

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 <sup>rd</sup> JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S APPLICATION TO ENFORCE  
PERMANENT INJUNCTION AND AUTOMATIC STAY  
[SCHAMBACHER/1601 AF/WFG]**

**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 Application to Enforce Permanent Injunction and Automatic Stay [Scott Schambacher, 1601 AF, Ltd., and WFG National Title Insurance Company] (the “Application”).

**I. INTRODUCTION**

1.1 The SDR files this Application to enjoin certain third party creditors (collectively referred to as the “Respondents”) from pursuing lawsuits asserting causes of action that belong to the SDR and the Texas Title Insurance Guaranty Association (“TTIGA”). Specifically, Respondents **Scott Schambacher** and **1601 AF, Ltd.**, have filed suit against Nancy Carroll, and others in Cause No. 236-284106 pending in the 236<sup>th</sup> Judicial District Court of Tarrant County Texas (the “Schambacher v. Carroll Lawsuit”), asserting claims belonging to the SDR and TTIGA, against largely the same potentially responsible parties. Respondent **WFG National Title Insurance Company** (“WFG”) has intervened in the same lawsuit as a plaintiff. Continued pursuit of the Schambacher v. Carroll Lawsuit violates the Permanent Injunction

entered in this proceeding and the provisions of Chapter 443 of the Texas Insurance Code. The receivership estate, its creditors, and TTIGA are damaged by the continued pursuit of the Schambacher v. Carroll Lawsuit, which serves only to deplete recoverable assets and prefer certain alleged creditors. As more fully described below, the damages are irreparable by any award of money, and injunctive relief is required.

## **II. STATUTORY AUTHORITY**

2.1 On January 25, 2016, this Court issued its *Agreed Order Appointing Liquidator and Permanent Injunction* (the “Permanent Injunction”) pursuant to TEX. INS. CODE Chapter 443 (the “Insurer Receivership Act”). The Permanent Injunction, which is a final judgment under TEX. INS. CODE §443.055, placed Millennium Title into liquidation and appointed the Commissioner of Insurance as Liquidator. Pursuant to TEX. INS. CODE § 443.154(a), the SDR has all of the powers granted to the Liquidator. The SDR is authorized to file this action under TEX. INS. CODE § 443.008 and the Permanent Injunction.

## **III. JURISDICTION AND VENUE**

3.1 This Court has jurisdiction to enter the relief sought pursuant to the provisions of the Insurer Receivership Act, including, but not limited to, Sections 443.005 and 443.008.

3.2 This Court has exclusive jurisdiction over the subject matter of this Application pursuant to TEX. INS. CODE § 443.005, as it concerns: (1) the disposition of Millennium Title’s property, and (2) a request to enforce a stay and injunctions under TEX. INS. CODE § 443.008. TEX. INS. CODE § 443.005(c) provides that this Court has exclusive jurisdiction over all property of Millennium Title, wherever located, including property located outside the territorial limits of the State of Texas. Under TEX. INS. CODE § 443.005(b), this Court is solely authorized to exercise jurisdiction over a request for a stay, injunction, or other relief related to this

proceeding. The authority to make such a request is contained in 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.

3.3 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.

3.4 This Court has jurisdiction over the Respondents herein pursuant to TEX. INS. CODE § 443.005. Specifically, this Court has personal jurisdiction over the Respondents for the following reasons:

- This is a civil proceeding arising under and related to this delinquency proceeding under Chapter 443 of the Texas Insurance Code.
- The transactions and occurrences that form the basis for this Application occurred, in whole or in part, in this state.
- The Respondents reside and/or conduct business in this state that is directly related to the subject matter of this Application.
- The Respondents have filed and/or been deemed to have filed proofs of claims ("POCs") with the SDR.
- The Respondents fall under the Court's statutory personal jurisdiction set out in TEX. INS. CODE § 443.005(d) and Texas Civil Practice & Remedies Code Chapter 17.

- The exercise of jurisdiction over any non-resident Respondent comports to customary standards of fair play and substantial justice and complies with the protections of the Constitutions of the United States of America and the State of Texas.

3.5 Exclusive and mandatory venue for this proceeding is in Travis County, Texas pursuant to TEX. INS. CODE § 443.005(g). An *Order of Reference To Master* has been entered in this proceeding, but the relief sought in this Application has not been referred to the Master.

#### IV. THE PARTIES

4.1 The SDR is the duly appointed Special Deputy Receiver appointed by the Commissioner of Insurance in his capacity as Receiver.

4.2 Respondent **Scott Schambacher**,<sup>1</sup> is a natural person. Schambacher lives in Tarrant County, Texas. He maintains his business address at 5751 Kroger Dr., Suite 293, Keller, Tarrant County, Texas 76244.

4.3 Respondent **1601 AF, Ltd**, is a Texas limited partnership. Its principal place of business is located at 5751 Kroger Dr., Suite 293. Service may be had on its registered agent, Susan Ross at 9001 Airport Freeway, Suite 675, North Richland Hills, Texas 76180.

