

CAUSE NO. _____

QUEST TRUST COMPANY	§	IN THE DISTRICT COURT
	§	
VS.	§	____ JUDICIAL DISTRICT
	§	
SANDY DASIGENIS, TRUSTEE,	§	
JONATHAN CAMPBELL AND MAIRA	§	HARRIS COUNTY, TEXAS
GIRALDO, <i>ET AL</i>		

**PLAINTIFF'S ORIGINAL PETITION WITH
REQUEST FOR TEMPORARY INJUNCTION**

1. PARTIES

A. QUEST TRUST COMPANY for the benefit of CAROLINE ALLISON IRA #2593721 is "Plaintiff Quest". Plaintiff Quest is represented by WILLIAM C. BOYD (TBA 02779000) (email: wboyd@pattersonboyd.com) and S. SCOTT BOYD (TBA 24026909) (email: ssboyd@pattersonboyd.com) of Patterson, Boyd & Lowery, P.C., 2101 Louisiana St., Houston, Texas 77002; (Ph. 713-222-0351 and fax: 713-759-0642).

B. SANDY DASIGENIS aka SANDRA DASIGENIS, trustee is "Defendant Dasigenis" and she may be served with citation at 1015 Cardinal Ave, Sugar Land, TX 77478-3450, or wherever she may be found.

C. MAIRA GIRALDO is "Defendant Giraldo" and she may be served with citation at she may be served with citation at 3909 Golf Dr., Houston, TX 77018-5200 or wherever she may be found.

D. JONATHAN CAMPBELL is "Defendant Campbell" and he may be served with citation at 3909 Golf Dr., Houston, TX 77018-5200, or wherever he may be found.

E. HOGAR HISPANO INC. is "Defendant Hogar" and is a Florida Company. Its current address is unknown.

F. ANDERS LENDING LLC d/b/a ANDERS CAPITAL GROUP is "Defendant Anders." Defendant Anders is a foreign corporation doing business in the State of Texas. Defendant Anders does not maintain a registered agent for service or a principal place of business in the State of Texas. Defendant Anders' primary place of business is at 1611 Summerland Ave, Winter Park, FL 32789-1446. Plaintiff requests that Defendant Anders be served by serving the Secretary of State as the Registered Agent for Defendant pursuant to Section 17.044 of the Texas Civil Practice & Remedies Code, and that the Secretary of State forward a copy of citation and Petition to Defendant Anders at its home office address at 1611 Summerland Ave, Winter Park, FL 32789-1446. Assumption of jurisdiction by this Court will not offend traditional notions of fair play and substantial justice.

2. FACTS

Plaintiff is the owner of real property located in Harris County with the legal description of Lot 21 Block 12 of WOODLAND TRAILS SEC 4 of Houston, Harris County, Texas, and more commonly known as 8602 Twisting Vine Lane, Houston, TX 77040 (herein referred to as the "Property").

Defendant Hogar, mortgagee, through its servicing agent, Defendant Anders, appointed Defendant Dasigenis as its Trustee to conduct a foreclosure sale of the property on September 6, 2022. See attached Notice of Foreclosure, Exhibit "A." Plaintiff's agent Caroline Allison was present at the September 6, 2022 sale and was the high bidder at the sale for \$187,500.00. Defendant Giraldo had the second highest bid at \$187,000.00.

At approximately 12:30p, Plaintiff's representative paid Defendant Dasigenis, acting as trustee, the bid amount with \$2,500.00 in cash and the balance in cashier's checks for the full \$187,500. Defendant Dasigenis refused to accept the cash and demanded full

payment by cashier's check. Plaintiff's representative indicated she would go immediately to her bank and convert the \$2,500.00 to a cashier's check, but Defendant refused to allow her to do so, claiming insufficient time.

Plaintiff is informed and believes that Defendant Dasigenis then sold the property to the second highest bidder, Defendant Giraldo, but not for the \$187,000.00 previously bid, but instead for only \$146,000.00. Plaintiff is further informed and believes that Defendant Giraldo was bidding on behalf of Defendant Campbell and herself, the current owners.

Defendants Dasigenis, Giraldo and Campbell have conspired to fraudulently deprive Plaintiff of Plaintiff's property. Alternatively, by wrongfully refusing Plaintiff's bid and accepting only \$146,000.00 for Plaintiff's property, Plaintiff has suffered damages of in excess of \$40,000.00.

3. CAUSES OF ACTIONS

A. Quiet Title

A suit to Quiet Title aims to declare ineffective Defendants' claim of title. Plaintiff was the owner of the Property on September 6, 2022. Plaintiff's ownership of the Property is adversely affected by a potential claim of title by Defendants. The Trustee's deed allegedly signed by Defendant Dasigenis transferring the real property to Defendants Giraldo and Campbell is invalid and unenforceable because of irregularities in the foreclosure sale process as outlined above. Defendants improperly prevented the current owner from bidding on its property. The trustee's deed made the basis of this lawsuit should be declared void, and Plaintiff awarded such other damages as it may be entitled.

