APPENDICES

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 20-11239

IN THE MATTER OF: WILLIAM PAUL BURCH

Debtor,

WILLIAM PAUL BURCH,

Appellant,

versus

HOMEWARD RESIDENTIAL, INCORPORATED,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-1226

ON PETITION FOR REHEARING

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 29, 2022
Lyle W. Cayce
Clerk

No. 20-11239
Summary Calendar

IN THE MATTER OF WILLIAM PAUL BURCH

Debtor,

WILLIAM PAUL BURCH,

Appellant,

versus

HOMEWARD RESIDENTIAL, INCORPORATED,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-1226

Before SOUTHWICK, GRAVES, and COSTA, *Circuit Judges*.

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

William Paul Burch moves to proceed in forma pauperis (IFP) in his appeal from the district court's without-prejudice dismissal of a final judgment of the bankruptcy court for the Northern District of Texas. Burch's request to supplement his IFP motion is granted.

To proceed IFP, a litigant must be economically eligible, and his appeal must not be frivolous. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). If the appeal is frivolous, this court will dismiss it. *See* 28 U.S.C. § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

In a motion in this matter, which this court denied, Burch requested a remand, asserting that, due to a favorable change in his financial situation, he could now pay the filing fee for his bankruptcy appeal. Even before Burch's concession regarding his improved financial situation, we held Burch was not financially eligible to proceed IFP on appeal. *See Burch v. Freedom Mortg. Corp.* (*Matter of Burch*), 835 F. App'x 741, 749 (5th Cir.), *cert. denied*, 142 S. Ct. 253 (2021), *rehearing denied*, No. 21-5069, 2021 WL 5763451 (U.S. Dec. 6, 2021). Further, Burch's conclusional assertions of error, without cogent argument, effectively fail to identify any error in the dismissal of his bankruptcy appeal for failing to pay the filing fee, and he has not he has not shown a nonfrivolous issue on appeal. *See Carson*, 689 F.2d at 586. Accordingly, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous. *See* § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

In prior instances, we have issued sanction warnings and directed Burch to review his pending appeals and withdraw any that were frivolous. *See, e.g., Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 294 (5th Cir. 2021); *Matter of Burch*, 835 F. App'x at 749. Because Burch failed to heed our warnings, we previously imposed monetary sanctions. *Burch v. Select Portfolio Servicing, Inc.* (*Matter of Burch*), No. 20-11171, 2022 WL 212836, *1 (5th Cir. Jan. 24, 2022) (unpublished) ($250 sanction); *Burch v. America's*

Servicing Company (Matter of Burch), No. 20-11074, 2021 WL 5286563, *1 (5th Cir. Nov. 12, 2021) (unpublished) ($100 sanction).

Burch, who has paid the above-mentioned monetary sanctions, has repeatedly ignored our admonitions, and we conclude that an additional monetary sanction is warranted. Burch is hereby ordered to pay $500.00 to the clerk of this court. The clerk of this court and the clerks of all courts subject to the jurisdiction of this court are directed to return to Burch unfiled any submissions he should make until the sanction imposed in this matter is paid in full.

We again warn Burch that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous.

MOTION TO SUPPLEMENT GRANTED; IFP MOTION DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTION IMPOSED; ADDITIONAL SANCTION WARNING ISSUED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

WILLIAM PAUL BURCH,	§	
	§	
Debtor/Appellant,	§	
	§	
v.	§	**Civil Action No. 4:20-cv-01226-O**
	§	
HOMWARD RESIDENTIAL INC.,	§	
	§	
Appellee.	§	

ORDER

On December 9, 2020, the Court issued an order requiring that Appellant pay the filing fee. ECF No. 3. The deadline for Appellant's filing fee payment was December 17, 2020. As of the date of this order, however, Appellant has not done so, nor has he sought an extension of time.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Appellant has been given ample time to pay the filing fee. He has declined to do so. Therefore, this action is **DISMISSED without prejudice** for failure to comply with a court order and for lack of prosecution. *See* Fed. R. Civ. P. 41(b) (an involuntary dismissal "operates as an adjudication on the merits," unless otherwise specified).

SO ORDERED on this **18th day** of **December, 2020.**

APPENDIX D

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 27, 2020

Mark X. Mullin
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

In re:	§	
	§	
William Paul Burch,	§	Case No. 12-46959-mxm-7
	§	
Debtor.	§	Chapter 7
	§	

	§	
William Paul Burch,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 20-4063
	§	
Homeward Residential, Inc.,	§	
	§	
Defendant.	§	
	§	
	§	
	§	

ORDER GRANTING MOTION TO VACATE
INTERLOCUTORY DEFAULT JUDGMENT
[Relates to Adv. ECF No. 7]

Before the Court is the motion to vacate an interlocutory default judgment (the "***Motion to Vacate***") under Federal Civil Rule 54(b), filed by defendant Homeward Residential, Inc. ("***Homeward***").[1] Homeward asks the Court to vacate an interlocutory default judgment (the "***Default Judgment***")[2] entered in the 348th Judicial District Court of Tarrant County, Texas under Cause No. 348-307179-19 (the "***State Court Lawsuit***"). Plaintiff William Paul Burch (the "***Plaintiff***" or the "***Debtor***") initiated the State Court Lawsuit with the filing of his *Plaintiff's Original Quiet Title Petition* (the "***Complaint***").[3] For the reasons described below, the Court agrees that the Motion to Vacate should be granted.

I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

II. PROCEDURAL BACKGROUND[4]

A. The Debtor's bankruptcy filings and confirmed plans

On December 1, 2008, the Debtor and Juanita Burch filed for Chapter 11 bankruptcy (the "***2008 Bankruptcy Case***") to prevent foreclosure on multiple properties, including property

[1] *Motion to Vacate Interlocutory Default Judgment and Brief in Support Thereof*, Adv. ECF No. 7.

[2] Adv. ECF No. 1-2, at 73/121.

[3] Adv. ECF No. 1-2, at 2/121.

[4] The documents cited in this section are either referred to in, or attached to, the Complaint, or are matters of which this Court can take judicial notice.

located at 420 Georgetown Drive, Everman, Texas (the "***Georgetown Property***") and property located at 426 Falling Leaves Drive, Duncanville, Texas (the "***Falling Leaves Property***").[5]

On December 29, 2008, American Home Mortgage Servicing, Inc., as servicing agent for Deutsche Bank Trust Company Americas as Indenture Trustee for American Home Mortgage Investment Trust 2006-2, Mortgage-Backed Notes, Series 2006-2, filed proof of claim number 19-1 in the 2008 Bankruptcy Case, asserting a claim for $62,266.25, secured by a mortgage on the Georgetown Property.[6] Various loan documents were attached to the proof of claim, including a note and deed of trust (together, the "***Georgetown Loan Documents***").

On December 29, 2008, American Home Mortgage Servicing, Inc., as servicing agent for JPMorgan Chase Bank, National Association, not individually but solely as Trustee for the Holders of Structured Asset Mortgage Investments II, Inc., Mortgage Pass-Through Certificates, Series 2006-AR5, filed proof of claim number 20-1 in the 2008 Bankruptcy Case, asserting a claim for $87,731.04, secured by a mortgage on the Falling Leaves Property.[7] Various loan documents were attached to the proof of claim, including a note and deed of trust (together, the "***Falling Leaves Loan Documents***").

On December 9, 2009, the Court entered an *Order Confirming Debtor's Third Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Confirmation Order***"),[8] which confirmed the Debtors' *Fourth Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Chapter 11***

[5] *See* Case No. 08-45761-RFN-11.

[6] Claim 19-1, Case No. 08-45761-RFN-11.

[7] Claim 20-1, Case No. 08-45761-RFN-11.

[8] ECF No. 246, Case No. 08-45761-RFN-11.

Plan") [9] that is attached as Exhibit A to the 2008 Bankruptcy Case Confirmation Order. Section 5.5 of the 2008 Bankruptcy Case Chapter 11 Plan provided for treatment of the claims of "America [*sic*] Home Mortgage," which the plan listed as the "mortgage holder" on the Falling Leaves Property and the Georgetown Property.[10]

The specific treatment as to the Falling Leaves Property was as follows:

> The Debtor shall surrender the Falling Leaves property in full satisfaction of the debt pursuant to 11 U.S.C. 1129(b)(2)(A)(iii).[11]

The specific treatment as to the Georgetown Property was as follows:

> Based upon the Debtors' current value of the Georgetown property, the Debtors will enter into a New Georgetown Note in the original principal amount of $59,500 ("New Georgetown Note"). The New Georgetown Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Georgetown Note in 360 equal monthly payments of $302.29 commencing on the Effective Date.[12]

No party appealed the 2008 Bankruptcy Case Confirmation Order. The 2008 Bankruptcy Case was closed on September 11, 2012.

