

No. 03-17-00846-CV

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IN THE COURT OF APPEALS FOR THE THIRD  
DISTRICT OF TEXAS AT AUSTIN

FILED IN  
3rd COURT OF APPEALS  
AUSTIN, TEXAS  
3/6/2018 5:00:39 PM  
JEFFREY D. KYLE  
Clerk

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RICHARD W. JACKSON AND LISA C. JACKSON,  
Appellants,  
v.  
JANICE COX AND HELEN RAMSEY,  
Appellees.

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From the County Court at Law No. 1, Travis County, Texas  
Trial Court Cause No. C-1-CV-17-001833

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CORRECTED BRIEF OF APPELLANTS

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Counsel for Appellants

ORAL ARGUMENT NOT REQUESTED

## **IDENTITY OF PARTIES AND COUNSEL**

**Appellants:** Richard W. Jackson and Lisa C. Jackson

**Appellees:** Janice Cox and Helen Ramsey

### **Counsel for Appellants in the appeals court:**

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## ORAL ARGUMENT IS NOT WARRANTED

This is a straightforward case where a party with a burden of production produced no evidence at all. Oral argument is not warranted.

### STATEMENT OF THE CASE

<i>Nature of the case:</i>	Declaratory judgment and breach of restrictive covenant suit to construe and enforce restrictive covenants. The appellants sued to require that amendments satisfy certain requirements set out in the restrictive covenants.
<i>Trial Court:</i>	The Honorable Todd Wong, County Court at Law No. 1, Travis County, Texas.
<i>Course of proceedings:</i>	The appellants won a hard-fought temporary injunction early in the case which was never appealed. The injunction barred amendments that did not satisfy certain preconditions set out in the restrictive covenants. Late in the case, the enjoined party asked the trial court to dissolve the injunction on the basis that the trial court had reversed course on whether the preconditions applied.
<i>Disposition below:</i>	The trial court granted the motion to dissolve the injunction. App. A.

## **STATEMENT OF JURISDICTION**

Texas Civil Practice & Remedies Code § 51.014(4) provides appellate jurisdiction where a trial court “grants . . . a motion to dissolve a temporary injunction.”

## **ISSUE PRESENTED**

On the eve of trial, is it a clear abuse of discretion for a trial court to dramatically alter the status quo by dissolving a temporary injunction where the enjoined party never appealed the injunction and makes no showing as to any change in conditions?

## **STATEMENT OF FACTS**

The Jacksons brought claims for declaratory judgment and breach of restrictive covenant to prevent Ramsey and Cox (and those acting in concert with them) from recording any amendments to subdivision restrictive covenants unless Ramsey and Cox –

- (1) sent prior notice of the proposed amendment to all owners and
- (2) obtained a recommendation from the subdivision’s architectural committee.

App. E; CR4 (petition as of injunction date).

On March 3, 2017, the Jacksons obtained a contested TRO. App. D. Following the subsequent, hard-fought temporary injunction hearing of March 9, 2017, at which testimonial and documentary evidence was introduced by both parties, the trial court entered a temporary injunction. App. C; CR23. By its terms,

that injunction applied to *any* amendments and required both (1) notice to all owners and (2) a recommendation from the architectural committee. Ramsey and Cox never appealed the temporary injunction order, and the Jacksons' declaratory judgment claim concerning the preconditions for amendment has remained live throughout the case. App. F; CR27 (¶¶ 27-30).

Many months later, on December 4, 2017 – four days before the pretrial conference for the December 11 trial setting – Ramsey and Cox filed a motion to dissolve the injunction. CR44; App. B. Its sole basis was an intervening change of heart by the trial court, at summary judgment, as to whether the restrictive covenants required notice to all owners and a recommendation of the architectural committee as preconditions to amendment as set out in the restrictive covenants.

The legal authority Ramsey and Cox relied upon in their motion – the *Murphy* case – required them to prove “changed circumstances.” *See Murphy v. McDaniel*, 20 S.W.3d 873, 877 (Tex. App.—Dallas 2000, no pet.). Their motion contained no evidence. At the hearing on the motion on December 8, they submitted no evidence. RR23-25. The trial court nevertheless granted their motion. App. A; CR49. The trial court concluded that its changed

interpretation of the restrictive covenants compelled dissolution of the injunction on the eve of trial. RR37-38, 41.

The trial setting was then passed by the parties owing to the trial court's indication that the case might not be reached on December 11 in any event. RR41-45.

On December 13, 2017, the Jacksons noticed this appeal. The Jacksons also filed a motion in this court for emergency relief, which was granted, and separately petitioned for a writ of mandamus, which was dismissed as moot.<sup>1</sup>

## **ARGUMENT**

### **I. The Clear Abuse of Discretion Standard Applies**

An appellate court reviews a trial court order dissolving an injunction for a clear abuse of discretion. *Murphy*, 20 S.W.3d at 877. It is a clear abuse of discretion for a trial court to dissolve an injunction based solely on an interlocutory summary judgment decision on the merits. *Id.* at 879. The evidentiary record from the original grant of the injunction cannot be reviewed. *Id.*

If the rule set out in *Murphy* were otherwise, a party could evade or expand the rules applicable to the appeal of interlocutory

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<sup>1</sup> Appeal No. 03-17-00849-CV (Jan. 12, 2018).



orders. *See Tober v. Turner of Texas, Inc.*, 668 S.W.2d 831, 835 (Tex. App.—Austin 1984, no writ). Texas law already affords a party against whom a temporary injunction is issued a guaranteed statutory interlocutory accelerated appeal, so long as that appeal is perfected within 20 days. *See* Tex. Civ. Prac. & Rem. Code § 51.014(4); Tex. R. App. P. 26.1(b). If a party fails to perfect such an appeal, it loses the ability to challenge the bases upon which the injunction was granted. *See Tober*, 668 S.W.2d at 834.

Nor can the trial court, after the time for appeal has expired, reconsider the granting of the injunction based on the evidence that was before the trial court previously. *Id.*

## **II. The Trial Court Clearly Abused Its Discretion Because Ramsey and Cox Produced No Evidence**

A party does not get to relitigate a temporary injunction it failed to appeal. *Universal Health Services, Inc. v. Thompson*, 24 S.W.3d 570, 580 (Tex. App.—Austin 2000, no pet.). The only bases upon which a party can get a temporary injunction dissolved are (1) a demonstrated change in circumstances arising after the injunction was entered, *see Murphy*, 20 S.W.3d at 877, and (2) fundamental error, meaning a jurisdictional defect or an

intervening change in the law, *Tober*, 668 S.W.2d at 834, 836.

