

CAUSE NO. DC-15-14459

Christi Underwood

PERVAIZ RAHMAN, and	§	IN THE DISTRICT COURT
RAUFIA RAHMAN,	§	
	§	
PLAINTIFFS,	§	
	§	
V.	§	
CITIGROUP MORTGAGE LOAN	§	DALLAS COUNTY, TEXAS
TRUST, INC. ASSET-BACKED	§	
PASS-THROUGH	§	
CERTIFICATES, SERIES 2007-	§	
AMC3, and U.S. BANK NATIONAL	§	
ASSOCIATION, TRUSTEE,	§	
	§	
DEFENDANTS.	§	_____ JUDICIAL DISTRICT

ORIGINAL PETITION

Plaintiffs, PERVAIZ RAHMAN and RAUFIA RAHMAN, Respondents, file this Original Petition, and in support thereof, state the following.

Discovery Control Plan

1. Plaintiffs intend that discovery in this case be conducted under Level 3, as described in Texas Rule of Civil Procedure 190.4.

Notice of Related Case

2. This case involves the same parties, property, and issues as those in the matter styled *In Re: Order of Foreclosure Concerning 6422 Turner Way, Dallas, Texas 75230*, which was assigned the *Cause No. 15-04575* in the 68th Judicial District Court, Dallas County, Texas. This is referred to as the “Order of Foreclosure Suit” in the remainder of this Original Petition. Plaintiffs Pervaiz

Rahman and Raufia Rahman were the Respondents in the Order of Foreclosure Suit, and Defendant Citigroup Mortgage Loan Trust, Inc., acting through its Trustee, U.S. Bank National Association, was the Petitioner in the Order of Foreclosure Suit.

3. By filing this Original Petition, Plaintiffs intend to invoke the automatic stay of foreclosure sale provided under Texas Rule of Civil Procedure 736.11(a). The Subject Property is scheduled for foreclosure sale on Tuesday, December 1, 2015. Plaintiffs are filing this Original Petition prior to 5 PM on the Monday before the scheduled foreclosure sale, as required under Rule 736.11(a). Plaintiffs also will provide prompt notice to Defendant's counsel and to the foreclosure trustee or substitute trustee, as required under Rule 736.11(b).

Parties

4. Plaintiff Pervaiz Rahman is an individual resident of the county and city of Dallas, Texas, who currently resides at 6422 Turner Way, Dallas, TX 75203. He may be served for all purposes by and through the undersigned counsel at the address and contact information set forth below.

5. Plaintiff Raufia Rahman is an individual resident of the county and city of Dallas, Texas, who currently resides at 6422 Turner Way, Dallas, TX 75203. She may be served for all purposes by and through the undersigned counsel at the address and contact information set forth below.

6. Defendant CITIGROUP MORTGAGE LOAN TRUST, INC.

ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2007-AMC3, may be served through the Secretary of State should service be necessary. Plaintiffs intend to request that Defendant accept service by and through its attorney in the Order of Foreclosure Suit, Jennifer A. Pfeiffer, 15000 Surveyor Blvd., Suite 100, Addison, TX 75001.

7. Defendant, U.S. BANK NATIONAL ASSOCIATION, TRUSTEE, also may be served through the Secretary of State, should service be necessary. Plaintiffs intend to request that Defendant accept service by and through its attorney in the Order of Foreclosure Suit, Jennifer A. Pfeiffer, 15000 Surveyor Blvd., Suite 100, Addison, TX 75001.

Factual Background

8. The real property at issue in this case (the “Property”) bears the street address 6422 Turner Way, Dallas, TX 75230. Plaintiffs, Pervaiz and Raufia Rahman purchased the Property on or about December 8, 2006. A portion of the purchase price was financed by a Texas Home Equity Adjustable Rate Note (the “Note”) in the original principal amount of \$1,080,000.

9. The Note is secured by a Texas Home Equity Security Instrument (First Lien) (the “Security Instrument”). While the Security Instrument states that it is not intended to finance Borrowers’ acquisition of the Property, Defendant knew at the time that this was the purpose of the execution of the Note and Security Instrument.

10. In mid-2013, Plaintiffs' suffered from some illnesses that substantially affected their income. As a result, Plaintiffs fell behind on their payments on the Note. In approximately September, 2013, Defendant sent notice of default to Plaintiff and stated its intent to accelerate the Note. Defendant sent the notice of acceleration of the Note in approximately October, 2013. In that notice, Defendant expressed – with insufficient clarity to provide adequate notice under the Security Instrument – its intention to proceed with foreclosure under the Security Instrument.

11. During the same timeframe, Plaintiff's provided massive amounts of financial information to Defendant in connection with Plaintiffs' efforts to refinance the Note through the government programs that are available for such purposes. Defendants never participated in good faith in that process, and never properly processed the massive amounts of financial information that were provided by Plaintiffs. Based on representations from Defendant CitiMortgage's employees or agents, Plaintiffs believed that Defendant was processing the applications in good faith.

