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IN THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS AT DALLAS

STEPHEN B. HOPPER AND LAURA S. WASSMER

Appellants/Relators

V.

JOHN MALESOVAS, D/B/A MALESOVAS LAW FIRM, AND FEE, SMITH, SHARP, & VITULLO, LLP

Appellees/Real Parties in Interest

REPLY BRIEF OF APPELLANTS/RELATORS

From the Probate Court No. 1, Dallas County, Texas,
Cause No. PR-11-03238-1, Hon. Brenda Hull Thompson, Presiding.

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INTRODUCTION

The Lawyers defend this injunction as an exercise of the probate court's discretion, but the order—which prevents the Clients from accessing *any* settlement funds, even those to which the Lawyers have no possible claim—is indefensible. The injunction must be reversed.

Although this case raises important issues about a court's authority to issue an injunction in the face of a binding arbitration agreement, reversal is required for an even more obvious reason: The Lawyers did not establish a probable, imminent, and irreparable injury, an element of proof they concede was necessary under any standard. The Lawyers speculated that, absent an injunction, the settlement proceeds could be disbursed to the Clients and dissipated before the Lawyers are paid. But there is absolutely no *evidence* to support this hypothetical harm theory.

In fact, the evidence showed there was *no* risk of the settlement funds being lost because: (1) the Clients agreed all along for the disputed funds to be held separately by their attorneys or an independent escrow agent; (2) JPMorgan stated in filings and in open court that it has no intention or obligation to pay the settlement proceeds to anyone until various conditions are met; and (3) the Clients testified they intend to pay the Lawyers a reasonable fee as determined by the arbitrator. In other words, the evidence established that the disputed amount of the settlement proceeds *will not* be paid to the Clients until the fee dispute is resolved in arbitration, and thus

cannot be dissipated as the Lawyers allege. Without any evidence of a probable, imminent, and irreparable injury, the injunction must be reversed.

Moreover, the injunction undermines the arbitration agreement drafted by the Lawyers and flouts the deference accorded such agreements by Texas law. The Lawyers largely ignore the abundant Texas law, including several opinions from this Court, that prohibited the probate court from deferring its ruling on the motion to compel arbitration until it had already issued this overbroad injunction and from wading into the merits of the dispute. And neither the TAA nor the FAA authorized the probate court to usurp the arbitrator's authority in this manner. Reversal is therefore required for this additional reason.

Finally, as the Lawyers essentially concede, the injunction is overbroad. At a minimum, it must be modified so that the Clients are permitted to access the portion of the settlement funds that indisputably belongs to them. The Lawyers' half-hearted claim that an overbroad injunction was necessary to preserve the confidentiality of the settlement falls flat. The probate court could easily have ordered JPMorgan to safeguard 45% of the settlement proceeds, plus an additional amount for expenses, without revealing the ultimate settlement amount—and the Clients suggested just that below. The probate court thus acted arbitrarily in freezing the entire amount. The injunction is an abuse of discretion and must be reversed.

ARGUMENT IN REPLY

I. The Lawyers' merits arguments underscore just how this proceeding interferes with the parties' upcoming arbitration.

The Lawyers open their brief by arguing the merits of the underlying fee dispute—claiming they are "entitled to disbursement" of their contingency fee and that their "property rights are fully vested." (Resp. Br. 16, 19.) But this is the issue that will soon be decided by an arbitrator.[1] The Lawyers' claimed property rights arise exclusively from the Fee Agreements, which the Clients argue are unenforceable for a number of reasons, including that the Lawyers were fired for cause. (CR:171, 324-25.) The Clients had no obligation in the probate court to prove *why* the Fee Agreements are unenforceable, because that question belongs in arbitration pursuant to the arbitration provision the Lawyers drafted. (CR:99, 106; *cf.* Resp. Br. 18-19.) And the Clients could not have articulated their enforceability arguments below because of privilege and confidentiality concerns. (2RR:34-35; 3RR:18-21.)

The Lawyers ask this Court to make the same mistake the probate court did: pre-determining the merits of the fee dispute before that issue is decided by an arbitrator. Texas law forbids this kind of judicial interference with a party's contractual right to have its dispute resolved in arbitration. *Tantrum Street, LLC v.*

[1] The arbitration in this matter is scheduled to commence November 28, 2018.

