

CAUSE NO. 25-00024

UDO BIRNBAUM,

Plaintiff,

v.

CSD VAN ZANDT LLC,

Defendant.

IN THE DISTRICT COURT

294TH JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

**PLAINTIFF UDO BIRNBAUM'S MOTION FOR NEW TRIAL AND/OR
MOTION FOR RECONSIDERATION OF FINAL ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff Udo Birnbaum, appearing *pro se*, and files this Motion for New Trial and/or Motion for Reconsideration pursuant to Texas Rule of Civil Procedure 329b, asking this Court to set aside its final order signed July 14, 2026, and in support would respectfully show as follows:

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. On February 6, 2025, Plaintiff filed his Original Petition for Equitable Bill of Review (assigned trial court cause number 25-00024), seeking to address a prior summary judgment procured without due process.

2. During the pendency of the case, opposing counsel and this Court rushed forward toward a summary judgment ruling while crucial new facts regarding extrinsic fraud and a broken chain of title were rapidly coming to light.

3. Specifically, Plaintiff discovered an archived video deposition online in which opposing counsel had deposed Lisa Girot, who confirmed several times that, before selling the property to Robert Dow, she told him that Udo Birnbaum was in possession of both the property and a deed. Opposing counsel conveniently failed to file this deposition into the record of this case, and conveniently omitted informing the court that this deposition was evidence that contravened his narrative of facts on which summary judgment was granted.

4. Plaintiff also discovered that opposing counsel had made material misrepresentations to this court regarding the foundational claim that Lisa Girot had legally inherited the subject property from Louis Thibodeaux. While Lisa Girot filed a Louisiana probate/succession proceeding in Jefferson Davis Parish (records which are not available online and required physical travel to Jennings, Louisiana), investigation revealed that the succession case has remained (and still remains) open and pending without any final judgment of possession ever being signed by the Louisiana court. Without a final judgment of possession, Lisa Girot

never lawfully inherited the property and **possessed zero legal authority** to sell what she did not own.

5. Furthermore, consulting with attorney Joe Izen brought to light the direct application of **Texas Property Code Section 13.001(b)**, which mandates that an unrecorded instrument is fully binding on the parties to the instrument and on their heirs. Consequently, even if Lisa Girot eventually completes her Louisiana succession, she and her heirs (as successors to Louis Thibodeaux, an heir of Gwendolyn Thibodeaux) remain legally bound by the unrecorded deed passing the property from Gwendolyn Thibodeaux to Plaintiff Udo Birnbaum.

6. Confronted with this rapidly emerging evidence of extrinsic fraud and lack of title, and facing a rushed summary judgment schedule, Plaintiff filed a timely Notice of Nonsuit on September 22, 2025. This notice immediately extinguished the case and controversy as to his bill of review claim and stripped this Court of jurisdiction over the merits pursuant to Texas Rule of Civil Procedure 162 and controlling Texas Supreme Court precedent (*University of Texas Medical Branch at Galveston v. Estate of Blackmon*, 195 S.W.3d 98, 100 (Tex. 2006); *City of Dallas v. Albert*, 354 S.W.3d 368, 375 (Tex. 2011)).

7. On April 15, 2026, the Twelfth Court of Appeals issued its Opinion and Judgment in Cause No. 12-25-00279-CV, expressly sustaining Plaintiff's first issue, reversing the trial court's September 22, 2025 summary judgment order, and remanding the cause for further proceedings consistent with its opinion.

8. Furthermore, in its official mandate dated June 26, 2026, the Twelfth Court of Appeals expressly adjudged **all costs of the appeal against Appellee CSD Van Zandt, LLC**, for which execution may issue.

9. Despite the appellate mandate holding that the nonsuit rendered the merits moot and stripped the court of jurisdiction, and despite the appellate court's clear allocation of appellate costs against Defendant, this Court entered a Final Order on July 14, 2026. This order purports to grant the nonsuit, while simultaneously addressing the merits of the claims with a "frivolous and malicious" determination. Further, it assessed **\$36,010.00** in attorney's fees against Plaintiff based on Defendant's collateral claims, while entirely failing to account for or reflect the mandated appellate costs owed by Defendant.

