

CAUSE NO. _____

STEPHEN MILLER AND KYLE MILLER	§	IN THE DISTRICT COURT
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
AFTON OAKS CIVIC CLUB, INC.	§	
	§	
<i>Defendant.</i>	§	
	§	JUDICIAL DISTRICT COURT

PLAINTIFFS' ORIGINAL PETITION

COME NOW, Plaintiffs Stephen Miller (“Steve”) and Kyle Miller (“Kyle”) (collectively, the “Millers”) and respectfully file their Original Petition against Defendant Afton Oaks Civic Club, Inc. (“AOCC”). The Millers and AOCC may be collectively referred to herein as the “Parties.” In support of their petition, the Millers submit as follows:

DISCOVERY LEVEL

1. Discovery in this case should be conducted under Discovery Control Plan Level 2 in accordance with Rule 190.4 of the Texas Rules of Civil Procedure.
2. Pursuant to Texas Rule of Civil Procedure 47, the Millers seek only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest and attorney fees.

PARTIES

3. Steve Miller is a resident of Harris County, Texas. The last three digits of his driver’s license number are: 436. His address is 4602 Bryn Mawr Lane, Houston, Texas.
4. Kyle Miller is a resident of Harris County, Texas. The last three digits of her driver’s license number are: 905. Her address is 4602 Bryn Mawr Lane, Houston, Texas.

5. The AOCC is a nonprofit corporation organized under the laws of the state of Texas. The AOCC may be served with process by serving its registered agent Christian N. Seger, 4522 Ivanhoe, Houston, Texas 77027, or wherever s/he may be found.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

7. This Court has jurisdiction over AOCC because it is a domestic corporation operating in Harris County, Texas.

8. Venue is proper in Harris County, Texas, because a substantial part of the events giving rise to the claim occurred here. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

FACTUAL BACKGROUND

9. At issue in this lawsuit are the improper actions and omissions of the AOCC, and in particular, certain Officers and Board Members of the AOCC towards the Millers regarding a sidewalk installed on property owned and controlled by the Millers (the "Property"). The Millers reside at 4602 Bryn Mawr Lane in Houston, Texas, which is part of a homeowners association overseen by the AOCC. The Millers' property is in Section 4 of Afton Oaks.

10. It is clear that the AOCC, without giving prior notice to homeowners in Afton Oaks, including the Millers, pushed for the installation of a sidewalk in Afton Oaks and on the Property. It did so clandestinely and to the detriment of the residents of Afton Oaks residents living on Bryn Mawr Lane, and especially the Millers, causing the Millers injury.

11. On or about September 7, 2016, the AOCC sent a letter to City of Houston Councilmember Greg Travis requesting a sidewalk on Westheimer and wheelchair access ramps at the Kettering/Westheimer Corners (the "Westheimer Sidewalk Project"). The Westheimer

Sidewalk Project was publically announced by the AOCC, and generally supported by the membership of AOCC, including the Millers, but did not include a sidewalk on Kettering, which is the location of the Property.

12. In October/November of 2016, an AOCC board member, David Montgomery, visited the Millers' home and asked the Millers, among other things, about allowing AOCC to place signage (lettering) on the Millers' private brick wall, separating the Millers' residence from Westheimer Road. For reasons of safety and security, the Millers declined to give AOCC access to their private brick wall for AOCC signage. At that time the Millers also informed Montgomery of various problems that had arisen between the Millers and AOCC in the past (related to the Millers safety and security at the corner of Westheimer and Kettering), and requested of Montgomery that the Millers be kept informed regarding the Westheimer Sidewalk Project, and any activities by AOCC affecting the Property, since all such activities would have a direct impact on the Miller's safety and security.

13. Since the time of Montgomery's visit to the Millers' residence, no meaningful information was provided to the Millers regarding the Westheimer Sidewalk Project, other than the information generally provided to all residents of Afton Oaks regarding the "slow pace" of the Westheimer Sidewalk Project. In approximately late July 2017, the Millers saw City workers on the Property and were informed that the City was surveying to install a sidewalk on the Property. The Millers contacted Montgomery and were given written assurances (by e-mail) that "In dealing with the City, we were explicit that any project work must avoid your land entirely," but Montgomery also reported that "this project" had been "taken over by the City."

