No. 12-10-00021-CV and 12-10-00050-CV

THE SUPREME COURT OF TEXAS

THOMAS D. SELGAS AND MICHELLE L. SELGAS

Petitioners

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT

Respondent

Petition for Review

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ORAL ARGUMENT REQUESTED

LIST OF PARTIES & THEIR COUNSEL

The undersigned certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or need for recusal.

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STATEMENT OF THE CASE

1. **Nature of the Case**: Petitioners appeal the court of appeals' decision to affirm the trial court's grant of summary judgment. In the underlying case, Petitioners challenged whether Respondent's appraisals of their properties were excessive. Petitioners now challenge whether the lower courts' rulings violate the Supremacy Clause of the United States Constitution and whether the cash purchase price paid for their properties was evidence of fair cash market value that raised a genuine issue of material fact, making the grant of either a no evidence or traditional summary judgment inappropriate.

2. **Trial Judge**: The Honorable Dan Moore

3. **Trial Court**: The 173rd Judicial District Court, Henderson County, Texas.

4. **Disposition by Trial Court**: Orders Granting Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment (1/15/10), attached to Appendix as Exhibit "A."

5. **Parties to Appeal**:

   Appellants - Thomas D. Selgas and Michelle L. Selgas

   Appellee - Henderson County Appraisal District

6. **Appellate District**: Court of Appeals for the 12th District of Texas, Tyler.

7. **Appellate Panel**: Chief Justice James T. Worthen, Justice Sam Griffith, & Justice Brian Hoyle comprised the panel. Justice Hoyle wrote the opinion.

8. **Citation to Appellate Decision**: *Thomas D. Selgas and Michelle L. Selgas v. Henderson County Appraisal District,* 2011 WL 5593138 (Tex. App. – Tyler 2011) (Opinion delivered November 16, 2011). Attached as Appendix Exhibit "B."

9. **Disposition by Appellate Court**: The Twelfth Court of Appeals *affirmed* the trial court's grant of summary judgment.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this cause. Petitioners brought these actions, challenging Respondent's appraised valuation of their property, in the 173rd Judicial District Court, Henderson County, Texas pursuant to chapter 42 of TEX. PROP. TAX CODE (Vernon 2009). Relevant excerpts attached as Appendix Exhibit "C." Under §42.28 of the Code, this Court has jurisdiction to review the decisions of the trial and appellate courts. (App. Ex. 26-27).

ISSUES PRESENTED

I. Whether the Court of Appeals Misconstrued the Applicable Law?

II. Whether Purchase Price Was Evidence of Fair Cash Market Value Making Summary Judgment Improper?

STATEMENT OF THE FACTS

A. Petitioners Paid $16,670 for the Subject Properties.

On February 27, 2008, JoAnn and Richard Bryant ("Sellers") conveyed to Thomas D. Selgas and Michelle L. Selgas ("Buyers") 36.428 acres (the "subject properties"), which was comprised of AB 538, RV Morrel Sur, TR 3F 23.059 (Parcel A) and AB 538, RV Morell Sur, TR 3F 23.369 minus a defined 10 acre tract (Parcel B). *General Warranty Deed*, attached to Appendix as Exhibit "D." As payment for the subject properties, Buyers gave Sellers one thousand six hundred and sixty-seven (1,667) American Eagle ten dollar gold coins. *Id.* at p. 148 (App. Ex. 29). Accordingly, the purchase price for the subject properties was sixteen thousand six hundred and seventy dollars ($16,670).

B. The Sale of the Subject Properties Was Arms Length Transaction.

Petitioners purchased the subject properties on or about February 27, 2008. *Affidavit of Thomas D. Selgas.* at Ex. I, p. 1 (Clerk's Record (C.R.), Cause 2008A-813, Vol. 2, p. 301). They purchased the subject properties based upon prevailing market conditions, with full awareness of its potential uses and enforceable restrictions, and neither party was in position to capitalize on the exigencies of the other. *Id.* at p. 301-302. They paid $16,670 cash for the subject properties. *Id.* at p. 302. In her affidavit, Seller JoAnn Bryant testified similarly. *Id.* at p. 304-305. Accordingly, this transaction was completely devoid of any duress, compulsion, or incomplete knowledge on the part of either party, and represented a true arms-length transaction.

C. In 2008 and 2009, Petitioners Protested Excessive Appraisal Values Assigned to the Subject Properties to No Avail.

1. In 2008, HCAD appraised the values of Parcel A and Parcel B at $251,630 and $40,240, respectively.

On or about May 16, 2008, Petitioner received notification from Respondent Henderson County Appraisal District ("HCAD") that Parcel A of the subject properties had been appraised for 251,630. (C.R., Cause 2008A-813, Vol. 1, p. 6, 11, & 13). The notice also informed him that Parcel B had been appraised for 40,240. (C.R., Cause 2008A-814, Vol. 1, p. 6, 11, & 13). Upon receipt of this notice, Petitioner Thomas D. Selgas filed a Notice of Protest. (*Id.* at p. 11; & C.R., Cause 2008A-813, Vol. 1, p. 11). On June 9, 2008, the Appraisal Review Board of Henderson County, Texas heard Petitioners' protest. (*Id.* at p. 14; & C.R., Cause 2008A-813, Vol. 1, p. 14). On June 16, 2008, the Chairman of the Appraisal Review Board issued an order, overruling Petitioners' protest and concluding that no changes would be made to the appraised market values of $251,630 and $40,240 for the subject properties. (*Id.*).

2. In 2009, HCAD appraised the values of Parcel A and Parcel B at $354,040 and $53,480, respectively.

On or about May 1, 2009, Petitioner received notification from Respondent Henderson County Appraisal District ("HCAD") that Parcel A of the subject properties had been appraised at 354,040 and Parcel B had been appraised at 53,480. (C.R., Cause 2008A-813, Vol. 2, p. 182; C.R., Cause 2008A-814, Vol. 1, p. 19). Upon receipt of this notice, Petitioner Thomas D. Selgas filed a Notice of Protest. (*Id.* at p. 181-190; & *Id.*). On July 10, 2009, the Appraisal Review Board of Henderson County, Texas heard Petitioners' protest. (*C.R.,* Cause 2008A-813, Vol. 1, p. 19; & *Id.*). On July 17, 2009, the Chairman of the Appraisal Review Board issued an order overruling Petitioners' protest and concluding that no changes would be made to the appraised market value of $354,040 or $53,480. (*Id.*). Even though Petitioners had only paid $16,670 for the subject properties in February 2008, HCAD appraised their market values as $291,870 in 2008 and as $407,520 in 2009.

D. Petitioners Filed Timely Appeals of HCAD's Final Order.

Pursuant to 42.21 of the Texas Property Tax Code, a party has sixty (60) days to file a petition with the district court, requesting a review of an appraisal board's final order. (App. Ex. 19-21). After receiving the Appraisal Board's 2008 Final Order, dated June 16, 2008, Petitioners filed Original Petitions with the 173rd Judicial District Court in Henderson County, Texas, challenging the appraised values of the subject properties as excessive. They timely filed these petitions on August 1, 2008, which assigned Cause No. 2008a-813 (Parcel A) and Cause No. 2008-814 (Parcel B). (C.R., Cause 2008A-813, Vol. 1, p.1; & Cause 2008A-814, Vol. 1, p. 1).

Similarly, after hearing the Selgas' protests over the 2009 appraisal values of the subject properties, the Appraisal Board issued final order, overruling Petitioners' protest, on July 17, 2009. Less than sixty (60) days later, on August 31, 2009, Petitioners filed their First Amended Original Petitions in Cause Numbers 2008a-813 and 2008a-814, including challenges of HCAD's 2009 appraised values of the subject properties. (C.R., Cause 2008A-813, Vol. 1, p.17-21; and Cause 2008A-814, Vol. 1, p. 17-21).

E. District Court Granted HCAD's Motions for Summary Judgment.

On September 23, 2009, HCAD filed its Motion for Summary Judgment and for No-Evidence Summary Judgment. (C.R., Cause No. 2008a-813, Vol. 1, 22-129; C.R., Cause No. 2008a-814, Vol. 1, 22-131). On December 7, 2009, the Selgases filed their Responses to the HCAD's Motion for Summary Judgment and for No-Evidence Summary Judgment. (C.R., Cause No. 2008a-813, Vol. 1, p. 130-169 & Vol. 2, p. 170-315; C.R., Cause No. 2008a-814, Vol. 1, p. 132-171 & Vol. 2, p. 172-317) On December 14, 2009, the court heard oral argument on HCAD's Motions. The Court then granted the HCAD's Motion for Summary Judgment and for No-Evidence Summary Judgment as it related to Parcel A on January 4, 2010, (C.R., Cause No. 2008a-813, Vol. 2, p. 321-322), and as it related to Parcel B, on January 25, 2010. (C.R., Cause No. 2008a-814, Vol. 2, p. 323-324).

F. Court of Appeals Affirmed Summary Judgment Rulings.

The Selgases then filed a timely notice of appeal in both cases. (Cause No. 2008a-813, Vol. 2, p. 325-326; C.R., Cause No. 2008a-814, Vol. 2, p. 327-328). On March 19, 2010, Petitioners filed a motion to consolidate the two related cases for appeal (Cause No. 2008a-813 [Parcel A] & Cause No. 2008a-814 [Parcel B]),;and the court of appeals granted their motion on March 30, 3010. *See Docket Sheets for Cause No. 12-10-00021-cv & 12-10-00050-cv*, attached

to Appendix as Exhibits "E" & "F," respectively (App. Ex. 36-38 & 44-45). After the parties had briefed the issues on appeal, the Twelfth District Court of Appeals heard oral argument on or about January 18, 2011. *Id.* (App. Ex. 36, 44). Based upon issues raised during oral argument, the Selgases filed a motion to file a supplemental brief as well as a supplemental brief that addressed the issues of federal law raised during the hearing, but the court overruled their motions. *See Exs. "E" & "F"* (App. Ex. 35, 39-41, 43, 7 46-48). Approximately ten months later, the court of appeals issued its opinion, affirming the grant of summary judgment in both cases. *Id.*(App. Ex. 35 & 43)*; see also Court of Appeals Opinion* (App. Ex. 6-17). While Petitioners filed a motion for rehearing, the appellate court denied same on January 4, 2012. *See Id.* (App. Ex. 35 & 43). Because the issuance of summary judgment in these cases contravenes legal precedent, Petitioners now file this Petition, seeking reversal of the orders of the courts below and remand of the cases for trial in accordance with this Court's instructions.

SUMMARY OF THE ARGUMENT

Petitioners challenged HCAD's 2008 and 2009 appraised values of the subject properties, which were $291,870 and $407,520, respectively, as excessive. Despite Petitioners' evidence they paid $16,670 case for the subject properties, raising a material fact issue regarding the propriety of appraisals, the district court granted summary judgment. On appeal, the court ignored long-standing federal law, mandating that a gold dollar coin is worth no more than a paper dollar bearing the same face value. Affirming summary judgment, the appellate court impermissibly held that the ten dollar gold coins used to pay the $16,670 cash purchase price, when valued in terms of paper 'dollars' or FRN, were actually worth more money than HCAD's appraised values for the subject properties. Accordingly, Petitioner respectfully asks this Court to

enforce the law, holding a coin dollar is equal to a paper dollar bearing same face value, and reverse and remand this case for trial consistent with its ruling and the applicable law.

ARGUMENT & AUTHORITIES

I. DID THE COURT MISCONSTRUE THE APPLICABLE LAW?

A. Texas Property Shall Be Taxed On Its Fair Cash Market Value.

"No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its *fair cash market value*…." TEX. CONST. Art. VIII, § 20 (emphasis added), attached to Appendix as Exhibit "G." An appraised value, therefore, should represent the 'fair cash market value' of the property. A property owner may protest an appraised value, and can also appeal the appraisal board's ruling of a protested appraisal value. *See* TEX. PROP. TAX CODE ANN. §§ 42.01 (WEST 2008) (APP. EX. 19). If the fact finder determines the appraised value exceeds the *legal* appraised value (i.e., its 'fair cash market value'), the court must adjust it accordingly. *Id.* at §§ 42.23 - 42.25 (APP. EX. 23-25).

B. The Term 'Cash' Is Not Limited to Federal Reserve Notes.

The heart of this dispute centers on the meaning of 'cash'. In setting forth the applicable law, the appellate court correctly recites the test for establishing a property's market value, but then glosses over the import of the word 'cash' as used in the constitutional phrase 'fair cash market value.' (App. Ex. 10). By affirming summary judgment, the court implicitly agrees with the unfounded assertion of Respondent Henderson County Appraisal District ("HCAD") that appraisal values can only be assessed in terms of Federal Reserve Notes ("FRN") or paper 'dollars', and therefore, some type of conversion of coin to paper dollars is required to evaluate the cash purchase price evidence. *See Selgas v. HCAD,* 2011 WL 5593138 (Tex. App. – Tyler

2011) (App. Ex. 7-17). Such a conclusion not only misconstrues federal law, but it also creates an artificial caveat that simply does not exist and cannot be supported in Texas law.

1. Texas' definition of 'cash' includes coin (specie) and paper dollars.

This Court has held the "word 'cash' in its strict sense refers to coins ***and*** paper money." *Stewart v. Selder,* 473 S.W.2d 3, 8 (Tex. 1971)(emphasis added). Subsequently, this Court elaborated further defining 'cash' as "ready *money* (as *coin, specie*, paper money, an instrument, token, or anything else *being used as a medium of exchange*)." *See Hardy v. State,* 102 S.W3d 123, 131 (Tex. 2003)(citing Webster's Third New Int'l Dictionary 346 (1961)(emphasis added). Additionally, citing this Court's definition of cash, Texas Attorney General Greg Abbott stated that Federal Reserve Notes (FRN) are only one form of 'cash.' TEX. ATT'Y GEN. OP. NO. GA-0469, AT *2 (OCT. 18, 2006), attached to Appendix as Exhibit "H" (APP. EX. 53). As defined then, the fair *cash* market value of a property may be expressible in terms of either coin (specie) or paper (FRN) currency. Thus, Texas does not limit the term 'cash' to FRN only.

