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DOCKET NO. 49871

PETITION OF THE CITY OF RED OAK §  
INDUSTRIAL DEVELOPMENT §  
CORPORATION TO AMEND §  
ROCKETT SPECIAL UTILITY §  
DISTRICT'S WATER CERTIFICATE §  
OF CONVENIENCE AND NECESSITY §  
IN DALLAS AND ELLIS COUNTIES §  
BY EXPEDITED RELEASE §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

**PETITIONER'S REPLY TO ROCKETT SPECIAL UTILITY DISTRICT'S RESPONSE  
TO AMENDMENT OF PETITION AND REQUEST TO RESTYLE DOCKET**

The Red Oak Industrial Development Corporation (ROIDC) files its Reply to Rockett Special Utility District's (Rockett) objection and response to ROIDC's Amendment of Petition and Request to Restyle Docket, and its Response and Objection to Rockett's Renewed Motion to Dismiss, filed herein on September 28, 2020.

**A. Rockett is incorrect that the petitioner was misidentified; the petition should be restyled to identify ROIDC.**

Rockett is wrong in its assertion that the error was a misidentification rather than a misnomer. *None* of the case law cited by Rockett directly supports its assertion. A misnomer arises "when a party misnames itself or another party, but the correct parties are involved."<sup>1</sup> ROIDC and City of Red Oak Industrial Development Corporation (CROIDC) have the same President, the same legal counsel, and serve the same purpose.<sup>2</sup> Therefore, the correct parties have been involved in this petition from the beginning, which is the determinative test.<sup>3</sup> Courts generally allow parties to correct a misnomer so long as it is not misleading, and when the plaintiff misnames *itself*, "the rationale for flexibility in the typical misnomer case—in which a plaintiff misnames the defendant—applies with even greater force."<sup>4</sup>

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<sup>1</sup> *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W. 3d 323, 325 (Tex. 2009) (per curiam).

<sup>2</sup> Ben Goodwyn is President of both organizations. Mr. Goodwyn submitted an Affidavit with the Petition attesting to ownership of the property by ROIDC. Likewise, the two organizations are represented by the same attorneys at Lloyd Gosselink in this Petition.

<sup>3</sup> *Greater Houston Orthopaedic Specialists*, 295 S.W. 3d at 325.

<sup>4</sup> *Id.* at 326.

Rockett cites *Gonzalez v. Greyhound Lines, Inc.* in support of its position that this is a case of misidentification and therefore may not be amended. However, contrary to Rockett's assertions, *Gonzalez* (which is a decision of the El Paso Court of Appeals and not the Texas Supreme Court as Rockett claims) does not hold that a party may not amend because of misnomer or misidentification. Rather, *Gonzalez* holds first that naming a different (but related) party *is* a case of misnomer ("While the alleged pleading defect may well be a case of misnomer . . ."), and second, that the misnamed party (in this case, CROIDC) lacks standing *if it never amends* to substitute in the correct plaintiff.<sup>5</sup> Such is not the case here, as ROIDC is in the process of amending the petition and restyling the docket.

ROIDC's interpretation of *Gonzalez* is supported by the Dallas Court of Appeals' holding in *Myers v. HCB Real Holdings, LLC*.<sup>6</sup> The original plaintiff, Hillcrest N.A., amended its pleadings to change the plaintiff to HCB Real Holdings, LLC. Myers (a guarantor of a note) contended that, because Hillcrest N.A., was not the owner or holder of a note at the time it filed suit, the court should not have allowed the pleadings to be amended. In support of this argument, Myers cited *Gonzalez*. The court disagreed, finding that amendment of the name of the plaintiff was proper and *Gonzalez* was limited to its particular circumstances (specifically, when the plaintiffs did not seek to amend until the appeal):

In *Gonzalez*, the court held, without authority or discussion, that "[s]ince the [plaintiffs] collectively lacked standing to sue the defendants in their lawsuit, their petition could not be amended to confer subject matter jurisdiction on the trial court." *Importantly, the plaintiffs in Gonzalez did not attempt to amend their lawsuit to name a new party plaintiff before the judgment of dismissal was rendered against them.* In response to the motion to dismiss, they argued solely that they were the correct parties with standing to sue. It was only on appeal that they requested an opportunity to amend. In this case, the pleadings were amended to name the correct plaintiff long before any judgment in the case was signed.<sup>7</sup>

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<sup>5</sup> *Gonzalez v. Greyhound Lines, Inc.*, 181 S.W.3d 386, 393 (Tex. App.—El Paso 2005, pet. denied).

<sup>6</sup> *Myers v. HCB Real Holdings, LLC*, 05-13-00113-CV, 2015 WL 2265152, at \*4 (Tex. App.—Dallas May 14, 2015, pet. denied).

