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CAUSE NO. DC-18-06835

FEE, SMITH, SHARP & VITULLO, LLP, ANTHONY VITULLO Plaintiffs, v. BLOCK GARDEN & McNeill, LLP, f/k/a BLOCK & GARDEN, LLP CHRISTOPHER McNEILL and STEVEN BLOCK Defendants.	§ § § § § § § § § § § § §	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 95TH JUDICIAL DISTRICT

PLAINTIFFS' RESPONSE TO DEFENDANTS' TRADITIONAL MOTION FOR SUMMARY JUDGMENT

PART 2 of 4

JAMS ARBITRATION TRIBUNAL

BLOCK, GARDEN & McNEILL, LLP f/k/a BLOCK & GARDEN, LLP, Claimant,	§	
VS.	§	ARBITRATION NO. 1310023697
LAURA WASSMER, DR. STEPHEN HOPPER, FEE, SMITH, SHARP & VITULLO, LLP, and ANTHONY L. VITULLO, Respondents.	§	

ORAL AND VIDEOTAPED DEPOSITION OF
CHRISTOPHER M. McNEILL
OCTOBER 29, 2018

ORAL AND VIDEOTAPED DEPOSITION OF CHRISTOPHER M. McNEILL, produced as a witness at the instance of the Respondents, and duly sworn, was taken in the above-styled and -numbered cause on October 29, 2018, from 9:37 a.m. to 2:21 p.m., before Angela L. Mancuso, CSR No. 4514 in and for the State of Texas, reported by Stenographic method, at the offices of Johnston Tobey Baruch, 3308 Oak Grove Avenue, 3308 Oak Grove Avenue, Dallas, Texas, pursuant to the Texas Rules of Civil Procedure, Notice, and any provisions stated on the record.

Job No. 3034028

Q. Are you -- based on what?
A. Based on my discussions with Mr. Block.
Q. Okay. Did you -- when you sent the engagement agreements to the client in October of 2012, you didn't copy Mr. Vitullo on those e-mails, did you, sir?
A. No.
Q. All right. And you didn't send him a copy of the agreement before you asked the clients to sign it, did you?
A. I don't believe so.
Q. You don't believe so. You know so. You didn't ask him to do that, did you?
A. I'm sorry?
Q. You didn't ask Mr. Vitullo anything about your agreement from October of 2012 when you sent the clients to sign it, correct?
A. I did not.
Q. I mean, Mr. Vitullo didn't even file a formal appearance in the probate case until three years later, right?
A. He made appearance at a hearing in, if not late 2012, some portion of 2013.
MR. LAUTEN: Object; nonresponsive.
Q. (BY MR. LAUTEN) When did Mr. Vitullo file a Notice of Appearance in the probate case?

A. He was my co-counsel, and he requested them.
Q. And you didn't keep a copy of the file, correct?
A. I kept a copy of certain electronic discovery records.
MR. LAUTEN: Objection; nonresponsive.
Q. (BY MR. LAUTEN) The three banker boxes of documents that you sent to Mr. Vitullo one month after you told Mr. Stewart that you were probably stepping out of the probate case, you didn't even keep a hard copy of that file you sent, did you, sir?
A. We did not make copies of the hard copy documents, no.
Q. Okay. All right. Is that true? Did you tell him that you most likely will be stepping out of the probate case in November 11th of 2015?
A. I did tell him that.
Q. And why did you tell him that?
A. Because I had been instructed by Mr. Vitullo that he was going to take over management of the case.
Q. Okay. And Mr. Vitullo had the authorization of the clients to tell you that you were going to be stepping out of the case, correct?
A. I understood he did, yes.
Q. And you wouldn't have sent Mr. Vitullo the

file in December of 2015 if the clients hadn't given Mr. Vitullo authorization to get it, right?

A. Correct.

Q. So you knew that when you sent the file to Mr. Vitullo in December of 2015, you were following the clients' instructions, right?

A. That's correct.

Q. The clients had the right to dismiss your firm and have Mr. Vitullo take over, correct?

MR. PENNINGTON: Object to form.

MR. TOBEY: Form.

A. That's two different questions.

Q. (BY MR. LAUTEN) Did the clients have the right to call up Mr. Vitullo and say, hey, Lenny, you're the guy in charge; you call Mr. McNeill and say you're the lead guy, send him the file? The clients had the right to do that, didn't they?

A. Yes.

Q. And you followed those instructions, correct?

A. Yes.

Q. And that's exactly what happened when you sent a letter to Glast, Phillips & Murray, correct?

A. Correct.

Q. All right. It happened the exact same way, except the file went from your office to Mr. Vitullo's

office, correct?

A. With respect to the file, yes.

Q. They didn't need to send you a typed written letter saying, Dear Mr. McNeill, you are no longer in charge. They had the right to tell Mr. Vitullo to call you and say send the file, right?

MR. TOBEY: Objection; form.

A. I'm sorry. Could you repeat the question?

Q. (BY MR. LAUTEN) The client, sir -- this can be done informally is my point, right?

A. What -- what do you mean by "this"?

Q. Let me -- let's be real simple. After this deposition is over, Mr. Vitullo could text me and say, I don't want you to be my lawyer anymore; send the file to X. He could do that, right?

A. He could.

Q. And that happens all the time, correct?

A. It does.

Q. There was nothing unusual about the client saying, Lenny, you're in charge; get the file from Mr. McNeill; take over. There is nothing unusual about that, is there?

A. No.

Q. The clients had a right to do that, correct?

A. They had a right to authorize Mr. Vitullo to

request the file, yes.

Q. And they were exercising their rights properly at the time when they did that, correct?

A. Their right to ask the file to be transferred?

Q. Yes.

A. Yes.

Q. And their right to have Mr. Vitullo, the lawyer of their choice, take over, right?

A. Yes. That was always expected.

MR. LAUTEN: Objection; nonresponsive.

Q. (BY MR. LAUTEN) The answer to my question is the clients had the absolute right and freedom to hire whoever they want at any time, correct?

A. Yes.

Q. All right. And that was true under the Block & Garden contract, correct?

A. Yes.

Q. And no magic words were required to say, call this guy up and get the file; you're the lead lawyer. They had the right to do that, right?

A. Correct.

Q. All right. They didn't have to send you some magic document or typed-up formal letter in order to effectuate that, did they?

A. In order to effectuate a trial -- a file

transfer?
Q. Right.
A. No.
Q. And for Mr. Vitullo to take over, correct?
A. No.
Q. They didn't have to do it that way, right? You're agreeing with me, correct?
A. I'm agreeing there is no magic language for Mr. Vitullo to assume management of the case.
Q. And there is no magic language for the clients to have Mr. Vitullo do that, right?
A. Are you asking about his assumption of management or termination of our services?
Q. You went to Harvard Law School, didn't you?
A. I did.
Q. Was Alan Dershowitz your ethics professor?
A. No.
Q. All right. You guys know a lot about ethics at Harvard, I assume. Right?
A. I don't know how to answer that question.
Q. All right. Let's just see if we can agree on something real basic.
A client can fire you for any reason or no reason, right?
A. Yes.

Q. All right. They don't have to send you a letter to fire you, do they?

A. No.

Q. Under the Block & Garden agreement, they could terminate or dismiss or tell you they don't want you to be their lawyer for any reason or no reason, correct?

A. They could terminate us at any time, yes.

Q. All right. And they were in their rights by calling up Lenny and saying take over, true?

A. To take over management of the case, yes.

Q. All right. And why was it probably a good thing for you to be stepping out of the probate case in November of 2015, according to you?

A. Because it was -- it was a stressful case.

Q. How was it stressful, sir? It had been stayed for two years prior to November 11, 2015.

A. Well, I had been working with the client on various matters relating to it for that three-year period. They were difficult to please.

