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2022 39990

CAUSE NO:

<p><i>WV</i></p> <p>VITORINO NICIA AS ASSIGNEE OF WILLIAM CALLEDARE</p>	§	IN THE DISTRICT COURT
<p>VS</p>	§	151 JUDICIAL DISTRICT
<p>POST OAK CROSSING COUNCIL OF CO-OWNERS WOODFOREST ASSOCIATION SEARS BENNETT &amp; GERDES LLC</p>	§	
	§	HARRIS COUNTY, TEXAS

**PLAINTIFFS ORIGINAL SWORN PETITION  
 FOR TEMPORARY RESTRAINING ORDER,  
 TEMPORARY INJUNCTION, PERMANENT INJUNCTION  
 AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF THE SAID COURT:

COME NOW NICIA VITORINO as Assignee of William Calledare AND WILLIAM CALLEDARE, the Plaintiffs in the above cause of action and file their pleadings, complaining of Post Oak Crossing Council of Co-owners, Woodforest Association, and Sears Bennett & Gerdes LLC, the Defendants in the above cause of action.

I. DISCOVERY LEVEL

RECORDER'S MEMORANDUM  
 This instrument is of poor quality  
 at the time of imaging.

**FILED**

Marilyn Burgess  
 District Clerk

JUL - 5 2022

Time: 9:45 AM  
 Harris County, Texas

By: *J. Perry*  
 Deputy

1. Plaintiffs would advise this court that this matter should be conducted under Level 2 of the Discovery Control Plan as stated in Rule 190 of the Texas Rules of Civil Procedure

## II. PARTIES

2. Plaintiffs William Caledare and Nicia Vitorino are individuals who are residents of 3219 Ashton Park Drive., in Houston, TX 77082 in the Harris County.
3. Defendant Post Oak Council of Co-owners(“Post”) is a non-profit organization doing business in the State of Texas in the County of Harris who can be served through its registered agent HOA Management at 5850 San Felipe St., Ste 500 in Houston TX 77057
4. Woodforest Association (:Woodforest”)is also a Texas non-profit corporation which can be served by serving Sarah Coleman at Prestige Association Management Group at 1419 Kingwood Dr., 103, Kingwood Texas 77339
5. Sears Bennett & Gerdes LLC., (“Sears”) is also a Texas Corporation in good standing which can be

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served by serving its registered agent at 6548  
Greatwood Parkway in Sugarland, TX77479 in the  
Fortbend County in Texas.

6. Plaintiffs reserve the right to add other defendants, if deemed necessary.
7. Plaintiffs have been informed and firmly believe and thereon allege that all times herein mentioned, the Defendants or their agents, employees, servants were acting within the course and scope of such agency, employment and under the direction of the Defendants.

### III. VENUE AND JURISDICTION

8. Venue is proper in Harris County, Texas as all or substantially all of the events giving rise to the claims of the Plaintiffs occurred in Harris County, Texas
9. The Properties purchased from Sears in June, 2011 are as follows and incorporated herein by reference:

- 1818 Augusta Dr., Unit 20 in Houston, TX 77057  
(Property-1)

Legal: Unit 20 Bldg. C :

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Post Oak Crossing Condo Amend

In Harris County

- 12955 Woodforest Blvd., (Property-2)
- Unit 33, Houston TX 77015
  
- TH 33., BLDG D: Woodforest Condo in Harris  
County

10. The Court has the jurisdiction over the subject-matter as the amount in controversy is within the jurisdictional limits

IV FACTS

11. Plaintiffs are the owners of the foregoing two properties having been purchased in HOAs foreclosures sale from Sears, the trustee. Such sale was conducted on **June 1, 2021** in Harris County, almost a year ago.
12. The prior owners since deceased, default occurred and properties were foreclosed upon on June 1, 2021.
13. The sale generated substantial amount of overage.
- 13 Sears, for unknown and unexplained reasons, failed to issue and/or record Deed for Property-1 until May 11,

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2022 (RP-2022-249140 at APPENDIX-X)) and for Property-2 until May 22, 2022 (RP-2022-264964at APPENDIX-Y) while the purchase was made on June 1, 2021, almost a year ago,

- 14 Plaintiff paid full sale price in cash on conclusion of sale and provided name and address for the purpose of receiving the recorded deeds. .
- 15 Plaintiff had a sale pending for both the properties which could not be closed upon in absence of deeds.
- 16 Property-2, taxes being outstanding for the prior years, the Plaintiffs could not intervene in the lawsuit.in absence of recorded deeds. That alone has put the Plaintiffs' investment at risk and has caused very anxious moments, monetary losses due to increased amount of interest, penalties, legal fees and interest payments. .
- 17 Despite seven written demands and certified letters, the legitimate request was not even responded. See Exhibit-A through Exhibit-M) on Property-1 and Exhibit A-1 on Property-2 attached hereto and made the part of this petition.

