

not identify specifically which pleading it is adopting, or which portions of the pleading is being adopted. That is, Glenn M. Karisch, appointed by the Court to represent the interests of the unit holders of the Trust who were served by publication and did not answer or appear in this proceeding (“Ad Litem”), has filed three answers and counterclaims in this case, all of which have been superseded: (1) a First Amended Answer and Counterclaim on or about November 16, 2015, (2) a Second Amended Answer and First Amended Counterclaim on or about August 17, 2016, and (3) a Third Amended Answer and Second Amended Counterclaim on September 29, 2016. The three answers and counterclaims are not identical, and therefore it is entirely unclear which pleading Speisman is adopting. The Trustees are therefore unable to ascertain the nature and basic issues of Speisman’s claim(s). *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000); *see also* TEX. R. CIV. P. 45(b) (action must be stated in plain and concise language), TEX. R. CIV. P. 47(a) (action must be sufficient to give fair notice of claim).

3. In addition to its failure to meet the fair notice standard, the Counterclaim is defective in that it does not plead that Ad Litem’s claims (in any pleading) seek relief or liability applicable to Speisman. The Ad Litem’s filings on their face do not mention Speisman and only purport to state claims for unitholders other than Speisman who were served by publication and did not answer or appear. The Counterclaim maintains that Albert and Joyce E. Speisman “are assignees of people who were served with citations but did not answer or appear as parties in this proceeding,” but sets out no facts showing which, if any, of the 2,743 beneficiaries Ad Litem was appointed to represent may have assigned their units to Albert and Joyce E. Speisman or identify any document or assignment that purportedly assigned any causes of action to Speisman. What is more, the Counterclaim does not allege how being an assignee of “people who were served with citations but did not answer or appear as parties in this proceeding” confers standing

on Speisman to assert or succeed to the claims the Ad Litem has asserted for different unit holders.

4. Trustees further specially except that the Counterclaim impermissibly purports to adopt Ad Litem's motion for summary judgment. Trustees specially except to Speisman's attempt to move for summary judgment in a pleading as procedurally improper. *See* TEX. R. CIV. P. 45(a) ("Pleadings . . . shall be by petition and answer"); *In re S.A.P.*, 156 S.W.3d 574, 576 n.3 (Tex. 2005) ("a motion for summary judgment is not a pleading"). The reference to the Ad Litem's motion for summary judgment should be stricken from the counterclaim.

5. The Trustees also specially except to the Counterclaim's purported "incorporate[ion of] all pleadings filed herein including the Attorney Ad Litem's" as wholly insufficient and incongruous. That is, the plain meaning of that sentence would incorporate into the Counterclaim pleadings filed by the Trustees, for example. The pleadings filed by the Ad Litem do not mention Speisman or purport to set out any claims of Speisman, but rather claims of other unitholders who did not appear and answer.

6. Finally, Trustees specially except to the Counterclaim's claim for relief due to its lack of specificity. *See* TEX. R. CIV. P. 47(c) & cmt (pleading must contain a specific statement of relief sought). Speisman merely "seek[s] the same relief the Ad Litem seeks for the parties the Ad Litem represents for their benefit individually," which is neither specific nor sufficient to explain how Albert and Joyce E. Speisman are entitled to the relief sought by Ad Litem.

**IV.
PRAYER FOR RELIEF**

WHEREFORE, Gary C. Evans, Jeffrey S. Swanson, and Thomas H. Owen, Jr., as Individual Trustees, and Bank of New York Mellon Trust Co., N.A., as Corporate Trustee, pray that Albert and Joyce E. Speisman be ordered to replead to cure all pleading defects, and if they

do not cure the defects, that the Court strike Speisman's Counterclaim and dismiss all claims with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 18, 2016, a true and correct copy of the foregoing has been served via Texas e-filing and email on counsel for Albert and Joyce E. Speisman, Ad Litem, counsel for Ad Litem, and counsel for RNR Production Land and Cattle. 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.

/s/ Peter Stokes _____
Peter Stokes