2. Coins have the same legal value as FRN of the same denomination.

As explained by the United States Supreme Court, a paper dollar represent an obligation of the United States to pay the holder with a gold or silver coin(s) (i.e., specie) of the same face value:

> "The same power is used, though it may be differently derived, which declares and impresses treasury notes with the value they purport to have upon their face. These notes are not deprived of intrinsic value, for they were issued upon the credit of the government, and have the good faith responsibility of all the people pledged for their redemption. The conviction of that being the case, though not perhaps one quite as tangible to the senses, should be an assurance of *actual value for them* [e.g., FRN], *equal to that created by the intrinsic value of gold and silver*. It was not a mere arbitrary value,

> therefore, which Congress provided these notes with, but one of an actual value, which at no remote day will extinguish the obligations they create with gold and silver coin."

Bronson v. Rodes, 74 U.S. (7 Wall.) 229, 239 (1868)(emphasis added). The Court subsequently reaffirmed this legal principle: "The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, *as a medium of exchange, the law knows no difference between them*." *Thompson v. Butler,* 95 U.S. 694, 696 (1877)(emphasis added). Thus, long-standing federal law mandates that when tendering payment for a debt, the amount paid shall be determined by the face value of the money received, and coin dollars are to be valued according to their face value, and therefore, equal to the value of paper dollars (FRN) of the same denomination.

3. Texas has successfully tested this legal principle in federal court.

Another Texas governmental agency successfully tested this long-standing legal principal that a gold coin has the same legal value as a paper dollar (FRN) of the same denomination in federal court. Texas resident Brent E. Crummey sued the Klein Independent School District ("KISD") in federal court because its tax office refused to accept his proffered fifty dollar United States American Eagle gold coins for any more than their face value ($50) as payment for the taxes he owed. The district court dismissed his claims.

On appeal, the Fifth Circuit stated:

> "We reject Crummey's suggestion that the 'dollar' has multiple meanings or values within the United States system of currency. [cite omitted]. As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency.
>
> *The legal monetary value of Crummey's fifty dollar American Gold Eagle coin is equivalent to that of a fifty dollar Federal Reserve Note.* Crummey's argument to the contrary, on which the bulk

of his appeal rests, fails."

Crummey v. Klein Indep. School Dist., 2008 WL 4441957, *2 (5th Cir. (Tex) 2008)(emphasis added). Attached to Appendix as Exhibit "I." The Fifth Circuit's holding relied upon the *Thompson* decision, which held a coin dollar was worth no more than a paper dollar. *Id.* at *1 (citing *Thompson,* 95 U.S. at 696) (App. Ex 58-59).

4. Because HCAD makes the same flawed argument, it too must fail .

Crummey argued that gold coins inherently have a different intrinsic value than their face value as evidenced by the fact that the U.S. Mint sells such coins into circulation at an amount that is often different than the face value of the coin. *Crummey,* 2008 WL at *1 (App. Ex. 58). Finding his argument improperly conflated the market value of such coins with their face value as legal tender, the Fifth Circuit rejected it. *Id.* (App. Ex. 58-59). Instead, agreeing with Texas' KISD position, the Fifth Circuit that, as legal tender, coins are to be valued by their face value and not the value of their metal content. *Id.*

In the face of black letter law and contravention of Texas' KISD's position, HCAD seeks to value coins according to the value of their precious metal content and not their face value. *Appellee's Brief, Cause Nos. 12:10-00021-CV/12:10-00050-CV, In the Court of Appeals for the 12th District of Texas, Tyler,* at p. 7. Even though the Fifth Circuit reject this argument in *Crummey*, the appellate court nevertheless used it to justify affirming the lower court's ruling. *Selgas,* 2011 WL at *9-10 (App. Ex. 15-17). For the same reasons this argument failed in *Crummey,* it must fail here as well.

5. The lower courts' rulings ignore the sovereignty of federal law.

As set forth above, coins (specie) have the same legal value as a paper treasury notes (i.e., FRN) of the same denomination. Whether one tenders payment in paper notes or coins, the value paid shall be determined by the face value of the money exchanged. *Thomas,* 95 U.S. at 696. Any judicial ruling, which values coin and paper money differently, ignores this long-standing legal principle in violation of the supremacy clause of the United States Constitution. *See Bronson,* 74 U.S. at 240 ("*Where those laws are supreme, that value must be observed and secured by the courts of justice, ...*") (emphasis added). Because the lower courts' rulings value coins and FRN differently, they violate the supremacy clause, and therefore, must be reversed.

C. Law Does Not Value Coins Pursuant to their Precious Metal Content.

1. Court of Appeals' reliance on Bronson decision is misplaced.

In its ruling, the appellate court relied upon dicta in the *Bronson* decision. *Selgas, 2011 WL* at *9-10 (App. Ex. 15-16). Referring to the *Bronson* decision, the court states to that a gold coin is intrinsically worth more than the nominal value of a FRN paper dollar bearing the same denomination. *Id.* Based upon this finding, the court erroneously concluded that HCAD could ignore the face value of Petitioners' purchase price paid (i.e., $16,670) when appraising Petitioners' property, and instead should convert the purchase price based upon the value of the amount of gold in the 1,667 coins as expressed in paper dollars (i.e., FRN). *Id.*

While the *Bronson* Court acknowledged a coin dollar and a paper dollar were not of equivalent intrinsic values, it also recognized that the prevailing law valued both forms of money according to their face value. *Bronson,* 74 U.S. at p. 240. The issue in *Bronson* was whether private parties could contract to require repayment of a debt be made only with a specific type of money. *Id.* at p. 245. After surveying the currency laws, the Court concluded while the government requires coins and paper dollars to be valued equally according to their face value,

private parties could require payment using a specific form of money. *Id.* at p. 252. In this case, however, no contract for repayment of debt exists between Petitioners and Respondent HCAD; and even if an implied contract could be said to exist, it certainly doesn't limit payment of taxes to a specific type of money. Accordingly, *Bronson* is irrelevant to this case.

2. Only contracting parties can distinguish between coin and notes.

Nine years after the *Bronson* decision, the issue of the different intrinsic values between a coin and paper 'dollar' was considered again by the Court. In *Thompson*, the parties had a contract for the purchase of a certain quantity of iron. *Thompson,* 95 U.S. at 695. Butler sued Thompson for not accepting the requisite quantity. *Id.* Because the Court entered judgment against Thompson for $5,066.17 in gold, the underlying contract must have required payment in gold. *See Bronson,* 74 U.S. at p. 254 ("When, therefore, contracts made payable in coin are sued upon, judgments may be entered for coined dollars and parts of dollars; and when contracts have been made payable generally, without specifying in what description of currency payment is to be made, judgments may be entered generally, without such specification."). To avoid appellate jurisdiction, Butler remitted damages by $66.17 in gold prior to entry of a final judgment. Thus, the court entered a final judgment for $5,000 in gold coin. *Id.*

On appeal, Butler moved to dismiss because the amount in controversy did not exceed $5,000. *Id.* The *Thompson* Court conceded it did not have jurisdiction when the amount in controversy did not exceed $5,000. *Id.* at p. 696. Acknowledging that parties could designate a specific form of acceptable money and that a coin dollar was worth more than a paper 'dollar', the Court reiterated that money, as a medium of exchange, must be valued the same [i.e., one coin dollar shall equal one paper 'dollar']. *Id.* at p. 696 - 97. While contracting parties can limit repayment to a specific type of money, third parties, like the *Thompson* Court, have no power to

value a payment other than by the face value tendered regardless of type. Thus, the Court was allowed merely "to determine the amount of money to be paid, and not the kind." *Id.* at p. 697. Since the did not exceed $5,000, the Court had no jurisdiction over the appeal. *Id.*

3. Petitioners purchased the subject properties for $16,670 cash.

In support of its Motions for Summary Judgment, HCAD's chief tax appraiser testified HCAD only appraises properties in FRN. *(C.R.s, Cause No. 2008-813 & 814, Vol. 1, p. 31).* In converting the purchase price from coin to FRN, however, Respondent HCAD sought to impermissibly convert the purchase price, paid with gold coin dollars, to FRN based on the value of the coins' gold content. But, as legal tender or medium of exchange, a coin dollar is worth no more than a paper one. *See supra,* Section I(B)(2-3) at p. 8-9. Accordingly, Petitioners paid $16,670 (1,667 coins x $10/coin) regardless of whether expressed in FRN or coin 'dollars'.

II. WHETHER PURCHASE PRICE WAS EVIDENCE OF FAIR CASH MARKET VALUE, MAKING SUMMARY JUDGMENT IMPROPER?

A. Standard of Review.

The lower court granted summary judgment against Petitioners' claim that the appraised market values of their properties were excessive. On appeal, a court reviews the grant of summary judgment de novo. *Tex. Mun. Power Agency v. Pub. Util. Comm'n,* 253 S.W.3d 184, 192 (Tex. 2007). Once a motion for summary judgment under either Rule 166a(i) or Rule 166a(c)) has been filed that demonstrates a prima facie case for summary judgment, the burden shifts to the non-movant to respond with evidence that demonstrates a genuine issue of material fact exists. *See Marcias v. Fiesta Mart, Inc.*, 988 S.W.2d 316, 317 (Tex. App.—Houston [1st

Dist] 1999, no pet.)(no-evidence motions); *City of Houston v. Clear Creek Basin Auth.,* 589 S.W.2d 671, 678-79 (Tex. 1979)(traditional motions); TEX. RULE CIV. PROC. 166a, attached to Appendix as Exhibit "J." Courts must also view the evidence in the light most favorable to the non-movant and disregard all contrary evidence and inferences. *Walmart Stores, Inc. v. Rodriquez*, 92 S.W.3d 502, 506 (Tex. 2002)(no-evidence); *Nixon v. Mr. Property Mgmt. Co.,* 690 S.W.2d 546, 548-49 (Tex 1985)(traditional).

B. Cash Purchase Price Evidence Indicates HCAD Overvalued Subject Properties.

The Texas Constitution guarantees Texas residents that their property will not be appraised for ad valorem taxes at greater than its fair cash market value. TEX. CONST. Art. VIII, § 20 (App. Ex. 50). As discussed, Texas defines 'cash' as coin (specie) or paper money. *See supra,* Section I(B)(1) at p.8. "Market Value" is the price the property would bring if offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no obligation to buy. *Exxon Corp. v. Middleton,* 613 S.W.2d 240, 246 (Tex. 1981); *see also TEX. TAX PROP CODE ANN.*§1.04(7), attached to Appendix as Exhibit "K." Accordingly, the issue is whether the $16,670 purchase price is evidence of 'fair cash market value' that makes summary judgment inappropriate.

This Court has held that a property owner's testimony as to the worth of the property is admissible evidence as to its market value. *See Redman Homes, Inc. v. Ivy,* 920 S.W.2d 664, 669 (Tex. 1996). Petitioners purchased the subject properties from Sellers for $16,670 based upon prevailing market conditions, with full awareness of its potential uses and enforceable restrictions, where neither party was in position to capitalize on the exigencies of the other. *See supra* Statement of the Facts Sections (A-B), at p. 3. When a purchase price is negotiated under these types of conditions, it presents probative evidence that could support a jury finding of fair

cash market value. *See Bailey Co. Appraisal Dist. v. Smallwood,* 848 S.W.2d 822, 825 (Tex. App. – Amarillo 1993, no writ); *see also TEX. TAX CODE ANN.*§1.04(7) (App. Ex. 66). Indeed, even the appellate court acknowledged Petitioners' purchase price of $16,670 is some evidence of its market value. *See Selgas,* 2011 WL 5593138 at 10 (App. Ex. 16). Since a coin dollar cannot be valued any greater than a paper dollar, no one can dispute that the disparity between these purchase price and appraised values raises a genuine issue of material fact upon which reasonable jurors could disagree, making summary judgment inappropriate.

C. Summary judgment rulings violate supremacy clause of U.S. Constitution.

HCAD appraised the subject properties at $292,050 in 2008 and $407,520 in 2009; yet, the evidence reveals Petitioners only paid $16,670 for them in 2008. The lower courts' rulings unlawfully sought to value coin and paper dollars differently in an attempt to unlawfully reclaim the discrepancy between the face value of gold coins and the gold in them. But, as the United States Supreme Court stated, "such courts are *required to execute and carry the laws into effect as they are found*, without endeavoring to accommodate them to the accidental or premeditated depreciations produced in the currency of the country by the tricks and devices of brokers." *Bronson,* 74 U.S. at 240. Thus, to let either the no-evidence or traditional grant of summary judgment stand, would sanction a violation of the supremacy clause. *United States Constitution, Art. VI, Clause 2,* attached to Appendix as Exhibit "L."

PRAYER

For the reasons set forth above, Petitioners respectfully pray that this Court reverse the grant of both the no-evidence and traditional summary judgments; remand the matter for further proceedings consistent with its ruling; and for such other relief, in law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 21, 2012, a true and correct copy of Petitioners' Petitioner for Review was served by USPS Delivery, Certified Mail, RRR No. 7099 3220 0006 3938 5581 on Kirk Swinney at McCREARY, VESELKA, BRAGG & ALLEN, P.C., 700 Jeffrey Way, Suite 100, Round Rock, TX 78665.

/s/ Eve L. Henson
Eve L. Henson

No. 12-10-00021-CV and 12-10-00050-CV

THE SUPREME COURT OF TEXAS

THOMAS D. SELGAS AND MICHELLE L. SELGAS

Petitioners

v.

THE HENDERSON COUNTY APPRAISAL DISTRICT

Respondent

APPENDIX

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EXHIBIT A

CAUSE NO. 2008A-813

THOMAS D. SELGAS AND MICHELLE L. SELGAS	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	HENDERSON COUNTY, TEXAS
THE HENDERSON COUNTY APPRAISAL DISTRICT	§	
Defendant.	§	173RD JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S OBJECTION TO PLAINTIFF'S SUMMARY JUDGEMENT EVIDENCE

On December 14, 2009, the Defendant's Objection to Plaintiff's Summary Judgment Evidence was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's objection to the testimony of Dr. Edwin Vieira for the Plaintiff is in all respects GRANTED.

