

CAUSE NO. 16-05997-16

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| NORTHWEST REGIONAL | § | IN THE DISTRICT COURT |
| AIRPORT PROPERTY OWNERS | § | |
| ASSOCIATION, INC. | § | |
| Plaintiff, | § | |
| v. | § | DENTON COUNTY, TEXAS |
| | § | |
| CHARLES GLEN HYDE, | § | |
| NORTHWEST REGIONAL | § | |
| AIRPORT, INC., TEXAS AIR | § | |
| CLASSICS, INC., DREAMSHIPS, INC. | § | |
| And HYDE-WAY, INC. | § | |
| Defendants. | § | 16 TH JUDICIAL DISTRICT |

DEFENDANTS' PLEA IN ABATEMENT

Defendants in the above-entitled and numbered cause file this Plea in Abatement, and would show the Court as follows:

I.
SUMMARY OF ARGUMENT

Plaintiff's Original Petition fails to satisfy Texas Civil Practice and Remedies Code Section 37.006(a) because it seeks declaratory relief directly affecting the claim or interest of persons who have not been made parties to this suit. Under Texas law, Plaintiff should be compelled to join all affected property owners to the instant case, or else have its declaratory judgment claim dismissed. Defendants move that the Court order an abatement of this matter for ninety (90) days to afford Plaintiff adequate time to identify and join all necessary parties, or alternatively, if Plaintiff fails to comply, order a dismissal without prejudice of Plaintiff's declaratory judgment claim.

II. ARGUMENT AND AUTHORITIES

Plaintiff filed suit for a declaration to confirm its authority over all property owners identified in and covered by Plaintiff's previously-filed *Amended and Restated Bylaws* (attached to its Original Petition at Exhibit D) and *Integrated Deed Restrictions* (attached to its Original Petition at Exhibit E). Because Plaintiff failed to name all such property owners in this suit, any determination of the issue *as pleaded*—whether favorable to Plaintiff, or not—would be improper. By this Plea in Abatement, Defendants urge that Plaintiff be compelled to join all necessary parties, or else face dismissal of its declaratory judgment claim.¹

A. Plaintiff's Original Petition Improperly Seeks a Declaration Against Non-Parties

Plaintiff's request for declaratory relief appears in Paragraph 31 of its Original Petition as follows:

Plaintiff requests judgment of the Court declaring that:

- a. The amended deed restrictions authorizing Plaintiff to govern the airport are valid and enforceable;*
- b. The delegation of authority to Plaintiff was a valid delegation of authority;*
- c. Plaintiff is authorized to oversee, repair, maintain, and provide for the upkeep of the runway, common areas and common facilities at NWRA, and to assess and collect fees for that purpose.*

As pleaded, Plaintiff's petition asks the Court for a declaration as to Plaintiff's authority over, and ability to assess and collect fees from, more than two hundred property owners. Despite implicating the rights and interests of hundreds of property owners, Plaintiff named only Defendants, failing to join the necessary parties required

¹ Because the defect in parties is apparent from the face of *Plaintiff's Original Petition*, no verification is required. Tex. R. Civ. P. 93; *see also*, Pl's Orig. Pet. at ¶¶ 11-26, Pl's Ex. G (Affidavit of Mitchell R. Whatley).

under Texas law. See Pl's Orig. Pet. at ¶¶ 11-26, Pl's Ex. G (Affidavit of Mitchell R. Whatley) (referencing property owners other than Defendants).

B. Plaintiff Should Be Compelled to Join All Necessary Parties

Texas law requires that Plaintiff join all affected property owners to the suit.

With respect to any civil case, Rule 39(a) imposes the following requirement:

*A person who is subject to service of process **shall be joined as a party** in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.*

Tex. R. Civ. P. 39(a) (emphasis added). Here, complete relief is impossible without the joinder of all property owners because Plaintiff seeks a declaration of its legal status and authority as to all affected property owners, not limited to Defendants. Moreover, if Plaintiff were to proceed against each property owner separately, then all would be at risk of suffering the injustice of inconsistent judicial rulings and declarations of rights. Therefore, Plaintiff's suit for declaratory relief—as pleaded—should not proceed unless Plaintiff first joins all persons whose rights or interests are affected by adjudication of Plaintiff's claim.

More specifically, the Uniform Declaratory Judgments Act (“UDJA,” Tex. Civ. Prac. & Rem. Code § 37.001, et seq.) provides: “When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration **must** be made parties.” Tex. Civ. Prac. & Rem. Code § 37.006(a) (emphasis added). Plaintiff's requested relief asks the Court to declare Plaintiff's authority to collect fees for the repair, maintenance, and upkeep of common areas utilized by numerous

property owners, and is not limited to the ability to collect fees from the named Defendants to this suit. Because the requested declaration necessarily imposes upon the rights and interests of other property owners, those property owners are necessary parties in determining Plaintiff's entitlement to the requested declaration.

“A declaratory judgment requires a justiciable controversy as to the rights and status of parties **actually before the court** for adjudication, and the declaration sought must actually resolve the controversy.” *Brooks v. Northglenn Ass'n*, 141 S.W.2d 158, 163-64 (Tex. 2004) (emphasis added). In *Brooks*, the Texas Supreme Court vacated portions of the trial court's judgment—pertaining to two sub-sets of homeowners, none of whom were represented in the suit—for lack of jurisdiction, citing the trial court's improper declaration of “the rights of parties who are not before the court.” *Id.* The Court further explained that the trial court's decision in the absence of a case or controversy could be no more than an advisory opinion prohibited by the Texas Constitution. *Id.* at 164 (citing Tex. Const. art. II, § 1). See also, *In re Estate of Bean*, 120 S.W.3d 914 (Tex. App.—Texarkana 2003, pet. denied) (trial court lacked jurisdiction to enter declaratory judgment in part because of failure to join necessary party).

