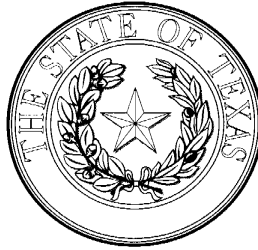


APPENDIX A

Opinion of the 1st Court of Appeals in Harris County

Opinion issued March 27, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00502-CV

MICHAEL FRANCIS PALMA, Appellant

V.

HARRIS COUNTY APPRAISAL DISTRICT, Appellee

**On Appeal from the 270th District Court
Harris County, Texas
Trial Court Case No. 2017-01753**

MEMORANDUM OPINION

Michael Francis Palma, as beneficiary of 6205 Trust, appeals from the trial court's summary judgment denying his petition for review of a Harris County Appraisal Review Board order, which determined a tax protest concerning a home

owned by the Trust.¹ Palma contends that the real property at issue does not have situs in Harris County and that Harris County Appraisal District has no authority to appraise it. We hold that the District proved as a matter of law that the subject property is real property located in Harris County and thus appraisable by the District. Therefore, we affirm.

Background

Michael Francis Palma is the beneficiary of 6205 Trust, which owns real property located at 5026 Autumn Forest Dr., Houston, Texas 77091. Harris County Appraisal District appraised the property for the 2015 tax year, and Palma filed a protest with the Harris County Appraisal Review Board, arguing that the property's taxable situs was not Harris County. The Board entered an order determining that the property's situs was Harris County, and Palma then filed a petition for review in the trial court.

In his petition, Palma argued that, because the property is residential, it is not taxable and therefore has no taxable situs and may not be appraised by the District. Palma requested that the trial court order the District to remove the property from its appraisal rolls.

¹ See TEX. TAX CODE § 41.41(a) (entitling property owner to protest before appraisal review board various actions of appraisal district), § 42.01(a)(1)(A) (entitling property owner to appeal appraisal review board order determining situs protest), § 42.21(a) (requiring party who appeals from appraisal review board order to timely file petition of review in district court).

The District filed a motion for traditional summary judgment, arguing that the property is taxable and has a taxable situs in Harris County because it is real property (i.e., land and improvements) physically located in Harris County. That the property is residential, the District argued, is irrelevant.

The trial court granted the District’s motion, finding that the District has the authority to appraise the property and that the property has taxable situs in Harris County for the 2015 tax year. Palma appeals.

Summary Judgment

We construe Palma’s brief as challenging the summary judgment determining that the District has the authority to appraise the property and that the property has taxable situs in Harris County for the 2015 tax year.²

We review summary judgments de novo. *Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014) (per curiam). A movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact and that it

² To the extent that Palma’s brief can also be construed as arguing that the trial court lacked subject-matter jurisdiction, we overrule that issue. The trial court had jurisdiction under the Constitution, Government Code, and Tax Code. *See* TEX. CONST. art. V, § 8 (“District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.”); TEX. GOV’T CODE § 24.008 (“The district court may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity.”); TEX. TAX CODE § 42.21(a) (“A party who appeals as provided by this chapter must file a petition for review with the district court . . .”).

is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). If the movant initially establishes a right to summary judgment on the issues expressly presented in the motion, then the burden shifts to the nonmovant to present to the trial court any issues or evidence that would preclude summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678–79 (Tex. 1979). We consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if a reasonable factfinder could, and disregarding contrary evidence unless a reasonable factfinder could not. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

Under Texas law, real property is taxable. TEX. CONST. art. VIII, § 1(b); TEX. TAX CODE §§ 11.01(a)–(b), 21.01. The taxable situs of real property is the county in which the property is located. TEX. CONST. art. VIII, § 11. Each county has an appraisal district, which is responsible for appraising real property located in the county for each taxing unit that imposes an ad valorem tax on the property. TEX. TAX CODE §§ 6.01(a)–(b), 6.02(a).

In its motion for summary judgment, the District argued that the subject property is appraisable by the District because it is real property (i.e., land and improvements) located in Harris County. *See id.* §§ 11.01(a)–(b), 21.01; *see also Oake v. Collin Cty.*, 692 S.W.2d 454, 455 (Tex. 1985) (explaining that county’s

taxing entities must prove that real property it seeks to tax is situated within its geographical boundaries). The District's summary-judgment evidence included (1) the District's account information for the subject property for tax years 2015 and 2017, which classified the property as single-family residential property owned by the Trust and subject to the jurisdiction of nine taxing units;³ and (2) the affidavit of a valuation specialist in the District's residential property division with four attached maps created by the specialist depicting the location of the property within the jurisdiction of a particular taxing unit, which established that the property is located within the territorial boundaries of Harris County and eight other taxing units.

