

JOHN MARTIN AND JULIA
MARTIN

Plaintiffs,

v.

KENNETH BITGOOD, JENNIFER
COLE, AND PAUL TORRETTI

Defendants.

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IN THE DISTRICT COURT OF

410th JUDICIAL DISTRICT

MONTGOMERY COUNTY, TEXAS

**DEFENDANTS KENNETH BITGOOD AND JENNIFER COLE'S
ORIGINAL ANSWER AND COUNTERCLAIM**

TO THE HONORABLE COURT:

Defendants Kenneth Bitgood and Jennifer Cole (collectively “Defendants”) file their Answer and Counterclaim, and in support thereof show the following:

I. GENERAL DENIAL

Defendants deny each and every, singular and all, the allegations contained in the Plaintiffs John Martin and Julia Martin (collectively “Plaintiffs”) petition, say that the allegations therein are not true, either in whole or in part, and demand strict proof thereof.

II. AFFIRMATIVE DEFENSES

Defendants assert the affirmative defenses of Plaintiffs are in breach of the deed restrictions, justification, failure to mitigate, and waiver.

Defendants further assert that Plaintiffs have not performed conditions precedent because Plaintiffs are in breach of the deed restrictions for the Properties related to the above-styled suit.

Defendants not made any utterings and publishing of disparaging words that were false and malicious related to Plaintiffs' allegations or otherwise.

Defendants have not presented or used any fraudulent court record related to Plaintiffs' allegations or otherwise.

Additionally, Defendants allege that Plaintiffs' injuries, if any, were Plaintiffs' own fault.

Defendants reserve the right to amend this answer to assert other and further defenses as discovery and investigation warrants.

III. COUNTERCLAIM

Pursuant to Texas Civil Practice & Remedies Code Chapter 12, Plaintiffs' allegations of fraud are baseless and wholly without merit, and were filed with the intent to harm Defendants. Plaintiff know full-well that the deed restrictions provide for an ACC, and know full-well that there is a good faith basis for the ACC to claim authority as successor members of the ACC. The allegations of fraud are frivolous, and by invoking Chapter 12, Plaintiffs have committed an unlawful and sanctionable act under Texas law.

IV. ATTORNEY'S FEES

Pursuant to Texas Civil Practice & Remedies Code Chapter 37.009, Defendants are entitled to recover reasonable and necessary attorney's fees. Additionally, Defendants are entitled to recover attorney's fees pursuant to Texas Civil Practice & Remedies Code Chapter 12. Therefore, Defendants pray the Court award them all reasonable and necessary attorney's fees.

V. REQUEST FOR DISCLOSURES

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant submits its Request for Disclosures. Plaintiffs are requested to disclose in writing of all information requested in Rule 194.2(a-l) within thirty (30) days of service of this request.

VI. PRAYER

Defendants pray that Plaintiffs take nothing, that the Court award reasonable and necessary attorney's fees to Defendants, damages pursuant to Texas Civil Practice & Remedies Code Chapter 12, court costs, and any other relief to which Defendants are entitled.

Respectfully submitted,

ROBERTS MARKEL WEINBERG BUTLER HAILEY PC



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ATTORNEYS FOR DEFENDANTS

KENNETH BITGOOD AND JENNIFER COLE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon the parties below by facsimile, messenger, U.S. certified mail, return receipt requested and/or electronic service, pursuant to the Tex. R. Civ. P. 21a this the 8th day of June, 2020.

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