

FILED

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2014-2639

DIVISION M

M SECTION 13

EASTOVER PROPERTY OWNERS ADJACENT TO THE BORROW PIT, LLC,
AND ITS CONSTITUENT MEMBERS

VERSUS

THE BOARD OF DIRECTORS DALE N. ATKINS
OF EASTOVER PROPERTY OWNERS ASSOCIATION,
DONALD E. PATE, INDIVIDUALLY AND AS CONTROLLING MEMBER
OF MULTIPLE ENTITIES TO BE MADE DEFENDANTS AT A LATER DATE,
ARCHER WESTERN CONTRACTORS, DELTA MINING LLC
EVENSTAR INCORPORATED,
THE GOLF CLUB OF NEW ORLEANS LLC,
UTILITY CONSTRUCTORS,
TEXTRON FINANCIAL CORPORATION,
AND ALL INSURERS, D&O CARRIERS, AND ADDITIONAL
THIRD-PARTIES DETERMINED TO HAVE LIABILITY HEREUNDER

FILED: March 14, 2014

DATE: 4/14/2014 at 15:38

DEPUTY CLERK#: 2014 - 02639 SFC : 2

RECEIPT#: 432747

NO service instructions

PETITION (i) FOR CONSERVATORY WRIT OF ATTACHMENT,
(ii) FOR THE SEIZURE OF THE BORROW PIT INTO CUSTODIA LEGIS,
(iii) FOR THE APPOINTMENT OF AMICI TO THE COURT
TO INSURE FULFILMENT OF THE BREACHED PROMISES
HERETOFORE MADE BY THE DEFENDANTS,
(iv) AND TO CONSTRUCT A SEAWALL/BULKHEAD ON THE WEST SIDE
OF THE GANNON CANAL
"...IN CONFORMANCE WITH THE SHOREGUARD SEAWALL PROTECTION
SYSTEM AND CMI PRODUCT ENGINEERING VINYL
SHEET PILING SPECIFICATIONS..."
ATTACHED TO ADDENDUM #1 DATED SEPTEMBER 27, 2010,
(v) FOR AN ORDER THAT ALL NET FUNDS GENERATED
FROM PIT EXCAVATION BE DEPOSITED TO THE REGISTRY OF THE COURT,
(vi) FOR THE ASSESSMENT OF SPECIAL DAMAGES TO
OWNERS OF PROPERTY ADJACENT TO THE BORROW PIT,
(vii) FOR JUDGMENT AGAINST ALL DEFENDANTS RESPONSIBLE
FOR THE CONVERSION OF FUNDS NOT DEPOSITED INTO ACCOUNTS FOR
THE BENEFIT OF THE EASTOVER COMMUNITY AS A WHOLE
AND FOR THE PROTECTION OF PROPERTIES OF PLAINTIFFS,
FOR JUDGMENT AGAINST ALL PARTIES BEARING RESPONSIBILITIES
PURSUANT TO LOUISIANA CIVIL CODE ARTICLES 2315, 2322, 667
AND OTHER APPLICABLE LAW

Stoppered on qual
VERIFIED 4

The petition of Eastover Property Owners Adjacent to the Borrow Pit, a Louisiana Limited Liability company, whose membership is restricted to owners of property adjacent to and abutting a borrow pit which was once part of the Eastover Country Club "Gator" Golf Course, more particularly described as Exhibit A hereto, with respect represents:

I. PROLOGUE

1. Eastover, a gated-community containing Eastover Golf and Country Club, was once the "crown jewel" of New Orleans East, boasting impeccable streets and infrastructure, mansions approaching million-dollar values, residents who were leaders of the community and an ambiance of grandeur greater in area than any other gated community in the New Orleans area ("Eastover").

2. After Katrina devastated the City of New Orleans on August 25, 2005, the residents of Eastover placed their trust in a board of directors and alleged "developer(s)" who promised to bring Eastover back to its former level of prestige expeditiously.

