

CAUSE NO. 2023-07385

WAJHAT ALI KHAN § **IN THE DISTRICT COURT**
VS. § **295TH JUDICIAL DISTRICT**
GEORGE A. OGGERO § **OF HARRIS COUNTY, TEXAS**

**DEFENDANT’S MOTION FOR SANCTIONS UNDER
RULE 13 OF THE TEXAS RULES OF CIVIL PROCEDURE AND
CHAPTER 10 OF THE CIVIL PRACTICES AND REMEDIES CODE
AND BRIEF IN SUPPORT OF SAME**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, GEORGE A. OGGERO (“Movant” or “Oggero”), files this Motion for Sanctions Under Rule 13 of the Texas Rules of Civil Procedure and Chapter 10 of the Civil Practice and Remedies Code and Brief in Support of Same, requesting the court issue an order imposing sanctions upon the following parties and counsel:

- a. Wajhat Ali Khan (“Khan”)
- b. Ray L. Shackelford (“Shackelford”)

This motion seeks sanctions under Rule 13 of the Texas Rules of Civil Procedure and Chapter 10 of the Texas Civil Practice and Remedies Code for failing to meet the signatory certification requirements for filings in Texas. In support of the motion, Intervenor would respectfully show the Court the following.

BACKGROUND FACTS

1. This matter concerns a specific receivership asset, 9201 Wickford Drive, Houston, Texas 77024 (the “Property”).
2. The facts underlying this matter stem from the judgment and post-judgment actions in Cause No. 2019-23138, *Wei Tan v. K International Partners, Inc., et al.*

before the 295th Judicial District Court of Harris County, Texas (the “Receivership Case”).

3. On December 30, 2021, the Court signed an Agreed Order of Turnover and Appointment of Post-Judgment Receiver in the Receivership Case (the “Turnover Order”).

4. The Turnover Order required, in part, all third parties in possession of receivership assets to turn said assets over to the court-appointed Receiver. Movant, in terms of the Property, complied with this order on December 20, 2022, by executing a Warranty Deed in favor of the Receiver. A copy of said deed is attached hereto as Exhibit 1 and incorporated by reference herein.

5. On January 10, 2023, attorney Ray Shackelford filed a notice of appearance in the Receivership Case on behalf of Carenet Medical Diagnostics, Inc. (“Carenet”) as an “intervenor” although Shackelford did not actually file a plea in intervention. As Khan swears to in an affidavit, he is the president and sole shareholder of Carenet. Khan and Shackelford were present for the January 30, 2023, hearing and had notice of the Receiver’s motions, but raised no objection to the entry of the Agreed Order or the listing of the house for sale, presumably because as a known (and self-proclaimed) business associate of Romeo Kison (“Kison”), Khan, along with Shackelford, already anticipated filing these frivolous alternate proceedings against Movant.

6. Khan and Shackelford now seek to not only controvert the Turnover Order, but to also lay responsibility for any damages, which can only be characterized as superficial, to Khan, at the feet of Movant. Such evidence does not exist. Khan’s

claims are groundless and initiating this action against Movant is nothing more than malicious gamesmanship in the face of this Court's authority.

SIGNATURE CERTIFICATION STANDARDS

Chapter 10 of the Texas Civil Practice and Remedies Code

7. Chapter 10 of the Texas Civil Practice and Remedies Code allows this Court to sanction Khan and Shackelford for filing pleadings or motions lacking a reasonable basis in law or fact. *Unifund CCR Partners v. Villa*, 299 S.W. 3d 92, 97 (Tex. 2009); *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). Under Chapter 10, the act of signing a pleading or motion constitutes a certificate that, to the signatory's best knowledge, information, and belief, formed after reasonable inquiry, all of the following are true:

- a. The pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- b. Each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- c. Each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

- d. Each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

TEX. CIV. PRAC. & REM. C. §10.001. The filings by Khan and Shackelford violate Chapter 10.

8. Chapter 10 requirements explicitly apply to *each* claim, allegation, or denial in the pleading or motion. That is, each allegation and factual contention in a pleading or motion must have, or be likely to have, evidentiary support after a reasonable inquiry. *Low v. Henry*, 221 S.W.3d 609, 615–617 (Tex. 2007); *see also State Office of Risk Mgmt.v. Foutz*, 279 S.W.3d 826, 831 (Tex. App.—Eastland 2009, no pet.).

