



Control Number: 45870



Item Number: 58

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SOAH DOCKET NO. 473-16-4619.WS
PUC DOCKET NO. 45870

COMPLAINT OF KER-SEVA LTD. §
AGAINST THE CITY OF FRISCO §

RECEIVED
2016 OCT 31
BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS
PUBLIC UTILITY COMMISSION
FILING CLERK

**MOTION BY THE CITY OF FRISCO FOR REMOVAL OF
KER SEVA, LTD. AS A PARTY**

COMES NOW, the City of Frisco ("City" or "Frisco") and files this Motion to Remove Ker Seva Ltd. ("Ker Seva") as a party to this proceeding. In support thereof, the City shows the following:

I. BACKGROUND

On April 19, 2016, Ker Seva filed a formal complaint against the City alleging that the City had denied Ker Seva retail water and wastewater service. Ker Seva has since sold the property that is the subject of this proceeding to ADC West Ridge, LP ("ADC") whose general partner is a wholly-owned subsidiary of the Center for Housing Resources, Inc. ("CHR").¹ The property that is the subject of this proceeding is referred to herein as the "Property" and is identified in **Exhibit 1**.

On July 29, 2016, the Public Utility Commission of Texas ("PUC") issued a Preliminary Order detailing approximately 13 items to be addressed in the proceeding. On July 29, 2016, the Administrative Law Judges ("ALJs") convened this matter before the State Office of Administrative Hearings ("SOAH"). The issues presented by the PUC all related to the provision of retail water and sewer service to the Property.

As detailed below, Frisco moves to remove Ker Seva as a party to this proceeding.

¹ Ker Seva, ADC, and CHR will be collectively referred to as "Complainants."

II. MOTION TO REMOVE KER SEVA AS A PARTY TO THIS PROCEEDING

Ker Seva is a Texas limited partnership that owned the Property at the time it filed the instant complaint. Since Ker Seva's original complaint, Ker Seva conveyed its interest in the Property to ADC West Ridge.² Ker Seva no longer has any legal or equitable interest in the Property.

PUC rules provide that a person has standing to participate in a proceeding if it:

1. Has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
2. Has or represented persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.³

Ker Seva has not been given a right to participate by any statute, PUC rule or order, or other law. The only right it had to participate in the original complaint was as a property owner who had a justiciable interest in the Property. Now, because Ker Seva who no longer owns the Property or has no legal interest in the Property has no justiciable interest that will be affected by the outcome of this proceeding.

At the preliminary hearing in this case, the ALJs requested of Ker Seva a statement about its continued participation. The only reason counsel for Ker Seva could state as to its continued participation was that Ker Seva may be a witness in this proceeding. Such a reason is devoid of any indicia of evidence of how Ker Seva may be adversely affected by this proceeding.

The Courts have determined that "justiciable interest" exists only when there is a "real" controversy between the parties.⁴ In order to demonstrate a justiciable interest, Ker Seva must

² See *Second Amended Formal Complaint Against the City of Frisco, Texas* filed July 1, 2016, at 3. The pleading is item no. 14 on the PUC interchange.

³ 16 Tex. Admin. Code § 22.103.

⁴ *City of Waco v. Texas Comm's on Environmental Quality*, 346 S.W.3d 781, 801 (Civ. App. – Austin, 2011).

demonstrate that that it could have brought the action in its own name.⁵ In this case, Ker Seva did originally demonstrate with the initial complaint that it had a justiciable interest to assert the allegations against the City. However, because it does not own the Property now, there is no manner in which Ker Seva could assert the same allegations against the City as it would not have standing to make such allegations.

Similarly, in this docket, the Winsor HOA sought intervention. In applying the relevant case law, Your Honors stated that the intervenors' concerns "even if factual, are not justiciable in this case; hence, Winsor does not have a justiciable interest that may be adversely affected by the outcome of the proceeding."⁶ Ker Seva is not adversely affected by the outcome of this proceeding. It has no legal interest in the Property and is not seeking retail water or sewer service from the City. There is no issue of genuine concern in this proceeding for which Ker Seva could be provided any relief. As such, Ker Seva no longer has standing to participate in this proceeding as a party and should be removed. The City moves for removal of Ker Seva as a party to this proceeding.

III. CONCLUSION AND PRAYER

The City respectfully requests an order:

- (1) Removing Ker Seva Ltd. as a party from this proceeding; and
- (2) Granting the City all other and further relief to which it is justly entitled.

