

Opinion issued March 17, 2011



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-10-00011-CV

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**730 N. POST OAK OFFICE PARK AND  
730 NORTH POST OAK, LP, Appellants**

**V.**

**HARRIS COUNTY APPRAISAL DISTRICT, Appellee**

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**On Appeal from the 61st District Court  
Harris County, Texas  
Trial Court Case No. 2007-52237**

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**OPINION**

In this ad valorem property tax case, appellants 730 N. Post Oak Office Park and 730 North Post Oak, LP appeal from the trial court's dismissal of their suit against the Harris County Appraisal District and the Harris County Appraisal

Review Board for want of jurisdiction. Appellants contend that the trial court erred by granting the appraisal district's plea to the jurisdiction and by denying appellants' motion to substitute the true name of the property owner. We conclude that the trial court erred in granting the plea to the jurisdiction because there is a question of fact as to whether the protest and the suit for judicial review were filed by a proper party using an assumed or common name. We reverse and remand for further proceedings consistent with this opinion.

The property at issue is a commercial office building and parking garage located in Houston. In 2003, a joint venture known as 730 N. Post Oak Office Park (the "Joint Venture") sold the property by special warranty deed to a limited partnership named 730 North Post Oak, L.P. (the "Limited Partnership"). On January 1, 2007, the Limited Partnership was the owner of the property. A notice of protest was filed with respect to the property with appraisal district's review board for the 2007 tax year. The chairman of the appraisal review board signed an order reducing the appraised value of the property.

An original petition for judicial review of the review board's order was filed in the name of "730 N. Post Oak Office Park, as the Property Owners and Property Owners" as "Plaintiff." The petition did not include any other explanation about the identity of the named "Plaintiff"; specifically, the petition did not explain whether the petition's named plaintiff was the Joint Venture of the same name or

the petition instead was intended to be brought in an assumed or common name on behalf of the Limited Partnership. The petition was later amended to identify the Limited Partnership as a named plaintiff.\*

The appraisal district filed a plea to the jurisdiction arguing that the original plaintiff to the suit was the Joint Venture, which lacked standing to sue because it did not own the subject property during the relevant tax year. The appraisal district attached a copy of the special warranty deed by which the Joint Venture sold the property to the Limited Partnership. In response, the plaintiffs argued that the name “730 N. Post Oak Office Park” was the common name of the Limited Partnership. They also moved, pursuant to Rule 28 of the Texas Rules of Civil Procedure and section 42.21(e) of the Tax Code, to substitute the Limited Partnership as the “true party as the plaintiff.”

As evidence that “730 N. Post Oak Office Park” was the assumed or common name of the Limited Partnership, records were produced showing that the appraisal district referred to the property owner by that name both before and after

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\* In the first amended petition, the named plaintiffs were identified as 730 N. Post Oak Office Park and 730 North Post Oak LP “as the PROPERTY OWNERS and the PROPERTY OWNERS.” No party argues that this quoted language has any significance to the issues on appeal. Appellants’ brief identifies the appellants to this appeal as “730 North Post Oak Office Park and 730 North Post Oak LP et al.,” with no indication of what other parties are referenced by the use of “et al.” Our review of the record reveals no other parties who could qualify as appellants. *See* TEX. R. APP. P. 3.1(a).

the property was sold by the Joint Venture to the Limited Partnership. In addition, the Limited Partnership submitted an affidavit from Sid C. Weiss, who averred:

I am a director and the Chairman and Chief Executive Officer of Weiss Realty Management, LLC (“Weiss Realty Management”) and authorized by it to make this affidavit. Weiss Realty Management manages the office building at 730 North Post Oak Road in Houston, Texas (the “Property”). As of approximately August 2003 the Property has been owned by 730 North Post Oak LP. I am authorized by 730 North Post Oak LP to make this affidavit. For a period of time prior to August 2003 the Property was owned by 730 North Post Oak Office Park which I understand to have been a joint venture between two entities.

The Property has for a long time been known as, and referred to as both the 730 North Post Oak Office Park and the 730 Memorial Office Park. After the purchase of the Property by 730 North Post Oak LP the Property continued to be known as 730 North Post Oak Office Park and it operated under that name and the name 730 Memorial Office Park for many purposes. Harris County Appraisal District has referred to the Property continuously from prior to August 2003 through at least about a month ago if not longer.

The owner 730 North Post Oak LP hired O’Connor & Associates as its tax agent for tax year 2007 and authorized the filing of a protest on its behalf for the 2007 tax year. Because Harris County Appraisal District referred to the Property owner as 730 North Post Oak Office Park and used that name in its records, the protest was filed under the name 730 North Post Oak Office Park; however, the party filing and pursuing that protest was the owner 730 North Post Oak LP. After the issuance of the appraisal review board order 730 North Post Oak LP authorized the filing of this judicial appeal. The party that prosecuted both the administrative protest administratively, and the party prosecuting this lawsuit as Plaintiff are one and the same, 730 North Post Oak LP.

Despite this evidentiary showing, the trial court granted the appraisal district's plea to the jurisdiction and dismissed the case for want of jurisdiction. The trial court did not explicitly rule on the Limited Partnership's Rule 28 motion.

