

CAUSE NO. \_\_\_\_\_

HOUSTON PRIME  
INVESTMENTS, LTD.

v.

COMMUNITY LOAN  
SERVICING, LLC

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,  
DEMAND FOR AN ACCOUNTING, AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Houston Prime Investments, Ltd., Plaintiff herein, filing this its Original Petition, Application for Injunctive Relief, Demand for an Accounting, and Request for Disclosures complaining of Community Loan Servicing LLC, Defendant herein, and for causes of action would respectfully show the Court as follows:

**DISCOVERY**

1. Plaintiff intends to conduct discovery under Texas Rules of Civil Procedure 190.3 (Level 2).

**PARTIES**

2. Houston Prime Investments, Ltd. is an entity incorporated under the laws of the State of Texas which conducts business in Harris County, Texas and may be served with process on the undersigned legal counsel.

3. Community Loan Servicing, LLC is an entity formed under the laws of the State of Delaware which conducts business in Harris County, Texas and may be served with process as follows:

Community Loan Servicing, LLC  
c/o Corporation Service Company  
211 E. 7th Street Suite 620  
Austin, TX 78701

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over Community Loan Servicing, LLC because the Defendant is an entity formed under the laws of the State of Delaware which conducts business in Harris County, Texas

5. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. Venue is mandatory in Harris County, Texas because the subject matter of the lawsuit involves real property which is located in Harris County, Texas. Further, all or a substantial part of the events or omissions giving rise to Plaintiff's causes of action occurred in Harris County, Texas thus venue is proper under §15.002(a)(1) of the Texas Civil Practice and Remedies Code.

## **RELEVANT FACTS**

6. The subject matter of the lawsuit is the real property and the improvements thereon located at 8301 & 8303 Gulf Freeway, Houston, TX 77017 (the "Property").

7. Houston Prime Investments, Ltd. ("HPI") purchased the Property on or about January 14, 2004. During the process of purchasing the Property, HPI executed a Note in the amount of \$500,000 ("Note") as well as a Mortgage, Deed of Trust, Security Agreement and Assignment of Leases ("Deed of Trust") in which Southwest Guaranty, Ltd. is listed as the Lender (the "Loan"). A true and correct copy of the Deed of Trust is attached hereto as Exhibit "1" and incorporated herein for all purposes.

8. Upon information and belief, the Note and Deed of Trust were subsequently transferred to Community Loan Servicing, LLC ("CLS") which also acts as the loan servicer.

9. HPI made its regular payments to CLS during the term of the loan, however; CLS mishandled those payments. After noticing that its mortgage statements weren't accurately

reflecting the payments being made, HPI requested an accounting of the Loan pursuant to Section 17 of the Deed of Trust to determine an accurate amount of the loan balance and to ensure that its loan payments had been properly allocated to the various components of the Loan.

10. HPI made requests for information on a regular basis; however, CLS continuously avoided the phone calls and, to this date, has yet to provide an accurate accounting of the loan payments. Accordingly, HPI retained the services of Greg Cochran at Owsley Law Firm, PLLC to step in and remedy the situation but, likewise, his efforts were to no avail. In response to Mr. Cochran's requests for information including, but not limited to, an accurate accounting, a loan reinstatement amount, and a loan payoff quote. HPI's primary objective when requesting this information was to bring the loan current or refinance the debt; however, CLS refused and continues to refuse to cooperate. In essence, CLS set HPI up to fail.

11. In retaliation for HPI and its attorney's persistent efforts to reach clarity and remedy the situation, CLS snubbed their noses at HPI, didn't even bother to tell HPI to pound sand, and flippantly posted the Property for foreclosure sale to occur on March 07, 2023 without providing the requisite notices to HPI as required by the Texas Property Code. A true and correct copy of the related Notice of Substitute Trustee's Sale, which was provided to HPI by the undersigned legal counsel, is attached hereto as Exhibit "2" and incorporated herein for all purposes.

**FIRST CAUSE OF ACTION:  
DECLARATORY JUDGMENT**

12. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 11 as if set forth fully herein.