This evidence established that the subject property is real property in Harris County. The burden therefore shifted to Palma to come forward with evidence sufficient to raise a genuine issue of material fact about the character of the property or its location. He failed to do so; he presented no evidence rebutting the evidence presented by the District. Instead, he argued incorrectly that the property was not taxable because it did not generate income, citing caselaw addressing the situs and taxability of intangible personal property, not real property. *See City of*

³ The taxing units listed included (1) Houston Independent School District, (2) Harris County, (3) Harris County Flood Control District, (4) the Port of Houston Authority, (5) Harris County Hospital District, (6) Harris County Education Department, (7) Houston Community College, (8) the City of Houston, and (9) Near Northwest Management District.

Houston v. Morgan Guar. Intern. Bank, 666 S.W.2d 524 (Tex. App.—Houston [1st Dist.] 1983, writ ref'd n.r.e.) (addressing situs and taxability of stock).

We hold that the District proved as a matter of law that the subject property has situs in Harris County and is appraisable by the District.⁴ *See Townsend v. Montgomery Cent. Appraisal Dist.*, No. 14-14-00103-CV, 2015 WL 971313, at *7–8 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, no pet.) (mem. op.) (holding affidavit of appraisal district employee and supporting material, including maps of property showing location in county, sufficient to establish right to summary judgment).

Conclusion

Therefore, we affirm the trial court's judgment.

Harvey Brown
Justice

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

⁴ After the appeal was set for submission, Palma filed an “Amended Petition,” in which he requests that we review an order of the Board determining the situs of the property for the 2017 tax year. However, under the Tax Code, a party appealing from an order of the Board must file a petition of review in the trial court first. TEX. TAX CODE § 42.21(a). Palma has not filed a petition of review in the trial court. Therefore, we lack jurisdiction to review the Board's order and deny Palma's request.

CAUSE NO. 2017-01753

PRIVATE HOME LOCATED AT 5026
AUTUMN FOREST DRIVE, HOUSTON
TX 77091, AKA THE 1086470010020
TRUST, AKA ACCT #1086470010020

§
§
§
§
§
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§
§

IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

HARRIS COUNTY APPRAISAL
DISTRICT AND HARRIS COUNTY TAX
ASSESSOR COLLECTOR

270th JUDICIAL DISTRICT

FINAL JUDGMENT

On this day came on to be considered Defendant's Motion for Summary Judgment, and the Court, having considered the motion, the response, the pleadings, the affidavits, the evidence and arguments of counsel finds that Defendant's Motion for Summary Judgment should be and is in all things GRANTED and Defendant is entitled to judgment as a matter of law on the issues set out in the motion.

The Court finds, and it is therefore ORDERED that Defendant has the authority to appraise Plaintiff's property under the law and that Plaintiff's property has taxable situs in Harris County for the 2015 tax year.

This is a final judgment which disposes of all issues and parties and is appealable.

SIGNED this ____ day of _____, 2017.



I, Chris Daniel, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date. Witness my official hand and seal of office this

CHRIS DANIEL, DISTRICT CLERK
HARRIS COUNTY, TEXAS

Deputy

Signed:
6/27/2017

JUDGE PRESIDING

5/25/2017 11:25:32 AM
Chris Daniel - District Clerk
Harris County
Envelope No: 17248390
By: GUTTEREZ, DANIELLE
Filed: 5/25/2017 11:25:32 AM

APPENDIX B

Order denying rehearing from First Court of Appeals



FIRST COURT OF APPEALS
301 Fannin Street
Houston, Texas 77002-2066

Tuesday, May 22, 2018

RE: Case No. 01-17-00502-CV

Style: Michael Francis Palma
v. Harris County Appraisal District, et al

Please be advised the Court today **Denied** Appellant's motion for en banc reconsideration in the above referenced cause.

