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NO. PROJ-3702-3

FILED
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DALLAS COUNTY
CLERK

IN RE: GUARDIANSHIP OF
NORMAN WURTZBACH ECKHARDT
AN ALLEGED
INCAPACITATED PERSON

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IN THE PROBATE COURT 3
OF
DALLAS COUNTY, TEXAS

**APPLICATION FOR APPOINTMENT OF
PERMANENT GUARDIAN OF PERSON AND ESTATE**

11-5-08
CITATION ISSUED 11-5-08

SARAH ECKHARDT (Applicant), files this Application for Appointment of Permanent Guardian of the Person and Estate for NORMAN WURTZBACH ECKHARDT, an Alleged Incapacitated Person, and respectfully shows the Court as follows:

- ★ 1. The Proposed Ward, NORMAN WURTZBACH ECKHARDT, is a male whose date of birth is July 28, 1922. He currently resides at 6751 Gaston Avenue, Dallas County, Texas 75214, and citation may be served at this address.
- 2. Applicant desires to be appointed Guardian of the Person and Estate. Applicant's address is 1001 Lorrain Street, Austin, TX 78703. Applicant is the proposed Ward's niece.
- 3. Applicant seeks guardianship of the Person and Estate of the Proposed Ward.
- 4. The Proposed Ward is totally incapacitated. It is requested that the Proposed Ward receive total protection and assistance and that there be no limitation of the powers granted in the Court's Order of Appointment.
- 5. The Proposed Ward is totally incapacitated due to progressive dementia and severe depression. The Proposed Ward is unable to care for himself. A doctor's letter indicating the incapacity will be filed with this Application.

6. The approximate value and description of the Proposed Ward's property is \$1,000,000.00 consisting of separate real and personal property.

7. Applicant requests that the term of the Guardianship continue indefinitely or until such time as the Court may find the Proposed Ward to have regained the capacity to care for himself and manage his estate.

8. Applicant holds a Durable Power of Attorney and a Medical Power of Attorney executed by the Proposed Ward.

9. The Proposed Ward is not married.

10. The Proposed Ward's parents are deceased.

11. The Proposed Ward's siblings are deceased

12. The Proposed Ward has no children.

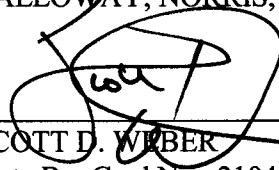
13. Signature Pointe on the Lake has care and custody of the Proposed Ward.

14. This Court has venue over these proceedings because the Proposed Ward is a resident of Dallas County, Texas.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Court consider this Application for Appointment of Temporary Guardian of Person and Estate of Norman Wurtzbach Eckhardt; that notice and citation be issued as required by law; that an Attorney Ad Litem be appointed to represent the interests of the Proposed Ward; that a time for hearing on this Application be set; and for such other and further relief to which Applicant may be entitled.

Respectfully submitted,

CALLOWAY, NORRIS, BURDETTE & WEBER



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Attorneys for Applicant, Sarah Eckhardt

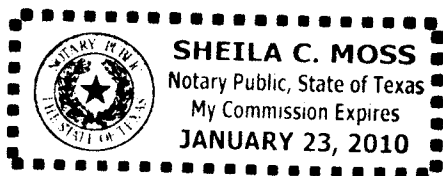
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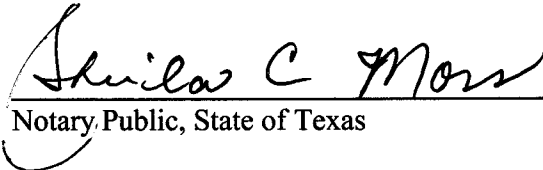
BEFORE ME, the undersigned Notary Public, on this day personally appeared SARAH ECKHARDT, who , being by me duly sworn on her oath, deposed and said that she has read the above and foregoing Application for Appointment of Permanent Guardian of the Person and Estate and that the allegations contained therein are within her personal knowledge to be true and correct.



