

GUILLERMO CASTRO JR., PETRA	§	IN THE DISTRICT COURT
CASTRO, ANDRES PEREZ, VANESSA	§	
PEREZ, PEDRO BALLESTEROS,	§	
Plaintiffs,	§	
	§	
V.	§	49TH JUDICIAL DISTRICT
	§	
ALBERT MULLER III, GREG EBE,	§	
VIRGINIA MULLER, AND ALBERT	§	
MULLER JR., INDIVIDUALLY AND AS	§	
BOARD MEMBERS OF LA BOTA	§	
RANCH OWNERS ASSOCIATION, INC.	§	
AND LA BOTA PROPERTY OWNERS	§	
ASSOCIATION, INC.,	§	
Defendants.	§	WEBB COUNTY, TEXAS

**PLAINTIFFS' FIFTH AMENDED ORIGINAL PETITION FOR DECLARATORY
JUDGMENT, EQUITABLE RELIEF, AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW GUILLERMO CASTRO JR., PETRA CASTRO, ANDRES PEREZ, VANESSA PEREZ, and PEDRO BALLESTEROS (hereinafter referred to as “Plaintiffs”), to petition the Court complaining against ALBERT MULLER III, GREG EBE, VIRGINIA MULLER, and ALBERT MULLER JR., individually and as board members (hereinafter referred to as “Individual Defendants”) of the LA BOTA RANCH OWNERS ASSOCIATION, INC. and LA BOTA PROPERTY OWNERS ASSOCIATION, INC.; LA BOTA RANCH OWNERS ASSOCIATION, INC.; and LA BOTA PROPERTY OWNERS ASSOCIATION, INC. (hereinafter referred to as “HOAs”) (hereinafter collectively referred to as “Defendants”), and for cause of action will show unto the Court as follows:

A. Discovery Control Plan

1. Plaintiffs will request that the Court enter a discovery order under Level 3 of Tex. R. Civ. P. 190.4.

B. Parties

2. Plaintiffs are residents of Laredo, Webb County, Texas.

3. Defendants ALBERT MULLER III, GREG EBE, VIRGINIA MULLER, and ALBERT MULLER JR. are individuals and may be served through their attorney of record, Christopher M. Raney at 1900 West Loop South, Suite 1000.

4. Defendant LA BOTA RANCH OWNERS ASSOCIATION, INC. is a Texas non-profit corporation and may be served with citation through its agent for service: CT Corporation System at its business address at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

5. Defendant LA BOTA PROPERTY OWNERS ASSOCIATION, INC. is a Texas non-profit corporation and may be served with citation through its agent for service: CT Corporation System at its business address at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

C. Venue

6. Venue in Webb County, Texas is proper pursuant to Tex. Civ. Prac. & Rem. Code §15.002 (a)(1) because it is the county in which all or a substantial part of the events giving rise to the claim occurred.

D. Facts

7. La Bota Ranch was a master-planned community carved out of land owned by the Muller family in the northwest part of Laredo. The Individual Defendants were members or affiliates of the developers of the La Bota Ranch community – A.F. Muller Co. and/or La Bota Development, Inc. Under declarant control (development period), the developers appointed all of the board members to the two homeowners associations – LA BOTA RANCH OWNERS ASSOCIATION, INC. and LA BOTA PROPERTY OWNERS ASSOCIATION, INC. – since their inception in or about 1992.

8. The LA BOTA PROPERTY OWNERS ASSOCIATION, INC. is the homeowners' association for the homes in the Cardinal Creek subdivision within La Bota Ranch. The LA BOTA RANCH OWNERS ASSOCIATION, INC. is the homeowners' association for the remainder of the homes in La Bota Ranch. However, on information and belief, the Defendants operate both homeowners' associations in tandem with regards to the respective member homeowners in La Bota Ranch.

9. The La Bota Ranch is a gated community with no public thoroughfare access. As such, it was created as a private unit development. The City of Laredo does not maintain the roadways or infrastructures in La Bota Ranch. Maintenance of the roadways, parks, facilities, as well as all other services are paid from the homeowners' association dues.

10. Over the years, the Individual Defendants began to act in their self-interests or for the interests of the developers, rather than for the interests of the member homeowners, whose interests they had a fiduciary duty to protect. Among other things, the Individual Defendants entered into a lease agreement as board members of the homeowners associations to pump water to La Bota Ranch and incidentally to the Mullers' family properties adjacent to and surrounding La Bota Ranch. However, the homeowners associations are conveniently saddled with the obligation of paying for the maintenance and repairs on the water pipeline.