4.3 Respondent **WFG** is a title insurance company whose registered agent for service is CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201. Alternatively, service may be waived by service on its counsel, Randall K. Price, Cantey Hanger, LLP, 1999 Bryan Street, Suite 3300, Dallas, Texas 75201.

#### V. FACTUAL BACKGROUND

5.1 On January 25, 2016, this Court entered its Permanent Injunction, which provides,

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<sup>1</sup> The plaintiff's name in the Schambacher v Carroll Lawsuit is spelled "Shambacher." His name is actually spelled "Schambacher," and will be referred to as such herein.

in part, as follows:

[2.4] The Liquidator shall be vested by operation of law with title to all of Defendant's property as defined in TEX. INS. CODE § 443.004(a)(20). Such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in shared, escrow or trust accounts, retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Defendant, and all licenses held by Defendant (collectively, "Defendant's Property"). The Liquidator's title shall extend to Defendant's Property regardless of where such items are located.

...

[3.2] Pursuant to TEX. INS. CODE § 443.151(a), title to all of Defendants' Property, including but not limited to, all the assets and rights described in this *Order Appointing Liquidator and Permanent Injunction*, is vested in the Liquidator.

...

[3.10] . . . . The Liquidator is authorized to file, prosecute, defend, or settle any action as he deems necessary, including any action to enforce the provisions of this *Order Appointing Liquidator and Permanent Injunction*.

5.2 The Respondents are expressly enjoined in the Permanent Injunction (pp. 7-8), as

follows:

All other parties, including but not limited to:

Creditors, claimants, insurers, intermediaries, attorney and all other persons... asserting claims or causes of action against Defendant, or in possession of any of Defendant's Property..;

EACH OF YOU ARE HEREBY RESTRAINED and ENJOINED from taking any and all of the following actions:

[4.3] Wasting, disposing of, converting, dissipating, using, releasing, transferring, selling, assigning, canceling, hypothecating, withdrawing, allowing to be withdrawn, offsetting, concealing, in any

manner, or removing from this Court's jurisdiction or from Defendant's place of business, any of Defendant's Property, or any other items purchased by Defendant, or any items into which such property has been transferred, deposited or placed, or any other items owned by Defendant's, wherever located, except through the authority of the Liquidator or his designees;

...

[4.8] Making any claim, charge or offset, or commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, or obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant, Defendant's Property or any part thereof, or against the Liquidator, except as permitted by the Insurer Receivership Act and TEX.INS. CODE Chapter 2602.

5.3 Pursuant to its statutory obligations, the SDR has filed an action against Nancy Carroll, her family, her affiliates, and others to recover damages to the estate and all of its creditors caused by their conduct. On February 2, 2016, this Court entered its Order Granting SDR's Application for Temporary Injunction enjoining Nancy Carroll and others. The injunction has been continued and remains in force as of this date. On September 26, 2016, this Court severed the SDR's claims against Ms. Carroll and others into the lawsuit styled CANTILO & BENNETT, L.L.P., Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title v. Nancy Carroll et al., Cause No. D-1-GN-16-004751, pending in the 98<sup>th</sup> Judicial District Court of Travis County, Texas. The SDR, in its First Amended Petition asserts claims for money damages and injunctive relief on behalf of all creditors pursuant to TEX. INS. CODE § 443.154(m).

5.4 On February 29, 2016, Respondents Scott Schambacher and 1601 AF, Ltd. filed suit against Nancy Carroll and others in Cause No. 236-284106, pending in the 236<sup>th</sup> Judicial District Court of Tarrant County, Texas. The SDR for Millennium Title filed notice of the Permanent Injunction and automatic stay on March 10, 2016 in the the Schambacher v Carroll

Lawsuit. Notwithstanding the filing and with full notice of the existence of the receivership Schambacher, 1601 AF, Ltd. (and now WFG) have not moved to dismiss or abate the proceeding. In fact Respondents Schambacher and 1601 AF, Ltd. have since filed six amended petitions in the Schambacher v. Carroll Lawsuit. On September 7, 2016, Respondent WFG filed its Original Petition in Intervention of WFG National Title Insurance Company. WFG does not contend that its claims relate to the plaintiffs' claims in the Schambacher v Carroll Lawsuit. Instead, it seeks to recover money it has paid out on title insurance policies issued by Millennium Title. A number of defendants in the Schambacher v. Carroll Lawsuit have retained counsel and appeared in the case. Money spent by these defendants, whether paid individually or from applicable policies of insurance, depletes assets that would otherwise be available to the estate and its creditors. The actual and potential loss is irreparable, because once assets are spent or insurance coverage is extinguished they cannot be recovered.

5.5 Schambacher, 1601 AF, Ltd. and WFG have filed or have been deemed to have filed proofs of claim with the SDR.

5.6 The Respondents' allegations in the Schambacher v. Carroll Lawsuit largely parallel the SDR's allegations with the exception that Respondents seek relief only for themselves. In contrast, the SDR seeks recovery for all creditors of the estate. Furthermore, all recoveries by the SDR will be distributed pursuant to the provisions of TEX. INS. CODE § 443.301.

