

CAUSE NO. _____

**JOHN TOWNES VAN ZANDT II,
WILLIAM VINCENT VAN ZANDT, and
KATIE BELLE VAN ZANDT, a Minor,
by and Through Her Next Friend,
JEANENE VAN ZANDT,**

Plaintiffs,

v.

HAROLD F. EGGERS, JR.,

Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, T E X A S

_____ **JUDICIAL DISTRICT**

PLAINTIFFS' ORIGINAL PETITION

John Townes Van Zandt II ("JT"), William Vincent Van Zandt ("William"), and Katie Belle Van Zandt ("Katie Belle"), a Minor, by and Through Her Next Friend, Jeanene Van Zandt ("Jeanene"), Plaintiffs, file this Original Petition against Harold F. Eggers, Jr. ("Eggers"), Defendant, and show the following in support.

I. DISCOVERY CONTROL PLAN

1. Plaintiffs pleads that discovery should be conducted in accordance with a Level 2 discovery control plan, pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

II. PARTIES

- 2. JT is an individual residing in Spicewood, Burnet County, Texas.
- 3. William is an individual residing in Smyrna, Rutherford County, Tennessee.

4. Katie Belle is a minor individual residing in Smyrna, Rutherford County, Tennessee, with her next friend and mother, Jeanene.

5. Eggers is an individual residing in Austin, Travis County, Texas, and may be served with process at his residence and/or business address of 1705 Crossing Place, #126B, Austin, Texas 78741, or at his other residence address of 8205 Roan Lane, Austin, Texas 78736.

III. JURISDICTION AND VENUE

6. Jurisdiction and venue are proper in Travis County, Texas, as Eggers is a resident of and/or conducts his business in Travis County, Texas, and some of the acts complained of took place in Travis County, Texas.

IV. FACTUAL BACKGROUND

7. John Townes Van Zandt ("Townes") was one of Texas's and the world's most gifted songwriters who inspired numerous artists and who arguably wrote some of the most beautiful and haunting melodies and poetry ever recorded. At the time of Townes' death on January 1, 1997, at the age of 53, he had three children: JT, William, and Katie Belle. Under the Last Will and Testament of Townes, Plaintiffs inherited the copyrights to compositions owned by Townes, as well as rights to royalties and income for licensed music, and the copyrights in and to all of the sound recordings created by Townes during his lifetime which he had not conveyed to any third party.

8. Townes struggled with alcoholism and drug addiction for most of his life. Although Jeanene and Townes had divorced in May 1994 due to fears of liability issues that could arise as a result of Townes' somewhat erratic behavior when he was intoxicated, Jeanene was given a power of attorney to act in Townes' stead, which she held until Townes' death. Moreover, Jeanene continued to run all of Townes' personal and business affairs, handled his tax matters, and took care

of their family and all of Townes' needs. Sometime around the divorce, Jeanene and Townes together purchased a second house (the "House") for the purpose of providing Townes with a private place to indulge his addictions, since Jeanene would not allow Townes to be around their children when he was impaired by drugs or alcohol.

9. Eggers was Townes' road manager on and off for a number of years during the 1970s and then again in the 1990s. Due to Townes' substance abuse problems, it was essential that Townes have around him someone who could help him when he was on the road and look after his affairs. Eggers was trusted by both Townes and Jeanene. In his capacity as an employee, representative, and business associate of Townes, Eggers owed Townes and Plaintiffs fiduciary duties and responsibilities.

10. In 1994, Eggers insisted that Townes enter into some sort of contractual arrangement with him, and while Townes did execute an agreement with Eggers, this agreement was revoked on May 2, 1995. A true and correct copy of the revocation letter (the "Revocation Letter") to Eggers from Townes' attorney, Sawnie R. [Trip] Aldredge, is attached hereto as **Exhibit 1** and incorporated by reference for all purposes.

11. During this period in the 1990s, Eggers had been collecting the soundboard tapes from Townes' live concerts, and in some cases collecting videotape recordings of Townes' performances. In the Revocation Letter, Townes demanded that all recordings be returned to him. When JT went to pick up the tapes at Townes' behest, Eggers represented to JT that Eggers' apartment had been flooded, that the tapes were ruined, and that Eggers had disposed of all of the tapes in the trash.

12. In December 1996, during the last month of his life, Townes was in poor health. He was extremely weak, and when he returned home from his last European tour a few weeks before he died, he appeared to be ill. It was during this period that Eggers drafted a new contract for execution by Townes. In the period shortly before his death, Eggers and Townes spent a couple of days at the House (where Townes went to indulge his penchant for drugs and alcohol), and that is where Townes executed the second agreement (the “Letter of Agreement”) with Eggers on December 8, 1996. A true and correct copy of the Letter of Agreement is attached hereto as **Exhibit 2** and incorporated by reference for all purposes. Eggers exercised undue influence over Townes and pressured Townes to execute the Letter of Agreement when Townes was in a fragile or impaired mental state, such that Townes would not have executed the Letter of Agreement but for the improper influence used by Eggers. Townes died 24 days later.

