

CAUSE NO. 10-01163

FILED
2010 FEB 24 AM 11:24
IN THE DISTRICT COURT
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

RTKL ASSOCIATES, INC. and
VRATSINAS CONSTRUCTION
COMPANY, §

Plaintiffs, §

v. §

TEXAS RANGERS BASEBALL
PARTNERS, HSG PARTNERSHIP
HOLDINGS LLC, HICKS HOLDINGS
LLC, HICKS GLORYPARK, LLC, SEG OF §
OHIO, INC. D/B/A STEINER + §
ASSOCIATES, INC. BALLPARK REAL §
ESTATE, LP, SSR GP INTERESTS, LP, §
SWS REALTY, LLC, ARLINGTON §
INTERESTS, LP, ARLINGTON DEVCO, §
LLC, SOUTHWEST SPORTS REALTY §
PARTNERS, LP, §

Defendants. §

14th-A
JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES RTKL Associates, Inc. ("RTKL") and Vratsinas Construction Company ("VCC") (RTKL and VCC are collectively referred to as "Plaintiffs"), complaining of and about Texas Rangers Baseball Partners ("Texas Rangers"), HSG Partnership Holdings LLC ("HSG"), Hicks Holdings LLC ("Hicks Holdings"), Hicks Glorypark, LLC ("Hicks Glorypark"), SEG of Ohio, Inc. d/b/a Steiner + Associates, Inc. ("Steiner"), Ballpark Real Estate, LP ("Ballpark Real Estate"), SSR GP Interests, LP ("SSR GP"), SWS Realty, LLC ("SWS Realty"), Arlington Interests, LP ("Arlington Interests"), Arlington Devco, LLC ("Arlington Devco"), Southwest Sports Realty Partners, LP ("Southwest"), (the above identified Defendants are sometimes

hereinafter collectively referred to as “Defendants”), and for cause of action would respectfully show the Court the following:

I

REQUEST FOR LEVEL 3 DISCOVERY CONTROL PLAN

1. Due to the number of parties and complexity of this action, Plaintiffs move that the Court order that discovery be conducted in accordance with a discovery control plan in accordance with Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure.

II

PARTIES

2. Plaintiff, RTKL is a Maryland Corporation in good standing and duly registered to do business in the State of Texas. RTKL’s principal office is located at 901 South Bond Street, Baltimore, Maryland 21231.

3. Plaintiff VCC is an Arkansas corporation in good standing and duly registered to do business in the State of Texas. VCC’s primary office is located at 216 Louisiana Street, Little Rock, Arkansas 72201.

4. Defendant Texas Rangers is a Texas General Partnership which owns and operates the “Texas Rangers” major league baseball team. The address for Texas Rangers is P.O. Box 90111, Arlington, Texas 76004. Texas Rangers does not have a registered agent or a designated agent for service of process in the State of Texas. Therefore, the Secretary of State is deemed to be Defendant’s agent for service of process under Texas Civil Practice & Remedies Code Section 17.044(a)(1) and (b). Notice of this suit and service thereof is hereby requested by and through the Texas Secretary of State, and should thereafter be served on the Defendant Texas Ranger’s managing general partner, HSG through HSG’s registered agent as described in Paragraph 5 below.

5. Defendant HSG is a Texas limited liability company and the managing general partner of the Texas Rangers. The principal business office for HSG is located at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011-5170. HSG may be served with process in this action by serving its registered agent, Casey Shilts, at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011. HSG is the Managing General Partner of the Texas Rangers and is therefore jointly and severally liable for all obligations of the Texas Rangers. Thomas O. Hicks is the Chairman, President and CEO of HSG.

6. Defendant Hicks Holdings is a Texas limited liability company. The principal office of Hicks Holdings is located at 100 Crescent Court, Suite 1200, Dallas, Dallas County, Texas 74201. Hicks Holdings may be served with process in this action by serving its registered agent, Joseph B. Armes, at 100 Crescent Court, Suite 1200, Dallas, Texas 75201. Thomas O. Hicks is the Manager of Hicks Holdings.

7. Defendant Hicks Glorypark is a Texas limited liability company. The principal office of Hicks Glorypark is located at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011. Hicks Glorypark may be served with process in this action by serving its registered agent, Casey Shilts, at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011. Thomas O. Hicks is the Chairman, President and CEO of Hicks Glorypark. The initial member of Hicks Glorypark is Southwest Sports Realty Partners, LP.