On December 28, 2012, Burch filed for Chapter 13 bankruptcy (the "***2012 Bankruptcy Case***").[13] The 2012 Bankruptcy Case was converted to Chapter 11 on December 23, 2013.[14]

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[9] *Fourth Amended Plan of Reorganization of William & Juanita Burch Pursuant to Section 1125 of the Bankruptcy Code Dated October 16, 2009*, ECF No. 244, Case No. 08-45761-RFN-11.

[10] 2008 Bankruptcy Case Chapter 11 Plan § 5.5.

[11] *Id.*

[12] *Id.*

[13] *Voluntary Petition*, ECF No. 1, Case No. 12-46959.

[14] *Order Converting Case from Chapter 13 to Chapter 11*, ECF No. 100, Case No. 12-46959.

On January 5, 2016, the Plaintiff filed an amended Chapter 11 plan of reorganization (the "***2012 Bankruptcy Case Chapter 11 Plan***"),[15] and on February 1, 2016, the Court entered an order confirming that plan (the "***2012 Bankruptcy Case Confirmation Order***").[16]

Nothing in the 2012 Bankruptcy Case Chapter 11 Plan or Confirmation Order provided, or even suggested, that the Debtor was retaining any causes of action related to the Georgetown Property or Falling Leaves Property, including any claims related to language in the 2008 Bankruptcy Case Chapter 11 Plan or related to events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

The 2012 Bankruptcy Case was converted to Chapter 7 on January 30, 2018 based in part on the Plaintiff's material defaults under the 2012 Bankruptcy Case Chapter 11 Plan.[17]

B. The Plaintiff's claims against Homeward related to the Georgetown Property and/or the Falling Leaves Property, the Default Judgment, and Homeward's related motions to vacate and to dismiss

On April 4, 2019, the Plaintiff filed his Complaint,[18] initiating the State Court Lawsuit. In the Complaint, the Plaintiff asserted claims against Homeward (i) under Texas Property Code section 53.160 for an allegedly invalid lien; (ii) under Texas Penal Code section 32.49 for refusal to execute a release of an allegedly fraudulent lien; (iii) under Texas Penal Code section 32.45 for misapplication of financial institution property; (iv) under Texas Civil Practice and Remedies Code section 12.003 for an allegedly fraudulent lien; (v) under Texas Business and Commerce Code section 27.01 for statutory fraud; (vi) for breach of contract; (vii) for quiet title; (viii) under

[15] *William Paul Burch's Amended Plan of Reorganization*, ECF No. 186, Case No. 12-46959.

[16] *Order Confirming Debtor's Plan of Reorganization*, ECF No. 188, Case No. 12-46959.

[17] *Order Granting Specialized Loan Servicing LLC's Motion to Dismiss with Prejudice or to Convert to Chapter 7*, ECF No. 354, Case No. 12-46959; *see also* ECF No. 390, Transcript of 1/25/18 hearing on conversion, at 46-51.

[18] Adv. ECF No. 1-2, at 2/121.

Texas Civil Practice and Remedies Code section 41.008 for gross negligence and punitive damages; and (ix) although not a separate count, for violations of the 2008 Bankruptcy Case Chapter 11 Plan and 2008 Bankruptcy Case Confirmation Order. All the Plaintiff's claims stem from the servicing of the mortgage encumbering the Georgetown and/or Falling Leaves Property. The Plaintiff also sought actual and punitive damages, pre- and post-judgment interest, and the production of documents. As explained in a detailed order dismissing the Complaint entered on this date, the Plaintiff's claims are completely without merit.

The Tarrant County District Clerk issued citation on April 9, 2019.[19] The citation was addressed to "Homeward Residential Holdings Inc." at "1525 S Belt Line Rd Coppell, TX 75019."[20]

On April 16, 2019, an Officer's Return was filed with the state court.[21] In the Officer's Return, April Bartlett, a Tarrant County deputy, indicated she received the citation on April 9, 2019 and served it, together with the Complaint, on "Homeward Residential Holdings Inc" by certified mail at "1525 S Belt Line Rd Coppell, TX 75019" on "the 7th day of April, 2019."[22] This, of course, is an impossibility; she could not have served the citation and Complaint two days before she received the documents.

[19] Adv. ECF No. 1-1, at 2/4.

[20] Adv. ECF No. 1-2, at 67/121.

[21] *Id.* at 66/121.

[22] *Id.*

By May 10, 2019, Homeward had neither answered nor appeared, so the Plaintiff filed an Application for Entry of Default, filed a corrected Application for Entry of Default, and was granted the Default Judgment on May 13, 2019.[23]

The Default Judgment removed an unspecified lien from the Georgetown Property and awarded Plaintiff over $1.4 million in unliquidated damages.[24] There is no record of any hearing held on the Default Judgment or the damages award.

The State Court Lawsuit records indicate the Default Judgment was served on Homeward on May 14, 2019, but according to Homeward, (a) Homeward never received the citation, the Complaint, or the Default Judgment; (b) those documents were apparently sent to an old address of the company and were not directed to anyone specific; and (c) Homeward only came to learn of the Default Judgment after Burch mentioned the judgment on a telephone call with Homeward's counsel.[25]

Homeward filed a notice of restricted appeal, and the appellate court dismissed the appeal for lack of jurisdiction after finding that the Default Judgment was not final because it did not dispose of all of the Plaintiff's claims.[26] The Plaintiff sought review of the dismissal by the Texas Supreme Court, which was denied.[27] The mandate was issued on August 19, 2020.[28]

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[23] Adv. ECF No. 1-1, 1-2, at 73/121.

[24] Adv. ECF No. 1-2, at 73/121.

[25] Motion to Vacate ¶ 12.

[26] Adv. ECF No. 1-2, at 108-115/121 (Default Judgment was interlocutory because, at a minimum, it did not dispose of Plaintiff's claims for Penal Code violations, prejudgment interest, and attorney's fees).

[27] Adv. ECF No. 1-2, at 116/121.

[28] *Id.* at 117/121.

On August 27, 2020, Homeward removed the State Court Lawsuit to this Court under 28 U.S.C. §§ 1452 and 1334,[29] thereby initiating this adversary proceeding (the "***Adversary Proceeding***").[30]

On September 28, 2020, Homeward filed a motion to dismiss the Complaint under Federal Civil Rule 12(b)(6),[31] which this Court is granting by separate order on this date.

On September 30, 2020, Homeward filed its Motion to Vacate, asking the Court to vacate and set aside the Default Judgment. The Plaintiff did not file a response to the Motion to Vacate.

The Court has reviewed the parties' filings, and the matter is now ripe for decision.

III. ANALYSIS

The Default Judgment is not a final judgment, but rather an interlocutory judgment.[32] Interlocutory default judgments may be revised, or reconsidered and vacated, at any time under Federal Rule of Civil Procedure 54(b).[33]

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[29] *Notice of Removal*, Adv. ECF No. 1.

[30] Although the Plaintiff has not challenged removal, the Court independently concludes that removal—accomplished several months after the Complaint was filed—was still timely under Bankruptcy Rule 9027 because Homeward's time to remove was never triggered by formal, proper service. *See* FED. R. BANKR. R. 9027(a)(3)(A) (establishing a deadline "30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed"); *cf. Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 347–48 (1999) ("[W]e hold that a named defendant's time to remove [under 28 U.S.C. § 1446(b)] is triggered by simultaneous service of the summons and complaint, or receipt of the complaint, 'through service or otherwise,' after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service.").

[31] Adv. ECF No. 6.

[32] *Homeward Residential, Inc. v. Burch*, No. 02-19-00413-CV, 2020 WL 370578, at *1-*2 (Tex. App.—Fort Worth, Jan. 23, 2020, no pet.).

[33] FED. R. CIV. P. 54(b) ("any order or other decision, however designated, that adjudicates fewer than all the claims . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities"); *Dos Santos v. Bell Helicopter Textron, Inc.*, 651 F. Supp. 2d 550, 553 (N.D. Tex. 2009) (Rule 54(b) governs reconsideration of an interlocutory order or judgment).

It is within the Court's sound discretion and inherent power to vacate an interlocutory default judgment.[34] The demanding thresholds for relief set by Federal Civil Rules 59(e) and 60(b) do not apply in the context of interlocutory partial judgments.[35] Under Rule 54(b), the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even without new evidence or an intervening change in or clarification of the substantive law.[36]

The Court adopts as its legal conclusions the legal arguments made in the Motion to Vacate. In short, the Motion to Vacate should be granted for the following reasons:

- The State Court never obtained personal jurisdiction over Homeward, and the Default Judgment is void, because (a) the return of service contains errors on its face with respect to the date of service; and (b) the record does not show Homeward was served through an agent authorized to receive service of process on its behalf.
- The Plaintiff is not entitled to the damages awarded (or to any damages at all).
- Homeward has a meritorious defense to the Complaint, as demonstrated in the order dismissing the Complaint that the Court is entering on this date.

