

**NO. 01-24-00292-CV**

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**IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS  
HOUSTON, TEXAS**

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**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE,  
Appellant,**

**v.**

**CHARLOTTE GONZALEZ, AS DEPENDENT ADMINISTRATOR,  
Appellee.**

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On Appeal from Probate Court No. 1 of Harris County, Texas  
Trial Court Cause No. 498670

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**APPELLEE'S BRIEF**

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**MCGUIRE & ROMAN, PLLC**

By: /s/ Brian D. Roman

Brian D. Roman

State Bar No. 24037386

Email: [roman@mcguireroman.net](mailto:roman@mcguireroman.net)

Robin D. McGuire

State Bar No. 24031463

Email: [mcguire@mcguireroman.net](mailto:mcguire@mcguireroman.net)

18726 Duke Lake Drive

Spring, Texas 77388

Tel. 832.605.5914

**ATTORNEYS FOR APPELLEE,  
CHARLOTTE GONZALEZ**

**ORAL ARGUMENT REQUESTED**

## IDENTITY OF PARTIES AND COUNSEL

Appellant: Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMCI, Mortgage Pass-Through Certificates, Series 2005-WMC1 (“Deutsche Bank”)

Appellant’s Counsel: Johnetta Lang  
Texas Bar No. 24036943  
Email: [jlang@logs.com](mailto:jlang@logs.com)  
Ronny George  
Texas Bar No. 24123104  
Email: [rgeorge@logs.com](mailto:rgeorge@logs.com)  
Grant Tabor  
Texas Bar No. 24027905  
Email: [TXAttorneys@logs.com](mailto:TXAttorneys@logs.com)  
LOGS Legal Group  
13105 Northwest Freeway, Suite 960  
Houston, Texas 77040  
Tel. (713) 462-2565  
Fax: (847) 879-4854

Appellant’s Trial Counsel: H. Gray Burks IV  
Texas Bar No. 03418320  
LOGS Legal Group  
13105 Northwest Freeway, Suite 960  
Houston, Texas 77040  
Email: [gburks@logs.com](mailto:gburks@logs.com)  
Tel. (713) 462-2565  
Fax: (847) 879-4854

Renee Casas  
Texas Bar No. 24107728  
Wright Law Group, PLLC  
3120 Southwest Freeway, Suite 101  
Houston, Texas 77098  
Email: [rnc@replevin.com](mailto:rnc@replevin.com)  
Tel. (855) 737-5384

Appellee: Charlotte Gonzalez, as Dependent Administrator

Appellee's Counsel: Brian D. Roman  
State Bar No. 24037386  
Email: [roman@mcguireroman.net](mailto:roman@mcguireroman.net)  
Robin D. McGuire  
State Bar No. 24031463  
Email: [mcguire@mcguireroman.net](mailto:mcguire@mcguireroman.net)  
MCGUIRE & ROMAN, PLLC  
18726 Duke Lake Drive  
Spring, Texas 77388  
Tel. 832.605.5914

Appellee's Probate Counsel: D. Paul Fairfield  
Texas Bar No. 24036545  
Email: [paul@fairfield-legal.com](mailto:paul@fairfield-legal.com)  
The Fairfield Law Firm  
3610 Green Meadows  
Pasadena, Texas 77505  
Tel. (281) 487-1645

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## **STATEMENT OF THE CASE**

Appellee disagrees with Appellant’s statement of the procedural history of the case. Appellant’s statement of the case contains argument, is misleading and/or incorrect and includes irrelevant information. Accordingly, Appellee submits the following as its Statement of the Case:

Appellant filed its Authenticated Secured Claim (the “Claim”) in Cause No. 498670, in the Estate of Reyes Gonzalez, Jr., Deceased (the “Main Case”). (CR 12-58). Appellee rejected Appellant’s Claim. (CR 59-60). Appellant then initiated a new lawsuit by filing its Original Petition to Enforce Claim, which was assigned Cause No. 498670-401 (the “Ancillary Case”). (App. 12). Appellee filed her Original Answer and Motion to Dismiss in the Ancillary Case wherein Appellee asserted that Appellant’s Claim should be dismissed based upon limitations. (App. 13). Appellant failed to respond to Appellee’s Motion to Dismiss. The Probate Court granted Appellee’s Motion to Dismiss and barred Appellant’s Claim for failure to timely commence suit. (App. 14).

Appellee then filed her Motion to Discharge Lien in the Main Case, asserting that Appellant’s mortgage lien should be discharged because Appellant’s Claim was barred in the Ancillary Case. (CR 61-66). Appellant failed to respond to Appellee’s Motion to Discharge Lien. On January 12, 2024, the Probate Court granted Appellee’s Motion to Discharge Lien and ordered that Appellant’s mortgage lien be discharged and removed from the property (the “Lien Discharge Order”). (CR 69-71; App. 1).

## **STATEMENT ON ORAL ARGUMENT**

The Court should grant oral argument because it would give the Court a more complete understanding of the facts presented in this appeal and aid the Court in deciding this case. The order being appealed was decided on the basis of the Probate Court's ruling on Appellee's motion to dismiss in the Ancillary Case, which is not part of the clerk's record in this appeal. Thus, the Court might find it beneficial to hear oral argument.



## **ISSUES PRESENTED**

Whether the Probate Court abused its discretion in granting Appellee's motion to discharge lien based upon the Probate Court's prior ruling in the Ancillary Case ordering that Appellant's Claim be barred in its entirety.

*Reply to Appellant's Issue No. 1:* The relevant inquiry here is whether the Probate Court abused its discretion in granting the motion to discharge lien, not whether Appellee, as dependent administrator, violated Appellant's due process rights by filing the motion in first instance.

*Reply to Appellant's Issue No. 2:* In its second issue, Appellant appears to be seeking an advisory opinion on the proper process to adjudicate its Claim in the probate case, which has no relevance to whether the Probate Court abused its discretion in granting Appellee's motion to discharge lien.

*Reply to Appellant's Issue No. 3:* Appellant's third issue also appears to seek an advisory opinion on matters not relevant to this case. Appellant's third issue incorrectly assumes that it was entitled to service of citation on its registered agent in connection with Appellee's motion to discharge lien. As with the other two issues, Appellant's third issue is simply not relevant to whether the Probate Court abused its discretion in granting Appellee's motion to discharge lien.

## STATEMENT OF FACTS

Appellant's Statement of Facts is misleading, contains argument and unsupported allegations of fact, cites to evidence that is not part of the clerk's record and uses made up terms to hide or obscure its intentional failures to respond. Appellee challenges all factual statements made in paragraphs 2-5 of Appellant's Statement of Facts pursuant to Texas Rule of Appellate Procedure 38.1(g).

### **A. Action on Appellant's Claim**

On May 4, 2023, Appellant, Deutsche Bank, filed its Claim in the Main Case. (CR 12-58). Deutsche Bank's Claim was filed by attorney Renee Casas. (CR 12-15). Pursuant to Rule 8 of the Texas Rules of Civil Procedure, and by virtue of the fact that no other attorney was listed on the pleading, Ms. Casas was the sole and lead counsel of record for Deutsche Bank until February 22, 2024, when Deutsche Bank filed a Notice of Appearance and Designation of Lead Counsel. Because Ms. Casas has not sought withdrawal and no motion to substitute counsel has been filed by Deutsche Bank, Ms. Casas remains an attorney of record for Deutsche Bank in both the Main Case and the Ancillary Case. *See* Tex. R. Civ. P. 10; *see also* Rule 9.1 of the Local Rules of the Probate Courts of Harris County, Texas.

Pursuant to section 355.051 of the Texas Estates Code, Appellee, Charlotte Gonzalez, rejected Appellant's Claim on May 26, 2023. (CR 59-60). After Appellee rejected Appellant's Claim, Appellant had ninety (90) days, or until August 24,

2023, to file suit challenging the rejection of its Claim. *See* TEX. ESTATES CODE § 355.064; *see also Andrews v. Aldine Indep. Sch. Dist.*, 116 S.W.3d 407, 410 (Tex. App.—Houston [14th Dist.] 2003) (Once a claim against an estate is rejected, the claimant must file suit within 90 days or the claim is forever barred.).

On August 29, 2023, five days after the ninety-day deadline, Appellant filed its Original Petition to Enforce Claim (the “Original Petition”), thereby initiating the Ancillary Case. (App. 12). On October 4, 2023, Appellee filed her Original Answer and Motion to Dismiss in the Ancillary Case. (App. 13). Appellant failed to respond to Appellee’s Motion to Dismiss. On October 26, 2023, the Probate Court granted Appellee’s Motion to Dismiss and signed its *Order on Defendant’s Motion to Dismiss* (the “Dismissal Order”), barring Appellant’s Claim. (App. 14).

**B. Appellee’s Motion to Discharge Lien**

On December 7, 2023, Appellee filed her *Motion to Discharge Lien on 13314 Knoll Crest Street, Houston Texas 77015* in the Main Case because her attempt to sell the property pursuant to the Probate Court’s prior sale order was unsuccessful due to Appellant’s purported lien. (CR 61-66). Appellee filed and served her Motion to Discharge Lien and Notice of Submission on December 7, 2023. (CR 61-68). The Automated Certificates of eService attached to the Motion to Discharge Lien and Notice of Submission show that Ms. Casas was served at the email address

listed in Deutsche Bank's pleadings in both cases, [rcasas@LOGS.com](mailto:rcasas@LOGS.com). (CR 247-258).

Appellant failed to respond to Appellee's motion to discharge lien. On January 12, 2024, the Probate Court granted Appellee's motion to discharge lien and entered the Lien Discharge Order. (CR 69-71; App. 1). On April 11, 2024, Appellant filed its untimely Notice of Appeal. (CR 259-261).

### **SUMMARY OF THE ARGUMENT**

The Probate Court properly granted Appellee's motion to discharge lien. The Probate Court's decision was based on the Probate Court's prior decision in the Ancillary Case, wherein the Probate Court barred Appellant's Claim pursuant to section 355.064 of the Texas Estates Code and well-established case law. Pursuant to *Andrews*, the Probate Court correctly granted Appellee's motion to discharge lien and discharged Appellant's purported mortgage lien. *Andrews*, 116 S.W.3d at 410-12.

The Probate Court's actions in granting the motion to discharge lien were based on relevant statutory code provisions and controlling case law. Thus, it cannot be said that in granting the motion, the Probate Court's actions were unreasonable, arbitrary or without reference to any guiding rules or principles. Accordingly, the Probate Court did not abuse its discretion in granting the motion.

Appellant's argument that Appellee was required to file a separate suit and serve Appellant with citation is as wrong as it is irrelevant. Appellant's argument might have some application or relevance to the Dismissal Order, but not the Lien Discharge Order being appealed. By the time Appellee filed her motion to discharge lien, Appellant's Claim had been fully and properly adjudicated and Appellant's lawsuit had been dismissed. The Lien Discharge Order, which was entered because of the Dismissal Order, simply gave effect to the Dismissal Order.

Even assuming Appellant's issue has some relevance to the Lien Discharge Order being appealed, Appellant's argument fails because Appellant was a mortgagee, not a vendor. Therefore, its Claim was subject to the claims process in a probate administration and Appellant was required to file suit to establish its Claim after Appellee rejected the same. Because Appellant failed to timely file suit, its Claim was barred, which in turn, extinguished Appellant's lien. *Andrews*, 116 S.W.3d at 412. No further lawsuit was or is required to discharge Appellant's lien.