11. On or about October 2, 2012, the LA BOTA RANCH OWNERS ASSOCIATION, INC. entered into a two-year lease agreement for \$77,700.00 annually with Broadband Real Estate Strategies, Inc. for the following premises: guardhouse, private boulevard entering and private streets within the La Bota Subdivision, jogging trail around the pond, soccer field and park area, landscape esplanades, and Cardinal Creek Lake. The lease agreement was executed by Albert F. Muller, III as both an authorized agent of Broadband Real Estate Strategies, Inc., which is wholly owned by members of his family, and an authorized agent of LA BOTA RANCH OWNERS ASSOCIATION, INC. After the two-year term, there is a 3.5% escalation of the lease amount

every year with no cap. The homeowners' associations are responsible for maintaining these areas. An additional rental term obligates them to pay taxes and insurance for these tracts of land.

12. Landscaping of Muller properties – restaurant and billboard lands – were performed by contractors paid solely from the homeowners' associations. Landscape maintenance fees have increased to \$61,000 per year. The landscaping company is owned by the Individual Defendants and/or their family.

13. There is mismanagement of homeowners' association monies. Bad debts have risen to approximately \$80,000 to \$100,000. The budget has grown to nearly \$1 million with no additional services to the homeowners.

14. Other rents and fees are exorbitant. General and Administrative fees represent approximately half of the total budget – \$507,295 out of \$1,020,929. General repair/maintenance has increased to \$211,031 in 2017 from \$49,000 in 2016. Office rent was \$4,500 per year in 2016 for a single room. Virginia “Cookie” Muller, one of the Individual Defendants, maintains her Realtor's office inside the same building. Office furniture rent has been \$1,000 per year for several years. Management fees increased to \$82,400 from \$56,000 last year. Pool maintenance/repair fees increased to \$84,000 annually in 2017 from \$6,000 in 2015 despite no improvements made. Reimbursement for paint for the bath house was \$16,531 in 2016. There have been many questionable line items in each annual budget.

15. The conflicts of interests were not raised, scrutinized at a board meeting, or resolved for the benefit of the Associations. If any conflicts were raised, which they were not, there were no board members among the Individual Defendants – Albert Muller Jr., Virginia Muller, Albert Muller III, and Greg Ebe – who are free of conflicts to be able to vote on the best interest of the Associations.

16. Upon information and belief, board members exclusively control the two HOAs and utilize annual fees collected from the subdivision property owners for the board members' personal uses, personal ventures, and business ventures unrelated to the subdivisions.

17. Moreover, board member duties and obligations were neglected. Services diminished. Conditions of the property are declining without repairs. Potholes in the streets are not timely repaired. Street lights and sprinklers are out, but not replaced. The poor conditions have risen to a safety concern for residents. For a period of time, collection of association dues was not enforced. Delinquent rates for dues climbed. The association accounting records were not released to members when requested. Financial records are not preserved or maintained for seven years as required by the Texas Property Code §209.005(m)(2). Meetings were closed and improperly noticed. Member homeowners were not allowed to attend meetings. Later when they were allowed to listen by telephone, member homeowners were not allowed to speak at meetings.

18. The individual Defendants sought to maintain control of the POA and ROA boards. Among other self-serving additions and changes, the board members took board action – without allowing input from member homeowners – to extend their declarant control over the board for an additional 30 years. Furthermore, on May 10, 2017, the Class B members, composed solely of the Muller family members appointed by the declarant, voted to pass the Amended and Restated Declaration for the LA BOTA RANCH OWNERS ASSOCIATION, INC. and the First Amendment to Declaration for Cardinal Creek Unit 1 at LA Bota Ranch for the LA BOTA PROPERTY OWNERS ASSOCIATION, INC. They further increased the term of declarant control over the board to January 1, 2050. These actions were taken without proper notice. Homeowners were not allowed to participate.

19. At the same time, the Individual Defendants, as board members, kept increasing association dues for the member homeowners. Dues for the LA BOTA RANCH OWNERS

ASSOCIATION, INC. jumped to \$2,268.52 from \$1,328.28, annually. Dues for the LA BOTA PROPERTY OWNERS ASSOCIATION, INC. increased to \$2,600.00 from \$1,651.48, annually. The higher association dues have been a hardship for homeowners. Prospective buyers were scared off by the amounts. Home values were drastically reduced. Many homeowners sold their homes for large losses.