Q. Okay. Let's be clear here. I don't want you to blur your work on other matters for these clients with the probate case. Okay?

A. Okay.

Q. So let's break it down.

How many matters did you have going for these

MR. PENNINGTON: Objection; form.
MR. TOBEY: Objection; form.
A. The clients did not ask us to get out. The clients asked us to hand over management to Mr. Vitullo.
MR. LAUTEN: Objection; nonresponsive.
Q. (BY MR. LAUTEN) Why didn't you tell Mr. Block that the clients told you to handle over management to Mr. Vitullo? Why didn't you tell him that?
A. Mr. Block knew that.
MR. LAUTEN: Objection; nonresponsive.
Q. (BY MR. LAUTEN) Did Mr. Block see these e-mails from you -- let me back up.
I'm putting myself in your shoes. Okay. If someone at my firm says we're entitled to a piece of this, go look at the contract, my response would be, no, we're not because the clients changed the deal back in November of 2015.
That's what these e-mails reflect. But you didn't tell Mr. Block that, did you?
MR. PENNINGTON: Objection; form.
MR. TOBEY: Objection; form.
A. I disagree with your characterization.
Q. (BY MR. LAUTEN) All right. Let's just keep going, then. We'll just -- we'll go through it. Let me show you tab -- the next exhibit is 36. Let me see Tab

56.

Before we get there, did you or did you not, to use your words, step out of the probate case?

A. No.

Q. Is that a lie?

A. I wasn't sure what I would be doing at the time I sent that e-mail.

Q. So -- so let me make sure we're clear. You told lawyers who you were co-counsel with that you would be stepping out of the probate case. You told them that, correct?

A. I said I will most likely be stepping out.

Q. Okay. Well, let's look at it. Where is 36? Did I already mark it? I marked mine. Let me give you a different sticker. That's my handwriting. My fault. Let me show you Exhibit 36.

(Deposition Exhibit 36 marked)

Q. Exhibit 36 is an e-mail from November 25th, 2015, correct?

A. Correct.

Q. All right. And this is from you, right?

A. Yes.

Q. To Mr. Vitullo, correct?

A. Correct.

Q. And to Mr. Bell, correct?

A. Correct.
Q. And it says, "James should probably come too, since we will be covering scheduling issues and I will be stepping out of the probate cases." Is that what it says?
A. That is.
Q. It's a fact that you told Mr. Vitullo and Mr. Bell that you would be stepping out of the probate cases, correct?
A. Yes. That's what Mr. Vitullo had instructed me.
Q. Why can't you just answer the question?
MR. LAUTEN: Objection; nonresponsive.
Q. (BY MR. LAUTEN) You told him you would be stepping out of the probate cases, right?
A. Yes, I said that.
Q. And you did step out of the probate cases, correct?
A. Not entirely.
Q. Okay. Not entirely.
You -- tell me -- tell me what you did after November 2015 if you didn't take depositions, you didn't go to hearings, you didn't go to the trial, and you didn't draft any motions.
A. I attended a scheduling conference. I

A. Yes. Yes. That's correct. Both of those related to the inventory.

Q. Okay. And your recollection is Mr. Vitullo attended at least those two hearings with you in the case?

A. I believe he -- I know he attended at least one of them.

Q. Okay. And do you recall if there was a record made?

A. I don't recall.

Q. And as far as the amounts that were actually paid to your firm, is your recollection consistent with Mr. Block's testimony in terms of the client paying, I think it was the initial $50,000 retainer under the agreement, the fixed fee portion of the agreement?

A. Correct.

Q. And then there were some additional amounts that were billed by your firm that related to the partition lawsuit, correct?

A. That's correct.

Q. And if I understood your testimony on this, the partition lawsuit was actually filed sometime after the October 8, 2012, agreement was entered into.

A. Correct.

Q. So there was a separate lawsuit that was

generated, I guess, by Jo Hopper, the stepmother?

A. That's correct.

Q. And based on -- your firm decided to bill separately for that agreement -- or I'm sorry -- for that lawsuit as opposed to the original case?

A. Yes. We had a discussion with the clients and agreed that that would be billed on an hourly basis.

Q. What was the general understanding of why it was done that way?

A. Well, it was a separate piece of litigation, an offshoot of the probate case, so not covered by the fixed fee portion of our engagement letter.

Q. All right. But there was no separate agreement entered into at that time, correct?

A. No.

Q. All right. Is that correct, though?

A. No separate written agreement, no.

Q. Right. Do you recall just approximately how -- how much your firm billed under the partition case?

A. I believe we have that in the -- looks like about 64,000 plus some expenses.

Q. And was -- was -- were all of those bills paid as to the partition?

A. Yes, I believe so.

Q. And then do you recall ever submitting any separate invoices to the client under the fixed fee portion where your firm would have demanded payment of the second part of that agreement, the additional 50,000?

A. I don't recall that.

Q. And the way the agreement was structured, those -- the second payment of the -- the second $50,000, that was not due until your firm had performed at least half of the entire pretrial services, correct?

A. Says, "Payment of the remaining 50 percent of such fixed fee ($50,000) shall be due upon request when, based on the Firm's opinion, at least 50 percent of the Pre-Trial Services have been completed." I'm reading from Exhibit 44.

Q. Right. So you agree with me?

A. I think the agreement speaks for itself.

Q. Okay. But I'm just -- your understanding, though, was that the clients weren't obligated to make that second payment of the additional 50,000 until at least half of the pretrial services were performed, correct?

A. Yes. When we requested it after, in our opinion, at least half had been completed, yes.

I, CHRISTOPHER M. McNEILL, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____
CHRISTOPHER M. McNEILL

STATE OF _____)
COUNTY OF _____)

Before me, _____, on this day personally appeared CHRISTOPHER M. McNEILL, known to me (or proved to me under oath or through _____ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

(Seal) Given under my hand and seal of office this _____ day of _____, 2018.

_____
Notary Public in and for the
State of _____

JAMS ARBITRATION TRIBUNAL

BLOCK, GARDEN & McNEILL, LLP f/k/a BLOCK & GARDEN, LLP, Claimant,	§	
VS.	§	ARBITRATION NO. 1310023697
LAURA WASSMER, DR. STEPHEN HOPPER, FEE, SMITH, SHARP & VITULLO, LLP, and ANTHONY L. VITULLO, Respondents.	§	

REPORTER'S CERTIFICATION
ORAL AND VIDEOTAPED DEPOSITION OF
CHRISTOPHER M. McNEILL
OCTOBER 29, 2018

I, Angela L. Mancuso, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, CHRISTOPHER M. McNEILL, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on November 8, 2018 to the witness or to the attorney for the witness for examination, signature and return to Veritext Legal Solutions by December 3, 2018;

That the amount of time used by each party at the deposition is as follows:

MR. ROBERT TOBEY: 0 hours, 0 minutes
MR. JAMES E. PENNINGTON: 1 hour, 49 minutes
MR. BRIAN P. LAUTEN: 2 hours, 1 minute
MR. DANIEL D. TOSTRUD: 0 hours, 0 minutes
MR. THOMAS J. ANNIS: 0 hours, 0 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of

FOR THE CLAIMANT:
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robert@jtlaw.com

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jep@jeplawyer.com

FOR THE RESPONDENTS, ANTHONY VITULLO, FEE, SMITH, SHARP & VITULLO, LLP, AND JOHN MALESOVAS, INDIVIDUALLY AND D/B/A MALESOVAS LAW FIRM:
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FOR THE RESPONDENTS, FEE, SMITH, SHARP & VITULLO, LLP, AND ANTHONY L. VITULLO:
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(214) 871-8200
tannis@thompsoncoe.com

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this 7th day of November, 2018.

