

FILED

Chris Daniel
District Clerk

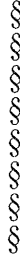
AUG 30 2011

CAUSE NO. 2011-51454

LEE ANN SARDO AND ALEX SARDO

v.

THE THICKET AT CYPRESSWOOD
COMMUNITY IMPROVEMENT
ASSOCIATION



Time: _____
Harris County, Texas
IN THE DISTRICT COURT OF
Deputy

HARRIS COUNTY, TEXAS

151 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

LEE ANN SARDO and ALEX SARDO (collectively "Plaintiffs"), files this their Original Petition for Declaratory Judgment against THE THICKET AT CYPRESSWOOD COMMUNITY IMPROVEMENT ASSOCIATION ("Defendant" or the "Association"), and for cause would show as follows:

I.

INTRODUCTION

1. Plaintiffs request that this court judicially declare that Plaintiffs' Vietnamese potbelly pig named "Wilbur" (hereinafter referred to as "Wilbur") is a "household pet" which may be kept by Plaintiffs at the Subject Property and is not a violation of the applicable deed restrictions.

II.

DISCOVERY CONTROL PLAN

2. Pursuant to Rule 190.3 of the Texas Rules of Civil Procedure, discovery is intended to be conducted under Level 2.

III.

PARTIES

- 3. LEE ANN SARDO is an individual residing in Harris County, Texas.
- 4. ALEX SARDO is an individual residing in Harris County, Texas.

5. THE THICKET AT CYPRESSWOOD COMMUNITY IMPROVEMENT ASSOCIATION is a non-profit Texas corporation, a homeowners' association for the subdivision of homes located in Harris County, Texas. It may be served with process through its registered agent, Community Asset Management, Inc. at 9802 FM 1960 By Pass West, Suite 210, Humble, Texas 77338.

IV.

JURISDICTION AND VENUE

6. A dispute exists regarding Plaintiffs' rights and obligations under the deed restrictions of the subdivision with regards to Plaintiffs' ability under the deed restrictions to own, keep, possess and care for Wilbur on the Subject Property. This Court has jurisdiction to adjudicate the dispute under Chapter 37 of the Texas Civil Practices and Remedies Code.

7. Venue is proper in this Court pursuant to Texas Civil Practice and Remedies Code.

V.

FACTS

8. Plaintiffs are the owners of the real property commonly known as 3419 Fir Forest Drive, Spring, Texas 77388-5153 (the "Subject Property").

9. The Subject Property is encumbered with deed restrictions known as "Amended and Restated Declaration of Covenants, Conditions and Restrictions, Thicket at Cypresswood, Section One, a subdivision in Harris County, Texas (the "Declaration" or "deed restrictions").

10. Article IV, Section 4.15 of the Declaration prohibits non-household pets from being raised, bred or kept on any lot and states as follows:

Section 4.15. Animals and Livestock. No animals, livestock, poultry, reptiles, or insects of any kind shall be raised, bred or kept on any Lot. Consistent with its use as a residence, dogs, cats and other household pets (not to exceed two of each category) may be kept on a Lot, provided that they are not kept, bred or maintained for any commercial purposes, but only for the use and pleasure of the Owner of such Lot. For purposes of this Section, the term "household pets" shall mean domestic animals commonly and traditionally kept in homes as pets, and shall not include any wild, semi-wild, or semi-domesticated animal. The Association may establish other rules and regulations concerning animals and livestock, which rules may specifically exclude certain animals from the Subdivision.

All animals must be properly tagged for identification and must be kept in an approved enclosure or fenced area. No animal may be chained or leashed outside of an enclosed or fenced area unless being walked on a leash. Whenever an animal is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash of chain, rope, plastic, leather or similar material. It is the pet owner's responsibility to keep the Lot clean and free of pet debris.

11. Plaintiffs own a Vietnamese potbelly pig named Wilbur who lives with the Plaintiffs (and their children) in the subject property. Wilbur is a household pet and should be permitted to live with the Plaintiffs in their home, with their family, and on the Subject Property. There is no rule or regulation specifically excluding Wilbur from the subdivision or the subject property.

12. Wilbur is a household pet and not "livestock" as demonstrated by the following:

- A. The definition of "Livestock" refers to animals raised in an agricultural setting to produce commodities such as food, fiber and labor. Potbelly pigs are not raised for food, fiber or used for farm labor.
- B. The State of Texas assesses taxes to the purchase of potbelly pig chow because such chow is not considered by the State of Texas as livestock feed.
- C. Potbelly pigs are sold in pet stores, not livestock auctions.

13. The Defendant Association has demanded that the Plaintiffs remove Wilbur from the Property. If not, the Association has threatened a lawsuit where the Association will seek to recover all court costs, attorney fees, and civil damages of up to \$200.00 per day for each day that Wilbur stays with his family, the plaintiffs. A copy of the Association's August 10, 2011 demand letter is attached hereto as Exhibit "A".

VI.

