



LMP Austin English Aire, LLC, derivatively through Lafayette English Partner, LLC, (individually and

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TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

JUDGMENT RENDERED SEPTEMBER 30, 2022

NO. 03-21-00219-CV

LMP Austin English Aire, LLC, derivatively through Lafayette English Partner, LLC, (individually and derivatively) through Lafayette English Apartments, LP, Appellants

v.

Lafayette English Apartments, LP (Nominal Defendant); Lafayette English GP, LLC; HVC English, LLC; HVC Lafayette, LLC; Scott Schaeffer; Austin Lafayette Landing Realty LLC; and Austin CMA English Aire Realty LLC, Appellees

APPEAL FROM THE 459TH DISTRICT COURT OF TRAVIS COUNTY BEFORE JUSTICES GOODWIN, BAKER AND TRIANA AFFIRMED IN PART, REVERSED AND REMANDED IN PART OPINION BY JUSTICE TRIANA

This is an appeal from the final judgment signed by the trial court on May 4, 2021

and certain subsumed orders. Having reviewed the record and the parties' arguments, the Court holds that there was reversible error in the court's judgment. Therefore, the Court affirms in part the final judgment as to these subsumed orders:

(1) the February 12, 2019 "Order Sustaining Defendants HVC English, LLC's and HVC Lafayette, LLC's Plea to the Jurisdiction";

(2) the June 24, 2019 "Order Granting Defendants HVC English, LLC's and HVC Lafayette, LLC's Amended Partial Motion to Dismiss Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code"; (3) the July 31, 2019 "Subsequent Order on Attorney's Fees, Costs, Other Expenses and Sanctions Awarded to Defendants HVC English, LLC and HVC Lafayette, LLC Pursuant to Chapter 27 of the Texas Civil Practice and Remedies Code"; and



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(4) the portion of the December 16, 2020 Order denying “Plaintiff’s Second Amended Motion for Partial Summary Judgment”; granting “Defendants HVC English, LLC and HVC Lafayette, LLC[’s] . . . Cross -Motion for Summary Judgment”; granting the “Motion for Summary Judgment of Defendants Austin Lafayette Landing Realty LLC and Austin CMA English Aire Realty LLC”; and granting “Defendants Lafayette English Apartments, LP, Lafayette English GP, LLC, and Scott Schaeffer’s Motion for Summary Judgment” on Appellants’ breach-of-contract claim alleging the necessity of an Independent Manager.

The Court reverses in part the final judgment as to the December 16, 2020 Order granting

“ Defendants Lafayette English Apartments, LP, Lafayette English GP, LLC, and Scott

Schaeffer’s Motion for Summary Judgment” on Appellants’ claims for: (1) breach of fiduciary

duty; (2) fraud by nondisclosure, (3) accounting; and (4) breach-of-contract alleging that the sale

of the Properties was below market value and was not in the best interest of the Original

Partnership, and remands those claims to the district court for further proceedings consistent with

the Court’s opinion.

Appellants LMP Austin English Aire, LLC, derivatively through Lafayette

English Partner, LLC, (individually and derivatively) through Lafayette English Apartments, LP,

shall pay all costs, both in this Court and in the court below—except for those incurred by

Appellees Lafayette English Apartments, LP, Lafayette English GP, LLC, and Scott Schaeffer,

who shall bear their own trial-court and appellate-court costs.