20. Rules were arbitrarily enforced. The La Bota Ranch Homeowners Manual – which was in existence since March 4, 1993 – stated that association dues cannot increase by more than 15%, which would have nullified the increases approved by the boards. When Plaintiff Vanessa Perez raised the point, the Manual was promptly taken off the labotahoa.com website on or about December 8, 2016. She was informed that the Manual was never valid. However, the Manual was given to Ms. Perez when she and her husband purchased their home in 2011. Terms in the Manual were previously cited to impose fines on Vanessa Perez for leaving a garbage can visible in her driveway.

21. Delinquent association dues were arbitrarily and selectively uncollected for years, further fueling revenue shortages. Some delinquencies are stale and uncollectable. Now, other collection actions are unduly burdening those who are paying.

E. Breach of Fiduciary Duty

22. Defendants, as board members of the La Bota HOAs, have a fiduciary relationship with Plaintiffs. Defendants have a fiduciary duty to Plaintiffs as member homeowners of LA BOTA RANCH OWNERS ASSOCIATION, INC. and LA BOTA PROPERTY OWNERS ASSOCIATION, INC. Defendants breached their fiduciary duties to the Plaintiffs. Defendants' breach of fiduciary duties injured Plaintiffs while benefiting Defendants. Plaintiffs seek unliquidated damages within the jurisdictional limits of this Court.

i. Defendants breached their fiduciary duty – self-dealing

23. Defendants breached their fiduciary obligations by self-dealing. For instance, on or about October 2, 2012, the LA BOTA RANCH OWNERS ASSOCIATION, INC. entered into a two-year lease agreement for \$77,700.00 annually with Broadband Real Estate Strategies, Inc. for the following premises: guardhouse, private boulevard entering and private streets within the La Bota Subdivision, jogging trail around the pond, soccer field and park area, landscape esplanades, and Cardinal Creek Lake. Albert Muller III signed on behalf of Broadband, which he solely owns, as well as for the Associations. He alone made the judgment that the lease amount that he obligated the Associations to pay to his Broadband company was “fair.” There is a lease agreement between A.F. Muller Company and the ROA for a \$3,000/month lease but with no lease document. Defendants own properties subject to association dues, but they sometimes pay dues and sometimes are allowed in-kind credit for services. Accounting Records do not exist to determine amounts and what services are provided.

24. On a whim, the Defendant board members revoked conveyance of the common area property from the Association back to the Defendant’s family ownership. The community center was conveyed to the ROA. Then conveyed back to the Muller family. Then leased to the Associations.

25. Funds are funneled back and forth between the Defendants and the Associations. Without any corroboration, the family purportedly paid money to help the Associations going back to the 1990s, expected to be paid back, and have received funds from the Associations over the years.

26. The balance for the notes payable from the ROA to La Bota Development Co. was reduced from \$83,000 in 2013 to \$14,900 in 2018. But there are no records of the transactions or payments. The Accounting Records are missing to ascertain the timing, amounts, and reasons for payments.

27. There are conflicts between Defendants' management of the POA and ROA boards. Funds are funneled back and forth between the POA and ROA. Most of the contracting and budgeting goes through the ROA with the POA paying money to the ROA. Such transactions occur at the direction of the Defendants who wholly control the boards of the POA and ROA. At times there is money in the POA but not in the ROA. The POA pays higher dues. The Associations do not benefit equally from expenses. There are no records that follow the funds as they flow between Associations and to and from the Defendants at the Defendants' direction.

ii. Defendants breached their fiduciary duty – failure to preserve accounting records

28. Texas Property Code §209.005(m)(2) requires a Texas property owners association composed of more than 14 lots to adopt and comply with a document retention policy that includes, at a minimum, the retention of all financial books and records for seven years. However, Defendants failed their duty to preserve the Accounting Records at issue in this lawsuit. They do not know why the missing Accounting Records no longer exist or incomplete. The lack of accounting records prevent even the most highly trained and skilled accountant to be able to provide a complete financial picture of a business enterprise. There is self-dealing, co-mingling of funds, and mismanagement of funds by the Defendants on behalf of the La Bota Ranch Owners Association, Inc. and the La Bota Property Owners Association, Inc.

iii. Defendants breached their fiduciary duty – financial mismanagement of the Associations

29. Defendants' financial mismanagement of the Associations that can only be answered by the missing Accounting Records. Suspicious transactions are present in the partial and incomplete Accounting Records received. For instance, the POA's balance sheet in 2018 shows a -\$247,449 equity balance, which means that the POA overspent since the inception of the entity. The 2018 total liabilities had a balance of \$601,645, of which \$510,534 was owed to

