

IN THE 82<sup>nd</sup> DISTRICT COURT  
ROBERTSON COUNTY, TEXAS

In the Matter of the Estate of

MARIUM JEANETTE OSCAR,  
deceased

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

MARSHA GILBERT and JOHN  
GILBERT,  
Plaintiffs,

v.

JOHN C. PASCHALL  
Defendant

FILED FOR RECORD

2012 FEB 21 PM 4:40

BARBARA W. AXTELL  
CLERK DISTRICT COURT  
ROBERTSON COUNTY, TEXAS

**SECOND AMENDED PETITION**

NOW COME Marsha Gilbert, and John Gilbert, the Plaintiffs herein, and allege and state 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 Plaintiffs bring this case under Discovery Level III, Tex. R. Civ. Pro. 190.4.

PARTIES

3. Plaintiff Marsha Gilbert resides at 8255 Kingsbrook Rd. #145, Houston, Texas 77024. She is a first cousin, twice removed, and an heir of the decedent, Marium Jeanette Oscar,

and she is an interested party under Chapter 149A of the Texas Probate Code.

4. John Gilbert resides at 8980 Lakes at 610 Drive, Suite 20, Houston, Texas 77054. He is a first cousin, twice removed, and an heir of the decedent, Marium Jeanette Oscar, and he is an interested party under Chapter 149A of the Texas Probate Code.

5. Defendant John Paschall is the district attorney for Robertson County, Texas, and he is the executor of the estate of Marium Jeanette Oscar. He may be served at his office in the Robertson County Courthouse in Franklin, Texas.

### 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, and apparently prepared by Mr. Paschall, 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, Cause No. 13,530, was dismissed. However, according to records in the Robertson County District Clerk's Office, the 1986 case, Cause No. 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. 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 this date, Mr. Paschall has never sought a declaratory judgment regarding any of the estate properties.

12. 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.

13. 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.

14. 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.

15. On April 20, 2011, the Plaintiffs, 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, and he has failed to provide evidence that the trust was ever created. 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.

## CLAIMS

### *Accounting*

14. All prior paragraphs are incorporated herein by reference.

15. 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 Plaintiffs under §149A of the Texas Probate Code. The Plaintiffs also request an equitable accounting.

### *Unjust Enrichment*

16. All prior paragraphs are incorporated herein by reference.

17. The will of Marium Oscar is invalid because no trust was ever created. Under the law of intestacy, the Plaintiffs inherit from the estate. The Plaintiffs assert claims against Defendant Paschall for unjust enrichment as well as money had and received.

### *Breach of Fiduciary Duty*

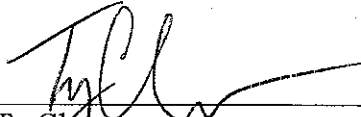
18. All prior paragraphs are incorporated herein by reference.

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

## 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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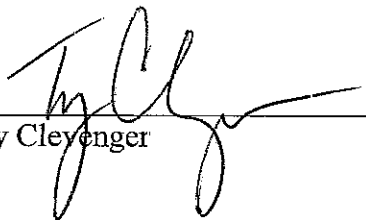
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing motion was provided to the individual below via the means indicated on February 21, 2012:

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

VIA HAND DELIVERY

  
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Ty Clevenger