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CASE NO. 017-290364-17

February 8, 2017

James A McGuire, on behalf of himself
and all others similarly situated in the State
of Texas
PLAINTIFF,

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IN THE DISTRICT COURT OF

V.

TARRANT, TEXAS

Gregg Abbott, in his official capacity as
Governor of the State of Texas and official
capacity as CEO of the State of Texas ,
DEFENDANT,

_____ **JUDICIAL DISTRICT**

PETITION FOR DECLARATORY JUDGMENT

COMES NOW, James Allen McGuire as a Notary (ID 130260037 expiration
06-16-2019), James Allen McGuire is also a Texas licensed Private Investigator
for Mortgage Compliance Investigations LLC.; for the benefit of the State of Texas
and the taxpaying citizens of the State of Texas (hereinafter “Plaintiff”) and files
its Original Petition for Declaratory Judgment against the defendants in their
official capacities as the parties allowing (78R) H.B. 1493 to remain of statutory
law, (hereinafter “Defendant”). Plaintiff seeks to prevent any party from further
miss-applying law and specifically Texas Property Code § 51.001(4)(C) and
violating the constitutions of the State of Texas and the United States Constitution,
and alleges as follows: Should Texas Statute §51.001(4)(C) be used to deprive a
Texas agency of rights expressly authorized by another subsection of Texas statute
such as Texas Statute §192.007 and other(s) along with allowing a breached Deed
of Trust be ressurected from the dead.

I.

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DISCOVERY-CONTROL PLAN

1.01 Plaintiff intends for discovery to be conducted, should any discovery be necessary, under Level 2 pursuant to Tex. R. Civ. P. 190.1 and 190.3

1.02 Plaintiff affirmatively pleads that this suit is not governed by the expedited actions process under Tex. R. Civ. P. 169. Plaintiff does not anticipate that Tex. R. Civ. P. 47 for expedition will become factor because Plaintiff seeks Declaratory Judgment.

II.

CLAIM FOR RELIEF

2.01 Plaintiff seeks Declaratory Judgment and no damages are requested

2.02 The remedies sought are within the jurisdictional authority of the court pursuant to Tex. R. Civ. P. 47.

III.

PARTIES

3.01 Plaintiff is James A McGuire, on behalf of himself and other similarly situated in the state of Texas. James A McGuire resides in Tarrant County, Texas.

3.02 Defendant Greg Abbott was the duly elected Governor of Texas during 2003-2004, and is the Chief Executive Officer of the State of Texas under Article IV, Section 1, of the Constitution of the State of Texas. Governor Abbott has allowed (78R) H.B. 1493 to continue to be effective law since January 1, 2004, and is sued here in his official capacity.

3.03 Defendant Greg Abbott may be served at State Insurance Building 1100 San Jacinto, Austin, Texas 78701.

41 3.04 Pursuant to Tex. Civ. Prac. & Rem. Code §37.006(b) the Attorney
42 General must be served and is entitled to be heard.

43 3.05 Attorney General Ken Paxton may be served at 300 W. 15th Street,
44 Austin, TX 78701.

45 IV.

46 **JURISDICTION**

47 4.01 This Court has jurisdiction to hear this case under the Uniform
48 Declaratory Judgments Act, Tex. Civ. Prac. & Rem. Code Ann. § 37. The
49 declaration sought is within the jurisdictional authority of the court pursuant to
50 Tex. R. Civ. P. 37.003. In addition, Tex. Gov’t Code § 22.004(g) would be
51 inapplicable. All relief sought by Plaintiff is within the jurisdictional limits of this
52 Court. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.002(b).

53 V.

54 **VENUE**

55 5.01 Tarrant County is a proper venue because it is the county in plaintiff is
56 located. It is also the county in which an alleged violation of the law occurred.
57 Furthermore, purpose of the Declaratory Judgments Act is “to settle and afford
58 relief from uncertainty and insecurity with respect to rights, status, and other legal
59 relations.” Tex. Civ. Prac. & Rem. Code Ann. § 37.002(b) (Vernon 2008); see
60 Bonham State Bank, 907 S.W.2d at 467; Indian Beach Property Owners’ Ass’n
61 v.Linden, 222 S.W.3d 682, 699 (Tex. App.—Houston [1st Dist] 2007, no pet.)

