduct and omissions constitute waste.

41. The wrongful acts and omissions of JPMorgan constitute failure to exercise the judgment and care under the circumstances then prevailing that ranchers of ordinary prudence exercise in the management of their own affairs concerning the preservation of the corpus of the trust estate; failure to properly monitor and administer the grazing lease; failure to exercise their duty to investigate the condition of the property, and they have demonstrated a lack of basic competency and knowledge in administering and managing the surface of the estate.

42. JPMorgan's breaches of fiduciary duty in these respects constitute waste of the surface estate in the lands included in the Middle Tract and have caused

damages to Plaintiffs, including loss of market value of the land, loss of grazing and hunting, lost income, and costs of remediation, all of which are continuing and for which Plaintiffs now sue.

Accounting

43. Pursuant to Section 113.151 of the Texas Trust Code, Plaintiffs demand a written statement of accounts covering all transactions since the creation of the trusts, inasmuch as JPMorgan has never furnished a complete and proper accounting to Plaintiffs.

Exemplary Damages

44. In its acts, omissions and conduct alleged above, Defendants have been grossly negligent, have acted with malice toward Plaintiffs, have defrauded Plaintiffs, and have breached fiduciary duties to Plaintiffs. Plaintiffs seek an award of exemplary damages.

Attorney's Fees

45. It has been necessary for Plaintiffs to engage the undersigned firms of attorneys to prepare and prosecute this suit, and they are entitled to recover reasonable attorney's fees.

Production of Documents

46. Plaintiffs hereby place Defendants on notice that Plaintiffs intend to use any document produced by Defendants in any pretrial proceeding or at trial.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury, and tender the jury fee.

WHEREFORE, Plaintiffs, Craig W. Clark and Richard B. Clark pray that Defendants be cited to appear and answer herein, and that upon final hearing, Plaintiffs have and recover judgment of and from J.P. Morgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond:

- (1) For damages;
- (2) For exemplary damages;
- (3) For an accounting;
- (4) For attorney's fees;
- (5) For prejudgment and post-judgment interest.

Plaintiffs pray for general relief.

Respectfully submitted,

TINSMAN & SCIANO, INC.
10107 McAllister Fwy
San Antonio, Texas 78216
Telephone: (210) 225-3121
Fax: (210) 225-6235
rtinsman@tsclawyers.com

PROCESS DEPT

By: Richard Tinsman

Richard Tinsman
State Bar No. 20064000

ATTORNEYS FOR PLAINTIFFS

w/ PERMISSION by JLD

DROUGHT, DROUGHT & BOBBITT, L.L.P.
2900 Weston Centre
112 East Pecan Street
San Antonio, Texas 78205
Telephone: (210) 225-4031
Fax: (210) 222-0586
jld@ddb-law.com

CRT
PROCESS DEPT

By: James L. Drought

James L. Drought
State Bar No. 06135000

Calhoun Bobbitt

State Bar No. 02530700

ATTORNEYS FOR PLAINTIFFS

Will bring CDs

>