

NO. \_\_\_\_\_

**DAVID RYAN** § **IN THE DISTRICT COURT**  
**VS.** § **\_\_\_\_\_ JUDICIAL DISTRICT**  
**CARRINGTON MORTGAGE**  
**SERVICES, LLC** § **HARRIS COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR TEMPORARY  
RESTRAINING ORDER**

COMES NOW, David Ryan, Plaintiff, complaining of and about Carrington Mortgage LLC, Defendant, and shows:

1. This case should be conducted under Discovery Level 2.
2. Plaintiff is an individual residing in Harris County, Texas.
3. Defendant is a foreign corporation authorized to do business in Texas. Defendant maybe served by registered agent: CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.
4. The subject matter in controversy is within the jurisdictional limits of the Court.
5. The Court has jurisdiction because the subject property is in Harris County, Texas, Defendant does business in Harris County, Texas, and/or Defendant committed a tort in Texas, and Defendant has minimum contacts with Texas.
6. Harris County is the proper venue.
7. This suit is brought to restrain the foreclosure sale by Defendant set for Tuesday, October 5, ~~2021~~2021 between 10 am and 2 pm in the place designated by Harris County Commissioner's Court.
8. In addition to the extraordinary relief to restrain/abate the foreclosure sale, Plaintiff brings

suit against defendant alleging breach of duty of good faith and fair dealing; breach of contract; actual damages; fraud; and attorney's fees.

9. Defendant holds the mortgage on Plaintiff's homestead, located at 3723 Cherry Forest Drive, Houston, Harris County, Texas 77036 (hereafter, home). Plaintiff has resided at this location for 24 years. Plaintiff's equity in the property is approximately 89% of the comparative value of homes sold at approximately \$458,000.00, and 70% of the tax valuation. Defendant is Plaintiff's mortgage holder, and the balance owed on the home is \$48,305.92. In February 2021, the home and Harris County were damaged by inclement weather in the form of a generation freeze that shut down the Harris County Courthouse. Harris County was declared a federal disaster area. To this time, Plaintiff was current on mortgage payments to Defendant. Defendant offered to forego monthly payments during the disaster recovery period, or May 20, 2021, and Plaintiff accepted. Plaintiff offered to consider modifying loan conditions, and Plaintiff submitted loan modifications. Plaintiff moved into a hotel in February 2021 and continues to reside there at the time this petition is filed, the home still being uninhabitable.

10. At that time, the parties had frequent communications, which turned contentious quickly. Plaintiff submitted insurance repair documents, repair estimates from USAA Insurance Company in the amount of \$156,390.12 dated February 28, 2021, insurance proceeds to undertake repairs in the amount of \$84,079.21, a contract for repairs, and the contractor's repair estimate. All documents and the proceeds were forwarded to Defendant's Loss Department on or about March 11, ~~2021~~2021, by overnight delivery (FedEx). On or about March 23, 2021, Defendant deposited and credited Plaintiff's mortgage account with \$84,079.21, leaving a credit balance to Plaintiff of \$36,403.29 (meaning Defendant's principle is almost double secured, and Defendant owes Plaintiff considerably more than the debt). On or about March 24, 2021, Plaintiff discussed with

Defendant Loss Department releasing funds so repairs could begin immediately. Defendant Loss Department informed Plaintiff all documents were received, but the contractor's bid was not signed and therefore unacceptable. Defendant Loss Department assured Plaintiff once this signed bid was received by Defendant Loss Department, funds would be released. Defendant Loss Department also inquired about the possibility of paying off the mortgage and forwarding the credit balance to Plaintiff. Plaintiff declined, citing the extensive repairs needed to make the home habitable, and Plaintiff's lack of sufficient funds to cover the repairs without the insurance proceeds due to the COVID-19 pandemic affecting Plaintiff's income and savings. The bid, signed and dated by the contractor and Plaintiff were forwarded to Defendant Loss Department.

11. On or about April 6, 2021, Plaintiff contacted Defendant Loss Department and was informed the signed bid had not been received. Plaintiff requested a direct way to forward the signed bid, but Defendant Loss Department declined, insisting the bid must be directly submitted to a general fax number, a general email, or by mail. Plaintiff again forwarded the bid. Defendant Loss Department informed Plaintiff it would take several weeks to process the bid. Plaintiff requested Defendant Loss Department at least release a portion of the \$36,403.29 insurance proceeds over and above the amount of debt, still secured and not past due. Defendant refused. On or about April 30, 2021, Plaintiff was informed the signed bid was received by Defendant Loss Department. Further, Defendant Loss Department now informed Plaintiff the insurance company loss statement from USAA had not been received. Plaintiff expressed dismay this was just now being discussed, Plaintiff included the document back in March 2021 and Defendant Loss Department had previously informed Plaintiff the only document missing was the signed bid. Defendant Loss Department again declined to forward any of the excess proceeds, and again declined a direct delivery of the method. Plaintiff verified with USAA Insurance Company had

also independently sent the insurance company loss statement. Plaintiff immediately forwarded to Defendant Loss Department, for the 3<sup>rd</sup> time, the insurance company loss statement.