SARAH ECKHARDT

3, 2008. SUBSCRIBED AND SWORN TO BEFORE ME by SARAH ECKHARDT, on October





Notary Public, State of Texas

CAUSE NO. C-1-PB-11-000558

SARAH ECKHARDT AS
INDEPENDENT
ADMINISTRATOR OF THE
ESTATE OF NORMAN
WURZBACH ECKHARDT,
DECEASED

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IN THE PROBATE COURT

NUMBER ONE

v.

MARY CID

TRAVIS COUNTY, TEXAS

[Estate of Norman Wurzbach Eckhardt,
Deceased, Cause No. C-1-PB-10-001160]

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Sarah Eckhardt (Ms. Eckhardt), as Independent Administrator of the Estate of Norman Wurzbach Eckhardt, Deceased (Decedent) files this Original Petition as follows.

I.

NATURE OF CASE

1. The Estate of Norman Wurzbach Eckhardt (Estate) is entitled to damages and equitable remedies, including constructive trust, disgorgement, and fee forfeiture, from Mary Cid arising from her wrongful acquisition of real and personal property from Mr. Eckhardt (Decedent) during his life.

II.

JURISDICTION, VENUE, AND DISCOVERY LEVEL

2. Venue is proper in Travis County under Texas Probate Code 6(a). This probate proceeding is not related to any suit for personal injury, death, or property damages.

3. This Court has jurisdiction over the subject claims under Texas Probate Code sections 4F(a) and 5.

4. Discovery will proceed pursuant to Texas Rule of Civil Procedure 190.3 (Level 2).



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III.
PARTIES

5. Plaintiff Sarah Eckhardt is Independent Administrator of the Estate, is a resident of Travis County, Texas and has standing to pursue all claims belonging to the Estate.

6. Defendant Mary Cid (Ms. Cid) is an individual whose last known address is 5445 Caruth Haven Lane, S-113, Dallas, Dallas County, Texas 75225. Service of process is requested at this time.

IV.
FACTUAL BACKGROUND

7. Decedent Norman Wurzbach Eckhardt was an elderly bachelor living alone in Dallas. He had no wife or children. His only relatives were his seven nieces and nephews, the closest of which lived in Austin, Texas.

8. In the five years prior to his death in March 2010 at age 87, the Decedent was lonely, isolated, and suffered from periodic dementia. Although he owned dozens of real properties in Texas and other states, he spent much of his last years living on a friend's couch and in a local Motel 6.

9. The Decedent demonstrated to all who knew him a particular revulsion to debt and a fear of owing taxes and penalties on his many real properties. He was incapable of keeping up with his financial affairs.

10. The Decedent met Mary Cid in 2005 or 2006. Ms. Cid and her boyfriend, Arlis Horrocks, would solicit construction work from property owners on whose property the City of Dallas had posted visible notices of liens and code violations. Ms. Cid approached the Decedent to solicit work on one of his houses. She soon took on other projects for the Decedent, and began to learn of the extent of his real estate wealth and to appreciate his vulnerability to

exploitation. Ms. Cid learned that the Decedent reacted with violent aversion to suggestions that he owed City liens or property taxes, and she began to exploit this fear.

11. While “remodeling” the Decedent’s home at 6750 Gaston Avenue in Dallas—a project that dragged on for more than three years—Ms. Cid moved into the home itself and began to live there as her primary residence. The Decedent, effectively homeless despite his dozens of real property holdings, slept for the next three years on a friend’s couch. In 2007, he told his friends that Ms. Cid had been working on the house for “five years,” that he could not move back in because she had installed an alarm system, and that he had paid her \$25,000 in cash “so far.”

12. After insinuating herself into Decedent’s confidence, Ms. Cid broadened her role in the Decedent’s life. She began to hold herself out to others as the Decedent’s general agent in all his real estate and financial matters. Property managers and others who had regularly dealt with the Decedent for years abruptly lost contact with him and were instead greeted on his telephone line by a rude and aggressive stranger, Ms. Cid. Ms. Cid refused to allow any contact with the Decedent and burst into profanities and invectives at any questioning of her authority.

