

REPORTER'S RECORD
VOLUME 4 OF 5
CAUSE NO. PR-11-3238-1
COURT OF APPEALS NO. 05-18-00558-CV

IN THE ESTATE OF
MAX D. HOPPER,
DECEASED

THE PROBATE COURT

|
JO N. HOPPER
Plaintiff,

v.

JPMORGAN CHASE BANK N.A.
STEPHEN B. HOPPER,
LAURA S. WASSMER
Defendants.

NUMBER ONE

JOHN L. MALESOVAS d/b/a
MALESOVAS LAW FIRM, and FEE
SMITH, SHARP & VITULLO, LLP
Intervenors,

v.

STEPHEN B. HOPPER, LAURA S.
WASSMER, and JPMORGAN CHASE
BANK N.A.,
Defendants.

DALLAS COUNTY, TEXAS

=====

MOTION TO COMPEL ARBITRATION

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On the 8th day of May, 2018, A.D., the
following proceedings came on for hearing in the above-
entitled and numbered cause before the HONORABLE COURT,
BRENDA HULL THOMPSON, Judge Presiding, held in Dallas,
Dallas County, Texas.

Proceedings reported by oral stenography.

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Exhibits
[None]

1 P R O C E E D I N G S

2 THE COURT: All right. This is PR-11-
3 3238 in the Matter of Max Hopper. May I have the
4 attorneys announce, please?

5 MS. JOHNSON: Yes, Your Honor, Ann
6 Johnson, Jim Pennington and Andrew Guthrie for the
7 intervention Defendants, Stephen Hopper and Laura
8 Wassmer.

9 MR. LAUTEN: Good afternoon, Your Honor,
10 Brian Lauten on behalf of Fee Smith and John Malesovas,
11 and Michelle, my paralegal, is here, too.

12 MS. PULLIAM: Your Honor, Jessica Pulliam
13 of Baker Botts on behalf of JPMorgan. We do not
14 anticipate participating today. I just wanted to let
15 you know we are here.

16 THE COURT: All right, what's your last
17 name?

18 MS. PULLIAM: Pulliam. P-u-l-l-i-a-m.

19 THE COURT: Anyone else?

20 MR. TOBEY: Your Honor, Robert Tobey for
21 the law firm of Block Garden & McNeill. I'm an
22 interested observer today.

23 THE COURT: All right, what -- Block --

24 MR. TOBEY: Block, B-l-o-c-k.

25 THE COURT: Oh, okay.

1 MR. TOBEY: Garden, G-a-r-d-e-n and
2 McNeill, M-c-N-e-i-l-l. It's a law firm.

3 THE COURT: Yes.

4 MR. TOBEY: They're counsel for Dr.
5 Hopper and Ms. Wassmer, also. They're filing a motion
6 in order to withdraw.

7 THE COURT: Your clients are filing a
8 motion to withdraw?

9 MR. TOBEY: They are.

10 THE COURT: Okay.

11 MR. TOBEY: We'll e-file that. I do not
12 anticipate participating in this hearing.

13 THE COURT: All right.

14 How long do you anticipate, Ms.
15 Johnson?

16 MS. JOHNSON: Your Honor, I think I have
17 about 10 or 15 minutes.

18 THE COURT: All right. Proceed.

19 MS. JOHNSON: Your Honor, we're here
20 today on the Motion to Compel Arbitration of Stephen
21 Hopper and Laura Wassmer. We're asking the Court today
22 for an order enforcing the arbitration provisions, in
23 the fee agreements that were drafted by the attorneys,
24 in the case, and we're asking the Court to compel
25 arbitration and stay all proceedings in this Court. I'd

1 like to start by talking about the arbitration
2 provision. May I approach, Your Honor?

3 THE COURT: Yes.

4 MS. JOHNSON: Your Honor, this is a copy
5 of the arbitration provision. I know the Court has seen
6 it before. It's contained in the fee agreements that
7 are in the record. The fee agreements here, it's
8 undisputed that they contain unambiguous, broad,
9 unlimited, arbitration provisions that cover all matters
10 that may arise between attorneys and clients, including
11 fee disputes.

12 And the highlighted language here, Your
13 Honor if I could just read that. "Any controversy or
14 claim arises out of or is related to this agreement, any
15 services provided by attorneys to client in connection
16 with clients' claims or any other matter that may arise
17 between client and attorney including malpractice claims
18 and fee disputes. Attorneys and client both waive any
19 right to bring a court action or have a jury trial and
20 agree that the dispute shall be submitted to binding
21 arbitration."

22 Then it goes on to give details about how
23 that arbitration should be conducted. Your Honor,
24 there's no challenge to the enforceability of this
25 provision. In fact, quite the opposite, the lawyer's

1 pleadings in this case state and I quote, that they
2 fully embrace the fee agreements, including
3 specifically, this arbitration provision. Nor is there
4 any argument about the broad and unambiguous scope of
5 this agreement, Your Honor.

6 They are not taking the position that the
7 dispute at issue here is not within the scope of the
8 agreement. They're not saying this is not a fee
9 dispute, which it most certainly is. They're not saying
10 that this is not a matter that has arisen between
11 clients and attorneys, which it most certainly is.
12 Having shown a valid arbitration clause -- this was our
13 burden, Your Honor, we had to show a valid arbitration
14 clause and we have to show that the fee dispute at issue
15 in this proceeding, is within the scope of that clause.

