

**CAUSE NO. 2019-33415**

**ABEL AND NANCY VERA, et al.** § **IN THE DISTRICT COURT OF**  
*Plaintiffs,* §  
§  
vs. § **HARRIS COUNTY, TEXAS**  
§  
**FIGURE FOUR PARTNERS, LTD., PSWA, INC.,** §  
**and REBEL CONTRACTORS, INC.** §  
*Defendants.* § **234<sup>th</sup> JUDICIAL DISTRICT**

*CONSOLIDATED WITH*

**CAUSE NO. 2019-34366**

**JEFFREY ATWOOD, et al.** § **IN THE DISTRICT COURT OF**  
*Plaintiffs,* §  
§  
vs. § **HARRIS COUNTY, TEXAS**  
§  
**FIGURE FOUR PARTNERS, LTD., PSWA, INC., and** §  
**REBEL CONTRACTORS, INC.** §  
*Defendants.* § **11<sup>th</sup> JUDICIAL DISTRICT**

*CONSOLIDATED WITH*

**CAUSE NO. 2019-36139**

**JENNIFER BECKER, et al.** § **IN THE DISTRICT COURT OF**  
*Plaintiffs,* §  
§  
vs. § **HARRIS COUNTY, TEXAS**  
§  
**FIGURE FOUR PARTNERS, LTD., PSWA, INC.,** §  
**and REBEL CONTRACTORS, INC.** §  
*Defendants.* § **164<sup>th</sup> JUDICIAL DISTRICT**

**PLAINTIFFS' SECOND AMENDED PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, ABEL AND NANCY VERA, JEFFREY AND KATHY ADAMS,  
RONNIE BALDON, KURT BASLER, LEWEY AND DONNA BECKHAM, PAUL  
AND CHRIS BENNETT, DAVID AND NORMA BURCIAGA, JAMES CASEY,

CODY AND MELISSA CLARK, FRANCISCO COLON, DEBBIE RAHBANI,  
WENDY CURTS, SONYA DAVIS, LAWRENCE DEFURIA, PAMELA POTTER,  
BRIAN AND JENNIFER DERBY, SYLVIE DESCOURS, CECILIA DIAZ, STEVEN  
AND RACHEL DUERRINGER, ANTHONY DUNCAN, JOHN AND MARILYN  
EASTON, JOHNATHAN AND BLANCA EVANS, THOMAS FLAHERTY,  
MICHAEL AND JAN FRAZIER, ROGELIO GARCIA, YESENIA GONZALEZ,  
JOHN GIBBS, TRAVIS GRAMS, GREG AND KELLY GUY, BRADLEY HALES,  
JAMES AND NATALIE HUMPHREY, NILDA HYNES, DONAVON AND TRACI  
KRAHN, ADAM AND JENNIFER LAURIE, RICHARD AND KATHLEEN LAURIE,  
CARLOS LEIJA, TODD AND KERRILEE MALMGREN, GARY AND KAY  
MASSON, JOSHUA MCCOLLUM, MARTE MCDOWELL, BILLY MCKEE,  
RICHARD AND CINDY MCMAHON, RICHARD MOYER, RYAN MURPHY,  
KEVIN NGUYEN, MARY BROOKE NICOTRA, DARYL PALMER, MONTE  
PENCE, JIM AND JOSEPHINE PEREZ, JENNIFER PERRY, SUSAN PETROSKI,  
KEITH AND HOLLY POLI, DARREN PORTER, DEBBIE WILLIAMSON, JOHN  
AND REBECCA PURSELL, DEAN AND PETRA RINGEISEN, AARON RIOS,  
NATHAN AND MERRIE RODRIGUEZ, ANDREW AND MINERVA ROMO, TIM  
SHEEHY, MARTHA GOMEZ, GARY STANIZESKI, PATRICK AND DEBORAH  
TERRELL, MARCUS TICER, STEPHANIE TINER, WILLIAM AND ANNE  
TRAPANI, WILLIAM AND CHERYL TRIMBUR, SUSAN VALDES, DANA  
VARISCO, LUIS ALEJANDRO CANTU VASQUEZ, JEFFREY ATWOOD,  
DIMITRY BEZSMERTNY, JAMES BOLDEN, MICHAEL BURKE, JAMES AND  
DEBORAH BURNETT, PHYLLIS CARVAJAL, WESLEY AND MARY ALICE  
COX, ELIZABETH DANISE, KARL DUPREE, VICKI DYKES, LARISSA

