

HEARING ON TEMPORARY RESTRAINING ORDER - *EXHIBITS*
MARCH 20, 2025

REPORTER'S RECORD
VOLUME 2 OF 2 VOLUMES
TRIAL COURT CAUSE NO. 25-DCV-327154

CONCERNED OWNERS OF) IN THE DISTRICT COURT
PROVIDENCE)
Plaintiffs,)
vs.) FORT BEND COUNTY, TEXAS
PROVIDENCE COMMUNITY)
ASSOCIATION, INC., WILLIE)
A. JONES, MICHAEL ATEs,)
PATRICK MEURER, LAURA L.)
DAWSON, STEVEN G. MCSWAIN,)
Defendants.) 400TH JUDICIAL DISTRICT

HEARING ON TEMPORARY RESTRAINING ORDER
EXHIBITS

On the 20th day of March, 2025, the following
proceedings came on to be held in the above-titled
and numbered cause before The Honorable
EDWARD M. KRENEK, Judge Presiding, held in Richmond,
Fort Bend County, Texas.

Proceedings reported by computerized stenotype
machine.

Cynthia Martinez, CSR
152nd Civil District Court
cynthiam@justex.net

HEARING ON TEMPORARY RESTRAINING ORDER - *EXHIBITS*
MARCH 20, 2025

APPEARANCES

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MR. PATRICK MEURER, Pro Se Defendant
MS. LAURA L. DAWSON, Pro Se Defendant
MR. STEVEN G. MCSWAIN, Pro Se Defendant

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 MARCH 20, 2025

E X H I B I T I N D E X

Plaintiff's			
Exhibit No.	Identification	Off./Admit	
1	11/27/2024 Letter - Mr. Berk	50	50

E X H I B I T I N D E X

Defendant's			
Exhibit No.	Identification	Off./Admit	
1	10/22/2024 Correspondence	50	50

Cynthia Martinez, CSR
 152nd Civil District Court
 cynthiam@justex.net

Mitchell Katine

From: David Berk
Sent: Thursday, November 7, 2024 2:55 PM
To: Lindsey Wikenczy
Cc: Telee Horacefield; Valerie Overbeck
Subject: RE: Providence Communications

Good afternoon, everyone.

You asked me to review the circumstances through which Providence Community Association, Inc., determined Nadeem Naik had vacated his seat on the Association's board of directors. You also asked me to review the appointment of Pat Muerer to fill such vacancy and his appointment as an officer of the Association. Finally, you asked me to review the removal of Karen Blakeman from the Providence Community Association, Inc., board of directors.

I first wish to go over the timeline and facts.

On October 22, 2024, director Paul Weider resigned from the board of directors. On November 1, 2024, directors Willie Jones and Michael Ates met. This meeting was conducted in person. Providence Community Association, Inc., did not provide notice of this meeting to the Association's homeowners. No other directors were present at this meeting.

During this meeting, Willie Jones and Michael Ates voted to declare director Nadeem Naik's board seat vacant. In this same meeting, Willie Jones and Michael Ates voted to remove director Karen Blakeman from the Association's board of directors. Finally, during this meeting, Willie Jones and Michael Ates voted to appoint Pat Muerer to the Association's board of directors to fill the vacancy created by the resignation of Paul Weider.

Assuming my understanding of the facts of these events is correct, Providence Community Association, Inc., did not properly declare Naik's seat vacant, and did not properly remove Blakeman from the Association's board of directors. Similarly, Providence Community Association, Inc., did not properly appoint Muerer to the board of directors.

1. The meeting of November 1, 2024, did not constitute a valid meeting of Providence Community Association, Inc.'s board of directors at which Association business could be conducted.

1.A: The meeting of November 1, 2024, was not properly noticed to the Association's homeowners.

Section 209.0051(c) of the Texas Property Code requires that all regular and special property owners' association board meetings be open to owners. (During the course of an open meeting, property owners' association boards have the right to adjourn such meetings into executive session to discuss certain confidential items.) Texas Property Code Section 209.0051(e) requires that "members shall be given notice of the date, hour, place, and general subject matter of a regular or special board meeting, including a general description of any matter to be brought up for deliberation in executive session." The Texas Property Code mandates specific methods by which property owners' associations may provide this notice and a timeline for providing notice.

