NO. 08-12-00331-CV

IN THE COURT OF APPEALS
EIGHT JUDICIAL DISTRICT OF TEXAS
El PASO, TEXAS

IN RE: ESTATE OF MAX D. HOPPER, DECEASED

STEPHEN B. HOPPER and LAURA S. WASSMER,
Defendants – Appellants/Cross-Appellees

JO N. HOPPER,
Plaintiff – Appellee/Cross-Appellant

JPMORGAN CHASE BANK, N.A.,
Defendant – Appellee/Cross-Appellee

JPMORGAN CHASE BANK, N.A.'S MOTION FOR REHEARING

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Appellee/Cross-Appellee JPMORGAN CHASE BANK, N.A., files this Motion under Texas Rule of Appellate Procedure 49.1 to clarify the Court's Opinion of December 3, 2014 (the "Opinion"), as follows:

INTRODUCTION

JPMorgan Chase Bank, N.A. is the Independent Administrator of the Estate of Max D. Hopper, Deceased (the "Administrator"). The Administrator does not ask the Court to revisit its substantive rulings; instead, the Administrator asks the Court to clarify its Opinion in two ways that will be important to the parties as this litigation eventually continues in the Probate Court. First, the Administrator asks the Court to distinguish between Jo Hopper's "homestead right" of use and possession (which *is not* subject to administration) and Mrs. Hopper's and the Heirs' fee interests in the residence (which *are* subject to administration). Second, the Administrator asks the Court to correct a reference at page three of the Opinion which misconstrues a statement made before the Probate Court. The partial quote creates the misimpression that the Administrator did not have a real interest in appearing in the Probate Court and responding to Jo Hopper's and the Heirs' motions for summary judgment against it.

1. Clarifying the distinction between Jo Hopper's "homestead right" and "Robledo" will eliminate future (incorrect) argument that the real property is not subject to administration.

The primary focus of the Court's Opinion is the parties' rights and duties with respect to Mr. and Mrs. Hopper's residence located on Robledo Drive. The Court's Opinion explicitly and correctly recognizes that the Hopper's residence on Robledo Drive was community property, and that Jo Hopper's ("Jo") constitutional homestead interest in the real property is a right of exclusive use and possession. Opinion at 5 ("Homestead Rights"); at 25 (declaring "[t]hat since Robledo was the community homestead, and since Jo has elected to maintain it as her homestead, she has the exclusive right of use and possession thereof."). *See Laster v. First Huntsville Properties Co.*, 826 S.W.2d 125, 129 (Tex. 1991) ("In Texas, the *homestead right* constitutes an estate in land. This estate is analogous to a life tenancy, with the holder of the *homestead right* possessing the rights similar to those of a life tenant for so long as the property retains its homestead character.") (emphasis added).

The Opinion also explicitly recognizes that because the residence was community property, the Heirs have an undivided one-half interest in it subject to Jo's homestead right. *Id.* at 25 (declaring that "immediately upon Max's death . . . Max's undivided one-half [community] interest [in the residence] passed to his

heirs" and that "[t]he heirs' interest is subject to her exclusive right of use and possession.").

With respect to administration of community property, the Court stated that "Pursuant to Section 177, the duly-qualified personal representative is authorized to administer not only the separate property of the deceased spouse, but also the community property . . . that was by law under the joint control of the spouses during the marriage." Opinion at 8. The Court also stated that this includes Jo's one-half community interest in the residence: "[t]he one-half community property interest that Jo retained upon her husband's death is not part of his estate but is subject to administration." Opinion at 18. Accordingly, both halves of the community fee interests in the residence are subject to administration (though they are burdened by Jo's homestead right of exclusive use and possession).

The Court also declined to hold that the Administrator acted improperly in administering the community fee interests in the residence:

> Because Chase had issued the Robledo deed to the heirs and Jo on June 25, 2012, *thereby removing Robledo from administration*, the court erred in its declaration regarding its distribution. . . . Jo contends the court should have declared, and asks that we so declare, that Chase failed to timely act "as originally required." Having already addressed the merits of Issue Four, we decline to do so.

Opinion at 21 (emphasis added). Thus, taking the Opinion as a whole, it should be clear that the Court determined that Jo's homestead right in the residence was not

subject to administration, but that her one-half and the Heirs' one-half of the fee interest in the residence were subject to administration because the residence was community property.

However, the Opinion's sometimes interchangeable use of the terms "homestead," "constitutional homestead," and "Robledo" with respect to what is subject to administration may lead to (incorrect) argument that the community fee interest in the residence was *not* subject to administration. Specifically, the Opinion states:

- "Jo sought the following declarations [in her fourth summary judgment issue] . . . (4) That **Robledo is not subject to administration**, and may not be partitioned as long as Jo maintains it as her constitutional homestead." (Opinion at 2) (emphasis added);
- "In her fourth summary judgment issue, Jo sought a declaration that **the constitutional homestead is not subject to administration**, and no party may be granted a partition thereof as long as she maintains it as her homestead. . . . [T]he trial court clearly erred in denying her fourth summary judgment issue." (Opinion at 17) (emphasis added);
- "**We render judgment** granting Jo's second, third, fourth, fifth, and eighth requested summary judgment declarations **and declare**: . . . (3) That **the homestead is not subject to administration**, and no party may be granted a partition of the homestead as long as Jo maintains it as her homestead." (Opinion at 25).

Using "homestead" and "Robledo" interchangeably in these statements may lead some of the parties in this case and others to gloss over the important distinction between Jo's homestead right and the community fee interest burdened by her homestead right. While the Opinion's discussion and analysis should demonstrate

that it is Jo's *homestead right* (i.e., exclusive right of use and possession) that is not subject to administration, some parties in this and future cases may attempt to selectively cite from the above language to argue (incorrectly) that *the community fee interest* in the residence was not subject to administration.

