

CASE NO. 05-17-00131-CV

**IN THE FIFTH DISTRICT COURT
OF APPEALS AT DALLAS, TEXAS**

~~FILED IN~~
~~5th COURT OF APPEALS~~
~~DALLAS, TEXAS~~
~~5/12/2017 5:09:11 PM~~
~~LISA MATZ~~
~~Clerk~~

TSP OPERATIONS, LLC d/b/a THE STANDARD POUR,
Appellant,

v.

WELLS FARGO BANK,
Appellee.

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS
5/15/2017 8:47:00 AM
LISA MATZ
Clerk

**On Appeal from County Court at Law No. 1,
Dallas County, Texas
Trial Cause No. CC-16-04243-A**

**APPELLANT TSP OPERATIONS, LLC d/b/a
THE STANDARD POUR BRIEF**

Oral Argument Requested

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TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL2

TABLE OF CONTENTS.....3

ABBREVIATIONS4

STATEMENT OF THE CASE.....5

STATEMENT OF ORAL ARGUMENT5

ISSUES FOR REVIEW AND REPLY POINTS6

STATEMENT OF THE FACTS6

SUMMARY OF THE ARGUMENT7

PRAYER.....8

CERTIFICATE OF SERVICE9

CERTIFICATE OF COMPLIANCE WITH RULE 9.4.....9

ABBREVIATIONS

The “Trial Court Lawsuit” means and refers to Cause No. CC-15-00318-A, TSP Operations, LLC d/b/a The Standard Pour v. Dallas Tent and Awning, Inc. and Daniel Newport, Dallas County Court at Law No. 1.

The “Final Judgment” means and refers to the Final Judgment entered on May 7, 2017, in Cause No. CC-15-00318-A, TSP Operations, LLC d/b/a The Standard Pour v. Dallas Tent and Awning, Inc. and Daniel Newport, Dallas County Court at Law No. 1.

The “Garnishment Court” means and refers to Cause No. CC-16-04243-A, TSP Operations, Inc d/b/a The Standard Pour v. Wells Fargo Bank, N.A., Dallas County Court at Law No. 1.

The “Garnishment Lawsuit” means and refers to the lawsuit from which this Appeal arises, Cause No. CC-16-04243-A, TSP Operations, Inc d/b/a The Standard Pour v. Wells Fargo Bank, N.A., Dallas County Court at Law No. 1.

“Appellee” or “Wells Fargo” means and refers to Appellee/Defendant Wells Fargo Bank, N.A. Appellee is also the defendant in the Garnishment Lawsuit.

“Appellant” or “TSP” means and refers to Appellant/Plaintiff TSP Operations, Inc. d/b/a The Standard Pour.

“Garnishee” or “Wells Fargo” means and refers to Garnishee Wells Fargo Bank, N.A., the Garnishee in the Garnishment Lawsuit.

STATEMENT OF THE CASE

This Appeal arises from an Order of Dismissal (the “Dismissal Order”) entered against Appellant in Cause No. CC-16-04243-A, TSP Operations, Inc d/b/a The Standard Pour v. Wells Fargo Bank, N.A. (the “Garnishment Lawsuit”). The Garnishment Judgment arose out of a Final Judgment entered against Garnishee in the Underlying Lawsuit, Cause No. CC-15-00318-A, TSP Operations, LLC d/b/a The Standard Pour v. Dallas Tent and Awning, Inc. and Daniel Newport, Dallas County Court at Law No. 1.

Appellant originally filed the Garnishment Lawsuit seeking to recover payment of monetary relief awarded to it in the Final Judgment of May 7, 2015 by the Court against Dallas Tent and Awning, Inc. and Daniel Newport, in conjunction with, Appellant has discovered the proper bank for garnishment of funds is Wells Fargo Bank, N.A., the Garnishee.

After filing the Garnishment, on September 26, 2016, Judgment Debtors, Daniel Newport and Dallas Tent and Awning, Inc., were each properly served with notice via certified mail at their last known address 4813 Memphis Street, Dallas Texas 75207.

