

NORTHWEST REGIONAL	§	IN THE DISTRICT COURT
AIRPORT PROPERTY OWNERS	§	
ASSOCIATION, INC.	§	
Plaintiff,	§	
	§	
v.	§	DENTON COUNTY, TEXAS
	§	
CHARLES GLEN HYDE,	§	
NORTHWEST REGIONAL	§	
AIRPORT, INC., TEXAS AIR	§	
CLASSICS, INC., DREAMSHIPS, INC.	§	
And HYDE-WAY, INC.	§	
Defendants.	§	16 <sup>TH</sup> JUDICIAL DISTRICT

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**DEFENDANTS' FIRST AMENDED ANSWER  
AND ORIGINAL COUNTERCLAIM**

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Defendants in the above-entitled and numbered cause file this Original Answer to Plaintiff's Original Petition, and respectfully show the Court as follows:

I.  
**GENERAL DENIAL**

Defendants deny each and every, all and singular, the allegations contained in Plaintiff's Petition, as a from time to time amended, and demand strict proof thereof by a preponderance of the credible evidence.

II.  
**AFFIRMATIVE DEFENSES**

For further Answer, if any is necessary, Defendants affirmatively plead that Plaintiff has no contract or contractual relation with property owners at the Northwest Regional Airport to support a claim for tortious interference by Defendants.

For further Answer, if any is necessary, Defendants affirmatively plead that

statements made by any of them are true or substantially true.

For further Answer, if any is necessary, Defendants affirmatively plead that the restrictive covenants contained within the “new” deed restrictions ostensibly created by Plaintiff are invalid and unenforceable.

For further Answer, if any is necessary, Defendants affirmatively plead that due to Plaintiff’s invalid organization, it lacks the capacity to sue anyone.

**III.**  
**PRAYER FOR RELIEF**

WHEREFORE, Defendants pray:

- (1) That Plaintiff take nothing on its claims; and
- (2) That the Court award Defendants their reasonable attorney’s fees, costs of court and such other and further relief to which they may show themselves to be justly entitled.

**DEFENDANTS’ ORIGINAL COUNTERCLAIM**

Defendants, now “Counter-Plaintiffs”, complain of and against Plaintiff, now “Counter-Defendant” and for such Counterclaim, state as follows:

**I. Background Facts**

1. Counter-Plaintiff Texas Air Classics, Inc. is the owner of the runway, taxiways and a very large part of the private property adjacent to the runway and taxiways at the Northwest Regional Airport (“the Airport”). It is also the manager of the Airport having had ownership and management rights and responsibilities of the Airport for over 35 years.

2. On or about May 12, 2016, a group of property owners at the Airport filed the “Integrated Deed Restrictions” (hereinafter “the IDRs”) attached hereto as Exhibit A1. The IDRs attempted to create a governing Northwest Regional Airport Property Owners Association (“NWRAPOA”).

3. In order to accomplish the IDRs and create the NWRAPOA, the proponents of the IDRs, organized a vote of the property owners which, the proponents say, voted in favor of creating the IDRs.

4. The proponents of the IDRs organized those votes by dividing the properties into voting blocs such as or similar to:

- a. Aero Valley Estates
- b. AVDCO (NE)
- c. Hyde-Way (NW, SE, SW2)
- d. Cole (SW1), and
- e. HW or None (West)

5. The proponents identified 250 total owners within those voting blocs and then set about to group the owners into voting blocs without regard to geographical proximity or platted subdivision or even whether a particular owner was ever subject to previous deed restrictions.

6. For instance, the designation of “HW (NW, SE, SW2)”, above, includes four separate platted subdivisions in the Northwest area of the airport, each with their own respective sets of deed restrictions. It also includes dozens of owners of the Southeast area of the airport which have nothing to do with the Northwest owners and

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<sup>1</sup> The signature pages of those seemingly voting for the new deed restrictions have been omitted from the filed documents due their bulk.

are not part of any subdivision. In fact, the NW area of distinct subdivisions were acquired by Glen Hyde from a different grantor at a different time than the original grantors. The “HW” designation also includes the owners of SW2, a separate and distinct platted subdivision on the Southwest side of the Airport.

7. In another instance, Plaintiff’s arbitrary grouping of “HW or None (West)” is comprised of several owners, some of whom including Defendants, who did not vote in favor of the IDRs, and until the IDRs were recently imposed upon them, had no deed restrictions affecting their property rights.