B. Trespass to Try Title

A trespass to try title action is the method of determining title to lands, tenements, or other real property. Texas Property Code Section 22.001(a), TRCP 783. The Property in question is an addition in Houston, Harris County, Texas. Plaintiff was the title owner of the

Property on September 6, 2022. Defendant Dasigenis, acting as trustee, conducted a foreclosure sale purporting to sell the Property to Defendant Giraldo and/or Campbell. The sale is void due to the irregularities in the foreclosure sale as outlined above. Plaintiff seeks a judgment that it is the current owner of the Property, and for such other damages as it may be entitled.

C. Void Foreclosure

Plaintiff seeks to set aside the September foreclosure sale because the Trustee failed to follow Texas law. Plaintiff appeared at the sale with qualified funds to pay for its winning bid. However, Defendant Dasigenis, acting as trustee, refused to accept \$2,500 of the bid amount because it was cash and not cashier's checks. While Defendant Dasigenis, acting as trustee, has some discretion related to the terms of the sale, refusing immediate payment from a bidder, regardless of the form of payment, is not legal or reasonable. In addition, Defendant Dasigenis was also wrong to refuse Plaintiff time to obtain \$2,500 in cashier's checks. Because Defendant Dasigenis, acting as substitute trustee, failed to follow Texas law regarding the foreclosure sale, Plaintiff asks that the sale be set aside as void.

D. Conspiracy

Defendants Geraldo, Dasigenis, and Campbell were part of a combination of people who intended to accomplish an unlawful purpose, or a lawful purpose by unlawful means. Specifically, the conspired to transfer title to the Property to Defendant Geraldo for a reduced price--\$146,000 instead of \$187,000. The members of the conspiracy had a meeting of the minds on the object and course of action. At least one of the members committed an unlawful, overt act to further the object or course of action. Plaintiff suffered injury as a proximate result of the wrongful act.

Defendants conspired to transfer title to Defendants Campbell and Giraldo for a reduced amount, avoiding excess proceeds and any payment to Plaintiff. This conspiracy

included the purpose of avoiding Plaintiff's winning bid, which Defendant Dasigenis rejected for unlawful reasons (because she did not accept cash). Plaintiff seeks to hold each Defendant, jointly and severally, liable for Plaintiff's injuries.

E. Declaratory Judgment

Plaintiff seeks a declaratory judgment that the foreclosure sale of the Property on September 6, 2022 is void. Specifically, Plaintiff seeks a declaration that Defendant Dasigenis failed to follow Texas law in conducting the sale. It was illegal and unreasonable for Defendant Dasigenis, acting as trustee, to refuse to accept \$2,500 as partial payment of Plaintiff's winning bid, with the balance paid in cashier's checks. Plaintiff further seeks a declaratory judgment that it was illegal and unreasonable for Defendant Dasigenis, acting as trustee, to refuse to allow Plaintiff time to convert her \$2,500 cash into a cashier's check. Plaintiff further seeks a declaration that it was illegal and unreasonable for Defendant Dasigenis, acting as trustee, to allow the second highest bidder, Defendant Giraldo, to purchase the Property at a reduced price, \$40,000 less than her second highest bid of \$187,000. Plaintiff seeks a declaration that the winning bid about was \$187,000, should the Court find the foreclosure was properly conducted.

F. Fraud

Defendant Dasigenis is liable to Plaintiff for fraud. Defendant Dasigenis, acting as trustee, misrepresented to Plaintiff that it could only pay for its foreclosure bid with cashier's checks—that \$2,500 in cash was not acceptable. Defendant further misrepresented that Plaintiff did not have sufficient time to convert her \$2,500 in cash to a cashier's check. Defendant also failed to disclose a material fact—that she was not accepting the second highest bid, but instead opening the auction for new bids, and eventually selling the property to the same, second highest bidder, Defendant Giraldo, for more than \$40,000 less than her previous bid. Plaintiff relied on these misrepresentations to her detriment. Plaintiff was

injured because it lost title to the Property and lost excess proceeds of over \$40,000. Plaintiff seeks to set aside the foreclosure sale, or alternatively the excess proceeds had the property sold for \$187,000.

G. Temporary Injunction

Plaintiff seeks a temporary injunction to maintain the status quo pending this lawsuit. Specifically, Plaintiff, as the owner of the property on September 6, 2022, asks the Court to enjoin Defendants from the following acts:

1. transferring title to the property;
2. damaging the property;
3. modifying the property;
4. evicting any tenants in possession of the property;
5. preventing Plaintiff and its representatives from access to the property.

