

CAUSE No. _____

TIMBERCREST HOMEOWNERS
ASSOCIATION, INC,

Plaintiff,

v.

MELISSA WALTERS and
ANDREW MORAN,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S VERIFIED ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTION**

Plaintiff Timbercrest Homeowners Association, Inc., files its Verified Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunction against Defendants Melissa Walters and Andrew Moran. In support hereof, Plaintiff states as follows:

I. PARTIES

1. Plaintiff Timbercrest Homeowners Association, Inc., is a non-profit corporation organized under the laws of the State of Texas and with its principal place of business in Harris County, Texas.

2. Defendant Melissa Walters is an individual residing and doing business in Harris County, Texas. She may be served with process at 3321 Prospect Street, Houston, Texas, 77004, or wherever she may be found.

3. Defendant Andrew Moran is an individual residing and doing business in Harris County, Texas. He may be served with process at 3349 Prospect Street, Houston, Texas, 77004, or wherever he may be found.

II. VENUE & JURISDICTION

4. The Court has jurisdiction over this action because the amount in controversy is within its jurisdictional limits.

5. Venue is proper in this Court because all or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Harris County, Texas, and because the real property at issue in this suit is located in Harris County, Texas.

III. RECOVERY SOUGHT

6. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff seeks monetary relief in the amount of \$250,000.00 or less and non-monetary relief.

IV. DISCOVERY CONTROL PLAN

7. Plaintiff intends to conduct discovery in accordance with the Level 2 Discovery Control Plan.

V. FACTS

8. Plaintiff Timbercrest Homeowners Association, Inc. (the "Association"), is the homeowners' association for the Timbercrest Addition subdivision of Harris County, Texas (the "Subdivision") (Exh. A: T. Boring Decl. ¶ 2.)

9. Timbercrest Addition is an approximately 100-home, deed restricted community subject to the Declaration of Covenants, Conditions and Restrictions of Timbercrest Addition, recorded under File No. 562-80-1649 in the Real Property Records of Harris County, Texas (the "Declaration"). (*Id.* ¶ 3; Exh. A1: Declaration.)

10. The Declaration establishes the Association and provides that the Association "shall be governed by the Articles of Incorporation and the Bylaws of said Association." (Exh. A1: Declaration, at art. VI, § 6.1; Exh. A2: Bylaws.)

11. The Association acts through a three-member Board of Directors who are to be elected by the members. (Exh. A: T. Boring Decl. ¶ 5.) Pursuant to the Bylaws, the election is to be held each October during the Annual Meeting of the Members. (Exh. A2: Bylaws, art. IV, § 4.01.)

12. The Association has been in a state of turmoil for the past several years. Board members refused to call elections, clinging to power while failing to disclose Association finances. Member dissatisfaction was high. (Exh. A: T. Boring Decl. ¶ 6.)

13. Things came to a head in September 2022, when conflicting groups proclaimed themselves the legitimate Association Board of Directors. (*Id.* ¶ 7.) This dispute culminated in a lawsuit brought against “Timbercrest Addition” and the then-President of the Association, Todd Boring, by members and self-proclaimed Board members, Melissa Walters and Andrew Moran. (*Id.*) Walters and Moran alleged, over the Association’s objection, that they were the rightful winners of the 2022 election. (*Id.*)

14. The parties eventually settled their dispute via an agreement to hold a new election after which the elected directors would serve “until such time as the expiration of the current term and the conduct of the next annual election.” (*Id.* ¶ 8; Exh. A3: Order (Oct. 13, 2023).) The election was held on September 30, 2023, for three directors who would each serve a one-year term. (Exh. A: T. Boring Decl. ¶ 8; Exh. A3: Order (Oct. 13, 2023).) Boring, Walters, and Moran were elected. (Exh. A3: Order (Oct. 13, 2023).)

15. Despite her vociferous complaints about the supposed shortcomings of prior directors, Walters has led with an iron fist. (Exh. A: T. Boring Decl. ¶ 9.) She has continued to litigate against the Association, seeking money for her lawsuit despite it being settled without any exchange of money; accepted Association funds for services allegedly provided to the Association;

made unilateral decisions on behalf of the Board; taken control of the Association bank account, post office box, and official email address; failed to disclose Association financial and other records to members; eliminated Director Boring's access to the Association's bank account, member portal, official Association email address, and website; and engendered substantial discontent among members via disparaging and offensive communications to and about Boring, his wife, and other Association members. (*Id.*) As a result, members have openly expressed their anticipation of the required October 2024 election and expectation of a leadership change. (*Id.*)

16. However, Walters and Moran have endeavored to violate the Association Bylaws and interfere with the 2024 annual election. (*Id.* ¶ 10.)