Panel consists of: Chief Justice Radack and Justices Jennings, Keyes, Higley, Bland, Massengale, Brown, Lloyd, and Caughey

T. C. Case # 2017-01753

Christopher A. Prine, Clerk of the Court

Michael Francis Palma
5026 Autumn Forest Dr.
Houston, TX 77091
DELIVERED VIA E-MAIL



FIRST COURT OF APPEALS
301 Fannin Street
Houston, Texas 77002-2066

Tuesday, May 22, 2018

RE: Case No. 01-17-00502-CV

Style: Michael Francis Palma
v. Harris County Appraisal District, et al

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Panel consists of: Chief Justice Radack and Justices Jennings, Keyes, Higley, Bland, Massengale, Brown, Lloyd, and Caughey

T. C. Case # 2017-01753

Christopher A. Prine, Clerk of the Court

Robert Preisler Jr.
Harris County Appraisal District
P.O. Box 920975
Houston, TX 77292
DELIVERED VIA E-MAIL

APPENDIX C

Texas Supreme Court denial to hear the case

FILE COPY

RE: Case No. 18-0564
COA #: 01-17-00502-CV
STYLE: PALMA v. HARRIS CNTY APPRAISAL DIST.

DATE: 9/7/2018
TC#: 2017-01753

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MR. MICHAEL FRANCIS PALMA

* DELIVERED VIA E-MAIL & POSTAL *

APPENDIX D

Order denying reconsideration from Texas Supreme Court

FILE COPY

RE: Case No. 18-0564
COA #: 01-17-00502-CV
STYLE: PALMA v. HARRIS CNTY APPRAISAL DIST.

DATE: 11/30/2018
TC#: 2017-01753

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. MICHAEL FRANCIS PALMA

* DELIVERED VIA E-MAIL & POSTAL *

APPENDIX E

Notice of Appraised Value

Notice of Protest

Hearing held - value

Mailing Address:
Information & Assistance Division
P.O. BOX 922004
Houston, TX 77292-2004



HARRIS COUNTY APPRAISAL DISTRICT

**NOTICE OF APPRAISED VALUE
FOR PROPERTY TAX PURPOSES**

This is **NOT** a tax bill. Do **NOT** pay from this notice.

* 1086470010020*

Tax Year: 2015

iFile Number: 38570549

www.hcad.org/iFile

PROPERTY DESCRIPTION:
LT 20 BLK 4
CANDLELIGHT OAKS VILLAGE

03/31/2015

Please use this ACCOUNT NUMBER Ú 1086470010020
when inquiring about your property.

HHHGHEHHEFFHFFEGGEGEGEHHGHGFFEFCHHECCCCGHEHGEHGHGEGEFHEF

PROPERTY LOCATION:
5026 AUTUMN FOREST DR
HOUSTON, TX 77091

2015 1086470010020 03/31/2015 0000050691
6205 TRUST
% MICHAEL PALMA
5026 AUTUMN FOREST DR
HOUSTON TX 77091-5002

Dear Property Owner:

This letter is your official notice of the 2015 property tax appraisal for the account listed above. Harris County Appraisal District (HCAD) appraises all of the property in Harris County for property tax purposes. Please review it carefully. **We noted you do not have a homestead exemption on this account; please see the information on back and the enclosed form.** If you qualify, the exemption provides significant tax savings.

As reported by many local and national news outlets, the Harris County real estate market has continued to show rapid growth over the last year. We are required to appraise property at the price for which it would have sold on January 1 in the open market. In our 2015 reappraisal, our appraisers took great care to ensure your property data was correct and that your value reflects all information available to us. You can find additional information about the reappraisal on our website at www.hcad.org/2015Values.

As of January 1, 2015, we appraised your property as shown below:

2015 Market Value: \$151,339

2015 Appraised Value*: \$151,339

There is more information about the appraisal on the back of this letter. If you believe our market value appraisal is not accurate, you should file a protest with the Appraisal Review Board of Harris County. I have enclosed more information about the protest process with this letter. The early deadline for filing a residential protest is April 30, 2015. If you miss that date, you can still file until the final deadline of June 1, 2015, or 30 days after the date this letter was mailed, whichever was later. I have also included a protest form, but the easiest way to protest is to file online at www.hcad.org/ifile, using the iFile number in the upper right corner of the page. You will need to create a user name and password if you have not already done so. After filing you may also wish to take advantage of our online settlement process, called iSettle™. You can find more information about iFile and iSettle™ at www.hcad.org.

Sincerely,

Sands L. Stiefer, R.P.A.
Chief Appraiser
Harris County Appraisal District

Harris County Appraisal District
 Information & Assistance Division
 P.O. Box 922004
 Houston TX 77292-2004
 FORM 41.44 (01/14)



PROPERTY TAX NOTICE OF PROTEST

Save a Stamp!