Signed January 4, 2010

Judge Presiding

APPROVED AS TO FORM:

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ATTORNEYS FOR DEFENDANT

CAUSE NO. 2008A-814

THOMAS D. SELGAS AND MICHELLE L. SELGAS	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
v.	§	HENDERSON COUNTY, TEXAS
THE HENDERSON COUNTY APPRAISAL DISTRICT	§	
Defendant.	§	173RD JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR NO-EVIDENCE SUMMARY JUDGMENT

On December 14, 2009, the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment was considered by the Court. After considering the evidence and hearing the arguments of counsel, it appears to the Court that the Motion should be granted.

IT IS, THEREFORE ORDERED, that the Defendant's Motion for Summary Judgment and for No-Evidence Summary Judgment is in all respects GRANTED. The Plaintiffs are ordered to take nothing hereby. All costs are assessed against the Plaintiffs. All relief not expressly granted is denied. This judgment is final and appealable and disposes of all parties and issues herein.

Signed January 15, 2010

Judge Presiding

AGREED TO:

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EXHIBIT B

NO. 12-10-00021-CV
NO. 12-10-00050-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

THOMAS D. SELGAS AND MICHELLE L. SELGAS, APPELLANTS	§	*APPEAL FROM THE 173RD*
V.	§	*JUDICIAL DISTRICT COURT*
THE HENDERSON COUNTY APPRAISAL DISTRICT, APPELLEE	§	*HENDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

Thomas D. Selgas and Michelle L. Selgas appeal from summary judgments granted in favor of the Henderson County Appraisal District (HCAD) in their suits contesting the valuation of their real property.[1] In two issues, the Selgases contend they raised a fact question regarding the market value of their property, the trial court abused its discretion by striking their expert's testimony, and HCAD failed to prove that the purchase price of the real property was not the price shown in the sales contract. We affirm.

BACKGROUND

On January 31, 2008, the Selgases purchased two tracts of land in Henderson County, totaling about thirty-six and one-half acres. Paragraph 11 of the contract, entitled "Special Provisions," provides that "Buyer shall tender purchase price in gold coin as described in Exhibit 'A.'" That exhibit is entitled "Property Payment in Lawful Money $10 American Gold Eagle Coins." Below the title are the words "PAYMENT CLAUSE." Section (b) provides that

[1] The Selgases filed a separate case for each of two tracts of land. The two cases were disposed of simultaneously at trial and consolidated for briefing on appeal.

> [p]ayment for the sale and purchase of the Subject Property shall be valued at sixteen thousand six-hundred seventy (16,670) "dollars" of coined gold, each such "dollar" to consist of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold in the form of the coins hereinafter specified in Section (c) of this PAYMENT CLAUSE.

Pursuant to section (c), "[p]ayment for the sale and purchase of the Subject Property shall consist only . . . of one thousand six hundred sixty-seven (1,667) American Eagle 'ten dollar gold coin[s],'" each of which contains one-quarter troy ounce of fine gold. Section (e) provides the disclaimer that the payment clause is not to be construed for the purpose of an abusive tax shelter or other unlawful means to avoid any lawful tax.

After receiving notice of the 2008 appraised value of their property, the Selgases filed a protest with HCAD. The Henderson County Appraisal Review Board refused to change the valuations and determined that the 2008 total market value of tract 3F was $251,630.00 and the total market value of tract 3 was $40,240.00. Again, in 2009, the Selgases protested the valuation of their property and again the review board refused to change the valuations. The 2009 valuation for tract 3F was $354,040.00 and for tract 3, it was $53,480.00. The Selgases filed suit against HCAD complaining of the valuations and asking the district court to fix the market value of tract 3F at $14,370.00 and fix the market value of tract 3 at $2,300.00. They also asked the court to render judgment compelling imposition of these assessed values and correlating taxes.

HCAD filed a combination no evidence and traditional motion for summary judgment with supporting evidence in each case. It contends there is no evidence that the two tracts have been over appraised in United States dollars as represented by Federal Reserve Notes. HCAD further argues that, because the Selgases admit that the gold dollars which they paid for the property exchange for Federal Reserve Notes at about twenty-five to one, there is no material issue of fact as to the valuation of the property. The Selgases filed a response, with supporting evidence, arguing that HCAD failed to provide evidence negating their evidence of market value and that they have provided evidence to show a material fact question regarding determination of market value. HCAD objected to the testimony of the Selgases' expert, Dr. Edwin Vieira, asserting that the testimony is an inadmissible legal opinion and he is unqualified to offer any

opinion on the value of the property. The trial court granted the objection. The trial court also granted both of HCAD's motions for summary judgment and rendered judgment that the Selgases take nothing in their suits against HCAD.

STANDARD OF REVIEW

We review the trial court's decision to grant summary judgment de novo. ***Tex. Mun. Power Agency v. Pub. Util. Comm'n***, 253 S.W.3d 184, 192 (Tex. 2007). After adequate time for discovery, a party without the burden of proof at trial may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense. TEX. R. CIV. P. 166a(i). Once a no evidence motion has been filed in accordance with Rule 166a(i), the burden shifts to the nonmovant to bring forth evidence that raises a fact issue on the challenged element. *See* ***Macias v. Fiesta Mart, Inc.***, 988 S.W.2d 316, 317 (Tex. App.–Houston [1st Dist.] 1999, no pet.). A no evidence summary judgment is essentially a pretrial directed verdict, which may be supported by evidence. ***Timpte Indus., Inc. v. Gish***, 286 S.W.3d 306, 310 (Tex. 2009).

When reviewing a no evidence summary judgment, we "review the evidence presented by the motion and response in the light most favorable to the party against whom the summary judgment was rendered, crediting evidence favorable to that party if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." ***Id.*** (quoting ***Mack Trucks, Inc. v. Tamez***, 206 S.W.3d 572, 582 (Tex. 2006)). An appellate court reviewing a no evidence summary judgment must consider whether reasonable and fair-minded jurors could differ in their conclusions in light of all of the evidence presented. ***Goodyear Tire & Rubber Co. v. Mayes***, 236 S.W.3d 754, 755 (Tex. 2007) (per curiam).

The movant for traditional summary judgment has the burden of showing that there is no genuine issue of material fact concerning one or more essential elements of the plaintiff's claims and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); ***Nixon v. Mr. Prop. Mgmt. Co.***, 690 S.W.2d 546, 548 (Tex. 1985). Once the movant has established a right to summary judgment, the nonmovant has the burden to respond to the motion and present to the trial court any issues that would preclude summary judgment. *See* ***City of Houston v. Clear Creek Basin Auth.***, 589 S.W.2d 671, 678–79 (Tex. 1979). Review of a summary judgment

under either a traditional standard or no evidence standard requires that the evidence be viewed in the light most favorable to the nonmovant disregarding all contrary evidence and inferences. ***Walmart Stores, Inc. v. Rodriquez***, 92 S.W.3d 502, 506 (Tex. 2002); ***Nixon***, 690 S.W.2d at 548-49.

When a party moves for both a no evidence and a traditional summary judgment, we first review the trial court's summary judgment under the no evidence standard of Rule 166a(i). ***Ford Motor Co. v. Ridgway***, 135 S.W.3d 598, 600 (Tex. 2004). If the no evidence summary judgment was properly granted, we need not reach arguments under the traditional motion for summary judgment. *See* ***id.***

APPLICABLE LAW

The Texas constitution mandates that no property in this state shall be assessed for ad valorem taxes at a greater value than its fair cash market value. TEX. CONST. art. VIII, § 20. "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if (a) exposed for sale in the open market with a reasonable time for the seller to find a purchaser; (b) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and (c) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other. TEX. TAX CODE ANN. § 1.04(7) (West 2008). The market value of the property shall be determined by the application of generally accepted appraisal methods and techniques. TEX. TAX CODE ANN. § 23.01(b) (West Supp. 2010). A property owner is entitled to protest before the appraisal review board the determination of the appraised value of the owner's property. TEX. TAX CODE ANN. § 41.41(a)(1) (West 2008). A property owner is entitled to appeal an order of the appraisal review board determining his protest. TEX. TAX CODE ANN. § 42.01 (West 2008). Review is by trial de novo in the district court. TEX. TAX CODE ANN. § 42.23 (West 2008). The district court may fix the appraised value of property in accordance with the requirements of law. TEX. TAX CODE ANN. § 42.24(1) (West 2008). If the court determines that the appraised value of the property according to the appraisal roll exceeds the appraised value required by law, the property

owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court. TEX. TAX CODE ANN. § 42.25 (West 2008).

SUMMARY JUDGMENT

In their first issue, the Selgases contend the trial court erred in granting HCAD's no evidence motion for summary judgment. They assert that they presented more than a scintilla of evidence raising a fact question on the market value of their property. They contend that the purchase price shown on the sales contract is the market value. They assert that they paid $16,670.00 for both tracts. Additionally, they contend the trial court abused its discretion by striking the deposition testimony of their expert witness, Dr. Edwin Vieira, Jr. They argue that Dr. Vieira's qualifications were properly proven by the Selgases, but not properly challenged by HCAD. Further, they assert that Dr. Vieira's testimony is critical on the issue of "the standard of measure" used by the Selgases in assessing the market value of their property and "his opinions are not merely opinions of law, but rather of fact." They argue that his testimony presents a mixed question of law and fact and the trial court should have required a hearing before striking his testimony.

In their second issue, the Selgases contend the trial court erred in granting HCAD's traditional motion for summary judgment. They argue that HCAD did not "prove that the purchase price of the real property was not the purchase price shown on the real property sales contract, [and] the recorded warranty deed, and attested to by both the Seller and Appellants."

HCAD's Combined No Evidence and Traditional Motion

In its motion for no evidence summary judgment, HCAD asserted that, after discovery, the Selgases identified "no evidence that their property . . . is over appraised in United States dollars as represented by Federal Reserve Notes." HCAD interpreted the Selgases' allegations as a claim that HCAD should be utilizing gold dollars for appraisal instead of Federal Reserve Notes. In its traditional motion for summary judgment, HCAD asserted that it properly appraised the property in Federal Reserve Notes and that the evidence shows, as a matter of law, that the real value of the property is in excess of that at which HCAD assessed the property. In support of the motion, HCAD presented the affidavit of Bill Jackson, Chief Appraiser of HCAD,

deposition testimony of Thomas Selgas and Michelle Selgas, and the Selgases' discovery responses.

Jackson stated that HCAD appraises property in United States dollars as represented by Federal Reserve Notes. He affirmed that the 2008 market value of tract 3F was $251,630.00, but it received an open space appraisal and was therefore assessed at $187,890.00. He also explained that the 2008 market value of tract 3 was $40,240.00, but assessed at $1,600.00 due to application of the open space appraisal.

In his deposition testimony, Thomas Selgas testified that he paid $16,670.00 total for the two tracts of land. Specifically, he stated that he and the seller agreed that he would pay 1,667 ten dollar gold coins, each containing one-quarter troy ounce of gold. He explained that both the Federal Reserve Bank and the Department of Treasury are required by law to redeem Federal Reserve Notes for lawful money, including gold coins. For example, ten one dollar Federal Reserve Notes should be given for one ten dollar coin or ten one dollar coins as equivalents to maintain equal purchasing value. Thus, if he is redeeming a coin or a note, the face of the coin or note should indicate what he is redeeming it for.

On the other hand, he explained, the Department of Treasury will redeem gold coins through a national dealer at an exchange rate. Thus, he said a purchase and an exchange are two different things. He further explained that if a person exchanged a ten dollar gold coin for Federal Reserve Notes, he would probably receive "25 Federal Reserve Notes for each dollar unit of lawful money," or, in other words, 250 Federal Reserve Notes for one ten dollar gold coin. He opined that there is no "profit motive" associated with an exchange, whereas there is a "profit motive" associated with a purchase. Selgas said that the unit of value he used was the ten dollar coin as defined by Title 31, Section 5112(a)(9) of the United States Code. He stated that the purchase price of his property was $16,670.00, which he considered to be market value. The farm and ranch contract was attached as an exhibit to Selgas's deposition.

HCAD also presented Michelle Selgas's deposition in which she explained that they sued HCAD because it appraised their property in Federal Reserve Notes, and they did not pay for it in Federal Reserve Notes. She also said the sellers were asking "approximately 400-something-thousand Federal Reserve Notes."

In their response to interrogatories, the Selgases said the total value of their property is $16,670.00, and they paid 1,667 American Eagle ten dollar gold coins, each one containing one-quarter troy ounce of fine gold.

The Selgases' Response

In their response to HCAD's motion, the Selgases asserted that HCAD failed to provide evidence negating their evidence of market value and that they provided evidence showing an issue of material fact regarding the determination of market value. They submitted the following exhibits: the general warranty deed to their property, the purchase contract, property tax notice of protest for 2008 and 2009, the affidavit and deposition of Bill Jackson, HCAD's supplemental responses to their request for admissions, the deposition and resume´ of their expert, Dr. Edwin Vieira, and affidavits of Thomas Selgas and JoAnn Bryant.

The warranty deed provides that Richard and JoAnn Bryant sold the property in consideration for 1,667 American Eagle ten dollar gold coins, "which collectively shall constitute the sole and exclusive medium of exchange, lawful money, currency, and legal tender, and other good and valuable consideration." Pursuant to the contract for the sale of the property, payment "shall be valued at sixteen thousand six-hundred seventy (16,670) 'dollars' of coined gold, each such 'dollar' to consist of twenty-five one-thousandths (0.025) of a Troy ounce of fine gold" to be paid through physical delivery of one thousand six hundred sixty-seven American Eagle ten dollar gold coins, each containing one-quarter troy ounce of gold. The contract specifies that this constitutes "the sole and exclusive medium of exchange, money, currency, and legal tender for the purposes of this PAYMENT CLAUSE."

The Selgases filed a notice of protest in 2008 asserting that they paid "$16,670.00 in lawful (current) money," and therefore that is the current fair market value of the property. In 2009, they filed another notice of protest explaining that they paid $16,670.00 and have made $2,500.00 in improvements. Therefore, they argued, the market value of their property is $19,170.00. They also argued that Federal Reserve Notes are legal tender, but not current lawful money, and cannot be used in payment of debts. They also explained that the Owen-Glass Act, which created the Federal Reserve System, is unconstitutional and they are not required to participate in it.

