

No. 01-23-00008-CV

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

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HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

GEORGE M. BISHOP,

Appellant,

v.

ROBERT G. PATE AND JUDY K. PATE,

Appellees.

On Appeal from the 434th Judicial District Court

Fort Bend County, Texas

Tr. Ct. No. 17-DCV-243655

APPELLEES' BRIEF

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ROBERT G. PATE AND JUDY L. PATE

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STATEMENT OF THE CASE

- Nature of the Case:** This case is a dispute over title to real property. Plaintiff, David H. Hamilton as the trustee and representative of the T.H. Trust (collectively, “T.H. Trust”), sued Defendants, Robert G. Pate and Judy K. Pate (collectively, the “Pates”) for trespass to try title and for declaratory judgment (CR 7-16). In their claims against the Pates, T.H. Trust, and, subsequently, its attorney, Cross-Defendant, George Bishop (“Bishop”), claimed to own superior title to the Property under an Alleged Substitute Trustee’s Deed (301-306). The Pates asserted counter/crossclaims against T.H. Trust and Bishop to quiet title and for declaratory judgment (Supp CR 252-262). The Pates disputed the validity of the Alleged Substitute Trustee’s Deed and sought to have the deed set aside.
- Course of the Proceedings:** The Pates moved for traditional summary judgment on T.H. Trust’s and Bishop’s title claims and on the Pates’ quiet title and declaratory judgment counter/crossclaims (CR 216-318).
- Trial Court’s Disposition:** On December 21, 2022, the Trial Court signed a final take-nothing judgment against T.H. Trust and Bishop. The Trial Court granted summary judgment in favor of the Pates on T.H. Trust’s and Bishop’s title claims and on the Pates’ quiet title and declaratory judgment counter/cross claims. The Trial Court also set aside the Alleged Substitute Trustee’s Deed and awarded title to the Property to the Pates. (CR 460-463).

STATEMENT REGARDING ORAL ARGUMENT

Appellees agree with Appellant that oral argument is not necessary, as the appeal can be determined by the Court of Appeals based on the record and the parties' briefs.

ISSUES PRESENTED¹

1. Whether the Trial Court complied with Tex. Gov't Code § 54A.111 in connection with Bishop's appeal of Associate Judge Argie Brame's summary judgment rulings.
2. Whether it was proper for Associate Judge Argie Brame, instead of elected Trial Court Judge Christian Becerra, to consider the Pates' Motions for Summary Judgment.
3. Whether the Trial Court erred in granting summary judgment in favor of the Pates on T.H. Trust's and Bishop's trespass to try title claims.
4. Whether the Trial Court erred in finding that the IRS Deed conveyed title to the Property to the Pates.
5. Whether the Pates had standing to assert their quiet title and Declaratory Judgment Act claims against T.H. Trust and Bishop.
6. Whether the Trial Court erred in granting summary judgment in favor of the Pates on their quiet title claims.
7. Whether the Trial Court erred in granting summary judgment and setting aside the Alleged Substitute Trustee's Deed under the Declaratory Judgment Act.

¹ The Pates believe that the multiple points of error raised by Bishop in his appeal can be efficiently addressed if broken down into the seven separate issues in order as listed above.

STATEMENT OF FACTS

A. The Property at Issue.

Defendants/Appellees, Robert G. Pate and Judy K. Pate (collectively, the “**Pates**”) were awarded title to the property that is the subject of this litigation: that certain 4.7695 acres of land in Fort Bend County (the “**Property**”), as further described in **Exhibit 2** which is attached in the Appendix and incorporated herein by reference (CR 297).

B. The Chain of Title for the Property from 2005 to 2017:

1. The Coastal Deed of Trust lien against the Property.

In 2005, the owner of the Property was Coastal Sun Development, Inc. (“**Coastal**”) (CR 253-259). On August 9, 2005, Coastal signed a deed of trust (the “**Coastal Deed of Trust**”), which created a lien against the Property. (CR 265-275).² The lien secured a \$400,000 loan that the borrower, Grand Parkway Equities, Ltd. (“**Grand Parkway**”) obtained from the lender, Mulligan Medical Consultants, LLC (“**Mulligan**”) (CR 265-275). The Coastal Deed of Trust stated that Coastal warranted good title to the Property (CR 266). In connection with the loan, Grand Parkway signed a \$400,000 promissory note (“**Mulligan Note**”) in favor of Mulligan

² The Coastal Deed of Trust was recorded on August 17, 2005 in the Official Public Records of Fort Bend County under Clerk’s File No. 2005100438 (CR 275).

(CR 265). The maturity date of the loan under the Mulligan Note was August 9, 2006. (CR 265).

On August 4, 2006, David Hamilton, as the President of Mulligan, assigned the loan to Bishop (CR 301-306). As a result of the assignment, Bishop became the owner and holder of the Mulligan Note and the beneficiary of the Coastal Deed of Trust. *Id.*

2. On August 9, 2006, Grand Parkway defaulted on the Mulligan Note. Bishop appointed K.M. Bishop as the substitute trustee to commence foreclosure proceedings on the Property.

On August 9, 2006 (the “**Default Date**”), the Mulligan Note matured by its terms. Grand Parkway defaulted on the loan by failing to pay the Mulligan Note by the Default Date. (CR 280).

On October 4, 2007, Bishop, as owner and holder of the Mulligan Note and as the beneficiary of the Coastal Deed of Trust, signed an “Appointment of Substitute Trustee” (“**Appointment**”).³ (CR 276-279). The Appointment stated that the Mulligan Note was in default and that its entire unpaid balance was due and payable (CR 277). The Appointment also stated that, because of the default, Bishop appointed his son, K.M. Bishop, as the substitute trustee to foreclose on the Property pursuant to the terms of the Coastal Deed of Trust (CR 277). The Appointment

³ The Appointment was recorded on October 5, 2007 in the Official Public Records of Fort Bend County under Clerk’s File No. 2007124343 (CR 279).

further requested K.M. Bishop to record a Notice of Substitute Trustee's Sale in the real property records and to post a copy of the Notice on the County Courthouse door at least 21 days before the date of the foreclosure sale. *Id.*

On October 4, 2007, Bishop signed an Affidavit of Noteholder (CR 285-286).⁴ The Affidavit of Noteholder stated that Bishop was the owner and holder of the Mulligan Note secured by the Coastal Deed of Trust Lien. The Affidavit of Noteholder further stated that Bishop appointed his son, K.M. Bishop, as the substitute trustee to foreclose on the Property (CR 285-286).

On October 9, 2007, Bishop signed an "Affidavit of Service by the Holder of the Note" ("**Affidavit of Service**") (CR 280-282),⁵ in which Bishop stated, "I have instructed the substitute trustee [K.M. Bishop] to enforce the power of sale contained in the Deed of Trust," presumably referring to the Coastal Deed of Trust. Bishop further stated, "A default occurred on the Note and Deed of Trust on August 9, 2006." (CR 280-282).

⁴ The Affidavit of Noteholder was recorded on October 16, 2007 in the Official Public Records of Fort Bend County under Clerk's File No. 2007128784. (CR 285).

⁵ The Affidavit of Service was recorded on October 16, 2007 in the Official Public Records of Fort Bend County under Clerk's File No. 2007128782 (CR 282).

3. On August 9, 2010, four years after the Default Date, the Coastal Deed of Trust lien became unenforceable due to limitations.

On August 9, 2010, four years after the August 9, 2006 Default Date, the four-year statute of limitations to enforce the Coastal Deed of Trust lien expired. *See* Tex. Civ. Prac. & Rem. Code § 16.035(b) (a sale of real property under a power of sale in the mortgage or deed of trust must be made not later than four years after the day the cause of action accrues). Therefore, the right to foreclose on the Property under the Coastal Deed of Trust was barred by limitations on August 9, 2010.

4. Bishop failed to foreclose on the Property before the limitations period expired.

While Bishop apparently took the first steps to commence foreclosure proceedings against the Property by appointing K.M. Bishop to serve as the substitute trustee, there is no evidence that the foreclosure sale of the Property actually took place. The Notice of Substitute Trustee's Sale that Bishop allegedly requested was never recorded or posted on the County Courthouse door.⁶ Moreover, a Substitute Trustee's Deed for the Property was never recorded before the four-year limitations expired on August 9, 2010.

⁶ An instrument entitled "Affidavit of Service by Substitute Trustee," executed by K.M. Bishop, Bishop's son, was recorded in Fort Bend County on October 16, 2007 under Clerk's File No. 2007128783 (CR 283-284). Although this instrument is sworn and states that "a true and correct copy of a Notice of Substitute Trustee's Sale" is attached to the affidavit, no such notice is, in fact, attached to the instrument.

5. Instead of foreclosing on the Property, Bishop conveyed the Property to JAB Development on November 12, 2007.

Instead of foreclosing on the Property, on November 12, 2007, Bishop conveyed the Property to JAB Development Company by general warranty deed (the “**Bishop Deed**”) (CR 287-291).⁷ Bishop signed this deed in his individual capacity, identifying himself personally as the owner of the Property, and warranting title to the Property. Bishop also signed the deed as “trustee,” presumably, as the trustee of the Coastal Deed of Trust (CR 288). The Bishop Deed also contained a general warranty of title. (CR 288).

6. The IRS asserted a tax lien against JAB Development and sold the Property to the Pates at a public tax auction.

On February 5, 2013, the IRS issued a Notice of Federal Tax Lien against JAB Development due to delinquent taxes in the amount of \$1,967,056.28 that were owed to the IRS (CR 292-293).⁸ The tax lien affected all property in Fort Bend County that belonged to “**JAB Development Corporation JAB Development Company**” (collectively, “**JAB Development**”) (CR 292) (Emphasis added).

On September 9, 2016, the IRS seized the Property so it could be sold under the IRS’ tax lien (CR 297). On February 8, 2017, the IRS noticed the tax sale of the

⁷ The Bishop Deed was recorded on July 16, 2009, in the Official Public Records of Fort Bend County under Clerk’s File No. 2009072850 (CR 291).

⁸ The Notice of Federal Tax Lien was recorded on February 12, 2013 in the Official Public Records of Fort Bend County under Clerk’s File No. 2013017291 (CR 293).

Property for March 16, 2017 (CR 249-251). The IRS notice confirmed that its federal tax lien was \$369,816.00 (CR 250).

On March 16, 2017, the IRS held a public tax auction and sold the Property to the Pates, who were the highest bidders of the Property (CR 295-296). The Pates paid \$176,000 for the Property (CR 252). On March 18, 2017, the IRS recorded its Certificate of Sale of Seized Property (“**Certificate of Sale**”) (CR 295-296).⁹

On September 19, 2017, after the 180-day redemption period expired, the United States of America conveyed the Property to the Pates via a Quitclaim Deed (the “**IRS Deed**”) (CR 297-300).¹⁰

Significantly, both the Certificate of Sale and the IRS Deed identify the Bishop Deed to JAB Development as the source of the title that the IRS conveyed to the Pates (CR 295, 297). In this regard, the legal description of the Property in the Certificate of Sale states:

“The property is described in Instrument # 2009072850 in the deed records of Fort Bend County Clerk of Courts in Texas.” (CR 295). (Emphasis added).

Moreover, the legal description of the Property in the IRS Deed states:

“Being the same property described in Warranty Deed from GEORGE M. BISHOP, to JAB DEVELOPMENT COMPANY,

⁹ The Certificate of Sale was recorded on March 16, 2017 in the Official Public Records of Fort Bend County under Clerk’s File No. 2017028085 (CR 296).

¹⁰ The IRS Deed was recorded on September 20, 2017 in the Official Public Records of Fort Bend County under Clerk’s File No. 2017103169 (CR 300)

dated November 12, 2007, recorded July 16, 2009 recording number 2009072850, Official Records of Fort Bend County, Texas.” (CR 297). (Emphasis added).

7. Bishop records an alleged “Substitute Trustee’s Deed” in 2017, ten years after the alleged foreclosure sale of the Property.

On October 2, 2017, while this suit was pending, Bishop recorded a back-dated document captioned “Substitute Trustee’s Deed” (the “**Alleged Substitute Trustee’s Deed**”) (CR 301-306).¹¹ T.H. Trust and Bishop both contend that the Alleged Substitute Trustee proves that K.M. Bishop, as the substitute trustee, actually foreclosed on the Property pursuant to the Coastal Deed of Trust on November 6, 2007.

The Alleged Substitute Trustee’s Deed states that: (i) the Mulligan Note and the Coastal Deed of Trust were assigned to Bishop; (ii) a foreclosure sale under the Coastal Deed of Trust occurred on November 6, 2007; and (iii) the Property was conveyed to T.H. Trust as the highest bidder at the alleged foreclosure sale (CR 301).

The Alleged Substitute Trustee’s Deed was recorded in 2017, **over ten years after the alleged 2007 foreclosure sale of the Property.** T.H. Trust and Bishop contend that the ten-year delay is due to the original substitute trustee’s deed being “lost.” They concede that the Alleged Substitute Trustee’s Deed is a replacement

¹¹ The Alleged Substitute Trustee’s Deed was recorded in the Official Public Records of Fort Bend County under Clerk’s File No. 2017106823 (CR 306). The purported signature of K.M. Bishop on the Alleged Substitute Trustee’s Deed is dated December 16, 2016 (CR 301).

deed. They further concede that the replacement deed was also missing until it was recently found on September 29, 2017 (Appellant's Brief at p. 8, Supp CR 20, 21, 28, and 29).

C. The Title Lawsuit, the Parties, and the Claims.

1. T.H. Trust sued the Pates for title to the Property.

On July 25, 2017, T.H. Trust filed suit against the Pates, claiming superior title to the Property. (CR 7-16).¹² T.H. Trust asserted claims of trespass to try title and declaratory judgment. *Id.*

2. The Pates asserted counter/crossclaims against T.H. Trust and Bishop.

On July 18, 2018, the Pates filed their Original Counterclaim against T.H. Trust and Original Crossclaim against Bishop (individually, and as trustee), and Bishop's son, K.M. Bishop, for quiet title, common law fraud, and breach of the general warranty of title under the Bishop Deed (CR 27).

On February 8, 2021, the Pates filed their First Amended Counterclaim and Crossclaim, dropping K.M. Bishop as a defendant and adding claims of statutory fraud, conspiracy, declaratory judgment, and liability for filing a fraudulent public

¹² Plaintiff was initially named as T.H. Trust in Plaintiff's Original Petition (CR 7). On August 23, 2017, Plaintiff filed its First Amended Petition changing the Plaintiff to Hamilton (CR 22).

record in violation of Tex. Civ. Prac. & Rem. Code § 12.001 *et seq.* (“**Chapter 12**”) (Supp CR 252-262).¹³

3. Bishop asserted a personal claim of title to the Property.

On March 15, 2021, Bishop filed his Original Answer and Counterclaim (Supp CR 342-347), and on January 18, 2022, Bishop filed his Supplemental Counterclaim against the Pates (CR 361-362). Here, Bishop claimed that he had acquired the Property from his client, T.H. Trust, and was now the owner with superior title to the Property.¹⁴ Bishop asserted claims of trespass to try title and declaratory judgment. *Id.*

4. Bishop has multiple roles in this suit: (i) grantor of the Property to JAB Development under the Bishop Deed; (ii) attorney for T.H. Trust; and (iii) party to this suit.

Bishop has multiple roles in this case. First, he is the grantor of the Property to JAB Development via the Bishop Deed in 2007 (CR 287-291). Second, Bishop was the attorney for Plaintiff, T.H. Trust, from July 25, 2017 (the filing date) until he was disqualified by the Trial Court on March 4, 2020 due to a conflict of interest

¹³ In Appellant’s Brief p. 16, Bishop challenges the sufficiency of the Pates’ evidence in support of their Chapter 12 claim. However, the Pates’ Chapter 12 claim was not addressed by the Final Judgment and is thus not covered by this appeal.

¹⁴ Bishop based his own standing to assert a title claim to the Property on the following alleged facts: (i) that his client T.H. Trust signed a promissory note for \$130,000 in unpaid attorney’s fees that was secured by a deed of trust lien against the Property; (ii) that the Property was foreclosed upon on December 7, 2021 due to T.H. Trust’s failure to pay the attorney’s fees owed to Bishop; and (iii) that Bishop purchased the Property as the high bidder at the December 7, 2021 foreclosure sale of the Property (CR 361-362).

(Supp CR 67, 195, 198, 202 and 206). Third, Bishop (*pro se*) is a party to the suit and is now the Appellant (also *pro se*). By this suit and appeal, Bishop seeks title to the Property all for himself.

D. The Pates filed their First Motion for Summary Judgment.

On February 8, 2021, the Pates filed their (i) Motion for Summary Judgment on the Claims Asserted by T.H. Trust; and (ii) Motion for Summary Judgment on the Pates' Counterclaims and Crossclaims against T.H. Trust and Bishop (collectively, the "**Pates' First MSJ**") (CR 216-318).

