

Cause No. 20-1513-A

JOHN WAMPLER,  
Judgment Debtor/Plaintiff,

vs.

CHARLES S. CRAIL,  
Judgment Creditor/Defendant.

Smith County Texas  
7<sup>th</sup> Judicial District

**RECEIVER’S AMENDED MOTION FOR AN ORDER TO SELL  
JUDGMENT DEBTOR’S CHOSSES IN ACTION & ACCOMPANYING BRIEF**

**STATEMENT OF SUBMISSION DATE  
PURSUANT TO LOCAL RULE 2.3**

Receiver’s selected date of submission for this Motion is Monday, December 7, 2020.

Receiver Andrew R. Korn (“Receiver”) asks the Court to sign an order setting the procedure<sup>1</sup> for the sale of Judgment Debtor John Wampler’s (“Judgment Debtor”) chosses in action.

Receiver’s contentions of fact and law

Receiver has the power and authority to secure control over all Judgment Debtor’s property – tangible and intangible – and engage in presale activities. *See the Turnover Order and Order Appointing Receiver* (signed on September 15, 2020) (“Receivership Order”) at p. 7.

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<sup>1</sup> *See Am. Bridge Prods. v. Decoulos*, 328 B.R. 274, 331 (D. Mass. Bankr. 2005) (Citing Clark on Receivers) (“Considered officers of the appointing court, receivers are subject to the court’s directions and orders and ‘at all time are entitled to apply to the court for instructions.’”).

“A chose in action is a right to damages, arising either from the commission of a tort, the omission of a duty, or the breach of a contract. A right or a suit for damages for personal injuries would be a chose in action ... The chose in action is an intangible or incorporeal right...” *Browne v. King*, 196 S.W. 884, 887 (Tex. Civ. App.—San Antonio 1917), *aff'd* 235 S.W. 522 (Tex. 1921). A chose of action is property to which the turnover statute applies. *Main Place Custom Homes, Inc. v. Honaker*, 192 S.W.3d 604, 627 (Tex. App.—Fort Worth 2006, *pet. denied*).

On Receiver October 11, 2020, Receiver asked Judgment Debtor to identify his choses in action. *See* Exhibit 1; *See also* Receivership Order at p. 3-4 (“Judgment Debtor is ordered to... Make a complete disclosure to the Receiver of all of Judgment Debtor’s property”). Judgment Debtor has not identified his choses in action.

Therefore, Receiver requests that the Court sign an order authorizing the sale of all Judgment Debtor’s choses of action, and the method and procedures for doing so. Receiver requests all other relief in furtherance of accomplishing the sale of Judgment Debtor’s choses in action.

Respectfully submitted,

By: Andrew R. Korn

ANDREW R. KORN

Andrew R. Korn, PLLC

State Bar of Texas identification number 11683150

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Receiver

**Certificate of Conference pursuant to Rule 2.1 of the Local Smith County  
Rules of Civil Trial - Judicial District Courts and County Courts at Law -  
Smith County, Texas**

I certify that a reasonable effort has been made to confer with Judgment Debtor and counsel of all parties affected by the requested relief to determine whether or not the contemplated motion will be opposed, and state the following:

- Judgment Creditor does not oppose this Motion
- Judgment Debtor has not provided his position on this Motion
- Intervenors have not provided their position on this Motion

Certified to on November 18, 2020.

By: Andrew R. Korn

ANDREW R. KORN

**CERTIFICATE OF SERVICE**  
**(Pursuant to TEXAS RULES OF CIVIL PROCEDURE 21 & 21a)**

On November 18, 2020, this instrument was served as follows:

- on all counsel of record who have followed Rule 21(f)(2) (“Email Address. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.”) via the court’s electronic filing system.
- On the Judgment Debtor, by email to [jhw@tbarwrench.com](mailto:jhw@tbarwrench.com).

Certified to on November 18, 2020.

By: Andrew R. Korn  
ANDREW R. KORN



Andy Korn &lt;akorn@receiverandrewkorn.com&gt;

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**Wampler Receivership; Notice of failure to comply with Receivership Order; Notice of Intent to file Motion regarding Sale of Receivership property (choses in action)**

1 message

Andy Korn &lt;akorn@receiverandrewkorn.com&gt;

Sun, Oct 11, 2020 at 7:44 PM

To: John Wampler &lt;jhw@tbarwrench.com&gt;

Cc: Arnold Spencer &lt;arnoldspencer75225@gmail.com&gt;, Willis Jarrel &lt;willis@willisjarrel.com&gt;

**The Case:****Cause Number:** 20-1513-A**Style:** *Charles S. Crail v. John Wampler***The Receivership Court:** 7<sup>th</sup> Judicial District Court, Smith County, Texas**The Judgment:** June 4, 2019 *Judgment* in Case Number 1439844; in the Superior Court of California, County of Santa Barbara; domesticated in Texas by the Case.**The Order:** *Turnover Order and Order Appointing Receiver* (signed on September 15, 2020)

Mr. Wampler:

The Order required you to deliver certain property, money, financial instruments and documents and electronically stored information to me within 5 days of "receiving a copy of th[e] Order." See Order at p. 3-6. Since I know you received a copy of the Order last Monday (and perhaps before that), you currently stand in a posture of contempt to a substantial amount of the Court Order. Please mitigate this failure by beginning to making the required turn overs. I do appreciate that when I levied at your Residence on October 7, 2020, I did obtain some of the property and documents identified in the Order, but if we are going to have expedited hearings on motions by you, Mrs. Wampler and CML, I can't allow the Receivership to be prejudiced by missing information that might tend to disprove the contentions of the movants in those hearings.

The Order requires you to "make a complete disclosure to the Receiver of all of Judgment Debtor's property." The Order applies to all your property, tangible or intangible. I can't "secure control over all property" if you fail to identify it. More particularly, one of the early motions I intend to file is a motion to permit me to sell all your claims and choses in action. A chose in action is essentially the right to sue. It is an intangible personal property right recognized and protected by law, and the law in Texas favors assignments of choses in action. To conduct such a sale, I don't need an inventory of your rights to recover money or property from third parties. But your failure to provide an inventory may result in a low price being realized from the sale of these rights. Since the Receivership Estate is in custody of your rights and claims, you should not be taking any action on any right or claim. That means you are not to initiate litigation or arbitration, nor should you be taking any action in any ongoing proceeding. You are of course, permitted to seek judicial relief in the Receivership as to the Order. I have not decided yet, but I may exclude from the Sale claims against your spouse, children and grandchildren. The Receivership may reserve prosecution of claims to recover any gifts made to, or amounts paid on behalf of, your relatives. Under a theory

of assumpsit like money had an received, the Receivership may seek to recover from a recipient or beneficiary any amount which equity and good conscience requires be repaid. Such as money paid for tuition, or trips. Your failure to identify these payments - while under a court order to do so - may extend the statute of limitations to recover on assumpsit for payments made over the last four years.

I hope that we can continue to resolve by agreement issues about your compliance with the Receivership Order, and that a forced sale of your choses in action will not be required.

***Andy "Gator" Korn***

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