



Texas. Alamo has branches located in Dallas County, Texas. Service of process may be had on Alamo, by serving its registered agent: CT Corporation Systems, 350 - North St. Paul Street, Dallas, Texas 75201.

1.3. Bank is a national banking association, whose principal place of business is in Hamlin, Jones County, Texas. Bank may be served with service of process by serving Joe E. Ford, President of Bank or any other officer of bank at 231 South Central Avenue, Hamlin, Texas 79520.

1.4. Castro is an individual residing in Stonewall County, Texas. Service of process may be had on Castro at his business address, 212 South Central Avenue, Aspermont, Texas.

1.5. Consolidated is a Texas corporation, with its principal place of business in Stonewall County, Texas. Service of process may be had on Consolidated, by serving Dorothy Dickerson, its President, at 510 South Broadway, Aspermont, Texas 79520.

1.6. Middleton and Son is a sole proprietorship, whose owner resides in Lubbock County, Texas. Service of process may be had on Middleton and Son, by serving Sam Middleton at his business address, 1507 - 13<sup>th</sup> Street, Lubbock, Texas 79401.

1.7. Middleton is an individual, who resides in Lubbock County, Texas. Service of process may be had on Middleton, by serving Middleton at his business address, 1507 - 13<sup>th</sup> Street, Lubbock, Texas 79401.

1.8. Lyle Walker is an individual, who resides in Dallas County, Texas. Service of process may be had on Lyle Walker, by serving Lyle Walker at his business address, 12221 - Merit Drive, Dallas, Texas 75251.

1.9. Sonya Walker is an individual, who resides in Dallas County, Texas. Service of process may be had on Sonya Walker, by serving Sonya Walker at her residence address, 2945

Fondren, Dallas, Texas 75225.

1.10. Aspermont pleads that discovery should be conducted in accordance with a tailored discovery control plan under *Tex.Rules Civ.Proc.*, Rule 190.4, which discovery plan has been established by the Court.

## II.

### JURISDICTION AND VENUE

2.1. This Court has jurisdiction of this matter because the defendants are all residents of the State of Texas.

2.2. Venue is proper under *Tex.Civ.Prac.&Rem.Code Ann.* §§15.002(a)(2) and §15.005 because Lyle Walker and Sonya Walker, two of the Defendants, are residents of Dallas County, Texas.

## III.

### FACTS & ALLEGATIONS

3.1. Arising from litigation, pending then and now, between John Wayne Denison (“John Denison”) and Bob Marshall Denison (“Bob Denison”), involving claims of fraud and breach of fiduciary duty of John Denison, as Executor under the Will of Ida Baldwin Denison, Deceased, (“Denison Will”) and as Trustee of a trust created for the benefit of Bob Denison and his two children under the Denison Will (“Denison Trust”) to Bob Denison (“Underlying Litigation”), Bob Denison filed a Notice of Lis Pendens on June 10, 2003, and an Amended Notice of Lis Pendens on October 29, 2003, in the Official Records of Stonewall County, Texas (“Lis Pendens”).

3.2. John Denison was represented by Castro in the Underlying Litigation at all times material to the allegations in this suit.

3.3. Bank was a substantial creditor of John Denison, in his capacity as Executor of the Estate of Ida Baldwin Denison, Deceased (“Denison Estate”) and Trustee of the Denison Trust. Castro also represented the Bank in connection with the loans to the Denison Estate and Denison Trust, and in other matters, at all times material to the allegations in this suit.

3.4. During the early period of the ongoing litigation between Bob Denison and John Denison, Bank loaned John Denison a substantial amount of money secured by real estate belonging to the Denison Estate and the Denison Trust. The funds loaned to Bob Denison were used by Bob Denison for his personal use and not deposited into an account for the Denison Trust. On information and belief, there was never a bank account established for the Denison Trust, even though Bank had direct knowledge of the existence of the Denison Trust. Castro was the attorney representing John Denison in his individual capacity and in his capacities as Executor of the Denison Estate and Trustee of the Bob Denison Trust, while simultaneously representing Bank in several matters, including the preparation of the deeds of trust on real property owned by the Denison Estate and Denison Trust securing the promissory notes executed by John Denison.

