

APPENDIX

**APPENDIX A - ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT DATED FEBRUARY 23,
2023 DISMISSING CASE 22-2919**

United States Court of Appeals
for the Federal Circuit

EDWARD BRAVENEC, et al.,

Plaintiff-Appellee

v.

ROWLAND J. MARTIN, JR.,

Defendant-Appellant

Appeal from the United States District Court for
the Western District of Texas in No.
5:22-cv-00522-JKP, Judge Jason Kenneth Pulliam

ON MOTION

PER CURIAM. O R D E R:

Before the court are Rowland J. Martin, Jr.'s response to this court's November 17, 2022, show cause order, ECF No. 14; "opposed motion for writ of mandamus and for emergency stay of the

district court order dated September 29, 2022,” ECF No. 13; and amended notice of appeal, ECF No. 12. For the following reasons, we now dismiss.

Edward Bravenec and 1216 West Ave., Inc. brought suit against Mr. Martin in Texas state court asserting a claim for tortious interference with contractual relations in connection with the sale of a property in San Antonio. See *Martin v. Bravenec*, No. 04-14-00483-CV, 2015 WL 2255139, at *2 (Tex. App. May 13, 2015). Mr. Martin removed the case to federal district court. On September 29, 2022, the district court issued an order remanding the case to state court for lack of jurisdiction,* explaining that the action sought to be removed was “not based on any federal claim within Plaintiff’s state petition or on the basis of diversity jurisdiction,” ECF No. 6-2 at 14, and that Mr. Martin’s attempts to assert various federal claims provided no basis for jurisdiction over the removed action, see *id.*

Judicial review over the district court’s remand order is foreclosed by 28 U.S.C. § 1447(d), which provides that “[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise.” The Supreme Court has made clear that if the district court “relied upon a ground that is colorably characterized as subject-matter jurisdiction,” then

the remand order is subject to § 1447(d)'s bar and therefore outside of the review authority of any appellate court. *Powerex Corp.*, Id. The district court here clearly premised its remand order on its view that it lacked jurisdiction over the removed case. Section 1447(d) therefore requires dismissal without need to further explore whether this appeal would otherwise come within our review authority under 28 U.S.C. § 1295(a) or be appropriately transferred under 28 U.S.C. § 1631.

Mandamus relief under 28 U.S.C. § 1651 is likewise unavailable. By its terms, section 1447(d) bars appellate review of remand orders, based on lack of subject matter jurisdiction, by way of “appeal or otherwise” (emphasis added). Review through a writ of mandamus is one such alternative prohibited by § 1447(d). See *Gravitt v. Sw. Bell Tel. Co.*, 430 U.S. 723, 723–24 (1977) (“The District Court’s remand order was . . . unreviewable by the Court of Appeals, by mandamus or otherwise.”).

Accordingly,

IT IS ORDERED THAT:

- (1) The appeal is dismissed.
- (2) All motions are denied as moot.
- (3) Each side shall bear its own costs.

February 23, 2023
/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

FOR THE COURT

**APPENDIX B - ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT DATED FEBRUARY 23,
2023 DENYING MOTION FOR PANEL
REHEARING**

United States Court of Appeals
for the Federal Circuit

EDWARD BRAVENEC, ET AL.,
Plaintiff-Appellee

v.

ROWLAND J. MARTIN, JR.,
Defendant-Appellant

2022-2191

Appeal from the United States District Court for
the Western District of Texas in No.
5:22-cv-00522-JKP, Judge
Jason Kenneth Pulliam.

ON PETITION FOR PANEL REHEARING

PER CURIAM.
O R D E R

Rowland J. Martin, Jr. filed a document entitled "Motion for Relief from Judgment of Dismissal and Motion for Contempt Against Plaintiff Edward Bravenec [ECF No. 18] which the court construed as a petition for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The mandate of the court will issue April 14, 2023.

Date April 7, 2023 FOR THE COURT
 /s/ Peter RMarksteiner
 Peter R. Marksteiner
 Clerk of Court

**APPENDIX C - ORDER OF THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT FILED DECEMBER 28,
2022 DISMISSING APPEAL**

United States Court of Appeals
for the Fifth Circuit

No. 22-50822

Edward Bravenec, Et al.,

Plaintiff—Appellee,

versus

Rowland J. Martin, Jr.,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:22-CV-522

Before Elrod, Graves, and Ho, Circuit Judges.
Per Curiam:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). In this civil rights case removed from state court, before the district court entered any ruling, Defendant filed a notice of appeal and an amended notice of appeal both directed to the Court of Appeals for the Federal Circuit. The district court forwarded only the amended notice to this court for review. It is apparent from the face of the document that it was not intended to be a notice of appeal to this court from any action by the district court. The appeal was erroneously opened and must be dismissed.

