

IN THE DISTRICT COURT, HARRIS COUNTY

**127th Judicial District**

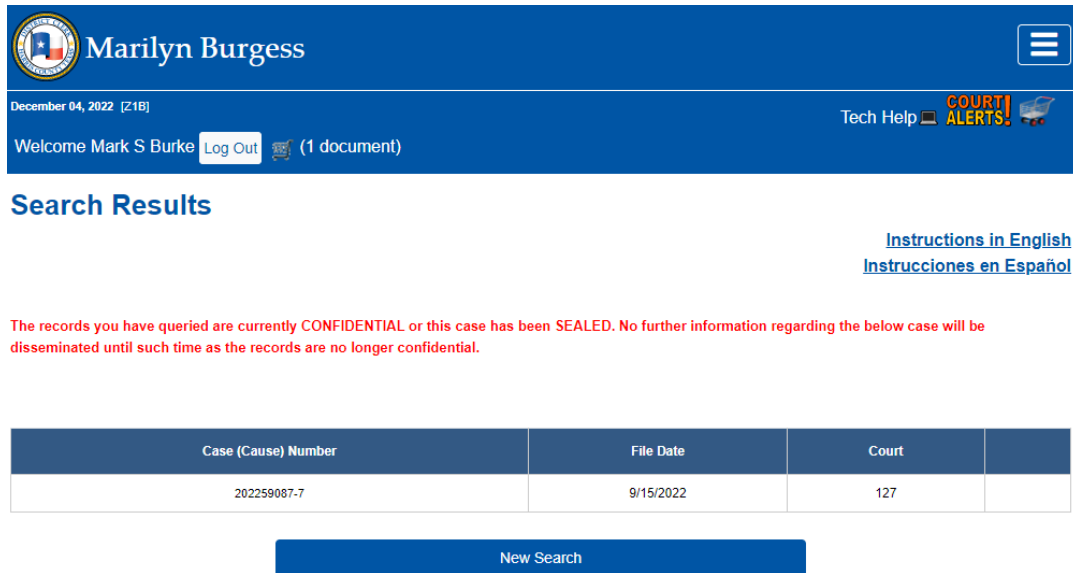
|                          |   |                    |
|--------------------------|---|--------------------|
| RENEE DUGEE              | ) | CASE No. 202259087 |
| Plaintiff.               | ) |                    |
|                          | ) |                    |
| vs.                      | ) |                    |
|                          | ) |                    |
| J. P. MORGAN CHASE BANK, | ) |                    |
| NATIONAL ASSOCIATION,    | ) |                    |
|                          | ) |                    |
| Garnishee                | ) |                    |
|                          | ) |                    |
| MARK BURKE               | ) |                    |
|                          | ) |                    |
| Intervenor               | ) |                    |
|                          | ) |                    |

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**MOTION TO INTERVENE**

Mark Burke, Intervenor (“Intervenor”), files this Motion to unseal the whole case and docket, currently marked as:

“The records you have queried are currently CONFIDENTIAL or this case has been SEALED. No further information regarding the below case will be disseminated until such time as the records are no longer confidential.”,



December 04, 2022 [Z16]

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| Case (Cause) Number | File Date | Court |
|---------------------|-----------|-------|
| 202259087-7         | 9/15/2022 | 127   |

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(Neither docket nor navigation is available to view for this lawsuit based on this unlawful “confidential” sealing, screenshot taken Dec. 4, 2022).

for the following reasons:-

**THE RECORD ESTABLISHES RULES UNDER 76A WERE NOT FOLLOWED BY THE COURT**

It is without doubt; the sealing of the above case violates court procedures in Texas Law. See; *Rice v. Lewis Energy Grp.*, No. 04-19-00234-CV, at \*11-13 (Tex. App. Oct. 28, 2020), “the trial court failed to apply the law correctly and it abused its discretion by ordering the permanent sealing of the court records in this case”, citing *Clear Channel Commc'ns*, 195 S.W.3d at 137 (reversing the trial court's order sealing court records when the procedures mandated by Rule 76a.3 were not followed); and, *Roane v. Dean*, No. 03-19-00308-CV, at \*4 (Tex. App. Apr. 30, 2020) (“Rule 76a provides the standard for sealing court records and provides that court records “are presumed to be open to the general public.” Tex. R. Civ. P. 76a(1).”).

**BACKGROUND**

This Application for Writ of Garnishment was filed in Harris County District Court on September 15, 2022.

The Intervenor, a blogger and investigative journalist, published the case on a blog at [LawsInTexas.com](https://lawsintexas.com)<sup>1</sup> (“LIT”) on the same day, including a copy of the Application for Writ of Garnishment and supporting Exhibits. (See; **EXHIBIT A**).

Upon revisiting the court docket on September 19, Intervenor noted the case had been completely sealed. Clearly, the timeline confirms the violation of Rule 76a, as completely sealing the docket after 4 days would not allow for compliance with the rule(s).