17. For months, Boring, Walters, and Moran have been advised by the Association's counsel to schedule the annual meeting so that notices could be timely circulated to Association members and ensure an October election as required by the Bylaws. (*Id.* ¶ 11.) Boring has reserved meeting space multiple times and communicated continually with Walters and Moran regarding scheduling. (*Id.*) However, Walters and Moran have refused to cooperate, instead claiming that various unidentified tasks needed to be completed before an election could be scheduled. (*Id.*) Inquiries by Association members regarding the date of the election have been ignored. (*Id.*)

18. With members expressing increasing discontent about the failure to call an election, Boring advised Walters and Moran, in writing, that barring any objection within the next 24 hours, an in-person, annual meeting and election would be noticed for December 7, 2024, with the nominations and ballots handled by the Association's attorney. (*Id.* ¶ 12.) No objection was lodged, so Boring announced the meeting date to the community and directed the Association's attorney to circulate a meeting notice and call for nominations to all Association members. (*Id.*)

Notices were mailed to all members shortly thereafter. (*Id.*; Exh. A4: Meeting Notice.)

19. Walters became irate. She proclaimed variously that “There will be no election! and that any election might occur “in January.” (*Id.* ¶ 13.) She immediately announced that the Association attorney was “TERMINATED.” (*Id.*) She circulated email to the community from the official Association email address claiming that the December 7 meeting was not sanctioned and that the Board was “in the process of finding a new attorney who will be able to conduct the election.” (*Id.*) When members pushed back, Walters raged. (*Id.*)

20. Walters subsequently claimed to hold an “emergency” Board meeting to hire new counsel on a day’s notice. (*Id.* ¶ 14.) Boring objected that the meeting was not called in accordance with the Association Bylaws. (*Id.*) Walters and Moran apparently held the meeting anyway.

21. Following the invalid meeting, Walters announced that the Association had hired new counsel. (*Id.* ¶ 15; Exh. A5: “Official Annual Meeting” Notice.) Walters also circulated a supposed notice of the “Official Annual Meeting” for Timbercrest to be held on November 7, 2024, and call for nominations for an election to the Board of Directors to be held on December 5, 2024, by absentee ballot. (Exh. A5: “Official Annual Meeting” Notice.) The notice and details of the meeting do not comply with the Association Bylaws.

22. Pursuant to the Bylaws, *during* the annual meeting of the members, “the Members shall elect one or more members to the Board of Directors.” (Exh. A2: Bylaws, art. IV, § 4.01.) Where absentee balloting will be used for that election, a call for nominations must be circulated at least 45 days prior to the meeting and election. (*Id.* ¶ 4.05.)

23. In contrast, the purpose of the annual meeting announced by Walters is solely “is to outline to the members the manner in which the Board of Directors election will be conducted.”

(Exh. A5: “Official Annual Meeting” Notice.) The actual election, by absentee ballot, will be purportedly be held on December 5, 2024. (*Id.*) The notice does not provide the requisite 45 days’ notice required by the Bylaws.

24. Also concerning is the directive from Walters that all nominations be submitted to her directly via the Association mailing and/or email address that she controls rather than to a disinterested party. (*Id.*)

25. Walters’ email accompanying the notice was equally deficient and awash in misstatements, including that the properly-noticed December 7, 2024, annual meeting and election could not proceed without Walters’ and Moran’s attendance. (Exh. A: T. Boring Decl. ¶ 16.) In fact, as Walters and Moran had previously been advised, the member meeting requires a quorum of 5% of Association members, regardless whether those members are also directors. (*Id.*)

26. It is apparent that Walters and Moran, after strenuously avoiding an election, are now seeking to sow confusion and interfere with the properly-called meeting in order to cling to power. (*Id.* ¶ 17.)

27. Walter’s and Moran’s hinderance of the lawful, and legally required annual meeting and election have created unnecessary conflict and uncertainty about the Association election. Members are expressing confusion and concern about their ability to elect their chosen leaders without interference by Walters and Moran. (*Id.*) As a party interested under the Declaration and other governing documents of the Association, the Court’s involvement is necessary to ensure that Association members can choose their rightful leaders.

VI. CAUSES OF ACTION

A. Declaratory Judgment

28. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if

fully stated herein.

29. A genuine dispute exists about the conduct of the Association annual meeting and election. The dispute can be terminated by granting a declaratory judgment that the December 7, 2024, meeting was properly called and noticed and should proceed as scheduled.

B. Breach of Contract

30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully stated herein.

31. As members of the Association Board of Directors, Defendants are required to abide by the governing documents of the Association, including its Bylaws and, in relevant part, timely call and conduct an annual meeting and election.

32. Defendants have materially breached and continue to materially breach the governing documents by refusing to call the election and doing so in violation of the Bylaws.

33. Defendant's breach has caused damage to Plaintiff for which Plaintiff is entitled to recovery in an amount to be proven at trial.

VII. APPLICATION FOR TEMPORARY RESTRAINING ORDER

34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully stated herein.

35. Plaintiff has a valid cause of action against Defendants and is likely to succeed on its claims that Defendants have created a genuine dispute concerning the 2024 annual meeting and election and have breached the governing documents in attempting to conduct a competing meeting and election. (Exh. A: T. Boring Decl. ¶ 18.)

