

TOMMY MANION, HANES CHATHAM,
SMART LITTLE LENA SYNDICATE,

Plaintiffs/Counter-Defendants,

v.

BILL FREEMAN, JILL FREEMAN, and
BILL FREEMAN, INC.

Defendants/Counter-Plaintiffs/
Third-Party Plaintiffs,

v.

TOMMY MANION OF TEXAS, INC.,
KYLE MANION, DUNCAN INVESTMENT
FUND LTD. PARTNERSHIP, ELAINE
HALL BARCLAY, MARK KENDALL
d/b/a KENDALL FARMS, PHIL RAPP,
RONALD M. WARD INDIVIDUALLY,
RONALD M. WARD IRREVOCABLE
TRUST, JUDY ZURBRIGGEN, and
KAREN FREEMAN, KAREN CLAYCOMB,
ARCESE QUARTER HORSES USA, and
ANTOINETTE CHATHAM

Third-Party Defendants.

TOMMY MANION AND HANES
CHATHAM, as representatives of others
similarly situated,

v.

BILL FREEMAN, JILL FREEMAN, and
BILL FREEMAN, INC.

IN THE DISTRICT COURT OF

POTTER COUNTY, TEXAS

181st JUDICIAL DISTRICT

**FIRST AMENDED CLASS ACTION PETITION AGAINST
BILL FREEMAN, JILL FREEMAN, AND BILL FREEMAN, INC.**

Tommy Manion and Hanes Chatham, as representatives of a class certified by this Court by order dated February 26, 2008 (the "class"), hereby complain of Bill Freeman, Jill Freeman, and Bill Freeman, Inc., as follows:

PARTIES

1. Tommy Manion is an individual residing in Denton County, Texas.
2. Hanes Chatham is an individual residing in Tarrant County, Texas.
3. Bill Freeman is an individual residing in Cooke County, Texas. He has appeared in this lawsuit and may be served through his attorney of record.
4. Jill Freeman is an individual residing in Cooke County, Texas. She has appeared in this lawsuit and may be served through her attorney of record.
5. Bill Freeman, Inc. ("BFI") is a Texas corporation with its principal place of business in Cooke County, Texas. BFI has appeared in this lawsuit and may be served through its attorney of record.

FACTS

6. The Smart Little Lena Syndicate (the "SLLS" or "syndicate") is an ownership group formed in 1982 to own and manage an American quarter horse stallion known as "Smart Little Lena." The syndicate was formed by Bill Freeman and Hanes Chatham using a document known as the "Syndicate Agreement," attached as Exhibit A, which was signed by both Freeman and Chatham at that time and has remained the same since then. Per the terms of the Syndicate Agreement, the syndicate is a group of individual co-owners who each own interests in Smart Little Lena as tenants-in-common.
7. The Syndicate Agreement, which has been presented to, and signed by, each of the co-owners of Smart Little Lena over the ensuing years, promises in no uncertain terms that:

[i]t is not the purpose or intention of this Agreement to create, and **this Agreement shall not be considered as creating, a joint venture, partnership, or other relationship whereby any party shall be held liable for the omission or commission of any other party**¹

8. Chatham remains committed to his promise. Freeman, however, is attempting by this suit to breach his same promise for no reason other than to create personal gain for himself, notwithstanding his fiduciary obligation to the co-owners to deal with them in an honest, trustworthy, and loyal manner.

9. Since at least 2001, and up until his removal from office in 2006, Bill Freeman, acting alone, in conspiracy with his wife, Jill Freeman (who, for a time, served as syndicate secretary), through his company, BFI, and often in combination with both, has abused his position as co-manager of the syndicate by using the syndicate's business opportunities, assets, bank accounts, relationships, reputation, and records as if they were his own, for his personal gain and profit, to the detriment of the members of the class.

10. Bill Freeman has caused the syndicate to pay Jill Freeman and him excessive compensation, and to pay them both compensation to which they were not entitled. He has commingled his own funds with syndicate funds, in both his accounts and the syndicate's accounts, for his own personal gain at the expense of the members of the class in buying and selling breeding contracts, usually in the name of the syndicate. He has sold his own breeding contracts at higher prices than those allocated to the syndicate to use to offset its expenses, even though he was obligated by his duty of loyalty to put the interests of the syndicate owners before his own. He has taken for himself, and for Jill Freeman and BFI, proceeds from the sale of breeding contracts belonging to the syndicate. He has altered and forged syndicate records. He has concealed and failed to disclose, and is continuing to conceal and fail to disclose through

¹ Exhibit A at ¶12 (emphasis added).

false explanations and withheld records, his unlawful and improper activities from the members of the class, notwithstanding his duty to make full and timely disclosure to them of all material facts affecting their interests.

11. The activities described in this petition have damaged the members of the class by lessening the value of their ownership interests and their breeding contracts, and by depleting the syndicate's assets, which belong to the owners. Those same activities have also benefited the Freemans and BFI to the extent of many hundreds of thousands of dollars and the acquisition of several valuable assets.

