

CAUSE NO. _____

CONRELL HADLEY	§	IN THE DISTRICT COURT
Plaintiff,	§	
VS.	§	OF HARRIS COUNTY, TEXAS
	§	
AMERICA'S SERVICING COMPANY	§	
Defendant	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION
AND
APPLICATION FOR INJUNCTIVE RELIEF

TO THIS HONORABLE JUDGE OF SAID COURT:

COMES NOW, **CONRELL HADLEY**, Plaintiff complaining of **AMERICA'S SERVICING COMPANY**, Defendant and for cause of action would respectfully show unto the court the following:

I.
SELECTION OF DISCOVERY LEVEL

The Plaintiff pleads the discovery should be conducted in accordance with a discovery control plan under Texas Civil Procedure Rule 190.3.

II.
PARTIES & SERVICE OF CITATION

- 2.1 Plaintiff is an individual residing in Harris County, Texas.
- 2.2 Defendant **AMERICA'S SERVICING COMPANY**, (hereinafter referred to as "ASC"), a corporation authorized to do business in Texas by and through its successor in interest, Wells Fargo Bank, N.A. . Citation may be served on Defendant by serving its registered agent **CORPORATION SERVICE CO. DBA CSC LAWYERS INCORPORATING SERVICE Co., 211 EAST 7TH STREET, SUITE 620, AUSTIN, TEXAS 78701.**

III.
JURISDICTION AND VENUE

3.1 This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition, arose, in whole or in part, in Harris County, Texas and the amount in controversy exceeds the minimal jurisdictional limits of the court.

3.2 This Court has personal jurisdiction over the Defendant because the acts and omissions complained of herein occurred in Texas, the Defendant does and/or did do business in the State of Texas, has committed a tort, in whole or in part in Texas, is a resident and citizen of Texas, has minimum contacts with the State of Texas during the period of time complained of herein.

3.3 Venue is properly laid in the Harris County, Texas because all or a substantial part of Plaintiffs' cause of action arose in Harris County, Texas.

IV.
Nature of Suit

4.1 This is a suit to enjoin and restrain a foreclosure proceeding scheduled by Defendant, AMERICA'S SERVICING COMPANY for Tuesday, March 4, 2014 between 10:00 a.m.- 4:00 p.m. at Harris County Courthouse, Houston, Texas.

V.
EXISTENCE OF CONTRACT AND PERFORMANCE

5.1 On or about June 27, 2006, Plaintiff entered into a written contract with the BNC Mortgage, Inc. by the terms of which the Plaintiff purchased a house and lot at the price of Three Hundred and Twenty-nine Thousand and Four Hundred and three and 00/100 Dollars (\$329,403.00) located at 4835 Canyon Shore Drive, Humble,

Texas 77396. Pursuant to the terms of the contract Plaintiffs were obligated to pay mortgage payment of Three Thousand and Seventy- Four Dollars and Ninety-Two cents (\$3,074.92) per month which included principal and interest as well as estimated taxes and insurance in an Adjustable Rate Note ("ARM").

5.2 Plaintiff has maintained his homestead and made his mortgage payments in a timely fashion through January, 2010.

5.3 Thereafter he entered into negotiations with Defendant for possible loan workout alternatives including the "Home Affordable Modification Program"(H.A.M.P.)

This included a trial modification period in which Plaintiff participated in however Plaintiff was never offered a "final loan modification".

5.4 These actions led to Plaintiff's property being posted for foreclosure on or about February, 2012 and a lawsuit being filed to restrain this matter in state district court in a case styled Cause No. 2012-07380; Conrell Hadley vs. America's Servicing Company 190th Judicial District, Harris County, Texas which resulted in the foreclosure being cancelled.

5.5 After several months of litigation this matter was resolved by and through a summary judgment in favor of the Defendant on or about October 29, 2012.

5.6 Upon the resolution of this case Plaintiff was contacted again by the Defendant America's Servicing Company through its Home Preservation Department on or about March, 2013.

More specifically, the Defendant assigned Plaintiff to Michael St. Onge to arrange a short sale as a workout plan in lieu of foreclosure.

A copy of this correspondence is attached as Exhibit "A" and incorporated fully by reference.

5.7 To facilitate this process Plaintiff hired Jeff Levine with Country Capital Mortgage to assist him with completion of the short sale requirements of Defendant "ASC".

5.8 After several months of negotiations between Plaintiff's agent, Jeffery Levine and Defendant's short sale department a contract was submitted and approved.

A copy of the contract and HUB-1 statement are attached as Exhibit "B" and incorporated fully by reference.

5.9 Thereafter, on or about November 18, 2013, Plaintiff received a final approval from Defendant on or about November 18, 2013.