Carson, No. 05-16-01096-CV, 2017 WL 3275901, at *10 (Tex. App.—Dallas July 25, 2017, orig. proceeding); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McCollum*, 666 S.W.2d 604, 609 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.); *see also infra* Section III.

Moreover, these merits issues are unnecessary to resolve the question before the Court—whether the probate court abused its discretion in issuing an injunction. The Lawyers' extended discussion of their alleged property rights in the settlement proceeds does not support an injunction when those issues must be decided by the arbitrator.[2] And even if the Lawyers do have a probable right to some lien or a security interest in a portion of the settlement, they still had the burden to establish a probable, imminent, and irreparable injury to that alleged interest to justify injunctive relief—and they did not do so, for the reasons discussed below.

The Court should refuse to issue a preliminary and incomplete ruling on the merits, and should reverse the injunction because it undermines the parties' bargain for their dispute to be resolved in arbitration.

[2] If the Fee Agreements are unenforceable, as the Clients argue, the Lawyers' alleged contractual security interest is unenforceable as well. (CR:97.) And the Lawyers have no common-law lien, as they claim, because they do not have possession of the settlement proceeds. *See, e.g., Norem v. Norem*, No. 3:07-CV-0051-BF(G), 2008 WL 2245821, at *5 (N.D. Tex. June 2, 2008) (cited by Lawyers, Resp. Br. 16) (common-law lien applies only to property in the attorney's possession).

II. The Lawyers' brief exposes that there is no evidence of a probable, imminent, and irreparable injury.

The Lawyers concede they had the burden to prove a probable, imminent, and irreparable injury to justify the injunction under any standard. (Resp. Br. 14, 20.) But their brief confirms that they fell well short of this burden. The Lawyers presented no evidence to support their imaginary claim that the settlement funds would be disbursed and spent by the Clients absent injunctive relief. Without such evidence, the probate court had no discretion to issue the injunction. *E.g., Bureaucracy Online, Inc. v. Schiller*, 145 S.W.3d 826, 829 (Tex. App.—Dallas 2004, no pet.) (reversing injunction because "there was no evidence presented at the injunction hearing to support the trial court's determination that, unless the injunction issued, [plaintiff] would suffer imminent and irreparable harm for which there was no adequate remedy at law").

Indeed, the evidence showed *no risk* that the Lawyers' claimed fee would be disbursed to the Clients. From the outset of the fee dispute, the Clients readily agreed to set aside the disputed amount of the alleged contingency—45% of the settlement proceeds, plus an additional amount for reimbursable expenses[3]—until the fee dispute could be resolved in arbitration. (5RR:20-21, 22-23.) The Clients

[3] Whether or not the Lawyers have a lien or security interest in the settlement proceeds, that interest would extend, at most, to the 45% contingency, plus any compensable expenses. (CR:94, 97; Resp. Br. 2; *see also infra* Section IV.)

committed to placing these disputed funds in their attorney's trust account, subject to his ethical obligations to retain disputed funds, and alternatively offered to deposit the funds with an independent escrow agent. (*See id.*; 2RR:18.) In other words, the evidence established that the disputed amount *would not* be paid to the Clients until the dispute was resolved in arbitration, and therefore could not be dissipated.

The Lawyers responded by arguing, essentially, that the Clients' attorneys could not be trusted. (*See* 2RR:47-48; Resp. Br. 20.) That is a serious allegation to make against a fellow member of the bar and one that should have a strong evidentiary basis before it is even considered. But there was no such evidence. And professionalism concerns aside, mere speculation or apprehension about possible harm is not sufficient to justify injunctive relief. *See Frey v. DeCordova Bend Estates Owners Ass'n*, 647 S.W.2d 246, 248 (Tex. 1983) ("[F]ear or apprehension of the possibility of injury alone is not a basis for injunctive relief."); *Schmidt v. Richardson*, 420 S.W.3d 442, 447 (Tex. App.—Dallas 2014, no pet.) ("Imminent harm is established by showing that the defendant will engage in the activity sought to be enjoined.").

