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**TAB - A**

Affirmed and Opinion Filed July 28, 2022.



In The  
Court of Appeals  
Fifth District of Texas at Dallas

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No. 05-20-01118-CV

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BRIGETTA D'OLIVIO, Appellant  
V.  
HILARY THOMPSON HUTSON, Appellee

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On Appeal from the County Court at Law No. 2  
Collin County, Texas  
Trial Court Cause No. 002-02704-2020

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**MEMORANDUM OPINION**

Before Justices Partida-Kipness, Reichel, and Goldstein  
Opinion by Justice Partida-Kipness

In this forcible entry and detainer case, pro se appellant Brigetta D'Olivio appeals the county court at law's judgment awarding possession of property to appellee Hilary Thompson Hutson. In five issues, D'Olivio seeks reversal of the judgment. Finding no error, we affirm the judgment.

**BACKGROUND**

In 2019, Hutson sued D'Olivio in district court for trespass to try title to a home in Plano, which forms the basis for this eviction suit. D'Olivio had asserted ownership of the home through a purported marriage to Richard W. Thompson, Jr., Hutson's elderly father, and a will Thompson allegedly executed two weeks later,

the day before he died, giving her all his property. On August 11, 2020, the district court rendered a final summary judgment declaring Hutson had superior title to the home because the house passed automatically to Hutson through a joint tenancy with right of survivorship. D'Olivio later appealed to this court, and we affirmed the judgment. *See D'Olivio v. Hutson*, No. 05-20-00969-CV, 2022 WL 2800836, at \*6 (Tex. App.—Dallas July 18, 2022, no pet. h.) (mem. op.). On August 12, 2020, Hutson sent D'Olivio notice to vacate the home within three days. It is undisputed that D'Olivio did not vacate.

On August 17, 2020, Hutson filed suit in justice court to evict D'Olivio from the home. As evidence in support, Hutson offered the presuit notice to vacate previously sent to D'Olivio, an affidavit confirming D'Olivio's lack of military status, and a deed showing the property had been transferred to Hutson and Thompson as joint tenants with a right of survivorship. Hutson also offered a copy of the August 11, 2020 district court judgment stating she had superior title to the home. After hearing the evidence, the justice court rendered a judgment of possession in Hutson's favor on November 11, 2020. D'Olivio appealed to the county court for a trial de novo.

During the December 2020 trial, Hutson did not introduce any new evidence to support her forcible entry and detainer claim. Instead, she relied on the evidence previously introduced in the justice court, along with the August 11, 2020 district court judgment that resolved title in her favor. Hutson asserted these documents

made a prima facie case for forcible entry and detainer. The county court agreed and rendered a judgment of possession for Hutson. D'Olivio appeals.

### STANDARD OF REVIEW

In an appeal from a bench trial where neither party has requested findings of fact and conclusions of law, the trial court's implied findings are reviewable for legal and factual sufficiency of the evidence by the same standards as a jury verdict. *Great Am. Lloyds Ins. Co. v. Vines-Herrin Custom Homes, L.L.C.*, 596 S.W.3d 370, 374 (Tex. App.—Dallas 2020, pet. denied). Evidence is legally insufficient to support a jury finding when (1) the record bears no evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *Shields LP v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017). When determining whether legally sufficient evidence supports a finding, we consider evidence favorable to the finding if the factfinder could reasonably do so and disregard evidence contrary to the finding unless a reasonable factfinder could not. *Id.* “The evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the finding under review.” *Guillory v. Dietrich*, 598 S.W.3d 284, 293 (Tex. App.—Dallas 2020, pet. denied).

In addition to her sufficiency challenge, D'Olivio also raises jurisdictional challenges. Whether a court has subject-matter jurisdiction is a question of law

subject to de novo review. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). “Exclusive jurisdiction is a question of law we review de novo.” *Emps. Ret. Sys. of Tex. v. Duenez*, 288 S.W.3d 905, 909 (Tex. 2009).

### ANALYSIS

D’Olivio brings five issues on appeal. Those issues center on D’Olivio’s contentions the county court either lacked jurisdiction to determine possession rights or failed to conduct a trial de novo as required by statute. Despite their common themes, however, D’Olivio’s arguments are distinct for each issue. We will address each in turn.

D’Olivio’s first two issues address her belief she did not receive a trial de novo. First, D’Olivio argues the county court did not conduct a trial de novo as required because it decided the case based on the evidence that was before the justice court rather than receiving new evidence. Second, D’Olivio maintains the evidence was insufficient to support the judgment of possession.

Cases first heard in justice courts may be appealed to a statutory county court for a trial de novo. *In re A.L.M.-F.*, 593 S.W.3d 271, 279 (Tex. 2019). The county court’s jurisdiction extends as far as the justice court’s jurisdiction. *In re Catapult Realty Capital, L.L.C.*, Nos. 05-19-00109-CV, 05-19-01056-CV, 2020 WL 831611, at \*7 (Tex. App.—Dallas Feb. 20, 2020, no pet.) (mem. op.) (combined appeal & orig. proceeding). When an appeal has been perfected in a forcible entry and detainer suit, the judge must immediately send the county court clerk a certified copy of all

docket entries, a certified copy of the bill of costs, and the original papers in the case. TEX. R. CIV. P. 510.10(a). In this appeal, the county court enjoyed the same jurisdiction as the justice court, and the evidence from the justice court was brought before the county court and can be found in the record on appeal. Moreover, the county court provided D'Olivio a full and complete de novo hearing during which the court permitted D'Olivio to make lengthy arguments and make her case. D'Olivio declined to introduce evidence and did not challenge the documents already before the court. We conclude the county court was within its rights to redetermine "all issues on which the judgment was founded" based on the evidence that appeared before it through a transfer of records from the justice court. *See A.L.M.-F.*, 593 S.W.3d at 278.

