

CAUSE NO. PR-11-3238-3

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
MAX D. HOPPER,	§	
	§	
DECEASED	§	
<hr/>		
JO N. HOPPER,	§	NO. 3
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
JP MORGAN CHASE BANK, N.A.,	§	
STEPHEN B. HOPPER, LAURA S.	§	
WASSMER and QUAGMIRE, LLC,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

**PLAINTIFF’S SECOND AMENDED ORIGINAL PETITION FOR:
DECLARATORY JUDGMENT, BREACH OF CONTRACT,
BREACH OF FIDUCIARY DUTY, FRAUD, ET AL, AND, JURY DEMAND**

COMES NOW Jo N. Hopper, (“Plaintiff” or “Jo” or “Surviving Spouse”) widow of Max D. Hopper (“Decedent”) and files this *Plaintiff’s Second Amended Original Petition for: Declaratory Judgment, Breach of Contract, Breach of Fiduciary Duty, Fraud, et al., and, Jury Demand* against: JPMorgan Chase Bank, N.A., Individually and/or as the Independent Administrator of the above-referenced Estate, (the “Bank”); and, Stephen B. Hopper (“Stephen” or “Defendant S. Hopper”), and, Laura S. Wassmer (“Laura” or “Defendant Wassmer”) [with Defendants S. Hopper and Defendant Wassmer collectively referenced as the “Heirs”], with Defendant Bank, Defendant S. Hopper and Defendant Wassmer, collectively referred as the Defendants (“Defendants”) herein. As grounds thereof, Plaintiff would show this Court the following:

I.

PRELIMINARY MATTERS

A. Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 3, Rule 190.4, Texas Rules of Civil Procedure.

B. Jurisdiction

2. This Court has jurisdiction pursuant to Tex. Probate Code Ann. §4C and §4D.

C. Venue and Service of Process

3. Venue is in Dallas County, Texas where the administration of the Estate of Max D. Hopper, Deceased, is pending in Probate Court No. 3 of Dallas County, Texas under Cause No. PR-10-1517-3, Dallas County, Texas (the “Hopper Administration”) and where Defendant Bank is located and has its principal place of business.

4. Defendant Bank has appeared and answered in this cause.

5. Decedent Max D. Hopper had two children from a prior marriage: Stephen B. Hopper and Laura Wassmer. They are interested parties for all purposes as to this action and are each also Defendants herein. They have appeared and answered in this cause.

6. Defendant Quagmire, LLC (“Quagmire”) is an Oklahoma limited liability company whose registered office is 3625 North Classen Boulevard, Oklahoma City, Oklahoma 73118. Quagmire engages in business in Texas, but does not maintain a regular place of business in this State nor a registered agent for service of process, and this suit arose from Quagmire’s business in Texas. Quagmire is amenable to service of process in the State of Texas pursuant to the Texas Long-Arm Statute, and accordingly may be served with process in this case by serving the Texas Secretary of State via certified mail, return receipt requested at Service of Process, Secretary of

State, P.O. Box 12079, Austin, Texas 78711-2079, who may then forward process to Quagmire's registered agent for service of process in Oklahoma, Crowe & Dunlevy, P.C., Attn: Cynda C. Ottaway, 324 N. Robinson Ave., Suite 100, Oklahoma City, Oklahoma 73102., or at such other place as she may be found. CITATION BUT NOT SERVICE REQUESTED AT THIS TIME.

D. Standing

7. Pursuant to Tex. Probate Code Ann. ("TPC") §3(r), Plaintiff is a "person interested" in the Estate and has standing to bring this action.

II.

FACTUAL BACKGROUND

A. Probate Code usage of the term "Estate" and other pertinent terms

For purposes of this Petition, Plaintiff will use the words "estate," "community property," and "subject to administration," as they are used in the Texas Probate Code, to-wit:

8. The word "estate" shall refer to Decedent's separate property and Decedent's one-half interest in those assets which were community property immediately prior to the Decedent's death.

9. The term "community property" shall refer both to the Decedent's one-half interest in those assets which were community property immediately prior to Decedent's death, and to the Surviving Spouse's (i.e., Plaintiff's) one-half interest in those assets which were community property immediately prior to Decedent's death.