In support of the motion, the Pates proffered, *inter alia*, the recorded instruments comprising the relevant chain of title from 2000 to 2017 (CR 241-300). The Pates' evidence also included: (i) Affidavits of Robert Pate and their counsel, Russell Jones (CR 242-247); (ii) the Notice of the IRS' Auction of the Property (CR 249-251); and (iii) the Pates' payment check of \$176,000 for the Property (CR 252).

1. The Pates moved for summary judgment on T.H. Trust's trespass to try title claim.

As against T.H. Trust's trespass to try title claim (CR 216-226), the Pates argued that summary judgment was proper because T.H. Trust failed to meet its burden of proof. T.H. Trust was required to prove its title by relying solely upon the strength of its own title, and not the weaknesses of the Pates' title. (CR 219-220). T.H. Trust failed to meet this burden, as T.H. Trust attempted to prove its title by

relying on the Alleged Substitute Trustee Deed, which had multiple defects. For example, the Alleged Substitute Trustee's Deed was recorded in 2017, ten years after the purported foreclosure sale of the Property in 2007 and seven years after the statute of limitations expired in 2010 to enforce Coastal Deed of Trust lien (CR 216-226).

2. The Pates moved for summary judgment on T.H. Trust's declaratory judgment claim.

As against the T.H. Trust's declaratory judgment claim, the Pates argued that summary judgment was proper because the exclusive method of determining T.H. Trust's title to the Property was via a trespass to try title claim, and not a declaratory judgment claim (CR 226).

3. The Pates moved for summary judgment on their quiet title counter/crossclaim against T.H. Trust and Bishop.

The Pates also moved for summary judgment against T.H. Trust and Bishop on the Pates' counter/crossclaim for quiet title (CR 227-229). In support of their quiet title claim, the Pates proved their title to the Property by the chain of title documents: The Bishop Deed to JAB Development (CR 287-291), the IRS lien against JAB Development (CR 292-296); the Certificate of Sale of Seized Property (CR 295); and finally, the IRS Deed to the Pates (CR 297-300).

The Pates argued that the Alleged Substitute Trustee's Deed was a "cloud" on their title to the Property. The Pates requested that the Alleged Substitute Trustee's Deed be set aside by the Court (CR 227-229).

4. The Pates moved for summary judgment on their declaratory judgment counter/crossclaim against T.H. Trust and Bishop.

The Pates moved for summary judgment against T.H. Trust and Bishop on the Pates' declaratory judgment counter/crossclaim. Consistent with their quiet title claim, which challenged the validity of the Alleged Substitute Trustee's Deed, the Pates sought a declaratory judgment that the Alleged Substitute Trustee's Deed was null and void, and without further effect (CR 233-234).

E. Bishop filed his Response to the Pates' First Motion for Summary Judgment.

Only Bishop filed a response to the Pates' First MSJ (CR 319-336). T.H. Trust failed to respond. In his response, Bishop asserted a litany of arguments, none of which relate to T.H. Trust's and Bishop's burden to prove their title to the Property based on the strength of their own title:

1. that the Pates' filed their motion before T.H. Trust and Bishop answered in the lawsuit;
2. that the IRS Deed to the Pates did not convey the Property because it was a quitclaim deed;
3. that Bishop and JAB Development never owned the Property;

4. that the Pates' claims were barred by the four-year statute of limitations that expired on November 6, 2011, four years after the alleged foreclosure sale on November 6, 2007;
5. that the IRS auction of the Property was "illegal" because JAB Development owed "no money" to the IRS and no notice of the tax sale was provided; and
6. that the Pates lacked standing to sue because they did not have title to the Property (CR 319-336).

As his sole evidence, Bishop submitted the affidavit of Daniel Goldberg ("**Goldberg**") (CR 333-336). Goldberg claimed that he had attended the alleged November 6, 2007 foreclosure sale of the Property. (CR 333).

F. Bishop Objected to Associate Judge Brame's Consideration of the Pates' First MSJ.

The oral hearing on the Pates' First MSJ was scheduled for April 19, 2021. On April 14, 2021, Bishop filed his "Objection to the Referral to Associate Judge" ("**Objection**") (CR 337-339). Bishop objected to Associate Judge Argie Brame's consideration of the Pates' First MSJ at the April 19, 2021 hearing. *Id.*¹⁵ On the same date, the Pates filed their response to Bishop's Objection (Supp CR 446-449).

On April 19, 2021, the date of the hearing, Bishop and David Hamilton (both acting *pro se*), each filed their own Motion to Recuse Judge Brame from the motions to be heard that day, including the Pates' First MSJ (CR 340-342, 343-346).

¹⁵ In addition to the Pates' First MSJ, Bishop objected to Judge Brame's consideration of the Pates' previously filed Motion for Sanctions (Supp CR 353, 432, and 494) and Motion to Exclude Evidence (Supp CR 348). These motions were also set for oral hearing on April 19, 2021. *Id.*

However, before Judge Brame proceeded with the April 19, 2021 oral hearing, Bishop and Hamilton withdrew their Motions to Recuse (Supp CR 724).

On April 21, 2021, after a hearing, Judge Brame denied Bishop's Objection because: (i) the Objection was filed beyond the 10-day deadline under Tex. Gov't Code § 54A.106; and (ii) the Objection was improperly made with respect to the Pates' Motion for Sanctions and Motion to Exclude Evidence, as section 54A.106 only allowed objections to the associate judge for a trial on the merits or for presiding over a jury trial (CR 357, Supp CR 490-493).

G. The Trial Court Signed its February 4, 2022 Interlocutory Order.

On February 4, 2022, Associate Judge Argie Brame signed her Interlocutory Order Granting the Pates' First MSJ in part (CR 367-372).

The Trial Court found that there were no genuine fact issues as to T.H. Trust's trespass to try title claim and the Pate's quiet title claim. The Trial Court granted summary judgment on T.H. Trust's trespass to try title claim on the grounds that T.H. Trust failed to prove its title based on the strength of its own title. The Trial Court awarded title to the Property to the Pates and declared that the Substitute Trustee's Deed was "null, void and of no further effect" (CR 367-372).

H. Bishop Appealed Judge Brame’s Ruling to the Elected Judge.

On August 8, 2022, Bishop appealed Judge Brame’s February 4, 2022 ruling to the elected judge of the Trial Court, Judge Christian Becerra, pursuant to Tex. Gov’t. Code § 54A.111 (CR 384-403).

On September 13, 2022, Judge Becerra conducted a *de novo* oral hearing on Bishop’s appeal (CR 404). On September 16, 2022, Judge Becerra signed his Order Dismissing Bishop’s appeal and held that the matters determined by Judge Brame’s February 4, 2022 Interlocutory Order shall not be relitigated (CR 404).¹⁶

I. The Trial Court Signed its Final Judgment dated December 21, 2022.

1. The Pates moved for clarification of the Interlocutory Order.

On August 1, 2022, the Pates sought clarification from the Trial Court with respect to the February 4, 2022 Interlocutory Order (CR 377-379). The Pates requested that the Trial Court enter a Final Judgment that incorporated the February 4, 2022 Interlocutory Order and specifically deny the relief that was not granted (CR 377-379).

¹⁶ Bishop sought further review of his appeal via a Petition for Writ of Mandamus, which was denied by this Court on November 8, 2022 (Supp CR 716).

2. The Pates filed their Second Motion for Summary Judgment to address Bishop’s counterclaim for title to the Property.

On September 27, 2022, the Pates moved for summary judgment on Bishop’s trespass to try title and declaratory judgment claim (410-415) (the “**Pates’ Second MSJ**”). Here, the Pates argued that Bishop’s claims, which were derived from T.H. Trust’s failed title to the Property as determined by the Trial Court’s February 4, 2022 Interlocutory Order, were likewise without merit for the reasons stated in the Pates’ First MSJ based on the law of the case doctrine. (CR 410-415).

The Pates’ Second MSJ was set for oral hearing on November 29, 2022 (CR 460).¹⁷ Although Bishop was duly served with at least 21 days’ notice of the hearing on October 18, 2022, Bishop failed to file a response to the Pates’ Second MSJ (CR 460).¹⁸

3. The Trial Court’s Final Judgment entered on December 21, 2022.

On December 6, 2022, Bishop filed an appeal of Judge Brame’s rulings on the Pates’ Motion for Summary Judgment on Bishop’s title claims to the Elected Judge under Tex. Gov’t. Code § 54A.111 (CR 454-457). The appeal was filed before the Trial Court issued its Final Judgment.

¹⁷ The Pates noticed their Motion for Clarification on the same date as their Second MSJ (CR 460).

¹⁸ At the oral hearing on the Pates’ Second MSJ, the Pates indicated to the Court that, upon the Court’s execution of a Final Judgment, they would nonsuit all claims and counterclaims against Bishop and Hamilton that were not granted by the Trial Court, to make the judgment a Final Judgment (CR 460).

On December 21, 2022, the Trial Court entered its Final Judgment (CR 460-465). The Final Judgment incorporated the Trial Court's prior Interlocutory Order dated February 4, 2022, and granted the Pates' Second MSJ against Bishop (CR 460-465).

The Trial Court found that there were no genuine issues of material fact as to T.H. Trust's and Bishop's trespass to try title claims against the Pates, as T.H. Trust and Bishop could not prove their title based upon the strength of their own title. The Trial Court further found that there were no genuine issues of material fact as to the Pates' quiet title claim. The Trial Court also found that the Pates were entitled to summary judgment as a matter of law (CR 460-465).

The Trial Court further found that there were no genuine issues of material fact as to T.H. Trust's claims for declaratory judgment and for attorney's fees, and that the Pates were entitled to summary judgment as a matter of law (CR 460-465).

The Trial Court therefore ORDERED, ADJUDGED, AND DECREED that Plaintiff, David H. Hamilton, Trustee of T.H. Trust, take nothing from Defendants Robert G. Pate and Judy K. Pate (CR 460-465).

The Trial Court further ORDERED, ADJUDGED, AND DECREED that the following instruments are declared to be null, void, and of no further effect, as if they had never been created or filed in the real property records:

- (i) That one certain Substitute Trustee's Deed filed in the Official Public Records of Fort Bend County on October 2, 2017 under Clerk's File No. 2017106823;
- (ii) That one certain Deed of Trust executed by David Hamilton, Trustee of the T.H. Trust on or about June 21, 2021 and filed in the Official Public Records of Fort Bend County under Clerk's File No. 2021106854; and
- (iii) That one certain Trustee's Deed dated January 12, 2022, filed under Clerk's File No. 2022007967 of the Official Public Records of Fort Bend County (CR 460-465).

The Trial Court further ORDERED, ADJUDGED, AND DECREED that title to the Property is in Robert G. Pate and Judy K. Pate (CR 460-465).

4. Only Bishop appealed.

On January 4, 2023, Bishop filed his Notice of Appeal to this Court (CR 466-467). T.H. Trust did not appeal.

SUMMARY OF ARGUMENT

The Trial Court's Final Judgment granting the Pates' Motions for Summary Judgment should be affirmed in all respects.

The Trial Court complied with Tex. Gov't Code § 54A.111 in connection with Bishop's appeal of Associate Judge Argie Brame's summary judgment rulings. Bishop's claim that he was denied a *de novo* hearing on appeal is without merit. In reality, Bishop was provided with a *de novo* hearing before Trial Court Judge Christian Becerra, who dismissed Bishop's appeal.

In his third issue on appeal, Bishop asserts that the Trial Court erred by having Associate Judge Brame consider the Pates' First Motion for Summary Judgment after Bishop objected to Judge Brame. This issue was not briefed by Bishop and has thus been waived on appeal. In any event, Bishop's argument is without merit. Bishop's objection to Judge Brame was properly denied because it was filed late and did not comply with Tex. Gov't Code § 54A.106.

The Trial Court did not err in granting the Pates' Motion for Summary Judgment on T.H. Trust and Bishop's trespass to try title claims and awarding the Property to the Pates. T.H. Trust and Bishop were required to prove their title to the Property based on the strength of their own title and not the weaknesses of the Pates' title. They failed to do so.

The Trial Court did not err in holding that the IRS Deed, a quitclaim deed, conveyed title to the Property to the Pates. Under Texas law, if the grantor of a quitclaim owns the property, then title to the property is conveyed to the grantee in the same manner as a deed. The chain of title establishes the Pates' title to the Property. The chain of title documents show that: (i) the Bishop Deed conveyed the Property to JAB Development; (ii) the IRS asserted its tax lien against the Property and seized all right, title, and interest that JAB Development held in the Property; and (iii) the Pates acquired JAB Development's title to the Property via the IRS Deed.

The Trial Court did not err in holding that the Pates had standing to assert their quiet title claims against T.H. Trust and Bishop. The Pates established that they had an interest in the Property that was injured by the "cloud" on their title caused by the defective Alleged Substitute Trustee's Deed.

The Trial Court did not err in granting the Pates summary judgment on their quiet title and declaratory judgment claims. The Pates were entitled to remove the "cloud" on their title to the Property caused by the defective Alleged Substitute Trustee's Deed. Further, the Trial Court's Order setting aside the Alleged Substitute Trustee's Deed under the Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code § 37.001 *et seq.* ("**DJA**") was proper, as the DJA can apply to quiet title claims when the validity of a deed is at issue.

Based on the above, the Pates carried their burden to be entitled to a traditional summary judgment as a matter of law. There are no genuine issues of material fact. The Trial Court's Final Judgment be affirmed in all respects.

ARGUMENT

A. Standard of Review for Traditional Summary Judgment.

To prevail on a traditional summary judgment motion, a movant must prove that there is no genuine issue regarding any material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Little v. Tex. Dep't. of Crim. Justice*, 148 S.W.3d 374, 381 (Tex. 2004). A party moving for summary judgment on one of its own claims must conclusively prove all essential elements of the claim. *See Rhône-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). A defendant may also prevail by traditional summary judgment if it conclusively negates at least one essential element of a plaintiff's claim or conclusively proves an affirmative defense. *See IHS Cedars Treatment Ctr. of DeSoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004). A matter is conclusively established if reasonable people could not differ as to the conclusion to be drawn from the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005).

If the movant meets its burden, the burden then shifts to the nonmovant to raise a genuine issue of material fact precluding summary judgment. *See Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 195, 197 (Tex. 1995). The evidence raises a genuine issue of fact if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary judgment evidence. *See Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam). On appeal, the

Court of Appeals reviews a trial court's summary judgment ruling *de novo*. *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

On appeal, the Court of Appeals shall consider all the evidence in the light most favorable to the nonmovant, crediting evidence favorable to the nonmovant if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not. *Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

B. The Trial Court complied with Tex. Gov't Code § 54A.111 in connection with Bishop's appeal of Associate Judge Argie Brame's summary judgment rulings.

In Point Two of his brief (pp. 13-14), Bishop asserts that the Trial Court erred under Tex. Gov't Code § 54A.111 by refusing to give him a *de novo* hearing in connection with his appeal of Judge Brame's summary judgment rulings to the elected judge of the Trial Court, Judge Christian Becerra. This assertion is inaccurate.

After Judge Brame signed her Interlocutory Order granting the Pates' First MSJ in part on February 4, 2022, Bishop appealed the ruling to Judge Becerra pursuant to Tex. Gov't Code § 54A.111 (CR 384-403). The Trial Court conducted a *de novo* oral hearing on Bishop's appeal (CR 404). On September 16, 2022, Judge Becerra signed his Order Dismissing Bishop's Appeal and held that the matters determined by Judge Brame's February 4, 2022 Interlocutory Order shall not be relitigated. (CR 404). Bishop sought further review of the February 4, 2022 Order

by Petition for Writ of Mandamus, which was denied by this Court on November 8, 2022 (Supp CR 716).

On December 6, 2022, Bishop filed a second appeal under Section 54A.111 (CR 454-459). However, this appeal was premature as the Final Judgment had not yet been signed. On December 21, 2022, the Trial Court signed its Final Judgment (CR 460-465). On January 4, 2023, Bishop filed his appeal to this Court (CR 466-467). Thus, the second appeal to the Trial Court under Section 54A.111 (and the need for a second *de novo* hearing) was rendered moot by Bishop's appeal to this Court.¹⁹

Because the Trial Court complied with Section 54A.111 and provided Bishop with his hearing, the Trial Court's Final Judgment should be affirmed in all respects.

C. It was proper for Associate Judge Argie Brame, instead of the elected Trial Court Judge Christian Becerra, to consider the Pates' Motions for Summary Judgment.

Bishop's Third Issue for appeal states: "After an objection to an Associate Judge hearing a summary judgment motion was filed, may the Associate Judge proceed to hear and decide the Motion for Summary Judgment?"

¹⁹ In p. 13 of his brief, Bishop asserts that he was denied *de novo* review with respect to Judge Brame's June 10, 2021 Order granting the Pates' Motion for Sanctions. The sanctions were imposed due to Bishop's failure to comply with the Trial Court's March 4, 2020 Order that disqualified Bishop and ordered Bishop to promptly provide the Trial Court and Pates' counsel Russell Jones with the contact information for Bishop's successor counsel or David H. Hamilton, Trustee of T.H. Trust *pro se*. (CR 494-496). The Court's June 10, 2021 Order is unrelated to the Trial Court's rulings in its Final Judgment that are the subject of this appeal.

