

ORIGINAL

CAUSE NO. PR-1/3238-3

FILED

IN RE: ESTATE OF

MAX D. HOPPER,

DECEASED

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IN THE PROBATE COURT

2011 OCT 17 PM 4:14

JOHN T. WARREN  
COUNTY CLERK  
DALLAS COUNTY

JO N. HOPPER,

Plaintiff,

v.

JP MORGAN CHASE, N.A., STEPHEN  
B. HOPPER and LAURA S. WASSMER,

Defendants.

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NO. 3

DALLAS COUNTY, TEXAS

**PLAINTIFF JO N. HOPPER'S RESPONSE TO JPMORGAN  
CHASE BANK, N.A.'S SPECIAL EXCEPTIONS**

COMES NOW, Mrs. Max D. (Jo N.) Hopper ("Hopper" or "Plaintiff") and files this Response to JP Morgan Chase Bank, N.A.'s Special Exceptions and states as follows:

JP Morgan Chase Bank, N.A., in its corporate capacity (the "Bank") and as the Independent Administrator (the "Administrator") of the Estate of Max D. Hopper (the "Estate") filed two Special Exceptions to *Plaintiff's Original Petition for: Declaratory Judgment, Breach of Contract, Breach of Fiduciary Duty, Fraud, et al., For Removal of Independent Administrator, And, Jury Demand* (the "Petition"). Both Special Exceptions lack merit and should be denied, as follows.

I.

The Bank's and Administrator's first (joint) Special Exception complains that they don't

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BANK, N.A.'S SPECIAL EXCEPTIONS

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have “fair notice” of which claims are being asserted against them because the Petition “. . . make[s] all allegations against the Administrator and the Bank simultaneously by defining their capacities interchangeably.” From their own words, the Bank and the Administrator thus admit that they do have actual notice from the Petition – of all claims/allegations that are made against both. That Texas is a “notice pleading” state, requires no citation. The Administrator acted through the Bank’s employees and officers, and given the allegations made –which the Bank/Administrator does not claim not to “understand” nor does it claim are “vague” or “uncertain”, thus both are “interchangeably” responsible for the claims asserted in the Petition as the Petition clearly states. The Exception should be denied.

## II.

In the second Special Exception, the Administrator claims that Hopper failed to “plead facts sufficient to show that she is entitled to a family allowance pursuant to Texas Probate Code section 286.” The Administrator is wrong; the Petition pleads sufficient facts to support a claim under Texas Probate Code (“TPC”) section 286 – certainly it is pled sufficiently to give “fair notice” in any event.

As the comments to TPC section 286 state: “In an independent administration, the executor<sup>1</sup> determines the amount of the allowance.” Accordingly, it was the Administrator’s responsibility to determine and pay Hopper the family allowance. The Petition avers that Hopper requested such an allowance, and, in paragraph “II C.C.” of the Petition, Hopper sets forth the fact that the Administrator “repeatedly assured [Hopper] that it would pay from the assets under administration,

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<sup>1</sup> Here, Administrator.

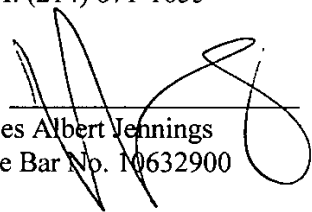
including Decedent's Estate, various costs of support of [Hopper], particularly with respect to costs and expenses associated with the Homestead...". That pleading is very clear.

Hopper asserts that the Administrator, with full knowledge of Hopper's financial situation, agreed to the allowance/payments requested by Plaintiff. The Administrator, however, failed to honor its promise and obligations under law. Those are the facts plead, and those are all that are necessary to support a claim under TPC section 286. Plaintiff gave far more than mere "fair notice" of her position in her Petition. Likewise, the Administrator's Special Exception to Hopper's Declaratory Judgment claim for an allowance under paragraph "III.C.9." fails, in that it is entirely appropriate that the Administrator, being on actual notice of the allowance sought, either pay same, or that not having done so, nor that occurring, the Court find and declare same due and payable to Plaintiff.

WHEREFORE, Premises Considered, Plaintiff Hopper prays that the Bank's and Administrator's Special Exceptions be denied and that the Court award Hopper such other relief to which she is entitled.

Respectfully submitted,

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BANK, N.A.'S SPECIAL EXCEPTIONS**

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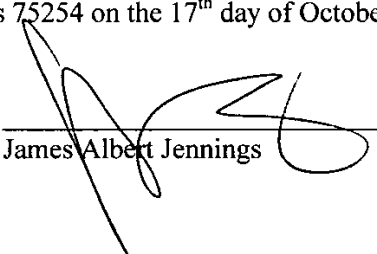
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ATTORNEYS FOR PLAINTIFF  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via facsimile to counsel for the Independent Executor, Thomas H. Cantrill, Hunton & Williams, 1445 Ross Avenue, Suite 3700, Dallas, Texas 75202, and to interested persons Stephen Hopper and Laura Wassmer, via their counsel of record, Gary Stolbach, Glast, Phillips & Murray, P.C., 14801 Quorum Drive, Suite 500, Dallas, Texas 75254 on the 17<sup>th</sup> day of October, 2011.

  
James Albert Jennings