Consistent use of "homestead right" (as used by the Texas Supreme Court in *Laster*) versus "Robledo" (defined as the fee interest in the residence) in the Court's discussion and declarations will provide clarity to the parties in this case as well as executors/administrators and future litigants in the homestead arena. Accordingly, the Administrator respectfully requests the Court to:

(a) explicitly define "Robledo" in the Opinion as the fee interest in the property located at 9 Robledo Drive, Dallas, Texas 75230;

(b) revise the third declaration on page 25 as follows:

> (3) That the homestead [right] is not subject to administration, and no party may be granted a partition of [Robledo] as long as Jo maintains [her homestead right];

(c) revise the sentence on page 2 as follows:

> "Jo sought the following declarations . . . (4) That [her homestead right] is not subject to administration, and [Robledo] may not be partitioned as long as Jo maintains [] her constitutional homestead [right]."

(d) revise the sentence on page 17 as follows:

> "In her fourth summary judgment issue, Jo sought a declaration that the constitutional homestead [right] is not subject to administration, and no party may be granted a

> partition [of Robledo] as long as she maintains [] her homestead [right]."

By making these clarifications, the Court's substantive rulings remain unchanged while the possibility of misinterpretation in this and future cases is eliminated.

2. The Court's Opinion incorrectly construes the capacities in which JPMorgan Chase Bank appeared in the Probate Court and creates the misimpression that the Administrator did not have a real interest in appearing in the Probate Court and responding to both Jo Hopper's and the Heirs' motions for summary judgment against it.

JPMorgan Chase Bank was named as a defendant in the suit in the Probate Court in two capacities: in its capacity as independent administrator of Mr. Hopper's estate and in its corporate capacity. Jo Hopper's Original Petition at 1, 1 Suppl. C.R. 006. Neither Jo's motion for summary judgment nor the Heirs' motion for summary judgment sought relief against JPMorgan Chase Bank in its corporate capacity. While JPMorgan Chase Bank made this point in its written Response to the motions for summary judgment and at the hearing on the motions before the Probate Court, the Court's Opinion quotes only part of a sentence by JPMorgan Chase's counsel relating to the dual capacities. The Opinion's use of a partial quotation from a statement regarding these dual capacities takes the statement out of context and creates a misimpression about the Administrator's role in the proceedings in the Probate Court and in this Court.

On page three of the Opinion, the Court purports to quote the Administrator's counsel stating broadly at the January 31, 2012 summary judgment

hearing that "I'm not sure we need to be here on the issues that are before the Court, but we're here anyway." However, the full quote is as follows:

> MR. EICHMAN: John Eichman and Tom Cantrill for JP Morgan Chase Bank as Independent Administrator and also in its corporate capacity although in the later [sic] capacity I'm not sure we need to be here on the issues that are before the Court, but we're here anyway.

1 R.R. 083. Thus, the point made was that there were no summary judgment motions pending against JPMorgan Chase *in its corporate capacity*, only those against it in its capacity as Administrator. Because Jo Hopper filed suit against JPMorgan in *both* capacities, JPMorgan made this same point on page one of its summary judgment response. 1 C.R. 200.[1] The Opinion's use of only the second half of counsel's sentence conveys a serious misimpression of the Administrator's statements to the Probate Court and trivializes the Administrator's obligation to appear and file responses to motions for summary judgment *against it*, including various declarations regarding the Administrator's authority and the propriety of its actions. *See* TEX. R. CIV. P. 166(a) (providing a non-movant 14 days to file a written response).

[1] JPMorgan Chase provided the following footnote on page one of its combined summary judgment response: "The relief requested in Mrs. Hopper's Motion and the Children's Motion only relates to the Administrator rather than to JPMorgan Chase Bank, N.A., in its corporate capacity. However, to the extent that any relief sought by the movants purports to be against the Bank, including with respect to the Children's Fifth request for declaratory relief, the Bank joins in this Response." 1 C.R. 200.

Additionally, both Mrs. Hopper and the Heirs assert claims against the Administrator relating to its administration of Robledo and its litigation of issues relating to that administration. *See* Jo Hopper's Original Petition at 16, 1 Suppl. C.R. 021; Heirs' First Amended Cross-Claim at 15, 2 Suppl. C.R. 267. Those parties might seize upon the misimpression created by the partial quote and attempt to use it as somehow supporting their claims. And while the Court's next sentence on page three (that the Administrator did not move for summary judgment) is correct and relevant to the Court's analysis, the preceding partial quote is not.

Accordingly, because it creates a contextual misimpression that the Administrator should not have responded to motions for summary judgment against it in the Probate Court, because it is not relevant to the Court's subsequent analysis, and because it could be inappropriately used against the Administrator during the rest of this case, the Administrator respectfully requests that the sentence "At the hearing, counsel for Chase stated, 'I'm not sure we need to be here on the issues that are before the Court, but we're here anyway'" be deleted from the Opinion.

PRAYER

Wherefore, the Administrator respectfully requests that the Court grant this motion, make the above changes to the Opinion, and grant the Administrator any and all such other relief to which it may be justly entitled.

Respectfully Submitted,

HUNTON & WILLIAMS LLP

By: */s/John C. Eichman*

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ATTORNEYS FOR APPELLEE/CROSS-APPELLEE JPMORGAN CHASE BANK, N.A. IN ITS CAPACITY AS INDEPENDENT ADMINISTRATOR OF THE ESTATE OF MAX D. HOPPER, DECEASED AND IN ITS CORPORATE CAPACITY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by email on this 18th day of December, 2014:

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