

CAUSE NO. 2021-22803

CHELSEI HICKS, individually and  
a/n/f of J.F., and MITZI WHIPPLE  
*Plaintiffs*

VS.

DHI HOLDINGS, LP  
*Defendant.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

334<sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT DHI HOLDINGS, LP'S  
MOTION TO EXPUNGE ABSTRACT OF JUDGMENT**

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COME NOW, Plaintiffs, Chelsi Hicks, individually and as Next Friend of J.F., Minor, and Mitzi Whipple, and file this Response in Opposition to Defendant DHI Holdings, LP's (hereinafter "Defendant DHI Holdings") Motion to Expunge Abstract of Judgment. In support, Plaintiffs would respectfully show this Honorable Court the following:

**SUMMARY OF THE ARGUMENT**

Plaintiffs file this Response in Opposition to Defendant DHI Holdings' Motion to Expunge Abstract of Judgment. Defendant DHI Holdings' Motion to Expunge Abstract of Judgment must be **denied** for the following two (2) reasons:

1. Pursuant to Texas Rule of Civil Procedure 507.1, this Court lost plenary power over this case on August 23, 2024, twenty-one (21) days after the Final Judgment was signed by this Court; and,
2. Even if the Court finds it has not lost plenary power over this case, Defendant DHI Holdings' Motion to Expunge Abstract of Judgment still fails because (1) there is an enforceable monetary Final Judgment, (2) the settlement reached requires Defendant DHI Holdings' to tender the amount set forth in the Abstract of Judgment to the affected Plaintiffs, and (3) said Final Judgment was in Plaintiffs' favor which permitted Plaintiffs' attorney to prepare and file the Abstract of Judgment.

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**I.**  
**FACTS AND BACKGROUND**

1.1 This lawsuit arises from a June 26, 2019, incident where Plaintiff J.F. suffered electrical burns stemming from an un-protected electrical outlet located on Defendant DHI Holdings' premises. At the time of the incident made the basis of this suit, Plaintiff Whipple leased 12973 Wirevine Lane, Houston, Texas 77072 (hereinafter "the Property") from Defendant DHI Holdings, LP.

1.2 After more than three (3) years of this case being on file with this Court, on August 2, 2024, this Court signed the Order Approving Settlement and Final Judgment, outlining specific instructions and required timeframes for Defendant DHI Holdings to tender settlement proceeds, namely with regards to Plaintiff J.F., a Minor.<sup>1</sup>

It is ORDERED, ADJUDGED AND DECREED that the settlement proceeds should be apportioned under the terms and conditions of the Settlement Agreements reviewed by the Court *in-camera*. This includes (1) a check issued to Chelsi Hicks, as Next Friend of J.F., a Minor, and ABRAHAM WATKINS NICHOLS AGOSTO AZIZ & STOGNER in the amount set forth in the Settlement Agreement within fourteen (14) days of this signed final judgment, and (2) a check issued to **Pacific Life & Annuity Services, Inc.** to fund periodic payments to the Minor Plaintiff within thirty (30) ~~fourteen (14)~~ days of this signed final judgment, as set forth in the Settlement Agreements, specifically the Settlement Agreement and Release for J.F., a Minor. The obligation to make the periodic payments described herein may be assigned to **Pacific Life & Annuity Services, Inc.** and funded by an annuity contract issued by **Pacific Life Insurance Company**, rated A+ XV by A.M. Best. The Court ORDERS that the check to Pacific Life & Annuity Services, Inc. must be sent to Plaintiff's counsel no later than September 1, 2024. Failure to do so will likely result in sanctions.

*Excerpt from Exhibit A at page 5.*

<sup>1</sup> See Exhibit A: August 2, 2024, Signed Order Approving Settlement and Final Judgment.

1.3 Of note, Defendant DHI Holdings failed to issue the above-referenced check to Chelsi Hicks, as Next Friend of J.F., a Minor, and ABRAHAM WATKINS NICHOLS AGOSTO AZIZ & STOGNER in the amount set forth in the Settlement Agreement, as ordered by this Court, in the required timeframe. To date, Defendant DHI Holdings has still failed to issue this check, which is in direct violation of this Court's Order.

1.4 As such, Plaintiffs were left with no other choice but to file an Abstract of Judgment against numerous properties of Defendant DHI Holdings in order to protect settlement funds rightfully owed to Plaintiffs.<sup>2</sup> The Abstract of Judgment was recorded in the Official Public Records of Real Property of Harris County, Texas on February 17, 2025.<sup>3</sup>

1.5 Now, in an effort to avoid tendering the settlement funds Plaintiffs are rightfully entitled to, Defendant DHI Holdings attempts to expunge the Abstract of Judgment through its present Motion. However, as further outlined below, Defendant DHI Holdings' Motion fails for a multitude of reasons, and this Court must deny Defendant DHI Holdings' Motion in order to fairly and fully compensate Plaintiffs, who have still not received all the settlement proceeds ordered by this Court through the Final Judgment.

