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08-12-00331-CV
No. 08-12-00331-CV

(8)

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,

FILED IN
COURT OF APPEALS

v.

JPMORGAN CHASE BANK, N.A.,
Appellee.

FEB 6 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 SECOND
OPPOSED 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 Second Opposed Motion for Extension of Time to File Brief and would respectfully show:

1. This Motion seeks a 14-day extension of time for Appellee/Cross-Appellant Mrs. Hopper to file her Brief. The current

deadline to file Appellee/Cross-Appellant's Brief is February 20, 2013. Consequently, Appellee/Cross-Appellant seeks an extended deadline to March 6, 2013. *See* Tex. Rs. App. P. 38.6(d); 10.5 (b).

2. This is Appellee/Cross-Appellant's second request for an extension of time to file her Brief, sought in accordance with the actual deadline to file her Brief.¹

3. As set forth in Appellee/Cross-Appellant's Motion to Dismiss for Lack of Standing, Mrs. Hopper's counsel became aware of information leading to the filing of the Motion to Dismiss, just prior to returning to the office from the holidays on January 2, 2013. From January 2, 2013 through the date counsel actually learned of the Court's decision to pass any ruling until the entire appeal is determined, counsel for Appellee/Cross-Appellant redirected their entire efforts on this fatal jurisdictional deficiency in Appellants' appeal. Specifically, from January 2, 2013 to January 10, 2013, counsel for Appellee/Cross-Appellant prepared and filed the Motion to Dismiss. Appellee/Cross-Appellant also filed a corresponding Motion to Suspend Briefing Deadlines, which this Court granted on January 15, 2013.

¹ Appellee/Cross-Appellant previously filed a Motion to Adopt Briefing Schedule of 5th Court of Appeals Local Rule 10. In conjunction with this Motion, Appellee/Cross-Appellant alternatively sought a motion for extension of time in the event the Court was not inclined to adopt 5th Court of Appeals Local Rule 10. This alternative Motion was sought simply to ensure that Appellee/Cross-Appellant's initial deadline to file her Brief was the same as her initial deadline to file her Brief when the appeal was in the 5th Court of Appeals. When this Court adopted 5th Court of Appeals Local Rule 10, it rendered Appellee/Cross-Appellant's Motion for Extension of Time as moot.

Thereafter, Appellee/Cross-Appellant began working on a reply to Appellants' Response to the Motion to Dismiss, having spent the time between January 10 and January 23 researching and drafting in anticipation of Appellants' Response arguments, and filed Mrs. Hopper's Reply on January 23, 2013. Simply put, the redirected efforts towards a Motion to Dismiss for Lack of Standing dominated counsel for Appellee/Cross-Appellant's time from January 2, 2013 to January 23, 2013 – 21 full days.

4. The Court passed on Appellee/Cross-Appellant's Motion to Dismiss by letter dated January 25, 2013. The Court also reset Appellee/Cross-Appellant's deadline to file her Brief to February 20, 2013. Appellee/Cross-Appellant did not receive this letter until January 29, 2013. Accordingly, receipt of the letter, which informed Appellee/Cross-Appellant of the deadline to file her Brief, left approximately 22 days to prepare and file her Brief. Based on this sequence of events, Appellee/Cross-Appellant needs additional time to prepare her combined Appellee and Cross-Appellant's Brief.

5. This is further complicated by the schedule of appellate counsel for Appellee/Cross-Appellant, Michael A. Yanof. As set forth in Appellee/Cross-Appellant's First Motion for Extension of Time, the

schedule of Mr. Yanof prevented Mr. Yanof from devoting significant time to the Brief from approximately late November, 2012 (when Appellants' Brief was filed), to January 10, 2013.² Additionally, in the time period when the Court had suspended briefing deadlines indefinitely, in consideration of Appellee/Cross-Appellant's Motion to Dismiss, the following additional matters were scheduled:

- a.) Mr. Yanof was called to trial on January 14, 2013, as appellate counsel for the defendants, in *Clark v. Wright*, Cause No. 08-01023, in the 134th Judicial District Court, Dallas County, Texas;
- b.) Drafting and filing an Appellant's Brief in *Longhorn Village v. Yesian*, No. 03-12-00657-CV, in the Third District Court of Appeals, due on January 28, 2013; and
- c.) Drafting and filing an Appellant's Reply Brief in *Gracia v. Davis*, No. 05-12-01147-CV, in the Fifth District Court of Appeals, due on February 11, 2013.