II. GROUNDS FOR NEW TRIAL AND RECONSIDERATION

A. Error in Assessing Attorney's Fees Following a Nonsuit Without a Finding of Prevailing Party Status or Independent Sanctions Basis

- **Lack of Particularized Findings and Mandated Procedures for Sanctions:** To the extent the \$36,010.00 award represents sanctions or punitive fee-shifting under Texas Rule of Civil Procedure 13 or Texas Civil Practice and Remedies Code Chapter 10, the

trial court's order is **fatally defective**. Texas law strictly mandates that no sanctions may be imposed without good cause, *the particulars of which must be stated in the sanction order*. A leading Texas case directly addressing this principle under **Texas Rule of Civil Procedure 13** is *Murphy v. Friendswood Development Co.*, 965 S.W.2d 705 (Tex. App.—Houston [1st Dist.] 1998, no pet.). In *Murphy*, the First Court of Appeals reversed a trial court's sanction/fee order because the order failed to state the particularized good cause findings within the text of the order itself. The court emphasized the literal, mandatory language of the rule: "Rule 13 is clear: the particulars for good cause 'must be stated in the sanctions order.' ... One purpose of the rule 13 particularity requirement is to justify the imposition of the sanctions and to give some evidence the sanctions were carefully weighed and imposed 'in an appropriate manner when justified by the circumstances.'"

- **Lack of Prevailing Party Status:** Under Texas law, a defendant is generally not considered a "prevailing party" entitled to attorney's fees when a plaintiff nonsuits a claim without prejudice, because the merits were never reached (*Moore v. Amarillo-Panhandle Humane Soc'y, Inc.*, 541 S.W.3d 403, 405 (Tex. App.—Amarillo 2018, pet. denied); *Doolin's Harley-Davidson, Inc. v. Young*, No. 06-05-00101-CV, 2006 WL 27983, at *3 (Tex. App.—Texarkana Jan. 6, 2006, no pet.)). While the Texas Supreme Court recognizes an exception under *Epps v. Fowler*, 351 S.W.3d 862, 869–70 (Tex. 2011)—whereby a defendant may recover fees if the trial court explicitly determines the nonsuit was taken to avoid an unfavorable ruling on the merits—this Court's order awards massive fees without establishing the strict foundational requisites or proper evidentiary support required under *Epps*.
- **Improper Grant of Declaratory Judgment Fees (Section 37.009):** Defendant sought attorney's fees under Section 37.009 of the Texas Civil Practices and Remedies Code. However, a bill of review is an independent equitable action, and an award of fees under the Declaratory Judgments Act requires a proper underlying claim and a prevailing party, neither of which legally supports a \$36,010.00 blanket fee award following a pure jurisdictional nonsuit.
- **Failure to Segregate and Support:** The award of \$36,010.00 includes fees "through any subsequent appeals of this ruling", which violates Texas law prohibiting the conditional award of appellate attorney's fees without proof of reasonableness and necessity for specific appellate tiers, and penalizes Plaintiff for successfully prosecuting his appeal to the Twelfth Court of Appeals.

B. Disregard of the Appellate Mandate Regarding Costs

- The trial court's final order fails to give effect to the Twelfth Court of Appeals' Judgment and mandate explicitly taxing all costs of the appeal against Appellee CSD Van Zandt, LLC. A trial court on remand must strictly comply with the mandate of the appellate court, and any final judgment that ignores or contradicts the appellate court's allocation of costs is legally flawed and subject to modification.

c. Preservation of Constitutional and Procedural Issues for Appeal

- Plaintiff preserves all objections that the assessment of punitive-level fees and purported sanctions under the guise of "attorney's fees" violates his right to access the courts, due process, and the unfettered statutory right to take a nonsuit under Texas Rule of Civil Procedure 162.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Udo Birnbaum respectfully prays that this Court grant this Motion for New Trial and/or Motion for Reconsideration, set aside and vacate the Final Order signed on July 14, 2026, correct the judgment to eliminate or substantially reduce the improper assessment of attorney's fees, properly enforce the appellate court's assessment of appeal costs against Defendant, and grant such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

/s/ Udo Birnbaum

Udo Birnbaum, Plaintiff *Pro Se*
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Tennessee Colony, TX 75861
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VERIFICATION / UNSWORN DECLARATION

My name is Udo Birnbaum, my date of birth is 11/28/1936, and my address is 119 AN County Road 2501, Tennessee Colony, TX 75861. I am the Plaintiff *pro se* in this cause. I have read the above Plaintiff Udo Birnbaum's Motion for New Trial and/or Motion for Reconsideration of Final Order. I declare the factual statements contained within it—including those regarding the probate proceedings in Jefferson Davis Parish, Louisiana, and the application of the unrecorded deed—are within my personal knowledge and are true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Anderson County, State of Texas, on the 26th day of July, 2026.

/s/ Udo Birnbaum

Certificate of Service

I hereby certify that a true and correct copy of the above document was served via the electronic filing system on all counsel of record on this the 26th day of July, 2026.

/s/ Udo Birnbaum