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TX R RCP Rule 52, Alleging a Corporation

***1653 Texas Rules of Civil Procedure, Rule 52**

**VERNON'S TEXAS RULES ANNOTATED
TEXAS RULES OF CIVIL PROCEDURE
PART II. RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS
SECTION 4. PLEADING
A. GENERAL**

Current with amendments received through 2/15/01

Rule 52. Alleging a Corporation

An allegation that a corporation is incorporated shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney, whether such corporation is a public or private corporation and however created.

HISTORICAL NOTES

1979 Main Volume

Source

Vernon's Ann.Civ.St. art. 1999, substituting "is incorporated" for "was duly incorporated."

REFERENCES

CROSS REFERENCES

Affidavit by agent or attorney, see rule 14.

Power to sue and defend in corporate name after dissolution, see V.A.T.S.Bus.Corp.Act, art. 7.12.

Verified denial of incorporation, see rule 93.

LAW REVIEW COMMENTARIES

Foreign corporation,

Proof of permit. 19 Texas L.Rev. 512 (1940).

Right to sue; burden of proof. 17 Texas L.Rev. 512 (1940).

LIBRARY REFERENCES

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C.J.S. Corporations s 1327.

West's Key No. Digests, Corporations k514.

ANNOTATIONS

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1. In general

When a corporation intended to be sued is sued and served by wrong corporate name and fails to appear and plead such misnomer in abatement and suffers judgment to be obtained, corporation is bound by judgment. [Adams v. Consolidated Underwriters \(Sup. 1939\) 124 S.W.2d 840, 133 Tex. 26.](#)

Invalidity of bank's incorporation cannot be complained of by stockholder on appeal from judgment on stock assessments, where not pleaded under oath. [Rogers v. South Texas Bank & Trust Co. \(Civ.App. 1934\) 77 S.W.2d 707,](#) writ refused.

*1654 A petition by a corporation need not allege by what authority it was incorporated or that it was incorporated by a lawful authority. [Houston Waterworks Co. v. Kennedy \(Sup. 1888\) 8 S.W. 36, 70 Tex. 233.](#)

2. Denial

In order for issue to be preserved on appeal, there must be timely objection which specifically states legal basis for objection; furthermore, objection stating one legal basis may not be used to support different legal theory on appeal. [Taylor v. State \(App. 14 Dist. 1991\) 820 S.W.2d 392.](#)

A general denial by defendant of all allegations in plaintiff's original petition alleging state incorporation and in affidavit controverting plea of privilege of defendant to be sued in county of residence, was not sufficient to raise any issue of fact as to whether plaintiff was or was not incorporated in state, notwithstanding counsel for defendant swore that facts and allegations in pleadings of defendant were true. [Barber v. Port City State Bank \(Civ.App. 1954\) 269 S.W.2d 690.](#)

Where both sides announced ready for trial without defendant having denied plaintiff's corporate existence under oath, plaintiff had a right to presume that its allegation of corporate existence would be taken as true and was justified in not being prepared to establish such fact by legal evidence, hence, where defendant offered no excuse for delay, denial of defendant's proposed trial amendment denying plaintiff's corporate existence was not an abuse of discretion. [Gonzalez v. Sociedad Mutualista Protectora Benito Juarez \(Civ.App. 1948\) 211 S.W.2d 245.](#)

Where defendants entered into written agreement with plaintiffs in action for construction of will that Vernon's Ann.Civ.St. art. 3263b [unconstitutional], allegedly gave corporate existence to a charitable foundation should have been introduced and fully considered, and a copy of the act was introduced, court was not required to assume that alleged corporation was duly incorporated because allegation that it was incorporated was not denied under oath, and the agreement was entitled to the same force and effect as though it were contained in the plaintiffs' pleadings. [Miller v. Davis \(Sup. 1941\) 150 S.W.2d 973, 136 Tex. 299, 136 A.L.R. 177.](#)