Moreover, the record before the probate court demonstrated that JPMorgan was not going to pay the settlement proceeds to *anyone* until the Lawyers satisfied certain conditions precedent in the settlement agreement—and thus, there was even less of a risk that the funds would be disbursed to the Clients' attorneys, much less

the Clients themselves. (CR:71; 3RR:50-51, 54; *see also* CR:317-20.) Although the specific language of the settlement agreement was submitted after the injunction issued, the probate court took judicial notice at the temporary injunction hearing of JPMorgan's representation "that certain conditions precedent must occur before JPMorgan has any obligation to make any settlement payment." (CR:71; 3RR:50-51, 54.) Further, the Lawyers submitted testimony from Stephen Hopper that JPMorgan had not distributed any settlement proceeds because the agreement "requires [the Lawyers] to release [their] lien" before JPMorgan pays the Clients. (Supp. RR, Ex. B at 8.) The probate court therefore had evidence—not merely a pleading—that JPMorgan has no obligation, or present intent, to make any settlement payment.

In any event, the burden of proof was on the Lawyers to prove imminent harm, not on the Clients to negate it. And the Lawyers offered no evidence—only surmise and speculation—that JPMorgan intended to pay out the settlement proceeds to the Clients' attorneys or the Clients in the near future. *Frey*, 647 S.W.2d at 248; *Schmidt*, 420 S.W.3d at 447. The Lawyers' illusory charge that JPMorgan and the Clients might "modif[y]" the settlement agreement to remove the conditions precedent was pure fiction, apparently offered because the Lawyers were forced to concede that the conditions precedent "provide[] some protection" to their interests.

(Resp. Br. 21.) There is simply no evidence to support the alleged harm on which the injunction was based.

The only affirmative evidence in the harm section of the Lawyers' brief relates to the Clients' alleged "lack of trustworthiness," citing unrelated, past relationships with other lawyers and the Clients' efforts to document their concerns about the Lawyers' performance. (Resp. Br. 23-26.) These character attacks are unsupported, inaccurate, and, in any event, are not probative of any alleged harm here. Most importantly, this evidence does not address or establish whether the Clients would receive the disputed funds in the first place, as discussed above. Nor does this evidence establish any intent by the Clients to "commingle[]" or "dissipate[]" any money they do receive. (Resp. Br. 22.) *Schmidt*, 420 S.W.3d at 447. Indeed, the Clients have agreed the Lawyers are owed a reasonable fee—they simply believe the contingency fee is unenforceable. (*E.g.*, Supp. RR, Ex. B at 5 ("I'm willing to pay you a reasonable fee, and I'm hoping that an arbitrator will help me know what that is."); *see also id.* at 3, 4.)

This case is therefore nothing like *Hartwell v. Lone Star, PCA*, cited in the Lawyers' brief, where there was evidence that the defendant had actually disposed of collateral securing the loans, used some of the proceeds to pay other creditors, transferred funds to personal accounts, and lacked the resources to repay the loan. 528 S.W.3d 750, 764 (Tex. App.—Texarkana 2017, pet dism'd). There is no such

evidence in this case—only speculation. And that speculation is unsupported by the Lawyers' proffered evidence. At best, that evidence shows that the Clients have had fee disputes with other attorneys (though not to the extent the Lawyers claim) and that they did not trust the Lawyers. (Supp. RR, Exs. A & B.) There is absolutely no support for the Lawyers' theory that the Clients intended to dissipate assets or defy court/arbitral orders to pay attorney's fees. And again, that theory is inconsistent with the hurdles to disbursement posed by JPMorgan and the Clients' attorneys.

The Lawyers' brief ultimately confirms they have no evidence of harm, and the injunction therefore fails under any standard for this reason alone.

III. The probate court had no authority to issue pre-arbitration injunctive relief under Texas law.

The injunction should also be reversed because it violates Texas law requiring respect for, and deference to, the parties' arbitration agreement. The injunction exceeded the probate court's discretion for several independent reasons.

First, the probate court had no discretion to defer its ruling on the motion to compel arbitration in favor of delving into merits discovery and injunctive relief. The Lawyers offer no response to the numerous Texas cases cited in the Clients' opening brief for this proposition. (App. Br. 11-12.) Instead, the Lawyers look to a Fifth Circuit case that purports to allow this practice in federal courts. (*See* Resp. Br. 30-31, citing *Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011).) Simply put, that is not the law in Texas—or in this Court specifically.

