

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 96- 9092

**TRANSFER OF CASE FROM THE
FIRST COURT OF APPEALS**

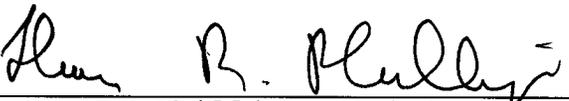
ORDERED:

The following case now on the docket of the Court of Appeals for the First Court of Appeals District, Houston, Texas is transferred to the Court of Appeals for the Fourteenth Court of Appeals District, Houston, Texas.

NUMBER	STYLE OF CASE
01-96-00038-CV	Moody National Bank v. Gary M. Riebschlager and The Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager

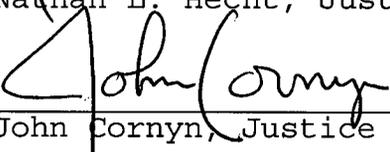
The First Court of Appeals will issue the necessary orders for the transfer. Further, the Clerk of that Court will transfer the original transcript and all filed papers in the case, to the Court of Appeals to which the case is ordered transferred, and will notify the Clerk of this Court when the transfer is complete.

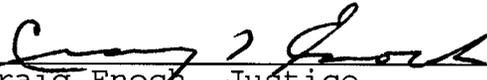
As ordered by the Supreme Court of Texas, en banc, in chambers, this the 16th day of May, 1996.

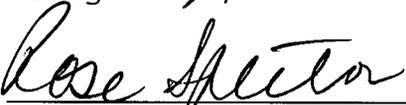

Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice

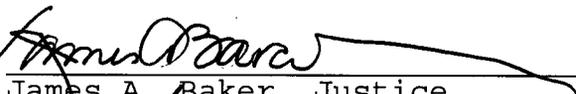

Nathan L. Hecht, Justice

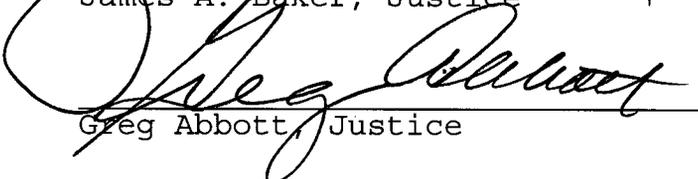

John Cornyn, Justice


Craig Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice

Misc. Docket No. 96-9092.



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

May 17, 1996

Ms. Margie Thompson, Clerk
First Court of Appeals
1307 San Jacinto, 10th Floor
Houston, Texas 77002

Dear Ms. Thompson,

Enclosed is a copy of an order of The Supreme Court of Texas of May 16, 1996 concerning a case to be transferred from your court to the Fourteenth Court of Appeals.

Sincerely,

A handwritten signature in black ink, appearing to be "John T. Adams", written over a horizontal line.

John T. Adams
Clerk

Encl.

cc: Ms. Mary Jane Smart, Clerk
Fourteenth Court of Appeals

Office of Court Administration

MICHAEL H. SCHNEIDER
CHIEF JUSTICE

MURRY B. COHEN
D. CAMILLE DUNN
MARGARET G. MIRABAL
MICHOLO'CONNOR
DAVIE L. WILSON
ADELE HEDGES
ERIC ANDELL
TIM TAFT
JUSTICES

**Court of Appeals
First Judicial District
1307 San Jacinto, 10th Floor
Houston, Texas 77002**

ORIGINAL



MARGIE THOMPSON
CLERK

LEVON G. HOVNATANIAN
CHIEF STAFF ATTORNEY

PHONE 713-655-2700

Misc. Docket No. 96- 9092

March 26, 1996

Received
~~FILED~~
IN SUPREME COURT
OF TEXAS

APR 02 1996

Mr. John T. Adams
Clerk, Supreme Court of Texas
201 West 14th Street
Room 104
Austin, Texas 78701

JOHN T. ADAMS, Clerk
By _____ Deputy

Dear Mr. Adams:

In accordance with Thomas W. McQuage's letter (copy enclosed) to Margie Thompson, I am writing to provide some "comments" regarding why this court denied the appellant's motion to transfer in cause number 01-96-00038-CV, *Moody National Bank v. Riebschlager*. Moody National Bank asked us to transfer the case from our court to the Fourteenth Court of Appeals, and we denied the motion. Moody National Bank now asks your court to transfer the case from us to the Fourteenth Court. You will find enclosed a copy of Moody National Bank's motion to transfer directed to your court.

