

HARRIS COUNTY, TEXAS

II. SPECIAL EXCEPTION - INCORRECT NAMING OF DEFENDANT

2. Pursuant to Texas Rules of Civil Procedure 90 and 91, Defendant specially excepts to Plaintiffs Original Petition for incorrectly naming Defendant as "Victor D. Walker, P.C." The correct legal name of Defendant, as registered with the Texas Secretary of State, is Law Office of Victor D. Walker, P.C.. (hereinafter "Law Office of Victor D. Walker, P.C."). This misnomer creates ambiguity in the pleadings and may cause confusion in the record. Defendant requests that the Court order Plaintiffs to amend their petition to reflect the correct name and grant such other relief as is just and proper. Defendant reserves the right to assert additional defenses, including misidentification, if discovery reveals that Plaintiffs intended to sue a different entity.

III. VERIFIED DENIAL - DEFECT IN PARTIES

3. Pursuant to Texas Rules of Civil Procedure 92 and 93(14), Defendant denies that it is properly named as "Victor D. Walker, P.C." in this lawsuit and asserts that its correct legal name is Law Office of Victor D. Walker, P.C.. To the extent Plaintiffs' naming error suggests a defect in parties or capacity, Defendant denies that it is the entity described in the Petition under the incorrect name. This denial is verified by the attached verification of Attorney Victor D. Walker, attesting to the correct legal name of the Defendant.

IV. SUMMARY OF THE MOTION

4. This lawsuit is a transparent attempt by Plaintiffs to retroactively claim entitlement to excess proceeds that were lawfully disbursed to Brenda Schmidt-the record owner of the property at the time judgment was rendered, as required under Texas Tax Code § 34.04. Law Office of Victor D. Walker, P.C. represented Schmidt in a court proceeding to recover those proceeds and obtained a valid court order distributing \$107,637.80.

Plaintiffs now attempt to sue Schmidt's attorney, despite:

- Having no legal right to the funds under § 34.04;
- Failing to file any timely claim to the proceeds; and
- Asserting claims against the Law Office of Victor D. Walker, P.C. for performing routine legal work in a judicial proceeding.

This lawsuit is barred as a matter of law.

V. STATEMENT OF FACTUAL BACKGROUND

5. Defendant Victor D. Walker, P.C. (the "Law Office of Victor D. Walker, P.C. ") submits the following factual background in support of its Motion to Dismiss under Texas Rule of Civil Procedure 91a, based on the attorney immunity doctrine. The facts are drawn from Plaintiffs Original Petition (filed March 19, 2025) and the Law Office of Victor D. Walker, P.C. Firm's Petition for Disbursement of Excess Proceeds (filed October 29, 2024), both of which are before the Court.

6. The Property and HOA Foreclosure: The real property at issue, located at 24206 Broken Bow Lane, Hockley, Texas 77447 (the "Property"), was owned by Brenda Schmidt until August 6, 2024, when Plaintiffs acquired it through a non-judicial foreclosure sale conducted by the Ranch Country Association ("HOA") for unpaid dues. (Pl.'s Orig. Pet., **14.2.**) Schmidt, the prior owner, did not redeem the Property within the 90-day redemption period and received moving assistance funds from Plaintiffs to vacate. (Id., **14.3.**)

7. Ongoing Tax Lawsuit and Notice to Plaintiffs: Plaintiffs admit in their Original Petition that an ongoing property tax lawsuit, styled *Waller Independent School District, Harris County, et al. v. Brenda Schmidt*, **Cause No. 2023-20600**, was pending in the 281st Judicial District Court of Harris County at the time of their acquisition. (Id., **14.4.**) This lawsuit, filed in 2023, culminated in a Judgment and Decree of Sale signed **on November 7, 2023**, against Schmidt. (Id.) An Order of Sale was issued on **June 21, 2024**, and the Property was sold at a tax foreclosure sale on **September 3, 2024**, generating \$120,000 in proceeds, with excess proceeds remaining after payment of tax liens and costs. (Id., **14.5.**) Plaintiffs' admission of the ongoing tax lawsuit establishes that they had, or should have had, notice of the litigation and its potential impact on the Property prior to their **August 6, 2024**, transaction with the HOA.

8. Walker Law Office's Representation of Schmidt: The Law Office of Victor D. Walker, P.C. represented Brenda Schmidt in connection with the tax lawsuit. On October 29, 2024, the firm filed a

Petition for Disbursement of Excess Proceeds in the 281 st Judicial District Court, asserting Schmidt's entitlement to the excess proceeds as the former record owner of the Property. (Def.'s Pet. for Disbursement, pp. 1-3.) The petition was supported by evidence of Schmidt's 100% ownership interest, stemming from her divorce decree awarding her full title to the Property on October 27, 2004. (Id., ¶¶ 5-6, Exs. 4-6.) On **December 18, 2024**, the court ordered the distribution of \$107,637.80 in excess proceeds to Schmidt and/or the Law Office of Victor D. Walker, P.C.. (Pl.'s Orig. Pet., ¶ 4.6.)

