No. 24-20238

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

In the Matter of Johnnie G. Eichor,
Debtor

Benson Scott Wyly, doing business as SW Equipment Company, Incorporated;
Pam Dale Wyly,
Appellants

v.

Johnnie G. Eichor,
Appellee

On Appeal from
United States District Court for the Southern District of Texas
4:22-CV-03274

BRIEF OF APPELLEE JOHNNIE EICHOR

SUBMITTED BY:

Charles Anthony Newton
Newtons Law
190 N. Millport Circle
The Woodlands, TX 77382-4015
Phone: (281) 681-1170

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of 5th Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Appellees:	**Counsel for Appellees:**
Johnnie Eichor	Charles Newton Newtons Law The Woodlands, TX 190 North Millport Circle The Woodlands, Texas 77382 [Tel.] (281) 681-1170
Appellants:	**Counsel for Appellants:**
Benson Wyly	Keith Gross 250 Park Avenue League City, Texas 77573 [Tel.] (832) 932-5970
Pam Wyly	Keith Gross 250 Park Avenue League City, Texas 77573 [Tel.] (832) 932-5970

S/Charles Anthony Newton
Attorney of record for Appellee

STATEMENT REGARDING ORAL ARGUMENT

The Wylys state in their Appellant Brief(s) that there is no dispute as to the facts, only the application of facts to the law. Because this appeal involves the application of well-established principles of the Bankruptcy Code, the United States Constitution and Texas Constitutional, oral argument is unnecessary to aid this Court's decisional process.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Constitutional Provisions

JURISDICTIONAL STATEMENT

This is an appeal from a final judgment issued by the United States Bankruptcy Court for the Southern District of Texas. The Court of Appeals, Fifth Circuit has jurisdiction over this appeal pursuant to 29 U.S.C. § 1291 because the judgment below is a final judgment of the United States District Court for the Southern District of Texas. Appellants appealed the District Court's order affirming the Bankruptcy Court's opinion.

SUMMARY OF THE ARGUMENT

The argument of the parties concerns three Sales Agreements (or claims as defined by 11 U.S.C. § 101(5)(B)) in which the Wyly's loaned money to Eichor for his business operations, and which improperly sought his homestead as collateral. Also it concerns the filing by the Wylys of a *Petition in Intervention to Quiet Title* against Eichor and his homestead in regard to the lawsuit *Pearland Independent School District, et. al. vs. Eichor, Johnnie G. et. al.*, Cause No. 103126-T, in the 239th District Court in and for Brazoria County, Texas. The intervention lawsuit sought damages and award of Eichor's homestead to the Wylys. All concerns arose before Eichor filed bankruptcy.

It is undisputed that the Wylys had notice of Eichor's bankruptcy, including his Order of Discharge.

Despite its pre-petition nature, the Wylys did not serve or proceed with their intervention lawsuit until Eichor was discharged from his bankruptcy. After discharge, the Wylys served Eichor with the intervention lawsuit for the first time, and obtained a default judgment against Eichor. The default judgment awarded Eichor's homestead to the Wylys. Upon obtaining the default judgment, the Wylys locked Eichor out of his homestead.

After the entry of default judgment and being locked out of his homestead, Eichor filed an adversary proceeding in the Bankruptcy Court, AP No. 21-03937. The adversary proceeding sought a declaratory judgment as to the ownership of Eichors' homestead as of the file date of Eichor's bankruptcy, the extent of any lien that may have attached to Eichor's homestead at the time Eichor filed bankruptcy, and the discharge of any pre-petition debt or claim held by the Wylys. Eichor also sought actual damages should it be found by the Bankruptcy Court that his statutory discharge had been violated.

After a trial on the merits, the Bankruptcy Court correctly found that the pre-petition Sales Agreements were not purchase agreements, but were "disguised loans." Additionally, that there was no pre-petition lien as to the homestead that could have survived discharge, and therefore the pre-petition loans were unsecured and thus discharged. For knowingly violating the statutory discharge injunction,

the Bankruptcy Court awarded actual damages against the Wylys in favor of Eichor (but no punitive damages).

