

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 APPLICATION TO AWARD FUNDS OR,
ALTERNATIVELY, FOR AUTHORITY TO INTERPLEAD FUNDS,
FOR SEVERANCE AND TO BE DISCHARGED**
[POC NOS. 197, 198, 207, 208 AND 211]

TO THE HONORABLE JUDGE OF THIS COURT:

CANTILO & BENNETT, L.L.P., solely in its capacity as the 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 Award Funds, or alternatively, for Authority to Interplead Funds and for Severance, and to be Discharged [POC Nos. 197, 198, 207, 208 and 211] (the “Application”).

I. INTRODUCTION AND SUMMARY

1.1 The Application is filed pursuant to TEX. INS. CODE § 443.154(y) and TEX. R CIV. P. 43.

1.2 As more fully described below, the SDR holds \$8,000 in undistributed escrow money which was deposited with Millennium Title through five separate transactions, each involving different parties. The money is claimed under five Proofs of Claim (“POCs”), which are the last unadjudicated claims in the estate. The SDR is an innocent stakeholder of the escrow money, some of which is subject to conflicting claims.

1.3 In order to prevent the SDR from exposure for double liability, and to provide for the orderly and cost-effective administration of the estate, the SDR requests that the Court:

- a. authorize the SDR to name all known potential claimants to the funds involved with POC Nos. 197, 198, 207, 208 and 211 (identified below);
- b. award the money attributable to each transaction to the claimant who appears in response to the Application or, alternatively, in the event of more than one claimant, order the interpleader of the remaining funds and sever the claims to the funds into separate lawsuits;
- c. award the SDR reasonable and necessary attorney's fees and costs from any funds interpleaded;
- d. rule that the SDR has completed the distribution of the funds in question; and
- e. discharge the Receiver, the SDR and the estate from any liability relating to the POCs and the escrow funds in question.

II. BACKGROUND

2.1 Millennium Title was placed in receivership in this proceeding on January 25, 2016, when the Court entered its *Order Appointing Liquidator and Permanent Injunction* (the "Liquidation Order"), appointing the Texas Commissioner of Insurance as Liquidator. The Receiver designated CANTILO & BENNETT, L.L.P. as SDR of Millennium Title on January 26, 2016.

2.2 This Court entered an order granting the SDR and TTIGA's *Joint Application to Provide Notice of Liquidation, Set Claims Filing Deadline, and Establish a Claims Processing Procedure*. The deadline to file claims was November 15, 2016.

2.3 This Court has jurisdiction over the subject matter of this Application and the parties pursuant to TEX. INS. CODE § 443.005. This Court has exclusive jurisdiction over the estate pursuant to TEX. INS. CODE § 443.005. This Court has personal jurisdiction over all parties named herein because this is a civil proceeding arising under, and related to, a delinquency proceeding under Chapter 443 of the Code. This Court further has personal jurisdiction over all parties named herein and the subject matter herein because this proceeding involves claims to property of the estate.

2.4 Travis County is the mandatory, sole, and exclusive venue for this proceeding. TEX. INS. CODE § 443.005.

2.5 The subject matter of this Application has not been referred to the Special Master appointed in this proceeding.

III. PARTIES

3.1 Applicant is the duly appointed SDR designated by the Commissioner of Insurance in his capacity as Receiver of Millennium Title.

3.2 For POC No. 197: Jamal Haruna and Kate Haruna (collectively, the “Harunas”) are individuals who reside at and may be served at 3112 Pheasant Run Court, Grand Prairie, Texas 75052. The Harunas filed POC No. 197 in this estate and are before the Court for all purposes.

3.3 For POC No. 198: Danielle Welch is an individual who may be served at 4123 N. O’Connor Road, Irving, Texas 75061. Ms. Welch filed POC No. 198 in this estate and is before the Court for all purposes.

3.4 For POC No. 207: Freddy Gamez is an individual who may be served at 11133 Limestone Drive, Balch Springs, Texas 75180. Mr. Gamez filed POC No. 207 in this estate and is before the Court for all purposes.

3.5 For POC No. 207: Kelly Boosh is an individual who may be served at 2706 S. Peachtree Road, Balch Springs, Texas 75180.

3.6 For POC No. 208: Dan Investments, LLC is an entity that may be served at 20347 Bentwood Oaks Drive, Porter, Texas 77365. Dan Investments, LLC filed POC No. 208 in this estate and is before the Court for all purposes

3.7 For POC No. 208: Rutenberg K. Freeman and Jane Freeman are individuals; the Freeman Family Partnership may be served through partner Michael Freeman. Rutenberg K. Freeman and Jane Freeman and the Freeman Family Partnership are collectively referred to as the “Freemans”. The Freemans may be served at 4806 Mt. Vernon Street, Houston, Texas 77006.

3.8 For POC No. 211: Curtis Thomas and Cynthia Thomas (the “Thomasess”) are individuals who may be served at 107 Prentice Drive, Seagoville, Texas 75159. The Thomasess filed POC No. 211 in this estate and are before the Court for all purposes.