13. Ms. Cid engaged in a series of self-dealing transactions with the Decedent for her own profit between August 2007 and October 2008. At first, Ms. Cid convinced the Decedent to pay her cash in exchange for real and imagined services. She learned that, due to his fear of city violations, he would agree to sign contracts for disproportionately huge “remodel” and cleanup fees rivaling the actual value of the improvements on a property. Later, she progressed to accepting as “payment,” and ultimately “gifts,” deeds in her name to properties worth hundreds of thousands of dollars.

14. Ms. Cid used the trust reposed in her to exploit the Decedent’s extreme psychological aversion to debt and his fear of property tax obligations and administrative penalties. Ms. Cid

would confront the Decedent with a real tax bill or citation for one of his properties and then tell the Decedent that he “could not afford to pay” the tax or lien. She then counseled that he must sell some property so that she could satisfy his debts. Playing the Decedent’s advocate, she powered these relatively nominal amounts over him, deliberately creating a false impression that he must liquidate real property for cash. The Decedent was invariably disgusted with the idea of any lien or tax due and would readily agree to whatever sale Ms. Cid suggested. Ms. Cid then offered to “buy” the property from him, but always at a fraction of the property’s actual value.¹

15. Next, Ms. Cid would to negotiate a payment scheme that resulted in her contributing little or wholly imaginary value—such as forgiveness of the inflated price of an unperformed construction contract—in satisfaction of the already unconscionable purchase price. Even then, what checks were actually written by Ms. Cid to the Decedent in payment were repeatedly returned for insufficient funds when the Decedent attempted to cash them.

16. In fact, the Decedent was wealthy. Even after a year in full-time nursing facilities, the Decedent at his death owned over \$1.5 million dollars in unencumbered real and personal property. At the time Ms. Cid engineered the sales to herself, the Decedent had a ready income stream from his rental properties (which Ms. Cid managed for him). At no time was he unable to pay any of his debts; a reasonable person with an appreciation of the Decedent’s financial portfolio would have found Ms. Cid’s suggestions clearly false and outrageous.

17. As of the date of this filing, Ms. Eckhardt is aware of at least six real properties in four counties totaling over \$1.3 million in value which Ms. Cid received from the Decedent in this

¹ For example, in early 2008, after having spent years allegedly remodeling the Decedent’s home at 6751 Gaston Avenue, and having actually lived in it for a period of months (while the Decedent paid the bills), Ms. Cid had the Decedent sign a contract to sell it for \$262,023.71. The property was tax-appraised that year for \$838,900. Ms. Cid then gave the Decedent a \$50,000 check which was never cashed. She then wrote him two checks for \$70,000 which she claims he would not accept. Ultimately, she acquired the property for one single payment of \$14,000. Ms. Cid tells a similar story about her acquisition of each of the Decedent’s properties.

fashion. In addition, Ms. Cid incurred telephone, utility, internet, and satellite television bills in the Decedent's name while living in his home at 6751 Gaston Avenue in Dallas.

18. To date, the known losses from Ms. Cid's self-dealing exceed \$1.3 million in property value and damages:

<u>Transaction:</u>	<u>Estimated appraised value:</u>
8/8/07 deed for "Star Harbor" Lots 11-14, Henderson County	\$15,000.00
9/20/07 deed for 95.55 Acres, Hunt County	428,683.78
11/28/07 deed for 6352 Hollis Avenue, Dallas County	12,000.00
1/24/08 deed for 6757, 6751, 6759 Gaston Avenue, Dallas County	838,900.00
3/18/08 deed for 15.0 Acres, Morris County (3/18/08)	21,320.00
Rent for 6 months living at Gaston Ave	9,000.00
Canceled Check Fees (2595, 2597, 2533, 2532) (total 11 attempts) x \$35.00 per attempt	385.00
Cable and Utility Bills incurred in Decedent's name:	
10/10/08 AT&T Bill	518.23
10/1/08 GC Services (TXU Energy)	665.29
10/1/08 AT&T U-Verse	469.44
10/7/08 GC Services (DISH Network)	433.00
10/22/08 City of Dallas Utilities (Water)	54.35
<u>Total:</u>	<u>\$1,327,429.09</u>