FEHRENBACHER-POWELL, JENNIFER FERNANDEZ, SHERRI FORSCHLER,  
JOHN WRIGHT, JIM GATLING, DARIN GILMORE, WILLIAM AND CYNTHIA  
GOEBEL, ELIZABETH GUIDE, KIMBERLY AND RICHARD HAGGERTY,  
JACOB HARGRAVE, BRYAN HENRY, GREGORY HOLLIDAY, RYAN AND  
AMY HORTON, LES HURST, ANDREA LYNN JARDINICO, MICHAEL KLASNO,  
KEVIN AND MICHELLE KINKEAD, KENNETH RAY, MARTHA, AND DENISE  
KORANDA, WILEY AND LINDA LANTZ, CHARLES AND ROSE LYONS, GARY  
AND PAULA MCMINN, RONALD RAYMAN, JOHN AND MARY REIDY,  
JEFFREY ROMIG, MICHAEL AND LORI SCOTT, CURTIS STIFFLEMIRE,  
PATRICK AND DEBORAH TERRELL, ALICE THROCKMORTON, DANIEL  
AND MARIA WARING, SUSAN AND ROBERT WEBB, SHAREL WEBBER,  
REGINA WHEATLEY, ABDULA MILES, DAVID WHITE, RHONDA  
WHITESSELL, LEONARD WIGGINS, JR., CHRISTOPHER AND TAMMY YATES,  
DAVID AND CATHERINE YOUNG, JENNIFER BECKER, WALTER STEWART,  
WILLIAM BUTLER, HUGO CHAMBON, DANIEL AND KATHY COOGLER,  
SCOTT CRAWFORD, THOMAS CURCIO, JESSICA AND BEATRIZ  
DAVENPORT, AUSTIN DRYE, MABEL FLOYD, MICHAEL AND DANNA  
GENCO, JAMES HEMPEL, NGOC HUONG THI LE, PETER JEDRZYNSKI,  
LINDA JONES, AMY AND JASON LOWERY, DEAN AND ESTHER LUHMAN,  
JESSICA MENCHACA, JOSEPH AND CHARLOTTE NICKNISH, PETER AND  
MARTA RICHARDSON, JAMES ROACH, JEFFREY ROBINSON, KIM  
RODGERS, RYAN RODRIGUEZ, BARBARA SMITH, DONALD, ELEANOR, AND  
DANIEL TAYLOR, LINDA AND TERRY TRAYLOR, BRIAN AND SHARON  
VOORHES, MICHAEL WOOD, DEBORAH YOCHAM, ANDREW POTTER,