The arguments raised against the Bankruptcy Court's judgment by the Wylys are without merit.

STANDARD OF REVIEW

This Court of Appeals reviews the District Court's affirmance of a Bankruptcy Court's decision by applying the same standard of review to the Bankruptcy Court decision that the District Court applied. Although this Court of Appeals generally reviews factual findings for clear error, the Wyly's allege no clear error. This Court of Appeals reviews the Bankruptcy Court's conclusions of law *de novo*. *See*, *Liberty Mut. Ins. Co. v. Lamesa Nat'l Bank*, 725 F.3d 498, 503 (5th Cir. 2013) (citations omitted).

ARGUMENT

I. Matters that are antecedent to the findings of the Bankruptcy Court.

First, the Wylys' lawyer is not versed in bankruptcy law. ROA.24-20238.885:13-887:3, 888:7. The Wylys did not confer with any bankruptcy attorney that their attorney referred to them. ROA.24-20238.959:16-20. And, after discharge the Wylys' lawyer knew there was a factual dispute. ROA.24-20238.887:11-23. The Wylys knew that they did

not own the house prior to Eichor's bankruptcy. ROA.24-20238.902:11-24. The Wylys' attorney knew that ownership of the property was unresolved. ROA.24-20238.888:7-9.

Second, the three Sales Agreements, as well as the intervention lawsuit were each pre-petition. ROA.24-20238.1, 357-60, 366-68, 372-74.

Third, the Wylys received bankruptcy storm warnings in terms of official notice that Eichor had filed bankruptcy, and was later discharged. ROA.24-20238.477-79, 701-02. However, the Wylys did not participate in Eichor's bankruptcy because their attorney "didn't know how to do that". ROA.24-20238.885:23-25. "When the holder of … [a] claim … receives any notice ... that its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril. 'Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry may have led. When a person has sufficient information to lead him to a fact, he shall be deemed to be conversant of it.'" *Robbins v. Amoco Production Co.*, 952 F.2d 901, 908 (5th Cir. 1992) (*citing Lawrence Tractor Co. v. Gregory (In re Gregory)*, 705 F.2d 1118, 1123 (9th Cir. 1983). Such notices are often called "storm warnings" to express the need to

timely review and act in regard to the bankruptcy. *Firefighters Pension & Relief Fund of New Orleans v. Bulmahn*, 53 F.Supp.3d 882, 899 (E.D. La. 2014).

Fourth, under applicable law, the Bankruptcy Court found that Eichor carried his burden to establish that the property was his homestead. ROA.24-20238.695. Eichor's homestead arose before the three Sales Agreements were entered. ROA.24-20238.337-356.

Fifth, the Texas Constitution voids "[a]ll pretended sales of the homestead involving any condition of defeasance[.]" Tex. Const. art. XVI, § 50. "A condition of defeasance permits the seller to reclaim the title to the property conveyed after the loan is repaid." *Perry v. Dearing (In re Perry)*, 345 F.3d 303, 313 (5th Cir. 2003). "A common example of a condition of defeasance is an option to repurchase at the end of the purported sale." *Cadengo v. Consolidated Fund Mgmt, LLC, et. al. (In re Cadengo)*, 370 B.R. 681, 692 (Bankr. S.D. Tex. 2007).

Sixth, all three Sales Agreements entered contained an option for Eichor to terminate the sale of his homestead upon payment of a stated sum by a date certain. ROA.24-20238.357, 366, 372. As to his homestead, this violated the Texas Constitution. Accordingly, the Bankruptcy Court found that there could be no forced sale or mortgage since the parties did not comply with Tex. Const. art. XVI,

§ 50(a) of the Texas Constitution in the drafting of the Sales Agreements. ROA.24-20238.715-716.

Seventh, "[i]n general, a conveyance of real property in Texas can only be accomplished by the delivery of a written instrument that is signed and delivered by the conveying party." Tex. Prop. Code § 5.021. The Bankruptcy Court found that Sales Agreement Three was not a recorded instrument to give the Wylys equitable title. ROA.24-20238.699. Sales Agreement Three did not contain any conveyance language. ROA.24-20238.699. (In fact, none of the Sales Agreements contained conveyance language. ROA.24-20238.357-60, 366-68, 372-74).