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18 On March 4, 2022, Plaintiff responded to 45 days Demand letter from Houston HOA management which offered three payment plan.

On March 20, Plaintiff responded through a Certified mail notifying once again the information provided for preparation of deeds , requested for a meeting , requesting deeds **but Sears responded no meeting shall be granted .**

Sears continued to refuse to deliver much awaited deeds on the property even though Plaintiff submitted the desired information., The copy of the letter and response is provided as recent as March 4, 2022 and so is the receipt of such mailing (Green card is also attached attached . SEE EXHIBIT-F)

19. Plaintiffs requested a hearing before the board pursuant to Code 209.007 but Defendants refused.

20. On June 14, 2022, Plaintiffs responded to ownership questioning and involvement of a management company , yet Sears posted the

properties for sale. (See Exhibit-requested Sears to devise a payment plan allowing to pay the disputed amount in at least three installments

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at least three payment of disputed amount. Such request was denied.

21.. To add insult to injury, Sears added additional outrageous legal fees in the amount of \$ 3000, raising the amount owed to almost \$20,000

to be paid in a matter of three hours on Saturday

22 Plaintiff could not have the certified disputed funds in a matter of three hours.

23.The deeds, it appears , were “backdated” with the sole objective of foreclosing once again the properties foreclosed upon the deceased prior

Owners which Sears could not do legally. Hence Sears issued deeds ast moment to foreclose on the Plaintiff.

24 In other words , if the prior owners continued to own properties, the assessment could have been paid from the excess proceeds,

25. Deeds were executed on **June 15, 2021** and notarized on the same day as is evident from the Notary Stamp, this is an act of fraud, for the notary is an insider and most likely notarized just a day before those were recorded with County Clerk’s office on May 11, 2022 and May 22, 2022 respectively for Property-1 and Property-2

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26. Sears sent Email replying to Plaintiff's written several demands to provide the Deeds Originals are not kept with their office .If that is true, the original, it appears , were generated days before recordation in order to claim assessment dues retroactively.
27. It is highly unlikely the original deeds were in Sears custody, their actions are questionable . Plaintiff had at least seven demands letters on Property-1 and at least 4 demands on Property-2..
28. Sears subsequently recorded both the deeds in the month of June, 2022 but managed to have been notarized though their inhouse notary which notarized in month of June, 2021.
29. These acts constitute fraud with the sole intention to deprive Plaintiffs of their investment as Sears posted both properties on May 26, 2022 after adding over \$3000 on each property as being his legal fees.
30. In other words, within 15 days of providing and recording the deeds Sears demanded almost \$20,000 to be paid immediately to avoid properties being foreclosed.

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31. Both deeds were recorded on May 11, 2022 whereas Gerdes of Sears office , in response to my demand letter stated as follows:

*“Deed has or will be recorded” She further stated “As I previously stated the deeds have been recorded”. She failed to advise that the deeds had been recorded on May 23, 2022.*

Most importantly, Gerdes on November 19, 2021 stated

“The original deeds were retrieved from our record. “However, we do not maintain originals “ Nevertheless, she committed a fraud by recording deeds on May 11, 2022 but “backdated” June 2021

32. In the meantime, the properties continued to be in ownership of the deceased prior owners i.e. Linda Dillard (prior owner of Woodforest) and Joseph Viviano (prior owner of Post)

33. The property at Woodforest continues to be a subject-matter of the tax lawsuit by the tax entities and is in active status ( Cause No: 2022-36848, styled Galena

**Park Independent School District Dillard Linda,  
Diane and Unknown Heirs and Successors)**

ARGUMENT AND AUTHORITY

34. Sarah Gerdes herself failed to establish our ownership although she was the one who actually struck off both the properties on June 1, 2021. Sears wrote ( see Exhibit-F) is reproduced hereunder:

“Sears is the legal representative of Post Oak Crossing, not Houston, HOA Management. In addition, the HOA nor HOA Management do not ever have access to any popery deeds Lastly you are not the owner of record, and we will not have any further communication with you regarding this property. We wish you the best and have copied in the legal representative regarding this transaction”

**Argument:**

35. Plaintiffs' were not recognized as the owners.

36 Plaintiff, legally are then not liable for the assessments.

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Plaintiff;s liability begins from the date both the properties were deeded and recorded in the county Clerk's record.

