

**TURNOVER AND RECEIVER
LOCAL RULE**

**JUSTICE COURTS
OF
TARRANT COUNTY, TEXAS**

EFFECTIVE: March 26, 2019

LOCAL RULE FOR TURNOVER & RECEIVER

TARRANT COUNTY JUSTICE COURTS

JUSTICE COURT - GENERAL OBJECTIVES

In accordance with law, the Justice Courts conduct proceedings to ensure the fair, expeditious and inexpensive resolution of all cases and matters under its jurisdiction. In addition, this Rule is intended to provide a limited, yet not all inclusive, resource for litigants and those who appear before these Courts.

TURNOVER & RECEIVER GUIDELINES

In an attempt to have uniformity and save litigants time and expense resulting from hearings on Turnover and Receiver matters, the following guidelines will generally be followed by the Justice Courts on matters pertaining to Turnover and Receiver requests.

The grant of an Order of Turnover and Appointment of a Receiver is within the sound discretion of the Court.

THE GENERAL SCOPE OF TURNOVER and RECEIVER ORDERS

The scope of a Turnover and Receiver Order is within the trial court's discretion. The Court will make an effort to impose reasonable limits while preserving the right of a judgment creditor seeking aid from the Court to reach property owned by the judgment debtor to satisfy their judgement.

Important Notes:

1. In an attempt to maintain fairness and consistency, this local rule is drawn from the Texas Civil Practices and Remedies Code (TCP) 31.002 "Collection

of Judgment Through Court Proceeding” herein referred to as the *Turnover Statute* and in part from the TCPRC Chapter 64 “Receivership”

2. As there are no specific Rules of Civil Procedure or statutory guidance in the Turnover statute, this local rule is also drawn from both receiver practices and case law to guide the Courts to shape sound, acceptable processes and practices for Receivers
3. TCPRC Chapter 64 entitled “Receivership” addresses Receivers, yet Chapter 64 does not directly apply to turnover proceedings
4. The appointment of a Receiver under the Turnover Statute, Chapter 31, is a matter within the Court’s discretion and within that discretion these Courts have chosen to require some of the Chapter 64 requirements to help give guidance to these Justice Courts; such as:
 - ✓ Qualifications to be a Receiver; requiring a Bond; a Receiver’s Oath; a list of a Receiver’s General Powers and Duties; etc.

PURPOSE OF A TCPRC 31.002 TURNOVER

The *purpose* of a CPRC 31.002 Turnover is to aid the judgment creditor who cannot otherwise reach property to satisfy their judgement.

Following the purpose of the law:

- A judgment creditor is entitled to aid from a court of appropriate jurisdiction to reach property owned by the debtor that is not exempt from attachment, execution or seizure to obtain satisfaction on the judgment.
- The non-exempt property owned by the debtor includes present or future rights to said property.
- There is no requirement that the creditor must show that the non-exempt property cannot readily be attached to or levied on by ordinary legal process.

AUTHORITY OF THE JUSTICE COURTS IN TURNOVER PROCEEDINGS

The Justice Courts have authority over matters of Turnover and Receiver and this authority comes from:

1. Texas Rule of Civil Procedure 303 (TRCP) “Court Shall Enforce It’s Decrees” – “the Court shall cause its judgments and decrees to be carried to execution... and in such may enforce its judgments by attachment, fine and imprisonment”
2. After a trial court’s plenary power has expired, it retains the inherent power to enforce its judgments.
3. Although the Turnover Statute does not make it clear, this Local Rule deems that the “court of appropriate jurisdiction” in a Turnover proceeding is the Justice Court that granted the judgment.
4. Considering all relevant statutes, existing case law and without specific statutory authority that either grants or denies a Justice Court the authority to issue an Order of Turnover, these Justice Courts acting within TCPRC 31.002 have the discretion and authority over turnover matters.