**KIMBER POTTER, PAULA BRIDGES, JOHN-RUSSELL THORNBURG, CHRISTOPHER TINER, RUTH MALINS, CAROLYN CLARK ROBIN, MATTHEW SCARAMUZZI, ALYSON AND RANDAL STEVENS, MICHAEL JORDAN, CARL AND WENDA MUELLER, JOSEPH NOZEMACK, IAN ROBINSON, TONYA TRISTAN, AARON FULLER, JULIE GREEN, WILLIAM RITTER, PETER PAUL AND MERCEDES BILNOSKI, EDWARD AND JAN THERRIEN, SHAH JAHAN, SALVADOR AND MICHELLE SANCHEZ, LEAH GYURE, JACK AND SHARON DOVER, JAMES AND JENNIFER GOODE, THERESA HARPER, NANCY SCARLETT, PETER VERZAL, CHRISTOPHER FREY, CHRISTINA DE VILLAR, MARK AND CALI WOOD, SUNG CHUL YOON, CALVIN CANUP, BEN THOMAS, MICHAEL ANTASH, KEITH BYRD, IRA, LEAH, AND MELISSA DEAN, GWENDOLYN JEANNINE JONES, DAVID AND PAMELA OTT, KEELY PIERCE, BRIAN MCKENDREE, ANDREW AND KIMBER POTTER, SHARON AND JAMES SCOTT, DANIEL WILLIAMS, EDUARDO AND DEBORAH LEAL, WALTER MATTHEWS, JULIE SHEARER, FELIX OSCOTO, SONIA OSBORNE, and KATHRYN CHAPMAN** (collectively referred to as “Plaintiffs”), and file this Petition complaining of **FIGURE FOUR PARTNERS, LTD., PSWA, INC., and REBEL CONTRACTORS, INC.** (collectively referred to as “Defendants”), and for cause of action would respectfully show the following:

**DISCOVERY LEVEL DESIGNATION**

1. Plaintiffs intend to conduct discovery in accordance with Rule 190.4 of the Texas Rules of Civil Procedure, also known as "Level 3" Discovery Control Plan, and as such, requests a discovery control plan be entered herein. Plaintiffs affirmatively plead that this suit is not governed by the expedited-actions process in Rule 169 of the Texas Rules

of Civil Procedure.

2. In accord with Texas Rules of Civil Procedure 47, Plaintiffs allege that this is a claim for only monetary relief in a sum over \$1,000,000.00, and a demand for judgment for all other relief to which Plaintiffs may show themselves to be entitled, including but not limited to damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. Plaintiffs would show that The Rules of Civil Procedure require Plaintiffs to set forth such demand or claim but that Plaintiffs represent that the Jury and/or Trier of Fact are charged with such final determination and Plaintiffs do not seek to represent or assert that the Rules of Civil Procedure do not require Plaintiffs to honor in any way take away or impugn the obligations, duties and/or considerations of the Jury or Trier of Fact.

### **PARTIES**

3. Plaintiffs are residents in Kingwood, Harris County, Texas.

4. Defendant **FIGURE FOUR PARTNERS, LTD.** (“Figure Four”), has been duly served and made an appearance in this matter, subject to a motion to transfer venue.

5. Defendant, **PSWA, INC.** (“PSWA”), has been duly served and made an appearance in this matter, subject to a motion to transfer venue.

6. Defendant, **REBEL CONTRACTORS, INC.** (“Rebel”), has been duly served and made an appearance in this matter.

### **VENUE AND JURISDICTION**

7. The present Court has personal jurisdiction over the parties as they are citizens of Texas or otherwise have minimum contacts with the State of Texas. The Court has subject matter jurisdiction as the amount in controversy is within the limits of the Court, and no other

court has exclusive jurisdiction.

8. Venue is proper in the present forum as this cause of action because the Defendant, Figure Four, has its principal office in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(3).

### **BACKGROUND/FACTUAL ALLEGATIONS**

9. Plaintiffs have been residents of the Elm Grove neighborhood in Kingwood, Texas. Prior to May 7, 2019, none of Plaintiffs' homes had ever flooded.

10. In May 2019, Defendants, Figure Four and PSWA, were developing a plot of land (the "Development") bordering the north side of Elm Grove. These Defendants hired Rebel as the general contractor to prepare the Development for construction. The Development is intended for a residential community and is neighboring the north side of Elm Grove.



11. As of May 7, 2019, the Development was not completed, but Defendants had begun the

removal of trees and debris from the Development. Defendants trenched out certain areas and added box culverts in an attempt to create drainage for the Development. Defendants also filled in existing creeks and drainage channels while developing the land and failed to properly construct retention ponds on the Development. Defendants were not complying with any engineering plans and in doing so, Defendants completely blocked waterflow from the existing water channels—ridding Elm Grove of proper drainage. Additionally, as Defendants cleared the land, they allowed the Development to slope toward Plaintiffs' neighborhood such that water would flow directly towards Plaintiffs' homes.