Providence Community Association, Inc., did not provide the Association's homeowners notice of the November 1, 2024, meeting. Therefore, this meeting did not constitute a valid meeting of the Association's

board of directors at which business could be conducted. No decisions made at the November 1, 2024, are effective.

1.B: A quorum of directors was not present at the November 1, 2024, meeting.

Article VI, Section 3 of the By-Laws of Providence Community Association, Inc., requires a quorum of “a majority of the number of directors” for meetings of the Association’s board of directors. If a quorum is achieved, then a simple majority of that quorum is required to act for the Association. (“Every act or decision done or made by a majority of the directors present **at a duly held meeting at which a quorum is present** shall be regarded as the act of the Board.”)

As of November 1, 2024, the Association’s board of directors consisted of four directors. Three directors constitute a majority of a four-director board. Therefore, to achieve quorum at a November 1, 2024, meeting of the Association’s board of directors, at least three directors must have been present.

Only two directors attended the November 1, 2024, meeting of the Association’s board of directors. Therefore, a quorum of directors was not achieved and a meeting could not properly be held. Because a quorum was not achieved, no business could be conducted at the November 1, 2024, meeting.

2. The November 1, 2024, meeting did not effectively appoint Association officers or fill the vacancy created by Paul Weider’s resignation.

Section 209.0051(h) of the Texas Property Code requires fifteen specific areas of property owners’ association business be conducted only in open and properly noticed board meetings. Section 209.0051(h)(13) of the Texas Property Code requires that any vacancy on a property owners’ association board of directors be filled only in an open and properly-noticed meeting of the board of directors. Similarly, Section 209.0051(h)(15) of the Texas Property Code requires that property owners’ association officers be elected only in an open and properly-noticed meeting of the board of directors.

Providence Community Association, Inc., is permitted to elect officers and fill director vacancies only in open and properly-noticed board meetings. The Association did not properly notice the November 1, 2024, meeting. Moreover, a quorum of directors was not present at the November 1, 2024, meeting. As a result, no board meeting was actually held on November 1, 2024. Therefore, the November 1, 2024, meeting could not elect officers or fill vacancies on the Association’s board of directors.

3. The November 1, 2024 meeting did not effectively declare Nadeem Naik’s board seat vacant.

The Texas Property Code allows property owners’ associations to conduct some association business outside of open and properly-noticed board meetings. However, the Property Code imposes strict notice and participation requirements for conducting such business. As noted above, Section 209.0051(h) prohibits conducting certain specific types of business outside of an open and properly-noticed meeting. Section 209.0051(h) of the Texas Property Code allows a property owners’ association board of directors to conduct all other areas of Association business outside of open and properly noticed meetings. However, a board may take action outside of a meeting on those permitted areas of association business only “if each board member is given a reasonable opportunity to express the board member’s opinion to all other board members and to vote.”

Providence Community Association, Inc., did not afford Naik or Blakeman a reasonable opportunity to express their opinion at the November 1, 2024, meeting, as to the decision to declare Naik’s seat as vacated by reason of absence. Further, the Association did not allow Naik or Blakeman the opportunity to vote on whether to declare Naik’s seat vacant due to absence. Therefore, Providence Community Association, Inc., did not satisfy

the requirements for conducting business outside of an open and properly noticed meeting. As a result, the vote to declare Naik's seat vacant is not effective.

4. Providence Community Association, Inc.'s board of directors cannot remove directors from the board, and the vote to remove Blakeman is therefore ineffective.

The By-Laws of Providence Community Association, Inc., outline how sitting directors may be removed from the board. (I address the issue of declaring a vacancy in the board, above.) Article IV, Section 3 of the Bylaws states that "any director may be removed from the Board, with or without cause, by a majority vote **of the members of the Association.**" This is the only method for removing directors, for reasons except absence, outlined in the Association's governing documents.