8. Defendant Steiner is a foreign for-profit corporation organized in the State of Florida. Steiner's principal place of business is 4016 Townsfair Way, Suite #201, Columbus, Ohio 43219. Steiner may be served with process in this action by serving its registered agent for service of process, National Registered Agents, Inc., located at 16055 Space Center, Suite 235, Houston, Texas 77062.

9. Defendant Ballpark Real Estate is a Texas limited partnership. Ballpark Real Estate's principal place of business is located at 200 Crescent Court, Suite 610, Dallas, Dallas County, Texas 75201. Ballpark Real Estate may be served with process in this action by serving its registered agent, Joseph Armes, who may be served with process at 100 Crescent Court, Suite 1200, Dallas, Texas 75201. The sole general partner of Ballpark Real Estate is SSR GP.

10. Defendant SSR GP is a Texas limited partnership authorized to do business in the State of Texas. On or about August 21, 2009, SSR GP became the general partner of Defendant Ballpark Real Estate and is therefore jointly and severally liable for the obligations of Ballpark Real Estate. SSR GP's principal business office is located at 100 Crescent Court, Suite 1200, Dallas, Dallas County, Texas 75201. The registered agent for SSR GP is Casey Shilts, who is located at 1000 Ballpark Way, Suite 400, Dallas, Texas 75201. The general partner of SSR GP is SWS Realty, LLC, a Texas limited liability company.

11. Defendant SWS Realty is a Texas limited liability company. SWS Realty is the general partner of SSR GP and is therefore jointly and severally liable for the obligations of SSR GP. The principal business office for SWS Realty is located at 100 Crescent Court, Suite 1200, Dallas, Dallas County, Texas 75201. SWS Realty may be served with process in this action by serving its registered agent, Casey Shilts, located at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011. Thomas O. Hicks is the initial member of SWS Realty and is also the CEO of SWS Realty.

12. Defendant Arlington Interests f/k/a Glorypark Town Center LP is a foreign limited partnership organized under the laws of the State of Delaware. Arlington Interests' principal office is located at 4016 Townsfair Way, Suite 201, Columbus, Ohio 43219. Arlington Interests may be served with process in this action by serving its registered agent, Corporation

Service Company d/b/a CSC-Lawyers Incorporating Service Company, located at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

13. Defendant Arlington Devco f/k/a Glorypark Town Center GP, LLC is a Delaware limited liability company which is the general partner of Arlington Interests and is therefore jointly and severally liable for the obligations of Arlington Interests. Arlington Devco's principal office is located at 4016 Townsfair Way, Suite 201, Columbus, Ohio 43219. Arlington Devco may be served with process in this action by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, located at 211 E. 7th Street, Suite 620, Austin, Texas 78701. Hicks Glorypark owns 75% of Arlington Devco and is a member of Arlington Devco.

14. Defendant Southwest is a Texas limited partnership. The general partner of Southwest is Defendant SWS Realty LLC of which Mr. Thomas O. Hicks is the CEO. Southwest's principal office is located at 100 Crescent Court, Suite 1200, Dallas, Dallas County, Texas 75201. Southwest may be served with process in this action by serving its registered agent, Casey Shilts, at 1000 Ballpark Way, Suite 400, Arlington, Texas 76011.

15. With the sole exception of Steiner, all of the Defendants are owned and/or controlled by Thomas O. Hicks.

III

JURISDICTION

16. This Court has jurisdiction over this lawsuit because the amount in controversy is within the Court's jurisdictional limits.

IV

VENUE

17. Venue in Dallas County, Texas, is proper under Texas Civil Practices and Remedies Code § 15.002(3) and § 15.005 because one or more of the Defendants is not a natural person and has their principal office in Texas in Dallas County, Texas. In addition, venue is proper under Texas Civil Practices and Remedies Code § 15.002(1) in that a substantial part of the events or omissions giving rise to the claims occurred in Dallas County, Texas.