⁵ *In re Union Carbide Corp.*, 273 S.W.3rd 152, 155 (Tex. 2008).

⁶ See Order No. 4 at 2.

Respectfully submitted,

Russell & Rodriguez, L.L.P.
1633 Williams Drive, Building 2, Suite 200
Georgetown, Texas 78628
(512) 930-1317
(866) 929-1641 (Fax)

Abernathy Roeder Boyd & Hullett, P.C.
Richard Abernathy
State Bar No. 00809500
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
(214) 544-4000
(214) 544-4040 (Fax)

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.
State Bar No. 00791551

ATTORNEYS FOR THE CITY OF FRISCO

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2016, a true and correct copy of the foregoing document has been sent via facsimile, first class mail, or hand-delivered to the following counsel of record:

State Office of Administrative Hearings
300 West 15th Street, Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061 Fax

Meitra Farhadi
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

Mr. Sam Chang
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas
(512) 936-7261
Via Electronic Mail

Mr. Ali Abazari
Ms. Mallory Beck
Jackson Walker, LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
(512) 236-2000
Via Electronic Mail

William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings 300
West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061- *Via Facsimile*

/s/ Arturo D. Rodriguez, Jr.
ARTURO D. RODRIGUEZ, JR.

PUC DOCKET NO. 45870
SOAH DOCKET NO. 473-16-4619.WS

FORMAL COMPLAINT OF KER-SEVA LTD. AGAINST THE CITY OF FRISCO RFI, TEXAS	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS
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**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc.'s file these Responses to City of FRISCO ("Frisco RFI") First Set of Requests for Information ("Frisco RFI RFI") and requests for Admission ("Frisco RFI RFA"), which was filed with the Public Utility Commission of Texas and served on Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. on July 26, 2016. These responses are timely filed. Ker-Seva, Ltd., ADC West Ridge Villas, L.P. and Center for Housing Resources, Inc. agree and stipulate that all parties may treat these responses as if the answers were filed under oath. Complainants and Frisco agreed to amend some of the requests which are reflected herein.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: Mallory Beck
Leonard Dougal - State Bar No. 06031400
Mallory Beck - State Bar No. 24073899
100 Congress, Suite 1100
Austin, Texas 78701
E: ldougal@jw.com
T: (512) 236 2233
F: (512) 391-2112

ATTORNEYS FOR COMPLAINANTS
KER-SEVA, LTD., ADC WEST RIDGE, L.P.,

Exhibit 1

AND CENTER FOR HOUSING
RESOURCES, INC.

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing document was served as shown below on
this 15th day of August 2016:

Art Rodriguez
Russell & Rodriguez, L.L.P.
1633 Williams Dr., Bldg. 2, Suite 200
Georgetown, Texas 78268
arodriguez@txadminlaw.com
Attorney for City of Frisco RFI

Via email and U.S. First Class Mail

Sam Chang
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
sam.chang@puc.texas.gov
Attorney for Public Utility Commission of Texas

Via email and U.S. First Class Mail

State Office of Administrative Hearings
300 West 15th St., Suite 502
Austin, Texas 78701
(512) 475-4993
(512) 322-2061 - Fax

Via U.S. First Class Mail


Mallory Beck

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**KER-SEVA, LTD., ADC WEST RIDGE VILLAS, L.P. AND CENTER FOR HOUSING
RESOURCES, INC.'S RESPONSES TO CITY OF FRISCO'S FIRST SET OF
REQUESTS FOR INFORMATION AND REQUESTS FOR ADMISSION**

Frisco RFI 2: (AMENDED AS AGREED): Please produce all documents evidencing the conveyance of Lot 2 to ADC West Ridge Villas, LP.

RESPONSE:

Please find enclosed documents produced in response to this Request.

Prepared/Sponsored by: > To be supplemented.



20160519000512640 05/19/2016 11:25:44 AM D1 1/3

RTT 1018-134708

Warranty Deed with Vendor's Lien

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: the 17th day of May, 2016

Grantor: Ker-Seva, Ltd.