16 Having met that burden, Your Honor, the
17 Court should compel arbitration. The attorneys do not
18 raise any defenses to arbitration. They do not claim
19 that this cause is unconscionable. They do raise a
20 number of arguments in an effort to avoid arbitration
21 and I want to address those, briefly. The first
22 argument they raise is that the Court cannot compel
23 arbitration against a non-signatory. Certainly, there
24 are a lot of issues when the Court is presented with an
25 issue of arbitration as to a non-signatory but, none of

1 those are flagged here because there is no one -- we are
2 not trying to compel a non-signatory, that is, JPMorgan
3 to this dispute.

4 I would refer the Court to JPMorgan's
5 filing on Friday, which was a notice to the Court about
6 their position related to the temporary injunction. And
7 here is what they said. They said we are not holding
8 disputed funds and there is no need -- we are not
9 holding disputed funds because we have no obligation to
10 make a settlement payment until certain conditions
11 precedent are met, right, and the Court knows that. The
12 release of the liens and order from this Court saying
13 that they can do so.

14 So, none of those conditions have been
15 met and as a practical matter Your Honor, none of those
16 conditions will be met until this fee dispute is
17 resolved between the lawyers and the clients, in
18 arbitration. They are not holding disputed funds and
19 there is no need for this Court to compel them to do
20 anything. They are akin to an interpleader Plaintiff.
21 They're not a party to dispute, and we are not seeking
22 to compel them to arbitrate.

23 The second argument that the lawyers have
24 made to avoid arbitration is an estoppel argument and
25 there are really two pieces to this. The first, they

1 say that we can't enforce an arbitration provision in
2 the contract. You can't do that if you're also claiming
3 that the contract is void or invalid. And Your Honor,
4 that precise argument has been rejected by the United
5 States Supreme Court, in the 2006 case of *Buckeye Check*
6 *Cashing*.

7 What the Court held there was that an
8 arbitration provision in a contract is severable and of
9 course, that is true here. We have a severance
10 provision in this contract, its paragraph 15, which says
11 that if any part of this contract is held unenforceable,
12 it doesn't make the remainder of the contract
13 unenforceable. In addition, the Court held explicitly
14 in that case that any challenge to the enforceability of
15 a contract should be decided by the arbitrator and not
16 the Court.

17 What that means is that the situation we
18 have here will happen, and it's not uncommon, which is
19 that a court may enforce an arbitration provision in an
20 agreement that an arbitrator may later find to be void.
21 In fact, the lawyers, if anyone has taking any
22 consistent position here, Your Honor, we submit that it
23 is intervention Plaintiffs, because they are saying we
24 fully embrace this contract that we drafted, that
25 contains an arbitration provision yet, the arbitration

1 provision is invalid. There is absolutely no case
2 authority for this inconsistency. If this were
3 permitted Your Honor, it would render arbitration
4 provision meaningless.

5 THE COURT: All right, tell me the case
6 you cited, again?

7 MS. JOHNSON: Yes, Your Honor, I have a
8 copy if you'd like it.

9 THE COURT: All right.

10 MS. JOHNSON: Thank you. The case is
11 *Buckeye Check Cashing*. The other kind of estoppel
12 argument they're making Your Honor, is really a quasi
13 estoppel argument that goes to the merits of dispute and
14 has no bearing on whether or not this Court should
15 compel arbitration. Essentially, they're saying our
16 right to recover a 45 percent fee is vested and secured
17 and so there's nothing for an arbitrator to decide and
18 there is no issue that should go to arbitration.

19 Well, Your Honor, that's belied by their
20 own summary judgment filing. They filed a summary
21 judgment motion in this court that is asking this Court,
22 improperly asking this Court, to rule on the merits of
23 the dispute. They've set that summary judgment motion
24 for May 23rd and they're asking this Court for a merits
25 ruling that should be decided by the arbitrator. And

1 that summary judgment filing, in their own petition,
2 confirms that this is a merits issue. They give you --
3 they cite these cases, *Tillery* and *Enochs* and they
4 really go to the merits, Your Honor, about what amount
5 should be paid to these lawyers and they have nothing to
6 do with arbitration and they are not arbitration cases.

7 And Your Honor, I would remind the Court
8 of the testimony that I think you heard at the temporary
9 injunction hearing, which is that our clients do not
10 dispute that compensation is owed to these lawyers.
11 That has never been a dispute. The issue, the merits
12 issue that should be decided in arbitration is the
13 amount of that compensation. That is the disputed
14 issue. That is the disputed issue that must be decided,
15 according to the lawyer's own agreement, by an
16 arbitrator.

17 Your Honor, I also want to point out the
18 timing issues related, that we have relevant to this
19 issue, which is, we had a Texas Supreme Court opinion
20 that's very clear that motions to compel arbitration
21 must be resolved without delay and that a court abuses
22 its discretion if it delays ruling on a Motion to Compel
23 Arbitration. We have a particular urgency here, which
24 has been created by the lawyer's filings. They have
25 filed a merit summary judgment motion which is set for

1 May 23rd; our Response to that is due next week, May 16,
2 and the Dallas Court of Appeals has been very clear in
3 cases -- The Dallas Court of Appeals --, it's cited in
4 our brief, Your Honor, the Dallas Court of Appeals has
5 been very clear that a court cannot rule on -- its
6 *Tantrum* is the name of the case, Your Honor.

