

Background of WPOA/Wimberley Springs litigation

In response to requests from property owners who requested an explanation of why the WPOA has been involved in a costly lawsuit for many years, we are providing a copy of Section 1 of a legal filing available from the county courthouse. Section 1 summarizes the series of events and prior board member actions that have led to the current situation. The entire document is too lengthy to provide so we have only provided the 1st section as it seems to address the questions that members ask. The entire document is available from the courthouse if you wish to obtain it.

The current board members elected to bring change to the WPOA by being open and transparent concerning actions of the board and its members. We hope this background document answers your questions. Please feel free to inquire if you have additional questions.

the individual sections may vote to amend the restrictive covenants burdening the lots within their section in accordance with allocation of votes determined by recorded dedicatory instruments.

3. Over the last several years, the lot owners within a number of WPOA Sections have voted to amend restrictive covenants to eliminate mandatory membership with the WPOA and to join the WSCA. Thus a WPOA Section is converted to a WSCA Section. Such conversions were anticipated by the December 11, 2008 Settlement Agreement which included provisions for such transitions. WSP owns numerous lots in WPOA Sections and many of the votes for conversion are cast by WSP.

4. After a dispute arose regarding compliance with the 2008 Settlement Agreement, the WPOA filed an application seeking an order for foreclosure under Tex. R. Civ. P. 736 on March 17, 2012. The application sought an order permitting foreclosure of alleged liens securing payment of charges allegedly owed to WPOA. The property subject to the liens was certain real property owned by WSP. The proceeding was styled *In re: Order for Foreclosure Concerning: Wimberley Springs Partners, Ltd. and Western National Bank (In REM Only) and the Property described as: 238 Woodcreek Drive, et al*, Cause No. 12-0638 in the 428th Judicial District of Hays County, Texas. ("Foreclosure Case"). Attorney David Junkin of the Law Offices of David Junkin made the application on behalf of the WPOA.

5. Subsequent the filing of the Foreclosure Case, the WPOA initiated another suit styled as *Woodcreek Property Owners Association of Hays County, Inc. v. Wimberley Springs Partners, Ltd., Wimberley Springs Community Association, Inc., et al.*, Cause No. 12-0860 in the 428th Judicial District of Hays County, Texas. ("Section 11 Case"). The WPOA disputed the right of property owners within individual sections (e.g., Section 11) to amend restrictive covenants to eliminate involuntary membership in the WPOA. The "et al." consisted of a number of individual property owners who appear to have been sued out of spite for exercising fundamental rights of free speech and petition with respect to promoting amendment of restrictive covenants to eliminate membership in the WPOA and joining the WSCA. The natural person defendants are referred to as the

“Free Speech” defendants. Attorney David Junkin of the Law Offices of David Junkin initiated suit on behalf of the WPOA.

6. At the time of filing the Section 11 case, the WPOA took the position that none of the property owners owning property within Section 11 nor any other property owner within the Woodcreek Subdivision (other than WPOA or WSP) needed to be party to the Section 11 Case.

7. At that time, the WPOA sought an order to impose unconstitutional restraints against free speech against the Free Speech defendants. The WPOA did not prevail in pursuit of restraining the Free Speech defendants. Although Mr. Junkin agreed on the record to non-suit the Free Speech defendants he did not file any pleading indicating an affirmative non-suit of the Free Speech defendants. Instead he filed an amended petition that omitted them from the caption of the pleadings. This inferential dismissal left transaction-oriented businesses such as title companies uncertain as to whether the Free Speech defendants (and therefore their property within the Woodcreek Subdivision) were still defendants or at-risk with pending litigation.

8. WSP then initiated this proceeding *Wimberley Springs Partners, Ltd. v. Woodcreek Property Owners Association of Hays County, Inc., et al.*, Cause No. 12-0921 in the 428th Judicial District of Hays County, Texas. (“Declaratory Judgment Case”). Pursuant to Tex. R. Civ. P. 736, the filing of the Declaratory Judgment Case resulted in dismissal of the Foreclosure Case. The individual defendants in the Declaratory Judgment Case currently include Sue Csejka, Janelle Delaney, Merry Merian, Diane Susan Purcell, Liz Sumter, and Glynn Schanen. Csejak, Merian, Purcell, and Schanen are former board members of the WPOA. Liz Sumter is a present board member of he WPOA. Janelle Delaney is a former employee of the WPOA. These defendants are referred to as “WPOA board defendants” for ease of reference. The WPOA and the WPOA board defendants are represented by insurance defense counsel with respect to the claims asserted by WSP. Attorney David Junkin of the Law Offices of David Junkin filed counterclaims against WSP on behalf of the WPOA.

