



CHRIS DANIEL HARRIS COUNTY DISTRICT CLERK

DATE 8/15/2014

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
8/15/2014 8:09:50 AM
CHRISTOPHER A. PRINE
Clerk

NOTICE OF APPEALS ASSIGNMENT OF COURT THE COURT OF APPEALS

**TO: 14TH COURT OF APPEALS
RELATED TO 14-14-00574-CV**

**From: Deputy Clerk: MICHELLE WOJCIK
Chris Daniel, District Clerk
Harris County, T E X A S**

CAUSE: 2012-49262

VOLUME _____ PAGE _____ OR IMAGE # 61761279

DUE 8/25/2014 ATTORNEY pro-se

NOTICE OF APPEAL HAS BEEN ASSIGNED TO THE 14th

DATE JUDGMENT SIGNED: 7/28/2014

REQUEST FOR FINDINGS FILED: n/a

REQUEST TRANSCRIPT DATE FILED n/a

NOTICE OF APPEAL DATE FILED 8/13/2014

NUMBER OF DAYS: (CLERKS RECORD) 10

FILE ORDERED: YES NO IMAGED FILED: YES NO

CODES FOR NOTICE OF APPEAL: D, OA

CHRIS DANIEL
Harris County, District Clerk

By: /s/MICHELLE WOJCIK
MICHELLE WOJCIK, Deputy

- BC NOTICE OF APPEAL FILED
- BG NOTICE OF APPEAL FILED – GOVERNMENT
- C JUDGMENT BEING APPEALED
- D - ACCELERATED APPEAL
- OA NO CLERK’S RECORD REQUEST FILED
- O CLERK’S RECORD REQUEST FILED (W/NOTICE OF APPEAL)
- NA AMENDED NOTICE OF APPEAL

CAUSE NO. 2012-49262

MARK THUESEN	§	IN DISTRICT COURT OF
	§	
Plaintiff	§	
	§	
VS.	§	
	§	
AMERISURE INSURANCE COMPANY, and	§	HARRIS COUNTY, TEXAS
SWAMPLLOT INDUSTRIES LLC, and	§	
LAURENCE DAVID ALBERT, and	§	
BETH ANNE BRINDSON	§	
	§	
Defendants	§	151st JUDICIAL DISTRICT

PLAINTIFF THUESEN’S NOTICE OF APPEAL TO EITHER THE FIRST OR FOURTEENTH COURT OF APPEALS

COMES NOW, Defendant Mark Thuesen (“Thuesen”) files this his Plaintiff Thuesen’s Notice of Appeal to Either the First or Fourteenth Court of Appeals in the above-referenced case pursuant to Texas Rules of Appellate Procedures. In support thereof, Thuesen would respectfully show unto the Court as follows:

A. Notice of Appeal

1. Plaintiff Thuesen hereby gives notice of appeal and requests that at a minimum, the following orders with related pleadings be included in the clerk’s record, as required by Tex. R. App. P. 34.5(a):
 - A. *Order Denying Mark Thuesen’s Motion to Compel Production of Documents from Swamplot Industries*, signed June 25, 2014.
 - B. *Order Signed Granting Entry of Temporary Orders*, signed July 14, 2014.
 - C. *Order Signed Granting Entry of Temporary Orders*, signed July 28, 2014.
2. Plaintiff Thuesen files this notice of appeal with either the First or the Fourteenth Court of Appeals. Because an Original Proceeding for Writ of Mandamus was previously filed on March

27, 2013 in the Fourteenth Court of Appeals related to this case, and an opinion was issued, this appeal will most likely be assigned to the Fourteenth Court of Appeals. *see In re Thuesen*, No. 14-13-00255-CV, (Tex. App.-Houston [14th Dist.] 2013, pet. denied).