10. The Surviving Spouse's (Plaintiff's) one-half interest in those assets which were community property immediately prior to the Decedent's death are, under TPC §177, subject to

administration by the Bank as the Independent Administrator, but are owned by the Surviving Spouse at the instant of death, subject to such administration.¹

11. The term “Homestead” as used herein (also the “Residence” or “Robledo”) means and refers to that house and real property located at No. 9 Robledo Drive, Dallas, Dallas County, Texas 75230 which Decedent and Plaintiff purchased as community property during their marriage and in which Plaintiff has continued to reside since Decedent’s death and which Homestead she has claimed as her “Homestead” under law and the Texas Constitution.

B. Property Still Under Administration

12. The Estate [“Estate”] (using the definition set forth under the TPC, §3(1) and as used in each of the other sections thereof which use that statutorily defined term -- meaning the Decedent’s one-half of the community and the Decedent’s separate property) has not been fully distributed. With respect to the Surviving Spouse’s property which is under administration (but not part of the Estate), much thereof has already been transferred by the Bank into the name of the Surviving Spouse and released from administration. However, a portion of the Surviving Spouse’s property (her one-half interest in what was community property prior to Decedent’s death) is still in the Bank’s possession for purposes of administration pursuant to § 177 of the TPC. Further, the Surviving Spouse now owns one-half of the Homestead *in fee* (her former community one-half thereof) and is exercising her Constitutional rights of homestead with respect to (and as a burden against) the other one-half thereof. Her Homestead is not subject to administration by the Independent Administrator pursuant to the provisions of TPC §271 and applicable law.

¹ With the exception of the Homestead, which is not subject to such administration.

C. Facts Relevant to the Litigation

13. Decedent and Plaintiff lived in the Homestead at the time of Decedent's death.

14. Plaintiff and Decedent were married for over 28 years at the time of Decedent's death. Decedent, who had been divorced prior to marrying Plaintiff, had his two children, but very little in the way of much property at the time of his marriage, over three decades ago, to Plaintiff. Working together during their marriage, they amassed a large community estate. Decedent never executed a Will; he died intestate. He died wholly unexpectedly without warning or any long illness -he simply died within three (3) or so hours of suddenly not feeling well.

15. After Decedent's intestate death, Plaintiff and the Heirs considered various options to handle the administration of the Estate left by Decedent. As part of this process Plaintiff and the Heirs were introduced to the Bank. In order to win the business through agreement of the interested persons, to-wit: the Heirs and the Plaintiff, the Bank made certain material representations and inducements to earn the Hopper family's estate administration business. Numerous discussions were held and numerous promises and inducements were offered. Eventually, this all culminated in a written agreement being signed. A true copy of same as executed by Plaintiff (the "Contract") is attached as Exhibit "A" hereto. Ms. Novak was at the time, and still is, both the Vice-President and Senior Fiduciary Officer in the Private Wealth Management/Estate Settlement Unit of the Dallas Branch of the Bank. Ms. Novak has, since those early days up to the present, been the "point person" within the Bank in charge of the administration of the Hopper Administration. The Contract laid out the fees for services as an "executor" (here actually as Independent Administrator) the Bank proposed to charge for the

administration of this matter via the “attached fee schedule”. Plaintiff relied on the Bank’s representations and inducements in executing the Contract.

16. The Bank was later appointed IA, by agreement of Plaintiff and the Heirs, on June 30, 2010, per Order of this Court. The Bank has undertaken its actions and conduct herein through its agents and employees, including, without limitation, Susan H. Novak (“Novak”), a Vice-President of the Bank.

17. The Bank, as it has admitted in writing since, from that moment forward in time became the fiduciary (in both capacities) for all three interested persons and thus engaged in the Hopper Administration. The Bank, as Independent Administrator, owed Plaintiff fiduciary duties including but not limited to, a duty of loyalty, duty of utmost good faith, fairness and honesty, a duty of full disclosure, and a duty of impartiality. In discharging its fiduciary duties, there are numerous examples over the years in which the Bank failed to act timely, professionally, fairly or competently.

18. In discharging its duties under the Contract, there are numerous examples over the years in which the Bank failed to act timely, professionally, fairly, or competently. For example, the Bank has not properly collected amounts owed to the Estate. By way of further example, the Bank has neither properly managed nor preserved assets, nor paid bills timely when due (even jeopardizing assets under administration by virtue of such non-payment of insurance, security services and the like).

