

STATE OF TEXAS,
Plaintiff,

v.

BRIAN F. QUILTY, a/k/a
MYLAND4SALE.COM
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201 JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

BP OCT 21 2008 30
At
Amalia Rodriguez-Mendoza, Clerk

**STATE OF TEXAS'S ORIGINAL PETITION AND
REQUEST FOR DISCLOSURE**

The State of Texas, by and through its Attorney General, Greg Abbott, on behalf of the people of Texas, files this original petition, and for cause of action would show the following:

1. DISCOVERY CONTROL PLAN

1.1. Pursuant to Tex. R. Civ. P. 190, Plaintiff intends that discovery in this case be conducted under Level 2.

2. PARTIES AND SERVICE

2.1. Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General pursuant to Tex. Local Gov't Code § 232.037 and Tex. Water Code §§ 16.353, 16.354.

2.2. Defendant, **Brian Quilty, a/k/a Myland4sale.com** is a resident of Douglas County, Nevada, and may be served with process at his home at 461 Barrett Dr., Stateline, Nevada 89449 or wherever he may be found.¹

2.3. Defendant, **Brian Quilty, a/k/a Myland4sale.com** may also be served with process at his home at 461 Barrett Dr., Stateline, Nevada 89449 under Tex. Civ. Prac. & Rem. Code § 17.045 through service on the Secretary of State.

¹ Tex. R. Civ. R. 106.

3. JURISDICTION AND VENUE

3.1. This Court has jurisdiction over the nonresident, Brian F. Quilty, a/k/a Myland4sale.com. The relief sought against the defendant arises out of, or is connected with, acts committed by the defendant in Texas. These acts, more fully described in Section 6 below, include the sale of lots from unauthorized Texas residential subdivisions and from the sale of lots which lack the requisite water and wastewater services. Tex. Const. art. V, § 8; Tex. Local Gov't Code § 232.037; and Tex. Civ. Prac. & Rem. Code § 17.042.

3.2. This Court has venue over this suit pursuant to Tex. Local Gov't Code §§ 232.035(f) and Tex. Water Code § 16.3545(3).

4. AUTHORITY

4.1. This suit seeks to enjoin certain unlawful acts of the defendant and seeks the assessment of civil penalties, attorney's fees, costs of investigation, and court costs.

4.2. No filing fee or other security for costs is required of the State.²

4.3. Texas Local Government Code, Chapter 232, Subchapter B ("Subchapter B"), applies to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of a county located within 50 miles of an international border. Land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities.³

4.4. Hudspeth County is located within 50 miles of the international border dividing the United States and Mexico.

² Tex. Civ. Prac. & Rem. Code § 6.001.

³ Tex. Local Gov't Code § 232.022 (a), (b), and (c).

4.5. Texas Local Gov't Code § 232.023(a) provides that a subdivider of rural land in a Subchapter B county "must have a plat of the subdivision prepared." A subdivision of a tract "includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description."

4.6. Texas Local Gov't Code § 232.037(a) provides that the Attorney General may take any action necessary in a court of competent jurisdiction to:

- (1) enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;
- (2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;
- (3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and
- (4) require platting or replatting under Section 232.040.

5. BACKGROUND ON BONITA VISTA AND EASTERN HILLS UNIT 2

5.1. The unauthorized residential subdivisions that are the subject of this lawsuit are referred to as Bonita Vista and Eastern Hills Unit 2 Subdivisions.

5.2. Bonita Vista Subdivision is off of Highway 10, in Hudspeth County, near the El Paso and Hudspeth County line.

5.3. Eastern Hills Unit 2 is also in Hudspeth County and is located six miles west of FM 1111, twenty-two miles south of U.S. 62 and 180 Highway, and seventeen miles north of Sierra Blanca, Texas.

5.4. The defendant subdivided the subject land in the Bonita Vista Subdivision into approximately 3,000 lots. The lots are under five acres and are intended primarily for residential use.

The defendant has not applied to obtain plat approval for the Bonita Vista Subdivision from the Hudspeth County Commissioners' Court.

5.5. The defendant subdivided the subject land in Eastern Hills Unit 2 into approximately 3,200 lots. The lots are approximately 60 feet by 100 feet in size, are under five acres, and are intended primarily for residential use.

5.6. As set out below, the defendant violated Subchapter B of Chapter 232 of the Texas Local Government Code.

6. VIOLATION 1
Sale of Lots in a Subdivision Not Legally Platted

6.1. Texas Local Gov't Code § 232.035(a) contains the following prohibition:

A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

6.2. Texas Local Gov't Code § 232.031(a) contains the following prohibition:

[A] subdivider may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

6.3. The defendant sold lots from these subdivisions as follows:

Date	Subdivision	Lot	Buyer
01-12-07	Bonita Vista	Block H, Lot 146	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block H, Lot 147	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block P, Lot 48	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block N, Lot 211	Kanetomo Horikawa, et al.

6.4. At the time of these sales, the Bonita Vista lots were not legally platted as required by Texas Local Government Code, Chapter 232, Subchapter B. Prior to the sale of any of the Bonita Vista lots, the defendant had not obtained subdivision plat approval from Hudspeth County in violation of Tex. Local Gov't Code §§ 232.035(a) and 232.031(a).