12. On May 7, 2019, a rainfall no worse than any other rainfall Plaintiffs have experienced

in the last 25 years hit the Kingwood area. The water drained from the Development directly into Elm Grove's streets and into Plaintiffs' homes. This water caused extreme damage to the structures and the personal effects of the Plaintiffs.

13. There is nothing that Plaintiffs did to contribute to this flooding.

### **COUNT 1**

#### **NEGLIGENCE, NEGLIGENCE *PER SE* AND GROSS NEGLIGENCE**

14. Plaintiffs would show that the incident and injuries and damages giving rise to this incident were proximately caused by the negligence of Defendants acting by or through their agents or employees, jointly, severally, singularly and together in any combination. The actions and omissions of Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination constitute negligence and/or gross negligence which proximately resulted in injuries and damages being suffered by Plaintiffs.

15. The negligent actions and/or omissions of Defendants, acting by or through its agents or employees, jointly, severally, singularly and together in any combination, include but are not limited to:

- a. Blocking the drainage channels;
- b. Filling in existing drainage channels;
- c. Failing to properly install box culverts;
- d. Failing to create temporary drainage channels;
- e. Failing to allow adequate drainage after construction;
- f. Failing to install silt barriers;
- g. Allowing the Development to force rainfall toward Plaintiffs' homes;
- h. Failing to pay proper attention;
- i. Failing to provide notice or warning;



- j. Failing to have a proper rain event action plan;
- k. Failing to have a proper storm water pollution prevention plan;
- l. Failing to follow a proper storm water pollution prevention plan;
- m. Failing to coordinate activities and/or conduct;
- n. Failing to supervise the activities of the Development;
- o. Failing to instruct in proper construction and/or drainage requirements;
- p. Failing to train in proper construction and/or drainage requirements,
- q. Failing to construct the emergency release channel; and,
- r. Failing to timely implement the detention ponds.

16. At this time, Plaintiffs are not alleging any fault with the engineering plans or designs. Simply, Plaintiffs allege that Defendants failed to protect the water runoff from flooding Plaintiffs' homes and did not protect Elm Grove from flooding during construction.

17. Further, all employees, contractors, subcontractors, independent contractors, agents, representatives, and/or individuals under the control of Defendants were, at all material times, acting within the course, scope, and direction of Defendants. Accordingly, Defendants are also liable for Plaintiffs' injuries under the doctrine of *respondeat superior*, vicarious liability, and applicable theories of agent/servant liability.

18. The acts or omissions of Defendants, when viewed objectively from its standpoint at the time of their occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. These acts and omissions were more than momentary thoughtlessness, inadvertence, or error of judgment. Rather, Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others. Such acts and/or omissions were a proximate cause of the flooding and the resulting injuries and damages sustained by

Plaintiffs. Accordingly, Plaintiffs hereby seek an award of exemplary damages.

19. Furthermore, the aforementioned conduct of Defendants was willful and/or motivated by the conscious disregard to the rights and welfare of others. Therefore, Plaintiffs are entitled to recover both actual and exemplary damages from Defendants as set forth above, together with prejudgment and post-judgment interest at the highest rate allowed by law, and all costs of court.

20. Pleading further and/or in the alternative, Plaintiffs would show that they cannot more specifically allege the acts of negligence on the part of Defendants, acting by or through their agents or employees, jointly, severally, singularly and together in any combination for the reason that the facts in that regard are peculiarly within the knowledge of each Defendant and, in the alternative, in the event Plaintiffs are unable to prove specific acts of negligence, Plaintiffs rely on the doctrine of *res ipsa loquitor*. In this connection, Plaintiffs will show that Defendants have exclusive control of the construction and or matters or things that caused damage about which this complaint is made. Plaintiffs have no means of ascertaining the method or manner in which the incident was caused to occur other than through Defendants. The occurrence causing harm to the Plaintiffs as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of the Defendants. Thus, Defendants acting by or through their agents or employees are/were negligent in their use and/or operation of its respective equipment and materials involved and such negligence was a proximate cause of the injuries and damages of Plaintiffs.

