Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00349-CV

CITY OF FREDERICKSBURG, Texas,
Appellant
v.

E. 290 OWNERS' COALITION,
Appellee

From the 216th Judicial District Court, Gillespie County, Texas
Trial Court No. 15758
Honorable Albert D. Pattillo, III, Judge Presiding

Opinion by: Lori I. Valenzuela, Justice

Sitting: Irene Rios, Justice
Liza A. Rodriguez, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: June 16, 2021

REVERSED AND REMANDED

Appellant, the City of Fredericksburg (the "City"), filed an interlocutory appeal from the trial court's denial of its plea to the jurisdiction. We reverse the trial court's order denying the City's plea to the jurisdiction and render judgment granting the City's plea to the jurisdiction and dismissing without prejudice appellee's claims for breach/anticipatory breach of contract, regulatory takings, and requests for declaratory relief. Additionally, we reverse and dissolve the trial court's April 23, 2019 temporary injunction. We remand this cause to the trial court for further proceedings.

I. FACTUAL BACKGROUND

On June 4, 2018, the City sent letters to owners of property in the City's extraterritorial jurisdiction ("ETJ") along East U.S. Highway 290 informing the owners that City staff were to begin annexation procedures concerning an area that included their property. Because tax records indicated their property was under an Agricultural, Timber, or Wildlife ad valorem tax exemption, the City was required to offer the property owners a development agreement in lieu of annexation. The City attached a copy of the proposed pre-annexation development agreement to its letter and informed the owner that if they did not respond, the City would assume the owner had declined to enter into the agreement. The City cautioned the owner that if they elected to decline the agreement, their property might be annexed, and public services provided in accordance with a statutory Annexation Service Plan.

Under the terms of the proposed pre-annexation development agreement, the City agreed to the continuation of the ETJ status of the owner's property, to immunity of the property from annexation by the City, and to immunity of the property from City property taxes. In return, the property owner agreed not to use the property for any use other than for agriculture, wildlife management, and/or timber land consistent with Chapter 23 of the Texas Tax Code, except for any existing single-family residential use of the property. Unless terminated earlier, the term of the agreement commenced on the date of execution by both parties and terminated on May 1, 2033.

Some property owners elected not to enter into the proposed pre-annexation development agreement and, instead, began negotiations with the City over other acceptable terms and conditions. On February 26, 2019, the City sent an email explaining what terms and conditions the City would require as part of a "Voluntary Annexation Agreement" with the owners of properties along East U.S. Highway 290. On March 12, 2019, the owners sent a proposed

"Voluntary Annexation Agreement" to the City, which the owners contended tracked the proposed terms and conditions.

II. PROCEDURAL BACKGROUND

One month later, on April 12, 2019, appellee, the E. 290 Owners' Coalition (the "Coalition"), filed suit against the City. In its petition, the Coalition alleged the February 26, 2019 email constituted an "offer" and the March 12, 2019 responsive email constituted an "acceptance," thereby creating contractual rights and responsibilities between the parties. According to the Coalition, this email exchange resulted in an agreement that the City breached. The Coalition stated it "was created specifically for the purpose of hiring an attorney and bringing the instant litigation to enforce the agreement as between the association members and the City of Fredericksburg, and to otherwise obtain a declaration of rights of the various provisions of Texas law as are applicable to the annexation process as between the City of Fredericksburg and the Plaintiff members." The Coalition contended the owners who elected not to sign the pre-annexation development agreement are members of the Coalition; however, none are identified by name in the petition.

The Coalition alleged (1) breach of contract and/or anticipatory breach of contract and (2) violation of Local Government Code Chapter 43, which governs municipal annexation. The Coalition sought (1) a declaratory judgment on several matters; (2) monetary damages for its members based on, among other things, breach of contract, loss of profitability, and loss of property value; (3) a temporary restraining order and a temporary injunction; and (4) attorney's fees.

On April 15, 2019, the trial court granted a temporary restraining order, ordering the City to

> cease and desist from taking any action whatsoever towards annexation of " . . . approximately 213.64 acres of land situated in Gillespie County, Texas along U.S. Highway 290 East, consisting primarily of frontage properties located along U.S. Highway 290 East, extending from the existing City Limit line to the east approximately one (1) mile to the City's Extraterritorial Jurisdiction (ETJ)", and in particular, the [City] is temporarily restrained from conducting the "2nd Public Hearing" with regard to said property, as is described in the . . . City Counsel [sic] Agenda for April 15, 2019, from the date of entry of this order until fourteen (14) days thereafter, or until further order of this Court.