12. On or about May 7, ~~2021~~, Plaintiff received a loan payoff statement from Defendant in the amount of \$50,113.65. At about the same time, Defendant contacted Plaintiff demanding immediate payment of the March 2021, April 2021, and May 2021 monthly payments. Plaintiff reminded Defendant no payments were due before June 2021, and Plaintiff was under disaster protection until May 20, 2021. Plaintiff further pointed out to Defendant was holding sums well in excess the principal of the note. Defendant inquired why the home was not declared a total loss and why Plaintiff would not agree to pay off the debt. Plaintiff again explained the proceeds are necessary for repairs and inquired about loan modification/release of excess funds. Defendant declined to consider a loan modification and transferred Plaintiff to Defendant Loss Department, which again claimed not to have received the insurance loss statement. On or about May 15, 2021, Defendant Loss Department contacted Plaintiff, continued to maintain no insurance loss statement had been received but would release some funds based on verbal confirmation of the damages from USAA.

..... Repair and/or restoration of the property is economically feasible and would not lessen Defendant's security. On May 19, 2021, Defendant's Loss Department issued a check in the amount of \$32,000.00. In issuing said insurance proceeds, Defendant admits that repair and/or restoration is economically feasible, and Defendant elected to apply the insurance proceeds to the repair and/or restoration of the property. There has been no written agreement between the parties to apply the insurance proceeds to the balance of the loan. Accordingly, Defendant has waived any right it may have had to elect to apply the proceeds to the balance of the loan.

..... On May 20, 2021, Plaintiff's disaster relief expired. On May 21, ~~2021~~, Plaintiff

received notice Defendant was undertaking foreclosure proceedings unless the loan was brought immediately current. On or about May 28, ~~2021~~2021, Plaintiff received the proceeds and deposited same. On or about June 2, ~~2021~~2021, Plaintiff issued funds to the contractor to begin repairs. Throughout June 2021 and July 2021, Defendant contacted Plaintiff demanding immediate payment by wire transfer only of sums in excess of \$15,000, refused to waive any late fees/penalties, declined any payment plan or loan modification. On July 14, 2021, Defendant Loss Department contacted Plaintiff to have Defendant Loss Department inspectors view the progress of repairs to issue additional funds. Contractor and Plaintiff made contact with Defendant Loss Department inspectors, who are located in Lubbock, Texas, to arrange inspection. ~~Defendant~~ Defendant Loss Department inspectors requested contractor take photographs of the repairs and forward same to Defendant Loss Department inspectors. Contractor forwarded photographs on or about July 20, 2021. On or about August 10, 2021, Defendant posted the home for foreclosure on October 5, 2021. On August 17, 2021, Contractor emailed Defendant Loss Department inspectors as to the status of approving additional repairs. To Plaintiff's knowledge, this email went unanswered. On or about September 30, 2021, Defendant Loss Department left Plaintiff a message about the status of repairs in order to issue additional funds. Defendant still intends to foreclose on Tuesday, October 5, 2021, despite retaining funds in the amount of \$52,079.21, almost \$2,000.00 in excess of the \$50,113.65 payoff amount.

13. Plaintiff relied to his detriment that Defendant would promptly forward insurance proceeds to effect repairs to property damages from the prior natural disaster, enter into a loan modification, or at least explain the denial of the modification. Defendant owed Plaintiff a duty to either accept the loan modification, or explain its denial, and promptly process loss claims to effect repairs to the insured property as part of its good faith and fair dealing.

14. Texas has long recognized a cause of action for breach of duty of good faith and fair dealing, and fair dealing between parties in equity as it relates to contracts and agreements. Defendant's conduct described herein constitutes an unexcused breach of duty imposed by law.

15. Defendant offered to modify the loan terms during the ~~forbearance, and forbearance and~~ had a duty to process damage claims promptly ~~once it determined the property was not a total loss.~~ Thus, Defendant has a duty to negotiate in good faith, Plaintiff had a right to rely on same, and Defendant cannot now deprive Plaintiff of his home without explanation and opportunity to make payments Defendant had foregone. Plaintiff had a right to know about the loan modification and have an opportunity to cure, and to effect repairs to the insured property. Plaintiff is a member of the class the law was designed to protect.

16. The foregoing also describes a breach of contract.

17. Defendant should not be allowed to foreclose, transfer or any other disposition of the property, or take possession or otherwise exercise control over the real property located at 3723 Cherry Forest Drive, Houston, Texas 77036. To permit the foreclosure sale to go forward would be egregious error.

18. Plaintiff will suffer irreparable harm and injury of Defendant is not enjoined from proceeding with the wrongful foreclosure sale of 3723 Cherry Forest Drive, Houston, Texas 77036.

19. There is a substantial likelihood Plaintiff will prevail at trial, and as noted above, Plaintiff's equity in the residence is approximately 89 percent of current market value. The threatened harm to Plaintiff outweighs the harm a preliminary injunction would inflict on Defendant. Additionally, Plaintiff's equity is substantially more than Defendant's alleged debt, which is fully secured by insurance proceeds Defendant refuses to release to Plaintiff.