There are two main reasons we denied the motion to transfer. First, in *Miles v. Ford Motor Co.*, 39 Tex. Sup. Ct. J. 173 (December 22, 1995), the Supreme Court of Texas wrote that, "*Only the Supreme Court is authorized to transfer appellate cases.*" (Emphasis added.) *Id.* at 174. That authority alone is dispositive of Moody National Bank's request that we transfer the case to the Fourteenth Court; according to *Miles*, we do not have the authority to do so.

Second, a couple of years ago, in another case, an appellant asked that we transfer its case to the Fourteenth Court under circumstances nearly identical to these. We granted the motion. Shortly thereafter, the Fourteenth Court, on its own motion, transferred the case back to us. We did not want to get into a "transfer war" over this case, and there was some concern that the Fourteenth Court might think we were trying to lessen our load at their expense.

These are basically the reasons that we denied the appellant's motion to transfer. We are not saying the case should not be transferred to the Fourteenth Court, just that we should not be the court to do it. If we read *Miles* correctly, only your court

can effect the transfer the appellant seeks.

If you have any questions or comments, please contact me at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Levon G. Hovnatanian". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Levon G. Hovnatanian
Chief Staff Attorney

cc: Margie Thompson

LH/jp

LAW OFFICES
GREER, HERZ & ADAMS, L.L.P. IN SUPREME COURT
OF TEXAS

Received
FILED

ORIGINAL

W. E. GREER (RETIRED)
CHARLES BROWN, P.C.
IRWIN M. HERZ, JR., P.C.
JERRY L. ADAMS, P.C.
STEPHEN G. SCHULZ, P.C.
FRANK T. CREWS, JR., P.C.
DEBRA G. JAMES
JOHN A. BUCKLEY, JR., P.C.
ANDREW J. MYTELKA
DARRYL H. LEVY
FREDERICK BLACK
JANET L. RUSHING

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

—
ONE MOODY PLAZA
—
GALVESTON, TEXAS 77550-7998

—
GALVESTON (409) 765-5525
HOUSTON (713) 480-5278
TELECOPIER (409) 766-6424

APR 02 1996

JOHN T. ADAMS, Clerk
By _____ Deputy

MARILYN L. SOLOWAY
GREGORY S. GARRISON
SCOTT D. DANIEL
JAMES M. ITIN
TARA B. ANNWEILER
MICHAEL G. ADAMS
THOMAS W. McQUAGE
JENNIFER M. McKAY
JOE A. C. FULCHER
GEORGE C. JONES
OF COUNSEL
JOHN S. McELDOWNEY
CHAS. B. SMITH
CHRISTINE KELLER

Misc. Docket No. 96- 9092 February 21, 1996

Margie Thompson
First Court of Appeals
1307 San Jacinto, 10th Floor
Houston, TX 77002

RECEIVED
FIRST COURT OF APPEALS
HOUSTON, TEXAS
FEB 22 1996
MARGIE THOMPSON
CLERK

Re: Case No. 01-96-00038-CV; *Moody National Bank v. Riebschlager, Gary M. and the Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager* - In the First Court of Appeals, Houston, Texas

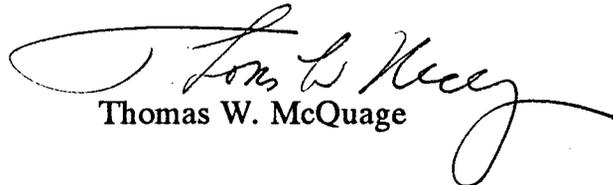
Dear Ms. Thompson:

The Appellant in this case recently filed a motion to transfer this case to the 14th Court of Appeals, on the ground that this case and another appeal pending before the 14th Court are essentially identical. The first Court of Appeals has denied that motion.

