

NO. D-1-GV-08-002014

STATE OF TEXAS,  
Plaintiff

v.

AMERITRUST TITLE COMPANY,  
Defendant

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

**SPECIAL DEPUTY RECEIVER’S TURNOVER APPLICATION  
[ENTERPRISE BANK]**

**TO THE HONORABLE JUDGE OF SAID COURT:**

CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Ameritrust Title Company, (the “SDR” and “Ameritrust” respectively), files this Turnover Application [Enterprise Bank] (the “Application”).

**I. INTRODUCTION AND SUMMARY OF RELIEF**

1.1 The Special Deputy Receiver files this Turnover Application to require respondent Enterprise Bank to turnover to the receivership estate certain funds that it holds on behalf of Ameritrust Title Company and to declare that Respondents Jose Villelas and Leydi Villelas (the “Villelases”) and Commonwealth Insurance Company have no claim to the funds. Enterprise Bank makes no claim to the money. The Receivership Court has already ruled that title to and the right to possess the money should be resolved in this delinquency proceeding.

1.2 The Texas Title Guaranty Association (“TTIGA”) supports this Application.

1.3 The SDR files this Application pursuant to TEX. INS. CODE ANN. § 443.201. The SDR is authorized to file this Application pursuant to TEX. INS. CODE ANN.

§ 443.151, which provides, *inter alia*, that the SDR is to conduct the business of the estate. The subject matter of this Application has been referred to the Special Master appointed in this proceeding in accordance with Paragraph III of the *Order of Reference to Master* entered on March 25, 2009.

### **III. JURISDICTION AND VENUE**

3.1 This Court has jurisdiction to enter the relief sought pursuant to the provisions of the *Insurer Receivership Act*, including but not limited to Sections 443.005 and 443.008.

3.2 This Court has exclusive jurisdiction over the subject matter of this application pursuant to TEX. INS. CODE § 443.005, as it concerns: (1) the recovery of the property of the estate, and (2) a request to enforce a stay and injunctions under TEX. INS. CODE § 443.008. TEX. INS. CODE § 443.005 (c) provides that this Court has exclusive jurisdiction of all property of the Defendant [Ameritrust], wherever located, including property located outside the territorial limits of the State of Texas. The authority to make such a request is contained in TEX. INS. CODE § 443.008, which states in pertinent part:

INJUNCTIONS AND ORDERS. (a) The receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.

3.3 This Court has jurisdiction over Respondents herein pursuant to TEX. INS. CODE § 443.005.

3.4 Exclusive and mandatory venue for this proceeding is in Travis County, Texas pursuant to TEX. INS. CODE § 443.005(g).

### **IV. CONDITIONS PRECEDENT**

4.1 All conditions precedent to jurisdiction have occurred or been complied

with; alternatively, conditions precedent have been waived.

## **V. RESPONDEAT SUPERIOR AND RATIFICATION**

5.1 Whenever the Application alleges that a Respondent did any act or thing, it means: (1) Respondent's attorneys, officers, agents, servants, employees or representatives did such act; (2) at that time such act was done, it was done with the full authorization or ratification of Respondent, and/or (3) it was done in the normal and routine course and scope of employment of Respondent's attorneys, officers, agents, servants, employees, or representatives.

## **VI. THE PARTIES**

6.1 The SDR is the duly appointed Special Deputy Receiver appointed by the Commissioner of Insurance in his capacity as Liquidator.

6.2 Enterprise Bank conducts business in the State of Texas, and may be served by service on William Woodby, CEO, Enterprise Bank, 4600 Gulf Freeway, Houston, Texas 77023.