Eighth, for the reasons stated below, the money exchanges between Eichor and the Wylys pursuant to the sales agreements were found to be "disguised loans." For example, the Bankruptcy Court considered the various business transactions between Eichor and the Wylys. ROA.24-20238.689. Besides the three sales agreements the Wylys and Eichor had other business dealings. ROA.24-20238.899:6-900-10. Pre-petition, Eichor also borrowed cash from Wyly all the time. ROA.24-20238.899:18. In this regard, the Wylys and Eichor entered into three separate agreements to purchase his homestead, along with a boat, because Eichor needed the money. ROA.24-20238.932:3-13. The sales agreements were all intended to be secured loans between Eichor and the Wylys. Only, the loans could not have been secured as they violated Eichor's homestead

protections and the three Sales Agreements were poorly drafted. ROA.24-20238.689. The funds paid by the Wylys to Eichor on Sales Agreement Two and Three were noted to be for a loan and not a purchase. ROA.24-20238.369, 375. Most of the checks that Eichor paid to, and were accepted by, the Wylys on the Sales Agreements included the notation of "loan reimbursement" on the Memo line. ROA.24-20238.362-364, 376-444. Furthermore, the terms of Sales Agreement Three stated "whereas, there remains a balance of $60,000.00 on Sales Agreement Two" indicating a loan transaction. ROA.24-20238.372, 966:5-7. For this and other reasons, the Bankruptcy Court found the sales agreements to be "disguised loans" pursuant to the Texas Constitution, and not the purchase of an asset. ROA.24-20238.689. As "disguised loans" they could not be and were not secured.

Ninth, for the reasons that there was no conveyance language and the three Sales Agreements were "disguised loans," the homestead became property of the bankruptcy estate pursuant to 11 U.S.C. § 542(a), for which there was no exception pursuant to 11 U.S.C. § 542(b). Eichor claimed Texas state exemptions as it concerned his homestead in his bankruptcy, to which the Wyly's did not object *per* the docket report maintained in the bankruptcy case. ROA.24-20238.98, 1-5. 11 U.S.C. § 522(c)(2) provisions that any property "exempted under this section is not liable during or after the case for any debt of the debtor that arose … before the

commencement of the case, except – **a debt secured by a lien** …". (Emphasis added). The operative language is "a debt secured by a lien." In addition to a lack of ownership at the time Eichor filed bankruptcy, the Bankruptcy Court found that the Wylys had no such lien on Eichor's homestead that survived the bankruptcy. ROA.24-20238.702-73.

Tenth, 28 U.S.C. § 157(b)(1) gives bankruptcy courts full judicial power over "all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under ... this section....'..." *U.S. Brass Corp. v. Travelers Ins. Group (In re U.S. Brass Corp.)*, 301 F.3d 296, 304 (5th Cir. 2002). The District Court for the Southern District of Texas, as assigned to the Bankruptcy Court, has "original and exclusive jurisdiction of all cases under title 11." *Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 33 (2014). As "disguised loans" the issue was core pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I), and/or (K).

Eleventh, Eichor received a discharge pursuant to 11 U.S.C. § 727 as a result of his no-asset Chapter 7 bankruptcy. Pursuant to 11 U.S.C § 103(a), chapters 1, 3 and 5 of Title 11 apply in a case under chapter 7, 11, 12, or 13. As such, the applicability of 11 U.S.C. § 524 is obvious and delineates the effect of a discharge granted to Eichor under Title 11, including that under Chapter 7 bankruptcy pursuant to 11 U.S.C. § 727.