This issue was not briefed by Bishop and has thus been waived on appeal.²⁰

Nonetheless, the Pates respond to Bishop's issue as follows:

1. Bishop's Objection to Judge Brame's consideration of the Pates' First MSJ failed to comply with Section 54A.106 of the Texas Government Code.

Judge Brame's consideration of the Pates' First MSJ was proper. Bishop fails to mention that his Objection to Judge Brame's consideration of the motions set for oral hearing on April 19, 2021 (i.e., the Pates' First MSJ, Motion for Sanctions, and Motion to Exclude Evidence) was filed after the 10-day deadline under Tex. Gov't Code § 54A.106 (CR 337-339).

Additionally, Bishop's Objection was improperly made as to the Pates' Motion for Sanctions and Motion to Exclude Evidence, as section 54A.106 only allowed objections to the associate judge for a trial on the merits or for presiding over a jury trial (CR 357, Supp CR 490-493).

²⁰ Texas Rule of Appellate Procedure 38.1(i) requires that an appellant's brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." Tex. R. App. P. 38.1(i). "Rule 38 requires [a party] to provide us with such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Id.* "Issues on appeal are waived if an appellant fails to support his contention by citations to appropriate authority ..." *Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.). Similarly, appellate issues are waived when the brief fails to contain a clear argument for the contentions made. *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 322 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

2. Bishop and David Hamilton withdrew their Motions to Recuse Judge Brame at the April 19, 2021 hearing.

On April 19, 2021, Bishop and David Hamilton filed Motions to Recuse Judge Brame from hearing the Pates' First MSJ, the Motion for Sanctions, and the Motion to Exclude Evidence. However, the Motions to Recuse were withdrawn before the hearing started. (Supp CR 724).

Based on the above, Judge Brame did not err in her consideration of the Pates' First MSJ and her subsequent rulings in the February 4, 2022 Interlocutory Order and the Final Judgment. Accordingly, the Trial Court's Final Judgment should be affirmed in all respects.

D. The Trial Court's Final Judgment granting summary judgment on T.H. Trust and Bishop's trespass to try title claims and awarding title to the Property to the Pates should be affirmed.

1. T.H. Trust and Bishop's burden of proof to recover for trespass to try title.

A trespass to try title action is the sole method of determining title to land or real property. Tex. Prop. Code § 22.001(a); *Martin v. Amerman*, 133 S.W.3d 262, 265-267 (Tex. 2004). A plaintiff in an action for trespass to try title may recover (1) by proving a regular chain of conveyances from the sovereign, (2) by proving a superior title out of a common source, (3) by proving title by limitations, or (4) by proving prior possession and that the possession has not been abandoned. *Rogers v.*

Ricane Enterprises, Inc., 884 S.W.2d 763, 768 (Tex. 1994); *Land v. Turner*, 377 S.W.2d 181, 183 (Tex. 1964).

The plaintiff in an action for trespass to try title must recover, if at all, on the strength of the plaintiff's own title and may not rely on the weakness of the defendant's title. *Kilpatrick v. McKenzie*, 230 S.W.3d 207, 214 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (when plaintiff fails to establish right to title in trespass to try title action, judgment must be entered for defendant even if defendant fails to establish pleaded title, because “harsh” rule is that plaintiff may recover only when the plaintiff's own title has been affirmatively proven); *Singleton v. Terel*, 727 S.W.2d 688, 690 (Tex. App.—Texarkana 1987, no writ) (argument that title claim of defendants was faulty was irrelevant in absence of showing of plaintiff's title); *Reinhardt v. North*, 507 S.W.2d 589, 591 (Tex. Civ. App.—Waco 1974, writ ref'd n.r.e.); *Gray v. Joyce*, 485 S.W.2d 311, 313 (Tex. Civ. App.—Tyler 1972, writ ref'd n.r.e.).

2. George Bishop is the common source of title for the parties' competing title claims.

Under the Texas Rules of Civil Procedure, a party may recover in a trespass to try title action by tracing to a common source without having to go beyond that common source. *Rogers*, 884 S.W.2d at 768; *Watkins v. Certain Teed Products Corp.*, 231 S.W.2d 981, 984 (Tex. Civ. App.—Amarillo 1950, no writ); Tex. R. Civ. P. 798, see *Gipson Jelks v. Gipson*, 468 S.W.3d 600, 603-604 (Tex. App.—Houston

[14th Dist.] 2015, no pet.) (when sisters each claimed title from a common source of their mother, it was not necessary to introduce the deed granting title to mother).

As shown by the relevant chain of title conveyances in the Pates' summary judgment evidence, George Bishop is the common source of the parties' competing title claims (CR 265-291 and CR 292-300).

3. T.H. Trust and Bishop failed to meet their burden to show their title based upon the strength of their own title as a matter of law.

The Trial Court did not err in granting summary judgment in the Pates' favor on T.H. Trust's and Bishop's trespass to try title claim and in awarding the Property to the Pates. T.H. Trust and Bishop failed to meet their burden to show their title from the common source (George Bishop) based on the strength of their own title and not based any alleged defect in the Pates' title. *Kilpatrick v. McKenzie*, 230 S.W.3d at 214.

a. T.H. Trust and Bishop failed to respond to both Motions for Summary Judgment.

First, T.H. Trust failed to respond to the Pates' First MSJ, and Bishop failed to respond to the Pates' Second MSJ. The local rules allowed the Trial Court to find that, due to their failure to respond, that T.H. Trust and Bishop did not oppose the

Pates' requested relief.²¹ Accordingly, summary judgment on T.H. Trust and Bishop's trespass to try title claims should be affirmed on this basis alone.

b. Multiple defects in the Alleged Substitute Trustee's Deed.

Moreover, the Trial Court correctly found that T.H. Trust and Bishop had failed to show the strength of their own title because of the multiple defects in the Alleged Substitute Trustee's Deed. As shown by the Pates' summary judgment evidence, the Alleged Substitute Trustee's Deed has multiple glaring defects (CR 301-306):

The Alleged Substitute Trustee's Deed is extremely untimely. It was signed on December 19, 2016, ten years after the August 9, 2006 default date of the Mulligan Note, nine years after the date that Bishop signed the Bishop Deed conveying the Property to JAB Development; seven years after the Coastal Deed of Trust lien became unenforceable due to the expiration of the four-year statute of limitations in 2010; and three and a half years after the IRS filed its tax lien against the Property (CR 301-306).

Even as tardy as Alleged Substitute Trustee's Deed was, it was still not recorded in Fort Bend County until October 2, 2017. This recording date is ten

²¹ See Fort Bend (Tex.) Civ. Dist. Ct. Loc. R. 3.3.2 ("Responses [to motions] shall be in writing and shall be accompanied by a proposed order. **Failure to file a response may be considered a representation of no opposition.**") (Emphasis added).

months after the December 19, 2016 date that K.M Bishop purportedly signed the deed, and seven months after the IRS' sale of the Property to the Pates (CR 301).

By the time the Alleged Substitute Trustee's Deed was recorded, Bishop had already conveyed the Property to JAB Development via the Bishop Deed in 2007, ten years earlier (CR 287-291). In the deed, Bishop warranted his title to the Property (CR 288). As a result of the deed he signed, Bishop is estopped from denying the conveyance he made to JAB Development.²²

By the time the Alleged Substitute Trustee's Deed was recorded, the following documents supporting the Pates' title to the Property were already recorded: (i) the IRS' Notice of Federal Tax Lien dated February 15, 2013 against JAB Development (CR 292-294); the IRS Certificate of Sale of Seized Property dated March 16, 2017 (CR 295-296); and the IRS Deed dated September 19, 2017 from United States of America, conveying the Property to the Pates (CR 297-300). These recordings gave notice to the world of its contents, including T.H. Trust and Bishop. *See* Tex. Prop. Code § 13.002.²³

²² Estoppel by deed is based on the principle that if the deed contains an express or implied representation that, at the time of its execution, the grantor possessed the title that the deed purports to convey, the grantor should not later be allowed to assert a position inconsistent with the provisions of the deed and prejudicial to the rights of the grantee and those claiming under the grantee. *McDaniel v. Cherry*, 353 S.W.2d 280, 284 (Tex. Civ. App.—Texarkana 1962, writ ref'd n.r.e.); *XTO Energy Inc. v. Nikolai*, 357 S.W.3d 47, 55-56 (Tex. App.—Fort Worth 2011, pet. denied).

²³ Tex. Prop. Code § 13.002 (An instrument that is properly recorded in the proper county is: (1) notice to all persons of the existence of the instrument; and (2) subject to inspection by the

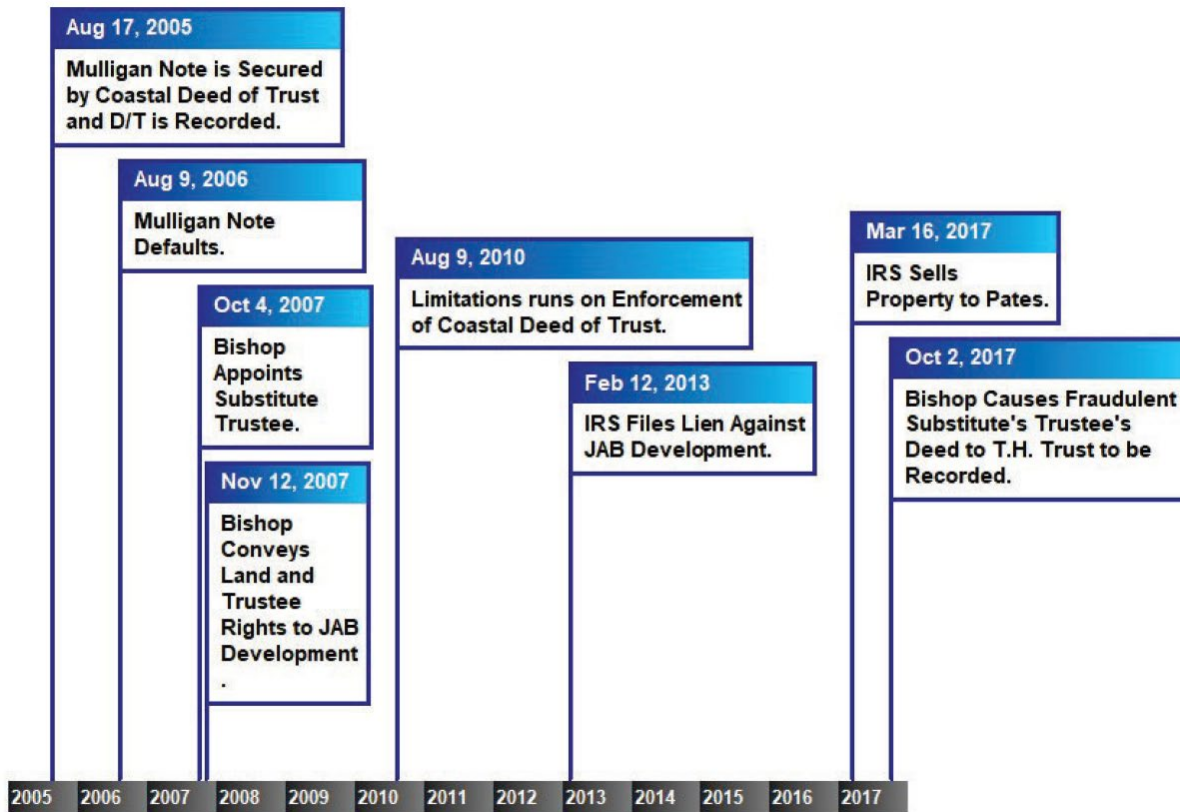
The Alleged Substitute Trustee's Deed was filed by T.H. Trust and Bishop only after the Pates moved to dismiss their claims. On August 16, 2017, the Pates filed their Motion to Dismiss for Want of Jurisdiction ("**Motion to Dismiss**") (Supp CR 8-11). The motion asserted that T.H. Trust lacked standing to sue because T.H. Trust did not own an interest in the Property. On October 2, 2017, the same day that T.H. Trust filed its response to the Pates' Motion to Dismiss, T.H. Trust recorded the Alleged Substitute Trustee's Deed to create its own standing (Supp CR 20-27).

The acknowledgement of the Alleged Substitute Trustee's Deed states that it was signed in Brewster County, Texas (not Fort Bend County), and that it was the intention of K.M. Bishop, as substitute trustee, to transfer the Property to an entity called "Coastal Financial Consultants, Inc," (not T.H. Trust) (CR 302).

Due to the multiple defects in the Alleged Substitute Trustee's Deed, the Trial Court properly determined that T.H. Trust and Bishop failed to meet their burden to prove their title to the Property based on the strength of their own title.

public). One is charged with constructive notice of the actual knowledge that one could gain by an examination of the public records. *Mooney v. Harlin*, 622 S.W.2d 83, 85 (Tex. 1981).

Timeline Showing Failure of Title in T.H. Trust



c. The deficient Goldberg Affidavit.

In his response to the Pates' First MSJ (CR 319-336), Bishop wholly failed to refute the defects in the Alleged Substitute Trustee's Deed. Instead, Bishop submitted an affidavit of Daniel Goldberg (the "**Goldberg Affidavit**") (CR 333-336).²⁴ Here, Goldberg claimed that he attended the November 6, 2007 foreclosure sale and submitted a "credit bid" for the Property on T.H. Trust's behalf (CR 333).

²⁴ The Goldberg Affidavit was the only evidence submitted in response to the Pates' First MSJ. In p. 8 of the Appellant's Brief, Bishop alleges that he filed an "abstract" on July 30, 2020 showing the chain of title to the Property starting with the Republic of Mexico (CR 137-215). However, as pointed out by the Pates in their Motion to Exclude Bishop and T.H. Trust's Evidence of Title filed

The Goldberg Affidavit fails to raise a genuine issue of material fact. The Goldberg Affidavit fails to describe the money that T.H. Trust paid for the Property, and how those funds were tendered to the substitute trustee, K.M. Bishop. Instead, Goldberg alleges that T.H. Trust's bid was a "credit bid" in the amount of \$130,000.

Only the lender was authorized under the Coastal Deed of Trust to make a credit bid.²⁵ There is no proof that T.H. Trust was ever Grand Parkway's lender. As Bishop states several times in his recorded affidavits, the loan was assigned to Bishop individually, not to T.H. Trust (CR 276-279, 280-282, 285-286). T.H. Trust had no authority under the Coastal Deed of Trust to make a "credit bid" against the indebtedness of the Mulligan Note. Thus, Goldberg's claim that he went to the November 7, 2007 sale and tendered a \$130,000 "credit bid" on behalf of T.H. Trust, which he had no authority to do, fails to raise a genuine fact issue.

on March 16, 2021 (Supp. CR 348-352), the documents did not comprise a proper abstract of title under Tex. R. Civ. P. 792 and 793 due to missing documents and multiple gaps in the chain of title. Additionally, Bishop and T.H. Trust did not file an abstractor's certificate, a statement of the nature of each document filed, or evidence of a patent by the sovereign. Bishop does not refer to his purported "abstract" in response to the Pates' Motions for Summary Judgment, so this evidence was not presented to the Trial Court. The purported "abstract" filed by T.H. Trust and Bishop does not raise a genuine issue of material fact.

²⁵ Per the terms of the Coastal Deed of Trust (CR 265-275), only the lender, Mulligan (or Bishop himself as Mulligan's purported assignee) is permitted to credit bid at the foreclosure sale. *See* Coastal Deed of Trust, Section B, ¶ 6(c): "If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may . . . **c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.**" (Emphasis added) (CR 267).

In their reply, (CR 435-445) the Pates assert that the Goldberg Affidavit is defective because Mr. Goldberg failed to swear that the statements made therein are based upon his personal knowledge under Tex. R. Civ. P. 166a(f). The Goldberg Affidavit also wholly failed to address the salient issue of whether a trustee's deed from the 2007 sale was recorded prior to the expiration of the four-year limitations period for the enforcement of the Coastal Deed of Trust (CR 439).

Overall, the Goldberg Affidavit wholly failed to explain the multiple holes in T.H. Trust and Bishop's title claim and failed to raise a genuine issue of material fact.

d. Bishop's additional arguments fail to advance the strength of T.H. Trust or Bishop's claimed title to the Property.

Bishop devotes the rest of his response (CR 319-336) to a litany of meritless arguments, none of which relate to T.H. Trust's and Bishop's burden to prove their title to the Property based on the strength of their own title.²⁶

²⁶ The following arguments raised by Bishop in his Response to the Pates' First Motion for Summary Judgment are addressed in Appellee's Brief *infra*: (i) that the IRS Deed did not convey the Property to the Pates because it was a quitclaim deed (see Section E); and (ii) that the Pates lacked standing to assert their counter/crossclaims (see Section F).

i. that the Pates' First MSJ was untimely.

Bishop argued that the Pates' First MSJ was filed in violation of Rule 166a because T.H. Trust and Bishop had not yet appeared or answered in the lawsuit. (CR 319). This argument is without merit because T.H. Trust and Bishop had been parties to the suit since its inception on July 25, 2017 and were counter/cross-defendants since July 18, 2018, when they were duly served with the Pates' original counterclaim and crossclaim (CR 27-36). In any event, the Trial Court had continued the oral hearing on the Pates' First MSJ to April 19, 2021 to resolve Bishop's alleged claim of insufficient notice. (Supp CR 437-438).

ii. that Bishop and JAB Development never owned the Property.