13. The Letter of Agreement references five specific sound recordings—(i) LIVE & OBSCURE, (ii) ROADSONGS, (iii) REAR VIEW MIRROR, (iv) HIGHWAY KIND, and (v) ABNORMAL—as well as two additional mail-order CDs with Normal Records, and all live Townes recordings contained on ON THE ROAD TOURING (collectively, the “Partially Conveyed Recordings”). The Letter of Agreement sets out that Townes and Eggers were the sole owners indefinitely of the Partially Conveyed Recordings, except for ten Townes songs and spoken-word recordings being used on Townes’ life-and-times documentary and a Townes duet with Barb Donovan of the song *I’ll Be Here in the Morning* (the “Wholly Conveyed Recordings”), the rights to which were assigned to Eggers. Under the terms of the Letter of Agreement, Townes and Eggers would equally split all monies made from the Partially Conveyed Recordings indefinitely, and the profits from the Wholly Conveyed Recordings were assigned to Eggers.

14. Eggers has failed to properly account to Plaintiffs for the exploitation of the Partially Conveyed Recordings. No payment has ever been received by Plaintiffs for the release of LIVE & OBSCURE, ROADSONGS, REAR VIEW MIRROR, HIGHWAY KIND, or ABNORMAL. Moreover, Eggers has released additional sound recordings which are not authorized by the Letter of Agreement; namely, IN PAIN (Normal Records 1996), ABSOLUTELY NOTHING (Normal Records 2002), REAR VIEW MIRROR, VOLUME 2 (Normal Records 2004, and Varese Sarabande 2004), JESTER LOUNGE (Normal Records 2004 (recorded live at the Jester Lounge in Houston, Texas, in 1966)), LIVE AT MCCABE'S (Return to Sender 2001, and Varese Sarabande 2003 (recorded at McCabe's in Los Angeles, California, on February 10, 1995)), ACOUSTIC BLUE (Tomato Records 2003), and HOUSTON 1988: A PRIVATE CONCERT DVD (Varese Sarabande 2004) (the "Unauthorized Releases"). A number of the Unauthorized Releases preceded the Revocation Letter and undoubtedly comprise the master recordings which Townes demanded be returned to him, and which Eggers claimed to JT were no longer in existence.

V. CAUSES OF ACTION

15. All conditions precedent to bringing this action have been satisfied.

COUNT 1: UNDUE INFLUENCE

16. Eggers exercised undue influence over Townes in order to coerce Townes into executing the Letter of Agreement, and but for such undue influence, Townes would not have executed the Letter of Agreement and would not have conveyed his sound-recording rights and profits to Eggers, in whole or in part. Plaintiffs seek an order from this Court setting aside the Letter of Agreement and restoring the rights of Plaintiffs in and to the Partially Conveyed Recordings and the Wholly Conveyed Recordings, and all profits derived therefrom.

COUNT 2: UNCONSCIONABLE CONDUCT

17. Eggers has engaged in unconscionable conduct to breach the rights of Plaintiffs. Specifically, Eggers has worked to divert the rights and profits of Townes and Plaintiffs to himself. Eggers took advantage of Townes to a grossly unfair degree, abdicated his responsibilities to Townes and Plaintiffs, and worked to gain benefit for himself at the expense of Plaintiffs. As such, Eggers is liable to Plaintiffs for the actual and consequential damages resulting from his unconscionable conduct, in an amount within the jurisdictional limits of this Court.

COUNT 3: FRAUD AND FRAUDULENT CONCEALMENT

18. The acts or omissions by Eggers described above constitute fraud. Eggers affirmatively agreed with Townes that Townes (and Plaintiffs) would receive one-half of the profits and benefits derived from the Partially Conveyed Recordings. Eggers has failed to provide Plaintiffs with an accounting and has wrongfully diverted profits from the Partially Conveyed Recordings to his own benefit. Eggers' representations and concealments were material and were intended to fraudulently induce Townes to sign the Letter of Agreement. Townes in fact relied upon these representations in doing so, and but for the fraud and fraudulent concealment of Eggers would not have executed the Letter of Agreement and assigned his sound-recording rights and profits to Eggers, in whole or in part. As such, Eggers is liable to Plaintiffs for fraud in an amount in excess of the minimum jurisdictional limits of this Court. Furthermore, because Eggers' conduct was fraudulent and undertaken with malice, Plaintiffs are entitled to exemplary damages.

