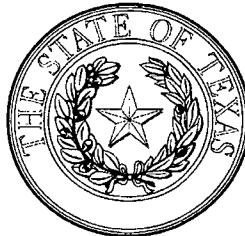


Opinion issued March 27, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00502-CV

MICHAEL FRANCIS PALMA, Appellant

v.

HARRIS COUNTY APPRAISAL DISTRICT, Appellee

**On Appeal from the 270th District Court
Harris County, Texas
Trial Court Case No. 2017-01753**

MEMORANDUM OPINION

Michael Francis Palma, as beneficiary of 6205 Trust, appeals from the trial court's summary judgment denying his petition for review of a Harris County Appraisal Review Board order, which determined a tax protest concerning a home

owned by the Trust.¹ Palma contends that the real property at issue does not have situs in Harris County and that Harris County Appraisal District has no authority to appraise it. We hold that the District proved as a matter of law that the subject property is real property located in Harris County and thus appraisable by the District. Therefore, we affirm.

Background

Michael Francis Palma is the beneficiary of 6205 Trust, which owns real property located at 5026 Autumn Forest Dr., Houston, Texas 77091. Harris County Appraisal District appraised the property for the 2015 tax year, and Palma filed a protest with the Harris County Appraisal Review Board, arguing that the property's taxable situs was not Harris County. The Board entered an order determining that the property's situs was Harris County, and Palma then filed a petition for review in the trial court.

In his petition, Palma argued that, because the property is residential, it is not taxable and therefore has no taxable situs and may not be appraised by the District. Palma requested that the trial court order the District to remove the property from its appraisal rolls.

¹ See TEX. TAX CODE § 41.41(a) (entitling property owner to protest before appraisal review board various actions of appraisal district), § 42.01(a)(1)(A) (entitling property owner to appeal appraisal review board order determining situs protest), § 42.21(a) (requiring party who appeals from appraisal review board order to timely file petition of review in district court).

The District filed a motion for traditional summary judgment, arguing that the property is taxable and has a taxable situs in Harris County because it is real property (i.e., land and improvements) physically located in Harris County. That the property is residential, the District argued, is irrelevant.

The trial court granted the District's motion, finding that the District has the authority to appraise the property and that the property has taxable situs in Harris County for the 2015 tax year. Palma appeals.

Summary Judgment

We construe Palma's brief as challenging the summary judgment determining that the District has the authority to appraise the property and that the property has taxable situs in Harris County for the 2015 tax year.²

We review summary judgments de novo. *Boerjan v. Rodriguez*, 436 S.W.3d 307, 310 (Tex. 2014) (per curiam). A movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact and that it

² To the extent that Palma's brief can also be construed as arguing that the trial court lacked subject-matter jurisdiction, we overrule that issue. The trial court had jurisdiction under the Constitution, Government Code, and Tax Code. *See TEX. CONST.* art. V, § 8 ("District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body."); *TEX. GOV'T CODE* § 24.008 ("The district court may hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity."); *TEX. TAX CODE* § 42.21(a) ("A party who appeals as provided by this chapter must file a petition for review with the district court . . .").

is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009). If the movant initially establishes a right to summary judgment on the issues expressly presented in the motion, then the burden shifts to the nonmovant to present to the trial court any issues or evidence that would preclude summary judgment. *See City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678–79 (Tex. 1979). We consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if a reasonable factfinder could, and disregarding contrary evidence unless a reasonable factfinder could not. *See Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

Under Texas law, real property is taxable. TEX. CONST. art. VIII, § 1(b); TEX. TAX CODE §§ 11.01(a)–(b), 21.01. The taxable situs of real property is the county in which the property is located. TEX. CONST. art. VIII, § 11. Each county has an appraisal district, which is responsible for appraising real property located in the county for each taxing unit that imposes an ad valorem tax on the property. TEX. TAX CODE §§ 6.01(a)–(b), 6.02(a).

In its motion for summary judgment, the District argued that the subject property is appraisable by the District because it is real property (i.e., land and improvements) located in Harris County. *See id.* §§ 11.01(a)–(b), 21.01; *see also Oake v. Collin Cty.*, 692 S.W.2d 454, 455 (Tex. 1985) (explaining that county's

taxing entities must prove that real property it seeks to tax is situated within its geographical boundaries). The District's summary-judgment evidence included (1) the District's account information for the subject property for tax years 2015 and 2017, which classified the property as single-family residential property owned by the Trust and subject to the jurisdiction of nine taxing units;³ and (2) the affidavit of a valuation specialist in the District's residential property division with four attached maps created by the specialist depicting the location of the property within the jurisdiction of a particular taxing unit, which established that the property is located within the territorial boundaries of Harris County and eight other taxing units.

This evidence established that the subject property is real property in Harris County. The burden therefore shifted to Palma to come forward with evidence sufficient to raise a genuine issue of material fact about the character of the property or its location. He failed to do so; he presented no evidence rebutting the evidence presented by the District. Instead, he argued incorrectly that the property was not taxable because it did not generate income, citing caselaw addressing the situs and taxability of intangible personal property, not real property. *See City of*

³ The taxing units listed included (1) Houston Independent School District, (2) Harris County, (3) Harris County Flood Control District, (4) the Port of Houston Authority, (5) Harris County Hospital District, (6) Harris County Education Department, (7) Houston Community College, (8) the City of Houston, and (9) Near Northwest Management District.

Houston v. Morgan Guar. Intern. Bank, 666 S.W.2d 524 (Tex. App.—Houston [1st Dist.] 1983, writ ref'd n.r.e.) (addressing situs and taxability of stock).

We hold that the District proved as a matter of law that the subject property has situs in Harris County and is appraisable by the District.⁴ See *Townsend v. Montgomery Cent. Appraisal Dist.*, No. 14-14-00103-CV, 2015 WL 971313, at *7–8 (Tex. App.—Houston [14th Dist.] Mar. 3, 2015, no pet.) (mem. op.) (holding affidavit of appraisal district employee and supporting material, including maps of property showing location in county, sufficient to establish right to summary judgment).

Conclusion

Therefore, we affirm the trial court's judgment.

Harvey Brown
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Brown.

⁴

After the appeal was set for submission, Palma filed an “Amended Petition,” in which he requests that we review an order of the Board determining the situs of the property for the 2017 tax year. However, under the Tax Code, a party appealing from an order of the Board must file a petition of review in the trial court first. TEX. TAX CODE § 42.21(a). Palma has not filed a petition of review in the trial court. Therefore, we lack jurisdiction to review the Board’s order and deny Palma’s request.

FILE COPY

RE: Case No. 18-0564
COA #: 01-17-00502-CV

DATE: 11/30/2018
TC#: 2017-01753

STYLE: PALMA v. HARRIS CNTY APPRAISAL DIST.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. MICHAEL FRANCIS PALMA
* DELIVERED VIA E-MAIL & POSTAL *