

NO. 01-23-00868-CV

FILED IN
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HOUSTON, TEXAS

**IN THE COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

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DEBORAH M. YOUNG
Clerk of The Court

RAMESH KAPUR

APPELLANT

v.

WOODFOREST CONDOMINIUM ASSOCIATION

APPELLEES

**APPELLEE WOODFOREST CONDOMINIUM ASSOCIATION'S
BRIEF**

From the 151st Judicial District Court of Harris County, Texas
Trial Court Cause No. 2022-39990

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STATEMENT REGARDING ORAL ARGUMENT

Appellee believes oral arguments are unnecessary in this matter.

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RECORD REFERENCES

Citations in this Response to the parties are as follows:

Appellant Ramesh Kapur will be referred to as “Appellant.”

The 151st District Court of Harris County, Texas will be referred to as the “Trial Court.”

Appellees will be referred to as “Appellees.”

Citations in this Response to the record are as follows:

CR – Clerk’s Record (i.e. CR [page]; e.g. CR 1).

RESPONSE TO APPELLANT'S ISSUES PRESENTED

- 1) Appellant has waived his issues by his own failure to procure the issuance and service of citation.

- 2) The Court should not consider Appellant's appeal because it is outside the jurisdiction of this Court.

SUMMARY OF THE ARGUMENT

Despite Appellant's contentions, the Trial Court did not abuse its discretion when it properly granted the Appellees' Motion for Summary Judgment when Appellant wholly failed to procure the issuance and service of citation of its petition. Further, the Trail Court did not abuse its discretion when it properly denied Appellant's Motion for Extension of Time to File Response because Appellant did not provide good cause explaining his failure to procure the issues and service of citation. Therefore, the Trial Court's rulings should be affirmed.

Alternatively, Appellant's appeal is not based on a final judgment or an otherwise appealable order. Therefore, this appeal is outside the jurisdiction of the Court as prescribed in Tex. Civ. Prac. & Rem. Code Ann. § 51.014 such that this Court should dismiss this appeal.

STATEMENT OF FACTS

This case arises from a homeowner's failure to pay timely assessments to his homeowners' association. Woodforest is a deed restricted community located in Houston, Texas. Condominium Association. The applicable deed restrictions are contained in the Declaration of Covenants, Conditions, and Restrictions for Woodforest ("Declaration"). The Declaration designates Woodforest Condominium Association as the owner's association for Woodforest. The Declaration also addresses the obligation of each owner for payment of assessments. The assessments cover, in part, insurance, maintenance, repairs, and upkeep of the condominium units. It provides that the assessment against each owner is to be considered the personal and individual debt of the owner thereof. The Board of Directors or Managing Agent of the Association is responsible for collecting any unpaid assessments.

On June 1, 2021, individuals named Ramesh Kapur and Hamayun Durrani purchased 12955 Woodforest Boulevard #33, Houston, Texas, 77015 ("Property") at a foreclosure sale. The foreclosure sale was conducted against the prior owners of the property for failure to pay

monthly assessments as mandated by the Association's governing documents, mainly the Declaration.

On June 15, 2021, Sarah Gerdes, the Association's general counsel, received an email from Ramesh Kapur instructing her to change the name on the Trustee Deeds to William Brian Caledare. Plaintiff Nicia Vicia Vitorino is an unverified assignee of William Caledare. Caledare started to receive ownership information, including statements seeking payments assessments. However, Caledare failed to pay the monthly assessments owed to the Association as required by the Declaration. On April 21, 2022, the Association issued a Notice of Default to Caledare for unpaid fees owed for the property at Woodforest. On June 10, 2022, Gerdes, on behalf of the Association, issued a Notice of Trustees sale to Caledare for unpaid assessments. The first foreclosure sale was scheduled for July 5, 2022. At no time prior to the first foreclosure sale did Caledare request a payment plan from the Association or otherwise pay the unpaid assessments. However, on July 5, 2022, Caledare on behalf of his unverified assignee, Plaintiff Nicia Vicia Vitorino, filed a lawsuit against the Association and obtained a Temporary Restraining Order to stop the first foreclosure sale.

The foreclosure sale was re-scheduled for October 4, 2022, when the Temporary Injunction was no longer in effect. The Woodforest property was sold to a third-party entity, West Chase Property Solutions, LLC. Calledare was notified of his right to redeem the property during the following 90 days as permitted by the Texas Property Code § 209.011. Calledare also received the payoff amount of \$19,474.44 for redemption. Thereafter, Calledare redeemed the Woodforest property.

On October 17, 2022, the Appellant filed his sworn petition and motion for intervention against Appellee claiming that the Appellee was engaging in deceptive trade practices. CR 185. Over the course of litigation, Appellant added—but never served—appellees who were therefore never proper parties to Appellant’s claims.

