

CAUSE NO. 48292

RENE FFRENCH, JOHN RICHARD	§	IN THE DISTRICT COURT
DIAL, AND STUART BRUCE SORGEN,	§	
INTERVENOR PLAINTIFFS	§	
	§	
v.	§	33RD JUDICIAL DISTRICT
	§	
FRIENDSHIP HOMES & HANGARS,	§	
LLC, WINDERMERE OAKS WATER	§	
SUPPLY CORPORATION, AND ITS	§	
DIRECTORS WILLIAM EARNEST,	§	
THOMAS MICHAEL MADDEN, DANA	§	
MARTIN, ROBERT MEBANE, PATRICK	§	
MULLIGAN, JOE GIMENEZ, MIKE	§	
NELSON, AND DOROTHY TAYLOR,	§	
DEFENDANTS	§	BURNET COUNTY, TEXAS

**DEFENDANTS WINDERMERE OAKS WATER SUPPLY CORPORATION  
DIRECTORS JOE GIMENEZ, MIKE NELSON, AND DOROTHY TAYLOR'S SECOND  
AMENDED PLEA TO THE JURISDICTION AND SECOND AMENDED ANSWER**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants Windermere Oaks Water Supply Corporation Directors Joe Gimenez, Mike Nelson, and Dorothy Taylor (“Directors”) file this second amended plea to the jurisdiction and, subject thereto, second amended answer and general denial to Intervenor Plaintiffs Rene Ffrench, John Richard Dial, and Stuart Bruce Sorgen’s (collectively, “Plaintiffs”) Third Amended Original Petition. In support, the Directors respectfully show this Court the following:

**I. PLEA TO THE JURISDICTION**

1. This Court lacks jurisdiction over each of Plaintiffs’ claims against the Directors for the following reasons:

- Plaintiffs lack standing to bring the claims asserted against the Directors;
- The claims Plaintiffs have asserted against the Directors are moot; and
- The Court would be required to issue an impermissible advisory opinion on the claims Plaintiffs have asserted against the Directors.

2. Accordingly, this Court should dismiss Plaintiffs' claims for lack of jurisdiction.

## **II. SPECIAL PLEA**

3. As a matter of law and as appears of record, Plaintiffs are not entitled to recover in the individual capacity in which they sue, and the Directors are not personally liable in the capacity in which they are sued.

## **III. GENERAL DENIAL**

4. Subject to their plea to the jurisdiction and special plea, the Directors invoke the provisions of Rule 92 of the Texas Rules of Civil Procedure, and deny generally each and every, all and singular, of the allegations contained in Plaintiffs' Third Amended Original Petition in Intervention and demand strict proof thereof.

## **IV. AFFIRMATIVE AND OTHER DEFENSES**

5. Subject to their plea to the jurisdiction and special plea, the Directors assert the following affirmative and other defenses, which bar the claims asserted by Plaintiffs:

- Res judicata;
- Collateral estoppel;
- Statute of limitations;
- Business judgment rule;
- Reliance on legal counsel and other persons with professional expertise;
- Immunity under Texas Business Organizations Code sections 22.221, 22.230, and 22.235;
- Immunity under Texas Civil Practice and Remedies Code, Chapter 84 (Charitable Immunity and Liability Act of 1987);

- Immunity under 42 U.S.C. section 14501 (Volunteer Protection Act);
- Limitation on liability under Texas Business Organizations Code section 7.001; and
- Statutory cap on exemplary damages under Texas Civil Practice and Remedies Code section 41.008.

## V. JURY TRIAL REQUESTED

6. Defendants request a trial by jury.

### PRAYER

Defendants Windermere Oaks Water Supply Corporation Directors Joe Gimenez, Mike Nelson, and Dorothy Taylor pray that the Court dismiss this suit for lack of jurisdiction or capacity, or alternatively, enter judgment that Plaintiffs take nothing by way of their causes of action against the Directors. The Directors further pray for such other and further relief to which they may show themselves entitled, at law or in equity.

Respectfully submitted,

By:  /s/ Shelby O'Brien  
Shelby O'Brien (SBN 24037203)  
sobrien@enochkever.com  
**ENOCH KEVER PLLC**  
7600 N. Capital of Texas Hwy  
Building B, Suite 200  
Austin, Texas 78731  
512.615.1200 / 512.615.1198 (fax)

*Attorney for Defendants Windermere Oaks  
Water Supply Corporation Directors  
William Earnest, Thomas Michael  
Madden, Dana Martin, Robert Mebane,  
Patrick Mulligan, Joe Gimenez, Mike  
Nelson, and Dorothy Taylor*

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 4, 2020, a true and correct copy of the above and foregoing has been served by electronic filing service on the following:

Molly Mitchell  
mollym@abdmlaw.com  
ALMANZA, BLACKBURN, DICKIE &  
MITCHELL, LLP  
2301 S. Capital of Texas Hwy., Bldg. H  
Austin, Texas 78746  
***Attorney for Defendant Friendship Homes  
& Hangars, LLC***

Kathryn E. Allen  
kallen@keallenlaw.com  
THE LAW OFFICE OF KATHRYN E.  
ALLEN, PLLC  
114 West 7<sup>th</sup> Street, Suite 1100  
Austin, Texas 78701  
***Attorney for Plaintiffs***

Jose de la Fuente  
jdelafuente@lglawfirm.com  
LLOYD GOSSELINK ROCHELLE &  
TOWNSEND, P.C.  
816 Congress Ave., Suite 1900  
Austin, Texas 78701  
***Attorney for Defendant Windermere Oaks  
Water Supply Corporation***

*/s/ Shelby O'Brien*  
Shelby O'Brien