<%12612,Signature%>

ANGELA L. MANCUSO, CSR 4514
Expiration Date: 12/31/19
Veritext Legal Solutions
Veritext Registration No. 571
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
(817) 336-3042 (800) 336-4000

Job No. 3034028

FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was/was not returned to the deposition officer on _____, 2018;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to Mr. Brian P. Lauten, Custodial Attorney;

That $_____ is the deposition officer's charges to the Respondents for preparing the original deposition and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein and filed with the Clerk.

Certified to by me this _____ day of _____, 2018.

<%12612,Signature%>

ANGELA L. MANCUSO, CSR 4514
Expiration Date: 12/31/19
Veritext Legal Solutions
Veritext Registration No. 571
300 Throckmorton Street, Suite 1600
Fort Worth, Texas 76102
(817) 336-3042 (800) 336-4000

Job No. 3034028

From: Anthony "Lenny" Vitullo
Sent: Saturday, November 14, 2015 9:45 AM
To: Laura Hopper; 'Stephen Hopper'
Cc: Christopher McNeill; 'james@jamesbellpc.com'; Melinda Spurgeon; Jay Fry
Subject: Strategy moving forward

As we discussed yesterday, the strategy moving forward is as follows:

1. McNeill is going to attempt to resolve the Partition lawsuit and reduce your legal fee exposure. The remaining issues are the division of the wine, golf clubs, personal belongings and storage costs. You both will continue to use McNeill to finalize the Partition lawsuit
2. James Bell will defend you in the Probate lawsuit for a flat rate of $200,000. He will reach out to you directly to enter into an engagement agreement on that matter. He will agree to some form of payment of the flat rate in separate traunches so that you do not have to come up with $200,000 immediately
3. My firm and my lawyers will represent you on your claims against Chase bank on a contingency fee basis. I will send you a final bill for my hourly work through the mediation on Monday. I will also send you a contingency fee agreement.
4. As you know we have a tolling agreement with Glast Phillips that will expire on December 15th so James and I will be proceeding with litigation against Glast Phillips after the tolling agreement expires.

I am sorry that you have both been exposed to the claims of Jo Hopper and Chase and the ridiculous amount of legal fees that they spent. We will endeavor to fight for both of you to make this right. I will talk to you this week. Lenny

Anthony L. Vitullo
Partner

FSSV
Fee, Smith, Sharp & Vitullo LLP

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13155 Noel Road
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P 972-980-3254
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Exhibit 81

CONTINGENCY FEE CONTRACT OF REPRESENTATION

The undersigned **Stephen Hopper, and Laura Wassmer** referred to as "Client" or "Clients" employ and retain Fee, Smith, Sharp & Vitullo, LLP, and Malesovas Law Firm, (herein "Attorneys") to represent Client as set forth herein.

1. SCOPE OF REPRESENTATION: Attorneys agree to investigate and evaluate and litigate Client's possible claim or claims of negligence, fraud, breach of contract, and breach of fiduciary duty against JP MORGAN CHASE and persons and companies relating to JP MORGAN CHASE BANKs wrongful acts in acting as the independent administrator of the Estate of Max Hopper..

Client understands and agrees that the scope of representation herein does not include the filing of any claim against any state or federal entity or employee or filing or pursuing an appeal from disposition in the Trial Court. ~~Client understands and agrees that the scope of representation herein does not include defending any claims or lawsuits filed against Client.~~ Client is retaining separate counsel on a flat fee agreement or other fee arrangement to defend them against any claims filed by any parties. other than Chase.

Client understands and agrees that the scope of representation herein does not include representing Clients in the probate lawsuit, ~~or lawsuit involving Chase bank, and defending Client against Chase bank or any other party.~~

Client understands and agrees that Attorneys will not file suit against entities that are in a foreign jurisdiction or are international companies whom in attorney's opinion cannot be sued in a United States court. Client understands and agrees that Attorneys are not obligated to pursue entities that are defunct and/or bankrupt.

Client hereby agrees and understands that Attorneys retain the right to withdraw from representation of Client at any time, so long as said withdrawal would not unduly prejudice Client's right to bring suit or to seek or retain another attorney to represent Client. In such event, Client agrees to timely sign an appropriate Motion for Substitution of Counsel. If after disposition in the trial court, Client desires to appeal, a new and separate agreement shall be entered into by the parties as to services and fees for any appeal, or Client shall retain separate counsel to handle any appeal and Attorneys shall retain their interest in the case under this agreement applicable to any recovery obtained by settlement or otherwise.

2. **AUTHORITY OF ATTORNEYS:** Client empowers Attorneys to take all steps in this matter deemed by them to be advisable for the investigation and handling of Client's Claims, including hiring investigators, expert witnesses, and/or other attorneys and filing any legal action necessary. Client authorizes and empowers Attorneys to do any and all things necessary and proper in the enforcement, compromise, settlement, adjustment and collection of Client's Claim, and Client further authorizes and empowers them to sign any and all pleadings and all releases, checks, drafts, authorizations and other papers necessary and proper in connection with the prosecution or enforcement of Client's Claims and collection or settlement of the damages awarded or to be paid therefore, and to receive such funds or other property in Client's name and for Client on account of any judgment recovered or any settlement agreed upon in connection with Client's Claim. Full power and authority is given by Client to Attorneys to adjust, settle or compromise Client's Claim, but no final settlement shall be made and consummated by Attorneys without first submitting the offer, compromise, or adjustment to Client for approval, and Client agrees not to compromise or settle Client's Claim without the Attorneys' authority, agreement and consent. Should Client make a settlement in violation of this Agreement, Client agrees to pay Attorneys the full fee agreed upon under paragraph 3 "Attorneys' Fee", below.

3. **ATTORNEYS' FEE:** This Agreement is a contingency fee contract. Specifically, if Attorneys are successful in recovering money or anything of value for Client, by settlement prior to trial begins, Attorneys shall receive attorneys' fees in the amount of forty percent (40%) of the gross recovery. The attorney fee will be split amongst the attorneys as follows: FSSV 50% Malesovas Law Firm 50% If the matter is resolved after trial begins, Attorneys shall receive attorneys' fees in the amount of forty-five (45%) of the gross recovery. All attorneys' fees shall be a percentage of the gross recovery. Gross recovery means the gross amount of money or other value or property recovered for Client, before the deduction of expenses. Trial is considered to have commenced at 5:00 p.m. on the Friday closest to ten (10) days before jury selection begins or evidence is first presented to the trier of fact, whichever is the earlier of these two events. If Attorneys do not recover any money or other value or property for Client, Client will not owe any attorneys' fees. Client agrees that Attorneys may, in their discretion, employ associate counsel to assist in prosecuting Client's cause of action, and Client does not object to the participation of any lawyers Attorneys may choose to involve in this representation of Client. With the exceptions set forth below, payment of attorneys' fees to associate counsel is the responsibility of Attorneys. In the event that the case is settled by way of a structured settlement, Client approves and authorizes attorneys' fees to be based upon the present value benefit of the settlement and further authorizes Attorneys to take attorneys' fees either in cash or in structured payment, as Attorneys deem appropriate.

In some instances, it may be necessary for Attorneys to retain special outside counsel to assist on matters other than prosecuting Client's claims for damages. Examples of such instances include the following: a defendant may seek bankruptcy protection; or a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; a defendant may transfer assets out of the country thereby necessitating the retention of foreign counsel, or a complex, multi-party settlement may require an ethics opinion from outside counsel; or special action in probate court may be necessary apart from the usual probate proceedings involved in an estate; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorneys may retain such special outside counsel to represent Client when Attorneys deem such assistance to be reasonably necessary, and that the fees of such counsel will be deducted from Client's share of the recovery.

