

CAUSE NO. 2019-33333

TANGLEWOOD HOMES
ASSOCIATION, INC.
Plaintiff,

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

WMJK, LTD.

Defendant.

133RD JUDICIAL DISTRICT

**WMJK, LTD.'s OBJECTIONS TO PLAINTIFF'S
SUMMARY JUDGMENT EVIDENCE**

Plaintiff Tanglewood Homes Association, Inc. ("THA") offers three declarations, and their attached exhibits, as summary judgment evidence:

- Exhibit A, the Tower Declaration, with exhibits A-1 through A-11.
- Exhibit B, the Boyd Declaration, with exhibits B-1 through B-7.
- Exhibit C, the Deluca Declaration.

Less than 14 hours before the hearing on its motion, THA filed Exhibit D, a Supplemental Tower Declaration, with Exhibits D-1 through D-2. Much of THA's original evidence is inadmissible. The late-filed Supplemental Tower Declaration and its exhibits are entirely inadmissible under Texas Rule of Civil Procedure 166a(c).

LAW

Supporting summary judgment evidence "shall be filed and served at least twenty-one days before the time specified for hearing." TEX. R. CIV. P. 166a(c). Affidavits "[1] shall be made on personal knowledge, [2] shall set forth such facts as would be admissible in evidence..., and [3] shall show affirmatively that the affiant is competent to testify to the matters stated therein." TEX. R. CIV. P. 166a(f). Competence as "a witness" is presumed, *see* TEX. R. EVID. 601, but personal knowledge of, and competence regarding, specific factual testimony is not. Summary judgment affidavits must affirmatively demonstrate both. *See id.*; *see also* TEX. R. EVID. 602 ("A witness

may testify to a matter only if evidence is introduced sufficient to support a finding the witness has personal knowledge of the matter.”).

Summary judgment affidavits must also “set forth such facts as would be admissible in evidence...”. TEX. R. CIV. P. 166a(f). Only relevant evidence—evidence tending to make a fact of consequence more or less probable—is admissible. TEX. R. EVID. 401 (defining relevance); *see also* TEX. R. EVID. 402 (“Irrelevant evidence is not admissible.”). Conclusory, foundationless, and speculative evidence is irrelevant, and therefore inadmissible. *Cf. Coastal Transp. Co. v. Crown Cent. Pet. Corp.*, 136 S.W.3d 227, 232 (Tex. 2004) (excluding speculative or conclusory opinions as irrelevant). And even relevant evidence can be excluded for hosts of reasons. *See, e.g.*, TEX. R. EVID. 101(d) (noting other laws potentially excluding relevant evidence), 402 (same), 403 (excluding relevant but overly prejudicial, confusing, or misleading evidence), 404(a)(1) (excluding some character evidence), 609 (excluding some criminal conviction evidence), 705(c) (excluding some expert opinions), 802 (hearsay inadmissible).

Applying these principles and others, WMJK, LTD. (the “Miller Family”) objects to certain evidence offered by THA on the grounds stated below.

EXHIBIT A—TOWER DECLARATION	OBJECTIONS
<p>A-1—Book on Tanglewood.</p> <p><i>Passim.</i></p>	<p>Hearsay as to the truth of any matters asserted. TEX. R. EVID. 802.</p> <p>Hearsay within hearsay. TEX. R. EVID. 805.</p>
<p>A-8—2002 Amendments.</p> <p><i>Passim.</i></p> <p>P. 6: “Whereas” clauses 4, 5, and 6, and “Now, Therefore” clause.</p>	<p>Best Evidence Rule/authenticity of original questioned. <i>See</i> TEX. R. EVID. 1002, 1003, 1005.</p> <p>Contain improper and inadmissible expert legal opinions from unqualified lay witness on matters such as content of and authority under statutes, legally effective</p>

<p>P. 22: Statement regarding manual supplementing restrictions.</p> <p>Last page (“Certificate”).</p>	<p>compliance with laws and other requirements, legal validity, scope, character, and effect of certain actions. TEX. R. EVID. 701.</p> <p>Declaration fails to “show affirmatively that the [declarant] is competent to testify as to the” same statements. <i>See</i> TEX. R. CIV. P. 166a(f).</p> <p>Conclusory, speculative, and irrelevant as to same statements. <i>See</i> TEX. R. EVID. 402, 602; <i>see also Coastal Transp. Co.</i>, 136 S.W.3d at 232 (speculative and conclusory opinions are irrelevant).</p> <p>Hearsay as to the same statements. TEX. R. EVID. 802.</p>
<p>A-9—Tanglewood Policy Manual.</p> <p><i>Passim.</i></p>	<p>Contains improper and inadmissible expert legal opinions from unqualified lay witness on matters such as content of and authority under statutes, legally effective compliance with laws and other requirements, legal validity, scope, character, and effect of certain actions, and applicability of all restrictions and policies addressed. TEX. R. EVID. 701.</p> <p>Declaration fails to “show affirmatively that the [declarant] is competent to testify as to” same statements. <i>See</i> TEX. R. CIV. P. 166a(f).</p> <p>Conclusory, speculative, and irrelevant as to same statements. <i>See</i> TEX. R. EVID. 402, 602; <i>see also Coastal Transp. Co.</i>, 136 S.W.3d at 232 (speculative and conclusory opinions are irrelevant).</p> <p>Hearsay as to the same statements. TEX. R. EVID. 802.</p>
<p>A-10—2018 Amendments.</p> <p>Recitals, ¶¶ 5, 8-11.</p>	<p>Contain improper and inadmissible expert legal opinions from unqualified lay witness on matters such as content of and authority under statutes, legally effective</p>