More specifically, the approval was contingent upon several conditions including as stated in "Section 3-lien holders" that all other liens must be satisfied within the confines of the agreement and complete on or by January 17, 2014.

A copy of the short sale approval letter and conditions are attached as Exhibit "C" and incorporated fully by reference.

5.10 In lieu of resolving the prior liens as required by the Defendant, Plaintiff has incurred unexpected delays in dealing with the Internal Revenue Service concerning several tax liens that had to be cleared and/or released in order for the short sale to be finalized.

5.11 Plaintiff has exercised diligence in clearing all conditions raised by the Defendant and has finally received a final release and discharged of his tax liens from the IRS and is now ready to proceed with closing the short sale.

A copy of this discharge of tax liens is attached as Exhibit

"D" and incorporated fully by reference.

5.12 More specifically, Plaintiff has provided all of the updated releases and discharges of any prior liens to Commonwealth Title and is ready to proceed with the short sale closing however, Defendant has failed to extend the closing date and posted the property for foreclosure on March 4, 2014.

5.13 To wit, Plaintiff will suffer irreparable harm and injury if he is not allowed to complete the short sale and protect his rights.

VI.

All Paragraphs Incorporated

6.1 All paragraphs incorporated. Each of the proceeding and succeeding paragraphs are incorporated as part of the following cause of action.

VII.

Application for Temporary Restraining Order and Temporary Injunction

7.1 Defendant, "ASC", has failed to follow the additional terms and conditions that it set with Plaintiff to finalize the short sale purchase and it is not entitled to proceed with the sale of the property through wrongful foreclosure. More specifically, Plaintiff alleges that he is entitled to specific performance from Defendant "ASC" as any delays were caused by third parties to comply with the conditions of the Defendant. Further, as evidenced by the communications between the parties he has acted in good faith and to allow the Defendant to proceed with foreclosure on March 4, 2014 would be an egregious error.

7.2 Plaintiff will suffer irreparable injury if Defendant "ASC" is not

enjoined from effectuating the wrongful foreclosure sale of 4835 Canyon Shore Drive, Humble, Texas 77396.

7.3 There is substantial likelihood that Plaintiff will succeed on the merits of this action. The threatened harm to Plaintiff's outweighs the harm of a preliminary injunction would inflict on Defendant. In addition, the property in question affords Plaintiff a substantial equity amount over and above the alleged debt owed to the Defendant.

7.4 Issuance of a preliminary injunction is in the public interest the granting of a preliminary injunction would maintain the status quo and retain one of the most significant assets of the Plaintiffs, To deny the preliminary injunction would be to unjustly enrich the Defendant and extinguish the Plaintiff substantial equity interest in his homestead.

7.5 Plaintiff is willing to post a bond in an amount the court deems appropriate.

7.6 Plaintiff asks the court to set her application for preliminary injunction for a hearing at the earliest possible time, and after hearing the application, issue a preliminary injunction against Defendant.

VIII.

Motion For Temporary Restraining Order

8.1 All allegations above are incorporated herein.

8.2 The Plaintiff is entitled to Temporary Restraining Order to restrain further transfer, or any other disposition of the property, or taking possession or exercising any control over the property as follows:

- a. Plaintiff will incur significant irreparable injury and loss. The threatened damage which would be incurred would be significant and substantial as specified in paragraphs 1 thru 3, and incorporated herein by reference.
- b. There is substantial likelihood of success on the merits as specified in paragraph 3, and incorporated herein by reference.
- c. The threatened harm outweighs the harm a temporary restraining order would inflict on the Defendants as specified in paragraph 3, and incorporated herein by reference.
- d. The Temporary Restraining Order would serve the public interest as specified in paragraph 4, incorporated herein by reference.
- e. Plaintiffs are willing to post a bond in the amount the court deems appropriate.

8.3 For these reasons, Plaintiff asks the court to issue a temporary restraining order preventing the Defendant, its attorneys, agents, successors and/or assigns from consummating, continuing, or effectuating any transaction, transferring the property, located at 4835 Canyon Shore Drive, Humble, Texas 77396, perfecting his lien or security interest in the property; exercising any dominion or control over the property, or attempting to take possession of the property or trespassing on the property, and to set the request for a preliminary injunction for hearing at the earliest possible time.

IX.

An Affidavit that proves the allegations in the Application for Injunction Relief is attached incorporated by reference.

X.

