

4. Defendant BHM Highpointe Management LLC (the “BHM General Partner”) is a limited liability company registered to do business in the State of Texas, and is the general partner of Defendant BHM Highpointe) and may be served with a citation through CT Corporation, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.

5. Defendant Buffington Land Group, Ltd. (“Buffington Land”) is a limited partnership registered to do business in the State of Texas. Defendant Buffington Land may be served with citation through CT Corporation, 1999 Bryan St., Suite 900, Dallas, TX 75201-3136.

6. United Development Funding IV (“UDF”) is a Maryland investment trust doing business in Texas. It may be served with process by serving its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.

7. Thomas Buffington (“Buffington”) is an individual resident of Travis County, Texas, who may be served at 3600 N. Capital of Texas Hwy, B-170, Austin, TX 78746-3314.

8. Patrick Starley (“Starley”) is an individual resident of Travis County, Texas, who may be served at 4720 Rockcliff Rd., Unit 5, Austin, TX 78746-1254.

III. Jurisdiction and Venue

9. This Court has jurisdiction over the subject matter complained of in this Petition because the amounts at issue exceed the minimal jurisdictional limits of this Court. Venue is proper in this Court pursuant to §15.001, *et. seq.* of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, inasmuch as all of the events and property giving rise to the claims alleged occurred in Travis County, Texas and because one of the Defendants has its principal office and place of business or residence in Travis County, Texas. Plaintiff claims monetary damages in excess of \$1,000,000.

IV. Facts

10. On or about December 24, 2008, Plaintiff and BHM Highpointe entered into a contract (the “Development Agreement”) for the management and development of real property located in the city of Dripping Springs, Texas. (the “Development”). The Development Agreement provided that BHM Highpointe was retaining Plaintiff to manage the development, construction and marketing for the Highpointe residential subdivision, approval of which had previously been obtained from the City of Dripping Springs (the “Project”). In return for performing the various obligations spelled out in the Development Agreement, BHM Highpointe agreed to pay Plaintiff a “Profits Interest” equal to 30% of the “Net Profits” from the Project. The Net Profits was calculated by subtracting all Project Expenses from the “gross revenues actually collected by or on behalf of [BHM Highpointe] from the Project.”

11. In addition to the above payment terms, the BHM Highpointe agreed to do and refrain from doing certain things with respect to the Project including:

- a. Agreeing that BHM Highpointe would not make changes to the Project business plan that would reduce projected Net Profits from the Project by more than ten percent without discussing it with Plaintiff, and “If any revised Cash Flow Analysis projects Net Profits of less than ninety percent (90%) of the Net Profits projected in the immediately preceding Cash Flow Analysis (a “Major Reduction”), Owner [BHM Highpointe] may in good faith modify the project business plan so as to meet Owner’s debt obligations and/or protect Owner’s investment or reflect the projections of Owner, while maintaining the Net Profits projected in the immediately preceding Cash Flow Analysis to the extent Owner determines to be possible.”

b. Agreeing that “in no event will any fee or similar payment to any person or entity having an ownership interest in the project constitute Project Expenses” for the purposes of calculating the Profits Interest;

c. Agreeing that “before BHM makes any distributions to [BHM’s partners] other than Tax Distributions, BHM will first pay to Plaintiff the amount of the Profits Interest that the Plaintiff would have received if Plaintiff had received a concurrent and proportionate payment of the Profits Interest at the time of the Tax Distributions (the “Reconciliation Amount.”

12. Despite Plaintiff continuing to expend efforts on behalf of BHM and the Project and performing its obligation thereunder, BHM Highpointe breached these provisions of the Development Agreement by at least failing to make any Profit Interest distributions to Plaintiff, despite making distributions to its partners. In at least one instance, such distribution took the form of BHM Highpointe making a distribution of approximately \$1,800,000 to Buffington Land characterized as a “loan”. At the time of such “loan”, Buffington Land had no ability to repay any loan from BHM Highpointe, and failed to do so.

13. BHM Highpointe failed to provide any, much less proper, notice of any reduction of Net Profits in accordance with the Development Agreement. Specifically BHM Highpointe failed to inform Plaintiff that it had assigned, for no consideration, various assets of BHM Highpointe, which were necessary and intrinsic to obtaining any Net Profits, to Buffington Land for no consideration.

14. On information and belief on or after November, 2011 BHM transferred to Defendant Buffington Land the right to receive MUD and other reimbursement rights relating to the Project and generated from the development of the Project (the “Reimbursements”). Such

