

AFFIDAVIT OF EDMUND HEIMLICH

**As a witness in cause 2022-12360 in the District Court
And in cause 495484 and 495484-401 in the Probate Court
Of Harris County, Texas**

I am Edmund Heimlich. I declare under penalty of perjury all the statements in this affidavit are true statements of facts known to me.

I am 67 years of age. I filed the probate case numbered 495484 in Harris County for the purpose of settling the Estate of my father, Ernest L. Heimlich, deceased, so that I and the other beneficiaries of the Estate could have the inheritance he intended for us to have. I have four (4) Sisters. I, and my Sisters, all know that it was our Father's will for the five (5) of us to have an equal share of his estate. I and three of my Sisters entered into an Estate Settlement Agreement and agreed to hire a paralegal with probate experience and an attorney to settle the Estate. One of my Sisters insisted on imposing upon all of us the expense of a Dependent Administrator chosen by the Judge of the probate court. As a result, David S. Cook was appointed on or about September 9, 2021. The misconduct of David S. Cook resulted in my filing of the cause numbered 2022-12360 in the District Court of Harris County.

EXPERT WITNESS CREDENTIALS

I have a bachelors degree in Business Administration with a major in Finance with a concentration in Real Estate. I began my career in Real Estate before I earned my degree with positions as a licensed real estate agent in Ohio and as a real estate appraiser under contract with the State of Ohio. After graduation I moved to Texas in 1979 and resumed my career in Real Estate with employment as an appraiser, followed by employment in a Title Company, followed by securing a Real Estate license in Texas, followed by employment in property management with a Nationwide Real Estate Investment Trust that owned large apartment communities.

For approximately five (5) years I was the manager of communities of 232 up to 801 units in size. Among the communities was a property purchased out of bankruptcy. I was put on that property immediately after acquisition and entrusted with the oversight of over \$500,000 in rehab and renovation of the property. In the mid-1980's the real estate market collapsed in many

parts of the country with Houston particularly hard hit. I was hired by a Savings and Loan in Arizona to handle their residential properties in Texas in default and in foreclosure. I then acquired a Texas Real Estate Broker's license and opened my Brokerage where my specialty was finding investment opportunities among the many properties in Houston that had been acquired by foreclosure. These properties were being sold by HUD, FNMA ("FannieMae"), Savings and Loans, banks, etc. I found investors from out of state, primarily in New York, to buy these properties based on my financial analysis and economic forecasts. I then managed these properties for them.

It was then that I first engaged in what is known as wholesaling. I would contract to purchase properties sold by HUD at auction and then find a buyer to assign my contract to before the closing date. If I could not find a buyer within the initial 60 days I would get a 30 day extension in exchange for a \$1,000 fee to the Seller. The attorneys for the US Department of Housing and Urban Development (HUD) were well aware that I, and some other real estate professionals, engaged in this practice. Contrary to misrepresentations of the law by David S. Cook, it is legal.

At that time the practice was known as a double close, but it is now known in the industry as wholesaling. I am also very familiar with the practice known as fix and flip. I did my first fix and flip at the age of 21 while a student at the University. Following the real estate downturn in the great recession, this practice became more widely known as featured in shows on cable TV. These shows do not delve into the contract terms and financing so what I did is not a well-known practice. That is, to avoid the expense of interim financing and closing expense; fix and flippers can arrange for the rehab of the property and resale of the property while it is under contract. Thus, they sell their equitable interest without ever taking title to the property. Sellers will agree to this to sell a property that they cannot afford to repair when its condition makes selling 'as is' difficult.

I had my Real Estate brokerage for five years and during that time sponsored only full-time agents able to pay a monthly fee to work under my license. At one point I had 21 agents under my sponsorship. In the course of my experience, I acquired expert knowledge of the law governing contracts of all sorts, and in particular law of real estate financing, titles, and transactions.

TESTIMONY ON TRANSACTION

I approached David S. Cook shortly after his appointment to be Dependent Administrator to express my interest in purchasing two (2) of the three (3) residential homes in the Estate. The two I sought to buy were in an extreme state of disrepair. I had a long meeting with David Cook to share with him my experience in Real Estate and tell him my experience doing property rehabs and renovations. I told him of my experience wholesaling, as well as retailing, Real Estate. I went into detail telling him what I wanted to do. I explained to him that I had lived in Austin for over 10 years and had no interest in long-term ownership of property in Houston. My interest was solely to fix and flip without the delay and expense of interim financing.

