

CAUSE NO. 2022-78335

SUSAN PETERSON, <i>Plaintiff(s)</i> ,	§	IN THE DISTRICT COURT
	§	
VS.	§	281ST JUDICIAL DISTRICT
	§	
HUNTER-KELSEY II, LLC <i>Defendant(s)</i> .	§	HARRIS COUNTY, TEXAS

**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**

On the 26th day of April, 2023, the Court considered the Motion for Summary Judgment (“the Motion”) filed by Hunter-Kelsey II, LLC, who is a Defendant and Counter-Plaintiff in the above styled cause. Susan Peterson is a Plaintiff and Counter-Defendant. Hunter-Kelsey II, LLC appeared by counsel of record. Susan Peterson failed to appear and refiled no response to the Motion. After considering the Motion, the evidence presented, and the arguments made by the by Hunter-Kelsey II, LLC, THE COURT FINDS the Motion is in good order and should be granted.

IT IS THEREFORE ORDERED that the Motion is in all things GRANTED. Susan Peterson’s claims against Hunter-Kelsey II, LLC for 1) Breach of Contract, 2) Common Law Fraud, and 3) Violation of the Texas Debt Collection Act are DISMISSED WITH PREJUDICE. Hunter-Kelsey II, LLC’s counterclaims against Susan Peterson are GRANTED, which include: 1) Breach of Contract; 2) Foreclosure; and 3) Declaratory Judgment, Attorney’s Fees, Costs of Court and Judgment Interest, as further described below. The Court grants judgment as follows:

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC recover of and from Susan Peterson the total sums of money set out below, which claims are secured by a lien against the parcels of real property hereinafter described, as follows:

Legal Description: Lot 38, Block 4, Replat and Extension of Westmont, according to the map or plat thereof, recorded in Volume 77, Page 1, Map Records, Harris County, Texas; more commonly known as 9302 Highmeadow Drive, Houston, Texas 77024.

Hunter-Kelsey II, LLC: \$169,061.23.

IT IS ORDERED, ADJUDGED, AND DECREED that any tax liens that encumber the aforesaid property are superior in kind to Hunter-Kelsey II, LLC's lien and will survive and continue to encumber the property after the foreclosure sale ordered hereby.

IT IS ORDERED, ADJUDGED, AND DECREED that, in addition to the above listed amounts, Hunter-Kelsey II, LLC shall recover from Susan Peterson post judgment interest on the aforesaid judgment awards to accrue at the contracted for annual default interest rate of 17.989% until said judgment awards are satisfied in full.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC has and recovers from Susan Peterson all court costs that have been and will be incurred in the prosecution of this cause; all costs of court shall be paid and or reimbursed to Hunter-Kelsey II, LLC by Susan Peterson.

IT IS ORDERED that Hunter-Kelsey II, LLC shall have foreclosure as stated in the Deed of Trust dated July 25, 2016, and recorded as Document/Instrument No(s). RP-2016-332736, in the Official Public Records of Harris County, Texas, on the above-described property against Susan Peterson or any person(s) claiming under her by any right, title or interest acquired before, during, or after the pendency of this suit. The above-described real property is ORDERED SOLD in execution of this judgment, the proceeds from which to be applied to the adjudged amounts awarded herein.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC has established by competent evidence that the entire debt owed, as described above, is now due in full after a notice of default of maturity of the promissory note and Susan Peterson's failure to cure the default in a requisite period.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC has and recovers from the Susan Peterson all costs of sale to include officer fees and/or commissions for foreclosure sale, advertising fees or costs, and publication fees or costs for notices, filing fees, recording fees, postage fees, deed preparation fees, sales transcript fees, and any other fee, cost, or expense related to the foreclosure of said real property by this judgment.

IT IS ORDERED, ADJUDGED, AND DECREED the clerk of this court is directed to issue an order of sale, upon the request of Hunter-Kelsey II, LLC, commanding that the Sheriff or Constable of this county seize, levy upon, advertise for sale, and sell said tracts of land to the highest bidder for cash, as under execution.