9. Accordingly, application of Chapter 10 cannot be defeated by claims that the signed document is pleaded in the alternative. Admittedly multiple allegations, which may even conflict, may be alleged in a pleading. There still must be, however, a reasonable basis for each alternative allegation. Alternative pleading is no justification for alleging a claim with no reasonable basis in fact or law “in the alternative” to a claim that does have support. *Low v. Henry*, 221, S.W.3d 609, 615 (Tex. 2007); *Trussell Ins. Servs. v. Image Solutions, Inc.*, 2010 Tex. App. LEXIS 9735, *7 (Tex. App.—Tyler 2010, no pet.) (mem. op.).

10. Chapter 10 is, by its own terms, limited to frivolous pleadings and motions. It does not encompass other types of documents. *R.M Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 709 (Tex. App.—Waco, 2008, pet. denied)]. By contrast, Rule 13,

discussed, below, applies to a “pleading, motion, *or other paper.*” *See* TEX. R. CIV. P. 13 (emphasis added).

Rule 13 of the Texas Rules of Civil Procedure

11. Rule 13 of the Texas Rules of Civil Procedure predates the frivolous pleading provisions found in Chapter 10 of the Civil Practice and Remedies Code. While the Texas Supreme Court is not allowed to adopt or amend rules that conflict with Chapter 10, that chapter does not bar application of Rule 13 to the extent that it does not conflict with Chapter 10. *See* TEX. CIV. PRAC. & REM. CODE § 10.006. Both Rule 13 and Chapter 10 may be in-play at the same time.

12. Rule 13 states that the act of signing a pleading, motion, or other paper (including an affidavit), amounts to a certification of certain matters contained in the instrument. Thus, the signers, whether attorneys or parties, certify that they have read the pleading, motion, or other paper. They also certify that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not either:

- a. Groundless and brought in bad faith; or
- b. Groundless and brought for the purpose of harassment.

TEX. R. CIV. P. 13.

13. Rule 13 thus requires violation of two elements, roughly characterized as:

- a. a subjective element (bad faith or intent to harass); and
- b. a more objective element (groundlessness), before sanctions may be imposed.

14. By this motion, Movant shows both elements. The imposition of sanctions under Rule 13 requires a showing that an instrument was not only groundless, but that it was signed with an improper purpose. TEX. R. CIV. P. 13; See *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 362–363 (Tex. 2014) (Rule 13 does not permit sanctions based on groundlessness alone).

15. In contrast, sanctions may be imposed under Chapter 10 when a suit is filed for an improper purpose, even though it is not groundless. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 369 (Tex. 2014); *Lake Travis Indep. Sch. Dist. v. Lovelace*, 243 S.W.3d 244, 257 (Tex. App.—Austin 2007, no pet.).

16. Civil Procedure Rule 13 also retains the language of the original rule, which provides:

Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt.

17. The First Court of Appeals rejected an argument that this much less important provision requires all Rule 13 proceedings to be treated as quasi-criminal contempt proceedings. The first sentence of Rule 13 addresses standards for pleadings generally. The sentence quoted above only “addresses particularly egregious actions ...that rule makers have determined *must* be dealt with as contemptuous conduct.” *Bradt v. Sebek*, 14 S.W.3d 756, 762 (Tex. App.—Houston [1st Dist] 2000, pet. denied) (original emphasis). As such, presenting concerns to a party or opposing counsel regarding the facts of a matter is not prohibited conduct. Indeed, such a presentation

triggers the duty to reasonably investigate the claims asserted. The failure to make such investigation is tantamount to contempt of court. This motion asks the Court to hold Khan and Shackelford in contempt to deter future offensive conduct and suffer the cost and expense of Movant, directly caused by Khan and Shackelford, so far.

18. The same due process concerns are applicable generally to imposition of sanctions under Rule 13 and Chapter 10. *See generally TransAmerican Nat. Gas. Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991) (discovery abuse case; explaining standards for just sanctions). The same standard of review applies to orders under both provisions—abuse of discretion. *Low v. Henry*, 221 S.W.3d 609, 614–617 (Tex. 2007). An appellate court may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling was arbitrary or unreasonable. *Cire v. Cummings*, 134 S.W.3d 835, 838, 47 Tex. Sup. Ct. J. 465 (Tex. 2004); *See Low v. Henry*, 221 S.W.3d 609, 614, 2007 Tex. LEXIS 320, *6, 50 Tex. Sup. J. 606. To determine if the sanctions were appropriate or just, the appellate court must ensure there is a direct nexus between the improper conduct and the sanction imposed. *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 882, 46 Tex. Sup. Ct. J. 604 (Tex. 2003) (citing *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917, 34 Tex. Sup. Ct. J. 701 (Tex. 1991)).

Reasonable Inquiry into Claims Required

19. Because both Chapter 10 of the Texas Civil Practice and Remedies Code and Rule 13 of the Texas Rules of Civil Procedure focus on the act of signing a pleading or motion, the offending conduct usually occurs before a case has been fully developed.