Bishop claimed that he and JAB Development never owned the Property (CR 322, 325, 329-330). This argument is without merit and is refuted by the recorded Bishop Deed to JAB Development (CR 287-291) as well as the following IRS documents transferring JAB Development's interest in the Property to the Pates: (i) the IRS lien against JAB Development (CR 292-296); (ii) the Certificate of Sale of Seized Property (CR 295); and (iii) the IRS Deed to the Pates (CR 297-300).

iii. that the Pates' claims are barred by limitations.

Bishop argued that the Pates' counter/crossclaims were barred by the four-year statute of limitations (CR 321). He claimed that the limitations period accrued on November 6, 2007, the date of the alleged foreclosure sale of the Property under the Coastal Deed of Trust. *Id.*

This argument is without merit, as the Alleged Substitute Trustee's Deed was not filed until ten years after the alleged sale, on October 2, 2017 (CR 301-306). The Pates (as well as the rest of the world) did not have notice (actual or constructive) of the contents of the Alleged Substitute Trustee's Deed until it was duly recorded on October 2, 2017. *See* Tex. Prop. Code § 13.002; *Mooney*, 622 S.W.2d at 85.

Accordingly, any cause of action arising from the Alleged Substitute Trustee's Deed accrued on October 2, 2017, the date of recording. *In re Estate of Matejek*, 928 S.W.2d 742, 744 (Tex. App.—Corpus Christi 1996, writ denied)(holding that statute of limitations on a claim to set aside a deed accrued on the date that the deed was recorded if the facts on the face of the deed put plaintiff on notice of her claims); *Vance v. Bell*, 797 S.W.2d 403, 405 (Tex. App.—Austin 1990, no writ) (constructive notice is limited to the facts reflected on the face of the records). The Pates' counter/crossclaims, filed on July 18, 2018, are clearly within the four-year limitations period (CR 27-36).

iv. that the IRS tax sale was illegal.

Bishop has asserted that the March 16, 2017 IRS sale of the Property to the Pates was “illegal” because (i) there was no notice of the tax sale provided to JAB Development (CR 325); and (ii) JAB Development owed “no money” to the IRS (CR 329). Bishop’s response (CR 319-336) contains no evidence to support these bare assertions.

Contrary to Bishop’s claims, the March 16, 2017 IRS tax sale was duly noticed, as shown by the Notice of Public Auction Sale dated February 8, 2016 (CR 249-251). Moreover, the Notice of Federal Tax Lien (292-293), the Notice of Public Auction Sale (CR 249-251), the Certificate of Sale of Seized Property (CR 295-296), and the IRS Deed (CR 297-300) all confirm that JAB Development owed delinquent taxes to the IRS.

Based on the above, the Pates carried their summary judgment burden as against T.H. Trust and Bishop’s trespass to try title claims. T.H. Trust and Bishop failed to prove their claims of title to the Property based on the strength of their own title. There were no genuine issues of material fact. Accordingly, this Court should affirm the Trial Court’s Final Judgment awarding the Pates title to the Property.

E. The Trial Court's finding that the IRS Deed conveyed title to the Property to the Pates should be affirmed.

- 1. Under Texas law, if the grantor of a quitclaim deed owns the property, then the title to the property is conveyed to the grantee in the same manner as a deed.**

In pp. 12, 17-18 of the Appellant's Brief, Bishop contends that the IRS Deed did not convey the Property to the Pates because it is a quitclaim deed. Bishop offers no evidence to support this bare contention other than the IRS Deed itself.

Bishop's position is without merit and fails to raise a genuine issue of material fact. Texas courts have held that "If a grantor of a quitclaim deed owns the fee at the time of executing a quitclaim deed, then the grantor's title is conveyed as fully and effectively as if the grantor had given a deed purporting to convey the fee." *Victoria Bank & Tr. Co. v. Cooley*, 417 S.W.2d 814, 817 (Tex. Civ. App.—Houston [1st Dist.] 1967, writ ref'd n.r.e.) (since the grantors owned the property in fee at the time they signed the quitclaim deed, the grantees acquired a fee simple title under the quitclaim deed); *citing Harrison Oil Co. v. Sherman*, 66 S.W. 2d 701, 705(Tex. App.—Beaumont 1933, writ ref'd); *Farhart v. Pope*, 384 S.W.2d 932, 934 (Tex. Civ. App. Waco 1964), writ ref'd. n.r.e. (Apr. 28, 1965); *Lott v. Lott*, 370 S.W.2d 463, 465 (Tex. 1963).

Further, 26 U.S.C. § 6339(b) of the Internal Revenue Code provides in relevant part:

(1) **Deed as Evidence.** The deed of sale ... shall be prima facie evidence of the facts therein stated; and

(2) **Deed as Conveyance of Title.** ... [S]uch deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

26 U.S.C. § 6339(b). (Emphasis added).

The cases cited by Bishop do not hold that a quitclaim never results in the passing of any title, but rather that if the grantor of a quitclaim deed has no title, then no title will pass. *Geodyne Energy Income Production Partnership I-E v. The Newton Corporation*, 161 S.W.3d 482, 487 (Tex. 2005); *Rogers*, 884 S.W.2d at 769 and *Jackson v. Wildflower Prod. Co.*, 505 S.W.3d 80, 89 (Tex. App.—Amarillo 2016, pet. denied).

2. The chain of title documents prove the Pates' ownership of the Property.

The Pates have proved their ownership in the Property by the following chain of title instruments emanating from the common source, George Bishop: (i) the Bishop Deed to JAB Development (CR 287-291); (ii) the IRS lien against JAB Development (CR 292-296); (iii) the IRS Certificate of Sale of Seized Property (CR 295); and (iv) the IRS Deed to the Pates (CR 297-300).

The Bishop Deed (CR 287- 289) conveyed the Property to JAB Development by general warranty deed. The Bishop Deed states that Bishop, as Grantor, “grants, sells, and conveys to Grantee [JAB Development] the Property, together with all and

singular the rights and appurtenances therein in any way belonging, to have and to hold it to grantee and grantee's heirs, successors, and assigns forever" (CR 287-289). As the grantor who warranted title, Bishop is estopped to assert anything in derogation of the grantee's title. *Wade v. Brockmann*, 404 S.W.2d 622 (Tex. Civ. App.—Austin 1966, writ ref'd n.r.e.).

The IRS issued its Notice of Federal Tax Lien against the property of JAB Development on February 5, 2012, recorded the tax lien on February 12, 2013, and seized the Property of JAB Development on September 9, 2016 (CR 292-296, 297). Although the IRS seized the Property, the IRS did not become the Property's owner in doing so. JAB Development remained the owner of the Property until the Property was sold and conveyed to the Pates via the IRS Deed. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 211 (1983) (ownership of the property is only transferred when the property is sold to a bona fide purchaser at a tax sale); 26 U.S.C. § 6339(b)(2) (IRS deed is a conveyance of all the right, title, and interest the party delinquent had in and to the real property). On September 19, 2017, the IRS conveyed all JAB Development's rights, title, and interest in the Property to the Pates via the IRS Deed (CR 297-300).

There is no doubt that the IRS Deed conveyed JAB Development's title to the Property to the Pates. The IRS' Notice of Federal Tax Lien (CR 292) states that the IRS' tax lien covered "all property and rights to the property" belonging to [JAB

Development Corporation JAB Development Company a Corporation] for the amount of these taxes, and additional penalties, interest, and costs that may accrue.” (Emphasis added).²⁷

Further, the IRS’ Certificate of Sale of Seized Property (CR 295-296) states that the IRS sold at public sale “the property described below” to the Pates. This property is the same property that was conveyed by the Bishop Deed:

I certify that I sold at public sale the [P]roperty described below, seized for nonpayment of delinquent Internal Revenue Taxes due from: JAB Development Company ... The [P]roperty is described in Instrument #2009072850 in the deed records of Fort Bend County Clerk of Courts in Texas (CR 295) (Emphasis added).

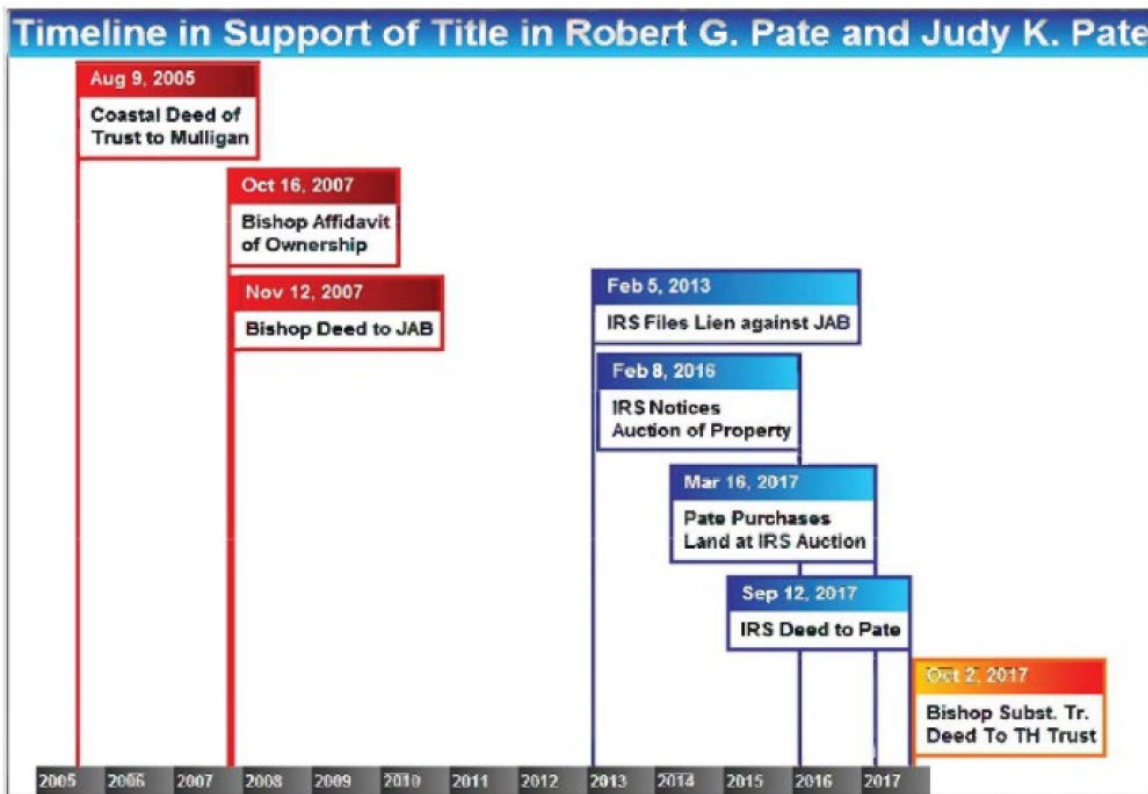
Moreover, the IRS Deed (CR 297-300) states that on September 19, 2017, the IRS conveyed to the Pates:

“all the rights, title, and interest” of the following real estate located in Fort Bend County: ... Being the same property described in the Warranty Deed from GEORGE M. BISHOP, to JAB DEVELOPMENT COMPANY, dated November 12, 2007, recorded July 16, 2009, recording number 2009072850, Official Records of Fort Bend County, Texas” (CR 297) (Emphasis added).

²⁷ In p. 8 of the Appellant’s Brief, Bishop asserts that there is no connection between JAB Development Company and JAB Development Corporation. This assertion is without merit as the Notice of Federal Tax Lien lists both of these names for the taxpayer. (CR 292). **Thus, the IRS’ tax lien covered the property for both JAB Development Corporation and JAB Development Company.** *Id.* On March 11, 2020, the Pates recorded a Correction Deed to change the name of JAB Development in the IRS Deed as “JAB Development Corporation a/k/a JAB Development Company” (CR 315-318).

3. Because JAB Development held title to the Property when the IRS signed the IRS Deed, JAB Development's title was conveyed to the Pates.

The above documents establish that on September 19, 2017, the IRS Deed conveyed to the Pates “all right, title, and interest” that the JAB Development held in the Property (CR 297). The Property conveyed was the same Property that is described in the Bishop Deed (CR 297). The conveyance specifically included “the Property and all rights in the Property of JAB Development” as provided by the Notice of Federal Tax Lien (CR 292). The conveyance also included the right to rely on the Bishop Deed and its general warranty of title (CR 287-289).



Based on the above, the IRS Deed conveyed title to the Property to the Pates. See *Victoria Bank & Tr. Co.*, 417 S.W.2d at 817; 26 U.S.C. § 6339(b). Bishop's response failed to raise a genuine issue of material fact as to the Pates' ownership of the Property.

Accordingly, the Trial Court did not err in its finding that the IRS Deed conveyed title to the Property to the Pates. The Final Judgment should be affirmed in all respects.

F. The Trial Court's finding that the Pates had standing to assert their counter/crossclaims should be affirmed.

1. A quiet title plaintiff must allege a right, title, or ownership in the property with sufficient certainty to warrant judicial interference.

To assert a claim for quiet title, a plaintiff must allege his right, title, or ownership in the property with sufficient certainty to enable the court to see that he has a right of ownership that will warrant judicial interference." *Wright v. Matthews*, 26 S.W.3d 575, 578 (Tex. App.—Beaumont 2000, pet. denied). Although the plaintiff in a quiet title case must base his action on the strength of his own title, he is not required to trace his title to either the sovereign or to a common source. *Katz v. Rodriguez*, 563 S.W.2d 627, 629-30 (Tex. Civ. App.—Corpus Christi 1977, writ ref'd n.r.e.) *citing*. *Dalton v. Davis*, 1 S.W.2d 571 (Tex. 1928); *Lee v. Grupe*, 223 S.W.2d 548 (Tex. Civ. App. Texarkana 1949, no writ). The plaintiff must show an interest of some kind, but it is error to hold that the plaintiff must show a fee simple

or an uncontestable interest to prevail in a suit to remove a cloud on title or to quiet title. *Id.*

2. The Pates established an interest in the Property that is sufficient to have standing to assert their quiet title claim.

As discussed in Section E *supra*, the Pates have proved their ownership in the Property by the following chain of title instruments emanating from the common source, George Bishop: (i) the Bishop Deed to JAB Development (CR 287-291); (ii) the IRS lien against JAB Development (CR 292-296); (iii) the Certificate of Sale of Seized Property (CR 295); and (iv) the IRS Deed to the Pates (CR 297-300). The Pates have thus shown a “right, title, or ownership in the Property ... with sufficient certainty to warrant judicial interference.” *Wright v. Matthews*, 26 S.W.3d at 578. By proving their title to the Property from a common source, the Pates have gone above and beyond of what is required under *Wright* to have standing for their quiet title claims against T.H. Trust and Bishop.

As owners of the Property, the Pates had standing to assert their counter/crossclaims against T.H. Trust and Bishop because the Pates suffered a distinct injury that arose from the “cloud” on their title that was caused by the defective Alleged Substitute Trustee’s Deed. The Pates’ suit to remove the “cloud” on their title was a real controversy between the parties that was determined by the Trial Court in its Final Judgment. *See Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001) (plaintiff with standing has a “distinct injury” and “a real controversy between the

parties, which ... will be actually determined by the judicial declaration sought”) citing *Texas Workers’ Compensation Comm’n v. Garcia*, 893 S.W.2d 504, 517-18 (Tex. 1995) and *State Bar v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994).

Based on the above, the Trial Court’s finding that the Pates had standing to assert their counter/crossclaims should be affirmed.

G. The Trial Court’s Order granting summary judgment on the Pates’ quiet title counter/crossclaim should be affirmed.

A quiet title action enables the holder of the feeblest equity to remove from his or her way to the title any unlawful hindrance having the appearance of a better right. *Thomson v. Locke*, 1 S.W. 112, 115 (1886); see *Bell v. Ott*, 606 S.W.2d 942, 952 (Tex. Civ. App.—Waco 1980, writ ref’d n.r.e.). The goal of an action to quiet title is to nullify the effect of the disputed claims or encumbrances (the “clouds”) that affect or impair the title to the property when no other means exist to establish that the claim is invalid or unenforceable. See *Sadler v. Duvall*, 815 S.W.2d 285, 293 n.2 (Tex. App.—Texarkana 1991, writ denied); *Vanguard Equities, Inc. v. Sellers*, 587 S.W.2d 521, 525 (Tex. Civ. App.—Corpus Christi 1979, no writ).

1. Elements of quiet title claim.

In a suit to quiet title the plaintiff must show (1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable. *Rhodes v. Kelly*, No. 05-16-00888-CV, 2017 Tex. App. LEXIS 6070, 2017 WL 2774452, at *10 (Tex.

App.—Dallas June 27, 2017, pet. denied) (mem. op.); *Downtown McKinney Partners, LLC v. InterMcKinney, LLC*, No. 05-22-00501-CV, 2023 Tex. App. LEXIS 4371, at *13 (Tex. App.—Dallas June 21, 2023, no pet. h.).

