EXHIBIT D

NO. D-000298C

EUNICE R. BENCKENSTEIN, WALTER G. RIEDEL III, AND ROY WINGATE, INDEPENDENT CO-EXECUTORS OF THE ESTATE OF NELDA C. STARK, DECEASED, AND WALTER G. RIEDEL III, GENERAL MANAGER OF THE NELDA C. AND H.J. LUTCHER STARK FOUNDATION	§	IN THE DISTRICT COURT
V.	§	OF ORANGE COUNTY, TEXAS
IDA MARIE STARK, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF W.H. STARK II, DECEASED, ET AL.	§	260th JUDICIAL DISTRICT

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' SUMMARY JUDGMENT EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Eunice R. Benckenstein, Walter G. Riedel III, and Roy Wingate, as Independent Co-Executors of the Estate of Nelda C. Stark, Deceased, Eunice R. Benckenstein, as Successor Independent Executor of the Estate of H. J. Lutcher Stark, Deceased, and The Nelda C. and H. J. Lutcher Stark Foundation, Plaintiffs, and make the following Objections to the Summary Judgment Evidence submitted by Ida Marie Stark, individually and as Independent Executor of the Estate of William H. Stark, II, Deceased, William H. Stark, III, Randall Hill Stark, and Lynn Marie Stark Barras, Defendants, as attachments to their Motion for Stay, Continuance and/or Abatement and Response to Plaintiffs' Amended Motion for Summary Judgment, (hereinafter "Defendants' Response"), filed on or about August 15, 2001, and would show the Court the following:

I.

EVIDENCE DOES NOT SUPPORT DEFENDANTS' CLAIMS

In a Reply filed by Plaintiffs on this date to Defendants' Response, (hereinafter "Plaintiffs' Reply"), Plaintiffs have shown that they owe no fiduciary duties to Defendants. Even if, however, Defendants could find a fiduciary duty applicable to this case, Defendants have failed to introduce any competent summary judgment evidence to support their proposition and all evidence produced is defective on its face and should be disregarded. Moreover, Defendants have failed to produce any competent summary evidence to support their claims of fraud and conversion raised in their pleadings.

II.

SUMMARY JUDGMENT EVIDENCE STANDARD

Rule 166a(f) of the Texas Rules of Civil Procedure governs the competence of affidavits and their attachments. Specifically, Rule 166a(f) states in relevant part that:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.[1]

Note the following requirements: (1) personal knowledge of the affiant; (2) admissible evidence; (3) competency of affiant to testify to the matters stated; and (4) sworn or certified copies of any extrinsic documents.

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[1] TEX. R. CIV. PROC. 166a(f).

Plaintiffs would show the Court that Defendants have failed to comply with the minimum requirements for competent summary judgment evidence, in the following respects:

III.

THE LABRUYERE AFFIDAVITS

Defendants attached to their Response, two affidavits dated August 15, 2001, of Louis R. LaBruyere, IV, on behalf of Louisiana Title and Abstracting Services, L.L.C., Lafayette, Louisiana. See Exhibit 8 to Defendants' Response. These affidavits and the attached Exhibit A are not competent summary judgment evidence for the following reasons:

A. Not Based on Personal Knowledge. The affidavits do not contain the required language that they are based on the personal knowledge of the affiant.[2] For that reason alone, they fail as competent summary judgment evidence.[3]

B. Witness Not Competent. Rule 166a(f) states that the affidavit must "affirmatively show" the witness is competent.[4] Nothing within the LaBruyere Affidavits indicate that Mr. LaBruyere is competent to testify regarding the matters included within these affidavits.[5] In fact, the affidavits do not even state that the affiant is over the age of 18, or at least that he is competent to make the affidavits.

C. Attachments Not Admissible Evidence. The information included in Exhibit A is not admissible evidence. The predicate for admissibility of the document has not been laid

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[2] *Humphreys v. Caldwell*, 888 S.W.2d 469, 470 (Tex. 1994).

[3] TEX. R. CIV. PROC. 166a(f).

[4] TEX. R. CIV. PROC. 166a(f).

