

# CITATION

Cause Number: 20-04-05026

Clerk of the Court  
Melisa Miller  
P.O. Box 2985  
Conroe, Texas 77305

Attorney Requesting Service  
J. Randal Bays  
1503 Hailey St  
Conroe TX 77301

## THE STATE OF TEXAS

**NOTICE TO DEFENDANT:** 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 twenty days after you were served this citation and petition, a default judgment may be taken against you.

To: Ken Bitgood  
9229 Lake Conroe Drive  
Conroe TX 77304  
OR WHEREVER THE ADDRESSEE MAY BE FOUND

DELIVERED

MAY 14 2020

DG PSC#11914

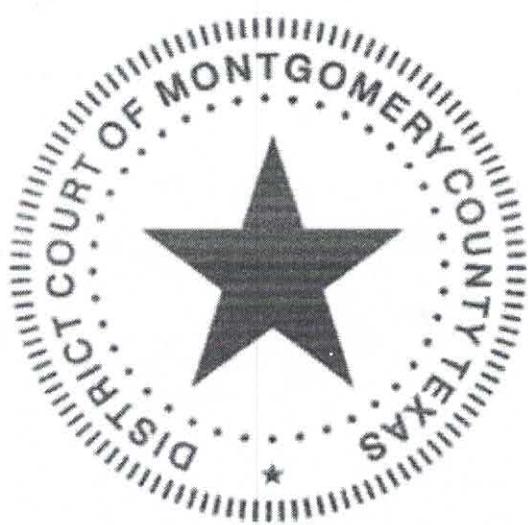
You are hereby commanded to appear by filing a written answer to the Plaintiffs' Original Petition at or before 10:00 A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable 410th Judicial District Court Montgomery County, Texas at the Courthouse of said County in Conroe, Texas.

Said Plaintiffs' Original Petition was filed in said court on this the 28th day of April, 2020 numbered 20-04-05026 on the docket of said court, and styled, John Martin, Julia Martin VS. Ken Bitgood, Jennifer Cole, Paul Torretti

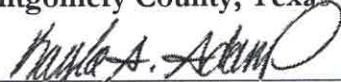
The nature of plaintiff's demand is fully shown by a true and correct copy of the Plaintiffs' Original Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at Conroe, Texas on this the 6th day of May, 2020.



Melisa Miller, District Clerk  
Montgomery County, Texas

By:   
Kayla Adams, Deputy

5/6/2020 9:28:07 AM

# OFFICER'S RETURN

Cause No. 20-04-05026

Court No: 410th Judicial District Court

Style: John Martin, Julia Martin VS. Ken Bitgood, Jennifer Cole, Paul Torretti

To: Ken Bitgood

Address: 9229 Lake Conroe Drive  
Conroe TX 77304

## OR WHEREVER THE ADDRESSEE MAY BE FOUND

Came to hand the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named defendants in person, a true copy of this citation with the date of delivery endorsed thereon, together with the accompanying copy of the Plaintiffs' Original Petition at the following times and places, to wit:

Name	Date/Time	Place, Course and distance from Courthouse

Manner of service: \_\_\_\_\_

\*And not executed as to the defendants(s) \_\_\_\_\_

The diligence used in finding said defendant(s) being: \_\_\_\_\_

And the cause of failure to execute this process is: \_\_\_\_\_

And information received as to the whereabouts of said defendant(s) being: \_\_\_\_\_

FEES:

Serving Petition and Copy \$ \_\_\_\_\_ OFFICER

TOTAL \$ \_\_\_\_\_ County, Texas

By: \_\_\_\_\_, Deputy

## AFFIANT

Complete if you are a person other than a Sheriff, Constable, or Clerk of the Court. In accordance with Rule 107: the officer, or authorized person who services, or attempts to serve a citation shall sign and return. The return must either be verified or be signed under penalty of perjury.

