

P-5

2009-45087

~~2009-45087~~

HERITAGE PARK POINTE
HOMEOWNERS ASSOCIATION, INC.

VS.

J.B. CONTRACTORS & DEVELOPMENT, LLC
AND FLORES RENOVATIONS

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127 JUDICIAL DISTRICT

PLAINTIFF'S PETITION IN INTERPLEADER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **HERITAGE PARK POINTE HOMEOWNERS ASSOCIATION, INC.** ("HERITAGE PARK POINTE"), the Plaintiff in the above-entitled and numbered cause, and makes and files this its *Petition in Interpleader*, and in support thereof would respectfully show unto the Court the following:

HERITAGE PARK POINTE, Plaintiff, complains of **Defendants J.B. CONTRACTORS & DEVELOPMENT, LLC ("JB CONTRACTORS")** and **FLORES RENOVATIONS** and for cause of action shows:

I.

Plaintiff HERITAGE PARK POINTE is a non-profit civic association doing business in Houston, Harris County, Texas. **Defendant JB CONTRACTORS** is a General Contractor may be served with process at J.B. CONTRACTORS & DEVELOPMENT, LLC, Corporation Service Company, Registered Agent, 701 Brazos Street, Suite 1050, Austin, Texas 78701. **Defendant FLORES RENOVATIONS** is a Subcontractor may be served with process by serving his counsel at Petronella Law Firm, P.C., Attorneys at Law, Eight Greenway Plaza, Suite 606, Houston, Texas, 77046-0801.

FILED
LORRAINE JACKSON
DISTRICT CLERK
HARRIS COUNTY, TEXAS
2009 JUL 15 PM 9:17
BY 7-15-09
DEPUTY

II.

Plaintiff **HERITAGE PARK POINTE** hired Defendant **JB CONTRACTORS** in March 2009 to perform construction work related to rebuilding their pool structure (“Construction Services”). On May 6, 2009, Plaintiff **HERITAGE PARK POINTE** received notice that Subcontractor **FLORES RENOVATIONS** filed a “Statutory Affidavit for Affixing Lien” against **HERITAGE PARK POINTE**’s common area property because **JB CONTRACTORS** did not pay them. (Please see Exhibit A attached hereto.) There is a clear dispute between Defendants **JB CONTRACTORS** and **FLORES RENOVATIONS** regarding how much should be paid to **FLORES RENOVATIONS**.

III.

HERITAGE PARK POINTE has yet to make its final payment to **JB CONTRACTORS** in the amount of \$20,494.93 (“Construction Services Fund”) because it is unclear which party is entitled to the money. The “Notification to Owners” prepared by **FLORES RENOVATIONS**’ counsel and directed to **HERITAGE PARK POINTE**, provides that “if this claim remains unpaid, you may become personally liable and your property subject to a lien unless you withhold funds from the contractor for payment of this claim or unless this claim is otherwise settled or paid.” [Emphasis added.] (Please see “Notification to Owners” attached to Lien in Exhibit A.)

IV.

Plaintiff **HERITAGE PARK POINTE** is subject to or reasonably anticipates rival claims to the Construction Services Fund which represents its last payment to **JB CONTRACTORS** in the amount of **\$20,494.93**.

V.

HERITAGE PARK POINTE is or may be subject to multiple liability with respect to the funds related to the Construction Services because of the potential rival claims by **Defendants JB CONTRACTORS and FLORES RENOVATIONS**.

VI.

These claims are adverse and conflicting, and **Plaintiff** is unable to determine which party is entitled to the Construction Services Funds. With respect to these funds, **Plaintiff**, therefore is in the position of an innocent stakeholder faced with the possibility of multiple liability and incidental costs.

VII.

Plaintiff neither has, nor claims, any interest in the Construction Services Fund, which **Plaintiff**, at all times has been willing to deliver to the proper person or persons justly entitled to possession.

VIII.

Plaintiff, HERITAGE PARK POINTE, unconditionally offers to, and is ready to deposit with the Court, the sum of **\$20,494.93** for services referred to herein.

IX.

Plaintiff, HERITAGE PARK POINTE, further alleges that it is entitled to recover reasonable attorney's fees and costs as a result of these proceedings.

X.

Prayer for Relief

For the reasons stated, **Plaintiff, HERITAGE PARK POINTE**, requests that Defendants **JB CONTRACTORS and FLORES RENOVATIONS** be cited to appear and answer, interpleading their claims to the Construction Services Fund in the amount of \$20,494.93, and that, on final trial, **HERITAGE PARK POINTE**, have the following:

1. That **Plaintiff, HERITAGE PARK POINTE** be released and discharged from all liability to **Defendants JB CONTRACTORS and FLORES RENOVATIONS** on account of the matters relating to the Construction Services Fund;
2. That **HERITAGE PARK POINTE** have and recover a reasonable fee for the services of its attorney, together with all costs of Court and expenses incurred by **HERITAGE PARK POINTE** in this suit, with all such fees, costs, and expenses to be paid out of the proceeds of the Construction Services Fund prior to any award to the prevailing **Defendant;**
3. Such other and further relief to which **HERITAGE PARK POINTE**, may be justly entitled.

Respectfully submitted,

DAUGHTRY & JORDAN, P.C.

BY: Margaret R. Maddox
Margaret R. Maddox
SBN: 24025507
Charles A. Daughtry
SBN: 05409410
17044 El Camino Real
Houston, TX 77058
Telephone: (281) 480-6888
Facsimile: (281) 218-9151

ATTORNEYS FOR PLAINTIFF, HERITAGE
PARK POINT HOMEOWNERS ASSOCIATION,
INC.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on defendants as shown below, on this the 15 day of July, 2009, via certified mail, return receipt requested:

VIA CMRRR # 7008 1140 0004 6018 2594 and Regular U.S. Mail
J.B. CONTRACTORS & DEVELOPMENT, LLC
CORPORATION SERVICE COMPANY
REGISTERED AGENT
701 BRAZOS STREET, STE. 1050
AUSTIN, TEXAS 78701

VIA CMRRR # 7008 1140 0004 6018 2723 and Regular U.S. Mail
J.B. CONTRACTORS & DEVELOPMENT, LLC
ATTN: MANAGER
P.O. BOX 3443
PEARLAND, TEXAS 77588

VIA CMRRR # 7008 1140 0004 6018 2648 and Regular U.S. Mail
Flores Renovations,
c/o Petronella Law Firm, P.C.,
Attorney Richard Petronella
Eight Greenway Plaza, Suite 606, Houston, Texas, 77046-0801

Margaret R. Maddox
Margaret R. Maddox