9. During the course of litigation, elections for a number of WPOA board positions were held. Due to new laws prohibiting boards from denying members from the right to

✓
vote or run for positions on the board, the former entrenched controlling majority of the WPOA board was no longer able to deny WPOA members the ability to seek a position on the board. The WPOA board was also no longer able to prevent other property owners from voting for candidates for the WPOA board. As a result, some of the Free Speech defendants were elected to the WPOA board in 2013 and in 2014. By 2014, the old controlling majority no longer had unilateral control over the board.

✓
10. During the course of litigation and prior to losing majority control, the old controlling majority designated one board member, Liz Sumter, to work on settlement between the WPOA, WSP, and WSCA. Little progress was made toward settlement. The details of the negotiations were shared only with the old controlling majority. The old controlling majority shared none of the communications or proposals with the more board members including the recent Free Speech board members.

✓✓
11. The Free Speech board members first became aware of the settlement proposed by Ms. Sumter (allegedly on behalf of the WPOA) when a representative of WSP and WSCA sent a missive to all WPOA board members in response to the settlement proposal. Unbeknownst to the remaining WPOA board members (much less the general membership of the WPOA or WSCA), the old controlling majority WPOA board members and employee Delaney were engaged in a self-enrichment scheme. In particular, these WPOA board defendants were using their control of the WPOA in an effort to extort financial consideration in the form of lifetime "transferrable" golf club memberships for the old controlling board members, spouses of the old controlling board members, and employee Delaney. The memberships have been informally estimated to have a value/cost on the order of \$500,000.

12. The WPOA and WSP have consented to disclosure of the settlement proposal by virtue of a Rule 11 Agreement of record with the court. The settlement proposal is attached and incorporated herein by reference as **Exhibit A**. The court is referred to paragraphs 16 and 17 of the settlement proposal.

13. Other less-than-scrutable actions by members of the old controlling majority came to light during the 2013-2014 calendar years. In one case, a former WPOA board member (Bill Bradfield) lived in a section that had converted from a WPOA Section to a

✓ WSCA Section by election. Indeed that election is the subject of the Section 11 case. Another now-former board member (Merry Merian) appears to have engaged in a fraudulent real estate transaction to give Bradfield “ownership” of a lot in a WPOA Section. Merian executed a general warranty deed conveying a lot owned by the WPOA to Bradfield. Although the general warranty deed referenced consideration for the lot, there was neither a payment nor a promissory note received in return for the general warranty deed at the time of conveyance.

✓ 14. The old controlling majority was desperate to retain its iron grip on the WPOA board and the involuntary members of the WPOA organization. Ownership of a lot within a WPOA Section meant Bradfield was eligible to run for WPOA board membership and he did. The land deal came to light and Bradfield suffered a crushing defeat during the relevant 2013 WPOA election. Never lacking in chutzpah, Mr. Bradfield has since threatened to sue the WPOA based upon the general warranty deed he received when acquiring the lot because there is an unresolved lien of record burdening the property. The identity of the person responsible for preparing the general warranty deed is unknown but is believed to be Merry Merian, Janelle Delaney, or David Junkin.

✓ 15. The old controlling majority of WPOA board engaged in various unscrupulous tactics in an attempt to preserve its control and status quo. During the course of various elections for 2013-2014, signs for candidates or issues opposed by the old controlling majority began disappearing from properties belonging to WPOA members. Hays County law enforcement personnel installed hidden cameras directed at campaign signs in several locations around the Woodcreek Subdivision due to WPOA member complaints. The culprit was caught on candid camera. In the videos Bradfield is seen trespassing onto private property, removing owner’s campaign/issue signs, placing them in the back of his pickup truck, and driving off. Bradfield was subsequently booked and forced to address criminal complaints for his actions. The actions of the WPOA board defendants and Mr. Junkin are part of the old controlling majority’s attempts to preserve the status quo of ongoing litigation between the WPOA and WSP.