9. Plaintiffs' Claims Against the Law Office of Victor D. Walker, P.C. Plaintiffs allege that the Law Office of Victor D. Walker, P.C., alongside Schmidt, wrongfully received the excess proceeds, asserting a single cause of action against the firm for "money had and received." (Id., ¶¶ 5.1-5.3.) Plaintiffs claim that, as the Property's owners on August 6, 2024, they were entitled to the excess proceeds from the September 3, 2024, tax sale, and that the Law Office of Victor D. Walker, P.C.'s receipt of these funds was inequitable. (Id., ¶ 5.2.) Notably, Plaintiffs do not allege that the Law Office of Victor D. Walker, P.C. acted outside its role as counsel for Schmidt or engaged in any conduct beyond formal legal representation in the tax lawsuit complying with Texas Tax Code § 34.04.

10. Attorney Immunity Context: The Law Office of Victor D. Walker, P.C.'s actions-filing the *Petition for Disbursement of Excess Proceeds* and securing a court order for distribution-were performed solely in its capacity as legal counsel for Schmidt in the tax lawsuit. These actions were part of formal legal procedures under Texas Tax Code § 34.04 and within the scope of the firm's representation. The firm had no direct interaction with Plaintiffs, and its conduct was limited to advocating for its client's interests in pending litigation, as authorized by the court's processes.

11. Plaintiffs' Failure to Intervene: Despite admitting knowledge of the ongoing tax lawsuit (Id., ¶ 4.4), Plaintiffs did not intervene in the tax lawsuit, file a claim for the excess proceeds, or notify the Law Office of Victor D. Walker, P.C. or the court of their alleged ownership interest prior to the December 18, 2024, distribution order. Plaintiffs claim they learned of Schmidt's petition only after the

disbursement (Id., ¶4.8), but their admitted awareness of the tax lawsuit undermines any assertion that they lacked opportunity to protect any interest they thought they had.

12. This factual background demonstrates that the Law Office of Victor D. Walker, P.C.'s conduct was wholly within the scope of its legal representation of Schmidt in connection with the tax lawsuit, entitling the firm to dismissal under the attorney immunity doctrine. Plaintiffs' claims arise from the firm's litigation-related actions, which are protected under Texas law, and their own failure to act despite notice of the tax lawsuit further weakens their equitable claims.

II. STANDARD UNDER RULE 91a

13. A party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. See Tex. R. Civ. P. 91a.1. A cause of action has no basis in law if the allegations, taken as true, do not entitle the claimant to the relief sought. The Court may not consider evidence and must base its decision solely on the pleadings. Dismissal is appropriate when the plaintiffs claims are barred by affirmative defenses, such as immunity, or when the plaintiff lacks a legal right to the relief sought. See *Bethel v. Quilling, Selander, Lownds, Winslett & Moser P.C.*, 595 S.W.3d 651,654 (Tex. 2020).

III. PLAINTIFFS HAVE NO LEGAL ENTITLEMENT TO EXCESS PROCEEDS

14. Under Texas Tax Code § 34.04(a):

"A person who was the owner of the property on the date the judgment was rendered is entitled to file a petition for the excess proceeds..." The statute clearly limits entitlement to the property owner "on the date the judgment was rendered." See *Wood v. N E Indep. Sch. Dist.*, 2020 WL 7365871, at *3 (Tex. App. - San Antonio 2020, no pet.) (affirming that only the owner at the time of the tax judgment is entitled to excess proceeds).

- The judgment in *Waller Independent School District, Harris County, et al. v. Brenda Schmidt, Cause No. 2023-20600*, was pending in the 281 st Judicial District Court of Harris County at the time of their acquisition. (Id., ¶4.4.) This lawsuit, filed in 2023, culminated in a Judgment and Decree of Sale signed on November 7, 2023.

- Allegedly, Plaintiffs did not acquire a deed to the Subject Property from the HOA property until August 6, 2024 via a non-judicial HOA foreclosure.
- Therefore, Plaintiffs are not statutorily entitled to recover excess proceeds because Brenda Schmidt was the former record owner of the Subject Property. Because Plaintiffs were not the owners on November 7, 2023, they lack statutory standing to claim the excess proceeds under § 34.04(a).

15. As a result, Plaintiffs' claims have no basis in law. The disbursement to Schmidt was lawful, and there is no cause of action for "wrongful payment" or "money had and received" where the claimant lacks statutory standing to claim the proceeds. The 281st Judicial District Court of Harris County, Texas, in Cause No. 2023-20600 ruled correctly that Defendant Brenda Schmidt was the former owner of the Subject Property at the date of the judgment via a *Special Warranty Deed* filed in the Harris County, Texas Real Property Records on August 6, 1990 under instrument number M758941.