On December 6, 2022, the Appellee, having been properly served by the plaintiff, filed its original answer to plaintiff’s petition. CR 208. On October 19, 2023, Appellee filed its Traditional and No-Evidence Motion for Summary Judgment against all of plaintiff’s claims. CR 223. On November 9, 2023, the Appellant filed its Motion for Extension of Time to File Response to Appellee’s Traditional and No-Evidence Motion for

Summary Judgment. CR 282. On November 13, 2023, the Trial Court denied Appellee's Motion for Extension of Time. CR 313.

On November 13, 2023, the Trial Court granted Appellee's Traditional and No-Evidence Motion for Summary Judgment. CR 311. Pursuant to the Trial Court's order, the plaintiff's claims against the Association were dismissed. *Id.*

On November 17, 2023, Appellant filed his Notice of Appeal regarding the Trial Court's order for interlocutory summary judgment. CR 318.

On appeal is whether the Trial Court erred in denying Appellant's Motion for Extension of Time and whether notice of Appellee's Motion for Traditional and No-Evidence Motion for Summary Judgment should have provided to Appellant. The Trial Court did not err, and Appellant was not entitled to notice of Appellee's Motion because Appellee was not aware of Appellant's claims against it as Appellant never served Appellee with its petition as required. Moreover, the Appellant appealed a non-appealable order. Therefore, the Trial Court's rulings should be affirmed or alternatively Appellant's Brief dismissed for failure to appeal an appealable order.

ARGUMENTS & AUTHORITIES

I. The Court should dismiss this appeal.

The Court has the authority under Texas Rule of Appellate Procedure 42.3(a) to dismiss an appeal for lack of jurisdiction. The Court should dismiss the appeal because the order being appealed is a non-appealable interlocutory order. *City of Hous. v. Kilburn*, 849 S.W.2d 810, 811 (Tex. 1993).

The order granting Appellee's Traditional and No Evidence Motion for Summary Judgment is not a final judgment as evidenced in the order as the Trial Court detailed that there are "other claims involving other parties remain pending in this lawsuit." CR 311. Additionally, the order is not expressly made appealable by statute, specifically Tex. Civ. Prac. & Rem. Code Ann. § 51.014. Appellant's appeal is outside the jurisdiction of this Court; therefore, this Court should dismiss Appellants' appeal.

II. The Appellant's intervention is defective.

Appellant's Brief is centered around its belief that it is entitled to service or otherwise notice of Appellee's Motion. However, Appellant's intervention is defective because Appellant's claims asserted in its

petition and motion for intervention were not realized as they were never served. Merely being named on a petition as “Defendant” does not make one a party to a claim. *ABC Exp., Inc. v. Tigator Trucking Serv., Inc.*, No. 14-95-00768-CV, 1996 WL 608478 (Tex. App.—Houston [14th Dist.] Oct. 24, 1996, no writ).

A party to a suit is generally one that is named in the pleadings and who is served with the cause of action. *Ex parte Bowers*, 886 S.W.2d 346,349 (Tex. App.—Houston [1st Dist.] 1994, writ dismissed w.o.j.). Moreover, this Court has opined that if the defendant appears after the plea in intervention is filed, then the intervenor must formally serve the defendant. *McWilliams v. Snap-Pac Corp.*, 476 S.W.2d 941 (Tex. App.—Houston [1st Dist.] 1971, writ refused n.r.e.).

No service had been obtained on Appellee as required nor was there ever a waiver of service. Furthermore, there is nothing in the record to support service or otherwise Appellee’s exercise of due diligence in serving Appellee. Similarly, Appellant’s Brief is mute to this point. Accordingly, Appellee’s intervention, as it relates to Appellant, was not effectuated prior to the filing and granting of Appellee’s Traditional and No-Evidence Motion for Summary Judgment.

PRAYER

For these reasons, and all the reasons set forth above, the Trial Court's Order Granting Appellee's Traditional and No Evidence Motion for Summary Judgment should be affirmed or in the alternative, to dismiss the appeal. Accordingly, Appellee respectfully requests that this Court deny all relief requested by Appellant, and for such other and further relief to which Appellees may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4 i(3) of the Texas Rules of Appellate Procedure, I certify that the word count in this Brief is 1950 words.



BRIANNA M. HERMAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon the parties listed below by facsimile, messenger, regular U.S. Mail, certified mail, return receipt requested and/or electronic service in accordance with the Texas Rules of Appellate Procedure on this the 21st day of February 2024.



BRIANNA M. HERMAN

Automated Certificate of eService

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