



COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON

NOTICE OF ORDER ON MOTION

Cause number: 01-06-00798-CV

Style: FCLT Loans Asset Corporation and Timothy J. Blair, Class Representative
v FIRST CITY FINANCIAL CORPORATION, Appellee/Appellant; J.P. MORGAN CHASE BANK, NATIONAL ASSOCIATION AS SUCCESSOR TRUSTEE OF FIRST CITY BANCORPORATION EMPLOYEES RETIREMENT TRUST.

Date motion filed: September 19, 2008

Type of motion: Appellant Timothy J. Blair's Motion for Additional Argument-Time - Filed by David A. Furlow

Party filing motion: Appellant

Document to be filed: _____

Ordered that motion is:

- Granted**
- Denied
- Dismissed (e.g., want of jurisdiction, moot)
- Other: _____

Appellant Blair will have 25 minutes to argue.

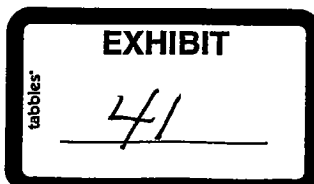
Appellant FCLT will have 20 minutes to argue.

Appellee FCFC will have 30 minutes to argue.

Judge's signature: /s/Justice Terry Jennings
 Acting individually Acting for the Court

Panel consists of _____

Date: **September 23, 2008**



THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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September 19, 2008

M. Karinne McCullough
Clerk, First Court of Appeals
1307 San Jacinto, 10th Floor
Houston, Texas 77002

Via Hand Delivery

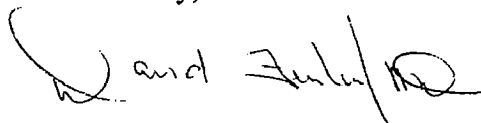
Re: No. 01-06-00798-CV, *FCLT Loans Asset Corp., et al., Appellants v. First City Financial Corp., Appellee*, in the First Court of Appeals. Appellant Timothy Blair's Response to FCLT's August 22, 2007 letter-brief and Blair's supplemental authorities.

Dear Ms. McCullough,

Please find enclosed the original and six copies of Appellant Timothy J. Blair's Motion for Additional Argument-Time and an Expedited Ruling on this Motion for filing in the above matter. Also enclosed is our firm check in the amount of \$10.00 to cover the filing fee of same.

Please acknowledge receipt of the above by placing your file stamp on the extra copy and return same to me via our messenger. By copy of this letter, I am forwarding a copy of the enclosed to opposing counsel of record. Thank you for your assistance in this matter.

Sincerely,



David A. Furlow

DAF\md
Enclosure

September 19, 2008

Page 2

cc: Kent Rutter
Odean Volker
Haynes and Boone, LLP
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Houston, Texas 77010
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John Hopwood
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NO. 01-06-00798-CV

**IN THE COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

**TIMOTHY J. BLAIR, CLASS REPRESENTATIVE, AND
FCLT LOANS ASSET CORPORATION,
*Appellants,***

VERSUS

**FIRSTCITY FINANCIAL CORPORATION,
*Appellee.***

**On Appeal from the 152nd Judicial District Court in Harris County, Texas, Cause
No. 2005-04492, the Honorable Ken Wise presiding**

**APPELLANT TIMOTHY J. BLAIR'S
MOTION FOR ADDITIONAL ARGUMENT-TIME
AND AN EXPEDITED RULING ON THIS MOTION**

Filed: September 19, 2008

Robert S. MacIntyre, Jr.
State Bar No. 12760700
MACINTYRE & MCCULLOCH, LLP
4801 Woodway, Suite 300E
Houston, Texas 77056
713-513-6148
713-752-2902 (fax)

David A. Furlow
State Bar No. 07555580
Mitchell E. Ayer
State Bar No. 01465500
Rhett G. Campbell
State Bar No. 03714500
THOMPSON & KNIGHT LLP
333 Clay Street, Suite 3300
Houston, Texas 77002
(713) 654-8111, (713) 654-1871 (fax)

**ORAL ARGUMENT
REQUESTED**

**ATTORNEYS FOR FORMER FIRST CITY
BANCORPORATION OF TEXAS, INC.
RETIREMENT PLAN-BENEFICIARIES CLASS
REPRESENTATIVE TIMOTHY J. BLAIR**

To the Honorable Justices of the Fourteenth Court of Appeals:

COMES NOW Appellant Timothy J. Blair (“Blair”), Class Representative and Appellant in the above-styled and numbered cause, and, pursuant to Rule 10.5(b)(1) of the Texas Rules of Appellate Procedure, files this Motion for Additional Argument-Time and Expedited Ruling, and shows the Court as follows:

RELIEF REQUESTED

Appellant Blair requests that this Court grant both Appellant Blair and opposing Appellant FCLT Loan Assets Corporation (“FCLT”) additional time to present their opposing appellate arguments, in which they present very different arguments and seek different relief. Opposing Appellant FCLT joins in this request for additional oral argument time. Counsel for Appellee First City Financial Corporation (“FCFC”) has agreed that additional time may be warranted but cannot agree that Appellant Blair’s and Appellant FCLT’s counsel should receive fifteen (15) minutes each, so the parties ask this Court to determine what is appropriate on an expedited basis so they can prepare for oral argument on September 24, 2008. **Because of the chaos caused by Hurricane Ike, Appellant Blair requests the most expedited consideration possible and a ruling as far in advance of the Wednesday, September 24, 2008 hearing-date as possible.**

BASIS FOR RELIEF REQUESTED

1. This is not a two-sided case but that rare three-party fight in which several mutually antagonistic opponents request the Court to provide them with adequate argument time to present mutually antagonistic arguments. Yet this Court’s oral

argument order of September 3, 2008 – which reached several of the parties only this week – treats the case as if there are only two sides.

2. Collectively allocating fifteen minutes of oral argument to two mutually antagonistic appellants makes no sense in the context of this important case.

3. Appellant Blair seeks a reversal of the summary judgment in favor of Appellee FCFC and rendition in favor of Appellant Blair (or, alternatively, a remand).

4. Appellant FCLT, on the other hand and on the basis of other legal arguments, seeks a reversal of the summary judgment in favor of Appellee FCFC, rendition in favor of Appellant FCLT, and denial of any relief to Appellant Blair (or, alternatively, a remand).

5. Forcing Appellants to divide their fifteen minutes while permitting Appellee to receive a full fifteen minutes deprives each of the two opposing Appellants of an adequate opportunity to fully develop their argument and to present their authorities.

6. In addressing the unusual dynamics of a three-party case, Appellants Blair and FCLT also recognize that the Court must be fair to Appellee FCFC. The parties believe that the Court has addressed similar situations before, and is in the best position to equitably allocate time among the parties.

7. When all parties seek to protect their clients' interests, it is exceedingly difficult to negotiate an agreement among counsel about how much time each party should receive for oral argument. Each appellate attorney strives to avoid prejudice to his client, impeding the ability of even the most reasonable counsel to agree about oral argument time.

8. Finally, this Court's September 3, 2008 letter refers to J.P. Morgan Chase Bank, National Association ("J.P. Morgan") as if it were an active appellee -- when it is not. A telephone call by Appellant Blair's lead appellate counsel David A. Furlow and co-counsel Robert S. MacIntyre, Jr. with J.P. Morgan's lead counsel John L. Hopwood on the afternoon of September 18, 2008 confirmed that no one representing J.P. Morgan will present oral argument on September 24, 2008. A September 19, 2008 e-mail from John L. Hopwood attached to this motion reflects that J.P. Morgan does not plan to present oral argument. A true copy of J.P. Morgan attorney John Hopwood's September 19, 2008 e-mail reflecting this agreement is attached hereto as Exhibit 1.

9. Appellants Blair, joined by Appellant FCLT, requests that this Court to exercise its discretion to equitably allocate the time available to each Appellant so they can adequately address the factual and legal complexities of this important case on the basis of a three-party fight. A true copy of Appellant FCLT counsel Susan Hay's September 19, 2008 e-mail reflecting this agreement is attached hereto as Exhibit 2.

CERTIFICATE OF CONFERENCE

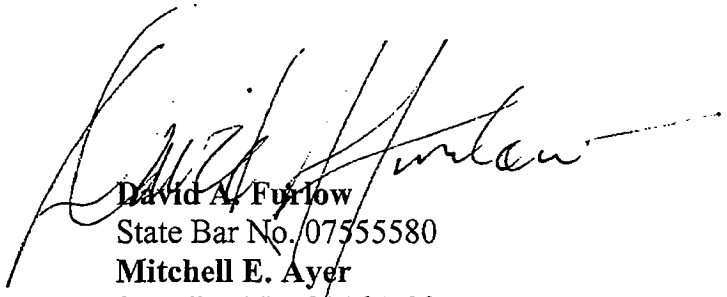
Counsel for Appellant Blair (David A. Furlow and Robert S. MacIntyre, Jr.), counsel for Appellant FCLT (Susan Hays) and counsel for Appellee FCFC (Kent Rutter) conferred in a Thursday, September 18, 2008 conference call in an effort to work out a mutually agreeable time-allocation but could not agree as to what would constitute a fair allocation. Appellant Blair, joined by Appellant FCLT, therefore ask this Court to determine what is appropriate on an expedited basis so they can prepare for oral argument on September 24, 2008. Kent Rutter, counsel for Appellee FCFC, has agreed that this

Certificate of Conference accurately reflects the conversations among counsel that occurred yesterday, as reflected in his e-mail attached to this motion. A true copy of Appellee FCFC counsel Kent Rudder's September 19, 2008 e-mail reflecting this agreement is attached hereto as Exhibit 3.

