

No. 495484-403

DAVID S. COOK, PLAINTIFF AS
DEPENDENT ADMINISTRATOR
V.
EDMUND B. HEIMLICH, DEFENDANT

IN PROBATE COURT 4
OF HARRIS COUNTY, TEXAS
JUDGE JAMES HORWITZ

JURY TRIAL DEMAND

**DEFENDANT'S NOTICE OF REMOVAL
TO FEDERAL COURT, with
MOTON TO CONSOLIDATE ANCILLARY CASES**

NOW COMES Edmund B. Heimlich with his Notice to this Court that the United States Federal Court, Southern District of Texas, now has jurisdiction over this case brought by David S. Cook as plaintiff. Attached as Exhibit A is the **OPINION AND ORDER** of the Honorable Judge Michael H. Watson, of the United States District Court, Southern Division of Ohio, Eastern Division, in Case No. 2:23-cv-1879. The Order transferred the relevant claims to the United States District Court, Southern District of Texas, Houston Division. Numbered 4:23-cv-03951 assigned to the Honorable U.S. District Judge Andrew S. Hanen. See attached Exhibit B.

Of primary relevance to this case is the ORDER of the Federal Court that the claim against David S. Cook, and Cook Law, for damages based on breach of contract, **NOT** be dismissed. The Federal Court ruled that the probate exception does not divest federal courts of jurisdiction over the claim this lien represents. The Federal Court also held that the Rooker-Feldman doctrine does not bar jurisdiction in his case for compensation for injury caused by the

breach of contract. The mechanic's lien is a lien for a breach of contract and, therefore, this probate court now lacks jurisdiction over the case of David S. Cook asking the court to declare the Mechanics Lien Unenforceable and Invalid and the summary motion set for hearing on Tuesday, October 31, at 2:30 pm in this court.

Request

**DEFENDANT RESPECTFULLY REQUEST THE COURT ORDER THE
HEARING CANCELLED AND DISMISS CASE 495484-403 in its entirety.**

MOTION TO CONSOLIDATE ANCILLARY CASES,

495484-401, 495484-402, and 495484-403 with

NOTICE OF REMOVAL TO FEDERAL COURT

All three of the ancillary cases are intimately intertwined. All concern the same subject matter. That is, the contract signed by the Dependent Administrator, David S. Cook, on or about November 19, 2021, approved by the then presiding Probate Court Judge with an Order for the sale to the First Reported Buyer, Edmund Heimlich and/or assigns, on or about February 22, 2022. A contract the Dependent Administrator then refused to close on under the spurious assertion the buyer, Edmund Heimlich and/or assigns, had trespassed onto the property contracted for. The Estate property at 806 Comstock Springs in Katy, Texas. See the Original Petition of the Dependent Administrator, David S. Cook, in cause 495484-401. See also the attached **Exhibit C**, the **NOTICE OF DISMISSAL** of the case signed by David S. Cook.

Ancillary case 495484-402 is the initial case for Breach of Contract filed by the Defendant in this case, Edmund Heimlich, as Plaintiff in the State District Court. A case Judge

Newman then had transferred into the probate court prior to his recusal. That case remains open and pending but has now been incorporated into the Civil Rights case in the Federal Court.

The Federal Case was filed by the Defendant on June 8, 2023. Over four (4) months ago. David S. Cook, along with co-Defendant Jerry Simoneaux, at the time the Judge presiding over the probate case, was promptly notified of the case and the claims made therein. In response Judge Simoneaux recused himself. The Magistrate's recommendations included a recommendation Jerry Simnoneaux, and the probate Judge first assigned to the case, Michael Newman, be dismissed. The Federal Judge did **not** accept the Magistrate's recommendation. Neither Jerry Simnoeaux, nor Michael Newman, were dismissed. They remain Defendants, with David S. Cook, in the Federal Court that now has jurisdiction over this matter.

SUPPLEMENT TO MOTION FOR REMOVAL OF DAVID S. COOK

AS DEPENDENT ADMINISTRATOR

The heir of the Estate was named as a Defendant in two actions brought by the Dependent Administrator, ancillary case -401 and this case, ancillary case -403. The Defendant, as an heir, is a beneficiary to whom the Dependent Administrator owes a fiduciary duty to act in his best interest. Obviously, breaching a contract with the beneficiary is not an act serving his best interest. Obviously, bringing legal actions upon him and requested legal fees from him is not an act serving in his best interest. In addition to the breach of contract claim the Dependent Administrator, David S. Cook, stands as Defendant in the Federal Court in a claim for damages for breach of fiduciary duties. This heir, Edmund Heimlich, has repeatedly, and again, asks the court upon which David S. Cook, as Administrator, is Dependent upon for his authority to act, be removed.

Of record in the underlying probate case, 495484, are Motions from heir Virginia Lahrman for his removal. Now of record in that case, filed just last week on October 17, 2023 is

a letter from the remaining three (3) heirs/beneficiaries with many complaints of imprudent performance of "Mr. Cook" in his administration of the estate. Included is the complaint of Mr. Cook "failing to act as a prudent person would". It is well-established that every fiduciary has a duty to act as a prudent person would given the same or similar circumstances. No prudent person would have refused to honor the contract and the order of the court for the sale of the Estate property 806 Comstock Springs in Katy Texas with a closing on the transaction to the first reported buyer. A closing that was ORDERED by the court on, and could have been had on, February 22, 2022. **That was 20 months ago!**

All five (5) heirs, beneficiaries to whom David S. Cook owes a fiduciary duty, have now complained of his breaches of his fiduciary duties.

CONCLUSION AND REQUEST

For judicial efficiency, the three ancillary cases should be consolidated. Notice should be taken by the Court that the jurisdiction over the subject matter of these cases is now in the United States Federal Court and, therefore, these case files in these ancillary cases should be transferred to the Federal Court and should be closed as far as this probate court is concerned. And finally, that David S. Cook be removed by the Court on its own motion. A replacement be appointed with authorization to hire legal services for the Estate to recover from David S. Cook, and the bonding company that insures him, for his injury and damages to the Estate and its beneficiaries.

Respectfully submitted this 25th day of October 2023

/s/ Edmund Heimlich
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