IT IS ORDERED, ADJUDGED, AND DECREED that the officer executing said order of sale shall make the sale thereunder and said officer shall make proper conveyance to the purchaser or purchasers of said properties under and by virtue to convey upon compliance with the terms of sale.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC may elect to conduct a trustee's foreclosure sale under the terms of said Deed of Trusts, in lieu of a sale by Sheriff or Constable.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC has and recovers from the Susan Peterson attorney's fees for post judgment work performed by the Hunter-Kelsey II, LLC attorney(s) and their agents in furtherance of foreclosure sale, including, but not limited to, correspondence with clerks, sheriffs, trustees, substitute trustee, parties to the suit, newspapers, bidders, purchasers and any other person involved in the foreclosure sale; preparation of documents, such as deeds, notices of foreclosure sale, letters, e-mails, bid sheets, petitions for proceeds, attachments, exhibits, settlement agreements, and any other document related to the foreclosure of the property described above or any legal work required to obtain sales proceeds; and appearances at hearings, sales or other events related to the above described foreclosure of property or collection of any amounts due hereunder.

IT IS ORDERED, ADJUDGED, AND DECREED that the net proceeds of any sale of such property made hereunder to any purchaser shall be applied to satisfy the judgment and liens foreclosed herein, but any excess in the proceeds of sale over the amount of judgment, the costs of suit, the costs of sale and other expenses chargeable against said property, shall be paid into the registry of the court and disbursed therefrom as provided by law.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC's Counterclaim 1 – Breach of Contract, is granted, there exists valid contracts between Hunter-Kelsey II, LLC and Susan Peterson, namely a Promissory Note dated July 25, 2016, made in the original principal amount of \$117,000.00 secured by the above referenced property, that Hunter-Kelsey II, LLC tendered performance by advancing Susan Peterson the principal balance stated in the Promissory Note, that Susan Peterson breached her contractual obligation by failing to make timely payments in accord with the contractual terms and Hunter-Kelsey II, LLC sustained money damages, as stated above in the judgment awards, as a result of her breach.

IT IS ORDERED, ADJUDGED, AND DECREED that Hunter-Kelsey II, LLC's Counterclaim 2 – Foreclosure, is granted, and at its election, Hunter-Kelsey II, LLC is entitled to judicially foreclose the aforesaid lien in the aforesaid manners, in accord with Tex. R. Civ. P. 309.

IT IS ORDERED, ADJUDGED, AND DECREED Hunter-Kelsey II, LLC's Counterclaim 3 – Declaratory Judgement, Attorney's Fees, Costs of Court and Judgment Interest is granted, and that the notice of sale issued by Hunter-Kelsey II, LLC to Susan Peterson dated November 1, 2022 was in all things valid and in all ways comported with the requirements of the law. Hunter-Kelsey II, LLC's attorney's fees totaling \$10,498.50 in attorney fees and \$189.11 in attorney costs, which sums are already incorporated into the total awarded to Hunter-Kelsey II, LLC, above, are reasonable and necessary, are assessed against Susan Peterson and the Subject Property.

IT IS ORDERED, ADJUDGED, AND DECREED that for all the above recovery, let execution issue.

IT IS ORDERED, ADJUDGED, AND DECREED that all parties named in any pleadings filed by any party and not included in the judgment, and any property set out in previous pleadings but not included in this judgment, are hereby dismissed without prejudice to the refile of same. Any other relief previously requested and not herein granted is expressly denied. This judgment finally disposes of all parties and all claims and is appealable.

Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Signed:  
4/28/2023



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

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing instrument, and any associated attachments, exhibits or proposed orders, has been mailed by Certified Mail, e-Service, fax or hand-delivery to the parties listed below pursuant to Tex. R. Civ. P. 21a. on April 26, 2023.

Erick DeLaRue, attorneys for Susan K. Peterson  
*Via eService to:* erick.delarue@delaruelaw.com

/s/ Dylan Schultz \_\_\_\_\_  
Dylan Schultz  
Attorney Certifying