The Selgases offered the deposition testimony of Bill Jackson, HCAD's Chief Appraiser. Jackson testified that HCAD appraises property at market value. It looks at similar properties that have sold. HCAD uses the dollar as the unit of measure of value and "depend(s) on the dollar being fixed as we know it to be." In its responses to the Selgases' request for admissions, HCAD admitted only that it lacks any legal power to set or otherwise regulate the value in "dollars" of any United States money, currency, or coin.

Deposition testimony of Dr. Edwin Vieira, the Selgases expert, was offered, but the trial court sustained HCAD's objection to the testimony.

The Selgases presented Thomas Selgas's December 4, 2009 affidavit in which he stated that he and his wife purchased the property based on prevailing market conditions, paying cash in the amount of "$16,670 dollars," which he stated was the fair market value of the property. Likewise, JoAnn L. Bryant stated in her affidavit of the same date that she and her husband sold the property to the Selgases for "$16,670 dollars, in American Eagle Gold Coin, lawful money of the United States." She claimed this was the fair market value of the property.

Vieira's Testimony

Dr. Edwin Vieira, an attorney who focuses on constitutional law issues in the fields of money, banking, and homeland security, testified by deposition. HCAD objected to Vieira's testimony in its entirety, contending that he offered only legal testimony, is unqualified to offer an opinion on the ultimate issue in the case, and his opinions are irrelevant. The trial court granted the objection.

An appellate court reviews a trial court's ruling that sustains an objection to summary judgment evidence for an abuse of discretion. ***Cantu v. Horaney***, 195 S.W.3d 867, 871 (Tex. App.–Dallas 2006, no pet.). An appellant has the burden to bring forth a record that is sufficient to show the trial court abused its discretion when it sustained the objections to the summary judgment evidence. ***Cruikshank v. Consumer Direct Mortg., Inc.***, 138 S.W.3d 497, 499 (Tex. App.–Houston [14th Dist.] 2004, pet. denied). As a prerequisite to presenting a complaint for appellate review, the record must show the complaint was made to the trial court by a timely request, objection, or motion. *See* TEX. R. APP. P. 33.1(a). When a party fails to object to the trial court's ruling that sustains an objection to his summary judgment evidence, he has not

preserved the right to complain on appeal about the trial court's ruling. ***Cantu***, 195 S.W.3d at 871.

The record shows that the objections were filed December 11, 2009, and they were considered at the hearing on HCAD's motions for summary judgment on December 14. The trial court did not sign the orders granting the objections until January 4, 2011. The Selgases have not identified where, in this record, it is shown that they objected to the trial court's ruling. Our review of the record revealed no such objection. We conclude that the Selgases have waived their right to complain that the trial court sustained HCAD's objections to Vieira's testimony. *See* ***id***. Accordingly, we do not consider Dr. Vieira's testimony for any reason.

Analysis - Evidence of Valuation

HCAD argued that it was entitled to summary judgment because there is no evidence that the Selgases' property is over appraised in United States dollars as represented by Federal Reserve Notes. The burden then shifted to the Selgases to raise a fact issue on the element of over appraisal. *See* ***Macias***, 988 S.W.2d at 317. Selgas, in his deposition, stated that he paid fair market value for the property, that is, he paid "$16,670 dollars" in one-quarter troy ounce gold eagle coins. The Selgases assert that Congress established the value of the "1/4 ounce gold eagle coins" at "ten dollars" pursuant to 31 U.S.C. §§ 5101, 5102, 5103, and 5112(a)(9).

Ten dollar gold coins are legally a form of currency. 31 U.S.C.S. §§ 5103, 5112(a)(9) (Matthew Bender & Co., LEXIS through 2010 legislation). A gold coin has intangible value based on its representative value as currency, its face value. ***Sanders v. Freeman***, 221 F.3d 846, 856 (6th Cir. 2000). The face value of currency in circulation is prima facie evidence of its value. ***Burton v. Commonwealth***, 708 S.E.2d 444, 448 (Va. Ct. App. 2011). Moreover, value is inherent in the precious metals. ***Bronson v. Rodes***, 74 U.S. (7 Wall.) 229, 249 (1869). Thus, a gold coin also has intrinsic value based on its metal content, that is, its market value. ***Sanders***, 221 F.3d at 856. This intrinsic value is determined by weight and purity. ***Bronson***, 74 U.S. at 249. Evidence can be presented to prove that money has a value different than its redeemable value as legal tender. ***Burton***, 708 S.E.2d at 449 n.3. The true value of coins is affected by their market value to numismatics and the intrinsic value of the coins' precious metal content. ***Id.*** Notably, the United States Secretary of the Treasury is required by statute to sell gold coins

minted by the federal government at market value. 31 U.S.C.S. § 5112(i)(2)(A) (Mathew Bender & Co., LEXIS through 2010 legislation).

A gold coined dollar and a Federal Reserve Note dollar are not the actual equivalent of each other. ***Bronson,*** 74 U.S. at 252. Coined dollars are worth more than note dollars. ***Id.*** Therefore, for example, an amount due in coin dollars pursuant to a contract cannot be satisfied by an offer to pay their nominal equivalent in Federal Reserve Note dollars. ***Id.*** at 253. The contract would have to be paid in an amount equal to the actual value of the gold demanded in the contract. ***Id.*** at 250.

The contract pursuant to which the Selgases purchased the property from the Bryants is prima facie evidence that they paid $16,670.00 for the land. *See* ***Burton***, 708 S.E.2d at 448. However, there is evidence showing that the value of the 1,667 ten dollar gold coins paid to purchase the property is greater than face value. In his deposition, Selgas explained that one ten dollar gold coin is worth approximately $250.00 in Federal Reserve Notes. He stated that he paid 1,667 ten dollar gold coins for the property. Michelle Selgas explained that the sellers' asking price was "approximately 400-something-thousand Federal Reserve Notes."

Therefore, the record shows that 1,667 ten dollar gold coins are worth approximately $416,750.00, which happens to be consistent with the sellers' asking price. The number of ten dollar gold coins offered was clearly determined based on their intrinsic value according to their weights as precious metals, not their face value. A sales price of $416,750.00 is considerably more than the 2008 market value assessed by HCAD, before application of the appraisal formula for open space land. Likewise, the 2008 sales price of $416,750.00 is even greater than the 2009 assessment of $407,520.00. Based on this record, reasonable jurors, knowing that the Selgases paid in gold, could disregard Selgas's testimony that he paid "$16,670 dollars." *See* ***Tamez***, 206 S.W.3d at 582. Thus, the Selgases' evidence did not raise a fact question on whether the property was over appraised. The no evidence summary judgment was proper because the evidence establishes conclusively the opposite of the challenged element. *See* ***Taylor-Made Hose, Inc. v. Wilkerson***, 21 S.W.3d 484, 488 (Tex. App.–San Antonio 2000, pet. denied). Accordingly, the trial court did not err in granting HCAD's no evidence motion for summary judgment. Likewise, the evidence establishes as a matter of law that there is no issue of fact regarding whether the assessed value of the property is higher than the market value of the

property. Accordingly, the trial court did not err in granting HCAD's traditional motion for summary judgment. *See* ***Nixon***, 690 S.W.2d at 548. We overrule the Selgases' first and second issues.

SANCTIONS

HCAD has asked this court to impose sanctions on the Selgases, contending that this appeal is frivolous. *See* TEX. R. APP. P. 45. Under Rule 45, this court may award just damages to a prevailing party if it determines that an appeal is frivolous. ***Id.***; ***Durham v. Zarcades***, 270 S.W.3d 708, 720 (Tex. App.–Fort Worth 2008, no pet.). Whether to award damages is within this court's discretion. ***Id.*** Sanctions should be imposed only in egregious circumstances. ***Id.*** We do not believe that this case warrants sanctions; therefore, we decline to impose monetary sanctions under Rule 45.

DISPOSITION

As the trial court did not err in granting HCAD's combined no evidence and traditional motion for summary judgment, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered November 16, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

EXHIBIT C

TAX CODE

TITLE 1. PROPERTY TAX CODE

SUBTITLE F. REMEDIES

CHAPTER 42. JUDICIAL REVIEW

SUBCHAPTER A. IN GENERAL

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER.

A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41; or

(B) a determination of an appraisal review board on a motion filed under Section 25.25; or

(2) an order of the comptroller issued as provided by Subchapter B, Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

Acts 1979, 66th Leg., p. 2309, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, Sec. 148, eff. Jan. 1, 1982; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 53, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1039, Sec. 41, eff. Jan. 1, 1998.

SUBCHAPTER B. REVIEW BY DISTRICT COURT

Sec. 42.21. PETITION FOR REVIEW.

(a) A party who appeals as provided by this chapter must file a petition for review with the district court within 60 days after the party received notice that a final order has been entered from which an appeal may be had or at any time after the hearing but before the 60-day

deadline. Failure to timely file a petition bars any appeal under this chapter.

(b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under Subdivision (2) or (3) of Section 42.01 or under Section 42.03 must be brought against the comptroller. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review is not required to be brought against the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate.

(c) If an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order. The amended petition must be filed with the court in the period provided by Subsection (a) for filing a petition for review of the subsequent order. A property owner may appeal the subsequent appraisal review board order under this subsection or may appeal the order independently of the pending appeal as otherwise provided by this section, but may not do both. A property owner may change the election of remedies provided by this subsection at any time before the end of the period provided by Subsection (a) for filing a petition for review.

(d) An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the appraisal office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. Citation of a party is issued and served in the manner provided by law for civil suits generally.

(e) A petition that is timely filed under Subsection (a) or amended under Subsection (c) may be subsequently

amended to:

(1) correct or change the name of a party; or

(2) not later than the 120th day before the date of trial, identify or describe the property originally involved in the appeal.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5344, ch. 981, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 760, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 796, Sec. 44, eff. June 15, 1989; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 54, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1113, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 905, Sec. 1, eff. June 19, 2009.

Text of section as amended by Acts 1993, 73rd Leg., ch. 667, Sec. 1

Sec. 42.22. VENUE.

Venue is in the county in which the appraisal review board that issued the order appealed is located, except as provided by Section 42.221. Venue is in Travis County if the order appealed was issued by the comptroller.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, Sec. 151, eff. Jan. 1, 1982; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 55, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 667, Sec. 1, eff. Sept. 1, 1993.

Text of section as amended by Acts 1993, 73rd Leg., ch. 1033, Sec. 1

Sec. 42.22. VENUE. (a) Except as provided by Subsections (b) and (c), and by Section 42.221, venue is in the county in which the appraisal review board that issued the order appealed is located.

(b) Venue of an action brought under Section 42.01(1) is in the county in which the property is located or in the county in which the appraisal review board that

issued the order is located.

(c) Venue is in Travis County if the order appealed was issued by the comptroller.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, Sec. 151, eff. Jan. 1, 1982; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 55, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 1033, Sec. 1, eff. Sept. 1, 1993.

Sec. 42.221. CONSOLIDATED APPEALS FOR MULTICOUNTY PROPERTY.

(a) The owner of property of a telecommunications provider, as defined by Section 51.002, Utilities Code, or the owner of property regulated by the Railroad Commission of Texas, the federal Surface Transportation Board, or the Federal Energy Regulatory Commission that runs through or operates in more than one county and is appraised by more than one appraisal district may appeal an order of an appraisal review board relating to the property running through or operating in more than one county to the district court of any county in which a portion of the property is located or operated if the order relating to that portion of the property is appealed.

(b) A petition for review of each appraisal review board order under this section must be filed with the court as provided by Section 42.21. The fee for filing each additional petition for review under this section after the first petition for review relating to the same property is filed for a tax year is $5.

(c) If only one appeal by the owner of property subject to this section is pending before the court in an appeal from the decision of an appraisal review board of a district other than the appraisal district for that county, any party to the suit may, not earlier than the 30th day before and not later than the 10th day before the date set for the hearing, make a motion to transfer the suit to a district court of the county in which the appraisal review board from which the appeal is taken is located. In the absence of a showing that further appeals under this section will be filed, the court shall transfer the suit.

(d) When the owner files the first petition for

review under this section for a tax year, the owner shall include with the petition a list of each appraisal district in which the property is appraised for taxation in that tax year.

(e) The court shall consolidate all the appeals for a tax year relating to a single property subject to this section for which a petition for review is filed with the court and may consolidate other appeals relating to other property subject to this section of the same owner if the property is located in one or more of the counties on the list required by Subsection (d). Except as provided by this subsection, on the motion of the owner of a property subject to this section the court shall grant a continuance to provide the owner with an opportunity to include in the proceeding appeals of appraisal review board orders from additional appraisal districts. The court may not grant a continuance to include an appeal of an appraisal review board order that relates to a property subject to this section in that tax year after the time for filing a petition for review of that order has expired.

(f) This section does not affect the property owner's right to file a petition for review of an individual appraisal district's order relating to a property subject to this section in the district court in the county in which the appraisal review board is located.

(g) On a joint motion or the separate motions of at least 60 percent of the appraisal districts that are defendants in a consolidated suit filed before the 45th day after the date on which the property owner's petitions for review of the appraisal review board orders relating to a property subject to this section for that tax year must be filed, the court shall transfer the suit to a district court of the county named in the motion or motions if that county is one in which one of the appraisal review boards from which an appeal was taken is located.

Added by Acts 1993, 73rd Leg., ch. 667, Sec. 2, eff. Sept. 1, 1993 and Acts 1993, 73rd Leg., ch. 1033, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1041, Sec. 3, eff. Sept. 1, 2003.

Sec. 42.23. SCOPE OF REVIEW.

(a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the

pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or comptroller, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.

(d) Each party to an appeal is considered a party seeking affirmative relief for the purpose of discovery regarding expert witnesses under the Texas Rules of Civil Procedure if, on or before the 120th day after the date the appeal is filed, the property owner:

(1) makes a written offer of settlement;

(2) requests alternative dispute resolution; and

(3) designates, in response to an appropriate written discovery request, which cause of action under this chapter is the basis for the appeal.

(e) For purposes of Subsection (d), a property owner may designate a cause of action under Section 42.25 or 42.26 as the basis for an appeal, but may not designate a cause of action under both sections as the basis for the appeal. Discovery regarding a cause of action that is not specifically designated by the property owner under Subsection (d) shall be conducted as provided by the Texas Rules of Civil Procedure. The court may enter a protective order to modify the provisions of this subsection under Rule 192.6 of the Texas Rules of Civil Procedure.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, Sec. 152, eff. Jan. 1, 1982; Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 56, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 1126, Sec. 25, eff. September 1, 2005.

