The Business Court of Texas,
Fourth Division

CADENCE MCSHANE CONSTRUCTION COMPANY LLC, *Plaintiff* v. SAN ANTONIO HOUSING FACILITY CORPORATION, *Defendant*	§ § § § § § § § § §	Cause No. 26-BC04B-0017

SYLLABUS[1]

The court denies a motion to dismiss challenging the amount in controversy under Chapter 25A of the Government Code. A project owner's decision to cap damages below $5 million in a parallel district-court suit does not, by itself, establish that a construction manager's declaratory-judgment suit involves $5 million or less. Because the owner produced no evidence controverting the cumulative value of all rights to be adjudicated, the construction manager's petition controlled.

[1] NOTE: The syllabus was created by court staff and is provided for the convenience of the reader. It is not part of the court's opinion, does not constitute the court's official description or statement, and should not be relied upon as legal authority.

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FOURTH DIVISION

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OPINION AND ORDER

¶1 Before the court are the Motion to Dismiss Pursuant to Texas Rule of Civil Procedure 354(c)(2) filed on September 8, 2026, by Defendant San Antonio Housing Facility Corporation, a nonprofit public-facility corporation that operates as an affiliated entity of the San Antonio Housing Authority, known as Opportunity Home (collectively, "Opportunity Home"); the response filed by Plaintiff Cadence McShane Construction Company LLC ("Cadence") on October 21, 2026; and Opportunity Home's reply filed on October 27, 2026. The court conducted a hearing on October 28, 2026, at which all parties were represented by counsel.

¶2 Having considered the parties' arguments, the evidence, and the applicable law, the court denies the motion to dismiss for the reasons that follow.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Cadence and Opportunity Home are parties to a Joint Venture Agreement ("the Contract") relating to the construction of the Horizon Pointe project, which is an affordable-housing apartment development in San Antonio, Texas ("the Project"). Cadence filed this suit on August 17, 2026, seeking declarations regarding allocation of Project funds and Opportunity Home's rights to inspect Cadence's company records. Cadence pleads that over $5 million is in controversy in its suit.

¶4 A few weeks after Cadence sued in this court, Opportunity Home filed a separate suit against Cadence in the 57th Judicial District Court of Bexar County asserting claims for fraud and breach of contract arising out of the same Contract and Project. In that petition, Opportunity Home seeks $4,999,999.99 in contractual damages in addition to statutory and exemplary damages.

LEGAL STANDARD

¶5 Texas Rule of Civil Procedure 354 requires that a petition originally filed in this court must "plead facts to establish the business court's authority to hear the action." TEX. R. CIV. P. 354(a). If the court determines "it does not have the authority to hear the action, the business court must" transfer or dismiss the action. *Id.* R. 354(d)(2). Whether the court has jurisdiction is a question of law for the court to decide. *Texas Gen. Land Off. v. SaveRGV*, 741 S.W.3d 556, 562 (Tex. 2026); *Black Mountain SWD, LP v. NGL Water Sols. Permian, LLC*, 2025 Tex. Bus. 24, ¶ 10, 718 S.W.3d 281, 286 (8th Div.).

¶6 The Texas Business Court has jurisdiction of specified types of actions in which the amount of controversy "exceeds $5 million, excluding interest, statutory damages, exemplary damages, penalties, attorney's fees, and court costs." TEX. GOV'T CODE § 25A.004(b). Whether styled as a motion to dismiss or a plea in abatement, a challenge to this court's subject-matter jurisdiction is analyzed under the same standard. *See C Ten 31 LLC on behalf of SummerMoon Holdings LLC v. Tarbox*, 2025 Tex. Bus. 1, ¶ 52, 708 S.W.3d 223, 243 (3rd Div.); *Amboree v. Bonton*, 575 S.W.3d 38, 42–43 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (recognizing a "generalized 'motion to dismiss' on jurisdictional grounds" is one of "several procedural vehicles" that may be used to challenge a trial court's subject-matter jurisdiction).

