

(Consolidated Under)
CAUSE NO. 2011-CI-02000

CAROLYN J. CLARK, ET AL.,
Plaintiffs,
vs.
JPMORGAN CHASE BANK, N.A.,
ET AL.,
Defendants.

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IN THE DISTRICT COURT
438TH JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

Caroline J. Clark
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PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Craig William Clark and Richard Burns Clark, Plaintiffs, complaining of JPMorgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond, and for cause of action would respectfully show the following:

Discovery Plan

1. Plaintiffs intend to conduct discovery in this case under Tex. R. Civ. Pro. 190.4 (Level 3).

Parties

2. Plaintiff, Craig W. Clark, is an individual residing in Aransas County, Texas.
3. Plaintiff, Richard B. Clark, is an individual residing in Bexar County, Texas.

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4. Defendant, JPMorgan Chase Bank, N.A. ("JPMorgan"), is a national banking association which has appeared herein and no further service of process is necessary.

5. Defendant, Patricia Schultz-Ormond ("Ormond"), is an individual residing in San Antonio, Bexar County, Texas, who has appeared herein and no further service of process is necessary.

Jurisdiction and Venue

6. This Court has jurisdiction of this cause pursuant to Section 115.001 of the Texas Property Code and because Plaintiffs' damages exceed the minimum jurisdictional limits of this Court.

7. Venue is proper in Bexar County under and pursuant to Section 15.002 of the Texas Trust Code because Defendant, JPMorgan, is a corporate trustee, and Bexar County is the situs of administration of the trusts, and because two of the Defendants reside in Bexar County, Texas. Venue is also proper pursuant to Section 15.001 *et seq.* of the Texas Civil Practice & Remedies Code, because (i) JPMorgan has offices, and transacts business, in Bexar County; (ii) Patricia Schultz-Ormond was a resident of Bexar County, Texas, at the time the causes of action accrued; and (iii) a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Bexar County.

Conditions Precedent

8. All conditions precedent to the assertion of the claims herein and the prosecution of this lawsuit have been performed or fulfilled.

Nature of Suit

9. This suit arises from the actions and inactions of JPMorgan and Ormond in the management of the Burns Ranch. It is a suit for breach of fiduciary duties, waste, negligence, mismanagement, improper accounting, incompetence, overcharging of fees, commissions and expenses, and oppression.

Plaintiff's Title and Ownership in the Burns Ranch

10. Plaintiffs are the owners of legal and beneficial interests in approximately 29,958 acres of land, more or less, in Frio and La Salle Counties, Texas, known as the Burns Ranch, which was founded by their great grandfather, T. E. Burns, early in the twentieth century.

11. The Burns Ranch is a cattle ranch, and has produced oil and gas income and grazing and hunting rentals.

12. Plaintiffs' interests in the Burns Ranch were largely subject to two trusts:

- (a) The "Irrevocable Trust", created by T.E. Burns pursuant to written trust agreement dated May 1, 1961; and
- (b) The "Testamentary Trust" under the will of T.E. Burns, deceased, dated July 25, 1962 which was probated in Bexar County, Texas.

13. Under both trusts, Plaintiffs' mother, Patricia Burns Clark Dailey, was the income beneficiary, and Plaintiffs and their siblings were the owners of the remainder, free of trust, upon the death of their mother.

14. Patricia Burns Clark Dailey died on August 5, 2011, whereupon Plaintiffs' interests in the Burns Ranch which were subject to the trusts vested in them.

15. Pursuant to partitions and agreements between and among Plaintiffs and other interest owners, and following the death of their mother, Richard Clark is the owner of the surface estate in 2,940 acres of land, and Craig Clark is the owner of the surface estate in 3,075 acres of land, both out of what is known as the "Middle Tract" of the Burns Ranch.

16. Pursuant to previous gifts by their mother, and following her death, under her Will and under the terms of the Testamentary Trust and the Irrevocable Trust, (1) Richard Clark is the owner of a .12500 mineral interest in 29,297.65 acres of the Burns Ranch in depths below the Georgetown formation ("deep rights") and a .10833 mineral interest above the base of the Georgetown formation ("shallow rights"), and a .20000 interest in a 639.26 acre tract out of the ranch known as "the Farm"; and (2) Craig Clark is the owner of a .12222 interest in the deep rights, a .10000 interest in the shallow rights, and a .20000 interest in the Farm.

17. Because of Mrs. Dailey's incapacity, Defendant, JPMorgan acted as the sole trustee under both trusts at all times relevant hereto.

