

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 §

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

Filed in the District Court
of Travis County, Texas
FEB 03 2011 9:15 AM
At Amalia Rodriguez-Mendoza, Clerk

**ORDER GRANTING SPECIAL DEPUTY RECEIVER'S APPLICATION FOR
AUTHORITY TO INTERPLEAD FUNDS, DETERMINE CLAIMS AND BE
DISCHARGED
[DBSI/GRAND PARKWAY/TENANT IN COMMON OWNERS
OF PARK PLAZA RETAIL CENTER]**

On the undersigned date, the Court considered the Application for Authority to Interplead Funds, Determine Claims and Be Discharged [DBSI /Grand Parkway/ Tenant-in-Common Owners of Park Plaza Retail Center] (the "Application") filed by CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of 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. (the "SDR" and, collectively, "Guardian"). When called for hearing, the SDR appeared by its representative and counsel and the Tenant-in-Common Owners of Park Plaza Retail Center appeared by and through their counsel. All parties announced ready. Having considered the Application and the evidence submitted by the SDR, the Court finds as follows:

1. The Court has jurisdiction over the Application, the SDR, DBSI Park Plaza Retail Center LLC ("DBSI"), Grand Parkway Katy Village, L.P. ("Grand Parkway") and M.

Bateman-Park Plaza Retail Center, LLC, Bovee-Park Plaza Retail Center, LLC, Clemens-Park Plaza Retail Center, LLC, Dalaya-Park Plaza Retail Center, LLC, Davies-Park Plaza Retail Center, LLC, Gardner-Park Plaza Retail Center, LLC, Herris-Park Plaza Retail Center, LLC, Jancen-Park Plaza Retail Center, LLC, Kelly-Park Plaza Retail Center, LLC, Mansfield-Park Plaza Retail Center, LLC, May-Park Plaza Retail Center, LLC, Minor-Park Plaza Retail Center, LLC, R. Morofsky-Park Plaza Retail Center, LLC, Morofsky-Park Plaza Retail Center, LLC, Parker-Park Plaza Retail Center, LLC, Segbarth-Park Plaza Retail Center, LLC, J & D-Park Plaza Retail Center, LLC, Shopbell-Park Plaza Retail Center, LLC, Tse-Park Plaza Retail Center, LLC, NRV-Park Plaza Retail Center, LLC, Webb-Park Plaza Retail Center, LLC, D. Webster-Park Plaza Retail Center, LLC, and Wildeman-Park Plaza Retail Center, LLC (collectively referred to herein as the "Tenant-in-Common Owners of Park Plaza Retail Center") (hereinafter the "Respondents", collectively).

2. At the time of its appointment, the SDR took possession of a number of guaranty files (hereinafter referred to as "GF Files") that contain the documents relating to real estate transactions for which Guardian acted as escrow agent. Among the GF Files was GF2006114081 relating to a real estate transaction by and among Respondents DBSI, Grand Parkway and the Tenant-in-Common Owners of Park Plaza Retail Center. As of the date of receivership, \$114,677.09 was held in a non-interest bearing escrow account for this transaction (hereinafter referred to as the "GF2006114081 Escrow Account").
3. On July 6, 2009, this Court entered its *Order Granting the Special Deputy Receiver's Application to Provide Notice of Liquidation, Set Claims Filing Deadline, Resolve Escrow Accounts and Establish a Claims Processing Procedure* (the "POC Order").
4. The POC Order expressly required all parties who claimed an interest to any asset held in escrow by the SDR to file a claim by the deadlines set out in the order. The POC Order

authorized the SDR to interplead any funds subject to conflicting claims into the registry of the Receivership Court.

5. Respondent DBSI timely filed POC number GUARD116, in connection with GF2006114081; respondent Grand Parkway timely filed POC number GUARD0125, in connection with GF2006114081; and respondent Tenant-in-Common Owners of Park Plaza Retail Center timely filed POC number GUARD0128, in connection with GF2006114081. POCs GUARD116, GUARD0125, and GUARD0128 all make escrow claims and assert ownership and right to possess the funds held in the GF2006114081 Escrow Account.
6. Respondents are the only claimants to the funds held in GF2006114081 Escrow Account, and assert conflicting claims to the funds held in GF2006114081 Escrow Account. The SDR makes no claims to the funds held in GF2006114081 Escrow Account, is an innocent, disinterested stakeholder, which has reasonable doubts as to the party entitled to the possession of the funds in its possession and which may be exposed to double or multiple liability as a result of the conflicting claims. The Court further finds that the SDR has incurred costs in connection with the preservation of the funds.
7. Notice of the Application was proper and provided in accordance with TEX. INS. CODE §443.007 (d), the Texas Rules of Civil Procedure and the *Order Granting SDR's Application to Use Electronic Service of Pleadings and Notices* entered on February 8, 2008.
8. The Application should be GRANTED in all respects.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Application is GRANTED.
2. The SDR is authorized to interplead into the Registry of the Court the amount of \$114,677.09, less any amounts awarded to the SDR for its reasonable and necessary

attorneys, fees and costs AND for the reasonable, necessary costs and expenses of preserving or disposing of the property for the benefit to the holder of such claim” pursuant to TEX. INS. CODE § 443.260, (the “Interplead Funds”), representing the final distribution from Guardian on POCs GUARD116, GUARD0125, and GUARD0128, and execute any documents as may be necessary to effectuate this Order.

3. All claims by Respondents to the Interplead Funds are severed into a separate action. Guardian, the Receiver and the SDR shall not be parties to the severed action. The Clerk of the Court is directed to open a new cause number for this severed action and place within the matter the following documents and such other documents as counsel request: 1) this Order, 2) the SDR’s Application for Authority to Interplead Funds, Determine Claims and Be Discharged [DBSI /Grand Parkway/Tenant-in-Common Owners of Park Plaza Retail Center], filed on January 14, 2011, and 3) the Answer and Claim to Funds of Tenant-in-Common Owners of Park Plaza Retail Center, filed February 2, 2011.
4. The Receiver, the SDR and the receivership estate of Guardian are discharged and released from any and all liability regarding POCs GUARD116, GUARD0125, and GUARD0128, the Interplead Funds and any claims by the Respondents thereto.
5. The SDR is awarded its reasonable and necessary attorney’s fees and costs against from the Interplead Funds in the amount of \$ 2,500 AND the SDR is awarded its reasonable, necessary costs and expenses pursuant to TEX. INS. CODE § 443.260 in the amount of \$ 800. The SDR shall deduct these awards from the GF2006114081 Escrow Account and then interplead the remainder into the Registry of the Court. In the event this Order is unsuccessfully appealed to the Court of Appeals or a mandamus filed to any court, the SDR is awarded \$5000 in reasonable and necessary attorneys fees and all costs of court, jointly and severally, against any party or parties filing the appeal or mandamus; \$4000 in reasonable and necessary attorneys fees and all

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costs of court, jointly and severally, against any party or parties filing in the event an unsuccessful application for writ is filed with the Texas Supreme Court; and \$10,000 in reasonable and necessary attorneys fees and all costs of court, jointly and severally, against any appealing party or parties, in the event that writ is granted and the appeal is denied.

6. This Order shall not, in any way, affect the Receiver's or the SDR's immunities from suit, give rise to any right to sue or create any causes of action against the Receiver or the SDR, or modify the Permanent Injunction entered in this proceeding.
7. 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 TEX. INS. CODE Chapter 443.

Signed on February 3, 2011.

By: 
JUDGE PRESIDING