

D-1-GV-08-000050

Cause No. _____

THE STATE OF TEXAS,
Plaintiff

v.

WEBB COUNTY TITLE &
ABSTRACT COMPANY, INC.
Defendant

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st

_____ JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JAN 11 2008

At 12:54 P.M.
Amalia Rodriguez-Mendoza, Clerk

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR ORDER
APPOINTING LIQUIDATOR AND REQUEST FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the State of Texas, by and through the Office of the Attorney General of Texas (hereinafter "Plaintiff"), complaining of Webb County Title and Abstract Company, Inc. (hereinafter "Defendant"), and would respectfully show the Court the following:

I. DISCOVERY LEVEL

1.1 Plaintiff intends to conduct discovery under Level 2 of the TRCP Rule 190.

II. NATURE OF SUIT

2.1 This suit is brought at the request of the Commissioner of Insurance for the State of Texas (hereinafter the "Commissioner of Insurance") pursuant to TEX. INS. CODE § 443.052. Unless otherwise indicated, all statutory references are to the TEX. INS. CODE.

2.2 Plaintiff seeks to obtain an order designating the Commissioner of Insurance as Liquidator of Defendant under TEX. INS. CODE § 443.151 *et seq.*

2.3 Plaintiff further seeks to obtain a Permanent Injunction pursuant to TEX. INS. CODE § 443.008(a), restraining Defendant from conducting the business of insurance, except as directed by the Liquidator, and restraining other parties from taking any actions against Defendant or its property.

2.4 Plaintiff further seeks to recover from Defendant all the fees, taxes, fines, penalties, and forfeitures provided by law for the acts complained of, including, but not limited to, all of the taxes, fines, penalties, and forfeitures provided by TEX. CONST. Art. IV, § 22, and TEX. CIV. PRAC. & REM. CODE §§ 64.051 and 66.003, and reasonable attorneys' fees and court costs provided by TEX. GOV'T CODE § 402.006, subject to the provisions of TEX. INS. CODE § 443.301(a).

III. DEFENDANT

3.1 Defendant is a Texas domestic title insurance agent holding a license issued by the Texas Department of Insurance. Defendant is a "Covered Person" as is defined in TEX. INS. CODE § 443.003(4), as it is a person organized or doing insurance business, and is subject to TEX. INS. CODE Chapter 443 as specified by TEX. INS. CODE ANN. § 2601.001. Defendant has waived citation and service.

IV. JURISDICTION

4.1 This Court has jurisdiction over this action pursuant to TEX. CONST. art. IV, § 22, TEX. CIV. PRAC. & REM. CODE §§ 64.001 and 66.001, and TEX. INS. CODE §§ 443.005.

V. VENUE

5.1 This suit must be brought against Defendant in Travis County, Texas pursuant to TEX. INS. CODE § 443.005(g).

VI. GROUNDS FOR ORDER OF LIQUIDATION

6.1 Grounds exist to place Defendant into liquidation pursuant to TEX. INS. CODE § 443.057(2), as the Defendant is insolvent. TEX. INS. CODE § 443.004(a)(13) provides that a Covered Person is insolvent if it is unable to pay its obligations when they are due, or does not

have admitted assets at least equal to its liabilities. As of November 27, 2007, Defendant's various liabilities result in a negative equity of \$952,657.18. Furthermore, Defendant has not been able to return funds that it held in escrow for consumers when these obligations become due.

6.2 Grounds exist to place Defendant into liquidation pursuant to TEX. INS. CODE § 443.057(9), because Defendant is in a condition that the further transaction of business would be hazardous financially to policyholders, creditors, or the public. On November 26, 2007, the Commissioner of Insurance placed Defendant under an Emergency Cease and Desist Order. The grounds for such order include, but are not limited to, the fact that Defendant has a negative equity of \$952,657.18 and has been unable to make up the deficiency, and is unable to return money due to consumers.

6.3 Grounds exist to place Defendant into liquidation pursuant to TEX. INS. CODE § 443.057(10), as there is reasonable cause to believe that there has been embezzlement from the insurer. On June 19, 2007, the Texas Department of Insurance received notice from Defendant that its escrow and operating accounts were missing \$2,307,703.73, and that this money had apparently been taken by two former employees. This money has not been returned or recovered, and the loss from this embezzlement is the primary cause of Defendant's insolvency.

6.4 Grounds exist to place Defendant into liquidation pursuant to TEX. INS. CODE § 443.057(20), as the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to control these entities specified by § 443.003, have consented to the entry of an order of liquidation under TEX. INS. CODE § 443.151.

VII. APPOINTMENT OF LIQUIDATOR

7.1 TEX. INS. CODE § 443.151(a) provides that the Court shall appoint the Commissioner of Insurance as Liquidator in a delinquency proceeding brought under TEX. INS. CODE § 443.057. TEX. INS. CODE § 443.151 *et seq.* Plaintiff requests that this Court issue an order appointing the Commissioner of Insurance as Liquidator of Defendant, and grant him all powers under the statutes and the common law of the State of Texas, including, but not limited to, TEX. INS. CODE § 443.151 *et seq.*, to conduct the business of the Defendant, and take any other actions as he deems necessary. Pursuant to TEX. INS. CODE § 443.008(m), Plaintiff further requests that the Liquidator not be required to file a bond.