Next, Appellant argues that because the Harris County Clerk failed to provide the notice contemplated in Texas Rule of Civil Procedure 306a(3), this Court should vacate the Lien Discharge Order. Whether the Harris County Clerk gave such notice or not has nothing at all to do with whether the Probate Court abused its discretion in granting Appellee's motion to discharge lien. Thus, Appellant's argument is

inconsequential and irrelevant to the issue of whether the Probate Court abused its discretion.

Appellant's next argument is also meritless and unavailing. Appellant makes the outlandish claim that the Lien Discharge Order should be vacated because Appellee's rejection of the Claim violated statutory authority. However, section 355.051 of the Texas Estates Code expressly grants Appellee the power to allow or reject claims. TEX. ESTATES CODE § 355.051. Appellant's assertion that its purported lien cannot be disallowed because it elected to have the claim treated as a preferred debt and lien under section 355.151 of the Texas Estates Code is equally frivolous. Appellant conveniently ignores the condition precedent to allowance of the claim under section 355.151 which states "**if it is a valid lien.**" See TEX. ESTATES CODE § 355.151(a)(2) (emphasis added). Because Appellee determined that Appellant's lien was not valid, she properly rejected the Claim pursuant to section 355.051 of the Texas Estates Code.

Finally, Appellant contradicts its earlier argument that its Claim should have been allowed under section 355.151 of the Texas Estates Code by asserting that its Claim is not a claim for money. Appellant further argues that it was not required to present its claim to the administrator before filing suit. Both of these arguments are incorrect because Appellant does not hold a vendor's lien. A mortgagee like Appellant must go through the administrator when the mortgagor dies, whether the

mortgagee wants the payments and money on the mortgage or whether it wants to foreclose on its lien. *Walton v. First Nat'l Bank of Trenton*, 956 S.W.2d 647, 653 (Tex. App.—Texarkana 1997, pet denied). Further, it has long been recognized by Texas courts that a claim secured by a mortgage is a “money claim,” within the ambit of section 355 of the Texas Estates Code even though it contains a power of sale by way of a non-judicial foreclosure. *Rivera v. Morales*, 733 S.W.2d 677, 679 (Tex. App.—San Antonio 1987, writ ref'd n.r.e.). Thus, Appellant’s assertion that the claims process can have no effect on its mortgage lien is without merit.

Accordingly, the Probate Court properly exercised its discretion in granting Appellee’s motion to discharge lien. Therefore, this Court should affirm the Probate Court’s order in all respects.

## **ARGUMENT**

### **1. The Probate Court properly granted the motion to discharge lien.**

#### **A. Standard of Review.**

Pursuant to Texas Rule of Appellate Procedure 9.7, Appellee adopts by reference the Standard of Review paragraph in Appellant’s Brief, which is contained on page xiv of Appellant’s Brief as if set forth fully herein.

#### **B. Lien Discharge Order was based on entry of Dismissal Order barring Appellant’s Claim in Ancillary Case.**

Appellant opted for probate court jurisdiction in lieu of foreclosure (probate or foreclosure being a mortgagee’s only two options) by filing its Authenticated

Secured Claim on May 4, 2023, in the Main Case. (CR 12-58). By doing so, Appellant knowingly subjected all its claims, including enforcement of its purported lien and foreclosure, to the rules governing enforcement of claims in probate proceedings. *Andrews*, 116 S.W.3d at 410. The “claims allowance process” in probate court provides rules for presentment of claims, action on claims, court approval of claims, classification and priority of claims and payment. *See generally* TEX. ESTATES CODE §§ 355.001-355.160. After Appellee rejected its claim, Appellant had until August 24, 2023, to file suit to challenge the rejection of its claim and to establish the validity of its claims. *See* TEX. ESTATES CODE § 355.064.

Five (5) days after that deadline, on August 29, 2023, Appellant filed its Original Petition in the Ancillary Case, which defined the issues for trial. *See Murray v. O & A Express Inc.*, 630 S.W.2d 633, 636 (Tex. 1982); (App. 12). In its Original Petition, Appellant sought, among other things, approval and allowance of its claim in full as a preferred debt and lien against the Property, authorization for non-judicial public sale of the Property, and authorization for public sale of the Property. (App. 12). Notably, the genesis of Appellant’s Claim is a home equity loan (the “Note”) executed solely by Reyes Gonzalez, Jr. (“Decedent”). (CR 16-21). The Note, which was attached to Appellant’s Claim and Original Petition, shows that Decedent is the sole obligor. *See id.*



After Appellant failed to respond to Appellee's Motion to Dismiss, the Probate Court granted the motion and signed the Dismissal Order on October 26, 2023. (App. 14). The Dismissal Order not only barred Appellant's monetary claim for moneys due on the Note, it also barred and/or extinguished Appellant's purported lien and its ability to foreclose on the property. *See Andrews*, 116 S.W.3d at 412. The Dismissal Order forever barred Appellant's Claim against Decedent (the sole obligor), including any rights to enforce or foreclose its purported lien. *See id.* at 412. Because Appellant can no longer establish a claim against Decedent on the Note (and there are no other obligors), Appellant's purported lien is unenforceable and invalid. *See Reser v. Century Trading Co.*, 618 S.W.2d 917, 920 (Tex. Civ. App.—Fort Worth 1981, writ ref'd n.r.e.) (A lien cannot exist in the absence of a debt).

On December 7, 2023, Appellee filed her motion to discharge lien in the Main Case because her attempt to sell the property pursuant to the Probate Court's prior sale order was unsuccessful due to Appellant's purported lien. (CR 61-66). The motion and corresponding notice of submission were served on Appellant's lead counsel at the time, Ms. Casas. (CR 61-68). Appellant failed to respond to the motion. The motion to discharge lien was based on the Dismissal Order which barred and extinguished Appellant's lien. (CR 61-66); *see also See Andrews*, 116 S.W.3d at 412. Given the Dismissal Order, which was based on a statutory

limitations period, the Probate Court granted Appellee's motion to discharge lien and ordered that it be removed from the property. The Probate Court's ruling was reasonable and in accordance with statutory provisions and well-established case law. Thus, the Probate Court did not abuse its discretion in granting the motion to discharge lien.

**2. Appellant was afforded due process; a new suit was not required.**

In its brief, Appellant argues that it was denied due process because the Appellee did not file a new suit to quiet title. (Appellant's Br. 1-3.) A new suit was not required in this case because Appellant's Claim, including its purported lien, had already been fully adjudicated by the Probate Court in the Ancillary Case as a part of the claims process as described above.

It is undisputed that Appellant held a mortgage lien as opposed to a vendor's lien. A mortgagee like Appellant does not hold superior legal title to the property, and it is not entitled to possession, rentals or profits of the property. *See Flag-Redfern Oil Co. v. Humble Exploration Co.*, 744 S.W.2d 6, 8 (Tex. 1987) (The mortgagor retains legal title and the mortgagee holds equitable title.). Because Texas follows the lien theory of mortgages, the lien under a deed of trust is merely a security for the underlying debt and conveys neither title nor the possessory right of the mortgagor in the land to the mortgagee. *Bank of N.Y. Mellon Trust Co. v. Cook*,

No. 5:18-CV-240-H, 2020 WL 13469391, at \*19 (N.D. Tex. Jan. 7, 2020) (concluding that a home equity lender's sole remedy is foreclosure).

An express vendor's lien is different from a regular mortgage, like Appellant's. *Walton*, 956 S.W.2d at 652 (citing *Jackson v. Ivory*, 30 S.W. 716, 718 (Tex. Civ. App. 1895, no writ). A claim based on a mortgage **is subordinate to the administration of the estate through the probate code.** *Id.* (emphasis added). A mortgagee such as Appellant must go through the administrator when the mortgagor dies, whether the mortgagee wants the payments and money on the mortgage or **whether it wants to foreclose on its lien.** *See id.* at 653 (emphasis added). In contrast, an express vendor's lien is not subordinate to the administration of an estate because the vendor retains superior title to the property, and a vendee's death cannot transform his title into something different from what he had before his death. *Id.*

A vendor is not required to file a claim in probate court because an action for possession and title to property due to an express vendor's lien is not considered a claim for money. *Id.* (citing *Lusk*, 625 S.W.2d at 776). Conversely, it has long been recognized by Texas courts that a claim secured by a mortgage is a "money claim," within the ambit of section 355 of the Texas Estates Code even though it contains a power of sale by way of a non-judicial foreclosure. *Rivera*, 733 S.W.2d at 679.

Appellant cannot, and indeed has not, sued for possession and/or title to the property because it merely holds equitable title, not superior legal title. Appellant's

sole remedy as mortgagee was to sue for the money owed on the Note and/or to foreclose its purported lien. *See Cook*, 2020 WL 13469391, at \*20. To exercise this remedy, however, Appellant was required to file a claim and follow the provisions of the Texas Estates Code, including section 355.064, which it did not do. *See Walton*, 956 S.W.2d at 652. Having failed to timely file suit on its rejected claim, Appellant's Claim was rightly barred by the Probate Court.

Appellant chose probate court jurisdiction which provided Appellant an opportunity to present its Claim and to litigate the rejection of its Claim. There can be no doubt that Appellant was afforded due process under the Texas Estates Code; Appellant's failure to avail itself of such due process does not entitle it to a mulligan or the proverbial "second bite at the apple."

**3. Notice of the judgment is irrelevant to an abuse of discretion inquiry.**

Appellant argues that because the Harris County Clerk failed to provide the notice contemplated in Texas Rule of Civil Procedure 306a(3), this Court should vacate the Lien Discharge Order. (Appellant's Br. 3-5.) Whether the Harris County Clerk gave such notice or not is irrelevant to the issue of whether the Probate Court abused its discretion in granting Appellee's motion to discharge lien. As stated in Rule 306a, the only consequence for the failure of the clerk to issue such notice is that it could extend the deadline for a party to file post judgment motions. *See TEX. R. CIV. P. 306a(3), (4)*. Failure of the Harris County Clerk to issue notice of the Lien

Discharge Order does not amount to a violation of due process nor does it have any bearing on whether the Probate Court abused its discretion in entering the order in the first place. Thus, Appellant's argument fails as a matter of law.

**4. Appellee's rejection of Claim did not violate statutory authority.**

In its Brief, Appellant asserts in a conclusory fashion that its purported lien cannot be discharged because of section 355.151 of the Texas Estates Code. (Appellant's Br. 5.) Section 355.151 requires a claimant to elect how it wants the estate to treat its secured claim for money. TEX. ESTATES CODE § 355.151. Appellant asserts that this section **requires** allowance of its claim merely because it elected to have its claim treated as a preferred debt and lien against the property. (Appellant's Br. 5.) Appellant's misinterpretation of the plain words of the statute ignores the condition precedent to allowance of the claim which states "**if it is a valid lien.**" See TEX. ESTATES CODE § 355.151(a)(2) (emphasis added). As a part of her evaluation of Appellant's Claim, Appellee determined that the lien in dispute was **not** a valid lien. Thus, Appellee properly rejected the Claim pursuant to section 355.051 of the Texas Estates Code, which expressly grants an administrator the power to allow or reject claims. TEX. ESTATES CODE § 355.051.

Appellant further argues that its purported lien cannot be voided by a barred claim under section 355.064(a). (Appellant's Br. 5.) Appellant's reliance on *Wyatt v. Morse* is misplaced as that case only deals with priorities of claims against the

estate. *Wyatt v. Morse*, 129 Tex. 199, 102 S.W.2d 396, 397 (1937) (The sole question presented is whether plaintiffs' secured claim has priority over first and second class claims against the estate.)

Thus, Appellant's argument that Appellee's rejection of its Claim violated statutory authority fails as a matter of law. There can be no doubt that Appellee acted in good faith and within her statutory authority in rejecting Appellant's Claim.

