

Cause No. _____

Arturo Dominguez,	§	In the District Court
Plaintiff,	§	
	§	
vs.	§	___ Judicial District
	§	
Raul S. Villarreal, President, Laredo Licensed	§	
U. S. Customs Brokers Association, Inc. and	§	
International Bank of Commerce, Laredo, Texas,	§	
Defendant.	§	Webb County, Texas

Plaintiff's Original Petition and
Application for Temporary Restraining Order

To the Honorable Judge of said Court:

Plaintiff Arturo Dominguez, files this his original petition and application for temporary restraining order and injunctive relief against defendant Raul S. Villarreal and the International Bank of Commerce, Laredo, Texas, and in support thereof would respectfully show unto the Court as follows, to-wit:

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because it seeks injunctive relief.

Parties

2. Plaintiff Arturo Dominguez is a natural person, Texas citizen, and residing and doing business in Webb County, Texas.

3. Defendant Raul S. Villarreal is a natural person, Texas citizen, residing and doing business in Webb County, and may be served with process at his usual place of abode or business at PG Customs Brokers, 118 Flecha Lane, Laredo, Webb County, Texas 78045, or wherever defendant may be found. Defendant Villarreal is being sued in his capacity as president of the Laredo Licensed U.S. Customs Brokers Association, Inc.

4. Defendant International Bank of Commerce, Laredo, Texas is a Texas state financial institution with its principal place of business in Webb County, Texas. International Bank of Commerce can be personally served with process by a Webb County deputy or constable by serving its registered agent, Dennis E. Nixon, 1200 San Bernardo Street, Laredo, Texas 78040.

Jurisdiction

5. Plaintiff invokes the jurisdiction of this Court pursuant to Article V, Section 8 of the Texas Constitution.

6. Plaintiff invokes the jurisdiction of this Court pursuant to the Texas Government Code §§24.007 and 24.008 and pleads that the amount in controversy is within the jurisdictional limits of this Court.

Venue

7. Venue of this lawsuit is proper because all or a substantial part of the events or omissions giving rise to plaintiff's claims occurred in Webb County, Texas, pursuant to Section 15.002 (a)(1) of the Texas Civil Practice and Remedies Code.

Relief Sought

8. Pursuant to Texas Rule of Civil Procedure 47(c), plaintiff pleads that at this time this suit seeks monetary relief of \$100,000.00 or less and nonmonetary relief.

Statement of Facts

Introduction: Ultra Vires Election by Rogue President

9. Plaintiff Arturo Dominguez is a U.S. Customs Broker and member in good standing with the Laredo Licensed U.S. Customs Brokers Association, Inc. Its current president, defendant Raul S. Villarreal, has intentionally violated the bylaws of this Association after being warned that his conduct was illegal and detrimental to the stated purpose of this non-profit entity. Despite express provisions on the nominating and electing of officers, defendant Villarreal nominated officers for the 2020–2021 term, improperly blocked the nomination of other candidates, and then illegally tampered with voting to secure their election. Despite the outcry of its members, defendant Villarreal refused to correct his unjustifiable violations.

10. By this litigation, plaintiff Dominguez seeks declaratory and injunctive relief from this Court to void the illegal election, permit a special meeting of the Association, and order a new election according to its bylaws. Plaintiff Dominguez also seeks a declaration from this Court that defendant Villarreal is guilty of misconduct or negligence, thereby denying him indemnity for his legal expenses in defending this lawsuit as provided by the Association's bylaws. Lastly, plaintiff Dominguez seeks injunctive relief against defendant Villarreal, in his capacity as President of the LLUSCBA and anyone acting in concert with him or at his direction, and the International Bank of Commerce, Laredo, Texas to prevent the unauthorized spending of the Association's funds contrary to its bylaws.

The LLUSCBA & its Relevant Bylaws

11. The bylaws of the Laredo Licensed U.S. Customs Brokers Association seek to promote the individual and collective interests of its members, their clients, and their industry:

The objectives of this non-profit association are to protect and further the business and interests Licensed U.S. Customs Brokers; to encourage the maintenance of professionalism within our industry, to maintain a standard of integrity and efficiency that will protect clients and the Government in the fair, reasonable and equitable administration of import and export laws and regulations and to develop acquaintance and fellowship among Members.

12. To pursue these goals, the Association provides for the nomination and then election of its officers by majority ballot vote of its regular members at an annual meeting:

Article III Membership

Section 3. Classes of Membership

(a) Regular: ... “only one vote will be permitted to each Regular Member No person, firm or corporation, however, may vote at any meeting unless he is a duly authorized representative of the Member he represents, and the President or person acting as such, at any meeting may call upon such representative to produce evidence as to the authorization of the representative by the member.”