Sec. 42.24. ACTION BY COURT.

In determining an appeal, the district court may:

(1) fix the appraised value of property in accordance with the requirements of law if the appraised

value is at issue;

(2) enter the orders necessary to ensure equal treatment under the law for the appealing property owner if inequality in the appraisal of his property is at issue; or

(3) enter other orders necessary to preserve rights protected by and impose duties required by the law.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982.

Sec. 42.25. REMEDY FOR EXCESSIVE APPRAISAL.

If the court determines that the appraised value of property according to the appraisal roll exceeds the appraised value required by law, the property owner is entitled to a reduction of the appraised value on the appraisal roll to the appraised value determined by the court.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982.

Sec. 42.26. REMEDY FOR UNEQUAL APPRAISAL.

(a) The district court shall grant relief on the ground that a property is appraised unequally if:

(1) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a reasonable and representative sample of other properties in the appraisal district;

(2) the appraisal ratio of the property exceeds by at least 10 percent the median level of appraisal of a sample of properties in the appraisal district consisting of a reasonable number of other properties similarly situated to, or of the same general kind or character as, the property subject to the appeal; or

(3) the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.

(b) If a property owner is entitled to relief under Subsection (a)(1), the court shall order the property's appraised value changed to the value as calculated on the basis of the median level of appraisal according to Subsection (a)(1). If a property owner is entitled to relief under Subsection (a)(2), the court shall order the property's appraised value changed to the value calculated on the basis of the median level of appraisal according to

Subsection (a)(2). If a property owner is entitled to relief under Subsection (a)(3), the court shall order the property's appraised value changed to the value calculated on the basis of the median appraised value according to Subsection (a)(3). If a property owner is entitled to relief under more than one subdivision of Subsection (a), the court shall order the property's appraised value changed to the value that results in the lowest appraised value. The court shall determine each applicable median level of appraisal or median appraised value according to law, and is not required to adopt the median level of appraisal or median appraised value proposed by a party to the appeal. The court may not limit or deny relief to the property owner entitled to relief under a subdivision of Subsection (a) because the appraised value determined according to another subdivision of Subsection (a) results in a higher appraised value.

(c) For purposes of establishing the median level of appraisal under Subsection (a)(1), the median level of appraisal in the appraisal district as determined by the comptroller under Section 5.10 is admissible as evidence of the median level of appraisal of a reasonable and representative sample of properties in the appraisal district for the year of the comptroller's determination, subject to the Texas Rules of Evidence and the Texas Rules of Civil Procedure.

(d) For purposes of this section, the value of the property subject to the suit and the value of a comparable property or sample property that is used for comparison must be the market value determined by the appraisal district when the property is a residence homestead subject to the limitation on appraised value imposed by Section 23.23.

Acts 1979, 66th Leg., p. 2311, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 174, ch. 13, Sec. 153, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 4924, ch. 877, Sec. 3, eff. Jan. 1, 1984; Acts 1985, 69th Leg., ch. 823, Sec. 3, eff. Jan. 1, 1986; Acts 1989, 71st Leg., ch. 796, Sec. 45, eff. June 15, 1989; Acts 1991, 72nd Leg., ch. 843, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1039, Sec. 42, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1041, Sec. 4, eff. Sept. 1, 2003.

Sec. 42.28. APPEAL OF DISTRICT COURT JUDGMENT. A party may appeal the final judgment of the district court

as provided by law for appeal of civil suits generally, except that an appeal bond is not required of the chief appraiser, the county, the comptroller, or the commissioners court.

Acts 1979, 66th Leg., p. 2312, ch. 841, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 57, eff. Sept. 1, 1991.

EXHIBIT D

Recorded By Infinite Title Solutions, LLC
GF# [illegible]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GENERAL WARRANTY DEED

THE STATE OF TEXAS §
§
COUNTY OF HENDERSON §

DATE: February 27, 2008

KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, **RICHARD BRYANT and wife, JOANN BRYANT,** hereinafter referred to as "Grantor", whether one or more, for in consideration of **One thousand six hundred sixty-seven (1,667)** American Eagle "ten dollar gold coin[s]" (*i*) each of which "contains one quarter (¼) troy ounce of fine gold, pursuant to Section 2(a)(9) of the Act of 17 December 1985, Public Law 99-185, 99 Statutes at Large 1177, 1177, now codified in Title 31, United States Code, Section 5112(a)(9); (*ii*) each of which has been designated "legal tender" by Congress under Title II, Section 202(h) of the Act of 9 July 1985, Public Law 99-61, 99 Statutes at Large 113, 116, now codified in Title 31, United States Code, Sections 5112 (h) and 5103, and "lawful money" pursuant to Article 1 Section 8 Clause 5 of the Constitution of the United States of America, Title 12, United States Code, Section 411 and Public Law 96-389; and (*iii*) which collectively shall constitute the sole and exclusive medium of exchange, lawful money, currency, and legal tender, and other good and valuable consideration in hand paid by the Grantee, herein

named, the receipt and sufficiency of which is hereby fully acknowledged and confessed, has GRANTED, SOLD and CONVEYED, and by these presents does hereby GRANT, SELL and CONVEY unto **THOMAS D. SELGAS and MICHELLE L. SELGAS**, herein referred to as "Grantee", whether one or more, the real property described as follows:

All that certain Lot, Tract or Parcel of land situated in Henderson County, Texas on the R.V. Morrell Survey, A-538 and being the 23.369 acre tract conveyed to Gerald W. Anthony and Teresa L. Anthony by Christian Oliver and and Carmen Oliver by Deed dated April 29, 2004 and recorded in Volume 2413, Page 346 of the Real Property Records of Henderson County, Texas and being the 23.059 acre tract conveyed to Gerald W. Anthony and Teresa L. Anthony by Edward Evans and Patricia Evans by Deed dated February 13, 2004 and recorded in Volume 2387, Page 832 of the Real Property Records of Henderson County, Texas. Said lot, tract or parcel of land being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" boat spike found at the Southeast corner of the 23.059 acre tract, in the West line of the James Ball survey, A-96 and Aubrey Daniel 100.00 acre tract recorded in Volume 369, Page 637, and in the intersection of County roads 3901 and 3900; witness found 28" Post Oak South 61 degrees, East 33.0 feet;

THENCE West, along County road 3901 and line of directional control, at 968.98 feet pass a ½" iron rod fond at the Southwest corner of the 23.369 acre tract and the South east corner of the Terri L. Hudson 30.45 tract recorded in Volume 2181, Page 437; witness: found ½" iron rod North 9 degrees 31 minutes West 24.1 feet;

THENCE along fence, North 9 degrees 31 minutes West 827.27 feet to a ½" iron rod found at an angle corner and North 13 degrees 55 minutes 43 seconds East 829.94 feet to a ½" iron rod found at fence corner;

THENCE South 84 degrees 17 minutes 08 seconds East, along fence 232.86 feet to a ½" iron rod found at an angle corner of the John M. Runyun 17.141 acre tract recorded in volume 2098, Page 418;

THENCE South 61 degrees 32 minutes 39 seconds East 390.56 feet to a ½" iron rod found and South 8 degrees 13 minutes 17 seconds East 431.49 feet to a ½" iron rod found in a North line of the 23.059 acre tract;

THENCE North 61 degrees 30 minutes 49 seconds East 197.13 feet to a ½" iron rod found North 87 degrees 40 minutes 11 seconds East 565.95 feet to a ½" iron rod found at the Southeast corner of the Runyon tract and Northeast

corner of the 23.059 acre tract; Witness: found ½" iron rod South 87 degrees 40 minutes 11 seconds West 9.78 feet;

THENCE South 2 degrees 18 minutes 06 seconds West, along County road 3900, 1160.58 feet to the place of BEGINNING and containing 46.428 acres of land of which approximately 1.17 acres lies in County roads 3901 and 3900.

SAVE AND EXCEPT FOR the 10.000 acre lot, tract or parcel of land retained by the Grantors out of said lot, tract or parcel of land described above, which said 10.000 acre lot, tract or parcel of land retained by the Grantors is described as follows:

All that certain lot, tract or parcel of land situated in Henderson County, State of Texas, on the R.V. Morrell Survey, A-538, and being a part of the called 46.428 acre tract conveyed to Richard Bryant and wife, Joann Bryant, by Gerald W. Anthony and Teresa L. Anthony, by Warranty Deed with Vendor's Lien dated August 29, 2005, and recorded in volume 2571, Page 347, of the Henderson County Real Property Records. Said lot, tract or parcel of land being more particularly described by metes and bounds as follows:

BEGINNING at a railroad spike found for corner in the centerline of County Road No. 3901, at the Southwest corner of the called 46.428 acre tract, at the Southeast corner of the Terri L. Hudson 30.45 acre tract recorded in Volume 2181, Page 437, of the Henderson County Real Property Records, and in the North line of the E.R. McLemore 43.00 acre first tract recorded in Volume 362, Page 133, of the Henderson County Deed Records, from WHENCE a ½" iron rod found in the North ROW line of the said county road bears North 09 degrees 14 minutes 58 seconds West 24.01 feet;

THENCE NORTH 09 degrees 31 minutes 00 seconds West 827.17 feet to a ½" iron rod found for corner at an angel corner in the West line of the called 46.428 acre tract and at an angle corner in the East line of the said 30.45 acre tract;

THENCE NORTH 62 degrees 39 minutes 52 seconds East 334. 29 feet to a 5/8" iron rod set for corner;

THENCE NORTH 43 degrees 53 minutes 47 seconds East 241.15 feet to a 5/8" iron rod set for corner;

THENCE NORTH 64 degrees 53 minutes 28 seconds East 225.31 feet to a 5/8" iron rod set for corner;

THENCE SOUTH 21 degrees 22 minutes 32 seconds West 374.33 feet to a 5/8" iron rod set for corner;

THENCE SOUTH 12 degrees 36 minutes 05 seconds West 716.14 feet to a railroad spike set for corner in the centerline of County Road No. 3901, in the South line of the called 46.428 acre tract and in the North line of the said E. R. McLemore 43.00 acre first tract, from WHENCE a 5/8" iron rod set in the North ROW line of the said county road bears North 12 degrees 36 minutes 05 seconds East 24.00 feet;

THENCE NORTH 89 degrees 59 minutes 55 seconds West along the centerline of the said county road, the South line of the called 46.428 acre tract and the North line of the said E.R. McLemore 43.00 acre first tract 238.76 feet to the place of beginning and containing 10.000 acres of land.

This conveyance, however, is made and accepted subject to any and all validly existing encumbrances, conditions and restrictions, relating to the hereinabove described property as now reflected by the records of the County Clerk of Henderson County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof.

Current ad valorem taxes on said property having been prorated, the payment thereof is assumed by Grantee.

EXECUTED this 26 day of Feb., 2008.

Richard Bryant by John Bryant agent and attorney in fact
RICHARD BRYANT, GRANTOR

John Bryant
JOANNE BRYANT, GRANTOR

THE STATE OF TEXAS §
COUNTY OF HENDERSON §

The foregoing instrument was acknowledged before me on the 26 day of Feb., 2008, by RICHARD BRYANT and wife, JOANN BRYANT.

Carla S. Collins
NOTARY PUBLIC, STATE OF TEXAS
PRINTED NAME OF NOTARY

MY COMMISSION EXPIRES:

CARLA S. COLLINS NOTARY PUBLIC STATE OF TEXAS EXPIRES 5-29-2009

Grantee's Address:
102 Rocky Pointe Ct.
GARLAND, TEXAS 75044

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EXHIBIT E

Case Search Results on Case # 12-10-00021-CV

Add to CaseMail

Case Information:

Case Number:	12-10-00021-CV
Date Filed:	12/26/2010
Style:	Thomas D. Selgas and Michelle L. Selgas
v.:	The Henderson County Appraisal District
Original Proceeding:	No
Transferred From:	
Transfer In Date:	
Transfer Case No:	
Transferred To:	
Transfer Out Date:	

Trial Court Information:

Trial Court:	173rd District Court
Trial Court Judge:	Judge Dan Moore
Trial Court Case #:	2008A-813
Trial Court Reporter:	Patrick Thurmond; N/A
Punishment:	

Parties:

Party	Party Type
Selgas, Thomas D.	Appellant
Henderson County Appraisal Dis	Appellee

Case Events:

Date	Event Type	Description
1/4/2012	Motion for rehearing disposed	Appellant
11/30/2011	Motion for rehearing filed	Appellant
11/16/2011	Memorandum opinion issued	
2/8/2011	Motion to file supplemental brief disposed	Appellant
2/7/2011	Opposition filed	Appellee
1/27/2011	Motion to file supplemental brief filed	Appellant
1/27/2011	Supplemental brief received	Appellant
1/27/2011	Fee paid	Appellant
1/25/2011	Telephone inquiry to or from the court	State Agency
1/25/2011	Internal memo	Memo to file

1/24/2011	Letter filed	Appellee
1/24/2011	Letter filed	State Agency
1/20/2011	Submitted	
1/18/2011	Confirmation of oral argument & counsel presenting oral argument	Appellee
11/16/2010	Motion to postpone oral argument disposed	Appellant
11/12/2010	Motion to postpone oral argument filed	Appellant
11/12/2010	Fee paid	Appellant
11/5/2010	Set for submission on oral argument	
11/2/2010	Set for submission on oral argument	
5/13/2010	Prescreened	
5/10/2010	Brief filed - oral argument requested	Appellee
5/10/2010	Case ready to be set	
4/23/2010	Record checked in	Appellee
4/16/2010	Fax received	Appellee
4/16/2010	Record checked out	Appellee
4/9/2010	Appendix filed	Appellant
4/8/2010	Brief filed - oral argument requested	Appellant
4/8/2010	Brief received - oral argument requested	Appellant
3/30/2010	Motion to consolidate disposed	Appellant
3/19/2010	Motion to consolidate filed	Appellant
3/19/2010	Fee paid	Appellant
3/17/2010	Motion for extension of time to file brief disposed	Appellant
3/10/2010	Fee paid	Appellant
3/4/2010	Motion for extension of time to file brief filed	Appellant
2/19/2010	Confidential mediation questionnaire filed	Appellee
2/19/2010	Docketing statement filed	Appellee
2/1/2010	Confidential mediation questionnaire filed	Appellant
2/1/2010	Clerks record filed	District Clerk
1/29/2010	Docketing statement filed	Appellant
1/29/2010	Fee paid	Appellant
1/25/2010	Notice of appeal filed in trial court	
1/25/2010	Notice of appeal filed in court of appeals	
1/25/2010	Notice of appeal w/form from trial clerk	District Clerk
1/25/2010	Fee requested	Appellant
1/25/2010	Court packet sent to parties	
1/4/2010	Judgment signed by trial court judge	

Calendars:

Set Date	Calendar Type	Reason Set
2/21/2012	Status	Petition for review due in the Supreme Court

Hint: Click on the folder icons above for more case information.

