

CAUSE NO. JP2-CV1900141

DARREN G. YANCY, SR. AND CAROL A. YANCY	§	IN THE JUSTICE COURT
Plaintiffs,	§	
VS.	§	PRECINCT 2, PLACE 1
THE BURLESON MAGNOLIA FARMS HOMEOWNERS ASSOCIATION BOARD OF DIRECTORS, CHARLES DUELLO, INDIVIDUALLY	§	
Defendants.	§	JOHNSON COUNTY, TEXAS

**DEFENDANT BURLESON MAGNOLIA FARMS HOMEOWNERS ASSOCIATION,
INC.'S PLEA TO THE JURISDICTION AND ORIGINAL ANSWER**

I. INTRODUCTION TO PLEA TO JURISDICTION

Plaintiff Darren G. Yancy, Sr. filed this suit alleging multiple causes of action against the Burleson Magnolia Farms Homeowners' Association Board of Directors. This court lacks subject matter jurisdiction over most of plaintiff's claims. Additionally, plaintiff improperly named the board of directors of the homeowners' association; accordingly, there is a misnomer of the parties. Plaintiff should have sued The Burleson Magnolia Farms Homeowners Association, Inc. Therefore, this plea to the jurisdiction and original answer is filed on behalf of The Burleson Magnolia Farms Homeowners Association, Inc.

Plaintiff Darren G. Yancy, Sr. also named three additional plaintiffs in his pleading; however, Mr. Yancy is not a licensed attorney and is not authorized to file claims on behalf of anyone other than himself. Therefore, Mr. Yancy is the only proper plaintiff before the court.

Finally, the individual board members named in paragraph 3.3 of Mr. Yancy's petition

have not been properly named or served with process in this matter. The only citation issued and served was addressed to the board of the Association and served on Charles Duello in his capacity as president of the board.

II. PLEA TO THE JURISDICTION

Defendant BURLESON MAGNOLIA FARMS HOMEOWNERS ASSOCIATION, INC. (“Defendant Association”) files this plea to the jurisdiction of the court for the following claims made by plaintiff:

1. Claim – Dispute Regarding The Burleson Magnolia Farms HOA Website beginning on page 4 of Plaintiff’s [sic] Original Petition.
2. Claim – No Road Reserve Fund for the HOA beginning on page 6 of Plaintiff’s [sic] Original Petition.
3. Claim – Violation of Tex. Bus. Code §22.352 and 22.354 beginning on page 9 of Plaintiff’s [sic] Original Petition.
4. Claim – Violation of Tex. Bus. Code §22.153 beginning of page 11 of Plaintiff’s [sic] Original Petition.
5. Claim – Discriminatory Action on page 13 of Plaintiff’s [sic] Original Petition.

A plea to the jurisdiction is the proper pleading to file when the court lacks subject matter jurisdiction and cannot adjudicate the claims presented by plaintiff. When a court lacks jurisdiction, it must dismiss the claims.

A. BACKGROUND

1. Plaintiff Darren G. Yancy, Sr. complains of multiple alleged violations of the governing documents of the Burleson Magnolia Farms Homeowners’ Association, Inc.; requests adjudication of ownership of the HOA website; sues for breach of duty; for violation of the Open

Meetings provisions of the Texas Property Code; for violations of the Texas Business Organizations Code; for malfeasance and misrepresentation; and for discrimination.

2. Most of plaintiff's claims are not within the jurisdiction of this court and should be dismissed.

B. ARGUMENT & AUTHORITIES

3. The purpose of a plea to the jurisdiction is to dismiss a cause of action without regards to whether the claim has merit. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000).

4. The Court must decide whether plaintiff has affirmatively demonstrated this Court's jurisdiction to hear this suit based on the facts alleged by plaintiff and, when necessary to resolve jurisdictional facts, on evidence submitted by the parties.