HOW THE TURNOVER/RECEIVER PROCESS TYPICALLY BEGINS

The request for a Turnover/Receiver typically begins:

1. With an Attorney for the judgment creditor filing an *Application for Turnover After Judgment and for Appointment of a Receiver*. (Sometimes, the Application may be called a Motion);
2. The Application/Motion names the judgment debtor, now respondent, and may provide wording that the debtor may be served in some manner, usually by certified mail. However, most Applications do not ask that the debtor be served, in fact most all request that the receiver be appointed Ex Parte;
3. The Application lays out a narrative to meet the requirements of the 31.002 statute such as: the judgment is final; creditor is entitled to aid from the court; notice and hearing is not required, seeks an ex parte hearing; name a proposed Receiver; no bond should be required; Receiver compensation; etc.
4. With this Application/Motion is also sent a Proposed Order of Turnover and Appointing a Receiver

GENERAL REQUIREMENTS FOR TURNOVER

The following are general requirements necessary to meet the purpose of TCPRC 31.002 Turnover (to aid a judgment creditor who cannot otherwise reach property to satisfy their judgement):

1. The creditor must have obtained a judgment;
2. The property owned by the debtor must be non-exempt (see Texas Property Code Chapter 42); and,
3. The creditor must present to the Court that granted the judgment some evidence of the judgment and property's non-exempt status; and,
4. With no specific guidance in TCPRC 31.002, whether this evidence presented to the Court is to be conducted by a hearing or ex parte. Case law showing that a Court may grant a post-judgment order ex-parte without violating the due process rights of a Debtor, the Justice Courts may issue such Turnover and Receiver Order ex parte; however,
5. These Justice Courts, absent an evidence based showing as to why ex parte is necessary, will require notice of hearing be sent to the debtor; and,
6. Under TCPRC 31.002 (b) the Court *may*, order Turnover means that the decision is discretionary and not mandatory; and,
7. Although the language of 31.002 (a) states that a judgment creditor is entitled to aid from the court, this does not make ordering Turnover mandatory. Case law supports that the decision to order Turnover lies within the sound discretion of the Court and entitlement requires proof.

THE COURT'S OPTIONS UNDER TCPRC 31.002(b)

The Court *may*:

- (1) Order the judgment debtor to turn over non-exempt property... to a designated sheriff or constable for execution;
- (2) Otherwise apply the property to the satisfaction of the judgment (permitting the court to order property to be placed into the registry of the court and not allow property to be turned over to the creditor); or,
- (3) Appoint a receiver with the authority to take possession of non-exempt property, sell it, and pay the proceeds to the judgment creditor to satisfy the judgment.

TURNOVER AND RECEIVER APPLICATIONS AND ORDERS –

JUSTICE COURT - REQUIREMENTS & GENERALLY ACCEPTABLE REQUESTS

The following is a list of requirements and generally acceptable requests for Turnover and Receiver Motions and Orders submitted to these Justice Courts.

- The Court of appropriate jurisdiction is exclusively the Justice Court that granted the judgment.
- The Courts, within their sound discretion, may require certain information be included or excluded within any Application, and may at any time limit the authority and powers granted to a Receiver within any Order.
- All Orders must be clear and concise:
 - (a) written so both the Court and the Receiver have a clear understanding of the terms;
 - (b) understand the extent of the duties/authority and responsibilities of the Receiver; and,
 - (c) provides confidence to the Court that the Order enables the Receiver the ability to understand and follow the Order without having to interpret their duties or the extent of their duties within the Order

- The Court within its discretion may consider the burden or expense of the proposed Order and the likely benefit; taking into account the amount of the judgment and setting reasonable time periods and limitations on Orders while always cognizant of the purpose of the Turnover statute.
- **Applications** must contain sufficient evidence that establishes all the necessary conditions and requirements of 31.002 including but not limited to:
 - (a) Information identifying the specifics of the underlying final judgment and an exhibit of the judgment provided;
 - (b) Provide information describing the property as non-exempt and sufficient enough for the Court to understand what is sought and provide some limitation to the Order without requiring the property be specifically identified in the Order. For example, a general laundry-list to provide some limitation to the Order (Note: The property does not need to be property that cannot be readily attached or levied on by ordinary legal process.)
 - (c) The judgment creditor must submit sufficient evidence, which may be by affidavit, that the judgment debtor has non-exempt property subject to the order.
 - (d) Address notice and opportunity for the creditor to appear for a hearing on the motion or whether the Order is sought ex parte.
 - Note: These Courts strongly prefer notice and opportunity for the debtor to appear. Any ex parte request absent evidence demonstrating why ex parte is necessary will be denied and require notice of hearing be sent to the debtor.
 - (e) Name and identify the proposed Receiver to include: complete contact information; whether the Receiver is an attorney; experience as a Receiver; and a curriculum vitae or resume.
 - (f) Proposed method to compensate the Receiver, fees and costs.
 - (g) Information about a Receiver's oath and bond.