A return signed under penalty of perjury must contain the statement below in substantially the following form:

My full name is \_\_\_\_\_

My date of birth is \_\_\_\_ / \_\_\_\_ / \_\_\_\_ , and my address is \_\_\_\_\_

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Executed in \_\_\_\_\_, County, State of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Declarant/Authorized Process Server

ID# & Exp. Of Certification

SWORN AND SUBSCRIBED ON

DATE

NOTARY

Declarant/Authorized Process Server

ID# & Exp. Of Certification

NO. 20-04-05026

JOHN MARTIN and JULIA MARTIN §                  410<sup>th</sup> JUDICIAL DISTRICT COURT  
vs.                                    §  
KEN BITGOOD, JENNIFER COLE, and                    §  
PAUL TORRETTI                    §                  MONTGOMERY COUNTY, TEXAS

**ORIGINAL PETITION**  
(contains discovery requests)

TO THE HONORABLE JENNIFER J. ROBIN:

John Martin and Julia Martin file this Original Petition complaining of Ken Bitgood, Jennifer Cole, and Paul Torretti, where they seek to recover damages, declaratory relief, and permanent injunctive relief, and in support of the relief requested, show this Court as follows:

**Discovery Level and Rule 47 Statement**

1. Discovery in this matter should be conducted under Level 2. The damages sought are within the jurisdictional limits of the Court. John Martin and Julia Martin seek monetary relief over \$200,000 but not more than \$1,000,000. John Martin and Julia Martin demand judgment for all other relief to which they deem themselves entitled.

**Parties**

2. John Martin is an individual residing in Montgomery County, Texas.  
3. Julia Martin is an individual residing in Montgomery County, Texas.  
4. Ken Bitgood is an individual residing in Montgomery County, Texas who may be summoned to appear by serving citation upon him at 9229 Lake Conroe Drive, Conroe, Texas 77304, or wherever he may be found.

5. Jennifer Cole is an individual residing in Montgomery County, Texas who may be summoned to appear by serving citation upon her at 9324 Lake Conroe Drive, Conroe, Texas 77304,

or wherever she may be found.

6. Paul Torretti is a resident of Montgomery County, Texas who may be summoned to appear by serving citation upon him at 9342 Lake Conroe Drive, Conroe, Texas 77304, or wherever he may be found.

#### **Jurisdiction and Venue**

7. This court has jurisdiction over this matter given that this is a civil action involving more than \$200. This Court has jurisdiction over each defendant because they are residents of the State of Texas.

8. Venue is mandatory in Montgomery County, Texas because this lawsuit seeks the removal of encumbrances to land located in Montgomery County, Texas. TEX. CIV. PRAC. & REM. CODE §§ 15.011. Venue is proper in Montgomery County, Texas as all of the events alleged occurred in Montgomery County, Texas and each defendant resides in Montgomery County, Texas. *Id.* §§ 15.001 and 15.002.

#### **Statement of Facts**

9. The parties to this lawsuit are owners of real property located in Tres Subdivision, a residential subdivision located in Montgomery County, Texas, per the plat of which is recorded in Cabinet G, Sheet 39A of Map Records of Montgomery County (“Tres”). Bill D’Amico, trustee was the developer of Tres. There is no single set of deed restrictions that encumbers the land shown on the plat of Tres. Instead, on some lots in Tres, the deed from Mr. D’Amico may have included some restrictions, and those restrictions varied from lot to lot.

10. John Martin and Julia Martin are the record owners of that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of

Reserve “C” of Tres (the “Martin Tract”). The deed conveying to John Martin and Julia Martin the Martin Tract is recorded under Clerk’s File No. 2014059757. Mr. D’Amico originally conveyed the Martin Tract to Robert Randall Seehausen by deed filed for record under Clerk’s File No. 2000050622 (the “Seehausen Deed”), which contains certain restrictions on the use of the Martin Tract. The restrictions that encumber the Martin Tract give the Architectural Control Committee for Tres (the “ACC”), as well as anyone owning any portion of the land in Tres, the right to enforce them, but not to amend them.

11. At no time has there even been a property owners’ association for Tres.

12. On February 23, 2019, Ken Bitgood and Jennifer Cole, and on February 25, 2019, Paul Torretti, signed an instrument filed for record under Montgomery County Clerk’s File Number 2019014421 titled, *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* (the “First Unauthorized Instrument”). Falsely claiming to be the ACC, defendants conspired to establish an instrument to restrict the Martin Tract, and other land within Tres. In actuality, Ken Bitgood, Jennifer Cole, and Paul Torretti possessed no authority to do so.