3.9 For POC No. 211: Santos Maximilano Rodriguez Escalante is an individual who may be served at 5770 Duncanville Road, Dallas, Texas 75236.

3.10 Collectively, the Harunas, Ms. Welch, Dan Investments, the Freemans, Ms. Boosh, Mr. Gamez, the Thomasess, and Mr. Escalante are referred to herein as “Respondents.” The SDR reserves the right to amend this Application to name additional respondents or to drop named Respondents before a final order is entered.

IV. CONDITIONS PRECEDENT

4.1 All conditions precedent have occurred or been complied with; alternatively, conditions precedent have been waived.

V. FACTS

5.1 **POC Nos. 197 and 198:** The SDR holds \$1,500 in escrow funds from a transaction

involving the sale of real property located at 1812 E. Grauwler Road, Irving, Texas 75061-3041. Millennium Title identified the transaction as Guaranty File (“GF”) 1503069-LD. The transaction did not close before receivership. The Harunas deposited \$1,500 into escrow. After receivership, the Harunas filed POC No. 197 seeking recovery of the \$1,500. However, the estate’s business records reflect that the seller of the property in question, Ms. Danielle Welch, filed POC No. 198 claiming the same funds. Based on available company records, the SDR is unable to determine which of the claimants is entitled to the funds.

5.2 **POC No. 207:** The SDR holds \$1,000 in escrow funds from a transaction involving the sale of real property located at 2706 S. Peachtree Road, Balch Springs, Texas 75180. Millennium Title identified the transaction as GF No. 1501093-LD, but the transaction did not close before receivership. Jose Gamez deposited the \$1,000 into escrow. After receivership, Mr. Gamez filed POC No. 207 seeking recovery of the \$1,000. However, the estate’s business records reflect that the seller of the property in question, Kelly Boosh, has not executed a release of the funds and did not file a POC for the funds.

5.3 **POC No. 208:** The SDR holds \$5,000 in escrow funds from a transaction involving the sale of real property located at 2610 McIlhenny, Houston, Texas. Millennium Title identified the transaction as GF No. 1500663-HP, but the transaction did not close before receivership. Dan Investments, LLC deposited the \$5,000 into escrow. After receivership, Dan Investments filed POC No. 208 seeking recovery of the \$5,000. However, the estate’s business records reflect that the sellers of the property in question, the Freemans, have not executed a release of the funds (although one has been tendered) and did not file a POC for the funds.

5.4 **POC No. 211:** The SDR holds \$500 in escrow funds from a transaction involving the sale of real property located at 1009 Netherland Drive, Seagoville, Texas 75159. Millennium

Title identified the transaction as GF No. 1503199-CO, but the transaction did not close before receivership. Mr. Escalante deposited the \$500 was into escrow. After receivership, the Thomases filed POC No. 211 seeking recovery of the \$500. However, the estate's business records reflect that the party who deposited the money, Mr. Escalante, has not executed a release of the funds (although one has been tendered), and has not filed a POC for the funds.

VI. RELIEF REQUESTED

6.1 The SDR requests that the Court authorize the award of the funds held in escrow sought to the claimants who filed POC Nos. 207, 208 and 211; and to award the funds held in escrow for GF No. 1503069-LD, sought by the claimants who filed POC Nos. 197 and 198 to whichever claimant makes an appearance to claim the funds. In the alternative, if both claimants appear, or neither claimant appears, the SDR requests authority to interplead the funds applicable to the conflicting claims. The SDR further moves the Court to declare that the Receiver, the SDR and the Receivership estate of Millennium Title are released from any and all liability, including, but not limited to, any liability related to or arising from the funds held in escrow sought by the claimants who filed POC Nos. 197, 198, 207, 208 and 211.

6.2 Rule 43 of the Texas Rule of Civil Procedure provides:

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in any other rules.

6.3 In the event that a severance and interpleader action is required to resolve POC Nos. 197 and 198, the SDR, as an innocent stakeholder, expressly asserts its right to, and prays for the

recovery of reasonable and necessary attorney's fees and costs incurred due to the conflicting claims to the funds held. This Application would not have been required had Respondents properly established their entitlement to the money.

6.4 Upon entry of the order authorizing the interpleader and discharging the Receiver, the SDR and the estate, the SDR will reject any obligations under any contract relating to the GFs associated with POC Nos. 197, 198, 207, 208 and 211, and Respondents pursuant to TEX. INS. CODE § 443.013 (a).

6.5 In addition to granting the SDR's Application, the SDR moves the Court to declare that to the extent any Respondent filed, seeks to file, or files a POC with the Texas Title Insurance Guaranty Association and/or the SDR, such POC(s) are denied, without prejudice to the rights of the Respondents to determine their respective rights to the interpleaded funds and that there is no right to object to or appeal the adjudication of the POC.