Twelfth, 11 U.S.C. § 524(a)(1) "**voids *any* judgment at *any* time obtained**, to the extent that such judgment is a determination of the personal liability of the debtor **with respect to any debt discharged under section 727** … of this title". (Emphasis added). In regard to 11 U.S.C. § 727, the operative terms of 11 U.S.C. § 524(a)(1) are "voids any judgment" and "at any time obtained." This would include a judgment issued post-discharge. Recall, both of the Wylys jointly filed their intervention lawsuit in the Brazoria District Court pre-petiton. ROA.24-20238.471-76. Thereafter, Eichor commenced his Chapter 7 bankruptcy case and discharge was entered. ROA.24-20238.1. However, the Brazoria lawsuit was not served on Eichor until after his discharge from bankruptcy. ROA.24-20238.480-81. After discharge, the Brazoria District Court entered a default judgment as to Sales Agreement Three. ROA.24-20238.482-85. This default judgment fell under the ambit of "any judgment" issued at "any time obtained" pursuant to 11 U.S.C. § 524(a)(1). Where the three Sales Agreements were "disguised loans", and the Wylys did not have a pre-petition lien or color of ownership on Eichor's homestead, the Wylys had no *in rem* right to pursue Eichor's homestead. Consequently, the attack on Eichor's homestead was an attack on Eichor *in personam*.

Thirteenth, as void *ab initio*, both the pre-petition disguised loans, and the post-petition default judgment, which emanated from the pre-petition intervention

lawsuit, had no effect whatsoever, were mere nullities, and therefore each was incapable of confirmation or ratification. "By strict definition that which is void is nugatory and of no effect and cannot be cured; that which is voidable may be either voided or cured. [T]hat when technical accuracy is desired, the term 'void' can only be properly applied to those transactions ... that are of no effect whatsoever, mere nullities, ... and therefore incapable of confirmation or ratification." *Sikes v. Global Marine, Inc.*, 881 F.2nd 176, 178 (5th Cir. 1989) (cites omitted).

Fourteenth, at the commencement of Eichor's bankruptcy the Wylys neither owned nor had a lien on Eichor's homestead. Moreover, the default judgment issued on the Wylys behalf by the Brazoria District Court in regard to the pre-petition intervention lawsuit was prohibited by Congress. These pretended sales ("disguised loans") were against public policy even if the bankruptcy had not been filed. The three Sales Agreements were void by a clear reading of the Texas Constitution. Post-discharge, the default judgment issued in regard to the pre-petition intervention lawsuit was void by a clear reading of 11 U.S.C. § 524(a)(1), as adopted by Congress. It is important to point out that each was void (and not merely voidable). ROA.24-20238.700-701. As such, the Bankruptcy Court did not void the Sales Agreements. The Texas Constitution did so before Eichor's bankruptcy was filed. The Bankruptcy Court did not void the default judgment issued by the Brazoria District Court. Congress did so pursuant to 11

U.S.C. § 524(a)(1). Therefore, pre-petition none of the three Sales Agreements were valid on their face nor enforceable. The same was true for the default judgment issued by the Brazoria District Court. Making such a determination by the Bankruptcy Court was core pursuant to 28 U.S.C. § 157(b)(2). The default judgment sought by the Wyly's constituted contempt of the discharge injunction pursuant to 11 U.S.C. § 524(a)(2).

II. The Wylys legal arguments are not compliant with the law.

A. The Bankruptcy Court properly held the Wylys in civil contempt.

The Wylys' first issue on this appeal concerns the legal insufficiency of the evidence for the Bankruptcy Court to hold the Wylys in contempt due to the wording of the Bankruptcy Court's Order of Discharge. This is clearly not so. In this case, Eichor's discharge order was entered. ROA.24-20238.1055. The Wylys perfected service on Eichor with the intervention lawsuit which sought personal damages from him. ROA.24-20238.471-476, 480. The Order of Discharge prohibited the collection of a discharged debt from Eichor personally but a creditor with a lien may enforce its claim against Eichor's property subject to that lien unless the lien was avoided or eliminated. ROA.24-20238.1055. The Wylys proceeded against Eichor for money damages by serving him with their intervention suit in violation of 11 U.S.C. 524(a)(2). The Wylys had no ownership right as there were no deeds in this case. ROA.24-20238.696. The Bankruptcy