8. The Integrated Deed Restrictions also ostensibly created the Northwest Regional Property Owners Association (“the Association”) to “carry out a general plan for the protection, use and convenience of all Property Owners...with the power to amend the Bylaws of the former Architectural Control Committee, a purely voluntary committee established by the original owner of the Airport, and make annual fees mandatory.

9. Since its ostensible creation, the Association has attempted to assess fees against all of the property owners and has threatened owners, including Counter-Plaintiffs, with collection costs, liens, harm to credit standing and further legal action.

10. The Association has also undertaken large financial obligations to construct drainage “improvements” without regard to the rights of Texas Air Classics, Inc., as the Airport operator.

11. Rather than constructing underground pipes with surface catch basins, the Association has constructed open trenches up to seven feet deep with exposed

concrete culverts. Those trenches and culverts were constructed on Counter-Plaintiff Charles Glen Hyde's private property immediately west of and adjacent to and running parallel to the runway (hereinafter the "Property"), in an FAA "Runway Safe Area" and an "Obstacle Free Zone". They were constructed without Mr. Hyde's permission and, indeed, over his objections. Additionally, the Association has left exposed mounds of dirt on the Property up to 12 to 15 feet high all in close proximity to the runway and taxiways and, again, within the "Runway Safe Area" and "Obstacle Free Zone". And finally, the Association has trucked off approximately 5,000 cubic yards of soil belonging to Counter-Plaintiff Charles Glen Hyde from the Property. All of the foregoing work by the Association on the Property is hereinafter referred to as the "Drainage Project").

12. The Drainage Project was undertaken without notice to the FAA as required by federal regulation and without approval of Texas Air Classics, Inc., the Airport operator.

13. By its Drainage Project, the Association has created an unsafe, in fact a hazardous condition, at the Airport by constructing hazards in the Runway Safety Area and Obstacle Free Zone. As a result, the Airport operator was forced to mandate a cessation of nighttime operations. The cessation of nighttime operations has created a great financial hardship upon Counter-Plaintiffs and especially Counter-Plaintiff Texas Air Classics, Inc., which is the owner and operator of the Airport and upon Counter-Plaintiff Northwest Regional Airport, Inc. which sells fuel to Airport patrons, and has damaged the reputation of the Airport and Counter-Plaintiffs in general.

14. The Property on which the Association conducted the Drainage Project is owned by Counter-Plaintiff Charles Glen Hyde. The Association did not seek or obtain permission from Mr. Hyde before making substantial changes to his Property and effectively stealing part of the Property.

15. Finally, the Counter-Defendant, by and through its President, Mitch Whatley, has conducted a campaign designed to discredit, demean and disparage Counter-Plaintiffs, especially Charles Glen Hyde by publishing comments to property owners and others which are false and injurious to Mr. Hyde's reputation.

## II. Causes of Action

### Declaratory Judgment

16. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

17. A bona fide dispute now exists between Counter-Plaintiffs and Counter-Defendant regarding the validity of the POA's legal constitution and its powers to govern the Airport property owners, levy assessments and the other powers it claims to have.

18. Pursuant to Tex. Civ. Prac. & Rem. Code §37.001, et seq., Counter-Plaintiff requests judgment of the Court declaring that:

- a. The Northwest Regional Airport Property Owners Association was not legally formed or constituted;
- b. The Integrated Deed Restrictions are invalid and unenforceable;
- c. The Northwest Regional Airport Property Owners Association lacks the legal authority to act on behalf of the property owners at the Airport;

d. The Northwest Regional Airport Property Owners Association does not have the power to levy assessments against the property owners at the Airport;

e. The Northwest Regional Airport Property Owners Association does not have the power to encumber Airport property;

f. The Northwest Regional Airport Property Owners Association does not have the authority to make improvements to Airport property; and

g. The Northwest Regional Airport Property Owners Association does not have the authority to financially obligate the property owners at the Airport.

*Negligence and Negligence Per Se*

19. Counter-Defendants created an unsafe, hazardous condition at the Airport by its constructing the drainage project without a qualified airport planning engineer and without the approval of the FAA.

20. By its construction in violation of 14 CFR Part 77 together with its creating a hazardous condition at the Airport, Counter-Defendants are guilty of negligence and negligence per se.

21. Counter-Plaintiffs have been damaged in an amount which exceeds the minimum jurisdictional limits of this court by Counter-Defendant's actions for which Counter-Plaintiffs seeks damages.