**5. Appellant's Claim is a money claim, it cannot escape the claims process.**

Appellant's final argument is one that only works if Appellant held a vendor's lien as opposed to the mortgage lien it actually held. Without saying so directly, Appellant obliquely argues that it was not required to present its Claim to Appellee at all, which is both incorrect as shown above and contrary to its assertion that its Claim should have been allowed under section 355.151 of the Texas Estates Code.

In its Brief, Appellant attempts to characterize its mortgage lien as a vendor's lien even though it judicially admitted in its Brief that it only held "equitable title" as the mortgagee. (Appellant's Br. ¶ 2.) Appellant's reliance on *Walton* and *Lusk*<sup>1</sup> is misplaced. These two cases involve vendor's liens and were decided on the basis of a remedy which is not available to mortgagees such as Appellant. Specifically, when a vendee defaults, a vendor may (a) sue for his money and foreclose his lien,

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<sup>1</sup> *Lusk v. Mintz*, 625 S.W.2d 774 (Tex. App.—Houston [14th Dist.] 1981, no writ).

(b) rescind the contract and take possession, or (c) sue to recover title and possession. *Lusk*, 625 S.W.2d at 775-76 (citations omitted). A mortgagee such as Appellant does not have options (b) and (c) above because it does not have superior legal title. *See Flag-Redfern Oil Co.*, 744 S.W.2d at 8; *see also Walton*, 956 S.W.2d at 652.

Here, Appellant's claim based on a mortgage is subordinate to the administration of the estate through the probate code. *Walton*, 956 S.W.2d at 652. A mortgagee such as Appellant must go through the administrator when the mortgagor dies, whether the mortgagee wants the payments and money on the mortgage or **whether it wants to foreclose on its lien**. *See id.* at 653 (emphasis added). There can be no doubt that a claim secured by a mortgage is a "money claim" within the ambit of section 355 of the Texas Estates Code even though it contains a power of sale by way of a non-judicial foreclosure. *Rivera*, 733 S.W.2d at 679. Thus, Appellant's Claim is subject to the claims process as Appellant does not hold a vendor's lien.

Next, even though Appellant admits it is a mere mortgagee as opposed to a vendor, it seeks to convince this Court that the language in its Texas Home Equity Security Instrument somehow transforms its mortgage lien into a vendor's lien. (Appellant's Br. ¶ 12.) It does not. The language Appellant relies upon expressly conveys a power of sale only to the **Trustee**; it does not convey legal title to Appellant or its predecessor in interest. *See Cook*, 2020 WL 13469391 at \*19.

Indeed, the Texas Property Code defines “Trustee” as a person authorized to exercise the power of sale, and only the power of sale, under the terms of security instrument. TEX. PROP. CODE §§ 51.0001(8), 51.0074.

A vendor’s lien is a seller’s lien on land as security for the purchase price. Black’s Law Dictionary 936 (7th ed. 1999). Clearly, a home equity lender can never hold a vendor’s lien as it is neither a seller of property nor a purchase money lender. Accordingly, as a mortgagee, Appellant was subject to the claims process, and it was required to file suit with ninety (90) days of the rejection of its claim. *See Walton*, 956 S.W.2d at 652; *see also* Tex. Estates Code § 355.064. Having failed to timely file suit, the Probate Court properly entered the Dismissal Order and barred Appellant’s Claim in its entirety, including its purported lien. *See Andrews*, 116 S.W.3d at 410-12.

### **PRAYER**

As demonstrated herein, the Probate Court correctly granted Appellee’s motion to discharge lien. The Probate Court did not abuse its discretion in entering the Lien Discharge Order as it was based on the Probate Court’s prior ruling in the Ancillary Case barring Appellant’s Claim. For the reasons stated in this brief, Appellee asks the Court to overrule Appellant’s issues and to affirm the Probate Court’s judgment in all respects.



Respectfully submitted,

**MCGUIRE & ROMAN, PLLC**

By: /s/ Brian D. Roman

Brian D. Roman

State Bar No. 24037386

Email: [roman@mcguireroman.net](mailto:roman@mcguireroman.net)

Robin D. McGuire

State Bar No. 24031463

Email: [mcguire@mcguireroman.net](mailto:mcguire@mcguireroman.net)

18726 Duke Lake Drive

Spring, Texas 77388

Tel. 832.605.5914

**ATTORNEYS FOR APPELLEE,  
CHARLOTTE GONZALEZ**

**CERTIFICATE OF SERVICE**

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I hereby certify that on June 28, 2024, I served this document on Johnetta Lang, counsel for Appellant Deutsche Bank via electronic service through E-File Texas and/or email.

Attorneys for Appellant Deutsche Bank, as Trustee

Johnetta Lang

Email: [klang@logs.com](mailto:klang@logs.com)

LOGS Legal Group LLP

13105 Northwest Freeway, Suite 960

Houston, Texas 77040

Tel. (224) 244-1367

Fax (847) 879-4854

/s/ Brian D. Roman

Brian D. Roman

## **CERTIFICATE OF COMPLIANCE**

I certify that this document was produced on a computer using Microsoft Word and contains 3,655 words, as determined by the computer software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

This brief complies with the typeface and type style requirements of Texas Rule of Appellate Procedure 9.4(e) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font or larger.

*/s/ Brian D. Roman* \_\_\_\_\_

Brian D. Roman

## **APPELLEE'S APPENDIX**

1. Order on Dependent Administrator's Motion to Discharge Lien on 13314 Knoll Crest Street, Houston, Texas 77015, signed on Jan. 12, 2024.
2. Texas Estates Code § 355.051.
3. Texas Estates Code § 355.064.
4. Texas Estates Code § 355.151.
5. Texas Property Code § 51.0001(8).
6. Texas Property Code § 51.0074.
7. Texas Rule of Appellate Procedure 38.1(g).
8. Texas Rule of Civil Procedure 8.
9. Texas Rule of Civil Procedure 10.
10. Texas Rule of Civil Procedure 306a.
11. Local Rules of the Probate Courts of Harris County, Texas
12. Plaintiff's Original Petition to Enforce Claim, filed on Aug. 29, 2023.
13. Defendant's Original Answer and Motion to Dismiss, filed on Oct. 4, 2023.
14. Order on Defendant's Motion to Dismiss, signed Oct. 26, 2023.

**CAUSE NO. 498670**

**ESTATE OF**

**REYES GONZALEZ, JR.,**

**DECEASED**

§  
§  
§  
§  
§  
§  
§  
§

**IN THE PROBATE COURT**

**NUMBER 1 FOR**

**HARRIS COUNTY, TEXAS**

**ORDER ON DEPENDENT ADMINISTRATOR'S MOTION  
TO DISCHARGE LIEN ON  
13314 KNOLL CREST STREET, HOUSTON, TEXAS 77015**

On this day came to be considered Dependent Administrator's Motion to Discharge Lien on 13314 Knoll Crest Street, Houston, Texas 77015 and supporting Affidavits in the above-styled and numbered Cause. The Court finds that Dependent Administrator's are true and sufficient to establish Dependent's Administrator's entitlement to the relief requested therein..

The Court therefore **GRANTS** Dependent Administrator's Motion to Discharge Lien on 13314 Knoll Crest Street, Houston, Texas 77015, and **ORDERS** that the lien in favor of Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMCI, Mortgage Pass-Through Certificates, Series 2005-WMC1 ("Mortgagee") described as

the lien created by and to secure payment of the Note (hereinafter the "Note") dated September 27, 2004 executed by Reyes Gonzalez in the original principal amount of \$60,000.00, and made payable to WMC Mortgage Corporation, its successors and assigns, and secured by the Deed of Trust (hereinafter the "Security Instrument") dated September 27, 2004, originally made payable to WMC Mortgage Corporation, its successors and assigns and subsequently assigned to [Mortgagee], said Security Instrument securing payment of the Note and which was recorded in the Official Public Records of Real Property in Harris County, Texas on October 11, 2004 and is indexed under Clerk's File/Instrument Number X981675

against the Property described as

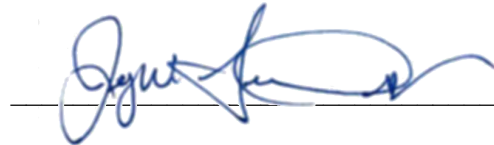
Lot 1206, in Block 38, of Home Owned Estates, Section Two (2), a subdivision in Harris County, Texas, according to the map or plat thereof, recorded in Volume 30, Page 27 of the map records of Harris County, Texas

# Appendix 1

and which currently has the address of: 13314 Knoll Crest, Street, Houston, Texas  
77015

be discharged and removed therefrom, and that the sale of the Property proceed in accordance with this Court's Order Approving Application for Sale of Real Property of April 11<sup>th</sup>, 2023, free and clear of and unencumbered by the above-described lien.

Signed this 12<sup>th</sup> day of January, 2024.



Judge Presiding SB

## Appendix 1

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

doston fairfield on behalf of Doston Paul Fairfield

Bar No. 24036545

paul@fairfield-legal.com

Envelope ID: 82339591

Filing Code Description: Application of Miscellaneous kind

Filing Description: Motion to Discharge Lien Against Estate Property

Status as of 12/8/2023 8:32 AM CST

Associated Case Party: Charlotte Gonzalez

Name	BarNumber	Email	TimestampSubmitted	Status
d paulfairfield		paul@fairfield-legal.com	12/7/2023 11:37:25 AM	SENT
doston paulfairfield		paul@fairfield-legal.com	12/7/2023 11:37:25 AM	SENT
d paulfairfield		paul@fairfield-legal.com	12/7/2023 11:37:25 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Teal de la Garza		rule21aservice@bdlg.com	12/7/2023 11:37:25 AM	SENT
Katie Costa		kcosta@logs.com	12/7/2023 11:37:25 AM	SENT
Emily Humphreys		ehumphreys@LOGS.com	12/7/2023 11:37:25 AM	SENT
Renee Casas		rcasas@LOGS.com	12/7/2023 11:37:25 AM	SENT

Associated Case Party: Reyes Gonzalez

Name	BarNumber	Email	TimestampSubmitted	Status
d paulfairfield		paul@fairfield-legal.com	12/7/2023 11:37:25 AM	SENT

## Appendix 2

### [Tex. Estates Code § 355.051](#)

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Estates Code > Title 2 Estates of Decedents; Durable Powers of Attorney (Subts. A — Z) > Subtitle H Continuation of Administration (Chs. 351 — 400) > Chapter 355 Presentment and Payment of Claims (Subchs. A — E) > Subchapter B Action on Claims (§§ 355.051 — 355.066)***

### **Sec. 355.051. Allowance or Rejection of Claim.**

---

A personal representative of an estate shall, not later than the 30th day after the date an authenticated claim against the estate is presented to the representative, or deposited with the clerk as provided under Section 355.002, endorse on the claim, attach to the claim, or file with the clerk a memorandum signed by the representative stating:

- (1) the date the claim was presented or deposited; and
- (2) whether the representative allows or rejects the claim, or if the representative allows or rejects a part of the claim, the portion the representative allows or rejects.

### **History**

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Enacted by [Acts 2009, 81st Leg., ch. 680 \(H.B. 2502\), § 1](#), effective January 1, 2014.

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## Appendix 3

### [Tex. Estates Code § 355.064](#)

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Estates Code > Title 2 Estates of Decedents; Durable Powers of Attorney (Subts. A — Z) > Subtitle H Continuation of Administration (Chs. 351 — 400) > Chapter 355 Presentment and Payment of Claims (Subchs. A — E) > Subchapter B Action on Claims (§§ 355.051 — 355.066)***

#### **Sec. 355.064. Suit on Rejected Claim.**

---

(a) A claim or part of a claim that has been rejected by the personal representative is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the estate is pending.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim, or any other memorandum of rejection filed with respect to the claim, is taken to be true without further proof unless denied under oath.

