

CAUSE NO. CV17-00628

EDWARD L. DUFURRENA and	§	IN THE COURT OF
SHONA DUFURRENA,	§	
Plaintiffs,	§	
	§	
v.	§	235TH JUDICIAL DISTRICT
	§	
DONALD EUGENE VOGEL,	§	
JANIE S. VOGEL and JANDON, LTD., a	§	
Texas Limited Partnership,	§	
Defendants.	§	COOKE COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE COURT:

EDWARD L. DUFURRENA and SHONA DUFURRENA, hereinafter referred to as Plaintiffs, file this suit against DONALD EUGENE VOGEL, JANIE S. VOGEL and JANDON, LTD., Defendants. In support of their petition, Plaintiffs respectfully show the Court the following:

I.

Discovery Control Plan & Request for Disclosure

1. Plaintiffs intend to conduct discovery in this case under Level 2 of the Discovery Control Plan, Rule 190.3, of the Texas Rules of Civil Procedure ("TRCP").
2. Pursuant to Rule 194 of the TRCP, Defendants are requested to disclose within 50 days of service of this request, the information or material described in Rule 194.2.

II.

Parties

3. Plaintiff Edward L. Dufurrena may be served through his undersigned counsel.
4. Plaintiff Shona Dufurrena may be served through her undersigned counsel.

5. Defendant Donald Eugene Vogel is an individual who may be served at 389 Littlefield Road, Saint Jo, Cooke County, Texas 76265.

6. Defendant Janie S. Vogel is an individual who may be served at 389 Littlefield Road, Saint Jo, Cooke County, Texas 76265.

7. Defendant Jandon, LLC is a Texas Limited Partnership that can be served through its registered agent, Donald Eugene Vogel, 389 Littlefield Road, Saint Jo, Texas 76265.

III.

Jurisdiction

8. The Court has subject matter jurisdiction over this matter. The claims herein exceed the minimum jurisdictional limits of this Court. The Court also has personal jurisdiction over the parties to the lawsuit.

IV.

Venue

9. Venue is proper in Cooke County because it is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. See Texas Civil Practice & Remedies Code (“CPRC”) §15.002(a)(1). Pursuant to §15.005, venue is proper as to all Defendants and all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

V.

Facts

10. Over a period of multiple years, Defendants placed in the care of Plaintiffs ten horses known as (1) CD Royal Joyfull, a 2004 mare; (2) Toodie Doc Rey, a 2010 mare; (3) Tico, a 2013 gelding; (4) Metallic Stardust, a 2014 filly; (5) Reybanz, a 2015 filly; (6) Pink Champagne 15, a

2015 filly; (7) Pending MC x Joy, a 2016 filly; (8) Pending AC x Tootsie, a 2016 colt; (9) Recip AC x Joy 2017; and (10) Recip MC X Joy 2017. As of February 3, 2017, the horses listed above had been placed by Defendants with the Plaintiffs.

11. Despite being invoiced periodically and having knowledge of the cost of maintaining so many horses, Defendants were not current on their account. Rather than pay their bills timely, Defendants continued to let their bill balances accrue, while promising to get the bills paid. On or about February 6, 2017, Defendants had accumulated an unpaid balance of approximately \$340,000 with respect to such boarded animals. Some of the unpaid amounts were for charges incurred over a year before.

12. On or about February 6, 2017, Defendants came to the premises of Plaintiffs where the horses were kept and stated that they intended to terminate the boarding of such horses. They intended to take the horses with them.

13. Plaintiffs had a possessory lien under Texas law as agisters. Such lien is codified at Texas Property Code Sec. 70.003 (a), which states that "A stable keeper with whom an animal is left for care has a lien on the animal for the amount of the charges for the care." Further, subsection (b) states that "An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing."

14. For enforcement, the lien requires that the person in possession of the horse retain possession so that it may be sold to apply the proceeds of sale to the unpaid balance of the charges subject to the lien.

15. The horses were valuable and Plaintiffs were interested in purchasing them if an agreement could be reached for that purpose. Defendants said that they wanted to get the horses

evaluated so that they could then further discuss a sale to the Plaintiffs. Based in part on that representation, Plaintiffs permitted Defendants to leave the premises with the ten horses.

16. There was another reason that the Plaintiffs allowed the Defendants to leave with the ten horses for which the unpaid charges were incurred that were subject to the lien. A redacted copy of that reason is attached hereto as Exhibit 1. It is a check for \$100,000 payable to "Dufferena Cutting Horses" (sic) from the account of Jandon, LLC. The check is dated February 6, 2017, and on its memo line it clearly states "2015 bill apply." The check was to be applied to an outstanding and unpaid balance from over a year prior to the date the check was tendered to the Plaintiffs.

17. The check was no good. Defendants' bank said that it would not clear despite multiple requests by the Plaintiffs that the check be covered.

18. Plaintiffs contacted Defendants on multiple occasions to obtain good funds with regard to the check as well as the unpaid balances of the invoices.

19. Defendants have refused to make good on the check and the unpaid invoice balances.

20. On information and belief, it was the Defendants' intention to cheat the Plaintiffs out of their charges on the horses and to defeat their lien under Texas law. To achieve such ends, they lied as to the intended evaluation of the horses and issued a check that they subsequently refused to cover. They refused, and continue to refuse, to pay any of the charges presented on or about February 6, 2017, for the care of the horses.

21. It was necessary for the Plaintiffs to engage counsel to enforce their rights to compensation.

22. All conditions precedent to the filing of this lawsuit have been taken or made pursuant to Texas Rule of Civil Procedure 54.

VI.