2. The Pates carried their burden for summary judgment on their quiet title counter/crossclaim as a matter of law.

The Pates satisfied all the elements of their quiet title claim as a matter of law. First, the Pates showed that they owned the Property by virtue of the chain of title documents from the Bishop Deed in 2007 until the IRS Deed in 2017 as described in Section E *supra* (CR 287-300).

Second, the Pates' title to the Property is affected by the "cloud" caused by the multiple defects in the Alleged Substitute Trustee's Deed (CR 301-306) described *supra*. The Pates were entitled to judgment to remove the "cloud" on their title to the Property caused by the Alleged Substitute Trustee's Deed.

Based on the above, the Pates carried their summary judgment burden with respect to their quiet title counter/crossclaim against T.H. Trust and Bishop. Accordingly, the Trial Court's Final Judgment granting summary judgment in the Pates' favor should be affirmed in all respects.

H. The Trial Court’s Final Judgment setting aside the Alleged Substitute Trustee’s Deed under the DJA should be affirmed.

1. The DJA applies to quiet title claims concerning the validity of a deed, contract, or other document affecting title.

The DJA offers a procedure for the judicial determination of “any question of construction or validity” arising under an instrument or contract. The DJA allows for the use of the statute by (1) a person “interested” under a deed or other writing constituting a contract or (2) a person whose rights or other legal relations are “affected” by a contract. Tex. Civ. Prac. & Rem. Code § 37.004(a). Further, the DJA expressly states that this enumeration does not limit or restrict the general powers conferred by the DJA to declare rights, status, or other legal relations. Tex. Civ. Prac. & Rem. Code § 37.003(c). Accordingly, the DJA should be liberally construed and “not hedged about by technicalities.” *Anderson v. McRae*, 495 S.W.2d 351, 356 (Tex. Civ. App.—Texarkana 1973, no writ) *citing Cobb v. Harrington*, 144 Tex. 360, 190 S.W.2d 709, 714 (1945).

Accordingly, a suit to remove a cloud from the title to real property applies within the literal provisions of the DJA if the suit questions the construction or validity of a deed, contract, or other document affecting title. *Duncan Land & Exploration, Inc. v. Littlepage*, 984 S.W.2d 318, 333–334 (Tex. App.—Fort Worth 1998, pet. denied) (termination of oil lease based on quiet title and slander of title claims may be brought as declaratory judgment action); *Anderson*, 495 S.W.2d at

356 (declaratory action to remove cloud and declare rights involving easement); *Indus. Structure & Fabrication, Inc. v. Arrowhead Indus. Water, Inc.*, 888 S.W.2d 840, 844–845 (Tex. App.—Houston [1st Dist.] 1994, no writ)(declaratory judgment and quiet title claim asserted to remove improper lien recorded in real property records).

2. Since the Pates proved their quiet title claim as a matter of law, the Trial Court did not err in setting aside the Alleged Substitute Trustee’s Deed under the DJA.

The Pates showed that they were entitled to quiet their title to the Property and to remove the “cloud” on their title caused by the defective Alleged Substitute Trustee’s Deed. As such, the Pates were likewise entitled to a declaratory judgment that the Alleged Substitute Trustee’s Deed was null, void, and of no further effect. Accordingly, the Trial Court did not err in setting aside the Alleged Substitute Trustee’s Deed under the DJA. The Trial Court’s Final Judgment should be affirmed in all respects.²⁸

²⁸Assuming, *arguendo*, that the Trial Court erred in its Final Judgment setting aside the Alleged Substitute Trustee’s Deed under the DJA (which the Trial Court did not err), because T.H. Trust and Bishop did not prevail on their trespass to try title claims and because the Pates established their right to remove the Alleged Substitute Trustee’s Deed as a “cloud” on their title, the Trial Court’s DJA ruling would not change the outcome of this appeal—that the Pates are the fee simple owners of the Property. The Trial Court did not award any attorney’s fees under the DJA.

I. The Trial Court's Final Judgment granting summary judgment on T.H. Trust's and Bishop's DJA claim should be affirmed.

1. A trespass to try title action is the sole method of determining title to property.

T.H. Trust and Bishop asserted a DJA claim to claim title to the Property. The DJA claim is improper because a trespass to try title claim under Tex. Prop. Code § 22.001(a) is the sole method of determining their title to the Property.

In *Martin v. Amerman*, 133 S.W.3d at 265-267, the Texas Supreme Court held that, because the Texas Property Code provides that a trespass to try title action is the sole method of determining title to land or real property, a party may neither avoid the pleading and proof requirements of the trespass to try title action, nor supplement the remedies available to such an action by styling it as an action for a declaratory judgment.

Because T.H. Trust and Bishop were required to prove their title via a trespass to try title action under Tex. Prop. Code § 22.001(a), and not via a DJA claim, the Trial Court did not err in granting summary judgment in the Pates' favor on T.H. Trust and Bishop's DJA claims. Accordingly, the Trial Court's Final Judgment should be affirmed in all respects.

CONCLUSION AND PRAYER

Appellees, Robert G. Pate and Judy L. Pate, having met their burden for summary judgment, are entitled to prevail on appeal. Bishop has failed to

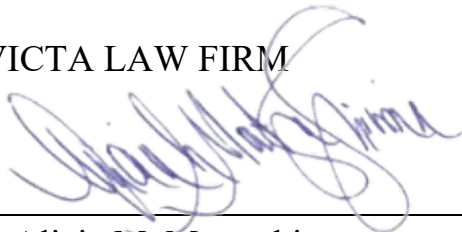
demonstrate a genuine issue of material fact precluding summary judgment. Accordingly, the Pates request that the Trial Court's Final Judgment be affirmed in all respects.

WHEREFORE, PREMISES CONSIDERED, Appellees, ROBERT G. PATE AND JUDY L. PATE respectfully request that the appeal of Appellant, GEORGE M. BISHOP be in all things denied and overruled, and that the Final Judgment of the Trial Court be upheld in all respects, and for such other and further relief to which the Pates may be justly entitled.

Respectfully submitted,

INVICTA LAW FIRM

By: _____



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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word and contains 11,820 words, as determined by the computer’s software’s word count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

Dated: July 26, 2023



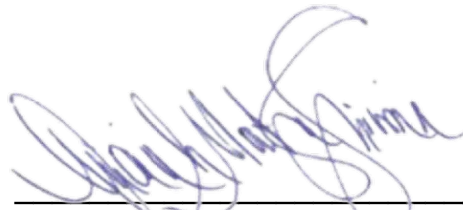
Alicia M. Matsushima
Attorney for Appellees, Robert G. Pate
and Judy L. Pate

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon the parties listed below through the Texas.gov Electronic Filing System of the Court of Appeals for the First District of Texas and/or by e-mail on the 26th day of July, 2023:

George M. Bishop
4191 F.M. 1155 South
Chappell Hill, Texas 77426
Email: george_bishop@sbcglobal.net

PRO SE APPELLANT



Alicia M. Matsushima
Attorney for Appellees, Robert G. Pate
and Judy L. Pate

APPENDIX

Exhibit

Exh. 1	Final Judgment
Exh. 2	Property Description
Exh. 3	Chain of Title
Exh. 3A	Coastal Deed of Trust
Exh. 3B	Appointment of Substitute Trustee
Exh. 3C	Affidavit of Service By Holder of Note
Exh. 3D	Affidavit of Noteholder
Exh. 3E	Bishop Deed
Exh. 3F	Notice of Federal Tax Lien
Exh. 3G	Certificate of Sale of Seized Property
Exh. 3H	IRS Deed
Exh. 4	Alleged Substitute Trustee's Deed
Exh. 5	26 U.S.C. 6339 and Fort Bend (Tex.) Civ. Dist. Ct. Loc. R. 3.3.2

Exhibit 1

Having considered the Motions, the argument of counsel, and the evidence presented, the court now enters its Final Judgment as follows:

On February 4, 2022, the Court considered the Defendants' Motion against the Plaintiff, Hamilton, as trustee For TH Trust, the summary judgment evidence, including affidavits, discovery, documentary evidence, pleadings of the parties, and the argument of counsel. At that time, this Court granted the motion in part as set forth in the Order Dated February 4, 2022 (the Interlocutory Judgment) and made the following findings:

The Court finds there is no genuine issue of material fact as to Plaintiff's claim against Defendants for trespass to try title for the reason that Plaintiff cannot prove its title based upon the strength of its own title; and further finds that there is no genuine issue of material fact as to Defendants' counterclaim to remove cloud from the title of the property which is the subject of this litigation. Defendants are entitled to summary judgment as more fully set out in the Interlocutory Judgment.

The Court further found that there is no genuine issue of material fact as to Plaintiff's claims for declaratory judgment and for attorney's fees, and Defendants are entitled to summary judgment thereon.

The Court therefore ORDERED, ADJUDGED AND DECREED that Plaintiff David H. Hamilton, Trustee of T.H. Trust, take nothing from Defendants Robert G. Pate and Judy K. Pate.

At the hearing on this date, the Court finds there is no genuine issue of material fact as to Bishop's claim against Defendants for trespass to try title for the reason that Bishop cannot prove his title based upon the strength of his own title in that his title is derivative of the title of Plaintiff in the disputed property, which the Court has heretofore ruled upon and found to be inferior to the claims of the Defendants; and further finds that there is no genuine issue of material fact as to

Defendants' counterclaim to remove the cloud, created by the subsequent deed of trust and resulting trustee's deed described in Bishop's pleadings, from the title of the property which is the subject of this litigation. Defendants are entitled to summary judgment against Bishop's claims.

The Court further finds that there is no genuine issue of material fact as to Bishop's claims for declaratory judgment and for attorney's fees, and Defendants are entitled to summary judgment thereon.

The Court determines that its findings and orders set forth in its Order Granting Defendants' Motion for Summary Judgment dated February 4, 2022 should be combined with and incorporated into this Final Judgment and are hereby incorporated herein as if restated in full and are further modified to incorporate the findings and holdings relating to the Motion of Defendants' for Summary Judgment on Claims Asserted by Bishop and Defendants' Motion for Clarification of the Court's Order dated February 4, 2022

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that that following instruments are hereby declared to be null, void and of no further effect, as if they had never been created or filed in the real property records:

1. That one certain Substitute Trustee's Deed filed in the official Public records of Fort Bend County on October 2, 2017 under Clerk's File Number 20127106823;
2. That one certain Deed of Trust executed by David H Hamilton, Trustee of the TH Trust executed on or about June 21, 2021 and filed under Clerk's File Number 2021106854 of the Official Records of Fort Bend County, Texas; and
3. That one certain Trustee's Deed dated January 12, 2022 filed under Clerk's File Number 2022007967 of the Official Records of Fort Bend County Texas are hereby declared to be null, void and of no further effect.

It is HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the fee title of the real property described in Exhibit A, attached to this Judgment, is in Robert G. Pate and Judy K. Pate.

IT IS FURTHER ORDERED that Defendants recover costs of court incurred in the course of this cause. Such judgment, for which let execution issue, shall bear interest at the rate of provided by law compounded annually from the date of this judgment, until paid.

IT IS FURTHER ORDERED that Defendants are entitled to enforce this judgment through abstract, execution, and any other process.

All claims made by all parties not specifically granted herein are denied. This judgment finally disposes of all parties and claims and is appealable.

Signed on ^{December 21}~~November 29~~, 2022.

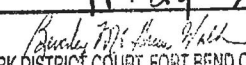


JUDGE PRESIDING

APPROVED:

/s/ Russell C. Jones
Russell C. Jones
Attorney for Defendants Robert G. Pate and
Judy K. Pate
THE HOLOWAY JONES LAW FIRM PLLC
Email: rjones@jonesattorneys.com
407 Julie Rivers Drive
Sugar Land, TX 77478
Tel. (281) 242-8100
Fax. (281) 242-7474


12/28/2022
FILED

DEC 22 2022
AT 11:24 A.M. ST

CLERK DISTRICT COURT, FORT BEND CO., TX

LEGAL DESCRIPTION
4.7695 ACRES OF LAND
KNIGHT & WHITE LEAGUE, A-46
FORT BEND COUNTY, TEXAS
November 20, 2001

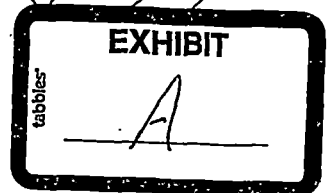
Being 4.7695 acres, (207,758 square feet) of land located in the Knight & White League, Abstract Number 46, the I. & G.N. Railroad Company Survey; Abstract Number 353, and the William Stanley Survey, Abstract 599, Fort Bend County, Texas, being the same called 4.7695 acre tract of land described as "TRACT TWO" by deed to Coastal Sun Development, Inc. by deed recorded under Fort Bend County Clerk's File Number 2000096355, and being more particularly described by metes and bounds as follows:

COMMENCING at a set 5/8 inch iron rod with cap marked "Carter & Burgess, Inc." (herein after referred to as a 5/8 inch iron rod with cap) on the south line of a called 16.4750 acre tract described in a deed to Sun Coastal Development, Inc. on recorded under Fort Bend County Clerk's File Number 1999029347, and also being the northwest corner of the called 473.176 acre tract described as "Tract 1" in deed to Old South Plantation, Inc. recorded under Fort Bend County Clerk's File Number 9722234;

THENCE, South 02 degrees 39 minutes 04 seconds East, with the west line of the Old South Plantation called 473.176 acre tract, a distance of 2,915.62 feet to the northeast corner of a called 104.224 acre tract of land described in a deed to Marjorie Winston Bailey on recorded under Volume 762 Page 275 of the Deed Records of Fort Bend County, and to a set 5/8 inch iron rod with cap;

THENCE, South 87 degrees 20 minutes 56 seconds West, with the northerly line of said Marjorie Winston Bailey tract a distance of 2,115.10 feet to the southerly line of a drainage easement recorded under Volume 2246 Page 1826 of the Deed Records of Fort Bend County and a set 5/8 inch iron rod with cap and the **POINT OF BEGINNING** of herein described tract;

1. **THENCE**, South 87 degrees 20 minutes 56 seconds West, continuing with the northerly line of said Marjorie Winston Bailey tract a distance of 857.34 feet to the centerline of Skinner Lane (60 feet wide occupied) and a set PK nail;
2. **THENCE**, North 01 degree 58 minutes 27 seconds West, with the centerline of said Skinner Lane a distance of 346.20 feet to a 5/8 inch iron rod with cap set at the southwest corner of said drainage easement;

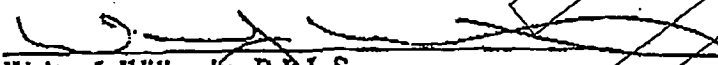


4.7695 Acres
November 20, 2001
Page 2 of 2 Pages

3. **THENCE**, North 87 degrees 11 minutes 46 seconds East, with the southerly line of said drainage easement a distance of 257.23 feet to a set 5/8 inch iron rod with cap;
4. **THENCE**, South 75 degrees 14 minutes 06 seconds East, continuing with the southerly line of said drainage easement a distance of 190.67 feet to a set 5/8 inch iron rod with cap and from which a 5/8 inch iron rod found bears South 19 degrees 41 minutes 21 seconds West, a distance of 1.00 foot;
5. **THENCE**, South 57 degrees 39 minutes 56 seconds East, continuing with the southerly line of said drainage easement a distance of 505.42 feet to the **POINT OF BEGINNING** and containing 4.7695 acres, (207,758 square feet) of land.

All bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83

This description is issued in conjunction with a Land Title Survey dated May 20, 2000 and updated June 4, 2001.


Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936

CARTER & BURGESS, INC.
Job No. 030122.010

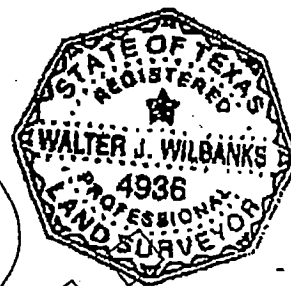


Exhibit 2

Exhibit 2

LEGAL DESCRIPTION
4.7695 ACRES OF LAND
KNIGHT & WHITE LEAGUE, A-46
FORT BEND COUNTY, TEXAS
November 20, 2001

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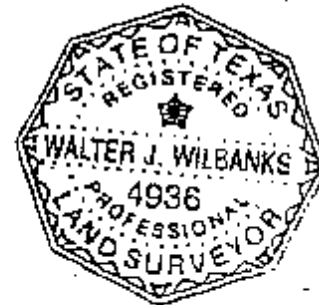
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This description is issued in conjunction with a Land Title Survey dated May 20, 2000 and updated June 4, 2001.


Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936



CARTER & BURGESS, INC.
Job No. 030122.010

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianna Wilson

2009 Jul 16 02:25 PM

2009072850

KG1 \$27.00

Dianna Wilson COUNTY CLERK
FT BEND COUNTY TEXAS

Exhibit 3

Exhibit 3

Chain of Title

Exhibit	Description	Date Recorded	Clerk's File No.
3A	Coastal Deed of Trust	8/17/2005	2005100438
3B	Appointment of Substitute Trustee	10/5/2007	2007124343
3C	Affidavit of Service By Holder of Note	10/16/2007	2007128782
3D	Affidavit of Noteholder	10/16/2007	2007128784
3E	Bishop Deed	7/16/2009	2009072850
3F	Notice of Federal Tax Lien	2/12/2013	2013017291
3G	Certificate of Sale of Seized Property	3/16/2017	2017028085
3H	IRS Deed	9/20/2017	2017103169

Exhibit 3A



Exhibit 3A

Deed of Trust

Terms

2611000574
GF # *Courtesy DCP*
HOLD COMMONWEALTH TITLE

Date: August 9, 2005
Grantor: Coastal Sun Development, Inc.
Grantor's Mailing Address:
21714 FM 1093
Richmond, Fort Bend County, Texas 77469

Trustee: Lawrence J. Maun
Trustee's Mailing Address:
9800 Richmond Avenue, Suite 520
Houston, Harris County, Texas 77042

Lender: Mulligan Medical Consultants, LLC
Lender's Mailing Address:
15200 Memorial Drive, Suite 3606
Houston, Harris County, Texas 77079

Obligation

Note

Date: August 9, 2005
Original principal amount: Four Hundred Thousand Dollars (\$400,000)
Borrower: Grand Parkway Equities, Ltd.
Lender: Mulligan Medical Consultants, LLC
Maturity date: August 9, 2006

Property (including any improvements): That certain 4.7695 acres of real property as further described in EXHIBIT "A" attached hereto and incorporated herein for all purposes.

Prior Lien: None

C:\Documents and Settings\txhdpd\Local Settings\Temporary Internet Files\OLK1\Deed of Trust Bob.doc

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

Clauses and Covenants

A. Grantor's Obligations

Grantor agrees to

1. keep the Property in good repair and condition;
2. pay all taxes and assessments on the Property before delinquency;
3. defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Lender, an insurance policy that—
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Lender approves a smaller amount in writing;
 - b. contains an 80 percent coinsurance clause;
 - c. provides all-risk coverage;
 - d. protects Lender with a standard mortgage clause;
 - e. provides flood insurance at any time the Property is in a flood hazard area; and
 - f. contains such other coverage as Lender may reasonably require;
5. comply at all times with the requirements of the 80 percent coinsurance clause;
6. deliver the insurance policy to Lender within ten days of the date of this deed of trust and deliver renewals to Lender at least fifteen days before expiration;
7. obey all laws, ordinances, and restrictive covenants applicable to the Property;
8. keep any buildings occupied as required by the insurance policy; and
9. if the lien of this deed of trust is not a first lien, pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments.

B. Lender's Rights

1. Lender may appoint in writing a substitute trustee, succeeding to all rights and responsibilities of Trustee.

2. If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.

3. Lender may apply any proceeds received under the insurance policy either to reduce the Obligation or to repair or replace damaged or destroyed improvements covered by the policy. If the Property is Grantor's primary residence and Lender reasonably determines that repairs to the improvements are economically feasible, Lender will make the insurance proceeds available to Grantor for repairs.

4. Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

6. If there is a default on the Obligation or if Grantor fails to perform any of Grantor's obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may—

- a. declare the unpaid principal balance and earned interest on the Obligation immediately due;
- b. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
- c. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

7. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

C. Trustee's Rights and Duties

If directed by Lender to foreclose this lien, Trustee will—

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;

2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;

3. from the proceeds of the sale, pay, in this order—

a. expenses of foreclosure, including a reasonable commission to Trustee;

b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;

c. any amounts required by law to be paid before payment to Grantor; and

d. to Grantor, any balance; and

4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

D. General Provisions

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any trustee's deed conveying the Property will be presumed to be true.

3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

5. If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will

not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Grantor assigns to Lender absolutely, not only as collateral, all present and future rent and other income and receipts from the Property. Grantor warrants the validity and enforceability of the assignment. Grantor may as Lender's licensee collect rent and other income and receipts as long as Grantor is not in default with respect to the Obligation or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the Obligation and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the Obligation or performance of this deed of trust, Lender may terminate Grantor's license to collect rent and other income and then as Grantor's agent may rent the Property and collect all rent and other income and receipts. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's rights and remedies under this paragraph without taking possession of the Property. Lender will apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Lender's rights and remedies and then to Grantor's obligations with respect to the Obligation and this deed of trust in the order determined by Lender. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies. If Grantor becomes a voluntary or involuntary debtor in bankruptcy, Lender's filing a proof of claim in bankruptcy will be deemed equivalent to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

9. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

10. When the context requires, singular nouns and pronouns include the plural.

11. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

12. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

13. If Grantor and Borrower are not the same person, the term *Grantor* includes

Borrower.

14. Grantor and each surety, endorser, and guarantor of the Obligation waive all demand for payment, presentation for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, protest, and notice of protest, to the extent permitted by law.

15. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

16. If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

COASTAL SUN DEVELOPMENT, INC.

BY:

Robert B. Ferguson

ROBERT B. FERGUSON,

PRESIDENT

ACKNOWLEDGMENT

STATE OF TEXAS

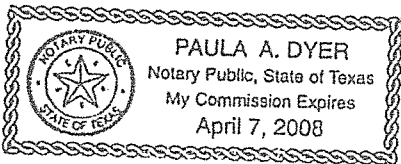
§

§

COUNTY OF HARRIS

§

This instrument was acknowledged before me on the 9 day of August, 2005 by Robert B. Ferguson, President of Coastal Sun Development, Inc., as the act and deed of said entity.



Paula A. Dyer
NOTARY PUBLIC, STATE OF TEXAS

Printed Name:

Commission Expires:

AS PER ORIGINAL

AFTER RECORDING RETURN TO:

Mulligan Medical Consultants, LLC

15200 Memorial Dr., Suite 3606

Houston, Texas 77079

Unofficial Document

EXHIBIT "A"

Legal Description of 4.7695 acres

LEGAL DESCRIPTION
4.7695 ACRES OF LAND
KNIGHT & WHITE LEAGUE, A-46
FORT BEND COUNTY, TEXAS
November 20, 2001

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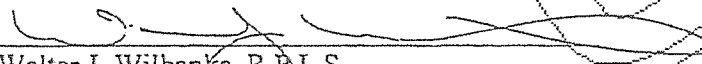
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4.7695 Acres
November 20, 2001
Page 2 of 2 Pages

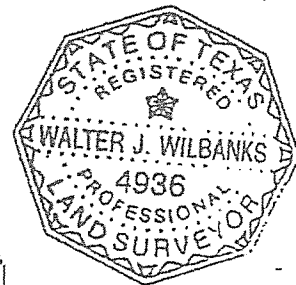
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Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936

CARTER & BURGESS, INC.
Job No. 030122.010



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dr. Dianne Wilson

2005 Aug 17 02:23 PM

2005100438

CDC \$25.00

Dianne Wilson, Ph.D. COUNTY CLERK

FT BEND COUNTY TEXAS

Unofficial Document

Exhibit 3B

APPOINTMENT OF SUBSTITUTE TRUSTEE

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

WHEREAS pursuant to that one certain Deed of Trust dated August 9, 2005, executed by Coastal Sun Development, Inc., "Mortgagor" and filed and recorded in the Official Public Real Property Records of Fort Bend County, Texas, under Clerk's File No. 2005100438 and Film Code No. 2611000574 of Fort Bend County, Texas, Mortgagor conveyed to Lawrence J. Maun, the Trustee named in the Deed of Trust, all of Mortgagor's right, title, and interest in and to the real property situated in Fort Bend County, Texas, and described as attached on Exhibit A hereto together with all improvements thereon, and including all other property, if any, set forth in the Deed of Trust, to secure payment of that one certain Real Estate Lien Note or promissory note dated August 9, 2005, in the original principal amount of \$403,000.00 executed by Mortgagor and payable to the order of Mulligan Medical Consultants, L.L.C. ("Beneficiary") and any and all other indebtedness secured by the Deed of Trust described herein; and

WHEREAS the Note is in default and its entire unpaid balance is due and payable, and Beneficiary intends to enforce the power of sale set forth in the Note and Deed of Trust referred to above; and

EXHIBIT 4

WHEREAS the Deed of Trust grants to Beneficiary the right to appoint a substitute or Successor Trustee to act in the place of the Trustee previously named in the Deed of Trust without any other formality except the designation in writing of a Substitute or Successor Trustee; and

WHEREAS the Beneficiary has determined to appoint K. M. Bishop as Substitute Trustee under the Deed of Trust and Beneficiary has directed the Substitute Trustee to enforce the power of sale pursuant to the terms stated in the Deed of Trust;

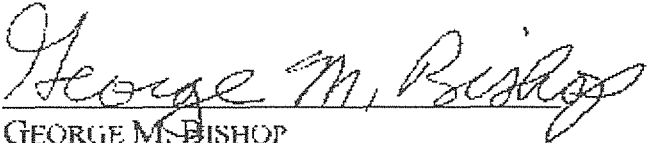
THEREFORE, the Beneficiary does hereby make, constitute and appoint K. M. Bishop whose address is 3341 Brucemont, Wilmington, North Carolina 28405, as Substitute Trustee to act under and by virtue of the Deed of Trust described above and to succeed to any and all of the rights, powers, trusts, and estates previously granted to the Trustee named in the Deed of Trust, and the Beneficiary hereby requests the Substitute Trustee to enforce the power of sale contained in the Deed of Trust in accordance with the terms and the applicable law.

FURTHERMORE, the Beneficiary hereby requests the Substitute Trustee to deliver by certified mail, return receipt requested, a copy of the Notice of Substitute Trustee's Sale at least 21 days preceding the proposed date of the sale to each debtor obligated to pay the indebtedness according to the records of the Beneficiary, and as required by law.

The name and address of each debtor is as follows: Grand Parkway Equities, Ltd., 21711 FM 1093, Richmond, Fort Bend County, Texas 77469 and Robert B. Ferguson, Guarantor, c/o Richard L. Fuqua, his attorney, 2777 Allen Parkway, Suite 480, Houston, Texas 77019.

Beneficiary also hereby requests the Substitute Trustee to properly post notice of the intended foreclosure sale at the door of the County Courthouse and to file and record the notice of Substitute Trustee sale with the County Clerk's office of Fort Bend County at least 21 days prior to the date of the sale and to comply with any and all other requirements of the Deed of Trust described above, the Internal Revenue Code, and the Texas Property Code applicable to the intended foreclosure described in this instrument.

EXECUTED this the 4th day of October, 2007.

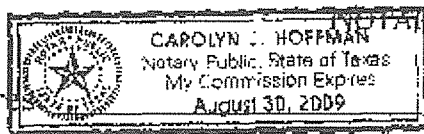

GEORGE M. BISHOP
6922 Alderney
Houston, Texas 77055

This instrument was acknowledged before me on the 4th day of October, 2007.



NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires



RETURNED AT COUNTER TO:

George M. Bishop
6922 Alderney Drive
Houston, Texas 77055

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianne Wilson

2007 Oct 05 09:02 AM

2007124343

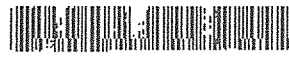
CK \$10.00

Dianne Wilson COUNTY CLERK

FT BEND COUNTY TEXAS

Exhibit 3C

27
Exhibit 3C



AFFDVT

2007128782

3 PGS

AFFIDAVIT OF SERVICE BY THE HOLDER OF THE NOTE

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared
GEORGE M. BISHOP, who after being by me first duly sworn, on oath stated:

"My name is George M. Bishop, and I am a person over the age of 18 years and am qualified to make this Affidavit.

I am the legal and equitable owner and holder of the note and debt referred to in the Deed of Trust and described in the foregoing Notice of Substitute Trustee's Sale.

Lawrence J. Maun was named as Trustee in the Deed of Trust. As Lawrence J. Maun is not able to act in the capacity of Trustee to conduct the sale, I have duly appointed K. M. Bishop as Substitute Trustee in his stead. I have instructed the Substitute Trustee to enforce the power of sale contained in the Deed of Trust dated August 9, 2005 and executed by Mortgagor, conveying to Lawrence J. Maun, Trustee, all Mortgagor's right, title, and interest in the real property described as shown on Exhibit A. The Deed of Trust has been filed in the Real Property Records of Fort Bend County, Texas, under Clerk's File No. 2005100438 and recorded in the Deed of Trust records of Fort Bend County, Texas. The Deed of Trust secured payment of indebtedness owed to Mulligan Medical Consultants, L.L.C. The indebtedness is further evidenced and described in a Real Estate Lien Note dated August 9, 2005, executed by Mortgagor and payable to the order of Beneficiary.

Default occurred on the Note and Deed of Trust on August 9, 2006. I have instructed the Substitute Trustee to prepare, file, post and serve Notice of Substitute Trustee's Sale on Grand Parkway Equities, Ltd. and Robert B. Ferguson, Guarantor. The Notice was signed by K. M. Bishop as Substitute Trustee.

EXHIBIT 5

I have caused service of the written Notice of the proposed sale by Certified Mail No. 700714900009748 and 700714900009748 ¹⁸⁹² ⁹⁸³⁵ on the following persons at the respective addresses set forth:

FABIAN VILLARREAL, GENERAL PARTNER
GRAND PARKWAY EQUITIES, LTD.
3102 Ashfield
Houston, Texas 77082

and

ROBERT B. FERGUSON
c/o Richard Fuqua, Esq.
2777 Allen Parkway, Suite 480
Houston, Texas 77019

Service was made more than 21 days preceding the date of the proposed sale. The addressees are the debtors who are obligated to pay the debt referred to in the Deed of Trust and Note described and identified in the Notice of Sale. Service was made by enclosing the Notice in a postpaid wrapper properly addressed to the most recent known address of each debtor, and depositing it in a post office or official depository under the care and custody of the U.S. Postal Service."

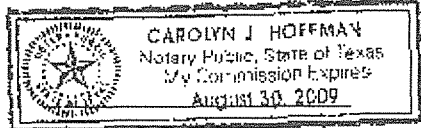
Executed this 9th day of October, 2007.

George M. Bishop
GEORGE M. BISHOP

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on October 4, 2007 by George M. Bishop.

Carolyn J. Hoffman
NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS



MY COMMISSION EXPIRES:

RETURNED AT COUNTER TO:

George Bishop
6722 Alderney
Houston, Texas 77055

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianne Wilson

2007 Oct 16 04:05 PM

2007128782

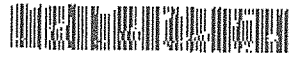
JH \$15.00

Dianne Wilson COUNTY CLERK

FT BEND COUNTY TEXAS

Exhibit 3D

Exhibit 3D



AFFIDAVIT OF NOTE HOLDER

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I, George M. Bishop, the owner and holder of the Note of August 9, 2005 described above, by reason of the refusal and resignation of Lawrence J. Maun to perform the duties of trustee that were conferred on him by the provisions of the Deed of Trust described above, have named, constituted, and appointed K. M. Bishop as Substitute Trustee. I have requested K. M. Bishop, as Substitute Trustee, to exercise the trust and powers conferred on him by the terms and provisions of the Deed of Trust.

WITNESS my hand this 4th day of October, 2007.

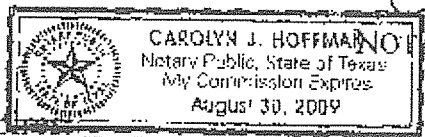
George M. Bishop
GEORGE M. BISHOP

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

AS PER ORIGINAL

SUBSCRIBED AND SWORN TO before me by George M. Bishop in his capacity as the Note Holder [title] of ~~_____~~ [name of lender] on this the 4th day of October, 2007.

Carolyn J. Hoffman



My Commission Expires _____

RETURNED AT COUNTER TO:

George Bishop
6922 Alderney
Houston, Texas 77055

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianne Wilson

2007 Oct 15 04:03 PM

JH \$11.00

Dianne Wilson COUNTY CLERK

FT BEND COUNTY TEXAS

2007128784

Exhibit 3E

Exhibit 3E



DEED

2009072850

5 PGS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

General Warranty Deed

Date: NOVEMBER 12, 2007

Grantor: GEORGE M. BISHOP, individually and as Trustee

Grantor's Mailing Address:

GEORGE M. BISHOP
6922 Alderney Dr.
Houston, Texas 77055
Harris County

Grantee: JAB DEVELOPMENT COMPANY, a Texas corporation

Grantee's Mailing Address:

JAB DEVELOPMENT COMPANY
316 N. John Young Parkway, Suite 5
Kissimmee, Fla. 34741

Consideration:

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements):

That certain 4.7695 acres of land in the KNIGHT AND WHITE LEAGUE, A-46, THE I & G.N. RAILROAD COMPANY SURVEY, A-353, AND THE WILLIAM STANLEY SURVEY, A-599, Fort Bend County, Texas, as per the metes and bounds description attached hereto and made a part hereof.

