

CAUSE NO. 2019-74357

SERIES 1—VIRAGE MASTER LP, Plaintiff,	§	IN THE DISTRICT COURT
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
B. GREGG PRICE, P.C., AND B. GREGG PRICE, Defendants.	§	215th JUDICIAL DISTRICT

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE ELAINE PALMER:

B. Gregg Price, P.C. and B. Gregg Price (collectively, "Defendants") represent:

1. This is a suit on a promissory note ("Note") and a guarantee of payment of said Note.

2. The Plaintiff's Motion for Summary Judgment has attached as Exhibit "B" the Note and guarantee; however, this Note and guarantee do not bear the signature of the Defendants.

The Note and The Guarantee

3. The Note and guarantee contain electronic signatures. These are not the signatures of the maker, B. Gregg Price, P.C. or Mr. Price. Accordingly, the Note and guarantee cannot be enforced against the Defendants.

4. For an electronic signature to be binding, there must be a showing of an intent by the parties to be bound by the Uniform Electronic Signature Act Tex. Bus. Com. Code §322.005(b). There is no evidence presented in the Motion for Summary Judgment that the parties intended for this Act to apply. Accordingly, the Motion for Summary Judgment should be not be granted.

The Guarantee

3. The Plaintiff seeks judgment against Mr. Price for the Note in his capacity as a “guarantor”. However, the Note and the guarantee have the same signatures. The signature on the guarantee is not that of Mr. Price. Instead it is that of an entity, the same entity that signed the Note:

“B. Gregg Price, AS ATTORNEY  
/s/ Electronically signed by:  
Law office of B Gregg Price”

4. For a guarantee to be valid and enforceable against a third party, it must be signed by the person against whom it is to be enforced. Tex. Bus. & Com. Code § 26.01; *Long v Ahlgren* 2013 Tex. App. LEXIS 13498; 2012 WL 5890906 (Tex. Civ. App. 11<sup>th</sup> Dist. – Eastland).

5. Here the guarantee does not bear Mr. Price’s signature in his individual capacity. Since the guarantee does not bear Mr. Price’s signature, it cannot be enforced against him.

WHEREFORE, the Defendants pray that the Court deny the Motion for Summary Judge and grant the Defendants such other and further relief, in law and in equity as is just.

Respectfully submitted,

THE GERGER LAW FIRM, PLLC

By: /s/ Alan S. Gerger

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was served upon the following by email on April 1, 2020:

Ashish Mahendru  
Darren A. Braun  
639 Heights Blvd.  
Houston, Texas 77007

By: /s/ Alan S. Gerger  
Alan Gerger

Unofficial Copy Office of Marilyn Burgess District Clerk