

CAUSE NO. 2022-59398

QUEST TRUST COMPANY	§	IN THE DISTRICT COURT
	§	
VS.	§	152ND JUDICIAL DISTRICT
	§	
SANDY DASIGENIS, TRUSTEE,	§	
JONATHAN CAMPBELL AND MAIRA	§	HARRIS COUNTY, TEXAS
GIRALDO, <i>ET AL</i>		

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

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 is represented by Alicia M. Matsushima (Texas Bar No. 24002546) and Moises Liberato Jr. (Texas Bar No. 24132067) of INVICTA LAW FIRM, 1923 Washington Ave. Ste. 2275, Houston, Texas 77007; (713) 955-4559 Tel.; (713) 881-9954 Fax; alicia@invictalawfirm.com; moises@invictalawfirm.com.

C. MAIRA GIRALDO is "Defendant Giraldo" and is represented by Alicia M. Matsushima (Texas Bar No. 24002546) and Moises Liberato Jr. (Texas Bar No. 24132067) of INVICTA LAW FIRM, 1923 Washington Ave. Ste. 2275, Houston, Texas 77007; (713) 955-4559 Tel.; (713) 881-9954 Fax; alicia@invictalawfirm.com; moises@invictalawfirm.com.

D. JONATHAN CAMPBELL is “Defendant Campbell” and is represented by Alicia M. Matsushima (Texas Bar No. 24002546) and Moises Liberato Jr. (Texas Bar No. 24132067) of INVICTA LAW FIRM, 1923 Washington Ave. Ste. 2275, Houston, Texas 77007; (713) 955-4559 Tel.; (713) 881-9954 Fax; alicia@invictalawfirm.com; moises@invictalawfirm.com.

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.

G. DUTCH MILL MHP, LLC is “Defendant Dutch” and it may be served with citation by serving its registered agent, Jonathan R. Campbell, 3909 Golf Dr, Houston, TX 77018-5200; or wherever he may be found.

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 Dutch, the current title owner.

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 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 and Dutch 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 and Defendant Dutch, 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 and Defendant Dutch, 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.

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CERTIFICATE OF SERVICE

The forgoing amended pleadings was served by efile on all parties of record as indicated in the Parties section above on the 20th day of January, 2023.

alicia@invictalawfirm.com; moises@invictalawfirm.com

/s/ S. Scott Boyd
S. SCOTT BOYD

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.

Scott Boyd on behalf of Scott Boyd
Bar No. 24026909
info@pattersonboyd.com
Envelope ID: 71994158
Status as of 1/20/2023 2:31 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
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