Providence Community Association, Inc.'s board of directors does not have the authority to remove a director from the board of directors. The Association's board can, in some circumstances, declare a seat vacant. Otherwise, only the Association's homeowners have the right to remove a director from the board of directors. Therefore, the vote to remove Blakeman from the board of directors is not effective.

Please note, the provisions for removing officers outlined in Article VIII, Section 5 of the Bylaws, do not apply to removing directors. Article VIII addresses Association officers; it is Article IV of the Bylaws that governs directors. Article VIII, Section 5 of the Bylaws governs the board of removing "any officer" from the board, whereas Article IV, Section 3 governs removing directors. Officers are those offices to which the board elects directors: president, vice president, and secretary. Removing a director from their officer position does not remove that director from the board. That power is not available to the Association's board of directors.

* * *

In conclusion, the board of directors for Providence Community Association, Inc., currently consists of directors Jones, Ates, Naik, and Blakeman. A purported board consisting of Jones, Ates, and Muerer cannot conduct business or make decisions on the Association's behalf. Jones and Ates are two of the four directors currently serving on the board. Muerer is not a director at all. Providence Community Association, Inc., cannot act except through its validly constituted board of directors (i.e., Jones, Ates, Naik, and Blakeman). Any Association acts approved or decided without the lawful and proper participation/opportunity to participate of the directors are invalid and could potentially expose Providence Community Association, Inc., to liability.

So long as Naik and Blakeman remain on the Association's board of directors, any acts Jones and Ates take unilaterally without the input or involvement of Naik and Blakeman are *ultra vires* acts and Jones and Ates are likely not shielded from personal liability for the results of such acts. To the extent Naik and Blakeman are excluded from Providence Community Association, Inc.'s board, these directors may have personal causes of action against the Association. However, as this law firm does not represent any director in their individual capacity, I cannot further address these issues of personal liability or potential causes of action.

Please let me know if I am mistaken as to any facts, as this would potentially change the analysis. Further, please note, HoltTollett, P.C., cannot take any action for Providence Community Association, Inc., except as determined by the Association's lawfully constituted board of directors. Therefore, because it is this law firm's opinion the Association's lawfully constituted board consists of Jones, Ates, Naik, and Blakeman, it is extremely important the Association appraise us if the Association takes a different position on board membership.

David K. Berk
Attorney

HoltTollett, PC

9821 Katy Freeway Suite 350
Houston, Texas 77024
Tel: (713) 510-1000
Fax: (713) 510-1001

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From: Lindsey Wikenczy <lwikenczy@chaparralmanagement.com>
Sent: Thursday, November 7, 2024 11:55 AM
To: David Berk <dberk@holttollett.com>
Cc: Telee Horacefield <thoracefield@chaparralmanagement.com>; Valerie Overbeck <voverbeck@chaparralmanagement.com>
Subject: Providence Communications

David,

Thank you again for taking the time to meet with Telee, Valerie and me this morning. We appreciate your input and support.

Attached are the communications I have received, for your review.

Lindsey Hall-Wikenczy, CMCA, AMS

Director of Community Management
Chaparral Management Company | 6630 Cypresswood Dr, Suite 100 | Spring, TX 77379
Tel: (281) 537-0957

Web: www.chaparralmanagement.com | Email: lwikenczy@chaparralmanagement.com

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OCTOBER 22, 2024

● Telee Horacefield

From: thoracefield@chaparralmanagement.com

To: Karen Blakeman, nadeemnaik@gmail.com, Willie Jones, Michael Ates

Wed, Oct 23 at 11:22 AM ☆

Good Morning Board,

As requested below is legal opinion on the three items I was asked to obtain.

Please let me know if you have any questions.

Thank you,
Telee

From: David Berk <dberk@holttollett.com>

Sent: Tuesday, October 22, 2024 12:23 PM

To: Telee Horacefield <thoracefield@chaparralmanagement.com>

Subject: RE: Providence - IMMEDIATE ATTENTION

Hi Telee, please see my responses below, in **bold**.

