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April 9, 2015

Mr. Steve Sadowsky
Historic Preservation Officer
City of Austin
One Texas Center
505 Barton Springs Rd., 5th Floor
Austin, Texas 78704

Via E-Mail at steve.sadowsky@austintexas.gov

Re: No. 03-14-00267-CV; *Daisy Wanda Garcia v. Thomas Lee Baumgarten*, in the Court of Appeals for the Third Judicial District of Texas at Austin and Cause No. D-1-GN-12-002429; *Baumgarten v. Garcia*; in the 201st Judicial District Court, Travis County, Texas

Dear Mr. Sadowsky:

I represent Paul Jennings Baumgarten, as independent executor to the Estate of Thomas Lee Baumgarten, deceased, in the above-captioned matters. I understand Mr. Baumgarten has applied for a demolition permit from the City of Austin and you are reviewing the file on that permit application. I also understand that Daisy Wanda Garcia recently informed you that she contends there is active litigation regarding a right to demolish the property, which statement is incorrect.

I believe it would be helpful to give you some background on this matter and explain the current procedural posture on this matter in the hopes that it will help in your consideration of the pending demolition permit.

Thomas Baumgarten and Daisy Garcia bought the property located at 1901 Exposition Boulevard that is the subject of the demolition permit in 1979 as cotenants. The house had been built many years before, in the 1940s long before Ms. Garcia was even aware of its existence, and was occupied by the prior owner before Mr. Baumgarten and Ms. Garcia purchased it. Mr. Baumgarten and Ms. Garcia parted ways but continued to be co-owners of the house to this day.

In 2011, after not talking for thirty or so years, Ms. Garcia hired a lawyer that threatened to sue Mr. Baumgarten if he did not gratuitously deed his 1/2 ownership interest in the property to her. Mr. Baumgarten eventually filed a partition lawsuit against Ms. Garcia to sell the property and divide the proceeds and defeated all of Ms. Garcia's defenses to his partition claims on summary judgment.

The parties then mediated the case and ultimately signed a settlement agreement. *See* Tab 1, Settlement Agreement. The Settlement Agreement provided Ms. Garcia will pay a certain sum of money by a certain date from the proceeds of a reverse mortgage for Mr. Baumgarten's 1/2 ownership interest in the property. It further provides:

Notwithstanding any of the foregoing, if Garcia is unable to obtain a reverse mortgage within 90 days from the effective date of this Agreement, Baumgarten's quitclaim deed held in escrow shall be returned to Baumgarten and Baumgarten and Garcia agree that Garcia will vacate the Property within 60 days thereafter, and the parties will list the Property for sale at a price of the average of three appraisals, will use a real estate agent selected by Baumgarten, will sell the Property to the first person or entity who offers at least the list price, with Baumgarten and Garcia splitting the sales proceeds and costs evenly (excluding taxes and insurance, which shall be borne solely by Garcia), and will sign all documents necessary to accomplish such a sale.

See Tab 1, Settlement Agreement at ¶ 8.

Ms. Garcia did not pay Mr. Baumgarten as agreed. Consequently, Mr. Baumgarten amended his lawsuit to assert a claim that Ms. Garcia breached her obligation in the settlement agreement and was now obligated to vacate the property so it could be sold. The trial court found Ms. Garcia had breached her agreement and ordered her to vacate the property. *See* Tab 2, Summary Judgment (April 18, 2014).

Ms. Garcia refused to vacate the property. Instead, Ms. Garcia asked the trial court to suspend the sale of the property. The trial court denied her request. *See* Tab 3, Order on Defendant's Motion to Set Alternate Security for Suspension of Judgment (September 2, 2014). Ms. Garcia then asked the Third Court of Appeals on two different occasions to suspend the sale of the property. The Third Court of Appeals denied both of Ms. Garcia's requests. *See* Tab 4, Order from Third Court of Appeals (May 16, 2014) and Tab 5, Order from Third Court of Appeals (September 19, 2014). Ms. Garcia then asked the Supreme Court of Texas to suspend the sale of the property. The Supreme Court of Texas denied Ms. Garcia's request. *See* Tab 6, Order from Supreme Court of Texas (October 2, 2014).

Ms. Garcia then requested that the Court set the amount of a supersedeas bond to suspend enforcement of the judgment. The trial court set the bond amount at \$175,000 and Ms. Garcia did not post the requisite bond. After an evidentiary hearing in October of 2014, Ms. Garcia was held in contempt of court for refusing to vacate the property. *See* Tab 7, Order Finding Defendant Daisy Wanda Garcia in Contempt of Court (October 14, 2014). Ms. Garcia finally vacated the property so that it could be sold per court order.

The property was listed for sale in November of 2014 pursuant to the trial court's order. An offer has been made and accepted and a contingency in the contract requires the buyer and seller to obtain a demolition permit. Because the house is in such poor condition, as evidenced by inspection reports you may have already seen, in our opinion the property is worth more without the house than it is with the house.

After the property was listed for sale, Tom Baumgarten passed away. Mr. Baumgarten's will has been probated in a matter in Houston by his brother, Paul. It is undisputed that Ms. Garcia is not named in Mr. Baumgarten's will.

While not relevant to the Landmark Commission's proceedings, in what appears to be a last ditch effort to thwart the sale of the property she previously agreed to, Ms. Garcia has recently claimed in the probate court that she was married to Mr. Baumgarten and is entitled to some share of his community estate. Ms. Garcia's new claim that she was married to Mr. Baumgarten is contrary to her sworn deposition testimony and her brief currently pending at the Third Court of Appeals, both of which deny that she and Mr. Baumgarten were ever married. *See* Tab 8, Deposition transcript and Tab 9, Excerpt from Garcia's brief.