14. The Millers then contacted Councilmen Greg Travis's office (District G – City of Houston) and were told by representatives of Greg Travis' office and by Greg Travis that AOCC

had informed Greg Travis' office that the residents of Afton Oaks wanted a sidewalk on the Property. Steve Miller explained to Greg Travis that (i) the Millers had been in attendance at substantially every AOCC public meeting and a sidewalk on the Property had never been mentioned in connection with the Westheimer Sidewalk Project, (ii) in about 1995/1996, prior to the new streets and sewers being installed in Afton Oaks, the residents of Afton Oaks had voted against any sidewalks in Afton Oaks, and (iii) that the AOCC would not have supported a sidewalk on the Property, without first communicating with the Millers and the other affected residents on the perimeter of Afton Oaks abutting Westheimer.

15. In further communications with Travis' office, it became clear that the AOCC had represented/misrepresented to the City that the residents of Afton Oaks were requesting a Kettering sidewalk – affecting the Property (the “Kettering Sidewalk Project”) – even though it was never discussed at any public meeting held for residents of Afton Oaks and was never previously discussed with the Millers, the only directly-affected residents.

16. After additional email correspondence to and from Greg Travis' office and the legal department of the City, in August of 2017 the Millers sent a cease and desist notice to the City regarding the Kettering Sidewalk Project.

17. On or about Monday, August 14, 2017, in an e-Alert circulated by the AOCC in advance of Quarterly AOCC meeting to be held on Thursday, August 17, 2017, the residents of Afton Oaks were first informed by AOCC that the City had decided to expand the Westheimer Sidewalk Project to include the Kettering Sidewalk Project. Prior to this announcement, the AOCC had feigned no prior knowledge (or involvement) in the City's plan to expand the Westheimer Sidewalk Project to include the Kettering Sidewalk Project.

18. Upon being publically informed by AOCC of the Kettering Sidewalk Project, the Millers and other residents of Bryn Mawr Lane appeared at the August 17 quarterly resident meeting and objected to a sidewalk on Kettering, due to safety and security risks for the affected residents bringing unwanted pedestrian traffic from Westheimer Road onto Bryn Mawr Lane. Their objections also included the potential use of Bryn Mawr Lane as additional parking for River Oaks District, a commercial development across Westheimer from the Property. The AOCC was also informed at this meeting that a cease and desist was previously sent to the City by the Millers and that the residents of Afton Oaks had, years prior, publically voted against sidewalks in Afton Oaks. Based upon information and belief, immediately after the objections were voiced at the quarterly meeting, a private vote was held by the AOCC Board, and despite protests by residents, including the Millers, the Board voted *for* the Kettering Sidewalk Project.

19. On or about Sunday, August 20, 2017, the Millers received a letter from AOCC in response to their safety and security concerns raised at the August 17, quarterly meeting; in it, the AOCC confirmed its resolution in *full* support of the Kettering Sidewalk Project.

20. After further written communications between the Millers and AOCC, a so-called “town hall meeting” was held at the River Oaks District on October 17, 2017, where residents both for and against the Kettering Sidewalk Project spoke up. The AOCC was supportive of those in favor of the Kettering Sidewalk Project, and dismissive of those who spoke in opposition to the Kettering Sidewalk Project, or who for reasons of safety and security, tried to propose alternatives to a sidewalk on Kettering. No vote was taken at the “town hall meeting,” but the resolve of the Board of AOCC in opposition to the Millers appeared unabated.

21. Based on information and belief, the Millers claim that the Board of Directors of the AOCC, despite their denials and feigned neutrality, did in fact clandestinely request the City

to install a sidewalk on the Property, and through deception, did actively participate in and support the City's decision to expand the Westheimer Sidewalk Project to include the Kettering Sidewalk Project, well in advance of the August 14, 2017 e-Alert announcement and the August 17 vote by the Board.

22. Based on information and belief, the Millers further claim that August 14 e-Alert to publicly announce the Kettering Sidewalk Project was a ruse and a sham, and that the subsequent public meetings purportedly held to allow Afton Oaks residents to "openly discuss" the Kettering Sidewalk Project were also a ruse and a sham, since the Board of Directors of the AOCC had already committed their support of the Kettering Sidewalk Project, long before any announcements were made, and any public meeting scheduled. Further, on information and belief, the Board spent AOCC funds on surveys and other works in support of the Kettering Sidewalk Project, the whole time being aware of the risks and the damage that the Kettering Sidewalk Project would cause the Millers.