David K. Berk
Attorney

Holt Tollett
9821 Katy Freeway, Suite 350
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Tel: (713) 510-1000
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From: Telee Horacefield <thoracefield@chaparralmanagement.com>

Sent: Tuesday, October 22, 2024 10:29 AM

To: David Berk <dberk@holttollett.com>

Subject: Providence - IMMEDIATE ATTENTION

Hi David,

I need legal opinion on the following three items please.

1. If a current board member was called to active duty by order of the United States Military, can he be removed from the board for missing three consecutive meetings?

Yes, the Association's board of directors has that option in these circumstances. Article VII, Section 1(d) of the By-Laws of Providence Community Association, Inc., empowers the board of directors to "declare the office of a member of the Board of Directors to be vacant in the event each such member shall be absent from three (3) consecutive regular meetings of the Board of Directors." The board is not required to exercise this power, and I can understand why the board might be reluctant to do so. I would hope in such a situation the director who can no longer perform their duties due to deployment would resign amicably from the board so that Association business can continue unhindered despite their unavailability.

2. Of a board of 5 members, if three resign, what happens to the vacant seats?

In this situation, the two remaining directors can fill the vacancies. Article IV, Section 3 of the Bylaws provides that "in the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor." Section 22.212(a) of the Texas Business Organizations Code states that "unless otherwise provided by the certificate of formation or bylaws of the

Def's Ex 1

corporation, a vacancy in the board of directors of a corporation shall be filled by the affirmative vote of the majority of the remaining directors, regardless of whether that majority is less than a quorum."

3. If there is a "shared" fence between common area and a resident. How do you determine who is responsible for repairing the fence?

Providence's restrictive covenants do not provide a definitive answer to this question. While the governing documents make homeowners responsible for fences on their Lots, it is unclear whether this overcomes the general rule as to party fences.

Providence's restrictive covenants make homeowners responsible for the Declarant-constructed or Association-constructed fences on their Lots. Article II, Section 13 of the restrictive covenants states "any wall fence or hedge erected on a Lot by Declarant, or its assigns, shall pass ownership with title to the Lot and it shall be owner's responsibility to maintain said wall, fence or hedge thereafter." A fence on a Lot line is still a fence on a homeowner's Lot. So, Providence has a strong argument homeowners are solely responsible for such fences.

That said, the general rule in Texas as to party walls between landowners is that each owner is responsible for maintaining such fence. Generally, when a fence is on the property line between two properties, the two owners are jointly responsible for repair/reconstruction, and in the event one owner must repair it on their own, any owner that repairs it can seek contribution for half the cost from the other owner. While the Declaration arguably overcomes that presumption, if a homeowner were to seek contribution from the Association for half of the cost of maintaining a fence on the property line between Common Area and a Lot, I cannot guarantee how a court would rule. Moreover, given Common Area fences are often especially visible, Providence may wish to join in the repair of such fences, so as to ensure the work is performed to a specific aesthetic standard.

How the board proceeds in this cases depends on the board's appetite for uncertainty if a homeowner were to sue for contribution, and on the board's desire to maintain some level of control as to fences shared between Lots and Common Area.

Thank you,
Telee

Telee Horacefield, CMCA, AMS
Community Manager
Chaparral Management Company | 6630 Cypresswood Dr, Suite 100 | Spring, TX 77379
Tel: (281) 537-0957 ext 1058
Direct: (281)-586-1714
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OCTOBER 29, 2024

From: "Chaparral Management Company (3)" <cmc@chaparralmanagement.com>

Date: October 29, 2024 at 4:46:40 PM CDT

To: pjmhouston@aol.com

Subject: Message from Providence Community Association, Inc. - Special Meeting of Members - [#XN14270868]

If you would like to respond to this notification, please place your response above the dotted line.

Sincerely,

Telee Horacefield

Chaparral Management Company (3) on behalf of Providence Community Association, Inc.

(281) 537-0957 | <http://www.chaparralmanagement.com/>