

NO. 2019-37306

DARRYL BARBER	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	190 JUDICIAL DISTRICT
	§	
DARA INVESTMENTS, INC.	§	
Defendant.	§	OF HARRIS COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION AND CONTINUED JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Mr. Darryl Barber, hereinafter called Plaintiff, complaining of and about Dara Investments, Inc., hereinafter called Defendant, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Mr. Darryl Barber continues intention that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Mr. Barber, is an Individual whose address is 7717 Independence Street, Houston, TX 77051.

3. Mr. Barber, has been issued a Texas driver's license, and that number is: 06457771.

4. Defendant Dara Investments, Inc., a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the

registered agent of the corporation, Mr. Nanik S. Bhagia, at 3126 Latrobe Lane, Katy, Texas, 77450, its registered office. Service of said Defendant as described above can be affected by certified mail, return receipt requested.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this court.
6. Mr. Barber seeks monetary relief over \$100,000, but not more than \$200,000.
7. This court has jurisdiction over the parties because Defendant, Dara Investments, Inc., is a Texas resident.
8. Venue in Harris County is permissive in this cause under § 15.002(a)(1) of the Tex. Civ. Prac. & Rem. Code Ann. because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.
9. This suit is being brought under § 16.035 of the Tex. Civ. Prac. & Rem. Code Ann.

FACTUAL ALLEGATIONS

10. On or about October 23, 2007, Darryl Barber entered into a Warranty Deed with Dara Investments, Inc., for the sale of certain property, as described as Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, for the purchase price of these two lots of \$38,500.00. A copy of the contract/deed is attached as Exhibit A, and incorporated by reference to this amended pleading.

11. On or about November 1, 2007, the parties entered into a Deed of Trust, for the same properties as listed and specified above, namely Lot 2, Block 38, Sunnyside Place,

Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, for the purchase price of these two lots of \$38,500.00.

12. At all relevant times to this matter, Mr. Barber made over, or approximately, 120 payments to Defendant, Dara Investments, Inc., totaling approximately \$56,000.00. However, Defendant foreclosed on the properties without conveying.

13. Upon information and belief, Defendant, Dara Investments, Inc., filed a Notice of Trustee's sale with the Harris County, Texas, Clerk on or about March 16, 2016, and sent notice to Mr. Barber. However, Mr. Barber maintains that said notice of the Trustee's sale was not properly effectuated on him in accordance with applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code, and language contained within the Deed of Trust and Warranty Deed.

14. Mr. Barber further maintains that said Notice of Trustee Sale did not comply with the requisites of applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code.

15. Upon information and belief, the foreclosure sale of Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, the properties which are the subject of this matter, took place on April 5, 2016, in Harris County, Texas. However, Mr. Barber maintains that the foreclosure sale did not comply with the requisites of applicable law, pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and §

51.0076 of the Texas Property Code.

16. Mr. Barber further maintains that since the Notice of Trustee's Sale was not properly effectuated on him, and, thus, failed to strictly comply with applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code, the foreclosure sale of Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, the properties which are the subject of this matter, which took place on April 5, 2016, in Harris County, Texas, should be set aside.

17. Mr. Barber further maintains that since the Notice of Trustee's Sale did not comply with the requisites of applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code, the foreclosure sale of Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, the properties which are the subject of this matter, which took place on April 5, 2016, in Harris County, Texas, should be set aside.

18. Mr. Barber further maintains that since the April 5, 2016, foreclosure sale, which took place in Harris County, Texas, did not comply with the requisites of applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075, and § 51.0076 of the Texas Property Code, the foreclosure sale of Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence

Street, Houston, Harris County, Texas, the properties which are the subject of this matter, it should be set aside.

19. Upon information and belief, Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, the properties which are the subject of this matter, are in the possession of the trustee, who is also the agent for Defendant, Dara Investments, Inc., in this matter, and/or Defendant, Dara Investments, Inc., and/or Mr. Nanik S. Bhagia, the registered agent of Defendant, Dara Investments, Inc., and have been in said possession since April 5, 2016, the date of the foreclosure sale.