- **Proposed Orders** Appointing a Post-Judgment Receiver must recite that all the necessary conditions and requirements of 31.002 have been met, reference the Motion and include but not limited to:
 - (a) Identifying the specifics of the underlying final judgment (amount awarded as damages, any pre and post-judgment interest, balance due on the judgment at the time of filing, etc.)
 - (b) Provide the name and complete contact information of the Receiver
 - (c) State that the Receiver is granted 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
 - (d) State that the Order does not authorize that the property be turned over directly to the judgment creditor
 - (e) Provide language that the Order does not require the turnover of the proceeds of, or the disbursement of, property exempt under any statute and does not compel turnover of the homestead, checks for current wages or cash on hand or other exempt property of the judgment debtor
 - (f) Describe the extent of the Receiver's authorized powers and authority
 - (g) Generally, a Receiver's powers and authority should be limited
 - (h) Reasonable limitations on powers and authority may include the taking of financial accounts such as bank accounts, money market accounts and certificates of deposit or similar accounts owned by the debtor but held by a third party and includes all financial records related to such property
 - (i) Additional powers, such as obtaining information from third-parties holding financial records and obtaining credit reports and related information is acceptable; yet, all powers and authority should be clear, concise and limited
 - (j) Orders granting Turnover and Receiver must have set time limitations
 - (k) Courts prefer wording that the Receivership terminates 120 days after the date of the Order, unless there is an ongoing payment plan and written agreement with the debtor or an extension is requested by the Receiver and granted by the Court
 - (l) Without sufficient evidence and showing of essential necessity, no Order will extend beyond one-year after the date of the Order; however, all Orders of essential necessity will terminate 5-years (60 months) from the date of issuance of the Order

(m) The Order should set out the Receiver's fees as compensation, reasonable costs and expenses incurred and how these are to be taxed against the debtor in addition to those sums provided for in the judgment

(n) The order should set whether a Bond is required, if so to whom it is made payable to; however, if required by the Courts any bond will be nominal, fair and reasonable

(o) A Receiver's oath of office is required and shall be returned to the Court within 10-days of the signing of the Order

(p) State that the Receiver shall not disburse to the Judgment Creditor funds recovered by the receiver without the judgment Debtor's written consent or Court order

(q) State that the Receiver shall provide the Court with an Order to Terminate Receivership and Discharge Receiver if no funds were recovered. If funds were recovered, the Receiver shall provide the Court a written inventory of all property taken within 30 days of the termination of an Order

RECEIVER FEES AND COMPENSATION

- Once an Order is granted the judgment creditor is entitled to recover reasonable costs and attorney's fees including those incurred by the appointment of and actions undertaken by the Receiver; yet,
- It is within the Court's discretion to determine what is reasonable particularly when determining what's expressed, in most proposed orders, as a "usual and customary post-judgment turnover receiver's fee"
- Proposed Orders can include Receiver fees to be set at an hourly rate. Other Orders set the fees as a "percentage of the funds" wording yet, also include that the percentage is "subject to a later determination as to the reasonableness by the Court or the judgment debtor's written agreement before the fee is paid"
- Whichever fee is proposed, hourly, percentage or a combination of both, Receiver's fees/compensation should be set conditionally and subject to later proof by the Receiver that the work was performed and the results justify the fee and costs

- Once proven as reasonable costs and fees including attorney fees, they may be taxed as costs against the judgment debtor from funds collected by the Receiver during the performance of their receivership duties
- Again, whatever fee order is initially approved by the Court, before fees are paid and in order to be paid, the Receiver must later submit a request to the Justice Court for approval
- From case law: A Receiver's fees should be measured by the value of the services rendered and the results which are accomplished by the Receiver

TURNOVER & RECEIVER – LIMITATIONS

- Cognizant of the purpose of the Turnover statute, these Justice Courts will make an effort to impose reasonable limits while preserving the right of a judgment creditor seeking aid from the Court to reach property owned by the judgment debtor to satisfy their judgement.
- Although some cases, if supported by evidence and proof of facts may warrant otherwise, the following is a partial list of powers that will not be granted by these Justice Courts, absent a strong showing of special circumstance:
 1. Orders that grant the Receiver the broadest powers allowed by law;
 2. Obtaining possession of and opening a debtor's mail;
 3. Locking a debtor out, changing locks, of his home or business;
 4. Permitting a Receiver to collect cash on hand;
 5. Interruption of any of a debtor's utilities;
 6. Ordering law enforcement (Constable, Sheriff) to act at the receiver's direction without Court Order or Writ
 7. Overly broad Orders that require third parties to act or otherwise perform at the Receivers discretion and direction;
 8. Orders permitting the Receiver to be appointed Master in Chancery
 9. Additionally, under 31.002 (f), a Court may not enter an order that requires the turnover of the proceeds or disbursement under any statute including Property Code 42.001 (b)(1) which exempts current wages for personal services, therefore; such exempt status extends to paychecks, retirement checks and other similar assets after received by a judgment debtor

