Affirmed and Memorandum Opinion filed December 7, 2010.

In The

Fourteenth Court of Appeals

NO. 14-10-00364-CV

GREATER HOUSTON DEVELOPMENT, INC., Appellant

V.

HARRIS COUNTY, TEXAS AND HARRIS COUNTY HOSPITAL DISTRICT, Appellees

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On Appeal from the County Civil Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 868,121

MEMORANDUM OPINION

Greater Houston Development, Inc., appeals from a grant of a plea to the jurisdiction favoring appellees, Harris County, Texas and Harris County Hospital District. Greater Houston sued appellees for inverse condemnation based on the alleged destruction of some of its property. In two issues, Greater Houston contends that (1) its petition

affirmatively demonstrated that the trial court had jurisdiction, and (2) in the alternative, there are fact issues precluding granting the plea to the jurisdiction. We affirm.

I. Background

In its petition, Greater Houston Development, Inc. represented that it is a nonprofit corporation dedicated to the "redevelopment of northeast Houston" through, among other things, "creating affordable housing" in that area. Toward that goal, on July 16, 2004, Greater Houston entered into a series of Donation Agreements with TexTac Partners I, whereby TexTac agreed to donate a number of houses to Greater Houston. Under the terms of the agreements, Greater Houston agreed to remove the houses from TexTac's property by November 30, 2004. "Upon removal of [each of] the Building[s] from [TexTac's] Land pursuant to the terms of the Agreement, [TexTac was to] execute and deliver to [Greater Houston] a Bill of Sale and Assignment in order to effectuate the proper transfer, conveyance and assignment of title of Building and any other related property to [Greater Houston]." In each of the agreements, Greater Houston and TexTac further agreed that either could terminate the agreement "for any reason at any time before removal of the [respective] Building from [TexTac's] Land." An additional clause in each agreement stated that "[t]his Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof."

On July 1, 2006, Greater Houston filed an inverse condemnation lawsuit against Harris County and the Harris County Hospital District, alleging that these entities caused the houses to be removed, damaged, and destroyed without Greater Houston's permission.[1] In 2004, the Hospital District apparently condemned and took possession of various tracts of land owned by TexTac as part of the LBJ Hospital Expansion Project. *Harris County*

[1] In the same lawsuit, Greater Houston also brought claims against allegedly related companies: Cherry House Moving Company, Inc. and Cherry Demolition, Inc. According to Greater Houston, Cherry Demolition performed the actual demolition work on the houses while, at the same time, Cherry House Moving was under contract with Greater Houston to move the houses from TexTac's property. The Cherry entities, however, are not parties to this appeal, and no issues are raised in the appeal concerning their involvement in this case.

Hospital District v. TexTac Partners I, 257 S.W.3d 303, 306 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Greater Houston's petition indicates that the subject houses were still on TexTac's former property at the time they were demolished.

Appellees filed a motion to dismiss for want of jurisdiction/plea to the jurisdiction, challenging the trial court's subject matter jurisdiction over Greater Houston's claims.[2] Specifically, appellees asserted that Greater Houston did not have an interest in the subject property sufficient to bring the inverse condemnation action. In support of their contention, appellees relied primarily on language in the Donation Agreements between Greater Houston and TexTac that appeared to make the gifts contingent on certain occurrences and revocable until those occurrences happened. In response, Greater Houston filed affidavits from Les Allison, a former president of TexTac, and Robin German Curtis, the president of Greater Houston, in which they asserted that their intention in entering the agreements was to affect an immediate conveyance of the houses. The trial court granted appellees' motion/plea and dismissed the lawsuit for want of jurisdiction.

II. Standards of Review

We consider a trial court's grant of a plea to the jurisdiction under a de novo standard. *See State v. Holland*, 221 S.W.3d 639, 642 (Tex. 2007). Generally, a plaintiff bears the burden to plead facts affirmatively demonstrating subject matter jurisdiction. *Id.* A plea to the jurisdiction can challenge either the sufficiency of the plaintiff's pleadings or the existence of jurisdictional facts. *Tex. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004). When a plea attacks the pleadings, the issue turns on whether the pleader has alleged sufficient facts to demonstrate subject matter jurisdiction. *Id*. In such cases, we construe the pleadings liberally in the plaintiff's favor and look for the pleader's intent. *See City of Waco v. Lopez*, 259 S.W.3d 147, 150 (Tex. 2008). When

[2] Appellees' pleading was entitled "Motion to Dismiss for Lack of Jurisdiction" but internally referred to itself as a plea to the jurisdiction. There is no meaningful distinction between the two labels. *See, e.g., Dahl v. State*, 92 S.W.3d 856, 860 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

a plea to the jurisdiction challenges the plaintiff's pleadings and not the existence of jurisdictional facts, we assume the facts pleaded to be true. *See Westbrook v. Penley*, 231 S.W.3d 389, 405 (Tex. 2007). Furthermore, we generally may not assess the merit of the plaintiff's claims. *See County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002).