The sole basis for Ramsey and Cox's motion to dissolve the temporary injunction was an interlocutory summary judgment order favorable to them on the merits. That is not a valid basis for dissolution. *See Tober, id.* Ramsey and Cox presented no evidence of any change in circumstances arising after the injunction was issued, *see Murphy*, 20 S.W.3d at 877 (identical case where party failed to present evidence), nor asserted any fundamental error, *Tober*, 668 S.W.2d at 834, 836. Their motion to dissolve was, in effect, a motion to reconsider the trial court's grant of the injunction. It was calculated to avoid the consequences of their failure to appeal the injunction. Ramsey and Cox must be held to have known from their own legal authority, *Murphy*, that they had the burden to produce evidence, and they conspicuously failed to meet that burden. Accordingly, the trial court clearly abused its discretion in granting the motion to dissolve the temporary injunction.<sup>2</sup>

Nor was there any intervening change in the law, but merely

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<sup>2</sup> Ramsey and Cox have waived any contention that the *Murphy* case is not applicable on these facts since they expressly relied upon it in their motion to dissolve the injunction.

a trial court change of heart on a purely legal issue during the pendency of the case. The meaning of restrictive covenants is a pure issue of law, even in cases of ambiguity, where a common-law rule favoring property rights is used. *See Boatner v. Reitz*, 03-16-00817-CV, 2017 WL 3902614, at \*3 (Tex. App.—Austin 2017, no pet.). The trial court made an interlocutory determination of law at the temporary injunction stage early in the case, then reversed itself interlocutorily later. Since neither legal determination was final or based on a change in controlling law from without, there was no salient “change in the law” within the meaning of the rule in *Murphy* and *Tober*.<sup>3</sup>

The trial court’s change of heart on the law mid-stream may well have affected aspects of how the case got tried, but the trial court went much further: it fundamentally altered the status quo on the eve of trial. Ramsey and Cox had been restrained since March 2017 from recording instruments affecting the Jacksons’ property rights unless those instruments satisfied the two

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<sup>3</sup> For instance, the law of the case doctrine could not apply because no law was established by the finality and appeals process. *See J.O. Lockridge Gen. Contractors, Inc. v. Morgan*, 848 S.W.2d 248, 250 (Tex. App.—Dallas 1993, writ denied).

preconditions urged by the Jacksons. That preserved the status quo pending trial and final judgment. When the trial court lifted that bar on the Friday before a case set for trial the following Monday, the trial court dramatically altered the status quo by allowing Ramsey and Cox to record restrictive covenants that a fair preliminary fight – one which Ramsey and Cox conspicuously did not appeal – had prevented them from filing. The trial court turned the tables on the Jacksons at a critical juncture, a clear abuse of discretion.

The Jacksons had every reason to expect that their preliminary victory would shield them from ambush on the eve of trial with newly-recorded restrictive covenants that altered their rights and the case to be tried. Instead, the trial court's order dissolving the injunction created a means for Ramsey and Cox to generate new claims and send the case spinning out. True, that can occur when new law comes down in the midst of proceedings. But that did not happen here. The abrupt change in the status quo was completely avoidable.

Accordingly, the trial court clearly abused its discretion in

pulling out from under the Jacksons on the eve of trial their significant early win obtaining an injunction. There had been a fair fight on that, and Ramsey and Cox could have appealed if they were dissatisfied. Not having done so, the trial court's changed view on the meaning of the deed restrictions was not a valid basis for tearing up the groundwork the Jacksons had laid for an orderly trial of a *particular* case, one *without* an intervening amendment to the restrictive covenants that threatened to alter the positions and rights of the parties fundamentally.

### **PRAYER FOR RELIEF**

This Court should vacate the trial court's order dissolving the temporary injunction, reinstate the injunction, and remand the case for further proceedings.

Respectfully submitted,  
/s/ J. Patrick Sutton  
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## CERTIFICATE OF SERVICE

I certify that on January 17, 2018, a true and correct copy of this opening brief was served by efileing on:

Michael L. Navarre  
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Phone: 512.879.5050 / Fax: 512.879.5040  
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/s/ J. Patrick Sutton  
Attorney for Relator

## TEX. R. APP. P. 28.1(e) VERIFICATION

I swear that the pleadings and court filings contained in the Appendix hereto are true and correct copies of those papers.



\_\_\_\_\_  
Attorney for Relator

## CERTIFICATE OF COMPLIANCE

This document complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in Century Schoolbook 14-point for text and 12-point for footnotes. Spacing is expanded by .6 point for clarity. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), if applicable, because it contains **1440** words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

/s/ J. Patrick Sutton  
Attorney for Relator

IN THE COURT OF APPEALS FOR THE THIRD  
DISTRICT OF TEXAS AT AUSTIN

---

RICHARD W. JACKSON AND LISA C. JACKSON,  
Appellants,

v.

JANICE COX AND HELEN RAMSEY,  
Appellees.

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From the County Court at Law No. 1, Travis County, Texas  
Trial Court Cause No. C-1-CV-17-0018333

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**APPENDIX TO CORRECTED BRIEF OF APPELLANTS**

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Dec. 4, 2017 Defendants' Motion to Dissolve TI	Tab B
March 9, 2017 Order granting temporary injunction	Tab C
March 3, 2017 order granting TRO	Tab D
Plaintiffs' A. Pet'n	Tab E
Plaintiffs' 5th A. Pet'n	Tab F

Tab A



CAUSE NO. C-1-CV-17-001833

RICHARD W. JACKSON,  
LISA C. JACKSON, and  
KATHLEEN WOODALL,  
Plaintiffs,

vs.

JANICE COX and HELEN RAMSEY,  
Defendants.

§  
§  
§  
§  
§  
§  
§  
§

IN THE COUNTY COURT

AT LAW NUMBER TWO OF

TRAVIS COUNTY, TEXAS

**ORDER GRANTING MOTION TO DISSOLVE THE TEMPORARY INJUNCTION**

Before the Court is Defendants/Counter-Plaintiffs' Motion to Dissolve the Temporary Injunction. The Court, having considered the Motion, the Response, the evidence, the pleadings and papers on file herein, and arguments of counsel, is of the opinion that it is meritorious and should be granted. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that Defendants/Counter-Plaintiffs' Motion to Dissolve the Temporary Injunction is hereby GRANTED in its entirety.

SIGNED this 8 day of December, 2017.

JUDGE PRESIDING

TODD T. WONG

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk

By Deputy:

*[Signature]*

DEC 13 2017

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2017 DEC -8 AM 11:32  
DANA DEBEAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

*have, had use is not determined at this time.*  
*TW*

Tab B

CAUSE NO. C-1-CV-17-001833

RICHARD W. JACKSON,	§	IN THE COUNTY COURT
LISA C. JACKSON, and	§	
KATHLEEN WOODALL,	§	
Plaintiffs,	§	AT LAW NUMBER TWO OF
vs.	§	
	§	
JANICE COX and HELEN RAMSEY,	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

**DEFENDANTS' MOTION TO DISSOLVE THE TEMPORARY INJUNCTION**

Defendants and Counter-Plaintiffs file their Motion To Dissolve The Temporary Injunction, and would respectfully show the court the following:

**I. EXECUTIVE SUMMARY**

**Background:** On February 24, 2017, Plaintiffs sued Ms. Cox and Ms. Ramsey to prevent them from following Section 4 of Article I of the 1972 Deed Restrictions to prohibit rentals for less than ninety (90) days. Plaintiffs' claims were for (1) a declaratory judgment that a notice and ACC approval requirement in Article IX of the 1972 Deed Restrictions could be copied/pasted into Section 4 of Article I of the 1972 Deed Restrictions and (2) breach of contract based on this same rewriting of the 1972 Deed Restrictions. Plaintiffs moved for a temporary restraining order and a subsequent temporary injunction, which the Court granted.

**Problem:** On November 17, the Court ruled against Plaintiffs on their sole basis for the temporary injunction. The Court rejected Plaintiffs' interpretation of the 1972 Deed Restrictions and granted Defendants' Motion for Partial Summary Judgment As To Claims And Counterclaims Concerning Section 4 Of Article I Of The Restrictive Covenants. Furthermore, Plaintiffs previously dropped their breach of contract claim that was based on their same faulty contract interpretation.