File Online at www.hcad.org/iFile

If you want the appraisal review board (ARB) to hear and decide your case, you must file a written notice of protest with the ARB for the appraisal district that took the action you want to protest.

GENERAL INSTRUCTIONS: Pursuant to Tax Code Section 41.41, a property owner has the right to protest certain actions taken by the appraisal district. This form is for use by a property owner or designated agent who would like the ARB to hear and decide a protest. If you are leasing the property, you are subject to the limitations set forth in Tax Code Section 41.413.

FILING DEADLINES: The usual deadline for filing your notice is midnight, May 31. A different deadline may apply in certain cases. For more information, see Page 2.

HCAD Account Number: 1086470010020 Tax Year: 2015

Step 1: Owner's or Lessee's Name and Address

Owner's or Lessee's First Name and Initial 6205 Trust Last Name

Owner's or Lessee's Current Mailing Address (number and street)
c/o 5026 Autumn Forest Dr.

City, State, ZIP Code
Houston, TX 77091

Phone (area code and number)

This space is reserved for HCAD only

NEWPT611

STATE OF TEXAS
 COUNTY OF HARRIS

This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.

2015 APR 22 AM 9:47
 HCAD I&A RECEIVED

Step 2: Describe Property Under Protest

Give Street Address and City if Different from Step 1, or Legal Description if No Street Address

Mobile Homes (give make, model, and identification number)

No. 14

4/18/15
Date

Ludky Va
Deputy Custodian of Records

Step 3: Check Reason(s) for Your Protest

Failure to check a box may result in your inability to protest an issue. If you check "value is over market value," you are indicating that the market value is excessive and your property would not sell for the amount determined by the appraisal district. If you check "value is unequal as compared to other properties," you are indicating that your property is not appraised at the same level as a representative sample of comparable properties, appropriately adjusted for condition, size, location, and other factors. Your property may be appraised at its market value, but be unequally appraised. An appraisal review board may adjust your value to equalize it with other comparable properties. Please check all boxes that apply in order to preserve your rights so that the appraisal review board may consider your protest according to law.

- Value is over market value.
- Value is unequal compared with other properties.
- Property should not be taxed in _____ (name of taxing unit)
- Failure to send required notice _____ (type)
- Exemption denied, modified, or cancelled.
- Property should not be taxed in this appraisal district.
- Change in use of land appraised as ag-use, open-space, or timber land.
- Ag-use, open-space, timber, or other special valuation denied, modified, cancelled.
- Owner's name incorrect.
- Property description incorrect.
 - Improvement (structures, etc.)
 - Land (attach copy of deed)
- Other Tax code 41.41(a)(3) and 41.42

Step 4: Give Facts That May Help Resolve Your Case

SEE ATTACHED DOCUMENTATION

Continue on additional pages as needed

What do you think your property's value is? (Optional) \$ _____

Step 5: Check to Receive ARB Hearing Procedures

I want the ARB to send me a copy of its hearing procedures. Yes No
 *If your protest goes to a hearing, you will automatically receive a copy of the ARB's hearing procedures.

Step 6: Signature

Signature of Owner Signature of Lessee Agent Agent Code # _____
 Print Name Michael Palma, beneficiary
 Sign Here [Signature] Date 4/18/15

ADDITIONAL INFORMATION ON BACK

Mailing Address:
Appraisal Review Board
P.O. BOX 920975
Houston, TX 77292-0975

* 1086470010020*

JLVQvc6ehyDF4a9VKRgTwdHj z
7100 3296 9770 1102 5688



Appraisal Review Board
Of Harris County Appraisal District
13013 Northwest Fwy., Houston, Texas
Information Center: (713)957-7800

PROPERTY DESCRIPTION:
LT 20 BLK 4
CANDLELIGHT OAKS VILLAGE

PROPERTY LOCATION:
5026 AUTUMN FOREST DR
HOUSTON, TX 77091

1086470010020 2015 20161104 00037
6205 TRUST
5026 AUTUMN FOREST DR
HOUSTON TX 77091-5002

DATE: 11/14/2016

ACCOUNT #: 1086470010020

YEAR: 2015

* 2015*

Order Determining Protest

The above property owner filed a notice of protest concerning the appraisal records for the tax year shown. The protest was filed timely and was presented for a hearing.

The Appraisal Review Board delivered notice of the hearing in the manner required by law. The property owner and Chief Appraiser were given the opportunity to present evidence and argument.

It is therefore ORDERED that the protest be denied.



