

IN RE: § IN THE PROBATE COURT
§
§ OF
§
TEL OFFSHORE TRUST § TRAVIS COUNTY, TEXAS

**DANIEL CONWILL’S ORIGINAL ANSWER AND COUNTERCLAIM TO
OPERATIVE PETITIONS FILED BY AD LITEM,
RNR PRODUCTION LAND AND CATTLE, AND ALBERT & JOYCE SPEISMAN**

Daniel O. Conwill (“Conwill”), as an Individual Trustee of the TEL Offshore Trust (“Trust”), files this his Original Answer and Counterclaim to the Ad Litem’s First Amended Petition as Realigned Plaintiff filed on or about October 28, 2016, RNR Production Land and Cattle’s Original Petition as Realigned Plaintiff filed on or about October 28, 2016, and Albert and Joyce E. Speisman’s First Amended Original Petition filed on or about December 16, 2016 (collectively, “Petitions”)¹:

**I.
GENERAL DENIAL**

1. As provided for and allowed under the Texas Rules of Civil Procedure 92, Conwill denies generally each and every, all and singular, of the allegations in the Petitions filed by Plaintiffs and demand strict proof thereof by a preponderance of the credible evidence, as required by the Constitution and the laws of the State of Texas.

**II.
DEFENSES**

2. The Plaintiffs’ claims are barred, in whole or in part, because Plaintiffs lack standing to bring this suit, or alternatively lacks standing to assert each of the claims asserted.

¹ Ad Litem, RNR Production Land & Cattle, and Albert and Joyce E. Speisman are collectively referred to as “Plaintiffs.”
27786807.1

3. The Plaintiffs' claims are barred, in whole or in part, by the statutes of limitations.

The discovery rule does not apply to Plaintiffs' claims.

4. The Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

5. The Plaintiffs' claims are barred, in whole or in part, by the doctrines of estoppel, including without limitation quasi-estoppel, equitable estoppel, judicial estoppel, and promissory estoppel.

6. The Plaintiffs' claims are barred, in whole or in part, by ratification.

7. The Plaintiffs' claims are barred, in whole or in part, by waiver.

8. The Plaintiffs' claims are barred, in whole or in part, by unclean hands.

9. The Plaintiffs' claims are barred, in whole or in part, by indemnity.

10. The Plaintiffs' claims are barred, in whole or in part, by the doctrines of payment, offset, credit, and/or recoupment.

11. Conwill pleads the defense of actual, apparent, and/or implied consent.

12. The Plaintiffs' claims are barred by acquiescence.

13. The allegations in the Petitions fail to state a claim upon which relief can be granted.

14. Conwill pleads the defense of the vice principal rule.

15. The Plaintiffs' claim for an accounting fails because Plaintiffs can obtain adequate relief through the use of standard discovery and because Plaintiffs' underlying grounds for obtaining an accounting fail.

16. Conwill specifically denies responsibility for punitive or exemplary damages. If this Court finds that such damages are recoverable, such exemplary damages are limited by Texas Civil Practice and Remedies Code section 41.008, and in addition, Plaintiffs cannot

recover any punitive damages that are constitutionally excessive. Conwill invokes all limitations, requirements, and protections provided in Texas Civil Practice and Remedies Code chapter 41, including without limitation, the requirement that Plaintiffs prove by clear-and-convincing evidence the right to recover and the elements of exemplary damages. Conwill contends that the correct burden of proof under constitutional principles is “beyond a reasonable doubt,” but at a minimum, the standard is clear-and-convincing evidence, as required by chapter 41.

17. Awarding punitive damages would violate Conwill’s constitutional rights, including his rights to equal protection and due process under Article I, Sections 3, 13, and 19 of the Texas Constitution and the Fifth and Fourteenth Amendments to the United States Constitution. Awarding punitive damages would also be an unconstitutional taking under Article I, Section 17 of the Texas Constitution. In addition, awarding punitive damages would violate the prohibitions against excessive fines and cruel or unusual punishment under Article I, Section 13 of the Texas Constitution and the Eighth Amendment to the United States Constitution.