4. COSTS AND OTHER EXPENSES: Clients **WILL NOT BE** responsible to pay for costs and expenses as incurred. Such costs include filing fees, expert witness fees, court reporter and video fees, copy charges, postage, mailing, travel, witness fees, electronic document conversion fees, delivery fees, internal operating costs and other related charges incurred or paid as an expense on behalf of Client and paid to third-party vendors or incurred internally by Attorneys and charged to Client in connection with Attorneys' representation of Client.

5. DISBURSEMENT OF PROCEEDS TO CLIENT: Client understands that Attorneys make no guarantee or assurance of any kind regarding the likelihood of success of Client's claims. Upon receipt by Attorneys of the proceeds of any settlement or judgment, Attorneys shall (1) retain either forty percent (40%) of the proceeds as their attorneys' fees if the matter is settled or resolved before trial begins or forty-five (45%) percent of the proceeds as their attorneys' fees if the matter is settled or resolved after trial begins, (2) deduct from Client's share of the proceeds any costs and expenses, including the fees of any special outside counsel that Attorneys may incur on Client's behalf, and (3) disburse the remainder of Client's share of the proceeds to Client. At the time of disbursement of any proceeds, Client will be provided with a disbursement sheet reflecting the attorneys' fees, the expenses deducted out of Client's share, and the remainder of Client's share.

Upon some circumstances, health insurers, workers compensation carriers, or others who have paid benefits or provided services on Client's behalf may claim a right to recover a portion of the proceeds of any action brought on behalf of the Client and may place Attorneys on notice of their claim. Except as may be required by law, Attorneys will not agree to protect any claim of a subrogation carrier or other creditor without Client's consent.

6. POWER OF ATTORNEY: Client gives Attorneys a power of attorney to execute and negotiate all reasonable and necessary documents connected with the handling of this cause of action, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, proofs of claim, ballots, verified statements including those pursuant to Bankruptcy Rule 2019, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.

7. COOPERATION; ADDRESS CHANGE; RETURN OF DOCUMENTS: Client agrees to cooperate with Attorneys to permit Client's claims to be investigated and developed; to disclose to Attorneys all facts relevant to the claim; and to be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings and trial. Client shall appear on reasonable notice at any and all depositions and Court appearances and shall comply with all reasonable requests of Attorneys in connection with preparation and presentation of Client's claims. The Client acknowledges and agrees that all communications with Attorneys are privileged. The Client acknowledges that Attorneys may represent other individuals on the same or similar matters and therefore may communicate matters of common interest to all of Attorneys' clients. Therefore, Client agrees and understands that other individuals who are clients of Attorneys may also invoke the attorney client privilege as to Attorneys' communications with Client. The Client acknowledges and agrees not to provide attorney work product or attorney client communications to any other person.

Client shall promptly notify Attorneys of any change of marital status or death of spouse. Client shall promptly notify Attorneys of any bankruptcy proceedings involving Client or Client's spouse. Client shall promptly notify Attorneys of any other legal proceedings to which Client or Client's spouse is a party.

Client agrees to notify Attorneys in writing of each change in Client's mailing address (work or home) or telephone number (work, home and cell) during the term of this representation within seven (7) days of each such change of address or telephone number. When the case is completed, and subject to any Court orders, Attorneys will provide Client the opportunity to retrieve any documents and/or materials that Client provided to Attorneys or that Attorneys have obtained from other sources in connection with the case. However, if Client has not retrieved those documents and/or materials within ninety (90) days after Attorneys have mailed to Client written notice that the case is completed and that those documents and/or material are available to Client, Attorneys may dispose of those documents and/or materials.

8. **NO TAX ADVICE:** Attorneys have advised Client that the pursuit of resolution of this claim may have various tax consequences. Client understands that Attorneys do not render tax advice and are not being retained to offer such advice to Client or to represent Client before the IRS. Moreover, Client accepts responsibility for making any payment or filings necessitated by the resolution of Client's claim.

Client understands that applicable State law may impose sales, service or other tax on any amount that Client may recover or the fees due Attorneys hereunder. Client also understands that applicable Federal income tax law may require that Client pay income tax on the fees due Attorneys hereunder, separate and apart from and in addition to any taxes owed by Attorneys. Client agrees that any such taxes (other than Federal and/or State income taxes that Attorneys may owe on monies actually received by them) shall be paid out of my share of any recovery.

9. **DEATH OF CLIENT:** The provisions of this Agreement will not terminate upon the death of Client. In the event of the death of Client, any duly appointed Representative of Client's heirs and/or estate will be bound by this Agreement to the extent allowed by applicable law, including without limitation, the provisions of this Agreement relating to the recovery of attorneys' fees and costs and other expenses. Any such Representative shall, upon request by Attorneys, execute a new Agreement in the capacity as Representative for the heirs and/or estate of the Client.

10. **OFFER OF SETTLEMENT:** Client understands that applicable law may, under certain circumstances, allow a Defendant to make an offer of settlement to Client and if Client rejects or does not accept such an offer, such may result in any award, verdict or judgment in Client's favor being reduced as provided by such law. Client understands that Client has the final authority to accept or reject any offer of settlement. Client understands that if Client rejects or does not accept such an offer, and Client's recovery is subsequently reduced, the fees owed to Attorneys will be calculated on the amount of any award, verdict or judgment before reduction, and the reduction shall be out of Client's share of any recovery.

11. **SECURITY INTEREST:** Client hereby assigns, transfers and conveys over to Attorneys an amount equal to either forty percent (40%) of the proceeds if the matter is settled or resolved before trial begins or forty-five percent (45%) of the proceeds if the matter is resolved after trial begins, of any property, money or other value recovered by settlement, compromise, verdict or judgment of the claims described in this contract. Client does hereby give and grant to Attorneys an express security interest, in addition to any statutory lien, upon Client's claims and any and all judgments recovered, and any and all funds or property realized or paid by compromise or settlement, as security for the compensation and costs and expenses advanced or due to be paid or reimbursed to Attorneys hereunder. This security interest is to continue in the event Attorneys are discharged without good cause. If the claims are not assignable at law, Client expressly assigns to Attorneys, to the extent of attorneys' fees and disbursements, any sum realized by way of a settlement or any judgment obtained thereon.

12. **BINDING EFFECT:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

13. **TERMINATION OF REPRESENTATION:** Client understands that Client can terminate Attorneys' representation of Client at any time by providing written notice to Attorneys. Should Client elect to terminate Attorneys' representation prior to the full conclusion of Attorneys' representation, Client understands and agrees that Attorneys have a claim for expenses of litigation and unpaid attorneys' fees which will become due upon receipt by Client or any successor attorney of Client or any proceeds for any remaining portion of Client's claim. Client understands that the obligation for unpaid attorneys' fees will be calculated based on the percentage of work completed on the case or claims at the time Client terminates Attorneys.

14. **NO GUARANTEE OF RECOVERY:** Client understands that no guarantee or assurances of any kind have been made regarding the likelihood of success of Client's claim, but that Attorneys will use their skill and diligence, as well as their experience, to diligently pursue Client's action.

15. **MISCELLANEOUS:** In case any one or more of the provisions contained in this agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

This contract constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings, or written or oral agreements between the parties respecting within the subject matter.

16. **STATUTE OF LIMITATIONS:** Client understands that an issue may exist as to whether the applicable statute of limitations has expired. This issue is raised in many lawsuits

even if the Client's claims are not beyond the Statute of Limitations. Client understands that Attorneys must perform an evaluation of Client's claim prior to filing Client's lawsuit, and that this evaluation will first require Client to provide Attorneys with all relevant documents and other information requested. It is possible that the statute of limitations has already expired or may expire during the interim between the date of Client's signature below and the filing of Client's lawsuit. Client agrees to accept this risk.