7 A court cannot rule on a summary judgment
8 motion while a Motion to Compel Arbitration is pending.
9 Nor, can it force a party to litigate by filing a
10 response to the summary judgment motion because to do so
11 would deprive that party of its contractual right to
12 arbitration. Let me just make two final points Your
13 Honor, just so you're up to speed on what developments
14 in the case since we were last here on the temporary
15 injunction hearing.

16 First, you heard from Mr. Tobey Block &
17 Garden, which is another law firm that is seeking to
18 recover their fees. They have filed a demand for
19 arbitration so I just want to let the Court know that.
20 They have a similar arbitration provision in their
21 contract. The second development obviously, is that the
22 Court has entered a temporary injunction and I want to
23 remind the Court that when we were here the temporary
24 injunction hearing, the authority that was proffered to
25 the Court for the Court's ability to enter an injunction

1 was the Texas Arbitration Act.

2 The provision was 171.086 and what that
3 provision says is that this Court, in support of
4 arbitration, may sign various orders that promote case
5 resolution, through arbitration. The other authority
6 the Court was given was the *Center* case from the Dallas
7 Court of Appeals. What that case said is that this
8 Court can only render an injunction in support of
9 arbitration.

10 So, we submit Your Honor, that the basis
11 for the injunction that was proffered to you by the
12 attorneys and on which this court entered injunction,
13 was that this case would proceed to arbitration. Your
14 Honor, in conclusion, all paths here lead to
15 arbitration. We have an undisputed arbitration clause.
16 We have a broad unambiguous scope. We have lawyer's
17 filings saying that they are embracing that arbitration
18 clause.

19 We have a summary judgment motion that
20 tees up the merits that should be decided by the
21 arbitrator, and we have this Court's own temporary
22 injunction, which was rendered based on authority that
23 presumes this issue is being decided in arbitration.
24 So, we ask this Court to grant the Motion to Compel
25 Arbitration and stay all of the proceedings in this

1 case, pending arbitration.

2 THE COURT: All right.

3 MR. LAUTEN: Good afternoon, Your Honor.
4 First, no disrespect intended, Ms. Johnson was nice
5 enough to move this hearing to accommodate a conflict I
6 had and unfortunately, Mr. Vitullo is on vacation, and
7 couldn't get back in time. So, no disrespect intended
8 by him not being here. There are three reasons why this
9 motion should be denied. And I'll talk about those in a
10 second.

11 The first thing she did say that was
12 correct is there's absolutely an enforceable arbitration
13 clause in this dispute, no question. But its prong two
14 of the analysis as to why this motion should be denied
15 today, as the pleadings currently stand, without
16 prejudice. The first issue is: Are there actually
17 claims on file today that are within the course and
18 scope in the umbrella of the arbitration provision?
19 There are not. And there are three reasons why this
20 motion should be denied.

21 First, there is no claim before this
22 Court that is subject to the arbitration provision at
23 issue. Number two, they're fully estopped; there is
24 nothing to arbitrate right now. And three, they've
25 taken irreconcilable positions. Let me start with the

1 first issue. What Ms. Johnson didn't talk about is what
2 is actually plead. We filed a second amended plea in
3 intervention. There's only one claim pending before
4 this Court and it's an application for declaratory
5 relief under 37.005, JPM remains the Independent
6 Administrator of the Estate.

7 Under 37.005, this Court has exclusive
8 jurisdiction to dispose of property incident to the
9 Estate and that is the settlement proceeds. The
10 settlement proceeds, albeit it hasn't been funded, are
11 entirely with JPM. Our DEC action complaint -- there's
12 no breach of contract that's been filed. There's no
13 legal malpractice case that's been filed. There's no
14 breach of fiduciary duty case that's been filed. All of
15 the claims that would fall within the orbit of an
16 arbitration clause, none of that has been filed.

17 Our dispute primarily, is with who has
18 the property, and that's JPM. We have no agreement with
19 JPM. JPM's not only a non-signatory to an arbitration
20 agreement, the lawyers have no agreement on any kind
21 with JPM. The jurisdiction, the corpus at issue is in
22 the hands of a party before you, who is not bound by any
23 agreement, much less an arbitration agreement. I've got
24 a case for you that's right on point. I've got copies
25 of it and it's cited in our brief, if I can approach?

1 THE COURT: Yes.

2 MR. LAUTEN: Let the record reflect this
3 is *Transamerica v. Rapid Settlements*, 284S.W.3d 385 and I
4 would submit to you that that case is on all fours with
5 the *Instant (phonetic)* case. Let me tell you what
6 happened. That was a situation where you had a personal
7 injury Plaintiff, injured in a car accident or something
8 like that; they enter into a settlement agreement and
9 instead of taking the cash, the lump sum for the
10 settlement, the Plaintiff, which is, you know what
11 happens all the time, is they structured the settlement
12 to get an annuity over a certain amount of years.

13 Well the Plaintiff in that case decided
14 that he wanted the money; that he didn't want to wait
15 for the annuity stream. So, what happened, which is not
16 wholly uncommon, is the Plaintiff reached out to this
17 company called Rapid Settlements, which is one of these
18 factoring companies and it enters it -- the Plaintiff,
19 who settled this case, structures a settlement; the
20 annuity provider was Transamerica. The Plaintiff enters
21 into this agreement with Rapid Settlements and agrees
22 that Rapid Settlements in going to write him a check for
23 \$5,000 and he's going to give him the annuity rights to
24 \$100,000.