The trial court set April 23, 2019, for a temporary injunction hearing. On that date, the trial court signed a temporary injunction restraining the City from the same actions as above. On May 6, 2019, the City filed its general answer, plea to the jurisdiction, and special exceptions to the Coalition's petition. The City's plea to the jurisdiction alleged (1) the Coalition lacked associational standing to sue on behalf of unnamed property owners, (2) the trial court lacked subject-matter jurisdiction over the Coalition's causes of action for breach of contract and its claim for damages because the City had immunity and there is no waiver of its immunity, (3) the lawsuit was not a proper ultra vires suit, (4) the Coalition lacked standing to challenge an annexation proceeding based on alleged procedural defects, (5) enjoining a legislative act violated the separation of powers, and (6) the Coalition's takings claim is not ripe. The City asked that "the claims subject to [its] plea be dismissed or, alternatively, the suit be dismissed in its entirety." Following a hearing, the trial court denied the plea to the jurisdiction. This appeal by the City ensued.

III. STANDARD OF REVIEW

To establish subject-matter jurisdiction, a plaintiff must allege facts that affirmatively demonstrate the court's jurisdiction to hear the claim. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993); *County of Bexar v. Steward*, 139 S.W.3d 354, 357 (Tex. App.—San Antonio 2004, no pet.). A party may contest a trial court's subject-matter jurisdiction by filing a plea to the jurisdiction. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154,

160 (Tex. 2016). We review a trial court's ruling on a plea to the jurisdiction under a de novo standard of review. *Id.*; *Steward*, 139 S.W.3d at 357.

There are two general categories of pleas to the jurisdiction: (1) those that challenge only the pleadings, and (2) those that present evidence to challenge the existence of jurisdictional facts. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-27 (Tex. 2004). When, as here, a plea to the jurisdiction challenges only the pleadings, we determine whether the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the case. *Id.* at 226. Our de novo review of such challenges looks to the pleader's intent and construes the pleadings in its favor. *Id.* If the pleadings lack sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiff should generally be given an opportunity to amend. *Id.* at 226-27. "If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiff[] an opportunity to amend." *Id.* at 227.

IV. LACK OF ASSOCIATIONAL STANDING

The Coalition claims standing to bring this suit under the Texas Uniform Unincorporated Association Act, codified in Chapter 252 of the Texas Business Organizations Code (the "Code"). "A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution." TEX. BUS. ORGS. CODE § 252.007(a). "A nonprofit association may assert a claim in its name on behalf of members of the nonprofit association if:"

> (1) one or more of the nonprofit association's members have standing to assert a claim in their own right;
> (2) the interests the nonprofit association seeks to protect are germane to its purposes; and

> (3) neither the claim asserted nor the relief requested requires the participation of a member.

Id. § 252.007(b); *accord Tex. Ass'n of Bus.*, 852 S.W.2d at 447.

In its first issue on appeal, the City asserts the Coalition lacks associational standing because the first and third prongs of section 252.007(b) are not satisfied.[1] The Coalition counters that (1) its members are individual owners of property along E. U.S. Highway 290 who received letters from the City in June 2018 containing a "Pre-Annexation Development Agreement"; and (2) its claim for relief does not require the participation of its members because the relief it seeks is primarily injunctive and declaratory in nature and any monetary damages will be awarded to the Coalition and not its members. Because we believe the third prong is dispositive, we address only whether "neither the claim asserted nor the relief requested requires the participation of a member" of the Coalition.

The third prong requires that the Coalition's pleadings and the record "demonstrate that neither the claim asserted, nor the relief requested require the participation of individual members in the lawsuit." *Tex. Ass'n of Bus.*, 852 S.W.2d at 448. "The third prong of the associational standing test . . . is best seen as focusing on the matters of administrative convenience and efficiency, not on elements of a case or controversy within the meaning of the Constitution." *Big Rock Investors Ass'n v. Big Rock Petroleum, Inc.*, 409 S.W.3d 845, 849 (Tex. App.—Fort Worth 2013, pet. denied). "Under the third prong of the associational standing test, determining what type of claims brought by an association and what type of relief sought by an association would or would not require the participation in the litigation of the association's individual members and therefore would or would not advance prudential concerns of administrative convenience, efficiency, and judicial economy is somewhat tricky." *Id.* "Usually, an association's claim for