IV. CONCLUSION

For the reasons described above, and for the additional well-taken arguments made in the Motion to Vacate, which the Court adopts, the Default Judgment should be vacated and set aside. Therefore, the Court **ORDERS** that the Motion to Vacate [Adv. ECF No. 7] is **GRANTED** and the Default Judgment [Adv. ECF No. 1-2, at 73/121] is **VACATED** and **SET ASIDE.**

End of Order # #

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[34] *Austin v. Kroger Texas, L.P.*, 864 F.3d 326, 336-37 (5th Cir. 2017).

[35] *Koerner v. CMR Constr. & Roofing, L.L.C.*, 910 F.3d 221, 227 (5th Cir. 2018).

[36] *Austin*, 864 F.3d at 336 (quotation marks omitted).

The following constitutes the ruling of the court and has the force and effect therein described.

Signed October 27, 2020

Mark X. Mullin
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

In re:	§	
	§	
William Paul Burch,	§	Case No. 12-46959-mxm-7
	§	
Debtor.	§	Chapter 7
	§	

	§	
William Paul Burch,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 20-4063
	§	
Homeward Residential, Inc.,	§	
	§	
Defendant.	§	
	§	
	§	
	§	

ORDER GRANTING MOTION TO DISMISS

[Relates to Adv. ECF No. 6]

Before the Court is the motion to dismiss (the "***Motion to Dismiss***") under Federal Civil Rule 12(b)(6), filed by defendant Homeward Residential, Inc. ("***Homeward***").[1] Homeward asks the Court to dismiss for failure to state a claim *Plaintiff's Original Quiet Title Petition* (the "***Complaint***"),[2] filed by plaintiff William Paul Burch (the "***Plaintiff***" or the "***Debtor***"). For the reasons described below, the Court agrees that the Complaint fails to state a claim upon which relief can be granted, so the Motion to Dismiss is granted.

I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

II. PROCEDURAL BACKGROUND[3]

A. The Debtor's bankruptcy filings and confirmed plans

On December 1, 2008, the Debtor and Juanita Burch filed for Chapter 11 bankruptcy (the "***2008 Bankruptcy Case***") to prevent foreclosure on multiple properties, including property located at 420 Georgetown Drive, Everman, Texas (the "***Georgetown Property***") and property located at 426 Falling Leaves Drive, Duncanville, Texas (the "***Falling Leaves Property***").[4]

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[1] *Motion to Dismiss and Brief in Support Thereof*, Adv. ECF No. 6.

[2] Adv. ECF No. 1-2, at 2/121.

[3] The documents cited in this section are either referred to in, or attached to, the Complaint, or are matters of which this Court can take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2008) (directing courts to "consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice"); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) ("[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.").

[4] *See* Case No. 08-45761-RFN-11.

On December 29, 2008, American Home Mortgage Servicing, Inc., as servicing agent for Deutsche Bank Trust Company Americas as Indenture Trustee for American Home Mortgage Investment Trust 2006-2, Mortgage-Backed Notes, Series 2006-2, filed proof of claim number 19-1 in the 2008 Bankruptcy Case, asserting a claim for $62,266.25, secured by a mortgage on the Georgetown Property.[5] Various loan documents were attached to the proof of claim, including a note and deed of trust (together, the "***Georgetown Loan Documents***").

On December 29, 2008, American Home Mortgage Servicing, Inc., as servicing agent for JPMorgan Chase Bank, National Association, not individually but solely as Trustee for the Holders of Structured Asset Mortgage Investments II, Inc., Mortgage Pass-Through Certificates, Series 2006-AR5, filed proof of claim number 20-1 in the 2008 Bankruptcy Case, asserting a claim for $87,731.04, secured by a mortgage on the Falling Leaves Property.[6] Various loan documents were attached to the proof of claim, including a note and deed of trust (together, the "***Falling Leaves Loan Documents***").

On December 9, 2009, the Court entered an *Order Confirming Debtor's Third Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Confirmation Order***"),[7] which confirmed the Debtors' *Fourth Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Chapter 11 Plan***")[8] that is attached as Exhibit A to the 2008 Bankruptcy Case Confirmation Order. Section 5.5 of the 2008 Bankruptcy Case Chapter 11 Plan provided for treatment of the claims of "America

[5] Claim 19-1, Case No. 08-45761-RFN-11.

[6] Claim 20-1, Case No. 08-45761-RFN-11.

[7] ECF No. 246, Case No. 08-45761-RFN-11.

[8] *Fourth Amended Plan of Reorganization of William & Juanita Burch Pursuant to Section 1125 of the Bankruptcy Code Dated October 16, 2009*, ECF No. 244, Case No. 08-45761-RFN-11.

[*sic*] Home Mortgage," which the plan listed as the "mortgage holder" on the Falling Leaves Property and the Georgetown Property.[9]

> The specific treatment as to the Falling Leaves Property was as follows:
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> The Debtor shall surrender the Falling Leaves property in full satisfaction of the debt pursuant to 11 U.S.C. 1129(b)(2)(A)(iii).[10]
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> The specific treatment as to the Georgetown Property was as follows:
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> Based upon the Debtors' current value of the Georgetown property, the Debtors will enter into a New Georgetown Note in the original principal amount of $59,500 ("New Georgetown Note"). The New Georgetown Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Georgetown Note in 360 equal monthly payments of $302.29 commencing on the Effective Date.[11]

No party appealed the 2008 Bankruptcy Case Confirmation Order. The 2008 Bankruptcy Case was closed on September 11, 2012.

On December 28, 2012, Burch filed for Chapter 13 bankruptcy (the "***2012 Bankruptcy Case***").[12] The 2012 Bankruptcy Case was converted to Chapter 11 on December 23, 2013.[13]

On January 5, 2016, the Plaintiff filed an amended Chapter 11 plan of reorganization (the "***2012 Bankruptcy Case Chapter 11 Plan***"),[14] and on February 1, 2016, the Court entered an order confirming that plan (the "***2012 Bankruptcy Case Confirmation Order***").[15]

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[9] 2008 Bankruptcy Case Chapter 11 Plan § 5.5.

[10] *Id.*

[11] *Id.*

[12] *Voluntary Petition*, ECF No. 1, Case No. 12-46959.

[13] *Order Converting Case from Chapter 13 to Chapter 11*, ECF No. 100, Case No. 12-46959.

[14] *William Paul Burch's Amended Plan of Reorganization*, ECF No. 186, Case No. 12-46959.

[15] *Order Confirming Debtor's Plan of Reorganization*, ECF No. 188, Case No. 12-46959.

Nothing in the 2012 Bankruptcy Case Chapter 11 Plan or Confirmation Order provided, or even suggested, that the Debtor was retaining any causes of action related to the Georgetown Property or Falling Leaves Property, including any claims related to language in the 2008 Bankruptcy Case Chapter 11 Plan or related to events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

The 2012 Bankruptcy Case was converted to Chapter 7 on January 30, 2018 based in part on the Plaintiff's material defaults under the 2012 Bankruptcy Case Chapter 11 Plan.[16]

B. The Plaintiff's claims against Homeward related to the Georgetown Property and/or the Falling Leaves Property and Homeward's related motion to dismiss

On April 4, 2019, the Plaintiff filed his Complaint[17] in the 348th Judicial District Court of Tarrant County, Texas under Cause No. 348-307179-19 (the "***State Court Lawsuit***"). In the Complaint, the Plaintiff asserted claims against Homeward (i) under Texas Property Code section 53.160 for an allegedly invalid lien; (ii) under Texas Penal Code section 32.49 for refusal to execute a release of an allegedly fraudulent lien; (iii) under Texas Penal Code section 32.45 for misapplication of financial institution property; (iv) under Texas Civil Practice and Remedies Code section 12.003 for an allegedly fraudulent lien; (v) under Texas Business and Commerce Code section 27.01 for statutory fraud; (vi) for breach of contract; (vii) for quiet title; (viii) under Texas Civil Practice and Remedies Code section 41.008 for gross negligence and punitive damages; and (ix) although not a separate count, for violations of the 2008 Bankruptcy Case Chapter 11 Plan and 2008 Bankruptcy Case Confirmation Order. All the Plaintiff's claims stem from the servicing of the mortgage encumbering the Georgetown and/or Falling Leaves Property.

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[16] *Order Granting Specialized Loan Servicing LLC's Motion to Dismiss with Prejudice or to Convert to Chapter 7*, ECF No. 354, Case No. 12-46959; *see also* ECF No. 390, Transcript of 1/25/18 hearing on conversion, at 46-51.

[17] Adv. ECF No. 1-2, at 2/121.

The Plaintiff also sought actual and punitive damages, pre- and post-judgment interest, and the production of documents.