Suit to Set Aside Foreclosure

(Mr. Barber incorporates by reference the allegations set forth above as if the same were fully set forth herein.)

20. Mr. Barber brings this cause of action pursuant to § 16.035 of the Tex. Civ. Prac. & Rem. Code Ann.

21. Strict compliance with the law and deed of trust is necessary to invoke the power of sale under a deed of trust.

22. Mr. Barber maintains that the legally required notice of the foreclosure sale in accordance and pursuant to strict compliance with applicable law, pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code, was not properly effectuated on him.

23. Mr. Barber further maintains that the Notice of Trustee's Sale failed to comply

with applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code.

24. Mr. Barber further maintains that the April 5, 2016, foreclosure sale, which took place in Harris County, Texas, did not comply with the requisites of applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code, on Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, the properties which are the subject of this matter.

25. Therefore, Mr. Barber seeks for this court to set aside the foreclosure sale of the properties, i.e., Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, that took place on April 5, 2016, in Harris County, Texas, and place him in the position that he would have been in, but for Defendant's actions and/or non-compliance with applicable laws.

SPECIFIC PERFORMANCE FOR

BREACH OF CONTRACT

(Mr. Barber incorporates by reference the allegations set forth above as if the same were fully set forth herein.)

26. All conditions precedent to the performance of Defendant, Dara Investments, Inc., per the Deed of Trust, as entered into by both parties on November 1, 2007, have been met by Mr. Barber.

27. Per the Deed of Trust, as entered into by both parties on November 1, 2007, the obligations of Mr. Barber have been met. Specifically, Mr. Barber has paid Defendant, Dara Investments, Inc., well over, or approximately, \$56,000.00, for the properties which are the subject of this matter. However, Defendant, Dara Investments, Inc., has failed to perform its contractual obligations. Specifically, Dara Investments, Inc., foreclosed on the properties, which are the subject matter of this cause, and failed to deliver clear title of the properties to Mr. Barber in contravention to the specific language in the Deed of Trust and related documents.

28. Damages are an inadequate remedy for the Defendant's, Dara Investments, Inc., breach of the contract because Mr. Barber has paid well over, or approximately, \$56,000.00 for the properties, which are the subject of this matter. Accordingly, Mr. Barber requests specific performance of the contract.

29. In the alternative, Defendant's, Dara Investments, Inc., breach of contract described hereinabove has injured Mr. Barber, causing him to lose his entire money and purchase price of well over, or approximately \$56,000.00.

PROMISSORY ESTOPPEL

(Mr. Barber incorporates by reference the factual allegations contained in the preceding paragraphs.)

30. In the alternative, Mr. Barber seeks the recovery of properties, i.e., Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, as conveyed to Defendant, Dara Investments, Inc., and/or Mr. Nanik S. Bhagia, the registered agent of Defendant, Dara Investments, Inc., as a result of the foreclosure sale of said properties

that took place on April 5, 2016, in Harris County, Texas, in detrimental reliance on the promise of Defendant, Dara Investments, Inc., as made to him.

DAMAGES

31. Mr. Barber has sustained damages in excess of this Court's jurisdictional minimum, as a result of the actions and/or omissions of Defendant, Dara Investments, Inc., described hereinabove, including, but not limited to:

- (a) Actual or economic damages for \$56,000.00.

OTHER RELIEF REQUESTED

32. Return of Properties: Mr. Barber requests that the Court enter an order requiring Defendant, Dara Investments, Inc., to return the following properties to Mr. Barber: Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, which are the subject of this matter.

33. Specific Performance: Mr. Barber requests the Court order Defendant, Dara Investments, Inc., to specifically perform the terms of the Deed of Trust, and related documents, and convey to Mr. Barber clear title to the properties, specifically Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, which are the subject of this matter.