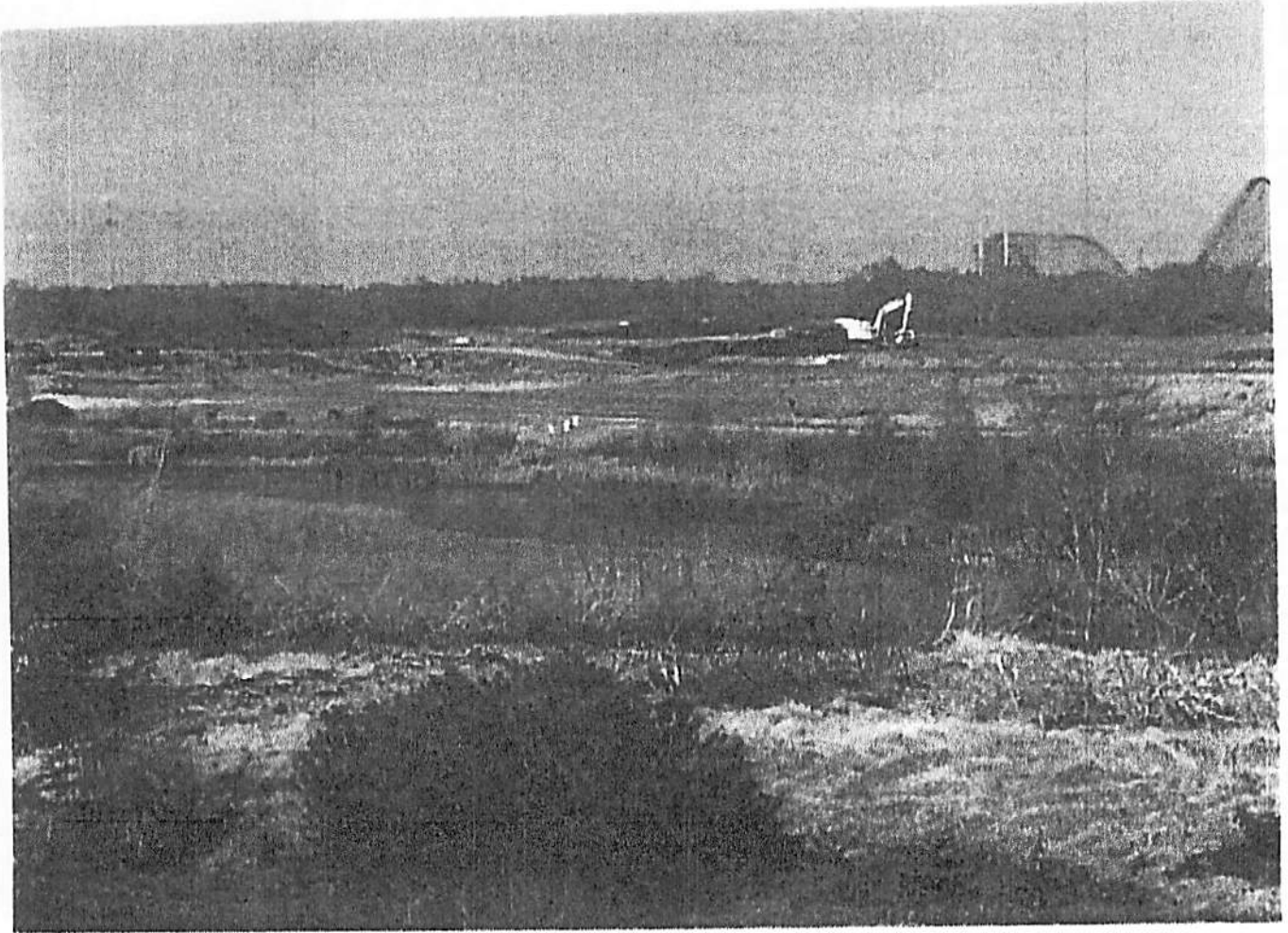
3. Today, Eastover is a deeply devalued community, with damaged streets, former mansions abandoned, empty lots overrun by fifteen-foot high weeds and trees fraught with danger, housing vermin and packs of wild coyotes.

4. Today, the first sight visible to visitors is a clubhouse untouched from its destroyed condition the day after Katrina struck, with a swimming pool full of brackish and contaminated water and tennis courts hopelessly tangled in twisted steel and resin.

5. The values of the properties at Eastover have diminished to less than 25% of pre-Katrina levels, with only "bottom-dwellers" as potential buyers of properties saddled with years of unpaid ad valorem taxes not even the City has an interest in adjudicating.

6. Every day, property owners adjacent to the Borrow Pit see dirt, construction equipment, collapsing terrain, brackish water,

unsightly vegetation and generally disgusting sights impossible to describe in words:



7. Every day, plaintiffs witness continuing erosion of their property into the Gannon Canal and other waterways.



8. Routinely, 10-20 trucks leave Eastover filled with dirt or clay excavated from the prior nine holes of the Gator Golf Course for sale to undisclosed purchasers for undisclosed prices deposited into undisclosed accounts maintained by certain defendants who refuse to account for the millions of dollars taken and converted for undisclosed purposes and uses:



II. DEFENDANTS

9. Made defendants herein are (i) all board members who held a fiduciary position with the Eastover Property Owner's Association ("EPOA") since August 29, 2005, some of whom are known and specifically named, some of whom are not known and will be named later; (ii) their respective Director & Officer ("D&O") Insurers, not known at this time; (iii) the insurance agent or agency charged with the responsibility of providing adequate D&O coverage to the board, (iv) all entities controlled and/or owned by Donald Pate, a/k/a "Donnie" Pate, a/k/a/ Donald E. Pate ("Pate") which have owned the pit after August 29, 2005, (v) all contractors and sub-contractors who participated in the excavation and failed to take steps to protect the neighboring properties, (vi) all consultants to the owners, the contractors or the board who failed to advise

against the excavation as it was performed, (vii) Pate, individually and as a controlling member, officer or owner of various entities which have - on information and belief - participated in actions and omissions more fully set forth hereinafter, (viii) known insurers Brierfield and Ace American and (ix) Textron Financial Corporation ("Textron").

III. FACTUAL BACKGROUND

10. On August 29, 2005, Hurricane Katrina struck the City of New Orleans, causing extensive damage to Eastover.

11. On June 29, 2007, at the invitation of persons and entities closely aligned with certain defendants, the United States Army Corps of Engineers ("the Corps of Engineers") made a determination that clay materials located on the Gator Golf Course east of the Gannon Canal were acceptable for use on levee construction projects needed for post-Katrina protection and so certified the Borrow Pit at issue.

12. On July 1, 2008, armed with information obtained from the Corps, an Eastover Reconstruction Plan was first presented to an Eastover Residents Committee by defendant Pate, allegedly providing a "master plan" for the reconstruction of Eastover Country Club and the Eastover community.

13. At the time, it was estimated that the total damages from Katrina exceeded TWELVE MILLION, FOUR HUNDRED SIXTY-EIGHT THOUSAND AND (\$12,468,000) NO/100 DOLLARS, and that the master plan would be more than adequate to meet that level of reconstruction need.

14. In the Eastover Reconstruction Plan, it was represented to the property owners of Eastover that providing clay materials to the Corps of Engineers from the Gator Golf Course would be "...a substantial source of capital to rebuild the golf courses and to rehabilitate the residential community..."

15. The proposed Eastover Reconstruction Plan included at least (i) the rebuilding of an 18-hole golf course, (ii) the

reconstruction of Eastover Country Club and (iii) the erection of "...a resident-friendly community center and clubhouse..."

16. The Eastover Reconstruction Plan also contemplated the building of approximately 80 "garden homes" similar to those in Greenbriar and Muirfield.

17. The Eastover Reconstruction Plan required that a resident committee and the EPOA ratify the plan within timelines set forth in the plan.

18. On August 5, 2008, after considerable representations and promises from Pate and the Golf Club of New Orleans, LLC, ("the Golf Club") a Memorandum of Understanding ("MOU") was executed by and between EPOA and the Golf Club of New Orleans, LLC ("the Club") for "...the future reconstruction and development of the Eastover subdivision and community...", noting that "...the Katrina devastation has created a significant need for cash infusion to assist with the remediation and rebuilding of our Community..."

19. The promises made in the MOU, which formed the essence of the agreement and provided the legal cause (causa) for the execution of the MOU included the following:

- The construction of a lake east of the Gannon Canal on the affected land that contained the portion of the Gator Golf Course that would be excavated for sale of clay to the Corps of Engineers;
- The commitment of no less than \$3,500,000 for the construction of a new clubhouse, swimming pool and tennis courts;
- The construction of an 18-hole golf course in Phase I on land north and south of Lake Forest Boulevard;
- The creation of a "Reserve Fund" for operations and "ramp-up activities" after completion of the first two priority items;
- Finalization of the design and remediation of the existing clubhouse;
- The design of a new clubhouse facility for all members, which would cost no more than \$2,500,000;

- The joint endeavor between the Golf Club and the Membership to expend an additional \$2,500,000 on a facility which would be marketed to attract Social/Golf Memberships;
- An agreement whereby the Golf Club would contribute 10% of its shares to the development if a new facility were achieved.

20. The MOU provided that the Golf Club's commitments were binding for a period of two years after the reopening of the clubhouse or until December 31, 2014, whichever came first.

21. On August 16, 2010, an agreement to set up three lockbox accounts was entered by and between the First NBC Bank, Delta Mining, LLC ("Delta Mining"), Eastover Commercial Properties LLC, ("ECP"), the Golf Club and Textron, as to which the Golf Club and Pate have refused to provide any accounting.