WHEREFORE, PREMISES CONSIDERED, Appellant Blair, joined by Appellant FCLT and at least partially opposed by Appellee FCFC, respectfully request this Court to determine whether it should equitably allocate oral-argument time on the basis of an unusual three-way argument about the facts, the law, and the relief sought, on an *expedited basis*, as much in advance of the currently-scheduled oral argument at 1:30 p.m. on Wednesday, September 24, 2008 as possible.

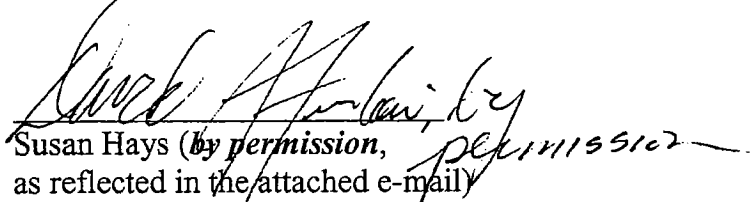
Filed: September 19, 2008

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State Bar No. 07555580
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State Bar No. 01465500
Rhett G. Campbell
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**ATTORNEYS FOR APPELLANT
TIMOTHY J. BLAIR, CLASS
REPRESENTATIVE**

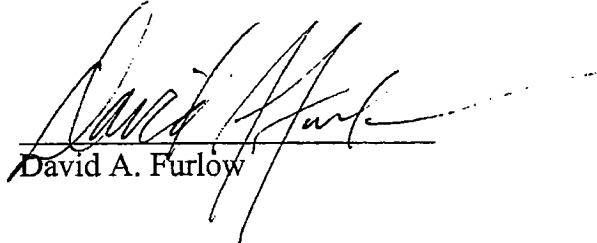


Susan Hays (*by permission,*
as reflected in the attached e-mail
Law Office of Susan Hays P.C.
5646 Milton St., Ste. 218
Dallas, Texas 75206
214) 557-4819
214) 432-8273 (fax)
hayslaw@sbcglobal.net

**ATTORNEYS FOR APPELLANT
FCLT LOAN ASSETS CORPORATION**

CERTIFICATE OF CONFERENCE

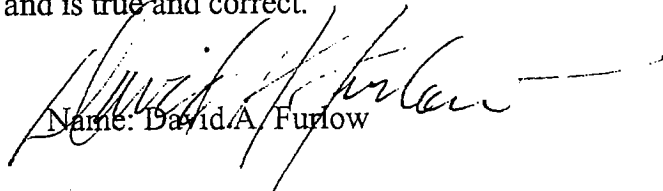
I certify that all of the parties in this case, being Timothy J. Blair, Class Representative, FCLT Loans Asset Corp., FirstCity Financial Corporation, and JP Morgan Chase Bank, National Association, have, through their counsel, considered the foregoing motion and were unable to agree about the amount of the increased oral-argument time and the amount of time for rebuttal requested herein, necessitating a decision by this Court.


David A. Furlow


ATTORNEY'S VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

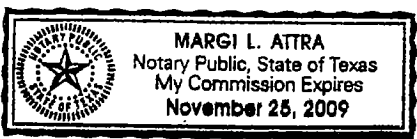
BEFORE ME, the undersigned authority, on this day personally appeared David A. Furlow, who being by me duly sworn, deposed and said that the information contained herein is based upon his personal knowledge and is true and correct.


Name: David A. Furlow

SWORN TO AND SUBSCRIBED before me, the undersigned notary public, to certify which witness my hand and seal of office, this 19th day of September, 2008.


Notary Public in and for the
State of Texas

My Commission Expires: 11/25/09



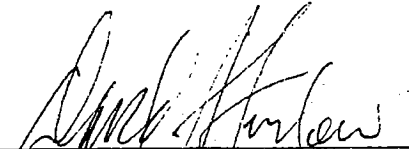
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been transmitted to the following parties by *facsimile* on this 19th day of September, 2008.