19. At various points and times in this litigation, both the Bank and Defendants S. Hopper and Wassmer have taken the position that Plaintiff owes some or all of the fees charged by the Bank for the Hopper Administration and professional fees incurred by the Bank, including

but not limited to, attorney's fees. As a matter of both fact and law, Plaintiff does not owe any of those fees.

20. Plaintiff has been forced to incur expenses for maintenance of property in which both the Estate and the Heirs have an interest. However, both the Estate and the Heirs have refused to reimburse Plaintiff for their proportionate shares of some of those expenses.

21. As a result of the acts and omissions of the Bank, Plaintiff has suffered and will continue in the future to suffer mental anguish. The Bank specifically knew about Plaintiff's fragile health condition when it sought to and did enter into the Contract with Plaintiff and thereafter, a condition that could be exacerbated by stress.

III.

PLAINTIFF'S CLAIMS

COUNT ONE

DECLARATORY JUDGMENT (ATTORNEY'S FEES AND EXPENSES RELATING TO CLAIMS REGARDING ROBLEDO)

22. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-22 of this Petition.

23. Plaintiff previously sought the following declaratory judgments for the following reasons: An actual and justiciable controversy(ies) exists and has arisen between the Plaintiff and Defendants. Plaintiff contends and seeks declaration against these Defendants, and specific orders from this Court as follows as to each of the matters below. Plaintiff further seeks judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Plaintiff and Defendants regarding the rights and obligations hereunder of the parties, one to another, and to have this Honorable Court declare the rights and legal relations in respect to any and all interests of the parties in relation to the

Contract, the Estate, the Homestead, the Hopper Administration and all its business affairs and dealings with the parties, all matters and rights to which Plaintiff is entitled, and to declare (generally) the parties' respective obligations and rights as a result of and arising out of these matters described herein between the parties generally, all as follows:

- a. That the residence of Decedent Max Hopper and Jo Hopper ("Surviving Spouse"), located at 9 Robledo Drive, Dallas, Texas, was the community property of Decedent and Surviving Spouse prior to Decedent's death.
- b. That immediately upon Decedent's death, Surviving Spouse retained and was fully vested in the fee simple title to her undivided one-half of the Residence, and Decedent's undivided one-half thereof passed to his children, Defendants Stephen and Laura.
- c. That since the Residence was their community homestead, and since Surviving spouse has elected to maintain the Residence as her Homestead, Surviving Spouse has the exclusive right of use and possession thereof, and the Defendant children's interest therein is subject to her exclusive right of use and possession.
- d. That the Homestead is not subject to administration, and no party may be granted a partition of the Homestead against Plaintiff, as long as she maintains it as her Homestead.
- e. That to the extent not delivered prior thereto, upon closing of the administration of the Estate of Max D. Hopper, the IA must and shall release and deliver Plaintiff's assets, previously subject to administration,

remaining after the appropriate payment of debts, allowances, and expenses, to the Surviving Spouse.

- f. The IA shall not charge against the Surviving Spouse's share of the assets being administered, any value attributable to the Surviving Spouse's right of sole use and possession of the children's one-half of the Residence and any tangible personal property in connection therewith, as a matter of law, as to the Homestead.
- g. That all exempt property pursuant to TPC § 271 be set apart for the sole use and benefit of the Surviving Spouse.
- h. That Plaintiff is entitled to full and exclusive use, possession and enjoyment of the Homestead and to maintain her Homestead interest at Robledo without interference from the Defendant children or Defendant IA for the remainder of her natural life (or until she ceases to occupy the Homestead and has affirmatively and deliberately abandoned same).
- i. That the Court order the IA to fix and pay to the Plaintiff a family allowance for the Surviving Spouse, as mandated by law, including but not limited to all costs of the Homestead, its maintenance, upkeep, insurance, taxes, and mortgage payments thereon.
- j. That the IA should determine, pursuant to TPC § 306(a)(2) that it is in the best interest of the Estate to pay the Homestead mortgage in full prior to its maturity and pay such amount in full pursuant to the terms of such Section.