Court found that Sales Agreement Three was not a recorded instrument to give the Wylys equitable title. ROA.24-20238.699. The Wylys had no secured lien on Eichor's home. ROA.24-20238.698. Therefore, the Wylys had no *in rem* right to pursue post discharge. As such, the Wylys actions were *in personam* and violated the discharge injunction of 524(a)(2). The Bankruptcy Court possesses civil contempt powers under 11 U.S.C. § 105(a) to prevent this. *See, Placid Refining Co. v. Terrebonne Fuel & Lube, Inc. (In re Terrebonne Fuel & Lube, Inc.)*, 108 F.3d 609, 613 (5th Cir. 1997). Civil contempt is established when: (1) the Bankruptcy Court's Order of Discharge was in effect (which it was); (2) the Order of Discharge prohibited certain conduct by the Wylys (which it did pursuant to 11 U.S.C. § 524(a)(2)); and, (3) the Wylys failed to comply with the Order of Discharge and the relevant statutes surrounding the discharge (of which the Wylys failed to comply). *Piggly Wiggly Clarksville, Inc. v. Mrs. Baird's Bakeries, 177 F.3d 380, 382 (5th Cir.1999) (citing FDIC v. LeGrand, 43 F.3d 163, 170 (5th Cir.1995))*. Particularly, "'[a] party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order.'" *Piggly Wiggly Clarksville*, 177 F.3d at 382 (citing *Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir.1995)). As a reminder, statutorily a Chapter 7 discharge "'operates as an injunction against an extensive list of actions that a creditor might take to collect on the discharged debt.

11 U.S.C. § 524(a)[(2)]. The discharge is a 'substantive right,' and that right is 'often enforced by a motion for contempt, but [it is] also enforceable through a declaratory judgment action.'" *Evan Brian Crocker v. Navient Solutions, L.L.C. (In re Evan Brian Crocker)*, 941 F.3d 206, 210 (5th Cir. 2019) *citing Wells Fargo cites Ins. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056, 1063 (5th Cir. 1997) (citations omitted). In the aggregate, Congress created the discharge injunction of 11 U.S.C. § 524(a)(2), and the Bankruptcy Court is obliged to enforce it. Moreover, the Wylys' argument that 11 U.S.C. § 727 does not correspond to 11 U.S.C. § 524(a) is pedestrian. 11 U.S.C. § 727 was issued because Eichor received a discharge in relation to his no-asset Chapter 7 bankruptcy. On the subject of such a discharge, 11 U.S.C. § 524 is entitled the "effect of discharge." 11 U.S.C. § 524 literally defines what the Wylys can and cannot do in relation to 11 U.S.C. § 727.

B. Rooker-Feldman doctrine does not apply.

The Wylys' second issue concerns the Rooker-Feldman doctrine that was not violated under the applicable law. The Rooker-Feldman doctrine derives from two United States Supreme Court cases, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine holds that inferior federal courts do not have the power to modify or reverse state court judgments **except when authorized by Congress**.

(Emphasis added). Still, the Fifth Circuit has repeatedly stated that the Rooker-Feldman doctrine does **not preclude review of void state court judgments**. *Burciaga v. Deutsche Bank Nat'l Trust Co.,* 871 F.3d 380 (5th Cir. 2017) *citing United States v. Shepherd*, 23 F.3d 923, 925 (5th Cir. 1994). (Emphasis added). The operative preclusive terms in regard to the Rooker-Feldman doctrine are "except when authorized by Congress" and "void state court judgments." Congress authorized 11 U.S.C. § 524(a)(1), and this provision "voids any judgment at any time obtained." As such, 11 U.S.C. § 524(a) is a statutory exception to the Full Faith and Credit Statute of 28 U.S.C. § 1738.