19. Eggers fraudulently concealed material facts that were within his knowledge. Eggers knew that Townes was ignorant of the material facts he concealed and that Townes did not have an equal opportunity to discover the truth. Eggers intended to induce Townes to execute the Letter of

Agreement and assign Townes' sound-recording rights and profits to Eggers by concealing or failing to disclose material facts, and Plaintiffs have suffered injury as a result of Townes' acting without knowledge of the undisclosed facts. Eggers concealed his intention and activities to divert the rights and profits of Townes and Plaintiffs to himself. Had these material facts been known to Townes, Townes would not have executed the Letter of Agreement and assigned his sound-recording rights and profits to Eggers, in whole or in part. As a direct and proximate result of the fraudulent concealment, Plaintiffs have suffered actual and consequential damages in an amount within the jurisdictional limits of this Court. Furthermore, because Eggers' conduct was fraudulent and undertaken with malice, Plaintiffs are entitled to exemplary damages.

COUNT 4: BREACH OF CONTRACT

20. In the alternative, under the Letter of Agreement, Townes and Eggers were to split equally all monies made from the Partially Conveyed Recordings. Eggers has breached his obligations under the Letter of Agreement by failing to account for or remit to Plaintiffs one-half of the profits from the Partially Conveyed Recordings. As a result of Eggers' breach of contract, Plaintiffs have suffered actual and consequential damages in an amount within the jurisdictional limits of this Court.

COUNT 5: BREACH OF FIDUCIARY DUTY

21. Based on his business dealings as an employee, representative, and business associate of Townes, Eggers owed Townes the highest duties known under the law; that is, to act with the utmost care and loyalty, to fully and fairly disclose all important information to Townes concerning the transactions in question, to treat Townes in a fair and equitable manner, and to exercise the utmost good faith and the most scrupulous honesty toward Townes. Moreover, employees are

required to discharge their duties in good faith and in a manner that is in the best interests of the employer. Eggers owed Townes duties of fidelity and allegiance; to act at all times during his employment in the interests of Townes; and to not act in any manner which would injure Townes' business, interests, or reputation. In addition, Eggers was required to devote his business time, attention, and energy to the business of Townes; to faithfully and diligently perform the duties of his employment; to promote the interests of Townes to the best of his ability, effort, and experience; and to not engage in any activity adverse to the interests of or which would in any way injure Townes.

22. As described above, Eggers has engaged in knowing, intentional, and egregious breaches of his fiduciary duties to Townes by wrongfully diverting Townes' rights and profits for Eggers' own benefit. Eggers used the advantage of his position as an employee, representative, and business associate of Townes to gain benefit for himself at the expense of Townes. These breaches have resulted in actual and consequential damages to Plaintiffs in an amount within the jurisdictional limits of this Court.

COUNT 6: BREACH OF FIDUCIARY DUTIES THROUGH CONFIDENTIAL RELATIONSHIP

23. Based on Eggers' business dealings as an employee, representative, and business associate of Townes, a confidential relationship existed between Townes and Eggers, imposing fiduciary responsibilities. Townes placed special confidence in Eggers whereby Eggers was bound, in equity and good conscience, to act in good faith and with due regard for the interests of Townes and Plaintiffs. Townes trusted in and relied upon Eggers with respect to Townes' business dealings. By inducing Townes to sign the Letter of Agreement, failing to account for and pay royalties owed, releasing master recordings belonging to Plaintiffs, and wrongfully diverting profits for his own benefit, Eggers has breached his fiduciary duties. Eggers' breaches have resulted in actual and

consequential damages to Plaintiffs in a sum in excess of the minimum jurisdictional limits of this Court.

COUNT 7: CONVERSION

24. The conduct of Eggers in misappropriating the recording masters for the Unauthorized Releases, which belong to Plaintiffs, constitutes conversion. This conduct has resulted in actual and consequential damages to Plaintiffs in a sum in excess of the minimum jurisdictional limits of this Court.

COUNT 8: UNJUST ENRICHMENT

25. Eggers abused his position of confidence and trust as an employee, representative, and business associate of Townes, and violated his duties of care, loyalty, fairness, disclosure, honesty, and good faith. In the process, Eggers has been unjustly enriched. Eggers acted intentionally to divert the rights and profits of Townes and Plaintiffs to himself, to the exclusion of Townes and Plaintiffs. To the extent Eggers has received revenue and profits that would have gone to Plaintiffs but for Eggers' wrongful acts, Eggers has been unjustly enriched. Eggers is liable to Plaintiffs for the foregone profits lost as a result of his conduct, for disgorgement of the profits unjustly earned by Eggers at Plaintiffs' expense, and for the profits wrongfully diverted by Eggers. As such, Eggers is liable to Plaintiffs for unjust enrichment in an amount within the jurisdictional limits of this Court.