*Trespass*

22. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

23. Counter-Plaintiff Hyde is the legal owner of the Property and was so at the time of the Association's actions described above. The Association has committed

trespass to real property by physically, intentionally and voluntarily entering the Property and performing work far beyond the scope of work represented to Hyde, without Hyde's permission. The Association's actions have invaded Hyde's lawful right of use and enjoyment of the Property.

24. As a proximate result of the Association's trespass to real property, Counter-Plaintiffs have suffered damages including, without limitation, for alteration of the Property and loss of use of the Property, in an amount in excess of the minimum jurisdictional limits of this Court, for which Hyde now sues.

Theft

25. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

26. The Association unlawfully appropriated Hyde's Property without permission and with intent to deprive Hyde of his Property. The Association's actions constitute theft in violation of the Texas Theft Liability Act, Texas Civil Practice & Remedies Code, Chapter 134. Hyde has suffered damages, including, without limitation, the value of the dirt removed from the Property and the cost to return the Property to its original state prior to when the Association began the Drainage Project, in an amount in excess of the minimum jurisdictional limits of this Court, for which Hyde now sues.

Libel/Slander/Business Disparagement

27. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

28. Counter-Defendant has in the past made and continues to make false and disparaging comments and claims against Counter-Plaintiff, Charles Glen Hyde regarding his authority to operate the Airport and to collect license fees under his contractual agreements.

29. Counter-Defendant has also published statements regarding Counter-Plaintiff's business operations and stated that Counter-Plaintiffs must be made to leave the Airport.

30. As a result of Counter-Defendant's false and injurious statements, Counter-Plaintiffs have suffered damages, including but not limited to lost business revenue and injury to reputation, in an amount in excess of the minimum jurisdictional limits of this Court, for which they now sue.

*Tortious Interference with Contract*

31. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

32. Charles Glen Hyde has existing license agreements with certain property owners situated about the Airport. By engaging in, among other things, the actions described above, Counter-Defendants have intentionally interfered with such agreements.

33. As a result of Counter-Defendant's actions, Counter-Plaintiffs have suffered damages in an amount in excess of the minimum jurisdictional limits of this Court, for which they now sue.

Injunction

34. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

35. Counter-Defendant has damaged Counter-Plaintiffs by creating an unsafe, hazardous condition to the use and enjoyment of the Airport and has damaged the fair market value of Counter-Plaintiffs' respective financial interest in the Airport.

36. Counter-Plaintiffs have suffered and will continue to suffer immediate and irreparable injury, loss or damage if Counter-Defendant is allowed to maintain the unsafe condition it caused by its drainage work. Therefore, Counter-Plaintiffs request that Counter-Defendant be enjoined from further construction and from maintaining the condition of an open trench with concrete culverts and that Counter-Defendant be ordered to abate the drainage work consistent with competent airport engineering practices and with the final approval of the FAA.

Punitive Damages

37. Counter-Plaintiffs incorporate by reference the allegations contained in the foregoing paragraphs.

38. Counter-Defendant's actions regarding theft, tortious interference, libel, slander and business disparagement were committed knowingly, intentionally, recklessly and with malice or, at the very least with gross negligence entitling Counter-Plaintiffs to an award of exemplary damages.

Attorney's Fees

39. Counter-Plaintiffs incorporate by reference the allegations contained in

the foregoing paragraphs.

40. Counter-Plaintiffs seek recovery of their attorney's fees and costs incurred in prosecution of this matter against Counter-Defendant under §§37.009 and 134.005(b) of the Texas Civil Practice & Remedies Code and under any other provision at law or at equity to which Counter-Plaintiffs may show themselves entitled, for which they now sue.

### III. Prayer

PREMISES CONSIDERED, Counter-Plaintiffs pray that the Court grant the Declaratory Judgment, Injunction and Damages requested herein and that the Court award Counter-Plaintiffs their reasonable and necessary attorneys' fees and costs of court, and for such other relief to which they may show themselves justly entitled. .

Respectfully submitted,

**SCHEEF & STONE, L.L.P.**

By: /s/ Kelly M. Massad

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**CERTIFICATE OF SERVICE**

I certify that on January 13, 2017, I served a true and correct copy of the foregoing pleading on the following pursuant to the Texas Rules of Civil Procedure:

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/s/ Kelly M. Massad