As a Dependent Administrator David S. Cook is required to secure court approval on his actions. The time required for various approvals and to complete the settlement of the Estate would provide me with all the time I needed to fix the 2 properties and find a new buyer to assign my contract. In exchange I expected an assignment fee to recoup my investment and earn compensation for my time, my labor, my ability to hire and supervise skilled labor, and my other expertise. I explicitly told David S. Cook of my plan and expectations. I shared with him my estimate of the time required. I told him I would need approximately 60 days for the rehab and another 30 days to find a buyer by assignment and close on the transaction.

I offered to pay the carrying costs of the properties I had under contract in exchange for avoiding the expense of interim financing and closing costs. David S. Cook did not want to bother with the accounting and was more interested in avoiding the liability for compensating my workers on the property if they were injured. So my offer to pay taxes and such other costs the property imposed on the Estate during the rehab was declined. It was with this understanding, this verbal contract, that we entered a written contract for Estate to sell 806 Comstock Springs in Katy Texas to "**Edmund Heimlich and/or assigns**".

I met Michael Seago at a presentation on finding, fixing, and then selling, properties. I was impressed by his presentation and asked him to list the property to find a buyer by assignment upon completion of the rehab. He loaned me \$10,000 as I was nearing completion of the rehab but running out of funds. He put the listing in his wife's name but assisted her in holding an open house and taking contracts on the property.

I wanted to list the house for \$295,000 and believed that, at that time, it would sell for that or close to it. But after telling Michael Seago of David S. Cook's attitude towards me and his

statements he would grant no further extensions we decided to list it for \$20,000 less. The house was under contract within a day of listing for the full list price of \$279,500. This was proof that I had achieved my goal. My investment in the property had improved the value by \$100,000. But the buyer needed time to close as the purchase was being financed. David S. Cook was repeatedly saying he would not provide another extension. As a result, I accepted an offer that was about \$13,500 below the highest offer of \$283,000.

I knew that as a fiduciary David S. Cook had a duty to grant another extension. This is what a prudent person would do and was in the best interest of the estate. But because of his threats, I did not want to run the risk he would not. The lower offer was all cash, and the buyer was taking it 'as is', so the closing was more likely to occur without delay. These terms provided for the transaction to close on the 17th of February, the same day stipulated in the contract I executed with David S. Cook as Dependent Administrator representing the Estate.

As an experienced real estate agent, I know that extensions of the closing dates on contracts for the purchase of residential real estate are very common. Sometimes in exchange for a minimal fee to compensate the seller for the additional costs of taxes, insurance, etc. to carry the property for a few days, another week, or maybe another 2 weeks. Buyers usually require financing so the next buyer will ask for at least 30 days or more to do inspections, complete the requirements for a mortgage, title insurance, etc, and have documents prepared for closing. So Sellers grant extensions to avoid the delay and expense of finding another buyer.

As is the case with all sellers of real estate the exact day a closing can take place is determined by many factors beyond the control of the seller and the buyer. And although the sale was not subject to a survey this buyer had contracted with a surveying company that requested a few more days to complete the survey. They expected this would be done by February 22, 2022 and asked for an extension until then. I told them, through Michael, that it was up to David S. Cook to agree to any extension. However, as a Dependent Administrator, David S. Cook had a duty to secure an Order from the probate court approving the sale before the closing. Due to his delay in asking for this order it was not signed by the Judge until five (5) days after the closing date of February 17 stipulated in the contract. The order was signed on February 22. **So, it was David S. Cook who was in most need of an extension!**

I, with the assistance of Michael Seago, made many attempts on behalf of the buyer by assignment to secure an extension from David S. Cook. I knew I had no duty to do so. Once assigned the contract is between the seller and the buyer that has assumed the position of the buyer by contract for the assignment. I expected David S. Cook, as an attorney, to know this. But he chose to feign ignorance and insist that if the closing did not happen on February 17 he had a right to terminate the contract. As a fiduciary, he had a duty to do what was in the best interest of the estate. Refusing an extension was unquestionably **not** in the interest of the estate.

I made clear to David S. Cook that I would not allow him to take from me the \$79,500 assignment fee I had earned. I told him he would leave me with no choice but to bring a suit upon the estate for specific performance, or damages for failure to perform, and quantum meruit recovery for my investment and services. A fiduciary has a duty to avoid entangling the estate in litigation that will be costly and cause delay. The extension requested was an extension that David S. Cook needed to complete his duty of securing the order approving the sale. It was an extension he should have been asking the buyer for, rather than denying theirs.