Moreover, even if she were married to Mr. Baumgarten, which she was not, that does not impact her agreement and the court order to vacate and sell the house. The probate court will not be deciding if the Exposition Blvd. property can be torn down or sold – it will only be deciding if Ms. Garcia is entitled to any share of Mr. Baumgarten's estate, including any of the proceeds of the sale of the house. The probate proceeding will not affect anything to be decided by the Landmark Commission, or vice versa.

Ms. Garcia appears to be dissatisfied with the agreement she made with Mr. Baumgarten and is apparently now going to whatever lengths she can to try and avoid the sale of the property. Despite Ms. Garcia's repeated, unsuccessful efforts to stop or delay the house sale, the trial court has ordered this property be sold, the appellate courts – including the Supreme Court of Texas – have denied Garcia's requests to stop the sale, and obtaining a demolition permit is the only contingency to the contract to sell the property. Ms. Garcia's actions appear to be yet another attempt by Ms. Garcia, without legitimate basis, to try to delay or stop the sale of the house. Several Texas courts have seen through Ms. Garcia's efforts in rejecting them, and we trust that the Landmark Commission will do so as well.

I am hopeful the foregoing will be helpful in the Landmark's Commission's consideration of this demolition permit application. Please let me know if the Landmark Commission needs anything further or has any questions about the foregoing.

Sincerely,

/s/ Nicholas P. Laurent

Nicholas P. Laurent

Enclosures/

cc: Mr. David Armburst *via E-Mail*
Mr. Eric deYoung *via E-Mail*
Mr. Paul Baumgarten *via E-Mail*

TAB 1

THOMAS LEE BAUMGARTEN,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
DAISY WANDA GARCIA,	§	
<i>Defendant.</i>	§	201 ST JUDICIAL DISTRICT

CONFIDENTIAL MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (the “Agreement”) is made between and among plaintiff, Thomas Lee Baumgarten, (“Baumgarten”) and defendant, Daisy Wanda Garcia (“Garcia”).

I. RECITALS

A. **WHEREAS**, a dispute exists between and among Baumgarten, on the one hand, and Garcia, on the other hand, concerning ownership and partition of the real property located at 1901 Exposition Blvd., Austin, Travis County, Texas 78703, more particularly described as South Seventy (70’) feet of Lot Eleven (11), Block Eighteen (18), WESTFIELD “A”, an addition in the City of Austin, Travis County, Texas, according to the map or plat of record in Volume 3, Page 103, Plat Records, Travis County, Texas (the “Property” or the “Exposition Blvd. Property”).

B. **WHEREAS**, on or about August 9, 2012, Baumgarten filed a civil suit against Garcia styled *Thomas Lee Baumgarten v. Daisy Wanda Garcia*, Cause No. D-1-GN-12-002429 in the 201st Judicial District Court of Travis County, Texas (“the Lawsuit”).

C. **WHEREAS**, bona fide disputes and controversies exist between and among the Parties regarding various claims and causes of action, including claims and causes of action that were or could have been asserted by any of the Parties, with all the Parties denying liability as to any other Party.

D. **WHEREAS**, the Parties desire to compromise and settle all claims and causes of action that may exist between and among them arising out of the transactions forming the basis of the Lawsuit.

E. **NOW, THEREFORE**, in consideration of the covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

II. DEFINITIONS

In addition to the other defined terms in this Agreement, for purposes of this Agreement, certain initial capital letter (unless otherwise provided) terms (and any variation thereof) shall have the meaning ascribed to them in this Agreement, including the following definitions. The following terms may be supplemented in the balance of the Agreement. In the event of any conflict, the description and definition as supplemented in the balance of the Agreement shall control.

1. **“Baumgarten”** shall mean Thomas Lee Baumgarten and all of his Representatives.

2. **“Garcia”** shall mean Daisy Wanda Garcia and all of her Representatives.

3. **“Lawsuit”** shall mean *Thomas Lee Baumgarten v. Daisy Wanda Garcia*, Cause No. D-1-GN-12-002429 in the 201st Judicial District Court of Travis County, Texas.

4. **“Effective Date”** shall mean the date the last of the Parties executes this Agreement.

5. **“Parties”** shall mean, collectively, Baumgarten and Garcia, and their respective Representatives.

6. **“Representative(s)”** shall mean, with respect to an applicable Party and except as otherwise provided in this Agreement, the spouse, heirs, executors, administrators, beneficiaries,

trustees, receivers, attorneys, assigns, predecessors, successors, partners, servants, representatives, agents, agencies, professional advisors and any other similar or related persons or entities, and each of their respective Representatives.

7. “**Settlement Consideration**” shall mean all amounts specified in Paragraph 8 of this Agreement below.

III. SETTLEMENT TERMS

The Parties acknowledge and agree that this Agreement represents a compromise and settlement of the disputes, as described herein. It is expressly acknowledged and agreed that: (i) the terms of this Agreement are contractual and not merely recitals; (ii) the agreements contained in this Agreement, and the consideration transferred, is to compromise disputed claims, avoid litigation, and buy peace; and (iii) no payments made or releases or other consideration given shall be construed as an admission of liability on the part of any Party, all such liability is expressly denied.