25 So, he's got a contract with Rapid

1 Settlements with an arbitration agreement. But the
2 people who actually have the money Transamerica, they're
3 not a party to any agreement. They're the JPM in this
4 fact pattern. What happens? They go to arbitration and
5 they simply, the client who entered the agreement with
6 Rapid, but not the person that actually had the money
7 Transamerica, they weren't a party to that contract.
8 They go arbitrate. They move to compel the arbitration
9 award. The Plaintiff loses. The arbitrator says you
10 entered into an agreement; you gave up your rights on
11 that annuity; you're bound by that.

12 Well, then they move to confirm the
13 award, like coming back to this Court. The JPM in that
14 particular scenario, Transamerica, who had no
15 arbitration agreement with them said we're not bound by
16 that, we're a non-signatory, you couldn't compel us to
17 arbitration; we didn't go to arbitration. We're not
18 going to comply with the arbitrator's award. We don't
19 care about your arbitration award. Our contract's with
20 the Plaintiff and that's what we're going to honor. And
21 in that case, the Court said, that's right.

22 And in the Houston case, they held that
23 it was reversible error to confirm the arbitration award
24 because the person that actually had the money, the
25 person that actually had the settlement, was not bound

1 by an arbitration award and they weren't privy to an
2 agreement. That's exactly what we have here. We have a
3 confluence. We have three parties. It's not just
4 client and lawyer. It's client, lawyer and JPM and
5 JPM's got the money. We had no agreement with them.
6 They're not moving to compel arbitration with respect to
7 JPM.

8 And furthermore, I would disagree that
9 this is just a fee dispute; it's not. It's an ownership
10 and property right dispute. We're entitled to that
11 property right now. We own it. We have filed a DEC
12 action and we're only seeking six findings. No legal
13 malpractice claim, no breach of fiduciary duty claim.
14 Why in the thunder would we go to arbitration and take a
15 dozen depositions and spend three months to a year in
16 arbitration when we're entitled to the property right
17 now, in the hands of a party who is not subject to any
18 arbitration agreement.

19 So, that's issue one, is there is no
20 claim subject to the arbitration agreement as things
21 currently stand. I totally agree with her. If we were
22 to amend and sue them for breach of contract and all
23 kinds of other things, yeah, I get that. If they were
24 to sue us for legal malpractice, I get that. None of
25 that is on file today. Point number two: They are

1 fully estopped. There's nothing to arbitrate. That's
2 what *Tillery* says; that's what *Enochs* says. Those
3 findings have been made in the injunction order, those
4 cases are cited in your order, and lastly, they have
5 taken a reconcilable position.

6 She is absolutely, right; I do not
7 disagree with *Buckeye*. She is correct and she is
8 telling you the truth when she says, that generally,
9 that's up to the arbitrator, that the arbitration
10 agreement can be severed from the contract. She's
11 absolutely telling the truth on that. But there's a
12 bigger point to be made here and that is simply this:
13 The policy of this is absolutely, awful. They have
14 accepted all of the benefits of this work, they
15 terminate the lawyers literally within minutes of the
16 settlement being reached; they fire the lawyers.

17 They say we agree the lawyers should be
18 paid but they say we're not going to tell you what that
19 number is nor are we going to pay any of it until an
20 arbitrator or court tells us otherwise. And they want
21 to be in a better position than they were before they
22 did all of this and they created this mess and that is
23 simply wrong.

24 I'm just telling you, Your Honor, if you
25 were to allow -- if a personal injury Plaintiff was

1 allowed to simply wait until the case is settled, until
2 the Frank Bransons and Ted Lyons and Windle Turleys of
3 the world, we're just not going to pay you. We're going
4 to go to arbitration now and spend a year there. That's
5 simply not the law. They are fully estopped. Lastly, I
6 want to leave you if I could, with a copy of the DEC
7 action statute. Can I approach?

8 THE COURT: Yes.

9 MR. LAUTEN: And this is not just a DEC
10 action statute, this is a unique provision of Chapter 37
11 that gives a Probate Court exclusive jurisdiction over
12 this type of claim. In the Civil Rights and Remedies
13 Code it says: "Declarations relating to trusts or
14 estate". This is the statute that we plead in the only
15 claim before this Court. And under 37.005 one, you have
16 exclusive jurisdiction as the Probate Court to deal with
17 a class of creditors who have an interest in funds
18 germane to the Estate. We're a creditor. We're owed
19 this money. We have a vested property right.

20 The Fifth Circuit applied Texas
21 substantive law has held the minute the contingency fee
22 is earned, it's a vested secured, fully vested estopped
23 ownership right. That's it. Under this provision, the
24 Court maintains exclusive jurisdiction to dispose of the
25 corpus. I will just remind the Court this, JPM again,

1 who we have no agreement with, they have no agreement
2 with, other than the settlement agreement -- by the way,
3 I would love to see what the choice of law or forum
4 selection is in that agreement, which we haven't seen.

5 But be that as it may, nobody has any
6 agreement with them that they're the Independent
7 Administrator. They got the property and they are not
8 bound by any agreement to arbitrate. So, therefore, for
9 these reasons we would ask the Court to do this: Deny
10 the Motion to Compel Arbitration without prejudice as it
11 stands right now, if the pleadings are later amended and
12 broadened, it has to be re-analyzed to see if claims
13 fall in the scope of that arbitration provision.