<sup>7</sup> *Id.* (citation omitted and emphasis added).

This docket is analogous to *Myers*; the Commission should similarly give *Gonzalez* little credence under these circumstances and should allow the petition to be restyled, or amended, to correct the misnomer.

Further, even if the petitioner *was* misidentified, the mistake can be corrected. *Enserch Corp. v. Parker*,<sup>8</sup> (also cited by Rockett in support of its position) is a case wherein the plaintiff sued the wrong defendant. However, this case also does not support Rockett's position, and has been mischaracterized by Rockett. The Texas Supreme Court in *Enserch* recognized that there are cases in which even if the parties are misidentified, if the plaintiff could prove that the proper defendant was not prejudiced by the mistake in pleading, then limitations would not operate to bar the suit.<sup>9</sup> That is the case here—Rockett has not identified *any* way in which it was prejudiced by the mistake (and there has been no prejudice). No property was misidentified. No party was kept from responding timely. And, importantly, no party was disadvantaged in obtaining relevant evidence, which is a primary inquiry when addressing misidentification.<sup>10</sup>

In reality, Rockett is simply trying to use a technicality as a means by which to dismiss ROIDC's petition. Rockett has cited no authority supporting its position that the requested amendment to the style of the petition to correct the misnomer may not relate back to the filing of the petition, and Rockett's arguments are contrary to court precedent.<sup>11</sup> Therefore, it is appropriate for the amendment to be made and relate to the date of filing of the petition.

**B. ROIDC is not an involuntarily dissolved corporation and has the right to do business in Texas.**

Rockett refers the Commission to the wrong statute in its argument that ROIDC failed to seek reinstatement within the correct time frame. Texas Business Organizations Code, Chapter

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<sup>8</sup> 794 S.W.2d 2 (Tex. 1990).

<sup>9</sup> *Id.* at 5; *see also Flour Bluff Indep. Sch. Dist. v. Bass*, 133 S.W.3d 272, 274 (Tex. 2004) (limitations will be tolled when two separate, but related, entities that use a similar trade name and the correct entity had notice of the suit and was not misled or disadvantaged by the mistake); *Reddy Partnership/5900 North Freeway LP v. Harris County*, 370 S.W. 3d 373, 376 (Tex. 2012), quoting *Sheldon v. Emergency Med. Consultants, I, P A*, 43 S.W. 3d 701, 702 (Tex. App. –Fort Worth 2001, no pet.).

<sup>10</sup> *Enserch Corp.*, 794 S.W.2d at 5.

<sup>11</sup> *Greater Houston Orthopaedic Specialists*, 295 S.W. 3d at 326, cited in *Reddy Partnership*, 370 S.W. 3d at 377.

22, Nonprofit Corporations is the operative statute, not Chapter 11 as cited by Rockett. More specifically, ROIDC was reinstated pursuant to Tex. Bus. Org. Code § 22.365, which permits reinstatement *at any time* after termination or revocation under § 22.364 of the same chapter. As Rockett acknowledges, ROIDC filed a report with the Secretary of State on March 24, 2020. ROIDC requests that the Commission take judicial notice of the fact that the Secretary of State’s website indicates that ROIDC’s entity status is “in existence,” that ROIDC’s name is “in use” (which would not be the case if the entity’s existence remained forfeited), and that the names and titles of ROIDC’s Directors and Officers were updated by the Secretary of State on April 10, 2020.<sup>12</sup>

Moreover, ROIDC’s forfeited status did not prevent it from transferring or acquiring property.<sup>13</sup> Under Texas Bus. Org. Code § 22.360, a nonprofit corporation’s failure to file a Periodic Report results in the corporation’s forfeiture of its right to conduct affairs in Texas. The effect of the forfeiture is that until the corporation is “revived” under § 22.363 or § 22.365, the corporation or any successor or assignee may not maintain an action, suit, or proceeding in a Texas court.<sup>14</sup> Importantly, § 22.362 specifically notes that the forfeiture of the right to conduct affairs does not impair the validity of a contract or act of the corporation, nor does it prevent the corporation from *defending* an action, suit, or proceeding in a Texas court.<sup>15</sup> The continuing validity of corporate acts and contracts provided in § 22.362 applies even when the corporation is involuntarily terminated or revoked.<sup>16</sup> Accordingly, Rockett’s argument that ROIDC has no legal existence and has forfeited its right to do business has no basis in law.

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<sup>12</sup> Screenshots from the Secretary of State’s business organizations page for ROIDC are attached for the Commission’s convenience as **Exhibit 1**.

<sup>13</sup> Tex. Bus. Org. Code § 22.364. ROIDC was involuntarily dissolved under Article 1396–9.02E of the Texas Non-Profit Corporation Act, an earlier version Chapter 22.