V

BACKGROUND FACTS

18. This action arises out of an aborted real estate development known as “Glorypark”. Glorypark was envisioned as a 75 acre urban town center/multi-use development which was to be constructed adjacent to the Texas Rangers Ballpark in Arlington, Texas, on the land currently used for surface parking to the south and west of the Ballpark. Thomas O. Hicks, the owner of the Texas Rangers, through a myriad of entities he owns and/or controls, was a co-developer of Glorypark along with Steiner.

19. Plaintiffs are not privy to the details of the business relationship between Steiner and Hicks Holdings (and other entities controlled by Thomas O. Hicks that were involved in Glorypark). Steiner and Hicks Holdings held themselves out to the public and to Plaintiffs as co-developers of Glorypark. Plaintiffs RTKL and VCC were each engaged to, and did provide, significant and valuable services in the planning, design and construction of Glorypark, for which they have not been paid by Defendants.

20. RTKL is a leading provider of planning, architecture, design and other creative services. RTKL has offices in cities throughout the United States, including Dallas, Texas, as

well as overseas. Most of the services that are the subject of this suit were provided by, through or coordinated by RTKL's office in Dallas, Texas.

21. VCC is a commercial contractor and construction manager recognized nationally for its expertise in mixed use and retail centers. VCC's work on Glorypark was managed out of its office in Irving, Texas.

22. RTKL entered into two written agreements for services relating to Glorypark. The first agreement, dated November 30, 2005, was signed by RTKL and Steiner ("RTKL's First Agreement"). The first page of RTKL's First Agreement identified the "Developer" as "Arlington Town Center LLC", an entity which was, upon information and belief, neither formed, nor authorized to do business in Texas, at the time that agreement was executed. The second agreement was between RTKL and an entity known as Glorypark Town Center LP, now known as Arlington Interests, and was dated July 15, 2007 ("RTKL's Second Agreement").

23. Under RTKL's First Agreement, RTKL was initially engaged to provide Architectural Concept Design and Architectural Schematic Design services for all buildings, parking structures and site improvements for the Glorypark development. Under RTKL's Second Agreement, RTKL was engaged to provide construction documents and construction contract administration for all buildings, parking structures and improvements in the Glorypark development. Until Thomas O. Hicks directed the suspension of Glorypark, RTKL, in good faith, performed its obligations under both Agreements but was not paid for much of the services that it performed. RTKL is owed not less than \$362,835.00 for services provided under RTKL's First Agreement and not less than \$851,806.00 for services provided under RTKL's Second Agreement.

24. RTKL also provided services at the specific request of and for the benefit of the Texas Rangers. Thomas O. Hicks, Cinda Hicks and Thomas O. Hicks, Jr. personally participated

in directing RTKL's work designing a stadium entertainment zone known as "Rangers Alley". Jeff Cogen and Rick McLaughlin, executives with the Texas Rangers, were involved with all of the services provided by RTKL at their request for the Texas Rangers. Generally these services involved planning and design for modifications to the baseball stadium and related site improvements around the stadium that would be necessitated by, or be desirable, as a result of the Glorypark development. Some of the improvements designed by RTKL, such as the Road to Six Flags hardscape and landscape, were built and are in use today while others were shelved when Glorypark failed. The Texas Rangers have failed to pay for such services and RTKL is owed not less than \$442,517.55 by the Texas Rangers for such services.

25. In addition, RTKL at the request, and after review and approval of Hicks Holdings and other Defendants, provided additional services that were outside the scope of RTKL's First Agreement and RTKL's Second Agreement. RTKL is owed not less than \$1,280,613.45 for these additional services. Hicks Holdings promised RTKL that RTKL would be paid for these services, but has failed to honor that promise.

26. RTKL also provided full design services and construction documents under a subcontract with VCC for the Glorypark parking garages. VCC has not received payment for those design services. RTKL is owed not less than \$484,765.11 for such services. VCC's claims in this action include the monies owed for RTKL's services as a design subcontractor to VCC on the Glorypark parking garages.