22. On September 27, 2010, speaking to the concerns of the owners whose properties would be adversely impacted by the proposed excavation and with the lockbox accounts in place, Addendum # 1 was executed, providing that:

- The Golf Club would construct a seawall/bulkhead on the west side of the Gannon Canal "...in conformance with the Shoreguard Seawall Protection System and CMI Product Engineering Vinyl Sheet Piling Specifications..." attached to the amendment;
- The permission of each property owner bordering the Gannon Canal would be obtained for purposes of constructing the Bulkhead;
- The reconstruction plan would first be coordinated with the Board of Directors of EPOA;
- The Golf Club would make public all inspection reports provided by Satoon Construction to Textron as part of the obligations contained in the Multiple Indebtedness Mortgage and Security Agreement entered into with Textron;
- Liability Insurance in favor of each and every resident of Eastover whose property bordered on the Gannon Canal would be purchased with said residents as named-insureds;
- The Golf Club would construct a park, a jogging trail, a new security gate along the I-510 service road, a new lake stocked with fish recommended by the Louisiana Department

of Wildlife and Fisheries and impose a limitation of the easements used for the golf course.

23. The Addendum also provided that the "Lake construction project" would not last more than 18 months, presumably meaning that the project would be concluded by March of 2012.

24. On March 29, 2012, without approval by owners, Addendum # 2 was executed by Pate, acting for the Golf Club and by Robert White, acting as President of the EPOA, providing as follows:

- The "reserve account", which was supposed to have been funded in the amount of \$3,500,000 would be increased to \$3,900,000 from the sale of clay materials taken from the Borrow Pit;
- The sale of \$2,250,000 in clay sales (unspecified as to priority) would be paid to Textron;
- The next \$1,250,000 would be placed in the reserve account, alleged to be lockbox account number 110039824, owned 31.724% by Textron and/or account number 110018869, owned 53.112% by Delta Mining, and/or account number 110039835, owned 5.164% by EPOA;
- The Club also agreed to deposit an additional \$2,250,000 from the anticipated sale of 850,000 tons of clay into the lockbox accounts;
- The next 800,000 tons of clay sold - with support from political leaders - would result in another \$400,000 being deposited in the lockbox accounts;
- The extra \$400,000 would be used for infrastructure projects including streets and lakes;
- Addendum #2 expressly recognized that Addendum #1 was devoted to the construction of Bulkhead on the Gannon Canal and no other purpose.

25. On July 29, 2012, a meeting was held with Pate (i) to discuss the suspected misuse of the lockbox accounts, (ii) to discuss the breaches of the MOU, (iii) to obtain an accounting of the funds derived from the excavation of the Borrow Pit, and (iv) to discuss the building of a protective bulkhead for the owners adjacent to the Borrow Pit.

26. At the July 29 meeting, thirteen (13) specific requests were made to Pate, none of which have been answered then or ever.

27. On February 14, 2013, the Davillier Law Group, LLC, acting on behalf of the EPOA as a body, made a demand upon Pate, as Registered Agent and Member of the Golf Club and Eastover Country Club, LLC ("ECC"), for a full accounting as to the use of the Borrow Pit and all receipts and disbursements therefrom.

28. To date, Pate, the Golf Club, Delta Mining, ECC and other entities involved have refused to account, and the Borrow Pit continues to be excavated with no evidence of funds being deposited to the lockbox accounts or to any of the promised reserve accounts.

29. There are no feasible ways or means to discern what has happened to the money generated from the sales of clay and materials from the Borrow Pit, given that Pate is a member, officer or agent for service of process for the following entities: Brandell Builders LLC, Delta Mining, LLC, Eastover Commercial Property LLC, Eastover Country Club (a Partnership in Commendam), Eastover Country Club, LLC, Eastover Development Corporation, Eastover Estates Investors, LLC, Eastover Homes, Incorporated, Eastover Mining, LLC, Eastover Properties, Incorporated, Eastover Realty, Inc., Eastover Redevelopment Company, LLC, Eastover Residential Properties Partnership, Lake Forest Inc, Lake Forest, LLC, Murifield Investors, LLC, Murifield Village LLC, Northshore Investors, Inc., and the Golf Club of New Orleans, LLC ("the Pate-controlled entities").

IV. COUNT ONE: FRAUD IN THE INDUCEMENT

30. Pate and entities operated and controlled by Pate, most of which use 5690 Eastover Drive as their principal place of business, having gained the confidence of the property owners in Eastover, presented a rosy post-Katrina picture of what could be accomplished at Eastover if Pate and his companies could secure contracts to sell the clay.

31. In order to gain the approval of the property owners and the EPOA Board of Directors, Pate and his companies made a power-point presentation to an Eastover Residents Committee, promising the gains and benefit set forth in ¶ 19 above, and much more.

