

CAUSE NO. _____

LECIA TAYLOR § **IN THE DISTRICT COURT**
 §
VS. § **_____ JUDICIAL DISTRICT**
 §
 §
SELECT PORTFOLIO SERVICING, INC § **OF HARRIS COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Plaintiff, LECIA TAYLOR, files against Defendant this original petition and application for temporary restraining order and files this temporary injunction against Defendant, SELECT PORTFOLIO SERVICING, INC.

Jurisdiction

1. The damages sought in this suit are within the jurisdictional limits of the Court. As required by Rule 47, Texas Rules of Civil Procedure, Plaintiff states that Plaintiff seeks monetary relief of \$250,000 or less and non-monetary relief.

Venue

2. Venue is proper in this county in that the events giving rise to this cause of action occurred within Harris County.

Plaintiff

3. Plaintiff, LECIA TAYLOR, is an individual whose address is 10923 South Acres, Houston, TX 77047. The last three digits of Plaintiff's driver's license number are 575. The last three digits of Plaintiff's Social Security number are 039.

Defendant

4. Defendant, SELECT PORTFOLIO SERVICING, INC, is a corporation organized under the laws of the state of Utah. SELECT PORTFOLIO SERVICING, INC is authorized to do business in Texas and may be served with process by serving CORPORATION SERVICE COMPANY D/B/A, its registered agent, by personal delivery at the registered office located at 211 E. 7th Street, Suite 620, Austin, TX, 78701-3218, USA.

Discovery Control Plan

5. Under Texas Rule of Civil Procedure 190.3, Plaintiff plans to conduct discovery under Level 2 and affirmatively pleads this suit is not governed by the expedited actions process Rule 169 of the Texas Rules of Civil Procedure because Plaintiff seeks injunctive relief.

Facts

6. Plaintiff has a loans that is serviced by Defendant for her property located at 10522 Leitrim Way, Houston, Texas 77047.

7. On or about July 26, 2021, Plaintiff's loan was transferred to Defendant for servicing. Prior to the transfer of the loan, Plaintiff's prior mortgage servicer's Relationship Manager was in process of adjusting account for erroneous fees on account in amount of 2,950.00 plus fees. Once the loan was transferred, Plaintiff informed Defendant of the errors with the account.

8. On or about July 21, 2021, Plaintiff made a payment on her loan of \$991.00. Defendant held this payment and the payment that Plaintiff made on or about late November of 2021 and did not apply payments to account.

9. Plaintiff received a statement from Defendant on or about December 17, 2021 which showed a 9.49% interest rate and a contradictory of correspondence on January 4, 2022 stating a

default interest rate of 18% effective as of December 1, 2021. Plaintiff made Defendant aware of its error and contradictory statement and she disputed the charges and fees. Defendant failed to make any changes or adjustments.

10. On or about February 7, 2022, Plaintiff again notified Defendant of error, inaccurate accounting, misapplied and unapplied payments via certified mail. From February 14, 2022 onwards, Plaintiff continuously, via various methods, attempted to notify Defendant of the issues with her account and continuously reached out to Defendant to resolve the matter; however, all of her entreats were ignored. As a result, the account incurred a default interest rate. Ultimately, Defendant delayed and failed to make adjustments to the account necessary fix its error for months.

11. On or about March 17, 2022, Plaintiff spoke to a representative of Defendant. The representative advised her of that her payments were being held in escrow which was causing her account to show as delinquent. The representative took two payments via phone and applied the two individual payments separately as not to further compromise account. Around the same time, after numerous correspondences, calls, letters and notices, Plaintiff spoke with one of Defendant supervisors who acknowledged that Defendant made error on account by holding the payment and not applying to the account. The supervisor noted the account and advised Plaintiff that she would escalate the issue to the cashier department, customer service and various other departments to fix the error.

12. Defendant acknowledged and vowed to fix the error timely, but failed to do so. Later, Defendant's representatives promised to escalate issue again and note that the account was previously escalated and that the issue had yet to be addressed. After the second escalation of the account, Plaintiff received a correspondence from Defendant requesting more time to fix the accounting error and issue. This time frame was ultimately delayed by 30 days and then another

30 days. These delays resulted in the account appearing to be delinquent and in default. As a result of its delays and feet dragging, the account was subject to a default interest rate causing an increase in payments.

13. Due to the continued problems resulting from the accounting errors, Defendant's website online portal would not accept Plaintiff's regularly scheduled payments. Defendant was immediately contacted regarding issues with the payment portal and representative was advised of the dilemma, acknowledged being aware of portal issues and vowed to note the account so Plaintiff would not be held responsible for actions beyond her control. Payments continued to be made on account while Defendant said that it would correct its error. On or about June 30, 2022, Plaintiff sent the payments to Defendant via alternate means. Defendant has these payments in its possession.

14. On or about, September 10, 2022, Defendant was again given notice, via certified mail, of ongoing continued inaccurate accounting, account errors, default rate issues, payments being held and not applied. On or about, September 28, 2022, Defendant was resent payments Defendant neglected to apply to account. After patiently waiting on Defendant to correct account Plaintiff sent numerous correspondences via certified mail requesting Defendant to fix its error; however, Defendant failed to sufficiently address the problem.

15. In or about November 2022, Defendant placed the account in F/C status, as a result of an error Defendant created. After numerous called Defendant rescinded the F/C and promised to fix the account and address any fees Defendant imposed. Rather than fix the error, Defendant choose to use delay tactics to mislead Plaintiff and try to obfuscate the issue. This continued June 2022, August 2022, September 2022, October 2022, December 2022 and even January 2023. To date account is not fixed although Defendant have payments and have failed to apply to account

and fix accounting error Defendant caused. As a result, Plaintiff have lost funding due to the inaccurate reporting of the account. Defendant have payments in its possession.