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[1] In its reply brief on appeal, the City withdrew any dispute to the second prong of section 252.007(b).

damages on behalf of its members is barred by want of the association's standing to sue because such suits typically require each individual member to participate in the litigation to establish his own damages." *Id.*

If an association seeks damages on behalf of its members "or must otherwise prove the members' individual circumstances to obtain relief, participation of the individual members is required, and the third prong is not satisfied." *Tex. Mun. League Intergovernmental Risk Pool v. Burns*, 209 S.W.3d 806, 815 (Tex. App.—Fort Worth 2006, no pet.), *overruled on other grounds*, *Tex. Mut. Ins. Co. v. Chicas*, 593 S.W.3d 284, 291 (Tex. 2019). "Thus, when claims for damages have not been assigned to an association, when the relief sought by an association is monetary damages for alleged injuries to individual members, and when the damages claimed are not common to the entire membership, nor shared by all to an equal degree, then each individual member must be a party to the suit; the association possesses no standing to claim damages on behalf of its members." *Big Rock Investors*, 409 S.W.3d at 850.

In contrast, an association that "seeks only prospective relief, raises only issues of law, and need not prove the individual circumstances of its members to obtain that relief" satisfies the third requirement for associational standing. *Tex. Ass'n of Bus.*, 852 S.W.2d at 448. "When . . . an association seeks a declaration, injunction, or some other form of prospective equitable relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured and that, consequently, prudential concerns are advanced and the association may possess standing to invoke the court's remedial powers on behalf of its members." *Big Rock Investors*, 409 S.W.3d at 850; *see also Tex. Ass'n of Bus.*, 852 S.W.2d at 448 (same). "But merely pleading for equitable relief does not automatically satisfy the third prong of the associational standing test." *Big Rock Investors*, 409 S.W.3d at 850-51. Associational standing will not exist to assert a declaratory judgment action if the declaration sought "does not present

pure issues of law, but instead require[s] individualized inquiry and fact-intensive analysis." *Am. Acad. of Emergency Med. v. Mem'l Hermann Healthcare Sys., Inc.*, 285 S.W.3d 35, 44 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

To resolve the issue of whether the Coalition's various claims require participation of its members, we next examine its requested relief.

A. Breach of contract

First, the Coalition alleged a breach/anticipatory breach of contract claim. One of the elements that must be established in a breach or anticipatory breach of contract claim is damages sustained by the plaintiff (or to the non-repudiating party) as a result of the breach. *See MG Bldg. Materials, Ltd. v. Moses Lopez Custom Homes, Inc.*, 179 S.W.3d 51, 61 (Tex. App.—San Antonio 2005, pet. denied) (stating four elements of breach of contract claim); *Good Shepherd Hosp., Inc. v. Select Specialty Hosp.–Longview, Inc.*, 563 S.W.3d 923, 929 (Tex. App.—Texarkana 2018, no pet.) (stating three elements of anticipatory breach of contract claim).

On appeal, the Coalition contends that none of its claims require participation by its members because the damages sought can be proven without their participation and any damages recovered would be awarded to the Coalition and not to the individual members. However, the Coalition also contends that "damages have been sought for the City's breach of contract, involving damages that would accrue to the Coalition's members' properties if the agreed upon annexation approach is not followed."

Although an association may be permitted to seek monetary damages, we must decide whether the monetary damages requested here require the participation of individual members in the lawsuit. *See BCCC Soc. Members Ass'n v. Barton Creek Resort LLC*, 03-18-00708-CV, 2020 WL 2990577, at *5 (Tex. App.—Austin June 3, 2020, pet. denied) (mem. op.) (concluding "the mere fact that the damages calculation formula may produce the same compensatory damages

calculation for each of the Association's members is insufficient to satisfy section 252.007(b)'s third prong that "'neither the claim asserted nor the relief requested requires the participation of a member'"); *Concerned Owners of Thistle Hill Estates Phase I, LLC v. Ryan Rd. Mgmt., LLC*, 02-12-00483-CV, 2014 WL 1389541, at *6 (Tex. App.—Fort Worth Apr. 10, 2014, no pet.) (mem. op.) (association "did not seek recoupment of the fees for any of its individual members but rather sought recoupment of any such monies for itself, so that such monies could be spent to benefit the Subdivision" and therefore only required proof of "alleged wrongful expenditures" not proof of the members' entitlement to compensatory money damages); *see also Am. Acad. of Emergency Med.*, 285 S.W.3d at 44 (concluding association's claims for declaratory relief on whether its physicians were violating Texas law by practicing at certain hospitals under some version of an independent contractor agreement, alleged to be similar to the form agreement attached to the association's petition, did "not present pure issues of law, but instead require individualized inquiry and fact-intensive analysis'").