Article VIII Elections

Section 1. The Officers and Directors ... shall be elected prior to the annual meeting or any adjournment thereof.

Section 2. Not later than 30 days prior to the annual meeting, the nominating Committee shall file its report of nominations for the officers of the Association to the Secretary who in turn shall deliver the ballot with a proxy form to each regular member.

Section 3. Elections shall be by majority vote; eligible Members may vote by written proxy.

13. The Association provides for the amendment of its Bylaws by its members only:

Article XIII Amendments

Section 2. These bylaws may be amended or revised at any regular or special meeting of the Association, upon a majority vote of the Members present or represented by written proxy, but such amendment shall not be considered unless written notice of the same shall have been submitted to all Members at least seven days prior to the vote.

14. Misuse of funds by bad actors is prohibited:

Article XIV Application of Funds

Section 1. The Association shall use its funds only to accomplish its objectives and purposes and no part of said funds shall insure or be distributed to the Members.

Article XV Indemnification

Section 1. The Association may, by resolution of the Board, provide for indemnification by the Association for any and all of its Directors or Officers or former Directors or Officers against expenses actually and necessarily incurred by them in connection with the defense of any action, suit, or proceeding, in which they or any of them have been made parties, or a party, by reason of having been Directors or Officers of the Association, except in relation to matters as which such Director or Officer or former Director or Officer shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and to such matters as shall be settled by agreement predicated on the existence of such liability for negligence or misconduct.

Defendant Villarreal's Illegal Nomination and Voting Scheme

15. Supposedly aware of its bylaws, on August 22, 2019 defendant Villarreal asked LLUSCBA members for a slate of officer nominations by close of business eight days later on August 30, 2019. Nominations were to be closed sixty days before its October 30, 2019 annual meeting. The applicable bylaw requires that ballots be sent to members thirty days before the annual meeting, and does not require nominations by slate.

16. Plaintiff Dominguez provided a slate of nominees on the evening of August 30, 2019:

President	Arturo Dominguez
Vice-President	Eduardo Lozano
Treasurer	Rafael Orduña
Secretary	Marina Rodriguez
Board Member	Oscar Fernandez
Board Member	Alonso Gonzalez
Board Member	Annalie Miravete

His nominations were rejected because they were not received by the close of business. The slate of nominees advanced by defendant Villarreal were consequently unopposed. Plaintiff Dominguez and other members complained that defendant Villarreal was not following the applicable bylaws, but he ignored their complaints and stated that the bylaws were modified by members at a meeting to require a slate of candidates.

17. To combat any write-in candidates, Defendant Villarreal then began soliciting votes to be submitted by email. Plaintiff Dominguez again advised defendant Villarreal that the applicable bylaw required ballot voting at the annual meeting and provided for voting by proxy, which can only mean that ballots must be cast in person. Defendant Villarreal again ignored the advice of his members.

18. On August 30, 2019, the unopposed slate of candidates elected by emailing voting were:

President	Monica Salinas
Vice-President	Bo Burge
Treasurer	Jose (Joe) D. Martinez
Secretary	Juan David Gonzalez
Board Member	Olga Cantu
Board Member	Dalia Moncivais
Board Member	Victor Gonzalez

After the illegal election of defendant Villarreal's unopposed slate of officers, plaintiff Dominguez and other members requested a special meeting and new election per the strictures of the Association's bylaws. Defendant Villarreal ignored this request. Special meetings can be called by the President, any three members of the Board, or within ten days of a specific written request by ten members.

Declaratory Relief

19. There is a present, justiciable controversy regarding the rights and status of the parties to this litigation as to the legality of the recent nomination and election of the 2020–2021 officers of the LLUSCBA that can be resolved by declaratory relief awarded by this Court. The parties need the Court to construe the bylaws of the LLUSCBA and declare the validity of the recent officer nominations and elections.

20. Plaintiff Dominguez requests the Court to declare the 2020–2021 nomination and election of officers void, and that defendant Villarreal is guilty of negligence and misconduct and not entitled to indemnity for any legal fees incurred in defending this litigation. The Court should further declare that the illegally elected officers are not authorized to act on behalf of the Association or access and spend its funds.