The Intervenor’s assumptions and reasoning why this Court decided to seal the case record in its entirety is provided on LIT’s blog ( see **Exhibit A**). That stated, it is not necessary to expand further in this Motion, as the

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<sup>1</sup> Direct link to blog article URL; <https://lawsintexas.com/rusty-hardin-and-ass-files-for-writ-of-garnishment-in-wrong-category-youre-busted/>

original Application for Garnishment and Exhibits were filed without being sealed (see **Exhibit A**).

In other words, this is a question of law, and one which is easily decided. Namely, the Court abused its discretion by sealing the case and not following mandated rules as confirmed by Texas case law, cited above.

### **ANY PERSON CAN INTERVENE**

As governed by Tex. R. Civ. P. 76a (“7. Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records.”).

### **STATUS OF THE CASE AND RESERVATION OF RIGHTS**

Intervenor and “general member of the public” only seeks to unseal the records and the docket at this time, in part, due to the unlawful “confidential” sealing, as Intervenor is currently unable to ascertain if the case is currently open or closed.

Furthermore, Intervenor cannot review any of the case docket records, to ascertain whether there is an actual sealing Order on the docket, see *Roane v. Dean*, No. 03-19-00308-CV, at \*4 (Tex. App. Apr. 30, 2020) (“Tex. R. Civ. P. 76a(1)(a)-(b). Rule 76a also requires that a motion to seal court records “shall be decided by written order,” and the sealing order shall state “the specific reasons for finding and concluding whether the showing required by paragraph 1, has been made.” Id. R. 76a(6).”).

As such, Intervenor *reserves his right* to amend his Motion to Intervene *as a right*, see *J. Fuentes Colleyville, L.P. v. A.S.*, 501 S.W.3d 239, 243 (Tex. App. 2016)), in part; ““Any party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” Tex. R. Civ. P. 60. Once a motion to strike has been filed, the burden shifts to the intervenor to show a *justiciable interest* in the lawsuit.”

In particular, “..a trial court abuses its discretion by striking a plea in intervention if the intervenor (1) could have brought the same action, or any

part of it, in its own name or could have defeated recovery, or some part of it, if the action had been brought against it, (2) the intervention would not complicate the case by excessively multiplying the issues, and (3) the intervention is almost essential to effectively protect the intervenor's interest. Guar. Fed. Sav. Bank, 793 S.W.2d at 657.

Here, Intervenor could repel any attempts by the Court to strike a plea in intervention, however, as the status of the case is unknown until the entire case and docket is unsealed, Intervenor reserves his right to amend his Motion and, if necessary, appeal and expresses so herein; 2027 S. Austin St., LLC v. Latour Condominiums, Inc., No. 07-19-00395-CV, at \*19 (Tex. App. Mar. 17, 2021) (“When a party moves for judgment on the verdict *without any reservation of rights or objections*, the party is affirming that the jury's findings find support in the evidence. *Russell v. Dunn Equipment, Inc.*, 712 S.W.2d 542, 545 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.). When a party moves for judgment on the jury verdict and the court renders

judgment as requested, the party is barred from subsequently complaining on appeal that the jury's findings have no support in the evidence or are factually insufficient. *Litton Indus. Prods., Inc. v. Gammage*, 668 S.W.2d 319, 322 (Tex. 1984). If a party desires to obtain a judgment yet reserve the right to complain on appeal, it must expressly say so in its motion. *First Nat. Bank of Beeville v. Fojtik*, 775 S.W.2d 632, 633 (Tex. 1989).”).

## **CONCLUSION**

In *Delaney v. University of Houston*, 835 S.W.2d 56, 65 (Tex. 1992) (“Texas Lawyer's Creed — A Mandate for Professionalism (adopted November 7, 1989), which states:

*“Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.”*”).

*The Texas Supreme Court states;*

*“Members of the legal profession have agreed to live under rules proclaiming that it is “a lawyer's duty to uphold legal process,” that “[a] lawyer's conduct should conform to the requirements of the law,” and that “[a] lawyer should demonstrate respect for the legal system and for those who serve it . . . .”*



The continued viability of the rule of law depends on the bench and bar adhering faithfully to these obligations. To do otherwise impugns the integrity of our judicial institutions and undermines the public's trust in their objectivity and reliability.

As judges and lawyers, we bear a sacred obligation to uphold the rule of law even when the law does not conform to what we believe it should be.

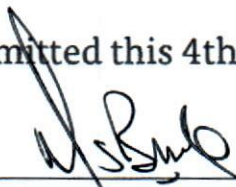
That duty includes withstanding the temptation to bend and abuse legal process to collect an earnestly desired result the law simply does not provide.

Those who underhandedly indulge that temptation dishonor both our profession and the rule of law."

- In re Texas, No. 15-0139, at \*5 (Tex. Apr. 15, 2016).

For the foregoing reasons, the Plaintiff's Motion should be granted.

RESPECTFULLY submitted this 4th day of December, 2022.



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