#### **History**

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Enacted by [Acts 2009, 81st Leg., ch. 680 \(H.B. 2502\), § 1](#), effective January 1, 2014.

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## Appendix 4

### [Tex. Estates Code § 355.151](#)

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Estates Code > Title 2 Estates of Decedents; Durable Powers of Attorney (Subts. A — Z) > Subtitle H Continuation of Administration (Chs. 351 — 400) > Chapter 355 Presentment and Payment of Claims (Subchs. A — E) > Subchapter D Presentment and Payment of Secured Claims for Money (§§ 355.151 — 355.160)*

### **Sec. 355.151. Option to Treat Claim As Matured Secured Claim or Preferred Debt and Lien.**

---

(a) If a secured claim for money against an estate is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in the claim, whether the claimant desires to have the claim:

- (1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or
- (2) allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the personal representative may pay a claim that the claimant desired to have allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interest of the estate.

### **History**

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Enacted by [Acts 2009, 81st Leg., ch. 680 \(H.B. 2502\), § 1](#), effective January 1, 2014.

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## Appendix 5

### [Tex. Prop. Code § 51.0001](#)

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Property Code > Title 5 Exempt Property and Liens (Subts. A — B) > Subtitle B Liens (Chs. 51 — 70) > Chapter 51 Provisions Generally Applicable to Liens (§§ 51.0001 — 51.016)***

### **Sec. 51.0001. Definitions.**

---

In this chapter:

- (1) “Book entry system” means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.
- (2) “Debtor’s last known address” means:
  - (A) for a debt secured by the debtor’s residence, the debtor’s residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002; or
  - (B) for a debt other than a debt described by Paragraph (A), the debtor’s last known address as shown by the records of the mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002.
- (3) “Mortgage servicer” means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.
- (4) “Mortgagee” means:
  - (A) the grantee, beneficiary, owner, or holder of a security instrument;
  - (B) a book entry system; or
  - (C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.
- (5) “Mortgagor” means the grantor of a security instrument.
- (6) “Security instrument” means a deed of trust, mortgage, or other contract lien on an interest in real property.
- (7) “Substitute trustee” means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.
- (8) “Trustee” means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

### **History**

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## Appendix 5

Tex. Prop. Code § 51.0001

Page 2 of 2

Enacted by [Acts 2003, 78th Leg., ch. 554 \(H.B. 1493\), § 1](#), effective January 1, 2004; am. [Acts 2007, 80th Leg., ch. 903 \(H.B. 2738\), § 1](#), effective June 15, 2007.

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# Appendix 6

## [Tex. Prop. Code § 51.0074](#)

This document is current through the 2023 Regular Session; the 1st C.S.; the 2nd C.S.; the 3rd C.S. and the 4th C.S. of the 88th Legislature; and the November 7, 2023 general election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Property Code > Title 5 Exempt Property and Liens (Subts. A — B) > Subtitle B Liens (Chs. 51 — 70) > Chapter 51 Provisions Generally Applicable to Liens (§§ 51.0001 — 51.016)***

### **Sec. 51.0074. Duties of Trustee.**

---

- (a) One or more persons may be authorized to exercise the power of sale under a security instrument.
- (b) A trustee may not be:
  - (1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or
  - (2) held to the obligations of a fiduciary of the mortgagor or mortgagee.

### **History**

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Enacted by [Acts 2007, 80th Leg., ch. 903 \(H.B. 2738\), § 3](#), effective June 15, 2007.

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# Appendix 7

## [Tex. R. App. P. Rule 38, Part 1 of 2](#)

The State and Federal rules are current through June 24, 2024. Local District rules are updated periodically throughout the year.

### ***TX - Texas Local, State & Federal Court Rules > TEXAS RULES OF APPELLATE PROCEDURE > SECTION TWO. APPEALS FROM TRIAL COURT JUDGMENTS AND ORDERS***

## **Rule 38. Requisites of Briefs.**

---

**38.1. Appellant's Brief.** The appellant's brief must, under appropriate headings and in the order here indicated, contain the following:

**(a) Identity of Parties and Counsel.** The brief must give a complete list of all parties to the trial court's judgment or order appealed from, except as otherwise provided in Rule 9.8. The brief must also give a complete list of the names of all counsel appearing in the trial or appellate courts; their firm or office name at the time of the appearance; and, for counsel currently appearing, their mailing address, telephone number, and email address. If new counsel appears or if any counsel currently appearing changes their firm or office affiliation during the pendency of the appeal, lead counsel for the party must notify the clerk by filing a supplemental disclosure.

**(b) Table of Contents.** The brief must have a table of contents with references to the pages of the brief. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

**(c) Index of Authorities.** The brief must have an index of authorities arranged alphabetically and indicating the pages of the brief where the authorities are cited.

**(d) Statement of the Case.** The brief must state concisely the nature of the case (e.g., whether it is a suit for damages, on a note, or involving a murder prosecution), the course of proceedings, and the trial court's disposition of the case. The statement should be supported by record references, should seldom exceed one-half page, and should not discuss the facts.

**(e) Any Statement Regarding Oral Argument.** The brief may include a statement explaining why oral argument should or should not be permitted. Any such statement must not exceed one page and should address how the court's decisional process would, or would not, be aided by oral argument. As required by Rule 39.7, any party requesting oral argument must note that request on the front cover of the party's brief.

**(f) Issues Presented.** The brief must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included.

**(g) Statement of Facts.** The brief must state concisely and without argument the facts pertinent to the issues or points presented. In a civil case, the court will accept as true the facts stated unless another party contradicts them. The statement must be supported by record references.

**(h) Summary of the Argument.** The brief must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. This summary must not merely repeat the issues or points presented for review.

**(i) Argument.** The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.

**(j) Prayer.** The brief must contain a short conclusion that clearly states the nature of the relief sought.

**(k) Appendix in Civil Cases.**

**(1) Necessary Contents.** Unless voluminous or impracticable, the appendix must contain a copy of:

- (A)** the trial court's judgment or other appealable order from which relief is sought;
- (B)** the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any; and
- (C)** the text of any rule, regulation, ordinance, statute, constitutional provision, or other law (excluding case law) on which the argument is based, and the text of any contract or other document that is central to the argument.

**(2) Optional Contents.** The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, laws, documents on which the suit was based, pleadings, excerpts from the reporter's record, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the brief.

**38.2. Appellee's Brief.**

**(a) Form of Brief.**

- (1)** An appellee's brief must conform to the requirements of Rule 38.1, except that:
- (A)** the list of parties and counsel is not required unless necessary to supplement or correct the appellant's list;
  - (B)** the appellee's brief need not include a statement of the case, a statement of the issues presented, or a statement of facts, unless the appellee is dissatisfied with that portion of the appellant's brief; and
  - (C)** the appendix to the appellee's brief need not contain any item already contained in an appendix filed by the appellant.

**(2)** When practicable, the appellee's brief should respond to the appellant's issues or points in the order the appellant presented those issues or points.

**(b) Cross-Points.**

**(1) Judgment Notwithstanding the Verdict.** When the trial court renders judgment notwithstanding the verdict on one or more questions, the appellee must bring forward by cross-point any issue or point that would have vitiated the verdict or that would have prevented an affirmance of the judgment if the trial court had rendered judgment on the verdict. Failure to bring forward by cross-point an issue or point that would vitiate the verdict or prevent an affirmance of the judgment waives that complaint. Included in this requirement is a point that:

- (A)** the verdict or one or more jury findings have insufficient evidentiary support or are against the overwhelming preponderance of the evidence as a matter of fact; or
- (B)** the verdict should be set aside because of improper argument of counsel.

**(2) When Evidentiary Hearing Needed.** The appellate court must remand a case to the trial court to take evidence if:

- (A)** the appellate court has sustained a point raised by the appellant; and
- (B)** the appellee raised a cross-point that requires the taking of additional evidence.

**38.3. Reply Brief.** The appellant may file a reply brief addressing any matter in the appellee's brief. However, the appellate court may consider and decide the case before a reply brief is filed.

**38.4.** [Deleted by Texas Supreme Court, Misc. Docket No. 12-9190 and Texas Court of Criminal Appeals, Misc. Docket No. 12-001, effective December 1, 2012.]

**38.5. Appendix for Cases Recorded Electronically.** In cases where the proceedings were electronically recorded, the following rules apply:

**(a) Appendix.**

**(1) In General.** At or before the time a party's brief is due, the party must file one copy of an appendix containing a transcription of all portions of the recording that the party considers relevant to the appellate issues or points. Unless another party objects, the transcription will be presumed accurate.

**(2) Repetition Not Required.** A party's appendix need not repeat evidence included in any previously filed appendix.

**(3) Form.** The form of the appendix and transcription must conform to any specifications of the Supreme Court and Court of Criminal Appeals concerning the form of the reporter's record except that it need not have the reporter's certificate.

**(4) Notice.** At the time the appendix is filed, the party must give written notice of the filing to all parties to the trial court's judgment or order. The notice must specify, by referring to the index numbers in the court recorder's logs, those parts of the recording that are included in the appendix. The filing party need not serve a copy of the appendix but must make a copy available to all parties for inspection and copying.

**(b) Presumptions.** The same presumptions that apply to a partial reporter's record under Rule 34.6(c)(4) apply to the parties' appendixes. The appellate court need not review any part of the electronic recording.

**(c) Supplemental Appendix.** The appellate court may direct or allow a party to file a supplemental appendix containing a transcription of additional portions of the recording.

**(d) Inability to Pay.** A party who cannot pay the cost of an appendix must file the affidavit provided for by Rule 20. The party must also state in the affidavit or a supplemental affidavit that the party has neither the access to the equipment necessary nor the skill necessary to prepare the appendix. If a contest to the affidavit is not sustained by written order, the court recorder must transcribe or have transcribed those portions of the recording that the party designates and must file the transcription as that party's appendix, along with all exhibits.

**(e) Inaccuracies.**

**(1) Correction by Agreement.** The parties may agree to correct an inaccuracy in the transcription of the recording.

**(2) Correction by Appellate or Trial Court.** If the parties dispute whether an electronic recording or transcription accurately discloses what occurred in the trial court but cannot agree on corrections, the appellate court may:

**(A)** settle the dispute by reviewing the recording; or

**(B)** submit the dispute to the trial court, which must—after notice and hearing—settle the dispute and ensure that the recording or transcription is made to conform to what occurred in the trial court.

**(f) Costs.** The actual expense of preparing the appendixes or the amount prescribed for official reporters, whichever is less, is taxed as costs. The appellate court may disallow the cost of any portion of the appendixes that it considers surplusage or that does not conform to any specifications prescribed by the Supreme Court or Court of Criminal Appeals.

**38.6. Time to File Briefs.**

**(a) Appellant's Filing Date.** Except in a habeas corpus or bail appeal, which is governed by Rule 31, or when an appendix is filed under Rule 34.5a, an appellant must file a brief within 30 days—20 days in an accelerated appeal—after the later of:

- (1) the date the clerk's record was filed; or
- (2) the date the reporter's record was filed.

**(b) Appellee's Filing Date.** The appellee's brief must be filed within 30 days—20 days in an accelerated appeal—after the date the appellant's brief was filed. In a civil case, if the appellant has not filed a brief as provided in this rule, an appellee may file a brief within 30 days—20 days in an accelerated appeal—after the date the appellant's brief was due.

