

CAUSE NO. 16-04-19,991-CV

CITY OF HEARNE,

Plaintiff,

vs.

MILTON JOHNSON,

Defendant, Counter-Plaintiff,
and Cross-Claimant

vs.

**CITY OF HEARNE, BRYAN F. RUSS,
JR., and PALMOS, RUSS,
McCULLOUGH & RUSS, LLP**

Counter-Defendant and
Cross-Defendants

**82nd District Court
Robertson County, Texas**

ANSWER, GENERAL DENIAL, COUNTER-PETITION and CROSS-PETITION

NOW COMES Milton Johnson, the Defendant, and files this answer, general denial, counter-petition, and cross-petition:

Answer and General Denial

Mr. Johnson generally denies the claims of the Plaintiff and demands strict proof in support of its claims against him.

Counter-Petition and Cross-Petition

A. Parties

1. Milton Johnson is the Defendant and Counter-Plaintiff and Cross-Claimant in the case listed above. He may be served with process via the undersigned counsel.

2. The City of Hearne, a Texas municipality, is the Plaintiff and Counter-Defendant. It

may be served with process via its attorney of record.

3. Bryan F. “Rusty” Russ is a Cross-Defendant. He is the city attorney for the City of Hearne, and he may be served with process at 306 Cedar Street, Hearne, Texas 77859.

4. Pamos, Russ, McCullough, & Russ, LLP (“The Firm”) is a Cross-Defendant. Mr. Russ is a partner in the Firm, and it contracts with the City of Hearne to provide legal services. The Firm may be served with process at 306 Cedar Street, Hearne, Texas 77859.

B. Facts

5. Mr. Johnson was among several residents of the City of Hearne who organized an initiative petition to force a forensic audit of city finances. Other organizers included Councilwoman Shirley Harris, City Council candidates Rodrick Jackson and Martha Castelijja, and resident Ola May Harris. The petition drive was motivated by revelations that city officials were misappropriating city funds, *e.g.*, the indictment of City Manager Pee Wee Drake for mishandling city funds, as well as evidence that city funds were used to purchase flat-screen televisions for city employees and football tickets for Councilman Michael Werlinger. The organizers also wanted auditors to investigate evidence that city officials tampered with utility bills to punish their enemies and reward their allies. In one instance, Rodrick Jackson's utility service was disconnected immediately after he began questioning city finances, even though his utility bill was fully paid. On the other hand, Sylvia Montelongo, the president of the Hearne ISD school board and the sister of Mayor Ruben Gomez, wrote almost fifty thousand dollars worth of hot checks for utility services and owed the city thousands of dollars in unpaid utility bills, yet her utility service was never disconnected.

6. As of March 21, 2016, Mr. Johnson and his colleagues had gathered signatures from 517 voters in support of the forensic audit ordinance, and they submitted the signed petitions to

the city clerk. Normally, the city clerk forwards such petitions to the county elections administrator, who verifies that the petitioners are registered voters of the City of Hearne. On this occasion, however, Mr. Russ intercepted the petitions and held them at his private office until April 7, 2016, thereby preventing them from being certified. Both the Firm and the City of Hearne were aware that Mr. Russ was holding the petitions, and they ratified his actions.

7. On April 8, 2016, Robertson County Elections Administrator Trudy Hancock hand-delivered a letter to Mr. Russ stating that there were only 318 signatures on the petitions, and 35 of the signers were not registered voters. That is far fewer than the 517 signatures gathered by Mr. Johnson and his colleagues, and it is not enough signatures to place the initiative on the ballot. Mr. Russ, however, did not share Ms. Hancock's letter with the city council, Mr. Johnson, or any of the other petition organizers. Mr. Johnson only learned about the letter because the undersigned attorney obtained a copy from Ms. Hancock on the morning of April 21, 2016. According to Ms. Hancock, the cover sheet on the petitions stated that there were 93 pages, but she did not receive 93 pages. Apparently Mr. Russ provided Ms. Hancock *only* with the signatures gathered by Mr. Johnson, and not the signatures gathered by Shirley Harris, Ola May Harris, and the other organizers. Whether this was intentional or not, it could have been corrected immediately if Mr. Johnson and his colleagues had been informed of the April 8, 2016 letter.

8. Under normal circumstances, petition organizers would have been informed of deficiencies, *e.g.*, a shortage of signatures, by the City of Hearne. Instead, Mr. Russ concealed Ms. Hancock's letter in order to keep Mr. Johnson and his colleagues from providing all of the signatures to Ms. Hancock. In other words, Mr. Russ concealed the letter in order to keep the initiative off of the ballot. Mr. Russ did this because he is desperately afraid that a forensic audit

will reveal criminal misconduct by his political allies, and that prosecution of those allies could ultimately lead to the prosecution of Mr. Russ.

C. Claims

9. Mr. Russ violated Mr. Johnson's First Amendment right to petition for redress of grievances and is liable for damages under 42 U.S.C. §1983 because he intercepted and held the initiative petitions in order to prevent their certification. The City of Hearne and the Firm are liable for damages under 42 U.S.C. §1983 because Mr. Russ was acting as an agent of both entities, and they ratified his unlawful acts. Mr. Russ is also liable for damages under 42 U.S.C. §1983 because he concealed Ms. Hancock's April 8, 2016 letter in order to keep the initiative off of the ballot, thereby violating Mr. Johnson's First Amendment right to petition for redress of grievances as well as his Fourteenth Amendment right to equal protection. The Firm is also liable for damages because it ratified Mr. Russ's unlawful conduct, and the City of Hearne is liable for its failure to supervise Mr. Russ. The City of Hearne has long known that Mr. Russ is corrupt and dishonest, and that he routinely violates the law to serve his own interests, yet the City of Hearne has taken no corrective action. Mr. Johnson does not bring claims against Mr. Russ, the Firm, or the City of Hearne for the filing of this lawsuit, nor for any activities related to Mr. Russ's role in representing the City of Hearne in this litigation as its attorney. Mr. Johnson seeks nominal and actual damages from the Firm, the City of Hearne and Mr. Russ, as well as exemplary damages from the Firm and Mr. Russ. Mr. Johnson further seeks an injunction prohibiting the Firm, the City of Hearne, and Mr. Russ from interfering with his right to petition via initiative and referendum. Finally, Mr. Johnson seeks costs and attorney fees from the Firm, the City of Hearne and Mr. Russ pursuant to 42 U.S.C. §1988.

PRAYER

Mr. Johnson asks the Court to enter a take-nothing judgment for the City of Hearne on its claims. He further asks the Court to enter judgment against the Firm, the City of Hearne and Mr. Russ for violating his civil rights, further awarding him damages, costs, and attorney fees as described above. Finally, Mr. Johnson asks the Court to enjoin Mr. Russ, the Firm and the City of Hearne from interfering with his right to petition for redress of grievances.

THE DEFENDANT DEMANDS A JURY TRIAL.

Respectfully submitted,

/s/ Ty Clevenger

Ty Clevenger

Texas Bar No. 24034380

21 Bennett Avenue #62

New York, New York 10033

Tel: (979) 985-5289

Fax: (979) 530-9523

tyclevenger@yahoo.com

Attorney for Plaintiff Milton Johnson

CERTIFICATE OF SERVICE

I certify that on April 21, 2016 a copy of the foregoing document was provided to the following attorneys via facsimile and email attachment:

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney
City of Hearne
P.O. Box 909
Hearne, Texas 77859
(979) 279-3712 (fax) / *bryanruss@palmousruss.com*

/s/ Ty Clevenger
Ty Clevenger