Even so, parties and their attorneys are required to explore their cases and contentions before they certify pleadings or other instruments. Rule 13 states that the certification of instruments is made “to the best of their knowledge, information, and belief formed after reasonable inquiry.” TEX. R. CIV. P. 13. Chapter 10 uses nearly identical language. *See* TEX. CIV. PRAC. & REM. CODE § 10.001 (“to the signatory’s best knowledge, information, and belief, formed after reasonable inquiry”).

20. In the context of both Rule 13 and Chapter 10, reasonable inquiry is defined as the amount of investigation that is reasonable under the circumstances of the case. An attorney will not necessarily be sanctioned for failing to examine all exonerating evidence, provided that a reasonable amount of investigation is undertaken in light of the circumstances. Those circumstances may include statute of limitations concerns and the amount of information available to parties before filing suit. *Griffin Indus. v. Grimes*, 2003 Tex. App. LEXIS 3439, **12–16 (Tex. App.—San Antonio 2003, no pet.) (amount of examination reasonable, given statute of limitations concerns). The sanctions requested by Movant are not taken lightly, especially against a member of the State Bar of Texas.

21. The requirement to conduct a reasonable inquiry is violated when attorneys or parties are put on notice that their contentions are inaccurate or insupportable and fail to act. For example, an attorney who possesses client medical records clearly showing that certain defendant doctors never prescribed a particular drug, and then signs a complaint containing allegations against those doctors for negligently prescribing the drug, has failed in the duty of inquiry. *Low v. Henry*, 221 S.W.3d 609,

615–617 (Tex. 2007) (sanctioned attorney possessed records for several months). Likewise, if a claim is made without evidence, where existing evidence dictates an opposite result or reality, sanctions are warranted.

22. A party cannot avoid sanctions by claiming he or she was not actually aware of facts making a claim groundless if he or she has made no inquiry into the actual facts. For instance, in a negligent entrustment action (involving a golf cart accident), a plaintiff based her case on a previous collision. Even after discovery had put her on notice that what she had heard about the first collision was wrong, she made no real effort to determine the actual facts. This lack of inquiry supported the trial court’s imposition of Rule 13 sanctions. *Monroe v. Grider*, 884 S.W.2d 811, 819 (Tex. App.—Dallas 1994, writ denied).

Groundless or Unsupported Contention

23. Certifications under either Civil Procedure Rule 13 or Chapter 10 imply that the factual and legal allegations, contentions, and denials contained within the pleading or other instrument are proper. TEX. R. CIV. P. 13; TEX. CIV. PRAC. & REM. CODE § 10.001(2)–(4). Rule 13 states this principle by requiring the signer to certify that the pleading, motion or other paper is “not groundless.” For the purposes of the rule, “groundless” means having “no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law.” TEX. R. CIV. P. 13. Khan and Shackelford are not arguing for the extension, modification, or reversal of existing law.

24. Chapter 10 takes a similar approach, although using more detailed language. First, the signatory certifies that each claim, defense, or other legal contention in the pleading or motion is warranted either by existing law, or more ambiguously, by a “nonfrivolous argument” that existing law should be extended, modified or reversed, or that new law should be established. TEX. CIV. PRAC. & REM. CODE § 10.001(2); see *Thompson v. Weaver*, 429 S.W.3d 897, 904–905 (Tex. App.—Tyler 2014, no pet. h.) (sanctions denied when party’s position “not thoroughly void of legal rigor”). The “nonfrivolous argument” under Chapter 10 has been construed as essentially the same as the “good faith argument” referred to in Rule 13. See *Blackburne & Brown Mortg. Fund I v. Atmos Energy Corp.*, 2007 Tex. App. LEXIS 9071, *22–*23 (Tex. App.—Fort Worth 2007, pet. denied) (mem. op.); *Elwell v. Mayfield*, 2005 Tex. App. LEXIS 6356, *18–*19 (Tex. App.—Waco 2005, pet. denied) (mem. op.).

25. Next, each allegation or factual contention is certified to have evidentiary support. In the case of a specific allegation or contention, the signatory meets these requirements if a particular allegation or contention “is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” TEX. CIV. PRAC. & REM. CODE § 10.001(3). The law is looking for more than zealous advocacy; rather it seeks to disparage reckless litigation with no reasonable expectation of evidentiary support.

26. Denials must also be warranted under Chapter 10 standards. The signer of a pleading or motion certifies either that each denial of a factual contention is

warranted by the evidence or for a specified denial, it is “reasonably” based on a lack of information and belief. TEX. CIV. PRAC. & REM. CODE § 10.001(4).

