

No. _____

In the Supreme Court of the United States

RICKEY NEWSOME,

Petitioner,

—v—

RSL FUNDING, LLC; RSL SPECIAL-IV, LIMITED PARTNERSHIP,

Respondents.

On Petition for Writ of Certiorari to

The Supreme Court of Texas

**APPENDIX IN SUPPORT OF PETITIONER RICKEY NEWSOME'S
APPLICATION TO STAY ENFORCEMENT OF JUDGMENT**

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July 31, 2019

APPENDIX

1. Texas Supreme Court's opinion dated December 21, 2018
2. Texas Supreme Court Judgment dated December 21, 2018
3. Texas Supreme Court's decision on Motion for Rehearing dated March 29, 2019
4. Texas Supreme Court Mandate dated March 29, 2019
5. December 14, 2018 Letter from RSL Funding, LLC CEO Stewart Feldman to Arbitrator Scott Link re: expectation of upcoming favorable decision from Texas Supreme Court and request for immediate arbitration
6. December 14, 2018 E-Mail from Arbitrator Link, responding to Mr. Feldman
7. December 21, 2018 E-mail from Mr. Feldman to Arbitrator Link re: Texas Supreme Court Opinion
8. December 21, 2018 E-Mail from Arbitrator Link re: dates for arbitration
9. December 21, 2018 E-mail from RSL's lawyer Andy Paredes to Newsome's lawyer, Earl Nesbitt
10. December 21, 2018 E-mails between Andy Paredes and Earl Nesbitt
11. January 2, 2019 E-mails between Andy Paredes and Earl Nesbitt
12. March 29, 2019 E-Mail from Andy Paredes to Arbitrator Link re: denial of rehearing and request for immediate arbitration
13. March 29, 2019 E-Mail from Arbitrator Link responding to Mr. Paredes
14. April 2, 2019 E-Mail from Earl Nesbitt to Andy Paredes and Arbitrator Link re: Newsome's plans to appeal to United States Supreme Court
15. April 2, 2019 E-mail from Andy Paredes responding to Earl Nesbitt's April 2, 2019 E-mail
16. April 2, 2019 E-mail from Earl Nesbitt confirming his participation in conference call with Arbitrator Link and lawyers for RSL
17. April 4 E-mail from Mr. Feldman e-mail to Arbitrator Link and Earl Nesbitt telephone call with Mr. Newsome

18. Affidavit of Rickey Newsome dated April 16, 2019
19. April 4, 2019 E-mail from Earl Nesbitt to Mr. Paredes and Mr. Feldman re: contact with Mr. Newsome and participation in April 5, 2019 conference call
20. April 5, 2019 E-mail from Arbitrator Link to counsel regarding abatement of arbitration if case further appealed
21. May 22, 2019 E-filing receipt, confirming RSL's submission of Order Referring Case to Arbitration
22. May 24, 2019 E-mail from Andy Paredes to Arbitrator Link re: signed Arbitration Order
23. May 29, 2019 E-Mail from Arbitrator Link to counsel re: decision to proceed with arbitration
24. Transfer Agreement between RSL Funding, LLC and Rickey Newsome dated September 24, 2013 (containing arbitration provision)
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26. Texas Supreme Court's Order denying Newsome's Motion to Stay
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RSL Funding, LLC v. Newsome

Supreme Court of Texas

October 9, 2018, Argued; December 21, 2018, Opinion Delivered

NO. 16-0998

Reporter

569 S.W.3d 116 *; 2018 Tex. LEXIS 1315 **; 62 Tex. Sup. J. 253; 2018 WL 6711316

RSL FUNDING, LLC AND RSL SPECIAL-IV LIMITED PARTNERSHIP, PETITIONERS, v. RICKY NEWSOME, RESPONDENT

Subsequent History: Rehearing denied by RSL Funding, LLC v. Newsome, 2019 Tex. LEXIS 302 (Tex., Mar. 29, 2019)

Prior History: **[**1]** ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS.

RSL Funding, LLC v. Newsome, 559 S.W.3d 169, 2016 Tex. App. LEXIS 9621 (Tex. App. Dallas, Aug. 30, 2016)

Counsel: For RSL Funding, LLC, RSL Special-IV Limited Partnership, Petitioners: E. John Gorman, Lead Attorney, The Feldman Law Firm LLP, Houston TX.

For Rickey Newsome, Respondent: Earl S. Nesbitt, Lead Attorney, Patrick Paul Sicotte, Nesbitt, Vassar & McCown, L.L.P., Addison TX.

Judges: JUSTICE DEVINE delivered the opinion of the Court.

Opinion by: John P. Devine

Opinion

[*118] The Structured Settlement Protection Act requires court approval to validate the transfer of a payee's structured-settlement-payment rights to another. TEX. CIV. PRAC. & REM. CODE § 141.004. The court here approved the transfer but did so in two different orders, creating a dispute between the parties over which order should control. One of the parties moved to compel arbitration of this dispute and others under an arbitration provision included in their transfer agreement. The trial court denied the motion, and the court of appeals affirmed, concluding that the dispute

over which order controlled was not an arbitrable issue despite the existence of an arbitration agreement that assigned issues of arbitrability to the arbitrator. 559 S.W.3d 169, 175 (Tex. App.—Dallas 2016) (mem. op.). Because the parties agreed to have the arbitrator decide issues of arbitrability, **[**2]** we conclude that the court of **[*119]** appeals erred in determining that the dispute here was one that could not be arbitrated. Accordingly, we reverse the court of appeals' judgment and remand the case to the trial court with instructions to grant the motion to compel arbitration.

I

Rickey Newsome settled a personal injury suit several decades ago and has since received structured settlement payments from Allstate Insurance Company. RSL Funding and its related entities offer lump-sum payments to purchase structured-settlement agreements from recipients like Newsome. Newsome assigned 120 monthly payments of varying amounts to RSL in exchange for a payment of \$53,000. Their contract included a mandatory arbitration clause that identified the Federal Arbitration Act as the controlling law. The clause delegates to an arbitrator not only contractual disputes but also whether a dispute is arbitrable. The relevant part reads:

Disputes under this Agreement of any nature whatsoever . . . shall be resolved through demand by any interested party to arbitrate the dispute. . . . The parties hereto agree that the issue of arbitrability shall likewise be decided by the arbitrator, and not by any other person. **[**3]** That is, the question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example by any court.

Under the Structured Settlement Protection Act, a court must approve a transfer of structured-settlement payments before the transfer is effective. TEX. CIV.

PRAC. & REM. CODE § 141.004. The court that approves the transfer is the court of original jurisdiction that authorized the settlement. *Id.* § 141.002(2)(A). But if the original court no longer has jurisdiction, approval must be sought from a district court or other designated court in the payee's county. *Id.* § 141.002(2)(B). Because the original court signed the judgment on the structured settlement decades before this transfer, it no longer retained jurisdiction, and so RSL petitioned a district court in Newsome's resident county to approve the agreement.

The district court signed an order approving the transfer that included the requisite statutory findings. See *id.* § 141.004 (stating the "express findings" the court must make to approve the transfer). The order, however, included an additional requirement in a handwritten note by the judge that provided: "Transferee to pay Mr. Newsome the sum of \$53,000 in 10 days from this order being signed or transferee **[**4]** will be required to pay Mr. Newsome \$106,000." The transferee did not pay the \$53,000 within the allotted ten days.

Seven months later, Newsome wrote a letter to the judge complaining that he had not been paid. The district court responded by ordering the parties to mediation, which resulted in an agreed motion to remove the ten-day payment penalty from the order approving the transfer. The court granted the motion and issued a corrected order nunc pro tunc.

After several more months passed without payment, Newsome filed a new pleading in the district court, titled "Original Petition for Bill of Review and Application for Injunctive Relief." This pleading attacked both the original and nunc pro tunc approval orders. Newsome argued the nunc pro tunc order was void because it corrected a judicial error after the expiration of the court's plenary power. He further asserted that the court's original transfer order therefore remained in full force and effect and subject to enforcement. But Newsome also asked the district court, in the alternative, to vacate the original **[*120]** approval order, although he did not assert a basis for doing so or specifically request that relief in the bill of review's **[**5]** prayer. A subsequent motion for summary judgment elaborated on the basis for Newsome's alternative request, asserting that the original transfer order should be vacated because RSL had not complied with it. RSL responded that it had not yet paid Newsome because of his refusal to accept the agreed purchase price of \$53,000 and his failure to cooperate in transferring the settlement payments to RSL. RSL moved to compel

arbitration of the dispute under the parties' contract, while Newsome pursued his motion for summary judgment. The district court granted Newsome's summary judgment motion in part, declaring the nunc pro tunc order void, but the court did not decide whether the original transfer order should also be set aside. Instead, the court reserved judgment on Newsome's alternative claim for future proceedings. The court also denied RSL's motion to compel arbitration.

RSL took an interlocutory appeal from the district court's order denying arbitration. See TEX. CIV. PRAC. & REM. CODE § 51.016 (authorizing interlocutory appeal). In a divided decision, the court of appeals affirmed the district court's order, reasoning that Newsome's bill of review, which challenged the approval orders' validity, offered "nothing for **[**6]** an arbitrator to determine" because approval of such transfers under the Structured Settlement Protection Act was a "purely judicial function." 559 S.W.3d at 175. A dissenting justice disagreed, arguing that the parties had agreed to arbitrate all matters raised in Newsome's bill of review, including whether the nunc pro tunc order was effective and whether the penalty added by the trial court properly altered the parties' transfer agreement. *Id.* at 176 (Schenck, J., dissenting).

RSL petitioned this Court to review the order denying arbitration, and we granted its petition.

II

The U.S. Supreme Court has explained that there are three types of disagreements in the arbitration context: (1) the merits of the dispute; (2) whether the merits are arbitrable; and (3) who decides the second question. *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995). The default rule for the third question is that arbitrability is a threshold matter for the court to decide. *Forest Oil Corp. v. McAllen*, 268 S.W.3d 51, 61 (Tex. 2008). But a contractual agreement to submit the arbitrability question to an arbitrator is valid and must be treated like any other arbitral agreement. *First Options*, 514 U.S. at 943. Arbitration clauses that assign gateway questions such as the arbitrability of the dispute are an established feature of arbitration law. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68-69, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (2010). This Court, too, has held **[**7]** that courts must enforce a valid arbitration agreement that places arbitrability with the arbitrator rather than a court. *Forest Oil*, 268 S.W.3d at 61.

RSL contends that the court of appeals impermissibly decided arbitrability itself in the face of a valid arbitration clause that explicitly assigns arbitrability disputes to the arbitrator. Newsome does not challenge the validity or effect of the arbitration clause itself. He contends that the arbitration clause is inapplicable here because this dispute must be decided by a court due to the bill of review and Structured Settlement Protection Act context. He also submits that under the Structured Settlement Protection Act no binding agreement (including an arbitration provision therein) exists until a court resolves [*121] the present dispute regarding the validity of the approving court's order.

The dispute thus presents two legal questions for us to decide. First, does an arbitral delegation clause in a court-approved structured settlement transfer agreement apply when the validity of the approving court order is at issue? The court of appeals held it does not. 559 S.W.3d at 175. Second, does a dispute about the validity of approving court orders under the Structured Settlement Protection [*8] Act affect the existence of an enforceable arbitration agreement? The court of appeals did not answer this question. Our review of these legal determinations is, of course, *de novo*. *Forest Oil*, 268 S.W.3d at 55 & n.9.

III

We first consider the court of appeals' conclusion and Newsome's arguments that the case should not be sent to arbitration because of its unique circumstances—a bill of review attacking approving court orders under the Structured Settlement Protection Act. RSL argues that because the parties agreed to delegate arbitrability to the arbitrator the weight of authority required the dispute be sent to arbitration. We agree.

A

A valid arbitration agreement creates a strong presumption in favor of arbitration. *Rachal v. Reitz*, 403 S.W.3d 840, 850 (Tex. 2013). Both Texas and federal law require the enforcement of valid agreements to arbitrate. 9 U.S.C. § 2; TEX. CIV. PRAC. & REM. CODE § 171.021. Arbitrators are competent to decide any legal or factual dispute the parties agree to arbitrate. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 268-69, 129 S. Ct. 1456, 173 L. Ed. 2d 398 (2009); *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 232, 107 S. Ct. 2332, 96 L. Ed. 2d 185 (1987). Generally, a court may

consider an arbitration agreement's terms to determine which issues must be arbitrated. *Forest Oil*, 268 S.W.3d at 61. But as parties have a right to contract as they see fit, they may agree to arbitral delegation clauses that send gateway issues such as arbitrability to the arbitrator. *Rent-A-Ctr.*, 561 U.S. at 68-70; *Forest Oil*, 268 S.W.3d at 61 & n.38. When faced with [*9] such an agreement, courts have no discretion but to compel arbitration unless the clause's validity is challenged on legal or public policy grounds. *Forest Oil*, 268 S.W.3d at 61. So the proper procedure is for a court to first determine if there is a binding arbitration agreement that delegates arbitrability to the arbitrator. If there is such an agreement, the court must then compel arbitration so the arbitrator may decide gateway issues the parties have agreed to arbitrate. See *id.*

The court of appeals, however, did not limit its inquiry to the existence of a valid arbitration agreement; it instead refused arbitration based on its own determination of the arbitrability of the dispute. It did this apparently because "the unique facts of this case" permitted it to disregard the parties' agreement. See 559 S.W.3d at 175.

Newsome defends the court of appeals' decision, contending that the court must decide the issues presented in his bill of review because the court has exclusive jurisdiction to hear this direct attack on its prior final judgment. See *Richards v. Comm'n for Lawyer Discipline*, 81 S.W.3d 506, 508 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (dismissing a bill of review because it was not filed in the court that rendered the judgment under attack). He further relies on authorities explaining that a court's subject matter [*10] jurisdiction comes from operation of law and cannot be created by consent. See *Dubai Petroleum* [*122] Co. v. *Kazi*, 12 S.W.3d 71, 76 (Tex. 2000); *Fed. Underwriters Exch. v. Pugh*, 141 Tex. 539, 174 S.W.2d 598, 600 (Tex. 1943). Combining these disparate authorities, Newsome concludes that the district court's jurisdiction is not only to the exclusion of other courts, but also to the exclusion of arbitration.

Unlike *Richards*, Newsome's bill of review was not filed in the wrong court, and none of Newsome's authorities concern arbitration or have any apparent application here. That a court has jurisdiction over a bill of review to the exclusion of all other courts does not speak to the issue of arbitrability. Arbitrators derive their jurisdiction over disputes from parties' consent and the law of contract. *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989); *Americo Life, Inc. v. Myer*,

440 S.W.3d 18, 21 (Tex. 2014). The Federal Arbitration Act preempts any state law that would interfere with parties' freedom to contract to arbitrate their disputes. *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426, 197 L. Ed. 2d 806 (2017); *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 888 (Tex. 2010). Reading grants of exclusive jurisdiction over a matter to a court to prohibit delegation of the matter to an arbitrator misunderstands arbitration and the preemptive effect of the Federal Arbitration Act.

