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08-12-00331-CV (4)
No. 08-12-00331-CV

DEC 4 2012

DENISE PACHECO, CLERK
EIGHTH COURT OF APPEALS

IN THE COURT OF APPEALS
FOR THE EIGHTH DISTRICT OF TEXAS

LAURA S. WASSMER AND STEPHEN B. HOPPER,
Appellants,

v.

JO N. HOPPER,
Appellee/Cross-Appellant,

v.

JPMORGAN CHASE BANK, N.A.,
Appellee.

FILED IN
COURT OF APPEALS

On Appeal from Cause No. PR-11-3238-3
In the Probate Court No. 3, Dallas County, Texas
Honorable Michael E. Miller, Presiding Judge

DEC 4 2012

DENISE PACHECO
CLERK 8th DISTRICT

**APPELLEE/CROSS-APPELLANT JO N. HOPPER'S REPLY TO
APPELLEE'S RESPONSE TO MOTION FOR EXTENSION
OF TIME TO FILE BRIEF**

TO THE HONORABLE EL PASO COURT OF APPEALS:

Appellee/Cross-Appellant Jo N. Hopper ("Appellee/Cross-Appellant" or "Mrs. Hopper"), files this Reply to Appellee JPMorgan Chase Bank, N.A.'s ("Appellee") Response to First Motion for Extension of Time to File Brief and would respectfully show:

1. A few facts are undisputed regarding Mrs. Hopper's First Motion for Extension of Time:

- a. The Appellants, Stephen B. Hopper and Laura S. Wassmer, are not opposed to Mrs. Hopper's request for a 46-day extension of time to file her Brief;
- b. Appellee is not opposed to a 30-day extension of time for Mrs. Hopper to file her Brief; and
- c. Appellee does not dispute in any way that the reasons provided by Mrs. Hopper for seeking the extension constitute good cause for the extension sought. In other words, there is no direct attack on the merits of Mrs. Hopper's Motion.

2. On this last point, Mrs. Hopper set forth specifically and with detail the serious and numerous conflicts by her appellate counsel, Mr. Yanof. Instead of disputing this good cause, Appellee makes two irrelevant arguments. First, Appellee argues that Mrs. Hopper has more than one lawyer, and Mr. Jennings is actually lead counsel for Mrs. Hopper. Mr. Jennings has always been lead counsel for Mrs. Hopper in the underlying litigation. But Mr. Yanof is her lead appellate counsel, who was hired specifically for this appeal. This Court's docket indicates Mr. Yanof is Mrs. Hopper's lead appellate counsel.

3. Second, Appellee argues that Mrs. Hopper is seeking a 76-day extension because of this Court's willingness to apply 5th Court of Appeals Local Rule 10. All parties agreed that application of 5th Court of Appeals Local Rule 10 was appropriate since all parties have proceeded in reliance on the rule. This Court agreed in applying 5th Court of Appeals Local Rule 10 to this appeal. There was no "extension" granted by 5th Court of Appeals Local Rule 10. Furthermore, it

did not simply inure to the benefit of Mrs. Hopper. Rather, it inured to the benefit of all parties by providing clarity as to the deadlines. This is the very reason all parties agreed to its application before this Court.

4. But more fundamentally, the demonstrated scheduling conflicts shown by Mrs. Hopper's lead appellate counsel, and thus the inability to timely file the Brief without an extension, are undisputed by Appellee. More precisely, Appellee does not oppose a 30-day extension, but opposes a 46-day extension. Consequently, Appellee can only legitimately challenge the 16 days sought by Mrs. Hopper beyond that to which Appellee is not opposed. Again, there is no reason given by Appellee why the 30-day extension is reasonable (with no contest by Appellee that good cause is demonstrated by Mrs. Hopper), but 46 days is unreasonable (as if good cause had not already been shown by Mrs. Hopper).

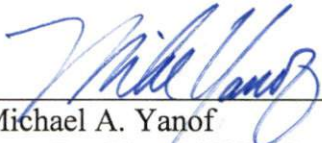
5. The other argument asserted by Appellee is surprising,¹ and indeed disingenuous. In this regard, Appellee argued that the issues before this Court were already briefed "exhaustively" in the trial court. This ignores the strict requirements of the Texas Rules of Appellate Procedure for preparing and filing briefs. This ignores the different standards in the law before trial courts versus appellate courts. This ignores that Mrs. Hopper is not only a cross-appellant, but is also an appellee, thereby requiring a *responsive* brief to Appellants' brief.

¹ It is also surprising that Appellee contests this Motion while it is a fiduciary for Appellee and Appellants. It is uncontested that Appellee is a fiduciary as the Administrator for both the Appellants and Appellee/Cross-Appellant Mrs. Hopper. It is unseemly at best for the Appellee Administrator to waste legal fees in such a Response, when it twice acknowledged agreement as to a 30-day extension, and when the principals it purportedly represents, and to whom it owes a fiduciary duty, are all in agreement that a 46-day extension is warranted and appropriate.

Accordingly, simply changing the name of Mrs. Hopper's briefing from the trial court to Brief for Appellee/Cross-Appellant does not alleviate the conflicts. Nor is it a reason to deny the relief sought by Mrs. Hopper when her relief is based upon good cause shown.

For these reasons, Appellee/Cross-Appellant Mrs. Hopper respectfully requests that the Court grant this Motion and extend the deadline to file Appellee/Cross-Appellant Mrs. Hopper's Brief until February 5, 2013, and grant any other relief to which she is justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

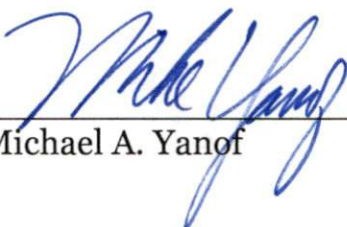
I certify that I have transmitted a true and correct copy of the foregoing document to the counsel listed below this 3rd day of December, 2012 as follows.

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