3.5. Bank had a copy of the Denison Will in its possession, and was imputed with the knowledge of Castro and John Denison at all times material with the allegations contained herein.

3.6. As a result of continuing defaults in the loans from Bank to John Denison, Bank required John Denison to sell a property, known as the West Ranch, approximately 6,080 acres (“West Ranch”) that was the subject of the Underlying Litigation. On information and belief, the loan to John Denison was in such default that the loans would have been classified in an examination of Bank by Federal Bank Regulators, and should have been classified internally, if not charged off; therefore, Bank had no choice, but to insist that the West Ranch be sold and the proceeds used to

retire John Denison's loans payable to Bank.

3.7. In January 2004, at public auction, advertised as a foreclosure sale, the West Ranch was sold to the highest bidder, T. Boone Pickens. After the auction, Pickens entered into a contract with John Denison, which required the issuance of a Commitment for Title Insurance and the issuance of a Title Insurance Policy at closing.

3.8. Consistent with that requirement, John Denison, through his attorney, Castro, caused Consolidated, an agent of Alamo, to issue a Commitment for Title Insurance to Pickens as of January 15, 2004 ("Pickens Title Commitment").

3.9. Castro, continued in his role as attorney for John Denison, the Bank and Consolidated. Castro participated in the preparation of the title work, and issuance of the Pickens Title Commitment.

3.10. A run sheet was prepared by Consolidated for the West Ranch showing the status of the title of the West Ranch in January 2004 ("2004 Run Sheet"). A run sheet is a document prepared by an abstract plant listing all matters of record for the subject property, and is a bullet point abstract. The 2004 Run Sheet was prepared by Stacy Meador Godfrey, a title examiner for Consolidated under the supervision and direction of Castro and Consolidated. The 2004 Run Sheet shows the existence of the Lis Pendens. On information and belief the information shown on the 2004 Run Sheet, including the Lis Pendens was furnished to Alamo.

3.11. Although the 2004 Run Sheet listed the Lis Pendens as an encumbrance of the West Ranch, the Lis Pendens was not listed as an exception in Schedule B or C of the Pickens Title Commitment, contrary to the rules promulgated by the Texas Department of Insurance. The issuance of the Pickens Title Commitment without showing the existence of the Lis Pendens was an intent

to conceal information about title to the West Ranch by suppressing or withholding the information about the Lis Pendens, and constitutes a “Willful issuance” of a title binder under § P-11 of the Basic Manual of Title Insurance, Section IV, issued by the Texas Department of Insurance.

3.12. As a matter of law, a Commitment for Title Insurance can not be issued without fully disclosing the existence of all outstanding and enforceable liens and encumbrances against the property described in the commitment and known to the title company issuing the commitment, unless after disclosure to a proposed insured, the insured consents in writing to their removal. A properly filed lis pendens notice prevents a grantee from becoming an innocent purchaser, and acts a cloud to title until the underlying litigation has been dismissed or resolved; therefore, such instrument is a lien and/or encumbrance against the property.

3.13. Consolidated, Castro, Bank and Alamo all knew that Pickens was relying on the Pickens Title Commitment to disclose all encumbrances and liens on the West Ranch. Based on the Pickens Title Commitment, Pickens purchased the West Ranch on March 29 2004, without knowledge of the Lis Pendens as an encumbrance on title. At closing, in the offices of Consolidated, Pickens received a Special Warranty Deed from John Denison, prepared by Consolidated and Castro, without an exception to the Lis Pendens; an Affidavit as to Debts and Liens signed by John Denison, prepared by Consolidated and Castro, stating: “That Affiant knows of no adverse claim to the hereinabove described property [West Ranch] . . . .”; and a Title Policy issued by Alamo by and through its authorized agent, Consolidated, without an exception to the Lis Pendens.

3.14. As a result of the sale of the West Ranch to Pickens: (i) Bank received payment in full of the loans it had made to John Denison; (ii) Castro received payment of substantial fees owed to him for legal work related to the Underlying Lawsuit; and (iii) Alamo and Consolidated received

fees for the issuance of a title policy.