ENFORCEMENT OF ORDERS

- The Court may enforce the Order by contempt proceedings or by other appropriate means in the event of refusal or disobedience
- In such matters, the Court will examine the refusal/disobedience against the clarity of the order alleged to be violated and judicial constraint will be the Court's first choice
- At a hearing, contempt will be considered and used only when the provided sufficient proof of facts and evidence clearly warrants same

See - EXAMPLE of an

**APPLICATION AND ORDER APPOINTING A POST JUDGMENT RECEIVER –
LIMITED RECEIVERSHIP**

SCOTT & ASSOCIATES, P.C.

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Hours of Operation (CST)
Monday - Friday
8:00 a.m.-6:00 p.m.

February 15, 2019

Clerk of the Justice Court
Tarrant County, Texas
100 W Weatherford, Rm 450
Fort Worth, TX 76196

Re: Filing of *Plaintiff's Motion to Appoint Post-Judgment Receiver Robert E. Jenkins Pursuant to CPRC 31.002 (Limited Receivership)*

Cause No. JP01-17-DC0 [REDACTED] *Midland Funding LLC vs. [REDACTED]* in
the Justice Court of Tarrant County, Texas

Dear Clerk of the Court:

Enclosed please find an original and one copy of Plaintiff's *Plaintiff's Motion to Appoint Post-Judgment Receiver Robert E. Jenkins Pursuant to CPRC 31.002 (Limited Receivership)*.

Please file the motion in the record of the case and return a filed-stamped copy to our office. A stamped, self addressed envelope has been included for your convenience.

If I can be of any assistance, please do not hesitate to call. As always, thank you for your assistance.

Sincerely,

Legal Assistant
Scott & Associates, PC

Enclosures

(S&A 1077652)

CAUSE NO. JP01-17-DC000 [REDACTED]

Midland Funding LLC
Judgment Creditor,

vs.

[REDACTED]

Judgment Debtor(s).

§ IN THE JUSTICE COURT
§
§
§ PRECINCT 1 PLACE 1
§
§
§ OF 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 Midland Funding LLC (hereinafter referred to as "Judgment Plaintiff") and files this *Motion to Appoint a Post-Judgment Receiver Robert E. Jenkins Pursuant to CPRC 31.002 (Limited Receivership)* seeking a receivership against Judgment Defendant [REDACTED] Bloomer (hereinafter referred to at times as "Judgment Defendant"), and in support thereof would respectfully show unto the Court the following:

FINAL JUDGMENT

2. On January 22, 2018, Judgment Plaintiff obtained a Judgment against Judgment Defendant by this Court in the above-styled case for \$2,493.33 in damages, \$0.00 in attorneys' fees, and costs of court with post-judgment interest at 5% per annum (hereinafter referred to as the "Judgment"). A true and correct copy of the Judgment is attached hereto and incorporated herein for all purposes by reference as **Exhibit "A"**. The Judgment is just, due, unpaid, and remains unsatisfied. No Supersedeas Bond has been filed or approved.

JUDGMENT DEFENDANT HAS BEEN UNCOOPERATIVE

2. Since obtaining the Judgment, Judgment Plaintiff has made good faith efforts to collect on the Judgment. Please see Plaintiff's Affidavit in Support of Motion to Appoint Post-Judgment Receiver Pursuant to CPRC 31.002 as Exhibit "B" for a description of the good faith collection efforts.

3. Despite the forgoing good faith efforts to collect on the Judgment, Judgment Defendant has been uncooperative and failed to pay the Judgment. As such, Judgment Plaintiff is requesting aid from this Court to collect the Judgment.