Moreover, we have held that parties may contract to arbitrate issues even when the law vests some related exclusive power in a court. For example, in *CVN Group, Inc. v. Delgado* the parties [**11] signed an expansive arbitration agreement as part of a contract for construction of a home. 95 S.W.3d 234, 235 (Tex. 2002). After the buyers breached the contract, an arbitrator awarded the home builder damages and a mechanic's lien on the home. *Id.* The trial court refused to allow foreclosure on the lien and the court of appeals affirmed, reasoning the Constitution and Property Code's requirement that mechanic's liens be foreclosed by judicial action also required judicial review and approval of mechanic's liens. *Id.* at 236-37. We reversed, holding the arbitrator-awarded lien could be enforced because it did not contravene constitutional and statutory protections. *Id.* at 239. The dissent reasoned the mechanic's lien statute's requirement that "[a] mechanic's lien may be foreclosed only on judgment of a court" meant arbitrators could not decide disputes on underlying issues involving a lien's existence. *Id.* at 247-48 (Hankinson, J., dissenting). The Court disagreed, however, concluding this requirement did not prevent arbitration of issues related to the existence of a mechanic's lien. See *id.* at 239-40.

Newsome's argument echoes the dissent in *CVN Group*. Newsome contends that because the Structured Settlement Protection Act requires a court to approve the transfer [**12] of structured-settlement-payment rights, and because only the original court has jurisdiction to decide a bill of review attacking its final approval order, the issues raised in this context cannot be decided by an arbitrator. But as with the mechanic's lien in *CVN Group*, we find no inconsistency here between the statute's requirement that courts approve structured-settlement transfers and the arbitration of issues related to that approved transfer. Just as in *CVN Group* where the statute assigned foreclosure on mechanic's liens to a court, here the Legislature has assigned approval of structured-settlement transfers to the courts. TEX. CIV. PRAC. & REM. CODE § 141.004. As

was the case with the mechanic's liens statute in *CVN Group*, the Structured Settlement Protection Act does not speak to arbitration at all. See *id.* §§ 141.001-007. While the statute requires a court to approve a settlement-payment [**123] transfer, it is silent as to who should decide disputes that arise after such approval, including disputes that require application of the court order itself. See *id.* In the face of such silence, we must apply the general rule that arbitrators are competent to decide any type of dispute. See *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 268-69, 129 S. Ct. 1456, 173 L. Ed. 2d 398 (2009). Even if the statute prohibited arbitration of [**13] certain disputes that would arise from the approval of structured-settlement transfers, the Federal Arbitration Act would preempt such a restraint on the freedom of contract in arbitration. See *Olshan*, 328 S.W.3d at 888.

Here, the courts below have not questioned the validity of parties' arbitration clause. We thus have no choice but to send this dispute to arbitration for the arbitrator to at least decide arbitrability. Accordingly, the court of appeals erred in affirming the trial court's refusal to compel arbitration on the grounds that the dispute in this case was not arbitrable.

B

RSL urges us to go further and read the court of appeals' decision as applying the "wholly groundless" exception and to explicitly reject such an exception in Texas. The wholly groundless exception is a doctrine applied by some federal appellate courts to deny arbitration even in the face of an arbitral delegation clause.¹ Under the wholly groundless exception, the court may decline to enforce an arbitral delegation clause when no reasonable argument exists that the parties intended the arbitration clause to apply to the claim before it. *Turi v. Main St. Adoption Servs., LLP*, 633 F.3d 496, 507 (6th Cir. 2011). Here, the court of appeals concluded that the dispute over the validity of the court's approval [**14] orders was "not relevant" and "had no bearing" on the parties' arbitrable disputes.

¹ The Fifth, Sixth and Federal Circuits apply the exception. See, e.g., *Douglas v. Regions Bank*, 757 F.3d 460, 462 (5th Cir. 2014); *Turi v. Main St. Adoption Servs., LLP*, 633 F.3d 496, 507 (6th Cir. 2011); *Qualcomm Inc. v. Nokia Corp.*, 466 F.3d 1366, 1371 (Fed. Cir. 2006). The Tenth and Eleventh Circuits have explicitly rejected it. *Jones v. Waffle House, Inc.*, 866 F.3d 1257, 1269 (11th Cir. 2017); *Belnap v. Iasis Healthcare*, 844 F.3d 1272, 1286 (10th Cir. 2017).

559 S.W.3d. at 175. RSL contends that this was in effect an adoption of the wholly groundless exception.

But the court of appeals does not mention the exception or discuss the federal cases that apply it. Nor has Newsome asked us to adopt the exception or any similar "relevance test" to deny enforcement of an otherwise valid arbitration agreement. The court of appeals did not refuse to enforce arbitration because it thought there was no reasonable argument that the arbitration agreement covered the parties' dispute. It refused to enforce arbitration because it decided this case offered "nothing for an arbitrator to determine." *Id.* In other words, the court decided the nature of the dispute made it non-arbitrable. It erred by skipping the first step in which it should have considered whether it could decide arbitrability in the face of the arbitral delegation clause. This skipped step is where the wholly groundless exception would come into play if the court of appeals had intended to apply it. We conclude the validity of a wholly groundless exception or similar relevance test is not properly before us. We need not go **[**15]** any further than to hold the court of appeals erred by deciding arbitrability itself.

IV

Because it decided the case on arbitrability grounds, the court of appeals did not address Newsome's arguments that the **[*124]** agreement and thus the arbitration clause never came into effect or was unenforceable. As explained above, this was error; the court should have first decided whether a valid arbitration agreement exists. When presented with an issue the court of appeals could have but did not decide, we may either remand the case or consider the issue ourselves. TEX. R. APP. P. 53.4. We choose to decide this issue.

Newsome argues no enforceable arbitration agreement exists here because both of the district court's approval orders were void. In doing so, he relies on two cases that hold structured-settlement-transfer agreements are not validly formed or enforceable without court approval. See *Wash. Square Fin., LLC v. RSL Funding, LLC*, 418 S.W.3d 761, 770 (Tex. App.—Houston [14th Dist.] 2013, pet. denied); *In re Rapid Settlements, Ltd.*, 202 S.W.3d 456, 461 (Tex. App.—Beaumont 2006, orig. proceeding [mand. denied]) (per curiam). Under this logic, Newsome argues that he cannot be compelled to arbitrate under the agreement either because the agreement never took effect without a valid court order or because the agreement cannot be enforced for some

other reason such as being contrary **[**16]** to public policy.

There are three distinct ways to challenge the validity of an arbitration clause: (1) challenging the validity of the contract as a whole; (2) challenging the validity of the arbitration provision specifically; and (3) challenging whether an agreement exists at all. *In re Morgan Stanley & Co.*, 293 S.W.3d 182, 187 (Tex. 2009). These distinctions arise from the U.S. Supreme Court decision *Prima Paint Corp. v. Flood & Conkling Manufacturing Co.*, which held that arbitration clauses are separable from the contracts in which they are embedded. 388 U.S. 395, 404, 87 S. Ct. 1801, 18 L. Ed. 2d 1270 (1967). Because an arbitration clause is separable from the rest of the contract, the arbitrator decides the first type of challenge. *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70, 130 S. Ct. 2772, 177 L. Ed. 2d 403 (citing *Prima Paint*, 388 U.S. at 403-04). Classic contract defenses such as unconscionability, illegality and fraudulent inducement fall under this first type of challenge; the arbitrator decides them if they are alleged only against the contract as a whole. *E.g.*, *id.* at 66 (unconscionability); *Buckeye Check Cashing, Inc. v. Cardega*, 546 U.S. 440, 443, 126 S. Ct. 1204, 163 L. Ed. 2d 1038 (illegality); *Prima Paint*, 388 U.S. at 402-04 (fraudulent inducement). But *Prima Paint* does not encompass contract-formation challenges. *Morgan Stanley*, 293 S.W.3d at 187-88 & nn. 5-6. Contract formation defenses—such as whether a party ever signed a contract, whether a signor had authority to bind a principal, or whether the signor had capacity to assent—are thus threshold issues **[**17]** to be decided by the court. *Id.* at 189. This is because the Federal Arbitration Act requires a court to be "satisfied that the making of the agreement for arbitration . . . is not in issue" before compelling arbitration. 9 U.S.C. § 4. The Texas Arbitration Act, too, requires that the existence of an agreement to arbitrate be proven to the court before the court must compel arbitration. TEX. CIV. PRAC. & REM. CODE § 171.021(b).

Here, Newsome does not challenge the arbitration clause specifically. Rather, he contends that no enforceable arbitration agreement exists because the entire transfer agreement never came into existence or is not enforceable. Under the Structured Settlement Protection Act, "[n]o direct or indirect transfer of structured settlement payment rights shall be effective . . . unless the transfer has been approved in advance in a final court order" based on specified express findings. TEX. CIV. PRAC. & REM. CODE § 141.004. **[*125]** Assuming for the sake of argument that this provision

requires the court to approve the parties' contract and not merely the structured-settlement-payment transfer, the effect of this provision on the arbitration clause depends on whether the challenge is to the contract's enforceability or its existence. Newsome cites cases that discuss the statute's **[**18]** effect on both the structured-settlement-transfer agreement's existence and its enforceability. See, e.g., *Wash. Square*, 418 S.W.3d at 770 (enforceability); *Rapid Settlements*, 202 S.W.3d at 461 (formation).

For example, in *Washington Square*, the court of appeals held that contracts to transfer structured-settlement-payment rights are unenforceable as contrary to public policy unless court-approved. 418 S.W.3d at 770. The court, however, did not decide whether court approval is a condition precedent to the formation of the contract. *Id.* at 771 & n.8. The case did not involve a motion to compel arbitration; the issue was whether an unapproved contract could support a tortious-interference claim. *Id.* at 770-71. *Washington Square* is not helpful here because the court did not consider whether the lack of court approval rendered the transfer agreement a nullity.

In the arbitration context, the *Prima Paint* separability doctrine provides that the arbitrator is to decide any challenge to the enforceability of an existing contract. 388 U.S. at 404. Any contract defense that attacks the contract as a whole but does not go to the issue of contract formation must be decided by the arbitrator. See, e.g., *Rent-A-Ctr.*, 561 U.S. at 66 (unconscionability); *Buckeye*, 546 U.S. at 443 (illegality); *Prima Paint*, 388 U.S. at 402-04 (fraudulent inducement). Voidness on public policy grounds as in *Washington* **[**19]** *Square* may provide a basis for revoking an existing contract but does not mean the agreement never formed in the first place. See *In re Poly-America, L.P.*, 262 S.W.3d 337, 348 (Tex. 2008) (orig. proceeding). Because voidness on public policy grounds, like illegality, is a defense to the contract's enforcement, it falls into the category that the *Prima Paint* line of cases delegates to the arbitrator. See *Buckeye*, 546 U.S. at 446. Consequently, when a party resisting arbitration argues the whole contract is void for violation of public policy, the arbitrator, not a court, decides the issue. We thus cannot decide here whether a transfer agreement lacking court approval under section 141.004 is void on public policy grounds or unenforceable for any other reason that does not go to contract formation because the doctrine of separability reserves such decisions for the arbitrator.

Newsome, however, also argues that section 141.004 of the Structured Settlement Protection Act creates a condition precedent to contract formation. That indeed was the holding of a court of appeals in another case Newsome cites. See *Rapid Settlements*, 202 S.W.3d at 461. Assuming that holding to be correct, a court would have an opportunity to decide at the outset whether a valid court order approved a structured-settlement-transfer agreement because the existence **[**20]** of the court order goes to contract formation, which the court decides before compelling arbitration. See *Morgan Stanley*, 293 S.W.3d at 187. Whether we may decide in this appeal if court approval is an issue of the underlying contract's formation depends on whether Newsome properly raised that issue below.

The primary thrust of Newsome's bill of review was for the trial court to declare the nunc pro tunc order void so Newsome could enforce the original approval order.

[*126] Because Newsome's bill of review pleads that the approval order is valid and created an enforceable contract, the possible voidness of the nunc pro tunc order does not affect the existence of the agreement to arbitrate. The contract containing the agreement to arbitrate exists even if a question exists about whether the nunc pro tunc order corrected only a clerical error. Newsome seeks to enforce a contract approved by a court that contains an arbitration agreement and thereby concedes the existence of the agreement to arbitrate.

But Newsome's bill of review contains an "alternative" allegation that both the nunc pro tunc order and the original approval order are void, and Newsome mentions that possibility again in his appellate briefing without explanation. **[**21]** In fact, Newsome has no theory to support his conclusory attack on the original order. He did not even raise the issue in his trial court brief opposing RSL's motion to compel arbitration. Indeed, Newsome's petition for bill of review barely mentions the possibility, and his briefing in this Court is no better. A brief must provide citations or argument and analysis for the contentions and failure to do this can result in waiver. TEX. R. APP. P. 38.1(i), 38.2(a)(1); *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 500 (Tex. 2015). Newsome has failed to present any theory, analysis, or authority that puts the validity of the original approval order and thus formation of the contract to arbitrate in issue, and we conclude that the doctrine of separability reserves to the arbitrator all other questions raised in the district court. The court of appeals therefore erred in affirming the trial court's order denying arbitration.

* * * *

Having found the court of appeals erred and no merit in Newsome's alternative grounds to affirm, we reverse the court of appeals' judgment and remand the case to the trial court with instructions to grant the motion to compel arbitration.

John P. Devine

Justice

Opinion Delivered: December 21, 2018

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IN THE SUPREME COURT OF TEXAS

No. 16-0998

**RSL FUNDING LLC AND
RSL SPECIAL-IV LIMITED PARTNERSHIP, PETITIONERS,**

v.

RICKEY NEWSOME, RESPONDENT

**ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS**

JUDGMENT

THE SUPREME COURT OF TEXAS, having heard this cause on petition for review from the Court of Appeals for the Fifth District, and having considered the appellate record, briefs, and counsels' argument, concludes that the court of appeals' judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

- 1) The court of appeals' judgment is reversed;
- 2) The cause is remanded to the trial court for further proceedings consistent with this Court's opinion; and
- 3) Petitioners RSL Funding, et al. shall recover, and Respondent Rickey Newsome shall pay, the costs incurred in this Court and in the court of appeals.

Copies of the Court's judgment and opinion are certified to the Court of Appeals for the Fifth District and to the District Court of Dallas County, Texas, for observance.