8. Settlement Consideration. Garcia agrees to pay Baumgarten the highest amount possible from loan proceeds she will obtain under a reverse mortgage on the Property, not to exceed \$337,500, but in any event no less than \$328,000, to purchase Baumgarten’s ownership interest in the Exposition Blvd. Property (“Baumgarten’s 1/2 Interest”). If Garcia obtains a reverse mortgage in excess of \$337,500, anything above \$337,500 may be used for her own use. Garcia agrees to proceed diligently in obtaining a reverse mortgage in the amount of \$337,500, but not less than \$328,000, and agrees to promptly complete all counseling and similar requirements that may be necessary and execute all documents reasonably promptly that may be necessary to obtain such a mortgage. In connection with Garcia’s application for a reverse mortgage, Baumgarten agrees to execute a quitclaim deed conveying his ownership interest in the Exposition Blvd. Property to Garcia and deliver the deed to an escrow agent to hold in

escrow to satisfy the reverse mortgage lender's requirements. In such a deed, it is expressly understood that Baumgarten will not and does not make any warranties. If Garcia is unable to obtain a reverse mortgage as described above, the quitclaim deed shall be returned to Baumgarten. All of the reverse mortgage proceeds obtained by Garcia as described above shall be paid directly to Baumgarten or to an escrow officer to then be paid to Baumgarten. In no event shall any proceeds of any reverse mortgage be paid directly to Garcia, until the sums owed to Baumgarten have been paid. Garcia, and not Baumgarten, shall bear all costs, expenses, and closing costs incurred in obtaining a reverse mortgage. Garcia agrees to assume all responsibility for the reverse mortgage and any obligations that flow from the reverse mortgage and expressly disclaims Baumgarten from any and all responsibility for obligations that flow from the reverse mortgage. Any closing or other costs for the reverse mortgage may be added to the amount of the reverse mortgage. The Parties understand that the proceeds of a reverse mortgage will be paid by the lender directly to Baumgarten, or to the escrow agent to be paid to Baumgarten, in a first installment on closing in an amount of at least \$190,000, and a second installment for the balance one year and one day from the closing date. The second installment payment to Baumgarten shall be secured by Garcia's agreement that those proceeds will be paid to Baumgarten, and Garcia agrees to execute a deed of trust in favor of Baumgarten, subordinate to the reverse mortgage lien, to secure the second installment payment. Furthermore, Garcia agrees that if the second reverse mortgage installment is not paid to Baumgarten within thirteen months from the closing date, she agrees to convey a 1/3 ownership interest in the Exposition Blvd. Property to Baumgarten, agrees to then sell with Baumgarten the Exposition Blvd. Property in an arm's length transaction within 90 days from the date the second reverse mortgage installment is due to Baumgarten, and further agrees that Baumgarten shall receive from the sale

proceeds the amount of the second reverse mortgage installment due Baumgarten. Garcia has exclusive control over the sale. The Parties acknowledge and agree that \$50 of the Settlement Consideration shall serve as consideration for the Parties' Confidentiality obligations as set forth below in the "Confidentiality" paragraph. Notwithstanding any of the foregoing, if Garcia is unable to obtain a reverse mortgage within 90 days from the effective date of this Agreement, Baumgarten's quitclaim deed held in escrow shall be returned to Baumgarten and Baumgarten and Garcia agree that Garcia will vacate the Property within 60 days thereafter, and the parties will list the Property for sale at a price of the average of three appraisals, will use a real estate agent selected by Baumgarten, will sell the Property to the first person or entity who offers at least the list price, with Baumgarten and Garcia splitting the sales proceeds and costs evenly (excluding taxes and insurance, which shall be borne solely by Garcia), and will sign all documents necessary to accomplish such a sale. All of the foregoing paragraph 8 shall be referred to as the "Settlement Consideration."

9. Release of Garcia. In consideration of the foregoing, effective upon Baumgarten's receipt in full of the Settlement Consideration, with the intention of binding himself and each of his respective Representatives, Baumgarten, and each of his respective Representatives release, settle, compromise, extinguish, relinquish, absolve, disclaim and forever discharge Garcia, and each of her respective Representatives of and from any and all rights, claims, counterclaims, charges, causes of action, demands, debts, liabilities, agreements, promises, damages, losses and claims for recovery, fixed or contingent, liquidated or unliquidated, known or unknown, arising at any time from the beginning of time to the Effective Date of this Agreement, in connection with, arising from, or to arise by reason of, any matters asserted in or which might have been asserted in the Lawsuit or which relate in any way, directly

or indirectly, to the Lawsuit, any dealings between Baumgarten and Garcia, and/or any other matter, including but not limited to those claims asserted in the Lawsuit for partition, declaratory relief, and attorneys' fees; provided, however, that this release does not affect the Parties' right and obligations under the terms of this Agreement.

10. Release of Baumgarten. In consideration of the foregoing, Garcia, and each of her respective Representatives release, settle, compromise, extinguish, relinquish, absolve, disclaim and forever discharge Baumgarten and each of his respective Representatives of and from any and all rights, claims, counterclaims, charges, causes of action, demands, debts, liabilities, agreements, promises, damages, losses and claims for recovery, fixed or contingent, liquidated or unliquidated, known or unknown, arising at any time from the beginning of time to the Effective Date of this Agreement, in connection with, arising from, or to arise by reason of, any matters asserted in or which might have been asserted in the Lawsuit or which relate in any way, directly or indirectly, to the Lawsuit, any dealings between Baumgarten and Garcia, and/or any other matter, including but not limited to those claims asserted in the Lawsuit for partition, declaratory relief, and attorneys' fees; provided, however, that this release does not affect the Parties' right and obligations under the terms of this Agreement.

11. Dismissal of Lawsuit. Upon Garcia's payment of the first installment to Baumgarten of at least \$190,000, Baumgarten shall direct his attorneys to file an Agreed Motion to Dismiss with Prejudice and submit the Order to Dismiss with Prejudice, dismissing all claims that were or could have been asserted by any party in the Lawsuit, with prejudice to the refiling of same. The Parties shall direct their attorneys to use all efforts reasonably necessary to obtain entry of the Order. The Parties agree that such a dismissal with prejudice shall not affect Baumgarten's rights to enforce Baumgarten's rights after the first installment payment.