[5] *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 661 (Tex. 1995).

through Mr. LaBruyere's affidavit. In order to self-authenticate, an affidavit must be made by a person,with knowledge of the documents' authority.[6] Defendants' attempt to self-authenticate fails. Therefore, since Exhibit A is not self-authenticating and there is also no evidence presented to authenticate it, it is not admissible evidence.[7]

D. Exhibit A Not Best Evidence. Even if Exhibit A were admissible, it is not the best evidence. Mr. LaBruyere, in his affidavit, admits the information found in Exhibit A is taken from public records. Therefore, the best evidence would be actual certified copies of the public records.[8]

E. Louis R. LaBruyere, IV Not Qualified as an Expert. The LaBruyere Affidavits do not qualify as admissible expert testimony under Texas Rules of Evidence 702 or the Texas Rules of Civil Procedure Rule 166a(c) and (f). Mr. LaBruyere's testimony is not admissible under the four tests for admissibility of expert testimony: qualifications, knowledge, helpfulness, and foundation data.[9] Specifically, nowhere in Mr. LaBruyere's affidavits are his qualifications set forth. It is the burden of the offering party to establish the qualifications of their expert affiant.[10] Defendants did no such thing. Additionally, because the affidavit contains

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[6] *Norcross v. Conoco, Inc.*, 720 S.W.2d 627, 632 (Tex. App.—San Antonio 1986, no writ).

[7] TEX. R. EVID. 901 and 902.

[8] TEX. R. EVID. 1002.

[9] *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998); and *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

[10] *United Blood Services v. Longoria*, 938 S.W.2d 29, 31 (Tex. 1997).

nothing more than unsubstantiated legal and factual conclusions, Mr. LaBruyere's opinions cannot be said to be based on sufficient "underlying facts" or data. Therefore, Mr. LaBruyere's expert opinions are not admissible because they are based on unreliable foundation evidence.[11] These "opinions are little more that subjective belief or unsupported speculation," and are, thus, not admissible.[12] Additionally, the LaBruyere Affidavits only state legal conclusions, which if deemed admissible are still insufficient as summary judgment evidence.[13]

F. Unsubstantiated Legal and Factual Conclusions. As set forth with more particularity in the following paragraphs, the affidavits of Mr. LaBruyere are nothing more than unsubstantiated legal and factual conclusions and should not be considered credible summary judgment evidence.[14]

1. Indefiniteness. One of the affidavits state that Louisiana Title performed an abstract of title in Cameron Parish for properties acquired by H. J. Lutcher Stark and Lutcher Moore Lumber Company for the period of 1900 through September, 1965. The properties listed on Exhibit A of this affidavit purport to be properties in Cameron Parish, Louisiana which "had been acquired by Henry Jacob Lutcher Stark or The Lutcher Moore Lumber Company and had not been divested by them." The other affidavit bears essentially the same allegations with respect to Iberia Parish. At best, these affidavits tell the Court that certain

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[11] *Robinson*, 923 S.W.2d at 558-59.

[12] *Gammill*, 972 S.W.2d at 728.

[13] *Anderson v. Snider*, 808 S.W.2d 54, 55 (Tex. 1991).

[14] *Purcell v. Bellinger*, 940 S.W.2d 599, 602 (Tex. 1997); *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996); *Anderson*, 808 S.W.2d at 55; *Brownlee v. Browlee*, 665 S.W.2d 111, 112 (Tex. 1984).

properties were purchased by either H. J. Lutcher Stark or Lutcher Moore Lumber Company. Defendants have not sued Lutcher Moore Lumber Company or its successor. Defendants have not even alleged any interest in the assets of Lutcher Moore Lumber Company, nor have they alleged that they are entitled to any accounting of assets held or formerly held by Lutcher Moore Lumber Company. At any rate, the affidavits are confusing and indefinite, telling the Court only that the properties described had been acquired by one or the other, but they do not lend any support to Defendants' outlandish claims that Plaintiffs or their predecessors have intentionally concealed "hundreds of thousands of acres" of Louisiana property from Defendants [Defendants' Response, pages 34-39.]

The affidavits further state that "preliminary research" in several other parishes have revealed "substantial lands" acquired by H. J. Lutcher Stark or Lutcher Moore Lumber Company and not divested by them at the date of Mr. Stark's death. These allegations are also indefinite and vague and are probative of nothing.

2. Big Lake Property. Plaintiffs will show that the property in Cameron Parish referred to as "the Big Lake Property" (items 1 and 2 on Exhibit A of the Cameron Parish Affidavit) was not an asset of H. J. Lutcher Stark at the time of his death. The title records in Cameron Parish indisputably show that H. J. Lutcher Stark acquired this property in 1944 and 1946, well after the death of Nita Hill Stark, that he sold it to Lutcher Moore Lumber Company in 1950, and that Lutcher Moore Lumber Company owned the property until 1967, two years after the death of H. J. Lutcher Stark, when it sold the property to the H. J. Lutcher Stark Estate. See Affidavit of Darrell Alston, attached as Exhibit B to Plaintiffs' Reply; see also Affidavit of Roy Wingate, attached as Exhibit C to Plaintiffs' Reply, together with supporting documents.