COUNT 9: DEMAND FOR ACCOUNTING

26. Plaintiffs demand an accounting from Eggers for all fees, income, and sums earned under the Letter of Agreement from December 8, 1996, until the time of judgment, as well as all expenses incurred. This accounting is demanded to establish the amount of revenues and expenses

related to the Partially Conveyed Recordings and the Wholly Conveyed Recordings so as to determine the sums due or to become due to Plaintiffs.

COUNT 10: IMPOSITION OF CONSTRUCTIVE TRUST

27. Eggers has abused his position of confidence and trust and violated his duties of care, loyalty, and good faith, and in the process Eggers has been unjustly enriched. Moreover, Eggers has held and disbursed monies for his own benefit, to the exclusion of Plaintiffs, and has refused to account to Plaintiffs. Consequently, Plaintiffs seeks the imposition of a constructive trust against Eggers on all monies payable to Plaintiffs under the Letter of Agreement, and all monies that would have been payable to Plaintiffs for the Partially Conveyed Recordings and the Wholly Conveyed Recordings had Townes not been unduly influenced and fraudulently induced into assigning his rights and profits to Eggers.

COUNT 11: INJUNCTIVE RELIEF

28. Plaintiffs seek a permanent injunction against Eggers, permanently enjoining Eggers from releasing any master recordings owned by Plaintiffs, including the Unauthorized Releases, and ordering Eggers to turn over all master recordings of Townes to Plaintiffs.

COUNT 12: EXEMPLARY DAMAGES

29. The harm sustained by Plaintiffs described herein resulted from the intentional, willful, and malicious acts (specifically, breach of fiduciary duties, fraud, fraudulent concealment, and conversion) of Eggers, as more particularly set forth above. As such, Plaintiffs are entitled to and seek an award of exemplary damages in an amount to be set by the trier of fact.

VI. ATTORNEYS' FEES AND EXPENSES

30. Plaintiffs have employed the undersigned attorneys to represent them and agreed to pay them reasonable attorneys' fees for their services. Pursuant to section 38.001 of the Texas Civil Practice and Remedies Code, Plaintiffs seek to recover their reasonable and necessary attorneys' fees and expenses incurred in the prosecution of this matter.

VII. JURY DEMAND

31. Plaintiffs demand a trial by jury and tender the required fee.

VIII. REQUEST FOR RELIEF

THEREFORE, Plaintiffs, John Townes Van Zandt II, William Vincent Van Zandt, and Katie Belle Van Zandt, a Minor, by and Through Her Next Friend, Jeanene Van Zandt, request that, upon service of citation, Defendant, Harold F. Eggers, Jr., be compelled to appear, and that Plaintiffs receive the following relief upon judgment:

- a. An order from this Court setting aside the Letter of Agreement dated December 8, 1996, by and between John Townes Van Zandt and Harold F. Eggers, Jr. and restoring the rights of Plaintiffs in and to the Partially Conveyed Recordings and the Wholly Conveyed Recordings, and all profits derived therefrom;
- b. Actual and consequential damages in an amount within the jurisdictional limits of this Court;
- c. Exemplary damages in an amount to be established by the trier of fact;
- d. An order from this Court requiring Eggers to provide an accounting for all fees, income, and sums earned under the Letter of Agreement from December 8, 1996, until the time of judgment, as well as all expenses incurred, specifically including all revenue and expenses related to the Partially Conveyed Recordings and the Wholly Conveyed Recordings;

- e. The imposition of a constructive trust against Eggers on all monies payable to Plaintiffs under the Letter of Agreement, and all monies that would have been payable to Plaintiffs for the Partially Conveyed Recordings and the Wholly Conveyed Recordings had Townes not been unduly influenced and fraudulently induced into assigning his rights and profits to Eggers;
- f. A permanent injunction against Eggers, permanently enjoining Eggers from releasing any master recordings owned by Plaintiffs, including the Unauthorized Releases, and ordering Eggers to turn over all master recordings of Townes to Plaintiffs;
- g. Attorneys' fees and expenses;
- h. Prejudgment interest at the maximum rate permitted by law;
- i. Postjudgment interest at the maximum rate permitted by law;
- j. Costs of court; and
- k. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

FRITZ, BYRNE, HEAD & HARRISON, LLP

98 San Jacinto Boulevard, Suite 2000

Austin, Texas 78701-4288

Telephone: (512) 476-2020

Telecopier: (512) 477-5267

By _____

Bruce Perkins

State Bar No. 15783020

Attorneys for Plaintiffs,

JOHN TOWNES VAN ZANDT II,

WILLIAM VINCENT VAN ZANDT, and

KATIE BELLE VAN ZANDT, a Minor,

by and Through Her Next Friend,

JEANENE VAN ZANDT