In this case, we conclude the Coalition cannot prove breach or anticipatory breach of contract damages "that would accrue to the Coalition's members' properties if the agreed upon annexation approach is not followed" without the participation of each member because proof of the members' individual circumstances will be required to determine the amount of damages accruing to each property. Therefore, because the third prong is not satisfied the Coalition does not have associational standing to assert a breach or anticipatory breach of contract claim and the trial court should have dismissed this claim.[2]

[2] In its fifth issue, the City asks: "Does a claim for breach of a development agreement fall within the waiver of governmental immunity from suit under Section 271.152 of the Texas Local Government Code when the agreement is not for providing goods or services to the city and was not properly executed? Can mandamus issue to force to compliance with an agreement?" Because we conclude the Coalition lacks associational standing to bring a breach/anticipatory breach of contract claim, we do not address the merits of issue five. *See* TEX. R. APP. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

B. Damages claims

In its petition, the Coalition alleges the following:

> As a direct and proximate result of the occurrences made the basis of this lawsuit, the subject of this lawsuit, the property owners whose interests are represented by [the Coalition], will be caused to suffer loss of the use of their respective properties without just compensation, and to incur the following damages:
>
> 11.1.1 Potential loss of profitability which will, in all probability, be incurred in the future;
> 11.1.2 Loss of property value in an amount yet to be determined;
> 11.1.3 Loss of Plaintiff's lawful, free and unrestricted use of the Owners' property;
> 11.1.4 Loss of use and enjoyment of property; and
> 11.1.5 Deprivation of the enjoyment of real property.

The Coalition does not tie the above requests for damages to a specific cause of action; however, these types of damages are generally associated with a takings claim.[3] *See e.g., Sheffield Dev. Co., Inc. v. City of Glenn Heights*, 140 S.W.3d 660, 677 (Tex. 2004) (lost profits and lost investment are relevant factors to consider in assessing value of property and severity of economic impact on property owner); *Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118, 139 (Tex. App.—San Antonio 2013, pet. denied) (economic impact of the regulation on property owner considers diminution in value of the property brought on by the regulation in question). Although the Coalition does not use the phrase "takings" in its petition, we construe the petition to allege a takings claim.[4]

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[3] "Several different general categories of takings claims exist." *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 71 S.W.3d 18, 29 (Tex. App.—Fort Worth 2002), *aff'd*, 135 S.W.3d 620 (Tex. 2004). "A regulatory taking may occur when [a] governmental land-use regulation deprives a landowner of all economically viable use of his land or when the land-use regulation does not substantially advance a legitimate state interest." *Id.* "In these cases, the application of the regulation itself or the governmental regulatory action purportedly effectuates a taking by impermissibly limiting a landowner's desired use of or activity on his property in total or partially for some reason not sufficiently related to a legitimate state interest." *Id.*

[4] On appeal, the parties refer to the Coalition's regulatory takings claim.

We conclude the damages resulting from the losses and deprivation alleged above will require proof of "the members' individual circumstances to obtain relief, [thus requiring] participation of the individual members."[5] *Burns*, 209 S.W.3d at 815. Accordingly, because the third prong is not satisfied the Coalition does not have associational standing to assert a takings claim and the trial court should have dismissed any claim for damages related to an alleged regulatory taking.[6]

V. REQUESTS FOR DECLARATORY RELIEF

In its request for declaratory relief, the Coalition asked the trial court to determine (1) whether the City adhered to the requirements of Local Government Code Chapter 43 in its attempt to annex the members' properties and (2) whether the City adhered to Government Code Chapter 551 in calling an alleged emergency meeting pertaining to the annexation of its members' properties. The Coalition also requested the trial court make determinations on a laundry list of other requests related to the proposed annexation. In its petition, the Coalition asserted it is entitled to arbitration or mediation because the City violated various provisions of Local Government Code Chapter 43, which governs municipal annexations.

