

Cause No: _____

ROSS STEVENSON,)
) **IN THE DISTRICT COURT**
)
Plaintiff,)
)
v.) _____ **JUDICIAL DISTRICT**
)
)
SPECIALIZED LOAN)
SERVICING, LLC ,)
Defendant.) **OF HARRIS COUNTY, TEXAS**

**PLAINTIFF’S ORIGINAL PETITION, APPLICATION FOR TEMPORARY
RESTRAINING ORDER, TEMPORARY INJUNCTION, PERMANENT INJUNCTION,
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, ROSS STEVENSON, hereinafter called Plaintiff, by and through his attorney, Robert C. Newark, III, and files this Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction and in support thereof would show unto the Court the following:

DISCOVERY CONTROL PLAN

1. The Plaintiff herein intends to conduct discovery under Level 3 of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff, ROSS STEVENSON, is an individual that resides in Harris County, Texas.

3. Defendant, SPECIALIZED LOAN SERVICING, LLC, (hereinafter referred to as “Lender”) is a foreign corporation operating as lenders in Harris County, State of Texas. Lender may be served with process through its registered agent at any address where its registered agent may be found.

JURISDICTION AND VENUE

4. 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.

5. 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 minimal contacts with the State of Texas during the period of time complained of herein.

6. Venue is properly laid in Harris County, Texas, because all or a substantial part of Plaintiff's cause of action arose in Harris County, Texas.

NATURE OF SUIT

7. This is a suit to enjoin and refrain a foreclosure sale proceeding scheduled by Defendant, for Tuesday, December 7, 2021, between 10:00 am and 4:00 pm at the location designated by the county clerk. See Exhibit A – Notice of Sale which is supposedly sent to Plaintiff.

8. In addition to the aforementioned request for the extraordinary relief to abate the foreclosure proceeding, Plaintiff brings this lawsuit against Defendant alleging negligence, violation of RESPA, 12 USC Sec. 1024, et seq., violation of the Texas Prop. Code Ann. Sec. 51.002 et seq., actual damages and attorney fees.

EXISTENCE OF CONTRACT AND PERFORMANCE

9. On or about August 24, 2021, Plaintiff entered into a written contract with Defendant, for the purchase of a house and lot located 22931 Gentle Shadow Drive, Hockley, TX 77447. See Exhibit B – Deed of Trust

10. The original principal of the contract was \$265,905.00.

NEGLIGENCE

11. Plaintiff alleges that the Defendant had a duty to Plaintiff to provide notice of any transfer, assignment, or sale of the note, to properly manage the loan and the escrow amount, to comply with the notice provisions contained in the deed of trust before accelerating the note and foreclosing on the property, and, when applying for a mortgage modification, to protect their rights and not mislead them. As shown above, Defendant breached the duties it owed to Plaintiff and as a result of this breach Plaintiff was damaged.

12. The duty of the Defendant can be found in the regulation of the Department of Housing and Urban Development (“HUD”) which is incorporated with the Deed of Trust.

13. A Lender can be found liable to its customers for negligent misrepresentation in the servicing of the Loan. *See Federal Land Bank Assn’*, 825 S.W.2d 439, 442 (Tex. 1992). Even a Defendant’s accidental false representation can be actionable. *See Milestone Props. Inc. v. Federated Metals Corp.*, 867 S.W.2d 113, 119 (Tex. App – Austin 1993). *SusserPetCo. V. Latina Oil Corp.*, 574 S.W.2d 830, 832 (Tex. App. – Texarkana 1978, no writ.). Defendant failed to use reasonable care in communicating to Plaintiff the options of loss mitigation. Plaintiff relied on the representations to his detriment. The Defendant’s representations involved a transaction to which Defendant had a pecuniary interest. However, the representations were false and Defendant is wrongfully attempting to foreclose on Plaintiff’s property, causing

Plaintiff to sustain damages, including but not limited to damages for clouding the title/slander of title concerning said residence, harm to credit reputation, credit worthiness, and credit history, actual damages, and the value of time lost trying to remedy the problem against Defendant.

