



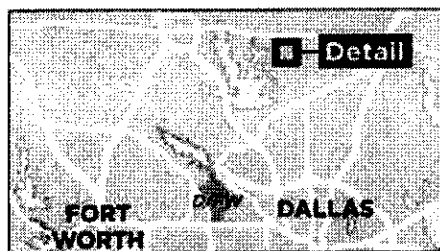
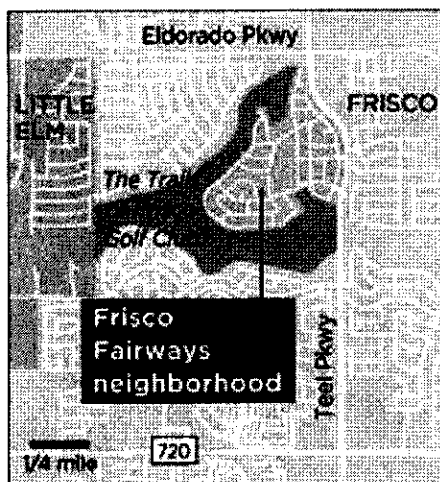
## Frisco homeowners association, residents in free speech fight

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FRISCO – It started as a typical neighborhood tussle, a disagreement over screening bushes and air-conditioning units.

But now, the arguing between the Frisco Fairways Homeowners Association and three of its residents has erupted into a full-blown legal battle over free speech that may have ramifications for members of homeowner associations across Texas.



TOM SETZER/Staff Artist

Last month, the association sued David Snell, David Doumani and Doug Macari in Denton County state district court on charges of libel, slander and defamation, claiming the three harmed the association and its board members by posting messages critical of them in an online forum.

Suits like this are rare, said Charles Davis, executive director of the National Freedom of Information Coalition at the University of Missouri. And Mr. Davis said he's never heard of an association winning one.

But if it did win, "it certainly would send a message to future critics of homeowners associations," he said. "It would narrow the debate."

The suit alleges that in their online postings, Mr. Snell, Mr. Doumani and Mr. Macari stated or implied that the board lied to association members, engaged in questionable financial dealings and acted unethically. It also claims they posted private information about board members.

Charles W. Branham III, an attorney for the defendants, said the board is trying to stifle free speech and must prove that the messages were false, defamed reputations and were posted with malice – the ingredients for a successful libel suit.

"You don't get to bring a lawsuit against your members because they don't like the way the board is running things," he said.

Addison lawyer Christopher Payne, who represents the association and the board, sees things differently.

"I think it's unfortunate that people who are volunteers get assailed in the fashion that these members of the board of directors were," he said.

#### Rule enforcement

In Texas, homeowners association board members typically are unpaid and elected. The association collects dues and enforces provisions designed to retain the neighborhood's aesthetic quality and protect home values.

It was enforcement that sparked the feuding in Frisco Fairways, a subdivision of about 600 homes nestled against a golf course in northwest Frisco.

According to the lawsuit, the board notified homeowners that it intended to enforce provisions requiring all air conditioners, pool equipment and other objects visible from the street to be screened. The board gave homeowners an option to have a shrub installed at a discounted rate.

At that point, the lawsuit says, Mr. Snell, Mr. Doumani and Mr. Macari began questioning board members and ultimately started harassing them, first on a community forum on the association's Web site, then in a public forum, Frisco-Online.com.

On Feb. 15, the board members sued, saying the defendants knew the statements were false and damaged their reputations.

The lawsuit, which is expected to head to trial in early April, seeks damages and an injunction to prevent future postings from the defendants.

The lawsuit does not make clear what statements comprised the alleged libel, and Mr. Payne declined to provide specifics, saying he did not want the comments to be widely circulated.

But in a court response to the lawsuit, Mr. Snell and other defendants provided a sampling of the postings. In one statement about a board member, Mr. Snell wrote: "I am victim to a LESS than ethical and honest VP simply doing/saying whatever he likes without ANY noted reprimand from HIS friend ... our president ... DOUBLE standards running wild here."