**Relief:** Defendants respectfully request that the Court grant this Motion, dissolve the temporary injunction, award Defendants the bond, and grant further relief.

## II. ARGUMENT AND AUTHORITIES

### A. The Sole Basis For Plaintiffs' Temporary Injunction Was Their Faulty Contract Interpretation.

On February 24, 2017, Plaintiffs sued Ms. Cox and Ms. Ramsey. Their sole claim for declaratory judgment was the following:<sup>1</sup>

“Plaintiffs seek a declaration that 30 days’ notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded.”

As set forth in Plaintiffs’ lawsuit, these requirements are in Article IX of the 1972 Deed Restrictions.<sup>2</sup> These requirements are not in Section 4 of Article I of the 1972 Deed Restrictions. Plaintiffs’ breach of contract claim was based on Plaintiffs’ same faulty interpretation of the 1972 Deed Restrictions.<sup>3</sup> Although Plaintiffs amended their claim twice before the temporary injunction hearing, these claims remained the same and Plaintiffs did not add any new claims.<sup>4</sup>

In his opening argument, Plaintiffs’ counsel made it clear that the sole basis for Plaintiffs’ request for a temporary injunction was their faulty interpretation of the 1972 Deed Restrictions:<sup>5</sup>

“We will show and will also argue that there are certain deeds restrictions in a subdivision from 1972 and that those deed restrictions do not allow any amendment to those restrictions without two specific things occurring.

One, written notice to all owners 30 days in advance of the adoption of the amendment. Two, a quote “recommendation” by an entity called the architectural control authority.”

Subsequently, the parties filed competing motions for partial summary judgment concerning the proper interpretation of the 1972 Restrictions. The Court recently ruled in favor of Defendants and granted partial summary judgment against Plaintiffs’ claims.

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<sup>1</sup> Plaintiffs’ Original Petition at ¶ 25.

<sup>2</sup> *Id.* at ¶ 13.

<sup>3</sup> *Id.* at ¶ 26-29.

<sup>4</sup> Plaintiffs’ First Amended Petition at ¶ 25; 26-29; Plaintiffs’ Second Amended Petition at ¶ 25; 26-29.

<sup>5</sup> Transcript of March 9, 2017 Temporary Injunction Hearing at 6-7.

**B. The Court Rejected The Sole Basis For Plaintiffs' Temporary Injunction And Granted Defendants' Motion For Partial Summary Judgment Against Plaintiffs' Claims.**

On October 12, 2017, Defendants filed their Motion For Partial Summary Judgment As To Claims And Counterclaims Concerning Section 4 Of Article I Of The Restrictive Covenants ("Defendants' MPSJ"). As set forth in the Motion, Defendants sought a partial summary judgment as to the claims that were the basis for Plaintiffs' temporary injunction:<sup>6</sup>

**This Motion for Partial Summary Judgment covers Plaintiffs' claims for (1) declaratory judgment that "30 days' notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded" and (2) breach or attempted breach of the Restrictive Covenants.** Defendants also move for summary judgment on their declaratory judgment claim that the requirements of notice and prior recommendation of the Architectural Control Authority in Article IX are not copied/pasted into Section 4 of Article I of the Restrictive Covenants.

On the other hand, Plaintiffs filed their Renewed Cross-Motion for Partial Summary Judgment Concerning Procedure for Amending Restrictive Covenants ("Plaintiffs' Cross-MPSJ"). Plaintiffs' Cross-MPSJ was a mirror-image of Defendants' MPSJ and sought the opposite interpretation of the 1972 Deed Restrictions.

On November 17, 2017, the Court issued its rulings. Importantly, the Court granted Defendants' MPSJ as to this contract interpretation issue:<sup>7</sup>

**"ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Partial Summary Judgment as to Claims and Counterclaims Concerning Section 4 of Article I of the Restrictive Covenants is GRANTED."**

The Court similarly denied Plaintiffs' Cross-MPSJ. By its orders, the Court disposed of Plaintiffs' claims in favor of Defendants.

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<sup>6</sup> Defendants' MPSJ at 3 (emphasis added).

<sup>7</sup> Order on Defendants' Motions for Summary Judgment at 2 (emphasis in original).

**C. The Court Should Dissolve The Injunction And Grant Relief To Defendants.**

By its Orders, the Court also eliminated the sole basis of Plaintiffs' temporary injunction. There is no basis for Plaintiffs' temporary injunction. Therefore, pursuant to Texas law, the Court should dissolve the temporary injunction. *Murphy v. McDaniel*, 20 S.W.3d 873, 878 (Tex. App.—Dallas 2000, no pet.) (explaining the circumstance that result in the dissolution of a temporary injunction). Furthermore, the Court should award the \$10,000 bond to Defendants. *Energy Transfer Fuel, L.P. v. Bryan*, 322 S.W.3d 409, 413-14 (Tex. App.—Tyler 2010, no pet.) (citing *DeSantis v. Wackenhut Corp.* 793 S.W.2d 670, 685 (Tex. 1990)). Finally, if the Court deems it necessary, Defendants request equitable or other relief in the form of time to file the change to the 1972 Restrictions or some other form to cure any harm caused to Defendants.

**III. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant this Motion, dissolve the temporary injunction, award Defendants the bond, and if the Court deems it necessary, Defendants request equitable or other relief in the form of time to file the change to the 1972 Restrictions or some other form to cure any harm caused to Defendants grant further relief. Defendants also request such other relief as the Court deems proper.

Respectfully submitted,

/s/ Michael L. Navarre

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was electronically served on counsel of record by electronic transmission on this 4<sup>th</sup> day of December, 2017:

James Patrick Sutton – via [jpatrickssutton@jpatrickssuttonlaw.com](mailto:jpatrickssutton@jpatrickssuttonlaw.com)

The Law Office of J. Patrick Sutton

1706 W. 10<sup>th</sup> St.

Austin, Texas 78701

Mr. David M. Gottfried – via [david.gottfried@thegottfriedfirm.com](mailto:david.gottfried@thegottfriedfirm.com)

The Gottfried Firm

West Sixth Place

1505 West Sixth Street

Austin, Texas 78703

*/s/ Michael L. Navarre*

\_\_\_\_\_  
Michael L. Navarre

Tab C



**TEMPORARY INJUNCTION**

THE STATE OF TEXAS

To:

POINT VENTURE NEIGHBORS FOR STR REFORM

c/o SAVE OUR SECTION 3-1

P.O. BOX 4114

LAGO VISTA, TX 78645

WHEREAS, in Cause No. **C-1-CV-17-001833** pending on the docket of the COUNTY COURT AT LAW #2 of Travis County, Texas, wherein RICHARD W JACKSON is Plaintiff and JANICE COX is Defendant, the Plaintiff filed an Application for a Temporary Restraining Order, asking among other things for granting and issuance of a Writ of Temporary Restraining Order, to restrain the Defendant, JANICE COX, fully set out and prayed for in the Application, a certified copy of which is attached hereto and to which reference is here made for the injunctive relief sought by the Plaintiff; upon presentation and consideration of said application, the Honorable TODD T WONG has entered in said cause the following, to wit: (See attached copy of order)

AND WHEREAS, BOND has been filed and approved;

THESE ARE, THEREFORE, to restrain, and you, JANICE COX are hereby restrained as fully set out and prayed for in the Application for Restraining Order, certified copy of which is attached hereto, made a part hereof and to which reference is hereby made for full and complete statement.