17. REFERRAL OR ASSOCIATION OF ADDITIONAL COUNSEL: Client agrees that Attorneys may refer this matter to another lawyer or associate additional lawyers to assist in representing Client and prosecuting the Client's cause of action. Prior to the referral or association becoming effective, Client shall consent in writing to the terms of the arrangement after being advised of (1) the identity of the lawyer or law firm involved, (2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made. The referral or association of additional attorneys will not increase the total fee owed by the Client.

18. **NOTICE TO CLIENTS: Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.**

20. **ARBITRATION: It is Attorney's goal to maintain at all times a constructive and positive relationship with Client on the matter described above and on future matters in which Attorney may perform services for Client. However, should a dispute arise between Attorney and Client, a prompt and fair resolution is in the interests of all concerned. To this end, if any controversy or claim arises out of is related to this agreement, any services provided by Attorneys to Client in connection with Client's Claims, or any other matter that may arise between Client and Attorney (including malpractice claims and fee disputes), Attorneys and Client both waive any right to bring a court action or have a jury trial and agree that the dispute shall be submitted to binding arbitration to be conducted in Dallas, Texas before the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA with one arbitrator who must be an attorney licensed to practice law in the State of Texas..**

CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer

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18. NOTICE TO CLIENTS: **Attorneys are only licensed to practice law in the State of Texas. To the extent that Attorneys are required to appear in Court in other States, Attorneys will seek permission of the appropriate Court to appear pro hac vice. If pro hac vice admission is granted, Attorneys will be subject to the disciplinary rules of that particular jurisdiction. Attorneys are also subject to the disciplinary jurisdiction of the State Bar of Texas. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. For more information call (800) 932-1900.**

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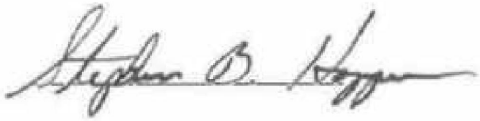
CLIENT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES AS STATED ABOVE AS OF THE DATE NOTED BELOW.

Laura Wassmer



Stephen Hopper

Date: 11/19/2015

Address: 3625 N Classen Blvd Oklahoma City, OK 7318

Telephone Numbers: 405-639-9186

_____

Stephen Hopper

Date: _____

Address: _____

Telephone Numbers:

_____

ATTORNEYS:

Fee, Smith, Sharp &Vitullo, LLP

Malesovas Law Firm

Cathy Owens

From: Christopher McNeill
Sent: Wednesday, November 11, 2015 12:20 PM
To: Kelly Stewart
Attachments: 1st Amended Petition 10-30-15.pdf; Hopper Second Amended Answer, Special Exceptions, and Counterclaim.doc

Kelly,

Regarding Hopper, hopefully the partition lawsuit will be shut down this week or next. With respect of the rest of the litigation (which you haven't been involved with), I will most likely be stepping out which is probably a good thing because our clients are difficult to please and are ultimately going to end up on the losing end, at least in part. Nonetheless, the deadline for filing amended pleadings in the partition lawsuit is next Monday the 16th. Since you are much more experienced in these issues than I, would you have an hour or so between now and Monday to review our last answer against Jo Hopper's most recent petition to see if any additional affirmative defenses, etc. should be added? Thanks.

Christopher M. McNeill

Block & Garden, LLP
Sterling Plaza
5949 Sherry Lane, Suite 900
Dallas, TX 75225
Direct: 214-866-0994
Main: 214-866-0990
Facsimile: 214-866-0991
Website: http://www.bgvllp.com
Email: mcneill@bgvllp.com

From:	Christopher McNeill </O=DGVLLP/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MCNEILL>
Sent:	Wednesday, November 25, 2015 9:54 AM
To:	'Anthony Lenny Vitullo' <lvitullo@feesmith.com>; 'Melinda Spurgeon' <mspurgeon@feesmith.com>
Cc:	'James Bell' <jamesb@jimesbellpc.com>
Subject:	RE: MESSAGE FROM ALAN LOEWINSOHN Can NOT move Dec. 8th hearings

James should probably come too, since we will be covering scheduling issues and I will be stepping out of the probate cases.

-----Original Message-----
From: Anthony "Lenny" Vitullo [mailto:lvitullo@feesmith.com]
Sent: Wednesday, November 25, 2015 9:34 AM
To: Melinda Spurgeon
Cc: Christopher McNeill; James Bell
Subject: Re: MESSAGE FROM ALAN LOEWINSOHN Can NOT move Dec. 8th hearings

Got it. Chris will have to cover on my end then. Chris are you available? I have a depo on that date

Anthony "Lenny" Vitullo
Fee,Smith,Sharp & Vitullo LLP
13155 Noel Road Suite 1000
Dallas, Texas 75240
(972) 934-9100
Sent from my iPhone

On Nov 20, 2015, at 8:10 PM, Melinda Spurgeon <mspurgeon@feesmith.com<mailto:mspurgeon@feesmith.com>> wrote:

I called again, this time as for the court coordinator (clerk vm still came out) he checked the schedule and he said HE COULD NOT move the hearing date NO TIME SLOT available. Both of these are still set for Dec. 8th. He also said if these are to again to try to change to another date, the scheduling party will have to be the one to call in and make the change.

From: Melinda Spurgeon
Sent: Friday, November 20, 2015 11:07 AM
To: Anthony "Lenny" Vitullo; 'Alan Loewinsohn'
Cc: Chris J. Munson; Christopher McNeill; James Bell; 'Eichman, John'
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

I called the Probate Court for Cause No. PR-11-3238-3 re the Motion for Consultation/Life Stay and the Scheduling Conference both set for Dec. 8th at 2:30 p.m. The Clerk's voicemail came and I was ask to leave a message which I did. If I do not receive a call back I will call again after lunch.

From: Anthony "Lenny" Vitullo
Sent: Friday, November 20, 2015 10:33 AM
To: 'Alan Loewinsohn'
Cc: Melinda Spurgeon; Chris J. Munson; Christopher McNeill; James Bell; 'Eichman, John'
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

Melinda, please see if you can get the hearing any time from 1pm until 4pm on December 10th. Thanks alv

From: Alan Loewinsohn [mailto:alank@lfdlaw.com]
Sent: Friday, November 20, 2015 8:59 AM
To: Anthony "Lenny" Vitullo
Cc: Melinda Spurgeon; Chris J. Munson; Christopher McNeill; James Bell; 'Eichman, John'
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

I didn't realize when we email yesterday that I have a hearing at 9:45 a.m. on December 10th so can our hearing be in the afternoon

Alan Loewinsohn
Loewinsohn Flegle Deary LLP
12377 Merit Dr Suite 900
Dallas Texas 75251

214-572-1700
www.lfdlaw.com<http://www.lfdlaw.com>

Alank@lfdlaw.com<mailto:Alank@lfdlaw.com>
On Nov 19, 2015 5:53 PM, Anthony Lenny Vitullo <lvitullo@feesmith.com<mailto:lvitullo@feesmith.com>> wrote:
Thank you.

Melinda please contact the Court tomorrow to move the December 8th hearing to December 10th. Thanks alv

-----Original Message-----
From: Eichman, John [mailto:jeichman@hunton.com]
Sent: Thursday, November 19, 2015 5:48 PM
To: Anthony "Lenny" Vitullo
Cc: Alan Loewinsohn; Melinda Spurgeon; Christopher McNeill; Chris J. Munson; James Bell
Subject: Re: MESSAGE FROM ALAN LOEWINSOHN

I am available on 12/10.

