

CAUSE NO. 2019-33333

TANGLEWOOD HOMES ASSOCIATION, INC.,

Plaintiff,

versus

WMJK, LTD.,

Defendant.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

133rd JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

TANGLEWOOD HOMES ASSOCIATION'S SUR-REPLY IN OPPOSITION
TO WMJK'S MOTION TO ABATE AND FOR A HEARING

Tanglewood Homes Association, Inc. (THA) opposes WMJK's motion to abate this proceeding and for an expedited hearing.

WMJK's so misstates the relevant authority that THA is compelled to file this sur-reply.

WMJK's motion is founded entirely on the false premise that this Court "must" join all Tanglewood homeowners based on a misinterpretation of section 37.006 of the Declaratory Judgment Act. The argument is based entirely on that section and two now-outdated opinion—*April Sound Mgmt. Corp. v. Concerned Prop. Owners for April Sound, Inc.*, 153 S.W.3d 519, 526 (Tex. App.—Amarillo 2004, no pet.); *Dahl v. Hartman*, 14 S.W.3d 434 (Tex. App.—Houston [14th Dist.] 2000, no pet.)—both declaratory judgment actions.

What WMJK failed to inform this Court, shortly after *April Sound* and *Dahl* were issued, the Texas Supreme Court clarified the rule for joinder in *Declaratory Judgment Act matters involving the interpretation and enforcement of restrictive covenants*. *Simpson v. Afton Oaks Civic Club*, 145 S.W.3d 169 (Tex. 2004) and *Brooks v. Northglenn Ass'n*, 141 S.W.3d 158 (Tex. 2004). While WMJK claims the first of these opinions do not address joinder directly, the change in Texas law was sufficient to induce the First

Court of Appeals to completely reconsider its opinion on mandatory joinder, moving from requiring the joinder of all homeowners to stating such joinder was not required and that the trial court has broad discretion on the issue. *Wilchester W. Concerned Homeowners LDEF, Inc. v. Wilchester W. Fund, Inc.*, 177 S.W.3d 552, 558 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

WMJK’s chief argument in its reply is that this “lawsuit is not an enforcement action” so none of THA’s cited opinion is relevant. Reply at 1.

Frankly, THA does not understand the purported distinction. This is a declaratory judgment action seeking a judgment that WMJK’s property is subject to unambiguous restrictions. WMJK argues that the Declaratory Judgment Act *requires* joinder. With one minor exception, every opinion cited by THA on the issue of mandatory joinder is a declaratory judgment action involving interpretation of restrictive covenants over residential real estate.¹ Every one. And, every one of those opinions (after *Brooks* and *Simpson*) states that this Court has broad discretion to deny the motion and refers to the Supreme Court’s dictum that mandatory joinder is rare.

The Fourteenth Court of Appeals has gone even further to state that requiring joinder of a thousand homeowners would so increase costs as to be an abuse of discretion—and did so in a declaratory judgment action involving interpretation of restrictive covenants. *In re Corcoran*, 401 S.W.3d 136, 139 (Tex. App.—Houston [14th Dist.] 2011, no pet.). *Corcoran* was a mandamus action brought from a declaratory judgment proceeding seeking interpretation of the applicability of restrictive covenants. 401 S.W.3d at 138.

WMJK’s purported and unexplained distinction is unsound and unsupported. THA’s authority is directly on point, and WMJK’s outdated authority has been squarely rejected.

¹ The sole exception is *Cooper v. Texas Gulf Indus., Inc.*, 513 S.W.2d 200, 204 (Tex. 1974), an opinion cited for the proposition that mandatory joinder is very rare under Rule 39.

Dated: September 9, 2019

Respectfully submitted,

By: /s/ Mark Maney

Mark Maney
Texas Bar No. 12898200
Maney & González-Félix PC
712 Main, Suite 2100
Houston, Texas 77002
Telephone: 713.806.2500
mmaney@maneylaw.com

and

Andrew P. Tower
Texas Bar No. 00786291
5850 San Felipe, Suite 500
Houston, Texas 77057
Telephone: 713.364.4701
andy@atowcrassoc.com

COUNSEL FOR TANGLEWOOD HOMES ASSOCIATION, INC.
Respectfully submitted,

CERTIFICATE OF SERVICE

A copy of the foregoing instrument was served on counsel of record on this date.

By: /s/ Andrew Tower