Opinion of the Court delivered by Justice Devine
December 21, 2018

RE: Case No. 16-0998
COA #: 05-15-00718-CV

STYLE: RSL FUNDING, LLC v. NEWSOME

DATE: 3/29/2019
TC#: DC-14-14580-L

EXHIBIT 3

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

MS. LISA MATZ
CLERK, FIFTH COURT OF APPEALS
600 COMMERCE, SUITE 200
DALLAS, TX 75202-4658
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 3/29/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

MR. PATRICK PAUL SICOTTE
NESBITT, VASSAR & MCCOWN, L.L.P.
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TX 75001
* DELIVERED VIA E-MAIL *

FILE COPY

RE: Case No. 16-0998
COA #: 05-15-00718-CV

STYLE: RSL FUNDING, LLC v. NEWSOME

DATE: 3/29/2019
TC#: DC-14-14580-L

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

DISTRICT CLERK DALLAS COUNTY
DALLAS COUNTY COURTHOUSE
GEORGE L. ALLEN, SR. COURTS BUILDING
600 COMMERCE, SUITE 103
DALLAS, TX 75202
* DELIVERED VIA E-MAIL *

FILE COPY

RE: Case No. 16-0998

DATE: 3/29/2019

COA #: 05-15-00718-CV

TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

MR. E. JOHN GORMAN
THE FELDMAN LAW FIRM LLP
TWO POST OAK CENTRAL
1980 POST OAK BOULEVARD, SUITE 1900
HOUSTON, TX 77056-3877
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 3/29/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

MR. EARL S. NESBITT
NESBITT, VASSAR & MCCOWN, L.L.P.
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TX 75001
* DELIVERED VIA E-MAIL *

EXHIBIT 4

IN THE SUPREME COURT OF TEXAS

NO. 16-0998

RSL FUNDING, LLC AND RSL SPECIAL-IV LIMITED PARTNERSHIP,
PETITIONER

V.

RICKEY NEWSOME, RESPONDENT

MANDATE

To the Trial Court of Dallas County, Greetings:

Before our Supreme Court on December 21, 2018, the Cause, upon petition for review, to revise or reverse your Judgment.

No. **16-0998** in the Supreme Court of Texas

No. **05-15-00718-CV** in the **Fifth** Court of Appeals

No. **DC-14-14580-L** in the **193rd District Court of Dallas** County, Texas, was determined; and therein our said Supreme Court entered its judgment or order in these words:

THE SUPREME COURT OF TEXAS, having heard this cause on petition for review from the Court of Appeals for the Fifth District, and having considered the appellate record, briefs, and counsels' argument, concludes that the court of appeals' judgment should be reversed.

IT IS THEREFORE ORDERED, in accordance with the Court's opinion, that:

- 1) The court of appeals' judgment is reversed;
- 2) The cause is remanded to the trial court for further proceedings consistent with this Court's opinion; and
- 3) Petitioners RSL Funding, et al. shall recover, and Respondent Rickey Newsome shall pay, the costs incurred in this Court and in the court of appeals.

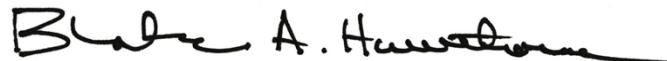
Copies of the Court's judgment and opinion are certified to the Court of Appeals for the Fifth District and to the District Court of Dallas County, Texas, for observance.

Wherefore we command you to observe the order of our said Supreme Court in this behalf, and in all things to have recognized, obeyed, and executed.

BY ORDER OF THE SUPREME COURT OF THE STATE OF TEXAS,

with the seal thereof annexed, at the City of Austin,
this the 29th day of March, 2019.

Blake A. Hawthorne, Clerk



By Monica Zamarripa, Deputy Clerk

Earl Nesbitt

From: Stewart A. Feldman <sfeldman@feldlaw.com>
Sent: Monday, December 17, 2018 10:53 AM
To: Dion Ramos(dionramos@dionramos.com); scottrlink@gmail.com
Cc: Earl Nesbitt
Subject: Update on Newsome Arbitration
Attachments: Ltr to Ramos and Link.pdf; Ex 1 - arb demand.pdf; Ex 2 - S. Link Appointment.pdf; Ex 3 - order temp inj.pdf

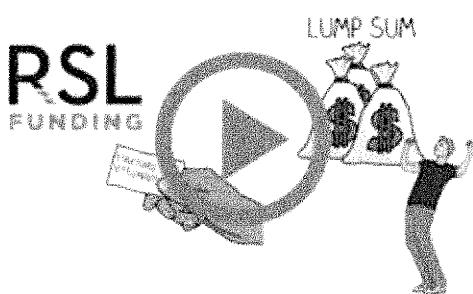
Please see attached.

STEWART A. FELDMAN
sfeldman@RSLFunding.com
www.RSLFunding.com



RSL FUNDING, LLC | 1980 POST OAK BLVD, STE 1975 | HOUSTON, TEXAS 77056
TEL 888.906.5849 | FAX 877.850.8700

[Website](#) | [Map](#) | [Twitter](#) | [Facebook](#)



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RSL FUNDING, LLC

"WHY WAIT?"

NATIONAL PROCESSING CENTER
TWO POST OAK CENTRAL
1980 POST OAK BLVD., SUITE 1975
HOUSTON, TEXAS 77056-3899

PHONE (713) 850-0550

FAX (713) 600-0066

sfeldman@RSLFunding.com

TOLL-FREE PHONE (877) 850-5600

TOLL-FREE FAX (877) 850-8700

December 14, 2018

Hon. Dion Ramos
Conflict Resolutions Solutions, PLLC
Washington Centre
4601 Washington Avenue, Suite 200
Houston, Texas 77007-5433

via: dionramos@dionramos.com

and

Hon. Scott Link
Law Office of Scott Link
440 Louisiana, Suite 2330
Houston, Texas 77002

email: scottrlink@gmail.com

Re: Arbitration filed November 26, 2014 with Conflict Resolution Solutions, PLLC -
RSL Funding, LLC vs. Rickey Newsome

Dear Judges Ramos and Link:

As the year winds down, we want to let you know the status of the Newsom arbitration pending before Conflict Resolution Solutions, PLLC ("CRS"). The purpose of this letter is to apprise you of events that have transpired since Judge Link was selected by Judge Ramos to be the arbitrator. We are unclear whether Judge Link is still the pending arbitrator in this case.

By way of background, on November 26, 2014, RSL Funding, LLC ("RSL") sent an Arbitration Demand to CRS alleging various causes of actions against Rickey Newsome of Dallas, TX. When the Arbitration Demand was sent to CRS, RSL asked for the appointment of an arbitrator (see attached Exhibit 1). On December 1, 2014, Judge Dion Ramos, as lead neutral for CRS, appointed Judge Link as the arbitrator (see attached appointment, Exhibit 2). Because RSL anticipated Mr. Newsome would resist arbitration (as has been proven by his actions over the last four years), RSL also filed a Motion to Compel Arbitration with the 61st Judicial District Court, Harris County, Texas. Before the 61st District Court could rule on RSL's motion, Mr. Newsome's counsel got a Dallas County District Court judge to enter an order enjoining RSL from taking any further action in: (1) the arbitration before Judge Link; or (2) the 61st Judicial District Court (see Exhibit 3 attached).

The above explains why Judge Link has heard little from any of the parties since his appointment. To be sure, even though a Dallas judge signed an order directing the parties to settle all disputes in arbitration in connection with approving the transfer order, that same judge took unusually aggressive actions to prevent any aspect of the arbitration or the parties' agreed to venue from occurring.

As a result of the Dallas judge's actions, RSL has been prosecuting its rights to arbitrate against Mr. Newsome in the appellate courts of Texas. At issue on appeal is whether a court or the arbitrator determines the gateway issue of arbitrability as expressly provided by the parties' various arbitration agreements as set forth in the delegation clauses. At issue in the underlying arbitration is the purchase price (which the Court unilaterally doubled from \$53,000 to \$106,000) and Mr. Newsome's multiple breaches of contract, including his refusal to sign the ancillary documents allowing him to be paid the original \$53,000 purchase price and those related to his refusal to arbitrate as he had otherwise agreed to do in writing. Mr. Newsome has caused immense expense to RSL which it seeks to recover in arbitration.

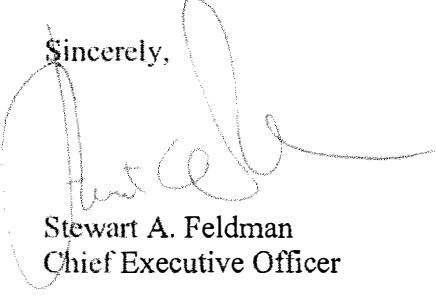
On October 9, 2018, the Texas Supreme Court heard oral argument in the matter currently before it on appeal. While the Dallas Court of Appeals had voted 2-1 against RSL; the Supreme Court granted writ and heard full oral argument. (The Court of Appeals dissent was by a well-respected justice who is board certified in appellate law.) The matter is now pending a decision by the Texas Supreme Court. RSL believes a favorable opinion enforcing RSL's rights to arbitrate will be issued relatively soon.

In anticipation of Mr. Newsome being compelled to arbitrate, RSL wants to make sure Judge Link, or an arbitrator appointed by CRS (as is provided for in the parties' agreements) will proceed in determining the gateway issue of arbitrability and ultimately resolving the parties' substantive disputes (especially given the four year, costly delay thus far), all in accordance with Texas and federal law and the parties' contractual agreements.

To be clear, RSL is not asking for any action to be taken at this time. However, RSL wants to apprise CRS of what has transpired and that, when asked, it is prepared to appoint an arbitrator (whether it be Judge Link or someone else as determined by CRS) to timely see the arbitration through to conclusion. RSL is especially concerned that Judge Link's jurisdiction may have expired given the four-month time limit for concluding a matter as set forth in the parties' agreement. It is unclear when the four-month time frame begins (e.g., whether as of the arbitrator's appointment, the arbitrator's acceptance of his appointment, or otherwise).

Please note that I have copied Mr. Newsome's counsel on this update. We will apprise you of further developments.

Sincerely,


Stewart A. Feldman
Chief Executive Officer

enclosures

cc: Earl S. Nesbitt (with enclosures)
Nesbitt, Vassar & McCown, L.L.P.
15851 Dallas Parkway, Suite 800
Addison, Texas 75001

via: enesbitt@nvmlaw.com

From: Scott Link <scottrlink@gmail.com>
Sent: Monday, December 17, 2018 11:00 AM
To: Stewart A. Feldman
Cc: Dion Ramos(dionramos@dionramos.com); Earl Nesbitt
Subject: Re: Update on Newsome Arbitration

Dear All, I am certainly ready to proceed with the arbitration between the parties once there is a definitive ruling on the viability of the arbitration agreement and the Dallas Court's restraining order. Normally, the arbitration agreement preempts most state court challenges. Please keep me posted. Scott

On Mon, Dec 17, 2018 at 10:53 AM Stewart A. Feldman <sfeldman@feldlaw.com> wrote:

Please see attached.

STEWART A. FELDMAN

sfeldman@RSLFunding.com

www.RSLFunding.com



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TEL 888.906.5849 | FAX 877.850.8700

Earl Nesbitt

From: Stewart A. Feldman <sfeldman@feldlaw.com>
Sent: Friday, December 21, 2018 10:39 AM
To: Scott Link; Dion Ramos(dionramos@dionramos.com)
Cc: Earl Nesbitt
Subject: RE: Update on Newsome Arbitration
Attachments: newsome opinion.pdf

Dear Judges Ramos and Link:

Please see a decision of the Texas Supreme Court issued today upholding the right of the long-delayed Newsome matter to proceed to arbitration. It appears to the Claimants that the authority of CRS to proceed has been decided in favor of RSL Funding, LLC's and RSL Special-IV, Limited Partnership's favor.

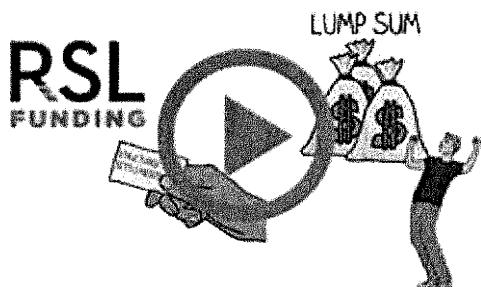
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STEWART A. FELDMAN
sfeldman@RSLFunding.com
www.RSLFunding.com



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TEL 888.906.5849 | FAX 877.850.8700

[Website](#) | [Map](#) | [Twitter](#) | [Facebook](#)



From: Scott Link <scottrlink@gmail.com>
Sent: Friday, December 21, 2018 10:53 AM
To: Stewart A. Feldman
Cc: Dion Ramos(dionramos@dionramos.com); Earl Nesbitt; John Gorman; Andy Paredes; Joseph Greenberg
Subject: Re: Update on Newsome Arbitration

Dear All, I am ready to arbitrate this matter . Please provide me with dates in January 2019 you can proceed with the hearing. thanks,Scott

On Fri, Dec 21, 2018 at 10:43 AM Stewart A. Feldman <sfeldman@feldlaw.com> wrote:

I apologize. I failed to copy counsel for RSL Funding, LLC and RSL Special-IV, Limited Partnership.

STEWART A. FELDMAN

sfeldman@RSLFunding.com

www.RSLFunding.com



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TEL 888.906.5849 | FAX 877.850.8700

[Website](#) | [Map](#) | [Twitter](#) | [Facebook](#)

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Friday, December 21, 2018 2:58 PM
To: Earl Nesbitt
Cc: John Gorman
Subject: FW: Update on Newsome Arbitration
Attachments: Scheduling.Order.01.docx; newsome opinion.pdf

Earl,

By now you are probably aware that the Texas Supreme Court agreed with RSL's position and the court will be ordering the trial court to compel arbitration (see attached ruling). Below is an email from the arbitrator where he has been made aware of these developments. As you can see, the arbitrator would like to get this proceeding moving forward. How do you envision proceeding? My initial thought is to see if we can agree on a scheduling order. Please see a generic one that I have attached. Look it over and let me know what you think.

L. Andy Paredes
Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
(877) 850-5600; Fax: (877) 850-8700

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From: Scott Link <scottrlink@gmail.com>
Sent: Friday, December 21, 2018 10:53 AM
To: Stewart A. Feldman <sfeldman@feldlaw.com>
Cc: Dion Ramos(dionramos@dionramos.com) <dionramos@dionramos.com>; Earl Nesbitt (enesbitt@nvm law.com) <enesbitt@nvm law.com>; John Gorman <jgorman@feldlaw.com>; Andy Paredes <aparedes@rslfundingllc.com>; Joseph Greenberg <JGreenberg@feldlaw.com>
Subject: Re: Update on Newsome Arbitration

Dear All, I am ready to arbitrate this matter . Please provide me with dates in January 2019 you can proceed with the hearing. thanks, Scott

On Fri, Dec 21, 2018 at 10:43 AM Stewart A. Feldman <sfeldman@feldlaw.com> wrote:

I apologize. I failed to copy counsel for RSL Funding, LLC and RSL Special-IV, Limited Partnership.