COUNT ONE – DECLARATORY JUDGMENT

12. The foregoing paragraphs are incorporated herein.

13. Despite the clear language of the Syndicate Agreement, which states that "[i]t is not the purpose or intention of this Agreement to create, and this Agreement shall not be considered as creating, a joint venture, partnership, or other relationship whereby any party shall be held liable for the omission or commission of any other party," Bill Freeman, Jill Freeman, and BFI have asserted derivative liability claims against numerous members of the class. Specifically, Bill Freeman, Jill Freeman, and BFI contend that the named co-owners of Smart Little Lena are "jointly and severally liable to pay all damages assessed in this lawsuit [against Tommy Manion, Hanes Chatham, Kyle Manion, Ron Ward, Karen Freeman, or Antoinette Chatham], as partners in the syndicate, members of a joint venture, or as principals responsible for the conduct of their agents, Manion and Chatham." Based on the Freemans' logic, all co-owners of Smart Little Lena, both those they have named and those they have not named, are jointly and severally liable for one another's acts.

14. Pursuant to the Declaratory Judgments Act, Chapter 37 of the Texas Civil Practice and Remedies Code, the class asks this Court to declare the rights, status, and legal relations between the class members and the Freeman parties. Specifically, the class seeks a declaration from this Court that the class members are not "jointly and severally liable to pay all damages assessed in this lawsuit, as partners in the syndicate, members of a joint venture, or as principals responsible for the conduct of their agents, Manion and Chatham," as alleged in the Freeman parties' counterclaims against them.

COUNT TWO – MISAPPROPRIATION AND CONVERSION

15. The foregoing paragraphs are incorporated herein.

16. Through the acts described above, the Freemans and BFI have misappropriated and converted assets of the syndicate. The class now sues Bill Freeman, Jill Freeman, and BFI, jointly and severally, for its share of the amount and value of those assets as actual damages in an amount within the jurisdictional limits of this Court.

COUNT THREE – BREACH OF FIDUCIARY DUTY

17. The foregoing paragraphs are incorporated herein.

18. The Freemans' acts described above were breaches of both of their fiduciary duties of full disclosure, due care, and loyalty. The Freemans committed these breaches alone and separate from each other, knowingly in participation with each other, knowingly in conspiracy with each other, and using BFI as their alter-ego and means of committing some of such wrongful acts. The class now sues them all, jointly and severally, to recover its share of all profit and gain that they realized from their breaches of duty to the syndicate, to recover its share of all damages which they caused the syndicate by such activities in an amount within the jurisdictional limits of this Court, and for the imposition of constructive trusts in the class' favor

on all assets that were in any way acquired, enhanced, or retained as a direct or indirect result of such wrongful acts.

COUNT FOUR – BREACH OF CONTRACT

19. The foregoing paragraphs are incorporated herein.

20. Bill Freeman, in his capacity as a co-owner of Smart Little Lena, signed the Syndicate Agreement, in which he agreed to not sell or otherwise transfer any ownership interest without first offering the co-owners the first right to purchase the interest.² Bill Freeman breached that contract by entering into certain half-share partnerships without first making the required offers and, as a result, the members of the class have been injured in an amount within the jurisdictional limits of this Court.

COUNT FIVE – VIOLATIONS OF TEXAS THEFT LIABILITY ACT

21. The foregoing paragraphs are incorporated herein.

22. Through the conduct described in this petition, the Freeman parties unlawfully appropriated, secured, or stole property belonging to the class, as co-owners in the syndicate, without the class members' consent and with the intent to deprive the members of the class of that property in violation of the Texas Theft Liability Act, Tex. Civ. Prac. & Rem. Code Ann. § 134.001, *et seq.* Consequently, the class has been damaged in an amount within the jurisdictional limits of this Court.

COUNT SIX – EXEMPLARY DAMAGES

23. The foregoing paragraphs are incorporated herein.

24. Bill Freeman and Jill Freeman, and Bill Freeman, Inc. have committed intentional acts of misappropriation, conversion, and breach of fiduciary duty. They committed these

² Exhibit A.

intentional wrongs alone and separate from each other, knowingly in participation with each other, knowingly in conspiracy with each other, and using BFI as their alter-ego and means of committing some of such wrongful acts. The class sues Bill Freeman, Jill Freeman, and BFI for exemplary or punitive damages under Chapter 41 of the Texas Civil Practice and Remedies Code.

COUNT SEVEN – ATTORNEY'S FEES

25. The foregoing paragraphs are incorporated herein.

26. The law firms of Thomas & Blackwood, LLP and Winstead PC have been retained in connection with the Freeman parties' actions described above and to pursue the claims set forth herein. Pursuant to the Syndicate Agreement and Chapters 37, 38, and 134 of the Texas Civil Practice and Remedies Code, the class is entitled to recover its reasonable attorney's fees incurred herein.

WHEREFORE, PREMISES CONSIDERED, Tommy Manion and Hanes Chatham, as representatives of the class, request that upon final trial, they have judgment against Bill Freeman, Jill Freeman, and BFI for:

- a. declaratory relief as requested herein;
- b. actual damages in an amount within the jurisdictional limits of this Court;
- c. a judgment decreeing a constructive trust in the class' favor on all assets that were in any way acquired, enhanced, or retained as a direct or indirect result of the Freeman parties' breaches of fiduciary duty;
- d. a judgment ordering the Freeman parties, as constructive trustee, to convey all assets that were in any way acquired, enhanced, or retained as a direct or indirect result of the Freeman parties' breaches of fiduciary duty to the members of the class;
- e. exemplary damages;
- f. attorney's fees;

- g. costs of court;
- h. prejudgment and post-judgment interest; and
- i. such other and further relief to which they may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR TOMMY MANION AND
HANES CHATHAM, AS REPRESENTATIVES
OF OTHERS SIMILARLY SITUATED**

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2008, a true and correct copy of the foregoing was served via facsimile upon the following counsel of record:

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