Pending this litigation, Plaintiff asks the Court to allow Plaintiff access to the property, to maintain the property and make any necessary repairs. Plaintiff asks that any bond be waived because Plaintiff only seeks to maintain the status quo. Defendants will not be harmed by a temporary injunction.

H. Reasonable and Necessary Attorney Fees

Plaintiff is entitled to recover reasonable and necessary attorney fees for its claims related to wrongful foreclosure and Declaratory Judgment. Plaintiff has retained the law firm of Patterson, Boyd & Lowery, P.C. to file suit and has agreed to pay a reasonable hourly fee to the law firm. All demands and conditions precedent to the recovery of attorney's fees have been performed. Plaintiff seeks to recover reasonable and necessary attorney's fees through trial and appeal.

I. Prejudgment and Post-judgment interest

Plaintiff seeks recovery of prejudgment and post-judgment interest at the maximum rate permitted by law.

6. PRAYER

Plaintiff requests a judgment against Defendants, jointly and severally, that the Foreclosure sale on September 6, 2022 is void, monetary damages and legal fees, and for such other relief to which Plaintiff is entitled.

RESPECTFULLY SUBMITTED,

PATTERSON, BOYD & LOWERY, P.C.

BY: /s/ S. Scott Boyd
WILLIAM C. BOYD
T/B/A 02779000
Email: wboyd@pattersonboyd.com
S. SCOTT BOYD
T/B/A 24026909
Email: ssboyd@pattersonboyd.com
2101 Louisiana St.
Houston, Texas 77002
Phone: 713-222-0351
Fax: 713-759-0642
Attorneys for Plaintiff

VERIFICATION

My name is Caroline Allison and I am representative for Plaintiff and I have read the facts contained in the preceding Petition and they are true and correct based on my personal knowledge. My date of birth is [REDACTED] and my current address is [REDACTED] in the United States of America, and I declare under penalty of perjury that the foregoing is true and correct.

Signed this date: _____

Caroline Allison, for Plaintiff

recovery of attorney's fees have been performed. Plaintiff seeks to recover reasonable and necessary attorney's fees through trial and appeal.

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RESPECTFULLY SUBMITTED,

PATTERSON, BOYD & LOWERY,
P.C.

BY: /s/ S. Scott
Boyd

WILLIAM C. BOYD

T/B/A 02779000

Email:

wboyd@pattersonboyd.com

S. SCOTT BOYD

T/B/A 24026909

Email:

ssboyd@pattersonboyd.com

2101 Louisiana St.

Houston, Texas 77002

Phone: 713-222-0351

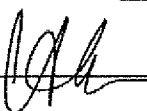
Fax: 713-759-0642

Attorneys for Plaintiff

VERIFICATION

My name is Caroline Allison and I am representative for Plaintiff and I have read the facts contained in the preceding Petition and they are true and correct based on my personal knowledge. My date of birth is 7-71 and my current address is Houston, Tx 77058 in the United States of America, and I declare under penalty of perjury that the foregoing is true and correct.

Signed this date: 9/16/22



Caroline Allison, for Plaintiff

NOTICE OF ACCELERATION AND NOTICE OF TRUSTEE'S SALE

Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.

DEED OF TRUST INFORMATION:

Date: October 28, 2003
 Grantor(s): Russell D. Buchner and Peggy J. Buchner
 Original Mortgagee: Financial Freedom Senior Funding Corporation, a Subsidiary of Lehman Brothers Bank, FSB
 Original Principal: \$142,500.00
 Recording Information: X188847
 Property County: Harris
 Property: ALL THAT PROPERTY (THE "REAL PROPERTY") LYING AND BEING SITUATED IN HARRIS COUNTY, TEXAS, DESCRIBED AS FOLLOWS, TO-WIT: LOT 21, IN BLOCK 12, OF WOODLAND TRAILS, SECTION FOUR (4), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 180, PAGE 29 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

Property Address: 8602 Twisting Vine Lane
 Houston, TX 77040

MORTGAGE SERVICING INFORMATION:

The Mortgage Servicer, if not the Current Mortgagee, is representing the Current Mortgagee pursuant to a Mortgage Servicing Agreement.

Current Mortgagee: Hogar Hispano Inc
 Mortgage Servicer: Anders Capital Group
 Mortgage Servicer: 1540 Kurt Street
 Address: Eustis, FL 32726

SALE INFORMATION:

Date of Sale: September 6, 2022
 Time of Sale: 10:00 AM or within three hours thereafter.
 Place of Sale: The Bayou City Event Center Pavilion located at 9401 Knight Rd, Houston, TX 77040
 OR AS DESIGNATED BY THE COUNTY COMMISSIONER'S OFFICE or, if the preceding area is no longer the designated area, at the area most recently designated by the County Commissioner's Court.