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Friday, December 21, 2018 3:33 PM
To: Earl Nesbitt
Cc: John Gorman
Subject: Re: Update on Newsome Arbitration

Earl,

Thank you for your email. We look forward to hearing from you next week. Have a great vacation with your family.
Happy Holiday!

Sent from my iPhone

On Dec 21, 2018, at 3:15 PM, Earl Nesbitt <enesbitt@nxmlaw.com> wrote:

First, I am on vacation with my family and will return to the office next Thursday. Really not focused on this right now.

Second, congratulations to you and John. You both did a good job on this case. Although I disagree with the decision, and have not yet studied it thoroughly, I must give due credit to attorneys who deserve it and both of you do. I hate losing, but you won, we lost, and I must accept it and recognize when lawyers have done their job well.

Third, I have not yet had the opportunity to discuss the decision with my client. We may seek rehearing. We may not. We'll make that decision soon. Obviously, having an arbitration before a motion for rehearing has been decided would be premature and inappropriate. Again, that decision will be made after consultation with my client next week.

Fourth, I have not been engaged to represent Mr. Newsome in an arbitration with RSL. I was never engaged to represent Mr. Newsome in an arbitration. My engagement related to the litigation in Dallas County District Court. I don't know if Mr. Newsome desires to engage me to represent him in the arbitration, nor do I know whether I want to be involved in an arbitration of this nature. So, I cannot address any scheduling order or proposed dates for an arbitration or anything like that at this point and have no authority to agree to ANYTHING relative to an arbitration on behalf of Mr. Newsome.

Finally, I am traveling a great deal on business in January. IF there is an arbitration and IF I represent Mr. Newsome in said arbitration, I would not be available until early February. I will be in California in court on February 8 and in court in another case in Texas on the 13th. Other than that, February looks pretty good.

I will be back in the office on the 27th and will clear things up with Mr. Newsome at that time. If you can wait until then, I would appreciate it.

Regards,

Earl S. Nesbitt
First
Ph. 972.371.2411

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Friday, December 21, 2018 2:58 PM
To: Earl Nesbitt <enesbitt@nvmlaw.com>
Cc: John Gorman <igorman@feldlaw.com>
Subject: FW: Update on Newsome Arbitration

Earl,

By now you are probably aware that the Texas Supreme Court agreed with RSL's position and the court will be ordering the trial court to compel arbitration (see attached ruling). Below is an email from the arbitrator where he has been made aware of these developments. As you can see, the arbitrator would like to get this proceeding moving forward. How do you envision proceeding? My initial thought is to see if we can agree on a scheduling order. Please see a generic one that I have attached. Look it over and let me know what you think.

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Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
(877) 850-5600; Fax: (877) 850-8700

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From: Scott Link <scottrlink@gmail.com>
Sent: Friday, December 21, 2018 10:53 AM
To: Stewart A. Feldman <sfeldman@feldlaw.com>
Cc: Dion Ramos(<dionramos@dionramos.com>); Earl Nesbitt (<enesbitt@nvmlaw.com>); John Gorman <igorman@feldlaw.com>; Andy Paredes <aparedes@rslfundingllc.com>; Joseph Greenberg <JGreenberg@feldlaw.com>
Subject: Re: Update on Newsome Arbitration

Dear All, I am ready to arbitrate this matter . Please provide me with dates in January 2019 you can proceed with the hearing. thanks,Scott

On Fri, Dec 21, 2018 at 10:43 AM Stewart A. Feldman <sfeldman@feldlaw.com> wrote:

From: Earl Nesbitt
Sent: Wednesday, January 2, 2019 3:18 PM
To: 'Andy Paredes'; scottrlink@gmail.com
Cc: John Gorman
Subject: RE: Update on Newsome Arbitration

Meeting with him and his wife tomorrow afternoon, in person.

Mr. Newsome will be seeking rehearing in the Texas Supreme Court. I recognize that is a longshot, but it is his legal right and we will be seeking that relief.

IF I represent Mr. Newsome in the arbitration (possible, but unlikely), we will not proceed with any arbitration until we have exhausted ALL of our appellate options and the mandate issues from the Texas Supreme Court, as is appropriate under the law.

IF I agree to represent Mr. Newsome in an arbitration, I have no problem with having a conference call with RSL's counsel and/or with RSL's counsel and Judge Link, the arbitrator selected by RSL, to discuss the logistics of an arbitration if and when it occurs and goes forward. In fact, I think that would make sense at the appropriate time.

Andy, if what I have written here does not make sense, please feel free to give me a call.

I am in the office for 3 more hours or so today, preparing for court tomorrow, which is why I cannot meet with the Newsomes until tomorrow afternoon.

Thanks.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Wednesday, January 2, 2019 3:10 PM
To: Earl Nesbitt <enesbitt@nvmlaw.com>; scottrlink@gmail.com
Cc: John Gorman <jgorman@feldlaw.com>
Subject: RE: Update on Newsome Arbitration

Earl,

I am following up from the email you sent below. I am wondering if you have spoken with Mr. Newsome about the Texas Supreme Court's opinion. Will you be representing Mr. Newsome in the arbitration or will he be pro se? Please advise because Claimants want to proceed with the arbitration now that the Supreme Court has compelled arbitration.

L. Andy Paredes

Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
(877) 850-5600; Fax: (877) 850-8700

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From: Earl Nesbitt enesbitt@nxmlaw.com
Sent: Friday, December 21, 2018 3:18 PM
To: scottrlink@gmail.com
Cc: Andy Paredes aparedes@rslfundingllc.com; John Gorman jgorman@feldlaw.com
Subject: FW: Update on Newsome Arbitration

Judge Link:

I did respond to Mr. Paredes' e-mail just now. My response is below.

As soon as I can speak with Mr. Newsome next week, I will be back in touch with you and counsel for RSL.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Earl Nesbitt
Sent: Friday, December 21, 2018 3:15 PM
To: 'Andy Paredes' aparedes@rslfundingllc.com
Cc: John Gorman jgorman@feldlaw.com
Subject: RE: Update on Newsome Arbitration

First, I am on vacation with my family and will return to the office next Thursday. Really not focused on this right now.

Second, congratulations to you and John. You both did a good job on this case. Although I disagree with the decision, and have not yet studied it thoroughly, I must give due credit to attorneys who deserve it and both of you do. I hate losing, but you won, we lost, and I must accept it and recognize when lawyers have done their job well.

Third, I have not yet had the opportunity to discuss the decision with my client. We may seek rehearing. We may not. We'll make that decision soon. Obviously, having an arbitration before a motion for rehearing has been decided would be premature and inappropriate. Again, that decision will be made after consultation with my client next week.

Fourth, I have not been engaged to represent Mr. Newsome in an arbitration with RSL. I was never engaged to represent Mr. Newsome in an arbitration. My engagement related to the litigation in Dallas County District Court. I don't know if Mr. Newsome desires to engage me to represent him in the arbitration, nor do I know whether I want to

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Friday, March 29, 2019 11:55 AM
To: Scott Link; Earl Nesbitt
Cc: John Gorman
Subject: RE: FW: Update on Newsome Arbitration
Attachments: newsome opinion.pdf

Judge Link,

As you may recall, you were appointed to be an arbitrator by Conflict Resolutions Solutions, PLLC ("CRS") when RSL Funding, LLC ("RSL") submitted a demand for arbitration with CRS back in 2014. The arbitration was put on hold when Mr. Newsome got a Dallas court to enjoin the arbitration. That court order has made its way through the appellate courts and in December the Texas Supreme Court (in a unanimous decision) issued an opinion favoring RSL's position regarding arbitration (see attached). Today the Texas Supreme Court denied Mr. Newsome's Motion to Reconsider. Accordingly, RSL asks that we move forward with the arbitration that has been put on hold since 2014.

L. Andy Paredes
Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
(877) 850-5600; Fax: (877) 850-8700

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From: Scott Link <scottrlink@gmail.com>
Sent: Saturday, December 22, 2018 11:11 AM
To: Earl Nesbitt <enesbitt@nvmlaw.com>
Cc: Andy Paredes <aparedes@rslfundingllc.com>; John Gorman <jgorman@feldlaw.com>
Subject: Re: FW: Update on Newsome Arbitration

that's fine,,,no rush. Scott

On Fri, Dec 21, 2018 at 3:18 PM Earl Nesbitt <enesbitt@nvmlaw.com> wrote:

Judge Link:

I did respond to Mr. Paredes' e-mail just now. My response is below.

As soon as I can speak with Mr. Newsome next week, I will be back in touch with you and counsel for RSL.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Earl Nesbitt
Sent: Friday, December 21, 2018 3:15 PM
To: 'Andy Paredes' <aparedes@rslfundingllc.com>
Cc: John Gorman <jgorman@feldlaw.com>
Subject: RE: Update on Newsome Arbitration

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Third, I have not yet had the opportunity to discuss the decision with my client. We may seek rehearing. We may not. We'll make that decision soon. Obviously, having an arbitration before a motion for rehearing has been decided would be premature and inappropriate. Again, that decision will be made after consultation with my client next week.

Fourth, I have not been engaged to represent Mr. Newsome in an arbitration with RSL. I was never engaged to represent Mr. Newsome in an arbitration. My engagement related to the litigation in Dallas County District Court. I don't know if Mr. Newsome desires to engage me to represent him in the arbitration, nor do I know whether I want to be involved in an arbitration of this nature. So, I cannot address any scheduling order or proposed dates for an arbitration or anything like that at this point and have no authority to agree to ANYTHING relative to an arbitration on behalf of Mr. Newsome.

Finally, I am traveling a great deal on business in January. IF there is an arbitration and IF I represent Mr. Newsome in said arbitration, I would not be available until early February. I will be in California in court on February 8 and in court in another case in Texas on the 13th. Other than that, February looks pretty good.

From: Scott Link <scottrlink@gmail.com>
Sent: Friday, March 29, 2019 12:19 PM
To: Andy Paredes
Cc: Earl Nesbitt; John Gorman
Subject: Re: FW: Update on Newsome Arbitration

Dear all, I am ready to start the arbitration process. Please call Lorene at my office to schedule a conference call . During the call we will agree on the final hearing dates and then work backwards from there on discovery deadlines. scott

On Fri, Mar 29, 2019 at 11:54 AM Andy Paredes <aparedes@rslfundingllc.com> wrote:

Judge Link,

As you may recall, you were appointed to be an arbitrator by Conflict Resolutions Solutions, PLLC (“CRS”) when RSL Funding, LLC (“RSL”) submitted a demand for arbitration with CRS back in 2014. The arbitration was put on hold when Mr. Newsome got a Dallas court to enjoin the arbitration. That court order has made its way through the appellate courts and in December the Texas Supreme Court (in a unanimous decision) issued an opinion favoring RSL’s position regarding arbitration (see attached). Today the Texas Supreme Court denied Mr. Newsome’s Motion to Reconsider. Accordingly, RSL asks that we move forward with the arbitration that has been put on hold since 2014.

L. Andy Paredes

Two Post Oak Central

1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056

(877) 850-5600; Fax: (877) 850-8700

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From: Earl Nesbitt
Sent: Tuesday, April 2, 2019 5:08 PM
To: 'Andy Paredes'
Cc: John Gorman; Scott Link
Subject: RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration

Importance: High

I have spoken to Mr. Paredes by phone. As I said to him today, and as I have said to him before, I have not been engaged to represent Mr. Newsome in an arbitration. If and when Mr. Newsome engages me in the arbitration, I will let you all know.

Moreover, as I explained to Mr. Paredes today, I continue to represent Mr. Newsome in the litigation aspect of this case. Mr. Newsome has not exhausted his appellate remedies in the litigation aspect of this case. Newsome will be appealing this case to the United States Supreme Court and I will be representing him in filing a petition for writ of certiorari in that Court in due course, in accordance with the law.

I'm not an idiot. I understand that the likelihood of the US Supreme Court taking this case is slim, but I also know that the United States Supreme Court does not review any case UNLESS an aggrieved litigant actually asks the Court to do so. It is Mr. Newsome's right to petition the Supreme Court and he wants to do so and I have agreed to continue to represent him on appeal in the Supreme Court. If the Supreme Court refuses to take the case, then Mr. Newsome will address the arbitration aspect of this case at the appropriate time, which will be after the Supreme Court acts on the petition.

RSL Funding seems to be in a rush to get this case into arbitration. That is a concern. It is also premature.

Respectfully, Judge Link, until Mr. Newsome exhausts his appellate remedies, it would be inappropriate for an arbitration to commence. There is no point in having a conference call to address arbitration or discuss potential dates for an arbitration until the Supreme Court takes action relative to Newsome's petition for writ of certiorari. It would also be improper for any party to move down the arbitration path while the appeal/writ is pending with the Supreme Court.

I would imagine that we will know by the middle or end of the summer whether the Supreme Court has any interest in hearing the case. If they do not, and if Mr. Newsome engages me to represent him in the arbitration, then I will be pleased to address the situation with all of you again at that time.

FYI. I do have a family vacation planned off of the mainland US for August 9-18. I jealously guard my vacations, as should we all in this business.

Let me know if any of you have any questions or require additional information.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Tuesday, April 2, 2019 3:24 PM
To: Earl Nesbitt <enesbitt@nvmlaw.com>
Cc: John Gorman <jgorman@feldlaw.com>; Scott Link <scottrlink@gmail.com>
Subject: RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration

Earl,

I am following up on the email from Arbitrator Link from below. I have called his office and I got some dates from Lorene as to when we can have a conference call to get a final hearing date for the arbitration. Arbitrator Link is available on the afternoon of the 5th. Please let me know if you are available then for the conference call.