David S. Cook and I also entered into a verbal agreement, supported by an email from David S. Cook to my email address, for my purchase of 6410 Rancho Blanco Court in Houston Texas. That agreement was for a 'To Be Determined' (TBD) price of 5% below the appraised value. The letters of Administration appointing David S. Cook specified that no appraisals were required. But to determine the sales price David S. Cook ordered an appraisal of the property. I offered to pay for the appraisal but David S. Cook insisted on one chosen by him and paid for by the Estate. The appraisal came in at \$135,000. After taking 5% off that price the sales price would not be sufficient to pay off the loan secured by the property. I told David S. Cook that I would pay enough to cover all encumbrances and a little more. I offered \$142,500 and requested a reasonable counter. None was forthcoming. I also offered to allow him more time to show the property, see what other offers he could get, and told him I would then top their offer by \$1,000.

But as with the contract on 806 Comstock Springs David S. Cook has also breached the verbal contract on 6410 Rancho Blanco. David S. Cook has repeatedly stated in emails, and verbally in Court hearings, his intent to give the deed to the property to the lender in lieu of foreclosure. David S. Cook has also attempted to secure approval by the probate court for the sale of 806 Comstock Springs to another buyer that will net the Estate less than the sale of the

property to the buyer by assignment found by my agent. The buyer found by the agent arranged by David S. Cook is not for a fair price. I am confident a higher price can be had.

The contract on 806 Comstock Springs provided for the customary 60 days to close with a provision for a 30-day extension of the contract for a fee of \$1,000. The rehab was nearly complete as the end of the initial 60 days approached. It was then that I told David S. Cook I needed him to enter into the written contract he had promised me for the property at 6410 Rancho Blanco. I explained that I went through the typical trial and error with the labor I hired. After a few changes, I now had a crew that I wanted to keep. This required I be able to keep them employed without interruption as we completed the first property and moved to the next. I had also invested a lot of money into tools with the expectation that they would be used again on the next property.

It was then that David S. Cook became belligerent and antagonistic in his tone whenever we spoke. He began to threaten to not grant the extension we had contracted for. The excuse he gave was that he had not given me his 'approval' to improve the property. This is an obvious lie. David S. Cook knew I contracted to purchase the property for no other reason than to fix it before I flipped it. **To do otherwise would be to engage with David S. Cook in a fraud. If he sold the property to me at a below market price so that I could flip it for market price the Estate would have been defrauded of the difference.** But he now claims that was what he expected me to do and has used this as his excuse to not perform on the contract.

David S. Cook, a licensed attorney, also gave other false representations of the law. He asserted I could not legally list the property for sale because I did not own it. The misrepresentation of the law by David S. Cook has been a common experience I have had with him. David S. Cook told me that the Judge that appointed him protects his appointees. David S. Cook has displayed the belief the probate court judges will allow him to act with impunity. However, the judge that appointed him has since recused himself. The Estate now remains in limbo as David S. Cook has refused to resign. We, the beneficiaries, are waiting for a hearing on his removal and replacement.

I invested over \$40,000 in labor and material into the rehab of 806 Comstock Springs. Almost \$20,000 was for labor I hired to assist me. I had 3 working full time and the work went on every day of the week. I and one of my workers worked on Christmas and New Years' day. I

purchased all new kitchen appliances for the Kitchen, refurbished the cabinets, installed a new granite countertop. All of the interior doors were replaced. New flooring and carpet was installed. New siding was installed on the exterior and entire exterior painted. A depression in the roof due to a rotted joist was expertly fixed by me and one of my laborers. I purchased and had my crew apply a pallet of sod to the bare areas of the yard. I trimmed the landscaping and trees. The before and after pictures show a dramatic improvement.

About \$15,000 of the over \$40,000 investment was from cash I had saved. In the course of the rehab, I topped out my credit account with Home Depot, Lowe's, BestBuy, and a couple of other charge cards. I expected to pay off all these debts after the closing of the sale. After David S. Cook refused to close, I was left with no choice but to default. My credit rating has now been destroyed. I am 67 years old. An age at which it is hard to recover from the loss of the \$79,500. I have repeatedly offered to settle the lawsuit with the Estate. The Estate can be freed from entanglement in this lawsuit acknowledging my right to \$79,500 from the sale of 806 Comstock Springs. An offer the fiduciary representing the estate has a duty to agree to as it is in the best interest of the estate to avoid further expense and delay in the settlement of probate.

But David S. Cook has refused to do his fiduciary duty and therefore I pray that this court will award a summary judgment against the estate for \$79,500 to me, Edmund Heimlich, in exchange for my dismissing claims against the Estate in this action.

I am Edmund Heimlich, I live at 2724 Philomena St. Apt. 407 in Austin in Travis County, and I DECLARE UNDER PENALTY OF PERJURY THE TRUTH OF THE FOREGOING.

Witness my Signature this the 25th day of July, 2022;

A handwritten signature in black ink, appearing to read "Ed Heimlich", is written over a horizontal line.