

CAUSE NO. 104559-CV

SOUTHWYCK SECTION IV	§	IN THE JUDICIAL DISTRICT COURT
HOMEOWNERS' ASSOCIATION, INC.	§	
	§	
v.	§	OF BRAZORIA COUNTY, TEXAS
	§	
SOUTHWYCK COMMUNITY	§	
ASSOCIATION, INC.	§	239th JUDICIAL DISTRICT

PLEA TO THE JURISDICTION OF DEFENDANT SOUTHWYCK COMMUNITY ASSOCIATION, INC. AND SUBJECT TO THAT PLEA, DEFENDANT'S ORIGINAL ANSWER

Defendant, Southwyck Community Association, Inc., ("Master Association") files this its Original Answer.

I. PLEA TO THE JURISDICTION

1. A plea to the jurisdiction is a dilatory plea intended to defeat a cause of action for lack of subject-matter jurisdiction regardless of whether the claims asserted have merit.¹

A. Plaintiff lacks standing to bring this lawsuit.

2. This Court lacks subject matter jurisdiction over the claims asserted by Plaintiff because Plaintiff lacks standing to bring this suit. Standing is a constitutional prerequisite to filing suit, and a court does not have jurisdiction over a claim made by a plaintiff who does not have standing to assert it.² Where a plaintiff asserts a claim under a statute, the Plaintiff must plead facts that demonstrate it meets the standing requirements of the statute. *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 851 (Tex. App.—Fort Worth 2005, no pet.)("When standing has been statutorily conferred, the statute itself serves as the proper framework for a standing analysis.").

3. In this case, Plaintiff has alleged that the Master Association defendant was required to keep various business records under the Texas Property Code, the Texas Business

¹ *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

² *Heckman v. Williamson City*, 369 S.W.3d 137, 150 (Tex. 2012).

Organizations Code (related to non-profit corporations, and the Texas Trust Code as part of its responsibilities as an incorporated property owner's association. Plaintiff has further alleged that the Master Association defendant is liable for failing to produce those records as required by the statute. The problem here is that Plaintiff has not alleged facts and cannot allege facts that show it is an entity entitled to obtain those records under any of these statutes.

- **Alleged Texas Property Code Violations**

4. Plaintiff has asserted claims under Tex. Prop. Code Sec. 209.005 against the Master Association for allegedly failing to produce records of the Master Association to the Plaintiff. However, under Sec. 209.005, only an owner of a lot in the Master Association may request association records.³ In this case, Plaintiff has made no factual allegations that it, another non-profit corporation, is a member owner of the Master Association entitled to request records. Because Plaintiff cannot show that it is an owner within the Master Association, Plaintiff has no standing under Tex. Prop. Code Sec. 209.005 to request records or bring these claims for failing to produce records of the Master Association. Accordingly, Plaintiff's claims must be dismissed.

5. In addition, even if the Plaintiff could show it is an owner within the Master Association pursuant to Tex. Prop. Code Sec. 209.005, Plaintiff was required to file its claim in the justice court, not district court.⁴ Plaintiff's claims for violating the Texas Property Code Sec. 209.005 must be dismissed.

³ Tex. Prop. Code Sec. 209.005(c). Notwithstanding a provision in a dedicatory instrument, a property owners' association shall make the books and records of the association, including financial records, **open to and reasonably available for examination by an owner, or a person designated in a writing signed by the owner as the owner's agent, attorney, or certified public accountant,** in accordance with this section. An owner is entitled to obtain from the association copies of information contained in the books and records.

⁴ Tex. Prop. Code Sec. 209.005(n).

- **Alleged Violations of the Texas Business Organizations Code**

6. Plaintiff has asserted claims against the Master Association for failing to make corporate records available to a member or owner of a non-profit corporation. However, Plaintiff has not asserted any factual allegations that it, another non-profit corporation, is a member of the Master Association. Because Plaintiff cannot show that it is a member or owner of the Master Association, Plaintiff has no standing under the Texas Business Organizations Code to bring these claims. Accordingly, Plaintiff's claims must be dismissed.

- **Alleged Texas Trust Code Violations**

7. Plaintiff claims that the Master Association violated the Texas Trust Code with regard to record keeping and providing records to the Plaintiff. However, Trust Code Sec. 111.003 stated that the Texas Trust Code only applies to an "express trust." The Texas Trust Code Sec. 111.004 (4) further defines "express trust" as

"... a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person."

8. Here, Plaintiff has not and cannot allege the existence of an "express trust" between the Master Association and the Plaintiff. Because there is no "express trust" between the Master Association and the Plaintiff, Plaintiff cannot be a beneficiary under the Texas Trust Code. Accordingly, Plaintiff has no standing to assert claims for violating the Texas Trust Code, and its claims must be dismissed.

II. General Denial

9. Pursuant to Tex. R. Civ. P. 94, Defendant Southwyck Community Association, Inc. denies each and every, all and singular, the material allegations contained in Plaintiff's Original

Petition and demands strict proof thereof by a preponderance of the evidence in accordance with the laws of the state of Texas and the United States Constitution. As authorized by the Texas Rules of Civil Procedure, Defendant Southwyck Community Association, Inc. reserves the right to amend this pleading before or during the trial of this cause on its merits.

III. Affirmative Defenses

10. Defendant pleads each of the following affirmative defenses in the alternative as permitted by the Texas Rules of Civil Procedure.

- a. Plaintiff’s petition fails to state a claim upon which relief may be granted.
- b. Plaintiff’s claims are barred by the doctrines of waiver, estoppel, unclean hands, ratification or laches.
- c. Plaintiff’s claims are barred by res judicata;
- d. Plaintiff’s claims are barred by the economic loss doctrine; Defendant denies that all conditions precedent have been complied with or have occurred.

IV. Rule 193.7 Self-Authentication Notice

11. Defendant Southwyck Community Association, Inc. intends to use all documents produced by Plaintiff in the course of discovery in the trial of this cause. Plaintiff must assert any objection to the authenticity of any document, or any part of a document, that Plaintiff produces within ten (10) days of its production. Otherwise, the Plaintiff’s documents are considered self-authenticated for admissibility purposes under TRE 901(a), although authentication is but a condition precedent to admissibility and does not establish admissibility.

V. REQUEST FOR DISCLOSURES

12. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff is requested to disclose, within 30 days of service of this answer, the information or material described in Rule 194.2(a)-(i), (l).

VI. PRAYER

13. Defendant respectfully prays that Plaintiff's claims be dismissed, that Plaintiff take nothing, and that Defendant be awarded such other and further relief to which it may be justly entitled.

Respectfully submitted,

THE NICHOLS FIRM, PLLC

/s/ Christopher L. Nichols

By: _____

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**ATTORNEYS FOR SOUTHWYCK COMMUNITY
ASSOCIATION, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing documents has been served on all counsel of record via the e-file service on October 14, 2019.

/s/ Christopher L. Nichols

By: _____

Christopher L. Nichols