COURT APPOINTED RECEIVER TO AID IN COLLECTING JUDGMENT

4. 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 that cannot be readily attached or levied on by ordinary legal process; and the property is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

NON-EXEMPT PROPERTY NOT READILY ATTACHED

5. Judgment Defendant is believed to have a bank account holding non-exempt funds. A true and correct copy of the evidence of Judgment Defendant's bank account is attached hereto and incorporated herein for all purposes by reference as Exhibit "B".

EX PARTE APPOINTMENT OF POST-JUDGMENT RECEIVER

6. Under the turnover statute, a court may appoint a receiver *ex parte* with the authority to take possession of the nonexempt 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 1998, 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).

7. If made aware of the receivership 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* application can build in protection for the Judgment Defendant into an *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.

REQUESTED POST-JUDGMENT RECEIVER

8. 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

7. Judgment Plaintiff respectfully requests this Court to appoint the following attorney as Receiver of the Judgment Defendant’s above-stated non-exempt property:

Robert E. Jenkins



Email: FrontDesk@JenkinsLaw.com

Mr. Jenkins has served as a turnover receiver in hundreds of cases and has consented to serve as the receiver in this case. A true and correct copy of Mr. Jenkins' Curriculum Vitae is attached hereto and incorporated herein for all purposes by reference as **Exhibit "C"**.

COMPENSATION TO RECEIVER

8. Judgment Plaintiff respectfully requests this Court order Judgment Defendant to pay as the receiver fee the usual, customary, and necessary 25% of the proceeds recovered during the receivership to the Receiver as compensation for receiver services, and that such compensation shall be paid by 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 out of pocket expenses directly related to the recovery of Judgment Defendant's property in this receivership. Judgment Plaintiff further requests the receiver fee and costs be taxed as costs against Judgment Defendant.

NO RECEIVER BOND REQUIRED

9. 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 receivership under TRCP 695a to protect the 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 Turnover & 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.

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

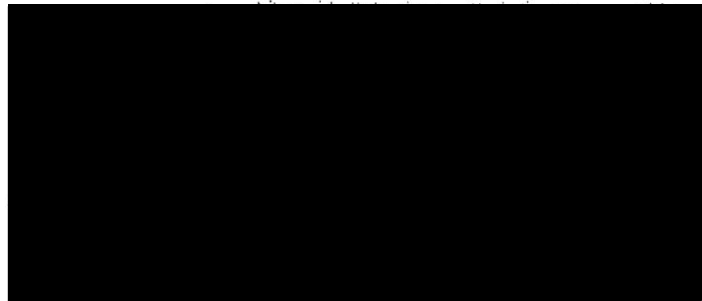
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PRAYER

WHEREFORE, PREMISES CONSIDERED, Judgment Plaintiff respectfully requests that the Court appoint Robert E. Jenkins as Receiver to collect the judgment in this case, award attorney's fees, and provide for the payment of fees and costs to the Receiver.

Respectfully submitted,

SCOTT & ASSOCIATES, P.C.,



Courts@scott-pc.com

ATTORNEYS FOR PLAINTIFF

FILED
1/19/2018 5:05 PM
Judge Ralph Swearingin
Justice of the Peace, Precinct 1
Tarrant County

NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA

CAUSE NO. JP01-17-DC0 [REDACTED]

MIDLAND FUNDING LLC
Plaintiff,

v.

[REDACTED]
Defendant

IN THE JUSTICE COURT

PRECINCT 1 PLACE 1

TARRANT COUNTY, TEXAS

JAN 26 2018

FINAL DEFAULT JUDGMENT

On this day came on for consideration Plaintiff's Motion for Entry of Default Judgment in the above-styled and numbered cause. The Court, having reviewed the records of this Court and the evidence presented by Plaintiff's Motion, FINDS that the Defendant Lilette Bloomer, though served with Citation, has failed to answer Plaintiff's petition, that the return of the Citation has been filed with the Court for the requisite period as provided for by the Rules, and that Plaintiff has established the amount of its damages. Therefore, the Court GRANTS Plaintiff's Motion for Entry of Default Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is entered for Plaintiff Midland Funding LLC and against Defendant Lilette Bloomer for \$2,493.33, plus taxable Costs of Court, for all of which let execution issue.
\$123.50

IT IS FURTHER ORDERED that this Judgment shall accrue interest from the date hereof until satisfied, at the following rates: 5.00% per annum as to the Damage award portion of this Judgment and 5.00% per annum as to all other amounts awarded herein.