13. Following an uproar by Tres owners caused by the First Unauthorized Instrument, defendants filed another dubious instrument on September 12, 2019 under Montgomery County Clerk’s File Number 2019084861 titled, *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* (the “Second Unauthorized Instrument”).

14. Defendants claimed in the First Unauthorized Instrument and the Second Unauthorized Instrument that the *Declaration* for Tres is set out in a series of ten deeds, including the Seehausen Deed which is in John Martin’s and Julia Martin’s chain of title. This is both false

and ignores most of the deeds for lots in Tres. Tres has no such *Declaration* despite defendants' best attempts to fabricate such an instrument.

15. Defendants further claimed that this imaginary *Declaration* gives the ACC the authority to enforce and amend the *Declaration* by an instrument executed by a majority vote of the ACC members. This is a complete misconstrual of what the deeds they cite actually say. As mentioned above, Tres has no such *Declaration*. Furthermore, the restrictions in the deeds cited, including the Seehausen Deed, give the ACC, as well as anyone owning property in Tres, the right to enforce the deed restrictions applicable to each lot. They do not, however, give the ACC, nor any other Tres residents, the right to amend others' deed restrictions under any circumstance. Once again, defendants conspired to grant unto themselves powers and authorities they simply do not have.

16. Furthermore, defendants' claims to be the ACC are suspect at best. In the First Unauthorized Instrument and the Second Unauthorized Instrument defendants claim that Bill D'Amico and Agnes Cecilia D'Amico designated William Coffer as their successor ACC member; William Coffer designated Bill D'Amico, Jr. as his successor ACC member; Bill D'Amico, Jr. designated Don Schrock as his successor ACC member; Don Schrock designated Ken Bitgood as his successor ACC member; and Ken Bitgood designated Jennifer Cole and Paul Torretti as additional ACC members. However, defendants have failed to provide any such documentation supporting their claim. In response to John Martin's and Julia Martin's demand letter, counsel for defendants assured John Martin and Julia Martin that she does indeed have the documentation to back up the succession narrative, though failed to provide it despite multiple requests, calling it "not necessary." Despite not being able to produce these documents, and despite no one ever having seen such documents, defendants want the Tres owners to take them at their word that they do exist, and

that they are not merely fabricating their role on the ACC the same way they are fabricating their authorities on it.

17. The restrictions the First Unauthorized Instrument and the Second Unauthorized Instrument put on the Martin Tract have ensured that John Martin and Julia Martin cannot build a home on their land. This was all the design of Ken Bitgood, for a home on the Martin Tract would block his view of Lake Conroe. On top of that, Torretti signed an instrument filed for record under Clerk's File Number 2019043047 (the "Variance") granting Ken Bitgood privileges other Tres property owners weren't fortunate enough to be granted by the ACC. It is hard to reconcile how per the First Unauthorized Instrument and the Second Unauthorized Instrument the ACC is a committee of three, but under the Variance, it is a committee of one. The Variance permits Ken Bitgood to locate a home well beyond the building line set out in the plat of Tres and to locate the house perpendicular to Lake Conroe Drive, where every other house on Lake Conroe Drive is parallel to it. Hard to fathom how exactly this committee of one believed he had the power to grant a variance to the Tres plat.

