

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
WEBB COUNTY TITLE	§	
& ABSTRACT COMPANY, INC.,	§	201st JUDICIAL DISTRICT
Defendant		

SPECIAL DEPUTY RECEIVER’S PLEA TO THE JURISDICTION, ORIGINAL ANSWER AND RESPONSE TO INTERPLEADER

To the Honorable District Court:

Comes now Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the “SDR” and “WCTA” respectively), and files this *Plea to the Jurisdiction, Original Answer and Response to Interpleader* (the “SDR’s Response”).

I. INTRODUCTION

1. The SDR files this Response to the interpleader filed by alleged creditor Glast, Phillips & Murray, P.C. (“GPM” or “Intervenor”) seeking declaratory relief and title to receivership estate property. GPM is a law firm that represented WCTA before receivership. Intervenor contends that it obtained a contract-based, pre-receivership assignment of certain WCTA property as security for past due attorneys fees. The law firm now demands that the Receivership Court bless this pre-receivership transaction and allow the firm to be preferred above this estate’s many other creditors. In summary, GPM’s affirmative claims should be dismissed for lack of jurisdiction or, alternatively, denied because the transaction is an avoidable fraudulent and/or preferential transfer under the Receivership Act, Chapter 443 of the Texas Insurance Code. The interplead funds are property of the estate. The SDR should be awarded the funds in question, along with its attorneys’ fees and other damages arising from GPM’s conduct, including but not limited to its violation of the automatic stay and permanent injunction.

II. RECEIVERSHIP HISTORY

2. WCTA was placed in receivership in this proceeding on January 11, 2008. The Court entered an *Agreed Order Appointing Liquidator and Permanent Injunction* on January 11, 2008 appointing the Texas Commissioner of Insurance as Permanent Receiver. The Receiver designated Cantilo & Bennett, L.L.P., as SDR of Webb County effective as of May 2, 2008.

3. The subject matter of this proceeding has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the Order of Reference to Master entered on April 10, 2008.

III. FACTUAL BACKGROUND

4. Prior to receivership, WCTA was a title insurance agency with its offices in Laredo, Webb County, Texas. Its insolvency is directly related to the embezzlement of trust and other funds by insiders and former management. GPM is a law firm that provided legal services to WCTA before receivership. GPM is not and never has been retained by the Receiver or SDR of WCTA. There has been no assumption of any contracts between WCTA, on one hand, and GPM, on the other hand.

5. GPM contends that it obtained an assignment, “effective” as of August 30, 2007 of an insurance claim owned by WCTA against the Hartford Lloyd’s Insurance Company (“Hartford”) on an employee dishonesty bond, (the “Assignment”). The Assignment was entered into at a time when WCTA was insolvent, as the document, itself admits. The contract was entered into between GPM, a law firm fiduciary, with a regulated entity, WCTA, without the benefit of separate counsel for WCTA.

6. GPM failed to disclose the alleged assignment to the Liquidator after the entry of the Permanent Injunction on January 11, 2008. In February 2008, GPM violated its fiduciary obligations

when it refused to provide documents relating the claim against the Hartford in response to a direct request by counsel for the Receiver. Upon another demand for its files by the SDR, GPM finally turned over a copy of the Assignment on or about May 15, 2008. Neither the SDR, nor the Liquidator, ever retained GPM to represent WCTA following its receivership. GPM was not requested and not required to perform any services for WCTA after January 11, 2008. The SDR has not assumed any contracts with GPM and was never requested to do so. The SDR is authorized and hereby does reject any alleged pre-receivership contract with GPM pursuant to TEX. INS. CODE ANN. §443.017.

7. WCTA is not an insurance company; it acted as an agent for several solvent title insurance companies. The title insurance companies continue to process and pay claims on title insurance policies issued by WCTA. As an agency, WCTA did not have any reserves, any reinsurance or any significant assets. Pursuant to this court's order of April 24, 2008, the SDR has transferred all escrow funds to the TTIGA. Administration of the estate has largely been financed by loans by the Department of Insurance from the Abandoned Property Fund in accordance with TEX. INS. CODE ANN. §443.304(c).

8. On September 5, 2008, counsel for the SDR received notice, for the first time, that Hartford and GPM had purported to enter into a settlement of certain claims held by the receivership estate regarding a claim filed on an "Employee Dishonesty" bond. Neither the SDR, nor the Receivership Court authorized the "settlement." GPM notified the SDR of the transaction over thirty (30) days after it actually purported to consummate the agreement with Hartford. GPM appears to have claimed to represent WCTA even after the entry of the Permanent Injunction and the appointment of the SDR.