<p>Amendments, “Now, Therefore” clause, ¶¶ 1-7, and “In Witness Hereof” clause.</p>	<p>compliance with laws and other requirements, legal validity, scope, character, and effect of certain actions. TEX. R. EVID. 701.</p> <p>Declaration fails to “show affirmatively that the [declarant] is competent to testify as to” same statements. See TEX. R. CIV. P. 166a(f).</p> <p>Conclusory, speculative, and irrelevant as to same statements. See TEX. R. EVID. 402, 602; see also <i>Coastal Transp. Co.</i>, 136 S.W.3d at 232 (speculative and conclusory opinions are irrelevant).</p> <p>Hearsay as to the same statements. TEX. R. EVID. 802.</p>
<p>A-11—Wilson article.</p> <p><i>Passim.</i></p>	<p>Hearsay.</p>
<p>EXHIBIT B—BOYD DECLARATION</p> <p>Declaration, ¶¶ 9, 13.</p>	<p>Contain improper and inadmissible expert legal opinions from unqualified lay witness on matters such as the legal entitlement of persons to cast votes on proposed amendments from unqualified lay witness. TEX. R. EVID. 701.</p> <p>Declaration fails to “show affirmatively that the [declarant] is competent to testify as to” same statements. See TEX. R. CIV. P. 166a(f).</p> <p>Conclusory, speculative, and irrelevant as to same statements. See TEX. R. EVID. 402, 602; see also <i>Coastal Transp. Co.</i>, 136 S.W.3d at 232 (speculative and conclusory opinions are irrelevant).</p> <p>Hearsay as to the same statements. TEX. R. EVID. 802.</p>
<p>EXHIBIT C—DELUCA DECLARATION</p> <p>Declaration, ¶¶ 1-8.</p>	<p>Inadmissible, irrelevant, speculation absent evidence statements are made on</p>

Declaration, ¶¶ 6-8.	personal knowledge. TEX. R. EVID. 602, 402. No personal knowledge, speculation, relevance with respect to statements of the intent and alternative conduct of declarant's wife. TEX. R. EVID. 602, 402.
EXHIBIT D—SUPPLEMENTAL DECLARATION OF ANDREW TOWER	
<i>Passim.</i>	Untimely filed. TEX. R. CIV. P. 166a(c).
D-1—Deed to I.B. Bell	Untimely filed. TEX. R. CIV. P. 166a(c).
D2—Deed to Josephine Restelle Boren	Untimely filed. TEX. R. CIV. P. 166a(c).

PRAYER

Defendant respectfully requests that the Court consider and sustain these objections, and grant it all further relief to which it may be entitled to, at law or equity.

Respectfully submitted,

RUSTY HARDIN & ASSOCIATES, LLP

/s/ Rusty Hardin

Rusty Hardin
State Bar No. 08972800
Lara Hudgins Hollingsworth
State Bar No. 00796790
Terry Kernell
State Bar No. 11339020
1401 McKinney Street, Suite 2250
Houston, Texas 77010
Telephone: (713) 652-9000
Facsimile: (713) 652-9800
rhardin@rustyhardin.com
lhollingsworth@rustyhardin.com
tkernell@rustyhardin.com

and

WILSON CRIBBS & GOREN

Reid Wilson

State Bar No. 21711500

Omar Izfar

State Bar No. 24041171

2500 Fannin St.

Houston, Texas 77002

Telephone: (713) 547-8504

Facsimile: (713) 229-8824

rwilson@wcglaw.com

oizfar@wcglaw.com

ATTORNEYS FOR DEFENDANT WMJK, LTD.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all parties and/or counsel of record on September 9, 2019, pursuant to the Texas Rules of Civil Procedure.

Mark Maney

Texas Bar No. 12898200

Maney & Gonzalez-Felix, P.C.

712 Main St., Suite 2100

Houston, Texas 77002

mmaney@maneylaw.com

Via E-Service

Andrew P. Tower

Texas Bar No. 00786291

5850 San Felipe, Suite 500

Houston, Texas 77057

andy@atowerassoe.com

ATTORNEYS FOR PLAINTIFF

Via E-Service



Lara Hudgins Hollingsworth