transfer to Buffington Land was done for no consideration and BHM Highpointe received nothing of value in connection with such transfer. The transfer of these valuable assets was actively concealed from Plaintiff by BHM Highpointe, Buffington and Starley. In fact, on numerous occasions BHM Highpointe actively misrepresented the status of the ownership of the Reimbursements. Contemporaneous with the assignment of the Reimbursements to Buffington Land, Buffington Land used the Reimbursements assigned by BHM Highpointe to obtain a loan from MUD Reimbursement Finance LLC secured by the Reimbursements and other assets. Upon information and belief and at the specific insistence of UDF, Buffington Land used the proceeds of such loan to pay UDF in excess of \$5,000,000 against loans made by UDF to Buffington Land which were guaranteed by each of Buffington and Starley. Upon information and belief, the assignment of the Reimbursements by BHM Highpointe to Buffington Land and the subsequent payment of obligations owed by Buffington Land to UDF was done with actual intent to hinder, delay and defraud Plaintiff and for the benefit of each of Buffington Land, Buffington, Starley and UDF, and to prevent Plaintiff from being paid the Net Profits it was entitled to and were contemplated under the Development Agreement and the operative Cash Flow Analysis. After the assignment of the Reimbursements, Buffington Land received in excess of \$5,000,000 in connection with the Reimbursements that had been assigned. None of such funds have been paid to BHM Highpointe as was intended in the Cash Flow Analysis under the Development Agreement.

V. Causes of Action

A. Breach of Contract

15. Plaintiff incorporates paragraphs 1-14 hereof. The acts of BHM Highpointe, as described herein, constitute breach of contract for which Plaintiff now sues. BHM Highpointe Management LLC, as the general partner of BHM Highpointe, is fully liable for such claim.

16. The Development Agreement obligates BHM Highpointe to make payments to Plaintiff and to make distributions to Plaintiff in accordance with the terms of the Development Agreement. Additionally, the Development Agreement prohibits BHM Highpointe from making distributions of Net Profits without making distributions to Plaintiff. Plaintiff has performed each and all of its obligations under the Development Agreement and all conditions precedent to the recovery of Plaintiff's damages as requested herein have occurred. Moreover, the Development Agreement prohibited BHM Highpointe from changing the Cash Flow Analysis without discussion with Plaintiff and then, only in "good faith to protect 'Owner's' investment." The assignment of the Reimbursements did not constitute a change for the purpose of protecting BHM Highpointe's investment, but rather to benefit Buffington Land, Buffington, Starley and UDF.

17. As a result of BHM's breach of the Development Agreement, Plaintiff has suffered injury in the form of actual and consequential damages, for which Plaintiff now sues. Additionally, Plaintiff seeks the recovery of its reasonable costs and attorneys' fees incurred pursuant to the terms of the Development Agreement and applicable Texas law.

B. Tortious Interference With Existing Contract

18. Plaintiff incorporates paragraphs 1-17 as if fully set forth herein. The actions of each of Buffington Land, UDF, Buffington and Starley, as described hereinabove, constitute tortious interference with the Development Agreement. On information and belief, each of

Buffington Land, UDF, Buffington and Starley actively solicited BHM Highpointe to assign the Reimbursements and use proceeds from the pledge of the Reimbursements to benefit each of Buffington Land, UDF, Starley and Buffington, and to prevent the use of the Reimbursements and the proceeds thereof from being paid to Plaintiff as part of the Net Profits of the Development Agreement. Such actions by UDF, Buffington, Starley and Buffington Land were done intentionally and willfully for their own benefit and were the proximate cause of BHM Highpointe's breach of contract as described herein and damages to Plaintiff. The actions of UDF, Starley, Buffington and Buffington Land were actively concealed from Plaintiff and the claim asserted is subject to the "discovery rule" as a result of such concealment.

C. Texas Fraudulent Transfer Act

19. Plaintiff incorporates paragraphs 1-18 as if fully set forth herein. The transfer of the Reimbursements from BHM Highpointe to Buffington and of the proceeds of the use of the Reimbursements to UDF are fraudulent transfers pursuant to Section 24.001 *et. seq.* of the TEXAS BUSINESS AND COMMERCE CODE for which Plaintiff now sues. Additionally, to the extent that such proceeds were used by Buffington Land to pay indebtedness owed by Buffington Land to UDF and guaranteed by each of Buffington and Starley, such transfer was for the benefit of UDF, Starley and Buffington.

20. Upon information and belief, BHM Highpointe transferred to Buffington Land certain valuable property and/or property rights, either with the actual intent to hinder, delay or defraud Plaintiff, and/or in return for less than reasonably equivalent value at a time during which BHM Highpointe was insolvent or was rendered insolvent by the transfer. The valuable property and/or property rights or the proceeds of such rights were subsequently transferred to UDF, without consideration and for no value to BHM Highpointe. Accordingly, Buffington

Land and UDF are jointly and severally liable with BHM Highpointe to Plaintiff for the value of such transfers, up to an amount necessary to compensate Plaintiff in full, pursuant to §24.001 *et seq.* of the TEXAS BUSINESS & COMMERCE CODE. On information and belief, Buffington Land and UDF did not receive the property and property rights in good faith or for a reasonably equivalent value, and Buffington Land and UDF had knowledge that Plaintiff was a creditor of BHM Highpointe. Plaintiff hereby seeks the recovery of the proceeds of such transfer pursuant to Section 24.008 and 24.009 of the TEXAS BUSINESS & COMMERCE CODE.

