

CAUSE NO. _____

ELATIOR, LLC,

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IN THE DISTRICT COURT

Plaintiff,

v.

_____ **JUDICIAL DISTRICT**

CHANCEY GREENE, JR., CANDICE GREENE, CASSAUNDR A GREENE WRIGHT, CARY GREENE, MONICA POWELL, ERIC GREENE and THE UNKNOWN HEIRS AT LAW OF GRACIE E. GREENE AND CHANCEY GREENE, SR., DECEASED,

Defendants.

**IN RE: 10321 BAINBRIDGE,
HOUSTON, TEXAS 77016**

OF HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ELATIOR, LLC ("Elator"), its successors and assigns, and files this original petition against Chancey Greene, Jr., Candice Green, Cassandra Greene Wright, Cary Greene, Monica Powell, Eric Greene, and the unknown heirs at law of Gracie E. Greene and Chancey Greene, Sr., Deceased and as grounds for this lawsuit will show the court the following:

DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery under Level 3 of TEX. R. CIV. P. 190.

PROPERTY

2. This proceeding concerns a home equity loan agreement, as the term "loan agreement" is generally defined under TEX. BUS. & COM. CODE § 26.02, created according to TEX.

CONST. art. XVI, § 50(a)(6) secured by real property and improvements commonly known as 10321 Bainbridge, Houston, TX 77016 (the "Property"), and legally described as:

LOT ONE HUNDRED EIGHTY-TWO (182), IN BLOCK EIGHT (8), OF FONTAINE PLACE, SECTION TWO (2), AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 36, PAGE 18, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

PARTIES

3. Plaintiff ELATOR, LLC, acquires loan agreements secured by real property in the State of Texas and, when necessary, enforces such security interests.

4. With respect to the Property and loan agreement, Elator is the mortgagee¹. Elator is the beneficiary of the security instrument and entitled to enforce the debt according to TEX. BUS. & COMM. CODE § 3.301 pursuant to assignment. *Id.*

5. Gracie E. Greene ("Decedent") died on or about December 17, 2015. Chancey Greene, Sr. ("Decedent") died on or about March 1, 2019. It appears no probate proceeding has been opened for either Decedent in the county where the Property is located. Therefore, there is no executor or administrator to be made a party in this proceeding as the personal representative of the Decedents' probate estates. Consequently, Plaintiff files this suit against Decedents' heirs-at-law. According to TEX. ESTATES CODE § 101.001, the heirs-at-law of Decedent, ("Heir"), whether known or unknown, acquired Decedents' undivided interest in the Property securing the loan agreement immediately upon Decedents' death. Each Heir is made a party this proceeding under TEX. ESTATES CODE § 101.001, TEX. CIV. PRAC. & REM. CODE §§ 17.003 or 17.005, and TEX. R. CIV. P. 112 or 113.

¹ The terms "mortgage", "mortgagee", and "mortgagor" used as defined under TEX. PROP. CODE § 51.0001.

6. Defendant Chancey Greene, Jr. is an Heir of Decedents and may be served with process at 3630 Borroughsville Road, Victoria, Texas 77905. No personal liability is sought against this defendant.

7. Defendant Candice Greene is an Heir of Decedents and may be served with process at 10321 Bainbridge Street, Houston, Texas 77016. No personal liability is sought against this defendant.

8. Defendant Cassaundra Greene White is an Heir of Decedents and may be served with process at 12919 Porter Meadow Lane, Houston, Texas 77014. No personal liability is sought against this defendant.

9. Defendant Cary Greene is an Heir of Decedents and may be served with process at 8000 W. Tidwell Road, Apt. 512, Houston, Texas 77040. No personal liability is sought against this defendant.

10. Defendant Monica Powell is an Heir of Decedents and may be served with process at 5100 FM 1960 Road W. Apt. 2609, Houston, Texas 77069. No personal liability is sought against this defendant.