3. Pursuant to Texas Civil Practice and Remedies Code, §52.006, and Tex. R. App. P. 24.1(c)(2) and 24.2(a)(1) and the attached declaration in lieu of affidavit, Plaintiff Thuesen hereby tenders a \$10.00 cash deposit to supersede the judgment and to avoid substantial economic harm. A judgment debtor with a negative net worth is not required to post a bond any higher than \$100. *See Hunter Buildings & Manufacturing, LP v. MBI Global, LLC*, No. 14-12-00246-CV (Tex.App.Houston [14th Dist.] 2013). Pursuant to Tex. R. App. P. 24.1(f), “Enforcement of a judgment must be suspended if the judgment is superseded. Enforcement begun before the judgment is superseded must cease when the judgment is superseded. If execution has been issued, the clerk will promptly issue a writ of supersedeas.” Accordingly, Plaintiff Thuesen hereby requests the clerk to promptly issue a writ of supersedeas if defendants attempt to enforce judgment.
4. Furthermore, defendant’s award of attorney fees and sanctions are punitive in nature and no bond is required for damages that are NOT compensatory damage awards. Statutes authorizing the recovery of attorney’s fees are penal in character and are to be strictly construed. *See First Preferred Ins. Co. v. Bell*, 587 S.W.2d 798 (Tex.Civ.App.-Amarillo 1979, writ ref’d n.r.e.); *New Amsterdam Casualty Co. v. Texas Industries, Inc.*, 414 S.W.2d 914, 915 (Tex.1967); *Van Zandt v. Fort Worth Press*, 359 S.W.2d 893, 895 (Tex.1962). In addition, three intermediate appellate courts have concluded that attorney’s fees are not compensatory damages or costs awarded in the judgment under CPRC Chapter 52, §52.006, and therefore, security is not required for the amount of attorney’s fees. *See Imagine Automotive Group, Inc. Boardwalk Motor Cars, L.L.C.*,

356 S.W.3d 716, 719-20 (Tex.App.-Dallas 2011, order); *PopCap Games, Inc. v. MumboJumbo, L.L.C.*, 317 S.W.3d 913, 914 (Tex.App.-Dallas 2010, order); *Shook v. Walden*, 304 S.W.3d 919-24 (Tex.App.-Austin 2010, no pet.). Pursuant to Tex. R. App. P. 24.2(a)(1), defendants were not awarded compensatory damages, thus no bond or deposit is required. Regardless of the award of attorney fees, the award of sanctions are NOT compensatory as the sanctions are punitive damages. *See Commissioner v. Miller*, 914 F.2d 586, 591 (4th Cir.1990) (explaining that punitive damages, unlike personal injury damages, are not excludable from income because “[s]uch damages are a windfall ... over and above any award of compensatory damages”). Defendants were not awarded interest or costs. Pursuant to CPRC Chapter 27 §27.009, “court costs” and “reasonable attorney’s fees” are listed separately, indicating legislative intent that attorney fees are NOT court costs. Furthermore, the attorney fees awarded in the judgment are a debt that should be suspended by the filing of a supersedeas bond. *See Roosth v. Daggett*, 869 S.W.2d 634, 637 (Tex.App.Houston [14th Dist.] 1994, no writ).

5. Pursuant to Tex. R. App. P. 20.1(a)(2) and 35.3(a)(2) and the attached declaration in lieu of affidavit below, Plaintiff Thuesen is entitled to appeal without paying the clerk’s record fee. Plaintiff Thuesen hereby requests a preparation of the record from the trial court clerk.

B. Plaintiff’s Unsworn Declaration in lieu of Affidavit

6. Pursuant to Tex. Civ. Prac. & Rem. Code §132.001, “an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.” Plaintiff Thuesen makes the following unsworn declaration in lieu of an affidavit:
 7. “My name is Mark Thuesen. I am capable of making this unsworn declaration. The facts stated in this document are within my personal knowledge, are true and correct, and I am personally

acquainted with the facts herein stated. I am competent to testify to the matters stated herein. I am a Plaintiff in the above-referenced matter. I am appealing the orders and judgment as set forth in *Plaintiff Thuesen's Notice of Appeal to Either the First or Fourteenth Court of Appeals* as I cannot afford to pay the entire costs of the appeal. I may be able to pay up to \$400 for court costs and appellant filing fees.

8. My liabilities exceed my non-exempt assets, thus I have a negative net worth. Pursuant to Tex. R. App. P. 24.2(a)(1)(A), the amount of my deposit to suspend enforcement of judgment pending appeal "must not exceed the lesser of: (A) 50 percent of the judgment debtor's current net worth..." Thus if an appellant has a negative net worth, 50 percent of a negative net worth is a zero cash deposit.
9. I do not have current employment income or government-entitlement income. I do not have a spouse. I do not have real property.
10. I have cash to pay my monthly expenses that exceed \$3,000 per month. My debts exceed \$30,000. I do not have excess amounts on deposit that I may withdraw, nor a line of credit or other loan for court costs.
11. I am pursuing this appeal *pro se* and have not asked an attorney to provide free legal services, nor has any attorney agreed to pay or advance court costs.
12. My name is Mark Lawrence Thuesen, my date of birth is October 15, 1968, and my address is P.O. Box 540365, Houston, Texas, 77254, United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Harris County, State of Texas, on the 13th day of August, 2014."

