

Affirmed and Opinion filed October 7, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00978-CV

**KM TS SPRING CYPRESS L.L.C., AS THE PROPERTY OWNERS AND
PROPERTY OWNERS, Appellants**

V.

HARRIS COUNTY APPRAISAL DISTRICT, Appellee

**On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 2008-52586**

MEMORANDUM OPINION

This appeal is from an order of dismissal signed October 12, 2009, granting appellee's plea to the jurisdiction. We affirm.

Appellants brought suit to appeal the 2008 property tax valuation of property located at 22625 State Highway 249. Appellee filed a plea to the jurisdiction on the grounds appellants have no right to appeal under section 42.01 of the Tax Code. *See* Tex. Tax. Code Ann. § 42.01 (Vernon 2001). Section 42.01 provides a property owner is entitled to appeal an order of the appraisal review board determining a protest by the property owner. Tex. Tax. Code Ann. § 42.01 (1)(A) (Vernon 2001). The record reflects

appellant filed a protest and a hearing was held. During the hearing, a section-1.111(e) agreement was reached. *See* Tex. Tax. Code Ann. § 1.111(e) (Vernon Supp. 2009). Such agreements are “final and not subject to protest by the property owner or subject to a property owner’s statutory suit for judicial review under chapter 42.” *MHCB (USA) Leasing and Finance Corp. v. Galveston Central Appraisal Dist.*, 249 S.W.3d 68, 83 (Tex. App. – Houston [1st Dist.] 2007, pet. denied). *See* Tex. Tax Code Ann. §§ 41.01(b), 42.01(1)(A) (Vernon 2001); *Sondock v. Harris County Appraisal Dist.*, 231 S.W.3d 65, 69-70 (Tex. App. – Houston [14th Dist.] 2007, no pet.); and *BPAC Tex., L.P. v. Harris County Appraisal Dist.*, No. 01-03-01238-CV, 2004 WL 2422033, at *3 (Tex. App. – Houston [1st Dist.] 2004, no pet.) (mem. op.).

Appellants claim their appeal is not precluded by the appraisal agreement because section 1.111(e) requires the agreement be between the property owner or the owner’s agent and the chief appraiser. Appellants argue it was not the chief appraiser for the Harris County Appraisal District (“HCAD”) who appeared at the hearing, but a representative, and therefore there was no agreement with the chief appraiser.¹

Although the Tax Code requires the appearance of the chief appraiser at a protest hearing, it also allows the chief appraiser to delegate authority to his employees. *See* Tex. Tax Code Ann. §§ 6.05(e), 41.45(c) (Vernon 2008 & Supp. 2009). Appellants cite no authority, and we are aware of none, prohibiting the chief appraiser from delegating his authority to reach an agreement with a property owner. We note that in many cases an “HCAD representative” appeared at the protest hearing. *See Sondock*, 231 S.W.3d at 69 (at the protest hearing “HCAD’s representative” offered an opinion on the value of the property); *Loopser v. Harris County Appraisal Dist.*, No. 14-07-00956-CV, 2009 WL 2146151, at *1 (Tex. App. – Houston [14th Dist.] 2009, no pet.) (mem. op.) (“HCAD’s representative” testified at the protest hearing to the property’s market value); *Prince v.*

¹ The record reflects appellants made no objection at the protest hearing that the chief appraiser failed to appear.

Harris County Appraisal Dist., No. 14-07-00919-CV, 2009 WL 20975, at *1 (Tex. App. – Houston [14th Dist.] 2009, no pet.) (mem. op.) (“an HCAD representative” appeared at the protest hearing); *Mann v. Harris County Appraisal Dist.*, No. 01-07-00436-CV, 2008 WL 1747807, at *1 (Tex. App. – Houston [1st Dist.] 2008, no pet.) (mem. op.) (“[E.W.] represented HCAD’s chief appraiser at the protest hearing”). We therefore reject appellants’ claim that an agreement between a property owner and an HCAD representative appearing on behalf of the chief appraiser is not an agreement subject to section 1.111(e).

Appellants further complain the trial court erred by granting the plea to the jurisdiction because the pleadings raised a disputed fact, e.g. whether there was an agreement with the chief appraiser. Appellants argue the trial court erred by not allowing them to conduct discovery on this fact issue. Appellee acknowledges that a representative of HCAD, not the chief appraiser, appeared at the protest hearing. Thus there is no disputed fact. The dispute, whether an agreement between a property owner and a representative of the chief appraiser precludes an appeal, is a question of law. As discussed above, we conclude that an agreement between the property owner and an HCAD representative is an agreement that, pursuant to section 1.111(e), precludes appeal. Appellants’ arguments are without merit.

Appellants assert that the appraisal review board issued an order which authorized this appeal. This same issue was presented in *Sondock*. In that case, this court noted the agreement was final at the moment it was reached, therefore, the previously entered order was irrelevant. *Sondock*, 231 S.W.3d at 69. For that same reason we reject appellant’s argument.

Appellants also assert no agreement was presented to the appraisal review board for approval or in order to cancel or withdraw the protest. Section 1.111(e) no longer provides that an appraisal agreement is not final without the approval of the appraisal

review board. *See* Tex. Tax Code §1.111(e); *BPAC Texas*, 2004 WL 2422033, at *3. Appellants' argument is without merit.

Finally, appellants claim to the extent section 1.111(e) precludes appeal it is unconstitutional and denies a property owner due process. Appellants' claim is overruled for the reasons set forth in *Sondock*. *Sondock*, 231 S.W.3d at 70.

Appellants' issues are overruled. We find the trial court did not err in granting appellee's plea to the jurisdiction and affirm the trial court's order.

PER CURIAM

Panel consists of Justices Seymore, Boyce, and Sullivan.