

**IN THE 82nd DISTRICT COURT
ROBERTSON COUNTY, TEXAS**

In the Matter of the Estate of

**MARIUM JEANETTE OSCAR,
deceased**

Cause No. 11-09-18,927-CV

**CALVERT HISTORICAL
FOUNDATION,
Plaintiff,**

v.

**JOHN C. PASCHALL,
Defendant**

FOURTH AMENDED PETITION

NOW COMES Calvert Historical Foundation, the Plaintiff herein, and alleges and states the following:

JURISDICTION AND VENUE

1. Venue and jurisdiction are properly in this Court because administration of the estate is already pending in this Court.

DISCOVERY LEVEL

2. The Plaintiff brings this case under Discovery Level III, Tex. R. Civ. Pro. 190.4.

PARTIES

3. Plaintiff Calvert Historical Foundation is a non-profit foundation organized under the laws of Texas and located in Calvert, Texas. It is an interested party under Chapter 149A of

the Texas Probate Code. The Plaintiff may be served via the undersigned counsel of record.

4. John Gilbert and Marsha Gilbert hereby announce that they are nonsuiting their claims in this case.

5. Defendant John Paschall is the former district attorney for Robertson County, Texas, and he is the executor of the estate of Marium Jeanette Oscar. He may be served via his counsel of record in this case.

FACTS

6. Before her death on November 20, 2004 at age 95, Marium Oscar was the sole survivor of a once-thriving Jewish community that had arrived in Calvert before the Civil War. Sadly, Ms. Oscar wandered the streets of Calvert as a pauper during many of her later years, notwithstanding considerable wealth that she inherited from her family.

7. In 1992, one of Ms. Oscar's friends took her to see Defendant Paschall, the newly-elected Robertson County District Attorney, to help get her possessions in order following the death of her sister, Rebecca Oscar, in 1991. Marium Oscar was the sole heir of her sister. According to an appraisal dated October 12, 1989, Rebecca Oscar's estate included several buildings and more than 100 acres of real estate, and it was worth \$302,781.65, all of which was inherited by Marium Oscar in 1991.

8. In a will dated July 10, 1992, Ms. Oscar designated Mr. Paschall as executor and bequeathed her estate to the "trustee of the Marium Oscar 1992 Trust."

9. On August 21, 1996, a document entitled "General Durable Power of Attorney" was filed with the Robertson County Clerk. The document is dated August 7, 1996, and Ms. Oscar's purported signature appears at the bottom. The document gave Mr. Paschall entire control over Ms. Oscar's affairs, financial and otherwise, and it named J.C. Woods as the

successor attorney in fact. Mr. Woods was a witness to Ms. Oscar's signature, as was Wendy Marchbanks (Mr. Paschall's secretary) and notary public Mildred Zan.

10. Beginning in 1985, the Internal Revenue Service placed several liens against Mr. Paschall's property for failure to pay income taxes, and he was also sued for failure to pay a school loan. In 1986 and 1987, Mr. Paschall was indicted by the Robertson County Grand Jury for misappropriating money from the county's hot check fund. The 1987 case, *i.e.*, cause number 13,530, was dismissed. However, according to records in the Robertson County District Clerk's Office, the 1986 case, *i.e.*, cause number 13,406, is still pending. In 1997, the year after Mr. Paschall gained the power of attorney, he paid off the last tax lien and he has not had another tax lien since.

11. After this lawsuit was filed, the Plaintiffs learned from Defendant Paschall's ex-wife that, while Marium Ocar was still living, Defendant Paschall would take money from Ms. Ocar's accounts whenever he needed money, then falsely claim that he had taken the money as reimbursement for work done on her behalf.

12. On November 22, 2004, Mr. Paschall filed Ms. Oscar's will with the Robertson County Clerk to be probated. In 2006, the county judge removed Mr. Paschall as executor because he failed to file an inventory of the estate as required by law. However, even though Mr. Paschall no longer had standing as executor, his attorney immediately asked the county judge to transfer the case to the district court, ostensibly because there were issues of stock and real estate ownership that might require a declaratory judgment. After the case was transferred to district court, Judge Robert M. Stem immediately reappointed Mr. Paschall as executor. To date, Mr. Paschall has never sought a declaratory judgment regarding any of the estate properties.

