

CAUSE NO. CC-21-00138-E

JOSE REFUGIO TAPIA-SILVA, Plaintiff,	§	IN THE COUNTY COURT.
	§	
	§	
Vs.	§	AT LAW NUMBER 5 OF
	§	
PERFORMANCE SPRAY FOAM, INC., Defendant.	§	DALLAS COUNTY, TEXAS

PLAINTIFF’S REPLY TO DEFENDANT’S REPLY IN SUPPORT
OF ITS MOTION TO CONSOLIDATE

TO THE HONORABLE JUDGE OF SAID COURT:

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

I.

As stated in Section III of Plaintiff’s Response to Defendant’s Motion to Consolidate, the automatic stay became effective when the Debtor HOWARD OKON HOMES, INC. filed its Chapter 7 bankruptcy petition and stopped action against that Debtor and its property, unless “[t]he automatic stay . . . is lifted or modified.” *Saden v. Smith*, 415 S.W.3d 450, 455 (Tex. App. - Houston [1st Dist.] 2013, pet. denied), *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.).

II.

The closing of the Debtor’s bankruptcy case means that Defendant cannot pursue any claim against that Debtor in this cause because this Court has no “jurisdiction over the debtor and” its “property . . .” *Id.* Section 727(a) of the U. S. Bankruptcy Code makes it clear that the Debtor’s filing a Chapter 7 petition automatically erases its liability to Defendant and all other

creditors for **pre-petition** debts because it does not even need “a discharge,” from those debts which arose **prior** to the filing of the Debtor’s Chapter 7 petition. *Mirada Energy, LLC v. Oasis Petro., Inc.*, 614 S.W.3d 439, 400 (Tex. App. - Houston [14th Dist.] 2020, no pet.)(*per curiam*), *quoting* 11 U.S.C. §362(a)(1).

III.

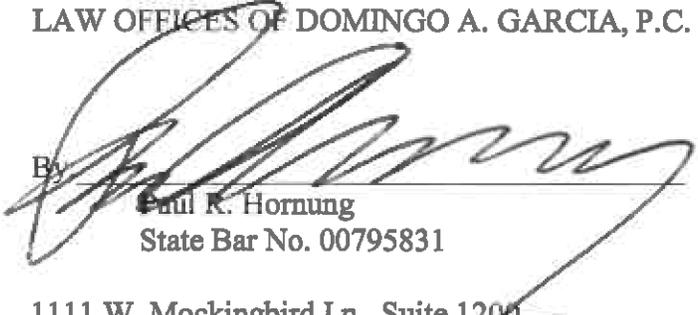
With regard to Defendant’s motion to consolidate so it can proceed against **pre-petition** obligations of the Debtor, Texas appellate courts hold that “a state court” may proceed **only** “as to claims asserted by the bankruptcy debtor or as to claims arising **after** the debtor filed the bankruptcy petition.” *Thuesen v. Amerisure Ins. Co.*, 487 S.W.3d 291, 297 (Tex. App - Houston [14th Dist.] 2016, no pet.)(emphasis added), *citing Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 346, 353 (5th Cir. 2008); *Bellini Imports, Ltd. v. Mason and Dixon Lines, Inc.*, 944 F.2d 199, 201 (4th Cir. 1991); and *Clarke v. Hunters Glen Community Ass’n*, 2004 Tex. App. LEXIS 5218, 6 (Tex. App. - Houston [14th Dist.], no pet.)(memo. op.). *See also S. Cal. Sunbelt Developers, Inc. v. Grammar*, 2019 Tex. App. LEXIS 11185, 29 (Tex. App. - Austin, pet. denied)(memo. op), *quoting* 11 U.S.C. §541(a)(1) and *MC Asset Recovery LLC v. Commerzbank A. G. (In re Mirant Corp.)*, 675 F.3d 530, 534 (5th Cir. 2012).

WHEREFORE, PREMISES, CONSIDERED, Plaintiff prays that this Court deny Defendant’s Motion to Consolidate and grant Plaintiff such other and further relief, at law or in

equity, general and specific, to which he may show himself justly entitled.

Respectfully submitted,

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

By 

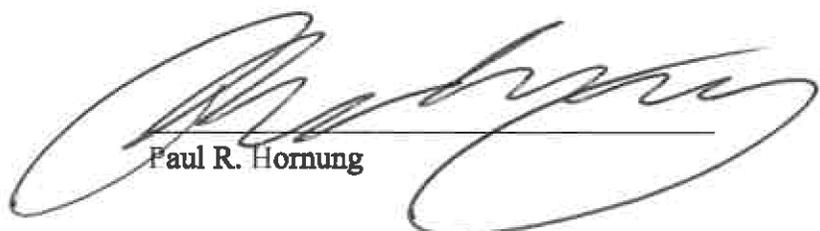
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that, on May 11, 2023, a true and correct photocopy of this document was e-served upon all counsel of record in this cause, in accordance with the Texas Rules of Civil Procedure:


Paul R. Hornung

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Status as of 5/11/2023 3:38 PM CST

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