13. Plaintiff seeks a determination of the rights of the parties pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001, *et seq.* (West). In particular, Plaintiff seeks a determination that the

pending foreclosure sale of its real property is wrongful because Defendant failed to properly follow the procedures as set forth in the Deed of Trust, the Texas Property Code, and the Texas Constitution. Specifically, Defendant failed to provide proper notice and opportunity to cure pursuant to Texas Property Code 51.002.

14. Further, Plaintiff seeks a determination that the pending foreclosure sale of its real property is wrongful because Defendant was precluded from taking any action whatsoever to foreclose on Plaintiff's Property without first complying with the Texas Property Code as well as due to Defendant's refusal to provide an accurate accounting, reinstatement amount, and payoff quote on violation of Section 17 of the Deed of Trust.

**A. Notice of Trustee's Sale**

15. Section 51.002 of the Texas Property Code governs the sale of real property under deeds of trust or other contract liens. Tex. Prop. Code Ann. § 51.002 (West); Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 569 (Tex. 2001). In particular, section 51.002(d) provides that "[n]otwithstanding any agreement to the contrary, the mortgage servicer ... shall serve a debtor in default ... with written notice by certified mail stating that the debtor is in default ... and giving the debtor at least 20 days to cure the default before notice of the sale can be given." *Id.* § 51.002(d). Section 51.002(b) states that notice of sale, in turn, must be given at least twenty-one days before the date of the sale and specifies various locations where the notice must be made available. *Id.* §§ 51.002(b)(1)-(3). In addition to the minimum statutory requirements, the deed of trust executed by the debtor-mortgagor usually details the agreed contractual terms and conditions for foreclosure of real property.

**B. Amount of Debt**

16. If the note secured by the property is an installment note payable in periodic payments, acceleration of an installment debt requires demand be made and an opportunity to cure the default be given. If the notice does not inform prospective bidders of the terms, conditions and amounts of the outstanding indebtedness, it can be argued the notice is ipso facto invalid. Even strong supporters of creditor's rights suggest the better practice is to detail the default to the extent necessary to provide the mortgagor an opportunity to cure the default in the notice of sale. *See Baggett, Texas Foreclosure Law and Practice*, § 2.27 (1984).

**SECOND CAUSE OF ACTION:  
BREACH OF CONTRACT**

17. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 16 as if set forth fully herein.

18. The actions committed by Defendant constitutes breach of contract because:

- A. There exists a valid, enforceable contract between Plaintiff and Defendant;
- B. Plaintiff has standing to sue for breach of contract;
- C. Plaintiff performed its contractual obligations under the Deed of Trust;
- D. Defendant breached the parties' agreement by not providing an accurate accounting of the loan, reinstatement amount, and payoff quote note as well as by failing to send the required foreclosure notices to Plaintiff at the proper address; and

E. The breaches of contract by Defendant caused Plaintiff's injury – actual damages which include, but are not limited to, loss of alternative loss mitigation options, violating Plaintiff's due process rights, litigation cost, interest on the balance of unpaid mortgage payments since the filing of this lawsuit, damage to Plaintiff's credit, and numerous erroneous expenses, overcharges, and

penalties.

**THIRD CAUSE OF ACTION:  
COMMON LAW FRAUD BY NONDISCLOSURE**

19. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 18 as if set forth fully herein.

20. Plaintiff shows that Defendant had a legal duty to disclose to Plaintiff an accurate accounting of the loan as well as a current reinstatement amount, and payoff quote but refused to do so. Defendant is the only party who can provide such information but refuses to disclose material facts within Defendant's knowledge which information is essential for Plaintiff to properly perform under the terms and conditions of the Note and Deed of Trust. In this situation, Defendant's performance is paramount yet it refused to do so.

21. Defendant used its failure to disclose material information to Plaintiff's disadvantage as a predatory lending tactic in order to obtain ownership of the Property from Plaintiff – it is Plaintiff understanding that it has built approximately \$1M in equity in the Property over the years. But for the deceit and trickery of Defendant, Plaintiff would be able to reinstate or payoff the Note

22. A confidential or "informal fiduciary" relationship existed between the parties. Defendant had a duty to disclose these facts to Plaintiff and was deliberately silent when Defendant had a duty to speak.