18. The actions of this so-called ACC provide evidence of their true intents and reasons for conspiring against the other property owners of Tres. Ken Bitgood has personally benefitted from this arrangement and been granted privileges other Tres property owners are not fortunate enough to be granted. As a result of their actions, John Martin and Julia Martin have been blocked from building a home on the Martin Tract because it would obstruct Ken Bitgood's view of Lake Conroe. On top of that, the privileges granted him in the Variance permits him to have a view of Lake Conroe out his front door. It seems one man has unilaterally benefitted from the ACC's suspect actions, the same man who apparently headed the ACC single-handedly before appointing

Jennifer Cole and Paul Torretti to it. In response to John Martin's and Julia Martin's demand that defendants remove the First Unauthorized Instrument and the Second Unauthorized Instrument, counsel for defendants would have us believe that Ken Bitgood's recusal from the ACC's fraudulent building approval process signals that the process was "unbiased." Yet this so-called unbiased process resulted in the two remaining members of the ACC, coincidentally appointed by Ken Bitgood, approving building plans that run counter to the architectural integrity of Tres to his benefit. Ken Bitgood has unilaterally benefitted from the ACC's actions to the detriment of others. Calling the committee unbiased is questionable at best.

19. The restrictions contained in the Seehausen Deed run afoul of the rule against perpetuities, for they have no provision allowing the owner of the Martin Tract to ever escape from them. The page of the Seehausen Deed bearing image code 725-00-1468 provides:

The covenants, conditions, restrictions, and easements of this declaration shall run with and bind the property and shall insure to the benefit of and be enforceable by any property owner within the said 63.61 acres subdivision unless amended as provided herein, shall be effective for a term of twenty years from the date this declaration is recorded. After which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten years.

There is no mechanism in those restrictions on how to amend them contrary to the statement that they may be "amended as provided herein." But with the restrictions having a 20 year initial life renews into perpetuity every ten years, they violate the rule against perpetuities.

### **Causes of Action**

20. **SLANDER OF TITLE.** Defendants have slandered the title to the Martin Tract. Defendants falsely claimed to be the Tres Architectural Control Committee and filed the First Unauthorized Instrument and the Second Unauthorized Instrument that encumber the Martin Tract. John Martin and Julia Martin seek to have the First Unauthorized Instrument and the Second

Unauthorized Instrument nullified. As a result of defendants' actions, John Martin and Julia Martin seek to recover their actual damages from Defendants, jointly and severally. As a result of Defendants' actions, John Martin and Julia Martin seek to recover exemplary damages from each Defendant.

**21. FRAUDULENT CLAIM FILED AGAINST REAL PROPERTY.** Both the First Unauthorized Instrument and the Second Unauthorized Instrument constitute a fraudulent claim filed against real property within the meaning of Chapter 12 of the Texas Civil Practices and Remedies Code. As a result of defendants' actions, John Martin seeks to recover \$10,000 from each defendant for filing the First Unauthorized Instrument, and \$10,000 from each defendant for filing the Second Unauthorized Instrument. As a result of defendants' actions, Julia Martin seeks to recover \$10,000 from each defendant for filing the First Unauthorized Instrument, and \$10,000 from each defendant for filing the Second Unauthorized Instrument. As a result of defendants' actions, John Martin and Julia Martin seek to recover exemplary damages from each defendant. John Martin and Julia Martin seek to recover their attorney's fees for trial and appeal from defendants.

**22. Declaratory Judgment.** John Martin and Julia Martin seeks declarations from this Court as permitted by the Uniform Declaratory Judgments Act insofar as there is a necessity – given the dispute as to the validity of the First Unauthorized Instrument and the Second Unauthorized Instrument, with such validity creating the need to settle and to afford relief from uncertainty and insecurity, and with the Act to be liberally construed and administered. TEX. CIV. PRAC. & REM. CODE §37.002(b). Thus, John Martin and Julia Martin seeks declarations from the Court that:

- a. The First Unauthorized Instrument is invalid and of no force or effect;
- b. The Second Unauthorized Instrument is invalid and of no force or effect;

- c. Defendants are not the ACC;
- d. The Variance is invalid and of no force or effect;
- e. The restrictions in Seehausen Deed violate the rule against perpetuities; and
- f. The restrictions in Seehausen Deed expire on May 25, 2020, twenty years from the date they were imposed.

Such declarations fall within the purview of the Court's jurisdiction under the Uniform Declaratory Judgments Act. TEX. CIV. PRAC. & REM. CODE §37.003(a) (the Court "has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed."); *id.* at §37.004(a) ("A person interested under a... written contract...may...obtain a declaration of rights, status, or other legal relations thereunder."). As a result of bringing this declaratory judgment action, John Martin and Julia Martin have been forced to hire an attorney to protect their rights and seeks to recover their costs and their reasonable and necessary attorney's fees as are equitable and just as permitted under the Declaratory Judgment Act. *Id.* §37.009.