ATTORNEY'S FEES

34. Request is made for all costs and reasonable and necessary attorney's fees incurred by or on behalf of Mr. Barber herein, including all fees necessary in the event of an appeal of this cause to the Court of Appeals and the Supreme Court of Texas, as the Court deems equitable and just, as provided by Chapter 38 of the Texas Civil Practice and Remedies Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Darryl Barber, respectfully prays that Defendant, Dara Investments, Inc., be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for him setting aside the April 5, 2016, foreclosure sale of Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, as Notice of Trustee's Sale was not properly effectuated on him; the Notice of Trustee's Sale failed to comply with applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code; and the April 5, 2016, foreclosure sale, did not comply with the requisites of applicable law pursuant to § 51.002 of the Texas Property Code, and/or § 51.0075 and § 51.0076 of the Texas Property Code.

And/or, in the alternative, Mr. Barber respectfully prays that judgment be entered for him as against Defendant, Dara Investments, Inc., for specific performance of the Deed of Trust, thus conveying clear title to Lot 2, Block 38, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7721 Independence Street, Houston, Harris County, Texas; and Lot 5 Block B, Sunnyside Place, Houston, Harris County, Texas, commonly known as 7706 Independence Street, Houston, Harris County, Texas, which are the subject of this matter to him.

And/or, in the alternative, Mr. Barber respectfully prays for damages requested hereinabove in an amount in excess of the minimum jurisdictional limits of the Court, together with prejudgment and post-judgment interest at the maximum rate allowed by law, attorney's fees, costs of court, and such other and further relief to which he may be entitled at law or in equity, whether pled or unpled.

Respectfully submitted,

/s/ Athill Muhammad

Athill Muhammad
State Bar No. 24039078
3402 Emancipation Avenue, Suite 207
Houston, TX 77004
Tel: 713/807-8167 and 713/589-6404
Fax: 713/589-2946
amuhammadlaw@att.net
Attorney for Plaintiff
Mr. Darryl Barber

PLAINTIFF, DARRYL BARBER, CONTINUES HIS DEMAND FOR TRIAL BY JURY

CERTIFICATE OF SERVICE

I hereby certify that on or about October 16, 2020, a true and correct copy of Plaintiff's First Amended Petition and Continued Jury Demand, was served on Defendant's attorney, Jerry Schutza (815 Walker, Suite 1053, Houston, TX, 77002, Tel: (713) 963-9988), electronically through the electronic filing manager.

/s/ Athill Muhammad

Athill Muhammad

Attachment “A”

WARRANTY DEED WITH VENDOR'S LIEN

Effective Date: October 23, 2007

Grantor: **DARA INVESTMENTS INC.**
Grantor's Mailing Address: P.O. BOX 509, Barker, TX. 77413

Grantee: **Darryl W. Barber**
Grantee's Mailing Address: 4901 Meadow Park Dr., Houston, TX. 77048

Consideration: Cash consideration of *Zero Dollars*, the receipt and sufficiency of which is herby acknowledged, and the further consideration of the execution and delivery by Grantee of that one certain promissory note of even date herewith, payable to the order of Grantor, in the principal sum of **\$38,500.00**.

Payable in two semi-monthly payments, containing the usual clauses relating to acceleration of maturity and for attorney's fees, and providing for acceleration of maturity, at the option of holder, in the event of default in the payment thereof, the payment of which note being secured by a vendor's lien and superior title herein and hereby expressly retained and reserved upon the property herein described and conveyed, and being additionally secured by a deed of trust thereon of even date herewith to *Nanik S. Bhagia*, Trustee.

Properties (including any improvements)

Lot 2	Block 38	Sunnyside Place	AKA 7721 Independence, Houston, Texas
Lot 5	Block B	Sunnyside Place	AKA 7706 Independence, Houston, Texas

Reservations from and Exceptions to Conveyance and Warranty:

Easements, right-of-way, and prescriptive rights, whether of record or not; and presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property.

IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH HEREIN), TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVAL, THE COMPLIANCE OF THE PROPERTIES WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION MATTER OR THING REGARDING THE PROPERTIES. BUYER ACKNOWLEDGES AND AGREES THAT SELLER HEREBY SELLS AND CONVEY TO BUYER AND BUYER ACCEPTS THE PROPERTIES "AS IS, WHERE IS, WITH ALL FAULTS."

NSB 10/23/07
NSB 10/23/07

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the properties to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to warranty, by, through or under Grantor, but not otherwise.


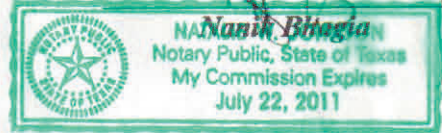
But it is expressly agreed that the Grantor herein expressly reserves for himself, his heirs and assigns, the vendor's lien, as well as the superior title in and to the above described properties, premises and improvements until the note herein described has been fully paid according to the face, tenor, effect and reading thereof, when this deed shall become absolute, and to additionally secure the Grantor herein in the payment of the note, Grantee has executed and delivered a deed of trust of even date herewith conveying the herein described properties to *Nanik S. Bhagia*, Trustee.

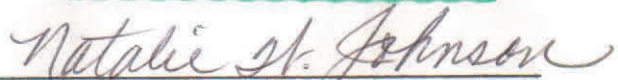
When the context requires, singular nouns and pronouns include the plural.

ACKNOWLEDGEMENTS

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 23rd day of October, 2007, by Nanik Bhagia; President of DARA Investments, Inc. /


NOTARY PUBLIC in and for State of Texas

DLB 10/23/07
WSB 10/23/07

WARRANTY DEED WITH VENDOR'S LIEN

Effective Date: October 23, 2007

Grantor: **DARA INVESTMENTS INC.**
Grantor's Mailing Address: P.O. BOX 509, Barker, TX. 77413

Grantee: **Darryl W. Barber**
Grantee's Mailing Address: 4901 Meadow Park Dr., Houston, TX, 77048

Consideration: Cash consideration of *Zero Dollars*, the receipt and sufficiency of which is hereby acknowledged, and the further consideration of the execution and delivery by Grantee of that one certain promissory note of even date herewith, payable to the order of Grantor, in the principal sum of **\$38,500.00**.

Payable in two semi-monthly payments, containing the usual clauses relating to acceleration of maturity and for attorney's fees, and providing for acceleration of maturity, at the option of holder, in the event of default in the payment thereof, the payment of which note being secured by a vendor's lien and superior title herein and hereby expressly retained and reserved upon the property herein described and conveyed, and being additionally secured by a deed of trust thereon of even date herewith to *Namik S. Bhagia*, Trustee.

Properties (including any improvements)

Lot 2 Block 38 Sunnyside Place	AKA 7721 Independence, Houston, Texas
Lot 5 Block B Sunnyside Place	AKA 7706 Independence, Houston, Texas

Reservations from and Exceptions to Conveyance and Warranty:
Easements, right-of-way, and prescriptive rights, whether of record or not; and presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property.

IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH HEREIN), TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVAL, THE COMPLIANCE OF THE PROPERTIES WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF ANY INFORMATION MATTER OR THING REGARDING THE PROPERTIES. BUYER ACKNOWLEDGES AND AGREES THAT SELLER HEREBY SELLS AND CONVEY TO BUYER AND BUYER ACCEPTS THE PROPERTIES "AS IS, WHERE IS, WITH ALL FAULTS."

DWB 10/23/07
NSB 10/23/07

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the properties to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to warranty, by, through or under Grantor, but not otherwise.