The Plaintiff obtained a default judgment on May 13, 2019,[18] which this Court is vacating and setting aside by separate order on this date.

On August 27, 2020, Homeward removed the State Court Lawsuit to this Court under 28 U.S.C. §§ 1452 and 1334,[19] thereby initiating this adversary proceeding (the "***Adversary Proceeding***").

On September 28, 2020, Homeward filed its Motion to Dismiss under Federal Civil Rule 12(b)(6), asking the Court to dismiss the Complaint for failure to state a claim. The Plaintiff has not filed a response to the Motion to Dismiss.

The Court has reviewed the parties' filings, and the matter is now ripe for decision.

III. ANALYSIS

Under the applicable standard for Federal Civil Rule 12(b)(6) motions, the Court must review the Complaint by "accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff."[20] Viewing the facts in the light most favorable to the Plaintiff, the Court must dismiss the Complaint if it fails "to state a claim to relief that is plausible on its face."[21] Applying this standard, the Court will review each count in the Complaint to determine whether any count states a plausible claim for relief.

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[18] Adv. ECF No. 1-2, at 73/121.

[19] *Notice of Removal*, Adv. ECF No. 1.

[20] *Stokes v. Gann*, 498 F. 3d 483, 484 (5th Cir. 2007).

[21] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

A. Preliminary observations and conclusions: Plaintiff's erroneous bankruptcy-related arguments

Before reaching the specific counts, the Court first will address allegations in the Complaint that infect the entire document with the Plaintiff's erroneous notions of an invalid or void note and deed of trust on the Georgetown Property. Throughout the Complaint, the Plaintiff alleges that new mortgage notes were to be delivered to the Plaintiff. Paragraph 13 of the Complaint then cites sections 13.4 and 14.3 of the 2008 Bankruptcy Case Chapter 11 Plan for the proposition that "The Mortgage Company had six months to replace the Note or lose the opportunity to do so permanently."[22]

The Plaintiff's interpretation of the 2008 Bankruptcy Case Chapter 11 Plan is mistaken, and equally important, his arguments are foreclosed by the 2012 Bankruptcy Case Chapter 11 Plan and Confirmation Order.

Plaintiff's erroneous interpretation of 2008 Bankruptcy Case Chapter 11 Plan. First, the plan provisions do not support the Plaintiff's allegation that there will be no claim or lien on the Georgetown Property if new loan documents are not signed within six months. It is true that section 5.5 of the plan states that "the Debtors will enter into a New Georgetown Note," but the plan does not require that separate loan documents be drawn up. Instead, the 2008 Bankruptcy Case Chapter 11 Plan provides that "all Claims and Debts will receive the treatment afforded in Articles of this Plan,"[23] and with respect to the "Allowed Secured Claim of America [*sic*] Home Mortgage," the plan specifies that "[t]he Debtor shall surrender the Falling Leaves property in full satisfaction of the debt," and with respect to the Georgetown Property, the Plan specifies the

[22] Complaint ¶ 13 (attaching as Exhibit F page 18 of the 2008 Bankruptcy Case Plan; section 13.4 of that plan is the only provision that mentions six months).

[23] 2008 Bankruptcy Case Chapter 11 Plan § 2.1.

interest rate on the debt (4.5%), the number of monthly payments (360), and the monthly payment amount ($302.29).[24] The plan also contains notice and cure provisions dealing with payment defaults by the Plaintiff under the plan.[25]

Notwithstanding the plan provisions that dealt with payment terms and defaults, the Plaintiff cites section 13.4 of the 2008 Bankruptcy Case Chapter 11 Plan as evidence that the claim and lien on the Georgetown Property are somehow voided if new loan documents are not drafted within six months. The Plaintiff completely misconstrues this plan provision, which provides for the forfeiture of distributions that are unclaimed for six months.[26] This is a common provision in Chapter 11 plans and deals with the situation where a debtor mails a distribution check to a creditor on account of an allowed claim, and the creditor does not negotiate the check for six months. In that scenario, the distribution is forfeited back to the debtor. Section 13.4 has nothing at all to do with voiding a creditor's entire secured claim and lien.

The Plaintiff finally cites section 14.3 of the plan, which deals with assumption or rejection or executory contracts and unexpired leases and has nothing to do with voiding a creditor's claim and lien.

In short, there is nothing in the 2008 Bankruptcy Case Chapter 11 Plan that provides for the voiding or disallowance of the claim and lien related to the Georgetown Property.

The Plaintiff's arguments are foreclosed by the 2012 Bankruptcy Case Chapter 11 Plan and Confirmation Order. In the Complaint, the Plaintiff alleges various claims based on actions

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[24] *Id.* § 5.5.

[25] *See id.* §§ 9.2, 9.3.

[26] 2008 Bankruptcy Case Chapter 11 Plan § 13.4 ("Any distribution pursuant to this Plan which remains unclaimed for a period of six (6) months from the due date of such distribution is forfeited.").

or inactions that occurred after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan. Even if such claims had merit (and as explained above, they do not), no such claims were preserved in the 2012 Bankruptcy Case Chapter 11 Plan, so the Plaintiff cannot raise them now.[27]

With these observations and conclusions in mind, the Court now turns to the specific counts in the Complaint.

B. Count 1: Texas Property Code § 53.160 Invalid Lien

This count alleges statutory violations of section 53.160 of the Texas Property Code based on alleged actions concerning the allegedly invalid note and mortgage on the Georgetown Property.

First, as explained above, nothing in the 2008 Bankruptcy Case Chapter 11 Plan invalidated the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about violations of Texas Property Code section 53.160 stemming from the allegedly invalid note and mortgage have no merit.

Second, section 53.160 of the Texas Property Code establishes a procedure for a property owner to have the validity of a mechanic's, contractor's, or materialmen's lien adjudicated on an expedited basis by filing a verified motion. The summary-motion procedure can be used only when asserting an objection based upon the seven grounds specified in section 53.160(b).[28] At least six of the seven grounds apply exclusively to mechanic's, contractor's, or materialmen's liens.[29] The Plaintiff does not allege the lien he challenges is a mechanic's, contractor's, or

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[27] 11 U.S.C. § 1123(b)(3)(B) (providing for the "retention and enforcement" of claims in a plan); *see also In re United Operating, LLC*, 540 F.3d 351, 355-56 (5th Cir. 2008) (debtor lacks standing to pursue claims that are not specifically and unequivocally preserved in confirmed Chapter 11 plan).

[28] TEX. PROP. CODE § 53.160(b) ("The grounds for objecting to the validity or enforceability of the claim or lien for purposes of the motion are limited to the following . . . .").

[29] TEX. PROP. CODE § 53.160(b)(1)-(6).

materialmen's lien. The seventh ground for which the summary-motion procedure is available is where "the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit."[30] The Complaint is devoid of allegations that would show that Homeward (or any other lender) executed a valid and enforceable waiver or release of its claim or lien.

Count 1 of the Complaint fails to state a plausible claim for relief against Homeward.

C. Count 2: Texas Penal Code section 32.49 – Refusal to Execute Release of Fraudulent Lien

This count alleges statutory violations of section 32.49 of the Texas Penal Code based on alleged actions concerning the allegedly invalid note and mortgage on the Georgetown Property.

First, as explained above, nothing in the 2008 Bankruptcy Case Chapter 11 Plan invalidated the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about violations of section 32.49 of the Texas Penal Code stemming from the allegedly invalid note and mortgage have no merit.

Second, under Texas Penal Code section 32.49, a person commits an offense if the person, with intent to defraud or harm another person, refuses to release a fraudulent lien or claim after a proper request.[31] Even if this Court had the power to enforce the Texas Penal Code (it does not), and even if the Plaintiff had a private right of action under the Texas Penal Code (he does not),[32]

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[30] TEX. PROP. CODE § 53.160(b)(7).

[31] TEX. PENAL CODE § 32.49(a).

[32] "Texas does not recognize private causes of action for penal code violations." *Joyner v. DeFriend*, 255 S.W.3d 281, 283 (Tex.App.-Waco 2008, no pet.) (citing *Trevino v. Ortega*, 969 S.W.2d 950, 953 (Tex. 1998)); *see also Kiggundu v. Mortgage Elec. Registration Sys., Inc.*, No. CIV.A. 4:11-1068, 2011 WL 2606359, at *6 n. 79 (S.D. Tex. June 30, 2011), *aff'd by* 469 F. App'x 330 (5th Cir. 2012) (citations omitted) (holding claim under Texas Penal Code § 32.47 "fail[ed] as a matter of law because the Texas Penal Code does not create a private right of action"); *Mathis v. DCR Mortgage III Sub, I, LLC*, 952 F. Supp.2d 828, 836 (W.D. Tex. 2013) (citations omitted) (dismissing claim for forgery in violation of the Texas Penal Code because "the Texas Penal Code does not create a private cause of action").

the Complaint is devoid of allegations that would show Homeward (or any other lender) had a fraudulent lien or claim or that it took any other action in violation of the statute.