36. As a direct and proximate result of Defendants' misconduct, Plaintiff will suffer irreparable harm for which it has no adequate remedy at law. (*Id.*) The provisions of the governing

documents are intended to protect the rights of Association members to, *inter alia*, elect their leaders. (*Id.*) If Defendants' misconduct continues, Plaintiff and its members will be deprived of important protections and obligations with which Defendants voluntarily agreed to comply when taking office. (*Id.*)

37. Consequently, Plaintiff requests that a Temporary Restraining Order, in the form attached, be entered against Defendants. In particular, Plaintiff requests a Temporary Restraining Order enjoining Defendants from interfering with the December 7, 2024, annual meeting and election including by attempting to hold a competing meeting and election.

VIII. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

38. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as if fully stated herein.

39. Injunctive relief is warranted where the applicant demonstrates: (1) the existence of a wrongful act; (2) the threat of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law. An injunction may be obtained to enforce a deed restriction or restrictive covenant where a substantial breach of the restriction or covenant is shown, even without a showing of actual damages or irreparable injury. *Fiala v. Nw. Airport Mgmt.*, No. 14-00-00888-CV, 2002 Tex. App. LEXIS 331, at *4 (Tex. App.—Houston [14th Dist.] Jan. 17, 2002, no pet.) (citing *Jim Rutherford Invs., Inc. v. Terramar Beach Cmty. Ass'n*, 25 S.W.3d 845, 8490 (Tex. App.—Houston [14th Dist.] 2000, pet. denied)); *Guajardo v. Neece*, 758 S.W.2d 696, 698 (Tex. App.—Ft. Worth 1988, no writ); *DeNina v. Bammel Forest Civic Club, Inc.*, 712 S.W.2d 195, 199 (Tex. App.—Houston [14th Dist.] 1986, no writ).

40. By impeding the 2024 annual meeting and election and improperly calling a competing meeting and election, Defendants have committed a wrongful act that imminently

injures the Association and its members. (Exh. A: T. Boring Decl. ¶ 18.)

41. Plaintiff will, at a hearing, demonstrate the likelihood of success on the merits of its claims and show that a balancing of the equities favors issuance of a temporary injunction enjoining Defendants from interfering with the December 7, 2024, annual meeting and election. Unless Defendants are temporarily, and eventually permanently, enjoined from the misconduct described herein, Plaintiff will be irreparably damaged by the loss of rights under the governing documents of the Association. (*Id.*)

42. Accordingly, Plaintiff requests an injunction prohibiting Defendants from interfering with the December 7, 2024, annual meeting and election including by attempting to hold a competing meeting and election.

IX. ATTORNEYS' FEES

43. Defendants' misconduct has made it necessary for Plaintiff to retain the undersigned attorneys to represent it in bringing and prosecuting this action. Plaintiff seeks recovery of the reasonable and necessary attorneys' fees incurred in pursuing this action as provided under the Declaration and/or as provided by Section 5.006 of the Texas Property Code and/or Chapters 37 and/or 38 of the Texas Civil Practice and Remedies Code.

X. RULE 193.7 NOTICE

44. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives actual notice to Defendants that any and all documents produced may be used against Defendant at any pre-trial proceeding and/or trial without necessity of authenticating the documents.

XI. CONDITIONS PRECEDENT

45. All conditions precedent to filing this suit and Plaintiff's right to recovery have been performed or satisfied.

XIV. PRAYER

WHEREFORE, Plaintiff Timbercrest Homeowners Association, Inc., requests that Defendants Melissa Walters and Andrew Moran be cited to appear and answer herein and on final hearing, that judgment be entered in favor of Plaintiff and that it be awarded:

- (a) Monetary damages;
- (b) Declaratory relief;
- (c) Issuance of a Temporary Restraining Order prohibiting Defendants from interfering with the December 7, 2024, annual meeting and election;
- (d) Issuance of a temporary and permanent injunction requiring Defendants to comply with the Bylaws in conducting the December 7, 2024, annual meeting and election;
- (e) Pre-judgment and post-judgment interest;
- (f) Reasonable and necessary attorneys' fees;
- (g) Costs of suit; and
- (h) Such other and further relief to which Plaintiff may show itself justly entitled.

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Respectfully submitted,

LANG & ASSOCIATES, PLLC

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Shannon Lang on behalf of Shannon Lang

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Filing Code Description: Petition

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Status as of 10/28/2024 9:57 AM CST

Associated Case Party: Timbercrest Homeowners Association Inc

Name	BarNumber	Email	TimestampSubmitted	Status
Shannon A.Lang		shannon.lang@shannonlanglaw.com	10/27/2024 12:40:46 PM	SENT
Jessica Hughes		jessica.hughes@shannonlanglaw.com	10/27/2024 12:40:46 PM	SENT
Ashleigh Pace		ashleigh.pace@shannonlanglaw.com	10/27/2024 12:40:46 PM	SENT