- k. That the Surviving Spouse has not requested of the Court a non-prorata partition of community property between the Surviving Spouse and the Decedent's Estate as set forth in §385 of the Texas Probate Code -nor has the Surviving Spouse requested a partition of any kind of the Homestead.
- l. That the items of tangible personal property previously identified by the Plaintiff to the IA (and by the IA to the children) as Plaintiff s separate property are in fact Plaintiff s separate property.
- m. That neither the Independent Administrator nor any Court, may partition Plaintiff s Homestead between (i) the Plaintiff, and (ii) the Decedent's estate or the Stepchildren, or their successors or assigns, whether under §380 of the Texas Probate Code or otherwise, without the consent of the Plaintiff, as long as it is the Plaintiff s Constitutional homestead, until she either dies or voluntarily abandons the property.

24. The above-referenced declaratory judgment matters were appealed to the El Paso Court of Appeals. The El Paso Court of Appeals ruled in Plaintiff's favor, making her the prevailing party.

25. This Court seeks judgment against all Defendants pursuant to the Texas Uniform Declaratory Judgment Act ("UDJA"), Texas Civil Practice & Remedies Code § 37.001 et seq. Plaintiff and Defendants are legal or natural persons having an interest in the matters set forth herein that would be affected by the declarations sought herein, as provided under Texas Civil Practice & Remedies Code, § 37.006(a). Plaintiff also seeks all legal fees and expenses as allowed under law and set forth elsewhere in this Petition, all of which are incorporated by reference herein in support hereof.

COUNT TWO
**DECLARATORY JUDGMENT (PLAINTIFF DOES NOT OWE FEES AND
EXPENSES TO THE BANK)**

26. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-25 of this Petition.

27. This Court seeks judgment against all Defendants pursuant to the Texas Uniform Declaratory Judgment Act (“UDJA”), Texas Civil Practice & Remedies Code § 37.001 et seq. Plaintiff and Defendants are legal or natural persons having an interest in the matters set forth herein that would be affected by the declarations sought herein, as provided under Texas Civil Practice & Remedies Code, § 37.006(a). Plaintiff also seeks all legal fees and expenses as allowed under law and set forth elsewhere in this Petition, all of which are incorporated by reference herein in support hereof.

28. An actual and justiciable controversy(ies) exists and has arisen between the Plaintiff and Defendants. Plaintiff contends and seeks declaration against these Defendants, and specific orders from this Court as follows as to each of the matters below. Plaintiff further seeks judgment against Defendants pursuant to the UDJA declaring the rights, status and other legal relations of Plaintiff and Defendants regarding the rights and obligations hereunder of the parties, one to another, and to have this Honorable Court declare the rights and legal relations in respect to any and all interests of the parties in relation to the Contract, the Estate, the Homestead, the Hopper Administration and all its business affairs and dealings with the parties, all matters and rights to which Plaintiff is entitled, and to declare (generally) the parties’ respective obligations and rights as a result of and arising out of these matters described herein between the parties generally, all as follows:

- a. Plaintiff does not owe the Bank or the Estate or the Heirs for any fees charged by the Bank for the Hopper Administration;
- b. Plaintiff does not owe the Bank or the Estate or the Heirs for any professional fees incurred by the Bank in connection with the Hopper Administration, including but not limited to, attorney's fees.

COUNT THREE
BREACH OF CONTRACT

29. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-28 of this Petition in the alternative to the foregoing causes of action.

30. The actions described above constitute multiple breaches of the Contract between Plaintiff and Defendant Bank. Plaintiff made the Contract, as did the Heirs, with Defendant Bank. The Bank did not honor and has not kept the terms and conditions of the Contract, either individually/corporately or while acting as the IA under the Contract, and has failed to perform under the Contract. Defendant Bank has breached its Contract with the Plaintiff and has caused Plaintiff to pay, or sought to charge Plaintiff, sums it should not have ever attempted to bill Plaintiff and to charge/bill as to matters which should never have occurred in the first instance. The Bank has also specifically failed to timely do the tasks which it is required to do and which it promised to do in connection with the Estate -upon which promised performance the fee schedule in the Contract was agreed to in the first instance. These failures have cost the Hopper Administration money and have also cost Plaintiff money -thus have additionally damaged Plaintiff, by Plaintiff having to deal with the aftermath of these errors and hire her own attorneys to try to "clean up after the Bank", all at her great (but necessary -given the Bank's conduct) expense and detriment.