Count 2 of the Amended Complaint fails to state a plausible claim for relief against Homeward.

D. Count 3: Texas Penal Code section 32.45 – Misapplication of Financial Institution Property

This count alleges statutory violations of section 32.45 of the Texas Penal Code based on alleged actions concerning the allegedly invalid note and mortgage on the Georgetown Property.

First, as explained above, nothing in the 2008 Bankruptcy Case Chapter 11 Plan invalidated the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about violations of section 32.45 of the Texas Penal Code stemming from the allegedly invalid note and mortgage have no merit.

Second, under Texas Penal Code section 32.45, a person commits an offense if the person "intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held."[33] Even if this Court had the power to enforce the Texas Penal Code (it does not), and even if the Plaintiff had a private right of action under the Penal Code (he does not), the Amended Complaint is devoid of allegations that would show Homeward misapplied any property as required by the statute.

Count 3 of the Amended Complaint fails to state a plausible claim for relief against Homeward.

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[33] TEX. PENAL CODE § 32.45(b).

E. Count 4: Texas Civil Practice and Remedies Code section 12.003 - Fraudulent Lien

This Count alleges that Homeward violated section 12.003 of the Texas Civil Practice and Remedies Code based on alleged actions concerning the allegedly invalid note and mortgage on the Georgetown Property. To properly allege a fraudulent lien claim pursuant to Texas Civil Practice & Remedies Code § 12.002(a), a plaintiff must allege sufficient facts to demonstrate that (1) the defendant made, presented, or used a document with knowledge that it was a fraudulent court record or a fraudulent lien or claim against real or personal property; (2) the defendant intended that the document be given legal effect; and (3) the defendant intended to cause plaintiff physical injury, financial injury, or mental anguish.[34]

As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of allegations that would show Homeward violated sections 12.002 or 12.003 of the Texas Civil Practice and Remedies Code.

Count 4 of the Complaint fails to state a plausible claim for relief against Homeward.

F. Count 5: Texas Business and Commerce Code section 27.01(a) - Statutory Fraud

The Plaintiff's "Statutory Fraud" count alleges statutory violations of section 27.01 of the Texas Business and Commerce Code based on alleged actions concerning the allegedly invalid note and mortgage on the Georgetown Property.

First, as explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about violations of

[34] TEX. CIV. PRAC. & REM. CODE § 12.002(a).

section 27.01 of the Texas Business and Commerce Code stemming from the allegedly invalid note and mortgage have no merit.

Second, to state a claim under section 27.01(a), a plaintiff must plead facts showing a false representation or false promise.[35] The Complaint is devoid of any meaningfully specific allegations that would show Homeward made any such false representation or false promise.

Finally, although there is not a separate count for common-law fraud, paragraph 34 of the Complaint (found within the Count 5—Statutory fraud section) contains a reference to common-law fraud. To the extent the Plaintiff is asserting such a claim, it also fails. The elements of common-law fraud are (1) the defendant made a material representation to the plaintiff; (2) the representation was false; (3) the defendant knew the representation was false or made the misrepresentation recklessly, without knowledge of the truth; (4) the defendant intended for the plaintiff to act on the misrepresentation; (5) the plaintiff acted on the misrepresentation; and (6) the plaintiff incurred damages.[36] Any argument about fraud stemming from the allegedly invalid note and mortgage have no merit, as explained above. Moreover, the Complaint is devoid of allegations that would show Homeward took any action, or failed to take any action, that would constitute common-law fraud.

Count 5 of the Complaint fails to state a plausible claim for relief against Homeward.

G. Count 6: Breach of Contract

This Count alleges that Homeward breached a contract through its actions in connection with the allegedly invalid note and mortgage on the Georgetown Property. As explained above,

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[35] TEX. BUS. & COMM. CODE § 27.01(a).

[36] *In re First Merit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001).

nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Georgetown Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of any other meaningfully specific allegations that would show Homeward breached any contract.

Count 6 of the Complaint fails to state a plausible claim for relief against Homeward.

H. Count 7: Quiet Title

This count appears to suggest that the Plaintiff is or should be the fee simple owner of the Georgetown Property or the Falling Leaves Property due to the allegedly invalid note and mortgage on one or more of the properties. The elements of a quiet title claim include the following: (1) the plaintiff has an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable.[37]

As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with either the Georgetown Property or the Falling Leaves Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of allegations that would show the Plaintiff is entitled to prevail on his quiet-title claim.

Count 7 of the Complaint fails to state a plausible claim for relief against Homeward.

I. Count 8: Texas Civil Practice and Remedies Code section 41.008(a) – Gross Negligence and Punitive Damages

This Count alleges that the Plaintiff is entitled to punitive and exemplary damages against Homeward due to Homeward's allegedly fraudulent and malicious conduct in connection with the

[37] *Green v. JPMorgan Chase Bank, N.A.*, 937 F. Supp. 2d 849, 863 (N.D. Tex. 2013) *aff'd sub nom.* 562 F. App'x 238 (5th Cir. 2014).

Georgetown Property and the Falling Leaves Property. As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with either property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of allegations that would show the Plaintiff is entitled to any exemplary or punitive damages.

Count 8 of the Complaint fails to state a plausible claim for relief against Homeward.

J. The balance of the Complaint fails to state a claim for relief

The balance of the Complaint (including its request for pre- and post-judgment interest and request for production of documents) is devoid of allegations that would show the Plaintiff is entitled to any relief whatsoever under any legal theory.

IV. CONCLUSION

For the reasons described above, and for the additional well-taken arguments made in the Motion to Dismiss, which the Court adopts, the Complaint fails to state a claim upon which relief can be granted. Therefore, the Court **ORDERS** as follows:

1. The Motion to Dismiss [Adv. ECF No. 6] is **GRANTED** with prejudice.
2. The Court will enter a separate final judgment consistent with this Order.

End of Order # #

APPENDIX E

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 4, 2020

Mark X. Mullin
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	CASE NO. 12-46959-MXM
WILLIAM PAUL BURCH,	§	
	§	CHAPTER 7
DEBTOR.	§	

ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION OF RECUSAL ORDER
(Relates to ECF No. 855)

Before the Court is a request[1] filed by William Paul Burch (the "***Debtor***") seeking authority to file a *Motion for Re-Consideration (sic) of Recusal of Judge Mark Mullin* (the "***Motion***").[2] Having considered the Motion, the Court finds and concludes that the Motion was

[1] On July 10, 2020, the Court entered its *Order (A) Designating William Paul Burch as a Vexatious Litigant, and (B) Granting Related Relief* (ECF No. 824) (the "***Vexatious Litigant Order***"). Pursuant to the Vexatious Litigant Order, the Court designated the Debtor as a vexatious litigant and prohibited the Debtor, without prior Court permission, from filing affirmative claims for relief in federal, state, or local trial courts with respect to the restricted subject matter. The Court's Vexatious Litigant Order does not apply, however, to motions to reconsider filed under Bankruptcy Rules 9023 and 9024 or to appeals or pleadings filed in any appeal pending in a United States District Court or the United States Court of Appeals while sitting in the capacity of an appellate court. The Court, therefore, has considered the Motion as a Motion filed under Bankruptcy Rule 9023.

[2] ECF No. 855.

not filed timely pursuant to Bankruptcy Rule 9023 and, even if the Motion had been filed timely, it has no merit and should be denied. It is, therefore

ORDERED that the Motion is **DENIED**.

End of Order

APPENDIX F

11 U.S. Code § 105

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

APPENDIX G

11 U.S. Code § 1141

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section

522(q)(1)(B);and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

APPENDIX H

22 Tex. Admin. Code § 157.4.

(a) Computation of Time. The following rules apply when computing any time period specified in Chapters 153, 157 or 159, or in any statute that does not specify a method of computing time:

(1) Exclude the day of the event that triggers the time period;

(2) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(3) Include the last day of the period, except if the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(4) If the Board is closed on the last day of the period as computed under subsection (a)(3) of this section, then the time period is extended to the first day the Board is open that is not a Saturday, Sunday, or legal holiday.

(b) Mailbox rule.

(1) Service by mail is complete upon deposit of the notice in a prepaid, properly addressed envelope in a post office or official depository under the care and custody of the United States Postal Service.

(2) Service by electronic mail is complete upon sending an email to the respondent's or applicant's email address as shown in the Board's records.

(3) Presumption of receipt. Unless proven by evidence submitted to the contrary, a rebuttable presumption that respondent or applicant received proper notice from the Board will arise:

(A) immediately after sending electronic mail to the respondent's or applicant's email address as shown in the Board's records; or

(B) three business days after the date the notice is deposited with the United States Postal Service.

(4) Failure to claim or refusal of properly addressed certified or registered mail does not support a finding of nonreceipt.

