

No. 03-23-00401-CV

*In the Court of Appeals
Third District of Texas — Austin*

**RENE FFRENCH, JOHN RICHARD DIAL, AND STUART BRUCE
SORGEN,**

Appellants/Cross-Appellees,

v.

FRIENDSHIP HOMES & HANGARS, LLC AND DANA MARTIN,

Appellees/Cross-Appellants,

and

**WINDERMERE OAKS WATER SUPPLY CORPORATION; DARBY
MAIR, INDEPENDENT ADMINISTRATOR OF THE ESTATE OF
JOHANN MAIR, DECEASED; MICHAEL MAIR; WILLIAM EARNEST;
THOMAS MICHAEL MADDEN; ROBERT MEBANE; JOE GIMENEZ;
MIKE NELSON; DOROTHY TAYLOR; AND PATRICK MULLIGAN,**

Appellees.

*On Appeal from the 33rd District Court — Burnet County, Texas
Cause No. 48292*

**JOINT MOTION TO DISMISS APPEAL AND RELEASE FUNDS IN
REGISTRY OF THE TRIAL COURT**

To the Honorable Court of Appeals:

Under Texas Rules of Appellate Procedure 10.1, 42.1(a)(1), and 43.6,
Appellants/Cross-Appellees Rene Ffrench, John Richard Dial and Stuart Bruce

Sorgen (“Appellants”); Appellees/Cross-Appellants Friendship Homes & Hangars, LLC and Dana Martin (“Appellees”); and Appellee Windermere Oaks Water Supply Corporation (“WOWSC”) file this joint motion seeking (1) dismissal of Appellants’ and Appellees’ appeals with prejudice in this case, and (2) for this Court to order the release of funds in the registry of the trial court in the manner set forth below.

BACKGROUND

On March 28, 2023, after a jury trial and consideration of post-trial motions, the trial court rendered a final judgment against Appellees for \$70,000. The final judgment requires the \$70,000 judgment to be split between Appellants and WOWSC, with Appellants to receive \$35,000 and WOWSC to receive \$35,000. The final judgment orders that Appellants take nothing on their claims against the other parties in the case. The final judgment is attached as Appendix A.

Appellants filed a timely notice of appeals. Fourteen days later, Appellees filed a timely cross-notice of appeal. These appeals were docketed in this Court as No. 03-23-00401-CV.

On July 17, 2023, Appellees deposited in the registry of the trial court a cashier’s check in the amount of \$82,026.44, payable to the order of the District Clerk of Burnet County, Texas, to suspend enforcement of the judgment against them during appeal. *See* TEX. R. APP. P. 24.1(a)(3), (c). This supersedeas amount represents (1) the \$70,000 judgment, and (2) two years post-judgment interest at the

8.25% interest rate in effect at the time of judgment. *See* TEX. R. APP. P. 24.2(a)(1).

The receipt for the deposit is attached as Appendix B.

The parties to these appeals have resolved the matters in controversy and no longer wish to pursue their respective claims in this appeal. Thus, they seek the relief requested in this motion.

RELIEF REQUESTED

Appellants and Appellees jointly request that the Court dismiss their appeals with prejudice. Appellants and Appellees agree that each will pay their own appellate costs.

Additionally, Appellants, Appellees, and WOWSC request that this Court's dismissal order specify that the Burnet County District Court clerk must release Appellees' deposit in the registry of the trial court as follows:

1. \$36,443.97 to WOWSC, made payable to Windermere Oaks Water Supply Corporation;
2. \$36,443.97 to Appellants, made payable to Rene Ffrench; and
3. \$9,138.50 to Appellees, made payable to Dana Martin.

PRAYER

Appellants, Appellees, and WOWSC respectfully request that this Court grant this Joint Motion to Dismiss Appeal and Release Funds in Registry of the Trial Court, dismiss this appeal with prejudice as set forth in this motion, and order the

release of funds in the registry of the trial court in the manner requested in this motion. Appellants, Appellees, and WOWSC further request any other relief to which they may be entitled.

Respectfully submitted,

By: /s/ Kathryn E. Allen

Kathryn E. Allen (SBN 01043100)

kallen@keallenlaw.com

**THE LAW OFFICE OF KATHRYN E. ALLEN,
PLLC**

114 W. 7th St., Suite 1100

Austin, Texas 78701

512.495.1400

James A. Hemphill (SBN 00787674)

jhemphill@gdhm.com

**GRAVES DOUGHERTY HEARON & MOODY,
PC**

401 Congress Ave., Suite 2700

Austin, Texas 78701

512.480.5762

*Attorneys for Rene Ffrench, Stuart Bruce
Sorgen, and John Richard Dial*

By: /s/ Shelby O'Brien

Shelby O'Brien (SBN 24037203)

sobrien@enochkever.com

ENOCH KEVER PLLC

7600 N. Capital of Texas Hwy

Building B, Suite 200

Austin, Texas 78731

512.615.1200

*Attorney for Dana Martin, William Earnest,
Thomas Michael Madden, Robert Mebane, Joe
Gimenez, Mike Nelson, Dorothy Taylor, and
Patrick Mulligan*

