

**CAUSE NO. 104559-CV  
239th District Court**

THE STATE OF TEXAS

CITATION

**TO: Southwyck Community Association, Inc.  
By serving its Registered Agent  
First Service Residential  
1330 Enclave Parkway, Suite 425  
Houston, TX 77058**

Defendant

**NOTICE:**

You have been sued. You may employ an attorney. If you or your attorney does not file a written answer with the Clerk who issued this Citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this Citation and Southwyck's Original Petition and Request for Disclosure a Default Judgment may be taken against you. If filing Pro se, said answer may be filed by mailing same to: Brazoria County District Clerk's office, 111 E. Locust, Suite 500, Angleton, TX 77515-4678 or by bringing said answer in person to the aforementioned address.

The case is presently pending before the **239th District Court** of Brazoria County sitting in Angleton, Texas, and was filed on the **5th day of September, 2019**. It bears Cause No. **104559-CV** and Styled:

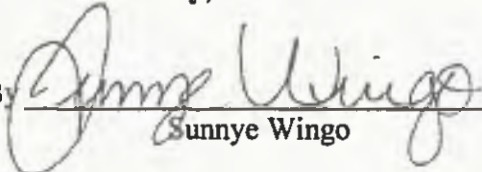
**Southwyck Section IV Homeowners Association, Inc.  
vs.  
SCA Southwyck Community Association, Inc.**

The name and address of the Attorney filing this action (or Party, if Pro Se) is **Shawn R. McKee, Lambright & McKee, 940 Corbindale Rd., Houston, TX 77024**.

The nature of the demands of said Plaintiff is shown by a true and correct copy of Plaintiff's Petition accompanying this Citation.

Issued under my hand and the seal of said Court, at Angleton, Texas, on the **5th day of September, 2019**.

**RHONDA BARCHAK, DISTRICT CLERK  
Brazoria County, Texas**

By , Deputy  
Sunnye Wingo



*ABC Legal Co.*

*Adrienne  
Gholston  
PC 14901*

*Tx State*

CAUSE NO. 104559-CV

SOUTHWYCK SECTION IV § IN THE JUDICIAL DISTRICT COURT  
HOMEOWNERS' ASSOCIATION, INC. §  
§  
V. § OF BRAZORIA COUNTY, TEXAS  
§  
SOUTHWYCK COMMUNITY §  
ASSOCIATION, INC. § \_\_\_\_\_ JUDICIAL DISTRICT

SOUTHWYCK'S ORIGINAL PETITION AND  
REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SOUTHWYCK SOUTHWYCK SECTION IV HOMEOWNERS ASSOCIATION, INC. and files this petition complaining of SCA SOUTHWYCK COMMUNITY ASSOCIATION, INC. and in support thereof would show the court the following:

DISCOVERY

1. This case should be conducted pursuant to a level two (2) discovery control plan as provided by the Texas Rules of Civil Procedure.

STATEMENT OF RELIEF SOUGHT (TRCP 47)

2. Pursuant to Tex. R. Civ. P. 47, SOUTHWYCK seeks monetary relief within the jurisdictional limits of this Court in an amount of \$100,000.00 or less, non-monetary relief<sup>1</sup> and attorney fees. SOUTHWYCK's causes of actions are more particularly set forth below.

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<sup>1</sup> Specifically, declaratory relief and injunctive relief.

### PARTIES

3. SOUTHWYCK SOUTHWYCK SECTION IV HOMEOWNERS ASSOCIATION, INC. ("SOUTHWYCK") is a non-profit corporation organized under the laws of the State of Texas, which governs Southwyck Sections IV, VII, VIII and IX.
4. SCA SOUTHWYCK COMMUNITY ASSOCIATION, INC. ("SCA") is a non-profit corporation organized under the laws of the State of Texas which may be served with process to its registered agent First Service Residential, 1330 Enclave Parkway, Suite 425 Houston, TX 77077, ; to its manager CMSI at 2615 Bay Area Blvd., Houston, TX 77058, or wherever it may be found.