6.6 The relief sought herein shall not affect, in any way, the Receiver's or the SDR's immunities from suit, and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Liquidation Order remain in effect unless expressly modified herein. Neither this Application, nor any relief granted thereto, amends, modifies or in any manner changes or affects the terms and provisions of the *Order Granting Joint Application to Provide Notice of Liquidation, Set Claims Filing Deadline, and Establish Claims Processing Procedure* entered on August 9, 2016, as it relates to any POC filed by any Respondent, except as expressly set out herein.

VII. NOTICE

7.1 Pursuant to TEX. INS. CODE § 443.007(d), this Application has been served on the Respondents by regular mail, and the entire service list for this proceeding, including TTIGA, in

the manner shown on the Certificate of Service.

VIII. OFFER OF PROOF AND VERIFICATION

8.1 This Application is verified by the affidavit and certification pursuant to TEX. INS. CODE § 443.017(b) by Susan E. Salch, Partner in 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 the Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title, respectfully requests this Court to set a hearing on the Application and upon such hearing:

1. Grant this Application;
2. Award the funds held in escrow sought by POC Nos. 207, 208 and 211, to the claimants who filed the POCs,
3. Award the funds held in escrow for GF 1503069-LD sought by the claimants who filed POC Nos. 197 and 198 to whichever claimant appears in response to the Application; alternatively, in the event that neither claimant appears, or both claimants appear, authorize the SDR to interplead the funds, less all amounts awarded to the SDR and the costs of court, to the Registry of the Court; order the severance of all such conflicting claims into a separate lawsuit and order the Clerk of the Court to open a new case file for the severed case;
4. Confirm the SDR's rejection of any obligations under any contracts relating to GFs referenced in POC Nos. 197, 198, 207, 208 and 211, and to Respondents pursuant to TEX. INS. CODE § 443.013 (a);
5. Discharge and release the Receiver, the SDR and the receivership estate from any and all liability regarding the funds held in escrow sought by POC Nos. 197, 198, 207, 208 and 211;
6. Declare that any POC filed by any Respondent is denied, with prejudice to any right to object to or appeal the determination and without further order of the Receivership Court;
7. In the event of an interpleader and severance, award the SDR its reasonable and necessary attorney's fees and costs as an innocent stakeholder;
8. Tax all costs of court for the new case solely against the parties to the severed case;

9. Award the SDR reasonable and necessary attorney's fees and costs against any party who unsuccessfully appeals; and
10. Grant the SDR such other and further relief to which it may be justly entitled.

Respectfully submitted,

FULLER LAW GROUP

/s/Christopher Fuller

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Attorney for CANTILO & BENNETT, L.L.P.,
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Services, L.L.C. d/b/a Millennium Title

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing on the Special Deputy Receiver's *Application to Award Funds, or Alternatively, for Authority to Interplead Funds and for Severance, and to be Discharged* [POC Nos. 197, 198, 207, 208 and 211] is set before the Honorable Judge Tim Sulak in the 353rd Judicial District Court on **Tuesday, November 12, 2019 at 2:00 p.m.** at the Heman Marion Sweatt Travis County Courthouse, 1000 Guadalupe Street, Room 501, Austin, Texas 78701. Pursuant to the Order of Reference to Master, any objection to this *Application* should be filed and served on all parties on the service list no later than three (3) calendar days prior to the hearing.

/s/Christopher Fuller
Christopher Fuller

CERTIFICATE OF SERVICE

I certify that on October 9, 2019, a true and correct copy of this Application was served pursuant to the Order of Reference, the Texas Rules of Civil Procedure, and TEX. INS. CODE § 443.007(d) on the following:

Via e-Mail: specialmasterclerk@tdi.texas.gov
Special Master's Clerk
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Rehabilitation & Liquidation Oversight
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Via e-Service: James.Kennedy@tdi.texas.gov
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Via First Class Mail
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Via First Class Mail
Santos Maximilano Rodriguez Escalante
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Dallas, TX 75236

/s/Christopher Fuller
Christopher Fuller

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

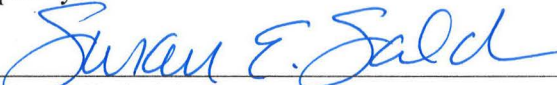
AFFIDAVIT OF SUSAN E. SALCH

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.
2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title (the "SDR" and "Millennium Title" respectively). I am duly authorized to make this Affidavit on behalf of the SDR.
3. I have reviewed the attached Application to Award Funds, or, Alternatively, for Authority to Interplead Funds, for Severance, and to be Discharged [POC Nos. 197, 198, 207, 208 and 211] (the "Application") and the facts stated therein are true and correct based on my personal knowledge, my review of estate records and my consultation with the staff and subcontractors.
4. 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 § 443.017, are either true and correct copies of records of Millennium Title 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 agency, and are held by the Special Deputy Receiver in its official capacity."

By: 
Susan E. Salch

SUBSCRIBED AND SWORN TO BEFORE ME on October 7, 2019, by Susan E. Salch, Special Deputy Receiver of Millennium Closing Services, L.L.C. d/b/a Millennium Title.



Notary Public