AND YOU ARE FURTHER NOTIFIED that the hearing on Plaintiff's Application for a Temporary Injunction is set for **JUNE 26, 2017 at time upon agreement of counsel** at the **County Courthouse in the City of Austin**, at which time you are required to appear and show cause, if any, why said injunction should not be granted as prayed for;

**HEREIN FAIL NOT** to obey this writ, under the pains and penalties prescribed by Law!

Issued and given under my hand and seal of office on March 09, 2017.



DANA DeBeauvoir, Travis County Clerk  
P.O. Box 1748, Austin, Texas 78767

By Deputy: \_\_\_\_\_

A M PEREZ

-----OFFICER'S RETURN-----

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock  
\_\_\_\_ M, and executed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_ o'clock  
\_\_\_\_ M, by delivery to the within named DEFENDANT'S NAME at \_\_\_\_\_

\_\_\_\_ In Travis County, Texas, in person, a true copy of this Notice  
the accompanying copy attached thereto.

To Certify which witness my hand officially.

BRUCE ELEFANT, CONSTABLE PRECINT 5  
TRAVIS COUNTY, TEXAS

By Deputy: \_\_\_\_\_

**TEMPORARY INJUNCTION**

THE STATE OF TEXAS

To:

POINT VENTURE NEIGHBORS FOR STR REFORM

c/o SAVE OUR SECTION 3-1

P.O. BOX 4114

LAGO VISTA, TX 78645

WHEREAS, in Cause No. **C-1-CV-17-001833** pending on the docket of the COUNTY COURT AT LAW #2 of Travis County, Texas, wherein RICHARD W JACKSON is Plaintiff and JANICE COX is Defendant, the Plaintiff filed an Application for a Temporary Restraining Order, asking among other things for granting and issuance of a Writ of Temporary Restraining Order, to restrain the Defendant, JANICE COX, fully set out and prayed for in the Application, a certified copy of which is attached hereto and to which reference is here made for the injunctive relief sought by the Plaintiff; upon presentation and consideration of said application, the Honorable TODD T WONG has entered in said cause the following, to wit: (See attached copy of order)

AND WHEREAS, BOND has been filed and approved;

THESE ARE, THEREFORE, to restrain, and you, JANICE COX are hereby restrained as fully set out and prayed for in the Application for Restraining Order, certified copy of which is attached hereto, made a part hereof and to which reference is hereby made for full and complete statement.

AND YOU ARE FURTHER NOTIFIED that the hearing on Plaintiff's Application for a Temporary Injunction is set for **JUNE 26, 2017 at time upon agreement of counsel** at the **County Courthouse in the City of Austin**, at which time you are required to appear and show cause, if any, why said injunction should not be granted as prayed for;

**HEREIN FAIL NOT** to obey this writ, under the pains and penalties prescribed by Law!

Issued and given under my hand and seal of office on March 09, 2017.



DANA DeBeauvoir, Travis County Clerk  
P.O. Box 1748, Austin, Texas 78767

By Deputy: \_\_\_\_\_

A M PEREZ

-----OFFICER'S RETURN-----

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock  
\_\_\_\_ M, and executed the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock  
\_\_\_\_ M, by delivery to the within named DEFENDANT'S NAME at \_\_\_\_\_

\_\_\_\_ In Travis County, Texas, in person, a true copy of this Notice  
the accompanying copy attached thereto.

To Certify which witness my hand officially.

BRUCE ELEFANT, CONSTABLE PRECINT 5

TRAVIS COUNTY, TEXAS

By Deputy: \_\_\_\_\_



NO. C-1-CV-17-001833

RICHARD W. JACKSON, LISA  
C. JACKSON, and KATHLEEN  
WOODALL,  
Plaintiffs,

V.

JANICE COX and HELEN  
RAMSEY, individually and d/b/a  
Point Venture Neighbors For  
STR Reform, an  
unincorporated association;  
and  
POINT VENTURE NEIGHBORS  
FOR STR REFORM, an  
unincorporated association,  
Defendants.

IN THE COUNTY COURT AT  
LAW

NUMBER 2

OF TRAVIS COUNTY, TEXAS

FILED FOR  
2017 MAR -9 AM  
DANA DEBEAUVOR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED FOR RECORD  
2017 MAR -9 AM 11:01  
DANA DEBEAUVOR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

### ORDER FOR ISSUANCE OF TEMPORARY INJUNCTION

Plaintiffs sued Defendants for breach and attempted breach of restrictive covenant. Plaintiffs sought issuance of a temporary restraining order and temporary injunction. The Court granted the temporary restraining order and set the temporary injunction request for hearing on March 9, 2017.

After due notice and a hearing on the request for a temporary injunction at which counsel for both parties were present, and due consideration of the evidence and the arguments of counsel, the Court is of the opinion that the request for a temporary injunction should be granted.

The Court makes the following findings:

1. Defendants Cox and Ramsey are owners in the Point Venture Section Three-1 subdivision ("subdivision") in Travis County, Texas. As such, they are subject to deed restrictions recorded in 1972 in the Official Records of Travis County, Texas at Vol. 4291, Page 1452 ("1972 Restrictions") which apply to the subdivision and the

I, Dana DeBeauvoir, County Clerk, Travis County,  
Texas, do hereby certify that this is a true and  
correct copy as same appears of record in my office.  
Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk  
By Deputy:

MAR -9 2017

*[Signature]*

A. M. PEREZ

individual properties therein.

2. All Plaintiffs are likewise owners in the subdivision and are likewise subject to the 1972 Restrictions.

3. The 1972 Restrictions provide that "any violation or attempted violation" may be enforced "by any proceedings at law or in equity against any person or persons violating or attempting to violate any" of the 1972 Restrictions. Further, that "it shall not be a prerequisite to the granting of [an] injunction to show inadequacy of legal remedy or irreparable harm."

4. Among the 1972 Restrictions are a requirements that "all . . . lot owners shall be given thirty (30) days notice in writing of any proposed amendment before same is adopted" and that any amendment cannot occur "without the prior recommendation of the Architectural Control Authority." These requirements apply to all amendments and can be harmonized with all other provisions of the deed restrictions, irrespective of what percentage of owners must approve amendments, which the deed restrictions provide varies depending on the circumstances.

5. Defendants are violating or attempting to violate the 30-day-notice and Architectural Control Authority requirements. Defendants seek to record an amendment to the 1972 Restrictions. Defendants did not provide the requisite 30 days' prior notice of amendment to Plaintiffs. The Architectural Control Authority did not make any recommendation concerning the proposed amendment.

6. Based on the 1972 Restrictions, Plaintiffs need not show irreparable injury or the inadequacy of a legal remedy in order to obtain an injunction.

7. Plaintiffs' injury will outweigh any injury to Defendants because the amendment proposed by Plaintiffs is likely to be void and unenforceable if recorded without meeting the requirements of the deed restrictions, while Defendants remain free to pursue amendment in the manner afforded by the 1972 Restrictions.

6. The restraining order will not disserve the public interest because

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk  
By Deputy: *AMF*

MAR - 9 2017

A. M. PEREZ



contractual due process under the 1972 deed restrictions is a right of all subdivision property owners for this and other subdivisions.