**(c) Filing Date for Reply Brief.** A reply brief, if any, must be filed within 20 days after the date the appellee's brief was filed.

**(d) Modifications of Filing Time.** On motion complying with Rule 10.5(b), the appellate court may extend the time for filing a brief and may postpone submission of the case. A motion to extend the time to file a brief may be filed before or after the date the brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

**38.7. Amendment or Supplementation.** A brief may be amended or supplemented whenever justice requires, on whatever reasonable terms the court may prescribe.

**38.8. Failure of Appellant to File Brief.**

**(a) Civil Cases.** If an appellant fails to timely file a brief, the appellate court may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief;
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper; or
- (3) if an appellee's brief is filed, the court may regard that brief as correctly presenting the case and may affirm the trial court's judgment upon that brief without examining the record.

**(b) Criminal Cases.**

**(1) Effect.** An appellant's failure to timely file a brief does not authorize either dismissal of the appeal or, except as provided in (4), consideration of the appeal without briefs.

**(2) Notice.** If the appellant's brief is not timely filed, the appellate clerk must notify counsel for the parties and the trial court of that fact. If the appellate court does not receive a satisfactory response within ten days, the court must order the trial court to immediately conduct a hearing to determine whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or, if not indigent, whether retained counsel has abandoned the appeal, and to make appropriate findings and recommendations.

**(3) Hearing.** In accordance with (2), the trial court must conduct any necessary hearings, make appropriate findings and recommendations, and have a record of the proceedings prepared, which record—including any order and findings—must be sent to the appellate court.

**(4) Appellate Court Action.** Based on the trial court's record, the appellate court may act appropriately to ensure that the appellant's rights are protected, including initiating contempt proceedings against appellant's counsel. If the trial court has found that the appellant no longer desires to prosecute the appeal, or that the appellant is not indigent but has not made the necessary arrangements for filing a brief, the appellate court may consider the appeal without briefs, as justice may require.

**38.9. Briefing Rules to be Construed Liberally.** Because briefs are meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case, substantial compliance with this rule is sufficient, subject to the following.

**(a) Formal Defects.** If the court determines that this rule has been flagrantly violated, it may require a brief to be amended, supplemented, or redrawn. If another brief that does not comply with this rule is



filed, the court may strike the brief, prohibit the party from filing another, and proceed as if the party had failed to file a brief.

**(b) Substantive Defects.** If the court determines, either before or after submission, that the case has not been properly presented in the briefs, or that the law and authorities have not been properly cited in the briefs, the court may postpone submission, require additional briefing, and make any other order necessary for a satisfactory submission of the case.

## History

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Amended by Texas Supreme Court, Misc. Docket No. 08-9115 and Texas Court of Criminal Appeals, Misc. Docket No. 08-103, effective September 1, 2008; Amended by Texas Supreme Court, Misc. Docket No. 12-9190 and Texas Court of Criminal Appeals, Misc. Docket No. 12-001, effective December 1, 2012; Amended by Texas Supreme Court, Misc. Docket No. 22-9057, effective August 1, 2022; Amended by Texas Supreme Court, Misc. Docket No. 23-9106, effective January 1, 2024.

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# Appendix 8

## [Tex. R. Civ. P. 8](#)

The State and Federal rules are current through June 24, 2024. Local District rules are updated periodically throughout the year.

### ***TX - Texas Local, State & Federal Court Rules > TEXAS RULES OF CIVIL PROCEDURE > PART I. GENERAL RULES***

#### **Rule 8. Attorney in Charge.**

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On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleadings for any party shall be the attorney in charge, unless another attorney is specifically designated therein. Thereafter, until such designation is changed by written notice to the court and all other parties in accordance with Rule 21a, said attorney in charge shall be responsible for the suit as to such party.

All communications from the court or other counsel with respect to a suit shall be sent to the attorney in charge.

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## Appendix 9

### Tex. R. Civ. P. 10

The State and Federal rules are current through June 24, 2024. Local District rules are updated periodically throughout the year.

#### ***TX - Texas Local, State & Federal Court Rules > TEXAS RULES OF CIVIL PROCEDURE > PART I. GENERAL RULES***

### **Rule 10. Withdrawal of Attorney.**

---

An attorney may withdraw from representing a party only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the party, the motion shall state: the name, address, telephone number, telecopier number, if any, and State Bar of Texas identification number of the substitute attorney; that the party approves the substitution; and that the withdrawal is not sought for delay only. If another attorney is not to be substituted as attorney for the party, the motion shall state: that a copy of the motion has been delivered to the party; that the party has been notified in writing of his right to object to the motion; whether the party consents to the motion; the party's last known address and all pending settings and deadlines. If the motion is granted, the withdrawing attorney shall immediately notify the party in writing of any additional settings or deadlines of which the attorney has knowledge at the time of the withdrawal and has not already notified the party. The Court may impose further conditions upon granting leave to withdraw. Notice or delivery to a party shall be either made to the party in person or mailed to the party's last known address by both certified and regular first class mail. If the attorney in charge withdraws and another attorney remains or becomes substituted, another attorney in charge must be designated of record with notice to all other parties in accordance with Rule 21a.

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# Appendix 10

## Tex. R. Civ. P. 306a

The State and Federal rules are current through June 24, 2024. Local District rules are updated periodically throughout the year.

### ***TX - Texas Local, State & Federal Court Rules > TEXAS RULES OF CIVIL PROCEDURE > PART II. RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS > SECTION 11. Trial of Causes > H. JUDGMENTS***

#### **Rule 306a. Periods to Run from Signing of Judgment.**

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**1. Beginning of Periods.** The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.

**2. Date to Be Shown.** Judges, attorneys and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order.

**3. Notice of Judgment.** When the final judgment or other appealable order is signed, the clerk of the court must immediately send the judgment or order to the parties as provided in Rule 21(f)(10). If the judgment awards monetary damages, the judgment must state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property). / Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio [www.texaslawhelp.org/exempt-property](http://www.texaslawhelp.org/exempt-property)." Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).

**4. No Notice of Judgment.** If within twenty days after the judgment or other appealable order is signed, a party adversely affected by it or his attorney has neither received the notice required by paragraph (3) of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in paragraph (1) shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.

**5. Motion, Notice and Hearing.** In order to establish the application of paragraph (4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.

**6. Nunc Pro Tunc Order.** When a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316, the periods mentioned in paragraph (1) of this rule shall run from the date of signing the corrected judgment with respect of any complaint that would not be applicable to the original document.

**7. When Process Served by Publication.** With respect to a motion for new trial filed more than thirty days after the judgment was signed pursuant to Rule 329 when process has been served by publication, the periods provided by paragraph (1) shall be computed as if the judgment were signed on the date of filing the motion.

## History

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Amended by Texas Supreme Court, Misc. Docket No. 21-9152, effective May 1, 2022; amended by Texas Supreme Court, Misc. Docket No. 22-9031, effective May 1, 2022; amended by Texas Supreme Court, Misc. Docket No. 23-9053, effective September 1, 2023; amended by Texas Supreme Court, Misc. Docket No. 23-9071, effective September 8, 2023; amended by Texas Supreme Court, Misc. Docket No. 24-9030, effective May 28, 2024.

Texas Local, State & Federal Court Rules  
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# Appendix 11

## LOCAL RULES OF THE PROBATE COURTS OF HARRIS COUNTY, TEXAS

### RULE 1: OBJECTIVE

1.1 The objective of these rules is to establish procedural and administrative rules to assist the courts, litigants and attorneys to resolve pending cases in a fair, just and efficient manner.

### RULE 2: REPORTS AND NUMBERING SYSTEM

2.1 Reports. The County Clerk shall supply to each Probate Judge of Harris County, on a monthly basis, information concerning the number of filings, dispositions, trials and other judicial activities, including mental health proceedings, in each Harris County Probate Court. With the exception of the County Clerk's report, these rules do not apply to mental health matters.

2.2 Case Numbering - New Matters. All new estate administrations, guardianships, trust matters (including testamentary trusts when the underlying estate has been closed) that are filed in the Probate Courts of Harris County shall be assigned to a court in accordance with Section 25.1034 of the Government Code. Each case shall be assigned a docket number sequentially. All matters relating or appertaining to an estate or guardianship that has not been closed as provided in the Probate Code, including proceedings upon trusts created by a decedent's will, shall remain in such court subject to an order of transfer as with any case, and shall retain the original docket number with an appropriate sub-file number. Each subsequent matter filed involving the same decedent or proposed ward shall be filed in the original file, under the same docket number and in the same court as the original filing. If wills are filed for probate at the same time for a husband and wife, both cases shall be filed in the court in which the lowest numbered case is assigned. If a decedent's estate is filed in which the decedent was a ward of a Harris County probate court, the decedent's estate shall be filed in the court in which the guardianship was pending.

2.3 Case Numbering - Closed Matters. All matters relating or appertaining to an estate, trust, guardianship or other matter that has been closed shall remain in the original court and shall retain the original docket number with an appropriate sub-file number as provided by these rules. The Clerk shall retrieve the closed files and maintain them with the new matter until the new matter is closed.

2.4 Sub-File Numbers. All matters relating to an estate or guardianship administration shall have only the sequential docket number. All ancillary matters shall be assigned the original docket number plus a suffix commencing with 4. For example, the Estate of Mary Doe, Deceased, shall be assigned number 123,456. An ancillary matter shall be assigned cause number 123,456-401. The Clerk shall maintain separate files for each sub-file number.

2.5 Core Matters that belong in the principal file. Those matters that are principally concerned with the administration of the estate are "core matters" and should be filed under the main cause number:

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- 2.5.1 Probate of wills, issuance of letters testamentary, administration and guardianship;
- 2.5.2 Determination of heirship;
- 2.5.3 Contest to will, heirship, administration (before and after the grant of letters);
- 2.5.4 Contest or objection to actions during administration (sales, fees, accounting, etc.)
- 2.5.5 Construction and interpretation of wills and testamentary trusts;
- 2.5.6 All claims pursuant to the claims-presentation process;
- 2.5.7 Removal of personal representative;
- 2.5.8 § 34.001/§ 1022.007 motions to transfer an ancillary case (but if the transfer comes in, it will go to an ancillary-case file);
- 2.5.9 Heirship determination within an administration or guardianship;
- 2.5.10 Release of Independent Executor pursuant to § 405.003, which may include an action pursuant to C.P.R.C. Chapter 37;
- 2.5.11 Heirship determination or declaratory judgment as part of a Muniment of Title proceeding;
- 2.5.12 Testamentary Trust Actions involving court interpretation or construction of the trust.

Any of the proceedings described as “core matters” may be severed as an ancillary proceeding at the Court’s discretion.

2.6 Ancillary Matters that belong in a different file with an ancillary or related case designation. Those contested matters that bear no direct relationship to the administration of the estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.):

- 2.6.1 Foreclosure of preferred debt and lien;
- 2.6.2 Action for the trial of title to land and enforcement of liens thereon;
- 2.6.3 Actions for the right of trial to property;
- 2.6.4 Testamentary Trust Actions (other than construction issues);
- 2.6.5 Intervivos Trust Actions (settlor is decedent in probate pending in subject court);
- 2.6.6 Declaratory judgments (after the will is admitted to probate);
- 2.6.7 Interpleader actions (funds tendered into registry during administration);
- 2.6.8 Divorces, child custody, paternity actions
- 2.6.9 Claims such as personal injury claims or suits on a claim that was rejected in its entirety or in part.