Among other things, awarding punitive damages would be a constitutional violation, because:

- a. Texas law regarding punitive damages is unconstitutionally vague and does not provide sufficient notice of the conduct that could be punished and the severity of the punishment;
- b. The unconstitutional vagueness of Texas law results in arbitrary and discriminatory awards;
- c. Texas law does not provide adequate substantive and procedural safeguards to prevent arbitrary, excessive, and unconstitutional awards;
- d. Texas law does not provide adequate and meaningful guidance to fact finders when they award punitive damages, leaving such awards to arbitrary determinations by the fact finders;
- e. Texas law does not require that liability for and the amount of punitive damages be proven beyond a reasonable doubt;

- f. Punitive damages are a windfall to plaintiffs, making such damages an unconstitutional taking; and
- g. Punitive damages are not available for lawful conduct inside of Texas, for conduct outside of Texas, for conduct that has already been punished, for the conduct of another party, or for harm to others besides the plaintiff.

18. Conwill pleads that all of his actions were specifically authorized by the Trust Agreement made as of January 1, 1983, including conducting royalty sales, obtaining loans to pay the Trust's expenses, paying the Trustees' compensation, and obtaining D&O insurance. Conwill pleads the provisions of the Trust Agreement, including, without limitation, the following:

- a. Pursuant to Section 2.02 of the Trust, one of the purposes of the Trust is to "pay or provide for the payment of any liabilities incurred in carrying out the purposes of the Trust, and thereafter to distribute the remaining amounts received by the Trust pro rata to the owners of the Units."
- b. Pursuant to Section 3.03, the unit holders "take and hold the Unit subject to all the terms and provisions of this Trust Agreement."
- c. Pursuant to Section 6.01, the Trustees are "authorized" to ... take such actions as in their judgment are necessary, desirable or advisable to achieve the purpose of the Trust."
- d. Pursuant to Section 6.06, the Trust Agreement provides that the Trustees "shall use all money received by the Trust for the payment of all liabilities of the Trust, including but not limited to all expenses, taxes, and liabilities incurred of all kinds, compensation to the Trustees for their services..."
- e. Pursuant to Section 6.08, in the event of borrowing money to cover Trust's costs, "the Trustees shall suspend further Trust distributions ... until the indebtedness created by such borrowing has been paid in full."
- f. Pursuant to Section 6.11, "[t]he Trustees are authorized to maintain and defend, and to settle, in the Trust's name any claim or controversy by or against the Trust without the joinder or consent of any Certificate Holder or owner of a Unit."
- g. Pursuant to Section 6.13 of the Trust Agreement, "[t]he powers granted the Trustees under this Trust Agreement may be exercised upon such terms as the Trustees deem advisable and may affect the Trust properties for any length of time regardless of the duration of the Trust."

- h. Pursuant to Section 6.14 of the Trust Agreement, “[t]he Trustees shall be under no obligation to ... dispose of any wasting assets.” The Trust Agreement specifically relieved the Trustees of any duty to dispose of any Trust assets at any particular time.
- i. Pursuant to Section 7.01 of the Trust Agreement, “[t]he Trustees are empowered to act in their discretion and shall not be personally or individually liable for any act or omission except in the case of gross negligence, bad faith or fraud.”
- j. Pursuant to Section 7.03 of the Trust Agreement, “[t]he Trustees shall be indemnified by, and receive reimbursement from, the Trust Estate against ... any and all liability, expense (including counsel fees and expenses incurred in preparing for and defending claims or suits), ... or loss incurred by them individually or as Trustees in the administration of the Trust [except for] gross negligence, bad faith or fraud...” Moreover, this Section provides the Trustees “shall have a lien upon the Trust Estate to secure them for such indemnification and reimbursement and for compensation to be paid to the Trustees.”
- k. Pursuant to Sections 7.04 and 7.05 of the Trust Agreement, the Corporate Trustee and the Individual Trustees are entitled to compensation for their services, as set forth in the Trust Agreement.
- l. Section 7.06 of the Trust Agreement provides: “To perform any act required or permitted by this Trust Agreement, the Trustees may ... be required to ... consult with . . . accountants, geologists, engineers and other parties deemed by the Trustees to be qualified as experts on the matters submitted to them ... and the opinion ... of any such parties on any matter submitted to them by the Trustees shall be full and complete authorization and protection in respect to any action taken or suffered by them hereunder in good faith and in accordance with the opinion”
- m. Pursuant to Section 9.01, the Trust Agreement’s termination provisions were not triggered.