9. On or about September 12, 2008, the SDR made demand on GPM for the turnover of the bond proceeds. On or about October 17, 2008, more than twenty (20) days after the demand for turnover, GPM filed its *Plea in Intervention of Glast, Phillips & Murray, P.C., Interpleader of Funds and Request for Declaratory Relief* asserting claims against the SDR, claiming title to property of the estate and seeking declaratory relief against the SDR.

10. GPM violated the automatic stay created by TEX. INS. CODE ANN. §443.008 and the provisions of the *Agreed Order Appointing Liquidator and Permanent Injunction* by, among other conduct, purporting to represent WCTA in the settlement with Hartford, by converting a portion of the settlement proceeds, by refusing the SDR's demand for turnover, and by filing this action.

IV. PLEA TO THE JURISDICTION

11. The SDR moves the Court to dismiss GPM's causes of action for declaratory judgment and attorneys fees for lack of subject matter jurisdiction. GPM's filing violates the provisions of Chapter 443 of the Code and the express terms of this Court's Permanent Injunction, which enjoined GPM, among others, from:

Making any claim, charge or offset; commencing or prosecuting any action, appeal, arbitration, or administrative proceeding; obtaining any preference, judgment, attachment, garnishment, or other lien; making any levy against Defendants, Defendants' Property or any part thereof, or the Liquidator; except as permitted by TEX. INS. CODE CHAPTER 443.

There is no provision in Chapter 443 authorizing former fiduciaries and alleged creditors, such as GPM, from filing suit against the SDR and asserting claims for declaratory relief and the recovery of fees and costs.

12. This Court further lacks subject matter jurisdiction because GPM failed to comply with all statutory prerequisites for the assertion of claims against the SDR. This Court set a claims filing deadline of October 14, 2008, requiring that all individuals and entities who seek to assert

claims against the estate or the SDR file a Proof of Claim (“POC”) at an address designated by the SDR on or before 11:59 p.m. C.D.T. on that date. GPM filed a POC by the deadline. However, the SDR has not adjudicated the claim and the Receivership Court has neither approved, nor rejected, any proposed treatment of the claim. Accordingly, GPM has failed to exhaust its administrative remedies prior to filing this intervention.

V. ORIGINAL ANSWER

13. The SDR generally denies the material allegations of the *Plea in Intervention of Glast, Phillips & Murray, P.C., Interpleader of Funds and Request for Declaratory Relief* and demands strict proof thereof, as it is entitled to do under the Constitution and laws of the State of Texas.

14. The SDR asserts the affirmative defenses of lack of jurisdiction as described above, breach of fiduciary duty, estoppel, unclean hands, conversion, and limitations and waiver pursuant to TEX. INS. CODE ANN. §443.201(d).

15. The SDR further asserts the affirmative defenses arising under TEX. INS. CODE ANN. §443.209 in that GPM is not entitled to setoff or offset any alleged debt because it was a fiduciary.

16. The SDR further asserts that the Assignment is void or, alternatively, voidable because it is a voidable preferential transfer and was entered into without benefit of separate counsel for WCTA.

VI. RESPONSE TO INTERPLEADER

17. The interplead funds are property of the estate. The SDR moves the Court for judgment awarding the funds, plus all accrued interest, to the SDR and ordering the Clerk of the Court to transfer such funds to the SDR.

18. Alternatively, the interplead funds are a voidable and recoverable transfer of property of the estate pursuant to TEX. INS. CODE ANN. §§443.201, 203, 204, 205, 206, 207, and 208. The SDR moves the Court for judgment awarding the funds, plus all accrued interest, to the SDR and ordering the Clerk of the Court to transfer such funds to the SDR.

19. Alternatively, the interplead funds are a voidable and recoverable transfer of property of the estate pursuant to TEX. INS. CODE ANN. §443.154 (v), which provides “[t]he liquidator may exercise all powers held by receivers on August 31, 2005, or conferred on receivers after that date by the laws of this state not inconsistent with this chapter.” Article 21.28, which governed liquidations on August 31, 2005, expressly authorizes the SDR to avoid the transfer of or lien upon property made within four (4) months of receivership, as follows:

Sec. 5. (a) Transfers or Liens Voidable. Any transfer or lien upon the property or assets of an insurer which is made or created within four (4) months prior to the commencement of delinquency proceedings under this Article, with the intent of giving to any creditor or enabling him to obtain a greater percentage of his debt than of any other creditor of the same class, and which is accepted by such creditor, having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Personal Liability. Every director, officer, agent, employee, stockholder, member, attorney-in-fact, associate, substitute or deputy attorney-in-fact, underwriter, subscriber, and any other person acting on behalf of such insurer, who shall be concerned in any such prohibited act or deed, and every person receiving thereby property of such insurer, or the benefit thereof, shall be personally liable therefor, and shall be bound to account to the receiver for the benefit of the creditors of the insurer.