27. VCC initially contracted to provide services on the Glorypark project by an agreement dated February 1, 2006 with Steiner acting "on behalf of Arlington Town Center" which later became known as Glorypark Town Center LP and is now known as Arlington Interests. VCC's initial scope of services was to provide conceptual estimating services. This scope of services was subsequently expanded by change orders to include additional

preconstruction services such as estimating, scheduling and value engineering. Ultimately, VCC's scope was increased by change order to include RTKL's design fees for and the fabrication of two concrete parking garages for Glorypark. VCC fully performed its obligations. The precast concrete members for two multi-story parking garages were fabricated and ready for delivery and erection when Mr. Hicks suspended Glorypark. The Defendants refused and failed to pay for the design and fabrication of the two parking garages despite ordering them. The precast concrete pieces for the two garages now sit in a field in Central Texas. VCC is owed not less than \$4,018,960.00 inclusive of the \$484,765.11 in design fees that would be remitted to RTKL upon payment to VCC for the parking garage design work.

28. RTKL began performing services on the Glorypark project in the Fall of 2005 and continued performing services until the project was suspended by Thomas O. Hicks in 2008. While RTKL was paid for much of its early work on Glorypark, outstanding unpaid bills were mounting in late 2007 and early 2008. In response to inquiries, RTKL received assurances from Defendants that RTKL's bills were going to be paid and that the Glorypark project was moving forward. However, in May of 2008, Hicks Holdings and Steiner made public statements that the Glorypark project being delayed due to lenders and retailers (prospective tenants) being in a wait-and-see mode. At the same time RTKL was informed that Thomas O. Hicks had agreed to pay RTKL's outstanding bills. By June, 2008, it became clear that Hicks Holdings and Steiner had failed to satisfy requirements for the public financing of the Glorypark parking garages. The parking garages were a critical first step required for the construction of Glorypark to proceed. Since Glorypark was to be built on existing parking lots serving the Rangers' baseball stadium, it was essential to provide replacement parking facilities in the Glorypark parking garages for Rangers fans.

29. In late June, 2008, key personnel who had been working on Glorypark were laid off by Steiner signaling the ultimate unraveling of the financing and the Glorypark development. In July, 2008, RTKL was advised by representatives of Steiner that Steiner's participation in Glorypark had been put on indefinite hold by Hicks Holdings and that all of RTKL's outstanding billings had been handed over to representatives of Hicks Holdings who were going to process and pay them. RTKL began communicating directly with representatives of Hicks Holdings regarding payment of RTKL's outstanding invoices. At the end of August, 2008, RTKL was advised by Casey Shilts (now known as Casey Coffman), a senior executive with Hicks Holdings, that Hicks Holdings would arrange for payment as soon as they had all the information on the outstanding invoices. RTKL provided all of the outstanding information and refrained from filing a lien on Glorypark as the result of the promised payment. When no payment was forthcoming after several additional months, RTKL pursued a meeting with Hicks Holdings and was then advised for the first time that Hicks Holdings was not going to honor and pay the outstanding Glorypark billings. Again, RTKL was promised payment for its work for the Texas Rangers but no payment has ever been made.

30. VCC began providing preconstruction services on the Glorypark project in 2006. During many meetings between representatives of VCC and the development team of representatives of Steiner and Hicks Holdings, VCC was assured that funding for VCC's work was available through Hicks Holdings and that public funding would be arranged for the parking garage structures, which would be the first major piece of physical construction performed by VCC on Glorypark. In 2007, VCC was authorized to proceed with the design of the parking garages and subsequently was authorized to proceed with the fabrication of the precast concrete pieces that would be erected into two parking garages.

31. As part of the overall financing planned for the development, the City of Arlington had agreed to pay for the design and construction of the Glorypark parking garages through the issuance of bonds. Pursuant to that plan, in early January, 2008, the City of Arlington, as landlord, entered into a lease with Arlington Interests, as tenant, for the parking garages that were to be built and gave Arlington Interests an option to buy those parking garages from the City. The City also entered into a construction contract with Arlington Interests for Arlington Interests to build the parking garages and to be paid by the City from proceeds of bonds that were to be sold specifically to pay for construction of those garages. There were conditions for the City to actually issue the bonds which, upon information and belief, Steiner and Hicks Holdings failed to meet. As a result the bonds were never sold by the City and no money was made available by the City to pay for the work performed by RTKL and VCC on the parking garages. In the agreement between Arlington Interests and the City, Arlington Interests was expressly cautioned that if work on the parking garages preceded the funding of the bonds that Arlington Interests would have to arrange for private funding to pay for the parking garage work until the bond money became available. Since VCC has been paid nothing for the garages, it appears that no such private funding was provided.