EXPERTS

14. Pursuant to the Texas Rules of Civil Procedure, Plaintiffs hereby designate the undersigned attorney, Mitchell Katine, as its expert to testify as to reasonable and necessary attorneys' fees incurred by Plaintiffs in preparation, discovery and trial of this lawsuit and any and all appeals hereof. Plaintiffs also designate any other counsel associated with the undersigned law firm who may be handling this suit at the time of trial as its expert on the issue of reasonable and necessary attorneys' fees incurred by Plaintiffs in this lawsuit.

15. Plaintiffs also hereby designate Dr. Bob Rogers of Spring, Texas, a doctor of veterinary medicine, with over twenty (20) years experience working with potbelly pigs, and a past president and current deed restrictions chair of his own homeowners association, as an expert witness, who will testify as to the nature of Wilbur being a household pet and not livestock. Plaintiffs intend to designate substantial additional experts in support of Wilbur's status as a household pet and not livestock.

VII.

REQUEST FOR DECLARATORY JUDGMENT

16. Pursuant to Chapter 37 of the Texas Civil Practices and Remedies Code, Plaintiffs seek a declaratory judgment regarding their rights and obligations under the Declaration of the Association.

17. Plaintiffs seek a judicial declaration that Plaintiffs' Vietnamese potbelly pig named "Wilbur" is a "household pet" which may be kept by Plaintiffs at the Subject Property and is not a violation of the applicable deed restrictions.

VIII.

ATTORNEY FEES

18. Plaintiffs seek an award of their reasonable and necessary attorney fees and costs, which are fair and just, pursuant to the Texas Declaratory Judgment Act.

19. All conditions precedent for Plaintiffs' recovery have occurred, been performed or have been waived.

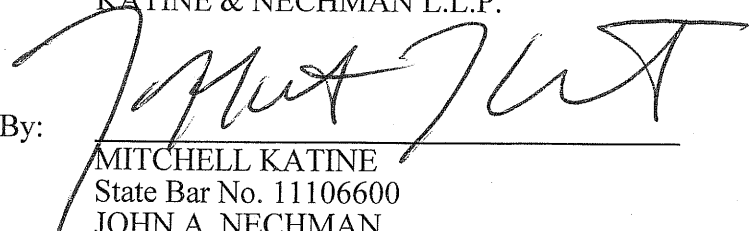
WHEREFORE PREMISES CONSIDERED, LEE ANN SARDO AND ALEX SARDO, Plaintiffs, pray that THE THICKET AT CYPRESSWOOD COMMUNITY IMPROVEMENT ASSOCIATION be cited to appear and answer herein, and that upon final trial, this Court enter judgment in favor of LEE ANN SARDO AND ALEX SARDO and against THE THICKET AT CYPRESSWOOD COMMUNITY IMPROVEMENT ASSOCIATION as follows:

- A. Judicially declare that Plaintiffs' Vietnamese potbelly pig named "Wilbur" is a "household pet" which may be kept by Plaintiffs at the Subject Property and is not a violation of the applicable deed restrictions; and
- B. Reasonable and necessary attorney fees through trial and all appeals; and
- C. Costs of Court; and
- D. Post-judgment interest; and
- E. Such other and further relief as justice requires.

RESPECTFULLY SUBMITTED,

KATINE & NECHMAN L.L.P.

By:



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ATTORNEY FOR PLAINTIFFS



August 10, 2011

Via CM# 70093410000122517329
Return Receipt Requested
and Copy by Regular Mail

Mr. Alessandro Sardo
Ms. Lee Ann Sardo
3419 Fir Forest Drive
Spring, Texas 77388-5153

Re: Deed Restriction Violation(s) at 3419 Fir Forest Drive

Dear Mr. and Ms. Sardo:

This law firm has been retained by The Thicket at Cypresswood Community Improvement Association (the "Association") regarding a certain deed restriction violation which exists on your property. The specific conditions relate to the pig in the backyard on the property, per the Declaration of Covenants, Conditions and Restrictions, Article III, Section 11: no animals, livestock, poultry, reptiles, or insects of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, and other household pets (not to exceed two of each category) ...

You are requested to comply with the restrictive covenants within thirty (30) days of the date of this letter by removing the pig from the property. In the event that you do not comply with the restrictive covenants as requested within thirty (30) days, the Association may proceed with a lawsuit to compel you to comply with the restrictive covenants.

If suit becomes necessary, the Association will also seek the recovery of all court costs and attorney's fees incurred by it in the prosecution of the suit to a final judgment. **Additionally, pursuant to Section 202.004(c) of the Texas Property Code, the court may assess up to \$200.00 per day in civil damages for each day that the violation exists.**

Section 204.010(a)(11) of the Texas Property Code authorizes the Association to collect reimbursement of actual attorney's fees and other reasonable costs incurred by it relating to violations of the deed restrictions, if notice and an opportunity to be heard are given. You were previously given this notice and an opportunity to request a hearing before the Board. The Association has actually incurred attorney's fees and costs relating to your violation of the deed restrictions in the amount of \$125.00. Therefore, the Association requests reimbursement of this sum pursuant to the Texas Property Code. Please make your check payable to the Association and forward it to this office.

No further requests for compliance will be forwarded to you prior to filing suit.

Very truly yours,

BUTLER | HAILEY

Eric B. Tonsul

Exhibit " A "

EBT/hc

cc: The Thicket at Cypresswood Community Improvement Association