27. In some cases (like the one, here), there is a clear lack of a reasonable basis for the sanctioned party’s legal position. For example, in one case, a party argued that the existence of long-term leases was a good defense to his purported breach of contract, while at the same time asserting that he had had no knowledge of those leases when he breached the contract. The reviewing court easily found that his contention had no legal or factual basis, and also defied “common sense.” *In re Lewis*, 2010 Tex. App. LEXIS 338, *10–*11 (Tex. App.—Dallas 2010, no pet.) (mem. op.). In another case, the Fort Worth Court of Appeals upheld an \$18,000 sanctions award against an attorney for filing a counterpetition against a third party in a divorce action for interference with the familial relationship. The counterpetition was essentially an action for alienation of affections, couched in other terms, and was, therefore based on a theory that had been abolished by the Family Code. *Stites v. Gillum*, 872 S.W.2d 786, 787–796 (Tex. App.—Fort Worth 1994, writ denied). In this case, Khan and Shackelford were present for the January 30, 2023, hearing and had notice of the Receiver’s motions, but raised no objection to the entry of the Agreed Order or the listing of the house for sale, only to turn around a few days later and seek a temporary restraining order and temporary injunction against Movant and his “assigns” (presumably the Receiver) from transferring the house, even though Khan acknowledges in his petition that the Receiver holds title to the property and that the

property is in custodia legis. This position defies common sense and is fertile grounds for sanctions.

Improper Purpose

28. Both Civil Procedure Rule 13 and Chapter 10 certifications require an assessment of the state of mind or intentions of the person signing the pleading or other instrument. Under Chapter 10, a signature is a certification that a pleading or motion is not being presented for any improper purpose. Improper purposes include intending to harass or to cause unnecessary delay or needless increase in the cost of litigation. TEX. CIV. PRAC. & REM. CODE § 10.001(1); see *Dike v. Peltier Chevrolet, Inc.*, 343 S.W.3d 179, 193–194 (Tex. App.—Texarkana 2011, no pet.) (no evidence of improper purpose). Intent for purposes of Rule 13 may be proven by circumstantial evidence as well as direct evidence. *Scheel v. Alfaro*, 406 S.W.3d 216, 227 (Tex. App.—San Antonio 2013, pet. denied).

29. An improper purpose may be found in a variety of circumstances. One complex case involved former church members attempting to obtain financial records of the church. In that case, sanctions were justified, among other reasons, because the sanctioned parties rebuffed multiple efforts made by the church to end the dispute. For instance, the parties did not respond to the church’s offer to allow them to inspect and copy records that were relevant to their expressed concerns. After ignoring the offer, the sanctioned parties then filed a motion to compel production. The appellate court concluded that the parties not only “lacked any legal basis for various allegations and claims, but also that they were more interested in litigating than they

were in actually inspecting the Church's financial records." *Price v. Schroeder*, 2010 Tex. App. LEXIS 3888, **41–43 (Tex. App.—Austin 2010, no pet.) (mem. op.). Notably, Khan and Shackelford, being present in court on January 30, 2023, having heard the Honorable Donna Roth's admonishments and hardline expectations going forward, still chose to file a frivolous lawsuit.

30. In another case, the Texas Supreme Court upheld sanctions against a party who asserted claims that were time-barred. *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 370 (Tex. 2014). Further, sanctions were justified in a case in which the filing of a lawsuit was mainly intended to unnecessarily prolong the litigation and to improperly circumvent an imminent adverse ruling from another trial court poised to finally dispose of the same legal issues. *Law Offices of Windle Turley, P.C. v. French*, 164 S.W.3d 487, 491–492 (Tex. App.—Dallas 2005, no pet.); see TEX. CIV. PRAC. & REM. CODE § 10.001(1).

31. Similarly, sanctions were upheld against the attorney of a plaintiff who sued a defendant in one county and, after the court there determined that Texas did not have personal jurisdiction over the defendant, filed the same case in three other counties without changing the jurisdictional allegations. *Corea v. Bilek*, 362 S.W.3d 820, 824–827 (Tex. App.—Amarillo 2012, no pet.). Filing a nonsuit for an improper purpose is also subject to sanctions. *Liles v. Contreras*, 547 S.W.3d 280, 296 (Tex. App.—San Antonio 2018, pet. filed) (sanctions were upheld when filing nonsuit was part of a larger collusive scheme to avoid court objection to settlement).