32. After receiving and approving the professional services performed and written materials produced by RTKL and VCC for the Glorypark development, including planning, concept studies, design, construction documentation, preparation of marketing materials, renderings, zoning support, wayfinding graphics and other services, on June 12, 2007, the City of Arlington acquired the land on which the Glorypark development would be built from the Arlington Sports Development Authority. The next day the City transferred the property to Hicks Glorypark except for the four tracts of land upon which four parking garages would be constructed to serve the Glorypark development and Texas Rangers parking needs. As indicated

above, the City leased the four tracts of land upon which the parking garages were to be constructed to Arlington Interests. After the Glorypark development stalled and then failed, the City and Arlington Interests agreed to terminate the lease on the parking garage properties. In August, 2009, the City transferred the title to the four parking garage tracts of land to Ballpark Real Estate another entity controlled by Thomas O. Hicks.

33. Shortly after the Glorypark project was suspended and with millions of dollars in unpaid obligations owed to RTKL, VCC and many other firms, Hicks Glorypark conveyed, on August 18, 2008, the Glorypark property the City had deeded to it in 2007 to Ballpark Real Estate in an apparent effort to disassociate the ownership of that property from the failed Glorypark development. On the very same day, Southwest transferred a note and deed of trust lien for a purported \$6,500,000.00 loan to Arlington Interests to Ballpark Real Estate. On the same date the purported "loan" was increased to \$12,500,000.00. As a result of these transactions the Glorypark land went from being free and clear of debt to being subjected to a \$12,500,000.00 debt in favor of Ballpark Real Estate.

VI

CONDITIONS PRECEDENT

34. All conditions precedent to Plaintiffs' rights to recover the relief herein requested from Defendants have been performed or have occurred.

VII

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

35. Each of the statements and allegations contained in Paragraphs 1 through 34 of this Original Petition are incorporated herein by reference.

36. Plaintiff RTKL asserts a cause of action against Defendants Texas Rangers, HSG, Hicks Holdings, Steiner, Arlington Interests and Arlington Devco for breach of contract. Despite

demands for payment having been made by Plaintiff RTKL, Defendants breached their agreements with RTKL by failing to pay for services provided by RTKL under the Agreements. RTKL has incurred damages as a result of such breaches within the jurisdictional limits of this Court.

37. Plaintiff VCC asserts a cause of action against Arlington Interests and Arlington Devco for breach of the contract between VCC and Arlington Interests (formerly known as Glory Park Town Center, LP). VCC provided preconstruction services and the labor, material and services for the design and construction of Glorypark and invoiced Arlington Interests for those services. Despite demands for payment having been made by VCC, Arlington Interests and Arlington Devco breached their agreement with VCC by failing to pay the amounts due and owing for the labor, materials and services furnished by VCC. VCC has incurred damages as a result of such breaches within the jurisdictional limits of this Court.

VIII

SECOND CAUSE OF ACTION – UNJUST ENRICHMENT

38. Each of the statements and allegations contained in Paragraphs 1 through 37 of this Original Petition are incorporated herein by reference.

39. RTKL provided valuable services to the Glorypark project including, but not limited to, planning, concept studies, design, construction documentation, preparation of marketing materials, renderings, zoning support, wayfinding graphics and other services. Among other things, RTKL's services in support of the rezoning process were critical to obtaining the City's approval of the Glorypark Planned Development.

40. VCC provided valuable preconstruction management services and construction services including, but not limited to, the design and fabrication of two parking garages for Glorypark.

41. The Defendants knowingly solicited and accepted the benefit of RTKL's and VCC's services and work.

42. Defendants would be unfairly and unjustly enriched by receiving the benefit of RTKL's and VCC's valuable services and work if no additional compensation were paid to RTKL and VCC.

43. RTKL and VCC are each entitled to recover their actual damages from Defendants within the jurisdictional limits of this Court, on account of and to prevent the Defendants' unjust enrichment.

IX

THIRD CAUSE OF ACTION – QUANTUM MERUIT

44. Each of the statements and allegations contained in Paragraphs 1 through 43 of this Original Petition are incorporated herein by reference.