31. As a result of these numerous breaches of Contract, Plaintiff has been damaged by the Bank in an amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues. Plaintiff also seeks all attorney's fees, interest and costs as set forth elsewhere herein, which are incorporated by reference.

COUNT FOUR
FRAUD/FRAUD IN THE INDUCEMENT

32. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-31 of this Petition in the alternative to the foregoing causes of action.

33. Defendant Bank made representations to Plaintiff as set forth above in order to induce Plaintiff to change position in reasonable reliance upon same and enter into the above-referenced Contract to hire the Bank to be the IA and to act in certain ways (e.g., pay certain bills of the Estate on the express understanding and assurances she would be "reimbursed" -which she has not been). As set forth above, Defendant Bank knew at the time it entered into the Contract that it (given the personnel with which it chose to staff this Estate's administration) did not have the capabilities advertised and promised to Plaintiff. Nor did the Bank intend to itself directly provide the level of personnel and support necessary that it represented it would without the need for enormous efforts by "outside professionals" it sought to include to perform tasks it should have and agreed to complete properly for one unitary fee -- such that these tasks could be accomplished timely in a complex estate such as this Estate. Defendant Bank engaged in fraud and misrepresentations and simply wanted to "snare" Plaintiff as a customer of the Bank and thus "get the business". It did so knowing full well that once the Bank was named as Independent Administrator with the assent of Plaintiff, it could then have a free rein in dealing with the Estate however it chose (as IA) and using as many outside professionals as it wished at whatever cost it determined to allow - all essentially free of judicial supervision. As Plaintiff now clearly perceives

and understands, this was the Bank's plan from the get-go. Certainly had the Bank advised her of the truth, she never would have changed positions and allowed the Bank to become Independent Administrator -by her agreement, or at all. She would have absolutely opposed such an oppressive and incompetent regime as has been imposed upon her and her interests by this trickery and deceit.

34. The Defendant Bank knew or should have known its statements/ongoing representations (also made once it was IA) and conduct as described above and herein generally, were false, deceptive and misleading when made, yet it made them (repeatedly) with the intent, design and purpose of deceiving Plaintiff: in order to induce Plaintiff to enter into the Contract. Then the IA continued to make false and deceptive statements to allow Defendant Bank to gain control over the Estate and its huge purse, and then further, to trick Plaintiff into paying bills on the promise of reimbursement, but not paying her back -to gain financial leverage over Plaintiff so that she could not oppose this wrongful conduct for fear of never being reimbursed.

35. As a result of the Bank's conduct as set out herein, the Bank is obligated to and should be ordered to disgorge any and all fees, expenses and costs paid out by it, or to, the IA itself.

36. As a result of this Defendant Bank's conduct (as set out above) and fraud/fraud in the inducement, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which she now sues and seeks to impose liability. Plaintiff also seeks all damages, exemplary damages and attorneys' fees and costs as set forth elsewhere herein and incorporated by reference herein.

COUNT FIVE
REIMBURSEMENT (FOR ROBLEDO EXPENSES)

37. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-36 of this Petition in the alternative to the foregoing causes of action.

38. Under Texas law, a co-tenant who incurs necessary expenses to preserve the property is entitled to reimbursement from the other co-tenants for their respective portion of those expenses. On information and belief, Defendant S. Hopper and Defendant Wassmer have each transferred their 25% interest in Robledo to a company called Quagmire, LLC (“Quagmire”). Thus, Plaintiff and Quagmire are co-tenants in the ownership of Robledo. With respect to preserving the Robledo house, Plaintiff has expended money for interest payments, capital repairs, and property taxes. Plaintiff seeks reimbursement from Quagmire, or alternatively, from S. Hopper and Wassmer, for their portion of these expenses.

COUNT SIX
REIMBURSEMENT (FOR MISCELLANEOUS EXPENSES)

39. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-38 of this Petition in the alternative to the foregoing causes of action.

40. Plaintiff has expended money to pay for and/or maintain property in which either the Estate and/or the Heirs have or had an ownership interest. The Estate and the Heirs have refused to pay their portion of these expenses.

41. Plaintiff seeks reimbursement from the Estate and the Heirs for their portion of these expenses.

COUNT SEVEN
BREACH OF FIDUCIARY DUTY

42. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-41 of this Petition in the alternative to the foregoing causes of action.

