

CAUSE NO. 2024-83557

DEESHA INVESTMENTS, LLC.
Plaintiff,

v.

MORRELL MASONRY SUPPLY, INC.
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

234th JUDICIAL DISTRICT

MORRELL MASONRY SUPPLY, INC.'s MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MORRELL MASONRY SUPPLY, INC. ("Morrell" or "Defendant"), and files this Motion for Sanctions against Plaintiff's counsel, Erick DeLaRue ("Plaintiff's counsel" or "DeLaRue"), and will show the Court as follows:

I. BACKGROUND

1. On November 27, 2024, there was a Petition and Application filed by Plaintiff's counsel without any grounds or knowledge of the history of the case. Plaintiff's counsel did not reach out to Defendant's counsel with any communication. However, request for disclosures served and a response was filed. In its response, Defendant provided the entire history of the case so to not delay justice.
2. Hearing was noticed for December 09, 2024. However, while counsel for Morrell waited for the case to be heard, the Honorable Judge presiding informed Morrell's counsel that Plaintiffs passed the hearing. There was no communication or filings or notices of any type.
3. Now, without candor or conference, Plaintiff's counsel has filed an "ex-parte" application for temporary restraining order without good cause and with knowledge that Defendant is represented by counsel.

II. ARGUMENTS AND AUTHORITIES

A. Sanction Imposed for Groundless Filings Tex. R. Civ. P. 13

4. A court must impose sanctions against an attorney or party who signs a pleading, motion, or other paper if it (1) is groundless and (2) was brought in bad faith or for the purpose of harassment. Tex. R. Civ. P. 13. A party can be sanctioned for its attorney's conduct if the party is implicated in the conduct apart from having entrusted the legal representation to the attorney. *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991); *Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 349–50 (Tex. App.—San Antonio 2006, pet. denied).;
5. A paper is groundless when it has no basis in law or fact and is not warranted by a good-faith argument for the extension, modification, or reversal of existing law. Tex. R. Civ. P. 13; see, e.g., *Robson v. Gilbreath*, 267 S.W.3d 401, 406 (Tex. App.—Austin 2008, pet. denied) (groundless pleading); *In re A.C.B.*, 103 S.W.3d 570, 576 (Tex. App.—San Antonio 2003, no pet.) (groundless paper). The standard for reviewing whether a paper is groundless is objective: did the party and the attorney make a reasonable inquiry into the legal and factual basis of the claim? The reasonableness of the inquiry is judged by the facts available and the circumstances present when the party filed the paper. See *Tarrant Cty. v. Chancey*, 942 S.W.2d 151, 155 (Tex. App.—Fort Worth 1997, no writ).
6. A paper is brought in bad faith when the signer consciously acted with a dishonest, discriminatory, or malicious purpose. *Parker v. Walton*, 233 S.W.3d 535, 540 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *Campos v. Ysleta Gen. Hosp., Inc.*, 879 S.W.2d 67, 71 (Tex. App.—El Paso 1994, writ denied). A pleading, motion, or other paper is brought to harass when the signer means to annoy, alarm, and abuse another person. *Parker*, 233

S.W.3d at 540.

7. Plaintiff's Motion is groundless and was brought in bad faith and for the purpose of harassment. Specifically, the Motion shows no good cause because there *is* no good cause. In fact, there is no lawful or factual basis that ground this motion.
8. Plaintiff and its Attorney, Erick DeLaRue, brought this request in front of this Court only to harass Defendant. Plaintiff's counsel even stated that he "has reached out to Defendant's counsel so many times without response" however, counsel fails to act in a prudent manner and according to the Professional Rules of Conduct that any attorney has taken an oath to do so. The office of Defendant's counsel and emails remain barren. In other words, Plaintiff's counsel lied to the Court. The request remains in bad faith and for purpose of harassment only.
9. Additionally, without remorse or fear of repercussion, Plaintiff's response to Defendant's Motion to Dissolve the TRO blatantly states that "Defendant was not served with the previously filed petition either" when, in fact, Defendant responded to Plaintiff's Petition and Application. Therefore, the request remains groundless. Except the blatant dishonesty, there is no basis of fact or law because Plaintiff doesn't even own the Properties.
10. Moreover, Plaintiff's counsel stated that he cannot be held liable for not knowing the history of the case. When, in fact, Defendant provided *everything* that would help Plaintiff's counsel understand that he was acting with sanctionable conduct. Plaintiff's counsel also had unlimited opportunities to reach out to Defendant's counsel. Neither was done. The dishonesty is clear.
11. Attorney Erick DeLaRue also signed and certified the request, so he is subject to sanctions. Plaintiff itself is also subject to sanctions because it is implicated in the sanctionable

conduct apart from having entrusted the legal representation to the attorney.

B. The Motion Order Was Signed in Violation of Tex. Civ. Prac. & Rem. Code Section 10.001.

12. A court can impose sanctions on a person who signs a pleading or motion in violation of Texas Civil Practice & Remedies Code Section 10.001, a party represented by the signing person, or both. Tex. Civ. Prac. & Rem. Code §10.004(a). A party can be sanctioned for its attorney's conduct if the party is implicated in the conduct apart from having entrusted the legal representation to the attorney. *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991); *Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 349–50 (Tex. App.—San Antonio 2006, pet. denied).
13. A pleading or motion is signed in violation of section 10.001 if it is presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Tex. Civ. Prac. & Rem. Code § 10.001(1).
14. Here, Plaintiff's request and order following was signed in violation of Section 10.001 because Defendant's counsel is known to Plaintiff and its counsel. Knowingly and for purpose of unnecessary delay, Attorney Erick DeLaRue signed the request, therefore he is subject to sanctions.