✓ 16. On Christmas Eve 2013, David Junkin sent notice of intent to depose various county officials and other individuals purportedly concerning the subject matter of the

Section 11 and Declaratory Judgment cases. The timing of the notice appeared to be designed to cause mental anguish to the intended deponents during the holiday season as well as to maximize the likelihood that opposing counsel would not be able to file a motion to automatically suspend depositions within the short timeframe required by the Rules. Moreover, the Level 2 discovery period for the Section 11 case is long past. The Declaratory Judgment case is subject to Level 3 discovery and no schedule has been approved by the parties or the court.

✓ 17. From 2013-2014 there was sufficient turnover in the WPOA board to eliminate the iron-grip control of the old controlling majority. In approximately February 2014, the WPOA terminated the services of David Junkin. The board announced it was aggressively moving toward settlement with WSP and the WSCA and the undersigned was engaged to facilitate that objective.

18. David Junkin subsequently appeared and asserted counterclaims on behalf of all but one of the WPOA board defendants in the Declaratory Judgment case (the present proceeding). In addition Mr. Junkin filed a motion i) to consolidate the Section 11 case with the Declaratory Judgment case, ii) to require WSP to join all property owners in the Woodcreek Subdivision to the consolidated proceeding, and iii) to abate the Declaratory Judgment case until such time as WSP joined all property owners in the Woodcreek Subdivision to the consolidated proceeding. A true and correct copy of Mr. Junkin's motion is attached as **Exhibit B** and incorporated herein by reference.

✓ 19. The undersigned has repeatedly notified Mr. Junkin that his former WPOA client does not consent to his representation of the WPOA board defendants in this litigation. Moreover, on behalf of the WPOA the undersigned has repeatedly requested Mr. Junkin to provide the communications between himself and specified current or former board members or other representatives of the WPOA concerning representation of the WPOA in the Section 11 and Declaratory Judgment cases but Mr. Junkin has refused to provide his former client's own files to it.

20. On March 19, 2014, the undersigned requested Mr. Junkin to provide copies of all communications between himself and specified current or former board members or other representatives of the WPOA. Mr. Junkin was also requested to provide a copy of any

written authorization from the WPOA constituting his former client's consent to represent the WPOA board members in the current litigation. A true and correct copy of the March 19, 2014 letter to Mr. Junkin is attached and incorporated herein by reference as **Exhibit C**.

21. On March 20, 2014, Mr. Junkin responded to the March 19, 2014 letter. Mr. Junkin's response to the undersigned's request for communications/files illustrates the adversarial position taken with respect to his own former client in the same litigation. Apparently he contemplated objecting to providing former client communications to his former client in accordance with the Texas Rules of Civil Procedure governing discovery. A true and correct copy of Mr. Junkin's response dated March 20, 2014 is attached and incorporated herein by reference as **Exhibit D**. Mr. Junkin did not provide the requested information.

22. On March 24, 2014, the undersigned sent a *second* letter to Mr. Junkin re-iterating the WPOA's request that he provide copies of i) all communications between himself and specified current or former board members or other representatives of the WPOA, and ii) any written authorization from the WPOA constituting his former client's consent to represent the WPOA board members in the current litigation. A true and correct copy of the undersigned's March 24, 2014 letter to Mr. Junkin is attached and incorporated herein by reference as **Exhibit E**. The undersigned made it clear that he was seeking the communications in his capacity as successor counsel for the WPOA.

23. Mr. Junkin did not provide the requested documents to the undersigned. On April 2, 2014, the undersigned sent a *third* letter to Mr. Junkin re-iterating that he provide copies of i) all communications between himself and specified current or former board members or other representatives of the WPOA, and ii) any written authorization from the WPOA constituting his former client's consent to represent the WPOA board members in the current litigation. A true and correct copy of the undersigned's April 2, 2014 letter to Mr. Junkin is attached and incorporated herein by reference as **Exhibit F**.

24. On April 7, 2014, Mr. Junkin responded in writing. A true and correct copy of Mr. Junkin's letter dated April 7, 2014 is attached and incorporated herein by reference as **Exhibit G**. Mr. Junkin has clearly adopted an adversarial posture with respect to his

former client by refusing to set any timeframe for providing the requested documents, refusing to heed his former client's objections to his representation of the WPOA board defendants in the Declaratory Judgment case, and insisting upon trying to initiate depositions despite the lack of any approved discovery schedule in a Level 3 case.