¶7 When a movant specifically challenges the jurisdictional amount in controversy, "the plaintiff's pleadings are determinative unless the defendant specifically alleges that the amount was pleaded merely as a sham for the purpose of wrongfully obtaining jurisdiction, or the defendant can readily establish that the amount in controversy is insufficient, as for example when the issue in dispute is a license or right rather than damages." *Bland ISD v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). If one of these two circumstances is not satisfied, a "trial court's inquiry behind the facts pled" is prohibited. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004) (citing *Bland*, 34 S.W.3d at 554).

¶8 Accordingly, a burden-shifting framework applies in determining the amount in controversy for a petition originally filed in this court:

> First, when the plaintiff's petition alleges the amount in controversy, that pleading controls unless (a) a party presents evidence that the amount pleaded is falsely asserted to wrongly obtain or avoid jurisdiction, or (b) a different amount in controversy is readily established, such as statutorily set fees . . . .
>
> [If] a party presents evidence demonstrating that the amount in controversy is outside of the Court's jurisdiction, the Court will remand the case unless another party presents controverting evidence that, at a minimum, raises a fact issue. And if there is a fact issue, the party asserting jurisdiction will bear the burden of proof on the issue at trial.

C Ten, 2025 Tex. Bus. 1, ¶¶ 49–51 (internal footnotes omitted).

ANALYSIS

¶9 In its petition, Cadence pleads that the court has jurisdiction over this action under Texas Government Code Sections 25A.004(b)(2), (d)(1), and (e). Opportunity Home does not contest that the suit concerns a qualified transaction or internal-governance dispute. Opportunity Home challenges only whether the suit meets the $5 million jurisdictional minimum.

A. Cadence's petition adequately pleads over $5 million in controversy.

¶10 Cadence seeks declaratory relief regarding the parties' respective rights to Project funds and concerning Opportunity Home's record-inspection rights under the Contract. Cadence expressly pleads that the amount in controversy exceeds $5 million. Pet. ¶¶ 5–6. Opportunity Home, for its part, expressly pleads that the amount in controversy does not exceed $5 million. Ans. § III.

¶11 "It has long been the law that the phrase 'amount in controversy,' in the jurisdictional context, means 'the sum of money *or the value of the thing* originally sued for[.]'" *Tune v. Texas Dep't of Publ. Safety*, 23 S.W.3d 358, 361 (Tex. 2000) (emphasis in original), *quoted in In re City of Dallas*, 501 S.W.3d 71, 74 n.1 (Tex. 2016). "The subjective value of a privilege, if asserted in good faith, establishes jurisdiction if that value meets the requisite amount in controversy." *Id.* at 362. This court has consistently followed this precedent. *Alamo Title Co. v. WFG Nat'l Title Co. of Texas*, 2026 Tex. Bus. 6, ¶ 6, 730 S.W.3d 656, 659 (4th Div.); *Safelease Ins. Serv. LLC v. Storable, Inc.*, 2025 Tex. Bus. 6, ¶ 12, 707 S.W.3d 130, 134 (3rd Div.); *Atlas IDF, LP v. NexPoint Real Est. Partners, LLC*, 2025 Tex. Bus. 16, ¶ 43, 715 S.W.3d 390, 397 (1st Div.).

¶12 Like the plaintiff in *C Ten*, Cadence seeks a declaratory, rather than a monetary, judgment. 2025 Tex. Bus. 1, ¶ 3. As in *C Ten*, the amount in controversy is "measured by the value of the rights at issue." *See id.* ¶¶ 35–37. Cadence seeks an attorney-fee award and declarations:

> (1) that Cadence owes no profit distributions to Opportunity Home;
>
> (2) that the Project's profits and costs must be paid as a Supervisor's Fee before any other distributions to Opportunity Home;
>
> (3) restricting Opportunity Home's inspection rights to Cadence's corporate records.

Pet. ¶ 37, at 11. Cadence pleads that the Joint Venture executed a construction contract with the Horizon Pointe partnership, as lessee of the land, in which the

partnership agreed to pay $45 million for the Project. *Id.* ¶ 19. Cadence pleads that Opportunity Home has accused Cadence of taking over $7.7 million in profits, which exceeded the amount permitted by federal law. *Id.* ¶¶ 26–30.