An analogous case decided by the Houston appellate court held that the trial court lacked jurisdiction to rule on a declaratory judgment claim in the absence of joinder of all affected property owners. *Dahl v. Hartman*, 14 S.W.3d 434 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). There, a resident sued his property owners' association on allegations that the association failed to comply with state law in its formation and in the extension of deed restrictions. *Id.* at 435. The trial court abated

the case and ordered the resident to serve all of the affected owners; when the resident did not, the trial court dismissed the action without prejudice. *Id.* at 436. That dismissal was upheld on appeal because “[t]he trial court did not abuse its discretion in finding that all property owners . . . were necessary parties to Dahl’s declaratory judgment action.” *Id.*

The court’s opinion in *Dahl* was bolstered by reference to other authorities calling for the same outcome. *Id.* at 437. For example, the court noted that the Texas Property Code requires certain residential property owners be made parties to declaratory judgment suits contesting deed restrictions. *Id.* at 437 (*citing* Tex. Prop. Code § 201.010(b)). The court further cited similar holdings from other appellate courts. *Dahl*, 14 S.W.3d at 437 (*citing Letsos v. Katz*, 489 S.W.2d 317 (Tex. Civ. App.—Houston [1st Dist.] 1972, no writ) (lot owners had joint interest with property owners’ committee and thus were indispensable parties); *Blythe v. City of Graham*, 303 S.W.2d 881 (Tex. Civ. App.—Ft. Worth 1957, no writ) (trial court did not err in requiring joinder of proper parties, even if they were not indispensable, because court could refuse to enter a declaratory judgment or decree if doing so would not terminate the controversy)).

The instant case involves the same issues as *Dahl*: whether Plaintiff was formed in accordance with Texas law, and therefore whether Plaintiff has the authority to act as a property owners’ association under state law, including extending deed restrictions and collecting fees for the maintenance of common areas. All property owners within by the Plaintiff’s alleged boundaries are affected by a judicial answer to these questions, making them indispensable to this case. Yet Plaintiff has failed to join

them as parties. Because this Court cannot enter an adequate judgment in the absence of these affected parties, Defendants urge, under the above authorities, that Plaintiff be compelled to join all affected property owners to Plaintiff's declaratory judgment claim. Such a ruling ensures equity and uniformity of result with respect to all involved.

Defendants acknowledge that failure to join necessary parties is rarely a jurisdictional defect. *Cooper v. Texas Gulf Indus., Inc.*, 513 S.W.2d 200, 204 (Tex. 1974) (“it would be rare indeed if there were a person whose presence was so indispensable in the sense that his absence deprives the court of jurisdiction to adjudicate between the parties already joined”). The Texas Supreme Court has found that nonjoinder does not constitute a fundamental error requiring reversal. *Simpson v. Afton Oaks Civic Club, Inc.*, 145 S.W.3d 169, 170 (Tex. 2004) (citing *Brooks*, 141 S.W.3d at 160-63). However, both *Simpson* and *Brooks* turned on waiver: specifically the associations' failure to raise the issue of necessary joinder prior to appeal. *Simpson*, 145 S.W.3d at 170; *Brooks*, 141 S.W.3d at 163. The Texas Supreme Court acknowledged in both cases that the associations could have—and should have—sought abatement for joinder of absent property owners, or filed special exceptions, especially to avoid the possibility of conflicting outcomes over multiple suits. *Simpson*, 145 S.W.3d at 170; *Brooks*, 141 S.W.3d at 163. Defendants, heeding such guidance here, urge under the UDJA and Texas Rules that this Court find all affected property owners to be indispensable or necessary parties to render judgment on Plaintiff's claim for declaratory relief under the UDJA, and that the Court abate this cause and compel Plaintiff to join all affected property owners within 90 days.

C. Failure to Join Necessary Parties Should Result in Dismissal

The declaration sought by Plaintiff implicates the rights of all property owners within the boundaries of Plaintiff's alleged authority. Plaintiff's pursuit of such a declaration without joining the other property owners puts all concerned at risk of suffering inequitable and inconsistent results through piecemeal litigation on a case-by-case basis. Dismissal without prejudice would not leave Plaintiff without an adequate remedy. Therefore, if Plaintiff should fail to comply with an order compelling joinder of all affected property owners, dismissal would be the appropriate remedy. Tex. R. Civ. P. 39(b); *Dahl*, 14 S.W.3d at 436-47.

III.
PRAYER FOR RELIEF

WHEREFORE, Defendants pray:

- (1) That Defendants' Plea in Abatement be GRANTED; and
- (2) That the Court ABATE this cause and COMPEL Plaintiff to join all affected property owners within 90 days, for which the failure to comply will result in dismissal of Plaintiff's declaratory judgment claim without prejudice; and
- (3) That the Court AWARD Defendants such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

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CERTIFICATE OF CONFERENCE

I certify that on January 12, 2017, I conferred with Aubry Talkington, counsel for Plaintiff, on the relief sought by this *Plea in Abatement*, and counsel stated that Plaintiff is opposed to such relief. Therefore, this matter is submitted to the Court for determination.

/s/ Kelly M. Massad

CERTIFICATE OF SERVICE

I certify that on January 12, 2017, I served a true and correct copy of the foregoing pleading on the following pursuant to the Texas Rules of Civil Procedure:

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