3.15. On information and belief, Pickens subsequently discovered the existence of the Lis Pendens and decided to sell the West Ranch to third parties. One portion of the property, approximately 4,848 acres (“4,848 Ranch”) was sold to Walker on March 28, 2006. The transaction from Pickens to Walker was also handled by Consolidated, Castro and Alamo. Walker was also furnished a Commitment for Title Insurance from Alamo by Consolidated, and it is unknown whether the commitment issued to Walker contained an exception for the Lis Pendens or whether or not Alamo and Consolidated received an informed consent from Walker agreeing to the removal of the lien from the commitment. In the transaction from Pickens to Walker, Walker received a General Warranty Deed from Pickens which contained no exception for the Lis Pendens; an Affidavit as to Debts and Liens, prepared by Consolidated and Castro, and approved by Pickens’ own attorneys, stating: “That Affiant knows of no adverse claim to the hereinabove described property [4848 Ranch] . . . .”; and a Title Policy without an exception to the Lis Pendens. Alamo, Consolidated and Castro had direct knowledge of the existence of the adverse claim placed on the 4848 Ranch by the Lis Pendens, and on information and belief, both Pickens and Walker had knowledge of the Lis Pendens.

3.16. A few months later, using Middleton & Son and Middleton as brokers, Walker contracted to sell the 4848 Ranch to 4848 Aspermont for a profit of approximately \$500,000.00. Middleton & Son and Middleton had knowledge of the existence of the encumbrance created by the Lis Pendens; however, Middleton & Son and Middleton concealed that information from Fred Ewers and Floyd Stokes, the brokers representing 4848 Aspermont, and 4848 Aspermont.

3.17. Consolidated prepared a run sheet for the West Ranch showing the status of the title

of the West Ranch in December 2006 (“2006 Run Sheet”). The 2006 Run Sheet was prepared by Stacy Meador Godfrey, title examiner for Consolidated under the supervision and direction of Castro and Consolidated. The 2006 Run Sheet also shows the existence of the Lis Pendens. Consolidated furnished Alamo with all the information shown on the 2006 Run Sheet. On November 13, 2006, pursuant to the 2006 Run Sheet Alamo, Consolidated and Castro issued a title commitment in which the Lis Pendens was not listed as an exception in Schedule B or C (“4848 Aspermont Title Commitment”). The issuance of the 4848 Aspermont Title Commitment without showing the existence of the Lis Pendens was an intent to conceal information about title to the 4848 Ranch by suppressing or withholding the information about the Lis Pendens. The issuance of the 4848 Title Commitment is contrary to the provisions of § P-11 of the Basic Manual of Title Insurance, Section IV, issued by the Texas Department of Insurance. Consolidated, Castro and Alamo failed to disclose the Lis Pendens to 4848 Aspermont and obtain written consent of 4848 Aspermont for its deletion. Contrary to the provisions of Tex. Bus. & Com. Code § 27.01 Walker, Middleton & Son, and Middleton, as sellers of real estate, failed to disclose the Lis Pendens to 4848 Aspermont.

3.18. On December 15, 2006, Walker conveyed the 4848 Ranch to 4848 Aspermont under a Special Warranty Deed which contained no exception for the Lis Pendens. At the closing, in the offices of the Alamo Branch in Fort Worth, Texas, Walker signed an Affidavit as to Debts and Liens, prepared by Alamo and Consolidated, and approved by Castro and Walkers’ own attorneys, stating: “That Affiant knows of no adverse claim to the hereinabove described property [4848 Ranch] . . . .”; however, Alamo, Consolidated, Castro, Walker, Middleton & Son, and Middleton had direct knowledge of the existence of the encumbrance placed on the 4848 Ranch by the Lis Pendens.