The value of the property remains:

	Market	Appraised/Homestead CAP
Final Value:	151,339	151,339

THE APPRAISAL REVIEW BOARD HAS MADE A FINAL DECISION ON YOUR PROTEST.

A PROPERTY OWNER HAS THE RIGHT TO APPEAL TO DISTRICT COURT AN APPRAISAL REVIEW BOARD ORDER DETERMINING (1) A PROTEST AS PROVIDED BY SUBCHAPTER C OF CHAPTER 41, TEXAS TAX CODE, OR (2) A MOTION FILED UNDER SECTION 25.25, TEXAS TAX CODE. TO APPEAL TO DISTRICT COURT, A PARTY MUST FILE A PETITION FOR REVIEW WITH THE DISTRICT COURT WITHIN 60 DAYS AFTER THE PARTY RECEIVES NOTICE THAT A FINAL APPRAISAL REVIEW BOARD ORDER HAS BEEN ENTERED FROM WHICH AN APPEAL MAY BE HAD OR AT ANY TIME AFTER THE HEARING BUT BEFORE THE 60-DAY DEADLINE. FAILURE TO TIMELY FILE A PETITION BARS AN APPEAL TO DISTRICT COURT. A PARTY OTHER THAN A PROPERTY OWNER, IN ORDER TO EXERCISE THEIR RIGHT TO APPEAL AN ORDER OF THE APPRAISAL REVIEW BOARD, MUST FILE A WRITTEN NOTICE OF APPEAL WITHIN 15 DAYS AFTER THE DATE THE PARTY RECEIVES THIS NOTICE OR IN THE CASE OF A TAXING UNIT, WITHIN 15 DAYS AFTER THE DATE THE TAXING UNIT RECEIVES NOTICE PURSUANT TO SECTION 41.07, TEXAS TAX CODE.

For more information regarding appeal to district court, you should consult Texas Tax Code, Chapter 42 and the clerk of the court. If you need legal advice, you should consult an attorney.

It is important to note that the pendency of an appeal, whether to district court, through binding arbitration, or to the State Office of Administrative Hearings, does not affect the delinquency date for the taxes on the property subject to the appeal. For more specific information, consult the applicable statutes and rules.

Signed this 4th day of November, 2016

A handwritten signature in black ink, appearing to read "Mary Goble", is positioned above the typed name.

Mary Goble
Chairman
Appraisal Review Board

APPENDIX F

Texas Tax code §41.41 &

Texas Government code §311.016

Sec. 41.41. RIGHT OF PROTEST.

(a) A property owner **is entitled to** protest before the appraisal review board the following actions:

- (1) determination of the appraised value of the owner's property or, in the case of land appraised as provided by Subchapter C, D, E, or H, Chapter 23, determination of its appraised or market value;
 - (2) unequal appraisal of the owner's property;
 - (3) inclusion of the owner's property on the appraisal records;
 - (4) denial to the property owner in whole or in part of a partial exemption;
 - (5) determination that the owner's land does not qualify for appraisal as provided by Subchapter C, D, E, or H, Chapter 23;
 - (6) identification of the taxing units in which the owner's property is taxable in the case of the appraisal district's appraisal roll;
 - (7) determination that the property owner is the owner of property;
 - (8) a determination that a change in use of land appraised under Subchapter C, D, E, or H, Chapter 23, has occurred; or
 - (9) any other action of the chief appraiser, appraisal district, or appraisal review board that applies to and adversely affects the property owner.
- (b) Each year the chief appraiser for each appraisal district shall publicize in a manner reasonably designed to notify all residents of the district:
- (1) the provisions of this section; and
 - (2) the method by which a property owner may protest an action before the appraisal review board.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

- (1) "May" creates discretionary authority or grants permission or a power.
- (2) "Shall" imposes a duty.
- (3) "Must" creates or recognizes a condition precedent.
- (4) "Is entitled to" creates or recognizes a right.**
- (5) "May not" imposes a prohibition and is synonymous with "shall not."
- (6) "Is not entitled to" negates a right.
- (7) "Is not required to" negates a duty or condition precedent.

APPENDIX G

Texas Tax code §41.42

Sec. 41.42. PROTEST OF SITUS. A protest against the inclusion of property on the appraisal records for an appraisal district on the ground that the property does not have taxable situs in that district shall be determined in favor of the protesting party if he establishes that the property is subject to appraisal by another district or that the property is not taxable in this state. The chief appraiser of a district in which the property owner prevails in a protest of situs shall notify the appraisal office of the district in which the property owner has established situs.