### JURISDICTION

5. This case involves Real Property and deed documents thereon located in Brazoria County Texas, therefore jurisdiction and venue are proper in this forum, and the damages sought are within the jurisdictional limits of this Court.

### CONDITIONS PRECEDENT

6. All conditions precedent have been performed or have occurred.

### FACTS

7. SOUTHWYCK is an Association governing four (4) sections of the Southwyck subdivision covering an entire conglomerated section of Brazoria County with numerous amenities and obligations. All owners within these sections are obligated to pay for their proportionate share of the SCA costs to SOUTHWYCK.
8. As part and parcel to a failed "Master Plan" for a larger "Southwyck" community, the original developers expressly anticipated many sub associations and a larger Master Planned Community. However, after developing numerous sections and creation of SOUTHWYCK,

the development cratered. As a result of the failed Master Development, the "Master Planned" community was fractured, rebranded, and neighborhoods such as Silverlake, Silvercreek and others came into existence, separate and apart from the originally intended Master Community that was contemplated under SCA SCA. SOUTHWYCK was expanded to take on sections IV, VII, VIII and IX. However, in SOUTHWYCK's covenants, vestiges of the original failed design remain:

### ARTICLE III – Use Restrictions

Section 11. Walls, fences and hedges. [...] The Master Association is empowered to repair or replace any part of the perimeter fence within its jurisdiction and to charge the cost to any Lot owner whose neglect or fault required the repair or replacement. It shall be the responsibility of the Master Association to maintain the perimeter fence within its jurisdiction so as to create a uniform appearance.

Section 16. Enforcement of Deed Restrictions. Articles V and VI hereof provide for the formation of two associations, the Village Association and the Master Association. The purposes of the Associations, jointly, are to provide for protection, maintenance, preservation and architectural control of the residential Lots and Village Common Areas. The Village Association is charged with enforcing the Deed Restrictions enumerated in Article III. The Village Association shall have the right to bring an action at law or in equity to enforce all restrictions, conditions, covenants, reservations, liens, and charges now or hereinafter approved by the provisions hereof. The Village Association shall be entitled to collect its costs, expenses and attorney fees incurred in enforcing the Deed Restrictions from the Owner. [...] The Village Association [...] shall have the right to collect said costs, expenses and fees from the Owner. [...]

### ARTICLE V – Southwyck Section IV Homeowners' Association

Section 1. Purpose. The purpose of the Village Association shall be to provide for protection, maintenance, preservation and architectural control of the residential Lots within its subdivision and the Village Common Area, if any.

Section 6. Inspection of Records. The members of the Village Association shall have the right to inspect the books and records of the Village Association at reasonable times during normal business hours.

**ARTICLE VI – Southwyck Community Association, Inc.**

Section 1. Purpose, membership and voting rights. The purposes of the Master Association are to provide maintenance and control of all General Common Areas of the properties which include, without limitations, the perimeter fences around major streets, main esplanades and to provide for the maintenance, preservation and architectural control of the residential Lots concurrently with the Village Association and exclusively in regard to the General Common Areas. [...] Every owner of a lot subject to a maintenance charge assessment by the Master Association shall be a member of the Master Association. [...]

Section 5. Inspection of Records. The members and Board of Directors of the Master Association shall have the right to inspect the books and records of the Master Association and the Village Association at reasonable times during normal business hours.

**ARTICLE VII – Maintenance Assessments**

**Section 1. The Maintenance Fund.**

- (a) Village Association: All funds collected as hereinafter provided for the benefit of the Village Association and any other Village Association hereafter brought into this Declaration, from the regular and/or special maintenance charges, for capital improvements, shall constitute and be known as the "Maintenance Fund"; each Village Association having and maintaining a separate Maintenance Fund. The assessments levied by the Village Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of Village Common Areas, if any, except the General Common Areas which are within the jurisdiction and responsibilities of the Master Association. [...] It is understood that the judgment of the Village Association in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

- (b) Master Association: All funds collected by the Master Association from its regular and/or special maintenance charges shall constitute and be known as the "Master Association Maintenance Fund". The assessments levied shall be used exclusively to effectuate the purposes of the Master Association as stated in Article VI, Section 1 above. The Board of Directors of the Master Association shall hereafter determine the amount of such assessment to be charged against each Lot Owner, but in no event shall such assessments be greater than the amounts of assessments provided in Section 5 below. The Master Association shall have all remedies and all lien rights set forth herein against the Owner and Lots for delinquent assessments owed to itself and to the Village Association.