/s/ Mark Thuesen
Mark Thuesen, Declarant

Respectfully submitted,

/s/ Mark Thuesen

Mark Thuesen, *Pro se*

P.O. Box 540365

Houston, Texas 77254

Telephone: (585) 300-5793

Email: xtraderweb@hotmail.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing instrument was served on the party listed below, pursuant to Tex. R. Civ. P. 21 and 21a(a)(2) via email, on this 13th day of August 2014.

James A. Hemphill

Matthew B. Baumgartner

GRAVES, DOUGHERTY, HEARON & MOODY, P.C.

401 Congress Ave., Suite 2200

Austin, Texas 78701

Telephone: 512-480-5762

Facsimile: 512-536-9907

Email for Jim Hemphill: jhemphill@gdhm.com

Email for Matt Baumgartner: mbaumgartner@gdhm.com

Defendant's attorney for Swamplot Industries LLC, Laurence David Albert, and Beth Anne Brinson

/s/ Mark Thuesen

Mark Thuesen, *Pro se*

In light of the above findings and holdings, the Court further ORDERS that Mark Thuesen's 2012 Counter-Claims against Swamplot Industries LLC, Laurence Albert, and Beth Brinsdon are hereby DISMISSED WITH PREJUDICE.

Signed this **JUL 28 2014** day of July, 2014.



HON. MIKE ENGELHART
JUDGE PRESIDING

JUC8H (NR4#)
INT6510

JUSTICE INFORMATION MANAGEMENT SYSTEM
CIVIL CASE INTAKE
GENERAL PARTY INQUIRY

AUG 15, 2014(C1)
OPT: _____ - INT
PAGE: 1 - 2

CASE NUM: 201249262__ PJN> __ TRANS NUM: _____ CURRENT COURT: 151 PUB? __
CASE TYPE: MALICIOUS PROSECUTION CASE STATUS: READY DOCKET
STYLE: SWAMPLOT INDUSTRIES LLC VS 2520 ROBINHOOD AT KIRBY CONDOMINI

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**** ACTIVE PARTIES ****

PJN NUM	PER/CONN NUMBER	COC	BAR	PERSON NAME	PTY STAT	ASSOC.	ATTY
-	00012-0001	DEF	00787674	MALISOW, CRAIG PHILLIP		HEMPHILL, JAM	
-	00010-0001	3PD		CARPENTER, AARON NEIL			
-	00006-0002	3PP		THUESEN, MARK L		PRO-SE	
-	00018-0001	DEF		AMERISURE INSURANCE COMPANY			
-	00014-0001	PLT		THUESEN, MARK		PRO-SE	
-	00008-0001	AGT		CREATIVE MANAGEMENT COMPANY IN			
-	00007-0001	AGT		2520 ROBINHOOD AT KIRBY CONDOM			
-	00004-0001	PLT	06095650	BRINDSON, BETH		DOYLE, MICHAEL	

==> (10) CONNECTION(S) FOUND

1=INACTIVE 2=ATY. INQ. 3=ACT.ENTRY 4=ISS. SERV. 5=DOC. INQ.
6=CASE INQ. 7=BACKWARD 8=FORWARD 9=PTY. ADDR. 10=REFRESH 11=HELP

JUC8H (NR4#) JUSTICE INFORMATION MANAGEMENT SYSTEM AUG 15, 2014(C1)
INT6510 CIVIL CASE INTAKE OPT: _____ - INT
GENERAL PARTY INQUIRY PAGE: 2 - 2

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=====
***** ACTIVE PARTIES *****
PJN PER/CONN COC BAR PERSON NAME PTY ASSOC. ATTY
NUM NUMBER STAT
_ 00003-0001 PLT 06095650 ALBERT, LAURENCE DOYLE, MICHAEL
_ 00001-0001 PLT 06095650 SWAMPLOT INDUSTRIES LLC DOYLE, MICHAEL

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