16. Despite all of Plaintiff's entreats and Defendant's promises to correct its error. Defendant began stating that it could not fix the problem with the account until the account is current however, Plaintiff account is current and is only appearing delinquent due to an error caused by Defendant by holding and not applying the payments to account. Defendant T has all payments in its possession, but has sent Plaintiff "PAYMENT DUE DATE OF MARCH 1, 2022" on correspondences and PAYOFF statements causing potential Lender's "Alarm" in addition to the erroneous fees and charges Defendant caused and not resolved. Further, Defendant is continuing to unjustly enrich themselves by inflating amount owed, attempting to collect fees and erroneous Defendant is not entitled to on Payoff statement.

17. Defendant has caused Plaintiff sleepless nights, financial, emotional psychological and mental distress having to continuously contact them over and over to no avail to hear broken promises., Plaintiff has to rely on Defendant to keep its promises and fix its error. As a direct result of Defendant failure to timely address the accounting errors that it caused, Plaintiff's ability to refinance the loan and get funding for the loan has been severely compromised.

COMMON LAW FRAUD

18. Defendant represented to Plaintiff that a certain course of action would fix the issues with her loan, failed to clarify and fix inconsistencies with her loan, made fraudulent claims regarding a federally backed loan and its true status.

19. Defendant's representations or lack of explanation was material.

20. Defendant representations to Plaintiff was a false promise of future

performance.

21. Defendant's representations to Plaintiff constituted a false statement of fact.

22. Defendant's conduct amounted to false representation to Plaintiff.

23. Defendant made the false representation when it knew or should have known that the representations were false.

24. Defendant made the false representation recklessly, a positive assertion and without knowledge of its truth.

25. Defendant intended for Plaintiff to rely on or had reason to expect plaintiff would act in reliance on the false representation.

Application for Temporary Restraining Order

26. The Plaintiff asks the Court for a temporary restraining order to prevent defendant foreclosing on her property on February 7, 2023.

27. It is probable that plaintiff will prevail after a trial on the merits because Plaintiff has made all of her payments and/or has the money to pay any and all payments that have not been accepted and because once the errors to the account are fixed the loan will not be delinquent or in foreclosure status.

28. If plaintiff's application is not granted, harm is imminent because her home will be sold and lost at a foreclosure sale on February 7, 2023.

29. The harm that will result if the temporary restraining order is not issued is irreparable because Plaintiff's home would be lost.

30. Plaintiff has no adequate remedy at law because the foreclosure is set for Tuesday, February 7, 2023.

Request for Temporary Injunction

31. Plaintiff asks the Court to set its application for temporary injunction for a hearing and after hearing make the temporary restraining order a temporary injunction against the defendant during the pendency of these proceedings.

32. There is not enough time to serve notice on defendant and to hold a hearing on this application because the foreclosure is set for Tuesday February 7, 2023.

Noneconomic Damages

28. Plaintiff seeks damages within the jurisdictional limits of the Court.

Attorney's Fees and Costs

29. Plaintiff requests judgment for reasonable attorney's fees and costs under Sections 37.009 and 38.001, Texas Civil Practice and Remedies Code.

Initial Disclosures

30. As provided in Rule 194, Texas Rules of Civil Procedure, required Initial Disclosures of all items listed in Rule 194.2 must be made at or within 30 days after the filing of the first answer unless a different time is set by the parties' agreement or court order.

31. Plaintiff asks the Court to keep the requirement of Initial Disclosures to be made within 30 days.

Conditions Precedent

32. Plaintiff confirms that all conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

Prayer

Plaintiff prays that citation be issued commanding Defendant to appear and answer herein and that Plaintiff be awarded judgment against Defendant for the relief requested herein and for all other relief to which Plaintiff is entitled both in equity and at law.

Respectfully submitted,

HAMILTON & CHILDS LAW, PLLC
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Houston, TX 77002

/s/ Eraka Childs
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Attorneys for LECIA TAYLOR

VERIFICATION

STATE OF TEXAS


§

COUNTY OF HARRIS

§

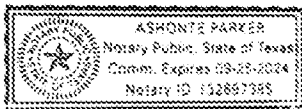
BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared the person known by me to be LECIA TAYLOR who, after being by me duly sworn, testified as follows:

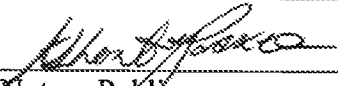
“My name is LECIA TAYLOR, I am over 18 years of age, and I am competent to testify to these matters. I have personal knowledge of all facts stated in the above Original Petition and Application for Temporary Restraining Order and all such facts are true and correct.”



LECIA TAYLOR, Affiant

SUBSCRIBED AND SWORN TO before me on February 6, 2023.





Notary Public

Certificate of Service

I certify that a true copy of this document was served in accordance with Rule 21a of the Texas Rules of Civil Procedure on the following on February 6, 2023.

/s/ Eraka Childs

ERAKA CHILDS
Attorney for LECIA TAYLOR

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.

KíEtha Hamilton on behalf of KíEtha Hamilton
Bar No. 24097786
hamiltonlegalservices.hls@gmail.com
Envelope ID: 72469914
Status as of 2/6/2023 5:09 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kay Hamilton		info@law-hls.com	2/6/2023 1:26:18 PM	SENT