L. Andy Paredes
Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
(877) 850-5600; Fax: (877) 850-8700

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Sent: Friday, March 29, 2019 12:19 PM
To: Andy Paredes <aparedes@rslfundingllc.com>
Cc: Earl Nesbitt <enesbitt@nvmlaw.com>; John Gorman <jgorman@feldlaw.com>
Subject: [EXTERNAL] Re: FW: Update on Newsome Arbitration

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Sent: Tuesday, April 2, 2019 5:27 PM
To: Earl Nesbitt
Cc: John Gorman; Scott Link
Subject: RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration
Attachments: 16-0998_MANDATE_FILECOPY.pdf

Judge Link,

I am about to leave the office. Before I do, I wanted to quickly respond to Mr. Nesbitt's email below because I do not believe there is any authority to stay the arbitration now that the Texas Supreme Court's Mandate has issued (see attached). Moreover, I am unaware of any appellate rule (federal or state) that says an intent to file a writ of certiorari with the US Supreme Court stays the Texas Supreme Court's Mandate. Nor do I believe a rule exists where the filing of a writ of certiorari with the US Supreme Court stays the Texas Supreme Court's Mandate. If such a rule exists, then I suggest Mr. Nesbitt provide it to us. Barring any such rule, I believe the Texas Supreme Court's opinion and mandate compelling arbitration should be followed.

I would also like to add that Mr. Nesbitt has previously said things that contradict his email below. Specifically, on January 2, 2019 he wrote in an email:

Mr. Newsome will be seeking rehearing in the Texas Supreme Court. I recognize that is a longshot, but it is his legal right and we will be seeking that relief.

IF I represent Mr. Newsome in the arbitration (possible, but unlikely), we will not proceed with any arbitration until we have exhausted ALL of our appellate options and the mandate issues from the Texas Supreme Court, as is appropriate under the law.

IF I agree to represent Mr. Newsome in an arbitration, I have no problem with having a conference call with RSL's counsel and/or with RSL's counsel and Judge Link, the arbitrator selected by RSL, to discuss the logistics of an arbitration if and when it occurs and goes forward. In fact, I think that would make sense at the appropriate time.

Again, I believe these is no justification to put this arbitration off any longer now that the mandate has issued. Even Mr. Nesbitt's email from January 2nd suggests the same thing. That is why I suggest that we have the conference call on Friday afternoon.

L. Andy Paredes
Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
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Sent: Tuesday, April 02, 2019 5:08 PM
To: Andy Paredes <aparedes@rslfundingllc.com>
Cc: John Gorman <jgorman@feldlaw.com>; Scott Link <scottrlink@gmail.com>
Subject: RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration
Importance: High

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Moreover, as I explained to Mr. Paredes today, I continue to represent Mr. Newsome in the litigation aspect of this case. Mr. Newsome has not exhausted his appellate remedies in the litigation aspect of this case. Newsome will be appealing this case to the United States Supreme Court and I will be representing him in filing a petition for writ of certiorari in that Court in due course, in accordance with the law.

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RSL Funding seems to be in a rush to get this case into arbitration. That is a concern. It is also premature.

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I would imagine that we will know by the middle or end of the summer whether the Supreme Court has any interest in hearing the case. If they do not, and if Mr. Newsome engages me to represent him in the arbitration, then I will be pleased to address the situation with all of you again at that time.

FYI. I do have a family vacation planned off of the mainland US for August 9-18. I jealously guard my vacations, as should we all in this business.

Let me know if any of you have any questions or require additional information.

Regards,

From:	Earl Nesbitt															
Sent:	Tuesday, April 2, 2019 5:51 PM															
To:	'Andy Paredes'															
Cc:	John Gorman; Scott Link															
Subject:	RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration															
Importance:	High															
Tracking:	<table><thead><tr><th>Recipient</th><th>Delivery</th><th>Read</th></tr></thead><tbody><tr><td>'Andy Paredes'</td><td></td><td></td></tr><tr><td>John Gorman</td><td></td><td></td></tr><tr><td>Scott Link</td><td></td><td></td></tr><tr><td>Patrick Sicotte</td><td>Delivered: 4/2/2019 5:51 PM</td><td>Read: 4/3/2019 7:50 AM</td></tr></tbody></table>	Recipient	Delivery	Read	'Andy Paredes'			John Gorman			Scott Link			Patrick Sicotte	Delivered: 4/2/2019 5:51 PM	Read: 4/3/2019 7:50 AM
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IF RSL persists in pursuing an improper and premature arbitration, we will take appropriate legal action.

What would be the point in having an arbitration if the United States Supreme Court decides to hear the case? All of the effort would have been wasted.

While Mr. Paredes and RSL may not care about that, as their goal is to break Mr. Newsome financially, why would Judge Link want to conduct an arbitration that could become moot? So, if an arbitration goes forward prematurely and the US Supreme Court takes the case and decides that the trial court and the Dallas Court of Appeals were right in denying the motion to arbitrate, what happens then? Who is going to reimburse Mr. Newsome for the cost of a premature arbitration? Who is going to pay Judge Link?

Again, we will take appropriate legal action as required if RSL wants to pursue this issue and I'd be pleased to take the very reasonable position that arbitration must wait until all appellate remedies have been exhausted.

We expect the arbitrator will see through RSL's transparent and improper motives here. They are trying to usurp the legal process to compel a premature and inappropriate arbitration, when any reasonable person would understand that the legal process must conclude before an arbitration can move forward.

So, yes, let's have the conference call on Friday. I will participate, with the understanding that I have not appeared in the case and my appearance in a conference call with a private arbitrator to preserve the jurisdiction of the US Supreme Court to at least have the opportunity to determine whether it wants to hear this case, but my appearance is not an appearance for purposes of the arbitration. Please let me know what time and if there is a conference call.

Moreover, the Texas Supreme Court decision may very well determine that it should not hear this case – the issue of arbitrability is a preliminary matter that must be determined. Judge Link is likely to determine that he cannot hear this case in arbitration until the issues in the underlying Dallas District Court Case are determined. But that is an argument for another day.

Mr. Paredes specious allegation that I am somehow taking a different position than I had in the past is not even worth responding to. He is wrong. My prior statements to Mr. Paredes and in e-mails are entirely consistent with what I have stated today.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Tuesday, April 2, 2019 5:27 PM
To: Earl Nesbitt <enesbitt@nvmlegal.com>
Cc: John Gorman <jgorman@feldlaw.com>; Scott Link <scottlink@gmail.com>
Subject: RE: [EXTERNAL] Re: FW: Update on Newsome Arbitration

Judge Link,

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IF I agree to represent Mr. Newsome in an arbitration, I have no problem with having a conference call with RSL's counsel and/or with RSL's counsel and Judge Link, the arbitrator selected by RSL, to discuss the logistics of an arbitration if and when it occurs and goes forward. In fact, I think that would make sense at the appropriate time.

Again, I believe these is no justification to put this arbitration off any longer now that the mandate has issued. Even Mr. Nesbitt's email from January 2nd suggests the same thing. That is why I suggest that we have the conference call on Friday afternoon.

L. Andy Paredes
Two Post Oak Central
1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
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From: Stewart A. Feldman <sfeldman@feldlaw.com>
Sent: Thursday, April 4, 2019 4:17 PM
To: Andy Paredes; Earl Nesbitt
Cc: John Gorman; Scott Link; lorene.slinklaw@gmail.com; rickeynewsome@att.net
Subject: RE: RSL Funding, LLC vs. Rickey Newsome; Arbitrator Scott Link

I have personally spoken with Mr Rickey Newsome and apprised him of the hearing tomorrow at 3:30 pm. He said that he was going to contact Earl Nesbitt to see if Earl is still representing him. I understand from Earl that he is not representing Mr Newsome in the arbitration.

With this, I think everyone has been notified and that this long delayed matter can move towards a final resolution.

Thank you.

saf

STEWART A. FELDMAN
sfeldman@RSLFunding.com
www.RSLFunding.com



RSL FUNDING, LLC | 1980 POST OAK BLVD, STE 1975 | HOUSTON, TEXAS 77056
TEL 888.906.5849 | FAX 877.850.8700



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EXHIBIT 18

AFFIDAVIT OF RICKEY NEWSOME

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME, the undersigned authority, personally appeared Rickey Newsome, an individual personally known to me, who after being by me duly sworn, testified upon his oath as follows:

1. "My name is Rickey Newsome. I am over 21 years old, of sound mind, capable of making this Affidavit, and fully competent and authorized to testify to the facts stated herein. Except where indicated, I have personal knowledge of the facts stated in this Affidavit and all such facts are true and correct.

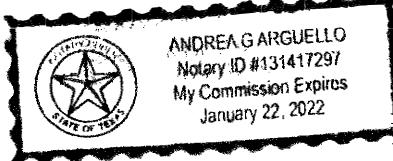
2. On Thursday, April 4, 2019 I received a telephone call from Stewart Feldman. I was surprised to hear from Mr. Feldman, since I am involved in a dispute with RSL Funding, LLC and I am represented by Attorney Earl Nesbitt in connection with the dispute with RSL. I understand that Mr. Feldman is the owner or president of RSL Funding. During our telephone call, Mr. Feldman informed me that Earl Nesbitt was no longer representing me, that an arbitration was taking place on April 5, 2019, and that he (Mr. Feldman) had some money for me.

3. I was very surprised to hear from Mr. Feldman that Earl Nesbitt was no longer representing me. I spoke to Mr. Nesbitt later on Thursday, April 4, 2019, and confirmed that he was still representing me in the dispute involving RSL Funding, LLC.

FURTHER AFFIANT SAITH NAUGHT.


Rickey Newsome

SUBSCRIBED and SWORN to before me the undersigned authority this 16 day of April 2019.




Andrea Arguello
Notary Public in and for the State of Texas

From: Earl Nesbitt
Sent: Thursday, April 4, 2019 5:02 PM
To: 'Stewart A. Feldman'; Andy Paredes
Cc: John Gorman; Scott Link; lorene.slinklaw@gmail.com
Subject: RE: RSL Funding, LLC vs. Rickey Newsome; Arbitrator Scott Link

Importance: High

Mr. Feldman's contentions that he understands from Earl that he is not representing Mr. Newsome in the arbitration is incorrect. To be clear, I have not been retained to represent Mr. Newsome in the arbitration. I may or may not represent Mr. Newsome in an arbitration if and when an arbitration properly goes forward. That decision has not been made by me or Mr. Newsome, as it is premature for any arbitration to move forward as the litigation case continues to make its way through the courts.

I have just spoken by telephone to my client, Mr. Newsome, and he has confirmed that Mr. Feldman contacted him directly by telephone. He was quite surprised and shocked to hear from Mr. Feldman that Earl Nesbitt no longer represented him. Mr. Newsome was also surprised to hear from Mr. Feldman that the arbitration was happening tomorrow and that Mr. Feldman had some money for Mr. Newsome. (At least two of those things are absolutely untrue. I don't know if Mr. Feldman has money for Mr. Newsome or not.)

Mr. Newsome is my client in the ongoing litigation case and neither Mr. Feldman, nor Mr. Paredes, nor anyone representing Mr. Feldman should be contacting my client directly for any reason. And no one should be providing Mr. Newsome inaccurate information behind my back. The litigation case is continuing, as we will be appealing the case to the United States Supreme Court.

I will say this as plainly as I can – again. I represent Mr. Newsome. He is my client in ongoing litigation with RSL. As such, any communications with Mr. Newsome must go through this office and me.

Mr. Feldman, please do not contact my client anymore. That was improper.

I have directed Mr. Newsome that if this happens again to let me know immediately.

I will be participating in the conference call tomorrow on behalf of Mr. Newsome, for the sole purpose, as his litigation counsel in the continuing court proceedings, to ensure that a premature, improper arbitration does not move forward at this time and to protect Mr. Newsome's interests. RSL and Mr. Newsome knew that I would be participating in the conference call tomorrow, to protect Mr. Newsome's interest, yet still Mr. Feldman improperly contacted my client directly by phone. It is clear to me that he did this for the purpose of harassing, scaring, and upsetting Mr. Newsome by providing him inaccurate information.

Below is the excerpt from my e-mail dated 4/2/2019, around 5:50 p.m. Obviously, no one who read this could be suffering from a misunderstanding that I would not be on the conference call tomorrow.

So, yes, let's have the conference call on Friday. I will participate, with the understanding that I have not appeared in the case and my appearance in a conference call with a private arbitrator to preserve the jurisdiction of the US Supreme Court to at least have the opportunity to determine whether it wants to hear this case, but my appearance is not an appearance for purposes of the arbitration. Please let me know what time and if there is a conference call.

I have today, after Mr. Paredes confirmed the time and conference number, advised Mr. Newsome of this call and asked him if he would like to participate in the call. He declined and feels comfortable with my role in representing him as his litigation counsel in the ongoing court proceedings to protect his interests during the conference call tomorrow.

Additionally, Mr. Newsome does not regularly check the old e-mail that Mr. Feldman used in his improper communication. (The att.net e-mail.) I have blind copied Mr. Newsome on this e-mail, to another e-mail address he has provided to me, so that he is kept in the loop.

RSL and Mr. Feldman should not e-mail my client or call him or otherwise communicate with him, except through me, as long as I am his attorney in the ongoing litigation.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: Stewart A. Feldman <sfeldman@feldlaw.com>

Sent: Thursday, April 4, 2019 4:17 PM

To: Andy Paredes <aparedes@rslfundingllc.com>; Earl Nesbitt <enesbitt@nvmlaw.com>

Cc: John Gorman <jgorman@feldlaw.com>; Scott Link <scottrlink@gmail.com>; lorene.slinklaw@gmail.com; rickeynewsome@att.net

Subject: RE: RSL Funding, LLC vs. Rickey Newsome; Arbitrator Scott Link

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saf

STEWART A. FELDMAN
sfeldman@RSLFunding.com
www.RSLFunding.com

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To: Earl Nesbitt
Cc: Stewart A. Feldman; Andy Paredes; John Gorman; lorene.slinklaw@gmail.com
Subject: Re: RSL Funding, LLC vs. Rickey Newsome; Arbitrator Scott Link

Dear All, let's be perfectly clear on the call today. I am setting a hearing date for the arbitration based on the Texas Supreme Court Ruling. If a party chooses to file an appeal, then the hearing date is abated until that court has ruled. It is offensive that a party or attorney would imply that there is some surreptitious scheme to conduct a secret arbitration. Scott

On Thu, Apr 4, 2019 at 5:02 PM Earl Nesbitt <enesbitt@nvmlaw.com> wrote:

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I have today, after Mr. Paredes confirmed the time and conference number, advised Mr. Newsome of this call and asked him if he would like to participate in the call. He declined and feels comfortable with my role in representing him as his litigation counsel in the ongoing court proceedings to protect his interests during the conference call tomorrow.

Additionally, Mr. Newsome does not regularly check the old e-mail that Mr. Feldman used in his improper communication. (The att.net e-mail.) I have blind copied Mr. Newsome on this e-mail, to another e-mail address he has provided to me, so that he is kept in the loop.