Further, the evidence was sufficient to support a judgment of possession. A forcible detainer action is a special proceeding created to provide a speedy, simple, and inexpensive means for resolving the question of right to immediate possession of real property. *In re Am. Homes for Rent Props. Eight, LLC*, 498 S.W.3d 153, 156 (Tex. App.—Dallas 2016, orig. proceeding) (mem. op. on reh'g). Judgment of possession in a forcible detainer action is not intended to be a final determination of whether the eviction is wrongful. *Marshall v. Hous. Auth. of City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006). Rather, "[t]he sole focus of a forcible detainer action is the right to immediate possession of real property." *Shields*, 526 S.W.3d at 478. To establish a superior right to immediate possession,

Hutson had the burden to prove (1) she owned the property; (2) D'Olivio was a tenant at will, tenant at sufferance, or a tenant or subtenant willfully holding over after the termination of the tenant's right of possession; (3) Hutson gave proper notice to D'Olivio to vacate the premises; and (4) D'Olivio refused to vacate.<sup>1</sup> *Id.*

Hutson's evidence demonstrated each of these elements. She established her ownership and D'Olivio's status (1) through a deed that created a joint tenancy with right of survivorship and automatically endowed Hutson with ownership of the house upon Thompson's death, *see Wagenschein v. Ehlinger*, 581 S.W.3d 851, 858 (Tex. App.—Corpus Christi—Edinburg 2019, pet. denied), and (2) through the final judgment based on that deed, in which the district court determined Hutson had superior title to the property. *See* TEX. PROP. CODE § 22.003 (“A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered . . . .”); *Martin v. McDonnold*, 247 S.W.3d 224, 231 n.2 (Tex. App.—El Paso 2006, no pet.); *see also Fleming v. Wilson*, 610 S.W.3d 18, 21 (Tex. 2020).

Hutson also produced sufficient evidence of adequate notice through a certified letter from her attorney. In a suit involving a tenant by sufferance, section

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<sup>1</sup> D'Olivio has not asserted that the Centers for Disease Control and Prevention's order concerning eviction should have any effect on this case, and the record bears no evidence that D'Olivio filed an affidavit that would have brought this case under the order. *See* Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292-01 (Sept. 4, 2020); *Johnson-Williams v. Idlewild Apartments*, No. 14-19-00977-CV, 2021 WL 98895, at \*1 n.2 (Tex. App.—Houston [14th Dist.] Jan. 12, 2021, no pet.) (mem. op.).



24.005(b) requires the plaintiff to give the tenant written notice to vacate three days before the plaintiff files a forcible detainer suit unless the parties contracted for a different notice period. TEX. PROP. CODE. § 24.005(b); *Lua v. Capital Plus Fin., LLC*, No. 05-19-01227-CV, 2022 WL 1681702, at \*2 (Tex. App.—Dallas May 26, 2022, no pet. h.); *Onabajo v. Household Fin. Corp. III*, No. 03-15-00251-CV, 2016 WL 3917140, at \*4 (Tex. App.—Austin July 14, 2016, no pet.) (mem. op.). The demand for possession must be made in writing by a person entitled to possession of the property. *Lua*, 2022 WL 1681702, at \*2. Here, the written demand for possession came from a person entitled to possession, the notice gave D’Olivio five days’ notice to vacate, and it is undisputed D’Olivio did not vacate as instructed. We conclude the evidence was sufficient to support the judgment of possession in favor of Hutson. D’Olivio’s first and second issues are overruled.

In her third issue, D’Olivio contends the county court was prohibited from deciding possession rights because the issues of title and possession were inextricably intertwined. More specifically, D’Olivio maintains the issue of title had to be resolved by the district court *before* the county court could adjudicate the right to possession. D’Olivio based this argument in part on her contention Hutson forged the deeds relied on by Hutson to establish her right to title of the property. We disagree for two reasons.

First, the district court resolved the issue of title before either the justice court or the district court determined possession rights. Any allegation concerning the

timing of the proceedings is without merit. *See Brooks v. Wells Fargo Bank, N.A.*, No. 05-16-00616-CV, 2017 WL 3887296, at \*8 (Tex. App.—Dallas Sept. 6, 2017, no pet.) (mem. op.) (“[B]y the time of trial on May 12, 2016, the issue of title to the Property had been resolved by the district court, and the county court’s adjudication of Wells Fargo’s right to immediate possession of the Property, therefore, was not intertwined with a determination of title to the Property.”). Second, the county court lacked jurisdiction to address or consider D’Olivio’s allegations of forgery and fraud because those issues were irrelevant to the question of possession rights. *See TEX. R. CIV. P. 510.3* (“The court must adjudicate the right to actual possession and not title.”); *Clarkson v. Deutsche Bank Nat’l Trust Co.*, 331 S.W.3d 837, 839 (Tex. App.—Amarillo 2011, no pet.) (“In fact, whether or not a sale pursuant to a deed of trust is invalid may not be determined in a forcible detainer action.”); *Williams v. Bank of New York Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.) (“[T]he only issue in a forcible detainer action is which party has the right to immediate possession of the property.”). We overrule D’Olivio’s third issue.

In her fourth issue, D’Olivio argues the county court erred in rendering judgment because the probate court that heard a dispute over Thompson’s will had exclusive jurisdiction. She relies on section 32.005 of the Texas Estates Code, which, when it applies, provides probate courts with exclusive jurisdiction over probate proceedings and causes of action “related to the probate proceeding” unless jurisdiction is made concurrent by the statute. TEX. ESTATES CODE § 32.005(a).

D'Olivio argues that because Hutson's claims were not listed among the types of claims for which there is concurrent jurisdiction under section 32.007, the probate court's jurisdiction over the case is exclusive rather than concurrent. *See id.* § 32.007.

We rejected this argument in D'Olivio's appeal from the district court action:

For section 32.005 to apply, the case must be either a probate proceeding or a case involving matters related to a probate proceeding. Matters related to a probate proceeding are defined to include "an action for trial of title to real property *that is estate property*," and "an action for trial of the right of property *that is estate property*." *Id.* § 31.002(c)(1). In this case, the sole issue was Hutson's superior title to the property, which she obtained before her father died. The evidence conclusively showed that Hutson and Thompson were joint tenants of the property based on the May 2018 deed. Thompson and his counsel ratified that deed and agreed Thompson had only a life estate in the property at issue. A life estate terminates upon the death of the life tenant and the life tenant has no power to devise the property that remains at his death. *In re Estate of Hernandez*, No. 05-16-01350-CV, 2018 WL 525762, at \*6 (Tex. App.—Dallas Jan. 24, 2018, no pet.) (mem. op.). The property, therefore, passed outside of the estate and is not a part of, or related to, the probate proceeding. *See Wallace v. Wallace*, No. 05-17-00447-CV, 2017 WL 4479653, at \*4 (Tex. App.—Dallas 2017, no pet.) (mem. op.) (probate court did not have exclusive jurisdiction where former wife was seeking to partition property as tenant in common and not as heir).