12. Garcia's Obligations. Garcia agrees to assume full responsibility for any obligations that are attendant with any financing for her payment of the Baumgarten 1/2 Interest, including the obligation to timely pay all property taxes, pay homeowner's association dues, maintain insurance on the Exposition Blvd. Property, and pay utilities until the Settlement Consideration is paid in full. Garcia further agrees to maintain the Exposition Blvd. Property in a reasonably good condition that is considered satisfactory to the reverse mortgage lender and to occupy the Exposition Blvd. Property as her primary residence until the Settlement Consideration is paid in full.

13. Indemnity. Should the reverse mortgage lender or any holder of any lien associated with financing to Garcia to pay the Baumgarten 1/2 Interest pursue Baumgarten or seek to collect anything from Baumgarten as a result of Garcia's failure to comply with the terms of the reverse mortgage, Garcia agrees to indemnify and hold Baumgarten harmless from any and all such liability. Garcia expressly assumes any defense costs Baumgarten may incur if the reverse mortgage lender or any holder of any lien associated with the reverse mortgage attempts to pursue Baumgarten or seek to collect anything from Baumgarten as a result of Garcia's failure to comply with the terms of the reverse mortgage

14. Mutual Cooperation. The Parties shall cooperate fully and execute any and all supplemental documents and to take additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement. The Parties agree to participate in good faith with any counseling that may be required by the reverse mortgage lender.

15. Entire Agreement. This Agreement, along with the exhibits hereto, constitutes the

entire agreement, as of the Effective Date, between or among the Parties hereto relating to the subject matter hereof and supersedes any and all prior agreements, arrangements or understandings among the Parties with respect to the subject matter of this Agreement. Any amendments or changes to the terms of this Agreement are ineffective unless they are in writing and executed by all of the Parties actually executing this Agreement. There are no understandings, oral or otherwise, regarding the settlement of the Parties' disputes in the Lawsuit, except as set forth in this Agreement. No Party is entitled to rely on any promise, inducement, assurance or expectation of any other Party to the Lawsuit, unless it is contained in writing in this Agreement.

16. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed copies of manually executed signature pages to this Agreement will be fully binding and enforceable without the need for delivery of the original manually executed signature page.

17. Construction. This Agreement shall not be construed against any Party as the drafting party. The terms and provisions of this Agreement have been jointly agreed to and negotiated by the Parties, with advice of counsel, and represent their collective agreement.

18. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid,

or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

19. Warranties of Parties. Each Party to this Agreement represents and warrants to the others that they have fulfilled the following:

- (a) Read Agreement. A duly authorized representative of the Party has read and understands this Agreement in its entirety, and the consequences and risks associated therewith, including but not limited to, the risk of reliance on certain laws, facts or circumstances which may be later discovered or otherwise;
- (b) Discussions with Counsel. The Party has discussed all aspects of this Agreement with his or its attorneys or had the opportunity to do so and fully understands all of the provisions and their legal and practical effect;
- (c) Voluntary Act. The Party is signing this Agreement freely and voluntarily, without coercion of any kind, and with full knowledge and understanding of its contents;
- (d) Non-Reliance. Except as expressly contained herein, the Party is not relying upon any statement or representation of any agent of any Party being released hereby or any other participant in the Lawsuit;
- (e) No Assignment or Transfer. The Party has not assigned, pledged or transferred or purported to assign or transfer to any person or entity any claim or right or any portion thereof or interest therein they purport to release by this Agreement, except as stated in this Agreement; and
- (f) Authority. The person executing this Agreement on behalf of such Party is fully authorized and legally competent to execute this Agreement as the legal, valid and binding act and deed of such Party, and is a duly authorized representative of such Party.

20. Binding Agreement. This Agreement shall be binding against each respective Party that executes it and shall inure to the benefit of those Parties' Representatives.

21. Notice. Any notice required by this Agreement between the Parties must be in writing and shall be deemed given if delivered personally, including, but not limited to, by courier, by registered or certified mail (return receipt requested), or by facsimile (with receipt of

confirmation). Such notice shall be deemed received on the date of personal delivery or fax and on the third business day following the date on which the notice is mailed by certified or registered mail. Any notice under this paragraph shall be addressed to the respective Party at the following addresses or such other addresses that the Party has given written notice in accordance with the provisions of this paragraph:

Thomas Lee Baumgarten
14452 Misty Meadow Ln.
Houston, TX 77079

w/ a courtesy copy that shall not constitute notice to:

Nicholas P. Laurent
McGinnis, Lochridge & Kilgore, L.L.P.
600 Congress Ave., Suite 2100
Austin, Texas 78701

Daisy Wanda Garcia
1901 Exposition Blvd.
Austin, Texas 78703

w/a courtesy copy that shall not constitute notice to:

John Foster
Foster Ramsey
400 W. 15th Street, Suite 404
Austin, Texas 78701

22. Survival of Covenants. All warranties, covenants, agreements and releases contained in this Agreement shall survive the Effective Date of this Agreement.

23. Captions. The captions, headings and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement.

24. Fees and Costs. Except as otherwise expressly provided herein, the Parties shall bear their own fees and expenses (including attorneys' fees) which were incurred in connection

with the Lawsuit, the controversies released herein and the preparation of this Agreement, except as otherwise provided under this Agreement.