3. Properties Sold to Largo Company. Plaintiffs will further show that several,of the properties described on Exhibit A to the Cameron Parish Affidavit were sold by Lutcher Moore Lumber Company to Largo Company in 1956. Other properties were owned by H. J. Lutcher Stark at one time but were sold prior to his death. This is proven through documents in the public records in Cameron Parish. Thus, the affidavit is false inasmuch as it states that H. J. Lutcher Stark or Lutcher Moore Lumber Company owned these properties in 1965. Since the affiant is a title company that had access to the title records and has represented to the Court that it had done a title examination, there is no conceivable reason for this misrepresentation of fact except that it was an intentional fraud made upon this Court. Moreover, the very documents that disprove these allegations were furnished to Defendants over ten years ago in the previous litigation between the parties.[15] It is thus clear that Defendants knew the falsity of these allegations when they made them.

4. Non Existent Properties. Many of the properties listed on Exhibit A to the Cameron Parish Affidavit do not exist. Again, there is no conceivable explanation how a title company could have made such a blatant misrepresentation of the public records in Cameron Parish, unless there was an actual intent to deceive this Court.

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[15] See for instance, Special Report - Louisiana Lands Owned December 31, 1956, Sale of Louisiana Property Rights and Interests, Etc. to the Largo Company by H. J. Lutcher Stark and Lutcher Moore Lumber Company 6/29/56, Prepared by Winkleman, Davies & Johnson, Pages 23-24. [Bates Nos. C005794-C005795, attached as Exhibit 27 of Affidavit of Roy Wingate, Exhibit C, to Plaintiffs' Reply.]

III.

THE AFFIDAVIT OF SAM O. SMITH

While providing many interesting but irrelevant facts about the history of the Stark Family in Orange County, the Affidavit of Sam O. Smith [Exhibit 9 to Defendants' Response] has no probative value to any other issues in this case, and thus is immaterial.

A. Sam O. Smith Not Qualified as an Expert. Even though the Smith Affidavit attempts to establish Mr. Smith as an expert, his testimony is not admissible under the four tests for admissibility of expert testimony: qualifications, knowledge, helpfulness, and foundation data.[16] Specifically, because the affidavit contains nothing more than unsubstantiated legal and factual conclusions, Mr. Smith's opinions cannot be said to be based on sufficient "underlying facts" or data. Therefore, Mr. Smith's expert opinions are not admissible because they are based on unreliable foundation evidence.[17] These "opinions are little more that subjective belief or unsupported speculation," and are, thus, not admissible.[18] Additionally, the Smith Affidavit only states legal conclusions, which if deemed admissible is still insufficient as summary judgment evidence.[19]

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[16] See cases cited in Footnote 9 above.

[17] *Robinson*, 923 S.W.2d at 558-59.

[18] *Gammill*, 972 S.W.2d at 728.

[19] *Anderson*, 808 S.W.2d at 55.

B. Hearsay Statement Included Within Affidavit. In Paragraph 18 of his Affidavit, Mr. Smith states that "I am advised by legal counsel that . . ." This statement is a conclusory statement of law and hearsay, with no value as evidence.[20]

C. Unsubstantiated Legal and Factual Conclusions. At best, Mr. Smith's Affidavit suggests that there may have been community property issues in the Estate of Nita Hill Stark. This is news to no one. The community/separate property nature of assets owned by H. J. Lutcher Stark at the death of Nita Hill Stark in 1939 was the central issue in the previous litigation between these parties over ten years ago. Smith's Affidavit identifies three areas: timber sales, retained earnings in separate property businesses, and stock dividends paid with retained earnings. The fact that there may have been legal issues involving community property is not the same as stating that anything was concealed from the Defendants, which Mr. Smith never says or suggests but which allegation Defendants contend Smith's Affidavit supports.

In Paragraph 16, Mr. Smith provides estimates of timber sales between 1919 and 1939. The figures are mere speculation, and Mr. Smith does not even pretend to make reference to actual historical records.

The stock dividend referred to in Paragraph 20 is also based wholly on speculation and states a legal conclusion as to a community reimbursement claim.