When a plea to the jurisdiction challenges the existence of jurisdictional facts, a court may consider evidence in addressing the jurisdictional issues. *Miranda*, 133 S.W.3d at 227. If the evidence reveals a question of fact on the jurisdictional issue, the trial court cannot grant the plea, and the issue must be resolved by a factfinder. *Id*. at 227-28. If the evidence is undisputed or fails to raise a question of fact, the court should rule on the plea as a matter of law. *Id*. at 228. After a defendant asserts, and supports with evidence, that the court lacks subject matter jurisdiction, the plaintiff must show the existence of a disputed fact issue in order to avoid dismissal for want of jurisdiction. *Id*. The standard of review for such jurisdictional disputes "generally mirrors that of a [traditional] summary judgment." *Id*.

A party seeking affirmative relief must have standing in order to invoke a court's subject matter jurisdiction. *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008). Without breach of a legal right belonging to the plaintiff, no cause of action can accrue to its benefit. *See Nobles v. Marcus*, 533 S.W.2d 923, 927 (Tex. 1976). When a plaintiff lacks standing, the proper disposition is to dismiss the lawsuit. *Inman*, 252 S.W.3d at 304.

III. Analysis

A. Was the Trial Court Limited to Reviewing Only the Pleadings?

In its first issue, Greater Houston maintains that its petition affirmatively demonstrated that the trial court had jurisdiction over the claims raised. Moreover, Greater Houston complains that the trial court improperly treated appellees' plea as a motion for summary judgment and delved into the facts. Greater Houston further insists

that it properly pleaded a taking and that appellees never challenged the pleadings as deficient or filed special exceptions. In making these arguments, Greater Houston misconstrues both the nature of appellees' plea and controlling precedent from the Texas Supreme Court.

On page one of the plea, appellees state that they are challenging the existence of jurisdictional facts. Appellees then proceed to specifically argue, not that Greater Houston failed to properly plead a takings claim, but that certain facts establish that the court in fact was without jurisdiction because Greater Houston did not possess an interest in the houses sufficient to bring an inverse condemnation action for their destruction. In support, appellees submitted evidence, including the Donation Agreements between Greater Houston and TexTac. Appellees argued that the proffered evidence demonstrated that a gift had yet to occur at the time the houses were destroyed.

Under the Texas Supreme Court's *Miranda* opinion, when a plea to the jurisdiction challenges the existence of jurisdictional facts, the trial court can consider evidence in determining whether it has jurisdiction over the case. 133 S.W.3d at 227; *see also Bland I.S.D. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) ("[A] court deciding a plea to the jurisdiction is not required to look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised."). Here, because appellees' plea challenged the existence of jurisdictional facts, the trial court was not limited to looking solely to the pleadings but properly considered evidence in determining whether it had jurisdiction over Greater Houston's claims. Accordingly, we overrule Greater Houston's first issue.

B. Did the Evidence Raise a Fact Question Precluding Dismissal?

In its second issue, Greater Houston asserts that if the trial court properly considered evidence, there is at least a fact issue regarding whether the court had jurisdiction. Therefore, it argues, the trial court was precluded from granting appellees' plea to the jurisdiction. Greater Houston alleges that the evidence upon which appellees rely does

not pertain to the court's jurisdiction but instead goes to the very merits of the case. Greater Houston also claims that the two affidavits it presented demonstrate that it had a sufficient interest in the subject properties to establish the trial court's jurisdiction over the action or to at least raise a fact issue regarding jurisdiction.

In their plea, appellees contended that Greater Houston did not have an interest in the houses sufficient to bring an inverse condemnation action for their demolition, thereby challenging Greater Houston's standing to bring the lawsuit. *See Austin Nursing Ctr.*, 171 S.W.3d at 848. In order to have standing to sue for inverse condemnation, a party must have a vested property interest in the subject property at the time of the alleged taking. *Tex. S. Univ. v. State Street Bank & Trust Co.*, 212 S.W.3d 893, 903 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 808 (Tex. 2005), and *State/Operating Contractors ABS Emissions, Inc. v. Operating Contractors/State*, 985 S.W.2d 646, 651 (Tex. App.—Austin 1999, pet. denied)); s*ee also Cypress Forest P.U.D. v. Kleinwood M.U.D.*, 309 S.W.3d 667, 675 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (holding trial court erred in denying plea to the jurisdiction in takings case where plaintiff failed to plead a vested property interest); *City of Houston v. Northwood M.U.D. No. 1*, 73 S.W.3d 304, 308-10 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (surveying cases). A property right is considered "vested" when it has definitive, rather than merely potential, existence. *City of La Marque v. Braskey*, 216 S.W.3d 861, 864 (Tex. App.—Houston [1st Dist.] 2007, pet. denied); *State Street Bank*, 212 S.W.3d at 903; *see also* Black's Law Dictionary 1595 (8th ed. 2004) (defining "vested" as "[h]aving become a completed, consummated right for present or future enjoyment; not contingent; unconditional; absolute").