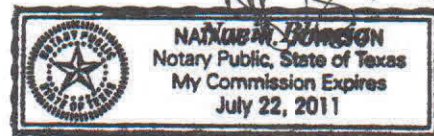
But it is expressly agreed that the Grantor herein expressly reserves for himself, his heirs and assigns, the vendor's lien, as well as the superior title in and to the above described properties, premises and improvements until the note herein described has been fully paid according to the face, tenor, effect and reading thereof, when this deed shall become absolute, and to additionally secure the Grantor herein in the payment of the note, Grantee has executed and delivered a deed of trust of even date herewith conveying the herein described properties to *Nanik S. Bhagia*, Trustee.

When the context requires, singular nouns and pronouns include the plural.

ACKNOWLEDGEMENTS

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 23rd day of October, 2007, by Nanik Bhagia; President of DARA Investments, Inc. /



Natalie St. Johnson
NOTARY PUBLIC in and for State of Texas

DLB 10/23/07
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Deed of Trust

Terms

Effective Date: November 01, 2007

Grantor: Darryl W. Barber

Grantor's Mailing Address: 4901 Meadow Park, Houston, TX. 77048

Trustee: Nanik S. Bhagia

Trustee's Mailing Address: P.O. BOX 509, Barker, TX. 77413

Beneficiary: **DARA INVESTMENTS INC.**

Beneficiary's Mailing Address: P.O. BOX 509, Barker, TX. 77413

Note:

Date: Even date herewith

Amount: \$38,500.00

Maker: Darryl W. Barber

Payee: Nanik S. Bhagia

Final Maturity Date: November 01, 2012

Terms of Payment: As therein provided

Property:

Lot 2 Block 38 Sunnyside Place AKA 7721 Independence, Houston, TX.

Lot 5 Block B Sunnyside Place AKA 7706 Independence, Houston, TX.

Prior Liens: None

Other Exceptions to Conveyance and Warranty: Easements, right-of-way, and prescriptive rights, whether of record or not; and presently recorded restrictions, reservations, covenants, conditions, oil and gas leases, mineral severances, and other instruments, other than liens and conveyances, that affect the property.

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NSB 10/23/07

For value received and to secure payment of the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

- 1. keep the property in good condition;
- 2. pay all taxes and assessments on the property when due;
- 3. preserve the lien's priority as it is established in this deed of trust.

Beneficiary's Rights

- 1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
- 2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
- 3. If Grantor fails to perform any Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
- 4. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured as may be required by law or by written agreement, then Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;

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NSB 10/23/07

(548)

- b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
- c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

- 1. either personally or by agent and or by certified mail give notice of the foreclosure sale as required by the Texas Property Code as then amended;
- 2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
- 3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

General Provisions

- 1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
- 2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
- 3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
- 4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.

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- 5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
- 6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary ^{will} release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.

NSB

- 7. Interest on the debt secured by this deed of trust shall not exceed ^{16%} the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be cancelled automatically as of the acceleration or prepayment or, if already paid, as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

NSB
NSB

- 8. When the context requires, singular nouns and pronouns include the plural.
- 9. The term note includes all sums secured by this deed of trust.
- 10. This deed of trust shall bind, insure to the benefit of, and be exercised by successors in interest of all parties.
- 11. If Grantor and Maker are not the same person, the term Grantor shall include Maker.

- 12. Grantor agrees to pay property taxes and forward a copy of tax-bill receipt to Grantee by the end of February each calendar year of said paid property taxes.

13. Grantor will take liability insurance.

NSB
NSB

The note, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien therein retained in deed of even date herewith to the undersigned, and this deed of trust is given as additional security for the payment of said indebtedness.

If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare the debt secured by this deed of trust immediately payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice or demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to

NSB 10/23/07
10/23/07

(7/8)

the following: (a) creation of a lien or encumbrance subordinate to this deed of trust; (b) creation of a purchase-money security or operation of law on the death of a joint tenant; (c) grant of a leasehold interest of three years or less without an option to purchase, and (d) a transfer from one spouse to the other.