*D'Olivio*, 2022 WL 2800836, at \*6. Our answer to D'Olivio's argument is the same in this appeal. We overrule her fourth issue.

In her fifth issue, D'Olivio argues the trial court erred in rendering judgment because the district court retained plenary power after its judgment. D'Olivio likens the district court's plenary power to exclusive jurisdiction, and she maintains the district court's plenary power should have prevented the county court from assuming jurisdiction over the case. D'Olivio provides no authority for the proposition that

one court's plenary power deprives all other courts of subject matter jurisdiction to consider related matters. Even liberally construing her brief in the interest of justice, we interpret her fifth issue as an assertion the district court had dominant jurisdiction, which should have precluded the county court from hearing a related suit. So construed, we disagree with this argument.

The general rule is the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts.<sup>2</sup> *In re J.B. Hunt Transp., Inc.*, 492 S.W.3d 287, 294 (Tex. 2016) (orig. proceeding). With some exceptions, when cases involving the same subject matter are brought in different courts, the court with the first-filed case has dominant jurisdiction and should proceed, and the other cases should abate. *Perry v. Del Rio*, 66 S.W.3d 239, 252 (Tex. 2001) (combined appeal & orig. proceeding). “This first-filed rule flows from principles of comity, convenience, and the necessity for an orderly procedure in the trial of contested issues.” *J.B. Hunt*, 492 S.W.3d at 294 (internal quotation marks omitted); see *Perry*, 66 S.W.3d at 252. “The default rule thus tilts the playing field in favor of according dominant jurisdiction to the court in which suit is first filed.” *J.B. Hunt*, 492 S.W.3d at 294.

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<sup>2</sup> The term “dominant jurisdiction” is a misnomer because it is not a doctrine of jurisdiction but of venue. *In re Powell*, 644 S.W.3d 753, 759 n.1 (Tex. App.—Texarkana 2022, orig. proceeding) (citing, *inter alia*, *Phillips v. Phillips*, No. 14-19-00618-CV, 2021 WL 3879262, at \*4 n.4 (Tex. App.—Houston [14th Dist.] Aug. 31, 2021, no pet.)).

The same is not true in a forcible-detainer suit where, as here, the issues of title and possession are not so intertwined that the right of possession cannot be determined. “[A] forcible-detainer suit in justice court may run concurrently with another action in another court—even if the other action adjudicates matters that could result in a different determination of possession from that rendered in the forcible-detainer suit.” *In re Am. Nat’l Inv’rs, Corp.*, No. 05-17-00937-CV, 2017 WL 6503101, at \*2 (Tex. App.—Dallas Dec. 19, 2017, orig. proceeding) (mem. op.) (quoting *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 437 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (op. on reh’g)); see *Cook v. Mufaddal Real Estate Fund*, No. 14-15-00651-CV, 2017 WL 1274118, at \*4 (Tex. App.—Houston [14th Dist.] Apr. 4, 2017, no pet.) (mem. op.). Matters relating to possession may overlap in the two proceedings without affecting a county court’s right to determine immediate possession. *Am. Nat’l Inv’rs*, 2017 WL 6503101, at \*2. That is because resolving a forcible detainer action determines only the right to immediate possession, not the ultimate rights regarding title. *Id.* (quoting *Hong Kong Dev.*, 229 S.W.3d at 437); accord *Gober v. Bulkley Props., LLC*, No. 06-18-00031-CV, 2019 WL 321326, at \*4 (Tex. App.—Texarkana Jan. 25, 2019, pet. denied) (mem. op.).

We have determined the suits in county court and district court were not so intertwined that the county court was required to abate this eviction suit. The suit in county court properly proceeded unhindered by any purported dominant jurisdiction

of the district court. *See Am. Nat'l Inv'rs*, 2017 WL 6503101, at \*2. We overrule D'Olivio's fifth and final issue.

#### CONCLUSION

D'Olivio has challenged the judgment on several grounds: the conduct of the trial de novo, sufficiency of the evidence, intertwinement of the proceedings, exclusive jurisdiction, and dominant jurisdiction. None of these arguments disturb the soundness of the judgment of possession. We overrule Appellant's issues and affirm the judgment.

/Robbie Partida-Kipness/

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ROBBIE PARTIDA-KIPNESS  
JUSTICE

201118F.P05



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

**JUDGMENT**

BRIGETTA D'OLIVIO, Appellant

No. 05-20-01118-CV      V.

HILARY THOMPSON HUTSON,  
Appellee

On Appeal from the County Court at  
Law No. 2, Collin County, Texas  
Trial Court Cause No. 002-02704-  
2020.

Opinion delivered by Justice Partida-  
Kipness. Justices Reichel and  
Goldstein participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

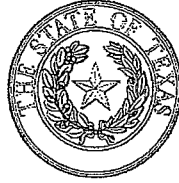
It is **ORDERED** that appellee HILARY THOMPSON HUTSON recover her costs of this appeal from appellant BRIGETTA D'OLIVIO.

Judgment entered this 28th day of July 2022.

**TAB - B**



Order entered September 21, 2022



In The  
Court of Appeals  
Fifth District of Texas at Dallas

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No. 05-20-01118-CV

---

BRIGETTA D'OLIVIO, Appellant

V.

HILARY THOMPSON HUTSON, Appellee

---

On Appeal from the County Court at Law No. 2  
Collin County, Texas  
Trial Court Cause No. 002-02704-2020

---

ORDER

Before Justices Partida-Kipness, Reichek, and Goldstein

Before the Court is appellant Brigetta D'Olivio's Motion for Rehearing. We

DENY the motion.

/s/ ROBBIE PARTIDA-KIPNESS  
JUSTICE

**TAB - C**

Order entered December 28, 2022



In The  
Court of Appeals  
Fifth District of Texas at Dallas

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No. 05-20-01118-CV

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BRIGETTA D'OLIVIO, Appellant

v.