By: /s/ Molly Mitchell

Molly Mitchell (SBN 14217815)

mollym@abdmlaw.com

**ALMANZA, BLACKBURN, DICKIE &
MITCHELL, LLP**

2301 S. Capital of Texas Hwy., Building H

Austin, Texas 78746

(512) 474-9486

Attorney for Friendship Homes & Hangars

By: /s/ Jose E. de la Fuente

Jose E. de la Fuente (SBN 00793605)

jdela Fuente@lglawfirm.com

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Ave., Suite 1900

Austin, Texas 78701

Telephone: (512) 322-5800

*Attorney for Windermere Oaks Water Supply
Corporation*

By: /s/ Andrew Oliver

Andrew Oliver

State Bar No. 24046556

aoliver@oliverlawoffice.com

13785 Research Blvd., Suite 125

Austin, Texas 78750

Telephone: (512) 233-1103

Fax: (512) 551-0330

Attorneys for Mair Defendants

CERTIFICATE OF CONFERENCE

As evidenced by my signature below, counsel for Appellants/Cross-Appellees has conferred with counsel for Appellees and WOWSC. Appellees and WOWSC do not oppose and join in this motion.

/s/ Kathryn E. Allen _____

CERTIFICATE OF SERVICE

I hereby certify that, on November 7, 2023, a true and correct copy of the above and foregoing has been served via electronic service on all counsel of record.

/s/ James A. Hemphill _____

Cause No. 48292

RENE FFRENCH, JOHN RICHARD §
DIAL, AND STUART BRUCE SORGEN, §
INTERVENOR §
PLAINTIFFS §

IN THE DISTRICT COURT

v.

FRIENDSHIP HOMES & HANGARS, §
LLC, WINDERMERE OAKS WATER §
SUPPLY CORPORATION, AND ITS §
DIRECTORS WILLIAM EARNEST, §
THOMAS MICHAEL MADDEN, DANA §
MARTIN, ROBERT MEBANE, §
PATRICK MULLIGAN, JOE §
GIMENEZ, MIKE NELSON, AND §
DOROTHY TAYLOR, ESTATE OF §
JOHAN ANTON MAIR AND MICHAEL §
MAIR §
DEFENDANTS

33RD JUDICIAL DISTRICT

BURNET COUNTY, TEXAS

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FINAL JUDGMENT

Prior to the trial of the cause, the Court entered a number of interlocutory orders that defined the scope of the trial. Such orders include the following:

The Court's order of February 24, 2020, on the Defendants' pleas to the jurisdiction determined that Plaintiffs lacked standing to bring suit as individuals seeking individual damages against the WOWSC's current and former officers and directors and that Plaintiffs lacked standing to bring a representative claim on behalf of WOWSC that is outside the scope of the grant of standing by TBOC 20.002(c)(2), but that Plaintiffs had standing ⁺⁰ to assert claims for breach of fiduciary duty, constructive fraud, and other theories in pursuit of claims brought pursuant to TBOC Secs. 20.002(c)(1) and (c)(2), and Chapter 22 subchapter J. No claims by Plaintiffs as individuals seeking individual damages against the WOWSC's current and former officers and directors were tried to the jury.

MM

The Court's order of October 20, 2020 implicitly determined that Plaintiffs could not recover the land in controversy on their direct claims asserted against the WOWSC, but that there was no limitation on the remedies available under Section 20.002(c)(2) and therefore Plaintiffs could proceed on their claims under said Section against the former and current directors named individually and could seek to unwind a fully performed transaction. No direct claims against the WOWSC were tried to the jury; however, the WOWSC remained a nominal party for purposes of facilitating any judgment reversing the land transaction through Plaintiffs' representative claims against Dana Martin and Friendship Homes & Hangars, LLC (collectively, the "Martin Defendants") and/or facilitating any judgment awarding relief under Section 22.512, Tex. Bus. Org. Code.

The Court's order of May 3, 2021, granted take-nothing summary judgments as to all claims against Defendants William Earnest, Thomas Michael Madden, Robert Mebane, Patrick Mulligan, Joe Gimenez, Mike Nelson, and Dorothy Taylor (collectively, "Director Defendants") alleged in Plaintiffs' Third Amended Original Petition. Such claims were not tried to the jury.