6.3 Commonwealth Insurance Company has appeared in this receivership proceeding on numerous occasions and may be served with this Application by email service to its attorney, Paul J. McConnell, III, DeLange, Hudspeth, McConnell & Tibbets, L.L.P., 1177 West Loop South, Suite 1700, Houston, Texas 77027 at [pmcconnell@dhmtlaw.com](mailto:pmcconnell@dhmtlaw.com)

6.4 The Villelases have appeared in this receivership proceeding on numerous occasions and may be served with this Application by email service to their attorneys Carlos A. Leon, The Leon Law Firm, P.C., Comerica Bank Building, One Sugar Creek Center Blvd., Suite 980, Sugar Land, Texas 77478 at

[cleon@theleonlawfirm.com](mailto:cleon@theleonlawfirm.com) and Norman Riedmueller, Norman Riedmueller PC & Associates, 6800 West Loop South, Suite 325, Bellaire, Texas 77401-4528 at [riedmueller@covad.net](mailto:riedmueller@covad.net).

## **VII. FACTUAL BACKGROUND**

7.1 Ameritrust was placed in receivership on March 20, 2009 in Cause No. D-1-GV-08-002014 pending in the 261st District Court of Travis County Texas by an Agreed Order Appointing Liquidator and Permanent Injunction (the “Liquidation Order”), which also appointed the Texas Commissioner of Insurance as Liquidator. The Liquidator subsequently designated Cantilo & Bennett, L.L.P., as SDR of Ameritrust effective as of April 16, 2009. Ameritrust was designated an “impaired agent” on March 26, 2009, effective March 20, 2009.

7.2 On or about January 26, 2006, Ameritrust executed a check from its Enterprise Bank escrow account payable to Compass Bank .in the amount of \$64,621.18. Ameritrust wrote the check in connection with its role as escrow agent for a residential property transaction. In the transaction, the Villelases purchased a house located at 6011 Santa Cecilia in Houston, Texas. The Villelases’ lender, Encore Credit, deposited \$123,213.13 in escrow with Ameritrust Title Company for payment of various third parties, including the Seller and the Seller’s lender.

7.3 For unknown reasons, Ameritrust failed to pay off Compass Bank, a lienholder of the residential property the Villelases purchased, at closing. While Compass Bank was supposed to be paid \$85,489.20 to release its lien, Ameritrust only sent \$64,621.18. Compass Bank rejected the “short” amount and returned the check. That original check was apparently lost. On or about October 4, 2006, Enterprise Bank

issued cashier's check No. 75650 in the same amount to the same payee. Compass did not accept the replacement check. Both checks have been lost and neither has been presented for payment. Enterprise Bank remains in possession of the \$64,621.18, plus accrued interest.

7.4 According to the Villelases, Ameritrust's failure to properly pay Compass Bank eventually led to repossession of the property by Compass Bank. The Villelases were evicted from their home in early June of 2006. Encore Credit, the lender from whom the Villelases borrowed money to purchase the house, went unpaid for a period of time.

7.5 Respondent Commonwealth Insurance Company issued a title policy in connection with the Villelases' purchase of the house. Commonwealth eventually paid the Villelases' lender, Encore Credit, approximately \$155,000 pursuant to the title insurance policy. Encore Credit has been made whole and has no claim to the cashier's check or its proceeds. Compass Bank, the payee on the cashier's check, rejected its tender and makes no claims to the funds.

7.6 The Villelases sued various defendants, including Ameritrust and Commonwealth, in Harris County. That lawsuit was stayed by operation of law once Ameritrust was declared insolvent and placed into receivership.

7.7 Since receivership, the Villelases filed three motions for relief from the stay, seeking among other relief, possession of the check(s) or its proceeds. Commonwealth supported the motions. TTIGA joined the SDR in opposition. The Special Master recommended the denial of the motions and ruled that rights to the check proceeds should be determined in the Receivership Court. That order is now final.

7.8 The SDR has filed an application to set a claims filing deadline. The SDR has not adjudicated any POCs as the SDR's application for approval of a POC filing deadline is pending with the Receivership Court. On April 28, 2010, Commonwealth made a written demand to TTIGA that it take no action regarding the cashier's check and asserted that Commonwealth had rights to the cashier's check and proceeds.