(c) Definitions. For purposes of this section, the following definitions apply:

(1) Last day - Unless a different time is set in statute or Board order, the last day ends:

(A) For electronic filing, at midnight in the Board's time zone;

(B) For filing by other means, when the Board's office is scheduled to close.

(2) Next day - The next day is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(3) Legal holiday - the term "legal holiday" includes:

(A) a national holiday as defined in Government Code § 662.003(a);

(B) a state holiday as defined in Government Code § 662.003(b); and

(C) any day declared a holiday by the President or the Governor.

APPENDIX I

28 U.S. Code § 1446 - Procedure for removal of civil actions

(a) Generally. —
A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.
(b) Requirements; Generally. —
(1)
The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.
(2)
(A)
When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.
(B)
Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.
(C)
If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.
(3)
Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.
(c) Requirements; Removal Based on Diversity of Citizenship. —
(1)
A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.
(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—
(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—
(i)
nonmonetary relief; or
(ii)
a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and
(B)

removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).
(3)
(A)
If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).
(B)
If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).
(d) Notice to Adverse Parties and State Court. —
Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.
(e) Counterclaim in 337 Proceeding. —
With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.
(g)
[1] Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

APPENDIX J

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments.* The court may permit a summons to be amended.

(b) ISSUANCE. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) SERVICE.

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

(d) WAIVING SERVICE.

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) *Failure to Waive.* If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) *Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) *Results of Filing a Waiver.* When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) SERVING A MINOR OR AN INCOMPETENT PERSON. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) SERVING A FOREIGN, STATE, OR LOCAL GOVERNMENT.

(1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

(2) *State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(*l*) Proving Service.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) *Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

(n) ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

(1) *Federal Law.* The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *State Law.* On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

Rule 4 Notice of a Lawsuit and Request to Waive Service of Summons.

(Caption)

To (name the defendant or — if the defendant is a corporation, partnership, or association — name an officer or agent authorized to receive service):

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: _____ _____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

Rule 4 Waiver of the Service of Summons.

(Caption)

To (name the plaintiff's attorney or the unrepresented plaintiff):

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____

(Signature of the attorney or unrepresented party)

_____

(Printed name)

_____

(Address)

_____

(E-mail address)

_____

(Telephone number)

(Attach the following)

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

APPENDIX K

TBCC 3.501

Sec. 3.501. PRESENTMENT.

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to:

(1) pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(2) accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States. Presentment may be made by any commercially reasonable means, including an oral, written, or electronic communication. Presentment is effective:

(A) when the demand for payment or acceptance is received by the person to whom presentment is made; and

(B) if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) On demand of the person to whom presentment is made, the person making presentment must:

(A) exhibit the instrument;

(B) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(C) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may:

(A) return the instrument for lack of a necessary indorsement; or

(B) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour

APPENDIX L

Texas Business and Commerce Code Title 3 Insolvency, Fraudulent Transfers, and Fraud, Chapter 26 Statute of frauds (TBCC)

Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING.

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care

provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

TBCC Section 26.02 provides:

Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING.

(a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002, Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds $50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties.

_____ _____

"Debtor or Obligor Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

APPENDIX M

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

(1) determining that the plaintiff is a vexatious litigant; and

(2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

(1) if the motion is denied, before the 10th day after the date it is denied; or

(2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

(A) finally determined adversely to the plaintiff;

(B) permitted to remain pending at least two years without having been brought to trial or hearing; or

(C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

(A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or

(B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the

final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of

security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local

administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9, eff. September 1, 2013.

APPENDIX N

TRCP Rule 145

(a) General Rule. A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

(b) Supreme Court Form; Clerk to Provide. The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.

(c) Costs Defined. "Costs" mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(d) Defects. The clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect is a ground for refusing to file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court - on its own motion or on motion of the clerk or any party - may direct the declarant to correct or clarify the Statement.

(e) Evidence of Inability to Afford Costs Required. The Statement must say that the declarant cannot afford to pay costs. The declarant must provide in the Statement, and, if available, in attachments to the Statement, evidence of the declarant's inability to afford costs, such as evidence that the declarant:

(1) receives benefits from a government entitlement program, eligibility for which is dependent on the recipient's means;

(2) is being represented in the case by an attorney who is providing free legal services to the declarant, without contingency, through:

(A) a provider funded by the Texas Access to Justice Foundation,

(B) a provider funded by the Legal Services Corporation; or

(C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services;

(3) has applied for free legal services for the case through a provider listed in (e)(2) and was determined to be financially eligible but was declined representation; or

(4) does not have funds to afford payment of costs.

(f) Requirement to Pay Costs Notwithstanding Statement. The court may order the declarant to pay costs only as follows:

(1) On Motion by the Clerk or a Party. The clerk or any party may move to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief:

(A) that the Statement was materially false when it was made; or

(B) that because of changed circumstances, the Statement is no longer true in material respects.

(2) On Motion by the Attorney Ad Litem for a Parent in Certain Cases. An attorney ad litem appointed to represent a parent under Section 107.013, Family Code, may move to require the parent to pay costs only if the motion complies with (f)(1).

(3) On Motion by the Court Reporter. When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to require the declarant to prove the inability to afford costs.

(4) On the Court's Own Motion. Whenever evidence comes before the court that the declarant may be able to afford costs, or when an officer or professional must be appointed in the case, the court may require the declarant to prove the inability to afford costs.

(5) Notice and Hearing. The declarant may not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(6) Findings Required. An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(7) Partial and Delayed Payment. The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(g) Review of Trial Court Order.

(1) Only Declarant May Challenge; Motion. Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) Time for Filing; Extension. The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) Record. After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) Court of Appeals to Rule Promptly. The court of appeals must rule on the motion at the earliest practicable time.

(h) Judgment. The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order under (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Amended by order of Aug. 31, 2016, eff. Sept. 1, 2016.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system - filing fees, fees for issuance of process and notices, and fees for service and return - are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs - which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001 - is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

APPENDIX O

28 U. S. C. § 1442

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

> (1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.
> (2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.
> (3) Any officer of the courts of the United States, for or relating to any act under color of office or in the performance of his duties;
> (4) Any officer of either House of Congress, for or relating to any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process.

(c) Solely for purposes of determining the propriety of removal under subsection (a), a law enforcement officer, who is the defendant in a criminal prosecution, shall be deemed to have been acting under the color of his office if the officer—

> (1) protected an individual in the presence of the officer from a crime of violence;
> (2) provided immediate assistance to an individual who suffered, or who was threatened with, bodily harm; or
> (3) prevented the escape of any individual who the officer reasonably believed to have committed, or was about to commit, in the presence of the officer, a crime of violence that resulted in, or was likely to result in, death or serious bodily injury.

(d) In this section, the following definitions apply:

> (1) The terms "civil action" and "criminal prosecution" include any proceeding (whether or not ancillary to another proceeding) to the extent that in such

proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.

(2) The term "crime of violence" has the meaning given that term in section 16 of title 18.

(3) The term "law enforcement officer" means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5 and any special agent in the Diplomatic Security Service of the Department of State.

(4) The term "serious bodily injury" has the meaning given that term in section 1365 of title 18.

(5) The term "State" includes the District of Columbia, United States territories and insular possessions, and Indian country (as defined in section 1151 of title 18).

(6) The term "State court" includes the Superior Court of the District of Columbia, a court of a United States territory or insular possession, and a tribal court.

APPENDIX P

In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-19-00413-CV

HOMEWARD RESIDENTIAL, INC., Appellant

V.

WILLIAM PAUL BURCH, Appellee

On Appeal from the 348th District Court
Tarrant County, Texas
Trial Court No. 348-307179-19

Before Gabriel, Kerr, and Birdwell, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

Homeward Residential, Inc. filed a restricted appeal from the trial court's May 10, 2019 default judgment. *See* Tex. R. App. P. 30. But as we explain below, we must dismiss the appeal for want of jurisdiction because the default judgment is not final.

William Paul Burch, proceeding pro se, sued Homeward Residential to quiet title to real property in Everman, Texas. In addition to his quiet-title claim, Burch pleaded claims for breach of contract, statutory fraud, and violations of Texas Civil Practice and Remedies Code Chapter 12, Texas Penal Code Sections 32.45 and 32.49, and Texas Property Code Section 53.160. *See* Tex. Bus. & Com. Code Ann. § 27.01; Tex. Civ. Prac. & Rem. Code Ann. §§ 12.001–.007; Tex. Penal Code Ann. §§ 32.45, .49; Tex. Prop. Code Ann. § 53.160. Burch sought removal of Homeward Residential's lien on the property, compensatory and exemplary damages, damages under Civil Practice and Remedies Code Section 12.002, specific performance of the contract, attorney's fees, court costs, and pre- and postjudgment interest. After Homeward Residential failed to answer or to otherwise appear,[1] the trial court signed a default judgment in Burch's favor:

[1]We make no determination whether Homeward Residential was properly served.

