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October 7, 2019

**Via E-Filing**

Fifth District Court of Appeals  
George L. Allen, Sr. Courts Bldg.  
600 Commerce Street, Suite 200  
Dallas, Texas 75202-4658

Re: No. 05-19-00562-CV in the Fifth District Court of Appeals of the State of Texas; *Silver Star Title, LLC d/b/a Sendera Title v. Marquis Westlake Development, Inc.; CDavis Investments, Ltd.; Pinetrada Interests, Ltd.; Winglake Holdings, Ltd.; and Westlake Townhall, LLC*

To the Honorable Fifth District Court of Appeals:

Founded in 1908, the Texas Land Title Association (“TLTA”) is a state-wide trade association representing the Texas title insurance industry and currently serving over 15,000 professionals involved in the safe and efficient transfer of real estate. In the course of their daily work, our membership serves over a million consumers each year. With active members in every Texas county, TLTA membership comprises approximately 90% of the title insurance agents and underwriters licensed to do business in Texas. From time to time, cases come before our courts which have significant impact on real estate commerce in Texas and affect the ability of TLTA’s members to safely insure title to real property. On those occasions, we will endeavor to share with the courts our support of those parties who advocate the sanctity of the Texas real property laws and doctrines. The TLTA has received no compensation for the preparation of this letter.

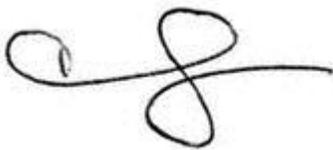
This case involves the availability of the interpleader remedy to the escrow agent. In closing real estate transactions, title insurance agents typically act as escrow agents, handling sales proceeds, loan funds, loan payoffs, and the like for the parties to the transaction in order to consummate the sale of real property. From time to time, the parties to the real estate transaction are unable to agree on how funds held by the title agent, as escrow agent, should be disbursed, particularly when a contract issue has arisen and the transaction will not close. Since the escrow agent, by definition, is a neutral party with limited fiduciary responsibilities to each of the parties, it is not in a position to determine the rights of the adverse parties to the funds it holds. *Bell v. Safeco Title Ins. Co.*, 830 S.W.2d 157, 161 (Tex. App.—Dallas 1992, writ denied) (identifying role of title agent as “neutral third party” that “owes a fiduciary duty to both parties of the escrow contract.”). Rule 43 of the Texas Rules of Civil Procedure provides that the escrow agent may file an interpleader action, requesting that the Court determine which of the conflicting claimants is entitled to the escrowed funds. It is not the escrow agent’s role to

interpret the contract or make decisions as to the rights of the parties making conflicting demands. *See Bell*, 830 S.W.2d at 161 (title agent cannot explain legal effect of interlineations in deed “because to do so would have breached its duty to both parties to remain a neutral third party at the closing.”).

The ready availability of the interpleader remedy is critical to an escrow agent’s function. In the case at hand, the buyer’s funds for closing were placed into escrow. The transaction failed to close, and both the buyer and seller made conflicting demands to the title agent regarding handling of the escrow. Neither the purchase contract nor the instruction letter to the title agent contained any instruction or direction on the issue. The title agent could not accede to the demands of one party without breaching its fiduciary duty to the other and exposing itself to liability. This is the very crux of an escrow agent’s fiduciary duty – not to make interpretations and decisions favoring one party over the other. Such decision making belongs to the courts when there is a dispute. Thus, the agent followed the requirements of Rule 43 and interplead the funds. Yet inexplicably, a breach of contract question was submitted to the jury in a fiduciary matter, and the jury found an implied contract to return the closing funds to the buyer.

Since this is an issue of vital importance to the title industry in Texas, TLTA urges the Court to uphold this important right. Without a readily available interpleader remedy, the longstanding practice of utilizing an escrow agent to consummate a transaction will be turned on its ear, requiring at a minimum detailed escrow agreements and agreed closing instructions. The result will be unacceptable delay in closing transactions, especially in complex commercial deals, and increased costs to all parties, including lenders and residential and business consumers.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aaron Day', with a stylized flourish extending to the right.

Aaron Day  
Director of Government Affairs & Counsel  
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State Bar No. 24037899

**CERTIFICATE OF COMPLIANCE**

I certify that this document contains 844 words in the portions of the document are subject to the word limits of the Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ Aaron Day  
Aaron Day

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2019, a true and correct copy of the foregoing amicus letter has been served by electronic mail to all attorneys of record.

/s/ Aaron Day  
Aaron Day

<p>Counsel for Petitioner:</p> <p>Marcy Anderson Lance Eric Caughfield Baker Moran Doggett Ma &amp; Dobbs LLP 1400 Preston Road, Suite 350 Plano, TX 75093</p>	<p>Counsel for Respondent:</p> <p>Kenneth Chaiken Brandon Eckhart HeatherLeMay Chaiken &amp; Chaiken PC 5801 Tennyson Pkwy, Ste 440 Plano, TX 75024</p>
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/s/ Aaron Day  
Aaron Day