Under cover of this letter, I submit to you a form of motion to transfer which is addressed to the Supreme Court of Texas. In accordance with the suggestion made to me by the clerk of the Supreme Court, I am submitting this motion to you, with the request that it be forwarded to the Supreme Court along with such comments as your court may wish to provide, particularly in connection with your court's disposition of the motion on this subject which I previously filed with you.

If this letter or its enclosure invoke any questions or comments on your part, please feel free to give me a call.

Yours very truly,


Thomas W. McQuage

TWM:jsg

Enclosure

cclient.twm.app.riebschl.1st/clerk6.ltr

Margie Thompson
February 21, 1996
Page 2

cc: John A. Buckley, Jr. (of the Firm)

Daniel J. Goldberg
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, TX 77056-1918

CERTIFIED MAIL - RRR

ORIGINAL

Received
IN SUPREME COURT
OF TEXAS

Misc. Docket No. 96- 9092

NO. _____

RECEIVED
FIRST COURT OF APPEALS
HOUSTON, TEXAS
FEB 22 1996
MARGIE THOMPSON
CLERK

APR 02 1996

IN THE SUPREME COURT OF TEXAS

JOHN T. ADAMS, Clerk
By _____ Deputy

MOODY NATIONAL BANK

Appellant in the First and Fourteenth Courts of Appeals

v.

THE LAW FIRM OF O'QUINN, KERENSKY, McANINCH & LAMINACK

Appellee in the First and Fourteenth Courts of Appeals

APPELLANT'S MOTION TO TRANSFER

TO THE HONORABLE COURT OF APPEALS:

Appellant, MOODY NATIONAL BANK, moves this Court to transfer the appeal now pending in the First Court of Appeals, under Case No. 01-96-00038-CV and styled, *Moody National Bank v. Gary M. Riebschlager and The Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager* to the Fourteenth Court of Appeals, sitting in Houston, Texas, pursuant to TEX. GOV'T CODE § 73.001, for the following reasons:

I.

The case now pending in the First Court of Appeals and the subject of this motion is an appeal from a summary judgment for the Defendant-Garnishee, the Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager, now known as O'Quinn, Kerensky, McAninch & Laminack. This case originated as one of two simultaneously and virtually identical post-judgment garnishment writs issued out of district courts in Galveston County. Because Appellant was the owner of two judgments in two different cases against the

Judgment Debtor, writs of garnishment were issued out of each case against the Judgment Debtor, directed to the same garnishees. Ultimately, disputed fact issues between Appellant and Appellee caused the two cases to be placed in the 281st District Court of Harris County, Texas pursuant to § 63.005(a) of the Texas Civil Practice & Remedies Code. This dispute continued to bear two distinct cause numbers in that court. Identical motions for summary judgment were filed in each of those two causes, and granted by identical orders for summary judgment. Appellant perfected appeal from each summary judgment, and the consecutively numbered district court causes were assigned to the First Court of Appeals and to the Fourteenth Court of Appeals, respectively. Transcripts were filed in each Court of Appeals on the same day, January 4, 1996. The lowest of the two district court cause numbers is now pending in the Fourteenth Court of Appeals as case no. 14-96-00041-CV, also styled *Moody National Bank v. Gary M. Riebschlager and The Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager*.

II.

The particulars of the procedural history of this (these) case(s) which suggest that there should be one substantive case on appeal consist of these facts:

On February 3, 1993, Appellant filed applications for writ of garnishment after judgment in cause numbers 90-CV-0046 and 90-CV-0047 in two different Galveston County District Courts. Appellant had obtained judgments in each of those cases against one David Goodbar. Writs of garnishment were issued in each of those proceedings on the date of the filing of each application, and a return of service was subsequently filed in each proceeding indicating the writs of garnishment were served.