HILARY THOMPSON HUTSON, Appellee

---

On Appeal from the County Court at Law No. 2  
Collin County, Texas  
Trial Court Cause No. 002-02704-2020

---

ORDER

Before Justices Partida-Kipness, Reichel, and Goldstein

On September 29, 2022, appellant Brigetta D'Olivio filed a motion for reconsideration and motion to transfer this case to one of the Houston courts of appeals. On September 30, 2022, pursuant to the procedure set forth in *Miles v. Ford Motor Company*, 914 S.W.2d 135, 137 n. 2 (Tex. 1995) (per curiam), this Court referred the portion of appellant's motion requesting a transfer to the Texas Supreme Court for determination. On our own motion, we abated the case pending the supreme court's resolution of the transfer issue. On November 21, 2022, the

Texas Supreme Court denied appellant's request for transfer. Accordingly, we now **LIFT THE ABATEMENT** and **REINSTATE** the case.

This Court denied appellant's motion for en banc reconsideration on September 20, 2022, and denied appellant's motion for rehearing on September 21, 2022. In denying appellant's motions, we did not modify our judgment, vacate our judgment, render a new judgment, or issue a new opinion. Appellant's September 29, 2022 motion for reconsideration is, therefore, not authorized by the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 49.4. A motion for reconsideration not authorized by the rules is a nullity. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 702 (Tex. 1990). Accordingly, we **DISMISS** appellant's motion for reconsideration.

/s/     **ROBBIE PARTIDA-KIPNESS**  
         **JUSTICE**

**TAB - D**

CAUSE NO. 002-02704-2020

HILARY THOMPSON HUTSON,	§	IN THE COUNTY COURT AT LAW
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	COURT NO. 2
	§	
BRIGETTA D'OLIVIO, and	§	
ALL OTHER OCCUPANTS,	§	
§	§	
	§	
<i>Defendants.</i>	§	COLLIN COUNTY, TEXAS
	§	

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FINAL JUDGMENT AND ORDER ON  
FORCIBLE ENTRY AND DETAINER

CAME THIS DAY before the Court, Plaintiff Hilary Thompson Hutson, and Defendant Brigetta D'Olivio, on appeal by Defendant of a Forcible Entry and Detainer Judgment of November 11, 2020, from the Justice Court of Collin County, Precinct 3-1. After hearing arguments and submissions of the parties, the Court ORDERS, ADJUDGES and DECREES:

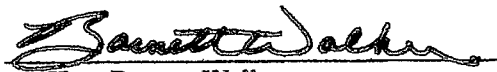
- (1) Possession of the premises at 2916 Creekbend Drive, Plano, Texas 75075 ("Premises"), is GRANTED to Plaintiff, with a right of possession commencing at 5:00 p.m., December 28, 2020;
- (2) Plaintiff shall be entitled to a Writ of Possession and a Forcible Detainer Eviction, enforced by the Constables of Collin County, if the Premises are not vacated on or before 5:00 p.m., December 28, 2020;
- (3) Defendant may stay eviction if a supersedeas bond in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) is timely paid to the Registry of Court

pursuant to law, and a monthly payment in lieu of rent, payable through the Registry to the Plaintiff, of TWO THOUSAND DOLLARS (\$2,000.00) is made on or before the fifth of each month, beginning on January 5, 2021; and

(4) Plaintiff is entitled to her costs in this case;

for which let execution issue. This is a final judgment; all other relief not expressly granted is hereby denied.

SO ORDERED, this 31st day of December, 2020.

A handwritten signature in cursive script, reading "Barnett Walker", written over a horizontal line.

Hon. Barnett Walker  
Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on December 18, 2020.

/s/ Bruce D. Cohen

Bruce D. Cohen



CAUSE NO. 002-02704-2020

HILARY THOMPSON HUTSON,	§	IN THE COUNTY COURT AT LAW
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	COURT NO. 2
	§	
BRIGETTA D'OLIVIO, and	§	
ALL OTHER OCCUPANTS,	§	
§	§	
<i>Defendants.</i>	§	COLLIN COUNTY, TEXAS
	§	

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CORRECTED PROPOSED  
FINAL JUDGMENT AND ORDER

COMES NOW Hilary Thompson Hutson and respectfully submits the attached corrected proposed Final Judgment and Order on Forcible Entry and Detainer. Two typographical errors (one material) were noted after filing of the Proposed Order, and a Corrected Draft is attached.

The corrections are addition of the word "a" in numbered paragraph (2) between "to" and "Writ of Possession; and, in paragraph (3) deletion of "after of" and inclusion of "before" between "on or" and "the fifth."

Undersigned counsel regrets the error.

This 16th day of December, 2020.

Respectfully submitted,

/s/ Bruce D. Cohen  
Bruce D. Cohen  
Texas Bar No 24014866  
8117 Preston Road, Ste. 300  
Dallas, Texas 75225  
(214) 613-3726  
cohenbru@msu.edu

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on December 16, 2020.

/s/ Bruce D. Cohen  
Bruce D. Cohen

**Granted**

  
31ST December 2020

**Barnett Walker**  
**Judge, Collin County Court at Law #2**

**TAB - E**

FILE COPY

RE: Case No. 23-0125

DATE: 4/28/2023

COA #: 05-20-01118-CV

TC#: 002-02704-2020

STYLE: D'OLIVIO v. HUTSON

Today the Supreme Court of Texas denied the Motion to Stay, as supplemented, and denied the petition for review in the above-referenced case.

BRIGETTA D'OLIVIO

\* DELIVERED VIA E-MAIL \*

**TAB - F**

FILE COPY

RE: Case No. 23-0125

DATE: 7/7/2023

COA #: 05-20-01118-CV

TC#: 002-02704-2020

STYLE: D'OLIVIO v. HUTSON

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

BRIGETTA D'OLIVIO

\* DELIVERED VIA E-MAIL & POSTAL \*

**TAB - G**



FILE COPY

RE: Case No. 23-0125  
COA #: 05-20-01118-CV

DATE: 7/13/2023  
TC#: 002-02704-2020

STYLE: D'OLIVIO v. HUTSON

Today the Supreme Court of Texas denied the Motion for  
En Banc Reconsideration in the above-referenced case.