The question here, then, is whether Greater Houston possessed a vested property right in the houses at the time they were allegedly destroyed. Greater Houston asserts that the houses were donated to it by TexTac before their destruction. For an inter vivos gift, or a gift made during the donor's lifetime, to be effective:

> title to the item must pass immediately and unconditionally and the transfer thereof must be so complete that the donee might maintain an action for the conversion of the property. There must be a delivery of the possession of the chattels by the donor to the donee with the intention on the part of the donor to vest the ownership of the chattels in the donee, immediately and unconditionally. The owner must, at the time he makes the alleged gift, intend immediate divestiture of rights of ownership out of himself and the consequent and immediate vesting of such rights in the donee. All dominion and control over the property must be released by the owner. Until a donor has divested himself, absolutely and irrevocably of the title, dominion, and control of the subject of the gift, he has the power to revoke it. If the donor has the power to revoke, there is no valid gift.

Oadra v. Stegall, 871 S.W.2d 882, 890 (Tex. App.—Houston [14th Dist.] 1994, no writ) (internal citation and quotation omitted).

In support of their contention that Greater Houston did not possess a vested right at the time of the alleged taking, appellees relied primarily on language in the Donation Agreements between Greater Houston and TexTac. Contrary to Greater Houston's contention, these agreements were highly relevant to the jurisdictional issues in the case and did not relate solely to the ultimate merits of the takings claims. Under the terms of the agreements, Greater Houston agreed to remove the houses from TexTac's property by November 30, 2004. "Upon removal of [each of] the Building[s] from [TexTac's] Land pursuant to the terms of the Agreement, [TexTac was to] execute and deliver to [Greater Houston] a Bill of Sale and Assignment in order to effectuate the proper transfer, conveyance and assignment of title of Building and any other related property to [Greater Houston]." Each agreement further provided that either party could terminate the agreement "for any reason at any time before removal of the [respective] Building from TexTac's] Land." Lastly, each agreement stated that "[t]his Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof." Greater Houston's own pleadings acknowledged that the houses in question were still on TexTac's property, or former property, at the time the alleged takings occurred.

Clearly, the terms of the Donation Agreements evidenced an intention by TexTac to donate property to Greater Houston. But just as clearly, the gift was conditioned upon the happening of certain occurrences, including removal of the houses from the land, and was revocable for any reason before the removal of the houses. It is further undisputed that the conditions listed in the agreements did not occur, chiefly that the houses were not removed by Greater Houston.

Greater Houston, however, points to the two affidavits it filed in response to the plea to the jurisdiction. Based on these affidavits, Greater Houston argues that it established that the gifts had been constructively delivered even though it did not remove the houses from the property as required by the Donation Agreements. In his affidavit, Les Allison, a former president of TexTac, stated that his intention had been to "absolutely and irrevocably divest [him]self of the title, dominion, and control of the homes and deliver them to Greater Houston." He further averred that it was his opinion that once each agreement was signed, he "held no further dominion or control over the homes." Regarding the language in the agreements making the gifts conditional and revocable, Allison said that this was intended simply to protect Greater Houston "and in no way affected [his] intent to donate the homes." In his affidavit, Robin German Curtis, president of Greater Houston, echoed the exact same sentiments presented in Allison's affidavit.

The operative documents here are the Donation Agreements. When parties have entered into a valid, integrated, and unambiguous agreement, as Greater Houston and TexTac have in this case, that agreement must be enforced as written, and parol evidence may not be used to add to, vary, or contradict the terms set forth in the agreement itself. *See, e.g., Adams v. McFadden,* 296 S.W.3d 743, 752, (Tex. App.—El Paso 2009, pet. granted, judgment vacated, and remanded by agreement); *Edascio, L.L.C. v. NextiraOne L.L.C.*, 264 S.W.3d 786, 796 (Tex.App.-Houston [1st Dist.] 2008, pet. denied). Greater Houston does not contend that the agreements are invalid; indeed, its very cause of action

depends on their validity. The agreements contain provisions specifying that they are the "entire understanding of the parties with respect to the subject matter," and they are clear and unambiguous. Accordingly, as parol evidence of the intentions behind the agreements, the affidavits are irrelevant to a proper interpretation of the agreements.

Under the definition of gift in *Oadra*, the evidence established that no gift had occurred because Greater Houston had not removed the houses from the land as required under the Donation Agreements. 871 S.W.2d at 890. Thus, at the time of the alleged taking, Greater Houston had no vested right in the houses and no standing to bring an inverse condemnation action for their destruction. *See State Street Bank*, 212 S.W.3d at 903. We overrule Greater Houston's second issue.

We affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges, Justice Yates, and Senior Justice Mirabal.[3]

[3] Senior Justice Margaret Garner Mirabal sitting by assignment.