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08-12-00331-CV (14)

AUG 19 2013

No. 08-12-00331-CV

~~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

AUG 19 2013

DENISE PACHECO
CLERK 8th DISTRICT

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

**APPELLEE/CROSS-APPELLANT JO N. HOPPER'S
MOTION TO ADDRESS SCHEDULING OF
ORAL ARGUMENT, AND, ALTERNATIVELY,
FOR ADDITIONAL AND SEPARATE HEARING AND
TIME ALLOTMENT TO ARGUE STANDING ISSUE**

TO THE HONORABLE EL PASO COURT OF APPEALS:

Appellee/Cross-Appellant Jo N. Hopper ("Appellee/Cross-Appellant" or "Mrs. Hopper") files this Motion to Address Scheduling of Oral Argument, and, Alternatively, for Additional and Separate Hearing and Time Allotment to Argue Standing Issue and would respectfully show:

I.
PROCEDURAL BACKGROUND

1. After the parties receipt of this Honorable Court's letter (Date) Notice of Setting for Oral Argument (set for October 24, 2013), the three distinct sets of parties (two of the "sides" each being an Appellant, and the third side being solely an Appellee) agreed to confer about the order of presentation of the various (three) sides in this Appeal. During the course of that discussion, counsel for the Independent Administrator (the "IA") whose client is *only* an Appellee, advised he had checked with the Court's Clerk and that only fifty (50) minutes had been allocated for the entire appellate argument on October 24th. This places Mrs. Hopper in an unfairly complicated and therefore untenable position, as she is both a Cross-Appellant and Appellee. The Court should note the briefing confirms that she is aligned with neither the other Appellants (the Heirs – Laura Wassmer and Stephen Hopper), nor Appellee. For the reasons set forth herein, Mrs. Hopper submits that the time for appellate argument should be expanded (*see*, and as per, Chart 2, "Merits section" thereof, hereinbelow).

2. By way of background, Mrs. Hopper filed her Motion To Dismiss For Lack of Standing ("Motion To Dismiss") on January 11, 2013. The Motion To Dismiss sought dismissal of the entire Appellant Heirs'

Appeal, based on their respective lack of standing to pursue the Issues appealed by them.

3. The Heirs filed a Response to the Motion To Dismiss on January 21, 2013.¹ Mrs. Hopper, in turn, filed her Reply on January 23, 2013, which Reply conclusively demonstrated that under dispositive case law, the Heirs' Response had admitted facts absolutely precluding jurisdiction over their Appeal.

4. The Heirs have not since filed any further substantive response to the Motion To Dismiss. However, when Mrs. Hopper wrote the Court on June 21, 2013 requesting the Motion To Dismiss be submitted and heard, the Heirs responded via their own responsive letter to the Court (June 24, 2013), and they requested oral argument² on the Motion To Dismiss, and therein made some comments on the case law previously cited.

¹ At no time did Appellee and Independent Administrator, JPMorgan Chase Bank, N.A. (the "IA"), substantively respond to the Motion To Dismiss. Indeed the IA stated, in its next-day "Response" to Mrs. Hopper's Motion To Dismiss filed January 12, 2013 with this Court: "that the Administrator does not take a position with respect to the merits of the Motion [To Dismiss]." In other words, the IA has chosen to "stay on the sidelines" as to the standing issue. Certainly it would be inappropriate if it now sought to be heard, when it abjured timely comment under the briefing schedule as to that Motion To Dismiss.

² Mrs. Hopper has previously made no request for oral argument regarding her Motion To Dismiss. However, if the Court is so inclined to allow any oral argument on the Motion To Dismiss, Mrs. Hopper believes it should be a preliminary/separate and discrete presentation, apart from the merits of the two Appeals presently before the Court, for the reasons set forth hereinbelow.

II. GROUNDS FOR RELIEF

5. The two separate Appeals of the Heirs and Mrs. Hopper (as Cross-Appellant), respectively, necessitate appropriate time for presentation at oral argument. This includes briefing for the parties, in conjunction with Fifth Court of Appeals Local Rule 10 (adopted by the Court for these Appeals), totaling hundreds of pages.

6. Additionally, the Motion To Dismiss has been ripe for consideration since the end of January 2013, as no further substantive briefing has been filed by the Heirs since, on the standing issue.

7. The Motion To Dismiss is outcome-determinative as to this Court's jurisdiction over the Heirs' Appeal – in its entirety. This, as a practical matter, renders a decision on the Motion To Dismiss a beneficial procedural and substantive option for the Court to more effectively consider and determine the merits of the Heirs' Appeal. That is because Mrs. Hopper's Motion To Dismiss necessitates bifurcated consideration of the standing issue first, and apart from, the secondary topic of the Appellant Heirs' Issues in their (defective) Appeal. In essence, ruling on the standing issue is a prefatory matter to consideration of any, indeed all, of the Heirs' (defective) Appellate Issues – *at all*.