62 VI.

63 **SUMMARY OF THE CASE**

64 6.01 Section § 51.0001(4)(C) of Chapter 51, Texas Property code reflects a
65 “mortgagee” (4) means (C) “if the security interest has been assigned of record,
66 the last person to whom the security interest has been assigned of record.” This
67 subsection is ambiguous in the statutes plain language.^{1, 2}

68 6.02 Plaintiff claims that section § 51.0001(4)(C) of Chapter 51, Texas
69 Property code, a Texas statute, is vague and overbroad.³

70 6.03 Plaintiff claims that section § 51.0001(4)(C) appears illegal on its
71 face.

72 6.04 Plaintiff claims that section § 51.0001(4)(C) as applied allows
73 personal property transactions to be misrepresented as real property transactions.

74 6.05 Plaintiff claims that section § 51.0001(4)(C) makes no clarification as
75 to whether a *security interest* was “lawfully” assigned of record, or whether a
76 *security interest* was allowed even if the security interest was a Chapter 9⁴ *security*

4 ¹ (“Unless a statute is ambiguous, we must follow the clear language of the statute.”); Brazos
5 River Auth. v. City of Graham, 163 Tex. 167, 354 S.W.2d 99, 109 n. 3 (1962)

6 ² If the statutory text is unambiguous, a court must adopt the interpretation supported by the
7 statute's plain language unless that interpretation would lead to absurd results. See *Tune v. Tex.*
8 *Dep't of Pub. Safety*, 23 S.W.3d 358, 363 (Tex.2000)

9 ³ When a statute is alleged to be overbroad and vague, we first determine whether the statute
10 "reaches a substantial amount of constitutionally protected conduct. See *Kuhl v. State, Tex*: Court
11 of Appeals, 6th Dist. 2016

12 ⁴ Tex. Bus. Comm. Code- *Sec. 9.110. SECURITY INTERESTS ARISING UNDER CHAPTER 2*
13 *OR 2A. A security interest arising under Section 2.401, 2.505, 2.711(c), or 2A.508(e) is subject*
14 *to this chapter. However, until the debtor obtains possession of the goods:*

15 (1) *the security interest is enforceable, even if Section 9.203(b)(3) has not been*
16 *satisfied;*

17 (2) *filing is not required to perfect the security interest;*

18 (3) *the rights of the secured party after default by the debtor are governed by*
19 *Chapter 2 or 2A; and*

77 *interest assigned*, and filed of record in the county clerks records as an eligible
78 instrument with the force of law.

79 6.06 Regardless of the presence or non-presence of a severability clause
80 Subsection(4)(c) of Chapter 51 of the Texas Property Code as codified into law
81 would if verbiage is not corrected allow that an instrument filed of record under
82 another Texas law such as section § 192.007(a)⁵, or other Texas recordation act law
83 would be rendered a nullity if subsection(4)(C) remains to allow an ineligible
84 instrument to be given the legal effect of a force of law.

85 6.07 Allowing such ambiguous section such as § 51.0001(4)(C) to continue
86 as enacted seemingly deprives local political divisions, such as county clerks from
87 revenue due; and seemingly deprives legal rights of an existing statute §
88 192.007(a) from the requirements specified in such section.⁶

89 6.08 Allowing such ambiguous section such as § 51.0001(4)(C) to continue
90 as enacted seemingly deprives political divisions, such as the Secretary of State
91 from revenue due; and seemingly deprives legal rights of an existing statute Article
92 9 filing requirements specified in such section.

93 6.09 The question before this Court is whether section § 51.0001(4)(C),
94 Chapter 51, Texas Property Code as enacted on January 1, 2004, on its face, is

21 (4) *the security interest has priority over a conflicting security interest created*
22 *by the debtor.*

23 ⁵ "purpose of recording laws is to notify subsequent purchasers ... and not to give protection to
24 perpetrators of fraud") See [Ojeda de Toca v. Wise](#), 748 SW 2d 449 - Tex: Supreme Court 1988

25 ⁶ "Section 192.007 of the Texas Local Government Code requires the re-recording of the
26 security instrument each time there is a release, transfer, assignment, or some other action
27 related to the instrument." See *Nueces County v. MERSCORP HOLDINGS, INC.*, Dist. Court,
28 SD Texas 2013

118 7.05 In 2003, the Texas Legislature passed House Bill 1493 during the 78th
119 Legislative Session. House Bill 1493 added Section § 51.0001 to the Texas
120 Property Code, which became effective on January 1, 2004.