2.7 New Filings. Those matters which are within the jurisdiction of the probate court but which are not part of a pending matter will be designated new files and assigned to a court and given a cause number as in Rule 2.2. Examples include, by description and not by way of limitation:

- 2.7.1 Intervivos Trust Action (where settlor is still living);
- 2.7.2 Motion to appoint successor custodian;
- 2.7.3 Sale of a ward’s interest in property;

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2.7.4 Testamentary trust actions (where the original probate is in another jurisdiction).

2.8 Duplication. In the event a docket number has been previously assigned to an estate, guardianship or trust matter, all matters shall be filed under such previously assigned number. When such a situation is disclosed for the first time after a hearing begins, the judge of the court presiding over the hearing shall terminate the hearing and order the case transferred to the court in which the case first originated.

2.9 Clerk's Duties. The County Clerk of Harris County shall file, docket, transfer and assign cases as directed by these rules. Neither the administrative judge nor the Presiding Judge may direct the County Clerk to do otherwise, except upon the consent of the majority of the probate judges in Harris County.

### RULE NO. 3. ADMINISTRATIVE JUDGE

3.1 Administrative Judge. The local administrative statutory probate court judge (the "administrative judge") shall be elected to serve for a term of not more than two years. The first term of the administrative judge shall commence upon his or her election after the enactment of these rules and the approval hereof by the Supreme Court. In the event of a tie in the election of the administrative judge, said tie shall be broken by a vote of the presiding judge.

3.2 Duties of Administrative Judge. The administrative judge shall have the following duties and no other:

- 3.2.1 Implement these local rules;
- 3.2.2 Recommend to the Presiding Judge of the Statutory Probate Courts any needs for assignment from outside the county to dispose of court caseloads;
- 3.2.3 Provide to the office of court administration or the Presiding Judge any requested statistical and management information;
- 3.2.4 Coordinate and cooperate with any other local administrative court judge in the county in the assignment of cases in the courts' concurrent jurisdiction for the efficient operation of the court system and the effective administration of justice; and
- 3.2.5 Perform other duties as may be directed by the Presiding Judge with the approval of a majority of the statutory probate judges of Harris County.

### RULE NO. 4: CASE TRANSFERS

4.1. Transfers. All case transfers between probate courts in Harris County shall be done on the written order of the transferring and receiving courts. It shall be the responsibility of the attorney representing the party desiring a transfer to obtain the agreement of the judges of the courts from which the transfer is sought and to which the case will be transferred.

4.2. Prior Filings. Any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous case involving the same decedent, proposed ward, or



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substantially related parties and claims shall be assigned by the administrative judge to the court where the prior matter was pending.

4.3. Recusal and Disqualification. If a judge voluntarily recuses himself, or if a motion for recusal or disqualification is granted by any judge, the case shall be referred to the presiding judge who will order the Harris County Clerk to randomly re-assign the case to another Harris County probate court.

### RULE 5: CONFLICTING TRIAL SETTINGS

5.1 Inter-County. The Regional Rules of Administration of the Second Administrative Judicial Region of Texas and the Civil Trial Division of the Harris County District Courts shall control conflicting engagements in the event of a conflicting trial setting as to parties and lead counsel in the probate courts. When a party or lead counsel is previously assigned to a trial in a different court, a matter that is subsequently assigned to trial in the probate court shall be held in abeyance but will proceed to trial as soon as practical after the party or lead counsel ceases to be engaged in the prior proceeding. The lead counsel shall notify the probate court immediately of his or her availability.

5.2 Intra-County. Among the trial courts sitting in Harris County, including the probate courts:

(A) Trial/Non-Trial. Trial settings take precedence over conflicting non-trial settings.

(B) Trial/Trial. A trial setting that is assigned takes precedence over a conflicting trial setting that is not assigned.

5.3 Waiver. The court with precedence may yield.

5.4 Lead Counsel. This rule operates only when lead counsel, as defined by Rule 8, Texas Rules of Civil Procedure, is affected unless the court expands coverage to other counsel.

### RULE 6: VACATIONS

6.1 Vacations. Attorneys will be allowed the same vacations as provided by the Rules of the Civil Trial Division of the Harris County District Courts. Vacation notices properly and timely filed for lead counsel with the District Clerk of Harris County will be honored. This rule operates only when lead counsel, as defined by Rule 8, Texas Rules of Civil Procedure, is affected, unless the court expands coverage to other counsel.

### RULE 7: DISMISSAL DOCKETS

7.1 Want of Prosecution. All contested cases which are not set for trial and which have been on file for more than three (3) years are subject to dismissal. Upon request of the court, the court staff shall furnish notice to all parties and their counsel that any contested case will be dismissed for want of prosecution pursuant to the provisions of Rule 165a of the Texas

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Rules of Civil Procedure. The procedures for notice of dismissal and retention shall be in compliance with Rules 165a and 306a of the Texas Rules of Civil Procedure.

### RULE 8: ANCILLARY AND/OR EMERGENCY PROCEEDINGS

8.1 Emergency Proceedings. All proceedings for restraining orders, temporary injunctions, writs of habeas corpus, receiverships, temporary administrations, temporary guardianships, small estates, or matters involving the payment of small claims without guardianships pursuant to § 452.101 - § 452.102; § 452.151 - § 452.152; and § 205.001 - 205.008, and proceedings for the examination and delivery of the contents of safe deposit boxes or any papers of the decedent pursuant to § 151.001 thru § 151.005 will be heard by the judge of the probate court to which the matter has been assigned and docketed, or if the judge of the court to which the matter is assigned and docketed is not available, then by any available probate court in Harris County. If such emergency proceeding is a new matter, it will first be assigned a case number and court as provided in Rule 2, and may be heard by any available probate judge if the judge of the assigned court is not available.

### RULE 9: SUBSTITUTION OR WITHDRAWAL OF COUNSEL

9.1 Motions to Withdraw or Substitute Counsel. All motions for withdrawal and/or substitution of counsel shall conform to the provisions of Rule 10, Texas Rules of Civil Procedure.

### RULE 10: MOTIONS

10.1 Form. Motions and applications shall be in writing on letter sized paper and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument but may be attached to the back of the motion or application.

10.2 Responses. All responses shall be in writing and shall be accompanied by a proposed written order. The proposed order shall be a separate instrument but may be attached to the back of the motion or application.

10.3 Submission. Motions and applications may be heard by written submission. All uncontested motions and applications (except applications for probate of will, for appointment of administrator, and for appointment of guardian) shall be considered by written submission, unless the court directs otherwise. Motions and applications on submission shall be filed with notice to other parties at least 10 days before the submission date, unless otherwise specified by a rule governing such motion or application. Responses shall be filed at least 3 days prior to the submission date, except on leave of court. While a case is on submission and remains undecided for 30 days or more any party may request and obtain an oral hearing before the Court.

10.4 Oral Hearings. Settings for uncontested hearings on applications for administration, muniments of title, guardianships and heirships shall be requested from the staff of the court or the County Clerk. Settings for oral hearings on all other matters should be requested from the staff of the applicable court. Notices of hearings shall include the date, time and identity of the court. An order tendered to the court after a contested hearing shall be approved as to form by counsel for all parties present at the hearing.

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10.5 Certificates. All certificates required by the Texas Rules of Civil Procedure are required in all contested matters before the probate courts.

### RULE 11: TRIALS

11.1 ADR. Except for good cause shown, only cases which have undergone a previously ordered ADR procedure will be tried.

11.2 Manner of Setting. All trials may be set by any party, lead counsel, or the court, by requesting a docket setting or scheduling conference from the proper personnel of the court in which the matter is pending and serving notice of the date and time of such scheduling conference upon all opposing parties or their lead counsel. At the scheduling conference, the court shall hear announcements from the parties and shall assign a date and time for trial of the matter on its merits and may enter a docket control order or scheduling order.

11.3 Date of Setting. Contested cases shall be set for trial for a date certain. More than one case may be set for the same time or day and, if so, the cases will be heard in the order established by court. If a case is not assigned to trial within 10 days of its setting date, the court shall conduct another scheduling conference, set a new trial date, or sign a new docket control order.

11.4 Agreed Continuances. Any trial setting may be continued by written agreement of all parties or their lead counsel, with the approval of the court.

11.5 Assigned to Trial. A case is assigned to trial when counsel are called to court to commence trial on the merits of the case. For purposes of engaged counsel, no court may have more than one case assigned to trial at any one time.

11.6 Dead Weeks. Except with the consent of all parties, no court will assign cases to trial on the merits, or set oral hearings on motions, during:

11.6.1. The week of the Texas Bar CLE Advanced Estate Planning and Probate program

11.6.2 Any December week or weeks in which the Monday of that week begins with the dates December 22-31.

### RULE 12: APPOINTEES

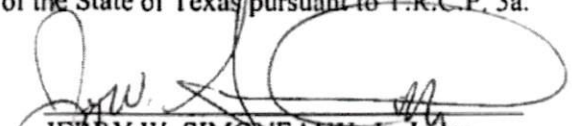
12.1 Appointee Defined. An appointee, for purposes of the Supreme Court order effective April 1, 1994 is a person chosen by the judge who takes his or her position by virtue of an order signed by the judge. An appointee does not include an attorney hired by a personal representative or guardian whose fees must be approved by the court pursuant to the probate code.

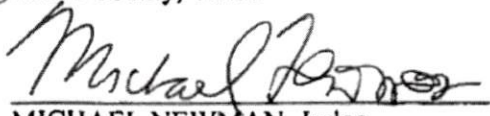
12.2 Appointee Fee Order. Each person appointed by a judge of a probate court to a position for which any type of fee may be paid shall be paid pursuant to a separate order before

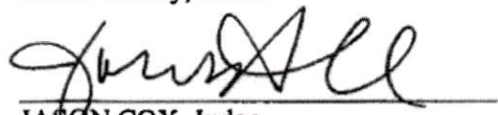
**Appendix 11**

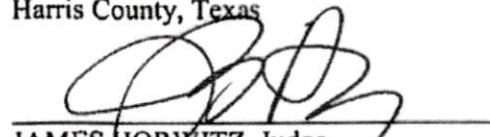
any judgment, dismissal or nonsuit is signed by the court. This order is required for every appointment. The title of an appointee fee order shall include the word "Appointee".

ADOPTED on the 7<sup>th</sup> day of May, 2019, and ORDERED EFFECTIVE upon the approval by the Supreme Court of the State of Texas pursuant to T.R.C.P. 3a.

  
JERRY W. SIMONEAUX, Jr, Judge  
Probate Court No. 1  
Harris County, Texas

  
MICHAEL NEWMAN, Judge  
Probate Court No. 2  
Harris County, Texas

  
JASON COX, Judge  
Probate Court No. 3  
Harris County, Texas

  
JAMES HORWITZ, Judge  
Probate Court No. 4  
Harris County, Texas

*Debra Sanderson*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS  
2019 JUL -2 AM 9:47  
FILED

**Appendix 12**

CAUSE NO. 498670401

IN THE ESTATE OF REYES  
GONZALEZ, JR., DECEASED

IN THE PROBATE COURT

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, IN TRUST  
FOR THE REGISTERED HOLDERS OF  
MORGAN STANLEY ABS CAPITAL I  
INC. TRUST 2005-WMC1, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2005-WMC1, Plaintiff

NUMBER 1 OF

v.