John Eichman
Hunton & Williams LLP
(214) 468-3321
jeichman@hunton.com<mailto:jeichman@hunton.com><mailto:jeichman@hunton.com>

On Nov 19, 2015, at 5:40 PM, Anthony Lenny Vitullo <lvitullo@feesmith.com<mailto:lvitullo@feesmith.com<mailto:lvitullo@feesmith.com%3emailto:lvitullo@feesmith.com>>>
wrote:

Thank you Alan
John, if you are available then I will reach out to the court to move the hearing. Thanks alv

Exhibit 88

JOHNSTON TOBEY BARUCH
Texas Trial & Appellate Lawyers

3308 Oak Grove Ave.
Dallas, Texas 75204
214.741.6260

December 11, 2017

Mr. Anthony L. Vitullo
Fee, Smith, Sharp & Vitullo, LLP
13155 Noel Road, Suite 1000
Dallas, Texas 75240-5019
Via email: lvitullo@feesmith.com

Re: Engagement Agreement between Block & Garden, LLP and Dr. Stephen Hopper and Laura Wassmer

Dear Mr. Vitullo:

This law firm represents Block & Garden, LLP, now called Block Garden & McNeill, LLP (the "Law Firm"), in the above-referenced matter. All further communications to the Law Firm should be directed to it in care of this office.

On October 8, 2012, Dr. Hopper and Mrs. Wassmer, pursuant to your introduction and recommendation, retained the Law Firm to pursue claims against JP Morgan Chase Bank, N.A. for breach of fiduciary duty and mismanagement in the administration of the estate of Max D. Hopper (the "Claims"). The Law Firm was to be compensated by a fixed fee in the amount of $100,000 for "Pre-Trial Services" described in the engagement agreement. Although the Law Firm performed the Pre-Trial Services contemplated by the engagement agreement, only $51,900 in fees were paid to the Law Firm.

In addition, in the engagement agreement Dr. Hopper and Mrs. Wassmer agreed to compensate the Law Firm with a hybrid contingent fee of one half of the Law Firm's standard hourly rates for services performed at trial and a contingent fee of 20% of the gross recovery on the Claims.

The engagement agreement also authorized the Law Firm to retain you and your firm to perform legal services on behalf of Dr. Hopper and Mrs. Wassmer, which happened. As a result, your services were covered by the Firm's hybrid contingent fee agreement with Dr. Hopper and Mrs. Wassmer. You then brought in James Bell to assist in the representation. The Law Firm has never been terminated

as counsel for Dr. Hopper and Mrs. Wassmer, so its engagement agreement remains in full force and effect according to its terms.

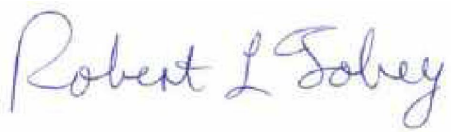
It is the Law Firm's understanding that you entered into a separate contingent fee agreement with Dr. Hopper and Mrs. Wassmer. If this is true, you should have advised the clients that they may have to pay a contingent fee to both the Law Firm and to your firm.

The Claims were successfully tried to a verdict. No judgment has been entered, and there has been no recovery on the Claims to date. By this letter, the Law Firm is putting you on notice of the Law Firm's claim to $50,000 owed by Dr. Hopper and Mrs. Wassmer for performance of Pre-Trial Services, and a contingent fee of 20% of the gross recovery on the Claims.

Please consider this letter a directive that no distribution of funds or other resolution of the Claims is to be made without accounting for the contingent fee interest of the Law Firm. A failure to abide by this directive will result in you becoming liable to the Law Firm for its contingent fee interest pursuant to its lien claim on these proceeds. *Dow Chemical Co. v. Benton*, 357 S.W.2d 565, 568 (Tex. 1962); *Honeycutt v. Billingsley*, 992 S.W.2d 570, 584 (Tex. App.—Houston [1st Dist] 1999, pet. denied).

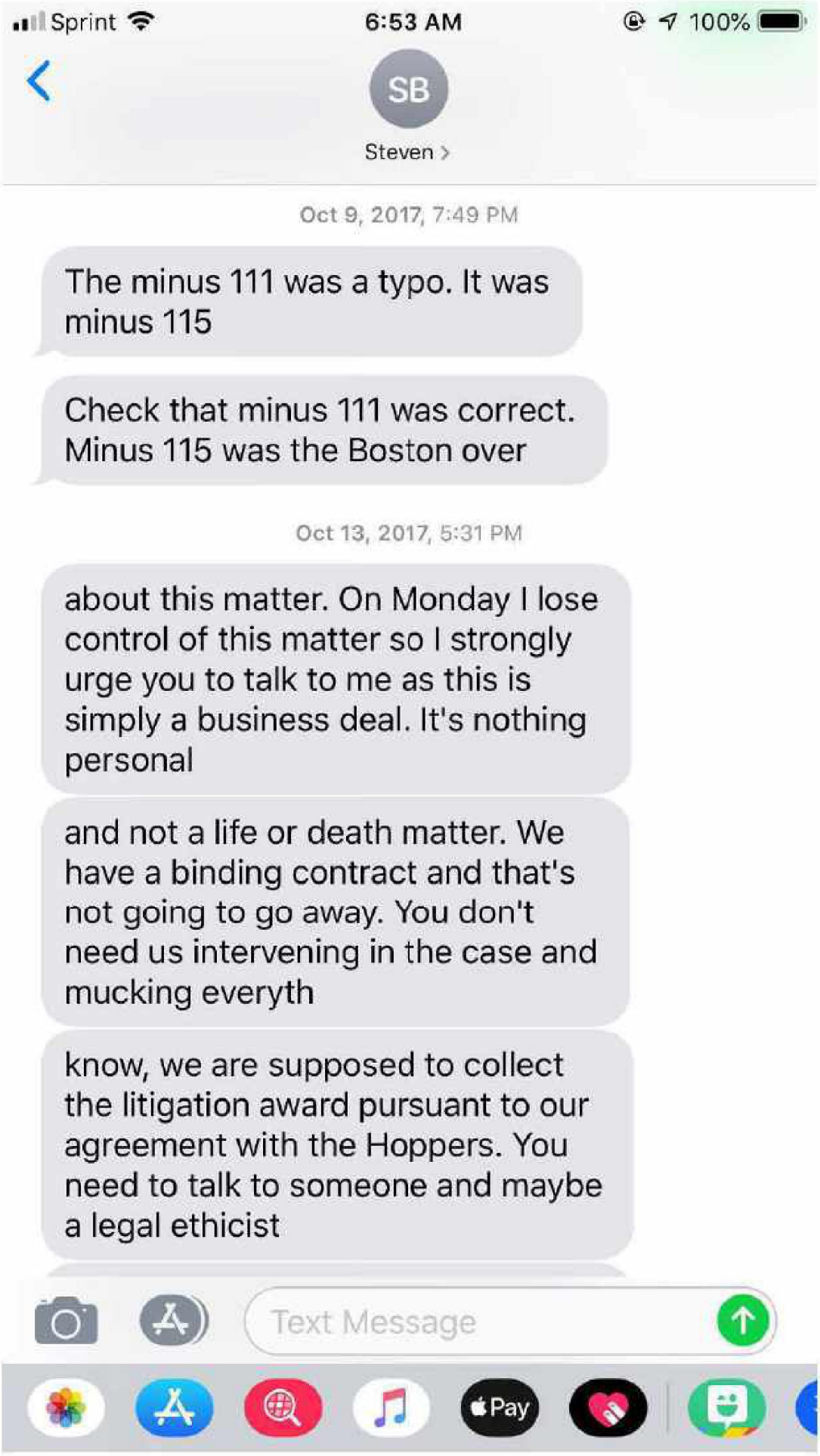
If for any reason you decide not to honor the demand set forth in this letter, I respectfully request that you notify me in writing so that I can take appropriate steps to protect the interest of the Law Firm through the judicial process. It is hoped that this matter can be resolved without the necessity of costly and time-consuming litigation. That result demands, however, a prompt and responsible reply from you on or before the close of business on December 19, 2017. To that end, I await your reply.