RSL and Mr. Feldman should not e-mail my client or call him or otherwise communicate with him, except through me, as long as I am his attorney in the ongoing litigation.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: [No-Reply@eFileTexas.gov](mailto>No-Reply@eFileTexas.gov)
To: Earl Nesbitt
Subject: Notification of Service for Case: DC-14-14580, RICKEY NEWSOME vs. RSL FUNDING LLC for filing Proposed Order, Envelope Number: 33785788
Date: Wednesday, May 22, 2019 3:08:17 PM

Notification of Service



Case Number: DC-14-14580
Case Style: RICKEY NEWSOME vs.
RSL FUNDING LLC
Envelope Number: 33785788

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	DC-14-14580
Case Style	RICKEY NEWSOME vs. RSL FUNDING LLC
Date/Time Submitted	5/22/2019 3:07 PM CST
Filing Type	Proposed Order
Filing Description	Proposed Order Referring Case to Arbitration
Filed By	Noe Guzman
Service Contacts	RICKEY NEWSOME: Earl Nesbitt (enesbitt@nvmlaw.com) Other Service Contacts not associated with a party on the case: E Gorman (jgorman@feldlaw.com) L. Paredes (aparedes@rslfundingllc.com) Earl Nesbitt (enesbitt@nvmlaw.com) Stewart Feldman (sfeldman@feldlaw.com)

Document Details

Served Document

[Download Document](#)

This link is active for 30 days.

Earl Nesbitt

From: Andy Paredes <aparedes@rslfundingllc.com>
Sent: Friday, May 24, 2019 12:15 PM
To: Earl Nesbitt; John Gorman; scottrlink@gmail.com
Cc: Stewart A. Feldman; lorene.slinklaw@gmail.com
Subject: RSL Funding, LLC vs. Rickey Newsome: Arbitrator Scott Link
Attachments: arb-disclosure (scott link).doc; Scheduling.Order.01.docx; executed order mtn compel arb.pdf

Judge Link,

Pursuant to the Texas Supreme Court's mandate and opinion, yesterday the Dallas County District Court signed an order compelling arbitration (see attached). Accordingly, you now have jurisdiction to proceed with the arbitration between RSL Funding and Rickey Newsome as all barriers to the arbitration have been removed. I suggest scheduling a conference call early next week (during the afternoon) where we can discuss the entry of a scheduling order. Please keep in mind, when we discuss setting the scheduling order, that this matter has been pending since 2014 (because it was abated by the Dallas court due to Mr. Newsome's actions) and involves arbitration agreements which calls for a four-month arbitration schedule. Moreover, during our call Mr. Nesbitt can also finally tell us if he will be representing Mr. Newsome in the arbitration. If Mr. Nesbitt doesn't confirm that he is representing Mr. Newsome in the arbitration (given his reluctance to acknowledge such since the issuance of the opinion), then RSL advises that it will inform Mr. Newsome of the upcoming scheduling conference so that Mr. Newsome has ample notice of same so he can participate.

In the meantime, Claimants ask the arbitrator to issue the arbitrator's disclosures. For the arbitrator's convenience, I have attached a Word version of the disclosures that is typically used by the AAA. I am also attaching a Word version of a blank Scheduling Order to use during our conference call (all we need to do is to fill in the blanks).

Please let me know if you have any questions or comments.

L. Andy Paredes
 Two Post Oak Central
 1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
 (877) 850-5600; Fax: (877) 850-8700

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From: Earl Nesbitt <enesbitt@nxmlaw.com>
Sent: Friday, April 05, 2019 5:48 PM
To: John Gorman <jgorman@feldlaw.com>; scottrlink@gmail.com
Cc: Andy Paredes <aparedes@rslfundingllc.com>
Subject: [EXTERNAL] RE: Mandate and Judgment

CAUSE NO. DC-14-14580-L

IN THE MATTER OF: § IN THE DISTRICT COURT OF
A TRANSFER OF STRUCTURED § DALLAS COUNTY, TEXAS
SETTLEMENT PAYMENT RIGHTS BY § 193RD JUDICIAL DISTRICT
RICKEY NEWSOME §

ORDER REFERRING CASE TO ARBITRATION

In an interlocutory appeal brought by RSL Funding, LLC and RSL Special-IV, Limited Partnership, the Supreme Court of Texas issued its opinion and rendered judgment on December 21, 2018, reversing this Court's order denying arbitration. The Supreme Court ruled that it is remanding the cause "to the trial court with instructions to grant the motion to compel arbitration." *See* Opinion at 2, 16. On March 29, 2019, the Supreme Court issued its mandate stating that the "cause is remanded to the trial court for further proceedings consistent with this Court's opinion." *See* Mandate at 1.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1. The Joint Motion to Compel Arbitration filed by Respondents RSL Funding, LLC and RSL Special-IV, Limited Partnership (the "Motion to Compel") on April 4, 2015, Respondent's Supplement to Joint Motion to Compel Arbitration and Verified Motion to Abate Proceedings Pending Arbitration (the "Supplemental Motion") filed on May 5, 2015, and Respondents' Joint Corrected Motion to Compel Arbitration & Verified Motion to Abate Proceedings Pending Arbitration filed on May 29, 2015 ("Corrected Motion") (collectively, all three will be regarded as the "Motion to Compel Arbitration") are hereby GRANTED in all respects.

2. In accordance with the express terms of the customer Application, the Transfer Agreement and the Promissory Note, the parties, Rickey Newsome, RSL Funding, LLC and RSL Special-IV, Limited Partnership, are referred to arbitration before the Honorable Scott Link who was appointed by

Conflict Resolution Solutions, PLLC as the arbitrator. Pursuant to the terms of the parties' arbitration provisions and the Supreme Court's opinion, Arbitrator Link will decide the gateway issues the parties have agreed to arbitrate

3. This Court's June 2, 2015 Temporary Injunction is dissolved in its entirety, thereby allowing the arbitration to proceed before Arbitrator Link.

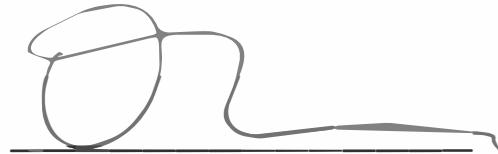
4. This Court's May 28, 2015 Order Granting in Part and Denying in Part Petitioner Rickey Newsome's Motion for Summary Judgement is hereby vacated because Arbitrator Link must determine if the issues raised in Petitioner Rickey Newsome's Motion for Summary Judgment are arbitrable disputes that need to be decided by the arbitrator.

5. The instant action is hereby stayed pending completion of the arbitration.

It is so ordered.

JUDGMENT READ, RENDERED AND SIGNED in Dallas County, Texas, on this 23 day of

May 2019.



JUDGE PRESIDING

Earl Nesbitt

From: Scott Link <scottrlink@gmail.com>
Sent: Wednesday, May 29, 2019 4:24 PM
To: Andy Paredes
Cc: Earl Nesbitt; John Gorman; Stewart A. Feldman; lorene.slinklaw@gmail.com
Subject: Re: RSL Funding, LLC vs. Rickey Newsome: Arbitrator Scott Link

Dear all, I will give you dates tonight. Thanks Scott

Sent from my iPhone

On May 29, 2019, at 4:00 PM, Andy Paredes <aparedes@rslfundingllc.com> wrote:

Judge Link,

I am following up on the email I sent below. Please advise about a teleconference. For your convenience, I am attaching the same attachments that I did last Friday.

L. Andy Paredes
 Two Post Oak Central
 1980 Post Oak Blvd., Suite 1975, Houston, Texas 77056
 (877) 850-5600; Fax: (877) 850-8700

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From: Andy Paredes
Sent: Friday, May 24, 2019 12:15 PM
To: Earl Nesbitt <enesbitt@nvmilaw.com>; John Gorman <jgorman@feldlaw.com>; scottrlink@gmail.com
Cc: Stewart A. Feldman <sfeldman@feldlaw.com>; lorene.slinklaw@gmail.com
Subject: RSL Funding, LLC vs. Rickey Newsome: Arbitrator Scott Link

Judge Link,

Pursuant to the Texas Supreme Court's mandate and opinion, yesterday the Dallas County District Court signed an order compelling arbitration (see attached). Accordingly, you now have jurisdiction to proceed with the arbitration between RSL Funding and Rickey Newsome as all barriers to the arbitration have been removed. I suggest scheduling a conference call early next week (during the afternoon) where we can discuss the entry of a scheduling order. Please keep in mind, when we discuss setting the scheduling order, that this matter has been pending since 2014 (because it was abated by the Dallas court due to Mr. Newsome's actions) and involves arbitration agreements which calls for a four-month arbitration

schedule. Moreover, during our call Mr. Nesbitt can also finally tell us if he will be representing Mr. Newsome in the arbitration. If Mr. Nesbitt doesn't confirm that he is representing Mr. Newsome in the arbitration (given his reluctance to acknowledge such since the issuance of the opinion), then RSL advises that it will inform Mr. Newsome of the upcoming scheduling conference so that Mr. Newsome has ample notice of same so he can participate.

In the meantime, Claimants ask the arbitrator to issue the arbitrator's disclosures. For the arbitrator's convenience, I have attached a Word version of the disclosures that is typically used by the AAA. I am also attaching a Word version of a blank Scheduling Order to use during our conference call (all we need to do is to fill in the blanks).

Please let me know if you have any questions or comments.

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From: Earl Nesbitt <enesbitt@nvmlaw.com>
Sent: Friday, April 05, 2019 5:48 PM
To: John Gorman <jgorman@feldlaw.com>; scottrlink@gmail.com
Cc: Andy Paredes <aparedes@rslfundingllc.com>
Subject: [EXTERNAL] RE: Mandate and Judgment

That is what I get for trying to multi-task. John is correct. I clicked on the wrong mandate.

But the correct judgment and mandate in this case both say what we represented that they said.

Regards,

Earl S. Nesbitt

Ph. 972.371.2411

From: John Gorman <jgorman@feldlaw.com>
Sent: Friday, April 5, 2019 4:47 PM
To: scottrlink@gmail.com
Cc: Earl Nesbitt <enesbitt@nvmlaw.com>; Andy Paredes <aparedes@rslfundingllc.com>
Subject: FW: Mandate and Judgment

Transfer Agreement
(For Transfer of Structured Settlement Payments)

This TRANSFER AGREEMENT ("Transfer Agreement" or sometimes "Agreement") is entered into by and between RICKY NEWSOME ("Assignor"), an individual; and RSL FUNDING, LLC, a Texas limited liability company ("RSL Funding" or "Assignee") whose address is 1980 Post Oak Boulevard, Suite 1975, Houston, Texas 77056-3899.

- a. *Whereas* Assignor is entitled to structured settlement payments (collectively referred to as the "Periodic Payments") as a result of a structured settlement dated on or about _____ (the "Settlement Agreement").
- b. *Whereas* Allstate Insurance Company (the "Annuity Owner" and "Structured Settlement Obligor") has the continuing obligation to make the Periodic Payments to the Assignor under the Settlement Agreement and pursuant to annuity contract No. 90-506/877/878 (the "Annuity Contract").
- c. *Whereas* the Periodic Payments are currently being paid by Allstate Life Insurance Company (the "Annuity Issuer").
- d. *Whereas* Assignor desires to sell, assign, and transfer to RSL Funding, and RSL Funding desires to purchase and accept such transfer and assignment from Assignor, the following entirety or portion of the Periodic Payments (hereinafter the "Assigned Payments"):

Twenty-One (21) monthly payments each in the amount of \$550 beginning on December 13, 2013 through and including August 13, 2015; thirty-three (33) monthly payments each in the amount of \$150 beginning on September 13, 2015 through and including May 13, 2018; and sixty-six (66) monthly payments each in the amount of \$1350 beginning on June 13, 2018 through and including November 13, 2023.

NOW THEREFORE IN CONSIDERATION THEREOF, SUBJECT TO THE OTHER TERMS AND CONDITIONS STATED HEREIN, RSL FUNDING AGREES TO PAY TO ASSIGNOR, AND ASSIGNOR AGREES TO ACCEPT AS FULL AND COMPLETE PAYMENT FROM RSL FUNDING, THE "ASSIGNMENT PRICE" (SEE SECTION 2 BELOW).

Preliminary: A court must approve Assignor's sale, assignment, and transfer to RSL Funding of the Assigned Payments before such payments can be transferred and the Assignment Price, set forth in Section 2 below, paid to Assignor. The Final Order shall state that the court at least has made all findings required by applicable law, and that Annuity Owner and Annuity Issuer are authorized and directed to pay the Assigned Payments to RSL Funding, its successors and/or assigns. Assignor and RSL Funding agree to proceed in good faith to obtain court approval of the transfer of the Assigned Payments.

IN CONSIDERATION OF THE COVENANTS, WARRANTIES, AND REPRESENTATIONS SET FORTH HEREIN, ASSIGNOR AND RSL FUNDING AGREE AS FOLLOWS:

1. Assignment. Assignor hereby sells, assigns, and transfers to RSL Funding all of Assignor's right, title, and interest (including all benefits and rights relating thereto) in and to the Assigned Payment(s). RSL Funding hereby purchases and accepts such assignment and transfer of the Assigned Payment(s).
2. Assignment Price. The Assignment Price is **FIFTY-THREE THOUSAND AND NO/100 (\$53,000.00) DOLLARS.** RSL Funding's obligation to pay the Assignment Price is subject to the terms, conditions, and offsets described herein and in the Disclosure Statement. In consideration for this assignment, and subject to these terms, conditions, and offsets, RSL Funding shall pay Assignor the Assignment Price.
3. Payment of the Assignment Price. Payment of the Assignment Price shall be made by RSL Funding's (or, as provided in paragraph 13d., its assignee's) check payable to Assignor and mailed to the address shown above.

unless otherwise directed in writing by the Assignor. The parties understand that a reasonable time may pass from the date the Final Order is obtained until the date that Annuity Issuer and Annuity Owner acknowledge to RSL Funding their obligation to comply with the Final Order resulting in the following:

- a. In the event that the parties hereto and the Annuity Issuer and the Annuity Owner enter into an agreement or stipulation agreeing to this Transfer, then RSL Funding shall promptly pay 100% of the Assignment Price to Assignor following its receipt of a certified copy of the Final Order; or
- b. Otherwise, following RSL Funding's receipt of the certified copy of the Final Order following the Annuity Issuer's confirmation that the Assigned Payments have not otherwise been assigned, transferred, sold or hypothecated, RSL Funding shall pay 75% of the Assignment Price to Assignor, with the 25% balance payable promptly upon RSL Funding's receipt of written notice from Annuity Issuer and Annuity Owner acknowledging their obligations under the Final Order.

Payment of the Assignment Price is subject to all the terms and conditions set forth herein and in the Disclosure Statement. In particular, Sections 5, 6, 7 and 8 of this Agreement may affect RSL Funding's obligation to pay the Assignment Price to Assignor where, for example, there are tax liens, judgments or other encumbrances on the Periodic Payments.

