

08-12-00331-CV (5)

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No. 08-12-00331-CV

DEC 20 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 20 2012

DENISE PACHECO  
CLERK 8th DISTRICT

**APPELLEE/CROSS-APPELLANT JO N. HOPPER'S  
RESPONSE TO: APPELLEE JPMORGAN CHASE BANK, N.A.'S  
MOTION TO MODIFY BRIEFING DEADLINES,  
OR, ALTERNATIVELY, FOR EXTENSION OF TIME**

**TO THE HONORABLE EL PASO COURT OF APPEALS:**

Appellee/Cross-Appellant Jo N. Hopper ("Appellee/Cross-Appellant" or "Mrs. Hopper"), files this Response to: Appellee JPMorgan Chase Bank, N.A.'s ("Appellee" or "the Bank") Motion to Modify Briefing Deadlines or, Alternatively, for Extension of Time and would respectfully show:

1. Mrs. Hopper is opposed to the Bank's Motion for several substantial reasons. It is worth noting at the outset a few critical facts related to Appellee Bank's Motion:

- a. The Bank is merely an Appellee in this appeal; nothing more, nothing less. In this regard, the Bank does not wear two hats, as it claims (Motion, p. 2, paras. 3, 6) as it has not filed a notice of appeal or cross-notice of appeal. Rather, it is only an Appellee whose sole involvement in this appeal, if any, is responding to the Brief of Appellants, Stephen B. Hopper and Laura S. Wassmer, and the Brief of Cross-Appellant, Mrs. Hopper.
- b. The primary relief sought by Appellee Bank amounts to a 76-day extension of time to file its Brief in response to the Brief of Appellants Stephen B. Hopper and Laura S. Wassmer.

2. On this last point, ironically if not hypocritically, the Bank filed a written opposition to Mrs. Hopper's motion for a 46-day extension of time to file her Brief. The bases for the extension sought by Mrs. Hopper were numerous conflicts by her appellate counsel, Mr. Yanof, that rendered filing a brief earlier than 46 days before the deadline a practical impossibility. Despite failing to dispute this good cause, Appellee argued at length that a 46-day extension was far, far too long. Now, Appellee seeks a 76-day extension of time to file its Brief in response to Appellant's Brief. In stark contrast to Mrs. Hopper's Motion for Extension of Time, Appellee fails to provide any substantive (much less persuasive) good cause. Stated another way, the Bank fails to provide a single reason why it cannot prepare and file its Brief by December 21, 2012. Indeed, the Bank admits it can timely file its Brief by the current deadline.

3. Specifically, late this afternoon (December 19, 2012) Mrs. Hopper's counsel has just received a fax letter to the Court (sent to Mrs. Hopper's counsel at 15:59) from Mr. Eichman requesting an emergency ruling – given the impending December 21, 2012 due date of the responsive Brief. But Query: Why is any extension needed at all as to Appellee's responsive Brief to Appellant Stephen Hopper's and Laura Wassmer's Appellant Brief when in Mr. Eichman's letter it states regarding the Motion "*in the event it [the Motion] is denied, JPMorgan will have time to submit its Appellee's Brief by this Friday.*" It appears, thus, that the Brief must already be essentially "completed" so as to arrive in El Paso by the 21<sup>st</sup> from Dallas. The Brief will have to be mailed tomorrow to meet that schedule – effectively only 24 hours from now. Mr. Eichman's facsimile letter today amounts to an admission that the Brief is already essentially complete, and ready to file by December 21. This buttresses the point made at the end of paragraph "5", herein below, that the real reason the extension is sought is to try and get in "the last word."

4. Again, in seeking the 76-day extension, the Bank argues that it (allegedly) is "wearing two hats", which "fact" somehow justifies one brief being filed by it after all other initial briefs are filed. But again, Appellee does not wear two hats. It is not a mere oversight that the 5<sup>th</sup> Court of Appeals does not list appellees as parties to whom Local Rule 10 applies. Rather, Local Rule 10 contemplates that appellees should file their briefs in accordance with the Texas Rules of Appellate Procedure. Therefore, Rule 38.6(b) clearly establishes the

deadline for any appellee to file its brief: 30 days after any appellant or cross-appellant's brief – unless of course there is a showing of true and substantial good cause for an extension.

