

EXHIBIT 1

Unofficial Copy Office of Marilyn Burgess District Clerk

SERIES 1—VIRAGE MASTER LP,

Plaintiff,

v.

**B. GREGG PRICE, P.C. and B. GREGG
PRICE,**

Defendants.

IN THE DISTRICT COURT

215th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

§
§
§
§
§
§
§
§
§
§

DECLARATION OF ALAN GERGER

My name is Alan Gerger. I am competent to make this declaration and the following facts are within my personal knowledge and are true and correct.

1. I was born on May 6, 1952. I am a lawyer. I am the manager of The Gerger Law Firm PLLC, 1770 St. James Pl. Suite 105, Houston, Texas 77056. I have been the attorney in charge in the lawsuit captioned above (the “Lawsuit”) for Defendants B. Gregg Price, P.C. and B. Gregg Price at all times relevant to the matters addressed in this declaration.

2. On or about March 12, 2020, I received Plaintiff’s Motion for Final Summary Judgment (the “Motion”) filed on behalf of Plaintiff Series 1-Virage Master LP in the Lawsuit. At the same time, I also received a Notice of Oral Hearing relating to the Motion for Summary Judgment stating that “Plaintiff’s Final Motion for Summary Judgment is set to be heard in this matter on **Thursday, April 2, 2020 at 8:30 a.m.** before the Honorable Judge Elaine Palmer.” (emphasis in original).

3. On or about March 23, 2020, I began work on a response to the Motion with the belief that both B. Gregg Price, P.C. and B. Gregg Price had meritorious defenses to the Plaintiff’s claims and sound grounds to defeat the motion. I then believed that the deadline for filing a response, if the Motion was indeed set for hearing on April 2, 2020, was March 26, 2020.

4. However, on March 24, 2020, before a response appeared to be due to the Motion, I read and became aware of orders from various governmental authorities regarding staying in place in Harris County, Texas, due to the COVID-19 pandemic. One of those orders, which was issued by Harris County Judge Lina Hidalgo and is attached to this Declaration as Exhibit "A", specifically identified professions and types of duties/responsibilities that were designated as "essential services" that were exempt from the stay at home orders. There was no mention in the County Judge's order of attorney services concerning commercial litigation services being included in "essential services." I did see that legal services were "essential" if they were necessary "to assist in compliance with legally mandated activities or to further Essential Businesses, Essential Government functions or Critical Infrastructure". Therefore, I concluded that a court proceeding seeking a judgment on a commercial debt was not an essential service.

5. Judge Hidalgo's March 24, 2020 order referred to various other orders previously issued by Judge Hidalgo, Governor Greg Abbott, President Donald Trump and Harris County Commissioners Court concerning orders and guidelines for governmental agencies regarding staying in place due to the COVID-19 virus, some of which I read at that time. None of those orders or guidelines changed my opinion concerning the effect of the March 24 Harris County orders.

6. Also, on or about March 24, 2020, I read the Emergency Procedures for the Harris County District Court which were adopted on March 12, 2020 and are attached to this Declaration as Exhibit "B". From those procedures I learned that if the Houston Independent School District closes, then the Harris County Courthouse would close and all hearings would be cancelled. The HISD schools were closed from at least March 16, 2020 through April 10, 2020. As a result, I believed and understood that the Courthouse was closed, and that all oral hearings were cancelled.

7. Also, on or about March 24, 2020, I read the Alternative Schedule adopted by the Harris County District Courts-Civil Division on March 16, 2020, which is attached to this Declaration as Exhibit "C". It states that "[a]ll previously set, non-essential in-person, oral (non-telephonic) hearings and dockets are cancelled" and provides a notice procedure if hearings are to be rescheduled. It further states that "[a]ll Essential Court Matters (temporary restraining orders, temporary injunctions, Chapter 33 and Chapter 81) will proceed as scheduled." The Motion did not fall within that description of Essential Court Matters and I received no notice from Plaintiff's counsel that Plaintiff sought to have the Motion classified as an "Essential Matter." And the Alternate Schedule also provides that for any Court wishing to opt out, that Court's Administrator shall post that Court's specific

procedures to Justex.net. I saw no such opt-out procedures posted by this Court's Administrator.

8. For all of the foregoing reasons, I concluded that the hearing on the Motion had been cancelled, if it had been set, so I stopped further work on the Defendants' response to the Motion and did not finalize it or obtain an affidavit from B. Gregg Price at that time. I believed that the Plaintiff, in accordance with this Court's Emergency Procedures and Alternate Schedule, would obtain a new hearing date and provide me with notice or set the Motion on the submission docket and provide me with notice of that setting. I never received notice of a new hearing date or submission date.