## **VI. REQUESTED RELIEF**

### **A. Enforcement of the Permanent Injunction and Automatic Stay**

6.1 This Court may grant injunctive relief as necessary or appropriate to carry out the provisions of the Insurer Receivership Act pursuant to TEX. INS. CODE § 443.008(a). The

Respondents are not authorized to pursue the causes of action asserted in the Schambacher v. Carroll Lawsuit. They are attempting to realize recoveries on claims they do not own. This conduct depletes the assets available from responsible parties and reduces the value of these assets to the detriment of the SDR and all other creditors of the receivership estate. The damages caused by the Respondents are irreparable because the Respondents are converting claims owned by the SDR and TTIGA, and because of the difficulty in calculating the losses arising from the multiplicity of litigation and waste of assets. The SDR has incurred expenses including, but not limited to, the hiring of the undersigned counsel and agreeing to pay reasonable and necessary attorney's fees, as a direct and proximate result of the Respondents' violation of the automatic stay and Permanent Injunction. Accordingly, the SDR moves the Court to enforce the terms of the Permanent Injunction and the provisions of Chapter 443 of the Texas Insurance Code including, but not limited to, TEX. INS. CODE § 443.008(k), by enjoining the Respondents from further pursuit of the claims asserted in the Schambacher v. Carroll Lawsuit or in any other forum. Specifically, the SDR moves the Court to order Respondents to file a motion to dismiss or abate the proceeding until such time as the receivership of Millennium Title is dismissed.

**B. Attorney's Fees, Actual Damages and Additional Sanctions**

6.2 The Respondents' conduct, described above, has required the SDR to engage the undersigned counsel and agree to pay reasonable and necessary attorney's fees, litigation costs, costs of court, and other related expenses. The SDR is entitled to recover its attorney's fees and expenses from the Respondents, individually and collectively, pursuant to the provisions of Texas law including, but not limited to, Chapter 443 of the Texas Insurance Code and Chapter 38 of the Texas Civil Practice & Remedies Code. The SDR prays for an award of its reasonable and necessary attorney's fees and related costs from the Respondents, jointly and



severally. The SDR prays specifically for an award pursuant to TEX. INS. CODE ANN. § 443.008, which provides:

(k) The estate of an insurer that is injured by any willful 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.

## **VII. CONDITIONS PRECEDENT**

7.1 All conditions precedent to jurisdiction have occurred or been complied with; alternatively, conditions precedent have been waived.

## **VIII. RESPONDEAT SUPERIOR AND RATIFICATION**

8.1 Whenever the Application alleges that Respondents did any act or thing, it means: (1) Respondents, their agents, servants, employees, or representatives did such act; (2) at that time such act was done, it was done with the full authorization or ratification of Respondents; and/or (3) it was done in the normal and routine course and scope of employment of Respondents' agents, servants, employees, or representatives.

## **IX. NO BOND REQUIRED**

9.1 TEX. INS. CODE § 443.008(m) provides that notwithstanding any other provision of law, bond may not be required of the commissioner or receiver in relation to any stay or injunction under this section. The SDR requests that it not be required to file a bond.

## **X. OFFER OF PROOF AND VERIFICATION**

10.1 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.

## **XI. NOTICE OF HEARING**

11.1 The SDR has provided notice of filing this Application prior to presenting it to the

Receivership Court. It is set for hearing before the Receivership Court on December 15, 2016, at 9:00 a.m.

**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. Enter an order enjoining Respondents to dismiss or abate the Schambacher v. Carroll Lawsuit until such time as the receivership of Millennium Title is dismissed;
2. Award the SDR its actual damages, reasonable and necessary attorney's fees, cost of court and all other costs of litigation solely against the Respondents;
3. Award the SDR additional sanctions against the Respondents as the Court deems appropriate under the circumstances; and
4. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

**FULLER LAW GROUP**

By: /s/Christopher Fuller  
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Millennium Title**

## CERTIFICATE OF SERVICE

I certify that on December 5, 2016, the foregoing Application served pursuant to the Texas Rules of Civil Procedure and TEX. INS. CODE CHAPTER 443 on the following by electronic mail, except as specifically noted:

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/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 competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

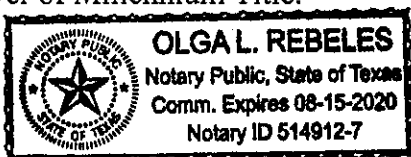
2. I am a partner in CANTILO & BENNETT, L.L.P., the designated Special Deputy Receiver of Millennium Closing Services, LLC, d/b/a Millennium Title (the "SDR" and "Millennium Title" respectively). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

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, are either true and correct copies of records of the insurer and were received from the custody of Millennium Title or found among its effects or were created by and filed with the Receiver's office in connection with the receivership of this delinquent title agency, and are held by the Special Deputy Receiver in its official capacity.

4. I have read the foregoing Application 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 December 2, 2016, by Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Millennium Title.



  
Notary Public