20. Issuance of a preliminary injunction is in the public interest in that granting said relief maintains the status quo. Denial would unjustly enrich Defendant and extinguish Plaintiff's equity in the property.

21. Plaintiff seeks a preliminary injunction hearing at the court's earliest opportunity.

22. Plaintiff is entitled to a temporary restraining order to restrain further transfer, or other disposition of the property, or taking possession or exercising any control over the property as follows:

A. Plaintiff will incur significant irreparable injury. Plaintiff is entitled to a temporary restraining order to restrain further transfer, or other disposition of the property, or taking possession or exercising any control over the property as follows:

B. There is a substantial likelihood of Plaintiff's success on the merits.

c. The threatened harm substantially outweighs the harm a temporary restraining order would inflict on Defendant.

d. The temporary restraining order serves the public interests.

e. Plaintiff is ready to post a reasonable bond in the amount deemed appropriate by the court.

23. For these reasons, Plaintiff asks to the court to issue a temporary restraining order preventing Defendant, its attorneys, agents, successors, and assigns. For these reasons, Plaintiff asks to the court to issue a temporary restraining order preventing Defendant, its attorneys, agents, successors, and/or assigns from consummating, continuing, or effectuating any transaction, transfer of the real property located at 3723 Cherry Forest Drive, Houston, Texas 77088, perfecting its lien or security interest in the property; exercising dominion or control over the real property, and to set the preliminary injunction for hearing at the earliest possible date.

24. A declaration that proves the allegations in this application is attached and incorporated herein, seeks to set the preliminary injunction against defendant at the court's convenience and earliest opportunity.

Wherefore, premises considered, Plaintiff requests that the Court grant this relief, and any other relief Plaintiff is entitled to at law or in equity.

Respectfully submitted,  
Ryan & Associates  
6161 Savoy Drive, Ste. 1116  
Houston, Texas 77036  
713.223.9898  
713.223.8448 fax

/s/ David Ryan\_\_\_\_\_

David M. Ryan  
SBOT 00789412  
Pro Se

### **DECLARATION**

MY NAME IS David Ryan, my date of birth is September 11, 1963, and my address is 6161 Savoy Drive, Suite 1116, Houston, Texas 77036, USA. I am a duly licensed attorney in good standing with the State Bar of Texas No. 00786412. My residence/home is 3723 Cherry Forest Drive, Houston, Harris County, Texas 77036.

I was stranded out of town during February 14, ~~2021~~2021 weekend when the natural disaster freeze occurred in Houston, Harris County, Texas, and did not return until February 17, 2021. In addition to practicing law, I am a volunteer firefighter who worked significant shifts as a result of the freeze upon my return to Houston, Harris County, Texas. At the time of the natural disaster, I was current on the mortgage to my home, held by Defendant Carrington Mortgage Services LLC.

The pipes burst in the attic of my home, doing significant damage. No one was present to



turn off the water to my home until I returned on February 17, 2021. Within one week, I reported the damages to my home to USAA (my home insurance carrier), hired a contractor, had the home inspected by USAA, and received an insurance loss statement dated February 28, 2021. I promptly forwarded insurance proceeds to Defendant Carrington Mortgage Services LLC., as my co-insured. I have been diligent in complying with requests regarding damages and repairs to my home with my mortgage company, Defendant Carrington Mortgage Services LLC.

Due to Defendant Carrington Mortgage Services LLC's delays in forwarding insurance proceeds, there is still no running water in the home, the ceilings remain largely unrepaired, and insulation permeates the upstairs areas of my home.

I currently have between 70-89% equity in my home. I have lived in this house for 24 years. Due to the COVID-19 pandemic, the damage to my home, and living expenses not usually incurred because of the extended hotel stay, I lack funds sufficient to allow Defendant Carrington Mortgage Services LLC to continue withholding funds ~~to~~ conduct repairs.

I am still hopeful of resolving this matter on or before December 1, 2021, less than 60 days from now. I am expecting either a loan reinstatement agreement, a loan modification agreement, or a current mortgage payoff within the next 3 weeks, but no sooner than November 1, 2021. I still expect release of insurance proceeds to repair my home, currently in possession of Defendant Carrington Mortgage Services LLC., which are necessary to effect repairs to my home. With a sale pending in 1 business day, I will have insufficient time to act, even if the information arrives today.

I have read the foregoing petition and it is true and correct. I have tried to make arrangements with Defendant to resolve this matter. Defendant is insistent the sale must proceed, or I must agree to release all insurance proceeds to pay off the mortgage.

I declare under penalty of perjury the foregoing statement is true and correct.

/s/ *David Ryan*        
David Ryan

**CERTIFICATE OF CONFERENCE**

I certify that on October 4, ~~2021~~2021, I spoke with an attorney representing Defendant and gave notice of this filing.

      // *David Ryan*        
David M. Ryan