

CAUSE NO: D-1-GN-16-000360

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
MILLENNIUM CLOSING SERVICES, LLC	§	
D/B/A MILLENNIUM TITLE	§	
<i>Defendant.</i>	§	53 rd JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S MOTION TO SEVER
AND EXTEND TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title (the “SDR” and “Millennium Title,” respectively), files this Motion to Sever and Extend Temporary Injunction (the “Motion”).

I. INTRODUCTION AND RELIEF SOUGHT

1.1 The SDR files this Motion pursuant to TEX. R. CIV. PROC. 41, 174 and 680. The SDR moves the Court to sever out from this receivership proceeding its causes of action against the Carroll Respondents into a separate lawsuit and to extend the temporary injunction entered against them by the Court.

1.2 On February 25, 2016, this Court entered an order granting a temporary injunction against Nancy B. Carroll, a/k/a Nancy Jackson Carroll, a/k/a Nancy Carroll; NJC Carroll Law, PLLC d/b/a Integrity Title d/b/a Texas Title; Millennium 1031 Exchange Services, LLC a/k/a Millennium Title 1031; MT&PS, LLC; ZAPP TRUST; Southwest Bank Acquisitions, LP; SWBANKACQ, LLC.; and PSS Title (collectively, the “Carroll Respondents”) and Prosperity Bank; Independent Bank f/k/a Grand Bank; Capitol One 360; and Wells Fargo Bank, N.A

(collectively, the “Bank Respondents”). The injunction was granted pursuant to the terms of this Court’s January 25, 2016 Permanent Injunction and the provisions of TEX. INS. CODE § 443.008. On May 5, 2016, this Court entered an order entending the temporary injunction until September 26, 2016.

1.3 It is now appropriate to sever the SDR’s causes of action against the Carroll Respondents into a separate lawsuit so that the SDR can pursue other remedies against such parties in addition to the relief available in this proceeding.

II. LEGAL AUTHORITY

2.1 Severance is authorized by Tex. R. Civ. Proc. 41 and 174. A claim is properly severable if (1) the controversy involves more than one cause of action; (2) the severed claim is one that would be the proper subject of a lawsuit if independently asserted; and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. The controlling reasons for a severance are to do justice, avoid prejudice, and further convenience. Severance of claims under the Texas Rules of Civil Procedure rests within the sound discretion of the trial court.

2.2 The Court is authorized to extend the Temporary Injunction pursuant to TEX. INS. CODE § 443.008, which states in pertinent part:

INJUNCTIONS AND ORDERS. (a) The receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.

Further, this Court’s Permanent Injunction issued on January 25, 2016, states the following:

[6.1] This *Order Appointing Liquidator and Permanent Injunction* shall issue and become effective immediately, and shall constitute a final judgment pursuant to TEX. INS. CODE § 443.055(b), provided that this Court shall retain jurisdiction to issue further orders pursuant to the Insurer Receivership Act.

Finally, Tex. R. Civ. Proc. 680 provides that a court may extend a Temporary Injunction.

2.3 The *Order of Reference to Master* entered on March 1, 2016 refers certain matters in this proceeding to a master. As temporary injunctions are excluded from the scope of this order, this matter is not referred to the master.

III. OFFER OF PROOF AND VERIFICATION

3.1 This Application is verified by the affidavit and certifications pursuant to TEX. INS. CODE § 443.017(b) of Susan E. Salch, the designated representative of CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title.

PRAYER

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title, respectfully requests that the Court:

1. Grant this Motion;
2. Sever the SDR's claims against the Carroll Respondents into a separate lawsuit;
3. Order that the Clerk of the Court open a new lawsuit in the 53rd District Court of Travis County Texas, styled *CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title v. Nancy B. Carroll, et al.*, and place in the file for the new lawsuit such pleadings, orders and other documents from this case as may be directed by the SDR;
4. Enter an order extending the temporary injunction enjoining the Carroll Respondents and the Bank Respondents;
5. Order that all costs of court incurred to date in connection with the SDR's claims against the Carroll Respondents shall be taxed as directed by law in the new lawsuit; and
6. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

FULLER LAW GROUP

By: /s/Christopher Fuller

Christopher Fuller
State Bar No. 07515500
4612 Ridge Oak Drive
Austin, Texas 78731
Telephone: (512) 470-9544
Email: cfuller@fullerlaw.org

**ATTORNEY FOR
CANTILO & BENNETT, L.L.P.,
SPECIAL DEPUTY RECEIVER OF
MILLENNIUM CLOSING SERVICES, L.L.C.
D/B/A MILLENNIUM TITLE**

CERTIFICATE OF SERVICE

I certify that on September 13th, 2016, a true and correct copy of this SPECIAL DEPUTY RECEIVER'S MOTION TO SEVER AND EXTEND TEMPORARY INJUNCTION was served pursuant to the Order of Reference, Texas Rules of Civil Procedure, TEX. INS. CODE ANN. SEC. 443.007(d) and the Court's order on electronic service on the following by email, except as specifically otherwise noted.

