

Cause No. [REDACTED]

[REDACTED]
[REDACTED]

IN THE JUSTICE OF THE PEACE
COURT

Plaintiff

vs.

PRECINCT 1, PLACE 1

[REDACTED]

Defendant

TARRANT COUNTY, TEXAS

PLAINTIFF'S MOTION TO APPOINT POST JUDGMENT RECEIVER
ROBERT E. JENKINS PURSUANT TO CPRC 31.002
(LIMITED RECEIVERSHIP)

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Cavalry SPV I, LLC, as Assignee of Citibank, N.A./AA Advantage (hereinafter referred to as "Judgment Plaintiff"), and files this *Motion to Appoint a Post-Judgment Receiver [REDACTED] Pursuant to CPRC 31.002 (Limited Receivership)* seeking a receivership against Judgment Defendant, [REDACTED], (hereinafter referred to at times as "Judgment Defendant"), and in support thereof would respectfully show unto the Court the following:

Final Judgment: On November 3, 2021, Judgment Plaintiff obtained a Judgment against Judgment Defendant by this Court in the above styled cause for \$10,811.61 in damages, \$0.00 in attorney's fees and costs of court with post-judgment interest at 5.00% per annum (hereinafter referred to as the "Judgment"). The Judgment is just, due, unpaid, and remains unsatisfied. No Supersedeas Bond has been filed or approved.

Judgment Remains Unsatisfied: Since obtaining the Judgment, Judgment Plaintiff has made good faith effort(s) to collect on the Judgment. Despite Judgment Plaintiff's good faith effort(s) to collect on the Judgment, the Judgment remains unsatisfied. As such, Judgment Plaintiff is requesting aid from this Court to collect the Judgment.

Court Appointed Receiver to Aid in Collecting Judgment: Civil Practice and Remedies Code section 31.002 (a) specifically provides that a "*judgment creditor is entitled to aid from a court of appropriate jurisdiction...*" and section §31.002 (a)(3) provides *for the appointment of a receiver to collect the debt*. Judgment Defendant has not paid the judgment, the Judgment Defendant is believed to own property, including present or future rights to property, and the property is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

Non-Exempt Property: Judgment Defendant owns or has, or will have within its possession or control property interests, together with documents relating to the property, which is not exempt from attachment, execution, or any other type of seizure for the satisfaction of liabilities. A true and correct copy of the evidence of Judgment Defendant's non-exempt property is attached hereto and incorporated herein for all purposes by reference as Exhibit "A".

Ex Parte Appointment of Post-Judgment Receiver: Under the turnover statute, a court may appoint a receiver *ex parte* with the authority to take possession of the non-exempt property, sell it, and pay the proceeds to the Judgment Creditor to the extent required to satisfy the judgment. See Tex. Civ. Prac. & Rem. Code § 31.002(b)(3), *Ex Parte Johnson*, 654 S. W. 2d 415, 418 (Tex. 1983) (stating that notice and hearing prior to issuance of the turnover order was not required under predecessor statute); *In re Guardianship of Bays*, 355 S.W. 3d 715,720 (Tex. App.- Fort Worth 2011, no pet) *Ross v. 3D Tower Ltd.*, 824 S.W.2d 270 (Tex. App.--Houston [14th Dist.] 1992, writ denied); *Sivley v. Sivley*, 972 S.W.2d 850, 860 (Tex. App.-Tyler 1993, no pet.) ("The [turnover] statute itself does not provide for notice or a hearing to be afforded a judgment debtor in a turnover proceeding."); *Plaza Court v. West*, 879 S.W.2d 271, 276 (Tex. App.--Houston [14th Dist.] 1994, no writ.) (noting the turnover statute does not provide for notice to be afforded a judgment debtor in a turnover proceeding).

If made aware of the receivership motion or proceeding, there is a possibility Judgment Defendant will dispose of the property or place it beyond the reach of the Receiver. The Court considering the **ex parte** Order by requiring a further order from the court concerning the disposition of the property in question by the Receiver, and maintaining the status quo during the interim. As such, the proposed Receivership Order prevents disbursement of any recovered funds without an additional order of the Court or Judgment Defendant's consent.