BRIGETTA D'OLIVIO  
2916 CREEKBEND DRIVE  
PLANO, TX 75075

\* DELIVERED VIA E-MAIL & POSTAL \*

**TAB - H**

CAUSE NO. 296-04855-2019

HILARY THOMPSON HUTSON,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	
	§	296TH JUDICIAL COURT
	§	
BRIGETTA D'OLIVIO, a/k/a	§	
BRIGETTA ALIX ANDERSON,	§	
ALIX BRIGETTA,	§	
	§	
<i>Defendant.</i>	§	COLLIN COUNTY, TEXAS
	§	

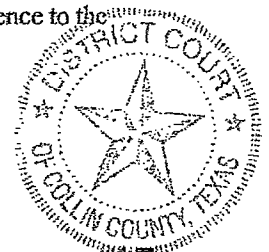
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FINAL ORDER AND JUDGMENT  
ON PLAINTIFF'S MOTION FOR TRADITIONAL  
AND NO-EVIDENCE SUMMARY JUDGMENT

This is a Trespass to Try Title action, involving a residential property in Plano, Collin County, Texas. The Plaintiff filed a Motion for Traditional and No-Evidence Summary Judgment on November 18, 2019, renewing that Motion on June 16, 2020. After consideration of the Motion and the extensive briefing of both parties, the Court finds and rules as follows.

Standard of Inquiry

A traditional motion for summary judgment requires the moving party to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166(a). If the movant carries this burden, the burden shifts to the nonmovant to raise a genuine issue of mater fact that would preclude summary judgment. No-evidence summary judgment motions are based on a contention that there is no evidence supporting an essential element of a burden borne by the nonmovant. There must be either a complete absence of evidence (or no more than a mere scintilla); or legal reasons why the court may not consider evidence to the



contrary; or conclusive evidence establishing the opposite of a legally vital fact. *Merriman v. XTO Energy*, 407 S.W.3d 244, 248 (Tex. 2013)(citation omitted).

The Court indulges every reasonable inference and resolves doubts in favor of the nonmovant. *E.g., Lujan v. Navistar*, 555 S.W.3d 447, 451 (Tex. App. – Dallas 2008, pet. denied).

#### Relevant Facts

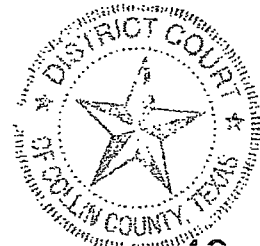
Indulging every reasonable inference and resolving genuine doubt in favor of the Defendant, the Court predicates its judgment on the following relevant facts.

The Plaintiff is Hilary Thompson Hutson, and the Defendant is Brigetta D'Olivio, who claims to be the widow of Plaintiff's father, Richard W. Thompson, Jr. For purposes of this Order, it is assumed that a July 1, 2019 marriage of Mr. Thompson and the Defendant occurred and is lawful.

The property in this trespass to try title action is located at 2916 Creekbend Drive, Plano, 75075, and its legal description is not in dispute:

BEING LOT 15 in Block 13 of THE FOURTH SECTION OF DALLAS NORTH ESTATES, 12th INSTALLMENT, an Addition to the City of Plano, Texas, according to the Map thereof recorded in Volume 7, Page 54 of the Map Records of Collin County, Texas, together with all improvements located thereon.

This property (the "Property") was deeded to Richard W. Thompson, Jr., and Evvonne R. Thompson on June 29, 1973, and recorded at Vol. 874, P. 439 of the Official Records of Collin County. It was declared to be the Thompsons' homestead on December 30, 1992, Doc. No. 92-0084522, and remained so until Evvonne Thompson died intestate on December 24, 2007. At her death, Evvonne Thompson had two living children, the Plaintiff and a son, Richard W. Thompson, III, who passed away in 2013. Neither Richard nor Evvonne had any other living children and Mr. Thompson was the father of both Plaintiff and Richard W. Thompson, III.



On May 5, 2018, Richard W. Thompson, Jr. conveyed the Property to himself and Plaintiff as "Joint Tenants with Full Right of Survivorship," by a Deed Without Warranty filed June 12, 2018 in the Official Records of Collin County. Document No. 20180612000719590. The deed reserved from conveyance, "the homestead life estate of Grantor," and indicated that it "covers and includes all interest of Grantor except the reserved life estate."

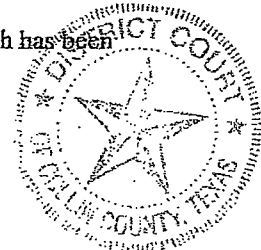
Late in 2018, the Plaintiff was granted temporary guardianship over the person and estate of her father in orders issued by the Probate Court of Collin County, *In the Guardianship of Richard W. Thompson, Jr.*, Cause No. GA1-0261-2018. The Defendant proffered several affidavits of Richard W. Thompson, Jr., purportedly challenging the validity of the May 5, 2018 Deed Without Warranty. Such affidavits were dated during the period of the temporary guardianship and were without legal effect.

In a court-ordered mediation conducted on May 6, 2019, Mr. Thompson's attorney admitted on his behalf that Mr. Thompson was then occupying the Property pursuant to the homestead provisions of Section 102.005 of the Texas Estates Code.

The marriage between Mr. Thompson and Ms. D'Olivio is alleged to have occurred on July 1, 2019. The body of Mr. Thompson was discovered at the Property on the morning of July 14, 2019, and his death is recorded as having occurred that day.

#### **Determination of a Trespass to Try Title**

Trespass to try title actions are the sole methods in Texas for determining disputes as to title to real property, and require as its single element of proof that the plaintiff must demonstrate prima facie right of title by one of four methods. The plaintiff can demonstrate its right by proving one of the following: (1) regular chain of conveyances from the sovereign, (2) superior title out of a common source, (3) title by limitations, or (4) prior possession, which has been



abandoned. *Bacon v. Jordan*, 763 S.W.3d 395, 396-97 (Tex. 1988); Tex. Prop. Code § 22.001. Trespass to try title actions are governed by Texas Rules of Civil Procedure 783-809, which prescribe both the sole element of proof and the procedural rules for such cases.

Plaintiff Hilary Hutson has proceeded in this case as the holder of a common source title; that is, to the extent the Defendant claims a right to possession or ownership of the Property, her claim derives from the same chain of title as the Plaintiff's. Rules of proof for such a claim are set forth in Rule 798, which obviates a property survey, and instead requires certified copies of relevant deeds to be filed with the Court and served on the Defendant. This requirement was met. Additionally, an abstract of title is required under Rules 791 and 792, if requested. While it is uncertain whether an abstract was requested, one was filed and served in this case.