121 7.06 On June 6, 2003 (78R) H.B.1493 was signed by, acting in their
122 individual official capacities for the State of Texas, duly elected, acting by and
123 through the Texas Senate of the State of Texas.

124 7.07 On June 6, 2003 (78R) H.B.1493 was signed by, acting in their
125 individual official capacities for the State of Texas, duly elected, acting by and
126 through the Texas House of Representatives of the State of Texas.

127 7.08 On June 20, 2003 (78R) H.B.1493 was signed off by, Rick Perry,
128 acting in his official capacity as Governor of the State of Texas.

129 7.09 In House Bill 1493, the sponsor, Burt Rowe Solomons provided that
130 pursuant to section 51.0001(4) a “mortgagee” means; giving three parts, (A); (B);
131 or (C),

132 7.09 Section § 51.0001(4)(C) creates a controversy with other Texas Law
133 such as Section § 192.007(a), Texas Local Government Code, and possibly other
134 Texas law.

135 7.10 Article 16, section 48 of the Texas Constitution provides that “*all*
136 *laws and parts of laws now in force in the State of Texas, which are not repugnant*
137 *to the Constitution of the United States, or to this Constitution, shall continue and*
138 *remain in force as the laws of this State, until they expire by their own limitation*
139 *or shall be amended or repealed by the Legislature”.*

140 7.11 Article I, section 19 of the Texas Constitution provides that “*No*
141 *citizen of this State shall be deprived of life, liberty, property, privileges or*

142 *immunities, or in any manner disfranchised, except by the due course of the law of*
143 *the land.”*

144

VIII.

145

SUIT FOR DECLARATORY RELIEF

146 8.01 This is a suit for Declaratory determination as to whether a Texas
147 Statute is so ambiguous on its face that it seemingly allows criminal acts given by
148 such violation of an enacted law the effect of full force of law. “*Statutory*
149 *construction is a question of law*”. See *Johnson v. City of Fort Worth*, 774 S.W.2d
150 653, 656 (Tex.1989).

151 8.02 Plaintiff provides this declaratory judgment for the benefit of the
152 people similarly situated in the state of Texas; and for the existing enacted Texas
153 laws without a voice to protect its statutory rights. “*The right to judicial review of*
154 *acts of legislative and administrative bodies affecting constitutional or property*
155 *rights is axiomatic.*” *City of Houston v. Blackbird*, 394 S.W.2d 159, 162 (Tex.
156 1965).

157 8.03 This suit for declaratory judgment is brought pursuant to the Uniform
158 Declaratory Judgments Act in Chapter 37 of the Texas Civil Practice and
159 Remedies Code. “*A court of record within its jurisdiction has power to declare*
160 *rights, status, and other legal relations whether or not further relief is or could be*
161 *claimed.*” Tex. Civ. Prac. & Rem. Code § 37.003(a). “*A person...whose rights,*
162 *status, or other legal relations are affected by a statute...may have determined any*
163 *question of construction or validity arising under the...statute...and obtain a*
164 *declaration of rights, status, or other legal relations thereunder.*” *Id.* at §
165 37.004(a).

166 8.04 The court’s general jurisdictional authority under Article V, § 8 of the
167 Texas Constitution and Tex. Gov’t Code § 24.011 is properly invoked by the filing
168 of a declaratory judgment action challenging the constitutionality of a statute.

169 8.05 It has been noted in previous court cases, “*Legally, qualified immunity*
170 *applies so long as the official conduct of the individual defendant "does not violate*
171 *clearly established statutory or constitutional rights of which a reasonable person*
172 *would have known."* *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). *Qualified*
173 *immunity generally requires an inquiry into (1) whether the plaintiff in the civil*
174 *action has demonstrated the violation of a constitutionally protected right and (2)*
175 *"whether the right is so 'clearly established' that a reasonable official would*
176 *understand that what he is doing violates that right."* *Brennan v. Township of*
177 *Northville*, 78 F.3d 1152, 1154 (6th Cir. 1996). *The court can consider any inquiry*
178 *first, and need not reach the remaining inquiry if it answers any inquiry in the*
179 *negative."*