4. Servicing Arrangement. Assignor agrees that to the extent that payments due from the Annuity Issuer or its affiliates must be split among various payees (including the Payee and its assigns) RSL Funding shall receive the full payment and in turn will undertake to pay to Payee or Payee's assigns any residual amount due such person as such comes due.

5. Assignor agrees to instruct the Structured Settlement Obligor and Annuity Issuer to deliver all Assigned Payments to RSL Funding received after the date this Transfer Agreement is executed by all parties and agrees to forward all Assigned Payments to RSL Funding Assignor receives after the execution of this Transfer Agreement. RSL Funding shall deposit the forwarded payments into an escrow account and hold such forwarded payments until the court considers the matter (hereinafter "held payments"). After the hearing, RSL Funding shall account for the held payments, subject to any lawful offsets and credits, and forward the amount of the held payments due and owing to Assignor in the usual course of business. Payment of the Assignment Price is subject to all the terms and conditions set forth herein and in the Disclosure Statement.

6. **Representations and Warranties.** Assignor hereby makes the following unconditional representations and warranties, each of which is agreed to be material to this Agreement and which form the basis of RSL Funding's obligations under this Agreement and for whose breach Assignor agrees to unconditionally indemnify RSL Funding:

- a. Assignor's name is Rickey Newsome with a social security number of _____. Assignor has never been known by or used any other name or social security number.
- b. Assignor is the sole holder of the entire right, title, and interest in and to the Assigned Payments and under the above referenced Servicing Arrangement, the Assignor may be the sole holder of the remainder of the difference between the Assigned Payments and Periodic Payments with full power and authority to enter into and perform all of Assignor's obligations under this Agreement, without the need to obtain the consent of any third party to do so. It is Assignor's sole responsibility promptly to obtain any consents, waivers, or releases needed.
- c. Assignor is entitled to the Assigned Payments, free and clear of any right, interest, lien, charge, encumbrance, or claim of any other person. Assignor has not previously conveyed, sold, assigned, pledged, or otherwise encumbered any portion of the Assigned Payments, to any person or entity. No other person, with or without Assignor's knowledge or consent, has previously conveyed, sold, assigned, pledged, or otherwise encumbered any portion of the Assigned Payments, to any person or entity. Assignee and its affiliates are authorized by Assignor, and Assignor has obtained and/or provided all

*Assignor affirms that Assignor is not married  *[Assignor's initials, if applicable]*

* OR *

(Assignor's initials, if applicable)

Assignor is married and Assignor's Spousal Consent Form is attached and incorporated into this Transfer Agreement [Assignor's initials, if applicable]

Rickey Newsome A-TX 6841

Page 2 of 7

R.A.T
initials

required authorizations to obtain and file any document as Assignee deems appropriate to effect the sale of the Assigned Payments.

d. No lawsuits or claims are pending or threatened against Assignor or Assignor's property and Assignor does not know of any basis for any such lawsuit or claim.

e. Assignor has no unpaid obligation to any former spouse for support, maintenance or similar obligations. Assignor has no unpaid child support or similar payment obligation.

f. Assignor has paid all federal, state and local taxes due and owing through and including the date of Assignor's signing of this Agreement (including current estimated obligations). Assignor has no outstanding or unsatisfied judgments of federal, state, or local tax or other liens against Assignor or the Assigned Payments. Assignor has previously filed all required income and other tax returns. Assignor has not filed for bankruptcy within the last five (5) years. Assignor agrees to provide all documentation in support thereof to RSL Funding to facilitate and expedite the court approval process.

g. Assignor is not in arrears or default on any student loan. Assignor has not received Aid to Families with Dependent Children, food stamp benefits, or low income energy assistance benefits.

h. Assignor has been advised by RSL Funding to seek independent professional advice regarding this transfer. Assignor has had the opportunity to obtain such independent professional advice and has either received that independent advice or freely chosen to waive obtaining such. In entering into this Agreement and considering the ongoing consequences thereof, Assignor has not relied in any way on RSL Funding or any person employed by or associated or affiliated with RSL Funding or its lawyers for advice concerning, among other things, the legal, tax or financial consequences of the transaction contemplated by this Agreement.

i. Assignor is an adult of sound mind, is not acting under duress, and at the time of signing both this Agreement and the Disclosure Statement is not under the influence of alcohol or any other substance or drug or impaired by any condition that would prevent Assignor from fully consenting to this Agreement as evidenced by Assignor's signature below. Assignor has inquired of third-parties as to other financial options available, including solicitation of offers from other structured settlement purchasers, and has concluded that entering into this Agreement is in the best interest of the Assignor and Assignor's dependents so that Assignor shall work exclusively with RSL Funding to the exclusion of all other potential purchasers to complete the Transfer.

j. Assignor does not need or depend on the Assigned Payments for payment of Assignor's current or future living expenses (food, housing, clothing, medical care, etc.) and Assignor has other means of providing for Assignor's living expenses and the living expenses of Assignor's dependents.

k. Assignor acknowledges and stipulates that damages arising from Assignor's breach of the Transfer Agreement by Assignor are fifteen percent of the Assigned Payments or actual damages whichever is greater; however, in the case of a breach of the right of first refusal, the liquidated damages are fifteen percent of the Periodic Payments transferred by Assignor in breach of the right of first refusal.

l. The representations and warranties are true, correct, and not misleading as of the date of Assignor's execution of this Agreement and Assignor has not failed to disclose any information to RSL Funding which a reasonable person might consider to be material or relevant to a purchaser in considering whether to enter into this Agreement. Assignor shall not take any action (and shall refrain from taking any action) that might cause the representations and warranties to become untrue, incorrect, or misleading. Further, Assignor shall immediately notify RSL Funding of any event, fact or circumstance that would render any of the representations and warranties untrue, incorrect, or misleading. All of Assignor's representations and warranties made herein regarding the Assigned Payments also apply in full to the Periodic Payments except for those prior transfers disclosed in writing to RSL Funding prior to Assignor's execution of this Transfer Agreement. The foregoing representations and warranties are made by Assignor with the full knowledge and expectation that RSL Funding is placing complete reliance thereon.

7. Covenants; Conditions Precedent to RSL Funding's Obligations. Assignor covenants that each of the representations and warranties made herein continue to be true as and of the date(s) of payment of the Assignment Price by RSL Funding. Except as may be expressly waived in writing by RSL Funding, RSL Funding's obligation to pay all or any portion of the Assignment Price is subject to: (i) the representations and warranties made herein being true when made as and of the date(s) the Assignment Price is paid; and (ii) RSL Funding having received the approval of a court for the sale and assignment contemplated in this Agreement. Assignor acknowledges that RSL Funding has no obligation to pay Assignor until Assignee obtains the Final Order. Additionally, Assignee's obligations to pay the Assignment Price hereunder are subject to the receipt and approval by Assignee of all documentation related to: (i) the Periodic Payment (e.g., the annuity contract, the settlement agreement and the related court order); and (ii) any prior transfer by Assignor of any Periodic Payments.

8. Agreed Offsets to Assignment Price.

a. Assignment Price Reduction. The Assignment Price shall be reduced by any legal/attorneys' fees set forth in the Disclosure Statement and by any Assigned Payments received by Assignor.

b. Certain Debts Paid. If Assignor owes back taxes, past due child support or has garnishments, recorded judgments or liens or similar encumbrances, RSL Funding shall determine which debts, claims, or liabilities must be paid at closing. RSL Funding may, in its sole discretion, pay those debts for Assignor's account, and deduct the amounts from the Assignment Price. In order to obtain full right, title and interest in the Assigned Payments, RSL Funding may pay any amounts necessary to discharge any liens or other claims adverse to the Assigned Payments, whether or not such adverse claims were disclosed by Assignor and regardless of the nature of the claim. Upon written notice to Assignor of payment of such an adverse claim, the Assignment Price shall be reduced by such payment. In the event that any reduction of or obligation affecting the Assigned Payments arises after the Purchase Price is paid to Assignor, Assignor shall indemnify RSL Funding for any such amounts paid or payable by RSL Funding or which result in a reduction of the Assigned Payments received by RSL Funding.

c. Other Possible Deductions from the Assignment Price. If some of the Assigned Payments are paid or payable to Assignor or third-parties (and/or will not ultimately be paid to RSL Funding or its successors or assigns) before or after the Assignment Price is paid, the Assignment Price shall be reduced "dollar for dollar" (that is, without time value adjustment) for the payments to Assignor and/or third-parties and/or which RSL Funding will not be receiving. As well, if any advances are made to Assignor by RSL Funding, such advances similarly shall be deducted from the amount due Assignor hereunder also on a "dollar for dollar" basis plus any accrued interest due thereon.

d. "Holdbacks" While Address Change is Processed. After being notified of the Final Order, it may take some time for the Annuity Issuer to process the change of address. If the Assigned Payments include monthly payments that are scheduled to be paid within three months of the issuance of the Final Order, RSL Funding will withhold a portion of the Assignment Price equal to three monthly payments until such time as the Annuity Issuer actually begins to redirect payments to RSL Funding pursuant to the Final Order.

e. Misrouted Payments. Even after a Final Order, an Assigned Payment may be misrouted or mislabeled by Annuity Issuer. In the event that Assigned Payments are instead sent to Assignor, Assignor agrees to hold these payments in trust for RSL Funding and immediately turn over these Assigned Payments to RSL Funding. Similarly, in the event that Assigned Payments are sent to RSL Funding but made payable to Assignor, Assignor hereby grants to RSL Funding an irrevocable limited power of attorney authorizing RSL Funding to cash any such checks and deposit them to RSL Funding's collection account.

9. Security Agreement. To secure the prompt and complete payment, performance and observance of all of the obligations of Assignor under this Transfer Agreement and regardless of whether such transfer and assignment is consummated and in furtherance of the right of first refusal set forth in this Agreement, Assignor hereby grants, assigns, conveys, mortgages, pledges, hypothecates and transfers to RSL Funding, a security interest (lien) upon all of Assignor's right, title and interest in, to and under all the Periodic Payments (hereinafter the "Collateral"), to secure payment of the Assigned Payments to RSL Funding and Assignor's other obligations hereunder. Additionally, Assignor hereby irrevocably authorizes RSL Funding at any time and from time to time to file in any filing office

in any jurisdiction any initial financing statements and amendments thereto covering payments due from the Annuity Issuer to secure RSL Funding's rights hereunder and containing any other information required by Article 9 of the Uniform Commercial Code or its equivalent for the filing office's acceptance of any financing statement or amendment. This Agreement shall function as a security agreement. RSL Funding is authorized to direct Annuity Issuer and/or Settlement Obligor to forward any and all of the Assigned Payments directly to RSL Funding in furtherance of this Agreement.

10. **Power of Attorney.** Assignor hereby grants to RSL Funding an Irrevocable Power of Attorney with full powers of substitution to do all acts and things that Assignor might do regarding the Assigned Payments and any and all rights Assignor has under the Settlement Agreement, including, without limitation, the power to endorse checks, drafts or other instruments, the power to alter, edit and change payment instructions and/or beneficiary designation and any other act which, in the sole discretion of RSL Funding as Assignor's Attorney-in-Fact, is necessary or expedient for RSL Funding to obtain all of the benefit of the bargain contemplated by this Agreement. This power of attorney is coupled with an interest and shall survive Assignor's death or disability.

11. **Further Assurances.** Assignor shall fully cooperate with RSL Funding, including making any court appearances as reasonably requested by RSL Funding in obtaining the court order and/or acknowledgment referred to above and in the taking of or performing any and all acts necessary to facilitate the objectives of this Agreement. Assignor shall execute any additional documents as RSL Funding may reasonably request. Assignor shall immediately endorse and forward to RSL Funding, as applicable, any Assigned Payment which may be made out to Assignor or which Assignor receives.

12. In consideration of the Transfer Agreement's execution, Assignor hereby grants and conveys to RSL Funding a ten (10) day right of first refusal beginning upon RSL Funding's receiving actual written notification of an offer to purchase or otherwise acquire any Periodic Payments, as follows: If Assignor receives an oral or a written offer to sell, assign, borrow against, pledge or otherwise encumber any Periodic Payments and Assignor desires to enter into a transaction involving the sale, assignment, borrowing against, pledging, or other encumbrance thereof, Assignor agrees to immediately notify RSL Funding in writing: (a) that Assignor has received an offer; and (b) describing in detail all terms of said offer along with providing all writings evidencing such. Assignor agrees to direct any other purchaser to directly pay over to RSL Funding fifteen percent of the amount of Periodic Payments transferred by Assignor to a person in breach of this paragraph. See also the Disclosure Statement.