#### **Application to the Instant Case**

When Euvonne R. Thompson died intestate on December 24, 2007, her surviving spouse Richard was entitled to the homestead life estate set forth in Article XVI, Section 52 of the Texas Constitution. He also became owner in fee simple because community property vests in the surviving spouse of an intestate decedent when all of his or her living children are also the children of the decedent. In this case, the Plaintiff Hilary Thompson Hutson and her brother Richard W. Thompson, III were the only children of Euvonne Thompson, and Richard W. Thompson, Jr. was their father.

Mr. Thompson was free to separate his homestead life estate from his title interests in the Property, as the homestead life estate confers only possessory rights, and is not itself title. *Laser v. First Huntsville Properties*, 826 S.W.2d 125, 129 (Tex. 1981). He did precisely that with his Deed Without Warranty of May 5, 2018, granting to himself and his daughter Plaintiff Hilary a joint tenancy with right of survivorship, but reserving his homestead life estate.



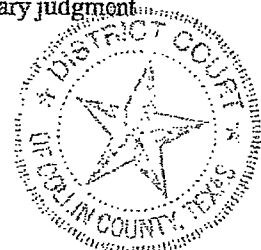
The homestead life estate in question was the surviving spouse's as prescribed in the Texas Constitution Article XVI, Section 52. That provision is codified at Estates Code 102.005, which was the provision acknowledged as his sole basis for possession of the Property at the mediation proceeding of May 6, 2019.

When Mr. Thompson died on July 14, 2019, title to the Property passed to the Plaintiff pursuant to the Joint Tenancy with Right of Survivorship. At the same time, his homestead life estate expired, but a new one did not arise for his putative surviving spouse. This is because the surviving spouse of a decedent who himself was possessing property pursuant to the Art. XVI, § 52 life estate is not entitled to a further life estate. *Marina v. Lombardo*, 277 S.W.2d 749 (Tex. App. – Beaumont 1955, writ n.r.e.); *see, also Conrad v. Judson*, 465 S.W.2d 819 (Tex. App. – Dallas 1971)(decided under older version of the former Probate Code, § 45(a)).

Because Defendant's only claim of title or possessory right to the Property is pursuant to the homestead life estate, and no such estate arose on the death of Richard W. Thompson, Jr., the Plaintiff has a superior claim of title, and is GRANTED summary judgment on the trespass to try title.

#### **No-Evidence Summary Judgment**

The Plaintiff sought a no-evidence summary judgment solely as to the issue of a prospective claim for good-faith improvements to the Property by the Defendant. Such claims may only be brought by a plaintiff who occupied the property in a trespass to try title for more than one year prior to the filing of suit. Tex. Prop. Code § 22.021(c)(1). In this instance, the action having been filed 45 days after Mr. Thompson's death, such claims are legally foreclosed, and the Plaintiff can come forward with no evidence to the contrary as a matter of law. Summary judgment is thus GRANTED as to this issue.



### Forcible Detainer Eviction and Writ of Possession

A successful trespass to try title plaintiff is entitled to a writ of possession if that issue is successfully proven. Tex. R. Civ. P. 804. The elements of such a writ, which derives from a forcible detainer eviction, are set forth in Chapter 24 of the Property Code, and have been met by the Plaintiff. The Plaintiff has made an affirmative showing of notice to the occupant-Defendant more than three days prior to the filing of this lawsuit by certified and regular mail, §§ 24.002, 240.004, and has demonstrated compliance with the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., with proof that the Defendant is not a member of the United States military. Having been granted summary judgment on the trespass to try title, and having made a successful showing as to eviction, the Plaintiff is GRANTED summary judgment as to Forcible Detainer Eviction and may proceed in Justice of the Peace Court to enforce her rights thereunder.

THEREFORE, having determined the issues before it in their entirety, the Court GRANTS summary judgment in favor of Plaintiff Hilary Thompson Hutson and against Defendant Brigetta D'Olivio, and further ORDERS that:

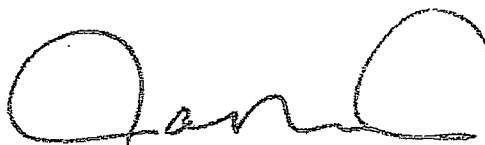
- (a) Title to the Property at 2916 Creekbend Drive, Plano, Collin County, Texas 75075 shall vest solely in the Plaintiff, Hilary Thompson Hutson by operation of a lawful Joint Tenancy with Right of Survivorship; and
- (b) Plaintiff is entitled to a Forcible Detainer Eviction and Writ of Possession as to the Property at 2916 Creekbend Drive, Plano, Collin County, Texas 75075, which she may pursue with the Justice of the Peace Court of Collin County; and





(c) Final judgment shall be entered in favor of Plaintiff and against Defendant with each party to bear its own costs.

SO ORDERED, this 11<sup>th</sup> day of August, , 2020.



HON. JOHN ROACH, JR.  
296th District Court  
Presiding



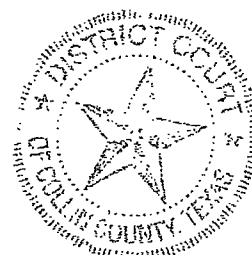
CERTIFICATE OF SERVICE

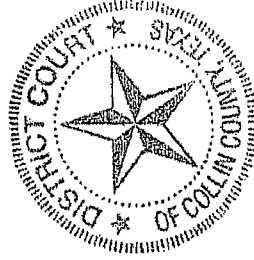
I hereby certify that a copy of the foregoing was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on August 6, 2020.

/s/ Bruce D. Cohen

Bruce D. Cohen

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KILGUS TO Y  
...  
PAGE 11





STATE OF TEXAS )  
COUNTY OF COLLIN )

I, Lynne Finley, District Clerk in and for Collin County Texas, do hereby certify that the above foregoing is a true and correct copy of the original document as the same appears on the file in the District Court, Collin County, Texas, Whereas my hand and seal of said Court, this the 14 day of ~~March~~ A.D. 20 ~~22~~ 20

LYNNE FINLEY, DISTRICT CLERK  
COLLIN COUNTY, TEXAS

*D. Lee Gordon* DEPUTY

**TAB - I**

GA1-0261-2018

FILED

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IN THE GUARDIANSHIP OF

§

IN THE PROBATE COURT

§

RICHARD W. THOMPSON, JR

§

OF


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AN ALLEGED

§

COLLIN COUNTY TEXAS

INCAPACITATED PERSON

STACY PREMP  
COUNTY CLERK  
COLLIN COUNTY, TEXAS  
BY:  DEPUTY

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NOTICE OF APPEAL

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TO THE HONORABLE JUDGE OF SAID COURT:

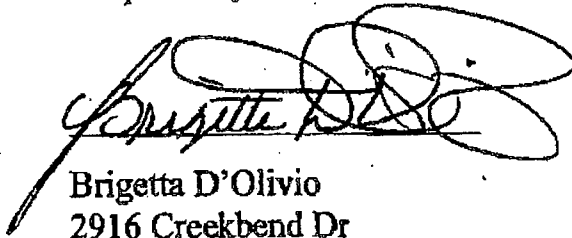
Brigetta D'Olivio, ("D'Olivio"), surviving spouse of Richard W. Thompson, Jr., (Deceased) and interested party, in the above-referenced cause, files this Notice Of Appeal. This is an appeal from every corner of the final judgment entered on May 4, 2022.