A.F. Muller Co., Inc. and \$23,736 was owed to La Bota Development. Both A.F. Muller Co., Inc. and La Bota Development are companies owned and/or controlled by the Muller family. The missing general ledgers and working papers would provide details for analysis. The amounts purportedly resulted from one of the Muller-owned companies loaning money to the Associations over the years for repair of a concrete wall and monthly gate guard salaries over the years, but no supporting documents are available. Interest is being charged, but no formal agreement specifying the repayment terms of the loans were ever executed. The \$23,736 liability to La Bota Development is listed as a notes payable instead of an accounts payable. Notes payable require a promissory note stipulating the terms of payment. However, none exists. No supporting documents for expenses exist. The Accounting Records were in the sole possession and control of the Defendants. Defendants are wholly responsible for the Accounting Records being incomplete.

iv. Defendants’ breach resulted in injury to Plaintiffs and/or benefit to the Defendants

30. Defendants have benefited through their unilateral control of the La Bota Ranch Owners Association, Inc. and the La Bota Property Owners Association, Inc. to contract with themselves, have large amounts paid and payable to them without any documentation of said debts. The costs born by the associations for roads and amenities benefit Defendants’ properties behind the La Bota subdivisions. The loan history from inception to date is pending for the following loans shown in the accounting records of the following entities:

La Bota Ranch Owners Association, Inc.:	
Balance on December 31, 2018:	
Note Payable-La Bota Development (Current Portion)	\$12,000.00
Note Payable-La Bota Development (Long Term Portion)	14,919.00
La Bota Property Owners Association, Inc.:	
Balance on December 31, 2018:	
AP-A.F. Muller Co., Inc.	\$510,534.00
NP-La Bota Development	23,736.00

It cannot be ascertain if these are funds borrowed from the companies cited above or they constitute journal entries to record the liability and represent expenses paid by said entities on behalf of La Bota Ranch Owners Association, Inc. and La Bota Property Owners Association, Inc. The entries are large debt amounts without agreements or working papers to evidence the debts. Conversely, Plaintiffs have been greatly harmed by crippling escalations of association dues while receiving fewer benefits.

v. There is No Safe Harbor Protection for Defendants

31. Interested transactions between corporate fiduciaries and their corporations are presumed to be unfair on the part of the officer or director and fraudulent on the corporation, and are thus generally voidable. *General Dynamics v. Torres*, 915 S.W.2d 45, 49 (Tex. App.—El Paso 1995, writ denied). Tex. Bus. Org. Code §22.230 provides for a limited “safe harbor” for interested transactions if: material facts are disclosed, and a majority of the disinterested directors thereafter authorize the transaction in good faith and exercise of ordinary care. Nonetheless, the Defendant-board members did not act (1) in good faith, (2) with ordinary care, or (3) in a manner that they reasonably believed to be in the best interest of the Associations.

32. There has never been a conflict raised to the Defendant-board members. There are no disinterested board members among the Individual Defendants – Albert Muller Jr., Virginia Muller, Albert Muller III, and Greg Ebe – to be able to vote on the best interest of the Associations. Albert Muller Jr. and Virginia Muller jointly own La Bota Development Company and A.F. Muller Company. Albert Muller Jr., Virginia Muller, Albert Muller III, and Greg Ebe (about 10%) own Laredo Roc Tech Sand and Gravel. Albert Muller III owns Broadband Real Estate Strategies, Inc., which controlled assets owned by La Bota Development Company to lease to the Associations. Greg Ebe worked as the CFO (officer) for La Bota Development Company, A.F. Muller Company, and Laredo Roc Tech Sand and Gravel. Because all four of the Individual Defendants are family members, have ownership interest in the businesses, and

hold positions with the businesses at the times of transactions with the Associations, then there are no disinterested board members to vote in in good faith and with ordinary care authorize the contract or transaction to comport with the safe harbor requirements. *See Carmichael v. Tarantino Properties, Inc.*, 604 S.W.3d 469, 477, 2020 WL 2991649 (Tex. App.—Houston [14th Dist.] no pet. (holding that because transactions were not approved by the sole disinterested director, then Tex. Bus. Org. Code §22.230 does not apply). The transaction such as the Broadband lease were not scrutinized by the board members. No third parties reviewed the numbers. There were no authorizations of the agreement; there is no evidence that the agreement was fair to the Associations. *See Sister Initiative, LLC v. Broughton Maint. Ass’n, Inc.*, No. 02-19-00102-CV, 2020 WL 726785, at *29 Tex. App.—Fort Worth Feb. 13, 2020, pet. denied) (mem. op.) (holding that the safe harbor provision does not apply because there was no adequate vote, approval, or failure to prove that the loans were fair and equitable).

