

Service of Requests

1. The Heirs have served a total of three requests for production of documents (the “Requests”) on the Bank either in its capacity as independent administrator or its corporate capacity. The Bank responded by making objections to many of the Requests.

Basis for Motion

2. As part of its response to the Requests, Bank has refused to search for emails for any employee of the Bank other than Susan Novak (“Novak”) and Henry Etier (“Etier”).

3. It cannot be disputed that there were other Bank employees who interacted with Plaintiff and/or the Heirs or others in or outside the Bank relating to Plaintiff, the Heirs, and/or the Hopper Estate. By way of example only, at a minimum, Plaintiff had interactions with the following employees of the Bank in addition to Novak: (1) Kal Grant, (2) Bill Bogart, (3) Todd Baird, and (4) David Munell. Additionally, Plaintiff believes that at a minimum the following persons employed by the Bank had some communications either internal or external to the Bank regarding Plaintiff and/or the Heirs: (1) Wendy Bessette, (2) Debra Round, (3) Bonnie A. Karamalegos, (4) Roy G. Popham, and (5) Timothy A. Davey. These names are not intended to be an exhaustive list of names as Plaintiff would not know the names of all persons employed by the Bank who had any communication relating to Plaintiff, the Heirs and/or the Hopper Estate. Examples of just a few documents evidencing the Bank’s documents and/or communications involving persons other than Novak and Etier relating to Plaintiff, the Heirs and/or the Hopper Estate are attached hereto as Exhibits A, B, and C and are fully incorporated herein by reference.

4. Counsel for the Bank believes he can meet his burden under the Texas Rules of Civil Procedure by simply identifying who he believes to be the “primary” persons within the Bank responsible for handling the Hopper Estate, and producing those persons’ emails, but that

is not the test. It is well settled that a party “may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action” TEX. R. CIV. P. 192.3(a). There is no question that email communications among or by employees of the Bank relating to Plaintiff, the Heirs and/or the Hopper Estate are reasonably calculated to lead to the discovery of admissible evidence. There is no authority in support of a defendant’s counsel restricting discovery to those he declares were “primarily” involved in a matter.

5. Like any party, the Bank should be required to identify internally all persons who may have had any communications that are responsive to any of the Requests and search for their emails, as the Bank did for the emails of Novak and Etier.

II.

REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that this Court:

- a) Grant this Motion;
- b) Enter an Order requiring the Bank to search for and produce all responsive emails not previously produced; and
- c) Grant the Plaintiff such other and further relief, both at law and in equity, to which the Plaintiff may be justly entitled.

Dated: January 27, 2016.

Respectfully submitted;

LOEWINSOHN FLEGLE DEARY, LLP

By: /s/ Alan S. Loewinsohn

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COUNSEL FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

Counsel for movant has conferred via letter, email and telephone about the issues present in this Motion, but counsel have been unable to resolve the dispute.

Certified on the 27th day of January, 2016.

/s/ Alan S. Loewinsohn

ALAN S. LOEWINSOHN

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record this 27th day of January, 2016 via e-service.

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