HARRIS COUNTY, TEXAS

CHARLOTTE GONZALEZ,  
DEPENDENT ADMINISTRATOR,  
Defendant

IN RE: 13314 KNOLLCREST STREET  
HOUSTON, TEXAS 77015

**PLAINTIFF'S ORIGINAL PETITION TO ENFORCE CLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

1 PERS BY CERT-MAIL  
8/29/2023

COMES NOW, Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2005-WMC1, Mortgage Pass-Through Certificates, Series 2005-WMC1, its successors in interest or assigns ("Plaintiff" or "Mortgagee" as the context herein implies), and would respectfully show the Court:

**I.**  
**DISCOVERY**

1. Plaintiff intends to conduct discovery under Level 2 of TEX. R. CIV. P. 190.

**II.**  
**PROPERTY**

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2. This proceeding concerns a certain mortgage loan agreement, secured by the real property and improvements commonly known 13314 Knollcrest Street, Houston, Texas 77015 (hereinafter “the Property”). The legal description of the encumbered Property is:

LOT 1206, IN BLOCK 38, OF HOME OWNED ESTATE, SECTION TWO (2), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 30, PAGE 27, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

### III. PARTIES

3. Plaintiff acquires and or originates security interests in real property in the State of Texas and, when necessary, seeks to collect the delinquent debts related to such security interests or enforce its security interest if unable to collect such debts. With respect to the Property and the loan agreement made the subject of this proceeding, Plaintiff is the holder of the note and the mortgagee, as "mortgagee" is defined in TEX. PROP. CODE § 12.017.

4. Reyes Gonzalez, Jr. (hereinafter referred to as “Decedent”) was the obligor under the Note and Deed of Trust but Decedent died on July 27, 2018.

5. On September 29, 2022, this Court signed an Order Appointing Charlotte Gonzalez as Dependent Administrator of Decedent’s Estate.

6. Defendant Charlotte Gonzalez is the Dependent Administratrix of Decedent’s Estate (“Defendant”) and may be served by certified mail c/o attorney D. Paul Fairfield, 3610 Green Meadows, Pasadena, TX 77505. *See* TEX. ESTATES CODE § 51.056(1).

### IV. JURISDICTION

7. This Court has subject matter jurisdiction over the controversy because Plaintiff seeks to enforce its lien against Estate property, and Plaintiff’s action is a matter related to a probate proceeding pursuant to TEX. ESTATES CODE §§ 31.002 and 32.001-.002.

## Appendix 12

### V. VENUE

8. Venue is proper in this county because the Decedent's Estate is located in this county.
9. Additionally, the Property is located in this county.

### VI. FACTS

10. The documents attached to this petition are made a part of this proceeding for all purposes and are true and correct copies of pertinent original loan agreement documents related to the debt secured by the Property and made the subject of this proceeding. Subject documents include:

- a. An exact duplicate of the Authenticated Secured Claim ("Claim"), attached as Exhibit "1;" which includes:
  - i. An exact duplicate of the Note attached as Exhibit "A;"
  - ii. An exact duplicate of the Deed of Trust attached as Exhibit "B";
  - iii. An exact duplicate of the assignment of the Deed of Trust as Exhibit "C"; and
  - iv. An exact duplicate of the Payoff Quote attached as Exhibit "D".

11. On September 27, 2004, Decedent executed a Note in the original principal amount up to \$60,000.00 and originally made payable to WMC Mortgage Corporation. *See* Exhibit "A". The Note is endorsed in blank. The Deed of Trust has been assigned to Plaintiff. *See* Exhibit "C". Therefore, Plaintiff is a party entitled to enforce the Deed of Trust.

12. On September 28, 2004, Decedent executed a Deed of Trust to secure the Note with a mortgage lien on the Property. Exhibit "B". Plaintiff is party entitled to enforce the Deed of Trust.

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13. The Note and Deed of Trust were executed in exchange for the Decedent being advanced funds.

14. According to the Plaintiff's records, the subject mortgage loan is due for the July 1, 2020 mortgage payment, and payments due thereafter.

15. Therefore, there has been a material breach of the loan agreement.

16. After Defendant was appointed to represent the Estate and on May 4, 2023, Plaintiff presented its Claim against the Estate with such Claim amount being \$88,934.66. Plaintiff's Claim is attached hereto as Exhibit "1."

17. Plaintiff's Claim specifically elected preferred debt and lien status and met all statutory requirements of TEX. ESTATES CODE § 355.004.

18. Since Plaintiff's Claim stems from a valid lien, Plaintiff's Claim should have been allowed and approved. *See* TEX. ESTATES CODE § 355.151(a)(2) stating a preferred debt and lien claim "shall be so allowed and approved if it is a valid lien."

19. On May 26, 2023, Defendant rejected Plaintiff's Claim. Exhibit 2.

### **VII.** **CAUSES OF ACTION**

#### **ENFORCEMENT OF PLAINTIFF'S CLAIM**

20. Since the Claim has been rejected, Plaintiff must establish its Claim arising from default of the Note and Deed of Trust by filing this suit. TEX. ESTATES CODE § 355.064.

21. As recited above, Decedent was the obligor under the Note and Deed of Trust. Exhibits "A" and "B".

22. Plaintiff is the holder of the Note endorsed in blank. Exhibit "A" & "C".



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23. Pursuant to the Note and Deed of Trust, Plaintiff is entitled to enforce its remedies as holder of the Note and beneficiary of the Deed of Trust due to the default under such documents. See Exhibit “A” at p.4, ¶7(C) and Exhibit “B” at p.16, ¶21.

24. As of April 21, 2023, the payoff, as “pay-off” is defined in TEX. PROP. CODE § 12.017, was at least \$88,934.66. See Exhibit “1”. However, the payoff amount increases daily under the terms of the loan agreement which includes, but which is not limited to, earned interest, collection costs, attorney fees, insurance and other legally authorized expenses.

25. Plaintiff requests that the Court enter Judgment authorizing a Claim in amount of at least \$88,934.66 (or the current payoff amount as of the date of Judgment) in satisfaction of TEX. ESTATES CODE §§ 355.064 and 355.066.

26. Plaintiff further specifically requests that such Claim be a preferred debt and lien.

27. Once the Claim is approved, Plaintiff intends to enforce its security interest against the Property as allowed under the Loan Agreement, TEX. PROP. CODE § 51.002 and the Deed of Trust.

### ENFORCEMENT OF LIEN

28. Pursuant to the Texas Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE § 37.001, et seq., Plaintiff further seeks a declaration that a Plaintiff has an enforceable lien against the Property under the terms of the Loan Agreement and the following statutory authority:

a. TEX. ESTATES CODE § 101.001(b), which states in pertinent part:

*“Subject to Section 101.051, the estate of a person who dies intestate vests immediately in the person’s heirs at law.”* (Emphasis added).

b. TEX. ESTATES CODE § 101.051(b), which states in pertinent part:

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*"A decedent's estate vests in accordance with Section 101.001(b) subject to the payment of, and is still liable for (1) the debts of the decedent..."*

29. Texas Estates Code makes clear that the Estate is liable for debts of a deceased individual. Plaintiff's lien is therefore enforceable against Defendant.

30. Because of a material breach of the Note and Deed of Trust, Plaintiff seeks to enforce its lien and security interest against the Property in accordance with the terms of the Loan Agreement, TEX. PROP. CODE § 51.002 and TEX. R. CIV. P. 309; or, in the alternative, TEX. ESTATES CODE § 355.156 or 356.201-.203.

31. Plaintiff requests that this Court enter Judgment for Plaintiff awarding Plaintiff a Claim in full pursuant to TEX. ESTATES CODE § 355.057, and further declaring that Plaintiff's security interest attach as an enforceable lien against Defendant and the Decedent's Estate.

### NON-JUDICIAL FORECLOSURE

32. Because of a material breach of the loan agreement, Plaintiff seeks to enforce its statutory probate lien and security interest through non-judicial foreclosure of the Property in accordance with the terms of the Loan Agreement, and TEX. PROP. CODE § 51.002. and TEX. R. CIV. P. Rules 310, and 735.

33. Upon default of a Home Equity Loan, Art. XVI, Section 50(a)(6) of the Texas Constitution limits recovery to *in rem* proceedings.

34. The most practical, efficient, and effective means to enforce Plaintiff's security interest in the Property would be a public auction of the Property.

a. The rights, responsibilities, and duties of Plaintiff and the trustee of the security instrument are well known under Tex. Prop. Code § 51.002 and Texas case law; therefore, a public auction conducted in the same manner as non-judicial foreclosure sale would meet all constitutional standards of due process.

b. In addition, a public auction of the Property would also be the most expedient means to put the Property back in the stream of commerce, as well as into the

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housing stock of the community. Otherwise, the Property will continue to be a wasting asset that is subject to vandalism and deterioration.

35. Under the terms of the security instrument, Plaintiff will appoint a Substitute Trustee to conduct the public auction.

### WRIT OF POSSESSION

36. If any person (“Occupant”) occupies or claims possession of the Property after transfer of all right, title and interest in the Property by a trustee or sheriff’s deed, Plaintiff requests a writ of possession against Occupant in the accordance with TEX. R. CIV. P. Rule 310.

### VIII. PRAYER

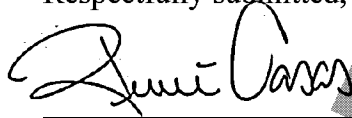
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Administrator be cited to appear and answer, and that, upon final hearing, the Court enter judgment:

- 1) That approves and allows Plaintiff’s Claim in full as a preferred debt and lien against the Property;
- 2) That taxes Plaintiff’s costs of suit against Defendant, in her individual capacity, and
- 3) That authorizes non-judicial public sale of the Property pursuant to the Loan Agreement and TEX. PROP. CODE § 51.002; or
- 4) That authorizes public sale of the Property pursuant to TEX. ESTATES CODE § 355.155(b)(3); and
- 5) That grants a writ of possession against any Occupant of the Property if such Occupant fails or refuses to leave the Property after foreclosure; and

Plaintiff further prays for all other relief, in law in equity, to which Plaintiff may show itself to be justly entitled.

## Appendix 12

Respectfully submitted,



---

Reneé Casas

State Bar No. 24107728

LOGS Legal Group LLP

13105 Northwest Freeway, Suite 960

Houston, TX 77040

Telephone: (713) 462-2565

Facsimile: (847) 879-4854

Email: rcasas@logs.com

*Attorney for* Deutsche Bank National Trust

Company, as Trustee, in trust for the registered  
holders of Morgan Stanley ABS Capital I Inc. Trust  
2005-WMC1, Mortgage Pass-Through Certificates,  
Series 2005-WMC1

UNOFFICIAL COPY

## Appendix 12

### CERTIFICATE OF SERVICE

I certify that on this 9th day of June, 2023, a true and correct copy of the foregoing was sent to:

Charlotte Gonzalez  
Dependent Administrator for the Estate of Reyes Gonzalez, Jr.  
c/o D. Paul Fairfield  
3610 Green Meadows  
Pasadena, TX 77505  
*Via Certified and Regular Mail*

  
\_\_\_\_\_  
Renee Casas

UNOFFICIAL COPY

**Appendix 13**

**NO. 498670-401**

**IN THE ESTATE OF REYES  
GONZALEZ, JR., DECEASED**

**IN THE PROBATE COURT**

**DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, IN TRUST  
FOR THE REGISTERED HOLDERS OF  
MORGAN STANLEY ABS CAPITAL I  
INC. TRUST 2005-WMC1, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2005-WMC1, Plaintiff**

**v.**

**NUMBER 1 FOR**

**CHARLOTTE GONZALEZ,  
DEPENDENT ADMINISTRATOR,  
Defendant**

**IN RE: 13314 KNOLLCREST STREET  
HOUSTON, TEXAS 77015**

**HARRIS COUNTY, TEXAS**

**DEFENDANT'S ORIGINAL ANSWER AND  
MOTION TO DISMISS**

COMES NOW Charlotte Gonzalez, Dependent Administrator in the Estate of Reyes Gonzalez, Jr., Deceased ("Defendant"), files this her Defendant's Original Answer and Motion to Dismiss in the above styled and numbered Cause and would show unto the Court as follows:

**GENERAL DENIAL**

1. Defendant **GENERALLY DENIES** all the allegations in Plaintiff's Original Petition to Enforce Claim.

**AFFIRMATIVE DEFENSES**

2. Plaintiff's Claim is barred for failure to commence suit on said Claim in this Honorable Court of original jurisdiction in which the Estate *sub judice* is pending before the statutory 90<sup>th</sup> day after the date upon which Defendant denied Plaintiff's Claim. TEX. ESTATES CODE §355.064(a).