Case # 12-10-00021-CV -> Event: Motion to consolidate filed

CaseMail

Event Information:

Event Type: Motion to consolidate filed
Description: Appellant
Date: 3/19/2010
Disposition:
Opinion Written:

Opinions Related to this Event:

Date Issued

No records returned.

Hint: Click on the folder icons above for more case information.

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  7-Amarillo | 8-El Paso | 9-Beaumont
  10-Waco | 11-Eastland | 12-Tyler
  13-Corpus Christi/Edinburg
  14-Houston
- Appellate Statistics

Case # 12-10-00021-CV -> Event: Motion to consolidate disposed

CaseMail

Event Information:

Event Type:	Motion to consolidate disposed
Description:	Appellant
Date:	3/30/2010
Disposition:	Motion or Writ Granted
Opinion Written:	

Opinions Related to this Event:

Date Issued

No records returned.

Hint: Click on the folder icons above for more case information.

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Case # 12-10-00021-CV -> Event: Supplemental brief received CaseMail

Event Information:

Event Type: Supplemental brief received
Description: Appellant
Date: 1/27/2011
Disposition:
Opinion Written:

Opinions Related to this Event:

Date Issued

No records returned.

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Case # 12-10-00021-CV -> Event: Motion to file supplemental brief filed CaseMail

Event Information:

Event Type: Motion to file supplemental brief filed
Description: Appellant
Date: 1/27/2011
Disposition:
Opinion Written:

Opinions Related to this Event:

Date Issued

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Case # 12-10-00021-CV -> Event: Motion to file supplemental brief disposed CaseMail

Event Information:

Event Type:	Motion to file supplemental brief disposed
Description:	Appellant
Date:	2/8/2011
Disposition:	Overruled
Opinion Written:	

Opinions Related to this Event:

Date Issued

No records returned.

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EXHIBIT F

Case Search Results on Case # 12-10-00050-CV

Add to CaseMail

Case Information:

Case Number:	12-10-00050-CV
Date Filed:	2/18/2010
Style:	Thomas D. Selgas and Michelle L. Selgas
v.:	The Henderson County Appraisal District
Original Proceeding:	No
Transferred From:	
Transfer In Date:	
Transfer Case No:	
Transferred To:	
Transfer Out Date:	

Trial Court Information:

Trial Court:	173rd District Court
Trial Court Judge:	Judge Dan Moore
Trial Court Case #:	2008A-814
Trial Court Reporter:	Patrick Thurmond; N/A
Punishment:	

Parties:

Party	Party Type
Selgas, Thomas D.	Appellant
Henderson County Appraisal Dis	Appellee

Case Events:

Date	Event Type	Description
1/4/2012	Motion for rehearing disposed	Appellant
11/30/2011	Motion for rehearing filed	Appellant
11/16/2011	*Memorandum opinion issued*	
2/8/2011	Motion to file supplemental brief disposed	Appellant
2/7/2011	Opposition filed	Appellee
1/27/2011	Motion to file supplemental brief filed	Appellant
1/27/2011	Supplemental brief received	Appellant
1/27/2011	Fee paid	Appellant
1/25/2011	Telephone inquiry to or from the court	State Agency
1/25/2011	Internal memo	Memo to file

1/24/2011	Letter filed	Appellee
1/24/2011	Letter filed	State Agency
1/20/2011	Submitted	
1/18/2011	Confirmation of oral argument & counsel presenting oral argument	Appellee
11/16/2010	Motion to postpone oral argument disposed	Appellant
11/12/2010	Motion to postpone oral argument filed	Appellant
11/12/2010	Fee paid	Appellant
11/5/2010	Set for submission on oral argument	
11/2/2010	Set for submission on oral argument	
5/13/2010	Prescreened	
5/10/2010	Brief filed - oral argument requested	Appellee
5/10/2010	Case ready to be set	
4/23/2010	Record checked in	Appellee
4/16/2010	Fax received	Appellee
4/16/2010	Record checked out	Appellee
4/9/2010	Appendix filed	Appellant
4/8/2010	Brief filed - oral argument requested	Appellant
4/8/2010	Brief received - oral argument requested	Appellant
3/30/2010	Motion to consolidate disposed	Appellant
3/9/2010	Clerks record filed	District Clerk
3/8/2010	Telephone call received	District Clerk
2/26/2010	Confidential mediation questionnaire filed	Appellant
2/26/2010	Response filed	Appellant
2/26/2010	Letter issued by the court	Appellant
2/26/2010	Docketing statement filed	Appellant
2/25/2010	Fee paid	Appellant
2/24/2010	Telephone call received	Attorney
2/22/2010	Fax received	District Clerk
2/18/2010	Notice of appeal filed in trial court	
2/18/2010	Notice of appeal filed in court of appeals	
2/18/2010	Notice of appeal w/form from trial clerk	District Clerk
2/18/2010	Fee requested	Appellant
2/18/2010	Court packet sent to parties	
2/18/2010	Appellant notified that notice of appeal late/show grounds to continue	Appellant
1/25/2010	Order entered	Trial court judge
1/4/2010	Judgment signed by trial court judge	

Calendars:

Set Date	Calendar Type	Reason Set
2/21/2012	Status	Petition for review due in the Supreme Court

Hint: Click on the folder icons above for more case information.

Case # 12-10-00050-CV -> Event: Motion to consolidate disposed

CaseMail

Event Information:

Event Type:	Motion to consolidate disposed
Description:	Appellant
Date:	3/30/2010
Disposition:	Motion or Writ Granted
Opinion Written:	

Opinions Related to this Event:

Date Issued

No records returned.

Hint: Click on the folder icons above for more case information.

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Case # 12-10-00050-CV -> Event: Supplemental brief received CaseMail

Event Information:

Event Type: Supplemental brief received
Description: Appellant
Date: 1/27/2011
Disposition:
Opinion Written:

Opinions Related to this Event:

Date Issued

No records returned.

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Case # 12-10-00050-CV -> Event: Motion to file supplemental brief filed CaseMail

Event Information:

Event Type: Motion to file supplemental brief filed
Description: Appellant
Date: 1/27/2011
Disposition:
Opinion Written:

Opinions Related to this Event:

Date Issued

No records returned.

Hint: Click on the folder icons above for more case information.

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Case # 12-10-00050-CV -> Event: Motion to file supplemental brief disposed CaseMail

Event Information:

Event Type:	Motion to file supplemental brief disposed
Description:	Appellant
Date:	2/8/2011
Disposition:	Overruled
Opinion Written:	

Opinions Related to this Event:

Date Issued

No records returned.

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EXHIBIT G

Effective:[See Text Amendments]

Vernon's **Texas** Statutes and Codes Annotated Currentness

Constitution of the State of **Texas** 1876 (Refs & Annos)
Article VIII. Taxation and Revenue
§ 20. Fair cash market value not to be exceeded; discounts for advance payment

Sec. 20. No property of any kind in this State shall ever be assessed for ad valorem taxes at a greater value than its **fair cash market value** nor shall any Board of Equalization of any governmental or political subdivision or taxing district within this State fix the value of any property for tax purposes at more than its **fair cash market value**; provided that in order to encourage the prompt payment of taxes, the Legislature shall have the power to provide that the taxpayer shall be allowed by the State and all governmental and political subdivisions and taxing districts of the State a three per cent (3%) discount on ad valorem taxes due the State or due any governmental or political subdivision or taxing district of the State if such taxes are paid ninety (90) days before the date when they would otherwise become delinquent; and the taxpayer shall be allowed a two per cent (2%) discount on said taxes if paid sixty (60) days before said taxes would become delinquent; and the taxpayer shall be allowed a one per cent (1%) discount if said taxes are paid thirty (30) days before they would otherwise become delinquent. The Legislature shall pass necessary laws for the proper administration of this **Section**.

CREDIT(S)

Adopted Aug. 23, 1937. Amended Nov. 2, 1999.

INTERPRETIVE COMMENTARY

2007 Main Volume

The oldest and basic **constitutional** provision governing the standard of value merely stated that property should be taxed according to its value ‹which shall be ascertained as may be provided by law.› (Art. 8, § 1) As as consequence, the standard of value was set entirely by legislative enactment. In 1937, however, a second important provision was added by the inclusion of this **section** which provided that no property of any kind in this state shall ever be assessed for ad valorem taxes at a greater value than its **fair cash market value**.

The approval of this amendment raised two important problems. The first was the potential effect of the proviso that property could not be valued at more than its ‹**fair cash market value**› upon previous statutory provisions which allowed valuation of property at its ‹real or intrinsic value› if such property had no market value. As interpreted by the courts, the principal difference in these two concepts is the use to which the property is put. A movie theater, for example, has a certain real or intrinsic value because it is adapted to the needs of a particular business. If it were to be sold merely as a building for another type of business, its market value would be much smaller, and perhaps almost worthless. It was feared that this **constitutional** amendment might have left the assessor with no alternative but to use ‹**fair cash market value**› exclusively, thus in effect removing from taxation that property which has no marketable value. However, since the adoption of this amendment, the courts have not disturbed the alternative of valuing property which has no market value at its real or intrinsic value. But if the property has any market value at all, even though it may be very small, the courts have held that such should be its taxable value under the law despite the fact that it may actually have a higher real or intrinsic value. The concept of real or intrinsic value can only be invoked if the property has no market value. (See Harlingen Independent School District v. Dunlap, Civ.App., 146 S.W.2d 235, 1940, error refused.)

The second problem arising out of the amendment was the necessity for enabling legislation before its provisions would become legal. Because of the direct wording that ‹the Legislature shall pass necessary laws for the proper administration of this Section,› and the additional fact that a

EXHIBIT H

Tex. Atty. Gen. Op. GA-0469, 2006 WL 2991434 (Tex.A.G.)

Office of the Attorney General

State of Texas
Opinion No. GA-0469

October 18, 2006

Re: Whether Federal Reserve notes are eligible as collateral for repurchase agreements under chapters 404 and 2256 of the Government Code--Clarification of Attorney General Opinion GA-0324 (2005)(RQ-0438-GA)

The Honorable Carole Keeton Strayhorn

Comptroller of Public Accounts
Post Office Box 13528
Austin, Texas 78711-3528
Dear Comptroller Strayhorn:

In Attorney General Opinion GA-0324, we advised that chapters 404 and 2256 of the Government Code do not authorize the Texas Treasury Safekeeping Trust Company to accept cash as collateral for its repurchase agreements. *See generally*Tex. Att'y Gen. Op. No. GA-0324 (2005). You now ask us to clarify whether Federal Reserve notes would be acceptable collateral for such repurchase agreements. [FN1]

For background, we review Opinion GA-0324 as well as your prior request. [FN2] The Texas Treasury Safekeeping Trust Company (ꢀTrust Company ꢁ) manages and invests state funds and pooled funds of local political subdivisions and entities participating in the Texas Local Government Investment Pool (ꢀTexPool ꢁ).*See id.* **at 1-2**.[FN3] The Government Code authorizes the Trust Company to invest these funds in repurchase agreements. *See id.* **at 2-3**.[FN4]

In a repurchase agreement, a party simultaneously sells securities and agrees to buy them back at a specified time. *See id.* **at 3**.[FN5] Although structured as a sale of securities, a repurchase agreement is essentially a collateralized loan, with the securities that are sold and repurchased serving as collateral and the difference between the initial sale price and the repurchase price representing the investor's return. *See id.*[FN6] Under Texas statutes, when the state is the initial purchaser the transaction is denominated a ꢀdirect security repurchase agreement.ꢁ Tex. Gov't Code Ann. § 404.001(3) (Vernon 2005) (definition). In a direct security repurchase agreement, the party selling and repurchasing securities is generally referred to as the ꢀcounterparty.ꢁ *See*Tex. Att'y Gen. Op. No. GA-0324 (2005) at 3; *see also* RQ-0295-GA, *supra* note 2, at 2.

In your prior request you explained that in a typical Trust Company repurchase agreement, the securities bought and sold are kept at a custodian bank, usually a large money-center bank in New York City. *See* RQ-0295-GA, *supra* note 2, at 2. The counterparty is generally another large money-center bank that does business in this state or a primary government securities dealer that maintains billions of dollars of securities at the custodian bank to enable it to participate in repurchase agreements with various public and private investors. *See id.*Typically the securities held by the purchaser in a repurchase agreement are to be determined and allocated nightly. *See id.* **at 2-3**.Each day, the counterparty provides the custodian with a list of repurchase agreements to be in place at the end of the day, and the custodian allocates the counterparty's securities to each repurchase agreement. *See id.* **at 2**. Occasionally, however, the counterparty may not have enough securities present at the custodian bank to fully collateralize all of the counterparty's repurchase agreements. *See id.*If this deficiency is determined late in the day, there may not be enough time for the counterparty to obtain additional securities to place with the custodian to satisfy all of the counterparty's repurchase agreements. *See id.* **at 2-3**.You have informed us that when such a deficiency occurs, it is customary in the banking industry for the counterparty to provide cash to make up the difference between the counterparty's securities maintained at the custodian bank and the amount

necessary to satisfy the counterparty's repurchase agreements. *See* ***id.***

2** In your prior request you asked whether the Trust Company may invest in a direct repurchase agreement that contemplates the possibility of cash as collateral. *See* ***id. **at 3-4**.You noted that the relevant statutes do not expressly include cash among the securities eligible as collateral for a repurchase agreement. *See* ***id.*** **at 4**;*see also*Tex. Gov't Code Ann. §§ 404.001(3)(A)-(C), .024 (Vernon 2005); 2256.009(a)(1) (Vernon Supp. 2006); 2256.011(a)(2) (Vernon 2000). You questioned, however, whether that omission was intended to exclude cash from serving as eligible collateral. *See* RQ-0295-GA, *supra* note 2, at 4. You suggested that the legislature's general intent was to limit the collateral eligible to secure a repurchase agreement to relatively risk-free and liquid collateral. *See* ***id.***You observed that cash would adequately serve the same purposes as the collateral that the statutes expressly authorize. ***Id.*** Thus, you queried whether the pertinent statutes in chapter 404 and 2256 might be construed as permitting cash to serve as collateral in repurchase agreements. *See* ***id.*** **at 4-5**.