Standing is a component of subject-matter jurisdiction that cannot be waived; therefore, a party's lack of standing deprives a court of authority to decide a pending case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993); *Koll Bren Fund VI, LP v. Harris Cnty. Appraisal Dist.*, No. 01-07-00321-CV, 2008 WL 525799, at \*2 (Tex. App.—Houston [1st Dist.] Feb. 28, 2008, pet. denied) (mem. op.). Subject-matter jurisdiction may be challenged by a plea to the jurisdiction. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000); *Koll Bren Fund VI*, 2008 WL 525799, at \*2. A trial court determines a plea to the jurisdiction by construing the pleadings in the plaintiff's favor. *See Bland ISD*, 34 S.W.3d at 553; *Koll Bren Fund VI*, 2008 WL 525799, at \*2. When a plea to the jurisdiction challenges the existence of jurisdictional facts, a court may consider evidence in addressing the jurisdictional issues. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004). In doing so, the court must take as true all evidence favorable to the plaintiff and “indulge every reasonable inference and resolve any doubts in [its] favor.” *Id.* at 227–28. 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 fact finder. *Id.*; accord *Smith v.*

*Galveston Cnty.*, 326 S.W.3d 695, 698 (Tex. App.—Houston [1st Dist.] 2010, no pet.). On appeal, we review de novo a trial court’s ruling on a plea to the jurisdiction. *Miranda*, 133 S.W.3d at 228.

Chapter 41 of the Texas Tax Code grants property owners the right to protest the appraised value of their property. *See* TEX. TAX CODE ANN. §§ 41.41–.47 (West 2008 & Supp. 2010). “Rights under the Code are premised upon ownership of the property at issue.” *KM-Timbercreek, LLC v. Harris Cnty. Appraisal Dist.*, 312 S.W.3d 722, 726 (Tex. App.—Houston [1st Dist.] 2009, no pet.). Property ownership is a prerequisite to both the right to protest an assessment to a local appraisal board and the right to appeal the board’s resolution of the protest to the district court. *Id.* at 727. In order to seek judicial review of an appraisal review board’s determination, “730 N. Post Oak Office Park” had to be an owner of the property, a designated agent of the owner, or the authorized lessee of the property. *See id.* A party that does not meet one of the above criteria lacks standing under the Tax Code. *Id.*; *Koll Bren Fund VI*, 2008 WL 525799, at \*3. If the litigant lacks standing, the trial court is deprived of subject-matter jurisdiction to consider a suit for judicial review based on an ad valorem tax protest. *KM-Timbercreek*, 312 S.W.3d at 727; *Koll Bren Fund VI*, 2008 WL 525799, at \*3.

The appraisal district argues that this case is no different from other cases in which appeals of tax protests have been dismissed because the administrative

protest and suit for judicial review were filed in the name of a prior owner of the property and there was no evidence to support the contention that such name was the assumed or common name of the true property owner. *E.g.*, *KM-Timbercreek*, 312 S.W.3d at 726; *Harris Cnty. Appraisal Dist. v. Chien-li Kang Shen*, No. 01-09-00652-CV, 2010 WL 1729397, at \*1 (Tex. App.—Houston [1st Dist.] Apr. 29, 2010, no pet.) (mem. op.); *Mei Hsu Acquisition Corp. v. Harris Cnty. Appraisal Dist.*, No. 01-08-00690-CV, 2009 WL 3152152, at \*1 (Tex. App.—Houston [1st Dist.] Oct. 1, 2009, no pet.) (mem. op.); *Koll Bren Fund VI*, 2008 WL 525799, at \*1. As in prior cases, we accord no deference to the fact that the appraisal district’s own records reflect “730 N. Post Oak Office Park” as the owner of the property both before and after the sale of the property from the Joint Venture to the Limited Partnership. The actual property owner cannot establish that it operated its business under a common name based solely upon the fact that the name is so reflected in the records of the appraisal district. *See, e.g.*, *KM-Timbercreek*, 312 S.W.3d at 729–30; *Tourneau Houston, Inc. v. Harris Cnty. Appraisal Dist.*, 24 S.W.3d 907, 909 (Tex. App.—Houston [1st Dist.] 2000, no pet.).

Here, however, there is other evidence in the record that the Limited Partnership actually filed both the administrative protest and the suit for judicial review. The affidavit provided evidence that the proceedings were actually initiated by the Limited Partnership, which was the true property owner and the

only party empowered to authorize the tax protest. Weiss specifically averred that it was the Limited Partnership that retained an agent for the purpose of challenging the appraisal, that authorized the filing of a protest, and that authorized the filing of the appeal of the appraisal review board's order to the district court.

Weiss also averred that the Joint Partnership operated under the name of "730 N. Post Oak Office Park" for "many purposes." Although the affidavit lacked specific detail about the "many purposes" for which the name purportedly was used, this was some evidence that the name was used for more purposes than one, and therefore was some evidence that the name was used for some purpose other than the mere designation of property ownership on the records of the appraisal district. The appraisal district did not object to the Weiss affidavit, nor did it present any contrary evidence.

Taking as true all evidence favorable to the plaintiff, indulging every reasonable inference and resolving any doubts in the plaintiff's favor, we conclude there is a question of fact about the identity of the party filing the tax protest and suit for judicial review. That question of fact precludes dismissal of the case on a plea to the jurisdiction. *See Miranda*, 133 S.W.3d at 227–28. We therefore sustain appellants' first two issues, which argue that the trial court erred in granting the appraisal district's plea to the jurisdiction.



In light of this resolution, we do not address appellants' issue relating to substitute a party's name, upon which the trial court has not yet explicitly ruled. We reverse the judgment of the trial court granting the appraisal district's plea to the jurisdiction, and we remand the case to the trial court for further proceedings.

Michael Massengale  
Justice

Panel consists of Chief Justice Radack and Justices Higley and Massengale.