14 The bottom line is this, no, we're not
15 running from our agreement. Our agreement's our best
16 friend. Our agreement's why this case is over before it
17 starts. Number one, there is no claim to arbitrate as
18 things are currently plead. I'd ask the Court to
19 consider and take judicial notice of our second amended
20 petition in intervention. Number two, they are fully
21 estopped under *Enochs* and *Tillery*. There is nothing to
22 go back in time and litigate.

23 THE COURT: Just a second. The second
24 amended petition is --

25 MR. LAUTEN: Yes, Your Honor, if you want

1 I can give you a copy of mine, a file-stamped copy. We
2 filed it on May 1st at 1:13 if I could approach?

3 I don't have an extra copy for you
4 Anne, but --

5 MS. JOHNSON: I got it.

6 THE COURT: So, you're asking for
7 judicial notice of that?

8 MR. LAUTEN: Take judicial notice of the
9 only pleading that could possibly be before the Court
10 with respect to their motion is one claim for
11 declaratory relief.

12 THE COURT: Any objection?

13 MS. JOHNSON: Uh, no, Your Honor.

14 MR. LAUTEN: And so, that's my argument.
15 I appreciate your time. I know that we've taken a
16 tremendous amount of your time away from how busy you
17 are on Mr. Loewinsohn's side of the case. I'm happy to
18 answer any questions you've got, but again, I'd ask the
19 Court to deny the Motion to Compel Arbitration without
20 prejudice at this time. I got a proposed order if the
21 Court wants me to leave it.

22 THE COURT: All right. The Court's going
23 to take judicial notice of the second amended petition
24 in intervention. And the Court will take proposed
25 orders from both sides.

1 MS. JOHNSON: Your Honor, may I just
2 respond, briefly?

3 THE COURT: Yes.

4 MS. JOHNSON: Thank you, Your Honor.

5 THE COURT: Okay. But I will take
6 proposed orders today.

7 MS. JOHNSON: Thank you, Your Honor.
8 Your Honor, Mr. Lauten's a very clever lawyer and he's
9 made some very clever arguments here but they drafted
10 this arbitration provision. This is the first time
11 we've heard by the way, that their pleadings are outside
12 the scope, but there is a whole bucket of law about how
13 artful pleadings do not get you out of an arbitration
14 clause. This arbitration clause does not say breach of
15 contract claims go to arbitration. It says any matter
16 that arises between the attorneys and the clients goes
17 to arbitration. Any matter, Your Honor.

18 It is one of the broadest most
19 unambiguous, unlimited arbitration clauses there can be.
20 And simply because they have plead this as a DEC action,
21 let's be very clear about the relief they are seeking.
22 They are seeking that this Court declare that they are
23 entitled to immediate disbursement of 45 percent of the
24 settlement proceeds. They can dress that up as a DEC
25 action, they can say oh, it's not breach of contract

1 it's not that. That is a matter that has arisen between
2 attorneys and clients. That is a fee dispute that is
3 specifically covered in this arbitration clause.

4 Your Honor, the Transamerica case they're
5 coming up with -- and again, Mr. Lauten's a very clever
6 lawyer but there is no non-signatory. Transamerica
7 would only apply to bring JPMorgan in if they'd said
8 we're not paying, no matter what, we're not paying.
9 Then they would need to be a party to the arbitration
10 but that is the opposite of what JPMorgan has said.
11 JPMorgan has said we have no dog in this fight. We will
12 hold on to the proceeds until this dispute gets
13 resolved, until this Court gives us an order that we can
14 release it and then we will pay.

15 Your Honor, there is no non-signatory
16 issue and if this Court stays the arbitration -- I'm
17 sorry.

18 THE COURT: Excuse me. The last time I
19 heard from Mr. Beckwith, he said that they were working
20 with a settlement sheet, that they did not have a signed
21 settlement agreement. And I guess the Court raised --
22 he represented that they would comply with the
23 settlement sheet, but he didn't say unequivocally, that
24 Chase might or could not possibly back out of the
25 settlement agreement and he didn't say that

1 unequivocally.

2 So, I guess one of the concerns that the
3 Court has, because I've seen it happen, is that
4 settlement agreements fall apart down here. And so, one
5 of the problems with what they were proposing to me, as
6 a resolution of the issue with the disputed funds, was
7 that there was some guarantee in place that, you know,
8 that Chase would not disburse the funds under certain
9 conditions. However, you know, Chase probably would
10 still retain an option to say that the conditions were
11 not satisfied or that they had changed their mind.

12 And so, as I said, I didn't hear from Mr.
13 Beckwith that Chase was unequivocally yoked to the
14 settlement agreement. In fact, he said that the
15 settlement agreement had not been signed or fleshed out.
16 He said that they were working with the settlement
17 terms.

18 MS. JOHNSON: Your Honor, I would like
19 Ms. Pulliam to respond to this but, I also refer the
20 Court to JPMorgan's filing on Friday. They filed --

21 THE COURT: I haven't seen it.

22 MS. PULLIAM: I have a copy for you, Your
23 Honor.

24 MS. JOHNSON: I understand but just to be
25 clear, JPMorgan makes very clear that they will abide by

1 existing court orders regarding payment and that they
2 holding -- they are waiting for this Court to make an
3 order.