**COUNT 2**

**SEC. 11.086 OF THE TEXAS WATER CODE. OVERFLOW CAUSED BY  
DIVERSION OF WATER – STRICT LIABILITY**

21. Defendants’ conduct created a diversion and/or impoundment of surface water during the storm by blocking drainage channels and filling in existing creeks prior to May 7, 2019. This diversion and impoundment of the surface water by the defective construction proximately caused the flooding of Plaintiffs’ home. This flooding was the cause of the damages to Plaintiffs’ homes pursuant to the Tex. Water Code Ann. § 11.086 (West).

22. Section 11.086 of the Texas Water Code states that “No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.” Tex. Water Code Ann. § 11.086 (West). Defendants’ conduct as described herein created a diversion and/or impoundment of the natural flow of surface water. This diversion and/or impoundment proximately caused the flooding of Plaintiff’s property. Defendants are subject to strict liability pursuant to the Texas Water Code and common law.

**COUNT 3  
NUISANCE**

23. When Defendants unlawfully diverted or impounded water (or allowed such diversion or impounding by them to continue) by not properly creating drainage channels and/or impounding water onto Plaintiffs’ homes it also resulted in private nuisances to Plaintiffs’ home. The four elements of a private nuisance claim are: (1) Plaintiffs had an interest in the land; (2) Defendant interfered with or invaded Plaintiffs’ interest by conduct that was negligent, intentional, or abnormal and out of place in its surroundings; (3) Defendant’s conduct resulted in a condition that substantially interfered with Plaintiffs’ use

and enjoyment of their land; and (4) the nuisance caused injury to Plaintiffs. *Cerny v. Marathon Oil Corp.*, 480 S.W.3d 612, 622 (Tex. App. 2015), review denied (Dec. 2, 2016). The facts asserted in this case proximately caused the nuisance in question.

24. Plaintiffs properly and clearly held an interest in their individual property as the owners and residents of the homes at the time of the incident. Defendants' conduct was negligent, intentional and unreasonable, and/or abnormal and out of place in its surroundings, and nevertheless, also subject to state statute Tex. Water Code Ann. § 11.086 (West). This conduct substantially interfered with Plaintiffs' use and enjoyment of their land, and caused injury to Plaintiffs when their homes, contents, automobiles, and personal effects were damaged, destroyed, and or interfered with by the diverted and/or impounded surface water which flooded the surrounding neighborhoods.

### **DAMAGES**

25. As a direct and proximate result of negligence of Defendants, acting by or through their agents or employees, jointly, severally, singularly, and/or together in any combination, Plaintiffs suffered or experienced damages in the past and, in all reasonable probability, is expected to experience such damages for a long time into the future.

26. The damages of Plaintiffs consist of one or more of the following:

- a. Cost of repairs to real property;
- b. Cost of replacement or fair market value of personal property lost, damaged, or destroyed during such event;
- c. Loss of use of real and personal property;
- d. Diminution of market value of Plaintiffs' properties;
- e. Loss of income and business income;
- f. Consequential costs incurred, inclusive of but not limited to alternative living conditions or accommodations and replacement costs;

- g. Mental anguish and/or emotional distress;
- h. Prejudgment interest;
- i. Postjudgment interest;
- j. Attorneys' fees; and,
- k. Costs of Court.

27. By reason of the above and foregoing, Plaintiffs would show that they have been damaged in a sum within the jurisdictional limits of the Court.

**SEC. 11.0841 OF THE TEXAS WATER CODE**  
**CIVIL REMEDY AND ATTORNEY FEES**

28. Sec. 11.0841(a) and (b) provide: (a) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury. (b) A district court may award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.