Accordingly, the appeal is DISMISSED.

**APPENDIX D - ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS DATED
SEPTEMBER 29, 2022 REMANDING CASE
TO STATE COURT**

Transcript Of Docket Summary
in Case 5:22-cv-0522-JKP
Dated September 29, 2023

ORDER OF REMAND --Under the analysis presented in Home Depot, the record clearly reflects a lack of subject matter jurisdiction over the original petition filed by Plaintiff. Accordingly, under 28 U.S.C. § 1447(c), the Court FINDS that it lacks jurisdiction over this removed action and REMANDS the case to the 285th Judicial District Court of Bexar County, Texas, Cause No. 2014-CI-07644.. Signed by Judge Jason K. Pulliam. (mgr) (Entered: 09/29/2022)

Transcript Of Order Of Remand
in Case 5:22-cv-0522-JKP
Dated September 29, 2023

“As noted above, Defendant sought to consolidate this action with his other removed case, No. SA-22-CV-00374-XR. On July 18, 2022, the Court granted a motion to remand that case for lack of jurisdiction; found that the federal laws identified in his various notices of removal are

raised as a defense to his liability; mooted the motion to consolidate that action with this one; and ordered Defendant to show cause why he should not be sanctioned under Fed. R. Civ. P. 11(a). See *Cnty. of Bexar v. Martin*, No. SA-22-CV-00374-XR, unpub. order (W.D. Tex. July, 18, 2022). ... In doing so it discussed this case (Bravenec) and noted that the state case appeared closed prior to removal. *Id.* at 4-5.”

**APPENDIX E: ORDER OF THE TEXAS
FOURTH DISTRICT OF APPEALS DATED
DECEMBER 4, 2014**

Fourth Court of Appeals
San Antonio, Texas

December 4, 2014

No. 04-14-00483-CV

Rowland MARTIN, Jr.,
Appellant

v.

Edward L. BRAVENEC and 1216 West Ave., Inc.,
Appellees

From the 285th Judicial District Court, Bexar
County, Texas

Trial Court No. 2014-CI-07644

Honorable Dick Alcalá, Judge Presiding

ORDER

Pending before the court are appellant's motion for rehearing, appellees' response to appellant's motion for rehearing, and appellant's supplemental motion for rehearing and motion for sanctions. Appellant's motion for rehearing is GRANTED. This court's prior opinion and judgment dated

October 1, 2014, are WITHDRAWN, and this case is REINSTATED on the docket of this court. Appellant's supplemental motion for rehearing and motion for sanctions are DENIED.

Appellees' request for alternative relief contained in appellees' response to appellant's motion for rehearing is GRANTED IN PART. Based on this court's review of the clerk's record and the supplemental notices of appeal filed in this court which have been forwarded to the trial court clerk, see TEX. R. APP. P. 25.1(a), this court construes this appeal as an accelerated, interlocutory appeal from: (1) the trial court's order dated July 17, 2014, granting a temporary injunction...see TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4); and (2) the trial court's order dated July 17, 2014, denying appellant's motion to dismiss filed pursuant to section 27.003 of the Texas Civil Practice and Remedies Code (Texas Citizens Participation Act), see *id.* At § 27.008.

If appellant believes this court has jurisdiction to consider any other order contained in the clerk's record in this appeal, appellant is ORDERED to show cause in writing no later than ten days from the date of this order why this court has jurisdiction to consider any other interlocutory order. Any such response should contain a citation to a specific statute that gives this court jurisdiction to consider such interlocutory order. If

appellant elects not to file a response to this order,
appellant's brief, which must be in compliance
with TEX. R. APP. P. 38:1,

Catherine Stone, Chief Justice

In WITNESS WHEREOF, I have hereunto set my
hand and affixed the seal of the said court on this
4th Day of December, 2014.