In its third issue, the City asserts the trial court lacks subject-matter jurisdiction over the Coalition's allegations that the City did not follow proper annexation procedures. In its sixth issue, the City asserts the trial court lacks subject-matter jurisdiction over requests for declaratory relief

[5] We note that, in its order denying the plea to the jurisdiction, the trial court found that, although the Coalition had standing to proceed "without further identification of [its] members," "to adequately plead injury and damages, the real parties in interest are to be identified in the pleadings [but] whether that will be necessary in this lawsuit will be determined at a later date."

[6] In its second issue, the City asks: "Is a regulatory takings claim arising from the possible future application of city zoning and design standards ripe for judicial review before annexation and when no permits, exceptions, or variances have been sought? Can a regulatory takings claim be brought without first exhausting administrative or statutory remedies that may alleviate, mitigate, or avoid the complained-of regulation?" Because we conclude the Coalition lacks associational standing to bring a takings claim, we do not address the merits of issue two. *See* TEX. R. APP. P. 47.1

that do not challenge the validity of any City ordinance or franchise. The Coalition asserts it has standing to raise these procedural defects based on Local Government Code section 43.908, which provides as follows:

> (a) This chapter may be enforced only through mandamus or declaratory or injunctive relief.
> (b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.
> (c) A court may award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this chapter.

TEX. LOC. GOV'T CODE § 43.908.

"In 2017, . . . the Legislature waived a political subdivision's immunity from suit for actions brought under chapter 43 of the Texas Local Government Code." *Hill v. City of Fair Oaks Ranch*, 07-19-00037-CV, 2020 WL 5552887, at *4 (Tex. App.—Amarillo Sept. 16, 2020, pet. denied) (mem. op.) (citing section 43.908(b)). "In doing so, the Legislature prescribed mandamus or declaratory or injunctive relief as the appropriate methods for enforcing the provisions of chapter 43." *Id.* (citing section 43.908(a)). However, while a trial court may have subject-matter jurisdiction to hear a case brought under Chapter 43, the substantive question is whether the Coalition has standing to request the relief. *See id.* ("In the underlying case, the Legislature's waiver of immunity invested the trial court with subject-matter jurisdiction to hear this type of proceeding. Therefore, the substantive inquiry becomes whether the landowners had *standing* to file suit.").

"The Texas Constitution confers on cities the power to annex land." *City of Rockwall v. Hughes*, 246 S.W.3d 621, 623 (Tex. 2008) (citing TEX. CONST. art. XI, § 5). "The Legislature prescribes procedures to be used by cities in conducting annexations." *Id.* (citing TEX. LOC. GOV'T CODE chap. 43); *see also Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 439 (Tex. 1991) (same). "Historically, review of an individual party's standing to challenge annexation inquires

whether the challenge attacks the city's authority to annex the area in question or simply complains of some violation of statutory procedure." *City of San Antonio v. Hardee*, 70 S.W.3d 207, 210 (Tex. App.—San Antonio 2001, no pet.); *accord Werthmann v. City of Fort Worth*, 121 S.W.3d 803, 806 (Tex. App.—Fort Worth 2003, no pet.). Merely showing an irregularity in a city's exercise of its annexation authority is not enough. *Werthmann*, 121 S.W.3d at 806.

A distinction should be drawn between municipal acts that are not authorized by law or color of law, and "those consisting of a mere irregular exercise of power." *Hardee*, 70 S.W.3d at 210. "Individual landowners have been allowed to bring private causes of action challenging (1) annexation of territory exceeding the statutory municipal size limits; (2) attempts to annex areas included in the extraterritorial jurisdiction of another city; (3) attempts to annex areas not contiguous with current city limits; and (4) annexation of an area with a boundary description that does not close." *Id.* However, "[a] *quo warranto* suit is the proper way to challenge procedural faults such as lack of notice, adequacy of the service plan, lack of quorum for hearing, and other deficiencies in the procedure of adopting the annexation ordinance." *Id.* (emphasis in original); *see also Alexander Oil*, 825 S.W.2d at 439 ("[A]ny irregularity in annexing property could only be challenged through a quo warranto proceeding.").