Section 2. Creation of the lien and personal obligation of assessments. Each Lot in the Properties is hereby subjected to the annual maintenance charges as set out in Section 1 [and] is deemed to covenant and agree to pay to the Master and Village Associations: (1) Maintenance assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

Section 4. Collection of Maintenance Assessments. The Master Association shall have the sole and exclusive right and obligation to bill and collect both the maintenance assessment set forth in Section 1. Subparagraph (a) and Subparagraph (b). The Village Association shall determine its annual assessment rate per Lot and shall provide said assessment rate to the Master Association on or before November 1 of each year. [...] All maintenance assessments for each of the properties collected by the Master Association shall be first applied to the Master Association maintenance assessment as set out in Section I, Subparagraph (b) and the remainder shall be promptly tendered to the Village Association for payment of the Village Association's maintenance assessments as set forth in Section I, Subparagraph (a).

Section 6. Effect of nonpayment of assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the date at the rate of ten (10%) percent per annum. [...]

Section 8. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the General

Common Areas and the Village Common Areas, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. The right of the Master Association and the Village Association to charge reasonable admission and other fees for the use of designated recreational facility situated upon the General Common Areas and the Village Common Area, if any, respectively that the Owners may elect to use; failure of Owner to pay such fees after having made such election shall give rise to the same liability and lien rights as set forth above, and shall be subject to the same subordination as set forth hereinabove in the case of assessments.
- B. The right of the Master Association and the Village Association to suspend the voting rights and right to use the General Common Areas and the Village Common Areas, if any, respectively, by an Owner for any period during which any assessment against his Lot remains unpaid, and to publish rules and regulations for the use of the common areas within their jurisdiction, including the right of suspension of the right and easement for a period not to exceed sixty (60) days for any infraction of the Associations' published rules and regulations.
- C. The right of the Master Association and the Village Association, respectively, to dedicate or transfer all or any part of the General Common Areas and the Village Common Areas, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be placed upon the Master Association and/or the Village Association or any portion of the General Common Areas or the Village Common Areas, if any, to the Master Association or the Village Association, respectively. No such dedication or transfer shall be effective unless an instrument is signed by two-thirds (2/3) of each Class of members agreeing to such dedication or transfer has been recorded. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the General Common Areas and the Village Common Area, if any, and the facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

9. Thus, SCA is placed in the role of SOUTHWYCK's financial fiduciary, with exclusive rights to bill, account for, pursue collections and disburse funds to SOUTHWYCK to provide services and amenities to the community members.
10. In addition, SCA is tasked with the duty to collect funds from the other vestige community Southwyck Section 1, and to use those funds for the benefit of owners in SOUTHWYCK and Section 1.
11. Although SCA has no declaration of its own bringing it into existence or spelling out its collective duty, it draws its fiduciary role from SOUTHWYCK's covenants, conditions and restrictions via the vestigial language.
12. However, despite demand, SCA refuses to provide SOUTHWYCK any accounting much less that which is required, disproportionately charges SOUTHWYCK, disproportionately disburses funds to its financial gain, to the detriment of its beneficiary. However, the limited records produced show that SCA is favoring its own accounts and interests above those of its beneficiary, SOUTHWYCK.
13. Given the gross failure to comply with its duties, SOUTHWYCK sent a request for records and accounting to SCA on August 30, 2018. SCA ignored the request. The request was resent on September 14, 2018. SCA replied through counsel on September 18, 2018, promising to provide the required documents and accounting on or before October 3, 2018.
14. While a narrow, limited smattering of documents were produced in October 2018, most of the documents requested were not produced (including an accounting, which was completely omitted). SOUTHWYCK sent a follow up on October 24<sup>th</sup> making further demand for such production to SCA.