23. Defendant used such trickery and deceit and false representations with the intent that Plaintiff would end up defaulting on the loan so that Defendant could eventually obtain the Property at a Foreclosure Sale.

24. Furthermore, Defendant knew Plaintiff was ignorant of the nondisclosed facts and lacked opportunity to discover the truth.

25. As a result of the unconscionable actions and intentional nondisclosure of Defendant set out above, Plaintiff was harmed, and should be allowed recovery of his actual damages. In order to fully compensate Plaintiff, equitable relief in the form of rescission is also proper. The actions of the Defendant also warrant exemplary damages to deter such conduct in the future.

**FOURTH CAUSE OF ACTION:  
VIOLATION OF TEXAS PROPERTY CODE §5.065**

26. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 25 as if set forth fully herein.

27. Pursuant to the provisions of the Texas Property Code, the holder of a note must ordinarily give notice to the maker of the holder's intent to accelerate the time for payment as well as notice of acceleration. If the holder intends to accelerate the maturity of the debt, the notice must unequivocally inform the borrower of the holder's intention. A proper notice of default must give the borrower notice that the alleged delinquency must be cured; otherwise, the loan will be accelerated and the property will go to foreclosure. Prior to a foreclosure action, the noteholder is also required to give the owner clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

28. The actions committed by Defendant constitutes a violation of the Texas Property Code §5.065 because Defendant never sent proper notice of default, the opportunity to cure the default, and notice of intent to accelerate the debt which would allow Defendant to foreclose. Defendant's notices lacked sufficient factual accuracies to enable Plaintiff to cure any alleged default of the Loan.

**FIFTH CAUSE OF ACTION:  
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT**

29. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 28 as if set forth fully herein.

30. This includes an action for violations of the Texas Debt Collection Act (“TDCA”) against Defendants. *See* Tex. Fin. Code §§ 392.001 et seq.

31. Plaintiff is a “consumer” within the meaning of Section 392.001 of the Texas Finance Code, and the debt in question relating to the Property is a “consumer debt” within the meaning of such statute.

32. Defendant is a debt collector. “Debt collection” is defined as the act or practice “in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.” A “debt collector” therefore includes a creditor who is collecting its own debt. *Smith v. Heard*, 980 S.W.2d 693, (Tex. App.—San Antonio, 1998, pet. denied) (A creditor is not excused from following the provisions of the TDCA on the basis that the debt is owed directly to the creditor).

33. The acts, omissions, and conduct of Defendant, as alleged above, herein, and below, constitute violations of the following provisions of the TDCA:

- a. Threatening to take an action prohibited by law, specifically seeking to sell the Property at a foreclosure sale in violation of state law. *See* Tex. Fin. Code §§ 392.301(a)(8).
- b. Using a fraudulent, deceptive, or misleading representation that misrepresent[s] the character, extent, or amount of a consumer debt.” Tex. Fin. Code § 392.304(a)(8).
- c. Misrepresenting the status or nature of the services rendered by the debt



collector. *See* Tex. Fin. Code § 392.304(a)(14).

*d.* Using other false representation or deceptive means to collect a debt. *See* Tex. Fin. Code § 392.304(a)(19).

34. Defendant seeks to sell the Property at a foreclosure sale prior to giving the proper notices as required by Texas law. Therefore, by moving forward with foreclosure proceedings, Defendant threatened to take an action prohibited by law.

35. Additionally, Defendant made significant types of misrepresentations to Plaintiff about the status of its loan and its own services constituting violations of TDCA Sections 392.304(a)(8), 392.304(a)(19), and 392.304(a)(14).

36. First, Defendant represented to Plaintiff amounts due on its Loan which were incorrect or inaccurate. Each time this representation was made, it was false, misleading, and deceptive in violation of TDCA Section 392.304(a)(8).

37. Also, Defendant represented that Plaintiff could make payments in a specific amount pursuant to its Loan. Each time this representation was made to Plaintiff, the representation constituted a false, misleading, and deceptive debt collection practice in violation of TDCA Section 392.304(a)(19).