## **II.**

### **ARGUMENTS AND AUTHORITIES**

**A. Pursuant to Texas Rule of Civil Procedure 507.1, this Court lost plenary power over this case on August 23, 2024, twenty-one (21) days after the Final Judgment was signed by this Court.**

2.1 The date of judgment or order is signed as shown of record shall determine the beginning of the periods prescribed by these rules for the court's plenary power to grant a new trial or to vacate, modify, correct or reform a judgment or order and for filing in the trial court the

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<sup>2</sup> See Exhibit B: February 17, 2025, Recorded Abstract of Judgment.

<sup>3</sup> *Id.*

various documents that these rules authorize a party to file within such periods including, but not limited to, motions for new trial, motions to modify judgment, motions to reinstate a case dismissed for want of prosecution, motions to vacate judgment and requests for findings of fact and conclusions of law.” *See* TEX. R. CIV P. 306a(1). “A justice court loses plenary power over a case when an appeal is perfected or if no appeal is perfected, 21 days after the later of the date judgment is signed or the date a motion to set aside, motion to reinstate, or motion for new trial, if any, is denied.” *See* TEX. R. CIV. P. 507.1.

2.2 Here, Final Judgment was signed by this Court on August 2, 2024.<sup>4</sup> Since that date, there have been no motions to set aside, reinstate, or to request a new trial filed with this Court. As such, this Court lost plenary power over this case on August 23, 2024, twenty-one (21) days after the Court signed the Final Judgment.

2.3 Furthermore, a simple search of this case on the Harris County District Clerk’s Website yields the following information:

**202122803 - HICKS, CHELSI (INDIVIDUALLY AND AS NEXT FRIEND OF MINOR CHILD J F) vs. DHI HOLDINGS LP (Court 334)**

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Case (Cause) Summary		The Current Presiding Judge	
File Date	4/16/2021	Current Court	334 <sup>th</sup>
Case (Cause) Location		Filing Court	334 <sup>th</sup>
Case (Cause) Status	Disposed (Final)	Address	201 CAROLINE (Floor: 14) HOUSTON, TX 77002 Phone:8329271825
Case (Cause) Type	PERSONAL INJ (NON-AUTO)	JudgeName	DAWN ROGERS
Next/Last Setting Date	4/2/2025	Court Type	Civil
Judgment For	FINAL JUDGMENT SIGNED FOR PLAINTIFF (NON-JURY)		
Judgment Date	8/2/2024		
Jury Fee Paid Date	N/A		

*Excerpt from Summary of Cause No. 202122803 from Harris County District Clerk’s Website.*

<sup>4</sup> *See* Exhibit A.

2.4 As the above excerpt illustrates, this case is listed on the Harris County District Clerk's Website as "Disposed (Final)" with a "Final Judgment Signed for Plaintiff" on August 2, 2024. Accordingly, Defendant DHI Holdings' Motion to Expunge Abstract of Judgment is untimely and cannot be heard by this Court because this Court no longer has plenary power over this matter. Therefore, as a preliminary matter, Defendant DHI Holdings' Motion to Expunge Abstract of Judgment must be denied.

**B. Even if the Court finds it has not lost plenary power over this case, Defendant DHI Holdings' Motion to Expunge Abstract of Judgment still fails because Plaintiffs' Abstract of Judgment is procedurally sufficient and applicable to the unpaid Final Judgment entered by this Court.**

2.5 "An unsecured money judgment is simply an adjudication between the plaintiff and defendant that the defendant owes the plaintiff some amount of money." *See TST Impresso, Inc. v. Asia Pulp & Paper Trading (USA), Inc.*, No. 05-12-01551-CV, 2014 Tex. App. LEXIS 1108 (Tex. App.—Dallas Jan. 30, 2014, pet. denied). Under the judgment, the plaintiff has no priority over any other claimant against the defendant. The plaintiff's "only superior position is against his judgment debtor, against whom he has litigated." *See Fore v. United States*, 339 F.2d 70, 72 (5th Cir. 1964); *see also Schumann v. Breedlove & Bensey*, 983 S.W.2d 333, 334 (Tex. App.—Houston [1st Dist.] 1998, no pet.).

2.6 Under Texas law, an abstract of judgment creates a lien on the judgment debtor's non-exempt real property in the county where the abstract is recorded and indexed, allowing the judgment creditor to enforce the judgment through the lien. *See* TEX. PROP. CODE ANN. § 52.001; *see also* 9 Dorsaneo, Texas Litigation Guide § 132.02 (2025).