D'Olivio files the appeals to the Fifth District Court of Appeals in Dallas, Texas. An Original Proceeding in the related cause number PB1-1381-2019 was filed in the Fifth District Court Of Appeals on March 2, 2022. D'Olivio is filing a 306a.5 motion in the trial court regarding the order, dated May 4, 2020. As



such, D'Olivio's Notice Of Appeal may premature. D'Olivio reserves the right to  
amend the within Notice Of Appeal.

Respectfully Submitted:



Brigetta D'Olivio  
2916 Creekbend Dr  
Plano, TX 75075  
214-733-72-4  
bdt2916@gmail.com



GA1-0261-2018

IN THE GUARDIANSHIP OF                    §                    IN THE PROBATE COURT  
   §  
RICHARD W. THOMPSON, JR                    §                    OF  
   §  
AN ALLEGED                    §                    COLLIN COUNTY TEXAS  
INCAPACITATED PERSON

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument, "Notice of Appeal" dated June 6, 2022, has been served in accordance with the Texas Rules of Civil Procedure 21 to the last known address for the following:

Attorney of Record for Hilary T. Hutson  
Leu & Peirce PLLC  
Erin Peirce  
2313 Coit Rd.,  
Plano, TX 75075

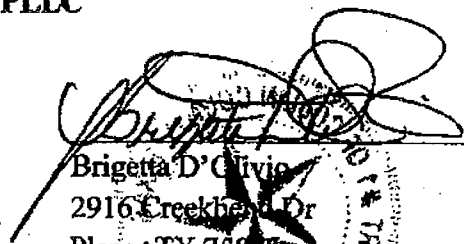
Law Office Of Julie Reedy  
c/o Julie Reedy  
4428 Lovers Lane  
Dallas, TX 75209

Ford & Bergner  
c/o Don Ford  
901 Main St 33<sup>rd</sup> Flr  
Dallas, TX 75202

Whitaker, Chalk, Swindle & Schwartz, PL  
c/o Michael Kaitcer  
301 Commerce St., Ste: 3500  
Fort Worth, TX 76102

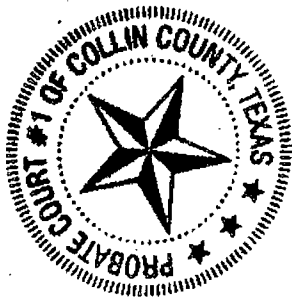
Caldwell, Bennett, Thomas, Toraason, & Mead, PLLC  
c/o James Brian Thomas  
4851 LBJ Freeway, Suite 601

Dallas, TX 75244

  
Brigetta D'Olivia  
2916 Creekhead Dr  
Plano, TX 75075  
214-733-7204  
bdt2916@gmail.com

A TRUE AND CORRECT COPY  
OF ORIGINAL INSTRUMENT AS  
FILED IN COLLIN COUNTY  
CLERKS OFFICE





THE STATE OF TEXAS  
COUNTY OF COLLIN

I, Stacey Kemp County Clerk,  
Court Collin County Texas

Do hereby certify that the foregoing instrument of writing is  
a full, true and correct copy of the instrument as filed for  
record in my office the 9 day of June, 2022  
No. 021-024-018

Witness my hand and official seal at my office in McKinney,  
Texas, this 5 day of August, 2022.

Stacey Kemp Collin County Clerk  
Collin County, Texas

By: [Signature], Deputy



**TAB - J**



**Fifth Court of Appeals**  
600 Commerce Street, Suite 200  
Dallas, Texas 75202

August 4, 2022

RE: Case No. 05-22-00768-CV

Style: In The Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person  
v.

The Court today filed appellant's notice of appeal in the above referenced cause. The 5<sup>th</sup> Court of Appeals follows the Standards of Conduct adopted by Texas Supreme Court and Court of Criminal Appeals order.

Trial Court Case No. GA1-0261-2018

Claudia McCoy, Clerk, Pro Tem

BRUCE DAVID COHEN  
PRAVATI CAPITAL, LLC  
8117 PRESTON ROAD  
STE. 300  
DALLAS, TX 75225-6347  
\* DELIVERED VIA E-MAIL \*



**Fifth Court of Appeals**  
600 Commerce Street, Suite 200  
Dallas, Texas 75202

August 4, 2022

RE: Case No. 05-22-00768-CV

Style: In The Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person  
v.

The Court today filed appellant's notice of appeal in the above referenced cause. The 5<sup>th</sup> Court of Appeals follows the Standards of Conduct adopted by Texas Supreme Court and Court of Criminal Appeals order.

Trial Court Case No. GA1-0261-2018

Claudia McCoy, Clerk, Pro Tem

BRUCE DAVID COHEN  
PRAVATI CAPITAL, LLC  
8117 PRESTON ROAD  
STE. 300  
DALLAS, TX 75225-6347  
\* DELIVERED VIA E-MAIL \*

**TAB - K**

# Supreme Court of Texas

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Misc. Docket No. 22-9102

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## Denial of Requests to Transfer Cases from the Fifth Court of Appeals

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The Supreme Court denies the requests to transfer the following cases from the Fifth Court of Appeals District, Dallas, Texas:

Case No. 05-22-00768-CV

*In the Guardianship of Richard W. Thompson, Jr., An Alleged Incapacitated Person*

Case No. 05-20-01118-CV

*Brigetta D'Olivio v. Hilary Thompson Hutston*

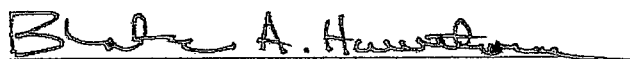
*and*

Case No. 05-20-00969-CV

*Brigetta D'Olivio a/k/a Brigetta Alix Anderson, Alix Brigetta v. Hilary Thompson Hutston*

ORDERED by the Supreme Court of Texas, in Chambers,

With the Seal thereof affixed at the City of Austin, this 21st day of November, 2022.