¶13 Cadence's petition describes a related *qui tam* action pending in the Western District of Texas, in which former Cadence employees, represented by Opportunity Home's counsel and on behalf of the United States government, sued Cadence under the False Claims Act. *Id.* ¶¶ 26, 30. The parties agree this court can take judicial notice of the federal suit's complaint, in which the plaintiffs allege that Cadence's original bid for the Project was $39 million, but that Cadence then artificially inflated the bid to $45 million while falsely claiming the increase was due to pandemic-related construction costs. 2d Am. Compl. ¶¶ 44–46, *United States v. Cadence*, No. 5:24-CV-522 (W.D. Tex. Apr. 14, 2026). The plaintiffs accuse Cadence of concealing "the extra $5–$6 million" excess profit in the form of fraudulent change orders. *Id.* ¶ 46.

¶14 Cadence's pleading seeks the above declarations on a $45 million Project on which Cadence has been accused of disguising its profit by falsely inflating costs. On its face, Cadence's petition explicitly pleads that over $5 million is in controversy with factual allegations in support. Cadence has satisfied its initial burden to plead that the values of the rights at stake exceed the requisite jurisdictional amount. *See C Ten*, 2025 Tex. Bus. 1, ¶¶ 49–51.

B. Opportunity Home produces no evidence that Cadence's pleading is a sham or that a lower amount is readily established.

¶15 Cadence adequately pleads that the requisite amount is in controversy, while Opportunity Home pleads that the "amount in controversy is below the court's jurisdictional limit." *See Bland*, 34 S.W.3d at 554. In the face of competing pleadings, the burden shifts to Opportunity Home as the movant to "present[] evidence that [Cadence's] amount-in-controversy pleadings are fraudulent (i.e., falsely assert that the value of the rights at issue exceed $5 million to wrongly obtain jurisdiction) or that the amount in controversy is readily established as $5 million or less." *C Ten*, 2025 Tex. Bus. 1, ¶ 54; *see Alamo Title Co.*, 2026 Tex. Bus. 6, ¶ 8. Unless Opportunity Home satisfies this burden, "the plaintiff's pleadings are determinative." *Bland*, 34 S.W.3d at 554.

¶16 According to Cadence's petition, Opportunity Home complains that Cadence earned $7.7 million profit on the Project. Pet. ¶¶ 26, 30. Opportunity Home responds that the entirety of that amount is not "in controversy" because all parties agree Cadence was entitled to some profit. Mot. at 6. But Opportunity Home attaches no evidence to its motion—beyond its own unsworn petition filed in the Bexar County district court.[1] In that suit, Opportunity Home seeks a damages model on the Contract totaling $4,999,999.99, consisting of:

[1] No party objects to this court accepting as true that the federal and district court pleadings were filed and that the respective plaintiffs made the claims identified in those pleadings. But the court does not accept the "truth of factual statements and allegations contained in the pleadings, affidavits, or other documents in the file, nor may it take the pleadings to be true, absent testimony,

> 1. $4,219,158.32 that Opportunity Home seeks in "inflated costs," an amount it calculates based on its 99% share of the $4,263,158.32 in profits Cadence allegedly retained as excess profit through fraudulent change orders;
>
> 2. "any remaining available cash under the [Contract] that does not exceed $780,841.67."

Mot. Ex. A ¶¶ 61, 79. Opportunity Home admits it is "specifically capping any amount that we would get to stay below the $5 million jurisdictional amount" in its district court suit. To accomplish this, Opportunity Home places an express maximum on the $780,841.67 sought in the second category. Its pleading specifies that it seeks "any other relief . . . except that that relief does not exceed $5 million exclusive of statutory damages, exemplary damages, penalties, attorney's fees, and court costs." *Id.* ¶ 79.

¶17 To determine whether the record shows evidence of a sham in Cadence's petition or a readily determinable amount in controversy below the $5 million threshold, the court examines the value of Cadence's requests for relief by category, as follows:

1. Cadence's request for a declaration concerning profit distributions:

¶18 Opportunity Home argues, and thereby concedes, that Cadence's first request for declaratory relief, regarding profit distributions, is a mirror image to Opportunity Home's first damages category, which it calculates as $4,219,158.32 in its own

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other proof, or admissions by the other party." *In re State for J.M.P.*, 687 S.W.3d 746, 758 (Tex. App.—Dallas 2024, no pet.).

district court suit. The court assumes without deciding that Cadence's first declaratory-judgment request may be valued at $4,219,158.32.