### **VIII. CAUSES OF ACTION**

The transactions and occurrences, described above, are incorporated by reference for each cause of action set forth below.

#### **A. Enforcement of the Permanent Injunction and Automatic Stay**

8.1 Enterprise Bank holds funds paid by Ameritrust to which Enterprise Bank has no claim. As of the date of the entry of the Liquidation Order, the SDR "is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located." TEX. INS. CODE ANN. § 443.151 (a). The Liquidation Order expressly applies to "financial institutions" and orders them to "immediately surrender all such property to the Liquidator or his designees." The SDR requests that the Receivership Court order Enterprise Bank to surrender the funds paid for the cashier's checks or their proceeds pursuant to TEX. INS. CODE § 443.008 (a). Subsection (m) of section 443.208 expressly provides that "[n]otwithstanding any other provision of law, bond may not be required of the commissioner or receiver in relation to any stay or injunction under this section.

8.2 The SDR further moves the Court to enforce the Liquidation Order and automatic stay against Commonwealth and the Villelases enjoining them from asserting any claims to the cashier's check, funds paid for the cashier's check and/or proceeds in any forum other than the Receivership Court.

**B. Turnover of the funds paid for the cashiers checks and/or proceeds**

8.3 The SDR is entitled to recover the money from Enterprise Bank pursuant to TEX. INS. CODE ANN. § 443.201. Concurrent with the filing of this Application, the SDR has served Enterprise Bank with a written demand for the delivery of the funds referencing by number and court and docket number of this receivership action and otherwise complying with the requirements of TEX. INS. CODE ANN. § 443.201 (a). At this time, the SDR seeks no additional relief against Enterprise Bank other than the turnover of the funds. In the event Enterprise Bank fails to comply with its obligations to turnover the funds, the SDR reserves the right to seek the recovery of its attorneys fees, costs and other expenses.

**C. Declaratory Judgment**

8.4 The SDR requests the Court to declare that the cashier's check, funds paid for the cashier's check and/or proceeds are "property of the estate" and not subject to any liens or trust, express, constructive or implied. The SDR further requests the Court to declare that no other parties, including but not limited to Commonwealth and the Villelases, have any claims to the funds.

**D. Award of Attorney's Fees and Other Costs**

8.4 The SDR has incurred expenses, including but not limited to litigation costs, costs of court and other related expenses, and the hiring of the undersigned counsel and agreeing to pay reasonable and necessary attorneys' fees, as a direct and proximate result of the transactions and occurrences described above. The SDR prays for an award of its reasonable and necessary attorneys fees as are equitable and just.

**IX. NO WAIVER**

9.1 Nothing in this Application or the relief sought herein shall affect, in any way, 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. The automatic stay and the provisions of the Liquidation Order remain in effect unless expressly modified the Receivership Court. The SDR expressly does not waive, release and/or settle any claims against any parties.

#### **X. NOTICE**

5.1 The SDR has served this Application to the registered agent for Enterprise Bank, to Respondents Commonwealth and the Villelases, to TTIGA and all other known parties at interest by email.

#### **XI. OFFER OF PROOF AND VERIFICATION**

6.1 This Response is verified by the affidavit and certification pursuant to TEX. INS. CODE §443.017(b) of Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Ameritrust Title Company.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, CANTILO & BENNETT, L.L.P., solely in its capacity as Special Deputy Receiver of Ameritrust Title Company respectfully request that this Court:

1. Order Enterprise Bank to turnover the funds paid for the cashier's check and/or its proceeds;
2. Enforce the Liquidation Order against Commonwealth and the Villelases enjoining them from asserting any claims to the cashier's check, funds paid for the cashier's check and/or proceeds in any forum other than the

Receivership Court;

3. Declaring that the cashier's check, funds paid for the cashier's check and/or proceeds are "property of the estate" and not subject to any liens or trust, express, constructive or implied and, further declaring that no other parties, including but not limited to Commonwealth and the Villelases, have any claims to the cashier's check, funds paid for the cashier's check and/or proceeds;
4. Awarding the SDR its reasonable and necessary attorneys fees as are equitable and just; and
5. Granting such other and further relief to which the SDR may be justly entitled.