(c) Avoiding and Recovery. The receiver in any proceeding under this Article, may avoid any transfer of, or lien upon the property or assets of an insurer which any creditor, stockholder or member of such insurer might have avoided, and may recover the property so transferred or its value from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the commencement of proceedings under this Article. Such property or its value may be recovered from anyone who has received it, except a bona fide holder for value as above specified.

GPM’s efforts to secure its claim against WCTA is void because it falls squarely under the provisions of this subsection.

20. Alternatively, the interplead funds are the proceeds of an unperfected security interest and lien on property of the estate. The SDR may avoid and recover the property pursuant to TEX.

INS. CODE ANN. §443.151(a), which provides:

(a) An order to liquidate the business of an insurer shall appoint the commissioner and any successor in office as the liquidator and shall direct the liquidator to take possession of the property of the insurer and to administer it subject to this chapter. The liquidator is entitled to request the receivership court to appoint a single judge to supervise the liquidation and to hear any cases or controversies arising out of or related to the liquidation. Liquidation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. As of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which the insurer's principal office or place of business is located or, in the case of real estate, the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with that recorder of deeds would impart.

21. The filing of the Intervention and Interpleader by GPM violated both the automatic stay and the provisions of the Permanent Injunction. The SDR has incurred expenses, including but not limited to the hiring of the undersigned counsel and agreeing to pay them their reasonable and necessary attorneys' fees, as a direct and proximate result of GPM's violation of the automatic stay and Permanent Injunction. The SDR prays for an award pursuant to TEX. INS. CODE ANN. §443.008, which provides:

(k) The estate of an insurer that is injured by any wilful violation of a stay provided by this section is entitled to actual damages, including costs and attorney's fees. In appropriate circumstances, the receivership court may impose additional sanctions.

The SDR prays for its actual damages, including costs and attorneys fees and, as the Receivership Court deems appropriate, additional sanctions.

22. The SDR has complied with all statutory prerequisites to the filing of these claims to recovery or, alternatively, they have been waived.

VII. NOTICE

23. Pursuant to TEX. INS. CODE ANN. § 443.007(d), this Response has been served on GPM and the entire service list for this proceeding, including TTIGA, in the manner shown on the Certificate of Service.

VIII. OFFER OF PROOF

24. Cantilo & Bennett, L.L.P., as Special Deputy Receiver, through its authorized representative, Susan Salch, submits its certificate pursuant to TEX. INS. CODE ANN. § 443.017(b) verifying the statements in this pleading.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, the SDR respectfully requests that this Court enter final judgment as follows:

1. Dismiss or, alternatively, deny GPM’s claims for declaratory judgment, attorneys fees and costs and title to the interplead funds;
2. Award the SDR judgment entitling it to the interplead funds, plus all accrued interest and ordering the Clerk of the Court to transfer such funds to the SDR;
3. Award the SDR its actual damages, including costs and attorneys' fees and, as the Receivership Court deems appropriate, additional sanctions;
4. Alternatively, award the SDR its attorneys fees and costs;
5. Award the SDR pre and post judgment interest at the highest rate allowed by law; and
6. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

By: /Christopher Fuller/
Christopher Fuller
Texas Bar No. 07515500
4612 Ridge Oak Drive
Austin, Texas 78731

Tel. (512) 470-9544
Fax (512) 374-0957
cfuller@fullerlaw.org
Attorney for Cantilo & Bennett, L.L.P.,
Special Deputy Receiver of Webb County Title &
Abstract Company, Inc.

And

By: /Jo Ann Howard/
Jo Ann Howard
Texas Bar No. 10072310
Jo Ann Howard & Associates, P.C.
P.O. Box 160130
Austin, Texas 78716
Tel. (512) 791-0911
Fax (512) 329-6612
iamanrd3@aol.com
Attorney for Cantilo & Bennett, L.L.P.,
Special Deputy Receiver of Webb County Title &
Abstract Company, Inc.