The Texas Supreme Court has held that motions to compel arbitration "should be resolved without delay" and that it is an abuse of discretion to order merits discovery before ruling on the motion to compel. *In re Houston Pipeline Co.*, 311 S.W.3d 449, 451-52 (Tex. 2009) (orig. proceeding). So, while courts often order expedited merits discovery before temporary injunction proceedings, that practice is prohibited when a motion to compel arbitration is pending. In that sense, Texas law does require the court to "stop[] everything" when a right to arbitration is invoked, except what is necessary to resolve the motion to compel. (*Cf.* Resp. Br. 30-31.)[4]

And this Court specifically has held that a temporary injunction *hearing* is not permissible pending a ruling on a motion to dismiss under a forum selection clause. *In re MetroPCS Comms., Inc.*, 391 S.W.3d 329, 340 (Tex. App.—Dallas 2013, orig. proceeding). The Lawyers make no attempt to challenge the applicability of that holding here, and for good reason: the Texas Supreme Court has held that arbitration provisions and forum-selection clauses are closely related. (App. Br. 12, n.5.) So, because this case is governed by Texas—not Fifth Circuit—law, the probate court

[4] The Lawyers are therefore wrong to argue "the probate court clearly had discretion" to allow discovery on the merits. (Resp. Br. 36.) The Supreme Court held just the opposite in *Houston Pipeline*, citing the very provision the Lawyers rely on and holding that, while that provision permits some limited discovery "regarding the scope of an arbitration provision or other issues of arbitrability," it "is not an authorization to order discovery as to the merits of the underlying controversy." 311 S.W.3d at 451. The Lawyers essentially concede their requested discovery was directed to the merits, not issues of arbitrability. (Resp. Br. 36.)

abused its discretion in holding a temporary injunction hearing and issuing this injunction before ruling on the motion to compel.[5]

Second, the probate court had no discretion to issue this injunction under the TAA's limited authorization for pre-arbitration injunctions. TEX. CIV. PRAC. & REM. CODE § 171.086. For the reasons described above in Section II, and in the Clients' opening brief, the Lawyers' evidence did not remotely show that the injunction was necessary to prevent "the destruction of all or an essential part of the subject matter of the controversy." TEX. CIV. PRAC. & REM. CODE § 171.086(a)(3). (App. Br. 15-17.) And apart from a brief cross-reference to their already-insufficient harm arguments, the Lawyers do not attempt to defend the applicability of this provision. (Resp. Br. 28-29.)

Now, the Lawyers claim—for the first time on appeal—that the injunction was authorized by a new provision entirely: Section 171.086(a)(6). (Resp. Br. 28.) But because the Lawyers never cited this provision in the probate court, it could not have formed the basis of the court's decision. (*See* CR:85-86 (claiming injunction authorized under sections (a)(2), (a)(3), (b)(1), and (b)(3)).)

[5] It makes no difference that the temporary injunction hearing was set before the motion to compel arbitration. (Resp. Br. 11.) That's part of the problem, as this Court held in *MetroPCS*. 391 S.W.3d at 341. Further, the Clients originally asked the Court to compel arbitration in their "Objection to Petitions in Intervention," filed before even the TRO hearing. (CR:33.)

Even setting aside waiver, this newly-cited provision does not justify the injunction. Read in the context of the statute as a whole, section (a)(6) does not grant unlimited, discretionary authority for injunctions that preserve the status quo pending arbitration, as the Lawyers claim. (Resp. Br. 28.) That interpretation is wholly inconsistent with case law holding that Section 171.086 provides "a *limited* authorization to issue certain types of orders in support of arbitration, as opposed to the merits" and thus reversing orders not listed in the statute. *E.g.*, *Tantrum Street, LLC v. Carson*, No. 05-16-01096-CV, 2017 WL 3275901, at *9 (Tex. App.—Dallas July 25, 2017, orig. proceeding) (emphasis added and internal quotations omitted).

The Lawyers' limitless interpretation of section (a)(6) would also render meaningless the TAA provision allowing a court to enjoin the destruction of the subject matter of the controversy—because if the court already has broad authority to issue injunctive relief simply to preserve the status quo, there would be no need for this specific test in the statute. TEX. CIV. PRAC. & REM. CODE § 171.086(a)(3). The Court should not, and may not, interpret section (a)(6) in a way that renders all others superfluous. *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008). The TAA does not authorize this injunction.