15. SCA has a contractual<sup>2</sup> and statutory<sup>3</sup> duty to keep and maintain its records and to allow those records to be inspected from time to time by SOUTHWYCK and its members—this duty extends to financial records and documents.
16. After these demands were made, and after providing more than adequate time for any good faith attempt at compliance with their legal and ethical duties, this suit followed.

### CAUSES OF ACTION

#### *Texas Trust Code Violations*

17. Trustees have a duty to disclose information to trust beneficiaries. This has traditionally been a common law fiduciary duty, however the Texas legislature held this duty in such high standard that they inserted it into Texas statutory law.
18. A trustee is required to keep a full, accurate and orderly record concerning the status of the trust estate and of all acts performed thereunder.<sup>4</sup>
19. SCA has breached its fiduciary duty to account by failing to provide documents show a true accounting of its income, expenditures, distribution and application of fund. SCA has likewise breached its fiduciary duty to disclose by failing / refusing to provide all of the documents to SOUTHWYCK to which SOUTHWYCK is statutorily and contractually entitled.
20. Section 111.004 of the Texas Trust Code defines "Beneficiary" to mean a person for whose benefit property is held in trust, regardless of the nature of the interest." Texas Trust Code §113.151 allows a "beneficiary" to demand a statutory accounting.

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<sup>2</sup> Through the governing documents of the Association

<sup>3</sup> Through the Texas Trust Code, the Texas Property Code; and the Texas Business Organizations Code

<sup>4</sup> See *Shannon v Frost National Bank*, 533 S.W 2d 389, (Tex. App.—San Antonio 1975, writ ref'd n r e.)

21. Bogert, *Trusts & Trustees*, Second Edition Revised, §961 explains the reason for this duty as follows:

The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is a mere representative whose function is to attend to the safety of the trust property and to obtain its avails for the beneficiary in the manner provided by the trust instrument. [...] If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines of equity entitle him, he must know of what the trust property consists and how it is managed.

22. William E. Fratcher, *Scott On Trusts*, §173 (Fourth Edition) states that:

The trustee is under a duty to the beneficiaries to give them on their request at reasonable times complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other documents relating to the trust and its administration.

23. Further, the instrument creating the trust further support the duty to disclose. Texas Trust Code §111.035 (h) provides that:

The terms of the trust prevail over any provision of this subtitle, except that the terms of the trust may not limit [...] (4) a trustee's duty (A) [...] to respond to a demand for accounting [...] (B) to act in good faith and in accordance with the purposes of the trust; (5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to: (A) modify or terminate a trust or take other action under Section 112.054; (B) remove a trustee under Section 113.082; (C) exercise jurisdiction under Section 115.001; (D) require, dispense with, modify, or terminate a trustee's bond; or (E) adjust or deny a trustee's compensation if the trustee commits a breach of trust [...]

24. SCA's blatant refusal to provide information it is legally obligated to provide is a breach of its fiduciary duty to disclose. Upon such a breach, the remedies set forth above may be granted.

25. Accordingly, SOUTHWYCK seeks from this court:

- a. An order removing SCA as trustee of SOUTHWYCK's pursuant to Texas Trust Code Section 113.082;
- b. An order substituting SOUTHWYCK in place of SCA to administer its accounts;
- c. An order in favor of SOUTHWYCK granting actual damages in an amount sufficient to fairly and adequately compensate for the damage caused by SCA's breaches of fiduciary duty and/or breaches of contract in an amount equal to the sum of the following amounts: (1) the amount necessary to fairly compensate SOUTHWYCK for funds collected but improperly applied for SCA's benefit; (2) an amount equal to all compensation taken by SCA for costs of fees charged SOUTHWYCK to fulfill its duty; (3) all interest withheld from SOUTHWYCK or collected by SCA, or both; (4) pre-judgment interest at the highest rate allowed by law; (5) post-judgment interest at the highest rate allowed by law; and (6) attorney's fees;
- d. An order compelling SCA to provide SOUTHWYCK on or before a date specified by this Court, with accountings containing:
  - (1) Account statements for all owners in Southwyck Section IV showing at least the last five years of activity;
  - (2) Any and all collection letters sent by SCA to owners in SSIV during the past five years;
  - (3) An accounting of all SSIV accounts wherein legal services were provided, including copies of any legal invoices, amounts received, and application of all payments received;