43. Defendant Bank owed (and has admitted it owes) fiduciary duties to Plaintiff, including, but not limited to, a duty of loyalty, a duty of utmost good faith, fairness and honesty,

a duty of full disclosure, a duty of impartiality, etc. By its actions described above, the Bank, breached its fiduciary duties to Plaintiff.

44. As a result of Bank's breaches of fiduciary duties, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues.

45. As a result of the Defendant Bank's/IA's conduct as set out herein, the Bank is obligated to and should be ordered to disgorge any and all fees, expenses and costs paid out by it, or to, the IA itself.

46. Plaintiff also seeks all damages, exemplary damages and as appropriate attorney's fees, interest and costs as allowed by the law of fiduciary duty and as set forth elsewhere herein, which paragraphs are incorporated by reference.

COUNT EIGHT
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

47. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-46 of this Petition in the alternative to the foregoing causes of action.

48. The Bank owed fiduciary duties to Plaintiff including, but not limited to, a duty of loyalty, a duty of utmost good faith, fairness and honesty, a duty of full disclosure, a duty of impartiality.

49. S. Hopper and L. Wassmer were aware of the fiduciary duties owed by the Bank to Plaintiff including its duties of loyalty, utmost good faith, fairness and honesty, full disclosure, and impartiality.

50. S. Hopper and L. Wassmer knowingly and successfully induced the Bank to breach the fiduciary duties it owed to Plaintiff.

51. S. Hopper and L. Wassmer knowingly participated and substantially assisted in the breaches of fiduciary duty owed by the Bank to Plaintiff.

52. This knowing inducement of and participation and assistance in breaches of fiduciary duties proximately caused irreparable injury to Plaintiff, causing actual damage and loss for which Plaintiff should recover.

COUNT NINE
UNJUST ENRICHMENT

53. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-52 of this Petition in the alternative to the foregoing causes of action.

54. In addition or in the alternative, and without waiver of the foregoing causes of action, the Bank has been unjustly enriched by receiving (or charging or seeking to charge) certain expenses to Plaintiff in connection with work done on the Estate -for which Plaintiff should not be charged. The IA has held onto funds that were promised to be reimbursed to Plaintiff. These funds were expended by Plaintiff at the urging, behest and agreement of the IA as Estate-related expenses, and were promised by the IA to Plaintiff to be promptly reimbursed to Plaintiff. IA has, in the meantime, been paying its attorneys' expenses in connection with the Estate (and the defense of claims lodged against it – both corporately as the Bank and as the IA): these attorneys' fees which have been actually paid, being upon information and belief well more than \$200,000 to date. The Bank has also attributed/allocated as much as 50% of this cost to Plaintiff. Effectively then, the monies withheld from Plaintiff due her as reimbursements, or direct transfer payments from funds received for her benefit from third parties, by the Bank, have gone, in whole or in part, to pay the Bank's attorneys without Plaintiff's permission or consent.

55. As a result of these actions, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which she now sues and seeks her damages from the Bank Plaintiff also seeks all damages, exemplary damages and as appropriate attorney's

fees, interest and costs as set forth elsewhere herein, which paragraphs are incorporated by reference.

COUNT TEN
MONEY HAD AND RECEIVED

56. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-55 of this Petition in the alternative to the foregoing causes of action.

57. The IA owes the Plaintiff for money expended by Plaintiff on the IA's behalf for the Estate and the Hopper Administration, this being money had and received from the Plaintiff to be paid by Defendant Bank to Plaintiff.

58. Plaintiff also seeks all attorneys' fees and expenses, interests and costs to be paid out of the Estate, or charged against the IA, all as set forth elsewhere herein and incorporated by reference.

COUNT ELEVEN
DTPA AND MENTAL ANGUISH

59. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-58 of this Petition in the alternative to the foregoing causes of action.

60. Plaintiff is a "consumer" under the Texas Deceptive Trade Practices-Consumer Protection Act (the "DTPA"). In order to induce Plaintiff to enter into the Contract in respect to the Bank administering the Decedent's Estate (through its assumption of the position/post and concomitant authority of acting as the Estate's Independent Administrator/"IA"), the Bank made various representations concerning the quality and characteristics of the services that it would provide as the IA in the administration of the Estate. The Contract and work undertaken in relation thereto, directly involved the Plaintiff "consumer's" Residence (here, Robledo) in myriad ways.