180 8.06 In a semi-recent federal court interlocutory order the court stated
181 “*TEX. LOC. GOV'T CODE ANN. § 192.007(a). Based on the plain language of*
182 *Section 192.007, the Court concludes that the statute requires the re-filing of an*
183 *instrument each time there is a release, transfer, assignment, or some other action*
184 *relating to an instrument filed with the county clerk. This interpretation is*
185 *consistent with this Court's previous interpretation of this statute. See Miller v.*
186 *Homecomings Financial, LLC*, 881 F. Supp. 2d 825, 830 (S.D. Tex. 2012) (“*Texas*
187 *statute declares that any transfer or assignment of a recorded mortgage must also*
188 *be recorded in the office of the county clerk”). There are no recorded cases of*
189 *Texas state courts interpreting Section 192.007”. See Nueces County v.*
190 *MERSCORP HOLDINGS, INC.*, Dist. Court, SD Texas 2013

191 8.07 Thus, one could reasonably infer from the federal courts interlocutory
192 order that § 51.0001(4)(C) system has caused a reduction in filing fees collected by
193 the County and that the County's property records have been degraded as a result
194 of a book entry system(s) such as “MERS”. *“Texas Local Government Code*
195 *requires the re-recording of the security instrument each time there is a release,*
196 *transfer, assignment, or some other action related to the instrument filed of*
197 *record”*.⁸

198 8.08 Whether the Texas Legislature or the sponsor of House Bill 1493
199 knew exactly what was being accomplished with the amendment only those
200 involved would know. Nonetheless, the statute as enacted, and upon its face
201 provides for ambiguity. As the federal court opined, a re-filing of a related
202 instrument would be required due to § 192.007(a).

203 8.09 On its face, section § 51.0001(4)(C) is vague enough to allow a
204 transaction relating to “personal property” collateral governed by Chapters 7, 8, or
205 9 Texas Business and Commerce Code, to have the force of law which actually
206 deprives or becomes superior to other existing Texas law while the personal
207 property is given the effect of full force of law. Hence 51.0001(4)(C) deprives the
208 statutory, and constitutional rights of other existing Texas laws.

209 8.10 On its face, section § 51.0001(4)(C) is vague enough to deprive
210 chapter 24, Texas Property Code, Chapters 3, 7, 8, 9, Texas Business and
211 Commerce Code, Tax Code, and the bankruptcy code to name a few possibilities
212 of constitutional violations against existing laws, yet to be given the effect of full
213 force of law.

35 ⁸ *Nueces County v. MERSCORP HOLDINGS, INC.*, Dist. Court, SD Texas 2013 2:12-cv-00131

214 8.11 On its face, section § 51.0001(4)(C) is vague enough to allow for
215 transactions governed by section § 322.016 of Texas Uniform Electronic
216 Transactions Act to be given the effect of full force of law.

217 8.12 On its face, section § 51.0001(4)(C) is vague enough to deprive the
218 county clerks of revenue regarding filing fees.

219 8.13 On its face, section § 51.0001(4)(C) is vague enough to deprive the
220 Secretary of State of revenue regarding filing fees.

221 8.14 For Texas to allow the ambiguous wording of § 51.0001(4)(C) to
222 continue only deprives not only citizens, but other persons such as local, or state
223 government corporations, and existing statutory law to take a back seat to any
224 unknown party whom chooses to utilize this certain section for an unfair
225 advantage, and to deprive.

226 8.15 For Texas to allow the ambiguous wording of § 51.0001(4)(C) as
227 applied to continue to carry the effect of law throughout the courts of the state,
228 paper rights case law will become a thing of the past, and abstract rights will
229 become the new property rights law regarding real property.

230 8.16 Whether the court ponders upon the “facial” challenge, or “as
231 applied” doctrine the results would be the same. Section § 51.0001(4) (C) allows
232 for deprivation of other Texas laws. “*Faithfully applying the law cannot mean*
233 *short-circuiting one Texas law in order to strike down another*”. See - Supreme
234 Court of Texas No. [15-0139](#) *In Re State Of Texas*, Relator

235 8.17 There are three (3) possible options to seemingly resolve the §
236 51.0001(4)(C) constitutional violation, (1) the Texas Legislature could simply
237 amend a single word “lawfully” in two places, which would ensure § 192.007(a)

238 was not violated of its statutory rights. As an example; “*if the security interest has*
239 *been <lawfully> assigned of record, the last person to whom the security interest*
240 *has been <lawfully> assigned of record.* (2) Or the Texas legislature could revert
241 back to the previous version of Chapter 51 which appeared to have worked
242 flawlessly. (3) Or the Texas legislature could completely remove the
243 unconstitutional portions of section § 51.0001 which would allow all other Texas
244 law violated by such section to gain equal protection provided for by the
245 Constitution.