4 THE COURT: I understand that but a
5 settlement agreement is not a settlement agreement until
6 it's signed and --

7 MS. JOHNSON: It is signed Your Honor.

8 MS. PULLIAM: Your Honor, I just want to
9 make clear because I was standing with Mr. Beckwith at
10 the last hearing and if we weren't clear, we certainly
11 intended to be clear that there was a signed settlement
12 agreement at that time.

13 THE COURT: All right, well what I heard
14 was that there were settlement terms that had been
15 signed off on. I didn't --

16 MS. JOHNSON: Definitely. Your Honor,
17 there was a Rule 11 Agreement that was filed with the
18 Court and then there were two notices that JPMorgan has
19 filed.

20 THE COURT: I have not seen them.

21 MS. JOHNSON: And if I may approach, I
22 can give you the one that we filed most recently on last
23 Friday, May 4th. So, in that notice, the excerpt
24 portions of the confidential signed settlement agreement
25 and those portions contained the conditions precedent to

1 settlement. I'll give you just a second to look at it,
2 Your Honor but I would direct to you the second page
3 that contains the excerpts to the settlement agreement.
4 So, Your Honor, this is a representation by JPMorgan
5 again, that there is a signed settlement agreement.

6 I believe Mr. Lauten was incorrect when
7 he said that the bank is not bound by anything. It is
8 certainly bound by this agreement. It's also made a
9 representation to the Court about the terms that are
10 contained in the settlement agreement. Those terms, as
11 outlined in our filing, contain conditions precedent
12 prior to any release of funds.

13 So, this idea that there are settlement
14 proceeds currently that anybody has a property interest
15 in, is incorrect. There are no settlement proceeds
16 currently that are owed to anyone under the settlement
17 agreement.

18 THE COURT: Well, I understand that but I
19 guess --

20 Go ahead.

21 MR. LAUTEN: If you were to read this
22 into the record right now it would be unbelievably
23 unclear procedurally, where we are. And this is a true
24 fact, that supplement is not in evidence. I haven't
25 seen it. You haven't seen it. You haven't seen it in

1 camera. We have a lawyer telling you what an agreement
2 says that nobody on this side of the table or the Court
3 has actually seen and the point that was made at the
4 prior hearing, which I think you're latching onto, is
5 simply this: They can get together and change their own
6 agreement at any time. We're not a party to that
7 agreement. I haven't even seen their agreement. That's
8 the point. They may file something today and say we'll
9 do this and then tomorrow, they turn around and say we
10 won't. That's the threat. And that was germane to the
11 injunction, which the Court granted.

12 MS. JOHNSON: Your Honor, I just want to
13 get us back to the issue. Is this is a dispute that
14 should be compelled to arbitration? Whether or not --
15 if this Court compels arbitration, this Court's
16 temporary injunction stays in place. And Your Honor, if
17 I may approach again, this is a really important point.
18 Mr. Lauten told you at temporary injunction hearing, the
19 reason this Court had the right to enter an injunction
20 -- it's really important that the Court understands
21 this -- is that under the Texas Arbitration Act, before
22 arbitration proceedings begin in support of arbitration,
23 this Court can enter injunctions if it thinks there's
24 going to be destruction of property.

25 This was the authority that was given to

1 this Court. If this Court orders arbitration that will
2 not affect the temporary injunction, those proceeds
3 aren't going anywhere until this arbitration is
4 concluded. Those proceeds aren't going anywhere.
5 JPMorgan has said that. They have told this Court they
6 are going to abide by the temporary injunction. We have
7 said that. This corpus stays because JPMorgan has no
8 obligation to pay these funds.

9 So, this court has entered a temporary
10 injunction in support of arbitration. That is the
11 authority that Mr. Lauten gave you and he's not
12 disputing that. So, those funds are going to stay put.
13 JPMorgan's going to hold on to those until this gets
14 resolved and this Court enters a different order. This
15 is a lot of noise trying to distract the Court from the
16 issue that is before the Court, which is: Is this a
17 dispute that needs to go to arbitration? It most
18 certainly is and to be clear what they are asking for,
19 they have filed a summary judgment motion and they're
20 asking this Court to order, give us 45 percent of
21 settlement proceeds right now. That is a fee dispute.
22 It is a matter between attorney and client and it must
23 be decided by an arbitrator.

24 MS. PULLIAM: Your Honor, again, we don't
25 take a position on the arbitration issue. If this Court

1 has any questions whatsoever after the representations
2 that Mr. Beckwith made at the last hearing about the
3 existence of a settlement agreement or the
4 representations that my firm and Mr. Beckwith made in
5 our May 4th hearing about the existence of a settlement
6 agreement, including representations that there were
7 excerpts from that settlement agreement included in our
8 filing, we are happy to address that with filing an in
9 camera redacted portion of it.

10 THE COURT: Well, the question was not
11 whether or not there was a settlement agreement. The
12 question in my mind was whether or not that settlement
13 agreement could be changed or altered or not honored. I
14 mean, I see people change their minds every day. And
15 so, the question in my mind was whether the
16 representation was that there was a settlement
17 agreement.

18 The question in my mind was well do I
19 hang my hat on something that could change. And so, I'm
20 not privy to the negotiations between the Intervenor
21 and Chase Bank and so I don't know that, I mean, without
22 having seen that, I don't know whether or not there's an
23 opt-out provision in the settlement agreement, whether
24 or not there's a -- you see what I'm saying?