7. The status quo should be maintained, in the public interest; and
8. *prior cash bond previously submitted by plaintiffs is sufficient and the*  
Plaintiffs' bond in the amount of \$10,000.00 will fully protect Defendants' rights during the pendency of this action. *7*

It is therefore ORDERED, ADJUDGED, AND DECREED that a temporary injunction issue, operative until judgment is entered in this case, enjoining Defendants Janice Cox, Helen Ramsey, and Point Venture Neighbors For STR Reform, and all persons acting in concert with them or on their behalf, from recording in the Official Records of Travis County, Texas, any amendments to the 1972 Restrictions which are not in compliance with the 30-day notice requirement and the requirement of prior recommendation of the Architectural Control Authority. Before the issuance of the restraining order, Plaintiffs shall have posted bond in the amount of \$10,000.00, payable to Defendants, conditioned and approved as required by law.

SIGNED on 9th of March, 2017 at 10:55 A.M.

*[Signature]*  
JUDGE PRESIDING

APPROVED AS TO FORM:

**Todd T. Wong**

\_\_\_\_\_  
J. Patrick Sutton  
Attorney for Plaintiffs

\_\_\_\_\_  
William E. Sterling, Jr.  
Attorney for Defendants

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk  
By Deputy: *[Signature]*

MAR - 9 2017

**A. M. PEREZ**

ORDER SETTING CAUSE FOR TRIAL

It is ORDERED that the foregoing cause of action is set for trial on

July week of June 26-30, 2017, at \_\_\_\_\_ A.M./P.M. - upon agreement  
of counsel. TW

SIGNED ON June 9, 2017

  
JUDGE PRESIDING

Todd T. Wong

I, Dana DeBeauvoir, County Clerk, Travis County,  
Texas, do hereby certify that this is a true and  
correct copy as same appears of record in my office.  
Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk  
By Deputy:



A. M. PEREZ

MAR - 9 2017

Tab D

**RICHARD W. JACKSON, LISA  
C. JACKSON  
Plaintiffs,**

**V.**

**JANICE COX and HELEN  
RAMSEY, individually and d/b/a  
Point Venture Neighbors For  
STR Reform, an  
unincorporated association;  
and  
POINT VENTURE NEIGHBORS  
FOR STR REFORM, an  
unincorporated association,  
Defendants.**

**IN THE COUNTY COURT AT  
LAW**

**NUMBER 2**

**OF TRAVIS COUNTY, TEXAS**

FILED FOR RECORD  
2017 MAR -3 AM 9:42  
CLERK OF COUNTY CLERK  
TRAVIS COUNTY, TEXAS

**ORDER FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER AND  
SETTING HEARING ON APPLICATION FOR TEMPORARY INJUNCTION**

At the hearing on Plaintiffs' Application for Temporary Restraining Order, Plaintiffs appeared by and through their attorney of record. The hearing was conducted with notice to Defendants, who likewise appeared through their counsel.

The Court finds as follows:

1. Defendants Cox and Ramsey, themselves and through Defendant Point Venture Neighbors for STR Reform, are owners in the Point Venture Section Three-1 subdivision ("subdivision") in Travis County, Texas. As such, they are subject to eed restrictions recorded in 1972 in the Official Records of Travis County, Texas at Vol. 4291, Page 1452 ("1972 Restrictions") which apply to the subdivision and the individual properties therein.

2. Plaintiffs are likewise owners in the subdivision subject to the 1972 Restrictions.

3. The 1972 Restrictions provide that "any violation or attempted violation"




may be enforced "by any proceedings at law or in equity against any person or persons violating or attempting to violate any" of the 1972 Restrictions. Further, that "it shall not be a prerequisite to the granting of [an] injunction to show inadequacy of legal remedy or irreparable harm."

4. Among the 1972 Restrictions are a requirements that "all . . . lot owners shall be given thirty (30) days notice in writing of any proposed amendment before same is adopted" and that any amendment cannot occur "without the prior recommendation of the Architectural Control Authority."

5. It clearly appears from specific facts shown by Plaintiffs' verified application that Defendants are violating or attempting to violate the 30-day-notice and Architectural Control Authority requirements. Defendants seek to record an amendment to the 1972 Restrictions without satisfying those requirements.

6. Based on the 1972 Restrictions, Plaintiffs need not show irreparable injury or the inadequacy of a legal remedy in order to obtain an injunction.

~~7. Because Defendants did not provide the requisite 30 days' prior notice of amendment to Plaintiffs, Defendants' acts tended to be concealed. Therefore, Plaintiffs have exercised due diligence in prosecuting the underlying claim in this cause upon learning facts indicating a right to sue.~~

5. Plaintiffs' injury will outweigh any injury to Defendant that may occur on issuance of this restraining order because Defendants remain free to pursue amendment in the manner allowed by the 1972 Restrictions.

6. The restraining order will not disserve the public interest because contractual due process under the 1972 deed restrictions is an important right of all subdivision property owners for this and other subdivisions.

7. The status quo should be maintained, in the public interest; and

8. Plaintiffs' bond in the amount of ~~\$500.00~~ <sup>*\$10,000.00 with*</sup> will fully protect Defendants' rights until a hearing can be held on Plaintiffs' application for a temporary injunction.

It is therefore ORDERED that a temporary restraining order issue, operative until the date of the hearing hereinafter ordered, restraining and enjoining Janice Cox, Helen Ramsey, and Point Venture Neighbors For STR Reform, and all persons acting in concert with them or on their behalf, from recording in the Official Records of Travis County, Texas, any amendments to the 1972 Restrictions which are not in compliance with the 30-day notice requirement and the requirement of prior recommendation of the Architectural Control Authority. Before the issuance of the restraining order, Plaintiffs must post bond in the amount of ~~\$500.00~~ <sup>\$1000.00</sup>, payable to Defendants, conditioned and approved as required by law. *not a surety* *\$1000.00 only*

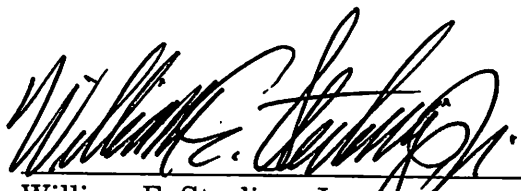
SIGNED on MARCH 3, 2012 at 10:38 M.

JUDGE PRESIDING

ERIC M. SHEPPERD

APPROVED AS TO FORM:

  
J. Patrick Sutton  
Attorney for Plaintiffs

  
William E. Sterling, Jr.  
Attorney for Defendants

NO. C-1-CV-17-001833

RICHARD W. JACKSON, LISA  
C. JACKSON  
Plaintiffs,

V.

JANICE COX and HELEN  
RAMSEY, individually and d/b/a  
Point Venture Neighbors For  
STR Reform, an  
unincorporated association;  
and  
POINT VENTURE NEIGHBORS  
FOR STR REFORM, an  
unincorporated association,  
Defendants.