Respectfully submitted,

By: /s/Christopher Fuller  
Christopher Fuller  
Texas Bar No. 07515500  
4612 Ridge Oak Drive, Austin, Texas  
78731  
Tel. (512)470-9544  
Fax (512)374-0957  
cfuller@fullerlaw.org  
Attorney for Cantilo & Bennett, L.L.P.,  
solely in its capacity as the  
Special Deputy Receiver of Ameritrust Title  
Company

**CERTIFICATE OF SERVICE**

I certify that on May 5, 2010, a true and correct copy of this Application was

served pursuant to the Order of Reference, the Texas Rules of Civil Procedure and TEX. INS. CODE ANN. SEC. 443.007(d) on the following by email, except as specifically noted.

/s/Christopher Fuller  
Christopher Fuller

Tom Collins, Special Master  
c/o Ms. Jean Sustaita  
P.O. Box 149104  
Mail Code 305-1D  
Austin, TX 78701  
Jean.Sustaita@tdi.state.tx.us

Joshua Godbey  
Assistant Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548  
joshua.godbey@oag.state.tx.us

Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
Attorneys for the Texas Title Guaranty  
Association  
P.O. Box 2212  
Austin, TX 78768-2212  
bburner@mwlaw.com  
bmccandless@mwlaw.com

Carlos A. Leon  
The Leon Law Firm, P.C.  
Comerica Bank Building  
One Sugar Creek Center Blvd., Suite 980  
Sugar Land, Texas 77478  
cleon@theleonlawfirm.com

Alison H. Moore  
Thompson, Coe, Cousins & Irons, L.L.P.  
700 N. Pearl St., 25th floor  
Dallas, TX 75201  
amoore@thompsoncoe.com

Claire W. Parsons  
Attorney at Law  
Wilson Elser Moskowitz Edelman & Dicker LLP  
5847 San Felipe, Suite 2300  
Houston, TX 77057-4033  
claire.parsons@wilsonelser.com

Norman Riedmueller  
Norman Riedmueller PC & Associates  
6800 West Loop South, Suite 325  
Bellaire, TX 77401-4528  
riedmueller@covad.net

Paul J. McConnell, III  
DeLange, Hudspeth, McConnell & Tibbets, L.L.P.  
1177 West Loop South, Suite 1700  
Houston, Texas 77027  
Fax (713) 871-2020  
pmcconnell@dhmtlaw.com

Internal Revenue Service  
Special Procedures Branch  
P.O. Box 250  
300 East 8th St., Ste. 352, Mail Stop 5022A  
Austin, TX 78701

Angel Garrett  
Texas Department of Insurance  
Financial/Rehabilitation & Liquidation Oversight Division  
333 Guadalupe, Mail Code 305-1D  
Austin, TX 78701  
Angel.Garrett@tdi.state.tx.us

Rachel Giani  
Texas Department of Insurance  
Financial/Rehabilitation & Liquidation Oversight Division  
333 Guadalupe Mail, Code 305-1D  
Austin, TX 78701  
Rachel.Giani@tdi.state.tx.us

Leanne Layne  
Texas Department of Insurance  
Financial/Rehabilitation & Liquidation Oversight Division  
333 Guadalupe, Mail Code 305-1D  
Austin, TX 78701  
Leanne.Layne@tdi.state.tx.us

Myra Garrett  
Texas Department of Insurance  
Financial/Rehabilitation & Liquidation Oversight Division  
333 Guadalupe, Mail Code 305-1D  
Austin, TX 78701

Myra.Garrett@tdi.state.tx.us

Kathy Gartner  
Texas Department of Insurance  
Financial/Rehabilitation & Liquidation Oversight Division  
333 Guadalupe, Mail Code 305-1D  
Austin, TX 78701  
Kathy.Gartner@tdi.state.tx.us

Felicia Kyle  
Sutherland Asbill & Brennan LLP  
909 Fannin Street, Suite 2200  
Houston, TX 77010  
felicia.kyle@sutherland.com

Enterprise Bank  
William Woodby  
CEO, Enterprise Bank  
4600 Gulf Freeway  
Houston, Texas 77023.

