CAUSE NO. PR-11-3238-1

IN RE: ESTATE OF MAX D. HOPPER, DECEASED | **IN THE PROBATE COURT**

JO N. HOPPER
***Plaintiff*,**
v.

JPMORGAN CHASE BANK, N.A. STEPHEN B. HOPPER AND LAURA S. WASSMER,
***Defendants*.**

NO. 1

DALLAS COUNTY, TEXAS

PLAINTIFF'S TRIAL BRIEF ON THE ADMISSIBILITY OF THE GARTNER STOCK

The Gartner stock evidence should be admitted.

A. Relevant Legal Standard

Texas Rule of Evidence 401 that says evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

Relevant evidence may be excluded only if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, by considerations of undue delay, or needless presentation of cumulative evidence. TEX.R. EVID. 403. The rule favors admission of relevant evidence and the presumption is that relevant evidence will be more probative than prejudicial. *Martinez v. State*, 327 S.W.3d 727, 737 (Tex.Crim.App. 2010). Rule 403 does not require exclusion of evidence simply because it creates prejudice; "the prejudice must be 'unfair .' " *Id*. The danger of unfair prejudice exists only when the evidence has the potential to

impress the jury in some irrational but indelible way. *Id*.; *see Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex.Crim.App.2006) (discussing factors involved in rule 403 analysis).

Reed v. State, 05-11-01495-CR, 2013 WL 4478112, at *3 (Tex. App.—Dallas Aug. 20, 2013, pet. ref'd)

The Texas Rules of Evidence Handbook states:

> 4. "The danger of unfair prejudice. This factor is the first in a series of factors that may lead to the exclusion of relevant evidence. In Federal Rule 403, the phrase "unfair prejudice" refers not to evidence's potentially adverse or detrimental effect but to "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one."
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> Unfair prejudice does not arise solely because evidence injures a party's case. Virtually all evidence that a party offers will be prejudicial to its opponent's case; only evidence that unfairly prejudices the other party may be excluded under Rule 403. If the offered item of evidence gives rise to both exculpatory and inculpatory inferences, it will rarely be deemed unfairly prejudicial.

B. <u>Facts Underlying Gartner Stock Issue</u>

The facts surrounding the Gartner stock incident include the following. Despite the Bank telling the Court they needed to be temporary administrator to sell the Gartner stock because it was so volatile (See Exhibit A), and despite the fact that the Court empowered the Bank to sell the stock, (see Exhibit B), the evidence will show, as seen in the demonstrative in Exhibit C, that the sequence of events was the Bank waited over a week to sell Mrs. Hopper's Gartner stock despite repeated demands, and the stock, of which there were approximately 37,000 shares belonging to Mrs. Hopper, dropped over $2.00 a share, causing Mrs. Hopper to suffer a dollar loss. While Mrs. Hopper has agreed not to seek that dollar loss as damages after the Bank filed a motion for summary judgment arguing she could not because the Bank received a discharge, Mrs. Hopper's lawyers also made clear in an email to the Bank's counsel (Exhibit D), that they were still planning

on introducing evidence regarding the Gartner stock because it was probative of other facts. These facts are relevant and probative of other key facts in this case.

C. Gartner Stock Facts Are Probative of Other Key Facts

Fact 1 - Mrs. Hopper had good justification for contacting companies that she owned an interest in, contrary to what she has been criticized for by the Bank. We know from the Bank's proposed opening slide they are going to make this allegation. (See Exhibit E). The Bank's corporate representative also made this allegation at her deposition. What happened to the Gartner stock is probative of this fact because it explains in part Jo Hopper's justification for contacting these companies. Jo Hopper did not completely trust the Bank because of their conduct as it related to Gartner.

Fact 2 - The Bank is going to claim and already told this jury that they didn't cause Mrs. Hopper to lose a single dollar (see Exhibit F) – we intend to prove the opposite. What happened on the Gartner stock refutes the Bank's contention and proves ours because Mrs. Hopper lost thousands of dollars. The fact that legally she cannot recover that money because the Bank was discharged does not mean it is untrue.

Fact 3 – We intend to prove the Bank was incompetent. The Bank asserted in opening that Ms. Novak was very competent and experienced (see Exhibit G). What happened on the Gartner Stock is probative of our proof to the contrary.

Fact 4 – The Bank said in opening there was a barrage of unjustified complaints from Mrs. Hopper. (See Exhibit H). We intend to prove the opposite that the complaints were very justified. What happened to the Gartner stock is probative of this fact.

Fact 5 – The Bank said in opening that the Bank did not misuse any assets. We intend to prove Bank did misuse assets. The Gartner stock is probative evidence of misuse.

Fact 6 – The Bank said in opening that Susan Novak did a good job collecting and splitting the assets – we intend to prove that she did not do a good job collecting and splitting the assets. The Gartner stock incident is probative evidence that Susan Novak did not do a good job of collecting and splitting the assets.

Fact 7 – The Bank claimed in opening that Jo Hopper was incredibly demanding and these demands caused all kinds of problems. (See Exhibit I). We intend to refute that Jo Hopper was demanding. Instead, we intend to explain Mrs. Hopper was persistent because of her lack of confidence in Ms. Novak starting with the Gartner stock incident.

Fact 8 – The Bank said in opening that the Court found it was in the best interest of estate to have JPMorgan appointed as independent administrator. (See Exhibit J) In other words, the Bank wants to hold over Mrs. Hopper's head that she agreed to the Court appointing the Bank as IA and agreeing to the language that it was in the best interest of the estate. Mrs. Hopper only agreed to that order because after the Gartner stock debacle she was assured at a meeting that this would not happen again. Exhibit K is the email setting up that meeting. We intend to refute it was not in the best interest of the estate, but Mrs. Hopper agreed to that order approving that order because after problems with Gartner stock at a meeting attended by Mrs. Hopper, she was assured by Ms. Novak that this would not happen again.

Fact 9 – The Bank is contesting the reasonableness and necessity of Mrs. Hopper's legal fees. Part of the proof to prove the reasonableness and necessity of the fees will be that Mrs. Hopper needed to hire a lawyer to watch carefully and interact with the Bank to correct mistakes that started with the Gartner stock incident.

CONCLUSION

The Court should admit the Gartner stock incident into evidence.

Dated: September 6, 2017

Respectfully submitted;

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CERTIFICATE OF SERVICE

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