IN THE COUNTY COURT AT  
LAW

NUMBER 2

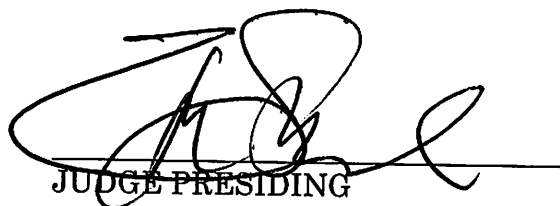
OF TRAVIS COUNTY, TEXAS

FILED FOR RECORD  
2017 MAR -3 AM 9:42  
JANA DEBEAUNION  
COUNTY CLERK  
TRAVIS COUNTY TEXAS

ORDER SETTING HEARING ON APPLICATION FOR  
TEMPORARY INJUNCTION

It is ORDERED that Janice Cox, Helen Ramsey, and Point Venture Neighbors For STR Reform, Defendants in this cause, appear before this Court on MARCH 9, 2017, at 9:00 ~~AM~~ PM at the Travis County Courthouse, 2d Floor, 1000 Guadalupe Street, Austin, TX 78701, to show cause, if any, why the temporary injunction requested by Plaintiffs should not issue against Defendant.

SIGNED on MARCH 3, 2017.

  
JUDGE PRESIDING

ERIC M. SHEPPERD

Tab E

**NO. C-1-CV-17-001833**

<b>RICHARD W. JACKSON, LISA C. JACKSON</b>	<b>§</b>	<b>IN THE COUNTY COURT AT LAW</b>
<b>Plaintiffs,</b>	<b>§</b>	
	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>NUMBER 2</b>
<b>JANICE COX and HELEN RAMSEY, individually and d/b/a Point Venture Neighbors For STR Reform, an unincorporated association; and</b>	<b>§</b>	
<b>POINT VENTURE NEIGHBORS FOR STR REFORM, an unincorporated association,</b>	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	<b>OF TRAVIS COUNTY, TEXAS</b>

**PLAINTIFFS' AMENDED PETITION FOR  
DECLARATORY AND OTHER RELIEF**

*with*

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

**Introduction**

Plaintiff property owners engage in short-term leasing. Their neighbors, Defendant property owners Cox and Ramsey, contend that a subgroup of property owners within the subdivision at issue are empowered to amend the subdivision's deed restrictions without notice to all owners and without the prior recommendation of the subdivision's governing body. The deed restrictions say otherwise. Defendants, through their alter ego, which is an unincorporated association or mere front, are now actively pursuing amendment without the prior recommendation of the authorized governing body. Plaintiffs, being property owners in the subdivision with property rights at stake, seek a

declaratory judgment that without the prior recommendation of the governing body and notice to all owners, there can be no amendment.

### **Claim for Relief**

1. Plaintiffs seek monetary relief of \$100,000 or less and non-monetary relief.

### **Control Plan Level**

2. Plaintiffs intend to use Discovery Level 2.

### **Parties and Service**

3. Plaintiffs Richard W. Jackson and Lisa C. Jackson are individuals and residents of Texas whose address is 18944 Peckham Dr. Point Venture, Texas 78645-8556.

4. Defendants Janice Cox and Helen Ramsey are individuals and Texas residents whose address is 18940 Peckham Dr., Point Venture, Texas 78645-8556, where they may be served with process.

5. Defendant Point Venture Neighbors For STR Reform (“Association”) is a nonprofit association pursuant to Tex. Bus. Orgs. Code § 252.001(2). **Service of process on Point Venture Neighbors For STR Reform is proper via certified mail on its authorized address, Point Venture Neighbors For STR Reform c/o Save Our Section 3-1, P.O. Box 4114, Lago Vista, Texas 78645.** In addition, Janice Cox and Helen Ramsey are agents authorized by appointment to receive service of process; officers; managing or general agents; or persons authorized to participate in the management of the Association’s affairs.

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. Venue in Travis County is proper in this cause under Section 15.002(a)(1) of the Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

## **FACTS**

### **General Background Concerning the Subdivision**

8. The natural person plaintiffs and defendants are property owners in the in the Point Venture Section Three-1 subdivision (“subdivision”) in Travis County, Texas.

a. Defendants Janice Cox and Helen Ramsey own 18940

Peckham Drive, Point Venture, Texas 78645-8556.

b. Plaintiffs own 18944 Peckham Dr.

Point Venture, Texas 78645-8556.

9. The defendant Association owns no property in the subdivision.

10. Deed restrictions recorded in 1972 in the Official Records of Travis County, Texas at Vol. 4291, Page 1452 (“1972 Restrictions”) apply to the subdivision and the individual properties therein. A true and correct copy of said restrictions, in relevant part, is attached hereto as Exhibit A.

11. The 1972 Restrictions, at Section I, ¶ 5, allow enforcement of the deed restrictions against anyone in violation or attempted violation. Enforcement expressly includes proceedings at law and in equity, including

mandatory and prohibitive injunctions and restraining orders. Irreparable harm or lack of a legal remedy need not be shown:

#### **Enforcement**

5. In the event of any violation or attempted violation of any of the provisions hereof, including any of the Reservations, Restrictions or Covenants herein contained, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions. It shall be lawful for the Developer or for any person or persons owning property in the Subdivision (or in any other Section of Point Venture) to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of such provisions.

12. The 1972 Restrictions, at Section II, create and authorize the Point Venture Architectural Control Committee ("ACC") as a governing entity with various powers and duties.

13. A standalone "Amendments" provision at Section IX governs amendments as follows:

Any or all of the covenants herein may be annulled, amended or modified at any time at the recommendation of the Architectural Control Authority, or its successors, and ratified by a vote of two-thirds of the lot owners in the Subdivision. All such lot owners shall be given thirty (30) days notice in writing of any proposed amendment before same is adopted. There shall be no annulment, amendment or modification of these covenants without the prior recommendation of the Architectural Control Authority.

#### **Plaintiffs Lease Their Properties**

14. Plaintiffs lease out their property for varying terms, days or months at a time, and desire to continue doing so.



15. Defendants oppose Plaintiffs' leasing, particularly for durations of less than 90 days.

**Defendants Pursue Amendment Without Notice  
or ACC Recommendation**

16. Defendants Janice Cox and Helen Ramsey are officers, organizers, or managers of the Association. They handle Association communications and are responsible for creating and maintaining the Association's websites, <http://pvstrreform.com> and <http://savesection3-1.org>.

17. Cox and Ramsey have not filed any assumed name certificate for the Association, nor filed any organizational documents or agent appoint with the Texas Secretary of State.

18. Cox, Ramsey, and the Association seek to impose new deed restrictions on leasing in the subdivision. To that end, they have drafted an amendment to the deed restrictions and are actively seeking the votes or signatures of owners on the amendment. A true and correct copy of the proposed Amendment is attached hereto as Exhibit B.

19. However, the ACC has not recommended an amendment to regulate leasing of subdivision properties. Nor have all lot owners been given 30 days notice in writing of the proposed amendment.

**CLAIMS FOR RELIEF**

**Alter Ego**

20. In the alternative to claims for relief set forth herein against the Defendants individually, Cox and Ramsey on the one hand, and the Association

on the other, disregarded the separation amongst themselves in the handling of their respective affairs.

21. Owing to this unity between the defendants herein, holding only one defendant liable for any of the claims asserted herein would result in injustice.

22. Therefore, the natural person and entity defendants are alter egos of one another such that any may be held liable for the dealings of another.

23. Without regard to alter ego, any of the defendants are also or in the alternative liable for their own individual actions.