² These conflicts noted in Mrs. Hopper's First Motion for Extension, and the redirected efforts discussed in paragraphs 3-4 above, overlap in time. For Mr. Yanof, this meant preparing for and arguing oral arguments in the Texas Supreme Court (January 8) and Beaumont Court of Appeals (January 10) while at the same time finding time to work with co-appellate counsel James A. Jennings on the Motion to Dismiss and Reply arguments.

6. Furthermore, trial counsel for Appellee/Cross-Appellant, who is also co-appellate counsel, is preparing for various hearings in the trial court below (in the companion probate case, Cause No. 10-1517-3), as well as work on other matters/cases. These deadlines and the procedural background noted above constitute “facts relied on to reasonably explain the need for an extension.” *See* Tex. R. App. P. 10.5(b)(1)(C).

7. Appellee/Cross-Appellant seeks 14 more days to prepare her Brief. Because of her designation as an appellee and cross-appellant, this Brief will be of necessity a weighty and lengthy Brief in order to respond to Appellants’ Issues, and present and argue Mrs. Hopper’s own substantive and numerous Issues.

8. Based on the foregoing, Appellee/Cross-Appellant seeks a 14-day extension of time to file her Brief, to March 6, 2013.

9. Counsel for Appellee/Cross-Appellant Jo N. Hopper has conferenced with counsel for Appellants Laura Wassmer and Stephen Hopper and Appellee JPMorgan Chase Bank, N.A. regarding this Motion and the relief sought. Counsel for Appellants Laura Wassmer and Stephen Hopper, and counsel for Appellee JPMorgan Chase Bank, N.A., are opposed to the Motion and the relief sought.

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 March 6, 2013, and grant any other relief to which she is justly entitled.

Respectfully submitted,

By:  _____

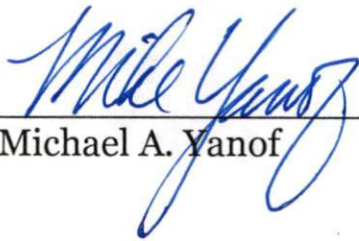
Michael A. Yanof
State Bar No. 24003215
Thompson, Coe, Cousins & Irons, L.L.P.
700 North Pearl St., 25th Floor
Dallas, Texas 75201
(214) 871-8200 – Telephone
(214) 871-8209 – Facsimile
Email: myanof@thompsoncoe.com

James Albert Jennings
State Bar No. 10632900
Kenneth B. Tomlinson
State Bar No. 20123100
ERHARD & JENNINGS, P.C.
1601 Elm Street
Suite 4242
Dallas, Texas 75201-3509
(214) 720-4001 – Telephone
(214) 871-1655 – Facsimile

ATTORNEYS FOR APPELLEE/
CROSS-APPELLANT JO N. HOPPER

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 Appellee JPMorgan Chase Bank, N.A. regarding this Motion and the relief sought. Counsel for Appellants Laura Wassmer and Stephen Hopper, and counsel for Appellee JPMorgan Chase Bank, N.A., are opposed to the Motion and the relief sought.



Michael A. Yanof

CERTIFICATE OF SERVICE

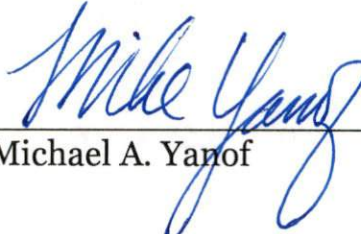
I certify that I have transmitted a true and correct copy of the foregoing document to the counsel listed below this 5th day of February, 2013 as follows.

Via Facsimile

John Eichman
Thomas H. Cantrill
HUNTON & WILLIAMS
1445 Ross Avenue
Suite 3700
Dallas, TX 75202
Counsel for Appellee JPMorgan Chase Bank, N.A.

Via Facsimile

Lawrence Fishman
Mark Enoch
GLAST, PHILLIPS & MURRAY, P.C.
14801 Quorum Drive, Suite 500
Dallas, TX 75254
Counsel for Appellants Laura Wassmer and Stephen Hopper



Michael A. Yanof