7. VIOLATION 2
Failure to Install or Bond Sewer Service Facilities

7.1. Texas Local Gov't Code § 232.027 contains the following requirements:

- (a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final approval of a plat under Section 232.024, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the FDIC. The subdivider must comply with the requirement before subdividing the tract.
- (b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

7.2. Sections 3.4 and 3.5 of the Model Rules⁴ set out detailed requirements for financial guarantees applicable to water and wastewater facilities.

7.3. Texas Local Gov't Code § 232.040(b) provides that "a lot in a subdivision may not be sold if the lot lacks water and sewer services as required by [Subchapter B]...." "Sewer services" includes individual, on-site wastewater treatment systems such as septic tanks.⁵

7.4. The defendant sold lots from these subdivisions as follows:

Date	Subdivision	Lot	Buyer
01-12-07	Bonita Vista	Block H, Lot 146	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block H, Lot 147	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block P, Lot 48	Kanetomo Horikawa, et al.
01-12-07	Bonita Vista	Block N, Lot 211	Kanetomo Horikawa, et al.

⁴ Codified as 31 Tex. Admin. Code §§ 364.54 and 364.55 (2008) (Tex. Water Dev. Bd.).

⁵ Tex. Local Gov't Code § 232.021(10).

03-18-05	Eastern Hills	Section 5, Block 71, Township 6 (R39619)	Kanetomo Horikawa, et al.
03-18-05	Eastern Hills	Section 5, Block 71, Township 6 (R39618)	Kanetomo Horikawa, et al.
03-09-05	Eastern Hills	Section 5, Block 71, Township 6 (R39138)	Kanetomo Horikawa, et al.
03-09-05	Eastern Hills	Section 5, Block 71, Township 6 (R39137)	Kanetomo Horikawa, et al.
01-07-05	Eastern Hills	(R38858)	Kanetomo Horikawa, et al.
01-07-05	Eastern Hills	(R38857)	Kanetomo Horikawa, et al.

7.5. Prior to the sale of lots, the defendant failed to install sewer service facilities in the Bonita Vista and Eastern Hills Unit II Subdivisions and failed to comply with the legal requirements of Tex. Local Gov't Code § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure installation of sewer service facilities. The defendant's sale of lots in the Bonita Vista Subdivision and Eastern Hills Unit 2 without complying with the "build it or bond it" sewer service requirements violated Tex. Local Gov't Code §§ 232.027 and 232.040(b).

8. VIOLATION 3
Failure to Install or Bond Water Service Facilities

8.1. Texas Local Gov't Code § 232.027 requires that water service facilities serving each lot be installed at the time of final plat approval, or in the alternative, a bond or other approved financial guarantee be posted to ensure the installation of water service facilities.

8.2. Prior to the sale of lots, the defendant failed to install water service facilities in the Bonita Vista Subdivision and Eastern Hills Unit 2 and failed to comply with the legal requirements of Tex. Local Gov't Code § 232.027, pertaining to the posting of a bond or other financial guarantee to ensure water service to each lot.

8.3. The defendant's sale of lots in the Bonita Vista Subdivision and Eastern Hills Unit 2 without complying with the "build it or bond it" water service requirements violated Tex. Local Gov't Code §§ 232.027 and 232.040(b).

9. INJUNCTIVE RELIEF

9.1. The State requests that, upon final trial on the merits, the defendant be permanently enjoined from subdividing, advertising, and selling property in violation of Texas Local Government Code, Chapter 232, Subchapter B and the Model Subdivision Rules.

9.2. The State further requests that, with respect to Bonita Vista Subdivision and Eastern Hills Unit 2, the defendant be permanently enjoined to properly plat the subdivision with the Hudspeth County Commissioners' Court, to include providing the required water and wastewater facilities, or in the alternative, to give full refunds to each lot buyer.

9.3. The State requests additional injunctive relief as warranted by the facts.

10. CIVIL PENALTIES

10.1. Texas Local Gov't Code § 232.035(d) provides that a subdivider or agent who sells a lot in a subdivision that has not been legally platted "is subject to a civil penalty of not less than \$10,000 or more than \$15,000 for each lot conveyed..." The State hereby requests that this Court assess a civil penalty within the statutory range for each lot sold in violation of the law.

11. ATTORNEY'S FEES AND COSTS

11.1. The State requests recovery of its attorney's fees expended in the prosecution of this case from Defendant as authorized by Tex. Local Gov't Code §§ 232.035(c) and (d), 232.037(a)(3), and Texas Gov't Code § 402.006(c).

11.2. The State requests recovery of its costs of investigation and court costs expended in the prosecution of this case from the defendant as authorized by Tex. Local Gov't Code §§ 232.035(c) and (d), 232.037(a)(3), and Texas Gov't Code § 402.006(c).

12. REQUEST FOR DISCLOSURE

12.1. Brian F. Quilty, a/k/a Myland4sale.com is requested to disclose to the State, within 50 days of service of this request, the information and material described in Tex. R. Civ. P. 194.2(a), (b), (c), (e), (f), and (i).

PRAYER FOR RELIEF

ACCORDINGLY, the State respectfully requests:

1. permanent injunctive relief as requested in this petition;
2. civil penalties as requested in this petition;
3. attorney's fees, costs of investigation, and court costs;
4. post-judgment interest at the legal rate; and
5. all other relief to which it is entitled.

Respectfully submitted,

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