25. Confidentiality. The Parties may disclose to third parties that the Lawsuit settled but shall not disclose to any third party any information concerning the terms of this Agreement without obtaining the written consent of the other Party hereto. The mere fact of the existence of this Agreement, but not the terms of this Agreement, shall be admissible in any court, tribunal, or other proceeding for any purpose without the express consent of both Parties. This Agreement shall not constitute any acknowledgement by either party of the validity or meritorious nature of any claim or defense that has been raised or might have been raised in the Lawsuit. Notwithstanding the foregoing, either Party may, without the consent of the other Party, disclose information concerning this Agreement (a) which it may be required to disclose in order that it not violate any law, rule or regulation applicable to it or that is required to be disclosed by proper discovery request or order of a court of applicable jurisdiction in which case the disclosing party shall use reasonable efforts to inform the other party of such disclosure requirement so that such other party shall have the opportunity to seek a protective order or other confidential treatment, which the disclosing party shall support, (b) to its directors, officers, employees, agents and professional advisors ("Advisors") who have reasonable need to know such information in connection with the approval and performance of this Agreement by such Party (and each party shall be responsible for compliance with this covenant by such Advisors), (c) which is, or shall become, generally available to the public by printed publication or otherwise through no violation of this Agreement by the disclosing Party, and (d) which is cloaked with any applicable legal privilege. In addition, notwithstanding the foregoing, the Parties shall be permitted to disclose information concerning this Agreement and the terms hereof to the extent such

disclosure is reasonably necessary to secure enforcement of any or all of the provisions of this Agreement, through litigation or other legal proceedings of any kind. The Parties expressly agree and understand that the foregoing confidentiality restrictions shall not inhibit either party from talking to or working with a lender, broker, or other necessary person or entity in a good faith effort to obtain a reverse mortgage as contemplated above.

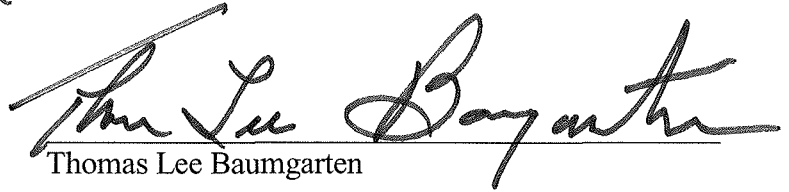
26. Governing Law. This Agreement shall be governed and construed in accordance with the Laws of the State of Texas.

27. Waiver of Conditions. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement in any one or more instances shall be deemed to be or construed as a waiver of the same or of any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not alternative.

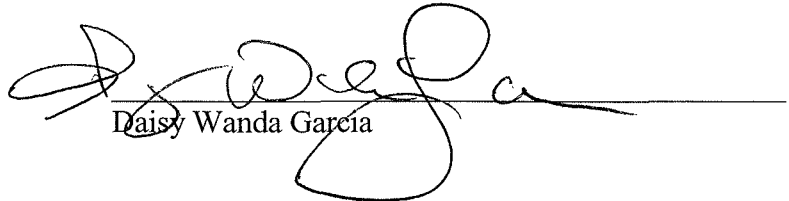
28. Transfer of Utilities. Baumgarten agrees to send a letter to the electric utility and gas utility provider for the Exposition Blvd. Property, copying Garcia, indicating his name should be removed from the account for electric and gas utility services at the Exposition Blvd. Property, and requesting that the accounts be transferred to Garcia's name. Baumgarten has no obligation beyond this to have the accounts transferred.

[Remainder of page intentionally left blank]

Executed this 2 day of October, 2013.


Thomas Lee Baumgarten

Executed this 22 day of October, 2013.


Daisy Wanda Garcia

TAB 2

THOMAS LEE BAUMGARTEN,
Plaintiff,

v.

DAISY WANDA GARCIA,
Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**ORDER GRANTING MOTION FOR TRADITIONAL SUMMARY JUDGMENT ON
DEFENDANT'S BREACH OF THE PARTIES' SETTLEMENT AGREEMENT**

On this day, the Court considered Plaintiff's Motion for Traditional Summary Judgment on Defendant's Breach of the Parties' Settlement Agreement (the "Motion"). After considering the papers, all admissible evidence, the Court is of the opinion that the Motion should be and is **GRANTED** in all respects.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. **JUDGMENT** is rendered in favor of Baumgarten and against Garcia on all claims.

2. Within 30 days from the date this judgment is signed, Defendant Daisy Wanda Garcia shall vacate herself and all of her personal property from the real property that is the subject of this litigation located at 1901 Exposition Blvd, Austin, Travis County, Texas 78703, more particularly described as:

South Seventy (70') feet of Lot Eleven (11), Block Eighteen (18), WESTFIELD "A", an addition in the City of Austin, Travis County, Texas, according to the map or plat of record in Volume 3, Page 103, Plat Records, Travis County, Texas (the "Exposition Property").

3. Baumgarten shall have the Exposition Property appraised by three appraisers of his choosing and shall list the Exposition Property for sale at the average of the three appraisals or at a price recommended by the real estate agent/broker retained by Baumgarten, whichever

Filed in The District Court
of Travis County, Texas

APR 18 2014

At Austin, Texas
L. Maria Rodriguez-Mendoza, Clerk

amount is higher. Defendant Daisy Wanda Garcia shall cooperate with Baumgarten's listing of the Exposition Property for sale, shall cooperate with any appraiser(s) hired by Baumgarten to determine a listing price, and shall accept any offer made for at least the listing price. Baumgarten has the sole discretion of selecting the real estate agent/broker that will list and show the Exposition Property. The parties are to evenly split the proceeds and costs of any sale of the Exposition Property (excluding taxes and insurance, which shall be borne solely by Garcia). Baumgarten and Garcia shall sign whatever documents may be necessary to accomplish such a sale.