Limited Time Period: Plaintiff requests that Receivership terminate 120 days after the date the Receiver files his Oath, unless there is an ongoing payment plan that is agreed to in writing by the Judgment Defendant or there is an extension granted upon request by the Receiver or Plaintiff.

Requested Post-Judgment Receiver: Judgment Plaintiff requests the Court to appoint a receiver pursuant to section 31.002 (b)(3), to take possession of the nonexempt assets and documents related to the assets to satisfy the judgment, including the receiver's fee and costs.

Proposed Receiver: Judgment Plaintiff respectfully requests this Court to appoint the following attorney as Receiver of the Judgment Defendant's above-stated property: [REDACTED]. According to his Curriculum Vitae, [REDACTED] has served as a post-judgment turnover receiver in more than 1,000 cases for 266 courts in 80 counties, and he has consented to serving as the receiver in this case. A true and correct copy of Curriculum Vitae is attached hereto and incorporated herein for all purposes by reference as Exhibit "B".

Compensation to Receiver: Judgment Plaintiff respectfully requests this Court find that the customary and usual post-judgment turnover receiver fee is 25% of the funds recovered during the receivership, subject to a later determination as to reasonableness by the Court or Judgment Defendant's written agreement. Additionally, Judgment Plaintiff requests the Receiver Fee be paid by the Judgment Defendant to the Receiver in addition to the amounts owed to Judgment Plaintiff.

Judgment Plaintiff further requests this Court order Judgment Defendant to pay Receiver all of out of pocket expenses directly related to the recovery of Judgment Defendant's nonexempt property in this receivership. Judgment Plaintiff requests the receiver fee and costs be taxed as costs against the Judgment Defendant.

No Receiver Bond Required: This is a **Post-Judgment** receivership pursuant to CPRC § 31.002. The decision whether to require a receiver's bond lies with the Court's discretion. Unlike a bond in a receiver under TRCP 695a to protect a defendant of a wrongfully appointed receiver, the Judgment Plaintiff has already won the Judgment. Judge Hittner's article addressed the need, or lack thereof, for a bond in the event of the appointment of a post-judgment receiver under the Turnover Statute:

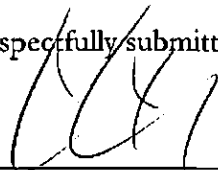
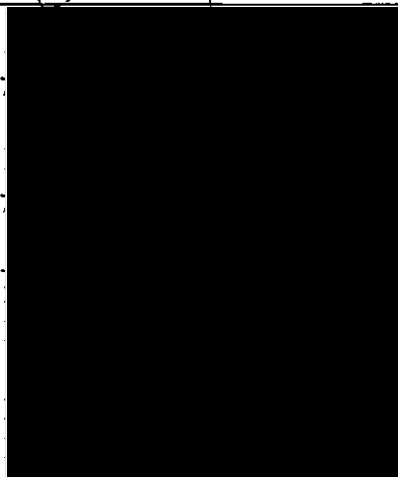
There is a strong view that since the underlying obligation has been determined by final judgment, *the judgment debtor will not be harmed if no bond, or merely a nominal bond is required.* Any bond which may be required should be carefully framed so as not to indemnify the judgment debtor in the traditional sense, as the righteousness of the appointment should have been fully litigated in any hearing pursuant to the new statutes.

Childre v. Great Sw Life Ins. Co., 700 S.W. 2d 284 (Tex. App. -- Dallas 1985, no writ) (quoting David Hittner, *Texas Post Judgment Receivership Statutes*, 45 Tex. Bar J. 417, 420 (1982)). Judgment Plaintiff respectfully requests this Court to order that no bond for the Receiver be required in this post-judgment matter, but only that the Receiver file an Oath to perform the Receiver's duties.

Alternatively, and bond required should not be in an amount that would act as prohibitive cost or make it economically impossible for Judgment Plaintiff to use the remedies provided in the Turnover Statute. *See Id* at 289 (quoting Hittner, *supra*, at 420).

WHEREFORE, PREMISES CONSIDERED, Judgment Plaintiff respectfully requests that the Court appoint [REDACTED] as Receiver to collect the Judgment in this case and provide for the payment of fees and costs to the Receiver.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. K. 1', is written above a horizontal line.A large black rectangular redaction box covers the area below the signature line, obscuring the name and any other identifying information of the signatory.