The Court's order of July 26, 2021, granted summary judgment in favor of Defendants Johann Anton Mair (for whom Darby Mair, Independent Administrator of the Estate of Johann Mair, deceased, was subsequently substituted) and Michael Mair (collectively "Mair Defendants"). No claims against the Mair Defendants or their property were tried to the jury.

The Court's order of July 22, 2022 denied leave for Plaintiffs' to file their Fourth Amended Original Petition alleging causes of action based on acts and omissions occurring after the date of their Third Amended Original Petition. No such claims were ~~or could have been~~ tried to the jury. *MM*

On November 14, 2022, this case was called for trial and all parties appeared through counsel and announced ready for trial. A jury of twelve jurors and two alternates were duly

impaneled. Based on the pretrial rulings described above, the case was ^{tried} tied to the jury. Having received and considered the jury's unanimous verdict and having considered the parties' respective post-verdict motions and responses, the Court is of the opinion that (i) the Mair Defendants' motion for judgment based on the Court's order of July 26, 2021 should be granted, (ii) the Director Defendants' motion for judgment based on the Court's order of May 3, 2021 should be granted as to the claims alleged in Plaintiffs' Third Amended Original Petition, (iii) Friendship Homes & Hangars' motion for judgement notwithstanding the verdict should be denied, (iv) Plaintiffs' motion for judgment should be denied as to the enforcement of a constructive trust and granted in part as and to the extent set forth below, and (v) the WOWSC's motion for judgment based on the Court's order of February 24, 2020 should be granted in part as and to the extent set forth below.

MM

It is, therefore, ORDERED, ADJUDGED AND DECREED as follows:

1. That, except as necessary to facilitate the judgment set forth in paragraph 5 below, Plaintiffs shall take nothing on their claims against WOWSC asserted in their Third Amended Original Petition.

2. That Plaintiffs, individually and as representatives of the WOWSC, shall take nothing on their claims against the Director Defendants alleged in their Third Amended Original Petition.

3. That Plaintiffs, as representatives of the WOWSC, shall take nothing on their claims against the Mair Defendants alleged in their Third Amended Original Petition.

4. That Plaintiffs, for and on behalf of the WOWSC, shall have and recover judgment on the claims alleged in their Third Amended Petition against Dana Martin and Friendship Homes & Hangars, LLC, jointly and severally, in the amount of \$70,000.00, which amount shall be reduced dollar-for-dollar by the judgment rendered in favor of Plaintiffs in paragraph 5 below.

The remainder of such judgment (or \$35,000) may be collected in full by the WOWSC.


5. That for purposes of reimbursing a portion of Plaintiffs' expenses obtaining a recovery in favor of the WOWSC, Plaintiffs shall have and recover judgment against Dana Martin and Friendship Homes & Hangars, LLC, jointly and severally, in the amount of \$35,000.00, which amount may be collected in full by any one of Plaintiffs or by two or more of them acting together.

6. That execution may be issued in favor of the WOWSC and/or Plaintiffs, respectively, in connection with the judgments entered in paragraphs 4 and 5 above.

7. That all other relief not expressly granted herein is denied.

This is a Final Judgment that disposes of all claims by all parties and is final and appealable.

SIGNED on this 28th day of March 2023.


MARGARET MIRABAL
DISTRICT COURT JUDGE, *Presiding*

APPROVED AS TO FORM ONLY:

THE LAW OFFICE OF KATHRYN E. ALLEN, PLLC
114 W. 7th St., Suite 1100
Austin, Texas 78701
(512) 495-1400 telephone
(512) 499-0094 fax

By: /s/ Kathryn E. Allen
Kathryn E. Allen
State Bar ID No. 01043100
kallen@keallenlaw.com

Attorneys for Plaintiffs

OFFICIAL RECEIPT
Casie Walker
Burnet County District Clerk
1701 East Polk, Suite 90
Burnet, Texas 78611-2757
Phone: (512) 756-5450



Payor
MARTIN, DANA JANE
205 COVENTRY ROAD
SPICEWOOD, TX 78669

Receipt No.
2023-128789
 Transaction Date
 07/17/2023

Description	Amount Paid
On Behalf Of FRIENDSHIP HOMES & HANGARS, LLC 48292 DOUBLE F HANGER OPERATIONS, LLC, LAWRENCE R. FFRENCH, Jr., PATRICIA FLUNKER, AND MARK A. McDONALD V. FRIENDSHIP HOMES & HANGARS, LLC Appeal Bond	
Civil Registry Fee	82,026.44
SUBTOTAL	<u>82,026.44</u>
	PAYMENT TOTAL
	82,026.44
	Cashier's Check (Ref #0930006137) Tendered
	<u>82,026.44</u>
	Total Tendered
	82,026.44
	Change
	0.00
07/17/2023	Cashier
11:06 AM	Station CS02
	Audit
	1320425

OFFICIAL RECEIPT