32. Subsequent to the presentation, Pate and his companies entered into the MOU more fully described in ¶¶ 19-24 above, which included as its essence the full and faithful implementation of the Eastover Reconstruction Plan.

33. But for the inducements contained in the Eastover Reconstruction Plan, the MOU would never have been executed, approved or ratified.

34. The MOU, by virtue of classic "fraud in the inducement", is an absolute nullity as defined by Article 1955 of the Louisiana Civil Code and Pate and his companies are not entitled to retain any benefits therefrom.

35. The damages due from the nullity of the MOU include (i) the diminution in the value of the property of your plaintiffs, (ii) the loss of enjoyment of property rights and benefits, (iii) costs to construct bulkheads or other protective measures, and (iv) attorneys fees, all pursuant to Article 1958 of the Louisiana Civil Code.

V. COUNT TWO: BREACH OF MEMORANDUM OF UNDERSTANDING

36. The August 5, 2008 MOU was a contract and a binding commitment between the Golf Club and EPOA, as to which all individual property owners were third-party beneficiaries.

37. Because all Pate-controlled and operated entities were intermingled, interrelated and interdependent, run by interlocking directorates, the liability for all damages for the breach of the MOU must be shared in solido by all Pate-controlled entities.

VI. COUNT THREE: LIABILITY OF DIRECTORS AND OFFICERS

38. On November 14, 2013, Concerned Citizens at Eastover, LLC ("CCE"), whose Petition for a writ of quo warranto is pending in

Docket Number 13-10061, Division H, called upon all board members ("the present Board") to resign from office due to their violations of Louisiana Revised Statute 12:91, which provides as follows:

§91. Relation of directors and officers to corporation and shareholders

Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its shareholders, and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances in like positions. Nothing herein contained shall derogate from any indemnification authorized by R.S. 12:83.

39. Your Plaintiffs join with CCE and aver that the present Board and prior boards have failed to carry out their respective fiduciary duties in the following ways:

- The present Board and prior boards have allowed the offices of the Association to be used for the benefit of Pate-controlled entities without authority and without full disclosure to the membership;
- The present Board and prior boards have failed to put in place the Eastover Reconstruction Plan executed as part of the MOU for the purposes of eliminating blight and protecting the properties owned by owners adjacent to the Borrow Pit;
- The present Board and prior boards have failed to implement and enforce the August 5, 2008 MOU;
- The present Board and prior boards have passively watched millions of dollars in clay being excavated and sent to unknown purchasers, causing erosion and other damages to the owners of property adjacent to the Borrow Pit without taking appropriate steps to prevent the defalcations and the increasing damages to your plaintiffs.

VII. COUNT FOUR: PIT-OWNER LIABILITY

40. Throughout the period of time since the MOU was executed, several entities named defendants herein have owned the fee-simple title to the Borrow Pit and are responsible for all damages sustained by plaintiffs pursuant to Article 667 of the Louisiana Civil Code, which provides, in pertinent part, as follows:

"Although a proprietor may do with his estate whatever he pleases, still he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him..."

41. On information and belief, one or more of the following entities have held ownership in the Borrow Pit and are therefore liable pursuant to Article 667 of the Louisiana Civil Code as quoted in ¶ 40 hereof: Delta Mining, Eastover Country Club (A Partnership in Commendam), Eastover Commercial Properties, LLC, Eastover Country Club, LLC, Eastover Mining, LLC, the Golf Club, and/or Textron.

VIII. COUNT FIVE: CONTRACTOR LIABILITY

42. Various entities which have served as contractors to the owners of the Borrow Pit and/or as subcontractors to Pate-controlled entities, including but not limited to Archer Western Contractors, LLC, Brandell Builders LLC, Delta Mining, LLC, Eastover Excavators, LLC, Eastover Mining, LLC, Evenstar, Inc., and Utility Constructors, Inc., and are liable for damages as set forth hereinbelow.

43. All contractors named defendants knew or should have known that the excavation of the Borrow Pit, without the construction of a Seawall/Bulkhead on the west side of the Gannon Canal "...in conformance with the Shoreguard Seawall Protection System and CMI Product Engineering Vinyl Sheet Piling Specifications..." attached to the first amendment to the MOU would cause the properties adjacent to the Borrow Pit to sink, the supporting land to erode and the foundations of those properties to be compromised, in certain instances irreversibly.

44. The liability of all contractors who excavated clay from the Borrow Pit is manifest, as a matter of law, Brister v. Gulf Central, 684 F.Supp. 1373 (W.D. La.1988):

Strict Liability Under La. C.C. Art 667.