C. Congress did not prohibit the Wylys from petitioning the Government to redress their grievances.

The Wylys' third issue concerns their First Amendment rights. The First Amendment reads in pertinent part: "Congress shall make no law … to [prohibit] petition [of] the Government for a redress of grievances. *U.S. Const. amend. I, § 4.* Congress did not prohibit the Wylys' right to petition the Government for redress of their grievance. Congress simply defined that any such grievance resides with the Bankruptcy Court first. Conjointly, the United States Constitution also authorized Congress to enact "uniform Laws on the subject of Bankruptcies." *U.S. Const. art. 1, § 8, cl. 4*. Correspondingly, Congress enacted 11 U.S.C. § 727 and 11 U.S.C. § 524(a). Likewise, the Supremacy Clause of the Constitution states in

pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" *U.S. Const. art. VI, cl. 2*. Where the Order of Discharge is the purported grievance arising under Title 11, the decision lies first with the Bankruptcy Court. What is more, the Supreme Court acknowledges that the Bankruptcy Court has the authority to award sanctions for contempt in regard to a discharge violation. *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1802 (2019).

D. The Wylys' "fair ground of doubt" argument does not apply to the Wylys' subjective state of uncertainty.

The Wylys' fourth issue concerns the "fair ground of doubt" standard made applicable to civil contempt for the violation of 11 U.S.C. § 524(a)(2). An objective standard is used to determine whether or not there was a fair ground of doubt. Therefore, as identified above, the Wylys subjective state of uncertainty lacks relevance to defend their actions taken in violation of the discharge order. "We have explained before that a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable. The absence of wilfulness does not relieve civil contempt." *Taggart v. Lorenzen*, 139 S.Ct. 1795, 1802 (2019). The Wylys had

actual notice of Eichor's bankruptcy and his discharge order. ROA.24-20238.477-79, 875:7-9. In addition to bankruptcy notices, the Wylys received a mitigation letter advising them that Eichor had received a discharge and not to act on the Brazoria District Court's default judgment as it may be void. ROA.24-20238.526-27. Under *Taggart*, all that must be demonstrated for the Bankruptcy Court to award civil contempt damages is (1) the party violated a definite and specific order of the court requiring him to refrain from performing particular acts (which the Wylys did); (2) the party did so with knowledge of the court's order (and the Wylys were aware of the Order of Discharge); and, (3) there is no fair ground of doubt as to whether the order barred the party's conduct (and as the record shows there may have been subjective state of uncertainty on behalf of the Wylys, but there was no objective doubt as the law is clear). Given the Texas Constitutional requirements, knowledge that there was a money dispute, knowledge that ownership was unresolved, knowledge of Eichor's bankruptcy filing, knowledge that the Wylys attorney did not have bankruptcy experience, the entry of the Order of Discharge, and the mitigation letter, there is no objective ground of doubt that 11 U.S.C. § 524(a) prohibited the Wylys' action. Ignorance of the law is a subjective excuse, and not an objective one. "We have long recognized the common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally … Our law is therefore no

stranger to the possibility that an act may be intentional for purposes of civil liability, even if the actor lacked actual knowledge that her conduct violated the law". *Hare v. Hosto*, 774 F.Supp.2d 849, 854 (S.D. Tex. 2011). Moreover, the Bankruptcy Court's Order of Discharge that discharged Eichor from the Wylys unsecured prepetition debts was entered first, and the default judgment issued in the intervention lawsuit was void *ab initio* pursuant to 11 U.S.C. § 524(a)(1).

CONCLUSION

All four of the Wylys issues on appeal should be denied, and the judgment of the Bankruptcy Court should stand.

SUBMITTED BY:
s/Charles Anthony Newton
Charles Anthony Newton

CERTIFICATE OF SERVICE

I certify that on September 13, 2024, the foregoing document was forwarded *via* U.S. Mail on today's date to the following parties/counsel:

Keith Gross
250 Park Avenue
League City, Texas 77573
Attorney for Appellants

s/Charles Anthony Newton

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f), and 5th CIR. R. 32.1: this document contains 4,063 words.

2. This document complies with the typeface requirements of FED. R. APP. P. 32(a)(5), and 5th CIR. R. 32.1 and the type-style requirements of FED. R. APP. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using Google Docs in Time New Roman font.

s/Charles Anthony Newton