IN THIS ACTION Defendant Homeward Residential, Inc has had ample time to provide evidence in their defense and has failed to do so.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff shall recover from Defendant, Homeward Residential, Inc the summary judgement as follows:

Lien removed by County Clerk on property located at 420 Georgetown Dr., Everman, Texas 76140

Section 12.002 actual damages: $ 569,833.00

Compensatory Damages: $ 569,833.00

Punitive Damages: $ 250,000.00

Court Cost and fees $ 35,000.00

Two days before the six-month deadline to file a restricted appeal, Homeward Residential filed a notice of restricted appeal. *See* Tex. R. App. P. 26.1(c), 30. In its notice, Homeward Residential expressed its concern that the default judgment was not a final judgment because it did not dispose of all of Burch's claims.

We were likewise concerned about the default judgment's finality and thus notified the parties of our concern that we lacked jurisdiction over this appeal because the default judgment did not appear to be either a final judgment or an appealable interlocutory order. We warned the parties that we could dismiss the appeal for want of jurisdiction unless one of them filed a response showing grounds for continuing it. *See* Tex. R. App. P. 42.3(a), 44.3.

Both parties responded. Homeward Residential concedes that the default judgment is interlocutory and that we thus lack jurisdiction.[2] Burch counters that the default judgment is final and appealable.

Unlike a judgment after a trial on the merits, there is no presumption of finality following a default judgment. *In re Burlington Coat Factory Warehouse of McAllen, Inc.*, 167 S.W.3d 827, 829 (Tex. 2005) (orig. proceeding). A default judgment that disposes of all parties and claims is final. *See id.* at 830. But "a default judgment that fails to dispose of all claims can be final only if 'intent to finally dispose of the case' is 'unequivocally expressed in the words of the order itself.'" *Id.* (quoting *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001)). A phrase such as "[t]his judgment finally disposes of all parties and all claims and is appealable" unequivocally expresses an intent to finally dispose of the case. *Lehmann*, 39 S.W.3d at 206; *see Burlington Coat Factory*, 167 S.W.3d at 830. If a default judgment lacks finality language, we look to the record to determine whether the judgment actually disposes of all parties and claims. *See In re Elizondo*, 544 S.W.3d 824, 827–28 (Tex. 2018) (orig. proceeding).

The default judgment here lacks language unequivocally expressing an intent to finally dispose of the case. *See Burlington Coat Factory*, 167 S.W.3d at 830. It does not

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[2]In its response, Homeward Residential stated that it filed its notice of restricted appeal because of the imminent restricted-appeal deadline, and "it was not clear at that time whether the [d]efault [j]udgment would be considered final." Homeward Residential explained that it perfected its appeal to preserve its ability to challenge the default judgment on appeal if we determined that it is final.

contain any finality language, does not state that it is a final judgment, and does not purport to dispose of all parties and claims. *See id.* We thus review the record to determine whether the default judgment actually disposes of all parties and claims. *See Elizondo*, 544 S.W.3d at 827–28; *Lehmann*, 39 S.W.3d at 205–06.

We have reviewed the record and have determined that the default judgment does not dispose of all of Burch's claims. The judgment purports to remove a lien against the property and awards Burch "Section 12.002 actual damages," compensatory and punitive damages, and "Court Cost[s] and fees." But at a minimum, it does not dispose of Burch's claims for Penal Code violations, prejudgment interest, and attorney's fees.[3]

Regarding Burch's claims for Penal Code violations, even though the default judgment removes a lien and awards damages and court costs and fees, the judgment cannot be construed as awarding relief for and therefore disposing of his Penal Code claims because the Penal Code does not create private rights of action. *See, e.g.*, *Tex. Health Res. v. Pham*, No. 05-15-01283-CV, 2016 WL 4205732, at *8 (Tex. App.—Dallas Aug. 3, 2016, no pet.) (mem. op.); *LeBlanc v. Lange*, 365 S.W.3d 70, 87 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Nor does the default judgment dispose of Burch's request for prejudgment interest. *See Sawyers v. Carter*, No. 01-14-00870-CV, 2015 WL 3981313, at *2 (Tex. App.—Houston [1st Dist.] June 30, 2015, no pet.)

[3]There is nothing in the appellate record indicating that Burch nonsuited or abandoned these claims.

(mem. op.) ("When a default judgment [without finality language] does not dispose of an unresolved request for prejudgment interest, the judgment is interlocutory, not final."); *Tehuti v. Barrett Daffin Frappier Turner & Engel, LLP*, No. 05-11-00449-CV, 2011 WL 3964573, at *1 (Tex. App.—Dallas Sept. 9, 2011, no pet.) (mem. op.) (holding that a judgment was not final because it did not affirmatively dispose of prejudgment-interest claim and lacked language indicating that all claims and parties had been disposed of and was intended to be final). And finally, the default judgment awarded "Court Cost[s] and Fees" but made no mention of Burch's attorney's-fees claim and thus failed to dispose of it. *See Farm Bureau Cty. Mut. Ins. Co. v. Rogers*, 455 S.W.3d 161, 162–64 (Tex. 2015) (holding that summary-judgment order without finality language that did not resolve the parties' competing attorney's-fees requests was not final); *McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2001) (holding that summary-judgment order's resolution of court-costs claim did not dispose of attorney's-fees claim and did not indicate finality).

Accordingly, we hold that the default judgment is not final. *See Lehmann*, 39 S.W.3d at 205–06 ("[W]e conclude that when there has not been a conventional trial on the merits, an order or judgment is not final for purposes of appeal unless it actually disposes of every pending claim and party or unless it clearly and unequivocally states that it finally disposes of all claims and all parties. . . . Nothing in the order [here] indicates that it is a final judgment, and it did not dispose of all pending claims and parties."). Absent a final judgment, we lack jurisdiction over this

appeal, and we must dismiss it.[4] *See id.* at 195. Accordingly, we deny all pending motions, and we dismiss this appeal for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 43.2(f).

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: January 23, 2020

[4]The default judgment is not an appealable interlocutory order and neither party contends that it is.

APPENDIX Q

IN THE 348th DISTRICT COURT
OF TARRANT COUNTY, TEXAS

WILLIAM PAUL BURCH **Plaintiff,**	§	**CASE NO. 348-307179-19**
VS.	§	
HOMEWARD RESIDENTIAL, INC **Defendant**	§	

FILED
TARRANT COUNTY
2019 MAY 13 AM 11:02
THOMAS A. WILDER
DISTRICT CLERK

DEFAULT JUDGEMENT

TO THE HONORABLE MIKE WALLACH, DISTRICT COURT JUDGE

IN THIS ACTION Defendant Homeward Residential, Inc has had ample time to provide evidence in their defense and has failed to do so.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff shall recover from Defendant, Homeward Residential, Inc the summary judgement as follows:

Lien removed by County Clerk on property located at 420 Georgetown Dr., Everman, Texas 76140

Section 12.002 actual damages: $ 569,833.00

Compensatory Damages: $ 569,833.00

Punitive Damages: $ 250,000.00

Court Cost and fees $ 35,000.00

Dated this 13 of MAY 2019

Judge Mike Wallach

NOTICE OF DEFAULT JUDGMENT W. Burch
MAILED 5-14-19 AB Homeward Residential Inc
RULE 239 TRCP

E-MAILED W. Burch
5-14-19 AB

IN THE 348th DISTRICT COURT OF TARRANT COUNTY. TEXAS

WILLIAM PAUL BURCH,	§	
Plaintiff,	§	**CASE NO. 348-307179-19**
	§	
vs	§	
	§	
HOMEWARD RESIDENTIAL, INC.	§	
	§	
Defendants	§	

FILED
TARRANT COUNTY
2019 MAY 10 P 3:46
THOMAS A. WILDER
DISTRICT CLERK

APPLICATION FOR ENTRY OF DEFAULT

COME NOW the Plaintiff, William Paul Burch and requests the Clerk pursuant to Rule 27.003, Texas Rules of Civil Procedure, to enter default on the Defendant, Nationstar Mortgage Holdings, Inc. in the above entitled action for failure to answer or otherwise defend as to Plaintiff's Complaint, or serve a copy of any Answer or other defense which he might have upon the undersigned Pro-Se Plaintiff..

A copy of the Summons, together with a copy of the Complaint, was served upon the Defendant by the United States Postal Service, Certified Mail on **April 10, 2019**. Pursuant to Rule 27.003, Texas Rules of Civil Procedure, service of process was deemed complete on delivery on **February 10, 2019.**

That this Application is executed by affiant herein in accordance with Rule 27.003, Texas Rules of Civil Procedure, for the purpose of enabling the Plaintiff to obtain an entry of default against the Defendant for his failure to answer of otherwise defend as to the Plaintiff's Complaint.