14. Defendant failed to perform its duties as mortgage servicer. Defendant avoided and evaded Plaintiff inquiries about an appeal an appeal of their modification application. Subsequently, without offering more than one loan workout alternative or replying to Plaintiff inquiries regarding an appeal to denial of a HAMP modification, the Defendant, forwarded a notice posting foreclosure sale of Plaintiff's property for December 7, 2021.

15. As a result of Defendant's negligence, Plaintiff is in danger of being dispossessed of his property. Defendant's mishandling of Plaintiff's loss mitigation constitutes a negligent misrepresentation.

16. As a result, Defendant has breached the written contractual agreements and covenants of the note and the requirements pursuant to the Bureau of Consumer Financial Bureau pursuant to applicable law.

17. As a result of Defendant's breach, Plaintiff has suffered harm as he has incurred additional charges to his loan balance and escrow account and is continuing to incur them to the present.

VIOLATION OF TEXAS. PROP. CODE ANN. CH 51.

18. Mortgage foreclosures in the State of Texas are governed by the express terms of the Deed of Trust and by Chapter 51 of the Property Code.

19. More specifically, it is well settled by statute that the mortgagee is required to (1) notify the mortgagor by certified mail that the Deed of Trust is in default and give him or his at

least twenty (20) days to cure and/or protest and (2) give mortgagor at least twenty-one (21) days notice of the sale by certified mail. Tex. Prop. Code Ann. 51.0002(b)(3), (d).

20. In the case at bar, Plaintiff's mortgage loan including Deed of Trust set out terms of default and acceleration in its covenants and as such when he received the notice of accelerations, he in fact did raise issues regarding his loan and payment history and pending loan workout alternatives as such until the disputes were resolved any notice to post his property for sale would be premature.

21. To wit, if Defendant is allowed to proceed with the finalization of the foreclosure proceedings of Plaintiff's property, Plaintiff will suffer immediate and irreparable injury.

22. Specifically, Plaintiff will be harmed in that he will lose all of the money previously invested in the property without having a fair opportunity to protect the investment of which Plaintiff has no adequate remedy at law. Plaintiff has no alternative but to seek injunctive relief.

BREACH OF CONTRACT

23. The elements of a breach of contract action are: (1) the existence of a valid contract; (2) performed or tendered performance by the Plaintiff; and (3) breach by the Defendant.

24. Plaintiff alleges that Defendant failed to comply with HUD regulations outlining procedures that must be followed prior to accelerating and foreclosing a loan subject to the FHA.

25. The paragraphs which Lender and/or Servicer breached are paragraphs 10, 15, 16, and 18 of the Deed of Trust.

26. Specifically the Note and Deed of Trust expressly provided that (1) Defendants must allow the right to reinstate and provide information to do such action, (2) Defendants must

provide notice of the Loan Servicer each time the Loan Servicer changed, and (3) Defendants must provide notice of default, action to cure default, a date no less than 30 days by which to cure the default, and what happens when the default is not cured. The Defendants have failed to performed these actions and others under the Deed of Trust and Note.

27. The Defendant failed to follow the foregoing steps and thus breached the contract with Plaintiff.

28. As a result, Defendant has breached the written contractual agreements and covenants of the note by wrongful applying these charges over and above Plaintiff's principal loan balance.

29. As a result of Defendant's breach, Plaintiff has suffered harm as he has incurred additional charges to his loan balance and escrow account and are continuing to incur them to the present.

ALL PARAGRAPHS INCORPORATED

30. Each of the proceedings and succeeding paragraphs are incorporated as part of the following cause of action.

ATTORNEY'S FEES

31. Plaintiff is entitled to recover reasonable and necessary attorney fees pursuant to Tex. Civ. Prac. & Rem. Code Sec. 37.009 and pursuant to Tex. Civ. Prac. & Rem. Code Chapter 38 in this action for the breach of contract as authorized in Sec. 38.001(8).

DISCOVERY – DISCLOSURES - TRCP 194.2

32. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests that Defendants disclose the information and material described in Rule 194.2 within 50 days of service.