4. Neither Plaintiff nor Defendant shall interfere with access to the Exposition Property by any real estate agent/broker retained to list and sell the Exposition Property, any real estate agent/broker retained by a potential buyer of the Exposition Property and/or any potential buyers of the Exposition Property so long as access to the Exposition Property occurs between 9:00a.m. and 5:00p.m. Defendant shall provide a key to the Exposition Property to the real estate agent/broker selected by Baumgarten and shall not interfere with the placement of a lockbox on or near the front door of the Exposition Property.

5. If a sale is consummated before the above 30 day deadline to vacate the Exposition Property, Garcia shall completely vacate and remove all of her personal property from the Exposition Property on or before the date of the closing.

6. When Garcia vacates the Exposition Property she shall leave the Exposition Property in the same condition the Exposition Property is in today.

7. Baumgarten shall recover attorneys' fees from Garcia pursuant to Tex. Civ. Prac. & Rem. Code § 38.001 in the amount of \$42,240, which the Court finds are reasonable and necessary, plus expenses and costs of court in the amount of \$5,615.04. The attorneys' fees

awarded in this judgment shall be paid out of Garcia's share of any proceeds she is to receive pursuant to the sale of the Exposition Property.

8. Baumgarten shall recover from Garcia an additional \$15,000 in attorneys' fees if Garcia appeals to the Court of Appeals and Baumgarten prevails, an additional \$7,500 in attorneys' fees if a petition for review is filed with the Supreme Court of Texas, an additional \$10,000 in attorneys' fees in preparing briefs to be filed with the Supreme Court of Texas, and an additional \$2,500 if Baumgarten prevails on appeal. The Court finds that the amount of attorneys' fees identified above for appeal are reasonable and necessary. The conditional attorneys' fees awarded in this judgment shall be paid out of Garcia's share of any proceeds she is to receive pursuant to the sale of the Exposition Property.

9. Baumgarten's objections to Garcia's summary judgment evidence are sustained.

This judgment is final, disposes of all parties and all claims, and is appealable.

SIGNED on this the 18th day of April, 2014.


HONORABLE JUDGE PRESIDING

TAB 3

COPY

NO. D-1-GN-12-002429

THOMAS LEE BAUMGARTEN
Plaintiff

VS.

DAISY WANDA GARCIA
Defendant

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§
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§
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

ORDER ON DEFENDANT'S MOTION TO SET
ALTERNATE SECURITY FOR SUSPENSION OF JUDGMENT

After considering Defendant DAISY WANDA GARCIA'S Motion To Fix The Amount of Security, the response, and the evidence, the Court *DENIES the motion.* (LJ)

~~ORDERS that supersedeas bond or alternate security be posted payable to Plaintiff THOMAS LEE BAUMGARTEN in the amount of \$5,869.94 for revenue from the proceeds of the sale of the property at 1902 Exposition for two years, and~~

~~Defendant WANDA DAISY GARCIA is ORDERED to timely pay all premiums coming due on insurance insuring the property at 1901 Exposition during the pending of her appeal of the judgment in this case.~~

SIGNED the 2nd day of September, 2014.


LORA LIVINGSTON
Judge Presiding

TAB 4

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00282-CV

In re Daisy Wanda Garcia

ORIGINAL PROCEEDING FROM TRAVIS COUNTY

MEMORANDUM OPINION

Relator Daisy Wanda Garcia has filed a petition for writ of injunction and motion for emergency temporary relief. *See* Tex. Gov't Code § 22.221(a); Tex. R. App. P. 52. In her petition, Garcia asks this Court to enjoin the sale of real property, as ordered by the trial court.¹ Based upon the petition and the record before us, we conclude that Garcia has failed to establish that she has no adequate remedy at law. *See* Tex. R. App. P. 24 (suspension of enforcement of civil judgment pending appeal). Accordingly, we deny Garcia's petition for writ of injunction and motion for emergency temporary relief. *See* Tex. R. App. P. 52.8(a).

Scott K. Field, Justice

Before Justices Puryear, Goodwin, and Field

Filed: May 16, 2014

¹ The trial court ordered the sale of the real property in its judgment, signed on April 18, 2014, in cause number D-1-GN-12-002429, 201st District Court of Travis County. Garcia has appealed this judgment, and this Court has assigned cause number 03-14-00267-CV to the appeal.

TAB 5



COURT OF APPEALS

THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547

www.3rdcoa.courts.state.tx.us

(512) 463-1733

J. WOODFIN JONES, CHIEF JUSTICE
DAVID PURYEAR, JUSTICE
BOB PEMBERTON, JUSTICE
JEFF L. ROSE, JUSTICE
MELISSA GOODWIN, JUSTICE
SCOTT K. FIELD, JUSTICE

JEFFREY D. KYLE, CLERK

September 19, 2014

Mr. John L. Foster
John L. Foster, Attorney at Law
812 San Antonio Street, Suite 400
Austin, TX 78701
* DELIVERED VIA E-MAIL *

Mr. Nicholas P. Laurent
McGinnis, Lochridge & Kilgore, LLP
600 Congress Avenue, Suite 2100
Austin, TX 78701
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-14-00267-CV
Trial Court Case Number: D-1-GN-12-002429

Style: Daisy Wanda Garcia
v. Thomas Lee Baumgarten

Dear Counsel:

Appellant's Motion for Emergency Stay, Motion for Review of Supersedeas Deposit Amount, and Supplemental Motion for Review of Supersedeas Deposit Amount were denied by this Court on the date noted above.