BLAKE A. HAWTHORNE, CLERK  
THE SUPREME COURT OF TEXAS

**TAB - L**

**CONFIDENTIAL**  
**CONFIDENTIAL**

**LEU & PEIRCE**  
**ELDER LAW ATTORNEYS**

---

**AGREEMENT FOR LEGAL SERVICES**

1. **Hilary Hutson ("Client") hereby employs Leu & Peirce, PLLC ("Attorney") to provide legal services in connection with the probate of the Estate of Richard W. Thompson, Jr, the Custodial Accounts, the real property located at 2916 Creekbend Drive, Plano, Texas 75075, and all other related matters.**
2. **Client agrees to pay Attorney at an hourly rate. Attorney's fees for legal services are based primarily on the published hourly rates in effect for each lawyer and legal assistant in our firm at the time the services are rendered. These rates vary between \$175 and \$375 per hour for attorneys, currently, \$375 per hour for Lori Leu, \$300 per hour for Erin Peirce, \$225 per hour for Lauren Olson, \$200 per hour for Laura Chavero and \$175 per hour for Zachary Stubblefield and are subject to change; however, no change is anticipated before January 1, 2020. The hourly rate for paralegals is \$125 per hour. From time to time you may ask for, and receive, estimates for projects. We will use our best efforts to give accurate estimates, but you should understand that they are only good faith estimates.**
3. **Client is responsible for paying all costs that are incurred by Attorney in representing Client. For purposes of this agreement, "Costs" mean and include, but are not limited to, all allowable court and discovery costs, record fees, travel and related expenses, court reporter fees, courier service and delivery fees, electronic database research fees, postage and outside copying fees. Attorney may also employ investigators, consultants, and experts, and the expenses of such employment are also Costs. Depending on the nature of the Costs, Attorney may advance the Cost and invoice Client, or send the Cost invoice directly to Client for payment. Client agrees to reimburse the Attorney or pay the Cost invoice within twenty (20) days of request for payment.**
4. **Client agrees to provide necessary information, and agrees that Attorney can rely on the information provided. Client has a duty to read all documents provided by Attorney.**
5. **Client agrees to immediately notify Attorney of any changes in residence or telephone number. Attorney shall have the right to cease legal work if Client does not furnish Attorney with all necessary, complete, and truthful information and documents, or if Client does not cooperate fully with Attorney in the handling of this matter.**

**CONFIDENTIAL**  
**CONFIDENTIAL**

**Agreement for Legal Services**

**Page 2**

6. Attorney will provide information to third parties (e.g., CPAs, financial planners, etc.) at Client's request. However, Client understands that doing so could affect the attorney-client privilege.
7. Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no representations or promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee and/or warranty regarding the success of the case. Client acknowledges that Attorney is simply expressing its opinion, and Client acknowledges that the uncertainty of the legal process makes any reliance on such an opinion unjustified.
8. Client authorizes Attorney to prepare, file and serve all notices, papers and pleadings (including complaints), and to take all steps in the prosecution and/or defense of Client's claims which Attorney, in its discretion, deems reasonable or necessary. Client authorizes Attorney to negotiate the settlement of Client's claims.
9. There is an attorney-client privilege in communications between Attorney and Client concerning a lawsuit. In order to preserve the confidentiality of discussions, Client should be careful what is said about the lawsuit to anyone outside the presence of Attorney. To encourage swift, open and inexpensive communications, Client authorizes Attorney to communicate with Client by electronic means, including email, voice mail, instant messaging and facsimile. The risk of inadvertent disclosure of confidential communications may increase with the use of these additional means of communications. Client accepts and acknowledges that risk.
10. Client acknowledges receipt of the following notice: The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with an attorney involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. Please call 1-800-932-1900 for more information.
11. This agreement is formed under and shall be governed by the laws of the State of Texas. Client and Attorney have made no agreements or promises other than the ones contained in this document.

**CONFIDENTIAL**  
**CONFIDENTIAL**

Agreement for Legal Services  
Page 3

**AGREED**

Attorney:



Leu & Peirce, PLLC

By: Erin W. Peirce

Date:

7.16.19

Client:



Hillary Hutson

Date:

7-16-2019



**M**

## **TEXAS PROPERTY CODE**

### **Section 24.004(a) - Jurisdiction**

(a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits.

**Section 24.001 (a)** A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

**Section 24.001(b)** For purposes of this chapter, a forcible entry is:

- (1) An entry without the consent of the person in actual possession of the property;
- (2) An entry without the consent of a tenant at will or by sufferance; or
- (3) An entry without the consent of a person who acquired possession by forcible entry.

**Section 24.002 (a)** A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

- (1) Is a tenant or a subtenant willfully and without force holding over after the termination of the tenant's right of possession;
- (2) Is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or
- (3) Is a tenant of a person who acquired possession by forcible detainer.

**Section 24.002 (b)** - The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005 (Notice to Vacate Prior to Filing Eviction Suit)

**Section 24.005(a)** If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 01.001 (Notice for Terminating Certain Tenancies).

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement...

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.

(d) In all situations in which the entry by the occupant was a forcible entry under Section 24.001 (Forcible Entry and Detainer), the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a

forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline...

(g) The notice period is calculated from the day on which the notice is received.

### **TEXAS RULES OF CIVIL PROCEDURE**

**Rule 510.11** On the trial of the case in the county court the appellant or appellee will be permitted to plead, prove and recover his damages, if any, suffered for withholding or defending possession of the premises during the pendency of the appeal. Damages may include but are not limited to loss of rentals during the pendency of the appeal and attorney fees in the justice and county courts provided, as to attorney fees, that the requirements of Section 24.006 of the Texas Property Code have been met. Only the party prevailing in the county court will be entitled to recover damages against the adverse party. The prevailing party will also be entitled to recover court costs and to recover against the sureties on the appeal bond where the adverse party has executed an appeal bond.