

CAUSE NO. D-1-GN-18-007069

TURNQUIST PARTNERS REALTORS,  
INC. d/b/a ENGEL & VÖLKERS  
AUSTIN,

Plaintiff,

vs.

ROBERT TURNER AND ITCOA,  
L.L.C. d/b/a INDEPENDENCE TITLE  
COMPANY

Defendants.

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

ROBERT TURNER,

Counter-Plaintiff

Vs.

TURNQUIST PARTNERS REALTORS,  
INC. d/b/a ENGEL & VÖLKERS  
AUSTIN,

Counter-Defendant

419<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFF'S AND COUNTER-DEFENDANT'S MOTION FOR LEAVE TO  
DESIGNATE RESPONSIBLE THIRD PARTY**

TO THE HONORABLE JUDGE OF THIS COURT:

Comes now, Plaintiff and Counter-Defendant, Turnquist Partners Realtors, Inc. d/b/a Engel & Völkers Austin ("EVA") and pursuant to Chapter 33 of the Texas Civil Practices and Remedies Code, files this motion for leave to designate certain responsible third parties as follows:

## I. INTRODUCTION AND PARTIES

1. Plaintiff and Counter-Defendant is EVA; Defendant and Counter-Plaintiff is Robert Turner (“Turner”). ITCOA, L.L.C. d/b/a Independence Title Company (“Independence Title”) was also a named defendant but is now out of the case as a summary judgment was entered in its favor on February 28, 2020. Responsible Third Party is Terry Irion, counsel for Defendant and Counter-Plaintiff in the underlying transaction that is the basis of the dispute.

2. Plaintiff and Counter-Defendant files this motion at least 60 days before the date set for trial (May 3, 2020).

3. Plaintiff and Counter-Defendant sued Turner when Turner wrongfully refused to pay EVA its commission due and payable and set forth under certain written commission agreements (“Listing Agreements”) executed by Turner for the sale of real property located at 5201 and 5203 Tortuga Trail, Austin, Texas 78746 (collectively the “Property”). Turner counter-claimed against EVA for breach of contract, negligence, fraud, and breach of fiduciary duty. Turner specifically claims that EVA breached an oral agreement to reduce the commission set forth in the Listing Agreements and further that, pursuant to the Texas Occupations Code, EVA breached its fiduciary duties to Turner by improperly acting as an intermediary between him and the buyer of the property, Laurie Moffett (“Buyer”). Plaintiff and Counter-Defendant denies these claims, but has determined that any damage, if any, suffered by Turner was caused by his own legal counsel, Terry Irion.

4. More specifically, well before Turner entered into any real estate sale contract with the Buyer, he retained his lawyer, Terry Irion, to (1) handle all entitlements and development issues related to the Property (as early as 2013); (2) to represent Turner in certain aspects of the negotiations with certain buyers who made offers on the Property, including drafting contracts and

provisions related to such offers and counter offers; and (3) to single handedly represent Turner in all of the negotiations, including, without limitation, all final contract drafting with the Buyer and the Buyer's counsel, Mr. Tim Young, and to represent Turner in the sale through the date of closing. Turner thereby discharged EVA from performing any additional acts once Terry Irion took over such matters, including all negotiations. To the extent Turner claims he was damaged, those damages are the result of Terry Irion who represented Turner in the sale and closing of the Properties at issue.

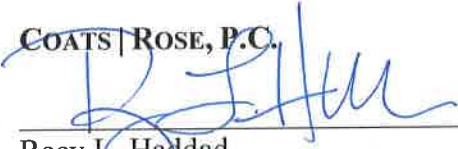
5. Terry Irion is a responsible third party within the meaning of Texas Civil Practice and Remedies Code Section 33.011(6) because Terry Irion caused or contributed to the harm which recovery of damages is sought by Plaintiff and Counter-Defendant.

6. For these reasons, Plaintiff and Counter-Defendant asks the court to grant Plaintiff's and Counter-Defendant's Motion for Leave to Designate the Responsible Third Party as plead for herein.

#### V. PRAYER

WHEREFORE, premises considered, Plaintiff and Counter-Defendant respectfully requests this Court enter an Order, granting Plaintiff's and Counter-Defendant's Motion for Leave to Designate Responsible Third Party.

Respectfully Submitted,

By:   
COATS | ROSE, P.C.  
Racy L. Haddad  
State Bar No. 24041033  
rhaddad@coatsrose.com  
Rex J. Zgarba  
State Bar No. 24028253  
rzgarba@coatsrose.com  
Terrace II

2700 Via Fortuna Suite 350  
Austin, Texas 78746  
(512) 469-7987 Telephone  
(512) 469-9408 Telecopier

**ATTORNEYS FOR PLAINTIFF / COUNTER-  
DEFENDANT**

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the above document was served on the following counsel(s) of record and/or individual(s) in accordance with TEX. R. CIV. P. 21a via the method indicated for each on the March 2, 2020.

**Counsel for Defendant/Counter-Plaintiff**

**Robert Turner:**

Jeffrey G. Henry  
SPOUSE SHRADER SMITH PLLC  
Las Cimas III  
805 Las Cimas Parkway, Suite 350  
Austin, Texas 78746  
Email: jeff.henry@sprouselaw.com

- Facsimile Transfer
- Certified Mail, Return Receipt Requested
- U.S. First Class Mail
- Email

**Counsel for ITCOA, L.L.C.:**

Jeffrey J. Hobbs  
ARMBRUST & BROWN, PLLC  
100 Congress Ave., Suite 1300  
Austin, Texas 78701  
Email: jhobbs@abaustin.com

- Facsimile Transfer
- Certified Mail, Return Receipt Requested
- U.S. First Class Mail
- Email

  
\_\_\_\_\_  
Racy L. Haddad