While admitting that he has not had sufficient time to investigate Lutcher Moore Lumber Company, Mr. Smith does not restrain himself from making the same wild speculations and conclusory statements about equitable reimbursement rights. Again, as it is clear that Mr.

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[20] TEX. R. EVID. 802.

Smith has not even reviewed the relevant documents from which he could draw certain conclusions, it is clear that his statements have no evidentiary merit.

Even if assumed to be true, Mr. Smith's speculations have nothing to do with Defendants' allegations of concealment. All that Mr. Smith says is that stock owned by H. J. Lutcher Stark as separate property may have been community property, or that the community estate may have had a claim for reimbursement in 1939. This exact issue was the basis of the previous litigation between the parties and is fully covered by the Release executed by the Defendants in 1991. It has no bearing on Defendants' current theory that assets were concealed, and Plaintiffs can show that all of the pertinent records relating to the Stark Family businesses were produced to Defendants over ten years ago in the previous litigation. See Roy Wingate Affidavit, Exhibit G to Plaintiffs' Reply. Nothing in the Smith Affidavit would even suggest anything to the contrary.

Therefore, the Affidavit of Sam O. Smith is nothing more than unsubstantiated legal and factual conclusions and should not be considered credible summary judgment evidence.[21]

D. Failure to Attach Exhibits and Referenced Documents. The Smith Affidavit at Paragraph 23 refers to an attached "Chain of Title" which is not attached to the Exhibit. Thus, the Exhibit fails under Texas Rules of Civil Procedure Rule 166a(f) for incompleteness. Additionally, in other paragraphs of this affidavit, Mr. Smith relies on information contained in various sources. Despite this fact, there are no exhibits to the Smith Affidavit to substantiate this

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[21] *Purcell*, 940 S.W.2d at 602, *Ryland Group*, 924 S.W.2d at 122, *Anderson*, 808 S.W.2d at 55, *Brownlee*, 665 S.W.2d at 112.

information. Therefore, this affidavit fails to amount to credible summary judgment evidence because appropriate documents, that affiant reviewed in order to reach his opinion, were not attached.[22]

IV.

THE AFFIDAVITS OF RANDALL HILL STARK, IDA MARIE STARK, WILLIAM H. STARK, III AND LINDA MARIE STARK BARRAS

The Affidavits of Randall Hill Stark (Exhibit 5), Ida Marie Stark (Exhibit 10), William H. Stark, III (Exhibit 11), and Linda Marie Stark Barra (Exhibit 12) all share the same common traits: they contain false information which Plaintiffs can prove that the affiants either knew or should have known was false when they made their sworn statements under oath. See Plaintiffs' Reply, pages 7-20. Therefore, these affidavits contain nothing more than unsubstantiated legal and factual conclusions that should not be admitted as summary judgment evidence.[23] Because such of the obvious falsity of such affidavits, and the state of Defendants' knowledge of facts to the contrary, it is evident that such affidavits have been presented in bad faith or made solely for the purpose of delay.[24]

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[22] *Guthrie v. Suiter*, 934 S.W.2d 820, 824-25 (Tex. App.—Houston [1st Dist.] 1996, no writ).

[23] *Purcell*, 940 S.W.2d at 602, *Ryland Group*, 924 S.W.2d at 122, *Anderson*, 808 S.W.2d at 55, *Brownlee*, 665 S.W.2d at 112.

[24] TEX. R. CIV. P. 166a(h).

V.

THE AFFIDAVIT AND SWORN STATEMENT OF CHARLES M. KINNEY

Attached as Exhibit 6 to Defendants' Response is the affidavit and sworn statement of Charles M. Kinney. This affidavit and sworn statement are not competent summary judgment evidence for the following reasons:

A. Not Based on Personal Knowledge. The affidavit does not contain the required language that it is based on the personal knowledge of the affiant.[25] For that reason alone, the affidavit fails as competent summary judgment evidence.[26]

Additionally, nowhere in his sworn statement does Mr. Kinney claim his testimony is based on personal knowledge. In fact, within his sworn statement he states that he does not have actual knowledge of the facts he is testifying to, that they were "passed on" to him and that he knew "secondhand" that the alleged concealment was going on. See Kinney's Sworn Statement, Page 7, Line 22 and Page 8, Line 7. His best attempt for satisfying the personal knowledge requirement is his statement that the information contained in his affidavit and in the sworn statement is to the best of his knowledge. See Kinney's Sworn Statement, Page 9, Lines 6 and 19. However, testimony to the best of the affiant's knowledge does not meet the strict requirements of summary judgment evidence pursuant to Texas Rules of Civil Procedure Rule 166a(f).[27]

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[25] *Humphreys*, 888 S.W.2d at 470.