III. RELIEF SOUGHT

8. Mrs. Hopper continues to maintain that for purposes of judicial economy, a decision on the Motion To Dismiss, prior to oral argument on the two separate Appeals before it, is prudent and beneficial to all concerned. But either with or without oral argument, it is incontestable that if the Court grants the Motion To Dismiss, it will moot all of the Heirs' (defective) Appellate Issues, leaving only Mrs. Hopper's Issues as Cross-Appellant.

9. The briefing on the Motion to Dismiss is all that is necessary to grant the Motion to Dismiss, whether prior to oral argument or after. But because the Heirs asked for oral argument, and this Court previously noted the Motion to Dismiss would be considered "with the case," it is highly likely the Heirs will choose to address the Motion to Dismiss in oral argument. As a result, not only will Mrs. Hopper effectively be forced to respond during oral argument, the argument upon the the Motion to Dismiss will necessarily cut into Mrs. Hopper's time for oral argument on her Appeal, as well. This would be unfair, given the complexity and voluminous nature of the briefing before the Court.

10. Accordingly, Mrs. Hopper requests and moves for additional and separate oral argument time to be granted to argue the Motion To

Dismiss, apart and in advance of oral argument and consideration of the other appellate Issues. Specifically, separate from the time periods for oral argument on the merits of not only the Heirs’ (defective) Appeal Issues, but also Mrs. Hopper’s own separate Appeal Issues, Mrs. Hopper requests that segregated oral argument on the Motion To Dismiss precede any other arguments, as follows:

Chart 1 – Oral Argument on Motion To Dismiss (only)	
Mrs. Hopper’s opening argument	10 minutes
The Heirs’ opening argument	10 minutes ³
Mrs. Hopper’s rebuttal	5 minutes

11. Again, no party to these Appeals (by the Heirs as Appellants, and Mrs. Hopper as Cross-Appellant/Appellee) is similarly aligned so as to constitute one “side” for purposes of oral argument. Therefore, any “sharing” of time for oral argument would be unworkable and unfair. Mrs. Hopper requests that the oral argument time (both as to the Motion to Dismiss first, then on the merits) be allotted as follows:

³ Again, the IA having passed on this issue, no argument from the IA is necessary or proper on the Motion To Dismiss. *See supra* note 1.

Chart 2 – Oral Argument on Motion To Dismiss, Followed By Oral Argument on Merits of Both Appeals	
Motion To Dismiss	
Mrs. Hopper’s opening argument on Motion To Dismiss for Lack of Standing	10 minutes
The Heirs’ argument on Motion To Dismiss	10 minutes
Mrs. Hopper’s rebuttal on Motion To Dismiss	5 minutes
Merits of Appeal(s)	
The Heirs’ opening argument as Appellants on the merits	20 minutes
Mrs. Hopper’s opening argument as Cross-Appellant/Appellee on the merits	20 minutes
Independent Administrator’s (IA) argument (As Appellee only) on the merits	20 minutes
The Heirs’ rebuttal on the merits	10 minutes
Mrs. Hopper’s rebuttal on the merits	10 minutes

This argument order follows the appellate briefing order, exactly.

12. Because Mrs. Hopper believes strongly in the logic of the Court's preliminary consideration and threshold determination/disposition of the Motion To Dismiss, Mrs. Hopper respectfully urges the Court to allocate sufficient time for all matters as set forth above in Chart 2.

IV. PRAYER

Mrs. Hopper respectfully prays that the Court (unless it has already granted Mrs. Hopper's Motion to Dismiss for Lack of Standing prior to oral argument—which Mrs. Hopper again prays be granted) enter an order that all oral argument be conducted in accordance with Chart 2 above, and for such other relief to which Mrs. Hopper is justly entitled.

Respectfully submitted,

By:  _____

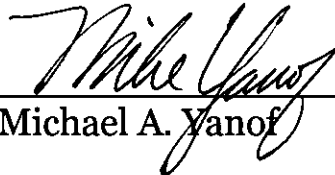
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CERTIFICATE OF CONFERENCE

I certify that counsel for Appellee/Cross-Appellant Jo N. Hopper has conferenced with counsel for Appellants Laura Wassmer and Stephen Hopper and counsel for the IA regarding this Motion and the relief sought, and counsel for these parties are opposed to the relief sought herein.



Michael A. Yanof

CERTIFICATE OF SERVICE

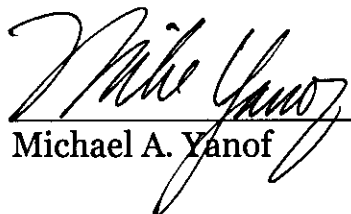
I certify that I have transmitted a true and correct copy of the foregoing document to the counsel listed below this 16th day of August, 2013 as follows.

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