NOTICE – TRCP 193.7

33. Plaintiffs hereby put Defendants on notice that Plaintiffs intend to use Defendant's discovery responses as evidence at trial in accordance with such rights and privileges established by Texas Rules of Civil Procedure 193.7.

RULE 47 DECLARATIONS

34. By reason of all the above and foregoing it has become necessary to bring this suit for which it is now brought in a just and reasonable sum greatly in excess of the jurisdictional limits of this Honorable Court, together with all interest, pre and post judgment to which Plaintiff is entitled by law. As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief seek greater than \$250,000.00 but not more than \$1,000,000.00. Plaintiff also seeks injunctive relief.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

35. Defendant, SPECIALIZED LOAN SERVICING, LLC should not be allowed to finalize foreclosure proceedings including transfer or any other disposition of the property, or taking possession or exercise any control over the property located 22931 Gentle Shadow Drive, Hockley, TX 77447.

36. Defendant, SPECIALIZED LOAN SERVICING, LLC has failed to follow state law notice provisions of the Texas Property Code and is not entitled to proceed with the sale of the property through wrongful foreclosure.

37. Plaintiff will suffer irreparable injury if Defendant, SPECIALIZED LOAN SERVICING, LLC, is not enjoined from effectuating the wrongful foreclosure sale of 22931 Gentle Shadow Drive, Hockley, TX 77447.

38. There is a substantial likelihood that Plaintiff will succeed on the merits of its lawsuit.

39. The threatened harm to Plaintiff outweighs the harm of a preliminary injunction would inflict on the Defendant.

40. In addition, the property in question affords Plaintiff a substantial equity amount over and above the alleged debt owed to the Defendant.

41. Issuance of a preliminary injunction is in the public interest. The granting of a preliminary injunction would maintain the status quo and retains one of the most significant assets of the Plaintiff. To deny the preliminary injunction would be to unjustly enrich the Defendant and extinguish the Plaintiff substantial equity interest in its property.

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

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

MOTION FOR TEMPORARY RESTRAINING ORDER

44. All allegations are incorporated herein.

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

a. Plaintiff will incur significant irreparable injury and loss. The threaten damage which would be incurred would be significant and substantial as specified above and incorporated herein by reference.

b. There is substantial likelihood of success on the merits as specified within.

c. The threaten harm outweighs the harm a temporary restraining order would inflict on the Defendant specified within and incorporated herein by reference.

d. The Temporary Restraining Order would serve the public interest as specified above, incorporated by reference.

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

46. For these reasons, Plaintiff asks the Court to issue a temporary restraining order preventing and refraining Defendant, its attorneys, agents, successors and/or assigns from consummating, continuing or effectuating any transaction, transferring the real property located at 22931 Gentle Shadow Drive, Hockley, TX 77447, perfecting its lien or security interest in the property, exercising any dominion or control over the real property, or attempting to take possession of the property, and to set the request for preliminary injunction for hearing at the earliest possible time.

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

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

a. Invalidate the foreclosure sale that is scheduled for December 7, 2021.

b. Issue an immediate temporary restraining order preventing and refraining Defendant, its attorneys, agents, successors and/or assigns from consummating, continuing or effectuating any transaction, transferring the real property located at 22931 Gentle Shadow Drive, Hockley, TX 77447, perfecting its lien or security interest in the property, exercising any dominion or control over the real property, or attempting to take possession of the property,

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 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 within and that upon final hearing, this Court grant declaratory judgment that no foreclosure sale of Plaintiff's 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; and evicting Plaintiff from his property;

e. The Plaintiff be granted his damages, costs, and reasonable attorney fees, and any other relief at law or in equity to which they may be entitled.

RESPECTFULLY SUBMITTED,
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ATTORNEY FOR PLAINTIFF

Automated Certificate of eService

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Robert Newark on behalf of Robert Newark
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Envelope ID: 59677287
Status as of 12/3/2021 10:52 AM CST

Associated Case Party: Ross Stevenson

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