We understood you to inquire about "cash" in its usual and ordinary sense, which may include coins, paper money, checks, and demand deposits. *See***Tex. Att'y Gen. Op. No. GA-0324 (2005)** at 6 (citing *Stewart v. Selder*, 473 S.W.2d 3, 8-9 (Tex. 1971); *see also*Tex. Bus. & Com. Code Ann. § 9.102(a)(9) (Vernon Supp. 2006) ("Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like."). We observed that while the repurchase agreement provisions of chapters 404 and 2256 do not mention cash, other provisions of those chapters expressly authorize using cash for other specific purposes. *See***Tex. Att'y Gen. Op. No. GA-0324 (2005)** at 6. For example, section 404.024 authorizes the Comptroller to lend securities under procedures requiring the loan to be fully secured "with cash, obligations, or a combination of cash and obligations."Tex. Gov't Code Ann. § 404.024(*1*) (Vernon 2005). And section 2256.0115 authorizes lending of securities as an investment provided the loan is secured by certain pledged securities, irrevocable letters of credit, or "cash invested in" certain securities and obligations, commercial paper, mutual funds, and investment pools. *Id.* § 2256.0115(b)(3)(C) (Vernon Supp. 2006). Because the legislature expressly authorized and limited the use of cash as security in sections 404.024(*1*) and 2256.0115, we determined that sections 404.024 and 2256.011 could not be read to implicitly authorize cash as eligible collateral in repurchase agreements. *See***Tex. Att'y Gen. Op. No. GA-0324 (2005)** at 7. We concluded that the Trust Company may not invest state funds or TexPool funds "in direct security repurchase agreement contracts that contemplate the possibility of cash as collateral."***Id.*** **at 8**.

You now ask us to confirm that chapters 404 and 2256 of the Government Code expressly authorize Federal Reserve notes as collateral for a repurchase agreement. *See* Request Letter, *supra* note 1, at 2. Federal Reserve notes are United States currency, legal tender for debts. *See*31 U.S.C. § 5103 (2000). They are our nation's lawful money. *See Milam v. United States*, 524 F.2d 629, 630 (9th Cir. 1974) (Congress has delegated to the Federal Reserve the authority to "establish a national currency" and "to make that currency lawful money."); *Rothacker v. Rockwall County Cent. Appraisal Dist.*, 703 S.W.2d 235, 236-37 (Tex. App.--Dallas 1985, writ ref'd n.r.e.) (noting that Federal Reserve notes are "legal tender," valued in "dollars," and issued pursuant to Congress' authority to establish a "fiat currency"). And as money, Federal Reserve notes are one form of "cash" as we used the term in our prior opinion. *See***Tex. Att'y Gen. Op. No. GA-0324 (2005)** at 6; Tex. Bus. & Com. Code Ann. § 9.102(a)(9) (Vernon Supp. 2006) (defining "cash proceeds" to include "money"). But as you observe, under federal law, Federal Reserve notes also constitute obligations of the United States: The said [Federal Reserve] notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.

***3** 12 U.S.C. § 411 (2000); *see also* Request Letter, *supra* note 1, at 2.
Texas Government Code chapters 404 and 2256 expressly authorize categories of acceptable collateral in language similar to the phrase "obligations of the United States." Section 404.001 of the Government Code specifies the exclusive list of "securities, obligations, or participation certificates" that may serve as collateral for a state-fund repurchase agreement:

(A) United States government securities;
(B) direct obligations of or obligations the principal and interest of which are guaranteed by the United

States; or

(C) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government.

Tex. Gov't Code Ann. § 404.001(3)(A)-(C) (Vernon 2005); *see also id.* § 404.024(b)(1), (c) (authorizing the Comptroller to invest in direct security repurchase agreements). Chapter 2256 similarly provides that local funds may be invested in a repurchase agreement only if the agreement "is secured by obligations described by [Government Code] Section 2256.009(a)(1)." *Id.* § 2256.011(a)(2) (Vernon 2000). The obligations that section 2256.009(a)(1) describes are "obligations, including letters of credit, of the United States or its agencies and instrumentalities." *Id.* § 2256.009(a)(1) (Vernon Supp. 2006).

With few exceptions, unambiguous statutes are construed according to their plain language. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999). When construing an unambiguous statute, we must "apply the tenet that the legislature chooses its words carefully and means what it says." *Nauslar v. Coors Brewing Co.*, 170 S.W.3d 242, 253 (Tex. App.--Dallas 2005, no pet.). Because Federal Reserve notes are obligations of the United States, they are eligible collateral for repurchase agreements under the plain language of sections 404.001, 404.024, 2256.009, and 2256.011 of the Government Code. *See* Tex. Gov't Code Ann. §§ 404.001(3)(B), .024(b) (Vernon 2005); 2256.009(a)(1) (Vernon Supp. 2006), 2256.011(a)(2) (Vernon 2000).

We reaffirm our determination in Opinion GA-0324 that, as a general proposition, sections 404.024 and 2256.011 do not authorize the Trust Company to accept cash in all its forms as collateral for repurchase agreements. *See* **Tex. Att'y Gen. Op. No. GA-0324 (2005)** at 8. But that opinion was overly broad, and must be modified to account for cash that constitutes an obligation of the United States, such as Federal Reserve notes. **Attorney General Opinion GA-0324 (2005)** is modified to the extent that it provides that cash in the form of a government obligation is not eligible as collateral for repurchase agreements.

SUMMARY Federal Reserve notes are eligible collateral for direct security repurchase agreements under sections 404.001, 404.024(b), 2256.009, and 2256.011 of the Government Code. **Attorney General Opinion GA-0324 (2005)** is modified to the extent that it provides that cash in the form of a government obligation is not eligible as collateral for direct security repurchase agreements.

Very truly yours,

***4** Greg Abbott
Attorney General of Texas
Kent C. Sullivan

First Assistant Attorney General
Ellen L. Witt

Deputy Attorney General For Legal Counsel
Nancy S. Fuller

Chair
Opinion Committee
William A. Hill

Assistant Attorney General
Opinion Committee

[FN1]. *See* Letter from Honorable Carole Keeton Strayhorn, Comptroller of Public Accounts, to Honorable Greg Abbott, Attorney General of Texas (Jan. 27, 2006) (on file with the Opinion Committee, *also available at* http:// www.oag.state.tx.us) [hereinafter Request Letter].

[FN2]. *See* Letter from Timothy Mashburn, General Counsel, Comptroller of Public Accounts, to Honorable Greg Abbott, Attorney General of Texas (Nov. 17, 2004) (on file with the Opinion Committee, *also available at* http:// www.oag.state.tx.us) [hereinafter RQ-0295-GA].

[FN3]. *See also* RQ-0295-GA, *supra* note 2, at 1-2 (discussing "TexPool"); Tex. Gov't Code Ann. §§ 791.001-.033 (Vernon 2004 & Supp. 2006) (chapter 791, "Interlocal Cooperation Act"); 2256.001-.055

(Vernon 2000 & Supp. 2006) (chapter 2256, "Public Funds Investment Act") ("TexPool" is organized under Government Code chapters 791 and 2256.).

[FN4]. *See also* Tex. Gov't Code Ann. §§ 404.024 (Vernon 2005) (authorizing investment of state funds in repurchase agreements); 404.102(a) (authorizing creation of the Trust Company to enable the Comptroller to manage and invest funds, including pooled funds); 404.106(c) (the Trust Company holding funds for a particular participant has the same investment authority as the participant with respect to those funds); 2256.003(a) (Vernon 2000) (authorizing pooled investments); 2256.011 (authorizing investment of local funds in repurchase agreements).

[FN5]. *See id.* §§ 404.001(3) (Vernon 2005) (defining "direct security repurchase agreement"); 2256.011(b) (Vernon 2000) (defining "repurchase agreement"); Jeanne L. Schroeder, *Repo Madness: The Characterization of Repurchase Agreements under the Bankruptcy Code and the U.C.C.*, 46 Syracuse L. Rev. 999, 1004-05 (1996) (hereinafter "Schroeder").

[FN6]. *See* Schroeder, *supra* note 5, at 1006-10 (discussing implications of characterizing a repurchase agreement as a true sale or a secured transaction).

Tex. Atty. Gen. Op. GA-0469, 2006 WL 2991434 (Tex.A.G.)

END OF DOCUMENT

EXHIBIT I

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
October 2, 2008
Charles R. Fulbruge III
Clerk

No. 08-20133
Summary Calendar

BRENT E. CRUMMEY,

Plaintiff - Appellant,

v.

KLEIN INDEPENDENT SCHOOL DISTRICT; THOMAS PETREK; DEBORAH H. WEHNER,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Texas
4:07-CV-1685

Before DAVIS, GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Brent E. Crummey brought this lawsuit complaining that the defendants-appellees, Klein Independent School District ("KISD") and two employees of the KISD tax office, declined to accept Crummey's fifty-dollar United States American Eagle gold coins for any more than the face value of the coins in Federal Reserve Note dollars as tender in payment for taxes Crummey owed.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Crummey, proceeding *pro se*, sought to assert various federal and state causes of action arising from this incident, including that the appellees violated Crummey's alleged right under Article 1, Section 10 of the Constitution to pay a debt in gold coin.[2] The district court, adopting the Memorandum, Recommendation and Order of the Magistrate Judge, dismissed *sua sponte* Crummey's federal claims and declined to exercise supplemental jurisdiction over Crummey's remaining state law claims, which were remanded to state court. Crummey appeals.

The core of Crummey's appeal rests on Crummey's argument that the legal monetary value of fifty dollars in United States American Eagle gold coin is different than (and worth more than) the legal monetary value of fifty dollars in Federal Reserve Notes, or as it is sometimes affectionately called, cash. Regardless of any currency confusion that may have arisen in bygone eras, our present standard is clear: As legal tender, a dollar is a dollar.

Crummey suggests that the United States has a parallel or dual monetary valuation system for the dollar. Crummey relies for support on a statute authorizing the Secretary of the Treasury to mint certain coins and to sell them to the public at a price based on the market value of the bullion plus production costs. *See* 31 U.S.C. § 5112(f)(1). According to Crummey, the fact that the United States Mint sells coins into circulation at an amount that is often different than the face value of the coins, supports his theory for the existence of some form of dollar-for-dollar exchange rate between the "coin" dollar and the "FRN" dollar.

Crummey's argument conflates the market value of such coins as bullion, or as a collectors' items, with the value of the coins as legal tender. Fittingly, the Supreme Court has explained:

---

[2] Article 1, Section 10 of the Constitution provides, in part: "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts."

> A coin dollar is worth no more for the purposes of tender in payment of an ordinary debt than a note dollar. The law has not made the note a standard of value any more than coin. It is true that in the market, as an article of merchandise, one is of greater value than the other; but as money, that is to say, as a medium of exchange, the law knows no difference between them.

Thompson v. Butler, 95 U.S. 694, 696 (1877). "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts." 31 U.S.C. § 5103; *see also Mathes v. Commissioner of Internal Revenue*, 576 F.2d 70, 71 (5th Cir. 1978) (per curiam) ("Congress has delegated the power to establish this national currency which is lawful money to the Federal Reserve System."); *United States v. Wangrud*, 533 F.2d 495, 495 (9th Cir. 1976) (per curiam) ("By statute it is established that federal reserve notes, on an equal basis with other coins and currencies of the United States, shall be legal tender for all debts, public and private, including taxes.").

We reject Crummey's suggestion that the "dollar" has multiple meanings or values within the United States system of currency. *See* 31 U.S.C. § 5101 ("United States money is expressed in dollars, dimes or tenths, cents or hundreths, and mills or thousandths. A dime is a tenth of a dollar, a cent is a hundredth of a dollar, and a mill is a thousandth of a dollar."). As legal tender, a dollar is a dollar, regardless of the physical embodiment of the currency.

The legal monetary value of Crummey's fifty dollar American Gold Eagle coin is equivalent to that of a fifty dollar Federal Reserve Note. Crummey's argument to the contrary, on which the bulk of his appeal rests, fails.

Having carefully considered all of Crummey's issues on appeal in light of the record and the applicable law, we find them to be without merit. For these reasons, the judgment of the district court is AFFIRMED.

Furthermore, appellees' motion for sanctions pursuant to Rule 38 of the Federal Rules of Appellate Procedure is DENIED. Crummey's alternative request for an evidentiary hearing on appellees' motion for sanctions is DENIED as moot.

A true copy
Attest:
Clerk, U. S. Court of Appeals, Fifth Circuit
By: Deputy
New Orleans, Louisiana
NOV 24 2008

EXHIBIT J

Gov't Code §21.001(a); TRCP 248; Tex.R.Jud.Admin. 11, 13; *Commen-* "Pretrial Conference," ch. 5-A; "Motion to Transfer for Pretrial Consoli- ch. 5-G; FORM 5A:1.

History of TRCP 166: Amended eff. Sept. 1, 2003, by order of Aug. 29, 2003 S.W.3d [Tex.Cases] xx): added paragraph on multidistrict litigation. eff. Sept. 1, 1990, by order of Apr. 24, 1990 (785-86 S.W.2d [Tex.Cases] first sentence amended to add "appropriate" and "to assist in the dispo- the case without undue expense or burden to the parties"; (a) amended pending" and to change "all motions and exceptions relating to a suit " to "motions and exceptions"; (c) changed to (b); new (c) and (d) former (b) changed to (e) and "Contested issues of fact and" added; (d) changed to (f) and "admissions" changed to "stipulations" and "and ments which will avoid unnecessary proof" was deleted; (g)-(m) added; (f) changed to (n); (o) added; former (g) changed to (p); last amended to add "or rulings of the court" and to change "entered" to ", to broaden the scope of the rule and to confirm the ability of the trial pretrial hearings to encourage settlement. Amended eff. Jan. 1, 1961, of July 26, 1960 (23 Tex.B.J. 620 [1961]): Requirement that court's a pretrial conference allowing amendments show "the time within which may be filed." Adopted eff. Sept. 1, 1941, by order of Oct. 29, 1940 (3 548 [1940]). Source: FRCP 16. The rule gives the court the power to the appearance of the parties or their agents, as well as the attorneys; may be referred to an auditor.