**EXEMPLARY DAMAGES**

29. As a result of the gross negligence of Defendants, a sum of money should be assessed against Defendants as allowed by law and awarded to Plaintiffs as exemplary damages for the injuries Plaintiffs sustained in connection with the grossly negligent acts and/or omissions of Defendants. Exemplary damages should be awarded as a penalty or by way of punishment, taking into consideration the following:

- a. The nature of wrong;

- b. The character of the conduct involved;
- c. The degree of culpability of the wrongdoer;
- d. The situation and sensibility of the parties involved;
- e. The extent to which such conduct offends a public sense of justice and propriety; and,
- f. The net worth of Defendants.

**PRE AND POST-JUDGMENT INTEREST**

30. Plaintiffs assert a claim for pre-judgment and post-judgment interest on all applicable elements of damages.

**CONDITIONS PRECEDENT**

31. All conditions precedent to Plaintiffs' right to recover herein and to Defendants' liability have been performed or have occurred.

**NOTICE OF INTENT TO USE AUTHENTICATED DOCUMENTS**

32. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiffs hereby give notice of intent to offer into evidence all documents and items produced by Defendants in response to Plaintiffs' discovery requests as authenticated for use against Defendants by virtue of Defendants' production of the same.

**JURY DEMAND**

33. Plaintiffs demand a trial by jury to resolve all fact issues in this case.

**WHEREFORE PREMISES CONSIDERED** Plaintiffs respectfully request that on final trial, Plaintiffs have and recover from Defendants, jointly and severally, the following:

- a. judgment against Defendants for actual damages in an amount within the jurisdictional limits of the Court;
- b. That after notice and hearing, a temporary injunction will issue enjoining and

restraining Defendants from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch. In as much as Defendants have taken actions to interfere with, block and/or impede the drainage prior to May 7, 2019, Plaintiffs seek a Mandatory Injunction from this Court ordering Defendants to return the property to its prior condition wherein the surface water runoff properly flows into the drainage ditch;

- c. That after trial on the merits, the Court permanently enjoin Defendants from interfering with, blocking and/or impeding drainage from their property into the Harris County Flood Control drainage ditch;
- d. judgment against Defendants for exemplary damages in an amount within the jurisdictional limits of the Court;
- e. pre-judgment and post-judgment interest as provided by law;
- f. costs of suit; and,
- g. such other and further relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

**THE WEBSTER LAW FIRM**

/s/ Jason C. Webster  
JASON C. WEBSTER  
State Bar No. 24033318  
HEIDI O. VICKNAIR  
State Bar No. 24046557  
OMAR R. CHAUDHARY  
State Bar No. 24082807  
6200 Savoy Drive, Suite 150  
Houston, Texas 77036  
713.581.3900 (telephone)  
713.581.3907 (facsimile)  
filing@thewebsterlawfirm.com

and

**SPURLOCK & ASSOCIATES, P.C.**

/s/ Kimberley M. Spurlock

Kimberley M. Spurlock  
State Bar No. 24032582  
kspurlock@spurlocklaw.com  
17280 West Lake Houston Pkwy.  
Humble, TX 77346  
Tel. (281) 548-0900  
Fax. (281) 446-6553

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the 8<sup>th</sup> day of July, 2019 in accordance with the Texas Rules of Civil Procedure.

J. Cary Gray  
Drew York  
GRAY REED & McGRAW LLP  
1300 Post Oak Blvd., Suite 2000  
Houston, Texas 77056  
Attorneys for Defendant, Figure Four Partners, Ltd. and PSWA, Inc.

William Cozort, Jr.  
Brothers Alvarado, P.C.  
Two Memorial City Plaza  
820 Gessner, Suite 1075  
Houston, Texas 77024  
Attorneys for Defendant, Rebel Contractors, Inc.

/s/ Omar R. Chawdhary

Omar R. Chawdhary