23. **Injunctive Relief.** Based upon the facts outlined above, John Martin and Julia Martin seek and are entitled to a mandatory injunction requiring defendants to execute an instrument in recordable form and record the same to put the world on notice that the First Unauthorized Instrument and the Second Unauthorized Instrument are void and of no force and effect and that the Variance is void and of no force and effect. John Martin and Julia Martin will likely suffer irreparable harm, injury and loss if defendants are not enjoined and ordered as requested. John Martin and Julia Martin are without remedy, except through the equitable jurisdiction of this Court to enjoin defendants as requested.

### **Attorney's Fees**

24. Because of defendants' actions, John Martin and Julia Martin have been forced to employ the services of an attorney to file and prosecute this suit against defendants, and seek to recover from defendants, jointly and severally, their reasonable and necessary attorney's fees for trial and appeal.

### **Conditions Precedent**

25. All conditions precedent to bringing this lawsuit have been performed, have occurred, or are excused.

### **Discovery Requests**

26. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Ken Bitgood is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2. Please serve all responses, documents and tangible items upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301.

27. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Jennifer Cole is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2. Please serve all responses, documents and tangible items upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301.

28. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Paul Torretti is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2. Please serve all responses, documents and tangible items upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301.

29. Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Ken Bitgood is requested

to produce, within 50 days of service of this request, the information or material requested below and to serve all responsive documents upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301. As used hereinafter, “document” means any written, recorded, or graphic matter within the scope of Rule 192 of the Texas Rules of Civil Procedure by whomever prepared, within the care, custody, or control of Ken Bitgood as well as documents that Ken Bitgood has a legal right to obtain to copy or have access to, and documents that he has placed in the temporary possession, custody, or control of any third party. If a document exists in electronic format, Ken Bitgood is requested to produce it in its electronic format. The term “electronic format” shall mean data or information in the electronic or magnetic form in which it was saved, created, received or sent by Ken Bitgood. Responsive e-mails includes all attachments to the e-mail.

**Material or Information Requested from Ken Bitgood:**

- a. The document whereby Bill D'Amico and Agnes Cecilia D'Amico designated William Coffer as their successor Architectural Control Committee member.
- b. The document whereby William Coffer designated Bill D'Amico, Jr. as his successor Architectural Control Committee member.
- c. The document whereby Bill D'Amico, Jr. designated Don Schrock as his successor Architectural Control Committee member.
- d. The document whereby Don Schrock designated Ken Bitgood as his successor Architectural Control Committee member.
- e. The document whereby Ken Bitgood designated Jennifer Cole and Paul Torretti as additional Architectural Control Committee members.
- f. Each document that discusses or describes the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- g. Each document that discusses or describes the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.

- h. Each document that discusses or describes the members of the architectural control committee for Tres Subdivision from January 1, 2000 through the present.
- i. Each document that Ken Bitgood relied upon in coming to the conclusion that he had the authority to sign the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- j. Each document that Ken Bitgood relied upon in coming to the conclusion that he had the authority to sign the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- k. Each document that relates to, pertains to, or describes that *Approved Variance* instrument signed by Paul Torretti that was filed for record under Montgomery County Clerk's File Number 2019043047.
- l. Each document that relates to, pertains to, or describes "the condition of encroachment for proposed improvements on a portion of Reserve B, Section 1, of TRES SUBDIVISION" mentioned in that instrument signed by Paul Torretti filed for record under Montgomery County Clerk's File Number 2019043047.
- m. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 2018 through the present.
- n. As of February 28, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
- o. As of August 31, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
- p. As of September 1, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.