Very truly yours,

JEFFREY D. KYLE, CLERK

BY: E. Talerico
Liz Talerico, Deputy Clerk

TAB 6

RE: Case No. 14-0768

DATE: 10/2/2014

COA #: 03-14-00267-CV

TC#: D-1-GN-12-002429

STYLE: IN RE DAISY WANDA GARCIA

Today the Supreme Court of Texas denied the Motion for Emergency Stay and denied the petition for writ of mandamus in the above-referenced case.

HONORABLE CHARLES R. RAMSAY
DISTRICT JUDGE 22ND DISTRICT
COURT
HAYS COUNTY CRIMINAL JUSTICE
CENTER
110 EAST MLK DRIVE

TAB 7

CAUSE NO. D-1-GN-12-002429

THOMAS LEE BAUMGARTEN,
Plaintiff,

v.

DAISY WANDA GARCIA,
Defendant.

§
§
§
§
§
§
§

IN THE DISTRICT COURT
OF TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

OCT 14 2014
At 9:50 M.
Amalia Rodriguez-Mendoza, Clerk

**ORDER FINDING DEFENDANT DAISY WANDA
GARCIA IN CONTEMPT OF COURT**

On October ¹⁴~~3~~, 2014, this matter, in which Defendant Daisy Wanda Garcia was, pursuant to Plaintiff's First Amended Motion to Show Cause Why Defendant Should Not Be Held in Contempt, ordered to show cause why she should not be punished for contempt because she had failed to vacate the residence located at 1901 Exposition Blvd, Austin, Texas 78703, along with all of her personal property on or before May 18, 2014 as ordered by the Court, was heard. Defendant Daisy Wanda Garcia was duly given notice of the order to show cause, her counsel of record duly accepted service of the show cause notice issued by the Court by Rule 11 agreement, the Rule 11 agreement has been filed with the District Clerk, and Defendant Daisy Wanda Garcia appeared personally at the hearing on October 3, 2014.

The Court has considered the pleadings in the Court's file, the evidence presented to the Court, and the arguments of counsel.

After considering the foregoing, the Court **FINDS** Defendant Daisy Wanda Garcia has been provided notice of the allegations made against her, she has had the opportunity to be heard, and she has had the opportunity to show cause why she should not be held in contempt.

The Court specifically finds that, by order of this Court dated September 2, 2014, if Defendant Daisy Wanda Garcia desired to suspend enforcement of the Court's April 18, 2014 summary judgment order she was required to post a supersedeas bond or other adequate security



in the amount of \$175,000 on or before September 22, 2014. The Court **FINDS** that as of today's date, Defendant Daisy Wanda Garcia has not posted a supersedeas bond or other adequate security in the amount of \$175,000.

The Court **FINDS** Defendant Daisy Wanda Garcia continues to occupy the 1901 Exposition Blvd, Austin, Texas 78703 property and currently occupies the 1901 Exposition Blvd, Austin, Texas 78703 property, despite the Court's order to vacate the 1901 Exposition Blvd, Austin, Texas 78703 property on or before May 18, 2014.

After considering the foregoing, the Court **FINDS** that Defendant Daisy Wanda Garcia is guilty of contempt of this Court by reason of the acts set out above.

It is accordingly **ORDERED, ADJUDGED and DECREED** that Defendant Daisy Wanda Garcia is guilty of contempt of Court. The Court imposes the following punishment:

- a. The Travis County District Clerk is ordered to promptly issue a writ of possession that directs the Travis County Sheriff's Office or the Travis County Constable's Office to immediately and forcibly remove Defendant Daisy Wanda Garcia and all of her personal property from the 1901 Exposition Blvd., Austin, Texas 78703 property, the cost of which shall be paid by Garcia by payment to the Court or by deduction of Garcia's share of the proceeds of the sale of the property.
- b. Said writ of possession shall award Baumgarten and his agents and other representatives temporary possession of the 1901 Exposition Blvd., Austin, Texas 78703 property pending the agreed-upon sale.
- c. ~~Defendant Daisy Wanda Garcia is hereby **ORDERED** to immediately deliver to her counsel a key that will open the locks currently on the doors~~

MAZ
If Ms Garcia does not vacate the Exposition Property on or before October 21, 2014, then:



to the 1901 Exposition Blvd., Austin, Texas 78703 property, Defendant Daisy Wanda Garcia is **ORDERED** not to change, alter, manipulate, ~~damage, and/or destroy the locks currently on the doors to the 1901 Exposition Blvd., Austin, Texas 78703 property, and Defendant Daisy Wanda Garcia's counsel is~~ **ORDERED** to promptly deliver all keys ~~provided by Defendant Daisy Wanda Garcia to counsel for Baumgarten.~~ 1D

- d. Baumgarten and his agents and other representatives are permitted to change the locks on the 1901 Exposition Blvd., Austin, Texas 78703 on or after Oct 22, 2014
- e. Defendant Daisy Wanda Garcia is found liable and fully responsible for all expenses associated with the issuance and service of the writ of possession and the removal of Garcia and her personal property from the 1901 Exposition Blvd., Austin, Texas 78703. Defendant Daisy Wanda Garcia may pay these expenses in cash or said expenses may be paid to Baumgarten out of Defendant Daisy Wanda Garcia's share of the proceeds of the agreed-upon sale if Baumgarten pays the expenses at this time. 22nd 1D
- f. Defendant Daisy Wanda Garcia is **FINED** ~~\$1,000~~ ^{100.00} per day from October 1, 2014, until the day she vacates the property either voluntarily or pursuant to the writ of possession. Defendant Daisy Wanda Garcia may pay this fine in cash or said fine may be paid to Baumgarten out of Defendant Daisy Wanda Garcia's share of the proceeds of the agreed-upon sale. 22nd 1D



It is further ordered that Defendant Daisy Wanda Garcia pay the costs of this proceeding,
for which let execution issue.