11. Defendant Eric Greene is an Heir of Decedents and may be served with process at 703 Kiley Drive, Houston, Texas 77073. No personal liability is sought against this defendant.

12. If Decedents had other heirs-at-law who have an interest in the Property, but whose identity and whereabouts are unknown, Plaintiff will seek service of process by citation by publication and appointment of an attorney ad litem to represent the defendants' interests according to TEX. CIV. PRAC. & REM. CODE § 17.004.

JURISDICTION

13. This Court has subject matter jurisdiction over the controversy under TEX. CONST. art. V § 8 and art. XVI, § 50(a)(6) because Plaintiff seeks title, possession or foreclosure of the Property that secures the loan agreement. Plaintiff seeks monetary relief of \$100,000.00 or less and non-monetary relief; as such damages are within the jurisdictional limits of the court. Further, Plaintiff demands judgment for all the other relief to which the party deems itself entitled.

VENUE

14. Venue is proper in this county because the Property is located in Harris County.

FACTS

15. Decedent Gracie E. Greene executed a note dated March 26, 2008 in the original principal sum of \$31,000.23 (the "Note") to obtain a home equity loan created under article XVI, § 50(a)(6) of the Texas Constitution. The Note is secured by a security instrument, executed by Decedents Gracie E. Greene and Chancey J. Greene encumbering the Property. (*See Exhibits "A" and "B"*). Plaintiff is the beneficiary of the security instrument. (*See Exhibit "C"*).

16. Gracie E. Greene is the person obligated to pay the loan agreement. Chancey J. Greene is a mortgagor of the loan agreement who is not a maker or assumer of the underlying debt. The debt was created in compliance with TEX. CONST. art. XVI, § 50(a)(6) and secured by the Property.

17. The documents attached to this petition are incorporated by reference, made a part of this proceeding for all purposes and are true and correct copies of pertinent original loan agreement documents and related documents pertaining to the Property. These documents include:

- a. Texas Home Equity Note marked as **Exhibit A**;
- b. Texas Home Equity Security Instrument marked as **Exhibit B**;

- c. Assignments of Equity Security Instrument marked as **Exhibit C**; and
- d. Notice of Default marked as **Exhibit D**.

18. According to Plaintiff's records, regular monthly payments have not been made in accordance with the terms of the loan agreement and the loan agreement was in default at the time of the loan maturation date. The loan matured according to its terms on March 26, 2019 and there remain sums due and owing.

19. Prior to the filing of this Petition, the requisite notice or notices to cure the default have been mailed to each person as required under applicable law and the loan agreement and the opportunity to cure has expired. (*See Exhibit D*). Plaintiff ACCELERATES the maturity of the debt evidenced by the loan agreement for the failure to cure. Therefore, there has been a material breach of the loan agreement.

20. As of February 3, 2022, the loan agreement payoff, as defined in TEX. PROP. CODE § 12.017, was at least \$30,956.33. However, this sum increases daily under the terms of the loan agreement to include earned interest, collection costs, attorney fees, taxes, insurance, and other legally authorized expenses.

CONDITIONS PRECEDENT

21. All conditions precedent have been performed or occurred, as required by TEX. R. CIV. P. 54, applicable law, and the loan agreement, for Plaintiff to enforce its security interest against the Property.

CAUSES OF ACTION

A. DECLARATORY JUDGMENT FOR NON-JUDICIAL FORECLOSURE

22. Declaratory Judgment is appropriate when a real controversy exists between the parties, and the entire controversy may be determined by judicial declaration. The trial court may

declare the rights of the parties as to those matters and has limited discretion to refuse a declaratory judgment, and may do so only where judgment would not remove the uncertainty giving rise to the proceedings. *Spawglass Construction Corporation v. City of Houston*, 974 S.W.2d 876 (Tex. Civ. App – Houston 1998, no writ).