### **APPLICANT'S NOTICE OF SUBMISSION**

Pursuant to the terms of the Order of Reference to Master entered by the District Court in this cause, the SDR's Turnover Application [Enterprise Bank] is hereby set for written submission before the Special Master, Tom Collins, on May 31, 2010.

The Special Master has asked that the following rules be provided you:

1. Any objection must be filed with the Travis County District Clerk at least three (3) calendar days before the submission date.
2. A copy of any objection shall be served by email by such date on:
  - (a) The Special Master's Docket Clerk, Ms. Jean Sustaita at [Jean.Sustaita@tdi.state.tx.us](mailto:Jean.Sustaita@tdi.state.tx.us);
  - (b) The undersigned counsel, Christopher Fuller at [cfuller@fullerlaw.org](mailto:cfuller@fullerlaw.org); and
  - (c) All interested parties, including those listed on the Applicant's Certificate of Service.
3. The objecting party shall coordinate with the SDR's counsel and the Docket Clerk [(512)463-6450] to obtain an oral hearing setting for argument on the Application and Objection, and complete and attach an "Objecting Party's Notice of Oral Hearing" to the objection.
4. The written objection must specifically list all reasons for objection with supporting references to and discussion of statutory and case authorities. Reasons not stated in writing will not be considered orally.
5. **Failure to file timely a written objection before the Special Master constitutes a waiver of the right to object to the Special Master's recommendation to the District Court.**
6. Any Acknowledgment of Notice and Waiver to be filed by the Guaranty Association or other interested party should be filed at least three (3) calendar days before the submission or hearing date.

/Christopher Fuller/  
Christopher Fuller

**SPECIAL DEPUTY RECEIVER'S CERTIFICATION PURSUANT TO TEX. INS.CODE  
ANN. §443.017(b)  
AFFIDAVIT OF SUSAN E. SALCH**

State of Texas  
County of Travis

BEFORE ME, the undersigned authority appeared Susan E. Salch, who after being by me duly sworn, stated the following under oath:

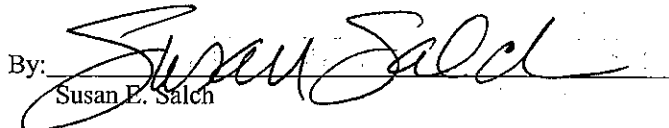
1. My name is Susan E. Salch. I am competent to make this affidavit. The statements of fact set forth herein are true and correct, and are within my personal knowledge.

2. I am a partner in CANTILO & BENNETT, L.L.P., the Special Deputy Receiver of Ameritrust Title Company (the "SDR" and "Ameritrust"). I am duly authorized to make this Certification and Affidavit on behalf of the SDR.

3. I certify that the exhibits, books, accounts, records, papers, correspondence, and/or other records and documents attached hereto were produced pursuant to TEX. INS. CODE ANN. §443.017(b), are true and correct copies of records created by and filed with the Receiver's office in connection with the receivership of this delinquent insurer, and are held by the Special Deputy Receiver in its official capacity.

4. I further state that I have read the statements contained in the attached Application and that they are true and correct based on my personal knowledge, my review of estate records and my consultation with my staff and sub-contractors.

5. Further affiant sayeth not.

By:   
Susan E. Salch

**SUBSCRIBED AND SWORN TO BEFORE ME** on May 4, 2010, by Susan E. Salch, on behalf of CANTILO & BENNETT, L.L.P., solely in its capacity as the Special Deputy Receiver of Ameritrust Title Company in receivership.

  
Notary Public