- r. Each document that relates to, pertains to, or describes nullifying the effect of the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- s. Each document that relates to, pertains to, or describes nullifying the effect of the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- t. Each document that relates to, pertains to, or describes the June 4, 2019 communication to Tres Residents.
- u. Each document that relates to, pertains to, or describes the identities of the "3 real estate attorneys and a civil judge" as stated in the June 4, 2019 communication to Tres Residents.
- v. Each document that relates to, pertains to, or describes information relayed to you by the "3 real estate attorneys and a civil judge" as stated in the June 4, 2019 communication to Tres Residents.
- w. Each document that relates to, pertains to, or describes "Ken, Paul and I have incurred personal costs through hiring a real estate attorney" as stated in the June 4, 2019 communication to Tres Residents.
- x. Each document where "we have also been erroneously maligned throughout the neighborhood" as stated in the June 4, 2019 communication to Tres Residents.
- y. Produce the document that states "The original deed restrictions state the covenants, condition, restrictions, and easements of the declaration may be amended by an Instrument executed by a majority vote of the ACC..." as stated in the June 4, 2019 communication to Tres Residents.
- z. Each document that relates to, pertains to, or describes the April 2, 2019 communication to Tres Residents.
- aa. Any and all models, visual aides, experiments, documents, plats, drawings, charts, graphs, or any other demonstrative item prepared by or preserved by you or any other person acting on your behalf that will or may be used in a trial of this lawsuit.
- bb. All authoritative sources, reports of other experts, learned treatises, or other such documents upon which any expert relies in forming the opinions and/or conclusions to which he/she may testify at the time of trial.

- cc. All documents that you plan to use as exhibits at any trial of this lawsuit.
  - dd. Any and all written communications made by you or anyone on your behalf regarding the subject matter of this litigation, except those communications between you and your attorneys.
  - ee. Each document reflecting, relating to or constituting a published treatise, news reports, news article, television report, radio report, magazine or newspaper article, periodical or pamphlet related to the matters made the basis of this lawsuit that you may offer or use at a trial of this cause under Rule 803(18) of the Texas Rule of Evidence.
  - ff. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 1991 through the December 31, 2017.
30. Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Jennifer Cole is requested to produce, within 50 days of service of this request, the information or material requested below and to serve all responsive documents upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301. As used hereinafter, "document" means any written, recorded, or graphic matter within the scope of Rule 192 of the Texas Rules of Civil Procedure by whomever prepared, within the care, custody, or control of Jennifer Cole as well as documents that Jennifer Cole has a legal right to obtain to copy or have access to, and documents that she has placed in the temporary possession, custody, or control of any third party. If a document exists in electronic format, Jennifer Cole is requested to produce it in its electronic format. The term "electronic format" shall mean data or information in the electronic or magnetic form in which it was saved, created, received or sent by Jennifer Cole. Responsive e-mails includes all attachments to the e-mail.

**Material or Information Requested from Jennifer Cole:**

- a. The document whereby Bill D'Amico and Agnes Cecilia D'Amico designated William Coffer as their successor Architectural Control Committee member.
- b. The document whereby William Coffer designated Bill D'Amico, Jr. as his successor Architectural Control Committee member.

- c. The document whereby Bill D'Amico, Jr. designated Don Schrock as his successor Architectural Control Committee member.
- d. The document whereby Don Schrock designated Ken Bitgood as his successor Architectural Control Committee member.
- e. The document whereby Ken Bitgood designated Jennifer Cole and Paul Torretti as additional Architectural Control Committee members.
- f. Each document that discusses or describes the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- g. Each document that discusses or describes the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- h. Each document that discusses or describes the members of the architectural control committee for Tres Subdivision from January 1, 2000 through the present.
- i. Each document that Jennifer Cole relied upon in coming to the conclusion that she had the authority to sign the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- j. Each document that Jennifer Cole relied upon in coming to the conclusion that she had the authority to sign the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- k. Each document that relates to, pertains to, or describes that *Approved Variance* instrument signed by Paul Torretti that was filed for record under Montgomery County Clerk's File Number 2019043047.
- l. Each document that relates to, pertains to, or describes "the condition of encroachment for proposed improvements on a portion of Reserve B, Section 1, of TRES SUBDIVISION" mentioned in that instrument signed by Paul Torretti filed for record under Montgomery County Clerk's File Number 2019043047.
- m. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 2018 through the present.
- n. As of February 28, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas

and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.