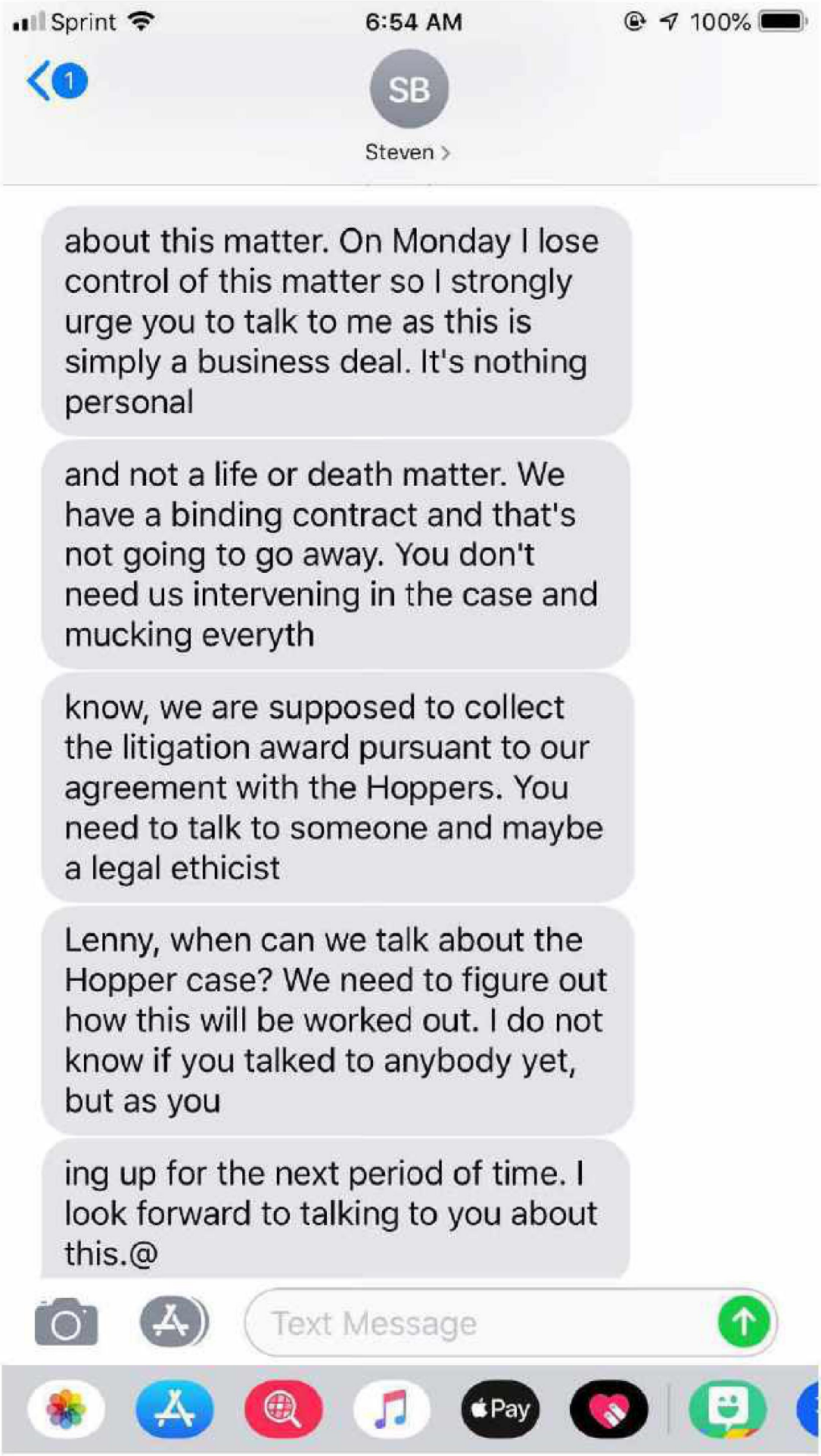
Sincerely,



Robert L. Tobey

cc: Steven Block


Sprint
6:53 AM
100%
SB
Steven >
Oct 9, 2017, 7:49 PM
The minus 111 was a typo. It was minus 115
Check that minus 111 was correct. Minus 115 was the Boston over
Oct 13, 2017, 5:31 PM
about this matter. On Monday I lose control of this matter so I strongly urge you to talk to me as this is simply a business deal. It's nothing personal
and not a life or death matter. We have a binding contract and that's not going to go away. You don't need us intervening in the case and mucking everyth
know, we are supposed to collect the litigation award pursuant to our agreement with the Hoppers. You need to talk to someone and maybe a legal ethicist
Text Message
Pay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Steven >
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know, we are supposed to collect the litigation award pursuant to our agreement with the Hoppers. You need to talk to someone and maybe a legal ethicist
Lenny, when can we talk about the Hopper case? We need to figure out how this will be worked out. I do not know if you talked to anybody yet, but as you
ing up for the next period of time. I look forward to talking to you about this.@
Text Message
Pay

From: Robert Tobey <robert@jtlaw.com>
Sent: Wednesday, April 4, 2018 5:31 PM
To: jlevinger@levingerpc.com
Cc: jep@jeplawyer.com; Brian Lauten <blauten@brianlauten.com>; Jan Gallagher <jan@jtlaw.com>
Subject: Settlement of Hopper Litigation

Jeff, I represent Block Garden & McNeill, LLP, which is involved in a fee dispute with Dr. Hopper, Ms. Wassmer and Mr. Vitullo. Attached is my letter dated December 11, 2017 to Mr. Vitullo regarding this matter. Discussions are underway between Jim Pennington, counsel for Dr. Hopper and Ms. Wassmer, and Brian Lauten as counsel for Mr. Vitullo and his firm, but there has been no resolution of the fee dispute.
My client was just served with the attached Rule 11 agreement reflecting a settlement of the litigation with JP Morgan Chase. Will you agree to keep all disputed funds in your Trust Account pending a resolution of the fee dispute? Please let me know as soon as possible.
Thanks!

Robert L. Tobey

JOHNSTON TOBEY BARUCH, P.C.
robert@jtlaw.com
214.741.6251 (Direct)
3308 Oak Grove Ave.
Dallas, Texas 75204

CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED,	§	IN THE PROBATE COURT
	§	
JO N. HOPPER,	§	
Intervenor,	§	
v.	§	NO. 1
JPMORGAN CHASE BANK, N.A., STEPHEN B. HOPPER, and LAURA S. WASSMER,	§	
Defendants.	§	OF DALLAS COUNTY, TEXAS

JOHN L. MALESOVAS, d/b/a MALESOVAS LAW FIRM, and FEE, SMITH, SHARP & VITULLO, LLP	§
Intervenors,	§
v.	§
STEPHEN B. HOPPER, LAURA S. WASSMER, individually and as Beneficiaries of the ESTATE OF MAX D. HOPPER, DECEASED, the ESTATE OF MAX D. HOPPER, DECEASED, JPMORGAN CHASE BANK, N.A.,	§
Defendants.	§

TEMPORARY INJUNCTION ORDER

Came to be heard on the 24TH day of April 2018, after appropriate notice to the parties and after the parties presented arguments, Fee Smith Sharp & Vitullo, LLP and John L. Malesovas d/b/a Malesovas Law Firm's (collectively, "Intervenors") *Verified Petition(s) in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief* against, *inter alia*, Stephen Hopper and

Laura Wassmer, individually and as beneficiaries of the Estate of Max D. Hopper, deceased, (hereinafter jointly "Clients") and JPMorgan Chase Bank, N.A. (hereinafter "JPM") (Clients and JPM hereinafter jointly, "Defendants" with respect to the claims now pending in this Intervention).