23. On or about Friday, January 12, 2018, the Millers provided a demand letter to the AOCC regarding the breaches of duty held by the AOCC to the Millers. The letter requested a response within sixty (60) days, which elapsed on March 13, 2018. To date, no response has been provided by the AOCC. A true and correct copy of that demand letter is attached hereto as "**Exhibit A.**"

24. On or about Thursday, March 1, 2018, City workers commenced the Kettering Sidewalk Project on the Property, and without protest or any other action being taken by AOCC, permanent and irreparable harm was caused to the Property, and on information and belief, but for the improper actions and omissions of certain Board Members of the AOCC, the Kettering Sidewalk Project would not have been conceived or implemented.

CAUSES OF ACTION

I: BREACH OF FIDUCIARY DUTY

25. The Millers re-allege and incorporate all allegations as if set forth in full herein.
26. The AOCC owed fiduciary duties to the Millers.
27. The AOCC breached those duties in the following particulars, which are provided for illustration and not exclusion:
 - (a) Knowingly and purposefully failed to consult with and withheld information from the Millers;
 - (b) Employed deception on the AOCC's true agenda for the project;
 - (c) Spent AOCC funds on surveys along Westheimer and provided other support for the project without adequate disclosure to the AOCC members affected, including the Millers;
 - (d) Knowingly and purposefully failed to notify the Millers of the AOCC's decision to support the Kettering Sidewalk Project, when made;
 - (e) Knowingly and purposefully passed a formal AOCC resolution to support the Kettering Sidewalk Project over the objections of the Millers and other affected residents, and without proper consideration of the safety and security concerns raised at the Quarterly Meeting held by the AOCC;
 - (f) Knowingly and purposefully giving unwavering support for the Kettering Sidewalk Project while at all times failing to reasonably and adequately consider any possible alternatives for the Kettering Sidewalk Project and/or failing to consider safety and security concerns of the affected residents, including the Millers;

(g) Misrepresented to the Millers and the AOCC membership the AOCC's prior and continuing involvement in the Kettering Sidewalk Project, and held sham open meetings to further their ruse and deception.

28. As a result of AOCC's breach of its fiduciary duties, the Millers suffered significant financial harm and direct economic loss, including the loss in property value due to the decreased safety of the Millers' Property.

29. The Millers have satisfied all conditions precedent prior to filing this suit.

II. NEGLIGENCE

30. The Millers re-allege and incorporate all allegations as if set forth in full herein.

31. The AOCC owed a duty to the Millers.

32. The AOCC breached duties owed to the Millers through the following actions, which are provided for illustration and not exclusion:

(a) Knowingly and purposefully failed to consult with and withheld information from the Millers;

(b) Employed deception on the AOCC's true agenda for the project;

(c) Spent AOCC funds on surveys along Westheimer and provided other support for the project without adequate disclosure to the AOCC members affected, including the Millers;

(d) Knowingly and purposefully failed to notify the Millers of the AOCC's decision to support the Kettering Sidewalk Project, when made;

(e) Knowingly and purposefully passed a formal AOCC resolution to support the Kettering Sidewalk Project over the objections of the Millers

and other affected residents, and without proper consideration of the safety and security concerns raised at the Quarterly Meeting held by the AOCC;

(f) Knowingly and purposefully giving unwavering support for the Kettering Sidewalk Project while at all times failing to reasonably and adequately consider any possible alternatives for the Kettering Sidewalk Project and/or failing to consider safety and security concerns of the affected residents, including the Millers;

(g) Misrepresented to the Millers and the AOCC membership the AOCC's prior and continuing involvement in the Kettering Sidewalk Project, and held sham open meetings to further their ruse and deception.

26. As a result of AOCC's breach of its duties, the Millers suffered significant financial harm and direct economic loss, including the loss in property value due to the decreased safety of the Millers' Property.

27. The Millers have satisfied all conditions precedent prior to filing this suit.

PRAYER FOR RELIEF

WHEREFORE, Stephen and Kyle Miller respectfully prays for the following relief:

1. Judgment against Defendant Afton Oaks Civic Club, Inc. for damages resulting from Defendant Afton Oaks Civic Club, Inc.'s breach of fiduciary duty and negligence; and
2. All losses, damages, applicable penalties, costs, prejudgment and post-judgment interest, and all other general and equitable relief to which Stephen and Kyle Miller may be entitled by law or in equity.

Dated: March 27, 2018

RESPECTFULLY SUBMITTED,

JONES WALKER LLP

/s/ Amy K. Anderson

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