2. Cadence's request for a declaration concerning payment of its Supervisor's Fee before any other distributions:

¶19 Cadence's second request for relief seeks to prevent Opportunity Home from receiving any "other distributions" on the Project before Cadence's Supervisor's Fee is paid. Pet. ¶¶ 23, 36–37, at 11. Opportunity Home did not seek to make the amount of that Fee "readily established" in the record. *See C Ten*, 2025 Tex. Bus. 1, ¶ 49.

¶20 Regardless, the value of other distributions on the Project necessarily would at least include the "remaining available cash under the [Contract]" that Opportunity Home seeks in its own district court suit. *See* Mot. Ex. A ¶ 79. Opportunity Home has admittedly capped its relief in that suit at $780,841 to remain under this court's jurisdictional minimum. Its reply also explains in a footnote that the $780,841 damages request is meant to only represent "the possibility" that additional cash remains in the Project, suggesting that recovery in this category is unlikely. Reply at 3 n.1. But this court's jurisdictional inquiry focuses on the relief sought at the time suit is filed, not on the amount a party will ultimately recover or is likely to recover. *See United Servs. Auto Ass'n v. Brite*, 215 S.W.3d 400, 402–03 (Tex. 2007).

¶21 Opportunity Home's decision to intentionally cap its relief at $780,841 does not indicate that Cadence's pleading is a sham or that the values at stake are, in fact,

"readily established" at an amount at or below $5 million. *C Ten*, 2025 Tex. Bus. 1, ¶¶ 46, 49–51. Opportunity Home has presented no evidence that the value of "other distributions" or available funds on the Project could not exceed $780,841. But, if this court were to assume without deciding that Opportunity Home's valuations of its damages model were accurate, Cadence's first two declarations would bear a $4,999,999.99 value.

3. Cadence's requests for declarations concerning record-inspection rights:

¶22 In addition to declarations concerning distributions and Project funds, Cadence seeks declarations concerning Opportunity Home's contractual inspection rights and access to Cadence's books and records. Pet. ¶¶ 28–29, 31, 37.

¶23 Opportunity Home presents no evidence demonstrating the value of these record-inspection declarations. Instead, Opportunity Home argues that Cadence's discovery obligations in the pending lawsuits will necessitate extensive exchange of documents, negating the value of a declaration concerning record-inspection rights. But this legal argument does not prove that Cadence's records-related declarations are worthless. For example, Cadence asks this court to hold that the Contract does not require a seven-day deadline for production of records and that the Contract's record-inspection rights do not extend to Cadence's corporate records that are unrelated to the Horizon Pointe Project. Pet. ¶¶ 27, 29, 36, at 11. Under the Texas Rules of Civil Procedure, discovery production typically runs on a thirty-day, not a seven-day, turnaround. *E.g.* TEX. R. CIV. P. 196.2–.3. And discovery production is

governed by a relevance standard tied to the subject matter of the suit, which may differ from Cadence's duties arising under the Contract's record-inspection clauses. *Id.* R. 192.3(a) (permitting discovery that is "relevant to the subject matter of the pending action"). Opportunity Home has not attached the Contract as evidence of those duties or otherwise demonstrated the value of the record-inspection rights at stake.

C. Opportunity Home's arguments do not defeat this court's subject-matter jurisdiction.

¶24 Opportunity Home's remaining arguments are unavailing.

¶25 First, Opportunity Home describes a race to the courthouse in which Cadence filed this purely declaratory action in the business court mere minutes after mediation failed and before Opportunity Home could file its own suit for damages in district court. Cadence, in turn, accuses Opportunity Home of gamesmanship because it capped its damages one cent below the jurisdictional minimum. Neither party's forum-shopping argument impacts this court's analysis.

¶26 "The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts." *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016). The first-filed rule has exceptions that are triggered in narrow circumstances, including by certain inequitable conduct or bad-faith intent by the first-filer. *Id.* at 294–97. The Texas Supreme Court has recognized that parties with differing preferences of forum will

often engage in a race to the courthouse, and the winner holds dominant jurisdiction "so long as the race to the courthouse was not unfairly run." *Id.* at 300 (internal brackets and quotations omitted).