45. Alternative to their other causes of action, Plaintiffs assert a cause of action against Defendants for recovery in quantum meruit. Plaintiffs furnished valuable services, labor and materials to the Defendants for their benefit. The reasonable value of the services provided by RTKL to the Defendants was \$2,937,771.89. The reasonable value of the labor, services and materials provided by VCC to the Defendants was \$4,108,960.00. Defendants accepted the services, labor and materials provided by Plaintiffs and had reasonable notice that each Plaintiff expected to be paid for the same.

46. Defendants have retained the benefits of such services, labor and materials without compensating Plaintiffs.

47. Plaintiff RTKL is entitled to recovery from the Defendants in the amount of not less than \$2,937,771.89 as the reasonable value of the services furnished to Defendants for which payment has not been made to RTKL. Plaintiff VCC is entitled to recover from Defendants in

the amount of not less than \$4,108,960.00 as the reasonable value of labor and materials furnished to Defendants for which payment has not been made to VCC.

X

FOURTH CAUSE OF ACTION – FRAUDULENT NONDISCLOSURE

48. Each of the statements and allegations contained in Paragraphs 1 through 47 of this Original Petition are incorporated herein by reference.

49. Defendants intentionally failed to disclose and concealed from RTKL and VCC material information known to them regarding the lack of funding to pay for the services they were procuring from RTKL and VCC. For example, on the parking garages, VCC was instructed by Defendants (and VCC in turn instructed its subcontractors including RTKL) to proceed with design and construction of the Glorypark parking garages when Defendants had knowledge, not disclosed to Plaintiffs, that the City of Arlington public funding planned as the source of payment for the parking garages was not in fact available and at the same time no other funding had been arranged to pay for the services, as would be necessary if RTKL and VCC were to ever be paid for the services each provided.

50. More generally, Defendants had knowledge of, and at all material times, failed to disclose to RTKL and VCC, that there was not adequate capital or other funding available to Glorypark Town Center LP to enable that entity (now known as Arlington Interests), to pay for the services that Defendants were requesting from RTKL and VCC. In effect, Defendants procured valuable goods and services from RTKL and VCC knowing, but not disclosing, there was no funding in place to pay for those services. RTKL and VCC were thus duped into becoming involuntary “investors” in the Glorypark project. When the decision was eventually made by Hicks Holdings to abort Glorypark, RTKL and VCC were told by representatives of

Hicks Holdings that, in effect, Glorypark was simply a bad deal and that Hicks Holdings had lost money too.

51. Defendants had a duty to disclose information that was material and known by them regarding the inadequacy of funding such that RTKL and VCC could have then made an informed decision about whether they wished to become involuntary “investors” in Glorypark.

52. RTKL and VCC would not have provided the services they provided and for which they are now seeking payment had Defendants disclosed the lack of available funding to pay for those services. RTKL and VCC reasonably relied upon the aforementioned non-disclosures by Defendants and were damaged as a result of acting without knowledge of the undisclosed material facts, in amounts within the jurisdictional limits of this Court.

53. Fraud allows for the imposition of punitive damages. Therefore, Plaintiffs seek punitive damages in an amount within the jurisdictional limits of this Court on account of the fraudulent nondisclosures by Defendants.

XI

FIFTH CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION

54. Each of the statements and allegations contained in Paragraphs 1 through 53 of this Original Petition are incorporated herein by reference.

55. As an alternative to other causes of action asserted herein, Plaintiffs assert a cause of action against Defendants for negligent misrepresentation.

56. The Defendants each made representations in the solicitation of RTKL’s and VCC’s services for Glorypark which were in the ordinary course of their business and in connection with transactions in which each of them had a pecuniary interest.

57. When Defendants were soliciting RTKL and VCC to provide services they made false representations concerning the source and availability of funding to pay for the services that

were being requested of RTKL and VCC. In addition, even after the services were provided false representations were made by Defendants as to the status of payment for those services. Defendants did not exercise proper care and skill in making these representations.

58. RTKL and VCC relied on the negligent misrepresentations made by Defendants to their detriment.

59. By reason of RTKL's and VCC's reliance upon the negligent misrepresentations of the Defendants to include, but not necessarily limited to, the timely availability and source of funding to pay for the services provided, RTKL and VCC are entitled to recover their respective reliance damages from Defendants.