Article 667 imposes responsibility upon both the proprietor and his independent contractor who performs the work that causes the damage. *Olsen v. Shell Oil Co.*, 365 So.2d 1285, 1293 (La.1978); *Lombard v. Sewerage and Water Board of New Orleans*, supra, at 914; *D'Albora v. Tulane University*, 274 So.2d 825, 828-29 (La. App. 4th Cir.1973); *Chaney v. Travelers Ins. Co.*, 259 La. 1, 249 So.2d 181, 186 (1971).

IX. COUNT SIX: TEXTRON LIABILITY

45. Independent of its intervention in various endeavors, Textron is liable for all damages sustained by the plaintiffs herein for the following reasons, to-wit:

- In connection with a mortgage granted to the Golf Club of New Orleans, Inc., Textron took an assignment of "...all of Golf Club's right title and interest in and to the leases rents and contracts in connection with the property...", meaning that Textron undertook the obligations under the MOU;
- Pursuant to provision 1.06(f) of a Multiple Indebtedness Mortgage and Security Agreement ("the Textron Mortgage") executed by the Golf Club and Textron, the Golf Club was obligated to "...promptly restore the Premises to its original condition after any casualty..."; yet Textron sat idly by while Pate and the Golf Club received hurricane insurance proceeds and other proceeds and did not use same to restore the clubhouse or any of the most important aspects of the Eastover Reconstruction Plan.
- Pursuant to provision 1.18 of the Textron Mortgage, a use prohibition stated that "...Mortgagor will not allow any other uses of the Premises unless Mortgagee has given its prior written consent...in its sole and absolute discretion" meaning that Textron's later consent to sell clay without taking steps to protect the adjacent properties rendered Textron liable as an owner;
- Pursuant to provision 1.12(a) of the Textron Mortgage, Textron was entitled to and did receive the books and records of the Golf Club and has access to evidence (on information and belief) that the sales of clay were not being deposited to the lockbox account and was fully aware that the conditions of the Eastover Reconstruction Plan were not being met, yet took no steps to protect the community adversely involved thereby;

- Pursuant to provision 2.05 of the Textron Mortgage, Textron was entitled to Operate the Premises upon default, and did so pursuant to a Writ of Sequestration issued by the United States District Court for the Eastern District of Louisiana for a period from October 6, 2011 to December 23, 2011 without -- on information and belief -- making deposits from the sale of clay into the lockbox account as required by the terms of the MOU as to which Textron was an assignee;
- Pursuant to provision 2.09 of the Textron Mortgage, Textron had full power of attorney to carry out any of the incorporeal rights collaterally assigned, including the right to collect the revenues of the clay sales and deposit same in the lockbox account, which Textron failed or refused to do;
- Pursuant to provision 10 of Exhibit B to the Textron Mortgage, regarding the transfer and assignment of incorporeal rights, Textron received all future sales of land or part of land and all deposits and payments in connection therewith, meaning that Textron was the rightful owner of the clay sales proceeds, which were dedicated to the fulfillment of the Eastover Reconstruction Plan, not Textron;
- Throughout the period of time Textron intervened in contracts involving the Borrow Pit and/or dominated the Golf Club and other owners and/or managed the affairs of the Borrow Pit, Textron had an impermissible conflict of interests which mandated that Textron obtain waivers from the property owners most adversely impacted by the excavation, but did not do so.

46. In sum total, Textron was not a "passive" lender simply protecting its collateral; rather, Textron became a "controlling lender" with concomitant obligations to the owners of property adjacent to the Borrow Pit, which obligations Textron breached by commission and omission.

47. Textron's domination of the process cannot be countenanced without consequences, see Lambert Contractors v. Maryland Casualty Company and generally, the "Domination Theory" in construction law.

**X. COUNT SEVEN: WRIT OF ATTACHMENT
AND DEPOSITS TO THE COURT**

48. Every day, tens of thousands of dollars in clay sales are being removed from the property and converted by some of the defendants in violation of the MOU and in disregard of the Eastover Reconstruction Plan.

49. A Writ of Attachment is applicable when the defendants are in a position to hide or dispose of the property at issue, in this case, the money coming from the sales of clay.

50. Plaintiffs pray that a Writ of Attachment issue as to the property which composes the Borrow Pit, as per Exhibit A, and that the contract to excavate be awarded to an entity approved by the court and that all revenues be deposited in the Registry of the Court, pending further orders.

51. Plaintiffs further pray that all defendants be ordered to account for all moneys received from the sale of clay and that they be held responsible for the return of such funds as the trial of this matter shall justify.

52. Plaintiffs further pray that all damages to the properties adjacent to the Borrow Pit be measured and cast against all defendants, jointly, severally and in solido.