Where denial of corporate existence at time of cause of action was unverified, employee had right to assume defendant was corporation at time of his injury. [Panama Refining Co. v. Crouch \(Sup. 1939\) 124 S.W.2d 988, 132 Tex. 608.](#)

*1655 Where plaintiff corporation alleged that it was foreign corporation, and that it was doing business in Texas with a permit so to do, defendant's general denial raised issue as to whether corporation had a permit so as to be entitled to maintain an action in state. [Hoffman v. Continental Supply Co. \(Civ.App. 1938\) 120 S.W.2d 851,](#) modified [144 S.W.2d 253, 135 Tex. 552.](#)

3. Pleading presumed true

Plaintiff's controverting plea, which alleged that defendants were corporations, that contracts were entered into between the parties, that such contracts were fully performable in specified county, and that such contracts were breached to plaintiff's damage, together with attached copies of the instruments purporting to be the subject contracts, incorporated in the plea by reference, supported the application of Vernon's Ann.Civ.St. art. 1995, subd. 23, providing that "suits against a corporation * * * may be brought * * * in the county in which a cause of action or part thereof arose * * *". [*Ginther-Davis Const. Co. v. Bryant-Curington, Inc. \(Civ.App. 1981\) 614 S.W.2d 923.*](#)

Allegation, in controverting affidavit to store's plea of privilege, that store was foreign corporation, which allegation was not denied under oath, was deemed admitted under this rule and subd. (g) of rule 93. [*Crosby v. Safeway Stores, Inc. \(Civ.App. 1978\) 568 S.W.2d 412,*](#) dismissed.

Where allegation in plea controverting defendant's plea of privilege that defendant was foreign corporation for purposes of application of subd. 27 of Vernon's Ann.Civ.St. art. 1995, allowing foreign corporation to be sued in any county where it has a representative was not denied under oath, pleading was deemed admitted. [*Insurance Co. of North America v. Fire Ins. Exchange \(Civ.App. 1974\) 508 S.W.2d 703.*](#)

Failure of any adverse party to deny under oath allegation that party is a corporation dispenses with necessity of proof of that fact. [*Galleria Bank v. Southwest Properties, Inc. \(Civ.App. 1973\) 498 S.W.2d 5.*](#)

Plaintiff, which sought to overcome defendant's plea of privilege to be sued in another county, was not required, for purposes of establishing applicability of Vernon's Ann.Civ.St. art. 1995, subd. 23, providing that suit against private corporation may be brought in county in which cause of action or part thereof arose, to prove that defendant was corporation where there was no denial under oath concerning fact that defendant was a corporation. [*Beckham Development Co. v. Bruce Clark & Associates \(Civ.App. 1973\) 492 S.W.2d 287.*](#)

*1656 In absence of pleadings or proof to contrary, it would be presumed that charter of condemning corporation had not been revoked. [*Bradford v. Magnolia Pipe Line Co. \(Civ.App. 1953\) 262 S.W.2d 242.*](#)

Alleged fact that defendant was a corporation, in absence of a verified denial thereof, stood as proved, for purpose of ruling on plea of privilege. [*Houston Milling Co. v. Carlock \(Civ.App. 1944\) 183 S.W.2d 1013.*](#)

The use of the abbreviation "Inc." by the defendant in its name merely indicated that it was incorporated, but where defendant did not deny under oath the existence of the corporate capacity in which it was sued, no proof of that fact was required. [*Norwood Bldg. v. Jackson \(Civ.App. 1943\) 175 S.W.2d 262,*](#) writ refused.

4. Waiver

Failure to object in trial court, by a plea in abatement or otherwise, to ability of party alleged in pleading to be a corporation to file suit due to suspension of corporate charter to do business in state resulted in waiver of right to contest corporate status of party. [*Mercantile Mortg. Co. v. University Homes, Inc. \(App. 14 Dist. 1983\) 663 S.W.2d 45.*](#)