

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

**STEPHEN EARLS –  
SUCCESSOR IN INTERESET  
TO THE ESTATE OF CHERYL  
EARLS-LOPEZ**

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**IN THE DISTRICT COURT**

**v.**

**HARRIS COUNTY, TEXAS**

**AMEGY BANK, N.A.**

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

**PLAINTIFF’S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,  
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Stephen Earles - Successor in Interest to the Estate of Cheryl Earles-Lopez, Plaintiff herein, filing this his Original Petition, Application for Injunctive Relief, and Request for disclosures complaining of Amegy Bank, N.A., 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. Stephen Earles is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.

3. Amegy Bank, N.A. is an entity who conducts business in Harris County, Texas and may be served with process as follows:

Amegy Bank, N.A.  
C/O Corporate Officer  
1717 West Loop South, Suite 16  
Houston, TX 77027-3049

## **JURISDICTION AND VENUE**

5. The Court has jurisdiction over Amegy Bank, N.A. who conducts business Harris County, Texas.

6. 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 against Defendant 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 this lawsuit is the real property and the improvements thereon located at 2102 Massey Tompkins, Baytown, TX 77521 (the "Property").

7. Cheryl Earles-Lopez ("Cheryl") purchased the Property in on or about October 9, 2013. During the process of purchasing the Property and obtaining the construction loan, Cheryl executed a Note as well as a Deed of Trust in which Amegy Bank, N.A. ("Amegy") is listed as the Lender.

8. Cheryl was very consistent about paying his mortgage. Unfortunately, Cheryl passed away from health complications in 2020 leaving behind a daughter, Christine Boone ("Christine"), who has disclaimer her right to the Estate, and a brother, Stephen Earles ("Earles"), who is Cheryl's successor in Interest to her estate. He is also the administrator of his Estate.

9. Upon Cheryl's passing, Earles reached out to Amegy to inform them of Cheryl's passing and to find out what he needed to do to maintain the mortgage payments. Amegy offered no solutions and continually told Earles that because he was not on the mortgage, they could not

provide him with any information.

10. Frustrated, Earles began researching ways to save the Property including, but not limited to, selling the Property. Despite having the ability to make the mortgage payments, Amegy still refused to let him make payments. As such, Earles continued his efforts to sell the Property which he now has a buyer for. The sale is set to close on the 15<sup>th</sup> of March, 2023. A true and correct copy of the contract for sale of the Property is attached hereto as Exhibit "1" and incorporated herein for all purposes.

11. Earles was excited because he thought he would be able to at least obtain the equity out of his sister's Property; however, in February of 2023, Earles began receiving a barrage of mail from investors and attorneys offering their services to help him save his home from the coming foreclosure sale on March 7, 2023. Earles was surprised to say the least because he had not received any notice from Amegy regarding the scheduled foreclosure sale. Apparently, Amegy posted the Property for foreclosure without obtaining a court order to do so as well as failing to send Earles/Cheryl any notice of default, notice of acceleration, and notice of foreclosure sale which is a violation of the Texas Property Code and Earles/Cheryl/the Estate's due process rights.

12. Accordingly, Plaintiff alleges that Defendant is attempting to wrongfully sell his Property at a foreclosure sale on March 7, 2023 which is a violation of the Texas Property Code, the Deed of Trust, and Plaintiff's due process rights.

### **CLAIMS**

#### **AGENCY & RESPONDEAT SUPERIOR**

13. Wherever it is alleged that Defendant did anything, or failed to do anything, it is meant that such conduct was done by Defendant's employees, vice principals, agents, attorneys,

affiliated entities, and/or previous owners of the Note, in the normal or routine scope of their authority, or ratified by Defendant, or done with such apparent authority so as to cause Plaintiff to reasonably rely that such conduct was within the scope of their authority. Plaintiff did rely to Plaintiff's detriment on Defendant's representatives being vested with authority for their conduct. Defendant is vicariously liable for the conduct of their employees, vice principals, agents, attorneys, affiliated entities, representatives of Defendant's affiliated entities, and previous owners of the Note by virtue of respondeat superior, apparent authority, and estoppel doctrines.

**FIRST CAUSE OF ACTION:  
BREACH OF CONTRACT**

14. To the extent not inconsistent herewith Stephen Earles ("Earles") incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

15. The actions committed by Amegy Bank, N.A. ("Amegy") constitute breach of contract because:

- A. There exists a valid, enforceable contract between Earles and Amegy;
- B. Earles has standing to sue for breach of contract;
- C. Earles performed, tendered performance, or was excused from performing his contractual obligations;
- D. Amegy breached the contract; and
- E. The breach of contract by Amegy caused Earles injury.

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

23. To the extent not inconsistent herewith, The Estate of Cheryl Earles – Deceased and Stephen Earles (collectively "Plaintiffs") incorporates by reference the allegations made in paragraphs 1 through 16 as if set forth fully herein.

24. 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 mortgagee intends to accelerate the maturity of the debt, the notice must unequivocally inform the mortgagor of the mortgagee'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 home owners clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

25. The actions committed by Amegy Bank, N.A. ("Amegy") constitute violations of the Texas Property Code §5.065 because Amegy never sent proper and timely notice of default, the opportunity to cure the default, notice of intent to accelerate the debt, notice of acceleration, and notice of foreclosure sale which are required in order for Amegy to foreclose on their lien rights to the Property.