On March 1, 1993, the garnishee separately filed answers, motions to transfer venue, and motions to quash service and to quash the writs of garnishment in each proceeding. The respective motions to quash the service of the writs and to quash the writs themselves were litigated in one Galveston County District Court. Identical filings appeared in each of the Galveston County cases. On August 18, 1993, the Galveston County district court granted the Garnishees' motions to quash service of the writs, but denied the motions to quash the writs themselves, by identical orders filed in each of the garnishment cases.

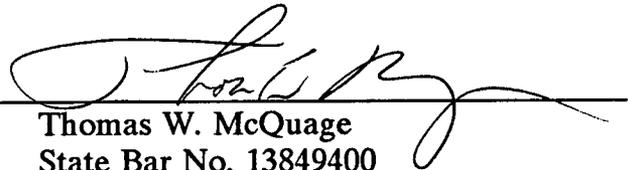
After the Galveston County district court granted the motions to quash service, each Garnishee filed an amended answer in each of the cases, denying that they were indebted to any judgment debtor, nor in possession of any effects belonging to any debtor as of the date upon which each Garnishee had appeared and answered the applications for writ of garnishment. Plaintiff then filed its controverting affidavit in each case. Thereupon, the Galveston County district court ordered that the contested fact issues be tried in a Harris County district court, in accordance with TEX. CIV. PRAC. & REM. CODE § 63.005.

Consequently, proceedings were refiled in the 281st District Court of Harris County, Texas. Because they originated as two separate but essentially identical garnishment proceedings from Galveston County, the two cases were likewise assigned different cause numbers in the 281st District Court. Identical motions for summary judgment and responses to motions for summary judgment were filed in each of those Harris County cases. After hearing, identical orders granting summary judgment were entered by the district court, and appeals were perfected from each of those judgments.

As a result, cause no. 94-042451 in the 281st District Court of Harris County is now pending before the Fourteenth Court of Appeals as its case number 14-96-00041-CV, and cause no. 94-042452 in the 281st District Court is now pending before the First Court of Appeals as its cause no. 01-96-00038-CV.

For the reasons stated, Moody National Bank, Appellant, prays that this Court transfer the appeal now pending before the First Court of Appeals under cause no. 01-96-00038-CV and styled, *Moody National Bank v. Gary M. Riebschlager and The Law Firm of O'Quinn, Kerensky, McAninch & Riebschlager*, to the Fourteenth Court of Appeals pursuant to TEX. GOV'T CODE § 73.001, so that these appeals on virtually identical transcripts and presenting precisely the same issues on appeal may be consolidated into one proceeding in one Court of Appeals.

Respectfully submitted,

By: 

Thomas W. McQuage
State Bar No. 13849400
One Moody Plaza, 18th Floor
Galveston, Texas 77550
(409) 765-5525 (Galveston)
(713) 480-5278 (Houston)
(409) 766-6424 Facsimile

ATTORNEYS FOR APPELLANT
Moody National Bank

OF COUNSEL:

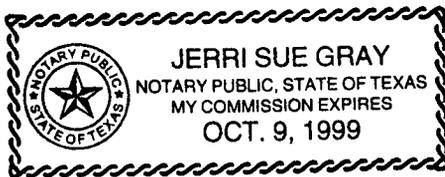
GREER, HERZ & ADAMS, L.L.P.

STATE OF TEXAS

COUNTY OF GALVESTON

Before me, a notary public, on this day personally appeared THOMAS W. McQUAGE, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this 21st day of February, 1996.



Jerry Sue Gray
Notary Public Signature

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served upon the following parties, as indicated, on this 21st day of February, 1996:

- Certified Mail, Return Receipt Requested, prepaid;
- First-Class, prepaid; Telecopier Transmission;
- Hand Delivery

Daniel J. Goldberg
ROSS, BANKS, MAY, CRON & CAVIN, P.C.
2 Riverway, Suite 700
Houston, TX 77056-1918

(713) 626-1200

Lynn Gomez

Thomas W. McQuage
Thomas W. McQuage