The purpose of a quo warranto proceeding is to question the right of a person or corporation, including a municipality, to exercise a public franchise or office. *Alexander Oil*, 825 S.W.2d at 436-37. Quo warranto proceedings are brought in the name of the State by the attorney general or a district or county attorney. TEX. CIV. PRAC. & REM. CODE §§ 66.001-.003. Quo warranto proceedings serve the purpose of avoiding "the specter of numerous successive suits by private parties attacking the validity of annexations." *Alexander Oil Co.*, 825 S.W.2d at 437. Because judgments in suits brought by private parties are binding only on those parties, conflicting results might be reached in subsequent suits by other individuals. *Id.* By requiring quo warranto

proceedings, these conflicting results are avoided because the judgment settles the validity of the annexation on behalf of all property holders in the affected area. *Id.*

Here, the Coalition does not challenge the City's authority to annex the land in question or otherwise contend the annexation is void. *Id.* at 439 (upholding "line of authority requiring a party to bring a direct attack in the form of a quo warranto proceeding when challenging annexation, unless the annexation is void"). On appeal, the Coalition argues that under the current version of Local Government Code Chapter 43, property owners must have the ability to bring a private action to challenge an annexation.[7] However, in its order denying the plea to the jurisdiction, the trial court twice based its findings on "*if*" the version of Chapter 43 effective as of May 24, 2019 "applies." [Emphasis added.] The trial court stated whether this version applies "has not yet been decided."

The Coalition raises only procedural complaints and because the trial court expressly declined to determine which version of the applicable statue applies, we conclude the Coalition lacks standing to raise any procedural complaints in a private suit. *See id.* at 438 ("Alexander's allegations directed at whether the service plan was adequate and whether a quorum was required to conduct the hearing are matters that could be raised in a direct attack by quo warranto but are insufficient grounds for a private challenge."). Accordingly, the trial court should have dismissed the Coalition's claim for violations of Local Government Code Chapter 43, as well as, any associated requests for declaratory relief.

[7] The Coalition cites to the version of Chapter 43 effective May 24, 2019. and Texas Government Code Chapter 3000 effective September 1, 2019. The City began its annexation process in 2018 and the lawsuit was filed on April 12, 2019. This court expresses no opinion on which version of Local Government Code Chapter 43 applies to the underlying dispute or whether the 2019 enactment of Government Code Chapter 3000 applies to the underlying dispute.

VI. SEPARATION OF POWERS

In its fourth issue, the City asserts that enjoining a legislative act, such as annexation, violates the separation of powers. This issue is aimed at the trial court's temporary injunction, which ordered the City to "cease and desist from taking any action whatsoever towards annexation of" the property at issue. We do not address the merits of the City's separation-of-powers argument because we conclude the Coalition did not show its entitlement to injunctive relief.

"A temporary injunction is an extraordinary remedy and does not issue as a matter of right." *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). To be entitled to injunctive relief, a party must plead and prove (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*

As we have explained above, the Coalition lacks standing to bring a breach/anticipatory breach of contract claim and a takings claim, and the trial court lacks subject-matter jurisdiction over any claims brought by the Coalition related to procedural defects. Therefore, the Coalition cannot plead and prove (1) a cause of action against the City or (2) a probable right to the relief sought. Accordingly, the trial court erred by entering the temporary injunction.

VII. CONCLUSION

For the reasons stated above, we reverse the trial court's June 22, 2020 "Order on Defendant's Plea to the Jurisdiction" and render judgment (1) granting the City's plea to the jurisdiction and (2) dismissing without prejudice the Coalition's claims for breach and anticipatory breach of contract, regulatory takings, and requests for declaratory relief. Additionally, we reverse

the trial court's April 23, 2019 "Temporary Injunction" and dissolve the temporary injunction in its entirety. We remand this cause to the trial court for further proceedings.[8]

Lori I. Valenzuela, Justice

[8] After the City filed its plea to the jurisdiction, the Coalition amended its petition to add a claim that the City violated the Texas Open Meetings Act ("TOMA"). The City did not amend its plea to challenge this claim. Therefore, the trial court's order denying the City's plea did not address this new allegation. On appeal, the City does not address the TOMA challenge as a possible ground on appeal. Accordingly, this claim remains pending before the trial court. *See City of Floresville v. Gonzalez-Dippel*, 04-20-00070-CV, 2020 WL 4606902, at *3 (Tex. App.—San Antonio Aug. 12, 2020, no pet.) (mem. op.) (for first time on appeal, City argued the TOMA violation was moot; court held, "because the City did not clearly raise the issue as a jurisdictional defect in the trial court, appellees lacked a full and fair opportunity in the trial court to develop the record and amend their pleadings to address whether the August 8, 2019 meeting mooted their TOMA claim. We therefore cannot sustain the City's mootness issue and must remand the issue to the trial court for its consideration.").