¶27 But "the concept of dominant jurisdiction may apply only when separate suits are filed in courts with concurrent jurisdiction." *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 507-08 (Tex. 2010) (quoting *Schuele v. Schuele*, 119 S.W.3d 822, 824 (Tex. App.—San Antonio 2003, no pet.) (internal quotations omitted)), *cited in Parker v. Lynzara-Austin Real Estate Mgmt., LLC,* 2026 Tex. Bus. 62, ¶ 11, _ S.W.3d_, (4th Div.). This opinion addresses the threshold question of whether this court has subject-matter jurisdiction of this suit. *See id.* Neither party raises the secondary question of whether the court has acquired dominant jurisdiction to the exclusion of the district court. As outlined above, the standard for analyzing the first question is well settled under Texas law—and it does not hinge on which suit was filed first nor on a subjective view of the parties' motives or strategy in filing.

¶28 Similarly, Opportunity Home argues that "the value of the case is determined not by Cadence['s] Petition filed in this Court, which seeks only declaratory judgment, but by Opportunity Home's Petition filed in Bexar County . . . ." Reply at 1. Opportunity Home has it backwards. The court has recognized the well-settled rule that "the plaintiff is the master of the complaint." *Reed v. Rook TX, LP*, 2025 Tex. Bus. 34, ¶ 2, 721 S.W.3d 25, 28 (3rd Div.), *mand. denied*, *In re ColossusBets Ltd.*, 731 S.W.3d 366, 371 (Tex. App.—[15th Dist.] 2026, no pet.) ("The Business

Court statute does not prevent parties from choosing what claims to file, even if that means forgoing certain business-related claims to avoid that court's reach."). This is not a case in which the plaintiff's damages model is capped at a maximum dollar amount with no declaratory or equitable relief pleaded. *See Black Mountain*, 2025 Tex. Bus. 24, ¶¶ 2–5, 12–16. As to the amount in controversy specifically, the plaintiff's pleading is "determinative" absent evidence of the two exceptions outlined above. *Bland*, 34 S.W.3d at 554.

¶29 While Opportunity Home's district-court petition capped its damages below the $5 million minimum, Cadence's petition does not do the same. The court determines whether it lacks jurisdiction over this suit based on the pleadings in **this** suit.

D. Opportunity Home has failed to meet its evidentiary burden as to the collective value of the rights in controversy.

¶30 The amount in controversy must be assessed based on the value of all rights that will be adjudicated in the action. *See Alamo Title Co.*, 2026 Tex. Bus. 6, ¶ 28 (holding under Chapter 25A that "action" refers to entire suit); *see also C Ten*, 2025 Tex. Bus. 1, ¶ 25 ("[T]he amount in controversy applies at the 'action' level, considering all claims.").

¶31 In addition to Cadence's first category for relief that Opportunity Home argues is the "flip side" of its own request for over $4.2 million, Cadence seeks declarations concerning its Supervisor's Fee, additional distributions, and

Opportunity Home's record-inspection rights. Pet. ¶¶ 36, 37, at 11. Even if the court were to accept Opportunity Home's theories and conclude that Cadence's first two declarations bear a total value of $4,999,999.99, the declarations concerning record-inspection rights are distinct requests for relief. And Opportunity Home has presented no evidence that those declarations are valued below two cents—much less that Cadence's pleaded amount in controversy is a sham or "readily established" below the statutory minimum.

CONCLUSION AND ORDER

Opportunity Home's valuation accounts only for its own requests for relief in the district-court action and only for its own arguments, calculations, and theories it advances. Under established Texas law, Opportunity Home bears the burden as the movant to present evidence as to the cumulative value of the rights at stake in Cadence's suit. Opportunity Home has failed to carry that burden.

For the reasons described above, the court DENIES the Motion to Dismiss Pursuant to Texas Rule of Civil Procedure 354(c)(2).

SO ORDERED.

Stacy Rogers Sharp

STACY ROGERS SHARP
Judge of the Texas Business
Court, Fourth Division

SIGNED ON: November 17, 2026