

NO. 2019-001047-2

DAISHA CHILDRRESS § **IN THE COUNTY COURT AT LAW**
§
v. §
§ **COURT NO. TWO**
CHAD EDWARD SNYDER, JENNIFER §
SUZANNE SNYDER AND LEGACY §
BOXER RESCUE, INC. § **TARRANT COUNTY, TEXAS**

PLAINTIFF'S SPECIAL EXCEPTIONS TO COUNTERCLAIMS

TO THE HONORABLE JUDGE OF THE COURT:

Defendant, Daisha Childress, files these Special Exceptions to Defendants' counterclaims and in support hereof will show the following:

Tortious interference with existing contract

1. Plaintiff specially excepts and objects to Paragraph 6 of Defendants' Original Answer and Counterclaim in which Defendants allege that Plaintiff committed tortious interference with an existing contract. Defendants do not claim that Plaintiff's conduct caused a contract to be breached. This is an essential element of tortious interference with contract. See *John Paul Mitchell Sys. v. Randalls Food Markets, Inc.*, 17 S.W.3d 721, 730 (Tex.App.-Austin 2000, pet. denied); see *All Am. Tel., Inc. v. USLD Commc'ns, Inc.*, 291 S.W.3d 518, 532 (Tex.App.-Fort Worth 2009, pet. denied). The Court should sustain this special exception and order Defendants to replead and either allege a breach of contract or remove their claim of tortious interference.

"Unjust enrichment"

2. Plaintiff specially excepts and objects to Paragraph 6.3 of Defendants' Original Answer and Counterclaim in which Defendants apparently attempt to allege a cause of action for unjust enrichment. Unjust enrichment is not recognized as an independent cause of action in Texas. See *Davis v. OneWest Bank N.A.*, No. 02-14-00264-CV (Tex. App.-Fort Worth, Apr. 9, 2015, pet. denied)(2015 Tex. App. Lexis 3470)(mem. op.) citing *Argyle Indep. Sch. Dist. v. Wolf*, 234 S.W.3d 229, 246 (Tex. App.-Fort Worth 2007, no pet.); *Friberg-Cooper Water Supply Corp. v. Elledge*, 197 S.W.3d 826, 832 (Tex. App.—Fort Worth 2006), rev'd on other grounds, 240 S.W.3d 869 (Tex. 2007).

3. Further, one of the essential elements of unjust enrichment is that one party *has obtained* a benefit from another. *Id.* Defendants do not allege that Plaintiff has obtained any benefit from Defendants.¹ The Court should sustain this special exception and order Defendants to replead and either allege that Plaintiff has obtained some sort of benefit from Defendants or remove their allegation of unjust enrichment.

Spoliation Instruction

4. Plaintiff specially excepts and objects to Paragraph 7 of Defendants' Original Answer and Counterclaim in which Defendants request that the jury be given a spoliation instruction. A requested jury instruction is not a matter to be included in a party's pleadings. *See* Tex. R. Civ. P 45, 85. The Court should sustain this special exception and order Defendants to replead and remove their requested jury instruction.

WHEREFORE, Plaintiff, Daisha Childress, moves the Court to sustain her special exceptions and order Defendants to replead as requested herein.

Respectfully submitted,

/s/ Randall E. Turner

Texas State Bar No.: 20328310

LAW OFFICES OF RANDALL E. TURNER, PLLC

5017 El Campo Ave.

Fort Worth, TX 76107

Direct line: (817) 420-9690

Fax: (817) 887-5717

www.randyturner.com

Email: randy@randyturner.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

In accordance with Rule 21a of the Texas Rules of Civil Procedure, I hereby certify that on March 20, 2019 a true and correct copy of the above and foregoing document was served electronically through the electronic filing manager to the email addresses of all attorneys of record and pro se parties whose email addresses are on file with the electronic filing manager.

/s/ Randall E. Turner

¹ To the extent that Defendants are claiming Plaintiff may receive a benefit sometime in the future, Defendants' claim is not ripe and thus not justiciable. *See Perry v. Del Rio*, 66 S.W.3d 239, 249 (Tex. 2001); *Patterson v. Planned Parenthood of Houston & Se. Tex., Inc.*, 971 S.W.2d 439, 442-443 (Tex. 1998). "A case is not ripe if its resolution depends on contingent facts or upon events that have yet to come to pass." *Id.* at 443.