5. This court does not have jurisdiction over many of the plaintiff's claims, as follows:

a. Claim – Dispute Regarding The Burleson Magnolia Farms HOA Website

The court lacks jurisdiction to adjudicate this claim because plaintiff seeks a declaratory judgment from the court regarding the ownership, control and use of a website. This court cannot render a declaratory judgment except in limited instances concerning enforcement of deed restrictions. Therefore, the court should dismiss this claim.

b. Claim – No Road Reserve Fund for the HOA

Plaintiff lacks standing to bring this claim, and this court lacks jurisdiction to hear this claim, in that a justiciable controversy does not exist as to the rights and status of the parties, nor will the controversy be resolved by the declaration sought by plaintiff. To constitute a justiciable controversy, there must exist a real and substantial controversy involving a genuine conflict of tangible interests, and not merely a theoretical dispute. In this action, plaintiff asks the court to require the defendant to establish a fund to make possible future repairs to a road. There

is no requirement for a reserve fund in the governing documents of the Burleson Magnolia Farms Homeowners' Association and there is no current need for repair of the road alleged in plaintiff's petition. The issue complained of by plaintiff is not genuine conflict of real and tangible interests. Accordingly, this court lacks jurisdiction over this claim and must dismiss it.

c. Claim – Violation of Tex. Bus. Code §22.352 and 22.354.

- i. Tex. Bus. Code Sec. 22.354 provides that a corporation commits an offense if it fails to maintain a financial record, prepare an annual report, or make the record or report available to the public in the manner required. The offense is a Class B misdemeanor.
- ii. Because the offense is a criminal matter, plaintiff lacks standing to assert this offense.

d. Claim – Violation of Tex. Bus. Code §22.153

This court lacks jurisdiction to hear this claim, in that a justiciable controversy does not exist as to the rights and status of the parties, nor will the controversy be resolved by the declaration sought by plaintiff. To constitute a justiciable controversy, there must exist a real and substantial controversy involving a genuine conflict of tangible interests, and not merely a theoretical dispute. Further, the court lacks jurisdiction to hear this claim because plaintiff has not complied with the statutory provisions of Tex. Bus. Code §22.154 which provides the requisite steps if the board fails to call an annual meeting. Plaintiff must first send a written demand to an officer by certified or registered mail or by other means specified in the board's governing documents. Tex. Bus. Code §21.154(a). Plaintiff has not sent a written demand to an officer as required prior to filing this lawsuit.

e. Claim – Discriminatory Action

This court lacks jurisdiction to hear this claim, in that a justiciable controversy does not exist as to the rights and status of the parties, nor will the controversy be resolved by the declaration sought by plaintiff. To constitute a justiciable controversy, there must exist a real and substantial controversy involving a genuine conflict of tangible interests, and not merely a theoretical dispute. Plaintiff claims that his First Amendment rights have been violated. The First Amendment applies to actions taken by the federal government and prohibits Congress from abridging free speech.

III. DEFENDANT'S ORIGINAL ANSWER

A. GENERAL DENIAL

6. Defendant Burleson Magnolia Farms Homeowners Association, Inc. denies generally the material allegations contained in Plaintiff's Original Petition and inasmuch as said allegations are questions of fact, Defendant demands strict proof thereof by a preponderance of the evidence if Plaintiff can do so.

B. AFFIRMATIVE DEFENSES

7. Defendant asserts the defense of failure of consideration.
8. Defendant asserts the defense of statute of frauds.
9. Defendant asserts the defense of waiver.
10. Defendant asserts the defense of limitations.
11. Defendant asserts the defense of standing.

C. PRAYER

12. For these reasons, defendant asks the Court to set this motion for a hearing and, after a hearing, to grant defendant's motion to dismiss plaintiff's causes of action as set forth above.

Defendant further prays that the court order that plaintiff take nothing, assess costs against plaintiff, and award all other relief to which defendant is entitled.

Respectfully Submitted,

/s/ Charles K. Aris

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**ATTORNEYS FOR DEFENDANT
BURLESON MAGNOLIA FARMS
HOMEOWNERS ASSOCIATION, INC.**

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been served on Plaintiff, pro se, as listed below, on the 13th day of March, 2019.

Via email and CMRRR: 7017 3380 0000 1399 4788

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/s/ Charles K. Aris

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