18. Pursuant to the trusts, JPMorgan managed and administered a 50% undivided interest in the oil, gas and mineral estate in the Burns Ranch except for the 639 acre tract (the "Farm") for which it managed 100% of the minerals; 100% of the surface estate in 10,245 acres known as the "Middle Tract"; and a 56.13% undivided

interest in the surface estate of 8,770 acres out of what is known as the "East Tract." Two-thirds of JPMorgan's mineral interest in the East Tract, Middle Tract, and West Tract was vested in the Testamentary Trust and one-third in the Irrevocable Trust. Its mineral interest in the Farm Tract was vested in the Testamentary Trust.

19. Defendant, Patricia Schultz-Ormond, was Vice President and Senior Property Manager for Specialty Assets, Oil and Gas Management, for JPMorgan at the time of the execution of the option to lease its oil and gas interest in the Burns Ranch as more fully described below. She was responsible for management of the trusts' oil, gas and mineral interest including leasing transactions. She actively participated with and aided and abetted JPMorgan in certain of its wrongful acts and omissions, more fully described below.

First Cause of Action: Breach of Fiduciary Duty

Negligence and Mismanagement of the Mineral Estate

20. The Burns Ranch has been productive of oil and gas, and is located in an area of south Texas that is known to be highly prospective and productive. Mineral income, including bonuses for execution of leases, rentals and royalties have been a major source of income to the Burns Ranch and its owners.

21. In 2008, the Burns Ranch was not subject to any oil and gas lease, with the exception of certain existing well units covering approximately 5,000 acres, and was open for leasing.

22. During and about the year 2008, a well known oil and gas play was in progress across south Texas. This was known as the Eagle Ford Shale trend. La

Salle and Frio Counties were and are at the center of this trend. Bonus consideration paid for oil and gas leases in the area had markedly increased and were continuing to increase. These were facts well known in the oil and gas industry, and among reasonably well informed mineral owners in the south Texas area.

23. On November 20, 2009, JPMorgan gave an option to lease the mineral interest to BB-II Operating, LP ("BB-II") for initial bonus consideration of \$125.00 per acre and deferred payments of \$75.00 per acre. On or about February 1, 2010, BB-II exercised its option and acquired the oil and gas lease from JPMorgan.

24. A \$125.00 per acre bonus was greatly below the market price and unreasonable in late 2009. Plaintiffs were not notified of the option or lease until well after the fact, and were never consulted regarding the BB-II option or lease.

25. In fact, within a few short months following JPMorgan's lease to BB-II, the owners of the other one-half interest in the minerals in the Burns Ranch leased their interest to Chesapeake Exploration, LLC, for \$1,300.00 per acre.

26. By leasing the Burns Ranch oil and gas for a bonus of \$125.00 per acre, a consideration which was greatly below the market and far less than should have been realized, and by failure to negotiate additional provisions in the lease which would have provided additional consideration to the Plaintiffs, JPMorgan and Ormond were negligent, guilty of mismanagement and maladministration, failed to reasonably investigate market conditions, failed to exercise the skill, care and caution under the circumstances then prevailing expected of prudent professional trustees, failed to exercise due diligence, failed to determine industry developments and

market conditions, failed to establish a competitive business environment, failed to consider special and unique circumstances relative to oil and gas operations on the ranch, and failed to implement systems and controls to insure review of the transaction by higher level management, and demonstrated a lack of basic competency and knowledge in administering the trusts' mineral interests.

27. As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Second Cause of Action: Breach of Trust – TEX. PROP. CODE § 114.001

Breach of Trust

28. Section 114.001(c) of the Texas Property Code provides that a trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust.

29. JPMorgan's conduct, including leasing the Burns Ranch for below the market in violation of its duties imposed by law, as herein alleged, constitutes a violation of the statutory duty JPMorgan owed to the Burns Trust.

30. As a direct and proximate result of JPMorgan's wrongful actions, Plaintiffs are entitled to recover all their damages for which they now sue.

Third Cause of Action: Breach of Fiduciary Duty

Failure to Disclose

31. As trustee of the trusts, JPMorgan and Ormond have at all times had the fiduciary duty to make full and complete disclosure to the Plaintiffs and other beneficiaries of all material facts concerning the assets, management, administration

and accounting of the trusts, and concerning the negotiation of major transactions affecting their interests.

32. Ormond had a continuing fiduciary duty, before and after her departure, to disclose certain material facts to Plaintiffs consistent with her ongoing fiduciary duties of loyalty and fidelity and to refrain from acts of self dealing. In breach and violation of their fiduciary duty, JPMorgan and Ormond have failed to disclose and/or been secretive, vague and tardy in their limited and inadequate disclosures. By way of example only, and without limiting the generality of these allegations, Plaintiffs requested on more than one occasion that JPMorgan provide copies of the BB-II option and lease, and correspondence concerning them, but JPMorgan refused any such disclosure, despite Plaintiffs' clear rights.