Keith Tuttle
Clerk Of The Court

**APPENDIX F: ORDER OF THE TEXAS
FOURTH DISTRICT OF APPEALS DATED
DATED MARCH 26, 2014**

Fourth Court of Appeals
San Antonio, Texas

March 26, 2015

No. 04-14-00483-CV

Rowland MARTIN, Jr.,
Appellant

v.

Edward L. BRAVENEC and 1216 West Ave., Inc.,
Appellees

From the 285th Judicial District Court, Bexar
County, Texas

Trial Court No. 2014-CI-07644

Honorable Dick Alcala, Judge Presiding

ORDER

On March 25, 2015, this court received the appellant's reply brief. The brief violates Rule 38 of the Texas Rules of Appellate Procedure in that it contains no index to authorities or citations to the record, exceeds the page limit and contains improper certificate of service. While substantial compliance with Rule 38 is sufficient, this court

may require additional briefing or make any other order necessary for satisfactory submission of the case, See, TEX R. APP. P. 38.9(a).

It is therefore ORDERED that appellant file an amended brief correcting these deficiencies, See, *id.* The amended brief is due within seven days from the date of this order. If an amended brief is not timely filed, this court may prohibit the filing of another brief and proceed without the brief, or if the amended brief is not compliant with Rule 38, this court may strike brief and proceed without further filing, See, TEX. R. APP. P. 42.3(c)

Jason Puliam, Justice

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said court on this 26th Day of March, 2015.

Keith Tuttle
Clerk Of The Court

**APPENDIX G: BEXAR COUNTY DEED
RECORD FOR 1216 WEST AVE.**

**THIRD PARTY PURCHASE MONEY
VENDOR'S LIEN**

LIEN TRANSACTION

DATE: October 31, 2003
(Deed Records Volume 10406, Pages 1601 and
1606).

SUBJECT

PROPERTY: 1216 West Ave., City
San Antonio and County of
Bexar, Texas

GRANTOR: Morocco Ventures, LLC.

GRANTEE AND

OWNER: Rowland J. Martin, Jr.

**THIRD PARTY BENEFICIARIES
AND INDEMNITEES:**

Estate of Johnnie Mae King, Probate Case No.
2001-PC-1263 and Nicolas Williams.

MAILING ADDRESS: 951 Lombrano, San
Antonio, Texas 78207

PURPOSE OF THE

RECORDING: This re-recording of the lien interest created on October 31, 2003 memorializes the property interests that vested in the Owner on that date for ease of reference in on-going judicial proceedings. It is expressly disclaimed that the lien was first created on October 14, 2015.

CONSIDERATION: The lien re-recorded herein is claimed against the grantor, Moroco Ventures, LLC, and all those claiming under the grants recorded as the (First) Deed of Trust to Roy Ramspeck and Annette G. Hanson, and as the (Second) Deed Of Trust to Albert McKnight and Edward Bravenec. The lien constitutes consideration for a payment in the amount of \$135,000, which was made by the Owner, in his individual capacity, to Roy Ramspeck and Annette G. Hanson as a credit to enable the grantor and debtor entity, Mo.roco Ventures, LLC, to acquire the subject property for a purchase price of \$284,500. The lien is referenced in the Warranty Deed with Vendor's Lien recorded in Volume 10406 Page 1601 as "other valuable consideration," and is further referenced in the (First) Deed Of Trust recorded in Volume 10406 Page 1606, in the section on "Other exceptions to Conveyances and Warranty," by way of express words of reservation stating that the conveyance is subject to "other than liens and conveyances," and in paragraph 14 of "General Provisions," where it

is expressly stated that "The creation of a subordinate lien ... will not entitle Beneficiary to exercise the remedies provided" for the acceleration of the note. Consideration was given by Albert McKnight and Edward Bravenec, during an attorney client relationship in Probate Case No. 2001-PC-1263, In the Second Deed Of Trust granted by Moroco Ventures, LLC in Document #20050099395 on Mays, 2005, by way of "Prior Lien reservations, and by way of the stipulation in paragraph 4 of the "General Provisions, with limitations on the second lien stating that "This lien shall remain superior to liens created later[]." "

PROPERTY DESCRIPTION: The property commonly known as 1216 West Ave, in San Antonio, Texas, is legally described as "Lots 1, 2, and 3, Block SO, new City Block 8806, LOS ANGELES HEIGHTS," and as further described in the attachment to this record.