Semi-monthly payments will be made on the payment dates specified in the note. If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare that debt secured by this Deed of Trust immediately payable. In that event Beneficiary will notify Grantor that the debt is payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice or demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to the following: (a) creation of a lien or encumbrance subordinate to this deed of trust; (b) transfer by devise, descent, or operation of law on the death of a joint tenant; (c) a transfer from one spouse to the other.

AMENDMENTS

This is a statement to verify that it is understood that the monthly payment of {\$ 934.22} for the said properties @ 7706 Independence and 7721 Independence, will be paid semi-monthly to payee's banking account on the 8th and the 23rd of each month beginning November 2007. It is also understood that the *semi-monthly* payments will be in the amount of {\$467.11}

Also, it is understood that a five-day grace period is granted for the 8th and the 23rd of each semi-monthly payment. Thus, making the last day of grace period the 13th and the 28th of each month respectively. However, payments received after the 13th and the 28th of each semi-monthly payment shall include a \$25.00 late fee for each occurrence.

NSB [signature]

NSB [signature]

NSB [signature]

ROWNS 10/23/07
NSB - 10/22/07

(8068)

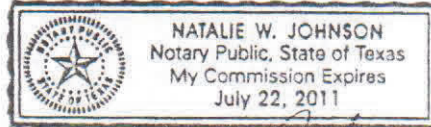
ACKNOWLEDGEMENTS

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 23, day of
October, 2007, by Darryl W. Barber.

Darryl W. Barber

Darryl W. Barber



Natalie W. Johnson
NOTARY PUBLIC in and for State of Texas

2019-37306

Yahoo Mail/Inbox

J Jerry Schutzza <schutzalaw@yahoo.com>
To: dbdewayne@gmail.com

Aug 12, 2019 at 12:08 PM

Mr. Barber

See attached.

Jerry L. Schutzza
Attorney At Law
815 Walker, Suite 1453
Houston, Texas 77002
713-963-9988

Begin forwarded message:

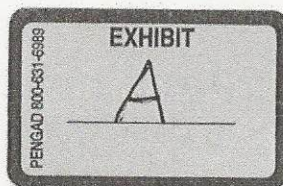
From: "Gaston & Thanheiser, P.C." <gastonscanner@gmail.com>
Date: August 12, 2019 at 12:02:04 PM CDT
To: "Jerry Schutzza" <schutzalaw@yahoo.com>
Subject: Send data from MFP12032076 08/12/2019 12:02

Scanned from MFP12032076
PUBLIC TEMPLATE GROUP
SCAN TO _JLS
Date:08/12/2019 12:02
Pages:9
Resolution:200x200 DPI

DO NOT REPLY

1 File 89.5kB

 DOC081219.pdf
89kB



CAUSE NO. 2019-37306

DARRYL BARBER

§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

DARA INVESTMENTS, INC.

190TH JUDICIAL DISTRICT

REQUEST FOR DISCLOSURE

Dara Investment, Inc., serves its Request for Disclosures to Plaintiff, pursuant to Rule 194 of the Texas Rules of Civil Procedure.

Respectfully submitted,

By: /s/ Jerry L. Schutz
Jerry L. Schutz
State Bar No. 17853800
815 Walker, Suite 1053
Houston, Texas 77002
(713) 963-9988
Schutzalaw@yahoo.com

**ATTORNEY FOR DEFENDANT DARA INVESTMENTS,
INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent to opposing counsel and all parties of interest as indicated below on August 6, 2019.

Darryl Barber
7717 Independence St.
Houston, Texas 77051

/s/ Jerry L. Schutza
Jerry L. Schutza

REQUEST FOR DISCLOSURES

Rule 194.2(a) State the correct names to the parties to the lawsuit

Response:

Rule 194.2(b) State the name, addresses, and telephone number of any potential parties.

Response:

Rule 194.2(c) State the legal theories and, in general, the factual basis of your claims or defenses. The party need not marshal all evidence that may be offered at trial.