3.19. Subsequently, 4848 Aspermont contracted to sell the 4848 Ranch to Mark White

(“White”). When Alamo, Consolidated and Castro issued the Commitment for Title Insurance to White, it contained an exception to title for the Lis Pendens, as required by law. Although Alamo offered to insure around the encumbrance, White was not willing to take title the 4848 Ranch subject to defeasance as a result of the outcome of an existing and ongoing lawsuit; therefore, 4848 Aspermont has been left holding the proverbial bag, a bag containing a piece of real estate with substantial debt and a questionable title.

3.20. 4848 Aspermont has suffered substantial damages as a result of the encumbered title and has also lost the benefit of its bargain, clear title to the 4848 Ranch, which 4848 Aspermont had sold for a profit of approximately \$1,500,000.00.

3.21. Bank, Castro, Consolidated and Alamo conspired to set in force a fraud that was perpetuated by Bank, Castro, Consolidated, Alamo, Walker, Middleton & Son, Middleton, and possibly other, through at least 3 transfers related to the 4848 Ranch, from which all of those parties received a benefit. Thereafter, that fraud was perpetuated by at least Castro, Consolidated Alamo, Walker, Middleton & Son and Middleton, in conspiracy with the Bank and others yet unknown.

#### IV.

#### CAUSE OF ACTION - COMMON LAW & STATUTORY FRAUD

4.1. Bank, Castro, Consolidated, Alamo, Middleton & Son, Middleton, and Walker, as sellers of and/or insurers of title to real estate, had a duty to disclose the existence of the Lis Pendens to 4848 Aspermont; however, Bank, Castro, Consolidated, Alamo, Middleton & Son, Middleton, and Walker intentionally concealed the Lis Pendens from 4848 Aspermont, while having a duty to disclose the information. Bank, Castro, Consolidated, Alamo, Middleton & Son, Middleton, and Walker made false representations and/or misrepresentations to 4848 Aspermont, both verbally and

in writing. These concealments, misrepresentations or nondisclosure were made in connection with the sale of the 4848 Ranch to 4848 Aspermont, and include the failure to include: i. the failure to disclose the existence of the Lis Pendens; ii. list as an exception in the 4848 Title Commitment for the Lis Pendens; iii. the omission of the Lis Pendens in the Walker Affidavit; and iv. the concealment of the Lis Pendens from 4848 Aspermont and its agents during negotiations between Walker, Middleton & Son and Middleton, and 4848 Aspermont, Ewers and Stokes. While Bank may not have been directly involved in making the concealments, false representations and/or misrepresentations to 4848 Aspermont, Bank is vicariously liable because Bank had knowledge and/or participated in the original fraud of the sale of the West Ranch to Pickens, and that initial fraud was perpetuated by Alamo, Castro, Consolidated, Middleton & Son, Middleton and Walker through the subsequent transactions to 4848 Aspermont. These concealments, false statements and/or nondisclosures were the same concealments, false statements and nondisclosures that were made to Pickens in the initial transaction.

4.2. The concealments, false representations and/or nondisclosures of Castro, Consolidated, Alamo, Middleton & Son, Middleton, and Walker were material in that they failed to disclose the quality of title of the 4848 Ranch which 4848 Aspermont was considering to purchase, and relegated 4848 Aspermont's title to the 4848 Ranch subject to the outcome of the Underlying Litigation, and prevents 4848 Aspermont from being an innocent purchaser. But for the concealments, false representations and nondisclosures of Castro, Consolidated, Alamo, Bank, Middleton & Son, Middleton, and Walker, 4848 Aspermont would not have purchased the 4848 Ranch.

4.3. The representations of Castro, Consolidated, Alamo, Middleton & Son, Middleton,

and Walker were false, as the Lis Pendens had been filed of record since June 10, 2003, and as a matter of law should have been disclosed to 4848 Aspermont. Castro, Consolidated, Alamo, Middleton & Son, Middleton, and Walker concealed and failed to disclosure material information concerning the quality of the title to the 4848 Ranch with the intent that 4848 ASpermont purchase the 4848 Ranch.