19. In Spring 2007, Ms. Eckhardt received a letter from her uncle, the Decedent, in which he wrote that he was living in a Motel 6. Concerned, Ms. Eckhardt traveled to Dallas to learn that the Decedent was effectively homeless and that Ms. Cid had convinced him to spend thousands of dollars remodeling his residence at 6751 Gaston Avenue while she lived there at his expense.

20. In August or September 2008, the Decedent fell and broke his hip in the Motel 6 bathroom and was transported to the hospital. Ms. Eckhardt traveled to Dallas and learned that Ms. Cid had taken the Decedent's wallet and keys from him and was holding herself out to hospital staff as his wife or sister. When asked what was going on at his Gaston Avenue home, the Decedent said that he "thought" he had sold it to Ms. Cid.

21. Ms. Eckhardt began to attempt to piece his health and finances together, moving him into a nursing home and closing his bank accounts. She reported Ms. Cid's activity to the Department of Family Protective Services. The nursing home was instructed not to allow Ms. Cid access to the Decedent.

22. Ms. Cid doggedly continued to exploit the Decedent. She drafted and dictated self-serving affirmations evidencing the Decedent's "gift" of the remaining balance of the already unconscionably low purchase price of 6751 Gaston Avenue, and then surreptitiously visited the Decedent in his nursing home room to obtain his signature. On at least one occasion, nursing home security had to eject Ms. Cid bodily, swearing and protesting, from the premises.

23. In February 2009 Ms. Eckhardt, still struggling to protect her uncle from Ms. Cid's unwelcome attention, filed for guardianship of the Decedent's person and estate. The Dallas County Probate Court No. 3 ruled that the Decedent lacked all capacity to manage his financial affairs, and appointed Ms. Eckhardt guardian of his person.² The Decedent was ultimately moved to an Austin nursing home where he passed away on May 23, 2010.

V. CAUSES OF ACTION

A. **Fraud**

24. All prior allegations are incorporated herein by reference.

25. By inducing the Decedent to enter into transactions based on false or misleading information, Ms. Cid (1) made a material representation that was false; (2) knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth; (3) intended to induce the Decedent to act on the representation; and (4) the Decedent actually and justifiably relied on the representation and suffered damages.

² At Ms. Eckhardt's request, a local corporate trustee (Frost Bank) was appointed guardian of the Decedent's estate.

26. Ms. Cid's acts also meet the standards of Fraud in Real Estate and Stock Transactions. See Tex. Bus. & Com. Code Ann. § 27.01. These statutory elements are set forth by reference herein.

B. Breach of Fiduciary Duty and Constructive Fraud

27. All prior allegations are incorporated herein by reference.

28. By virtue of her confidential relationship with the Decedent with regard to his business affairs and in particular her trusted role as manager of his real properties, Ms. Cid owed the Decedent a fiduciary duty. Ms. Cid breached this fiduciary duty to the Decedent in the course of the above transactions. This breach resulted in injury to the Decedent and benefit to Ms. Cid.

Because Ms. Cid owed the Decedent a fiduciary duty, the law imputes additional and higher duties of disclosure to her. These duties include a general duty of full disclosure and a general prohibition against using the relationship to benefit the fiduciary's personal interests. All transactions between the fiduciary, Ms. Cid, who breached such a duty and her principal, the Decedent, are presumptively void and the burden is on Ms. Cid as the fiduciary to show the validity of each transaction.

C. Declaratory Relief: Undue Influence

29. All prior allegations are incorporated herein by reference.

30. The transactions detailed above were the result of the undue influence of Ms. Cid on the Decedent. Specifically, each deed described above was the result of the existence of undue influence and exertion of such influence, the effective operation of that influence so as to subvert the will or overpower the mind of Decedent at the time of the execution of the deeds. Decedent would not have executed the deeds but for that influence.