25 MS. PULLIAM: Yeah.

1 THE COURT: I basically -- I made the
2 observation that -- you're asking me to make a decision
3 without much information. And so, you know, with those
4 questions hanging in the air nobody decided to give the
5 Court any more information so, I reached the conclusion
6 that I reached.

7 MS. PULLIAM: And to be clear there is a
8 signed settlement agreement by both parties that --

9 THE COURT: I'm clear on that, ma'am.

10 MS. PULLIAM: -- creates obligation and
11 what is clear is that that will not change. That there
12 is a settlement agreement that obligates my client that
13 is signed by my client and that fact will not change.
14 And again, we're happy to present in camera if the Court
15 is interested, a redacted version of the settlement
16 agreement, subject to discussion with counsel.

17 MS. JOHNSON: And Your Honor, let me just
18 speak, this is so important. This whole business about
19 whether the settlement agreement can change, the Court
20 has already protected against that, because you have
21 entered a temporary injunction. You have said JPMorgan,
22 nobody's getting these settlement funds.

23 THE COURT: Well, the settlement
24 agreement and the temporary injunction -- I mean the
25 injunction protects the funds. It doesn't protect the

1 agreement.

2 MS. JOHNSON: That's true, Your Honor but
3 isn't that what the issue is?

4 THE COURT: No. The issue and I'll say
5 it again, the issue is I am not sure about the
6 settlement agreement. I'm not sure whether or not the
7 settlement agreement can be changed or modified without
8 the Court being aware of it. I don't know.

9 MS. JOHNSON: Your Honor, we will
10 represent -- we will propose today that we will notify
11 the Court immediately if the party's change any part of
12 the settlement agreement. But the point is everybody
13 here is concerned about what happens to these funds.
14 Nothing is happening to these funds while there's an
15 arbitration. The Court has entered a temporary
16 injunction preventing that.

17 THE COURT: I understand.

18 MS. JOHNSON: Yeah.

19 MS. PULLIAM: So, really, --

20 THE COURT: That's why I entered the
21 temporary injunction.

22 MS. JOHNSON: That's right. And that
23 stays in place pending arbitration unless it's reversed
24 by the Court of Appeals or unless the Court reverses
25 itself. That temporary injunction maintains those

1 funds. JPMorgan -- nothing is happening to those funds.

2 THE COURT: It maintains the funds,
3 ma'am. It doesn't necessarily maintain the agreement.
4 You see what I'm saying?

5 MS. JOHNSON: I do understand, Your Honor
6 and I don't know what to say other than we will inform
7 the Court if something changes in the agreement, but and
8 none of this, and again, Your Honor, all of this goes
9 to, all of this goes to an argument that there is now a
10 non-signatory who cannot be compelled to arbitration.
11 Again, there is absolutely no argument that's been
12 articulated related to JPMorgan that should prevent this
13 court from compelling its dispute to arbitration.

14 THE COURT: All right.

15 Ma'am?

16 MS. PULLIAM: Your Honor, I just want to
17 offer again, that we have a copy of the redacted version
18 of the settlement agreement that I'm happy to offer in
19 camera if the Court chooses subject to --

20 MS. JOHNSON: We have no objection to
21 that, Your Honor.

22 THE COURT: What about you?

23 MS. PULLIAM: I don't think she's looking
24 at me, Brian.

25 MR. LAUTEN: I don't have a copy to offer

1 into evidence, Your Honor so, if she wants to offer the
2 agreement in camera, I don't have a problem with that.
3 I don't have a problem with seeing the agreement.

4 THE COURT: Well, they're not offering
5 the agreement. They're offering a redacted copy of the
6 agreement.

7 MR. LAUTEN: Well, I would need to know
8 what they're redacting. I mean, it's hard to object to
9 something you haven't seen, that's being shown to the
10 Court without me getting a copy.

11 MS. PULLIAM: Your Honor, I can represent
12 the only thing redacted in the settlement agreement is
13 the amount of the settlement proceeds.

14 MR. LAUTEN: I don't have a problem with
15 the Court seeing it in camera.

16 THE COURT: All right.

17 MS. PULLIAM: Your Honor, to assist the
18 Court, the portions of the settlement agreement that are
19 quoted in our May 4th filings are contained in section 2
20 on page 3.

21 THE COURT: Thank you.

22 MS. JOHNSON: Your Honor, we're just
23 asking, given the timing, that we have a ruling quickly.
24 I understand we put all that in our papers that we have
25 a summary judgment response due next week. In the event

1 the Court denies our Motion to Compel Arbitration we
2 would ask the Court for a stay of proceedings that we
3 can seek emergency relief in the Dallas Court of Appeals
4 and alternatively, we would ask the Court to continue
5 the summary judgment hearing, which is set for May 23rd.
6 That would give everybody more space to be able to
7 resolve this issue.

8 THE COURT: The Court doesn't -- I don't
9 have very many days left in this month that aren't
10 already committed to other matters. And if the Motion
11 for Summary Judgment is taken up on the 23rd, I'm
12 planning to be out the following week.

13 MS. JOHNSON: The problem Your Honor, is
14 that we would have to file a response on the summary
15 judgment motion May 16th. We can't be forced to proceed
16 to continue to litigate the case while there's a Motion
17 to Compel pending and we would say even if the Court
18 wants more time to rule that would give everybody more
19 space if the Motion for Summary Judgment was continued.