33. The sizable debts owed to La Bota Development Company and A.F. Muller Company on the Associations’ balance sheets were due to the family members fronting money to pay for Association costs in the early 1990’s. However, there are no minutes, contracts, or records of such transactions to satisfy the safe harbor provisions.

34. There was no policy in place to control for conflicts of interests between the board members and the Associations. The safe harbor protections do not apply to the Defendants. The Defendant-board members do not met any of the terms of Tex. Bus. Org. Code §22.230.

F. Equitable Relief

35. Plaintiffs seek access to the books, records, and materials associated with the operation of the HOAs.

36. Plaintiffs seek an audit and full accounting of the records of the LA BOTA RANCH OWNERS ASSOCIATION, INC. to determine how funds collected from property owners since 2013 have been spent.

37. Plaintiffs seek an audit and full accounting of the records of the LA BOTA PROPERTY OWNERS ASSOCIATION, INC. to determine how funds collected from property owners since 2013 have been spent.

38. Plaintiffs seek the removal of all current board members from the boards of the LA BOTA RANCH OWNERS ASSOCIATION, INC. and LA BOTA PROPERTY OWNERS ASSOCIATION, INC. Plaintiffs seek to have elections to fill the boards from member homeowners.

39. Plaintiffs seek that HOAs be created for the respective subdivisions, pursuant to Tex. Prop. Code §209.00591(c), with board members, of whom at least one-third, elected by subdivision property owners.

40. Plaintiffs seek to recover any and all monies paid by members of the HOAs controlled by the Defendant-board members if said monies paid were not used by Defendant-board members for the benefit of the subdivisions.

G. Request for Permanent Injunction

41. Plaintiff asks the Court to set his request for a permanent injunction for a full trial on the merits and, after trial, issue a permanent injunction against the Defendants to prevent further increases of association dues that do not benefit the respective property owners and subdivisions.

H. No Adequate Relief

42. Plaintiffs have no adequate remedy at law to pursue the requested relief other than this application.

I. Jury Demand

43. Plaintiffs demand a jury trial and tender the appropriate fee with this petition.

J. Conditions Precedent

44. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

K. Prayer

45. For the foregoing reasons, Plaintiffs request that Defendants be cited to appear and answer, and that on final hearing, Plaintiffs have judgment against the Defendants as follows:

- A. Actual damages.
- B. Transfer of the board membership of the LA BOTA RANCH OWNERS ASSOCIATION, INC. and the LA BOTA PROPERTY OWNERS ASSOCIATION, INC. to the respective homeowners.
- C. Access to the books, records, and materials associated with the operation of the HOAs.
- D. An audit and full accounting of the records of the LA BOTA RANCH OWNERS ASSOCIATION, INC. to determine how funds collected from property owners since 2013 have been spent.
- E. An audit and full accounting of the records of the LA BOTA PROPERTY OWNERS ASSOCIATION, INC. to determine how funds collected from property owners since 2013 have been spent.
- F. Removal of all current board members from the boards of the LA BOTA RANCH OWNERS ASSOCIATION, INC. and LA BOTA PROPERTY OWNERS ASSOCIATION, INC. Plaintiffs seek to have elections to fill the boards from member homeowners.
- G. Recovery of any and all monies paid by the HOAs to Defendant-board members and/or companies owned and/or controlled by Defendant-board members if said monies paid were not for the benefit of the subdivisions or no financial records are available to evidence said transactions.
- H. Recovery of any and all monies paid by the HOAs to Defendant-board members and/or companies owned and/or controlled by Defendant-board members if said monies paid benefited Defendant-board members and/or companies owned and/or controlled by Defendant-board members, or no financial records are available to evidence said transactions.

- I. Cancellation of any debts – accounts payable, notes payable – from the HOAs to Defendant-board members and/or companies owned and/or controlled by Defendant-board members if said monies owed were not for the benefit of the subdivisions or no financial records are available to evidence said transactions.
- J. Cancellation of any debts – accounts payable, notes payable – from the HOAs to Defendant-board members and/or companies owned and/or controlled by Defendant-board members if said monies owed benefit benefited Defendant-board members and/or companies owned and/or controlled by Defendant-board members of the subdivisions, or no financial records are available to evidence said transactions.
- K. Exemplary damages.
- L. Prejudgment and post-judgment interests.
- M. Court costs.
- N. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

/s/Doanh “Zone” T. Nguyen
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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served upon the following counsel of record in accordance with the Texas Rules of Civil Procedure on this the 1st day of April, 2021.

Via email to: craney@grsm.com

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/s/Doanh “Zone” T. Nguyen

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