**DAMAGES:**  
**ACTUAL DAMAGES**

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

**EXEMPLARY DAMAGES**

27. Plaintiff is entitled to recover his exemplary damages from Defendants for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**ATTORNEYS' FEES**

28. Plaintiff was forced to employ the undersigned attorneys to represent his and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover his 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**

29. 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**

30. Defendants are hereby requested to disclose to Plaintiff, 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**

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

32. 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. Defendant has already posted Plaintiff's Property for the March 7, 2023 foreclosure sale. Plaintiff has no adequate remedy at law because the subject matter is real property, and any legal remedy of which Plaintiff may avail himself will not give him as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

33. Therefore, Plaintiff requests that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from taking any further foreclosure

action to sell the Property (including, but not limited to, sending notices of default, acceleration, and foreclosure sale) which is the subject matter of this lawsuit and is commonly known as 2102 Massey Tompkins, Baytown, TX 77521.

34. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 33 above.

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

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

#### **BOND**

37. 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 taking any further foreclosure action to sell the Property (including, but not limited to, sending notices of default, acceleration, and foreclosure sale) which is the subject matter of this lawsuit and is commonly known as 2102 Massey Tompkins, Baytown, TX 77521;

- 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 his 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 by,

**Law Office of Erick DeLaRue, PLLC**

By: */s/ Erick DeLaRue*

**ERICK DELARUE**

Texas Bar No: 24103505

2800 Post Oak Boulevard, Suite 4100

Houston, TX 77056

Telephone: 713-899-6727

Email: [erick.delarue@delaruelaw.com](mailto:erick.delarue@delaruelaw.com)

**ATTORNEY FOR PLAINTIFF**



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

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SUCCESSOR IN INTEREST  
TO THE ESTATE OF CHERYL  
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\_\_\_\_\_ JUDICIAL DISTRICT

v.

AMEGY BANK, N.A.

STATE OF TEXAS  
COUNTY OF HARRIS

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KNOW ALL THESE BY MEN PRESENTS:

DECLARATION/VERIFICATION OF STEPHEN EARLES

1. "My name is Stephen Earles. I am the Plaintiff in the above-captioned lawsuit. I have read the Plaintiff's Original Petition, Application for Injunctive Relief, and Requests for Disclosures to which this Declaration relates and offer this Declaration in support of the statements and arguments asserted herein. I have personal knowledge of the facts therein and state that every factual statement made is true and correct. I have never been convicted of a felony or other crime involving moral turpitude.

The foregoing is sworn to by penalty of perjury.

My name is Stephen Earles, my date of birth is 12/19/1957, and my address is 7381 Millstone Dr Newasota, TX 77868. I declare under penalty of perjury that the foregoing information is true and correct."

Executed in Harris County, State of Texas, on the 6 day of March, 2023.

Stephen Earles  
STEPHEN EARLES

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TO THE ESTATE OF CHERYL  
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**AMEGY BANK, N.A.**

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

**TEMPORARY RESTRAINING ORDER**

ON THIS DATE the Plaintiff’s Application for Temporary Restraining Order that was incorporated into and pled in Plaintiff’s Original Petition, Application for Injunctive Relief, and Request for Disclosures (“Petition”) in this cause, was heard and considered before this Court.

Based upon the pleadings, exhibits, records, and documents filed by Plaintiff and presented to the Court, as well as the arguments of legal counsel at the hearing, IT CLEARLY APPEARS THAT:

- A. Unless Amegy Bank, N.A. (“Defendant”), their agents, employees, directors, shareholders, and legal counsel is/are immediately enjoined and restrained, Defendant may sell the Property at any time during the pendency of this matter thus depriving Plaintiff of ownership of the Property identified and described in the Petition and potentially causing Plaintiff to be dispossessed of the Property. Plaintiff will suffer an immediate and irreparable harm and will have no adequate remedies under the law and Defendant may commit the foregoing before notice and hearing on Plaintiff’s Application for Temporary Injunction.

B. Plaintiff will suffer an irreparable harm if Defendant, their agents, employees, directors, shareholders, and legal counsel are not restrained immediately because Defendant has posted Plaintiff's property for the March 7, 2023 foreclosure sale, which is real property and Plaintiff's homestead, which is unique and irreplaceable, and there is no adequate remedy at law to grant Plaintiff complete, final, and equitable relief.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant, their agents, employees, directors, shareholders, and legal counsel are hereby ORDERED to immediately cease and desist from taking any further action in pursuit of foreclosing on the Property (including, but not limited to, sending notices of default, acceleration, and foreclosure sale) which is the subject matter of this lawsuit and is commonly known as 2102 Massey Tompkins, Baytown, TX 77521. Defendant, their agents, employees, directors, shareholders, and legal counsel are hereby immediately enjoined and restrained from the date of entry of this Order until fourteen (14) days hereafter, or until further ordered by this Court.

**IT IS FURTHER THEREFORE ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Application for Temporary Injunction be heard on the \_\_\_\_ day of March, 2023 starting at \_\_\_\_ a.m./p.m. in the courtroom of the \_\_\_\_\_ District Court of Harris County located at in the Harris County Courthouse, 201 Caroline Street, Houston, Texas 77002 and that Defendant is commanded to appear at that time and show cause, if any, why a temporary injunction should not be issued against Defendant.

The Clerk of the above-entitled court shall issue a notice of entry of a temporary restraining order in conformity with the law and the terms of this Order, to include a copy of this Order, upon the filing by Plaintiff of the bond hereinafter set.

This Order shall not be effective until Plaintiff deposits with the Harris County District Clerk, a bond in the amount of \$\_\_\_\_\_, in due conformity with applicable law. The bond may be in the form of cash, cashier's check, or a check drawn from operating account of Plaintiff's attorney's law firm.

SIGNED and ENTERED this the \_\_\_\_\_ day of March, 2023 at \_\_\_\_\_ a.m./p.m.

\_\_\_\_\_  
JUDGE PRESIDING