Thereafter, since the Dallas Tent and Awning, Inc.’s account could satisfy the Judgment the Garnishee and Appellant entered into an agreed order; however, despite presenting said agreed order to the Court Coordinator of County Court at Law No. 1. who runs the dismissal docket the Garnishment Lawsuit was improperly dismissed.

STATEMENT OF ORAL ARGUMENT

Appellant respectfully submits that oral argument would provide the Court with a more complete understanding of the facts in this appeal and the procedural history of this Appeal. *See* TEX. R. APP. P. 39.1(c). More specifically, oral argument would be helpful to explain the procedural history concerning the Garnishment and Trial Court Lawsuits, Final Judgment entered in the Trial Court Suit, and efforts by Appellant in the Garnishment Lawsuit which is related to and arose from the Final Judgment, and now, this Appeal which has arose out of the Garnishment Lawsuit.

ISSUE FOR REVIEW AND REPLY POINTS

Issue for Review:

1. Whether County Court at Law No. 1 abused its discretion by dismissing the Garnishment Lawsuit.

STATEMENT OF THE FACTS

A. County Court at Law No. 1 Improperly dismisses Garnishment Suit

On November 9, 2016, County Court at Law No. 1 served the Appellant with a deficiency letter for the following reasons: 1) No Evidence that other Judgment Debtor has been properly served; 2) No Certificate of Last Known Address; and, 3) Non Service Member's Affidavit on file.

On September 26, 2016, Judgment Debtors, Daniel Newport and Dallas Tent and Awning, Inc., were each properly served with notice via certified mail at their last known address 4813 Memphis Street, Dallas Texas 75207. **As such, the Appellant entered into an Agreed Judgment to pay the amount due and owing. The Agreed Judgment** was only to be garnished from Judgment Debtor, Dallas Tent and Awning, Inc.'s bank account as the individual Debtor, Daniel Newport did not have sufficient funds to satisfy the Judgment. Despite the fact that both the Judgment Debtor Defendants were served pursuant to § 27.59:3 Service

on Defendant of the Texas Collections Manual published by the State Bar of Texas. § 27.59:3 Service on Defendant states in pertinent part that:

The judgment defendant must be served with copies of the writ of garnishment, the application, the accompanying affidavits, and the orders of the court as soon as practical after service of the writ on the garnishee. This service can be in any manner prescribed for service of citation or as provided in Tex. R. Civ. P. 21a. Tex. R. Civ. P. 663a. **It is recommended that, instead of serving the defendant personally, his copy of the application and affidavit be served by certified mail, return receipt requested, and by regular mail.** (Emphasis Added).

Yet despite following the appropriate rules and procedures required by law County Court at Law No. 1, refused to sign the Agreed Judgment and dismissed the Garnishment Lawsuit because a Certificate of Last Known Address pursuant to Tex. R. Civ. P. 239a and a Non Service Member's Affidavit were not provided to the Court.

SUMMARY OF THE ARGUMENT

This Appeal is brought for the purpose of determining if the Garnishment Lawsuit was unjustly dismissed.

In light of the foregoing, Appellant TSP Operations, LLC d/b/a The Standard Pour respectfully requests that this Court order reinstate the Garnishment and Order County Court at Law No. 1 to sign the Agreed Judgment, and for such other relief to which Appellant may be justly entitled.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant TSP Operations, LLP d/b/a The Standard Pour respectfully requests this Honorable Court should rule to reinstate the Garnishment Lawsuit, and for such other and further relief to which Appellant may be justly entitled.

Respectfully submitted,

By: /s/ Jason H. Friedman

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THE STANDARD POUR

CERTIFICATE OF SERVICE

This shall certify that a true and correct copy of the foregoing document has been served upon all parties or counsel of record on this the 12TH day of May, 20175, in accordance with the Texas Rules of Civil Procedure, to each of the below:

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Houston, Texas 77027

/s/ Jason H. Friedman

Jason H. Friedman

CERTIFICATE OF COMPLIANCE WITH T.R.A.P. 9.4

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains 1067 words (including the caption, identity of parties and counsel, statement regarding oral argument, table of contents, table of authorities, statement of the case, statement of issues presented, signature, proof of service, certification, certificate of compliance, and appendix). This is a computer generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Jason H. Friedman

Jason H. Friedman