[26] TEX. R. CIV. P. 166a(f).

[27] *Ryland Group*, 924 S.W.2d at 122.

B. Witness not Competent. Rule 166a(f) states that the affidavit must "affirmatively show" the witness is competent.[28] Nothing within the Kinney Affidavit indicates that he is competent to testify regarding the matters included within the affidavit.[29] In fact, the affidavit does not even state that the affiant is over the age of 18, or at the least that he is competent to make the affidavit. In addition, at no point in Mr. Kinney's sworn statement does he establish that he is competent to testify to the matters with the sworn statement.

C. Testimony Riddled with Hearsay. Due to the fact that Mr. Kinney admits in his sworn statement that he does not have personal knowledge of the information contained therein, and that he found out the information "secondhand," the affidavit and sworn statement are subject to objections based on hearsay. Therefore, the affidavit and sworn statement are not admissible evidence.[30]

D. Unsubstantiated Legal and Factual Conclusions. The affidavit and sworn statement of Mr. Kinney includes nothing more than unsubstantiated legal and factual conclusions. There is no factual basis for the conclusions that Mr. Kinney assert. Therefore, because the affidavit and sworn statement include these unsubstantiated legal and factual conclusions, they are not credible summary judgment evidence. [31]

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[28] TEX. R. CIV. PROC. 166a(f).

[29] *Laidlaw Waste Sys.*, 904 S.W.2d at 661.

[30] TEX. R. EVID. 802.

[31] *Purcell*, 940 S.W.2d at 602, *Ryland Group*, 924 S.W.2d at 122, *Anderson*, 808 S.W.2d at 55, *Brownlee*, 665 S.W.2d at 112.

E. Evidence Less than Scintilla of Evidence. When evidence is so weak as to do no more than create a mere surmise or suspicion of a fact, it is considered to be the legal equivalent of no evidence.[32] Because of the speculative nature of Mr. Kinney's testimony, it creates nothing more than a mere surmise or suspicion, and thus should not even be considered summary judgment evidence.

VI.

THE SWORN STATEMENT OF CLAYTON NEWBERRY

Attached as Exhibit 7 to Defendants' Response is the sworn statement of Clayton Newberry. This sworn statement is not competent summary judgment evidence for the following reasons:

A. Sworn Statement Not Sworn. The "sworn" statement of Mr. Newberry is not signed. Therefore, regardless of its label assigned by the Defendants, the statement of Mr. Newberry cannot be considered a sworn statement.

B. Not Based on Personal Knowledge. On several occasions Mr. Newberry states that the information given within the statement is based on the best of his knowledge. See Newberry's Sworn Statement, Page 5, Line 13; Page 8, Line 3. Additionally, he stated that he information he was testifying to was based on "his understanding" and what he believed. See Newberry's Sworn Statement, Page 5, Line 21; Page 6, Line 13; Page 10, Line 23. As stated above, testimony to the best of an affiant's knowledge, to affiant's understanding, or what affiant

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[32] *Moore v. K Mart Corp.*, 981 S.W.2d 266, 269 (Tex. App.—San Antonio 1998, pet. denied).

believes, does not meet the strict requirements of summary judgment evidence pursuant to Texas Rules of Civil Procedure Rule 166a(f).[33]

C. Witness not Competent. Rule 166a(f) states that the affidavit must "affirmatively show" the witness is competent.[34] At no point in Mr. Newberry's statement does he assert that he is over the age of majority or even that he is competent to testify to the matters included therein.[35]

D. Testimony Riddled with Hearsay. Mr. Newberry's testimony is based on inadmissible hearsay. In several instances throughout the statement, Mr. Newberry refers to conversations he had with Anna Jean Caffey. See Newberry's Sworn Statement, Page 7, Lines 13-15; Page 8; Lines 9-13; Page 10, Lines 5-10. The information that Mr. Newberry testifies to, as being evidence of what was contained in the "suitcase/briefcase," is what Ms. Caffey allegedly said during these alleged conversations. Therefore, because what Ms. Caffey supposedly said to Mr. Newberry is hearsay, the statement of Mr. Newberry is not admissible evidence.[36]

E. Charles Newberry Not Qualified as an Expert. On one occasion, Mr. Newberry attempts to testify regarding the valuation of assets within the Foundation and how that value would have affected the settlement obtained in the prior litigation. See Newberry's Sworn Statement, Page 11, Lines 8-14. Mr. Newberry's testimony regarding this issue is not admissible expert testimony under Texas Rules of Evidence 702 or the Texas Rules of Civil Procedure Rule

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[33] *Ryland Group*, 924 S.W.2d at 122.