13. Mr. Paschall finally filed an estate inventory on November 17, 2006. Numerous items, however, are missing from the inventory. Several properties listed on the inventory already had been sold by Mr. Paschall, including a 109-acre tract of land that he sold to DonMichael L. Triolo of Bryan on April 8, 2005. On the other hand, Mr. Paschall failed to list another tract of roughly 100 acres that the estate still owned. And he failed to notify the court that he had sold the mineral estate belonging to the latter tract to Virginia Jackson on February 2, 2005, even though he had retained the surface estate. It is not clear what Mr. Paschall did with the proceeds of the sale of the mineral estate.

14. According to a former member of the Calvert city council, Ms. Oscar asked that her estate proceeds be used to build a Jewish museum in Calvert, and that some of her family's antique furniture be displayed in the museum. No proceeds have been used for a museum, and most of the antique furniture has since been destroyed as a result of neglect. Ms. Oscar made only one specific request in her will, namely, that "my body shall be buried in a Mausoleum, above ground, in a proper and decent manner." Mr. Paschall had Ms. Oscar buried beneath ground in what one witness described as the cheapest casket that the funeral home had to offer. In fact, Ms. Oscar's body would have been embalmed – a grave violation of Jewish burial customs – but for the fact that two of her Gentile friends intervened to prevent it.

15. On April 15, 2008, Mr. Paschall asked Judge Stem to retain jurisdiction over the Oscar estate, and it is still pending in the district court.

16. On April 20, 2011, the Plaintiff's predecessor in this case, acting through counsel, demanded an accounting from Defendant Paschall. The Plaintiff also requested that Defendant Paschall provide evidence that the "Marium Oscar 1992 Trust" actually exists. On May 24, 2011, Mr. Paschall refused to provide an accounting. In other words, Mr. Paschall has refused to

account for hundreds of thousands of dollars belonging to the estate, most likely because he has misappropriated the money for his own personal use, just as he did while Ms. Oscar was still living.

17. The Plaintiff alleges that it is a beneficiary or potential beneficiary of the “Marium Oscar 1992 Trust.”

CLAIMS

Accounting

18. All prior paragraphs are incorporated herein by reference.

19. Defendant Paschall refuses to account for hundreds of thousands of dollars belonging to the estate of Marium Jeanette Oscar. Defendant Paschall owes an accounting to the Plaintiff under §149A of the Texas Probate Code. The Plaintiff also requests an equitable accounting.

Unjust Enrichment

20. All prior paragraphs are incorporated herein by reference.

21. The Plaintiff asserts claims against Defendant Paschall for unjust enrichment as well as money had and received.

Breach of Fiduciary Duty

22. All prior paragraphs are incorporated herein by reference.

23. Defendant Paschall breached his fiduciary duties and is liable for damages.

Equitable Relief

24. All prior paragraphs are incorporated herein by reference.

25. The Plaintiff demands equitable relief, including the imposition of a constructive trust and/or resulting trust over any property that purportedly belonged to the Marium Oscar

1992 Trust.

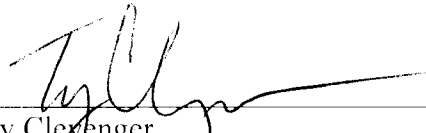
REQUEST FOR DISCLOSURE

The Plaintiff hereby requests that the Defendant disclose those items set forth in Texas Rule of Civil Procedure 194.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully pray that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendant, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,



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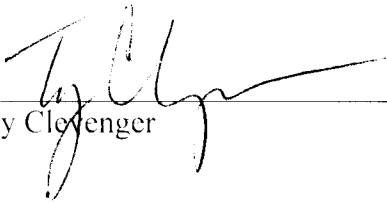
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion was provided to the individual below via the means indicated on June 3, 2013:

Mr. Bryan F. Russ, Jr., Counsel for Defendant
Palmos, Russ, McCullough & Russ, LLP
P.O. Box 909
Hearne, Texas 77859
Facsimile: (979) 279-3712

VIA MAIL AND FACSIMILE



Ty Clefenger