VI. Fraud

21. Additionally or alternatively, on various occasions on or after November 2011, Plaintiff discussed the status of the Development with Buffington and BHM Highpointe representatives. Starley, Buffington and BHM Highpointe specifically discussed the status of the Development and the income that was going to be generated out of the assets. In such conversations, after the assignment of the Reimbursements to Buffington Land, BHM Highpointe, Starley and Buffington represented to Plaintiff that the Reimbursements were part of projected Net Cash Flow. Additionally, when Plaintiff became aware that Reimbursements should have been received, Plaintiff inquired about them and was told that the Reimbursements had or would be applied against the debt owed to UDF by BHM Highpointe, and to the extent that such debt reduction was not being reflected, they would “take care of it and clear it up”. At the time that such representations were made, BHM Highpointe, Starley and Buffington were aware that the Reimbursements had been assigned to Buffington Land. The representations made by Buffington, Starley and BHM Highpointe, as reflected above, were material, were false, were made to Plaintiff so that Plaintiff would rely upon them in continuing to perform work on the Project and in compliance with the Development Agreement, and were relied upon by

Plaintiff in continuing to perform under the Development Agreement despite BHM Highpointe's breach, and resulted in damages to Plaintiff for which Plaintiff now sues.

VII. Attorney Fees

22. Due to the Defendants' conduct, Plaintiff has been forced to retain the undersigned counsel to bring and prosecute this case. Plaintiff is entitled to, and hereby makes claim for, its' reasonable and necessary attorneys' fees and litigation costs incurred in this cause.

23. Plaintiff is entitled to its attorneys' fees under Article VIII of the Development Agreement.

24. Additionally and alternatively, Plaintiff is entitled to its attorneys' fees under Chapter 38 of the TEXAS CIVIL PRACTICES AND REMEDIES CODE. *See* TEX. CIV. PRAC. & REM. CODE § 38.001(8) and Section 24.013 of the TEXAS BUSINESS & COMMERCE CODE.

25. All conditions precedent to recovery of the claims asserted herein have occurred.

PRAYER

Plaintiff requests that Defendants be served with citation and directed to appear and answer, and that on final trial, Plaintiff be awarded the following relief:

- Judgment against the Defendants BHM Highpointe and BHM Highpointe Management LLC for breach of contract and for actual damages including but not limited to all Net Profits, that should have been paid to Plaintiff under the Development Agreement and all other amounts due and owing thereunder plus lost profits;
- Judgment against UDF, Starley, Buffington, Buffington Land for tortious interference with contract and all damages thereunder;

- Judgment against UDF, Starley, Buffington and Buffington Land for fraudulent transfer and recovery under Section 24.008 and 24.009 of the TEXAS BUSINESS & COMMERCE CODE and the avoidance of the fraudulent transfers described herein;
- Judgment against Starley, Buffington and BHM Highpointe for fraud and all damages incurred as a result of such fraud;
- Lost profits;
- Prejudgment and postjudgment interest as provided by law;
- Attorney fees;
- Costs of court; and
- Any other relief to which Plaintiff may be entitled.

Respectfully submitted,

TAUBE SUMMERS HARRISON TAYLOR
MEINZER BROWN LLP

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ATTORNEYS FOR HANNA/MAGEE L.P. #1

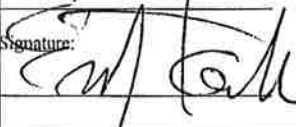
CIVIL CASE INFORMATION SHEET

MAY ENTER CAUSE # / COURT # IF ALREADY ASSIGNED (E.G., FAMILY MOTION, AMENDED PETITION)

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED Hanna/Magee L.P. #1 vs. BHM Highpointe Ltd., BHM Highpointe Management, LLC, Buffington Land Group, Ltd., United Development Funding IV, Thomas Buffington and Patrick Starley

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: Eric J. Taube	Email: etaube@taubesummers.com	Plaintiff(s)/Petitioner(s): Hanna/Magee L.P. #1	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: 100 Congress Ave., 18th Floor	Telephone: 512-472-5997	Defendant(s)/Respondent(s): BHM Highpointe Ltd.	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
City/State/Zip: Austin, TX 78701	Fax: 512-472-5248	BHM Highpointe Management, LLC (see attached for additional defendants)	
Signature: 	State Bar No: 19679350	Attach additional page as necessary to list all parties	

2. Indicate case type, or identify the most important issue in the case (select only 1):

OPTION A: CK CASE TYPE (EXCEPT OTHER) FOR CLERK TO SELECT SUIT TYPE; SEE SEC. 3 NOTE BELOW *Civil*

			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input checked="" type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other: Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:
OPTION B: CK OTHER & ENTER 3-LETTER SUIT TYPE FOR CLERK TO USE WHEN DOCKETING				
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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OPTION C: SECTION 3 PROCEDURES/REMEDIES IN **BOLD** MAY BE USED AS CASE OR SUIT TYPES. YOU MAY SPECIFY THAT ONE OF THESE PROCEDURES/REMEDIES BE USED AS A SUIT TYPE BY CHECKING IT AND LEAVING THE CASE TYPE IN SECTION 2 BLANK. SELECTING A CASE TYPE IN SECTION 2 OVERRIDES ANY SELECTION IN SECTION 3.

Additional Defendants:

Buffington Land Group, Ltd.

United Development Funding IV

Thomas Buffington

Patrick Starley