IT IS SO ORDERED.

SIGNED this 14 day of October, 2014.

Misela D. Manc
HON. JUDGE PRESIDING

I, AMALIA RODRIGUEZ-MENDOZA, District Clerk,
Travis County, Texas, do hereby certify that this is
a true and correct copy as same appears of
record in my office. Witness my hand and seal of
office on 10/14/14



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy:

Billy Powell



TAB 8

1 NO. D-1-GN-12-002429
2 THOMAS LEE BAUMGARTEN,) IN THE DISTRICT COURT
3 Plaintiff,)
4 VS.) TRAVIS COUNTY, TEXAS
5 DAISY WANDA GARCIA,)
6 Defendant.) 201ST JUDICIAL DISTRICT

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ORAL DEPOSITION OF

DAISY WANDA GARCIA

MARCH 20, 2013

VOLUME 1 OF 1

ORAL DEPOSITION OF DAISY WANDA GARCIA, produced as
a witness at the instance of the Plaintiff, and duly
sworn, was taken in the above-styled and numbered cause
on March 20, 2013, from 10:52 a.m. to 12:53 p.m., before
Vanessa J. Theisen, CSR in and for the State of Texas,
reported by machine shorthand, at the law offices of
Foster*Ramsey, 400 West 15th Street, Suite 404, Austin,
Texas 78701, pursuant to the Texas Rules of Civil
Procedure and provisions stated on the record or
attached hereto.

1 Q. Okay. Do you have any children, Ms. Garcia?

2 A. No.

3 Q. Have you ever been married?

4 A. No.

5 Q. And you're not married now?

6 A. No.

7 Q. Okay. Do you have an expectation as to when
8 you're ready to retire from the City of Austin?

9 A. Well, I would like to retire as soon as
10 possible.

11 Q. But you don't have a set date or year in mind?

12 A. No, huh-uh.

13 Q. And can you tell the jury where you live today?

14 A. I live at my house at 1901 Exposition
15 Boulevard.

16 Q. And that's in Austin?

17 A. Right. I live there with my two dogs.

18 Q. Okay.

19 A. They're rescued dogs, and that's our forever
20 home.

21 Q. Okay. During the deposition today, I'm going
22 to use two terms, and I would like to define those terms
23 for you.

24 A. Uh-huh.

25 Q. And if you have any question about the

1 Deposition officer at the time said testimony was taken,
2 the following includes counsel for all parties of
3 record:

4 Mr. Nick Laurent, Attorney for Plaintiff,
5 Mr. John L. Foster, Attorney for Defendant,
6 DAISY WANDA GARCIA.

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to Rule
13 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me this _____ day of
16 _____, 2013.

17

18

19 VANESSA J. THEISEN, Texas CSR 3238
20 Expiration Date: 12/31/14
21 Firm Registration No. 231
22 1511 West 34th Street
23 Houston, TX 77018
24 Phone: (713)223-3300
25 Fax: (713)228-3311



TAB 9

NO. 03-14-00267-CV

**IN THE
THIRD COURT OF APPEALS
AUSTIN, TEXAS**

**DAISY WANDA GARCIA
V.
THOMAS LEE BAUMGARTEN**

**Appealed from
201st District Court of Travis County, Texas.
Cause No. D-1-GN-12-002429**

APPELLANT DAISY WANDA GARCIA'S BRIEF

John L. Foster
State Bar No. 07289000
Foster-Ramsey,
400 W. 15th Street, Suite 404
Austin, Texas 78701
Telephone: 512.476.4473
FASCIMILE 512-610-1617
JFOSTER@FOSTERRAMSEY.COM

**ATTORNEY FOR APPELLANT
DAISY WANDA GARCIA**

APPELLANT REQUESTS ORAL ARGUMENT

STATEMENT OF FACTS

In 1970, Daisy Wanda Garcia, a student at the University of Texas, met Tom Baumgarten, another student, and shortly thereafter Mr. Baumgarten moved into Garcia's apartment. They then lived together continuously until 1981. Garcia alleges that at the time they met Baumgarten had no substantial income and Garcia, whose physician father provided her living expenses, essentially supported Baumgarten during the time they lived together. She testifies that they lived together, essentially as husband and wife, and that she relied upon him to manage her financial affairs. Baumgarten would pay bills, but to obtain funds to do so he would make out checks on her bank account payable to him and she would, without question, sign them.

In 1977 Garcia decided to buy a townhome in Austin, and used the proceeds from the sale of a rent house she owned in Corpus Christi to make the down payment. Baumgarten negotiated the terms of the purchase and arranged that the property would be purchased in both their names, as husband and wife, but, of course, **they were not married.**

In 1979 they sold the townhome and used the proceeds to make the down payment of the property that is the subject of this litigation located at 1901 Exposition Blvd. in Austin. Again Baumgarten handled the negotiations, and the

creditor's claim for six months after the date of sale." Tex. Prop. Code §41.001(c).

The trial court erred in awarding attorneys' fees to Baumgarten, and encumbering Garcia's interest in the proceeds of the sale of her homestead with that claim. That order must be set aside by this Court.

PRAYER

Wherefore, Appellant Daisy Wanda Garcia respectfully prays that the judgments of the trial court be set aside in their entirety, and that this case be remanded to the court for the jury trial appellant has demanded.

Respectfully submitted,

FOSTER•RAMSEY

By:/s/John L. Foster_____

John L. Foster

State Bar No. 07289000

400 W. 15th Street, Suite 404

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ATTORNEY FOR APPELLANT