Response:

Rule 194.2(d) Please state the amount and any method of calculating economic damages.

Response:

Rule 194.2(e) Please state the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case.

Response:

Rule 194.2(f) Please disclose the following for any testifying expert:

- 1) the expert's name, address and telephone number;
- 2) the subject matter on which the expert will testify;
- 3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject your control, documents reflecting such information;
- 4) if the expert is retained by, employed by, or otherwise subject to your control, please produce:
 - A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or the for the expert in anticipation of the expert's testimony; and
 - B) the expert's current resume and bibliography.

Response:

Rule 194.2(g) Please disclose any discoverable indemnity and insuring agreements.

Response:

Rule 194.2(h) Please disclose any discoverable settlement agreements.

Response:

Rule 194.2(i) Please disclose any discoverable witness statements.

Response:

Rule 194.2(j) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills

Response:

Rule 194.2(k) In a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the responding party by virtue of an authorization furnished by the requesting party.

Response:

CAUSE NO. 2019-37306

DARRYL BARBER	§	IN THE DISTRICT COURT OF
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
DARA INVESTMENTS, INC.	§	190TH JUDICIAL DISTRICT

REQUEST FOR PRODUCTION

Dara Investments, Inc., serves its Request for Production to Plaintiff, pursuant to Rule 196 of the Texas Rules of Civil Procedure.

Respectfully submitted,

By: /s/ Jerry L. Schutza

Jerry L. Schutza
State Bar No. 17853800
815 Walker, Suite 1053
Houston, Texas 77002
(713) 963-9988
Schutzalaw@yahoo.com

**ATTORNEY FOR DEFENDANT DARA INVESTMENTS,
INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was sent to opposing counsel and all parties of interest as indicated below on August 6, 2019.

Darryl Barber
7717 Independence St.
Houston, Texas 77051

/s/ Jerry L. Schutza

Jerry L. Schutza

REQUEST FOR PRODUCTION

1. Copies of all canceled checks and receipts which reflect payments to Dara Investments, Inc., as described in Plaintiff's Petition.

Response:

2. All correspondence between Plaintiff and Defendant.

Response:

3. All agreements between Plaintiff and Defendant which relate to the property described in Plaintiff's Petition.

Response:

CAUSE NO. 2019-37306

DARRYL BARBER	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
DARA INVESTMENTS, INC.	§	190 TH JUDICIAL DISTRICT
	§	
Defendant.	§	

**DEFENDANT DARA INVESTMENTS, INC.'S
FIRST MOTION FOR CONTINUANCE**

Dara Investments, Inc., (“Dara”) Defendant files its First Motion For Continuance.

1. Dara seeks a continuance of the trial setting which is presently scheduled for November 17, 2020.

2. The trial setting should be continued because Plaintiff’s current pleading, his First Amended Petition does not state any facts which would put Dara on notice of Plaintiffs specific allegations. The First Amended Petition was not filed until October 16, 2020, which was the day before the deadline to file Amended pleadings and was only a month before the trial setting. Because of the lack of facts, Dara is not able to adequately prepare for trial.

3. Dara has filed Special Exceptions which object to Plaintiff’s First Amended Petition but the Court has not issued a ruling. Plaintiff has agreed to file a Second Amended Petition and has requested leave because the Court’s deadline for filing amended pleadings has passed.

4. The trial setting should also be continued because discovery is not complete, especially in light of Plaintiff’s failure to plead facts to support its claims for relief.

5. As previously stated in its Motion To Compel which was granted by this Court on July 23, 2020, Plaintiff was ordered to respond to Dara's discovery and was ordered to produce responsive documents by August 22, 2020.

6. Plaintiff failed to comply with the Court order and did not provide discovery responses and did not produce documents until October 15, 2020, well past the time as ordered by the Court and only two days before this Court's discovery deadline.

7. Because of Plaintiff's delay in responding to discovery, Dara should be entitled to additional time to conduct discovery, especially in light of Plaintiff's failure to plead specific facts to support any cause of action against Dara.