9. It was further my belief that since the hearing was cancelled, if it had been set, and I had received no notice of a hearing date or submission date for the Motion for Summary Judgment, a response to the Motion would not be due until a later date. It was my intention to file a response to the Motion in accordance with Rule 166(a) in a timely manner based upon the reset disposition date for the Motion.

10. On April 1, 2020, I accessed the docket entries for this case through the Harris County District Clerk's website at approximately 7:00 a.m. on April 1, 2020, to see if a new hearing date or submission date had been set. None appeared. I also reviewed the Court's oral hearing docket for April 2, 2020. The oral hearing on the Motion did not appear on the Court's oral hearing docket for that date. This confirmed my belief that the hearing had been cancelled. A copy of the Court's oral hearing docket for April 2, 2020, is attached as Exhibit "D". However, I noticed that some hearings in other cases appeared on the Court's docket. I was curious why some hearings remained on the Court's docket when all hearings had been cancelled.

11. I called the Case Coordinator for this Court at about 7:20 a.m. I reached her voicemail but her voice mail message did not address my questions. Then, I called the Court Clerk, Mr. Joshua Bovell. I asked him whether the hearings on the Court's docket for April 2, 2020, the next day, were proceeding and he said "of course." This confused me based on all the information I had from the various orders discussed above, including the March 12th, 2020 Order (Exhibit "B") and the March 16, 2020 Alternate Schedule (Exhibit "C") that all oral hearings were cancelled. I asked him if he knew why the hearing for the Lawsuit was not on the Court's hearing docket. He said that he did not know. He then said that the Motion would be heard on submission. He suggested that if I wanted the Court to consider anything on submission, I should be sure that it was in the Court's file before submission.

12. I did not ask Mr. Bovell if a submission date had been set for the Motion. However, I believed and expected that the submission date, when set, would be at least ten days after the date when I received Notice in accordance with Local Rule 3.3.3. The Court's submission docket for April 2, 2020, which is attached as Exhibit "E", did not list the Motion.

13. As of April 1, 2020, no oral hearing appeared on the Court's docket (if one had ever appeared on that docket), I had not received any Notice of Submission, and no submission date appeared on the Court's docket. I did not believe that I needed to file a motion for leave to file a late response because the oral hearing was not on the Court's docket and I had not received any Notice of Submission. Nevertheless, out of an abundance of caution and because of Mr. Bovell's comments, I filed two papers that day to at least inform the Court that the Defendants opposed the Motion.

14. The first I filed was Defendants' Opposition to Motion for Summary Judgment (the "First Opposition") which is attached as Exhibit "F". I filed that document electronically at approximately 7:57 a.m. on April 1, 2020. The second, with the same title, (the "Second Opposition") is attached as Exhibit "G". The Second Opposition is the same as the First Opposition, but it has attached to it the Affidavit of B. Gregg Price. My efforts to file the Second Opposition electronically failed. Therefore, I decided to have a messenger service file it by hand. The file stamp on the Second Opposition reflects that it was filed on April 1, 2020 at 3:17 p.m.

15. The First Opposition and Second Opposition were never intended to be the Defendants' formal responses to the Motion for Summary Judgment. Again, out of an abundance of caution, when I filed the Second Opposition, I included a letter asking this Court to consider this filing when considering the Motion, even though I fully expected to be filing a more complete response to the Motion on behalf of the Defendants in the days ahead once I received notice of the submission date. The letter to the Court is attached is Exhibit "H".

16. I placed the letter to the Court and the Second Opposition in an envelope addressed to this Court. I asked the dispatcher to ask the driver to deliver the envelope with letter and the Second Opposition to the Court. The dispatcher for the messenger service told me that messenger delivery drivers were not allowed in the Courthouse, but that the envelope would be placed in the drop box. A copy of the order sheet from the delivery service is attached as Exhibit "I". The messenger service provided me with the file-stamped copy of the Second Response, but did not

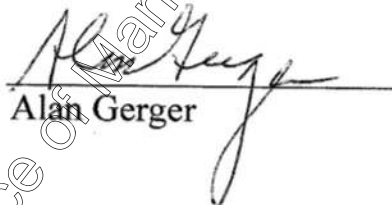
have an extra copy of the letter to the Court, so I do not have a filed-stamped copy of that letter.

17. The Court's docket for this case does not reflect the Second Opposition or the April 1, 2020 letter to the Court, which I believe is in error. However, in an inadvertent oversight, I neglected to serve the Plaintiff's counsel with copies of the Second Opposition or the letter to the Court, having become used to the automatic service that comes with electronic filing.

18. On April 6, 2020, I learned of the Court's April 2, 2020 Order Striking Defendants' Summary Judgment Response and Order Granting Summary Judgment when I received an email from the Court's clerk that they had been entered.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Houston, Harris County, Texas on the 23 day of April, 2020.


Alan Gerger

Unofficial Copy Office of Marilyn Bugess District Clerk