### **Claim for Declaratory Judgment**

24. There is a justiciable controversy between the parties. Plaintiffs lease their properties for any duration and wish to continue doing so. Plaintiffs maintain that all owners must be given notice of proposed amendments and that the ACC must recommend amendments before they may be voted upon. Defendants contend that the deed restrictions may be amended without notice to all owners and without ACC recommendation. Defendants are in the midst of proposing and seeking selected owners' approval of deed restrictions without notice to all owners and without ACC recommendation.

25. Plaintiffs seek a declaration that 30 days' notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded in the Official Records of Travis County, Texas or otherwise enforced against owners in the subdivision.

**Claim for Breach or Attempted Breach of  
Restrictive Covenant**

26. The restrictive covenants authorize any owner to assert breach or attempted breach of restrictive covenant in a proceeding at law or equity.

27. The restrictive covenants at issue require notice to all owners of proposed amendments and prior recommendation of the ACC.

28. Defendants have proposed and are attempting to propose an amendment to the deed restrictions without notice to all owners or prior recommendation of the ACC.

29. Defendants' actions are in breach or attempted breach of the restrictive covenants' requirements for amendments.

**Attorney's Fees**

30. Plaintiffs are entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice & Remedies Code section 37.009 because this is a suit for declaratory relief.

31. Plaintiffs are entitled to recover reasonable and necessary attorney's fees under Tex. Prop. Code § 5.006.

**Conditions Precedent**

32. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

## APPLICATION FOR TEMPORARY RESTRAINING ORDER

33. The allegations and claims above are incorporated herein by reference.

34. Plaintiffs' application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code §65.011(1)-(3).

35. Applicants seeking an injunction to enforce a restrictive covenant are not required to prove irreparable injury but only that the nonmovants intend to do an act that would breach the covenant. *See Jim Rutherford Investments v. Terramar Beach Commun. Assoc.*, 25 S.W.3d 845, 849 (Tex.App.-Houston [14th Dist.] 2000, pet. denied); *Marcus v. Whispering Springs Homeowners Assoc.*, 153 S.W.2d 702, 707 (Tex.App.-Dallas 2005, no writ).

36. In addition, the restrictive covenants here expressly relieve an applicant from having to show irreparable injury or the inadequacy of a legal remedy.

37. Plaintiffs ask the court to restrain Defendants or those acting in concert with them from recording in the Official Records of Travis County, Texas, any annulment, amendment, or modification of the restrictive covenants as to which all owners were not notified 30 days in advance or as to which there was no ACC recommendation.

38. It is probable that Plaintiffs will prevail because the evidence establishes that notice to all owners and recommendation by the ACC are preconditions to any annulment, amendment, or modification of the restrictive covenants, and that those preconditions were not met.

39. Plaintiffs are willing to post bond.

### **REQUEST FOR TEMPORARY INJUNCTION**

40. Plaintiffs asks the court to set the application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against defendant.

41. Plaintiffs have joined all indispensable parties under Texas Rule of Civil Procedure 39.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs Richard W. Jackson and Lisa C. Jackson respectfully pray that the Defendants, Janice Cox, Helen Ramsey, and Point Venture Neighbors For STR Reform, be cited to appear and answer herein and that upon a final hearing of the cause, and that judgment be entered for Plaintiffs against Defendants for declaratory judgment as set forth herein, breach of restrictive covenant, costs of court, attorney's fees, and such other and further relief to which the Plaintiff may be entitled at law or in equity.

**IT IS FURTHER PRAYED** that the Court issue a TRO to restrain Defendants and those acting in concert with them from recording in the Official Records of Travis County, Texas, any annulment, amendment, or modification of the restrictive covenants as to which all owners were not notified 30 days in advance or as to which there was no ACC recommendation; that the court set the application for a temporary injunction for a hearing, and that after a hearing, the court issue a temporary injunction.

Respectfully submitted,  
/s/ *JPS*  
J. Patrick Sutton  
Texas Bar No. 24058143  
1706 W. 10th Street  
Austin, Texas 78703  
Tel. (512) 417-5903  
Fax. (512) 355-4155

**RICHARD W. JACKSON, and LISA  
C. JACKSON  
Plaintiffs,**

**V.**

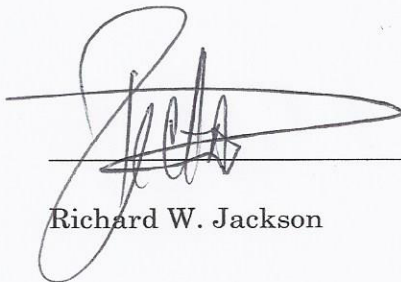
**JANICE COX d/b/a Point Venture  
Neighbors For STR Reform, an  
unincorporated association, and  
POINT VENTURE NEIGHBORS  
FOR STR REFORM, an  
unincorporated association,  
Defendants.**

§ **IN THE COUNTY COURT AT LAW**  
§  
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§  
§ **NUMBER \_\_\_\_\_**  
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§ **OF TRAVIS COUNTY, TEXAS**

**DECLARATION OF RICHARD W. JACKSON  
UNDER PENALTY OF PERJURY**

1. "My name is Richard W. Jackson, a Plaintiff in the captioned case. My date of birth is JANUARY 5 1962. I am over 18 years of age, of sound mind, and capable of making this Declaration. I am a citizen of Texas residing at 18944 Peckham Dr., Point Venture, Texas 78645-8556.

2. I declare under penalty of perjury that facts stated in Plaintiffs' Application for TRO are true and correct."

  
Richard W. Jackson

2/22/17  
date

Tab F



**NO. C-1-CV-17-001833**

<b>RICHARD W. JACKSON and LISA</b>	<b>§</b>	<b>IN THE COUNTY COURT AT LAW</b>
<b>C. JACKSON</b>	<b>§</b>	
<b>Plaintiffs,</b>	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	<b>NUMBER 2</b>
<b>JANICE COX and HELEN</b>	<b>§</b>	
<b>RAMSEY, individually and d/b/a</b>	<b>§</b>	
<b>Point Venture Neighbors For STR</b>	<b>§</b>	
<b>Reform, an unincorporated</b>	<b>§</b>	
<b>association; and</b>	<b>§</b>	
<b>POINT VENTURE NEIGHBORS</b>	<b>§</b>	
<b>FOR STR REFORM, an</b>	<b>§</b>	
<b>unincorporated association,</b>	<b>§</b>	
<b>Defendants.</b>	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	
	<b>§</b>	
<b>KATHLEEN KOLB WOODALL,</b>	<b>§</b>	
<b>Counter-Defendant.</b>	<b>§</b>	<b>OF TRAVIS COUNTY, TEXAS</b>

**PLAINTIFFS' FIFTH AMENDED PETITION  
FOR DECLARATORY AND OTHER RELIEF**

This 5<sup>th</sup> Amended Petition nonsuits claims of alter ego and breach of restrictive covenant and adds to the declaratory judgment claims a request concerning waiver or abandonment of deed restriction to bolster a previously-asserted defense to the same effect.

**Claim for Relief**

1. Plaintiffs seek monetary relief of \$100,000 or less and non-monetary relief.

**Control Plan Level**

2. Plaintiffs intend to use Discovery Level 2.

## **Parties and Service**

3. Plaintiffs Richard W. Jackson and Lisa C. Jackson are individuals and residents of Texas whose address is 18944 Peckham Dr. Point Venture, Texas 78645-8556.