Reservations from Conveyance:

None

Exceptions to Conveyance and Warranty:

Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping

EXHIBIT 8

of improvements; all rights, obligations, and other matters arising from and existing by reason of the Fort Bend County Texas; and taxes for 2007, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

As a material part of the Consideration for this deed, Grantor and Grantee agree that Grantee is taking the Property "AS IS" with any and all latent and patent defects and that there is no warranty by Grantor that the Property has a particular financial value or is fit for a particular purpose. Grantee acknowledges and stipulates that Grantee is not relying on any representation, statement, or other assertion with respect to the Property condition but is relying on Grantee's examination of the Property. Grantee takes the Property with the express understanding and stipulation that there are no express or implied warranties except for limited warranties of title set forth in this deed.

When the context requires, singular nouns and pronouns include the plural.

George M. Bishop

GEORGE M. BISHOP, individually and as trustee

STATE OF TEXAS)

COUNTY OF FORT BEND)

This instrument was acknowledged before me on December 22, 2008, effective November 12, 2007, by GEORGE M. BISHOP, individually and in the capacity as Trustee..



Mark W. Brown II

Notary Public, State of Texas
My commission expires: 2-14-2012

AFTER RECORDING RETURN TO:

Bousquet & Devine P.C.
9225 Katy Freeway # 103
Houston, Tx 77024
Tel: (713) 827-8000
Fax: (713) 827-0096

LEGAL DESCRIPTION
4.7695 ACRES OF LAND
KNIGHT & WHITE LEAGUE, A-46
FORT BEND COUNTY, TEXAS
November 20, 2001

Being 4.7695 acres, (207,758 square feet) of land located in the Knight & White League, Abstract Number 46, the I. & G.N. Railroad Company Survey, Abstract Number 353, and the William Stanley Survey, Abstract 599, Fort Bend County, Texas, being the same called 4.7695 acre tract of land described as "TRACT TWO" by deed to Coastal Sun Development, Inc. by deed recorded under Fort Bend County Clerk's File Number 2000096355, and being more particularly described by metes and bounds as follows:

COMMENCING at a set 5/8 inch iron road with cap marked "Carter & Burgess, Inc." (herein after referred to as a 5/8 inch iron rod with cap) on the south line of a called 16.4750 acre tract described in a deed to Sun Coastal Development, Inc. on recorded under Fort Bend County Clerk's File Number 1999029347, and also being the northwest corner of the called 473.176 acre tract described as "Tract 1" in deed to Old South Plantation, Inc. recorded under Fort Bend County Clerk's File Number 9722234;

THENCE, South 02 degrees 39 minutes 04 seconds East, with the west line of the Old South Plantation called 473.176 acre tract, a distance of 2,915.62 feet to the northeast corner of a called 104.224 acre tract of land described in a deed to Marjorie Winston Bailey on recorded under Volume 762 Page 275 of the Deed Records of Fort Bend County, and to a set 5/8 inch iron rod with cap;

THENCE, South 87 degrees 20 minutes 56 seconds West, with the northerly line of said Marjorie Winston Bailey tract a distance of 2,115.10 feet to the southerly line of a drainage easement recorded under Volume 2246 Page 1826 of the Deed Records of Fort Bend County and a set 5/8 inch iron rod with cap and the **POINT OF BEGINNING** of herein described tract;


1. THENCE, South 87 degrees 20 minutes 56 seconds West, continuing with the northerly line of said Marjorie Winston Bailey tract a distance of 857.34 feet to the centerline of Skinner Lane (60 feet wide occupied) and a set PK nail;
2. THENCE, North 01 degree 58 minutes 27 seconds West, with the centerline of said Skinner Lane a distance of 346.20 feet to a 5/8 inch iron rod with cap set at the southwest corner of said drainage easement;

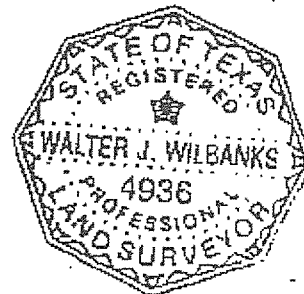
4.7695 Acres
November 20, 2001
Page 2 of 2 Pages

3. THENCE, North 87 degrees 11 minutes 46 seconds East, with the southerly line of said drainage easement a distance of 257.23 feet to a set 5/8 inch iron rod with cap;
4. THENCE, South 75 degrees 14 minutes 06 seconds East, continuing with the southerly line of said drainage easement a distance of 190.67 feet to a set 5/8 inch iron rod with cap and from which a 5/8 inch iron rod found bears South 19 degrees 41 minutes 21 seconds West, a distance of 1.00 foot;
5. THENCE, South 57 degrees 39 minutes 56 seconds East, continuing with the southerly line of said drainage easement a distance of 505.42 feet to the POINT OF BEGINNING and containing 4.7695 acres, (207,758 square feet) of land.

All bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83

This description is issued in conjunction with a Land Title Survey dated May 20, 2000 and updated June 4, 2001.


Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936



CARTER & BURGESS, INC.
Job No. 030122.010

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dianna Wilson

2009 Jul 16 02:25 PM

2009072850

KG1 \$27.00

Dianna Wilson COUNTY CLERK
FT BEND COUNTY TEXAS

Exhibit 3F



3592

Department of the Treasury - Internal Revenue Service

Exhibit 3F

Form 668 (Y)(c)
(Rev. February 2004)

Notice of Federal Tax Lien

Area: SMALL BUSINESS/SELF EMPLOYED AREA #3 Lien Unit Phone: (800) 913-6050	Serial Number 920533813	For Optional Use by Recording Office
--	----------------------------	--------------------------------------

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer **JAB DEVELOPMENT CORPORATION**
JAB DEVELOPMENT COMPANY
a Corporation

Residence **316 N JOHN YOUNG PARKWAY STE 5**
KISSIMMEE FL 34741-0000

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
1120	12/31/1998	[REDACTED] 0211	04/26/2004	05/26/2014	
1120	12/31/1998	[REDACTED] 0211	11/23/2011	12/23/2021	778811.68
1120	12/31/1999	[REDACTED] 0211	04/26/2004	05/26/2014	
1120	12/31/1999	[REDACTED] 0211	12/19/2011	01/18/2022	3045.60
1120	12/31/2000	[REDACTED] 0211	04/26/2004	05/26/2014	
1120	12/31/2000	[REDACTED] 0211	12/19/2011	01/18/2022	8092.43
1120	12/31/2001	[REDACTED] 0211	03/15/2004	04/14/2014	
1120	12/31/2001	[REDACTED] 0211	11/23/2011	12/23/2021	593180.54
1120	12/31/2002	[REDACTED] 0211	04/26/2004	05/26/2014	
1120	12/31/2002	[REDACTED] 0211	11/23/2011	12/23/2021	583926.03

Place of Filing **COUNTY CLERK**
FORT BEND COUNTY
RICHMOND, TX 77469

Total \$ **1967056.28**

This notice was prepared and signed at NASHVILLE, TN, on this, the 05th day of February, 2013.

Signature 
for **BRYAN MORRIS**

Title
REVENUE OFFICER
(813) 315-2233

23-08-3730

(NOTE: Certificate of officer authorized by law to take acknowledgment is not essential to the validity of Notice of Federal Tax Lien
Rev. Rul. 71-466, 1971 - 2 C.B. 409)

Part 1 - Kept By Recording Office

Form 668(Y)(c) (Rev. 2-2004)
CAT. NO. 80020X

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Dianne Wilson

Dianne Wilson, County Clerk
Fort Bend County, Texas

February 12, 2013 01:01:40 PM

FEE: \$16.00 LU
FEDLIEN

2013017291



Unofficial's Document

Exhibit 3G

Exhibit 3G



2 PGS
CERT

2017028085

Form **2435**
(Rev. January 2003)

Department of the Treasury — Internal Revenue Service
Certificate of Sale of Seized Property

I certify that I sold at public sale the property described below, seized for nonpayment of delinquent Internal Revenue taxes due from:

Taxpayer's name JAB DEVELOPMENT COMPANY	Date of sale 03/16/2017
--	----------------------------

Sale held at: Fort Bend County Clerk, 301 Jackson St. Richmond, TX

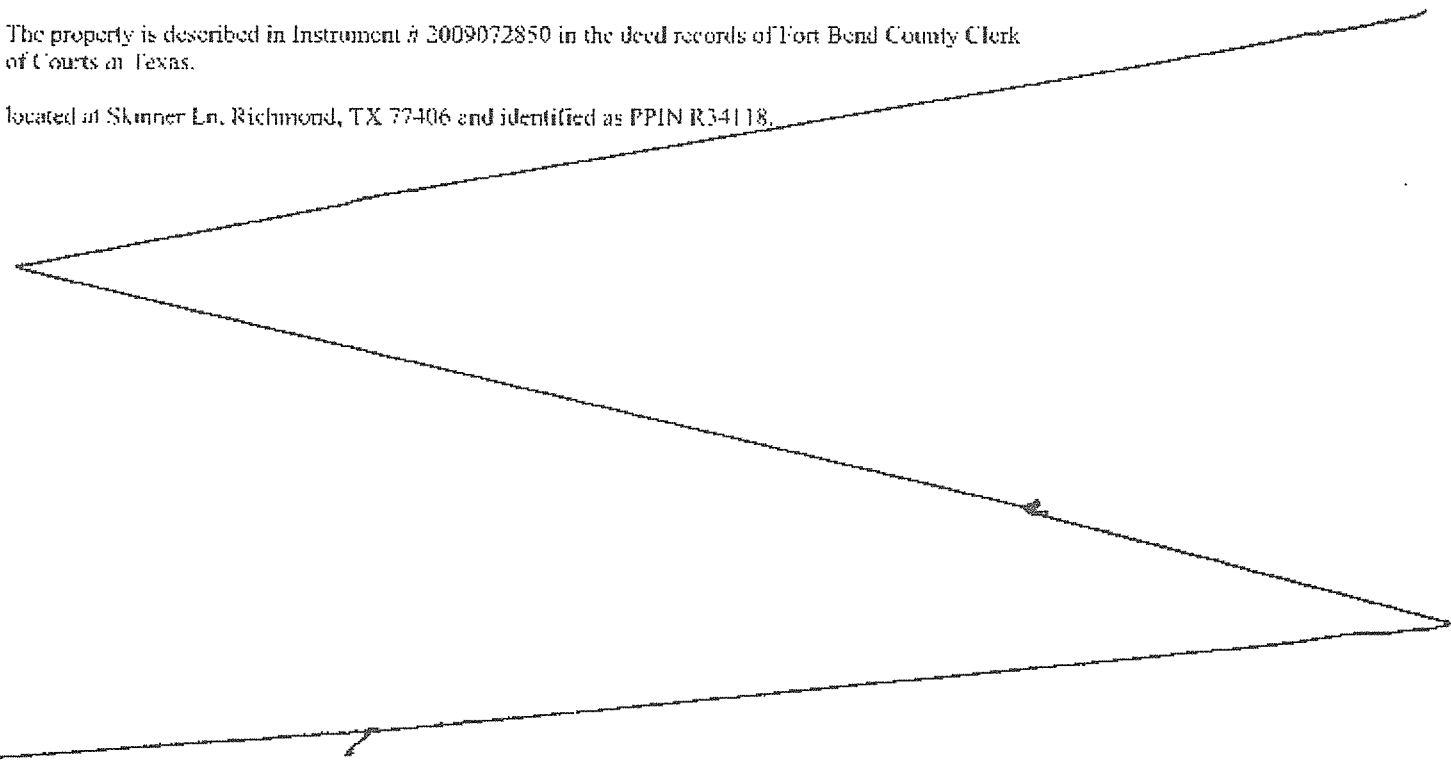
in the county of Fort Bend County

Description of property sold (if you need more space, please attach a separate sheet. If property listed includes motor vehicles, airplanes, and/or boats, see information under Notice of Encumbrances.)

Being 4.7695 acres of land in the KNIGHT AND WHITE LEAGUE, A-46 THE I & G.N. RAILROAD COMPANY SURVEY, A-353 AND THE WILLIAM STANLY SURVEY, A-599, Fort Bend County, Texas, as per the metes and bounds description.

The property is described in Instrument # 2009072850 in the deed records of Fort Bend County Clerk of Courts in Texas.

located at Skinner Ln, Richmond, TX 77406 and identified as PPIN R34118.



The above property was sold at the highest bid received, and receipt of the bid amount is acknowledged. The sale was conducted as provided by Subchapter D, Chapter 64, of the Internal Revenue Code and related regulations.

Sale amount \$ <u>176,000.00</u>	Purchaser's name <u>Judy K & Robert G Pate</u>
Purchaser's address <u>407 Spencers Glen Dr, Sugarland, TX 77479</u>	
Signature of IRS employee <u>Paulene Jones</u>	Area Office / Territory Office Gulf States: Houston
Office address of IRS employee 4041N Central Ave MS 502J, Phoenix, AZ 85012	Date <u>03-16-2017</u>

Part 1 — To Purchaser

Catalog No 184932

www.irs.gov

Form 2435 (Rev. 1-2003)

EXHIBIT 10

RETURNED AT COUNTER TO:

ROBERT & JUDY PATE
407 SPENCERS GLEN DR
SUGAR LAND, TX 77479

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Laura Richard

Laura Richard, County Clerk
Fort Bend County, Texas

March 16, 2017 01:40:08 PM

FEE: \$16.00 JE
CERT

2017028085



Exhibit 3H

Exhibit 3H



4 PGS
DEED

2017103169

QUITCLAIM DEED

STATE OF TEXAS

COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, **JAB DEVELOPMENT CORPORATION**, is indebted to the United States for taxes imposed by the Internal Revenue Code, the property hereinafter mentioned and described was seized on September 9, 2016, under the authority of Section 6331 of the Internal Revenue Code and was offered for sale at public auction on the March 16, 2017 and;

WHEREAS, said property was then and there purchased by **Judy K. & Robert G. Pate** for the sum of One Hundred Seventy-Six Thousand and 00/100 Dollars (\$176,000.00); and

WHEREAS, on March 16, 2017, in accordance with Section 6338 of the Internal Revenue Code, the Director, Specialty Collection- Offers, Liens and Advisory, executed and delivered to the said **Judy K. & Robert G. Pate**, a certificate of sale of seized property; and

WHEREAS, the one hundred eighty day redemption period provided for in section 6337 of the Internal Revenue Code has expired and it is now proper for this quitclaim deed to be issued in accordance with Section 6338 of the Internal Revenue Code;

NOW, THEREFORE, I, Frederick Schindler, as Director, Specialty Collection- Offers, Liens and Advisory, Small Business/Self-Employed Division, of the Internal Revenue Service or my delegate, in accordance with Section 6338 of the Internal Revenue Code, do hereby grant, sell, convey, and quitclaim to the said **Judy K. & Robert G. Pate** and their heirs and assigns, all the rights, title, and interest of the following described real estate located in Fort Bend County, Texas:

Legal description:

The certain 4.7695 acres of land in the KNIGHT AND WHITE LEAGUE, A-46, THE I & G.N. RAILROAD COMPANY SURVEY, A-353, AND THE WILLIAM STANLEY SURVEY, A-599, Fort Bend County, Texas, as per the metes and bounds description attached hereto and made a part hereof. (SEE ATTACHMENT)

Being the same property described in Warranty Deed from GEORGE M. BISHOP, to JAB DEVELOPMENT COMPANY, dated November 12, 2007, recorded July 16, 2009, recording number 2009072850, Official Records of Fort Bend County, Texas.

EXHIBIT 11

TO HAVE AND TO HOLD unto the said Judy K. & Robert G. Pate and unto their heirs and assigns forever with all appurtenances thereto belonging.

GRANTEE: Judy K. & Robert G. Pate
407 Spencers Glen Dr.
Sugarland, TX 77479

IN TESTIMONY, WHEREOF, I have hereunto set my hand this 19th day of (September), 2017

UNITED STATES OF AMERICA
Director, Specialty Collection – Offers,
Liens and Advisory

By: Alma Burks
Alma Burks, Acting
Technical Services Group Manager (Advisory)
Gulf States Area

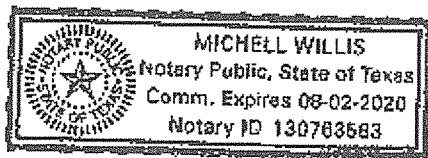
STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, in and for said county and state, on this day personally appeared Alma Burks known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in her capacity as delegate of the Director, Specialty Collection – Offers, Liens and Advisory, of the Internal Revenue Service.