- (4) Any and all written payment plans authorized by SCA for owners in SSIV in the past five years;
- (5) Any and all financial records, bank statements, general ledgers (monthly and annual), and invoices evidencing the disbursement of collected maintenance assessments by SCA during the past five years;
- (6) Any and all notices provided to Owners (SSIV or SCA) for any meetings at which a vote was held regarding fence repair;
- (7) Any and all sign-in sheets from any SCA meeting at which a vote was held regarding fence repair;
- (8) Any and all ballots and proxy ballots showing votes from any meeting at which a vote was held on fence repair;
- (9) Any and all contracts or agreements related to fence repair entered into by SCA during the past five years;
- (10) The minutes from any SCA meeting (Board or Annual) at which fence repair was discussed.

#### *Texas Property Code Violations*

26. Texas Property Code § 209.005(m) provides that a property owners association must keep the following books and records available for inspection to its members:

- (m) *A property owners' association composed of more than 14 lots shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:*
  - (1) *certificates of formation, bylaws, restrictive covenants, and all amendments to the certificates of formation, bylaws, and covenants shall be retained permanently;*
  - (2) *financial books and records shall be retained for seven years;*

- (3) *account records of current owners shall be retained for five years;*
- (4) *contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;*
- (5) *minutes of meetings of the owners and the board shall be retained for seven years; and*
- (6) *tax returns and audit records shall be retained for seven years.*

27. It further requires that:

A property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant, in accordance with this section.

28. SOUTHWYCK made demand on SCA requesting copies of its books and records in accordance with the requirements of § 209.005,<sup>3</sup> but was almost completely ignored.

29. Accordingly, SOUTHWYCK seeks from this Court:

- a. An order requiring SCA to produce the documents and records including but not limited to:
  - (1) Account statements for all owners in Southwyck Section IV showing at least the last five years of activity;
  - (2) Any and all collection letters sent by SCA to owners in SSIV during the past five years;
  - (3) An accounting of all SSIV accounts wherein legal services were provided, including copies of any legal invoices, amounts received, and application of all payments received;

- (4) Any and all written payment plans authorized by SCA for owners in SSIV in the past five years;
- (5) Any and all financial records, bank statements, general ledgers (monthly and annual), and invoices evidencing the disbursement of collected maintenance assessments by SCA during the past five years;
- (6) Any and all notices provided to Owners (SSIV or SCA) for any meetings at which a vote was held regarding fence repair;
- (7) Any and all sign-in sheets from any SCA meeting at which a vote was held regarding fence repair;
- (8) Any and all ballots and proxy ballots showing votes from any meeting at which a vote was held on fence repair;
- (9) Any and all contracts or agreements related to fence repair entered into by SCA during the past five years;
- (10) The minutes from any SCA meeting (Board or Annual) at which fence repair was discussed.

- b. A judgment against SCA for court costs and attorney's fees incurred in connection with seeking to compel compliance with the Texas Property Code<sup>6</sup>.

*Texas Business Organizations Code Violations*

30. All business entities doing business in Texas must comply with the provisions of the Business Organizations Code. Section 3.151 reads:

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<sup>6</sup> See Tex. Prop. Code § 209.005(n)(2) (providing for "a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section")

Sec. 3.151. BOOKS AND RECORDS FOR ALL FILING  
ENTITIES.

- (a) Each filing entity shall keep:
  - (1) books and records of accounts;
  - (2) minutes of the proceedings of the owners or members or governing authority of the filing entity and committees of the owners or members or governing authority of the filing entity;
  - (3) at its registered office or principal place of business, or at the office of its transfer agent or registrar, a current record of the name and mailing address of each owner or member of the filing entity; and
  - (4) other books and records as required by the title of this code governing the entity.
- (b) The books, records, minutes, and ownership or membership records of any filing entity, including those described in Subsection (a)(4), may be in written paper form or another form capable of being converted into written paper form within a reasonable time.