**THIS ORDER DISPOSES OF ALL PARTIES AND ALL ISSUES PRESENTED
IN THIS CASE AND IS FINAL FOR PURPOSES OF AN APPEAL.**

SIGNED: January 22, 2018, 20

Signed: 1/22/2018 02:17 PM

Ralph Swearingin Jr.



JUDGE PRESIDING
Ralph Swearingin Jr.
Justice Court, Pct. 1
100 W. Weatherford St., Rm 450
Fort Worth, TX 76196-0242

58A 1077652 -JDDO

AFFIDAVIT IN SUPPORT OF
MOTION TO APPOINT POST-JUDGMENT RECEIVER
PURSUANT TO CPRC 31.002

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority on this day personally appeared, who, being by me duly sworn upon his oath stated the following:

1. "My name is [REDACTED] I am over the age of eighteen and am competent and capable of making this Affidavit. I am an attorney for the Plaintiff Midland Funding LLC("Plaintiff"), I have personal knowledge of the facts stated in this Affidavit, and they are true and correct. I am authorized to make this Affidavit and Motion to Appoint Post-Judgment Receiver Robert E. Jenkins Pursuant to CPRC 31.002 (Limited Receivership).

2. On or about January 22, 2018, Midland Funding LLC obtained a final judgment against defendant Defendant [REDACTED] ("Defendant") in a case styled *Midland Funding LLC* v. [REDACTED], Cause Number JP01-17-DC0 [REDACTED] in the Justice Court, Precinct 1 Place 1, of Tarrant County, Texas (hereinafter, the "Judgment"). The Judgment awarded the principal sum of \$2,493.33, plus taxable costs of court. Said Judgment is of record in the Court.

3. The Court fixed post-judgment interest at 5.00% per annum as to the damages awarded in the judgment, and 5.00% per annum as to interest, cost and attorneys fees; to be applied until the Judgment was paid in full. The Judgment is in all things final, valid, and subsisting, and as of the date of the filing of this application, it is unsatisfied.

4. As of the filing of this Application, the amount which remains due and owing on the Judgment is \$2,616.83.



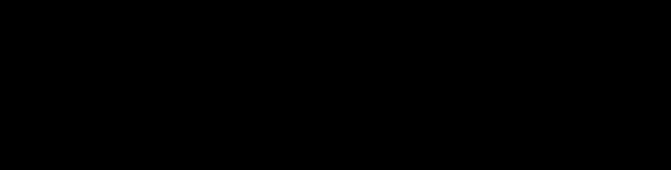
5. "Within my personal knowledge, Plaintiff has made good faith efforts to collect on this Judgment by mailing a demand letter to the Defendant requesting payment of the debt and/or sending Post Judgment Discovery In Aid of Enforcement of Judgment and/or Subpoena for Records; however, despite the forgoing good faith efforts to collect on the Judgment, Defendant has been uncooperative and failed to pay the Judgment.

6. "I have reason to believe and do believe that Defendant has a bank account holding non-exempt funds.

7. "This appointment of a receiver is not sued out to injure the defendant-in-judgment."

FURTHER AFFIANT SAYETH NOT.

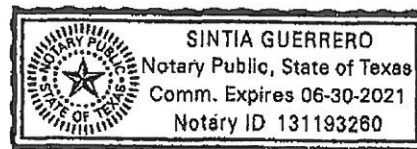
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SUBSCRIBED AND SWORN TO BEFORE ME by Taylor Thomas on February 19, 2019

Sintia Guerrero
Notary Public, State of Texas

(S&A(1077652))



ROBERT E. JENKINS

Attorney & Receiver

SUMMARY OF QUALIFICATIONS:

Robert E. Jenkins has been a licensed attorney for over 16 years and began serving as a court-appointed receiver in 2012. He is now a fulltime post-judgment turnover receiver and has been appointed to aid in the recovery of non-exempt assets for the payment of judgments in more than 500 cases in 96 courts throughout Texas. Receiver Jenkins is dedicated to his duty of serving as an agent of the Court within the strictures established by the receivership orders and treating all defendants with dignity and respect. Receiver Jenkins is the principal attorney in Jenkins Law Firm, PC where, prior to becoming a fulltime post-judgment turnover receiver, he represented banks, investors, and business owners in the recovery of consumer and commercial debt, garnishment defense, and judgment enforcement. Having represented national and state banks, he is familiar with institutional protocols and his office has implemented stringent security measures to protect sensitive financial data. Receiver Jenkins also has vast experience in locating and recovering non exempt assets to liquidate debts and satisfy judgments, and has negotiated resolutions to hundreds of cases.