Given under my hand and seal of office at Houston, Texas, this the 19th day of (September), 2017

Michel Willis
Michel Willis
Notary Public



Harris Texas
County State

My Commission Expires:
08-02-2020

LEGAL DESCRIPTION
 4.7695 ACRES OF LAND
 KNIGHT & WHITE LEAGUE, A-46
 FORT BEND COUNTY, TEXAS
 November 20, 2001

Being 4.7695 acres, (207,758 square feet) of land located in the Knight & White League, Abstract Number 46, the I. & G.N. Railroad Company Survey, Abstract Number 353, and the William Stanley Survey, Abstract 599, Fort Bend County, Texas, being the same called 4.7695 acre tract of land described as "TRACT TWO" by deed to Coastal Sun Development, Inc. by deed recorded under Fort Bend County Clerk's File Number 2000096355, and being more particularly described by metes and bounds as follows:

COMMENCING at a set 5/8 inch iron road with cap marked "Carter & Burgess, Inc." (herein after referred to as a 5/8 inch iron rod with cap) on the south line of a called 16.4750 acre tract described in a deed to Sun Coastal Development, Inc. on recorded under Fort Bend County Clerk's File Number 1999029347, and also being the northwest corner of the called 473.176 acre tract described as "Tract 1" in deed to Old South Plantation, Inc. recorded under Fort Bend County Clerk's File Number 9722234;

THENCE, South 02 degrees 39 minutes 04 seconds East, with the west line of the Old South Plantation called 473.176 acre tract, a distance of 2,915.62 feet to the northeast corner of a called 104.224 acre tract of land described in a deed to Marjorie Winston Bailey on recorded under Volume 762 Page 275 of the Deed Records of Fort Bend County, and to a set 5/8 inch iron rod with cap;

THENCE, South 87 degrees 20 minutes 56 seconds West, with the northerly line of said Marjorie Winston Bailey tract a distance of 2,115.10 feet to the southerly line of a drainage easement recorded under Volume 2246 Page 1826 of the Deed Records of Fort Bend County and a set 5/8 inch iron rod with cap and the POINT OF BEGINNING of herein described tract;


1. THENCE, South 87 degrees 20 minutes 56 seconds West, continuing with the northerly line of said Marjorie Winston Bailey tract a distance of 857.34 feet to the centerline of Skinner Lane (60 feet wide occupied) and a set PK nail;
2. THENCE, North 01 degree 58 minutes 27 seconds West, with the centerline of said Skinner Lane a distance of 346.20 feet to a 5/8 inch iron rod with cap set at the southwest corner of said drainage easement;

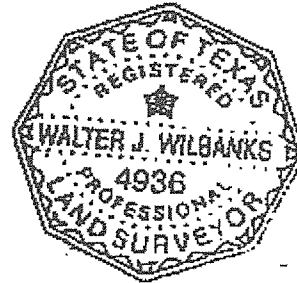
4.7695 Acres
November 20, 2001
Page 2 of 2 Pages

- 3. THENCE, North 87 degrees 11 minutes 46 seconds East, with the southerly line of said drainage easement a distance of 257.23 feet to a set 5/8 inch iron rod with cap;
- 4. THENCE, South 75 degrees 14 minutes 06 seconds East, continuing with the southerly line of said drainage easement a distance of 190.67 feet to a set 5/8 inch iron rod with cap and from which a 5/8 inch iron rod found bears South 19 degrees 41 minutes 21 seconds West, a distance of 1.00 foot;
- 5. THENCE, South 57 degrees 39 minutes 56 seconds East, continuing with the southerly line of said drainage easement a distance of 505.42 feet to the POINT OF BEGINNING and containing 4.7695 acres, (207,758 square feet) of land.

All bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83

This description is issued in conjunction with a Land Title Survey dated May 20, 2000 and updated June 4, 2001.


Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936



CARTER & BURGESS, INC.
Job No. 030122.010

PAC:

Robert & Judy Pate
407 Spencers Glen Dr.
Sugar Land, TX 77479

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Laura Richard

Laura Richard, County Clerk
Fort Bend County, Texas

September 20, 2017 03:09:10 PM

FEE: \$23.00 RR1
DEED

2017103169



Exhibit 4

Exhibit 4



6 PGS
DEED

2017106823

SUBSTITUTE TRUSTEE'S DEED

STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF FORT BEND

WHEREAS, K.M. Bishop of Alpine, Texas was appointed Substitute Trustee pursuant to the Deed of Trust of August 9, 2005 in which Grand Parkway Equities, Ltd. borrowed \$400,000.00 from Mulligan Medical Consultants, L.L.C. on August 9, 2005. The note in that amount was secured by the same Deed of Trust and WHEREAS there was a default in the payment of the note secured by the Deed of Trust, the property consisting of 4.7695 acres of real property as further described in EXHIBIT A attached hereto and incorporated herein for all purposes was properly posted by me for foreclosure on October 9, 2007. The foreclosure took place on the first Tuesday of November, 2007 which was November 6, 2007. Prior to the foreclosure, the Deed of Trust was filed in the Real Property Records of Fort Bend County, Texas under Clerk's File Number 2005100438 and recorded in the Deed of Trust Records of Fort Bend County, Texas. The Deed of Trust secured payment of indebtedness owed to Mulligan Medical Consultants, L.L.C. The note and Deed of Trust was assigned to George M. Bishop by the president of Mulligan Medical Consultants, L.L.C. on August 4, 2006. An Affidavit Of Service By the Holder of the Note was filed and recorded in the Official Public Records of Fort Bend County on October 16, 2007 in Clerk's File Number 2007128782. K.M. Bishop was appointed Substitute Trustee by George M. Bishop on October 4, 2007 which instrument was filed and recorded in the Official Public Records of Fort Bend County on October 5, 2007 in Clerk's File Number 2007124343. At the foreclosure sale, the 4.7695 acres of land in the Knight & White League, A-46 in Fort Bend County, Texas as more particularly described in EXHIBIT A attached hereto and incorporated herein for all purposes was sold to the highest bidder, T.H. Trust, a Texas trust. Pursuant to the powers vested in me by the terms of the Deed of Trust of August 9, 2005, I hereby grant, devise and convey the property described herein and in EXHIBIT A to T.H. Trust, a Texas trust.

Witness my hand and signature on this the 19 date of December, 2016



K.M. Bishop
Substitute Trustee
1020 Loop Drive

EXHIBIT 12

Alpine, Texas 79830-3230

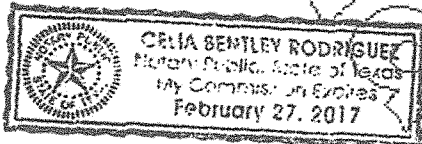
STATE OF TEXAS

COUNTY OF BREWSTER

BEFORE ME, the undersigned authority appeared a person known to me as K.M. Bishop, who stated to me on his oath that the above Substitute Trustee's Deed was true and correct and his free act and deed and that it was his intention to transfer the above described property to Coastal Financial Consultants, Inc Signed and sworn to BEFORE ME on this the 19 day of December, 2016 to which witness my hand and seal of office.

Celia Bentley Rodriguez

Notary Public in and for the
State of Texas



Document

EXHIBIT "A"

Legal Description of 4.7695 acres

C:\Documents and Settings\txhopd\Local Settings\Temporary Internet Files\OLK1\Deed of Trust Bob.doc

LEGAL DESCRIPTION
4.7695 ACRES OF LAND
KNIGHT & WHITE LEAGUE, A-46
FORT BEND COUNTY, TEXAS
 November 20, 2001

Being 4.7695 acres, (207,758 square feet) of land located in the Knight & White League, Abstract Number 46, the I. & G.N. Railroad Company Survey, Abstract Number 353, and the William Stanley Survey, Abstract 599, Fort Bend County, Texas, being the same called 4.7695 acre tract of land described as "TRACT TWO" by deed to Coastal Sun Development, Inc. by deed recorded under Fort Bend County Clerk's File Number 2000096355, and being more particularly described by metes and bounds as follows:

COMMENCING at a set 5/8 inch iron rod with cap marked "Carter & Burgess, Inc." (herein after referred to as a 5/8 inch iron rod with cap) on the south line of a called 16.4750 acre tract described in a deed to Sun Coastal Development, Inc. on recorded under Fort Bend County Clerk's File Number 1999029347, and also being the northwest corner of the called 473.176 acre tract described as "Tract 1" in deed to Old South Plantation, Inc. recorded under Fort Bend County Clerk's File Number 9722234;

THENCE, South 02 degrees 39 minutes 04 seconds East, with the west line of the Old South Plantation called 473.176 acre tract, a distance of 2,915.62 feet to the northeast corner of a called 104.224 acre tract of land described in a deed to Marjorie Winston Bailey on recorded under Volume 762 Page 275 of the Deed Records of Fort Bend County, and to a set 5/8 inch iron rod with cap;

THENCE, South 87 degrees 20 minutes 56 seconds West, with the northerly line of said Marjorie Winston Bailey tract a distance of 2,115.10 feet to the southerly line of a drainage easement recorded under Volume 2246 Page 1826 of the Deed Records of Fort Bend County and a set 5/8 inch iron rod with cap and the **POINT OF BEGINNING** of herein described tract;

1. **THENCE**, South 87 degrees 20 minutes 56 seconds West, continuing with the northerly line of said Marjorie Winston Bailey tract a distance of 857.34 feet to the centerline of Skinner Lane (60 feet wide occupied) and a set PK nail;
2. **THENCE**, North 01 degree 58 minutes 27 seconds West, with the centerline of said Skinner Lane a distance of 346.20 feet to a 5/8 inch iron rod with cap set at the southwest corner of said drainage easement;

4.7695 Acres
November 20, 2001
Page 2 of 2 Pages

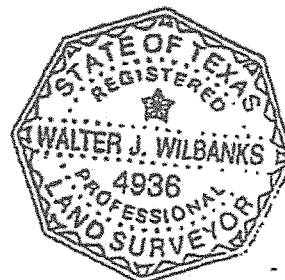
- 3. THENCE North 87 degrees 11 minutes 46 seconds East, with the southerly line of said drainage easement a distance of 257.23 feet to a set 5/8 inch iron rod with cap;
- 4. THENCE, South 75 degrees 14 minutes 06 seconds East, continuing with the southerly line of said drainage easement a distance of 190.67 feet to a set 5/8 inch iron rod with cap and from which a 5/8 inch iron rod found bears South 19 degrees 41 minutes 21 seconds West, a distance of 1.00 foot.
- 5. THENCE, South 57 degrees 39 minutes 56 seconds East, continuing with the southerly line of said drainage easement a distance of 505.42 feet to the POINT OF BEGINNING and containing 4.7695 acres, (207,758 square feet) of land.

All bearings are based on the Texas State Plane Coordinate System, South Central Zone, NAD 83

This description is issued in conjunction with a Land Title Survey dated May 20, 2000 and updated June 4, 2001.


Walter J. Wilbanks, R.P.L.S.
Texas Registration Number 4936

CARTER & BURGESS, INC.
Job No. 030122.010



RETURNED AT COUNTER TO: (1)

George M. Bishop
4791 F.M. 1155 South
Chappel Hill, Tex 77426

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Laura Richard

Laura Richard, County Clerk
Fort Bend County, Texas

October 02, 2017 08:08:48 AM

FEE: \$27.00 JE
DEED

2017106823



Official Document

Exhibit 5

Exhibit 5

[26 USCS § 6339](#)

Current through Public Law 118-8, approved July 18, 2023.

United States Code Service > TITLE 26. INTERNAL REVENUE CODE (§§ 1 — 9834) > Subtitle F. Procedure and administration. (Chs. 61 — 80) > CHAPTER 64. Collection. (Subchs. A — E) > Subchapter D. Seizure of property for collection of taxes. (Pts. I — II) > Part II. Levy. (§§ 6331 — 6360)

§ 6339. Legal effect of certificate of sale of personal property and deed of real property.

(a) Certificate of sale of property other than real property. In all cases of sale pursuant to section 6335 [\[26 USCS § 6335\]](#) of property (other than real property), the certificate of such sale—

(1) As evidence. Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale; and

(2) As conveyances. Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) As authority for transfer of corporate stock. If such property consists of stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) As receipts. If the subject of sale is securities or other evidences of debt, shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) As authority for transfer of title to motor vehicle. If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(b) Deed of real property. In the case of the sale of real property pursuant to section 6335 [\[26 USCS § 6335\]](#)—

(1) Deed as evidence. The deed of sale given pursuant to section 6338 [\[26 USCS § 6338\]](#) shall be prima facie evidence of the facts therein stated; and

(2) Deed as conveyance of title. If the proceedings of the Secretary as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) Effect of junior encumbrances. A certificate of sale of personal property given or a deed to real property executed pursuant to section 6338 [\[26 USCS § 6338\]](#) shall discharge such property from all liens, encumbrances, and titles over which the lien of the United States with respect to which the levy was made had priority.

(d) Cross references.

Local Rules

District Courts Of Fort Bend County

OBJECTIVE OF RULES

The objective of the rules of the District Courts of Fort Bend County is to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law and established rules of procedural law.

Where attorney or counsel is used in these rules, the term shall also include a pro se party/party not represented by counsel.

1. **TIME STANDARDS:** District Judges in Fort Bend County should, as far as reasonably possible, ensure that all cases are brought to trial or final disposition in conformity with the following standards:
 - 1.1. **Criminal cases:** Within 12 months of arrest or indictment whichever is earlier.
 - 1.2. **Civil cases other than Family Law:**
 - 1.2.1. **Civil jury cases.** Within 18 months of appearance date.
 - 1.2.2. Civil non-jury cases. Within 12 months from appearance date.
 - 1.3. **Family Law Cases:**
 - 1.3.1. Contested Family Law Cases. Within 6 months from appearance date or within 6 months from the expiration of the waiting period provided by the Family Code where such is required, whichever is later.
 - 1.3.2. Uncontested Family Law Cases. Within 3 months from appearance date or within 3 months from the expiration of the waiting period provided by the Family Code where such is required, which is later.
 - 1.4. **Complex cases:** It is recognized that in especially complex or special circumstances it may not be possible to adhere to these standards.
2. **REPORTS TO THE ADMINISTRATIVE JUDGE:** The district clerk shall supply to the Administrative Judge of Fort Bend County, on a monthly basis, information concerning the number of filings, dispositions, trials and other judicial activities in each court.
3. **CIVIL CASES**
 - 3.1. **FILING & ASSIGNMENT.** On being filed, a case shall be assigned randomly to the docket of one of the courts. Once assigned to a court, a case will remain on the docket of that court for all purposes unless transferred.
 - 3.2. **TRANSFER:**

- 3.2.1. Prior Judgment. Any claim for relief based upon a prior judgment shall be assigned to the court of original judgment.
- 3.2.2. Prior filings. Any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous filing involving substantially-related parties and claims shall be assigned to the court where the prior matter was pending.
- 3.2.3. Consolidation:
 - 3.2.3.1. Consolidation of Cases. A motion to consolidate cases must be heard in the court where the first filed case is pending. If the motion is granted, with the consent of the transferring court the consolidated case will be given the number of the first filed case and assigned to that court.
 - 3.2.3.2. Consolidation of Discovery. A motion to consolidate discovery in separate cases must be heard in the court where the first filed case is pending. If the motion to consolidate discovery is granted, the case will not transfer, but the consolidating court will conduct the discovery management.
- 3.2.4. Severance: If a severance is granted, the new case will be assigned to the court where the original case pends, bearing the same file date and the same number as the original case with a letter designation; provided, however, that when a severed case has previously been consolidated from another court, the case shall upon severance be assigned to the court from which it was consolidated.
- 3.2.5. Agreement Any case may be transferred from one court to another court by written order of the judge of the court from which the case is transferred; provided, however, that the transfer must be with the written consent of the court to which the case is transferred.

3.3. MOTIONS.

- 3.3.1. Form. Motions shall be in writing and shall be accompanied by a certificate of service and proposed order granting the relief sought. The proposed order shall be a separate instrument, unless the entire motion, order, signature lines and certificate of service are all on one page. Motions shall include a certificate of conference in compliance with Rule 3.3.9.
- 3.3.2. Response. Responses shall be in writing and shall be accompanied by a proposed order. Failure to file a response may be considered a representation of no opposition.
- 3.3.3. Submission. Motions may be heard by written submission. Motions shall state a Monday date at 8:00 a.m. as the date for written submission. This date shall be at least 10 days from filing, except on leave of court. Responses shall be filed at least three days before the date of submission, except on leave of court.
- 3.3.4. Oral Hearings. Settings for oral hearings should be requested from the court coordinator. The notice of oral hearing shall state the time and date and be provided to all adverse parties or their counsel, by the requestor.
- 3.3.5. Unopposed Motions. Unopposed motions shall be labeled "Unopposed" in the caption.
- 3.3.6. Discovery motions. All motions for discovery sanctions, requests for ruling on discovery objections, and motions to compel discovery shall set out within the body of the motion, the interrogatory or request which is in dispute, and the objection and answer or response which is in dispute, so that all matters necessary for the Court's consideration are set out in one concise document.
- 3.3.7. Any motion to withdraw must comply with Rule 10 of the Texas Rules of Civil Procedure.
- 3.3.8. Any dismissal or non-suit shall be accomplished by notice with a court order.

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.

Moises Liberato Jr. on behalf of Alicia Matsushima

Bar No. 24002546

moises@invictalawfirm.com

Envelope ID: 77904988

Filing Code Description: Brief Not Requesting Oral Argument

Filing Description: Brief Not Requesting Oral Argument

Status as of 7/26/2023 1:48 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
George Bishop	2353000	george_bishop@sbcglobal.net	7/26/2023 1:27:07 PM	SENT
Mia Shimaj		mia@invictalawfirm.com	7/26/2023 1:27:07 PM	SENT
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Moises Liberato Jr.		moises@invictalawfirm.com	7/26/2023 1:27:07 PM	SENT