Grantor's Mailing Address: 9421 Westridge Blvd., McKinney, TX 75070

Grantee: ADC West Ridge Villas, LP

Grantee's Mailing Address: 347 Walnut Grove Ln., Coppell, TX 75019

Consideration: TEN and no/100 DOLLARS and other good and valuable consideration and further consideration of a promissory note ("TDHCA HOME Note") of even date herewith in the original principal sum of Three Million and no/100 DOLLARS (\$3,000,000.00) executed by Grantee and payable to the Texas Department of Housing and Community Affairs ("TDHCA"), a public and official agency of the State of Texas, secured by the vendor's lien herein retained in the amount of One Million and no/100 Dollars (\$1,000,000.00) and is additionally secured a deed of trust (with security agreement and assignment of rents) of even date herewith from Grantee to Timothy Irvine, Trustee

Property (including any improvements): Lot 2, Block A, Westridge Addition, Frisco, Collin County, Texas, containing approximately 4.916 acres.

Reservations from and Exceptions to Conveyance and Warranty:

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against the Property and superior title to the Property are retained until that portion of the TDHCA HOME Note recurred by the vendor's lien is fully paid according to its terms, at which time this deed will become absolute.

ADC00045

When the context requires, singular nouns and pronouns include the plural.

EXECUTED on the dates of our respective acknowledgements below.

GRANTOR: KER-SEVA, LTD. a Texas Limited Partnership

By: Ker-Seva Management, LTD, a Texas Limited Liability Company

By: Jastinder S. Jawanda
Jastinder S. Jawanda, Manager

GRANTEE:

ADC West Ridge, LP, a Texas limited partnership

By: CHR West Ridge Villas, LLC, a Texas limited liability company, its General Partner

By: Center for Housing Resources, Inc., a Texas Not for Profit Corporation, its Manager

By: Terri L. Anderson
Terri L. Anderson, Chairperson

THE STATE OF TEXAS §

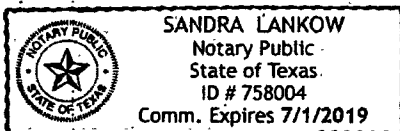
KNOW ALL MEN BY THESE PRESENTS

COUNTY OF DENTON §

This instrument was acknowledged before me on this 17th day of May, 2016, by Jastinder S. Jawanda, Manager of KER-SEVA MANAGEMENT, LTD, a Texas Limited liability Company, of KER-SEVA, LTD., a Texas limited partnership.

Seal

Sandra Lankow
Notary Public, State of Texas



ADC00046

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this 18th day of May, 2016, by Terri L. Anderson, Chairperson, Center for Housing Resources, Inc., Manager of CHR West Ridge, LLC, General Partner of ADC West Ridge, LP.



Kristin Nicole Kirby

Notary Public, State of Texas

Seal

AFTER RECORDING RETURN TO:

The Law Offices of Claire G. Palmer, PLLC
Attorney for Borrower
2224 Clearspring Drive South
Irving, TX 75063

Filed and Recorded
Official Public Records
Stacey Kemp, County Clerk
Collin County, TEXAS
05/19/2016 11:25:44 AM
\$34.00 DFOSTER
20160519000612640



Stacey Kemp

ADC00047

CORRECTION AFFIDAVIT
(NON-MATERIAL CORRECTION, Texas Property Code Sec. 5.028)

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared SANDRA LANKOW, to me well known, and who, after being by me duly sworn, deposes and says that:

"My name is SANDRA LANKOW. I am a Vice President and Escrow Officer employed by Republic Title of Texas, Inc. and I am a 'person with personal knowledge' of the facts set forth herein, as defined in Section 5.028(a), Texas Property Code, as added by S.B. 1496.

The Warranty Deed filed of record on 05/19/2016, and recorded under cc#20160519000612640 Real Property Records of Collin County, Texas, and

contained an incorrect Grantee name as follows:

ADC West Ridge Villas, LP.

The correct Grantee name is and should have been:

ADC West Ridge, LP.

This correction is based on my review of the company documents for the Grantee and the closing documents.

A copy of this Correction Affidavit is being delivered via first class mail to all parties to the original instrument recorded."

FURTHER AFFIANT SAITH NOT.

Executed this 24th day of June, 2016

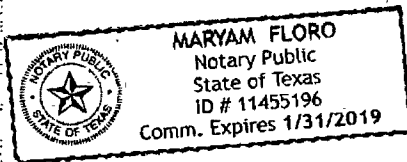

SANDRA LANKOW

STATE OF TEXAS

COUNTY OF

Denton

The above and foregoing instrument was acknowledged **subscribed and sworn to** before me, the undersigned authority, on this 27 day of June, 2016 by SANDRA LANKOW.





Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Republic Title of Texas, Inc.
3024 E. Hebron Pkwy.
Carrollton, Texas 75012

ADC00049