33. Because of JPMorgan's and Ormond's failure to disclose, Plaintiffs are presently uncertain of the full extent to which JPMorgan has breached its duties and responsibilities as trustee, and reserve the right to seek additional relief.

34. JPMorgan's and Ormond's failure to disclose has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fourth Cause of Action: Breach of Fiduciary Duty

Loyalty and Discretion

35. JP Morgan owed the highest duty of loyalty and discretion to Plaintiffs as trust beneficiaries. It knew that its life income beneficiary was over 90 years old and incapacitated; that the Burns Ranch, and particularly the mineral estate therein, was the primary asset of the trusts; and that the pending leasing transaction was of

enormous and long lasting economic consequences to the beneficiaries.

36. Notwithstanding such knowledge, JP Morgan and Ormond breached their duty of loyalty and discretion to Plaintiffs by failing to seek the cooperation of the owners of the other 50% of the mineral interest in the Burns Ranch in order to maximize the lessors negotiating position; by failing to consult with or consider input from the beneficiaries during the negotiating process; by confining its negotiation of a lease to Blackbrush without consideration of other competitors; and by negotiating a lease exclusively with Blackbrush on terms favorable to Blackbrush and unfavorable to the beneficiaries while Defendant Ormond was in the process of leaving JP Morgan's employ to commence employment by Blackbrush.

Unreasonable Fees and Expenses

37. JPMorgan has charged and collected unreasonable and excessive fees and commissions as trustee of the trusts, and paid unreasonable and excessive expenses, in breach of its fiduciary obligations.

38. The charging of such excessive and unreasonable fees, commissions and expenses has been a proximate cause of damages to Plaintiffs, for which they now sue.

Fifth Cause of Action: Breach of Fiduciary Duty

Waste

39. On or about February 1, 2009, JPMorgan granted and executed a grazing/farming lease, as lessor, to Billy Applewhite, as lessee, covering and including the Middle Tract of 10,245 acres.

40. JPMorgan permitted and allowed the surface to be severely overstocked and over-grazed to the point that it is depleted of grasses and reduced to a desert like condition. It now bears no resemblance to the conditions of a properly managed ranch.

41. JPMorgan, although clearly empowered to do so, and despite repeated complaints and requests by Plaintiffs, have wholly failed in any effective respect to manage the surface estate of the Middle Tract.

42. JPMorgan's conduct and omissions constitute waste.

43. The wrongful acts and omissions of JPMorgan constitute failure to exercise the judgment and care under the circumstances then prevailing that ranchers of ordinary prudence exercise in the management of their own affairs concerning the preservation of the corpus of the trust estate; failure to properly monitor and administer the grazing lease; failure to exercise their duty to investigate the condition of the property, and a lack of basic competency and knowledge in administering and managing the surface of the estate.

44. JPMorgan's breaches of fiduciary duty in these respects constitute waste of the surface estate in the lands included in the Middle Tract and have caused

damages to Plaintiffs, including loss of market value of the land, loss of grazing and hunting, lost income, and costs of remediation, all of which are continuing and for which Plaintiffs now sue.

Accounting

45. Pursuant to Section 113.151 of the Texas Trust Code, Plaintiffs demand a written statement of accounts covering all transactions since the creation of the trusts, inasmuch as JPMorgan has never furnished a complete and proper accounting to Plaintiffs.

JP Morgan Attorney's Fees

46. Due to the acts, omissions and conduct alleged above, Defendant JP Morgan is not entitled to and is disallowed from paying its attorney's fees and costs to defend itself in this cause out of the trusts that are the subject of this lawsuit.

Attorney's Fees

47. It has been necessary for Plaintiffs to engage the undersigned firms of attorneys to prepare and prosecute this suit, and they are entitled to recover reasonable attorney's fees.

Production of Documents

48. Plaintiffs hereby place Defendants on notice that Plaintiffs intend to use any document produced by Defendants in any pretrial proceeding or at trial.

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury, and tender the jury fee.

WHEREFORE, Plaintiffs, Craig W. Clark and Richard B. Clark pray that Defendants be cited to appear and answer herein, and that upon final hearing, Plaintiffs have and recover judgment of and from J.P. Morgan Chase Bank, N.A., Individually and Corporately, and as Trustee of the Burns Irrevocable Trust and the Burns Testamentary Trust, and Patricia Schultz-Ormond:


- (1) For damages;
- (2) For an accounting;
- (3) For attorney's fees;
- (4) For prejudgment and post-judgment interest.


Plaintiffs pray for general relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has been sent
by:

_____ U.S. Certified Mail, Return Receipt Requested to:
_____ ✓ Facsimile to:
_____ First Class Mail to:
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on this the 29th day of June, 2012.



James L. Drought