61. This Contract amounted to a purchase of services from the Bank by Plaintiff - which services Plaintiff was advised would be without cost to her. The Contract and its contents, as represented, prepared and presented to Plaintiff by the Bank, was accepted by Plaintiff directly as so presented, without negotiation or any change. At the time of the purchase of these services, Plaintiff executed the Contract which included in detailed form a description of the various qualities and characteristics of the Bank's services as IA that Plaintiff expected and contractually relied upon. The Contract specified the Bank's services (as IA) to be performed, possessed certain qualities and characteristics in regard to the Estate's (then) upcoming administration -which services the Bank directly and as IA promised to perform to such standard(s) in its role as IA. Thus, Plaintiff was made representations both as a "consumer" to secure her agreement to its services, and, in certain respects, as a third-party beneficiary of those represented/promised services as well.

62. These services as actually provided by the Bank as IA since, have NOT conformed to the descriptions contained in, or promised, via the Contract - as to quality, price/cost to her, or in any other material way. The representations concerning these service parameters were false, misleading, deceptive, unconscionable, knowing and intentional -given, and as demonstrated by the Bank's (as IA) abject failures in regard to same and its pitiful performance -these failures unequivocally prove.

63. The Bank did not provide what was promised, either at the onset of the Contract, nor as promised during the course of the Hopper Administration, to date. As set forth above, the variance between what was promised, both as to the quality and characteristics of the services, and what little was delivered is huge. The representations concerning these services were (at least) false, misleading, deceptive, unconscionable, knowing and intentional. The Bank has

violated, at least, and without limitation, §17.46(a), (b)5, (b)7, (b)9 and (b)24 of the DTPA. In regard to such knowing and willful violations, Plaintiff further seeks treble damages under, at least §17.50(b)(1) of the DTPA.

64. As a result of the Bank's (corporately and acting as the IA) actions, Plaintiff has suffered economic damages (including/involving Plaintiff's/ "consumer's" residence) for which she now sues and seeks from the Bank. In addition, Plaintiff has suffered mental anguish as a result of the Bank's knowing, intentional, unconscionable and wrongful conduct, for which she now sues and seeks relief from the Bank. Plaintiff further seeks all attorneys' fees, interest, and costs as allowed under the DTPA, and as generally set out herein in this Petition, which requests elsewhere herein are incorporated herein by reference.

COUNT TWELVE
TORTIOUS INTERFERENCE WITH CONTRACT

65. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-64 of this Petition in the alternative to the foregoing causes of action.

66. Plaintiff entered into a valid and enforceable contract with the Bank.

67. Plaintiff has fully performed her contractual obligations under the Contract.

68. Defendants S. Hopper and Wassmer were aware of the terms of the Contract.

69. Defendants S. Hopper and Wassmer interfered with the Contract by willfully and intentionally causing the Bank to breach the terms of the Contract.

70. This interference proximately caused irreparable injury to Plaintiff, causing actual damage and loss for which Plaintiff should recover from the Heirs.

COUNT THIRTEEN
EXEMPLARY DAMAGES

71. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-70 of this Petition in the alternative to the foregoing causes of action.

72. Because Defendant Bank's and Defendants Hopper and Wassmer's actions were knowing, intentional, and in reckless and utter disregard for her rights, Plaintiff is entitled to exemplary damages in an amount to be determined by the trier of fact against the Defendant Bank, Defendant S. Hopper, and Defendant Wassmer, plus her attorney's fees and costs - which requests elsewhere herein, are hereby incorporated by reference.

IV.

ATTORNEYS' FEES, INTEREST AND COSTS

73. Plaintiff incorporates by reference as if fully set forth herein paragraphs 1-72 of this Petition in the alternative to the foregoing causes of action.