Third, the probate court had no discretion to issue this injunction under the FAA because the Fee Agreements do not authorize injunctive relief. (App. Br. 15.) The Lawyers now argue that the cautious approach of the Fifth Circuit, and the Texas

courts that have followed it, should be ignored in favor of out-of-state circuits allowing broader pre-arbitration injunctions under the FAA. (App. Br. 15; Resp. Br. 30.) This Court should decline the invitation. Notwithstanding the Lawyers' attempted spin, in *RGI, Inc. v. Tucker Assocs., Inc.*, the Fifth Circuit refused to join those circuits that have adopted the Lawyers' more expansive view of the FAA's pre-arbitration injunction authority. 858 F.2d 227, 230 (5th Cir. 1988). *Janvey* did not resolve the split, and neither should this Court. 647 F.3d at 595, n.7.[6]

Fourth, the probate court had no discretion to rule on the merits of the dispute in issuing the injunction, but did just that, as noted above in Section I. (App. Br. 13.) The Lawyers' generic authorities about the preliminary nature of injunctive relief miss the point. (Resp. Br. 34-36.) As the Fourteenth Court of Appeals explained in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McCollum*:

> A court…in ruling on a motion for preliminary injunction must consider the merits of the movant's claim and his chances for success. The Court's findings in this regard along with findings in relation to the other factors to be considered would be cited by the parties and could interfere with the arbitrator's independent determination of the issues.

[6] The AAA Rules change nothing about the court's authority to issue an injunction. A trial court's authority is defined by controlling state law, not by the rules of a private arbitration association. For the reasons discussed above, the court had no authority to issue injunctive relief even if the AAA Rules might "allow" it. Regardless, the AAA Rule simply confirms there are some cases where a court-ordered injunction may be appropriate, as in the language of the TAA, to "support" the arbitration. TEX. CIV. PRAC. & REM. CODE § 171.086(a). This is not such a case.

666 S.W.32d 604, 609 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) (citing *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. DeCaro*, 577 F.Supp. 616 (W.D.Mo. 1983)). *Merrill Lynch* recognizes that, whether or not a court's merits findings would be treated as conclusive in court, they can nevertheless negate a party's bargained-for right to have the dispute resolved—on a clean slate—by an arbitrator. *See also Tantrum Street,* 2017 WL 3275901, at *10 ("[A] party's right to arbitration encompasses a right to an arbitration unaffected by erroneously rendered judicial rulings on the case's merits."). The probate court therefore abused its discretion in making even preliminary merits findings. *Supra*, section I.

IV. At a minimum, the injunction is overbroad because it freezes funds to which the Lawyers have no claim.

If the Court does not reverse the injunction in full, it should at least modify the injunction so that the Clients can receive the portion of the settlement funds that indisputably belongs to them. The probate court abused its discretion by freezing the entire amount without any legitimate basis.

The Lawyers claim this alternative argument was not raised below, but that is plainly wrong. Starting at the TRO hearing, the Clients consistently argued that, at most, only the disputed portion of the funds—45%, plus expenses—should be frozen and that "the portion of the money that indisputably belongs to the clients should go to the clients." (2RR:52.) After the probate court indicated it would likely freeze the entire amount of the settlement proceeds, the Clients' attorney "specifically

point[ed] out" that "if there's any amount that is not in dispute, that at least that portion should be paid to the client." (2RR:57; *see also* 2RR:60 ("I think it would be improper to order that [JPMorgan] hold all of it.").) The Clients' attorney referred back to these arguments at the temporary-injunction hearing and reiterated that only the disputed amount of the funds should be protected, if anything. (3RR:16-17.)

The Clients clearly preserved this alternative argument for review under well-established Texas law. "[T]he cardinal rule for preserving error is that an objection must be clear enough to give the trial court an opportunity to correct it." *Arkoma Basin Expl. Co. v. FMF Assocs. 1990–A, Ltd.*, 249 S.W.3d 380, 387 (Tex. 2008); *see also* TEX. R. APP. P. 33.1(a) (record must show timely request made with "sufficient specificity to make the trial court aware of the complaint"). If the "party made the trial court aware of the complaint, timely and plainly, and obtained a ruling," there is no waiver. *State Dep't of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992).

There is no question the Clients made the probate court aware of this alternative position and the probate court rejected it. At one point in the TRO hearing, the Clients' attorney suggested that JPMorgan had agreed to retain the disputed portion of the funds and the court cut him off stating: "If I agree that [JPMorgan] retain the funds, [they are] going to retain all of it." (2RR:55; *see also* 2RR:56.) The probate court plainly understood the Clients' objection to an

injunction over the entire amount of the settlement proceeds, and rejected it. There was no waiver. *Arkoma Basin*, 249 S.W.3d at 387; *Payne*, 838 S.W.2d at 241.