12. In approximately September, 2014, Defendant sent notice that Defendant's previous notice of acceleration of the Note was "rescinded." Relying upon this rescission, Plaintiff subsequently continued with the refinance process by providing yet additional financial information.

13. Also in reliance upon Defendant's rescission of the notice of

acceleration, Plaintiff attempted to resume payment under the Note. In breach of the terms of the Note and the Security Instrument, even after having rescinded the notice of acceleration, Defendants refused to accept duly payments.

Causes of Action

Cause of Action I: Breach of Contract

14. Plaintiffs reallege all allegations in the remaining paragraphs of this Original Petition as though they are set forth in full here under.

15. Plaintiffs and Defendants are parties to a contract. The terms of such contractor set forth in the Note and Security Instrument. Defendants breached this contract by, among other things, (1) improperly accelerating the Note, (2) improperly rejecting payments under the Note after rescinding its improper acceleration of the Note, and (3) failing to process Plaintiffs' refinance application despite making assurances to Plaintiff's that it would do so.

16. Plaintiffs suffered economic damages as a result of these breaches. In addition other contract damages, Plaintiffs have suffered a diminution in the value of the Property as a result of the Property being flagged as "under foreclosure." Plaintiffs request that they be awarded their damages for Defendants' breaches of the contract between the parties.

17. Plaintiffs were required to engage the services of the undersigned counsel as a result of Defendants' breaches of the contract. Under Chapter 38 of the

Texas Civil Practice & Remedies Code, Plaintiffs request that they be awarded their reasonable and necessary attorney fees related to the prosecution of this claim.

Cause of Action II: Fraud

18. Plaintiffs reallege all allegations in the remaining paragraphs of this Original Petition as though they are set forth in full here under.

19. Defendants committed fraud against Plaintiffs. Specifically, Defendants – through numerous employees and agents – misrepresented to Plaintiffs that Defendants were processing Plaintiffs’ refinance application. Defendants knew that they were not actually processing the application with any sort of good faith. In other words, there was simply no chance that the house was ever going to be refinanced. Defendants intended for Plaintiffs to rely upon Defendants’ misrepresentations relating to the application for refinance in order to induce Plaintiffs into getting into a deeper and deeper hole with respect to the Note and Security Instrument.

20. Defendants wanted Plaintiff to get so far behind on their Note payments because they wanted to misappropriate the equity that had accrued in the Property since the inception of the Note and Security Instrument. Defendants knew that during this period, prices of high-end homes like the Property in the Dallas area were skyrocketing. Thus, by fraudulently inducing Plaintiffs to dig in ever deeper hole in their payments under the Note, Defendants attempted to take equity that rightfully

belongs to Plaintiffs. These fraudulent activities were buttressed by Defendants' refusal to accept duly tendered payments on the Note.

21. Plaintiffs suffered damages as a result of their reliance upon Defendants' fraudulent misrepresentations. Plaintiffs request that the Court award them damages for Defendants' fraud.

22. Plaintiffs also request that they be awarded exemplary damages against Defendants. Defendants committed their fraud with a reckless disregard for Plaintiffs' rights under Texas law. Defendants also did so in a context where they owed fiduciary duties to Plaintiffs with respect to loan payments that were made to (or tendered to and rejected by) Defendants. Thus, Defendants' actions constitute a misappropriation of fiduciary property, and therefore, the exemplary damages awarded in connection with this cause of action should not be subject to the regular Provided in Chapter 41 of the Civil Practice & Remedies Code.

Jury Demand

23. Plaintiffs demand jury trial and tender the appropriate fee.

Request for Disclosure

24. Plaintiffs request that Defendants provide Plaintiffs with all information required to be disclosed under Texas Rule of Civil Procedure 194.2 (a) through (l).

Request for Relief

On the basis of the foregoing, Plaintiffs Pervaiz Rahman and Raufia Rahman request that, after notice and proper jury trial, the Court award Plaintiffs all relief to which they show themselves entitled, as more specifically described in connection with each of the causes of action set forth above.

Plaintiffs further request all relief necessary to enforce the stay triggered by this Original Petition, and such other and further relief that is found appropriate.

Respectfully submitted,

LANEY & BOLLINGER, LLP

By: /s/ Kelly D. Hollingsworth
Kelly D. Hollingsworth
Texas Bar No. 00793966

600 Ash Street
Plainview, Texas 79072
(806) 293-2618
(806) 293-8802 – telecopier
Kelly@LaneyBollinger.com

CERTIFICATE OF SERVICE

Under Texas Rule of Civil Procedure 21a, I hereby certify that a true and correct copy of the above and foregoing instrument is being served upon the following counsel of record:

Jennifer A. Pfeiffer
15000 Surveyor Blvd., Suite 100
Addison, Texas 75001

Via:

_____ CERTIFIED MAIL/RETURN RECEIPT REQUESTED
_____ TELEPHONIC DOCUMENT TRANSFER (FAX)
_____ HAND-DELIVERY (IN PERSON)
_____ EMAIL
 X E-FILING SERVICE

Dated: November 30, 2015.

/s/ Kelly D. Hollingsworth
Kelly D. Hollingsworth