IV. WALKER LAW OFFICE IS IMMUNE FROM LIABILITY UNDER THE ATTORNEY IMMUNITY DOCTRINE

16. Under well-settled Texas law, attorneys are immune from civil liability to third parties for conduct performed in the scope of representing a client in litigation. See:

- *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477 (Tex. 2015)
- *Youngkin v. Hines*, 546 S.W.3d 675 (Tex. 2018)

A. Legal Standard for Attorney Immunity

17. Under Texas law, attorneys are immune from liability to non-clients for actions taken within the scope of their representation of a client, particularly in litigation. *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). The doctrine protects attorneys from suits by third parties when the attorney's conduct is "part of the discharge of the lawyer's duties in representing his or her client." *Id.* at 482. This includes filing pleadings, obtaining court orders, and handling client funds in an IOLTA account. See *Youngkin v. Hines*, 546 S.W.3d 675, 681 (Tex. 2018) (affirming immunity for attorneys handling litigation-related funds).

18. The immunity applies unless the attorney's conduct is "foreign to the duties of an attorney" or involves "independently tortious" acts outside the scope of representation, such as fraud committed directly by the attorney against the plaintiff. *Bethel*, 595 S.W.3d at 657-58. Allegations of a client's misconduct do not negate the attorney's immunity. *Id.*

19. Because Plaintiffs were not the owners on November 7, 2023, they lack statutory standing to claim the excess proceeds under § 34.04(a). Law Office of Victor D. Walker, P.C.'s conduct-filing a petition, obtaining a court order, and receiving funds into an IOLTA account-are all standard legal functions within a *comi* proceeding. There is no allegation that the law firm acted outside its role as legal counsel.

20. Plaintiffs do not allege that Walker Law Firm engaged in independently tortious conduct, such as fraud directed at Plaintiffs. Instead, they claim Schmidt misrepresented her entitlement to the proceeds-a claim directed at the client, not the attorney. Even if Schmidt's actions were improper (which Walker Law Firm denies), the attorney immunity doctrine bars liability against the firm for performing its representational duties. *See Cantey Hanger*, 467 S.W.3d at 485 (attorney not liable for client's alleged misrepresentations in litigation). Because all alleged conduct by Walker Law Firm was within the scope of representing Schmidt in a judicial proceeding, Plaintiffs' claims are barred as a matter of law.

V. PLAINTIFFS FAIL TO STATE ANY VIABLE CLAIM AGAINST THE LAW FIRM

21. Plaintiffs allege causes of action such as:

- a. "Money Had and Received"
- b. "Unjust Enrichment"
- c. "Fraud by Nondisclosure"
- d. "Wrongful Payment"

These causes of action fail against the law firm for multiple reasons:

- a. The law firm owes no duty to Plaintiffs.
- b. The firm acted under a court order in handling IOLTA funds.
- c. The law firm was not a party to any transaction with Plaintiffs.
- d. The firm made no representations to Plaintiffs and owed them no disclosure obligations.

22. Because all alleged conduct by Walker Law Firm was within the scope of representing Schmidt in a judicial proceeding, Plaintiffs' claims are barred as a matter of law.

VI. PRAYER

For these reasons, Defendant Victor D. Walker, P.C. respectfully prays that this Court:

1. Grant this Motion to Dismiss under Rule 91a;
2. Dismiss with prejudice all claims asserted against the Walker Law Office;
3. Award reasonable attorneys' fees and costs under Rule 91 a.7 for defending against a baseless claim; and
4. Grant such other relief to which Defendant may be justly entitled.

Respectfully submitted,

LAW OFFICE OF VICTOR D. WALKER, P.C.

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**ATTORNEY FOR DEFENDANT,
LAW OFFICE OF VICTOR D. WALKER, P.C.**


VERIFICATION

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned notary public, on this day personally appeared Victor D. Walker, who, being duly sworn, stated under oath that he is the principal of Law Office of Victor D. Walker, P.C., that he has personal knowledge of the facts stated in Paragraph 5 of the foregoing Motion To Dismiss, and that the correct legal name of the Defendant is **Law Office of Victor D. Walker, P.C.**, as registered with the Texas Secretary of State, and not "Victor D. Walker, P.C." as alleged in Plaintiffs Original Petition.


Victor D. Walker

SUBSCRIBED AND SWORN TO before me on April 25, 2025.


Latisha L. Gillard
Notary Public, State of Texas
My Commission Expires: September 5, 2026



CERTIFICATE OF SERVICE

I hereby certify that on **April 25, 2025**, a true and correct copy of the PETITION FOR DISBURSEMENT OF EXCESS PROCEEDS and proposed ORDER AUTHORIZING DISBURSEMENT OF EXCESS PROCEEDS were forwarded by eservice, certified mail, or facsimile to the last known address of the parties required to receive notice.

Jeffrey C. Jackson

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VICTORD. WALKER

Automated Certificate of eService

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Victor Walker
Bar No. 789775
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Envelope ID: 100127089
Filing Code Description: No Fee Documents
Filing Description: Motion To Dismiss
Status as of 4/28/2025 9:26 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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