23. Plaintiff seeks a Declaratory Judgment from this Court authorizing Plaintiff to non-judicially foreclose its lien created under Tex. Const. art. XVI, § 50(a)(6) in compliance with the loan agreement and Tex. Prop. Code § 51.002. Plaintiff seeks judgment divesting the Mortgagors, Mortgagors' putative estates, and Mortgagors' Heirs of all right, title, and interest in the Property made the subject to of this proceeding upon foreclosure and conveyance of the Property by a trustee's deed in accordance with Tex. Const. art. XVI, § 50(a)(6)(D).

24. The undisputed facts in this case conclusively establish the following:

- a. the loan agreement was created under with TEX. CONST. art. XVI, § 50(a)(6);
- b. Plaintiff, the beneficiary of the security instrument, has the requisite authority to conduct a non-judicial foreclosure; and
- c. the loan agreement has matured and sums remain due and owing.

B. ENFORCEMENT OF STATUTORY PROBATE LIEN

25. Pursuant to the Uniform Declaratory Judgments Act, TEX. CIV. PRAC. & REM. CODE § 37.001, *et seq.*, Plaintiff seeks a declaration that it has an *in rem* lien against the Property under the terms of the loan agreement and statutory authority.

26. Plaintiff's statutory lien pursuant to the Texas Estates Code gives it an enforceable and superior *in rem* lien against the Property. Because of a material breach of the loan agreement, plaintiff seeks to enforce its statutory lien against the Property according to the terms of the loan agreement and TEX. PROP. CODE § 51.002 or TEX. R. CIV. P. 309.

27. Plaintiff seeks no personal liability against the Heirs. Plaintiff seeks only the *in rem* interest in the Property acquired by the Heirs upon the death of the Decedents.

C. NON-JUDICIAL FORECLOSURE

28. Because of a material breach of the loan agreement, Plaintiff seeks non-judicial foreclosure pursuant to TEX. CONST. art. XVI, § 50(a)(6)(D), TEX. PROP. CODE § 51.002, and the terms of the loan agreement with respect to all defendants who are obligors of the loan agreement or acquire the Property subject to Decedents' debts. The loan has matured and sums remain due and owing, no person has stepped up and paid off the lien. There has been a breach of the loan agreement and Plaintiff is entitled to foreclosure. No personal liability is sought against the Defendants.

PRAYER

Plaintiff respectfully requests that upon final hearing, Defendants be cited to appear and answers and, the Court enter judgment granting:

- a. A declaration that Plaintiff has a lien against the Property in an amount equal to the pay-off of the loan agreement under TEX. CONST. art. XVI, § 50(a)(6);
- b. An order authorizing Plaintiff to foreclose its lien created under TEX. CONST. art. XVI, § 50(a)(6) in compliance with the loan agreement and TEX. PROP. CODE § 51.002;
- c. Mortgagee is authorized to enforce the home equity security agreement made the subject of this proceeding against the secured Property pursuant to: TEX. CONST. art. XVI, § 50(a)(6)(D); TEX. BUS. & COMM. CODE § 3.301 or TEX. PROP. CODE §§ 51.0001, 51.0025; TEX. PROP. CODE § 51.002 *et seq.*; and TEX. ESTATES CODE § 101.001;
- d. The Mortgagors, Mortgagors' putative estates, and Mortgagors' Heirs will have no personal liability for the home equity debt and shall be divested of all right, title, and interest in the Property securing the loan agreement pursuant to TEX. ESTATES CODE § 101.001 upon foreclosure in accordance with TEX. CONST. art. XVI, § 50(a)(6) and TEX. PROP. CODE § 51.002 *et seq.*; and

- e. All other relief, in law and in equity, to which Plaintiff may be entitled.

Respectfully submitted,

By: /s/ Shelley L. Hopkins
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ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Shelley Hopkins on behalf of Shelley Hopkins
Bar No. 24036497
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Status as of 1/6/2022 10:05 AM CST

Case Contacts

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