EDUCATION:

[REDACTED]

PUBLICATIONS:

[REDACTED]

LICENSES AND ADMISSIONS:

[REDACTED]

MEMBERSHIPS:

[REDACTED]

PROFESSIONAL HONORS:

[REDACTED]

SIGNIFICANT LEGAL EXPERIENCE:

2012 - Present Jenkins Law Firm, PC, Dallas, Texas

2007 - 2012

2003-2007

2000-2002

[REDACTED]

Midland Funding LLC
Judgment Creditor,

vs.

[REDACTED]

Judgment Debtor(s).

§ IN THE JUSTICE COURT
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§ PRECINCT 1 PLACE 1
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§
§ OF TARRANT COUNTY, TEXAS

ORDER APPOINTING POST-JUDGMENT RECEIVER
ROBERT E. JENKINS PURSUANT TO CPRC 31.002
(LIMITED RECEIVERSHIP)

On this day came on to be considered Judgment Plaintiff, Midland Funding LLC *Motion to Appoint a Post-Judgment Receiver Robert E. Jenkins Pursuant to CPRC 31.002 (Limited Receivership)*.

After reviewing the evidence and the Court's file, the Court finds that the Judgment rendered in this case is valid, final and fully payable. The judgment awarded \$2,493.33 in damages, \$0.00 in pre-judgment interest, \$0.00 in attorneys fees, court costs and post-judgment interest at a rate of 5% per annum. The Court find the Judgment remains unsatisfied, and that Judgment Plaintiff is entitled to aid from this Court in order to reach non-exempt property of Judgment Defendant against [REDACTED] Bloomer(hereinafter referred to as "Judgment Defendant") to obtain satisfaction of the Judgment. At the time of filing this Application for Receivership, the total balance due on this Judgment, less any credits or payment, is \$2,616.83. The Court further finds that a receiver should be appointed to take possession of and sell the leviable non-exempt assets of Judgment Defendant that cannot readily be attached or levied on by ordinary legal process. Notwithstanding any language to the contrary, this Order does not compel turnover of the homestead, checks for current wages, or other exempt property of Judgment Defendant.

IT IS THEREFORE, ORDERED, that Robert E. Jenkins [REDACTED] be, and he is hereby appointed Receiver pursuant to the Texas Turnover Statute, with authority to take possession of and sell the non-exempt assets of the Judgment Defendant.

Receiver's Powers: The Receiver shall have the power and authority to take possession of all non-exempt leviable property of Judgment Defendant, including, but not limited to the following non-exempt property: (a) all financial accounts (bank accounts), certificates of deposit, and money-market accounts held by any third party; and (b) all financial records related to such property that is in the actual or constructive possession or control of Judgment Defendant; and that all such

property shall be held in custodia legis of said Receiver as of the date of this Order.

Time Period: The Receivership shall 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.

Additional Powers: The Receiver shall have the following additional rights, authority, and powers with respect to the Judgment Defendant's non-exempt property, to: (a) request Judgment Defendant disclose financial information; (b) obtain Judgment Defendant's credit information and credit reports; (c) obtain from any third party any financial records belonging to or pertaining to the Judgment Defendant; (d) certify copies of this order and; (e) to negotiate and obtain installment payment agreements with Defendant, if the Receiver reasonably believes that a payment agreement is the best option to satisfy the judgment; and the Receiver does not compromise any amounts awarded in the judgment without Plaintiff's authorization.

Receiver's Fee, Oath, and Bond: The Court finds 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 before the fee is paid. The Receiver's fee is taxed as costs against the Judgment Defendant. Because this is a post-judgment receivership pursuant to CPRC 31.002, no receiver bond is required. The Receiver is further ordered to take the oath of his office. AND TO RETURN SAME TO THE COURT WITHIN 10 DAYS OF SIGNING THIS ORDER.

Receiver's Expenses: Any costs reasonably incurred in carrying out the terms of this Order shall be taxed against the Judgment Defendant as costs of court, and shall be collected by the Receiver from the Judgment Defendant which shall be in addition to those sums and amounts provided for in the Judgment.

Receiver to Hold Property: Receiver shall not disburse to Judgment Plaintiff funds recovered by Receiver without Judgment Defendant's written consent, or court order.

Signed on _____, 20__.

Judge Presiding