Application for Temporary Restraining Order

21. Pursuant to Chapter 65 of the Texas Civil Practice and Remedies Code and Rule 680, *et. seq.*, of the Texas Rules of Civil Procedure, plaintiff Dominguez hereby moves the Court for an *ex parte*, temporary restraining order that would prevent defendant Villarreal, the illegally elected 2020-2021 officers, and anyone acting in concert with him or at his direction from:

1. Withdrawing or spending any funds of the Laredo Licensed U.S. Customs Brokers Association, Inc. on deposit at International Bank of Commerce, Laredo, Texas or any other financial institution;
2. Entering into any contracts on behalf of the Laredo Licensed U.S. Customs Brokers Association, Inc.;

3. Transacting any business on behalf of the Laredo Licensed U.S. Customs Brokers Association, Inc.; and
4. Representing the interests of the Laredo Licensed U.S. Customs Brokers Association, Inc.

Presently, the LLUSCBA does not have duly authorized officers or anyone that can act on its behalf or bind it. Accordingly, plaintiff Dominguez moves the Court for an *ex parte* temporary restraining order that would prevent defendant International Bank of Commerce, Laredo, Texas from allowing the withdrawal or spending of any funds that it has on deposit from the LLUSCBA until further order from this Court. Alternatively, defendant International Bank of Commerce, Laredo, Texas can interplead any funds it has on deposit from the LLUSCBA. The facts supporting this request for *ex parte* temporary restraining order are contained in the affidavit of plaintiff Arturo Dominguez and exhibits A-L attached to his affidavit, all being attached to this application and adopted by reference herein.

22. Plaintiff Dominguez has a probable right of relief on his claims against defendant Villarreal due to his violation of the bylaws of the LLUSCBA as they pertain to the nomination and election of officers.

23. If plaintiff Dominguez is not granted a temporary restraining order, he and the LLUSCBA will suffer imminent harm because defendant Villarreal's unrestrained, wrongful violation of its bylaws has resulted in the illegal nomination and election of officers that will then spend its funds and act on its behalf without legal authority.

24. The harm that will result if the temporary restraining order is not issued is irreparable because defendant Villarreal's unrestrained, wrongful acts of violating the LLUSCBA's bylaws will allow the unauthorized operation of the LLUSCBA and dissipation of its funds. Plaintiff has no adequate remedy at law.

25. Plaintiff is willing to post bond.

26. The continuing illegal and unauthorized operation of the LLUSCBA and use of its funds requires an emergency hearing before notice can be given to defendant Raul S. Villarreal.

Temporary and Permanent Injunctive Relief

27. Plaintiff Dominguez, upon the granting of his request for *ex parte*, temporary relief, respectfully request the Court to set the necessary hearing on his request for a temporary injunction that will restrain defendant Villarreal, the illegally elected 2020–2021 officers, and anyone acting in concert with him or at his direction from:

1. Withdrawing or spending any funds of the Laredo Licensed U.S. Customs Brokers Association, Inc. on deposit at International Bank of Commerce, Laredo, Texas or any other financial institution;
2. Entering into any contracts on behalf of the Laredo Licensed U.S. Customs Brokers Association, Inc.;
3. Transacting any business on behalf of the Laredo Licensed U.S. Customs Brokers Association, Inc.; and
4. Representing the interests of the Laredo Licensed U.S. Customs Brokers Association, Inc.

Attorneys' Fees and Costs

28. Plaintiff has been required to hire the undersigned attorneys to prosecute and defend this action. In retaining counsel, plaintiff has agreed to compensate his attorneys with a reasonable, necessary, usual, and customary fee. Plaintiff requests an award of reasonable

and necessary attorneys' fees and expenses incurred in prosecuting this action and a conditional award of attorneys' fees incurred in any appeal or appeals.

Jury Demand

29. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

Conditions Precedent

30. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

Prayer

31. Wherefore, Premises Considered, plaintiff Arturo Dominguez requests that defendants Raul S. Villarreal and International Bank of Commerce, Laredo, Texas:

1. be immediately restrained *ex parte*;
2. that they be served with process and cited to appear;
3. after hearing they be temporarily restrained until trial;
4. upon answer and on final trial, that defendant International Bank of Commerce, Laredo, Texas be dismissed and declaratory and permanent injunctive relief be awarded in a final judgment against defendant Raul S. Villarreal only, including attorneys' fees, court costs, and all other relief, both general and special, at law or in equity, to which plaintiff Arturo Dominguez is justly entitled.

Respectfully submitted,

/s/Baldemar Garcia Jr.

Baldemar Garcia Jr.

State Bar No. 0790740

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