- o. As of August 31, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
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- s. Each document that relates to, pertains to, or describes nullifying the effect of the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- t. Each document that relates to, pertains to, or describes the June 4, 2019 communication to Tres Residents.
- u. Each document that relates to, pertains to, or describes the identities of the "3 real estate attorneys and a civil judge" as stated in the June 4, 2019 communication to Tres Residents.
- v. Each document that relates to, pertains to, or describes information relayed to you by the "3 real estate attorneys and a civil judge" as stated in the June 4, 2019 communication to Tres Residents.
- w. Each document that relates to, pertains to, or describes "Ken, Paul and I have incurred personal costs through hiring a real estate attorney" as stated in the June 4, 2019 communication to Tres Residents.
- x. Each document where "we have also been erroneously maligned throughout the

neighborhood” as stated in the June 4, 2019 communication to Tres Residents.

- y. Produce the document that states “The original deed restrictions state the covenants, condition, restrictions, and easements of the declaration may be amended by an Instrument executed by a majority vote of the ACC...” as stated in the June 4, 2019 communication to Tres Residents.
- z. Each document that relates to, pertains to, or describes the April 2, 2019 communication to Tres Residents.
- aa. Any and all models, visual aides, experiments, documents, plats, drawings, charts, graphs, or any other demonstrative item prepared by or preserved by you or any other person acting on your behalf that will or may be used in a trial of this lawsuit.
- bb. All authoritative sources, reports of other experts, learned treatises, or other such documents upon which any expert relies in forming the opinions and/or conclusions to which he/she may testify at the time of trial.
- cc. All documents that you plan to use as exhibits at any trial of this lawsuit.
- dd. Any and all written communications made by you or anyone on your behalf regarding the subject matter of this litigation, except those communications between you and your attorneys.
- ee. Each document reflecting, relating to or constituting a published treatise, news reports, news article, television report, radio report, magazine or newspaper article, periodical or pamphlet related to the matters made the basis of this lawsuit that you may offer or use at a trial of this cause under Rule 803(18) of the Texas Rule of Evidence.
- ff. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 1991 through the December 31, 2017.

31. Pursuant to Rule 196 of the Texas Rules of Civil Procedure, Paul Torretti is requested to produce, within 50 days of service of this request, the information or material requested below and to serve all responsive documents upon the undersigned counsel of record, J. Randal Bays, at 1503 Hailey, Conroe, Texas 77301. As used hereinafter, “document” means any written, recorded, or graphic matter within the scope of Rule 192 of the Texas Rules of Civil Procedure by whomever prepared, within the care, custody, or control of Paul Torretti as well as documents that Paul Torretti

has a legal right to obtain to copy or have access to, and documents that he has placed in the temporary possession, custody, or control of any third party. If a document exists in electronic format, Paul Torretti is requested to produce it in its electronic format. The term “electronic format” shall mean data or information in the electronic or magnetic form in which it was saved, created, received or sent by Paul Torretti. Responsive e-mails includes all attachments to the e-mail.

**Material or Information Requested from Paul Torretti:**

- a. The document whereby Bill D'Amico and Agnes Cecilia D'Amico designated William Coffer as their successor Architectural Control Committee member.
- b. The document whereby William Coffer designated Bill D'Amico, Jr. as his successor Architectural Control Committee member.
- c. The document whereby Bill D'Amico, Jr. designated Don Schrock as his successor Architectural Control Committee member.
- d. The document whereby Don Schrock designated Ken Bitgood as his successor Architectural Control Committee member.
- e. The document whereby Ken Bitgood designated Jennifer Cole and Paul Torretti as additional Architectural Control Committee members.
- f. Each document that discusses or describes the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- g. Each document that discusses or describes the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.
- h. Each document that discusses or describes the members of the architectural control committee for Tres Subdivision from January 1, 2000 through the present.
- i. Each document that Paul Torretti relied upon in coming to the conclusion that he had the authority to sign the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- j. Each document that Paul Torretti relied upon in coming to the conclusion that he had

the authority to sign the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number 2019084861.