5. The Bank asserts no valid reason to treat the deadlines for this appeal any differently. While the Bank's Motion gives lip service to support the notion (stated in a conclusory fashion) that filing one brief "will promote judicial economy and clarity by decreasing the number of filings and allowing the Administrator to address the issues in a more efficient, consolidated manner," in fact there is no real meat on that bone. First, the Bank does not provide any insight as to how/why this is so. Second, it is difficult to ascertain how the relief sought by the Bank would result in a more "efficient, consolidated" Brief [see Motion, p. 3, para. 7] when it also seeks the doubling of the other limits of the respective individual brief word requirements. In other words, it blatantly asserts that a single brief, consolidated would be "more efficient", yet it goes on to seek twice the word requirement of two individual briefs to do so. This is not good cause for an extension, much less a 76-day extension to try, not so subtly, to obtain the "last word" as an Appellee. Transparently, that is the real goal here – the last word – given no valid, much less compelling reason for the very long extension sought is presented by the Bank.

6. The Bank alternatively seeks a 30-day extension of time<sup>1</sup> to file its Brief, if the Court is not inclined to grant a 76-day extension of time. It is worth

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<sup>1</sup> One must wonder why this extension request was filed so late – practically on the eve of the regular December 21<sup>st</sup> due date for Appellee Bank's Response Brief to Appellants Wassmer and Hopper.

noting that the reasons given for the 30-day extension of time are not asserted in support of a 76-day extension of time. This can only be intentional, as the reasons given for the 30-day extension of time would not in any way support the 76-day extension of time. Specifically, the Bank asserts two reasons for a 30-day extension: Mr. Eichman is on vacation from December 23,<sup>2</sup> 2012 to January 5, 2013, and Mr. Cantrill is “very busy” with his estate planning practice – the press of which work evaporates at or ending on December 31st. Mr. Eichman’s late-filed request requesting his two-week vacation over the holidays would not justify a 76-day extension – nor even a thirty day extension past the normal due date. As to Mr. Cantrill, an introduction to the Court as to his role might well be in order, as he is not listed on the Court’s docket. Mr. Cantrill is not lead appellate counsel for the Bank, as Mr. Eichman has signed every pleading in this Court. Nor, contrary to the Motion, is Mr. Cantrill lead counsel in the litigation case below, from which this appeal was filed. Rather, he is the Bank’s estate lawyer for the estate administration proceeding (which separate cause [No. PR-10-1517-3] is not before this Court). While Mrs. Hopper will abjure any comment on whether he will contribute to the Brief in some way, it is clear he is not the Bank’s appellate counsel. More fundamentally, however, the stated reason that Mr. Cantrill is “very busy” until the end of the year with his estate planning practice in light of presumed looming changes in the law, would not justify a 76-day extension to March 5, 2013.

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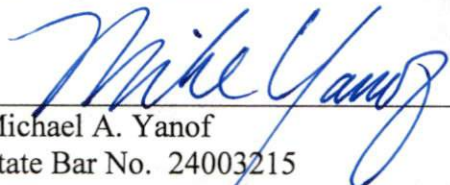
<sup>2</sup> Note: Mr. Eichman’s vacation begins two (2) days after the Brief was/is in fact due under the Rules.

7. Furthermore, it is debatable whether vague reasons such as Mr. Cantrill is “very busy” with his practice are even arguendo “good cause” justifying an extension in accordance with Texas Rule of Appellate Procedure 10.5(b)(1)(C). All that aside, these stated reasons would at best justify an extension of no more than 30 days, to January 21, 2013.

For these reasons, Appellee/Cross-Appellant Mrs. Hopper respectfully requests that the Court deny the Bank’s Motion to Modify Briefing Deadlines or, Alternatively, for Extension of Time, entirely, or at the most, grant a briefing deadline extension to January 21, 2013, and grant Mrs. Hopper any other relief to which she is justly entitled.

Respectfully submitted,

By:

  
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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 19<sup>th</sup> day of December, 2012 as follows.

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