38. Further, Defendant made misrepresentations about the information in its Loan, where it could acquire additional information via a website and automated phone system, these statements were misrepresentations not only about the status of the Loan, but also the status and nature of services that Defendant and its representatives could provide to him. Therefore these misrepresentations also violated TDCA Section 392.304(a)(14).

39. As a result of these violations of the TDCA, Plaintiff is entitled to relief provided by Section 392.403, including but not limited to recovery of all actual damages sustained as a result of violations of the TDCA, all actual direct and indirect economic damages, damages for

lost time, damages resulting from payment of excess or additional interest, and any consequential damages. Plaintiff is also entitled to exemplary damages and attorneys' fees. *See* Tex. Fin. Code § 392.403.

**DEMAND FOR ACCOUNTING**

40. Plaintiff requests an Order for an accounting of all transactions on its mortgage loan.

**DAMAGES:  
ACTUAL DAMAGES**

41. Plaintiff is entitled to recover its actual damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**EXEMPLARY DAMAGES**

42. Plaintiff is also entitled to exemplary damages under the TDCA. *See Morante v. Am. Gen. Fin. Ctr.*, 157 F.3d 1006, 1011 (5th Cir. 1998); *Enis v. Bank of Am., N.A.*, No. 3:12-CV-0295-D, 2012 WL 4741073, at \*8 (N.D. Tex. Oct. 3, 2012) (Fitzwater, J.).

**ATTORNEYS' FEES**

43. Pursuant to Section 392.403 of the Texas Finance Code, Plaintiff is entitled to recover attorneys' fees reasonably related to the amount of work performed and costs, for all actions in the trial court, the Court of Appeals, and the Texas Supreme Court.

44. Plaintiff was forced to employ the undersigned attorneys to represent it and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover its reasonable attorneys' fees pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**CONDITIONS PRECEDENT**

45. All conditions precedent to the Plaintiff's right to bring these causes of action have been performed, have occurred, or have been waived.

**REQUEST FOR DISCLOSURES**

46. Community Loan Servicing, LLC is hereby requested to disclose to Houston Prime Investments, Ltd., within 50 days of service of this request, the information and material described in Rule 194 of the Texas Rules of Civil Procedure.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

47. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraph 1 through paragraph 45 as if set forth fully herein.

48. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable. More specifically, if not enjoined, Defendant may sell the Property at any time during the pendency of this matter thus depriving Plaintiff of ownership of the Property and potentially causing Plaintiff to be dispossessed of the Property. Plaintiff has no adequate remedy at law because the subject matter is real property, and any legal remedy of which Plaintiff may avail itself will not give it as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

49. Therefore, Plaintiff requests that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from selling the real property which is the subject matter of this lawsuit and is commonly known as 8301 & 8303 Gulf Freeway, Houston, TX 77017.

50. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 49 above.

51. Plaintiff is likely to prevail on the merits of the lawsuit as described above.

52. The granting of the relief requested is not inconsistent with public policy considerations.

### **BOND**

53. Plaintiff is willing to post a reasonable temporary restraining order bond and requests that the Court set such bond.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- A. Defendant be cited to appear and answer herein;
- B. The Court conduct a hearing on Plaintiff's Application for Injunctive Relief;
- C. A temporary restraining order be issued restraining Defendant, their agents, employees, and legal counsel, and those acting in concert or participation with Defendant who receive actual notice of the Order, by personal service or otherwise, from selling the real property which is the subject matter of this lawsuit and is commonly known as 8301 & 8303 Gulf Freeway, Houston, TX 77017;
- D. A Permanent Injunction be entered enjoining Defendant from the same acts listed in Paragraph C above; and
- E. Upon final hearing or trial hereof, the Court order a judgment in favor of Plaintiff against Defendant for its actual damages, exemplary damages, reasonable attorneys' fees, all costs of court, and such other and further relief, both general and special, at

law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

VILT LAW, P.C.

By:



ROBERT C. VILT

Texas Bar Number 00788586

Email: clay@viltlaw.com

5177 Richmond Avenue, Suite 1142

Houston, Texas 77056

Telephone: 713.840.7570

Facsimile: 713.877.1827

ATTORNEYS FOR PLAINTIFF