CAUSE OF ACTION

Count One – Breach of Contract

23. Plaintiffs incorporate by reference the allegations in ¶¶ 1-22 above, as if fully set forth herein.

24. There was a valid and enforceable contract between the parties, which was that the Defendants would pay the Plaintiffs' charges with respect to the horses. The Plaintiffs are the proper parties to sue for its enforcement and they have performed pursuant to the contract or were excused from performing. The Defendants have failed to perform pursuant to the contract, thereby breaching same. The breach in the form of a failure to remit the amount owed, approximately \$340,000, has damaged Plaintiffs. Defendants' breaches are material.

25. Exclusive of attorneys' fees, costs and pre-judgment interest, Plaintiff has incurred damages of approximately \$340,000.

Count Two - Quantum Meruit

26. Plaintiffs incorporate by reference the allegations in ¶¶ 1-25 above, as if fully set forth herein.

27. Pleading in the alternative where necessary, Plaintiffs provided valuable materials and services, which were provided to Defendants, who accepted the materials and services. Defendants had reasonable notice that Plaintiffs expected to be compensated for such materials and services.

28. Defendants are liable in quantum merit for the reasonable value of the materials and services provided, prejudgment and post judgment interest, court costs and attorneys' fees.

Count Three - Promissory Estoppel

29. Plaintiffs incorporate by reference the allegations in ¶¶ 1-28 above, as if fully set forth herein.

30. Pleading in the alternative where necessary, Defendants promised to pay Plaintiffs, Plaintiffs reasonably and substantially relied on such promises to their detriment and such reliance was foreseeable by Defendants. Injustice can only be avoided by enforcing the Defendants' promises.

31. Defendants are liable under promissory estoppel for their reliance damages, prejudgment and post judgment interest, court costs and attorneys' fees.

Count Four - Fraud

32. Plaintiffs incorporate by reference the allegations in ¶¶ 1-31 above, as if fully set forth herein.

33. Pleading in the alternative where necessary, Plaintiffs allege that (a) Defendants made representations to the Plaintiffs that they would pay for the care of the horses before placing them with the Plaintiffs and repeatedly thereafter to obtain continuing care for the horses, Defendants represented that they would get the horses evaluated for possible sale to the Plaintiffs, Defendants represented that they would pay the invoices in order to gain possession and to defeat the lien on same and Defendants represented that they were paying part of their 2015 bill balance when they were passing a bad check; (b) the Defendants' representations were material; (c) the representations were false; (d) when the Defendants made their representations they made them knowing of their falsity or as positive assertions without knowledge of the truth; (e) Defendants intended that the Plaintiffs rely on their statements; (f) the Plaintiffs did, in fact, rely on such statements; and (g) such representations caused the Plaintiffs injury.

34. By clear and convincing evidence, the Defendants committed fraud and Plaintiffs' damages resulted from such fraud.

35. Plaintiffs are entitled to their out of pocket damages as well as benefit of the bargain damages, including contract damages. Plaintiffs are entitled to prejudgment and post judgment interest and court costs. Plaintiffs seek exemplary damages to the full extent that Texas law so provides. Exemplary damages are sought against the Defendants in an amount equal to the greater of: two times the amount of economic damages; plus an amount equal to any noneconomic damages found by the jury, not to exceed \$750,000; or \$200,000. Plaintiffs reserve the right to amend and supplement their exemplary damages claims to assert such claims under alternative theories.

Count Four - Owner Liability

36. Plaintiffs incorporate by reference the allegations in ¶¶ 1-35 above, as if fully set forth herein.

37. Pleading in the alternative where necessary, as a theory of recovery, Plaintiffs allege that the entity Jandon, LTD. participated in the Defendants' fraud. It was used to perpetrate the fraudulent acts, including but not limited to cheating the Plaintiffs out of their possessor lien and passing a check that was not made good, despite substantial notice and lack of cure for more than ten days.

38. Defendants, as officers of Jandon, LTD. are liable for its actions as they used it to perpetrate actual fraud for their personal benefit.

39. The Vogel Defendants and Jandon, LTD. are jointly and severally liable for the Plaintiffs' damages.

Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully ask that this Court award to them judgment for the following:

1. direct or actual damages of approximately \$340,000, as found by the trier of fact;
2. all of Plaintiffs' reasonable attorneys' fees;
3. all of Plaintiffs' costs of court;
4. pre-judgment interest at the highest legal rate until date of judgment;
5. post-judgment interest at the highest legal rate from date of judgment until paid;
6. exemplary damages of approximately \$680,000;
7. out of pocket costs;
8. reliance damages;
9. reasonable value of materials and services provided;
10. all such other and further relief, whether at law or in equity, to which Plaintiffs may show themselves to be justly entitled;
11. with all such damages being assessed against each of the Defendants, jointly and severally.

Respectfully submitted,





SIEBMAN, BURG, PHILLIPS & SMITH, LLP

By: /s/ Bryan H. Burg

Bryan H. Burg
Texas Bar No. 03374500
4949 Hedgcoxe Rd., Suite 230
Plano, Texas 75024
Telephone: 214-387-9100
Facsimile: 214-387-9125
bryanburg@siebman.com

ATTORNEYS FOR PLAINTIFFS

EXHIBIT 1

JANDON LTD. P O BOX 610 SAINT JO, TX 76285		5613 68-2283/1131-145
		<u>01-06-2017</u> Date
Pay to the Order of	<u>Dufferena Cutting homes</u>	<u>\$ 100,000.</u> ⁸⁰
	<u>One hundred thousand</u>	Dollars  
 PROSPERITY BANK* MIDLAND BANKING CENTER 1000 E. DIVISION • MIDLAND, TX 79703 940-789-6000 www.prosperitybankusa.com		
For	<u>2015 bill apply</u>	<u>Ronald E Vogel</u>
		5613

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