

NO. 4222-A

BOB MARSHALL DENISON
Plaintiff,

V.

**JOHN WAYNE DENISON, AS
INDEPENDENT EXECUTOR OF
ESTATE OF IDA BALDWIN
DENISON, DECEASED**
Defendant.§
§
§
§
§

IN THE DISTRICT COURT

39TH JUDICIAL DISTRICT

§

§ OF STONEWALL COUNTY, TEXAS

DEFENDANT'S MOTION FOR NO EVIDENCE SUMMARY JUDGMENT

NOW COMES Defendant, **John Wayne Denison**, individually as named Defendant in the above-entitled and numbered cause, and, in the alternative, as Independent Executor of Estate of Ida Baldwin Denison, Deceased, Movant herein, and brings this Motion for No Evidence Summary Judgment, and in support hereof, shows the court the following:

I.

A. An adequate time for discovery by Plaintiff has passed.

1. This suit was filed on March 9, 2000.

2. **Over two years have passed since this cause was filed.**

II.

A. As a matter of law, Plaintiff has no standing to sue in a derivative capacity on behalf of the Estate of Ida Baldwin Denison, Deceased, and cannot obtain relief in that capacity.

B. **As a matter of law, Plaintiff cannot sue in the capacity of a beneficiary of the testamentary trust to be created under the Will of Ida Baldwin Denison, Deceased, because no such**

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BETTY L. SMITH, Clerk
Betty L. Smith Clerk/Deputy

trust yet exists.

C. As a matter of law, Plaintiff cannot recover from John Wayne Denison individually.

D. As a matter of law, Plaintiff cannot recover from John Wayne Denison as Trustee because no trust exists.

F. As a matter of law, Plaintiff's claims are barred by limitations.

G. Plaintiff has filed a claim against Movant seeking affirmative relief for Breach of Fiduciary Duty with Respect to the Administration.

1. There is no evidence of one or more of the following elements of Breach of Fiduciary Duty with Respect to the Administration on which Plaintiff has the burden of proof at trial:

- a. That Plaintiff and Defendant had a fiduciary relationship.
- b. That Defendant has breached any fiduciary duty to Plaintiff, specifically:
 - i. That Defendant owed the duty of prudence to Plaintiff.
 - ii. That Defendant has breached any duty of prudence.
 - iii. That Defendant has caused damage to the Estate by losing, destroying or converting property.
 - iv. That Defendant owed the duty of loyalty to Plaintiff.
 - v. That Defendant has breached any duty of loyalty to Plaintiff.
 - vi. That Defendant has failed to act in good faith.
 - vii. That Defendant acted in bad faith.
 - viii. That Defendant engaged in self-dealing.

- ix. That Defendant owed the duty to fully and fairly disclose to Plaintiff all matters pertinent to the Estate.
- x. That Defendant has breached any duty to fully and fairly disclose to Plaintiff all matters pertinent to the Estate.
- xi. That Defendant owed the duty of impartiality to Plaintiff.
- xii. That Defendant has breached any duty of impartiality to Plaintiff.

- c. That Defendant's breach, if any, of any fiduciary duty, if any, owed to Plaintiff, resulted in injury to Plaintiff or in any benefit to the Defendant.

B. Plaintiff has filed a claim against Movant seeking affirmative relief for Constructive Fraud.

1. There is no evidence of one or more of the following elements of Constructive Fraud on which Plaintiff has the burden of proof at trial:

- a. That Plaintiff and Defendant had a fiduciary Relationship.
- b. That Defendant breach any fiduciary duty.
- c. That Defendant's breach, if any, of any fiduciary duty, if any, owed to Plaintiff, resulted in injury to the Plaintiff or benefit to the Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant, John Wayne Denison, prays that this Honorable Court will dismiss Plaintiff's claims, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

LAW OFFICE OF ISAAC M. CASTRO

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By: 

ISAAC M. CASTRO
Texas Bar No. 03997450

**Attorney for Defendant, John Wayne Denison, as
Independent Executor of Estate of Ida Baldwin
Denison, Deceased**

NOTICE OF HEARING

The above and foregoing Defendant's Motion for No Evidence Summary Judgment is set for hearing on June 17, 2002, at 9:00 A.M., in the 39th Judicial District Court of Stonewall County, Texas.


ISAAC M. CASTRO

CERTIFICATE OF SERVICE

I certify that on **May 24, 2002** a true and correct copy of Defendant's Motion for No Evidence Summary Judgment was served by facsimile transmission on the following counsel of record:

Suzie Shay at 806/763-7536

Ken Leggett at 677-4195

Mark Zachary at 676-8836


ISAAC M. CASTRO