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**RETROACTIVE RESERVATIONS AND
EXCEPTIONS TO CONVEYANCES AND
WARRANTIES:**

1. Until further notice, the lien interest herein re-recorded is subject to the indemnification

obligations set forth in the Heirship Settlement Agreement in Probate Case No. 2001-PC-1263. It is declared that any and all interests in title claimed under the second deed of trust granted to Albert McKnight and Edward Bravenec are subject to the priority assigned by law to the vendors' lien herein recorded. The latter is made executory and inferior in relation to the purchase money lien by virtue of contractual exceptions to the conveyance in the first deed of trust, to wit: "all rights, obligations, and other matters emanating from and existing by reason of the ... operation of any governmental district, agency or authority," Bexar County Deed Records, Vol.10406 Page 1607. By virtue of express provisions that subject the second deed of trust to the first deed of trust, Owner claims equitable title under DTND Sierra Investments v. HSD Bank U.S.A., Case No. 14-51142 (5th Cir., 2015), a court decision which by operation of law renders the interests acquired by Albert McKnight and Edward Bravenec by foreclosure on October 3, 2006 executory and inferior in relation to the lien herein re-recorded.

2. It is declared that deed transfers from Albert McKnight and Edward Bravenec to assignees and successors in interest, including 1216 West Ave., Inc., Edward Bravenec, and Torralba Properties, Inc., are subject to the notice of lis pendens, and future amendments thereto if any, which was referenced in the decision of the Texas Fourth

company known as Moroco Ventures, LLC, whose charter is presently inactive.

CHARLCYE LANAE GLENWINKEL
Notary Public, State of Texas
My commission Expires: June 02. 2019

_____/s/_____
Notary Public, State of Texas

[Page 2][Page 3 omitted]

APPENDIX H**SELECTED REMARKS FROM
THE U.S. SENATE DESIGN PATENT
COMPROMISE OF 1993**

Remarks Of Sen. Carol Mosely Braun (D - Il) July 22, 1993:

Madam President, I really had not planned to have to do this. In my remarks ... I talked about the Committee procedure. I talked about the lack of germaness of this amendment. I talked about how it wasn't necessary for this organization to receive the design patent extension which was an extraordinary act to begin with. What I did not talk about, and which I am now constrained to talk about with no small degree of emotion, is the symbolism of what this vote really means.

This is a vote about race. It is about racial symbols ... it is about our racial past, and it is about the single most painful experience in American history ...

[Sen. Daniel Patrick Moynahan: "The Senate is not in order! Please ask conversation to leave the floor while the Senator from Illinois is heard!"]

... I'm really stunned by how often and how much the issue of race - the subject of race - comes up in

this body ... in the United States Senate. When the issue of the design patent for the UNited Daughters of the Confederacy [came up] ... I looked at it ... and I said I'm not going to vote for that Who would have expected a design patent for the confederate flag.

... The issue is whether Americans in this country, such as myself, who believe in the promise of this country - who feel strongly in this country - patriots in this country - will have to suffer the indignity of being reminded time and time again ... that at one point in this country's history [black people] were [treated as] human chattel ...

Madam President, I say to you it is an outrage, it is an absolute outrage that this body would adopt as an amendment to this legislation a symbol of this point of view... It is absolutely unacceptable to me and to millions of Americans both black and white that we would put the imprimatur of the United States Senate on a symbol of this nature ... We've got to get past the isms that divide us and come together as Americans so we can make this country what what it can be in the 21st century... That is what this vote is about ... if I have to stand here until this room freezes over, I am not going to see this amendment put on this legislation which has to do with national service. This is something that has no place in our modern times ... It has no place in this Senate [and] no place in our society ... “

Remarks Of Sen. Howard Heflin (D - Al), July 22, 1993:

... The whole thing boils down to ... an issue of symbolism ... We must get racism behind us. And we must move forward. Therefore, I will support a reconsideration of this [renewal amendment]. I do this with conflict, but nevertheless we must realize that we live in an America today ... we live in a world in which, we are so proud of the fact that we have made so much progress in removing the ills of racism. We must realize that we must move forward to eradicate all of these [ills]. We live in a country in which we believe that all men - as in the declaration of independence, all men and women are created endowed with life, liberty, and I feel like today, this is a symbolic step if we move forward to put an end to the stamp of approval of the United States Senate [and Congress] on a symbol that is offensive to a large segment of Americans/. I think that by doing so we will not be moving in the right direction ... We must move forward and this is a step in the right direction.