

LM NOV 23 2010

At S. BDA. J.
Amalia Rodriguez-Mendoza, Clerk

NO. D-1-GV-08-001478

STATE OF TEXAS,
Plaintiff

v.

Guardian Fidelity Title Company, Ltd.,
Guardian Fidelity Title Company CLR, LLP,
Guardian Fidelity Title Company NWR, LLP,
Guardian Fidelity Title Company KTB, Ltd.,
Guardian Fidelity Title Company SB, Ltd.,
Guardian Fidelity Title Company DFT, Ltd.,
Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

**MEMORANDUM RECOMMENDATION-SPECIAL DEPUTY RECEIVER'S
APPLICATION FOR APPROVAL OF THIRD CLAIMS REPORT [ESCROW
ACCOUNTS] AND DISTRIBUTION OF ESCROW FUNDS TO APPROVED ESCROW
CLAIMANTS**

On November 1, 2010, the Special Master considered the SDR's *Application for Approval of Third Claims Report [Escrow Accounts] and Distribution of Escrow Funds to Approved Escrow Claimants* (the "Application"). When called for hearing, the SDR appeared in person and by counsel. Objector Diana Sanchez appeared by phone. Objector Paul Lawson appeared on behalf of himself and his wife, Objector Bettye Lawson who also appeared by phone. Objector J.C. Investments Unlimited, L.L.C. appeared by counsel, Samuel Beale. The Special Master conducted a hearing on the Application at which the parties presented evidence, testimony, and oral argument. Having considered the Application, the Special Master makes the following findings: Having considered the Application, the Court finds as follows:

1. The Court has jurisdiction over the Application and the parties affected hereunder;
2. The *Order of Reference to Master* ("Order of Reference") entered by this Court

on August 22, 2008, provides that applications filed pursuant to Texas Insurance Code section 443.007 are referred to the Special Master appointed in this proceeding;

3. The Application was submitted to the Special Master in accordance with the Order of Reference;

4. Notice of the Application was provided in accordance with Texas Insurance Code section 443.007 (d) and the Order of Reference;

5. The Special Master held a hearing on November 1, 2010, pursuant to the Order of Reference.

6. As of the date of receivership, the receivership estate did not hold any funds in escrow in connection with the transactions described in proofs of claim GUARD0091 and POC No. GUARD0092 filed by Diana Sanchez.

7. As of the date of receivership, the receivership estate did not hold any funds in escrow in connection with the transactions described in proofs of claim GUARD0147 filed by Paul and Bettye Lawson. On May 5, 2010, the Receivership Court, after a contested hearing, granted the SDR's application to interplead an original promissory note and dismissed, as moot, the Lawsons' claim, POC GUARD0147.

8. Neither the relief sought in the Application nor an order granted thereon shall, in any manner, affect, amend, modify or change the terms and provisions of the *Agreed Order Appointing Liquidator and Permanent Injunction*, the POC Order or the automatic stay; waive the Receiver's or the SDR's immunities from suit; or give rise to any right to sue or create any causes of action against the Receiver or the SDR.

9. An order on the Application constitutes a final judgment for purposes of appeal pursuant to Texas Insurance Code § 443.257 (c), provided that this Court retains jurisdiction to

issue further orders pursuant to Texas Insurance Code Chapter 443

and

10. The Application should be GRANTED in all respects.

RECOMMENDATIONS

The Special Master recommends that the Receivership Court enter an order GRANTING the Application, providing as follows:

1. Approving the SDR's Third Report of Claims [Escrow Accounts];
2. Denying the Objections filed by Diana Sanchez and Paul Lawson on behalf of himself, his wife Bettye Lawson and a foreign limited liability company, J.C. Investment Unlimited ("JC Investment");
3. Authorizing the SDR to distribute the funds held in escrow to each claimant whose claim is approved by the Receivership Court;
4. Discharging and releasing the Receiver, the SDR and the receivership estate from any and all liability regarding the distributed Escrow Accounts;
5. Ruling that, in the event that any action by the SDR and/or Receivership Court results in a shortage to an escrow account, the shortage shall not be considered a covered claim as that term is defined in Texas Insurance Code section 2602.252;
6. This Order constitutes a final judgment fully resolving all issues relating to the Application, provided that this Court shall retain jurisdiction to issue further orders pursuant to Texas Insurance Code Chapter 443. This Order shall not affect, in any way, the Receiver's or the SDR's immunities from suit and shall not give rise to any right to sue or create any causes of action against the Receiver or the SDR. The automatic stay and the provisions of the Receivership Order remain in effect unless expressly modified herein. This Order does not

amend, modify or in any manner change or affect the terms and provisions of the *Agreed Order Appointing Liquidator and Permanent Injunction* and the POC Order except as expressly set out herein.

Any Order on this Recommendation should not be submitted by the SDR to the District Court until the time for the Objectors to seek de novo review (10 days from the undersigned date) has expired.

Signed on Nov. 22, 2010.

By: Tom Collins
TOM COLLINS, SPECIAL MASTER