XI. COUNT EIGHT: IMMEDIATE RELIEF SOUGHT

53. Petitioners are entitled to immediate relief in the form of (i) a Conservatory Writ of Attachment, (ii) the seizure of the Borrow Pit into custodia legis, (iii) the appointment of amici to the court to insure fulfilment of the breached promises heretofore made by the defendants, including but not limited to the construction of a Seawall/Bulkhead on the West Side of the Gannon Canal "...in conformance with the Shoreguard Seawall Protection System and CMI Product Engineering Vinyl Sheet Piling Specifications..." attached to Addendum #1 dated September 27, 2010, (iv) an order that all net funds generated from pit

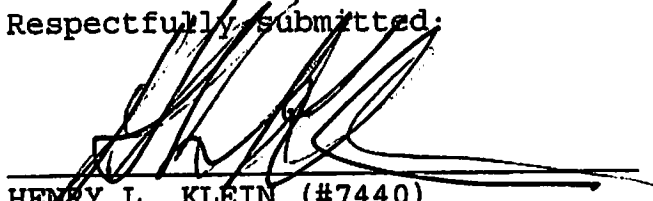
excavation be deposited to the Registry of the Court, and (v) such other relief the court may deem appropriate to wrest control of the Borrow Pit to protect the interests of all parties concerned.

54. Petitioners request that the court schedule a hearing on a rule to show cause, addressed to all defendants, why the relief set forth in ¶ 53 should not be GRANTED, said rule to be heard no later than ten days from service hereof.

55. In anticipation of efforts by defendants to avoid service, and in the interests of justice, petitioners request that service by publication be ordered, in addition to service by the Civil Sheriff for the Parish of Orleans and direct mailing to defendants at their principal place of business as set forth by the records of the Secretary of State.

WHEREFORE, petitioners, Eastover Property Owners Adjacent to the Borrow Pit, LLC, and its members, named and unnamed, pray that this petition be filed and served on all defendants (i) by publication, (ii) by sheriff's service and (iii) by direct mailing to the principal offices as set forth by the records of the Secretary of State, and that a hearing be held, requiring all defendants to show cause, if any they have or can, why an order should not issue in the form of a Conservatory Writ of Attachment, ordering the immediate seizure of the Borrow Pit into custodia legis, and why the court should not appoint amici to the court to insure fulfilment of the breached promises heretofore made by the defendants, and why all net funds generated from pit excavation should not be deposited to the registry of the court, and in due course, after all appropriate proceedings had, why there should not be a judgment assessing damages in favor of all petitioners and against all defendants, jointly, severally and in solido, and for all just and equitable relief.

Respectfully submitted:


HENRY L. KLEIN (#7440)
844 BARONNE STREET
NEW ORLEANS, LA 70113
(504) 586-9971
Email: henry@hlklawoffice.com

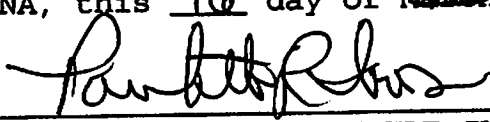
RULE NISI

LET the defenadants show cause, if any they have or can, on the 22nd day of May, 2014, at 9:00 o'clock (a.m.), why a Conservatory Writ of Attachment should not issue, ordering the seizure of the Borrow Pit into custodia legis, and why the court should not appoint amici to insure fulfilment of the breached promises heretofore made by the defendants, and why all net income from pit excavation should not be deposited to the Registry of the Court, all subject to further orders of the court; and

LET THE FOLLOWING NOTICE BE GIVEN BY PUBLICATION in the Times-Picayune and Crescent City Advocate, twice in 10 days prior to the hearing:

NOTICE IS HEREBY GIVEN to any and all interested parties that in the matter of Eastover Property Owners Adjacent to the Borrow Pit v. the Board of Directors of Eastover Property Owners Association, et als. a hearing will be held before the Honorable Val Exnicious, Judge of Division H of the Civil District Court for the Parish of Orleans, on the request by the plaintiffs that the court issue a Conservatory Writ of Attachment and for the Seizure of the Borrow Pit into the custody of the court and for an order that all net fund derived from excavation be deposited to the Registry of the Court and for the appointment of monitors under the court's guidance for all future dealing and orders as the court may deem appropriate. Interested parties are invited to appear and express their opposition or support of the proposed orders.

NEW ORLEANS, LOUISIANA, this 16th day of April, 2014.