20 THE COURT: All right, is there an
21 objection?

22 MR. LAUTEN: If that pleases the Court,
23 that's fine with us, Your Honor.

24 THE COURT: All right.

25 MR. LAUTEN: It's totally up to you.

1 THE COURT: All right.

2 Sheriff?

3 THE BAILIFF: Yes.

4 THE COURT: Could you get Amanda, please?

5 I'm just running over with motions
6 for summary judgment down here. I thought I'd had
7 enough motions for summary judgment in Hopper but it
8 looks like I'm not done yet, I've done easily 20
9 something.

10 THE COURT: When is that set for?

11 MR. LAUTEN: I'm not sure, Your Honor,
12 off the top of my head. I thought it was 30 minutes but
13 I'm not 100 percent confident in telling you that's
14 accurate.

15 MS. JOHNSON: It's set at 2 p.m. on May
16 23rd.

17 THE COURT: You have an hour. Okay, I
18 have any time Tuesday afternoon, on June 5th.

19 MS. JOHNSON: That's fine with me. Is
20 that okay with you, Jim?

21 MR. PENNINGTON: Your Honor, I've got a
22 trial starting on June the 4th. I'm told it's the number
23 one setting.

24 THE COURT: All right, what about 9
25 O'clock, June 6th. You think you'll be finished?

1 MR. PENNINGTON: No, unfortunately, it's
2 going to be about a week.

3 THE COURT: I'm sorry?

4 MR. PENNINGTON: It's going to be about
5 approximately one week, Your Honor.

6 MS. PULLIAM: Your Honor, I think that
7 JPMorgan is a party to that hearing. I think the
8 summary judgment is also directed to the bank. I have
9 my availability here but I don't have Mr. Beckwith's.

10 THE COURT: I can't hear you.

11 MS. PULLIAM: I have my availability on
12 my calendar here with me, but I don't have Mr.
13 Beckwith's. One thing we can do is confer and -- If I'm
14 wrong, I'm happy to be wrong about that.

15 THE COURT: Okay, I could give you June
16 11th from 9-10 or I could give you June 11th at 3.

17 MS. PULLIAM: The 9-10 would be
18 preferable on my end but again, I haven't been able to
19 confer with Mr. Beckwith.

20 MR. LAUTEN: We can make these times
21 work, Your Honor. You tell us when to be here and we'll
22 be here.

23 MS. JOHNSON: Those times are fine with
24 us too, Your Honor.

25 THE COURT: Okay, well I can, I mean, if

1 you aren't finish Monday morning, it'll run into my 10
2 O'clock docket but I can put you on say at 3 O'clock or
3 move a case up to 1 O'clock and be finished at 2:30. I
4 can put you on say 2:30-4 on Monday afternoon, worst
5 case 3-5, Monday afternoon. Do you want to do that?

6 MR. LAUTEN: Sure.

7 MS. PULLIAM: The morning spot would be
8 preferable for me. I think I have to get on a plane
9 later that afternoon, but --

10 THE COURT: Can you text him or email
11 him?

12 MS. PULLIAM: I just did. I just did.

13 THE COURT: All right. Okay. What we'll
14 do is I'll move the date and you'll have an extended
15 amount of time to respond.

16 MR. LAUTEN: Your Honor, can I approach
17 the bench and give you a proposed order? I think Ms.
18 Johnson may have already given you hers.

19 THE COURT: Yes.

20 MR. LAUTEN: Thank you.

21 MS. JOHNSON: So, Your Honor, that would
22 mean that our response would be June 4th and so we would
23 ask that the Court give us, that we have a ruling on
24 arbitration one way or the other a couple of weeks
25 before our response is due. Thank you.

1 THE COURT: Well, what I'll do is we'll
2 set it on June 11th. You'll either have the 9-10 slot or
3 you'll have the 2:30-3:30 or 4, depending on --

4 MS. PULLIAM: We'll get back to you
5 tomorrow morning.

6 THE COURT: Okay, is everybody okay with
7 that? Can you all work that out?

8 MR. LAUTEN: Sure, Your Honor.

9 THE COURT: All right, and then your
10 response date would be --

11 MS. JOHNSON: I believe June 4th, Your
12 Honor.

13 [Counsel confer about dates]

14 THE COURT: All right, so everybody's
15 clear, either 9-10 on June 11th or 2:30-3:30 on June 11th
16 or I can go a little bit later. Anything else? Just
17 notify the Court tomorrow.

18 MS. PULLIAM: Absolutely, Your Honor.

19 MR. LAUTEN: Your Honor, thank you.

20 MR. LAUTEN: Did you say 2:30 or 3:30 on
21 June 11th?

22 THE COURT: I'm going to start another --
23 I'll have a motion for summary judgment in front of
24 yours that's going to start at 1pm and so, I've given
25 them an hour-and-a-half. Let's start you at 3 O'clock

1 to make sure I've given them enough time.

2 MR. LAUTEN: Thanks, Judge.

3 MS. JOHNSON: Thank you, Your Honor.

4 THE COURT: Okay, thank you very much.

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6 [End of proceedings]

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STATE OF TEXAS X

COUNTY OF DALLAS X

I, Jackie Galindo, Deputy Official Court Reporter for the Probate Court Number One, Dallas County, Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this request in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND, this the 1st day of June, 2018.

—
/s/: *Jackie Galindo*

Jackie Galindo, Texas CSR #7023
Expiration Date: 12/31/19
Official Court Reporter
The Probate Court,
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