<sup>14</sup> Tex. Bus. Org. Code § 22.362(a).

<sup>15</sup> *Id.* at § 22.362(c).

<sup>16</sup> *Bahr v Emerald Bay Prop Owners Ass’n, Inc.*, 09-16-00325-CV, 2018 WL 2341312, at \*4 (Tex. App.—Beaumont May 24, 2018, no pet.). In *Bahr*, the association at issue was involuntarily dissolved in 1995, made amendments to its deed restrictions in 1999, and was reinstated in 2014. *Id.* at \*3–4. The Court held that the validity of the deed restrictions were not affected by the forfeiture or dissolution. *Id.* at \*4.

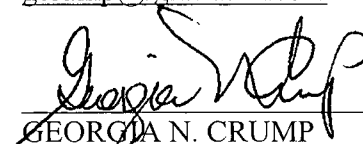
## CONCLUSION

Red Oak Industrial Development Corporation has demonstrated the appropriateness of amending the Petition filed here to correct a misnomer, and respectfully requests that the style of this matter be revised to read: "Petition of Red Oak Industrial Development Corporation to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release." Additionally, for all the reasons stated above, the Commission should deny Rockett's renewed motion to dismiss the petition.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)  
[gcrump@lglawfirm.com](mailto:gcrump@lglawfirm.com)



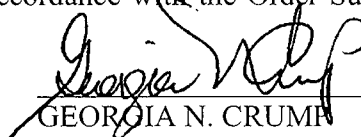
GEORGIA N. CRUMP  
State Bar No. 05185500

JAMIE L. MAULDIN  
State Bar No. 24065694

ATTORNEYS FOR RED OAK INDUSTRIAL  
DEVELOPMENT CORPORATION

## CERTIFICATE OF SERVICE

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on October 2, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



GEORGIA N. CRUMP

**TEXAS SECRETARY of STATE****BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

<b>Filing Number:</b>	67984201	<b>Entity Type:</b>	Domestic Nonprofit Corporation
<b>Original Date of Filing:</b>	November 15, 1983	<b>Entity Status:</b>	In existence
<b>Formation Date:</b>	N/A	<b>Non-Profit</b>	N/A
<b>Tax ID:</b>	00000000000	<b>Type:</b>	
<b>Duration:</b>	Perpetual	<b>FEIN:</b>	
<b>Name:</b>	RED OAK INDUSTRIAL DEVELOPMENT CORPORATION		
<b>Address:</b>	[ADDRESS NOT PROVIDED]		

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>
<b>Name</b>	<b>Address</b>	<b>Inactive Date</b>			
Todd Fuller	200 Lakeview Parkway Red Oak, TX 75154 USA				






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**Duration:** Perpetual  
**Name:** RED OAK INDUSTRIAL DEVELOPMENT CORPORATION  
**Address:** [ADDRESS NOT PROVIDED]

**Entity Type:** Domestic Nonprofit Corporation  
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**Non-Profit Type:** N/A  
**FEIN:**

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT	ASSUMED NAMES	ASSOCIATED ENTITIES	
View Image	Document Number	Filing Type	Filing Date	Effective Date	Eff. Cond	Page Count	
	5004577	Articles of Incorporation	November 15, 1983	November 15, 1983	No	8	
	5004574	Miscellaneous	May 25, 1989	May 25, 1989	No	1	
	5004575	Notice of Forfeited Rights for Non-Filing of Periodic Report	April 13, 1994	April 13, 1994	No	1	
	5004576	Involuntary Dissolution	October 12, 1994	October 12, 1994	No	2	
	958745300002	Nonprofit Periodic Report	March 24, 2020	March 24, 2020	No	2	

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<b>Name</b>	<b>Name Status</b>	<b>Name Type</b>	<b>Name Inactive Date</b>	<b>Consent Filing #</b>	
RED OAK INDUSTRIAL DEVELOPMENT CORPORATION	In use	Legal			

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<b>Last Update</b>	<b>Name</b>	<b>Title</b>	<b>Address</b>		
April 10, 2020	Weylan McAnally	Director	1 Remington Court Red Oak, TX 75154 USA		
April 10, 2020	Alan Hugley	Director	1575 Stainback Road Red Oak, TX 75154 USA		
April 10, 2020	Casey Hargrove	Director	213 Rose Garden Way Red Oak, TX 75154 USA		
April 10, 2020	Ben Goodwyn	President	1205 Batchler Road Red Oak, TX 75154 USA		
April 10, 2020	David Wolle	Secretary	207 North Star Court Red Oak, TX 75154 USA		


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Assumed Name                      Date of Filing                      Expiration Date                      Inactive Date                      Name Status                      Counties No names exist for this filing.					

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Name	Entity Type	Document Description	Filing Date	Entity Filing Number	Jurisdiction	Capacity
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