Sewart or Leva

Substitute Trustee: Anna Sewart, David Barry, Byron Sewart, Helen Henderson, Austin DuBois, Sandy Dasigents, Jeff Leva, Steve Leva or Patricia Poston, Michael J. Burns, Vruttil Patel, or Jonathan Smith, any to act
 Substitute Trustee Address: 5501 LBJ Freeway, Suite 925
 Dallas, TX 75240
 TXAttorney@PadgettLawGroup.com

Exhibit 'A'

APPOINTMENT OF SUBSTITUTE TRUSTEE:

THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE. THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.

The undersigned is the attorney for the mortgagee and/or mortgage servicer, and in such capacity does hereby remove the original trustee and all successor substitute trustees under the above described Deed of Trust and appoints in their place Anna Sewart, David Barry, Byron Sewart, Helen Anderson, Adam DuBois, Sandy Dasigenis, Jeff Leva, Steve Leva or Patricia Poston, Michael J. Burns, Vrutti Patel, or Jonathan Smith, any to act, whose address is c/o Padgett Law Group, 5501 LBJ Freeway, Suite 925, Dallas, TX 75240 as Substitute Trustee, who shall hereafter exercise all powers and duties to set aside the said original trustee under said Deed of Trust, and further does hereby request, authorize, and instruct said Substitute Trustees to conduct and direct the execution of remedies set aside to the beneficiary therein.

WHEREAS, the above-named Grantor(s) previously conveyed the above described property in trust to secure payment of the Note set forth in the above-described Deed of Trust; and

WHEREAS, a default under the Note and Deed of Trust was declared, such default was reported to not have been cured, and all sums secured by such Deed of Trust are declared immediately due and payable.

WHEREAS, the original Trustee and any previously appointed Substitute Trustee under said Deed of Trust has been hereby removed and the herein described Substitute Trustees, have been appointed as Substitute Trustees and authorized by the Mortgage Servicer to exercise the power of sale granted in the Deed of Trust; and

WHEREAS, the undersigned law firm has been requested to provide these notices on behalf of the Current Mortgagee, Mortgage Servicer and Substitute Trustee.

NOW, THEREFORE, NOTICE IS HEREBY GIVEN of the foregoing matters and that:

1. The maturity of the Note is hereby accelerated, and all sums secured by the Deed of Trust are declared to be immediately due and payable.
2. The herein appointed Substitute Trustees, any to act, as Substitute Trustee will sell the Property to the highest bidder for cash on the date, at the place, and no earlier than the time set forth above in the Sale Information section of this notice. The sale will begin within three hours after that time.
3. This sale shall be subject to any legal impediments to the sale of the Property to any exceptions referenced in the Deed of Trust or appearing of record to the extent the same are still in effect and shall not cover any property that has been released from the lien imposed by the Deed of Trust.
4. No warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for the particular purpose shall be conveyed at the sale, save and except the Grantor's warranties specifically authorized by the Grantor in the Deed of Trust. The property shall be sold "AS-IS", purchaser's will buy the property "at the purchaser's own risk" and "at his peril" and no representation is made concerning the quality or nature of title to be acquired. Purchasers will receive whatever interest Grantor and Grantor's assigns have in the property, subject to any liens or interest of any kind that may survive the sale. Interested persons are encouraged to consult counsel of their choice prior to participating in the sale of the property.
5. If the sale is set aside for any reason, the Purchaser at the sale shall be entitled only to a return of the funds paid. The Purchaser shall have no further recourse against the Mortgagor, the Mortgagee, the Mortgagee's Attorney, or the duly appointed Substitute Trustee.

Michael J. Burns / Vrutti Patel / Jonathan Smith

Sewart or Leva

CERTIFICATE OF POSTING

My name is SANDY DASIGENIS, and my address is c/o Padgett Law Group, 5501 LBJ Freeway, Suite 925, Dallas, TX 75240. I declare under penalty of perjury that on August 15, 2022, I filed at the office of the Harris County Clerk to be posted at the Harris County courthouse this notice of sale.



Declarant's Name: SANDY DASIGENIS

Date: 8/15/22

Padgett Law Group
5501 LBJ Freeway, Suite 925
Dallas, TX 75240
TXAttorney@PadgettLawGroup.com
(850) 422-2520

UNOFFICIAL COPY

Automated Certificate of eService

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

Margaret Berner on behalf of William Boyd

Bar No. 02779000

mberner@pattersonboyd.com

Envelope ID: 68346485

Status as of 9/16/2022 3:41 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
William Boyd		wboyd@pattersonboyd.com	9/16/2022 3:06:19 PM	SENT
S. Scott Boyd		ssboyd@pattersonboyd.com	9/16/2022 3:06:19 PM	SENT