Kent Rutter
Odean Volker
Haynes and Boone, LLP
One Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010
Fax: (713) 236-5581

Susan Hays
J. Michael Curran
Curran Tomko Tarski, LLP
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Dallas, Texas 75201
Fax: (214) 270-1401

John Hopwood
Locke Liddell & Sapp, LLP
600 Travis Street
2400 First City Chase Tower
Houston, Texas 77002
Fax: (713) 229-2590



David A. Furlow



"Hopwood, John"
<JHopwood@lockelord.com>
09/19/2008 02:11 PM

To <David.Furlow@tklaw.com>, <hayslaw@sbcglobal.net>,
<kent.rutter@haynesboone.com>
cc <macintyre@mmlawtexas.com>, <Rhett.Campbell@tklaw.com>

bcc

Fax to

Subject RE: Please review this motion for additional time and expedited
ruling -- I tried to make it objective, fair, and consistent with our
discussions yesterday -- and plan to file this afternoon

History: This message has been replied to

The draft Motion looks fine to me. Will it help anybody if I send a letter, or something, to the Court confirming that JPMC does not plan to make a presentation, but will have counsel there to observe and to respond to any question that the Court may pose to us?

-----Original Message-----

From: David.Furlow@tklaw.com [mailto:David.Furlow@tklaw.com]
Sent: Friday, September 19, 2008 11:41 AM
To: hayslaw@sbcglobal.net; Hopwood, John; kent.rutter@haynesboone.com
Cc: macintyre@mmlawtexas.com; Rhett.Campbell@tklaw.com
Subject: Please review this motion for additional time and expedited
ruling -- I tried to make it objective, fair, and consistent with our
discussions yesterday -- and plan to file this afternoon

Dear Susan, John, and Kent,

I have prepared a draft motion for additional time for oral argument and an expedited ruling as much in advance of oral argument as possible. Here it is:

(See attached file: Document.pdf)

I tried to make it objective, fair, and consistent with our discussions yesterday. If you disagree with anything I have written, please send me an e-mail corrective.

Kent, I need to know if FCLT will oppose this motion.

This is a draft, and I am prepared to tweak it if necessary. I plan to file this motion in the First Court of Appeals around 3:00 p.m., so please provide me with any oppositions/non-oppositions, suggestions, and/or comments this afternoon. Thank you for your time.

David A. Furlow
Senior Partner
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Houston, Texas 77002
(713) 654-8111
(713) 653-8653 Direct
(832) 397-8253 FAX
Http://www.tklaw.com





Susan Hays
<hayslaw@sbcglobal.net>

09/19/2008 02:03 PM

To David.Furlow@tklaw.com

cc jhopwood@lockelord.com, kent.rutter@haynesboone.com,
macintyre@mmlawtexas.com, Rhett.Campbell@tklaw.com

bcc

Fax to

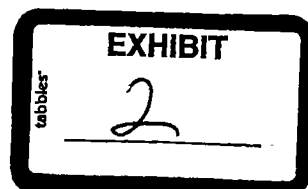
Subject Re: Please review this motion for additional time and expedited
ruling -- I tried to make it objective, fair, and consistent with our
discussions yesterday -- and plan to file this afternoon

I'm fine with it as written. It looks like we are the only argument
for Wed. I've been pulled into an emergency matter so I may not have
time to call to confirm that. But if I do, I'll send all an email.

Susan Hays
Law Office of Susan Hays P.C.
5646 Milton St., Ste. 218
Dallas, Texas 75206
(214) 557-4819
(214) 432-8273 (fax)
hayslaw@sbcglobal.net

On Sep 19, 2008, at 11:40 AM, David.Furlow@tklaw.com wrote:

> <Document.pdf>





"Rutter, Kent"
<Kent.Rutter@haynesboone.com>

09/19/2008 11:57 AM

To <David.Furlow@tklaw.com>, <hayslaw@sbcglobal.net>, <jhopwood@lockelord.com>
cc <macintyre@mmlawtexas.com>, <Rhett.Campbell@tklaw.com>

bcc

Fax to

Subject RE: Please review this motion for additional time and expedited ruling -- I tried to make it objective, fair, and consistent with our discussions yesterday -- and plan to file this afternoon

David and Susan,

I agree that the motion and certificate of conference accurately reflect our conversation yesterday and don't require any revisions before filing. I may file a very short response this afternoon (in all likelihood, essentially agreeing that it's up to the court), but I don't want to hold up your filing since time is running short. I appreciate your fair and professional approach to this issue.

Kent Rutter
Partner
kent.rutter@haynesboone.com

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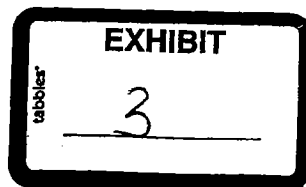
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