- k. Each document that relates to, pertains to, or describes that *Approved Variance* instrument signed by Paul Torretti that was filed for record under Montgomery County Clerk's File Number 2019043047.
- l. Each document that relates to, pertains to, or describes "the condition of encroachment for proposed improvements on a portion of Reserve B, Section 1, of TRES SUBDIVISION" mentioned in that instrument signed by Paul Torretti filed for record under Montgomery County Clerk's File Number 2019043047.
- m. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 2018 through the present.
- n. As of February 28, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
- o. As of August 31, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
- p. As of September 1, 2019, the deed restrictions imposed on that certain 1.000 acre tract of land in the Elijah Collard Survey, Abstract 7, Montgomery County, Texas and being out of Reserve "C" of Tres Subdivision that was originally conveyed by Bill D'Amico, trustee to Robert Randall Seehausen by deed filed for record under Clerk's File No. 2000050622 as of the date you respond to this request for production.
- r. Each document that relates to, pertains to, or describes nullifying the effect of the *Restated and Amended Declaration of Restrictions of Tres Community Association Amended January 1, 2019* filed for record under Montgomery County Clerk's File Number 2019014421.
- s. Each document that relates to, pertains to, or describes nullifying the effect of the *Amended Declaration of Restrictions of Tres Community Association Amended September 1, 2019* filed for record under Montgomery County Clerk's File Number

2019084861.

- t. Each document that relates to, pertains to, or describes the June 4, 2019 communication to Tres Residents.
- u. Each document that relates to, pertains to, or describes the identities of the “3 real estate attorneys and a civil judge” as stated in the June 4, 2019 communication to Tres Residents.
- v. Each document that relates to, pertains to, or describes information relayed to you by the “3 real estate attorneys and a civil judge” as stated in the June 4, 2019 communication to Tres Residents.
- w. Each document that relates to, pertains to, or describes “Ken, Paul and I have incurred personal costs through hiring a real estate attorney” as stated in the June 4, 2019 communication to Tres Residents.
- x. Each document where “we have also been erroneously maligned throughout the neighborhood” as stated in the June 4, 2019 communication to Tres Residents.
- y. Produce the document that states “The original deed restrictions state the covenants, condition, restrictions, and easements of the declaration may be amended by an Instrument executed by a majority vote of the ACC...” as stated in the June 4, 2019 communication to Tres Residents.
- z. Each document that relates to, pertains to, or describes the April 2, 2019 communication to Tres Residents.
  - aa. Any and all models, visual aides, experiments, documents, plats, drawings, charts, graphs, or any other demonstrative item prepared by or preserved by you or any other person acting on your behalf that will or may be used in a trial of this lawsuit.
  - bb. All authoritative sources, reports of other experts, learned treatises, or other such documents upon which any expert relies in forming the opinions and/or conclusions to which he/she may testify at the time of trial.
  - cc. All documents that you plan to use as exhibits at any trial of this lawsuit.
  - dd. Any and all written communications made by you or anyone on your behalf regarding the subject matter of this litigation, except those communications between you and your attorneys.
  - ee. Each document reflecting, relating to or constituting a published treatise, news reports, news article, television report, radio report, magazine or newspaper article,

periodical or pamphlet related to the matters made the basis of this lawsuit that you may offer or use at a trial of this cause under Rule 803(18) of the Texas Rule of Evidence.

- ff. All minutes for the purported architectural control committee for Tres Subdivision from January 1, 1991 through the December 31, 2017.

### **PRAYER FOR RELIEF**

John Martin and Julia Martin respectfully requests that Defendants be cited to appear, and upon final trial they recover from Defendants:

1. The mandatory injunctions as requested herein;
2. Their actual, incidental, and consequential damages;
3. Exemplary damages;
4. Prejudgment and post-judgment interest at the rate provided by Texas law;
5. Their reasonable and necessary attorney's fees;
6. Their costs of court;
7. All writs and processes necessary to collect all sums; and
8. All other relief to which they, or either of them, may be justly entitled.

Respectfully submitted,

/s/ J. Randal Bays  
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