2.7 To file an abstract of judgment, the judgment creditor or their attorney must ensure that the abstract complies with statutory requirements to include specific details such as the names of the plaintiff and defendant, the amount of the judgment, the balance due, and other identifying

information. *See* TEX. PROP. CODE ANN. § 52.003, TEX. PROP. CODE ANN. § 52.002, *see also* *Gordon v. W. Hous. Trees, Ltd.*, 352 S.W.3d 32, 38 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

2.8 First, Plaintiffs, through their attorney, filed and recorded a valid abstract of judgment which contained the name of the judgment creditors (Plaintiffs) and the name of the judgment debtor (Defendant DHI Holdings), the amount of the judgment, the balance due, as well as identifying information on Defendant DHI Holdings' non-exempt real property.<sup>5</sup>

2.9 Despite the recording of a valid abstract of judgment that complied with all statutory requirements, Defendant DHI Holdings attempts to further hinder Plaintiffs' tireless efforts to collect on an unpaid final judgment through the present Motion to Expunge.

2.10 First, Defendant DHI Holdings attempts to argue that because this Court's Final Judgment does not contain a specific dollar amount, an abstract of judgment is improper because Plaintiffs do not have an enforceable money judgment lien against Defendant DHI Holdings. However, this Court is well aware of the settlement terms and the amounts to be apportioned among the Plaintiffs through its *in-camera* review of the Parties' final settlement agreement,<sup>6</sup> which was reflected in the Final Judgment entered by this Court. Plaintiffs' Abstract of Judgment accurately reflects the amount of the judgment and the balance still due, despite a specific dollar amount not contained in the black and white lettering of the Final Judgment. After all, it was Defendant DHI Holdings' demand that the terms and conditions of the Final Settlement Agreement be confidential; however, this Court cannot allow Defendant DHI Holdings to take advantage of the confidential terms and conditions to further prevent Plaintiffs from obtaining the monetary recovery they are rightfully entitled to.

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<sup>5</sup> *See* Exhibit B.

<sup>6</sup> *See* Exhibit C: Plaintiff J.F. Settlement Release (Not filed with Response but provided for in-camera review).

2.11 Second, Defendant DHI Holdings further attempts to argue that Plaintiff's Abstract of Judgment misrepresents material terms and namely, the amount of the final judgment and the remaining balance of said judgment. Again, this Court is well aware of the terms, and specifically the amounts, contained in the Final Settlement Agreement through its *in-camera* review. These amounts are accurately reflected in Plaintiffs' Abstract of Judgment; therefore, Defendant DHI Holdings' Motion to Expunge fails on these grounds as well.

2.12 Lastly, Defendant DHI Holdings attempts to argue that there was no final judgment in favor of Plaintiffs; therefore, an abstract of judgment is improper. This is an inaccurate assertion. Not only did the Court find final judgment in favor of Plaintiffs, but the Court specifically stated in its Signed Order that "the Settlement Agreements are in the best interests of the minor plaintiff, J.F."<sup>7</sup>

The Court is of the opinion that the Settlement Agreements executed by the Plaintiffs are fair and equitable and that the same should be and is hereby in all things approved, and the Court specifically finds the Settlement Agreements are in the best interests of the minor plaintiff, J.F.

*Excerpt from Exhibit A at page 3.*

2.13 Accordingly, Plaintiffs complied with Texas Property Code Section 52.002(b) in that said abstract of judgment was prepared by the attorney of the person in whose favor a judgment was rendered. Accordingly, Defendant DHI Holdings' third argument also fails, and this Court should deny Defendant DHI Holdings' Motion to Expunge on this ground as well.

2.14 To emphasize, it was not Plaintiffs hope or desire to file and record the Abstract of Judgment; however, Defendant DHI Holdings' continuous refusal to tender the unpaid settlement proceeds to Plaintiffs left Plaintiffs with no other choice. To date, Plaintiffs have not received full

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<sup>7</sup> See Exhibit A.

and complete payment from the Final Judgment entered by this Court.<sup>8</sup> All the while, Defendant DHI Holdings continues to lease properties, such as those listed in the Abstract of Judgment, and collect rental proceeds. This Court must put an end to Defendant DHI Holdings' continuous refusal to pay Plaintiffs the settlement proceeds they are rightfully entitled to and must deny Defendant DHI Holdings' Motion to Expunge Plaintiffs' Abstract of Judgment in its entirety.

**PRAYER**

WHEREFORE PREMISES CONSIDERED, Plaintiffs pray that the Court will deny Defendant DHI Holdings, LP's Motion to Expunge Plaintiffs' Abstract of Judgment and grant any other relief to which Plaintiffs may be justly entitled.

*[Signature block on the next page.]*

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<sup>8</sup> To date, the only payment made by Defendant DHI Holdings, LP was the annuity payment for Plaintiff J.F.



Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,  
AGOSTO, AZIZ & STOGNER**

By: /s/ Soroush Montazari

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**ATTORNEYS FOR PLAINTIFFS**

Unofficial Copy Office of Marilyn Brown, District Clerk

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record in accordance with the Texas Rules of Civil Procedure on April 1, 2025.

/s/ Soroush Montazari  
Soroush Montazari

Unofficial Copy Office of Marilyn Burgess District Clerk

### Automated Certificate of eService

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Holdings, LP's Motion to Expunge Abstract of Judgment

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