

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00790-CV

Comal Trace Homeowners Association, Appellant

v.

**Bryan D. “Doug” Lippert, Jane Lippert, Joseph Campbell, Anita Campbell,
Ronald McKinnon, and Comal Trace Home Owners Advocacy Group, Appellees**

**FROM THE DISTRICT COURT OF COMAL COUNTY, 274TH JUDICIAL DISTRICT
NO. C20141453C, HONORABLE DIB WALDRIP, JUDGE PRESIDING**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Appellees have filed a Motion to Show Authority to Appeal and to Dismiss for Lack of Jurisdiction, arguing that appellant Comal Trace Homeowners Association (“the Association”), through its board of directors, did not actually authorize this appeal from the trial court’s final judgment. Appellees provided an affidavit by Ronald McKinnon, who is both an appellee and a member of the board, in which he averred that the board was “never presented with the decision to vote for an appeal” before the Association’s attorneys filed the notice of appeal. The Association responded, arguing that the board approved of the appeal, as shown by its “majority vote to post and file a supersedeas bond” to stay execution of the underlying judgment.

Appellees’ motion questions the continued existence of a justiciable controversy and, therefore, our jurisdiction over the appeal. On this record, we cannot make that determination

because the underlying facts are disputed and the parties have not addressed the relevant legal standards (e.g., the Association's governing documents) or how those standards should be applied to the facts to determine whether the appeal was authorized.

Accordingly, we will abate the appeal and remand to the trial court for an evidentiary hearing on the issue of whether the appeal was authorized by the Association. The trial court is directed to hold the hearing and to make findings of fact and conclusions of law as appropriate to determine the question. Those findings and conclusions should then be provided to this Court in a supplemental clerk's record filed with our Clerk no later than March 10, 2017.

It is ordered February 9, 2017.

Before Justices Puryear, Pemberton, and Goodwin

Abated and Remanded

Filed: February 9, 2017