Conwill would show this Court that the claims asserted by Plaintiffs are all barred by the language quoted above, with the clarification that with respect to Section 7.06 of the Trust Agreement, Conwill is not at this time asserting the defense of advice of counsel.

19. Conwill relies upon Texas Property Code, Section 112. 054, which sets forth the limited circumstances in which modification or termination of a trust should be sought. The Trustees’ decision to seek judicial termination of the Trust in 2014 was an extraordinary measure.

20. Conwill pleads the defense of mitigation of damages.

21. Conwill pleads that they are likely to succeed on the merits of this case and have a probable right to the relief they seek.

22. Conwill pleads that they are entitled to recover attorney's fees and reimbursement of costs as are equitable and just pursuant to Section 114.064 of the Texas Trust Code.

23. Conwill files this Original Answer in good faith and with just cause. Conwill respectfully reserves the right to file an Amended Answer in this case in the manner authorized by the Texas Rules of Civil Procedure.

**III.
CONWILL'S COUNTERCLAIM FOR ATTORNEYS' FEES**

24. Conwill, as Counter-Plaintiff, asserts the following Counterclaim against Ad Litem, RNR Production Land and Cattle, and Albert and Joyce Speisman ("Counter-Defendants"), and in support thereof, respectfully shows as follows:

25. In accordance with Section 114.064 of the Texas Trust Code and Chapter 38.007(8) of the Texas Civil Practices & Remedies Code, Conwill is entitled to recover his attorneys' fees and reimbursement of costs.

26. Conwill has retained the law firm of Norton Rose Fulbright US LLP to represent him in this proceeding and has agreed to pay Norton Rose Fulbright reasonable and necessary attorneys' fees, costs, and expenses. An award of reasonable and necessary attorneys' fees and expenses to Conwill would be equitable and just pursuant to Section 114.064 of the Texas Trust Code.

**IV.
PRAYER**

WHEREFORE, Defendant/Counter-Plaintiff Daniel O. Conwill, as a former Individual Trustee of the TEL Offshore Trust, prays that Plaintiffs/Counter-Defendants Ad Litem, RNR Production Land and Cattle, and Albert and Joyce E. Speisman take nothing, and that Conwill be awarded his reasonable attorneys' fees, costs, and expenses, and pre- and post-judgment interest thereon.

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP



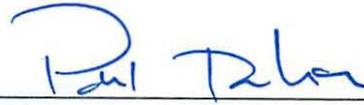
Paul Trahan (Texas Bar No. 24003075)
paul.trahan@nortonrosefulbright.com
Peter Stokes (Texas Bar No. 24028017)
peter.stokes@nortonrosefulbright.com
98 San Jacinto Boulevard, Suite 1100
Austin, Texas 78701-4255
Telephone: (512) 474-5201
Facsimile: (512) 536-4598

Daniel M. McClure (Texas Bar No. 13427400)
Dan.mcclure@nortonrosefulbright.com
1301 McKinney, Suite 5100
Houston, TX 77010
Telephone: (713) 651-5159
Facsimile: (713) 651-5246

ATTORNEYS FOR DANIEL O. CONWILL

CERTIFICATE OF SERVICE

I hereby certify that, on January 6, 2017, a true and correct copy of the foregoing has been served via Texas e-filing and email on counsel for RNR Production Land and Cattle, Ad Litem, counsel for Ad Litem, counsel for Albert and Joyce E. Speisman, and counsel for Corporate Trustee, Bank of New York Mellon Trust Company, N.A. I hereby certify that all other interested parties in this matter will be served in accordance with the Court's Order Directing Method of Service dated January 21, 2016.



Paul Trahan