13. **Other Provisions.**

a. **Choice of Law; Arbitration; Waiver of Jury Trial.** Disputes under this Agreement of any nature whatsoever including but not limited to those sounding in constitutional, statutory, or common law theories as to the performance of any obligations, the satisfaction of any rights, and/or the enforceability hereof, including any claims that the Assignor has breached this Agreement, shall be resolved through demand by any interested party to arbitrate the dispute under the laws of Assignee's domicile to the maximum extent possible (including the Federal Arbitration Act which shall be controlling) and shall submit the same to a neutral arbitration association (including but not limited to Conflict Resolution Solutions, PLLC of Houston) or arbitrator for resolution pursuant to its single arbitrator, expedited rules. Notwithstanding anything else to the contrary herein or elsewhere, the arbitrator shall award attorneys' fees and costs against the breaching, defaulting or repudiating party. If the first arbitration organization or arbitrator which receives a written demand for arbitration of the dispute from any interested party does not complete the arbitration to finality within four months of the written demand, any interested party then may file a written demand for arbitration of the dispute with another neutral arbitration association or arbitrator, with the prior arbitration association or arbitrator then being immediately divested of jurisdiction, subject to a decision being rendered by the replacement arbitration association within four months of the written demand being filed with the replacement arbitration group. The arbitration decision shall be final and binding in all respects and shall be non-appealable. Any person may have a court of competent jurisdiction enter into its record the findings of such arbitrators for all purposes, including for the enforcement of the award. In any event, the parties to this Agreement hereby waive the right to trial by jury in any action or proceeding instituted with respect to this Agreement. The aforementioned provisions contained in this paragraph shall be effective notwithstanding any actions that may take place after the execution of this Agreement, and regardless of whether such transfer and assignment is consummated. The parties hereto agree that the issue of arbitrability shall likewise be decided by the arbitrator, and not by any other person. That is, the

question of whether a dispute itself is subject to arbitration shall be decided solely by the arbitrator and not, for example by any court. In so doing the intent of the parties is to divest any and all courts of jurisdiction in disputes involving the parties, except for the confirmation of the award and enforcement thereof.

b. Priority of Periodic Payments. To the extent that, after the date hereof, the Annuity Issuer or the Annuity Owner is placed in receivership, rehabilitation, liquidation, or is subject to any other proceeding or action of any kind whatsoever where the Periodic Payments are reduced, delayed or otherwise impaired, Assignor agrees to and upon entry of an order of transfer shall be deemed to subordinate Assignor's rights to receive any Periodic Payments not included in the Assigned Payments, so that (i) any reduction, delay or impairment in Periodic Payments is first applied against the Periodic Payments not included in the Assigned Payments, so as to leave the Assigned Payments whole and unaffected by any such reduction, delay or impairment; (ii) any Periodic Payments made after a reduction, delay or impairment has occurred are first applied to the Assigned Payments; and (iii) any insurance fund benefit or other similar payment will be applied in the following order: First, to the Assigned Payments until the Assigned Payments have been made whole and current; Second, any remaining balance is then applied to make whole the holder of the Assigned Payments as to Assigned Payments which are not yet due and payable, but which may possibly be delayed, reduced, or impaired; Third, any remaining balance is then applied to make whole and current the Periodic Payments which are not included in the Assigned Payments; Fourth, any remaining balance is then applied with respect to any unpaid, but not yet due, Periodic Payments.

c. Counterparts; Headings; Recitals. This Agreement may be executed in multiple counterparts as originals or as faxes, each of which shall be deemed an original and all of which together when executed by all parties below shall constitute a single instrument. The Agreement's headings are for reference only and shall not affect in any way the meaning or interpretation of this Agreement. The recitals herein shall be construed as Assignor's representations and warranties.

d. Effect; Severability; Amendment; Waiver; Assignment; Other. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and permitted assigns. If any provision of this Agreement is found to be invalid or unenforceable, the validity or enforceability of any other provision of this Agreement shall not be affected thereby. This Agreement may not be amended or modified, or any provision deemed waived, except by written instrument signed by all of the parties hereto, and as to RSL Funding, only with the signature of its Chief Executive Officer. The waiver or modification by a party of performance or breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other performance or breach thereof. RSL Funding may assign the right to receive the Assigned Payments to all or any portion of its right, title, and interest in and to this Agreement, the Settlement Agreement, the Annuity, and the Assigned Payments without the consent of any other person. If and when RSL Funding assigns the right to receive the Assigned Payments to RSL Funding's assignee, the references herein to the right to receive the Assigned Payments only shall be understood to mean RSL Funding's assignee.

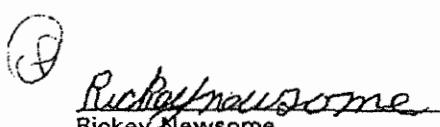
e. Notices. All notices, demands, and other communications required or permitted hereunder shall be made in writing and shall be effective upon actual or constructive receipt at the address shown above or otherwise for the parties.

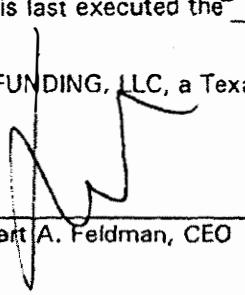
f. No Rule of Construction; Entire Agreement; Independent Representation. The parties hereto have participated in negotiating and drafting this Agreement, and no rule of construction shall apply to this Agreement which construes any language, whether ambiguous, unclear, or otherwise, in favor of either party. This Agreement constitutes the entire agreement and understanding of the parties with respect to the matters and transactions contemplated hereby and supersedes any and all prior agreements and understandings with respect thereto. All prior agreements of the parties, whether written or oral, have been merged into and incorporated herein. No statements have been made, or relied upon, by either party except those set forth in this Agreement. This Agreement shall take effect on the date on which it is last executed by either party. **ASSIGNOR SHALL HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHIN THREE (3) BUSINESS DAYS OF ASSIGNOR'S EXECUTION.**

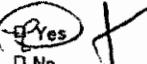
IN WITNESS WHEREOF, this Agreement is last executed the 24th day of Sept, 2011.

ASSIGNOR:

RSL FUNDING, LLC, a Texas limited liability company


Rickey Newsome

By: 
Stewart A. Feldman, CEO

Life Addendum (incorporated herein): Yes 

No



Rickey Newsome A-TX 6841

Page 7 of 7

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Ric
initials

IN THE ARBITRATION OF
RSL FUNDING, LLC, ET AL., CLAIMANTS
vs. RICKEY NEWSOME, RESPONDENT

SCHEDULING ORDER

This proceeding is being conducted Pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA) as administered by Conflict Resolution Systems, PLLC which for purposes of the disputes among the parties includes the election for a single arbitrator, and having adopted the AAA's Expedited Procedures and Optional Rules of the AAA For Emergency Measures of Protection (regarding injunctive or equitable relief, which requests for relief shall be exclusively be submitted to the arbitrator). A scheduling conference was held on July 16 & 17, 2019, before Arbitrator Scott Link. The following is based upon the Arbitrator's interpretation and application of the applicable rules.

Arbitrator Scott Link has been informed that Rickey Newsome has filed a Petition for Writ of Certiorari (the "Petition") with the United States Supreme Court, seeking a review of the decision/judgment of the Texas Supreme Court, relative to the motion to compel arbitration filed by RSL Funding, LLC at the trial court level. That Petition remains pending with the United States Supreme Court. Newsome maintains that this arbitration should be abated, pending resolution of the Petition by the Supreme Court, and if the Petition is granted and the Supreme Court accepts the case for a review of the decision of the Texas Supreme Court dated December 21, 2019, that this arbitration should then be abated until the Supreme Court decides the case. RSL maintains that the arbitration should move forward until and unless Newsome obtains a stay of the arbitration from the United States Supreme Court pursuant to 28 U.S.C § 2101. The Arbitrator has decided to move forward with the arbitration.

Newsome's participation in this arbitration shall not constitute a waiver by him of any right of appeal, including Newsome's right to pursue the Petition currently pending with the United States Supreme Court, and shall not constitute an admission or acknowledgement that this arbitration is proper or appropriate and Newsome continues to preserve and has not waived any and all legal rights and arguments, to be made in this or in any court proceeding, that arbitration of this case is improper, impermissible, and/or prohibited by applicable law. Moreover, the Arbitrator has not yet determined the Arbitrability Issue described and defined below and has determined that this arbitration shall be conducted as a bifurcated proceeding, whereby the Arbitrability Issue shall be decided first, before moving on to the merits of the parties' claims and defenses.

By Order of the Arbitrator, the following is now in effect:

July 19, 2019	Claimants' final amended demand for arbitration is due.
August 9, 2019	Respondents' objections to arbitration and/or the jurisdiction and/or authority of the arbitrator to hear the merits of any claims asserted in this case, including the legal authority of the arbitrator to hear and decide the case and whether the issues/claims/defenses asserted or claimed by the parties are or should be arbitrable under the relevant documents and applicable law (the "Arbitrability Issue"), are due. Respondents' final answering statement/counterclaims are due.

Respondents' participation in this proceeding both before and after the Arbitrator has ruled on the Arbitrability Issue shall be without prejudice and shall not constitute a waiver of any such objections, as Respondent Rickey Newsome has preserved all rights and objections. Respondent Rickey Newsome has also indicated that he is pursuing a stay of these proceedings from the United States Supreme Court, pending resolution of the Petition referenced above.

August 23, 2019 Claimants' responses to Respondents' jurisdictional objections to arbitration and/or the arbitrator, and any motions/objections relative to the Arbitrability are due. Claimants' answer to any counterclaim is due.

August 28, 2019 The Reply of Respondent to Claimant's response to any motion/objection of Respondent relative to the Arbitrability Issue is due.

September 5, 2019 If necessary, Arbitrator will hold a telephonic hearing to resolve Respondents' jurisdictional objections to arbitration and/or the arbitrator and/or any motion/objection of Respondent relating to the Arbitrability Issue.

September 10, 2019 Arbitrator shall decide any jurisdictional objections to arbitration and/or the arbitrator and/or any motion/objection of Respondent relating to the Arbitrability Issue in a written ruling.

See below. **EXPERT WITNESS DESIGNATION.** The disclosure of expert witnesses shall include the full name, address and phone number of the witness, a short summary of anticipated testimony, a CV and a list of file materials reviewed and copies of any other documents reviewed in preparation of his testimony must be disclosed. Each party shall be responsible for updating its disclosures as new information becomes available. The duty to update this information continues up to and including the date that hearings in this matter terminate. Expert witness designations must be served by the following dates:

- (a) Experts for parties seeking affirmative relief: By the close of business on Sept. 16, 2019.
- (b) All other experts: By close of business on Sept. 23, 2019.

September 16, 2019 **DISCOVERY PERIOD ENDS.** All written discovery must be served by this date with the responding party answering discovery within seven days (7) of receipt of the discovery. Objections shall be filed within three (3) business days and heard within the following three (3) business days. Each side is limited to eight (8) interrogatories, eight (8) requests for admissions and eight (8) requests for production.

Sept. 27, 2019 **DEPOSITION DISCOVERY ENDS.** All depositions must be completed by this date. Each side is limited to a total of four hours, with no more than three (3) hours per witness.

Oct. 11, 2019 **DISPOSITIVE MOTIONS AND PLEAS.** Must be submitted to the Arbitrator. Responses by October 16, 2019.

Oct. 4, 2019 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidence challenges to expert testimony must be filed by this date. Responses by October 11, 2019.

October 18, 2019 **PRE-HEARING SUBMISSIONS.** (1) The parties shall file with Arbitrator all exhibits to be offered or used at the hearing pre-marked by the side with numbers beginning with "C1" for Claimants and "R1" for Respondents. (2) The parties shall each file lists of witnesses they intend to call at the hearing whether by a document, deposition or live.

FINAL HEARING. The hearing will be held on October 21, 2019, and October 22, 2019 beginning at 9:00 a.m. daily CST in the offices of Scott Link, 4400 Post Oak Parkway, Suite 2850, Houston, TX 77027. The parties estimate the hearing will take no more than 2 days of hearing time.

October 30, 2019 Post-Hearing Submission, if any, by either side must be submitted to Arbitrator.

October 30, 2019 **Attorney's Fee Affidavit.** The issue of attorney's fees will be submitted to the Arbitrator via affidavit. Any party seeking attorney's fees will submit an affidavit following applicable state law for submitting same by October 30, 2019. Any objections/responses to a filed attorney's fee affidavit will be submitted by November 4, 2019.

The Arbitrator will issue a **Reasoned Award** by November 8, 2019. Any party can provide at their expense a court reporter, in which event the transcript will be provided to all parties and the Arbitrator. All deadlines stated herein will be strictly enforced. All filings in this matter shall be simultaneously made by email with pdf attachment to all parties and the Arbitrator, with follow up hard copies to every party should hard copies be provided to the Arbitrator or any person. After such deadline, the parties may not file such motions except with the permission of the Arbitrator, good cause having been shown. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

STANDING ORDER - Whenever any motion or request for any type of discovery is filed and served on the opposing party, the respondent has seven (7) business days to file and serve his response, including producing documents and witnesses. Any objections to discovery or depositions shall be filed within three (3) business days of the receipt of same.

Any and all documents to be filed with or submitted to the Arbitrator outside the hearing:

- a) Shall be given to the Arbitrator. COPIES OF SAID DOCUMENTS SHALL ALSO BE SENT SIMULTANEOUSLY TO THE OPPOSING

PARTIES BY THE SAME METHOD OF DELIVERY PROVIDED TO THE ARBITRATOR. There shall be no direct oral or written ex parte communication between any party and the Arbitrator. Settlement discussions shall not be provided to the Arbitrator.

Signed this ____ day of July, 2019.



Scott Link, ARBITRATOR

AGREED:

L. Andy Paredes
Attorney for Claimants

Earl Nesbitt
Attorney for Respondent
Rickey Newsome
Pro Se

RE: Case No. 16-0998
COA #: 05-15-00718-CV

STYLE: RSL FUNDING, LLC v. NEWSOME

DATE: 6/28/2019
TC#: DC-14-14580-L

EXHIBIT 26

Today the Supreme Court of Texas denied the Respondent's Motion to Recall Issuance, or Alternatively Stay Enforcement, of the Mandate denied in the above-referenced case.

MS. LISA MATZ
CLERK, FIFTH COURT OF APPEALS
600 COMMERCE, SUITE 200
DALLAS, TX 75202-4658
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 6/28/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the Respondent's Motion to Recall Issuance, or Alternatively Stay Enforcement, of the Mandate denied in the above-referenced case.

MR. PATRICK PAUL SICOTTE
NESBITT, VASSAR & MCCOWN, L.L.P.
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TX 75001
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 6/28/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the Respondent's Motion to Recall Issuance, or Alternatively Stay Enforcement, of the Mandate denied in the above-referenced case.

DISTRICT CLERK DALLAS COUNTY
DALLAS COUNTY COURTHOUSE
GEORGE L. ALLEN, SR. COURTS BUILDING
600 COMMERCE, SUITE 103
DALLAS, TX 75202
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 6/28/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the Respondent's Motion to Recall Issuance, or Alternatively Stay Enforcement, of the Mandate denied in the above-referenced case.

MR. E. JOHN GORMAN
THE FELDMAN LAW FIRM LLP
TWO POST OAK CENTRAL
1980 POST OAK BOULEVARD, SUITE 1900
HOUSTON, TX 77056-3877
* DELIVERED VIA E-MAIL *

RE: Case No. 16-0998
COA #: 05-15-00718-CV

DATE: 6/28/2019
TC#: DC-14-14580-L

STYLE: RSL FUNDING, LLC v. NEWSOME

Today the Supreme Court of Texas denied the Respondent's Motion to Recall Issuance, or Alternatively Stay Enforcement, of the Mandate denied in the above-referenced case.

MR. EARL S. NESBITT
NESBITT, VASSAR & MCCOWN, L.L.P.
15851 DALLAS PARKWAY, SUITE 800
ADDISON, TX 75001
* DELIVERED VIA E-MAIL *

Order entered June 10, 2015



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00718-CV

RSL FUNDING, LLC AND RSL SPECIAL-IV, LIMITED PARTNERSHIP , Appellants

V.

RICKY NEWSOME, Appellee

On Appeal from the 193rd Judicial District Court

Dallas County, Texas

Trial Court Cause No. DC-14-14580-L

ORDER

Before Justice Lang-Miers, Evans and Whitehill

Before the Court is Appellants' Emergency Motion to Stay Trial Court Proceedings filed June 9, 2015. We **GRANT** the motion and **ORDER** all proceedings in the trial court stayed pending further order of this Court.

/s/ **BILL WHITEHILL**
JUSTICE