25. Although Mr. Junkin did provide an optical disk containing some materials to the WPOA board regarding his representation of the WPOA in the Section 11 and Declaratory Judgment cases, it was the undersigned's review of the materials that prompted the requests to Mr. Junkin to begin with. The material provided to his former client appears limited almost exclusively to letters exchanged between attorneys and pleadings filed in the cases. One of his current clients engaged in spoliation of WPOA records by shredding them before announcing her resignation. After her resignation and spoliation exercise, she became one of Mr. Junkin's clients with respect to the counterclaims filed in the Declaratory Judgment case.

26. Mr. Junkin has once again demanded available dates for deposition of undisclosed persons for undisclosed purposes. Mr. Junkin has to-date refused to turn over the requested WPOA files or recognize his obligations to his former client as required by the Texas Disciplinary Rules of Professional Conduct. Mr. Junkin has ignored his former WPOA client's express objections to his representation of other parties in either the Section 11 or Declaratory Judgment cases.

27. Mr. Junkin's actions are calculated to:

- i) disrupt settlement between WSP, WSCA, and his former WPOA client;
- ii) to cause financial harm to WSP (and therefore increase the potential liability to his former client);
- iii) to expose his former client to financially devastating expenditures. The Section 11 case was filed prior to the Declaratory Judgment case and the arguments he now makes for joinder would logically likewise have applied to the earlier-filed Section 11 case that he is seeking to consolidate with the Declaratory Judgment case;
- iv) to undermine the legal position he took when allegedly representing the WPOA through its agents and current clients: the WPOA board defendants
- v) to leave his former client unable to adequately defend or participate in depositions or other discovery in this and other threatened litigation;
- vi) to conceal claims or evidence of claims his former WPOA client could otherwise assert against his current clients: the WPOA board defendants;

- vii) to enable the statute of limitations to run in order to create an affirmative defense with respect to causes of action against the WPOA board defendants that accrued during his representation of the WPOA to the detriment of his former WPOA client for the benefit of his current client: the WPOA board defendants

II. ARGUMENT AND AUTHORITIES FOR DISQUALIFICATION

28. An attorney must be disqualified if he i) personally represented a former client, ii) is now representing another client in a matter adverse to the former client, iii) does not have the former client's consent to represent the other client, and iv) any of the following apply:

- a. In the pending matter, the client questions the validity of the attorney's services or work performed for the former client. Tex. Disciplinary R. Prof'l Conduct 1.09(a)(1).
- b. In the pending matter, the attorney's representation of the client will in reasonable probability involve a violation of Tex. Disciplinary R. Prof'l Conduct 1.05 governing the use of a client's confidential information. Tex. Disciplinary R. Prof'l Conduct 1.09(a)(2).
- c. The pending matter is the same as or substantially related to the earlier matter. Tex. Disciplinary R. Prof'l Conduct 1.09(a)(3). A matter is "substantially related" when the fact of the earlier representation are so related to the facts in the pending litigation that there is a genuine threat that confidences revealed to former counsel will be divulged to a present adversary. *In re EPIC Holdings, Inc.*, 985 S.W. 2d 41, 51 (Tex. 1998); *Metro. Life Ins. Co. v. Syntek Fin. Corp.*, 881 S.W.2d 319, 320-321 (Tex. 1994).

29. There is no dispute that Mr. Junkin previously personally represented the WPOA in both the Declaratory Judgment Case and the Section 11 case. Likewise there is no dispute that Mr. Junkin represented the WPOA as counter-plaintiff in the Declaratory Judgment Case.

30. There is no dispute that after termination of representation by the WPOA, Mr. Junkin began representing the WPOA board defendants as counter-plaintiffs in the Declaratory Judgment Case. Although technically not presently adverse, Mr. Junkin has i) engaged in conduct to increase the exposure to liability for his former client, ii) engaged in conduct designed to thwart settlement between the WPOA and WSP, iii) refused to provide requested documents that would enable his former client to investigate cross-claims against the WPOA board member co-defendants, iv) refused to