CERTIFICATE OF SERVICE

I certify that on January 16, 2009 a true and correct copy of this pleading was served pursuant to the Order of Reference, the Texas Rules of Civil Procedure, and TEX. INS. CODE ANN. §§ 443.007 on the following.

/Jo Ann Howard
Jo Ann Howard
Texas Bar No. 10072310

Tom Collins, Special Master
c/o Ms. Jean Sustaita
P.O. Box 149104
Mail Code 305-1D
Austin, TX 78701
Jean.Sustaita@tdi.state.tx.us

Burnie Burner
Texas Title Insurance Guaranty Association
Mitchell, Williams, Selig, Gates & Woodyard,
PLLC
P.O. Box 2212
106 E. Sixth Street, Suite 300
Austin, TX 78768-2212
bburner@mwsqw.com

Kurt L. Lyn
Attorney for Xerox
Lam, Lyn, Robinson & Philip, PC
3555 Timmons Lane, Ste. 790
Houston, TX 77027
Fax (713)772-7085
klyn@llrplaw.com

H.C. Hall III
Attorney for Riverol claimants
Hall, Quintanilla & Alarcon
P.O. Box 207
Laredo, TX 78042
Tel (956)723-5527
Fax (956)723-8168
hchall@sbcglobal.net

Albert F. Muller, III
Attorney for A. F. Muller Company & La Bota
Development Co, Inc.
6911 Chevy Chase Drive
Sugarland, TX 77479
Fax (281)602-4079
albertmuller@comcast.net

John Villarreal
International Bank of Commerce
P.O. Drawer 1359
Laredo, TX 78042-1359
john_villarreal@iboc.com

Jon D. Lowe
Attorney for IBC Bank
Martin & Drought, PC
300 Convent St., 25th Floor
San Antonio, TX 78205
jlowe@mdtlaw.com

D. Ronald Reneker
Attorney for Fidelity National Title Insurance
Company
Munsch, Hardt, Kopf & Harr, PC
3800 Lincoln Plaza
500 N Akard Street
Dallas, TX 75201-6659
Fax (214)978-4384
rreneker@munsch.com

Ricardo de Anda
Attorney for City of Laredo
Plaza de San Agustin
212 Flores Ave.
Laredo, TX 78040
Fax (956)726-0030
arceliap@gmail.com

R. Christopher Clark
Glast, Phillips & Murray, PC
219 E. Houston Street, Suite 400
San Antonio, TX 78205
Fax (210)244-4199
ccclark@gpm-law.com

Carl Barto
Attorney for Raquel Gonzalez
Law Offices of Carl M. Barto
611 Hidalgo
Laredo, TX 78040
Fax (956)722-6739
cmblaw@netscorp.net

Javier Montemayor
1814 Victoria Street
Laredo, TX 78040
lawjm@sbcglobal.net

Bruce McCandless III
Texas Title Insurance Guaranty Association
Mitchell, Williams, Selig, Gates & Woodyard,
PLLC
P.O. Box 2212
106 E. Sixth Street, Suite 300
Austin, TX 78768-2212
bmccandless@mwsqw.com

CNA Surety/ Western Surety Company
Leann Niebuhr
P.O. Box 5077
Sioux Falls, SD 57117-5077
lea.niebuhr@cnasurety.com

Jenny Jackson
Assistant Attorney General
Financial Litigation Division
P.O. Box 12548
Austin, TX 78711-2548
jennifer.jackson@oag.state.tx.us

Alamo Title Insurance
ATTN: Betsy Thompson
10010 San Pedro, Suite 440
San Antonio, TX 78216
Tel (800)292-5320
betsy.thompson@fnf.com

Sally Vettters
United General Title Insurance Company
13750 San Pedro, Suite 715
San Antonio, TX 78232
Fax (800)204-6614
svettters@ugtic.com

Laredo FBI Field Office
ATTN: Aaron Ackland
109 Shiloh Drive, Suite 430
Laredo, TX 78045
aaron.ackland@ic.fbi.gov

Webb County District Attorney
ATTN: Veronica Molina
110 Victoria St. Suite 401
Laredo, TX 78040
Tel (956)523-4900
Fax (956)523-5054

Roy Ibanez
Attorney for Patricia Garcia
Law Firm of Roy Ibanez
1410 Dove
McAllen, TX 78504
ribanez@ribanez.com

Ilyse Lerner
Attorney for Continental Homes of Texas, LP
Armbrust & Brown, LLP
100 Congress Avenue, Suite 1300
Austin, TX 78701
ilerner@abaustin.com

Daniel Meyers
1776 Powder Mill Road
Silver Spring, MD 20903
Fax (301)434-0157
danielmeyers@verizon.net