32. To justify sanctions under Civil Procedure Rule 13, the offending instrument must not only be groundless but must also be either “brought in bad faith” or “brought for the purpose of harassment.” TEX. R. CIV. P. 13. The concept of “bad faith” under Rule 13 has been held to mean not simply bad judgment or negligence, but the conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose. *Mobley v. Mobley*, 506 S.W.3d 87, 94–95 (Tex. App.—Texarkana 2016, no pet.). A party acts in bad faith when discovery puts that party on notice that the party’s understanding of the facts may be incorrect, and no reasonable inquiry is made before a pleading is filed. *Monroe v. Grider*, 884 S.W.2d 811, 819 (Tex. App.—Dallas 1994, writ denied).

CONCLUSION

33. Despite being present for the final adjudication, Khan continues to attempt to prolong and circumvent that which this Court, and the parties to the Receivership Case, have already agreed upon in writing and in open court. He refuses to play by the rules of civil lawsuits established by our Legislature and Texas Supreme Court. He refuses to obey even a single Order of this Court. He believes the rules do not apply to him, and his conduct bears this out. As a result, Court time and resources have been epically wasted. Movant has incurred many costly hours of his time in being subjected to and damaged by Khan’s actions. As a member of the State Bar, Shackelford knows better than to engage in such improper conduct. The Court has been exceedingly patient during this entire process, but the time for patience is over.

34. It is time. It is time for the Court to put a stop to these outrageous shenanigans. Strong sanctions are required. Strong sanctions are appropriate. Strong sanctions are reasonable and necessary. Strong sanctions are mandated by the facts of this case and the law. This case is the very type of misuse of our judicial system for which Rule 13 and Section 10 sanctions were created. If they are not imposed, not only will Khan, et al continue to laugh at this Court and abuse the process, it will render Rule 13 and Chapter 10 meaningless. It is time to put a stop to it. The time is now.

PRAYER

Movant therefore requests that, after notice and hearing, the Court enter appropriate sanctions against Khan and Shackelford as follows:

- a. Award Movants reasonable attorney's fees and expenses in preparing this motion as authorized by TEX. CIV. PRAC. & REM. CODE Sec. 10.002(c) and TEX. R. CIV. P. RULE 13;
- b. Award Movants reimbursement for out-of-pocket expenses incurred as a result of this litigation and related lawsuits;
- c. Sanction each of the Respondents that they be enjoined from filing any additional pleadings or motions in litigation against Gabrielle Hansen without first obtaining the permission of this Court, in order to deter and prevent further groundless and harassing litigation being filed against her;
- d. Sanction both Khan and Shackelford by awarding Movant George Oggero his reasonable attorney's fees which were incurred in this case (and all related cases) by reason of the Respondents' violations of Chapter 10 and Rule 13; and

- e. Such other and further sanctions which Movant may show are appropriate and proper under Chapter 10 and Rule 13.

Respectfully submitted,

THE OGGERO LAW FIRM



George A. Oggero
Attorney for George A. Oggero
Texas Bar No.: 24060360
1220 Blalock Rd., Suite 300
Houston, Texas 77055
Phone: 713.364.5759
Fax: 844.438.6546
Email: george@golawtexas.com

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on February 14, 2023.

Ray L. Shackelford by electronic filing manager at rshackctic@yahoo.com.

Preston T. Kamin by electronic filing manager at pkamin@grayreed.com.

Jeremy Walter by electronic filing manager at jwalter@grayreed.com.

With courtesy copies, by electronic filing manager, to:

Herrick Sovany herrick@sovanylaw.com

Clyde J. "Jay" Jackson III jackson@burfordperry.com

Travis Vargo tvargo@vargolawfirm.com

Victoria G. Whiddon victoria@sovanylaw.com

Brian S. Humphrey II brian@htx-law.com

F. Andino Reynal

areynal@frlaw.us



George A. Oggero
Attorney for George A. Oggero

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George Oggero on behalf of George Oggero
Bar No. 24060360
george@golawtexas.com
Envelope ID: 72769636
Status as of 2/15/2023 8:49 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Rae LCuddihy		rcuddihy@grayreed.com	2/14/2023 7:22:02 PM	SENT
Ray LShackelford		rshackctc@yahoo.com	2/14/2023 7:22:02 PM	SENT
Jackie Kish		jkish@grayreed.com	2/14/2023 7:22:02 PM	SENT
Michael Poynter		mpoynter@vargolawfirm.com	2/14/2023 7:22:02 PM	SENT
Preston T.Kamin		pkamin@grayreed.com	2/14/2023 7:22:02 PM	SENT
Travis Vargo		tvargo@vargolawfirm.com	2/14/2023 7:22:02 PM	SENT
Jeremy Walter		jwalter@grayreed.com	2/14/2023 7:22:02 PM	SENT