ANNOTATIONS

Koslow's v. Mackie, 796 S.W.2d 700, 703 (Tex. . TRCP 166 "includes the power to order the par- through their attorneys (or through themselves if aring pro se) to confer to narrow the issues for the en pretrial conference report."

Provident Life & Acc. Ins. Co. v. Hazlitt, 216 2d 805, 807 (Tex.1949). "The purpose of [TRCP is to simplify and shorten the trial.... [N]o contro- issues of fact could be adjudicated at [the pre- conference, but orders could be entered disposing issues which are founded upon admitted or undis- facts."

In re Bledsoe, 41 S.W.3d 807, 812 (Tex.App.—Fort 2001, orig. proceeding). "Rule 166 of the CPs] permits trial courts to hold pretrial confer- and to enter orders establishing the agreements parties as to any of the matters considered, which the subsequent course of the case up to trial. trial court has power, implicit under rule 166, to a party for failing to obey its pretrial orders."

Lindley v. Johnson, 936 S.W.2d 53, 55 (Tex.App.— 1996, writ denied). "When a trial court's pretrial duling order changes the deadlines set forth in a dural rule, the trial court's order prevails."

TRCP 166a. SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover a claim, counterclaim, or cross-claim or to obtain declaratory judgment may, at any time after the ad- party has appeared or answered, move with or out supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion for summary judgment shall state the specific grounds therefor. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

(d) Appendices, References and Other Use of Discovery Not Otherwise on File. Discovery products not on file with the clerk may be used as summary judgment evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to

other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary judgment proofs: (i) at least twenty-one days before the hearing if such proofs are to be used to support the summary judgment; or (ii) at least seven days before the hearing if such proofs are to be used to oppose the summary judgment.

(e) **Case Not Fully Adjudicated on Motion.** If summary judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the judge may at the hearing examine the pleadings and the evidence on file, interrogate counsel, ascertain what material fact issues exist and make an order specifying the facts that are established as a matter of law, and directing such further proceedings in the action as are just.

(f) **Form of Affidavits; Further Testimony.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) **When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(i) **No-Evidence Motion.** After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

By Texas Supreme Court Order dated Aug. 15, 1997, the amendment TRCP 166a(e) & (i) took effect September 1, 1997, and apply to all motions summary judgment filed on or after that date. Unlike other notes and comments in the TRCP, the Notes & Comments to TRCP 166a(i), below, are intended inform the construction and application of the rule.

Notes & Comments to TRCP 166a(i): This comment is intended to the construction and application of the rule. Paragraph (i) authorizes a motion for summary judgment based on the assertion that, after adequate opportunity for discovery, there is no evidence to support one or more specified elements an adverse party's claim or defense. A discovery period set by pretrial order should be adequate opportunity for discovery unless there is a showing to the contrary, and ordinarily a motion under paragraph (i) would be permitted only the period but not before. The motion must be specific in challenging the dentiary support for an element of a claim or defense; paragraph (i) does not authorize conclusory motions or general no-evidence challenges to an opponent's case. Paragraph (i) does not apply to ordinary motions for summary judgment under paragraphs (a) or (b), in which the movant must prove entitled to judgment by establishing each element of its own claim or defense as a matter of law. To defeat a motion made under paragraph (i), the respondent is not required to marshal its proof; its response need only point to evidence that raises a fact issue on the challenged elements. The existing rules continue to govern the general requirements of summary judgment practice. A motion under paragraph (i) is subject to sanctions provided by existing law (CPRC §§9.001-10.006) and rules (TRCP 13). The denial of a motion under paragraph (i) is no more reviewable by appeal or mandamus than the denial of a motion under paragraph (c).

See ***Commentaries***, "Rules of Pleading," ch. 1-B; "Motion for Continuance," ch. 5-D; "Forms of Discovery," ch. 6-A, §4; "Motion for Summary Judgment—General Rules," ch. 7-B; FORMS 7B, 7C, 7D.

History of TRCP 166a: Amended effective Sept. 1, 1997, by order of Mar. 13, 1997 (60 Tex.B.J. 872 (Oct. 1997)): Amended (e) and added (i); see comment above. Amended eff. Sept. 1, 1990, by order of Apr. 24, 1990 (785-86 [Tex.Cases] l): Added (d); The amendment provides a mechanism for previously unfiled discovery in summary judgment practice; such proofs must be filed in advance of the hearing in accordance with TRCP 166a; redesignated (d) - (g) to (e) - (h). Amended eff. Jan. 1, 1988, by order of July 15, 1987 (734 S.W.2d [Tex.Cases] li): Amended sec. (c). Amended eff. Apr. 1, 1984, by order of Dec. 5, 1983 (661-62 S.W.2d [Tex.Cases] xlv): Amended sec. (c) to include stipulations and authenticated and certified public records as proof in support of a summary judgment. Amended eff. Jan. 1, 1981, by order of Nov. 10, 1980 (599-600 S.W.2d [Tex.Cases] xxxix): Added in the second sentence the words "with notice to opposing counsel," "and any supporting affidavits" and "filed and"; added "file and" in third sentence. Amended eff. Jan. 1, 1978, by order of July 11, 1977 (553-54 S.W.2d [Tex.Cases] xlvi): Changed requirements in (c); added third, fourth, and fifth sentences of (c), and last sentence of (e). Amended eff. Jan. 1, 1971, by order of July 21, 1970 (460 S.W.2d [Tex.Cases] xxxi): Added first sentence of (c); inserted words "answers to interrogatories" in the fifth sentence of (c). Amended eff. Jan. 1, 1967, by order of July 20, 1966 (401-02 S.W.2d [Tex.Cases] xxxiii): Added third sentence of (c). Amended eff. Mar. 1, 1952, by order of Oct. 1, 1951 (14 Tex.B.J. 531 [1951]): Added last sentence to (a). Adopted eff. Mar. 1, 1950, by order of Oct. 12, 1949 (12 Tex.B.J. 531 [1949]). Source: FRCP 56, with changes; substituted "adverse party has appeared or answered" for "pleading in response thereto was served" in par. (a).

EXHIBIT K

Effective: June 18, 2005

Vernon's Texas Statutes and Codes Annotated Currentness

Tax Code(Refs & Annos)
Title 1. Property **Tax Code**
Subtitle A. General Provisions
Chapter 1. General Provisions (Refs & Annos)
§ 1. 04. Definitions

In this title:

(1) "Property" means any matter or thing capable of private ownership.

(2) "Real property" means:

(A) land;

(B) an improvement;

(C) a mine or quarry;

(D) a mineral in place;

(E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property enumerated in Paragraphs (A) through (E) of this subdivision.

(3) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land;

(B) a transportable structure that is designed to be occupied for residential or business purposes, whether or not it is affixed to land, if the owner of the structure owns the land on which it is located, unless the structure is unoccupied and held for sale or normally is located at a particular place only temporarily; or

(C) for purposes of an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, the:

(i) subdivision of land by plat;

(ii) installation of water, sewer, or drainage lines; or

(iii) paving of undeveloped land.

(3-a) Notwithstanding anything contained herein to the contrary, a manufactured home is an improvement to real property only if the owner of the home has elected to treat the manufactured home as real property pursuant to Section 1201.2055, Occupations Code, and a certified copy of the statement of ownership and location has been filed with the real property records of the county in which the home is located as provided in Section 1201.2055(d), Occupations Code.

(4) "Personal property" means property that is not real property.

(5) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or otherwise perceived by the senses, but does not include a document or other perceptible object that constitutes evidence of a valuable interest, claim, or right and has negligible or no intrinsic value.

(6) "Intangible personal property" means a claim, interest (other than an interest in tangible property), right, or other thing that has value but cannot be seen, felt, weighed, measured, or otherwise perceived by the senses, although its existence may be evidenced by a document. It includes a stock, bond, note or account receivable, franchise, license or permit, demand or time deposit, certificate of deposit, share account, share certificate account, share deposit account, insurance policy, annuity, pension, cause of action, contract, and goodwill.

(7) "Market value" means the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

(A) exposed for sale in the open market with a reasonable time for the seller to find a purchaser;

(B) both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and

(C) both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.

(8) "Appraised value" means the value determined as provided by Chapter 23 of this code.

(9) "Assessed value" means, for the purposes of assessment of property for taxation, the amount determined by multiplying the appraised value by the applicable assessment ratio, but, for the purposes of determining the debt limitation imposed by Article III, Section 52, of the Texas Constitution, shall mean the market value of the property recorded by the chief appraiser.

(10) "Taxable value" means the amount determined by deducting from assessed value the amount of any applicable partial exemption.

(11) "Partial exemption" means an exemption of part of the value of taxable property.

(12) "Taxing unit" means a county, an incorporated city or town (including a home-rule city), a school district, a special district or authority (including a junior college district, a hospital district, a district created by or pursuant to the Water Code, a mosquito control district, a fire prevention district, or a noxious weed control district), or any other political unit of this state, whether created by or pursuant to the constitution or a local, special, or general law, that is authorized to impose and is imposing ad valorem taxes on property even if the governing body of another political unit determines the tax rate for the unit or otherwise governs its affairs.

(13) "Tax year" means the calendar year.

(14) "Assessor" means the officer or employee responsible for assessing property taxes as provided by Chapter 26 of this code for a taxing unit by whatever title he is designated.

(15) "Collector" means the officer or employee responsible for collecting property taxes for a taxing unit by whatever title he is designated.

(16) "Possessory interest" means an interest that exists as a result of possession or exclusive use or a right to possession or exclusive use of a property and that is unaccompanied by ownership of a fee simple or life estate in the property. However, "possessory interest" does not include an interest, whether of limited or indeterminate duration, that involves a right to exhaust a portion of a real property.

(17) "Conservation and reclamation district" means a district created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or under a statute enacted under Article III, Section

52, or Article XVI, Section 59, of the Texas Constitution.

(18) "Clerical error" means an error:

(A) that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating; or

(B) that prevents an appraisal roll or a tax roll from accurately reflecting a finding or determination made by the chief appraiser, the appraisal review board, or the assessor; however, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning in the making of the finding or determination.

(19) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

CREDIT(S)

Acts 1979, 66th Leg., p. 2218, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 118, ch. 13, § 2, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 984, § 25, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 1123, § 1, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., ch. 20, § 13, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 393, § 1, eff. June 10, 1991; Acts 1991, 72nd Leg., ch. 843, § 6, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, § 8.01(22), eff. Nov. 12, 1991; Acts 1993, 73rd Leg., ch. 347, § 4.04, eff. May 31, 1993; Acts 1997, 75th Leg., ch. 1070, § 52, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 1284, § 30, eff. June 18, 2005.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Acts 1997, 75th Leg., ch. 1070, in subd. (3), added par. (C).

Acts 2005, 79th Leg., ch. 1284 added subd. (3-a).

Prior Laws:

Acts 1875, 14th Leg., p. 113.

Acts 1876, 15th Leg., p. 275.

Rev.Civ.St.1879, arts. 434, 435.

Acts 1879, 16th Leg., p. 39.

G.L. vol. 8, pp. 485, 1111, 1339.

Rev.Civ.St.1895, arts. 495, 496, 5062, 5063, 5064, 5088.

Acts 1905, 29th Leg., p. 72.

Acts 1905, 29th Leg., p. 263, § 166.

Rev.Civ.St.1911, arts. 934, 935, 2861, 7504, 7505, 7506, 7530.

Acts 1919, 36th Leg., 2nd C.S., p. 107, ch. 48, §§ 39, 48.

Acts 1923, 38th Leg., 2nd C.S., p. 78, ch. 35, § 1.

Acts 1932, 42nd Leg., 3rd C.S., p. 63, ch. 27, § 33.

EXHIBIT L

CONSTITUTION OF THE UNITED STATES [1]

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

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[1] This text of the Constitution follows the engrossed copy signed by Gen. Washington and the deputies from 12 States. The small superior figures preceding the paragraphs designate clauses, and were not in the original and have no reference to footnotes.

The Constitution was adopted by a convention of the States on September 17, 1787, and was subsequently ratified by the several States, on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788.

Ratification was completed on June 21, 1788.

The Constitution was subsequently ratified by Virginia, June 25, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790; and Vermont, January 10, 1791.

In May 1785, a committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton, of New York) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should

Continued

in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth

IN WITNESS whereof We have hereunto subscribed our Names,

GO. WASHINGTON—Presidt.
and deputy from Virginia

Delaware

GEO: READ
GUNNING B
JOHN DICK
RICHARD B
JACO: BRO

Maryland

JAMES MC
DAN OF ST
DANL CAR

Virginia

JOHN BLA
JAMES MA

North Carol

WM BLOU
RICHD. D
HU WILLI

South Caro

J. RUTLE
CHARLES
CHARLES
PIERCE B

Georgia

WILLIAM
ABR BAL

Attest:

Exhibit M

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

NOVEMBER 16, 2011

NOS. 12-10-00021-CV
12-10-00050-CV

THOMAS D. SELGAS AND MICHELLE L. SELGAS,
Appellants
V.
THE HENDERSON COUNTY APPRAISAL DISTRICT,
Appellee

Appeal from the 173rd Judicial District Court
of Henderson County, Texas. (Tr.Ct.Nos. 2008A-813; 2008A-814)

THESE CAUSES came to be heard on the oral arguments, appellate records and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgments.

It is therefore ORDERED, ADJUDGED and DECREED that the judgments of the court below **be in all things affirmed**, and that all costs of these appeals are hereby adjudged against the Appellants, **THOMAS D. SELGAS AND MICHELLE L. SELGAS,** for which execution may issue, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.