Via e-Service: specialmasterclerk@tdi.texas.gov
Special Master's Clerk
TEXAS DEPARTMENT OF INSURANCE
Rehabilitation & Liquidation Oversight
PO Box 149104
Austin, TX 78714-9104

Via e-Service: James.Kennedy@tdi.texas.gov
James Kennedy
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, TX 78714-9104

Via e-Service: Kimberly.Hammer@tdi.texas.gov
Kimberly Hammer
TEXAS DEPARTMENT OF INSURANCE
PO Box 149104
Austin, TX 78714-9104

Via e-Service: Vicente.Aguillon@tdi.texas.gov
Vicente Aguillon
TEXAS DEPARTMENT OF INSURANCE
Rehabilitation & Liquidation Oversight
PO Box 149104
Austin, TX 78714-9104

Via e-Service:

Cynthia.Morales@texasattorneygeneral.gov

Cynthia Morales
Assistant Attorney General
Financial, Litigation, Tax, & Charitable Trusts
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, TX 78711-2548

Via Email:

rachel.obaldo@texasattorneygeneral.gov

Rachel Obaldo
Assistant Attorney General
Bankruptcy and Collections Division
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548
Austin, TX 78711-2548

Via First Class Mail

INTERNAL REVENUE SERVICE
Special Procedures Branch
P.O. Box 250
300 East 8th Street, Suite 352
Mail Stop 5022AUS
Austin, TX 78701

Via First Class Mail

INTERNAL REVENUE SERVICE
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Via e-Service: Kergin@burtonhyde.com

Kergin B. Bedell
BURTON & HYDE, PLLC
311 West 5th Street, Suite 100
Austin, TX 78701

Via e-Service: jason@vandykelawfirm.com

Jason Lee Van Dyke
THE VAN DYKE LAW FIRM
200 Chisholm Place #250
Plano, TX 75075
Counsel for Maverick Title of Texas, LLC

Via e-Service: kyelkin@gardere.com

Kimberly A. Yelkin
GARDERE WYNNE SEWELL LLP
3000 One American Center
600 Congress Avenue
Austin, TX 78701

Via e-Service: msaenz@gardere.com

Marisol M. Saenz
GARDERE WYNNE SEWELL LLP
3000 One American Center
600 Congress Avenue
Austin, TX 78701

Via E-Service: bburner@mwlaw.com

Burnie Burner
MITCHELL WILLIAMS
500 W. 5th Street Suite 1150
Austin, TX 78701
*Counsel for Texas Title Insurance Guaranty
Association*

Via E-Service: bmccandless@mwlaw.com

Bruce McCandless, III
MITCHELL WILLIAMS
500 W. 5th Street Suite 1150
Austin, TX 78701
*Counsel for Texas Title Insurance Guaranty
Association*

Via E-Service: brad@hrrpc.com
Brad Repass
HAYNIE, RAKE, REPASS & KLIMKO, P.C.
14643 Dallas Parkway, Suite 550
Dallas, TX 75254
*Counsel for Scott Schambacher, Avondale
Development Group, 1601 AF Ltd. and Affiliates*

Via E-Service: phil@philmeyerlaw.com
Philip A. Meyer
CityCentre One
800 Town and Country Blvd., Suite 300
Houston, TX 77024
Counsel for First Funding Investments, Inc.

Via E-Service: sam@scarterlawfirm.com
Howard F. Carter, Jr.
THE CARTER LAW FIRM
HOWARD F. CARTER, JR. P.C.
8750 N. Central Expressway, Suite 625
Dallas, TX 75231
Counsel for Peniel Holdings, LLC

Via E-Service: mark@strombergstock.com
Mark Stromberg
STROMBERG STOCK, PLLC
8750 N. Central Expressway, Suite 625
Dallas, TX 75231
Counsel for Peniel Holdings, LLC

Via E-Service: ehill@murphy-hill.com
Eric C. Hill
MURPHY-HILL LAW GROUP
302 W. Commerce Street, Ste 200
Dallas, TX 75208
Counsel for Miriam Gray

Via E-Service: tmcdaniel@imtexaslaw.com
Via E-Service: jbrown@imtexaslaw.com
Via E-Service: gstory@imtexaslaw.com
Timothy M. McDaniel
Jeremy T. Brown
IRELAN MCDANIEL, PLLC
14440 N. Central Expressway, Suite 800
Dallas, TX 75231
Counsel for Leirana Investments, LLC

/s/Christopher Fuller
Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO
TEX. INS. CODE ANN. §443.017(b)**


AFFIDAVIT OF SUSAN E. SALCH

State of Texas

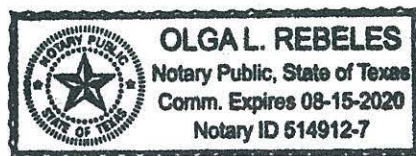
County of Travis

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 of sound mind, capable of making this affidavit, and am competent to testify to the matters contained in this affidavit by personal knowledge, which are true and correct.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Millennium Closing Services LLC, d/b/a Millennium Title (the "SDR" and "Millennium Title" respectively). I am duly authorized to make this Certification on behalf of the SDR.
3. I have read the Motion and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and subcontractors."

By: 
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on September 13, 2016, by Susan E. Salch, Special Deputy Receiver of Millennium Closing Services LLC, d/b/a Millennium Title.




Notary Public