

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC,  
RICHARD H. "DICK" GRAY,  
HILL COUNTRY FUNDING, LLC,  
HILL COUNTRY FUNDING, , and  
WENDY ROGERS,

Defendants,

AND

JAMES SETTLEMENT SERVICES,  
LLC et al.

Third Party Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

**RECEIVER'S PLEA TO THE JURISDICTION AND OBJECTION TO THE  
MOTIONS TO ENFORCE OF ROGERS AND MCDERMOTT**

Eduardo S. Espinosa, court-appointed receiver for Retirement Value, LLC files his plea to the jurisdiction and objection to the motions to enforce their respective settlement agreements filed by Wendy Rogers and Michael McDermott.

This Court lacks subject-matter jurisdiction over the motions to enforce. First, the Court's plenary power over the disputes between the (a) Receiver and the State and (b) Rogers and McDermott expired long ago. In order to enforce their settlement agreements, Rogers and McDermott need to file a separate lawsuit. This issue is more fully briefed in the Receiver's Response to Roger's Motion to Enforce and in the Receiver's Response to McDermott's Motion to Enforce.

Second, the Court lacks subject-matter jurisdiction to intervene in the criminal cases pending against McDermott and Rogers in Collin County. Both McDermott and Rogers<sup>1</sup> have asked the Court to enjoin the State, the TSSB and the Receiver from taking actions with respect to the criminal cases against them. Among other things, McDermott has asked this Court to enjoin the TSSB and various of its employees from prosecuting the criminal case, to determine whether TSSB employees may properly be appointed as special prosecutors by local District Attorneys, to declare that certain (unspecified) evidence is inadmissible in the criminal trial and to enjoin the Receiver and the TSSB from providing certain evidence to the prosecutors in the criminal case. Rogers has made similar, albeit more limited, requests to this Court.

Regardless of the merits of these claims, this is not the right Court to decide them. The only court that has the jurisdiction to decide who may prosecute the case, whether the criminal cases should be dismissed, what evidence may be submitted and who may testify is the court in Collin County hearing the criminal cases. It is a basic principal of Texas law that a court exercising civil jurisdiction, such as this one, cannot interfere with an ongoing criminal prosecution unless constitutional issues and vested property rights are at issue. Neither is at issue in the criminal cases against Rogers and McDermott. This issue is more fully briefed in the Receiver's Response to McDermott's Motion to Enforce.

Even if this Court has jurisdiction over this dispute, Rogers and McDermott cannot enforce a settlement agreement by a motion to enforce. Instead, they must

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<sup>1</sup> Rogers appears to have withdrawn at least part of her request for injunctive and declaratory relief.

file a petition against the Receiver and the State, which can then be litigated in accordance with the Rules of Civil Procedure. The Receiver objects to the attempt by Rogers and McDermott to short circuit the Rules of Civil Procedure. They should be required to file new suits against the State and Receiver, which can then be tested under the Rules and law of this State. This issue is more fully briefed in the Receiver's Response to Roger's Motion to Enforce and in the Receiver's Response to McDermott's Motion to Enforce.

ACCORDINGLY the Court should dismiss the motions to enforce filed by Rogers and McDermott.

Respectfully submitted,

By: /s/ Michael D. Napoli  
Michael D. Napoli  
State Bar No. 14803400

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record listed below, through the electronic filing manager if that counsel's e-mail address is on file or via e-mail, if not, on this 1<sup>st</sup> day of June 2015

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By:           /s/ Michael D. Napoli            
Michael D. Napoli

Unofficial copy Travis Co. District Clerk Michael L. Price