XII

SIXTH CAUSE OF ACTION – FRAUDULENT MISREPRESENTATION

60. Each of the statements and allegations contained in Paragraphs 1 through 59 of this Original Petition are incorporated herein by reference.

61. Defendants, through their agents or representatives, made material misrepresentations to RTKL and to VCC regarding the availability of funding to pay for the services those same Defendants were requesting RTKL and VCC to perform. Such representations were made with knowledge of their falsity or made recklessly without knowledge of the truth. Defendants made the misrepresentations concerning the funding with the intent that RTKL and VCC should act on such misrepresentations and to continue to provide valuable services to the Glorypark development and/or refrain from taking other actions to secure payment. RTKL and VCC acted in reliance on Defendants' misrepresentations and suffered injury as a result thereof. As a direct and proximate result of the false representations by Defendants RTKL and VCC each incurred damages within the jurisdictional limits of this Court, for which Plaintiffs seek recovery.

62. Fraud allows for the imposition of punitive damages. Therefore, Plaintiffs RTKL and VCC seek punitive damages in an amount within the jurisdictional limits of this Court.

XIII

SEVENTH CAUSE OF ACTION – FRAUDULENT TRANSFER

63. Each of the statements and allegations contained in Paragraphs 1 through 62 of this Original Petition are incorporated herein by reference.

64. On August 18, 2008, Hicks Glorypark granted Southwest a \$12,500,000.00 lien on the Glorypark property then transferred the lien and title to the property to Ballpark Real Estate. This transfer and the encumbrance of the property were done with the intent to hinder, delay or to defraud creditors of the Glorypark development including, but not necessarily limited to, RTKL and VCC.

65. Similarly, the series of transactions by which Arlington Interests gave up its lease with the City of Arlington on the parking garage properties and then title to those properties was thereafter transferred by the City of Arlington to Ballpark Real Estate was done to hinder, delay or defraud creditors of Glorypark. VCC, which had filed a mechanic's and materialman's lien against the leasehold interest of Arlington Interests, was specifically damaged by this series of transactions.

66. On information or belief, Arlington Interests and Hicks Glorypark made these transfers of property without receiving reasonably equivalent value and were already insolvent or rendered insolvent as a result. As a result of these transfers, Arlington Interests and Hicks Glorypark were left with little or no assets and without any other ability to pay their Glorypark related bills.

67. Plaintiffs RTKL and VCC have each been damaged by the fraudulent transfers of the Glorypark property including the parking tracts to Ballpark Real Estate and the encumbering

of that property with liens. RTKL and VCC herein seek damages within the jurisdiction of this Court against Hicks Glorypark, Southwest and Ballpark Real Estate on account of such fraudulent transfers.

68. Fraud allows for the imposition of punitive damages. Therefore, Plaintiffs RTKL and VCC seek punitive damages in an amount within the jurisdictional limits of this Court.

XIV

INTEREST

69. Paragraphs 1 through 68 of this Original Petition are incorporated herein. Plaintiffs seek pre and post judgment interest on the amounts due each at the maximum rate permitted by Texas law.

XV

ATTORNEYS' FEES

70. Paragraphs 1 through 69 of this Original Petition are incorporated herein.

71. Plaintiffs will show that it was necessary for it to retain the undersigned attorneys to prosecute the foregoing claims and that pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code Plaintiffs are entitled to recovery of their reasonable attorneys' fees through trial and all post trial motions and appeals.

XVI

JURY DEMAND

72. Plaintiffs hereby request a jury trial of all matters in this action and hereby tenders the necessary jury fee.

XVII

REQUEST FOR INITIAL DISCLOSURES

73. Pursuant to Rule 194 of the Texas Rules of Civil Procedures Plaintiffs request that each Defendant disclose within fifty (50) days of service of this request the information or material described in Rule 194.2(a)-(1) of the Texas Rules of Civil Procedure.

XVIII

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer and that upon final hearing Plaintiffs each have judgment against Defendants, jointly and severally, for the following:

- A. Actual and punitive damages within the jurisdictional limits of this Court;
- B. Expenses and costs of suit;
- C. Reasonable attorneys' fees;
- D. Prejudgment and postjudgment interest; and
- E. All other relief, in law and in equity, to which Plaintiffs may be justly entitled.

Respectfully Submitted,

FORD NASSEN & BALDWIN P.C.

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