246

IX.

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OBJECTION TO ASSOCIATE JUDGE

248 9.01 Plaintiff objects to the referral of this case to an associate judge for
249 hearing a trial on the merits or presiding at a jury trial. Tex. Gov’t Code §
250 54A.106(c).

251

X.

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CONDITIONS PRECEDENT

253 10.01 All conditions precedent to plaintiff’s claim for relief have been
254 performed or have occurred. Texas. R. Civ. P. 54

255

XI.

256

REQUEST FOR DISCLOSURE

257 11.01 Under Texas Rule of Civil Procedure 194, plaintiff requests that
258 defendant disclose, within 50 days of the service of this request, the information or
259 material described in Rule 194.2.

260

XII.

261 **CONCLUSION**

262 12.01 As currently enacted, section § 51.0001(4)(C) as applied allows for
263 the use of secret equities which encourages violations of the Texas Penal Code and
264 the Statute of Frauds, such as fraudulent filings; section § 51.0001(4)(C) allows for
265 the use of abstract rights, rather than paper rights. As currently enacted, section §
266 51.0001(4)(C) deprives a party of rights of other Texas law(s), which violates the
267 Texas Constitution and the U.S. Constitution. In alternative if the court determines
268 that a unlawful is constitutional then crooks committed to prison for violating a
269 statute comes to question.The very short version; Can a law be enacted to resurrect
270 a dead breached contract, by not following all applicable law as the contract itself
271 said will be done, and to give such dead contract the right of full force of law
272 without violating the constitution or interfering with Contract Law?

273
274 **XIII.**

275 **PRAYER**

276 13.1 For these reasons, plaintiff asks that defendants be cited to appear and
277 answer and that the Court declare section § 51.0001(4)(C) in violation of
278 the Texas constitution, thus violating other Texas law; And plaintiff
279 requests any other declaratory determination to which plaintiff is entitled
280 to.

281 Respectfully submitted, /S/James A McGuire

282 1717 Grassy View Drive

283 Fort Worth, Texas 76177

284 j.mcguire@trilliondollarfubar.com

285 817 704-8961

286

CERTIFICATE OF COMPLIANCE

287 I hereby certify that according to the word-count feature of the OpenOffice Writer,
288 which has been applied including headers the Petition for Declaratory Judgment
289 consists of a cumulative total of 2,904 words. Last three digits of Texas Drivers
290 license is 412 and last three digits of SSN is 020.

291

Respectfully submitted By: /S/James A McGuire

292

James A McGuire

293

1717 Grassy View Drive

294

Fort Worth, Texas 76177

295

817-704-8961 Pro Se

296

Email: j.mcguire@trilliondollarfubar.com

297

UNSWORN DECLARATION

298 Pursuant to chapter 132(d), Texas Civil Remedies and Practices, I, James A
299 McGuire provides this unsworn declaration. "My name is James A McGuire, my
300 date of birth is November 10, 1952, and my address is 1717 Grassy View Drive
301 Fort Worth, Texas 76177 and United States.

302

I declare under penalty of perjury that the foregoing is true and correct.

303

Executed in Tarrant County, State of Texas, on this February 8, 2017.

304

Declarant /S/James A McGuire

305

James A McGuire

306 Email: j.mcguire@trilliondollarfubar.com

307

Phone: 817 704 8961

308

CERTIFICATE OF SERVICE

309 I hereby certify that on February 8, 2017 a true and correct copy of Plaintiffs'
310 Petition for Declaratory Judgment was delivered to parties of this case listed
311 below via Service of Process, Secretary of State.

312

313 Gregory Wayne "Greg" Abbott in his official capacity as Governor of Texas –
314 U.S. Mail Defendant may be served at Office of the Governor
315 State Insurance Building
316 1100 San Jacinto
317 Austin, Texas 78701
318 c/o Service of Process, Secretary of State
319 P.O. Box 12079
320 Austin, Texas 78711-2079

321

322 Attorney General is being serviced pursuant to Tex. Civ. Prac. & Rem. Code
323 §37.006(b)

324 Ken Paxton in his official capacity as Attorney General of Texas – U.S. Mail
325 300 W. 15th Street, Austin, TX 78701
326 c/o Service of Process, Secretary of State
327 P.O. Box 12079
328 Austin, Texas 78711-2079