## Appendix 13

3. Defendant is prohibited by statute from allowing Plaintiff's Claim against Decedent's Estate because Plaintiff's Claim is barred under Section 355.064. TEX. ESTATES CODE §355.061(a).

### MOTION TO DISMISS

#### *Facts*

4. Plaintiff filed its Claim against Decedent's Estate on May 4<sup>th</sup>, 2023.
5. Defendant denied Plaintiff's Claim on May 26<sup>th</sup>, 2023.
6. The 90<sup>th</sup> day after May 26<sup>th</sup>, 2023 was August 24<sup>th</sup>, 2023.
7. Plaintiff did not commence suit on its Claim in this Honorable Court of original jurisdiction in the Estate *sub judice* until August 29<sup>th</sup>, 2023, 5 days *after* the passing of the statutory 90<sup>th</sup> day after the date upon which Defendant denied Plaintiff's Claim.

#### *Argument & Authorities*

8. It is indisputable that Plaintiff did not commence suit on its Claim until after the passing of the statutory 90<sup>th</sup> day after Defendant denied Plaintiff's Claim.

9. It is further indisputable that, owing to Plaintiff's failure to commence suit on its Claim within that statutory period, Plaintiff's Claim is barred. TEX. ESTATES CODE §355.064; *In the Estate of Mary E. Larson, Deceased*, 541 S.W.3d 368, 376 (Tex. App.--Houston [14<sup>th</sup> Dist.], 2017)(claim was barred because claimant failed to file suit contesting rejection of claim within 90 days of such rejection); *Wilkinson v. Susman*, No 1-18-00996-CV (Tex. App.--Houston [14<sup>th</sup> Dist.], 2020)(because claimant did not commence suit on rejected claim within 90 days of the rejection, claim was barred as a matter of law).

10. There is no issue, genuine or otherwise, involving any fact, material or otherwise, in this Cause and the facts indisputably establish Plaintiff's Claim is barred as a matter of law.

## Appendix 13

11. Further, there is no omission or defect in Plaintiff's pleading which can be cured amendment.

12. Quite simply, Plaintiff failed to commence suit on its claim within the statutorily allotted period and its Claim is now barred as a matter of law.

13. Where a party is not entitled to the relief it seeks even where all allegations and reasonable inferences drawn therefrom are taken as true, the cause of action has no basis in law. TEX. RULE CIV. P. 91a.1. Where, as here, a cause of action has no basis in law, the opposing party is entitle to a dismissal. *Id.*

### *Attorneys Fees*

14. It was necessary for Defendant to defend the Estate against the baseless allegations in Plaintiffs' Original Petition and to prepare this Motion to Dismiss.

15. On a Motion to Dismiss a baseless cause of action, the Court may award the prevailing party on said Motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action. TEX. RULE CIV. P. 91a.7.

### DEMAND FOR JURY

16. Defendant demands a jury trial and tenders the appropriate fee herewith.

### PRAYER

For the foregoing reasons, Defendant **PRAYS** the Court **RENDER** a take-nothing judgment against Plaintiff; **DISMISS** Plaintiff's Claim and Petition in their entirety; **ASSESS** costs and expenses of this pleading against Plaintiff; and **GRANT** Defendant all other relief to which she is entitled.



## Appendix 13

Respectfully submitted,

D. Paul Fairfield

Digitally signed by D. Paul Fairfield  
DN: cn=D. Paul Fairfield, o=The Fairfield Law Firm,  
ou=Principal, email=paul@fairfield-legal.com, c=US  
Date: 2023.10.04 13:29:50 -05'00'

**D. Paul Fairfield**  
**The Fairfield Law Firm**  
Texas Bar No.: 24036545  
3610 Green Meadows  
Pasadena, Texas 77505  
Telephone: (281) 487-1645  
e-mail: paul@fairfield-legal.com  
**Attorney for Defendant,**  
**Charlotte Gonzalez, Dependent**  
**Administrator of the Estate of**  
**Reyes Gonzalez, Jr., Deceased**

### CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of October, 2023, I effected service of a true and correct copy of the foregoing instrument electronically through the electronic filing manager in accordance with the TEX. R. CIV. PROC. 21a upon the parties listed below.

D. Paul Fairfield

Digitally signed by D. Paul Fairfield  
DN: cn=D. Paul Fairfield, o=The Fairfield  
Law Firm, ou=Principal,  
email=paul@fairfield-legal.com, c=US  
Date: 2023.10.04 13:30:17 -05'00'

D. Paul Fairfield

Renee' Casas  
LOGS Legal Group LLP  
13105 Northwest Freeway, Suite 960  
Houston, TX 77040  
Telephone: (713) 462-2565  
Facsimile: (847) 879-4854  
Email: rcasas@logs.com

**Attorney for Deutsche Bank National Trust Company,**  
**as Trustee, in trust for the registered holders**  
**of Morgan Stanley ABS Capital I Inc. Trust**  
**2005-WMCI, Mortgage Pass-Through Certificates, Series 2005-WMC1**

## Appendix 13

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

doston fairfield on behalf of Doston Paul Fairfield

Bar No. 24036545

paul@fairfield-legal.com

Envelope ID: 80246374

Filing Code Description: Answer/Response

Filing Description: Defendant's Original Answer & Motion to Dismiss

Status as of 10/5/2023 11:26 AM CST

Associated Case Party: Deutsche Bank National Trust Company, as Trustee, in trust for the registered

Name	BarNumber	Email	TimestampSubmitted	Status
Renee Casas	24107728	rmc@replevin.com	10/4/2023 1:48:53 PM	SENT

Associated Case Party: Charlotte Gonzalez

Name	BarNumber	Email	TimestampSubmitted	Status
doston paulfairfield		paul@fairfield-legal.com	10/4/2023 1:48:53 PM	SENT

**Appendix 14**

FILED  
10/30/2023 12:26:00 PM  
Teneshia Hudspeth  
County Clerk  
Harris County, Texas  
Rebecca.Zapata

NO. 498670-401

**IN THE ESTATE OF REYES  
GONZALEZ, JR., DECEASED**

**IN THE PROBATE COURT**

**DEUTSCHE BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE, IN TRUST  
FOR THE REGISTERED HOLDERS OF  
MORGAN STANLEY ABS CAPITAL I  
INC. TRUST 2005-WMC1, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2005-WMC1, Plaintiff**

v.

**NUMBER 1 FOR**

**CHARLOTTE GONZALEZ,  
DEPENDENT ADMINISTRATOR,  
Defendant**

**IN RE: 13314 KNOLLCREST STREET  
HOUSTON, TEXAS 77015**

**HARRIS COUNTY, TEXAS**

**ORDER ON DEFENDANT'S MOTION TO DISMISS**

After considering Defendant's Motion to Dismiss Plaintiff's Original Petition to Enforce Claim, the Court:

**GRANTS** Defendant's Motion to Dismiss and **RULES** as follows:

- (a) Plaintiff's Claim is **BARRED** for failure to commence suit on said Claim before the statutory 90<sup>th</sup> day after the date upon which Defendant denied Plaintiff's Claim.
- (b) Defendant is **PROHIBITED** from allowing Plaintiff's Claim against Decedent's Estate because Plaintiff's Claim is barred under TEX. ESTATES CODE §355.061(a).

Signed: 10/26/2023  
4:06:08 PM

  
\_\_\_\_\_  
JUDGE PRESIDING

## Appendix 14

Approved as to form by:

D. Paul Fairfield

Digitally signed by D. Paul Fairfield  
DN: cn=D. Paul Fairfield, o=The  
Fairfield Law Firm, ou=Principal,  
email=paul@fairfield-legal.com, c=US  
Date: 2023.10.05 12:26:37 -05'00'

**D. Paul Fairfield**  
**The Fairfield Law Firm**  
Texas Bar No.: 24036545  
3610 Green Meadows  
Pasadena, Texas 77505  
Telephone: (281) 487-1645  
e-mail: paul@fairfield-legal.com  
**Attorney for Defendant,**  
**Charlotte Gonzalez, Dependent**  
**Administrator of the Estate of**  
**Reyes Gonzalez, Jr., Deceased**

### CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of October, 2023, I effected service of a true and correct copy of the foregoing instrument electronically through the electronic filing manager in accordance with the TEX. R. CIV. PROC. 21a upon the parties listed below.

D. Paul Fairfield

Digitally signed by D. Paul Fairfield  
DN: cn=D. Paul Fairfield, o=The Fairfield  
Law Firm, ou=Principal,  
email=paul@fairfield-legal.com, c=US  
Date: 2023.10.05 12:27:01 -05'00'

**D. Paul Fairfield**

Renee' Casas  
LOGS Legal Group LLP  
13105 Northwest Freeway, Suite 960  
Houston, TX 77040  
Telephone: (713) 462-2565  
Facsimile: (847) 879-4854  
Email: rcasas@logs.com  
**Attorney for Deutsche Bank National Trust Company,**  
**as Trustee, in trust for the registered holders**  
**of Morgan Stanley ABS Capital I Inc. Trust**  
**2005-WMCI, Mortgage Pass-Through Certificates, Series 2005-WMC1**

## Appendix 14

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

doston fairfield on behalf of Doston Paul Fairfield

Bar No. 24036545

paul@fairfield-legal.com

Envelope ID: 80289583

Filing Code Description: Proposed Order

Filing Description: Proposed Order on defendant's Motion to Dismiss

Status as of 10/6/2023 8:25 AM CST

Associated Case Party: Deutsche Bank National Trust Company, as Trustee, in trust for the registered

Name	BarNumber	Email	TimestampSubmitted	Status
Renee Casas	24107728	rmc@replevin.com	10/5/2023 12:30:58 PM	SENT

Associated Case Party: Charlotte Gonzalez

Name	BarNumber	Email	TimestampSubmitted	Status
doston paulfairfield		paul@fairfield-legal.com	10/5/2023 12:30:58 PM	SENT

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brian Roman on behalf of Brian Roman  
Bar No. 24037386  
roman@mcguireroman.net  
Envelope ID: 89304642  
Filing Code Description: Brief Requesting Oral Argument  
Filing Description: Appellee's Brief  
Status as of 6/28/2024 11:06 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Brian Roman	24037386	roman@mcguireroman.net	6/28/2024 10:56:24 AM	SENT
Doston Fairfield	24036545	paul@fairfield-legal.com	6/28/2024 10:56:24 AM	SENT
Deborah Young	794894	Deborah.Young@txcourts.gov	6/28/2024 10:56:24 AM	SENT
Katie Costa		kcosta@logs.com	6/28/2024 10:56:24 AM	SENT
Ronny George		rgeorge@logs.com	6/28/2024 10:56:24 AM	SENT
Emily Humphreys		ehumphreys@LOGS.com	6/28/2024 10:56:24 AM	SENT
Johnetta GrayLang		jlang@logs.com	6/28/2024 10:56:24 AM	SENT