The Court, after considering the *Intervenors' Collective Verified Original Petition in Intervention, Application for Temporary Restraining Order, Temporary Injunction, and Application for Declaratory Relief,* the evidence submitted by Intervenors *in camera*, the relevant exhibits, the arguments of counsel, concludes that—unless immediately restrained, Defendants will irreparably injure Intervenors.

This Court has subject matter jurisdiction over the dispute brought before it under both, TEX. ESTATES CODE ANN. § 32.007 et seq. (Vernon 2014), *and*, TEX. CIV. PRAC. & REM. CODE § 37.005 et seq. (Vernon 2014) (authorizing declaratory judgment actions in probate court when such relief is germane to an Estate).

Intervenors respective Pleas and application for Injunctive Relief are timely filed, given that this Court has yet to sign a judgment; and, therefore, retains plenary power over this proceeding. *See* TEX. R. CIV. P. 60 et seq.

This Court has, preliminarily, taken judicial notice, pursuant to Rule 201 of the Texas Rules of Evidence, of the following facts that, in reasonable probability, appear to be true at this preliminary stage of the proceeding:

1.) In, around, or about November of 2015, Clients executed a valid and enforceable contingency agreement ("CA") with Intervenors;

2.) On or about April 5, 2018, attorneys for Clients and JPM appeared before this Court and announced, without revealing any of the substantive terms, that a confidential settlement had been reached between them in the underlying dispute pending in this Court (hereinafter "Settlement");

3.) On or about the same day, April 5, 2018, but—literally what appears to have been within minutes after the Court was informed that a settlement had been reached by the parties in this underlying dispute—Clients terminated their CA with Intervenors by and through their attorney, James Pennington;

4.) Intervenors have filed what, by all accounts, appears to be a valid and enforceable First Party Attorney's Fees Lien in the proceeds of the Settlement;

5.) Intervenors fully performed; or, at the very least, substantially and materially performed all of their duties, responsibilities, and obligations under the CA at or before the time Clients terminated the CA—as those legal terms are meant in, *Tillery & Tillery v. Zurich Ins. Co.*, 54 S.W.3d 356, 360-61 (Tex. App.—Dallas 2018, no pet.), *Enochs v. Brown*, 872 S.W.2d 312, 317 (Tex. App.—Austin 1994, no writ), *disapproved of on unrelated grounds*, by *Roberts v. Williamson*, 111 S.W.3d 113 (Tex. 2003), and *Mandell & Wright*, 441 S.W.2d 841, 847 (Tex. 1969); and

6.) Given the timing of the termination of Intervenors, Clients are estopped, quasi-estopped, and/or have waived any and all defenses, if any, that could or would be lodged to the CA or the quality of the legal services performed by Intervenors.

The Court finds that Clients have admitted that some of the settlement funds belong to Intervenors, but Clients refuse to identify the amount that belongs to Intervenors and refuse to allow the undisputed amount that belongs to Intervenors to be paid to Intervenors. Based on this, as well as the Court's findings above, Intervenors are entitled to immediate payment of a portion of the settlement funds once they become due and payable under the terms of the settlement. The Court finds that within hours after the Court heard Intervenors' Application for a Temporary Restraining Order where Intervenors were asking this Court to protect the settlement funds in dispute pending the outcome of their Petition in Intervention and after the Court took the matter under advisement, Clients executed a settlement agreement with JPM which required JPM to wire transfer the settlement funds to any location designated by Clients, which would necessarily include a foreign bank account, and further required Intervenors to waive their lien on the settlement funds and to withdraw their Petition in Intervention claiming an interest in the settlement funds, and that Clients still refused to pay

Intervenors any of the settlement funds. The Court finds that this action by Clients was designed to attempt to circumvent this Court's inherent power to protect the disputed funds and to circumvent Intervenors' lien on the Settlement funds.

The Court finds that based on all of the foregoing and all of the other evidence and stipulations presented, the settlement funds are in danger of being lost or depleted unless this Court exercises its inherent power to protect the settlement funds pending the outcome of Intervenors' Petition in Intervention.

Based upon these preliminary findings, this Court is of the opinion that Intervenors have established a probability of success on the merits on their application for, *inter alia*, declaratory relief. *See* TEX. CIV. PRAC. & REM. CODE § 37.004 et seq. (Vernon 2014). This Court is of the opinion that, unless restrained, one or more Defendants are likely to cause permanent damage to Intervenors, should they be allowed to transfer, hypothecate, assign, or take title to Intervenors' interest in the settlement proceeds before the pleas in Intervention are adjudicated on the merits. Such harm would be irreparable and injury would be imminent because this Court is of the opinion that there is no showing; or, in the alternative, an inadequate showing that Defendants could timely and immediately pay the disputed funds to Intervenors, should Intervenors ultimately prevail in this proceeding, and because Intervenors have a security interest in and lien upon a portion of the settlement proceeds which would be eviscerated by allowing Clients to dispose of 100% of the settlement proceeds as they saw fit and/or by risk that such funds will be lost or depleted or otherwise disposed of. Moreover, given the Court's preliminary findings set forth above in (i)-(vi), Intervenors have established a property right and secured interest in the proceeds at issue, and the loss of such funds and property right would leave Intervenors with no adequate remedy at law.

The Court is, **THEREFORE**, of the opinion that Intervenors are entitled to the issuance of an Order of Temporary Injunction and that such an Order is necessary to protect Intervenors' rights. This **ORDER** is necessary because of the immediate need to enforce the security interest and lien which Intervenors have in a portion of the settlement proceeds and to stop the wrongful flow of funds in the near future from being disseminated to either Clients or their attorneys, or some other third party subject to

Clients' direction and control, upon which Intervenors would have no adequate remedy at law. Without intervention by this Court, Intervenors' property right, that is Intervenors' security interest in and lien upon the settlement proceeds, would be destroyed and there would be no way to restore that property right in the Settlement proceeds themselves.

It is therefore **ORDERED, ADJUDGED**, and **DECREED** that Defendants, Stephen Hopper, Laura Wassmer, and JPMorgan Chase, N.A., and any of his, her, their, or its agents, servants, employees, successors, assigns and those persons in active concert or participation therewith, must:

1) Deposit all of the settlement proceeds due to Stephen B. Hopper and Laura S. Wassmer, individually and as beneficiaries of the Estate of Max Hopper, Deceased, into a safekeeping account with JPMorgan Chase Bank, NA, to be treated as a deposit in the registry of the Court, and to be held in trust until further order of this Court. Funds in this safekeeping account shall be withdrawn only upon Order of this Court;

2) The parties are **ORDERED** to preserve and prevent the destruction of all documents, including electronic data, emails, and notes, that relate in any way to the matters and claims set forth in the Intervenors' respective Pleas on file—and, moreover, all electronic storage devices must be imaged and preserved.

IT IS FURTHER ORDERED that the $10,000 corporate or surety cash bond currently deposited with the appropriate clerk of this Court shall remain in place.

IT IS FURTHER ORDERED that trial in this matter is set for October 1, 2018 at 9:30 o'clock a.m.; All Parties are Ordered to appear for a scheduling conference on or before June 15, 2018.

Signed and issued this the 24th day of April 2018, at 2:05 o'clock p.m.

JUDGE PRESIDING