

CAUSE NO. CC-21-00138-E

**JOSE REFUGIO TAPIA-SILVA,
PLAINTIFF,**

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IN THE COUNTY COURT

VS.

AT LAW NO. 5 OF

**PERFORMANCE SPRAY FOAM, INC.,
DEFENDANT.**

DALLAS COUNTY, TEXAS

**PLAINTIFF’S RESPONSE TO DEFENDANT PERFORMANCE SPRAY FOAM, INC.’S
MOTION TO CONSOLIDATE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff JOSE REFUGIO TAPIA-SILVA, who files this his Response to Defendant PERFORMANCE SPRAY FOAM, INC.’s Motion to Consolidate and respectfully shows this Honorable Court the following:

I.

Defendant HOWARD OKON HOMES, INC. filed its Voluntary Chapter 7 Bankruptcy Petition with the U. S. Bankruptcy Clerk for the Northern District of Texas on July 2, 2021. Ex.

1. “No assets listed on schedules” filed in that case. Ex. 2

II.

Defendant previously tried to bring in the bankrupt Defendant HOWARD OKON HOMES, INC. as a party to this cause, but its motion was denied. The only thing which has now changed is that Defendant HOWARD OKON HOMES, INC.’s bankruptcy was successfully completed with the automatic stay now permanent, since no motion to lift that stay was ever filed.

III.

Texas appellate courts hold, “The filing of a voluntary petition for bankruptcy impacts

the issues of standing and jurisdiction due to the creation of the bankruptcy estate and **the automatic stay.**” *Saden v. Smith*, 415 S.W.3d 450, 455 (Tex. App. - Houston [1st Dist.] 2013, pet. denied)(emphasis added), *quoting* 11 U.S.C. § 362(a)(1).

362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301; 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

In *Saden*, the First District Court of Appeals affirmed its prior holding that “[t]he automatic stay deprives state courts of jurisdiction over the debtor and his property until the stay is lifted or modified.” *Saden v. Smith*, 415 S.W.3d at 455, *quoting Hous. Pipeline Co. LP v. Bank of Am., N.A.*, 213 S.W.3d 418, 428-29 (Tex. App. - Houston [1st Dist.] 2006, no pet.).

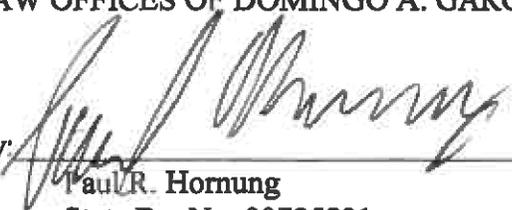
IV.

Section 727(a) of the U. S. Bankruptcy code states, “The court shall grant the debtor a discharge, unless – (1) the debtor is not an individual; . . .” As a result, Defendant HOWARD OKON HOMES, INC.’s bankruptcy case was merely closed on March 21, 2022. Exs. 1 & 3. This explains why the Exhibits 3 and 4 attached to Defendant’s motion discharge the U. S. Bankruptcy Trustee from that case and why that Exhibit 4 states that “the Bankruptcy case is closed . . .”

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court deny Defendant PERFORMANCE SPRAY FOAM, INC.’s Motion to Consolidate and grant Plaintiff such other and further relief, at law or in equity, to which he may be justly entitled, specific or general.

Respectfully submitted,

LAW OFFICES OF DOMINGO A. GARCIA, P.C.

By: 

Paul R. Hornung

State Bar No. 00795831

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

A true and correct photocopy of this document was served upon all counsel of record in this cause by eService on April 28, 2023 in accordance with TEX. R. CIV. P. 8, 21, and 21a.


Paul R. Hornung

Exhibit "1"

21-31232-mv17 Howard Okon Homes, Inc.
Case type: bk Chapter: 7 Asset: No Vol: v Judge: Michelle V. Larson
Date filed: 07/02/2021 Date of last filing: 07/14/2022
Date terminated: 03/21/2022

History

Doc. No.	Dates	Description
	<i>Filed & Entered: 07/02/2021</i>	● Credit Card Receipt
<u>1</u>	<i>Filed & Entered: 07/02/2021</i>	● Voluntary petition (chapter 7)
<u>2</u>	<i>Filed & Entered: 07/02/2021</i>	● Meeting (AutoAssign Chapter 7b)
<u>3</u>	<i>Filed & Entered: 07/04/2021</i>	● BNC certificate of mailing - meeting of creditors
<u>4</u>	<i>Filed & Entered: 10/18/2021</i>	● Clerk's correspondence
<u>5</u>	<i>Filed & Entered: 10/18/2021</i>	● Chapter 7 trustee's interim report
<u>6</u>	<i>Filed & Entered: 01/06/2022</i>	● Clerk's correspondence
<u>7</u>	<i>Filed & Entered: 01/25/2022</i>	● Trustee Services Rendered Pursuant to 330(e)
	<i>Filed & Entered: 02/16/2022</i>	● Chapter 7 Trustee's Report of No Distribution
	<i>Filed & Entered: 03/21/2022</i>	● Close bankruptcy case
<u>8</u>	<i>Filed & Entered: 03/21/2022</i>	● Order approving chapter 7 trustee report and discharging trustee
<u>9</u>	<i>Filed & Entered: 07/14/2022</i>	● Trustee Payment Under 11 U.S.C. 330(e) Processed

PACER Service Center			
Transaction Receipt			
04/27/2023 10:49:07			
PACER Login:	domingo2017	Client Code:	
Description:	History/Documents	Search Criteria:	21-31232-mv17 Type: History
Billable Pages:	1	Cost:	0.10

Exhibit "2"

Case No: 21-31232 MVL Judge: MICHELLE V. LARSON
Case Name: HOWARD OKON HOMES, INC.