Dated: May 10, 2019

Respectfully submitted,

William Paul Burch-Pro Se
P. O. Box 201236
Arlington, Texas 76006
817-919-4853
billburch@worldcrestauctions.com

AFFIDAVIT

State of Texas

County of Tarrant

My legal name is William Paul Burch, and my current occupation is Retired. I am presently 67 years old, and my current address of residence is 5947 Waterford Dr, Grand Prairie, Texas 75052.

Defendant, Homeward Residential, Inc, received the petition and citation for cause number 348-307179-19 on April 10, 2019 delivered by the United States Postal Service Certified Mail. This is twenty-one days prior to the Entry of Default. Defendant, having had ample time, has failed to plead or otherwise defend and is therefore in default.

I hereby state that the information above is true, to the best of my knowledge. I also confirm that the information here is both accurate and complete, and relevant information has not been omitted.

Signature of Individual

William Paul Burch

Date

4/29/19

Notary Public

Notary Public

Title and Rank

11/28/2019 Notary Public

Date of Commission Expiry

11/28/2019

DOUGLAS K KRAUSE
Commission # 128613998
My Commission Expires
November 28, 2019

Affidavit of William Paul Burch

STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, this day personally appeared WILLIAM PAUL BURCH, who after being by me duly sworn, on oath deposes and says:

1. I am over the age of 18 and am a resident of the State of Texas. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.

2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.

3. The Defendant, Homeward Residential, Inc, is not in the military service, and is not an infant or incompetent.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 29th day of April, 2019.

William Paul Burch

NOTARY ACKNOWLEDGEMENT

STATE OF TEXAS, COUNTY OF TARRANT, ss:

This Affidavit was acknowledged before me on this 29th day of April 2019 by William Paul Burch, who, being first duly sworn on oath according to law, deposes and says that he/she has read the foregoing Affidavit subscribed by him/her, and that the matters stated herein are true to the best of his/her information, knowledge and belief.

DOUGLAS K KRAUSE
Commission # 128813998
My Commission Expires
November 28, 2019

Notary Public

Notary Public
Title (and Rank)

My commission expires 11/28/2019

Cause Number 348-307179-19

WILLIAM PAUL BURCH HOMEWARD RESIDENTIAL, INC.

VS

OFFICER'S RETURN

Received this Citation By Certified Mail on the 9th day of April, 2019 at 3:22 PM ; and executed at 1525 S BELT LINE RD COPPELL TX 75019

within the county of _____ State of TX on the 7th day of April, 2019 by mailing to the within named HOMEWARD RESIDENTIAL HOLDINGS INC a true copy of this Citation By Certified Mail together with the accompanying copy of:

PLAINTIFF'S ORIGINAL QUIET TITLE PETITION

Authorized Person/Constable/Sheriff: Thomas A. Wilder
100 N CALHOUN
FORT WORTH TX 76196-0402

County of Tarrant, State of Texas

By _____ Deputy
APRIL BARTLETT

Fees $ 75.00

(Must be verified if served outside the State of Texas)

State of _____ County of _____

Signed and sworn to by the said _____ before me this _____

to certify which witness my hand and seal of office

(Seal)

_____
County of Tarrant, State of Texas

FILED
TARRANT COUNTY
2019 APR 16 PM 1:47
THOMAS A. WILDER
DISTRICT CLERK

34830717919000002

THE STATE OF TEXAS
DISTRICT COURT, TARRANT COUNTY

ORIGINAL

CITATION

Cause No. 348-307179-19

WILLIAM PAUL BURCH
VS.
HOMEWARD RESIDENTIAL, INC.

TO: HOMEWARD RESIDENTIAL HOLDINGS INC
1525 S BELT LINE RD COPPELL, TX 75019-

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFF'S ORIGINAL QUIET TITLE PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 348th District Court in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

WILLIAM PAUL BURCH

Filed in said Court on April 4th, 2019 Against
HOMEWARD RESIDENTIAL HOLDINGS INC

For suit, said suit being numbered 348-307179-19 the nature of which demand is as shown on said PLAINTIFF'S ORIGINAL QUIET TITLE PETITION a copy of which accompanies this citation.

PRO SE
Attorney for WILLIAM PAUL BURCH Phone No. -
Address 5947 WATERFORD DR GRAND PRAIRIE, TX 75052

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 9th day of April, 2019.

By Lauren Melanson Deputy
LAUREN MELANSON

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 100 N CALHOUN, FORT WORTH TX 76196-0402

OFFICER'S RETURN *34830717919000002*

Received this Citation on the _____ day of _____, _____ at _____ o'clock ___M; and executed at _____ within the county of _____, State of _____ at _____ o'clock ___M on the _____ day of _____, _____ by mailing to the within named _____

a true copy of this Citation together with the accompanying copy of PLAINTIFF'S ORIGINAL QUIET TITLE PETITION having first endorsed on same the date of delivery.

Deputy/Constable/Sheriff: _____
County of _____ State of _____ By _____ Deputy
Fees $_____

State of _____ County of _____ (Must be verified if served outside the State of Texas)
Signed and sworn to by the said _____ before me this _____ day of _____, ____
to certify which witness my hand and seal of office
(Seal)

_____
County of _____, State of _____

7015 3430 0000 8630 5043

000077

CITATION

Cause No. 348-307179-19

WILLIAM PAUL BURCH

VS.

HOMEWARD RESIDENTIAL, INC.

ISSUED

This 9th day of April, 2019

Thomas A. Wilder
Tarrant County District Clerk
100 N CALHOUN
FORT WORTH TX 76196-0402

By LAUREN MELANSON Deputy

PRO SE
Name: WILLIAM PAUL BURCH

Address: 5947 WATERFORD DR

GRAND PRAIRIE, TX 75052

CIVIL LAW

34830717919000002

00013

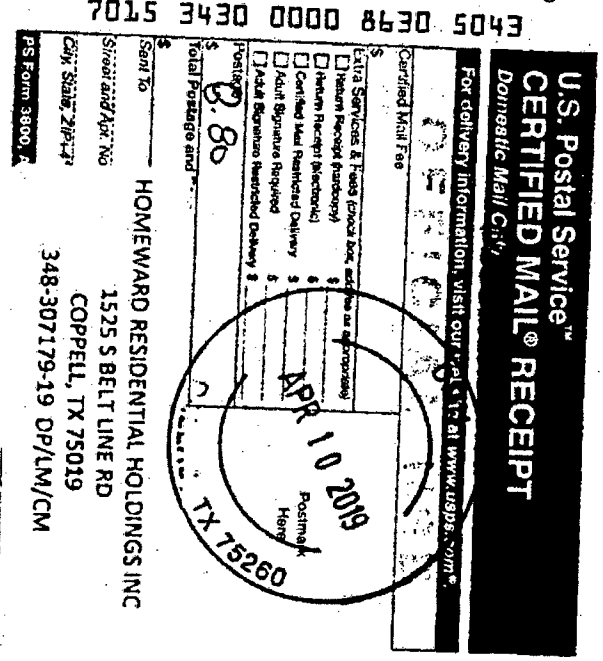
FILE COPY

9-19

AL, INC.

Deputy

52



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HOMEWARD RESIDENTIAL HOLDINGS INC
1525 S BELT LINE RD
COPPELL, TX 75019
348-307179-19 DP/LM/CM

9590 9402 4268 8121 6791 89

2. Article Number *(Transfer from service label)*

7015 3430 0000 8630 5043

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)* DEAN ELLIOTT

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

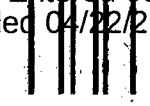
3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

USPS TRACKING #

9590 9402 4268 8121 6791 89



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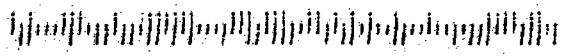
Tarrant County
Thomas A. Wilder District Clerk
Civil Division
100 N. Calhoun St., 2nd Floor
Fort Worth, TX 76196-0402



IN THE 348th DISTRICT COURT OF TARRANT COUNTY. TEXAS

WILLIAM PAUL BURCH,	§	
Plaintiff,	§	**CASE NO. 348-307179-19**
	§	
vs	§	
	§	
HOMEWARD RESIDENTIAL INC.	§	
	§	
Defendants	§	

ENTRY OF DEFAULT

TO THE HONORABLE MIKE WALLACH, DISTRICT COURT JUDGE:

Plaintiff William Paul Burch requests the Clerk of Court to enter default against Defendant Homeward Residential, Inc for failure to answer or plead in said action as required by law.

Default may be served on the Homeward Residential, Inc at its principle address is 1525 S Belt Line Rd Coppell, TX 75019.

Dated: May 10, 2019

Respectfully submitted,

William Paul Burch-Pro Se
P. O. Box 201236
Arlington, Texas 76006
817-919-4853
billburch@worldcrestauctions.com