4. Counter-Defendant Kathleen Kolb Woodall is a resident of Texas.

5. Defendants Janice Cox and Helen Ramsey are individuals and Texas residents whose address is 18940 Peckham Dr., Point Venture, Texas 78645-8556. Defendants have appeared and answered.

6. The subject matter in controversy is within the jurisdictional limits of this court.

7. Venue in Travis County is proper in this cause under Section 15.002(a)(1) of the Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

## **FACTS**

### **General Background Concerning the Subdivision**

8. The natural person plaintiffs and defendants are or were property owners in the in the Point Venture Section Three-1 subdivision ("subdivision") in Travis County, Texas.

a. Defendants Janice Cox and Helen Ramsey own 18940 Peckham Drive, Point Venture, Texas 78645-8556.

b. Plaintiffs the Jacksons own 18944 Peckham Dr. Point Venture, Texas 78645-8556.

c. Plaintiff Kathleen Kolb Woodall, *sub nom.* "Kathleen A. Kolb," formerly owned 18920 Peckham Drive, Point Venture, Texas 78645.

9. Point Venture Neighbors For STR Reform ("Association") is a nonprofit association pursuant to Tex. Bus. Orgs. Code § 252.001(2). Defendants are its members.

10. Deed restrictions recorded in 1972 in the Official Records of Travis County, Texas at Vol. 4291, Page 1452 ("1972 Restrictions") apply to the subdivision and the individual properties therein. A true and correct copy of said restrictions, in relevant part, is attached hereto as Exhibit A.

11. The 1972 Restrictions, at Section I, ¶ 5, allow enforcement of the deed restrictions against anyone in violation or attempted violation. Enforcement expressly includes proceedings at law and in equity, including mandatory and prohibitive injunctions and restraining orders. Irreparable harm or lack of a legal remedy need not be shown:

#### **Enforcement**

5. In the event of any violation or attempted violation of any of the provisions hereof, including any of the Reservations, Restrictions or Covenants herein contained, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions. It shall be lawful for the Developer or for any person or persons owning property in the Subdivision (or in any other Section of Point Venture) to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any of such provisions.

12. The 1972 Restrictions, at Section II, create and authorize the Point Venture Architectural Control Committee (“ACC”) as a governing entity with various powers and duties.

13. A standalone “Amendments” provision at Section IX governs amendments as follows:

Any or all of the covenants herein may be annulled, amended or modified at any time at the recommendation of the Architectural Control Authority, or its successors, and ratified by a vote of two-thirds of the lot owners in the Subdivision. All such lot owners shall be given thirty (30) days notice in writing of any proposed amendment before same is adopted. There shall be no annulment, amendment or modification of these covenants without the prior recommendation of the Architectural Control Authority.

14. A leasing clause at Section IV, ¶ 5 requires prior written consent of the Developer for all leasing. Leasing is not otherwise regulated or restricted.

15. Owners at Point Venture have been renting out properties without seeking prior consent since at least 1991.

16. Owners at Point Venture have been openly, publicly, and conspicuously renting out their properties since at least 2000.

17. Owners who have rented out properties have been doing so without seeking or obtaining prior permission from the Developer or HOA or anyone else. No one in the community took any interest in the leasing consent clause or objected to leasing until Defendants did so in this lawsuit.

18. The HOA, for its part, has no knowledge or records of anyone having ever sought its permission to lease since 1985. It has no record of having ever enforced or required such prior consent. It has no record of anyone having

ever sued based on the prior consent provision. It doesn't even know that any such requirement exists.

### **Plaintiffs Leased Their Properties**

19. Plaintiffs and counterdefendants have leased out their property for varying durations. Plaintiffs desire to continue doing so.

20. Defendants oppose Plaintiffs' leasing, including for durations of less than 90 days.

### **Defendants Pursue Amendment Without Notice or ACC Recommendation**

21. Defendants Janice Cox and Helen Ramsey are officers, organizers, or managers of the Association. They handle Association communications and are responsible for creating and maintaining the Association's websites, <http://pvstrreform.com> and <http://savesection3-1.org>.

22. Cox and Ramsey have not filed any assumed name certificate for the Association, nor filed any organizational documents or agent appoint with the Texas Secretary of State.

23. Cox, Ramsey, and the Association seek to ban all leasing or else restrict leasing according to minimum duration. To that end, they drafted an amendment to the deed restrictions and are actively seeking the votes or signatures of owners on the amendment.

24. However, the ACC did not recommended an amendment to regulate leasing of subdivision properties. Nor were all lot owners been given 30 days notice in writing of the proposed amendment.

25. On March 9, 2017, upon Plaintiffs' application, the court issued a temporary injunction barring Defendants from recording any amendment for which the requirements of 30 days' notice and ACC recommendation were not fulfilled. Defendant Cox testified at the hearing on the temporary injunction that irrespective of Defendants' proposed amendment, Cox (or Defendants generally) take the position that the deed restrictions bar all leasing.

#### **APPLICATION FOR TRO AND TEMPORARY INJUNCTION**

26. Plaintiffs have previously pled for and obtained temporary injunctive relief pending final judgment. The need for and granting of same is incorporated herein by reference for all purposes.

#### **CLAIMS FOR RELIEF**

##### **Claim for Declaratory Judgment**

27. There is a justiciable controversy between the parties. Plaintiffs lease their properties for any duration and wish to continue doing so.

28. All owners must be given notice of proposed amendments, and the ACC must recommend amendments before they may be voted upon. Defendants contend that the deed restrictions may be amended without notice to all owners and without ACC recommendation. Defendants have proposed and sought selected owners' approval of deed restrictions without notice to all owners and without ACC recommendation.

29. Defendants also contend that all leasing is presently barred by the deed restrictions.

30. Plaintiffs therefore seek a declaration that 30 days' notice to all owners of proposed amendments and the prior recommendation of the ACC are required before any amendment may be adopted and recorded in the Official Records of Travis County, Texas or otherwise enforced against owners in the subdivision.

31. Plaintiffs seek a declaration that the deed restrictions do not presently bar leasing. Relatedly, that the deed restrictions' original requirement of Developer preapproval of leasing was rendered inapplicable and unenforceable once the Developer ceased to own any lots. Relatedly, that the requirement of Developer pre-approval of leasing has been waived or abandoned.

32. Plaintiffs also seek a declaration that the deed restrictions do not presently impose any minimum duration on leasing or occupancy.

### **Permanent Injunction**

33. Plaintiffs ask the court to permanently enjoin Defendants from recording any amendments to the deed restrictions if the requirements of 30-days' written notice and a recommendation from the ACC are not fulfilled.

### **Attorney's Fees**

34. Plaintiffs are entitled to recover reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice & Remedies Code section 37.009 because this is a suit for declaratory relief.

### **Conditions Precedent**

35. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED,** Plaintiffs Richard W. Jackson and Lisa C. Jackson respectfully pray that the Defendants, Janice Cox and Helen Ramsey, be cited to appear and answer herein and that upon a final hearing of the cause, and that judgment be entered for Plaintiffs against Defendants for declaratory judgment as set forth herein, permanent injunction, costs of court, attorney's fees, and such other and further relief to which the Plaintiffs may be entitled at law or in equity.

Respectfully submitted,  
/s/ JPS  
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### **CERTIFICATE OF SERVICE**

I certify that on October 13, 2017, a true and correct copy of this 5th A. Petition was served to each person listed below by e-service.

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/s/ JPS