8. This motion is not sought for delay but that justice be done.

WHEREFORE, Dara Investments, Inc., requests that the Court grant the relief which is requested and any other relief to which it is entitled.

Respectfully Submitted,

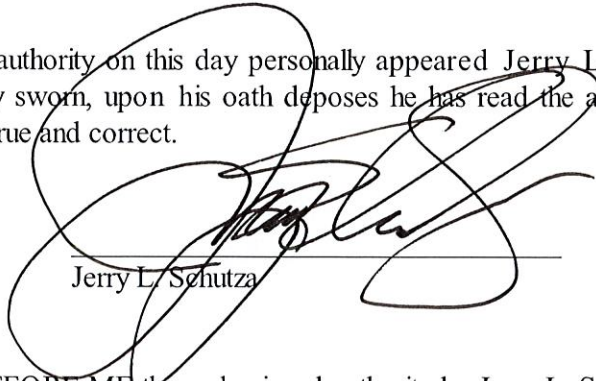
By: /s/ Jerry L. Schutza
Jerry L. Schutza
State Bar No. 17853800
815 Walker Street, Suite 1453
Houston, Texas 77002
(713) 963-9988
(713) 963-0085 (Fax)
Schutzalaw@yahoo.com

ATTORNEY FOR DARA INVESTMENTS, INC.

VERIFICATION

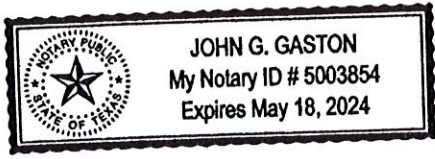
STATE OF TEXAS §
 §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared Jerry L. Schutzta attorney for Dara Investments, Inc., duly sworn, upon his oath deposes he has read the above and foregoing document and that the same is true and correct.



Jerry L. Schutzta

SWORN TO AND SUBSCRIBED BEFORE ME the undersigned authority by Jerry L. Schutzta on the 11th day of November, 2020.





Notary Public in and for Texas

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's First Motion For Continuance served upon all counsel and record in accordance with the Texas Rules of Civil Procedure on this the _____ day of November, 2020.

Athill Muhammad
3402 Emancipation Ave., Suite 207
Houston, Texas 77004

/s/ Jerry Schutzta
Jerry L. Schutzta

CERTIFICATE OF CONFERENCE

I certify that on November 11, 2020, I conferred with the attorney for the Plaintiff who does not oppose the continuance in this case.

/s/ Jerry Schutza

Jerry L. Schutza

BARBER, DARRYL

vs.

DARA INVESTMENTS INC

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
190th JUDICIAL DISTRICT

ORDER RESETTING TRIAL

This case is reset for TRIAL for the two week period beginning 07-05-2022.

If the case has not been reached by the second Friday after this date, the trial will be reset. All previous pre-trial deadlines remain in effect, unless changed by the court.

If you have any questions regarding this notice, please contact the Court coordinator, JERRY MIRANDA at (832) 927-2306.

Signed

Signed: 1/6/2022



BEAU MILLER
JUDGE, 190TH DISTRICT COURT
Generated on: 1/6/2022

BARBER, DARRYL

vs.

DARA INVESTMENTS INC

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
190th JUDICIAL DISTRICT

ORDER RESETTING TRIAL

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Signed

Signed: 1/6/2022

BEAU MILLER
JUDGE, 190TH DISTRICT COURT
Generated on: 1/6/2022

BARBER, DARRYL

vs.

DARA INVESTMENTS INC

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
190th JUDICIAL DISTRICT

ORDER RESETTING TRIAL

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If you have any questions regarding this notice, please contact the Court coordinator, JERRY MIRANDA at (832) 927-2306.

Signed

Signed: 1/6/2022

BEAU MILLER
JUDGE, 190TH DISTRICT COURT
Generated on: 1/6/2022