Sandra Havlen, Bankruptcy Specialist
Special Procedures Branch
Internal Revenue Service
P.O. Box 250
300 E. 8th St. Stop 5022AUS
Austin, TX 78701
Tel (512)499-5237

James Lee, Jr.
Attorney for General Electric
919 Congress, Suite 1300
Austin, TX 78701
info@mcginnislaw.com

Kenneth A. Valls
Wilson, Trevino, Freed, Valls & Trevino, LLP
6909 Springfield, Suite 200
Laredo, TX 78041
Tel (956)722-1417
Fax (956)791-0220
kennyvalls@wtfcv.com

Anthony C. McGettric
Assistant City Attorney
City of Laredo
1110 Houston
Laredo, TX 78040
Tel (956)791-7318
Fax (956)791-7494
amcgettric@ci.laredo.tx.us

Webb County Tax Collector
1110 Victoria St., Suite 107
P.O. Box 420128
Laredo, TX 78042
Tel (956)523-4200
Fax (956)523-5050

L.I.S.D. Tax Office
820 Main Ave.
Laredo, TX 78040
Tel (956)795-3300
Fax (956)795-3477

Sigifredo Perez, III
Kazen, Meurer & Perez, LLP
P. O. Box 6237
919 Washington St.
Laredo, Texas 78042
Tel (956)712-1600
Fax (956)712-1628
sperez@kmp-law.com

Jemie Russell
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight
Division
333 Guadalupe, Mail Code 305-1D
Austin, TX 78701
Jemie.Russell@tdi.state.tx.us

Texas Workforce Commission
Regulatory Enforcement Division
101 E. 15th Street
Austin, TX 78778-0001

Angel Garrett
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight
Division
333 Guadalupe, Mail Code 305-1D
Austin, TX 78701
Angel.Garrett@tdi.state.tx.us

Rachel Giani
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight
Division
333 Guadalupe Mail, Code 305-1D
Austin, TX 78701
Rachel.Giani@tdi.state.tx.us

Leanne Layne
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight
Division
333 Guadalupe, Mail Code 305-1D
Austin, TX 78701
Leanne.Layne@tdi.state.tx.us

John Walker
Texas Department of Insurance
Financial/Rehabilitation & Liquidation Oversight
Division
333 Guadalupe, Mail Code 305-1D
Austin, TX 78701
John.Walker@tdi.state.tx.us

§443.017(b)
AFFIDAVIT OF SUSAN SALCH

State of Texas

County of Travis

BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

1. "My name is Susan E. Salch. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

2. "I am a partner in Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. (the "SDR" and "WCTA"). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

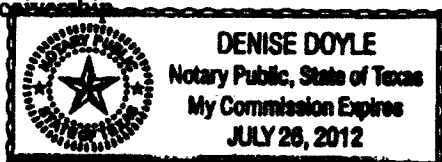
3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE ANN. §443.017(b), are true and correct copies of records created by and filed with the Receiver's office in connection with the receivership of this delinquent insurer, and are held by the Special Deputy Receiver in its official capacity.

4. I further state that I have read the statements contained in the attached Application and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.

5. Further affiant sayeth not.

By: *Susan Salch*
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on January 14, 2009, by Susan E. Salch, on behalf of Cantilo & Bennett, L.L.P., Special Deputy Receiver of Webb County Title & Abstract Company, Inc. in receivership.



Denise Doyle
Notary Public

SDR'S NOTICE OF ORAL HEARING

SDR'S NOTICE OF ORAL HEARING

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the *Plea in Intervention of Glast, Phillips & Murray, P.C., Interpleader of Funds and Request for Declaratory Relief* and the SDR's *Plea to the Jurisdiction, Original Answer and Response to Interpleader* is hereby set for oral hearing before the Special Master, Tom Collins, on January 26, 2009 beginning at 2:00 p.m..

The Special Master has asked that the following rules be provided you:

1. All responses in this proceeding are subject to an agreed scheduling/briefing schedule.
2. A copy of any responsive pleading or briefing shall be served by such date on:
 - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita, Texas Department of Insurance, (**Hand Delivery**) 333 Guadalupe, Hobby Tower 3, Room 550, Austin, Texas; or (**Mail To**) P. O. Box 149104, Austin, Texas 78714-9104
 - (b) All interested parties, including the undersigned counsel and those listed on the Applicant's Certificate of Service.

/Christopher Fuller/

Christopher Fuller
Texas Bar No. 07515500