31. Section 3.153 reads:

Sec. 3.153. RIGHT OF EXAMINATION BY  
OWNER OR MEMBER

Each owner or member of a filing entity may examine the books and records of the filing entity maintained under Section 3.151 and other books and records of the filing entity to the extent provided by the governing documents of the entity and the title of this code governing the filing entity.

32. Likewise, Chapter 22 of the Business Organization's Code, dealing specifically with for-profit corporations like SCA, states:

Sec. 22.351. Member's Right to Inspect Books and Records

A member of a corporation, on written demand stating the purpose of the demand, is entitled to examine and copy at the member's expense, in person or by agent, accountant, or attorney, at any reasonable time and for a proper purpose, the books and records of the corporation relevant to that purpose.

Sec. 22.352. Financial Records and Annual Reports

- (a) A corporation shall maintain current and accurate financial records with complete entries as to each financial transaction of the corporation, including income and expenditures, in accordance with generally accepted accounting principles.
- (b) Based on the records maintained under Subsection (a), the board of directors of the corporation shall annually prepare or approve a financial report for the corporation for the preceding year. The report must conform to accounting standards as adopted by the American Institute of Certified Public Accountants and must include:
  - (1) a statement of support, revenue, and expenses;
  - (2) a statement of changes in fund balances;
  - (3) a statement of functional expenses; and
  - (4) a balance sheet for each fund.

Sec. 22.353. Availability Of Financial Information For Public Inspection

- (a) A corporation shall keep records, books, and annual reports of the corporation's financial activity at the corporation's registered or principal office in this state for at least three years after the close of the fiscal year.
- (b) The corporation shall make the records, books, and reports available to the public for inspection and copying at the corporation's registered or principal office during regular business hours. The corporation may charge a reasonable fee for preparing a copy of a record or report.

33. The penalty for refusing to provide documents for inspection and copying is set forth in § 22.354:

Sec. 22.354. Failure to Maintain Financial Record or Prepare Annual Report; Offense.

- (a) A corporation commits an offense if the corporation fails to maintain a financial record, prepare an annual report, or



make the record or report available to the public in the manner required by Section 22.353.

- (b) An offense under this section is a Class B misdemeanor.

***Governing Document Violations (Breach of Contract)***

34. Article VI, Section 1 of the Declaration of Covenants, Conditions and Restrictions of SCA and SOUTHWYCK provides that "Every owner of a lot subject to a maintenance charge assessment by the Master Association shall be a member of the Master Association."
35. Likewise, Article VI, Section 5 of the Declaration of Covenants, Conditions and Restrictions of SCA and SOUTHWYCK provides that "The members and Board of Directors of the Master Association shall have the right to inspect the books and records of the Master Association and the Village Association at reasonable times during normal business hours."
36. Finally, the Declaration of Covenants, Conditions and Restrictions for SOUTHWYCK and SCA, Article VI, Section 1 specifically states that "the members of the Village Association shall have the right to inspect the books and records of the Village Association at reasonable times during normal business hours."
37. By failing and refusing to allow SOUTHWYCK and/or its members access to the requested records, SCA has breached its contract.
38. Accordingly, SOUTHWYCK seeks a judgment for actual damages from this Court plus an award of reasonable and necessary attorney's fees under Tex Civ. Prac. & Rem. Code § 38.001, *et seq.* and Tex. Prop. Code § 5.006 for SCA's breach of contract.

***Request For Injunctive Relief***

39. SCA has failed and refused to comply with the Texas law by denying SOUTHWYCK access to copy and inspect the requested documents. Due to clear-cut canons of statutory and

common-law, SOUTHWYCK has a right to see these documents and as such, a probable right to the relief sought.

40. For the harm and damage done to SOUTHWYCK and for the harm and damage that will continue but for this Court's intervention, SOUTHWYCK has no adequate remedy at law.