CIVIL DISTRICT COURT JUDGE
ENTERED ON MINUTES

APR 17 2014

Addendum #2 to the Memorandum of Understanding Dated August 5, 2008 and Addendum #1 Dated 27th day of September 2010 between Eastover Property Owners Association, Inc. (EPOA) and The Golf Club of New Orleans, LLC (Club)

WHEREAS the Eastover Property Owners Association, Inc. (EPOA) entered into a contract to execute the Memorandum of Understanding (MOU) and Addendum #1 to the MOU requiring the Eastover Country Club, LLC to construct a bulkhead per the Remediation Plan detailed in the Addendum.

WHEREAS the Eastover Country Club, LLC agrees to increase the funds for the reserve account from the \$3,500,000.00 that was agreed to in the MOU to \$3,900,000.00. The Addendum #2 details how the Eastover Country Club, LLC/Eastover Property Owners Association, Inc. (ECC/EPOA) reserve account will be funded. The EPOA and the Club agree to the following in addition to the original MOU and Addendum #1. The reserve account (lockbox) will be funded as targets are met with material (clay) sales per the following:

1. Sales of 2,250,000 ton of material will payoff the first mortgage and put approximately \$1,250,000.00 into the ECC/EPOA reserve account (lockbox).
2. The club agrees to add an additional \$2,250,000.00 to the reserve account (lockbox) from the next 850,000 tons of materials sold. The 3,100,000 tons (2,250,000 plus 850,000) will generate \$3,500,000.00 for the ECC/EPOA reserve account (lockbox).
3. Through the joint efforts of the Eastover Property owners Association, Inc. (EPOA) and the Eastover Country Club, LLC (ECC) the sales of the next 800,000 tons of materials will generate an additional \$400,000.00 for the ECC/EPOA reserve account (lockbox). The EPOA Board of Directors will continue to work jointly with Donnie Pate, President of the Golf Club of New Orleans, LLC to communicate and gain continued support from US Senator Mary Landrieu's Office, Congressman Richmond's Office, Mayor Mitch Landrieu's Office and our Local and State Political Leaders. The request of our Political and Community Leaders is to influence the US Corps of Engineers and Prime contractors to purchase clay materials from Eastover Country Club, LLC to help rebuild the Eastover Community and restore New Orleans East. The ECC total materials sales of 3,900,000 tons will generate \$3,900,000.00 for the ECC/EPOA reserve account (lockbox).
4. The ECC/EPOA designates the additional \$400,000.00, that the agreement to Addendum #2 adds to the reserve account (lockbox), to be used for infrastructure projects to include the streets and the lakes.

Addendum #2 is an agreement in addition to the original MOU and Addendum #1 that requires construction of Bulkheads on the Gannon Canal. Addendum #2 is an agreement to add an additional \$400,000.00 of funds in the reserve account (lockbox).

Accepted and Agreed to this 29 day of March, 2012

Donald E. Pate, President, Golf Club of New Orleans, LLC

Robert White, President, Board of Directors, EPOA

Witness by Leila Eames, Vice President, EPOA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No.: 2014-2639

FS 8 A d - MUL 1113 Division: M

Eastover Property Owners Adjacent to the Borrow Pit, I.L.C. and Its Constituent Members

The Board of Directors of Eastover Property Owners Association, et al.

RECEIVED
2014 JUN 12 AM 11:55
ORLEANS PARISH
CLERK'S OFFICE

PARTY TO BE SERVED: Lela Eames
THROUGH: _____
ADDRESS: 5420 Eastover Drive South
SUITE/ROOM: _____
CITY: New Orleans, Louisiana 70128
SPECIAL SERVICE INSTRUCTIONS: _____
DOCUMENT TYPE: Unopposed Petition for Intervention
FILED BY ATTORNEY: Galen M. Hair BAR NO. 32865
DATE OF FILING: 5/21/2014
ATTACHMENTS/EXHIBITS: _____

RETURN FOR PERSONAL SERVICE

On the 4 day of June 2014 served
a copy of the within _____

On _____
Lela Eames

in _____
person

R Jordan #377
Deputy Sheriff of Orleans Parish

AW ENTERED _____
PAPER RETURN
18, 9702
SERIAL NO. DEPUTY PARISH

DOMICILIARY SERVICE

On this _____ day of _____ 20__ served
a copy of the within _____

on _____

by leaving same at _____ domicile or usual
place of abode _____
in the hand of _____

a person of suitable age and discretion, residing
therein as a member of _____ domiciliary
establishment, whose name and other facts
connected with this service I learned by interrogating
the said _____
the said _____ being
absent from _____ domicile at time of said service.

Returned same day
Deputy Sheriff of Orleans Parish

SHERIFF'S RETURN

Form 95

VERIFIER
Jade Scott
Deputy Clerk

6-6-14 Jade Scott