C. Sanctions are Just.

15. Sanctions are just if they have a direct relationship to the offensive conduct and are not excessive. *Schindler Elevator Corp. v. Ceasar*, 670 S.W.3d 577, 589 (Tex. 2023); *Nath v. Tex. Children's Hosp.*, 446 S.W.3d 355, 363 (Tex. 2014); *Am. Flood Research, Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006); *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 882 (Tex. 2003).

16. Defendant asks the Court to impose the following sanctions on Plaintiff and/or Plaintiff's counsel:

- a. An order designating certain matters as established against Plaintiff. Tex. R. Civ. P. 215.2(b)(3); *see* Tex. R. Civ. P. 13. Specifically, establish that the issue and claim has been litigated previously, previous judgments should be adhered to, and no additional TRO's would be valid if filed.
- b. An order prohibiting Plaintiff from bring additional motions of the same claims. Tex. R. Civ. P. 215.2(b)(4); *see* Tex. R. Civ. P. 13. Specifically, prohibit Plaintiff and its counsel from filing additional motions for temporary or permanent injunctive relief for the Property subject to rightful foreclosure.
- c. An order striking all or part of Plaintiff's pleadings. Tex. R. Civ. P. 215(b)(5); *see* Tex. R. Civ. P. 13. Specifically, to strike the recently filed TRO's and orders related thereof.
- d. An order dismissing Plaintiff's suit with prejudice. Tex. R. Civ. P. 215(b)(5); *see* Tex. R. Civ. P. 13. Specifically, if Court does not strike all or part of Plaintiff's pleadings, then Court dismiss Plaintiff's suit with prejudice.
- e. An order directing Plaintiff be barred and be refrained from performing additional acts that hinder or delay Defendant's justice. Tex. Civ. Prac. & Rem. Code Section 10.004(c)(1). Specifically, Defendant to be made whole.

III. REQUEST FOR ATTORNEY FEES & EXPENSES

17. As a sanction under Texas Rule of Civil Procedure 215.2(b)(8) *and* Texas Civil Practice & Remedies Code section 10.004(c)(3), a court can award to a party the reasonable expenses incurred because of the filing of an improper application for TRO. Defendant has incurred reasonable expenses, including attorney fees, because of Plaintiff's Motion to Extend.

Attached to this motion as Exhibit A is the affidavit of Defendant's attorney detailing these expenses. Defendant asks the Court to award Morrell attorney fees and expenses.

18. A court can award to a party who prevails on a motion for sanctions under Texas Civil Practice & Remedies Code section 10.002 the reasonable expenses and attorney fees incurred in presenting the motion. Tex. Civ. Prac. & Rem. Code § 10.002(c). Defendant has incurred reasonable expenses, including attorney fees, in presenting this motion. Attached to this motion as Exhibit A is the affidavit of Defendant's attorney detailing these expenses. If the Court grants this motion, Defendant asks the Court to award Morrell attorney fees and other expenses.
19. A court can award to a party who prevails on a motion for sanctions under Texas Civil Practice & Remedies Code section 10.002 all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the underlying litigation if the party to be sanctioned has not shown due diligence. Tex. Civ. Prac. & Rem. Code § 10.002(c). Defendant has incurred expenses from the litigation, and Plaintiff did not exercise due diligence.
20. Specifically, If Plaintiff's counsel conducted a simple search under his client, Deesha Investments and/or Shojai, he would find all facts based on previous rulings and cases. With due diligence, Plaintiff's counsel would have reasonably gained information. But for the failure of his duties as a licensed attorney in Texas, Defendants would not incur attorney fees and cost of litigation. Attached to this motion as **Exhibit A** is the affidavit of one of Defendant's attorneys. If the Court grants this motion, Defendant asks the Court to award Morrell attorney fees and expenses.
21. Plaintiff's petition and application are gravely delusive, deceptive, and fraudulent and

Plaintiff's petition and application rests upon a fundamental subterfuge of the legal process. Plaintiff's counsel knowingly misrepresents to this court there is a foreclosure of a Property owned by Plaintiff. The court relied on these misrepresentations when it granted the temporary restraining order in favor of Plaintiff. This has caused harm and injury to Defendant. As a result, Plaintiff's counsel should be held accountable and sanctions should be imposed.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests the Court impose sanctions against Plaintiff's counsel and award Defendant its attorney fees and expenses associated with filing this motion.

Respectfully submitted,

THE CROMEENS LAW FIRM, P.L.L.C.

BY: /s/ Nimra Alexis

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**ATTORNEYS FOR MORRELL MASONRY
SUPPLY, INC.**

CERTIFICATE OF SERVICE

I certify that on the 8 day of February, 2025, I served a copy of the attached response to all counsel of record in this cause, as required by the Texas Rules of Civil Procedure.

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/s/ Nimra Alexis

NIMRA K. ALEXIS

Unofficial Copy Office of Marilyn Burges District Clerk

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Meghan Billeaud on behalf of Nimra Alexis
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Envelope ID: 97149674
Filing Code Description: Motion (No Fee)
Filing Description:
Status as of 2/10/2025 8:31 AM CST

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