In another, he said: "DO we live in a communistic community because I am beginning to think we do?"

The legal document also includes private messages that Mr. Snell said were sent to him by Richard O'Neil, one of the association board members. One, dated Nov. 12, reads: "Did I paint you in a negative lite? Only in regard to your idiot posts and your constant whining like a 3 year old."

Another says: "As long as I'm on the Board, every CCR in the Declaration will be enforced to the extent that we are able. If that doesn't suit you, then that is tough."

Mr. Snell disagrees with the lawsuit's version of events, saying he was questioning in part why the board was focusing on shrubs instead of collecting unpaid dues. He also said that, among other concerns, the board would not allow Mr. Doumani and him to speak at a meeting to voice their concerns.

"I'm outspoken and I don't like being bullied," said Mr. Snell, who noted his home already met the screening requirement before the issue erupted. "I just think they thought they would financially crush us. They didn't expect us to fight back."

Mr. Doumani said he continued his postings after the board declined several attempts to meet with him.

Mr. Macari, a Fairways resident for just over a year, said: "I'm disappointed in how this whole thing happened. Unfortunately, it's not in my best interest to comment now."

Board President Phil Luzius said he and other board members – Mr. O'Neil, Gabriel Corra, Dave Wilcox and John Mistr– also would not comment.

Mr. Davis, the free speech expert, said in this case the court must decide whether there is a difference between exercising one's First Amendment rights to criticize a homeowners association and actually libeling it.

If the association wins in court, it could set a precedent that would allow other associations in Texas to take legal action against dissenters as well, he said.

Houston lawyer Charles Daughtry, whose firm represents some homeowners associations, said he gets several inquiries a year from associations about posted messages but has never advised one to sue.

"We generally tell them, unless what [the poster] is making is clearly a statement of fact about a specific instance, it's not worth their time and money to pursue," Mr. Daughtry said.

Nationally, such suits are rare. In Wyoming, a case was dismissed, while in Colorado, the suing association prevailed.

Last year, a developer filed a lawsuit in Orlando's 9th Judicial Circuit Court against a resident who claimed that the developer misspent homeowner association money. That suit is ongoing.

Neighbors torn

Down the winding roads of Frisco Fairways are plenty of manicured lawns and stone and brick homes in the \$200,000 to \$400,000 range. But there are few residents who know about the lawsuit.

Chris McCawley, 55, said he could see how Mr. Snell's constant hammering on the issues was annoying,

but not vindictive.

"He was frustrated," Mr. McCawley said. "He just wanted a board meeting. It's not the United Nations."

Shelly Fairfield, a 3 ½-year resident who just volunteered for the association's Architectural Control Committee, said, "I honestly don't think very many people think about it, or care about it, except for the people involved."

Other residents said they either weren't aware of the lawsuit or preferred not to discuss it.

But on the online site singled out in the lawsuit, it's a different story, with many posters alternately expressing support for the defendants or asking for more information about the suit.

"This whole affair all the way to the lawsuit does nothing but lower my property values and allure of our neighborhood," said one poster, identified only as begrdr.

The issue could come to a head in May, when the association's annual meeting is scheduled. Last year, only 30 to 40 neighbors showed up.

"This year there will be a lot more, which is good," Ms. Fairfield said. "You should definitely be as involved as much you can, because if you don't, the choices will be made for you."

## **WHAT IS LIBEL?**

Basics of a typical libel or slander case:

- Claims are for false statements of fact about a person or entity that are communicated to others.
- Libel generally refers to written statements, while slander generally refers to oral statements.
- A successful claim must prove harm to the plaintiff's reputation, as opposed to mere insult.
- Name-calling or hyperbole or statements that cannot be proved as true or false cannot be the subject of a claim.
- For public figures, a successful claim must prove actual malice, meaning the defendant knew the statement was false or recklessly disregarded the truth.
- The burden of proof is on the plaintiff.