Plaintiff will be liable for assessment payments with effect from May 11, 2022 ,the date the deeds were recorded and thus legally became the owner.

37 Sears, in similar circumstances have paid six months of assessment payment from the overage although it may not be appropriate to pay

future assessment payments from the overage. Given the situation, the presumption applied that six months of assesments could have been

paid from the overage or waiver applied . Sears when told recently vehemently denied hat it has ever been done. ( See Exhibits- )

38. Plaintiffs produce a record from the property which was foreclosed upon and the owner being deceased, six months of future assessment

payments were made by Sears. ( See statement of account at Exhibit)

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## REQUEST FOR DISCLOSURE

39 Plaintiffs request that Defendants disclose within 45 days of service of this request the information or material described in Texas Rule of Civil Procedure 194.2

## RELIEF REQUESTED

40. Plaintiffs seek to avoid any risk that the associations will seek foreclosure, or any other improper relief, concerning the debt or other violations baselessly asserted by the associations

41. Plaintiffs also seek the Defendants would be enjoined to evict any tenant or assert any other claim, injure or harm Plaintiff in retaliation.

42 Plaintiffs seeks damages for not receiving deeds on both properties for over a year, causing anxious moments, harassment and mental

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I anguish,

43 Plaintiffs request this court to declare that Plaintiffs were not liable for the assessment payments until the deeds were recorded in their names

44. Court provide further monetary relief for additional legal fees, interest payments, penalties and increased amount of taxes due to Plaintiffs'

failure to intervene in the ongoing tax lawsuit in absence of any deed to Property -2.

45 Plaintiffs further seeks damages for they could not sell the properties and move with their business because there no deeds to the properties for about a year and Plaintiffs sustained monetary damages.

46. Pursuant to the Texas Declaratory Judgment Act, Tex. Civ. Prac. & Rem. Code 37.001 *et seq* Plaintiffs seeks declaratory Judgment to establish

that fines and other charges unlawfully imposed and demanded by the Defendants are not, in fact due, and that the Defendants had no lawful

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bases to post to Plaintiff's account, unlawfully imposed and demanded.

47. As further related relief, Plaintiffs seek a permanent injunction as appropriate to correct the accounts and to secure statutory rights.

48. Plaintiffs are further entitled to recover attorney fees under Texas Property code 5.006 and Texas Civil Practices & Remedy Code 38.001(8) as

they wish to retain the services of an attorney for further handling of the case. Independently, Plaintiff are entitled to recover reasonably and

necessary attorney fees that are equitable and just under the Declaratory Judgment Act Tex. Civ. Prac. Rem. Code 37.009

#### PRAYER

WHEREFORE PREMISES CONSIDERED Plaintiffs ask that Defendants be cited to appear and answer, and that this court enter judgment against Defendants for the following

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- a. DECLARATION for the relief requested above, including clarification of the fines and other charges that the Defendants did not lawfully assess against the Plaintiffs.
- b. An INJUNCTION compelling the Defendants to issue a true statement of Plaintiffs' account beginning May 22, 2022.
- c. Appropriate attorney's fees when deployed, costs of the court, and such other and further relief, both general and special, at law or in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted

*Nicia Vitorino*

NICIA VITORINO AS ASSIGNEE  
AND WILLIAM CALLEDARE

3219 Ashton Park Dr

Houston, TX 77082

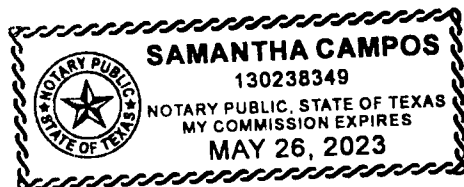
*nicia.vitorino@gmail.com*  
*(832) 202-4397*

SWORN AFFIDAVIT

COUNTY OF HARRIS

STATE OF TEXAS

Subscribed and sworn before me, the undersigned authority on 5<sup>th</sup> day of July 2022 by Nicia Vitorino that the statements made in the foregoing petition and the exhibits attached thereto are within my personal knowledge and are true and correct.



*Samantha Campos*  
Notary Public