74. Further, by reason of Defendant Bank's conduct and the matters alleged elsewhere herein, and pursuant to the Texas Civil Practice and Remedies Code, §37.001 et seq., and/or §38.001 et seq., and/or Texas Civil Practice & Remedies Code §134.005, and/or the Deceptive Trade Practices-Consumer Protection Act, §17.50 or, alternatively, other applicable law, or in equity, Plaintiff is entitled to have and recover of and from Defendant Bank, her reasonable attorneys' fees incurred in connection with disputes concerning the Contract, Declaratory actions, and the other causes of action (as appropriate and alleged by law) asserted by Plaintiff herein. All notices and demands as required by law for such fees and costs have been or are being given. Plaintiff seeks a reasonable sum for such attorneys' fees and costs; or if this matter requires trial, such additional sums as are necessary to cover these attorneys' fees and costs, as well as, all reasonable attorneys' fees and costs in any Court of

Appeals, for which each and every appeal taken (in the event of such an appeal(s)) Plaintiff seeks her attorneys' fees and costs, and for all of which reasonable attorneys' fees and costs Plaintiff sues and demands relief against Defendant Bank named herein.

75. Plaintiff would further show that if she is allowed to recover under any theory pled in this cause against Defendant Bank, Plaintiff is entitled to all pre-judgment interest appropriate, at the highest rate allowed by law against Defendant Bank. Further, Plaintiff would show that if she is allowed to recover under any theory pled in this cause against this Defendant Bank, Plaintiff is entitled to all post-judgment interest as appropriate, at the highest rate allowed by law against this Defendant Bank, from the date of judgment until the satisfaction of same. Plaintiff also seeks all costs of court and all other costs expended herein as are allowed at law or in equity.

76. Plaintiff likewise seeks judgment for the same relief as to attorneys' fees, costs, interest, sought in Paragraphs 75 and 76 above, also as to Defendant children, jointly and severally, as to matters pled in connection with the Declaratory Judgment sought in Counts "1" and "2" above under Tex. Civ. Prac. & Rem. Code §§37.001 et seq. and other applicable laws, to the same extent it is sought against the Bank in Paragraphs "75" and "76" above in this Attorney's Fees, Interest and Costs section.

V.

CONDITIONS PRECEDENT

All conditions precedent to recover under the claims asserted herein have occurred or been performed as to all Defendants herein.

VI.

JURY DEMAND

Plaintiff respectfully requests a jury trial and a jury fee has already been paid.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, for these reasons Plaintiff prays that Defendants named herein be cited to appear and answer and that Plaintiff have Judgment and this Court award Judgment, against Defendants, jointly and severally, where and as may be appropriate, for the following (as applicable and appropriate):

- a. A Declaratory judgment in all the particulars and generally as set out above, against all Defendants in favor of Plaintiff in all respects, together with all attorneys' fees and costs to the greatest extent allowed by law;
- b. Judgment in favor of Plaintiff upon any of the theories, actions or causes of action pled herein against any or all of the Defendants (as pled) for such sums as may be proved in open Court and for judgment for all other appropriate relief enumerated (whether generally or specifically) in this Petition and Prayer, or as may be appropriate in the premises;
- c. Disgorgement of all fees, including attorneys' fees charged or paid out by or to the IA/Bank, plus all expenses and costs charged by the IA/Bank and paid out by, or to, the IA;
- d. All reimbursements, stock payments, escrow payments, storage charges, and all other sums properly due or owed Plaintiff promised by the IA, or otherwise, be paid Plaintiff;

- e. All actual, consequential, and special damages; alternatively, relief for all Plaintiff's damages;
- f. All additional damages, mental anguish damages, and special damages as allowed by the DTPA, the law of fiduciary duty, or other applicable law;
- g. All exemplary damages as sought in the Petition (plus reasonable attorneys' fees and any costs in connection therewith);
- h. Reasonable and necessary attorneys' fees, jointly and severally against Defendants (as may be appropriate), and if this cause requires a trial, for Plaintiff's reasonable attorneys' fees for the prosecution or defense of same; and, an additional sum or sums if this cause is appealed, all as specified more fully hereinabove;
- i. Costs of suit or reasonable expenses as are allowed at law or in equity;
- j. Prejudgment and post-judgment interest as allowed, at the highest rates allowed by law;
- k. For such Declaratory and other orders and judgments affecting the obligations of each of the Defendants, jointly and severally, to Plaintiff and as to and to uphold the rights of Plaintiff and in favor of Plaintiff, as this Honorable Court may find appropriate under the circumstances; and
- l. All other general and special relief, in law or equity, to which Plaintiff may be justly entitled.

Dated: December 7, 2015.

Respectfully submitted,

LOEWINSOHN FLEGLE DEARY, L.L.P.

By: /s/ Alan S. Loewinsohn

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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record via e-filing this 7th day of December, 2015:

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