4.4. When the concealments, false representations and nondisclosures were initially made Alamo, Castro, Consolidated, and Bank knew the concealments, representations and/or misrepresentations were contrary to what was represented and what was not represented because of their previous knowledge of the Underlying Litigation and the existence of the Lis Pendens. When Aspermont Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker made the concealments, false representations and nondisclosures to 4848 Aspermont, Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker knew they were concealing facts from 4848 Aspermont and that their representations were false, because of their previous knowledge of the Underlying Litigation or knowledge of the Lis Pendens.

4.5. Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker made the concealments, false representations and nondisclosures to 4848 Aspermont with intent that 4848 Aspermont act on the concealments, representations and nondisclosures - purchase the 4848 Ranch.

4.6. 4848 Aspermont relied on the concealments, false representations and nondisclosures and purchased the 4848 Ranch.

4.7. The concealments, false representations and nondisclosures caused injury to 4848 Aspermont resulting in damages. 4848 Aspermont has suffered damages by paying additional interest as a result of a lost sale of the property and has lost the benefit of its bargain, a profit of

approximately \$1,500,000.00 from the sale it lost of the 4848 Ranch to Mark White. 4848 Aspermont brings suit against Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, joint and severally, for the damages it sustained as a result of the fraud, including the benefit of its bargain, a sum that exceeds the minimum jurisdictional limits of this Court.

4.8. The actions of Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, in making the concealments, false representations and nondisclosures were intentional. They were made for the sole purpose of inducing 4848 Aspermont to purchase the 4848 Ranch; therefore, 4848 Aspermont brings suit against Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, jointly and severally, for exemplary damages as allowed under Tex. Civ. Prac. & Rem. Code Chapter 41.

## V.

### CAUSE OF ACTION - CONSPIRACY TO COMMIT FRAUD

5.1. Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker intentionally conspired to perpetuate a fraud on 4848 Aspermont.

5.2. Alamo, Castro, Consolidated, Middleton & Son, Middleton and Walker intentionally withheld the Lis Pendens as an exception in Schedule B or C of the 4848 Aspermont Title Commitment, contrary to the provisions of P-11 of the Basic Manual of Title Insurance, Section IV, issued by the Texas Department of Insurance, an unlawful act. Middleton & Son, Middleton and Walker intentionally withheld disclosure of the Lis Pendens to 4848 Aspermont, contrary to the provisions of Tex. Bus. & Com. Code § 27.01, also an unlawful act.

5.3. Alamo, Castro, Consolidated, Middleton & Son, Middleton and Walker had a meeting of the minds about the object of their conspiracy - to sell the 4848 Ranch to 4848 Aspermont without

disclosure of the Lis Pendens.

5.4. Alamo, Castro, Consolidated, Middleton & Son, Middleton and Walker overtly withheld knowledge of the Lis Pendens from 4848 Aspermont in furtherance of their conspiracy - to sell the 4848 Ranch to 4848 Aspermont without disclosure of the Lis Pendens.

5.5. As a proximate result of the conspiracy to commit fraud by Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, 4848 Aspermont has suffered damages from the fraud perpetuated upon 4848 Aspermont by Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker.

5.6. The conspiracy to make the concealments, false representations and nondisclosures to 4848 Aspermont resulted in substantial damages to 4848 Aspermont. 4848 Aspermont has suffered damages by paying additional interest as a result of a lost sale of the property and has lost the benefit of its bargain, a profit of approximately \$1,500,000.00. 4848 Aspermont brings suit against Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, jointly and severally, for the damages it sustained as a result of the conspiracy to commit fraud, including the benefit of its bargain, a sum that exceeds the minimum jurisdictional limits of this Court.

5.7. The actions of Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, in conspiring to make the concealments, false representations and nondisclosures were intentional, and made for the sole purpose of inducing 4848 Aspermont to purchase the 4848 Ranch; therefore, 4848 Aspermont brings suit against Alamo, Castro, Consolidated, Bank, Middleton & Son, Middleton and Walker, jointly and severally, for exemplary damages as allowed under Tex. Civ. Prac. & Rem. Code Chapter 41.

WHEREFORE PREMISES CONSIDERED, 4848 Aspermont requests that the Defendants,

each of them, be served with service of citation, and that upon trial, the Court grant the relief requested herein above, and for such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

THE HOLMES LAW FIRM, INC.

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