41. If SCA is permitted to continue in violation of state law, SOUTHWYCK will be irreparably harmed.

42. SOUTHWYCK's damages are irreparable because SCA is actively refusing SOUTHWYCK's exercise of its rights to inspect SCA's documents concerning SOUTHWYCK's funds.<sup>7</sup>

43. Interim relief pending final litigation of a dispute may be available in a dispute when the party seeking the relief either has probable grounds for a decree of specific performance or can demonstrate the probability of an irreparable injury and the inadequacy of a money damage award as compensation.<sup>8</sup>

44. Consequently, SOUTHWYCK asks the court to set this application for temporary relief for a hearing and, after the hearing, issue a mandatory injunction against SCA requiring that SCA provide SOUTHWYCK with:

- (1) Account statements for all owners in Southwyck Section IV showing at least the last five years of activity;
- (2) Any and all collection letters sent by SCA to owners in SSIV during the past five years;

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<sup>7</sup> See, e.g. *In re Spiritus Ranch Enters, L.L.P.*, 218 S.W.3d 887 (Tex. App. Fort Worth 2007) (irreparable harm is clear when taking no action will result on the loss of a statutory right)

<sup>8</sup> *Butmaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

- (3) An accounting of all SSIV accounts wherein legal services were provided, including copies of any legal invoices, amounts received, and application of all payments received;
- (4) Any and all written payment plans authorized by SCA for owners in SSIV in the past five years;
- (5) Any and all financial records, bank statements, general ledgers (monthly and annual), and invoices evidencing the disbursement of collected maintenance assessments by SCA during the past five years;
- (6) Any and all notices provided to Owners (SSIV or SCA) for any meetings at which a vote was held regarding fence repair;
- (7) Any and all sign-in sheets from any SCA meeting at which a vote was held regarding fence repair;
- (8) Any and all ballots and proxy ballots showing votes from any meeting at which a vote was held on fence repair;
- (9) Any and all contracts or agreements related to fence repair entered into by SCA during the past five years;
- (10) The minutes from any SCA meeting (Board or Annual) at which fence repair was discussed.

45. Further, at trial, **SOUTHWYCK** asks the court to render an order for permanent injunction requiring that **SCA** cease and desist withholding the corporate documents described hereinabove from **SOUTHWYCK**, and providing **SOUTHWYCK** with continuing and permanent access to all such records and documents.

REQUEST FOR DISCLOSURES

46. SCA is required to provide to SOUTHWYCK all information requested in Tex. R. Civ. P. 194 within fifty (50) days of service of this suit.

PRAYER

47. For these reasons, SOUTHWYCK asks that the court issue citation for SCA to appear and answer, and that SOUTHWYCK be awarded a judgment against SCA for the following:

- a. Actual damages as described herein *supra*;
- b. Temporary and Permanent injunctive relief as described herein *supra*;
- c. Court costs;
- d. Attorney fees;
- e. All other relief to which SOUTHWYCK is entitled.

Respectfully submitted,

LAMBRIGHT ★ MCKEE

/s/ Shawn R. McKee

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ATTORNEYS FOR SOUTHWYCK

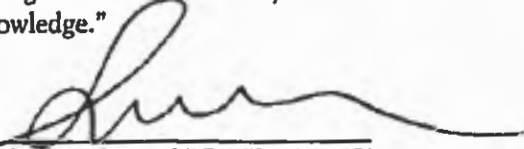
STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

VERIFICATION

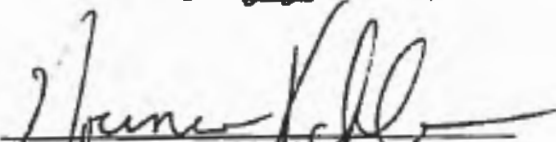
BEFORE ME, the undersigned authority, on this day personally appeared Scarlett Kutch, who is competent to make this affidavit, and stated that the facts contained herein are true and correct within her personal knowledge, and upon her oath said:

"My name is Scarlett Kutch. I am competent to testify. I am over the age of 18 and of sound mind. I am able to accurately perceive, recall, and recount. I have personal knowledge of the facts and information contained in this affidavit and the facts in it are true and correct."

"I have read the foregoing SOUTHWYCK's Original Petition. Every statement contained therein is true, correct, and within my personal knowledge."

  
\_\_\_\_\_  
Scarlett Kutch, President of SOUTHWYCK

This instrument was acknowledged before me on August 28, 2019, by Scarlett Kutch.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