31. An actual, imminent, justiciable controversy exists as to the validity of the transactions above as a result of undue influence exerted on Decedent.

D. Declaratory Relief: Unjust Enrichment

32. All prior allegations are incorporated herein by reference.

33. Ms. Cid obtained the value of the above properties from Decedent by fraud, duress, or the use of an undue advantage. In so doing, Ms. Cid wrongfully secured a benefit or passively received one which it would be unconscionable to retain. Even in the absence of a breach of contract or any affirmatively wrongful act on Ms. Cid's part, the Estate is entitled to the return of the subject properties and cash as an equitable right and independently of the existence of a wrong.

34. Ms. Cid received the subject properties and benefits unjustly, and should make restitution for those benefits.

E. Accounting

35. All prior allegations are incorporated herein by reference.

36. As the Decedent's agent and fiduciary with regard to his business in general and the transactions above in particular, Ms. Cid owes the Estate a duty to account for all assets, receipts, and disbursements in the course of her business and personal relationship with the Decedent.

VI.
RELIEF SOUGHT

A. Accounting

37. Ms. Eckhardt seeks an accounting of all Ms. Cid's business with the Decedent, specifically including but not limited to a detailed account of her performance of her alleged purchase contracts with the Decedent for the properties described above, her use of the

Decedent's home at 6759 Gaston Avenue in Dallas, her use of Decedent's bank accounts and income, as well as any amounts paid by the Decedent to her for any reason.

B. Constructive Trust and Equitable Remedies

38. The real properties titled in Ms. Cid's name that were the subject of her breaches of fiduciary duty or fraudulent conduct are identifiable *rei* and should be held in constructive trust for the Estate's benefit.

39. Any profit or compensation obtained in the course of Ms. Cid's fraudulent conduct or breaches of fiduciary duty should be disgorged or forfeited in the Estate's favor.

C. Reimbursement for Damages to the Estate

40. Ms. Eckhardt, on behalf of the Decedent's estate, seeks reimbursement to the Estate in the form of damages within the jurisdictional limits of this court, including actual damages and prejudgment and post-judgment interest.

41. Ms. Eckhardt further seeks exemplary damages because Ms. Cid's conduct was intentional and met the standard set forth in Texas Civil Practice and Remedies section 41.003. That standard is incorporated herein by reference.

D. Attorneys' Fees

42. Ms. Eckhardt seeks attorneys' fees and costs pursuant to Texas Civil Practice and Remedies Code section 27.01 for Ms. Cid's statutory real estate fraud.

43. Ms. Eckhardt seeks attorneys' fees and costs incurred in the clarification of the ownership of the subject real properties pursuant to Texas Civil Practice and Remedies Code Section 37.011.

E. Jury Demand

44. Ms. Eckhardt demands a jury trial and has tendered the appropriate fee.

VII.
PRAYER

Plaintiff Sarah Eckhardt respectfully prays that Defendant Mary Cid be cited to appear and answer herein, and that Decedent's Estate on her behalf have and recover judgment for all actual damages proven, exemplary damages, constructive trust, equitable restitution, disgorgement, forfeiture, or other equitable relief, attorneys' fees as allowed by law, pre-judgment interest and post-judgment interest at the highest lawful rate, costs of Court and for such other relief, at law or in equity, to which the Estate may be entitled.

Respectfully submitted,

/s/ Joseph R. Marrs

By: _____

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Telephone: (512) 381-7280
Facsimile: (512) 628-6345

ATTORNEY FOR PLAINTIFF SARAH
ECKHARDT AS INDEPENDENT
ADMINISTRATOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been sent by certified mail, return receipt requested to the following on this 4th day of April, 2011.

Major Ginsberg
4502 W Lovers Lane
Dallas, Texas 75209

/s/ Joseph R. Marrs

Joseph R. Marrs

UNOFFICIAL