

Cause No. 2012-20396

1620 HAWTHORNE LTD.,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
	§	
MONTROSE MANAGEMENT DISTRICT,	§	
Defendant	§	333 rd JUDICIAL DISTRICT

ORIGINAL ANSWER OF MONTROSE MANAGEMENT DISTRICT

Subject to its Plea to Jurisdiction, Defendant Montrose Management District (“District”) files its Original Answer to Plaintiff’s Original Petition and Suit for Declaratory Judgment (“Petition”) and would respectfully show the Court following:

I.
NATURE OF THE CASE

1. The District is a municipal management district the Texas Legislature created “to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety and the public welfare in the area of the district.”¹

2. Plaintiff is a commercial property owner within the District.

3. Plaintiff seeks a declaratory judgment requiring the District to dissolve and to refund the assessments that it has levied to fund its activities.

4. As discussed in greater detail in the District’s Plea to Jurisdiction, this Court lacks subject matter jurisdiction over Plaintiff’s claims.

¹ The District is the result of the consolidation of two management districts created by the Texas Legislature. The first, earlier referred to as the East Montrose Management District, was created in 2005. TEXAS SPECIAL DISTRICT LOCAL LAWS CODE §3843.001 *et seq.* The second, earlier referred to as the West Montrose Management District, was created in 2009. *Id.* §3878.001. *et seq.* On February 15, 2011, the districts were combined into the District.

5. In any event, the District properly interpreted and applied the relevant statutory provisions and its actions comply with all applicable constitutional provisions.

II.

ORIGINAL ANSWER SUBJECT TO PLEA TO JURISDICTION

6. The District generally denies Plaintiff's allegations under Rule 92 of the Texas Rules of Civil Procedure and demands that it prove its allegations by a preponderance of the credible evidence as is required by the Constitution and the laws of the State of Texas.

7. Because Plaintiff has purported to challenge the constitutionality of various state statutes, it is required to serve the Attorney General with "a copy of the proceeding." TEX. CIV. PRAC. & REM. CODE §37.006(b). If Plaintiff fails to do so within a reasonable time, this Court must dismiss the proceeding. *Gatesco Q.M., Ltd. v. City of Houston*, 333 S.W.3d 338, 351-52 (Tex. App.–Houston [14th Dist.] 2010, no pet.).

8. The Court lacks subject matter jurisdiction over Plaintiff's claims against the District because:

- The District is immune from suit, except where Plaintiff can demonstrate an express waiver of that immunity. Plaintiff has failed to plead and it cannot establish the existence of any waiver of immunity. No such waiver of immunity exists here;
- Although Plaintiff has purported to invoke the Texas Declaratory Judgment Act ("DJA"), TEX. CIV. PRAC. & REM. CODE §37.001 *et seq.*, the DJA does not bestow jurisdiction on a court where none exists to begin with. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). The DJA "is merely a procedural device for deciding cases *already within* a court's jurisdiction." *State v. Morales*, 869 S.W.2d 941, 947 (Tex. 1994) (emphasis added).
- Plaintiff's claims are not ripe or, alternatively, they are moot, because it has not alleged and it cannot prove that the District is subject to dissolution, even under its erroneous interpretation of TEX. LOC. GOV'T CODE §375.262(1).

- No waiver of immunity exists for Plaintiff's complaint about the District's application of TEX. LOC. GOV'T CODE §375.262(1). *Tex. Dept. of Transp. v. Sefzik*, 355 S.W.3d 618, 622 (Tex. 2011);
- No waiver of immunity exists for Plaintiff's challenge to the constitutionality of TEX. LOC. GOV'T CODE §375.262(1) or Chapter 375 of the Texas Local Government Code, because Plaintiff has not negated the existence of a rational basis for those statutes and, as a matter of law, a rational basis exists for both;
- No waiver of immunity exists for Plaintiff's challenge to the 2009 assessments levied by the East Montrose Management District because Plaintiff failed to exhaust its state administrative and judicial remedies as required by TEX. LOC. GOV'T CODE §375.123. *Caspary v. Corpus Christi Downtown Management District*, 942 S.W.2d 223, 226-27 (Tex. App.—Corpus Christi 1997, writ denied);
- No waiver of immunity exists for Plaintiff's request to obtain retrospective financial relief. *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex. 2009);
- Plaintiff lacks standing to obtain relief for any other District property owner, all of whom, like Plaintiff, failed to exhaust the available statutory procedure for contesting the District's assessment. *See City of Houston v. Guthrie*, 332 S.W.3d 578, 598 (Tex. App.—Houston [1st Dist.] 2009, pet. denied)(plaintiffs lacked standing to assert claims on behalf of other property owners and district court lacked subject matter jurisdiction over those claims); and
- No waiver of immunity exists for Plaintiff's complaint about the formation of the District because Plaintiff failed to exhaust its statutory and judicial remedies as required by TEX. LOC. GOV'T CODE §375.123, the actions complained about are conclusively presumed valid by TEX. WATER CODE §49.235, Section 375.201 is irrelevant to Plaintiff's complaint, and Section 375.021 is inapplicable to the District.

9. Plaintiff has not stated a claim for denial of due process or denial of any right to due course of law.

10. Plaintiff has not stated a claim for denial of equal protection.

11. The District properly interpreted and applied the provisions of TEX. LOC. GOV'T CODE §375.262(1).

12. The District's actions had a rational basis and comply with all applicable statutory and constitutional provisions.


13. Plaintiff has not stated any claim for attorney's fees that is not otherwise barred by governmental immunity.

14. The District expressly reserves its right to amend to plead such other and further defenses as may be either necessary or appropriate.

Accordingly, subject to its Plea to Jurisdiction, the District respectfully requests that the Court dismiss Plaintiff's claims, order that Plaintiff take nothing and that the District be granted such other and further relief, whether legal or equitable, to which it may show itself to be justly and equitably entitled.

Respectfully submitted,

BLANK ROME LLP

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ATTORNEYS FOR DEFENDANT
MONTROSE MANAGEMENT DISTRICT

CERTIFICATE OF SERVICE

I certify that on May 7, 2011, I served a true and correct copy of the foregoing instrument on Plaintiff's counsel, at the address and in the manner indicated below:

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Andy Taylor
ANDY TAYLOR & ASSOCIATES, P.C.
2668 Highway 36S, #288
Brenham, Texas 77833



Barry Abrams