7.2 Plaintiff further requests that, pursuant to TEX. INS. CODE § 443.151(a), this Court issue an order finding that all of Defendant's property of any kind or nature, wherever situated, whether real, personal, or mixed, and whether held in Defendant's name or for Defendant's benefit, including, but not limited to, cash, accounts, funds, stocks, bonds, statutory deposits (including deposits made by Defendant with any agency of a state or the federal government), trust funds, letters of credit, safe deposit boxes, notes, books, records, documents, furniture, equipment, real estate, retainages and retainers, and rights or causes of actions of any kind, including, but not limited to, accounts receivables, contract rights, premiums, insurance and reinsurance proceeds, and all licenses held by Defendant, be vested in the Liquidator.

VIII. STAY OF PROCEEDINGS

8.1 Pursuant to TEX. INS. CODE § 443.008(c) the commencement of this delinquency proceeding operates as a stay against the commencement or continuation of a judicial, administrative, or other action or proceeding or process against Defendant or its property.

Plaintiff further requests that this Court enter any additional stays under TEX. INS. CODE § 443.008(a) as may be necessary.

IX. INJUNCTIVE RELIEF

9.1 Plaintiff requests that this Court issue an injunction as set forth herein pursuant to TEX. INS. CODE § 443.008(a) to prevent immediate and irreparable injury, loss and damage to the State of Texas, the general public, and Defendant's creditors.

9.2 Plaintiff would show that, unless restrained by this Court, Defendant will continue to operate in a hazardous financial condition.

9.3 Plaintiff therefore requests that this Court enter an order enjoining Defendant and its current and former officers, trustees and directors (including, but not limited to, Raquel Gonzalez) owners (including, but not limited to, Raquel Gonzalez, Richard Haynes, Nick Hernandez, Irene Hernandez, Salinas Investments, and Ada Cronfel), underwriters (including but not limited to Alamo Title Insurance, United General Title Insurance Company, and Old Republic National Title Insurance Company), affiliates, managers, employees, agents, servants, representatives, attorneys, adjusters and other persons or entities from conducting business on behalf of Defendant, except as directed by the Liquidator, and from wasting, transferring, selling, assigning, canceling, concealing, claiming, hypothecating or disposing of, in any manner, any of Defendant's property. Plaintiff further requests that this Court order Defendant and Defendant's agents to cooperate with the Liquidator as required by TEX. INS. CODE § 443.010.

9.4 Plaintiff would further show that all financial institutions and depositories (including, but not limited to, any and all banks, savings and loan associations, trust companies, credit unions, welfare trusts, or any other financial or depository institutions in the possession and/or control of any of Defendant's Property) and any other parties that receive actual notice should be restrained

from taking unauthorized actions in connection with Defendant's property. Plaintiff therefore requests that this Court issue an order pursuant to TEX. INS. CODE § 443.008(a) enjoining any parties from releasing, transferring, concealing, withdrawing, allowing to be withdrawn, or affecting, in any manner, any of Defendant's property, as further described herein, or other asset to the credit of Defendant on deposit with them or in their possession, except as authorized by the Liquidator or his designees, and that such parties be ordered to produce and deliver to the Liquidator or his designees such assets, money, deposits, or other items they have in their custody.

9.5 Plaintiff would further show that in order to avoid the dissipation or loss of Defendant's assets or records, and prevent any creditors or claimants from obtaining any preferences in violation of TEX. INS. CODE Chapter 443, an injunction should be issued against any and all parties asserting claims or causes of action of any kind against Defendant. Plaintiff therefore requests that this Court enjoin any parties (including, but not limited to, policyholders, creditors, claimants, reinsurers, intermediaries, attorneys and all other persons, associations, corporations, or any other legal entities asserting claims or causes of action against Defendant, or in possession of any of Defendant's Property, and the United States Postmaster) from commencing or prosecuting any action against the Liquidator or Defendant, including, but not limited to, arbitration, administrative proceedings, lawsuits or appeals, and from obtaining any preference, judgment, attachment, garnishment, lien or levy against the Liquidator, Defendant or Defendant's property, except by doing so as permitted by TEX. INS. CODE Chapter 443. Plaintiff further requests that this Court order that the United States Postmaster deliver to the Liquidator any items addressed to Defendant.

IX. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the Plaintiff prays:

1. that the Court grant the Application and the relief requested;
2. that this court enter a Permanent Injunction enjoining Defendant and Defendant's agents, financial institutions and depositories, and all other persons from taking any action in connection with Defendant's business and property, except as directed by the Liquidator, and from taking any action against Defendant or the Liquidator, except as permitted by TEX. INS. CODE § 443.151 *et seq*;
3. that the Court immediately appoint the Commissioner of Insurance as Liquidator to conduct Defendant's business and take charge of Defendant's property as described herein, and that the Liquidator be given all equitable powers under the statute and the common law of the State of Texas that authorize the appointment of a receiver;
4. that the Court vest the Liquidator with title to Defendant's property;
5. that the Office of the Attorney General be awarded all costs incurred in this proceeding, including, but not limited to, reasonable attorneys' fees, investigative costs, and court costs, pursuant to TEX. CIV. PROC. & REM. CODE §§ 64.051 and 66.003 and TEX. GOV'T CODE § 402.006, subject to the provisions of TEX. INS. CODE § 443.301;
6. that no bond be required of the Commissioner of Insurance or the Liquidator; and
7. for any and further relief, both general and specific, in law and in equity, to which the Plaintiff may be entitled.

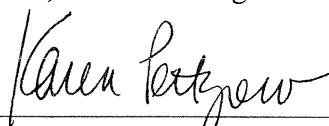
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX
Assistant Attorney General
Chief, Financial Litigation Division



KAREN PETTIGREW
Assistant Attorney General
State Bar No. 01529500
Office of the Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
Phone: 512-475-2952
Fax: 512-477-2348

ATTORNEYS FOR PLAINTIFF
THE STATE OF TEXAS