Trustee Name: DANIEL J. SHERMAN, TRUSTEE
Date Filed (f) or Converted (c): 07/02/21 (f)
341(e) Meeting Date: 08/10/21
Claims Bar Date:

For Period Ending: 10/18/21

1	2	3	4	5	6
Asset Description (Scheduled and Unscheduled (u) Property)	Petition/ Unscheduled Values	Estimated Net Value (Value Determined by Trustee, Less Liens, Exemptions, and Other Costs)	Property Formally Abandoned OA=54(a) Abandon	Sale/Funds Received by the Estate	Asset Fully Administered (FA) Gross Value of Remaining Assets
No Assets To Report					

TOTALS (Excluding Unknown Values) \$0.00 \$0.00 \$0.00 \$0.00 \$0.00

Gross Value of Remaining Assets
(Total Dollar Amount in Column 6)

Major activities affecting case closing which are not reflected above, and matters pending, date of hearing or sale, and other action:

No assets listed on schedules. Trustee is analyzing state court discovery produced by a creditor to determine whether avoidable transfers were made by the debtor's principal. A 341 meeting report will be filed in the next 30 days.
Estimated date of closing 12/31/21.

Initial Projected Date of Final Report (TFR): 12/31/21 Current Projected Date of Final Report (TFR): 12/31/21

Exhibit "3"

21-31232-mv17 Howard Okon Homes, Inc.
Case type: bk Chapter: 7 **Asset:** No **Vol:** v **Judge:** Michelle V. Larson
Date filed: 07/02/2021 **Date of last filing:** 07/14/2022
Date terminated: 03/21/2022

Case Summary

Office: Dallas
County: DALLAS-TX
Fee: Paid
Origin: 0
Previous term:
Joint: n
Original chapter: 7
Current chapter: 7

Filed: 07/02/2021
Terminated: 03/21/2022

Debtor discharged:
Reopened:
Converted:
Debtor dismissed:
Confirmation hearing:

Debtor disposition: Discharge Not Applicable

Nature of debt: business
Pending status: Case Closed
Flags: REFORM, CLOSED

Trustee: United States Trustee **City:** Dallas **Phone:** 214-767-8967 **Email:** ustregion06.da.ecf@usdoj.gov
Trustee: Daniel J. Sherman **City:** Dallas **Phone:** (214) 942-5502 **Fax:** 214-946-7601 **Email:** djsherman@syllp.com

Party 1: Howard Okon Homes, Inc. (Debtor)
Tax ID / EIN: 20-2566967

Atty: Guy H. Holman **Represents party 1:** Debtor **Phone:** 972-325-2900
Fax: 972-325-2900
Email: gholman@debtreset.net

Location of case files:
Volume: CS1

The case file may not be available.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Terah Richardson on behalf of Paul Hornung
Bar No. 00795831
trichardson@dgley.com
Envelope ID: 75146496
Filing Code Description: Ody - Response
Filing Description:
Status as of 5/1/2023 9:39 AM CST

Associated Case Party: JOSEREFUGIOTAPIA-SILVA

Name	BarNumber	Email	TimestampSubmitted	Status
Dallas Office		dallasoffice@dgley.com	4/28/2023 4:18:35 PM	SENT
Terah Richardson		trichardson@dgley.com	4/28/2023 4:18:35 PM	SENT
Paul Hornung		Paul@dgley.com	4/28/2023 4:18:35 PM	SENT
Rachel Pope		rpope@dgley.com	4/28/2023 4:18:35 PM	SENT
Alfred Khele		akhele@dgley.com	4/28/2023 4:18:35 PM	SENT
Sarah Moreno		smoreno@dgley.com	4/28/2023 4:18:35 PM	SENT

Associated Case Party: PERFORMANCE SPRAY FOAM, INC.

Name	BarNumber	Email	TimestampSubmitted	Status
Rhonda JThompson		rthompson@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT
Vicki Duhon		vduhon@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT
Susan Usery		susery@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT
Brett DGardner		bgardner@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT
Linda Coyle		lcoyle@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT
Paul Arnold		Parnold@thompsoncoe.com	4/28/2023 4:18:35 PM	SENT

Associated Case Party: OKON HOMES

Name	BarNumber	Email	TimestampSubmitted	Status
David C.Hill		DHill@DavidHillLawFirm.com	4/28/2023 4:18:35 PM	SENT

Associated Case Party: DALMAR ELECTRIC, LLC

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Terah Richardson on behalf of Paul Hornung
Bar No. 00795831
trichardson@dgley.com
Envelope ID: 75146496
Filing Code Description: Ody - Response
Filing Description:
Status as of 5/1/2023 9:39 AM CST

Associated Case Party: DALMAR ELECTRIC, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Victor McCall		victor@atwoodmccall.com	4/28/2023 4:18:35 PM	SENT
David Davis		davis@atwoodmccall.com	4/28/2023 4:18:35 PM	SENT
Virginia Villareal		vvillareal@atwoodmccall.com	4/28/2023 4:18:35 PM	SENT
Harper Pitts		harper@atwoodmccall.com	4/28/2023 4:18:35 PM	SENT