[34] TEX. R. CIV. PROC. 166a(f).

[35] *Laidlaw Waste Sys.*, 904 S.W.2d at 661.

[36] TEX. R. EVID. 802.

166a(c) and (f). No where in Mr. Newberry's statement are his qualifications set forth. It is the burden of the offering party to establish the qualifications of their expert affiant.[37] Defendants did no such thing. Therefore, Mr. Newberry is not qualified to testify regarding this matter.

F. Unsubstantiated Legal and Factual Conclusions. The statement of Mr. Newberry includes nothing more than unsubstantiated legal and factual conclusions. There is no factual basis for the conclusions that Mr. Newberry assert. Throughout the final pages of Mr. Newberry's statement, he is questioned whether his testimony is based on his personal knowledge. However, every question that is responded to calls only for an affirmative answer to a legal conclusion, such as that Plaintiffs' actions were an attempt to defraud the "heirs." See Newberry's Sworn Statement, Page 10, Lines 19-23. Therefore, the statement includes legal and factual conclusions that are not based on factual evidence, and thus it is not credible summary judgment evidence.[38]

G. Evidence Less than Scintilla of Evidence. When evidence is so weak as to do no more than create a mere surmise or suspicion of a fact, it is considered to be the legal equivalent of no evidence.[39] Because of the speculative nature of Mr. Newberry's testimony, it creates nothing more than a mere surmise or suspicion, and thus should not even be considered summary judgment evidence.

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[37] *Longoria*, 938 S.W.2d at 31.

[38] *Purcell*, 940 S.W.2d at 602, *Ryland Group*, 924 S.W.2d at 122, *Anderson*, 808 S.W.2d at 55, *Brownlee*, 665 S.W.2d at 112.

[39] *Moore*, 981 S.W.2d at 269.

V.

CONCLUSION

For the reasons stated above, Plaintiffs request that the Court disregard as Summary Judgement evidence Exhibits 5 through 12 to Defendants' Response.

WHEREFORE, PREMISES CONSIDERED, Eunice R. Benckenstein, Walter G. Riedel III, and Roy Wingate, as Independent Co-Executors of the Estate of Nelda C. Stark, Deceased, Eunice R. Benckenstein, as Successor Independent Executor of the Estate of H. J. Lutcher Stark, Deceased, and The Nelda C. and H. J. Lutcher Stark Foundation, Plaintiffs, pray that the Court sustain these Objections to Defendants' Summary Judgement Evidence and exclude Exhibits 5 through 12 to Defendants' Response from evidence in its deliberations on Plaintiffs' Amended Motion for Summary Judgment.

Respectfully submitted,

MEHAFFY & WEBER
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CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing was forwarded to all counsel of record on this the 4th day of OCTOBER, 2001 by certified mail, return receipt requested according to Texas Rules of Civil Procedure.

Kurt M. Andreason

NO. D-000298C

EUNICE R. BENCKENSTEIN, WALTER G. RIEDEL III, AND ROY WINGATE, INDEPENDENT CO-EXECUTORS OF THE ESTATE OF NELDA C. STARK, DECEASED, AND WALTER G. RIEDEL III, GENERAL MANAGER OF THE NELDA C. AND H.J. LUTCHER STARK FOUNDATION	§	IN THE DISTRICT COURT
V.	§	OF ORANGE COUNTY, TEXAS
IDA MARIE STARK, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF W.H. STARK II, DECEASED, ET AL.	§	260th JUDICIAL DISTRICT

ORDER

ON THIS DAY, came to be heard and considered Plaintiffs' Objections to Defendants' Summary Judgment Evidence. The Court, having considered the Objections, is of the opinion that the Objections should be SUSTAINED. It is, therefore,

ORDERED that Exhibits 5 through 12, to Defendants' Motion for Stay, Continuance and/or Abatement and Response to Plaintiffs' Amended Motion for Summary, are not admissible summary judgment evidence.

SIGNED on this _____ day of _____, 2001.

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JUDGE PRESIDING

MW/299850