To-wit, Plaintiff has been required to obtain legal counsel to prosecute this action. The Plaintiff is therefore, entitled to recover a reasonable amount as attorney's fees for the services rendered and to be rendered by counsel in the trial of this suit. The event of an appeal, the Plaintiff will be entitled to additional reasonable sums as reasonable attorney's fees for services to be rendered or appealed.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court:

- (a) Invalidate the foreclosure sale that is scheduled for March 4, 2014.
- (b) Issue an immediate temporary restraining order to restrain and prevent Defendant, its attorneys, agents, successors and/or assigns from consummating, continuing, or effectuating any transaction, transferring the property, located at 4835 Canyon Shore Drive, Humble, Texas 77396, perfecting its lien or security interest in the property; exercising any dominion or control over the property, or attempting to take possession of the property, or interfering with the Plaintiff's use and possession of the property or trespassing on the property, and to set the request for a preliminary injunction for hearing at the earliest possible time.
- (c) Following hearing and notice to Defendant, issue a temporary injunction to prevent Defendant and its agents and employees from proceeding with the foreclosure sale of Plaintiff's property and home during the pendency of this cause of

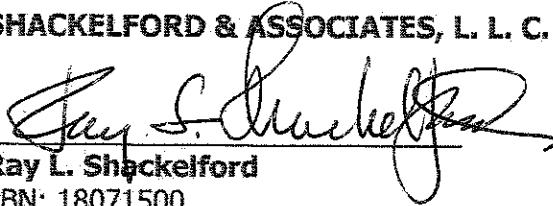
action in order to maintain the status quo herein;

(d) Order the Defendant to be cited to appear and answer herein and that upon final hearing, this Court grant declaratory judgment that no foreclosure sale of 4835 Canyon Shore Drive, Humble, Texas 77396 house be validated during the pendency of this cause and enter a permanent injunction to prevent Defendant, its employees or agents from foreclosure validation on the property at 4835 Canyon Shore Drive, Humble, Texas 77396.; and

(e) That Plaintiff be granted cost of court and such other and further relief to which he may himself justly entitled.

Respectfully Submitted,

SHACKELFORD & ASSOCIATES, L. L. C.

A handwritten signature in black ink, appearing to read "Ray L. Shackelford", is written over a horizontal line.

Ray L. Shackelford

SBN: 18071500

1406 Southmore Blvd.

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(713) 520-8484 -Office

(713) 520-8192 -Facsimile

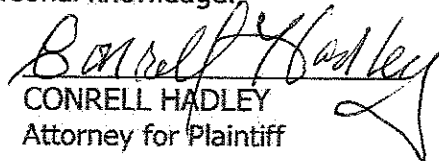
rshackctic@yahoo.com (email)

Attorney for Plaintiffs

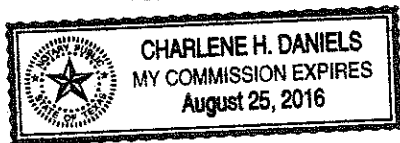
STATE OF TEXAS)(

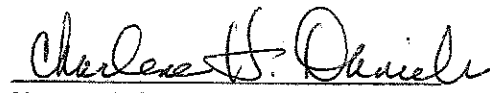
COUNTY OF HARRIS)(

BEFORE ME, the undersigned authority, on this day personally appeared CONRELL HADLEY, Plaintiff, who upon his oath deposed and stated that he has the authority to make this Affidavit and the facts and allegations contained in the foregoing Application for Injunctive Relief are true and correct and within his personal knowledge.


CONRELL HADLEY
Attorney for Plaintiff

Subscribed and Sworn to before me on this 1st day of March, 2014, to which witness my hand and seal of office.

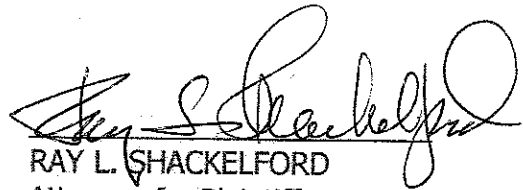



Notary Public-State of Texas

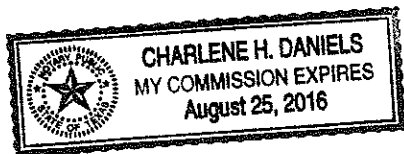
STATE OF TEXAS)(

COUNTY OF HARRIS)(

BEFORE ME, the undersigned authority, on this day personally appeared RAY SHACKELFORD, Attorney of Record for Plaintiff, who upon his oath deposed and stated that he has the authority to make this Affidavit and the facts and allegations contained in the foregoing Application for Injunctive Relief are true and correct and within his personal knowledge.


RAY L. SHACKELFORD
Attorney for Plaintiff

Subscribed and Sworn to before me on this 1st day of March, 2014 to which witness my hand and seal of office.




Notary Public-State of Texas