The Lawyers next argue that an injunction over the entire amount was necessary to preserve the confidentiality of the settlement agreement. (Resp. Br. 37-38.) That's not true either. The percentage amount of the Lawyers' alleged contingency is not confidential. Thus, the probate court could have simply issued an injunction requiring JPMorgan to safeguard 45% of the settlement proceeds, plus an additional amount for any compensable expenses. There was no need for the probate court to calculate a more precise amount because JPMorgan is a party to the settlement and could therefore easily calculate how much to set aside, while still preserving the confidentiality of the settlement amount. And the Clients' attorney suggested this very solution to the probate court. (2RR:42, 56.)

Finally, the Lawyers half-heartedly suggest they are entitled to a contingency fee greater than 45% of the settlement proceeds. (Resp. Br. 38.) Although not spelled out on appeal, the Lawyers argued below that they should also receive 45% of the "value" of counterclaims defeated on the Clients' behalf. (*See* 2RR:28-29.) There is no basis in the Fee Agreements for this argument. At best, the Lawyers are entitled to 45% of "the gross amount of money or other value or property *recovered for Client*, before the deduction of expenses." (CR:94 (emphasis added).) A defeated counterclaim is not money or value or property "recovered for" the

Clients—and thus the Lawyers have no basis for an additional payment. The most they can receive (and the only amount legitimately in dispute) is 45% of the settlement proceeds, plus expenses.

That the probate court nevertheless enjoined the *entire amount* of the settlement proceeds demonstrates this ruling was made "without reference to any guiding rules or principles" and was therefore an abuse of discretion. *E.g., Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010). In fact, the Lawyers undermine their own argument by citing a comment to Rule 1.14 that permits a lawyer to retain only "the portion" of the recovery "from which the fee is to be paid." (Resp. Br. 38, citing TEX. DISCIPLINARY R. PROF'L CONDUCT 1.14, cmt. 2.) Because the injunction does much more than that, it was an abuse of discretion and should—at a minimum—be modified to so that the Clients can access the portion of the proceeds to which the Lawyers have no possible claim.

V. The parties agree that interlocutory appeal—not mandamus—is the appropriate vehicle for resolving this dispute.

There is at least one area of agreement in this case: the parties agree the order below was "clearly an injunction" and is thus properly reviewed by interlocutory appeal. (Resp. Br. 39; Pet. 1.) If the Court also agrees—and it should, because the order below does far more than simply ordering funds into the court's registry—then the alternative mandamus proceeding is indeed unnecessary. (*Id.*)

But even if the Court concludes this was an order to deposit funds into the court's registry, reversal by mandamus is required for the reasons discussed above and in the Clients' mandamus petition. Despite appearing to agree that the outcome will be the same regardless of the procedural vehicle, the Lawyers spend some time reiterating their harm arguments and attempting to distinguish the authorities cited in the Clients' mandamus petition. (Resp. Br. 40-41.) These arguments fail for the same reasons discussed in Section II—there is no evidence that the settlement proceeds were in danger of being lost absent an injunction. But because the substance of the mandamus rises and falls with the substance of the interlocutory appeal, the Clients will not restate every responsive point here. Suffice it to say that, regardless of whether the Court determines this was a temporary injunction or an order into the registry of the court, reversal is required.

CONCLUSION AND PRAYER

The Clients respectfully request that this Court reverse the probate court's temporary injunction order and dissolve the temporary injunction entered on April 24, 2018, in its entirety. Alternatively, the Clients request that this Court modify the temporary injunction to order distribution to the Clients of 55% of the settlement proceeds, the portion which the Lawyers have no possible right to recover. The Clients also request any additional relief to which they are entitled.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE
WITH RULE 9.4(e), (i)

1. This brief complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(C) because, according to the Microsoft Word 2016 word count function, it contains 4,547 words on pages 1-18 excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(e)(i)(1).

2. This brief complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 software in Times New Roman 14 point font in text and Times New Roman 12 point font in footnotes.

/s/ Anne M. Johnson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record in accordance with the Texas Rules of Civil Procedure on the 26th day of November, 2018.

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