

CAUSE NO. 2023-10403

SAMURAI MARTIAL SPORTS, INC.	§	IN THE DISTRICT COURT
	§	
	§	
vs.	§	165 th JUDICIAL DISTRICT
	§	
BANKUNITED N.A. AND CRE	§	
PROPERTIES, INC.	§	HARRIS COUNTY, TEXAS

DEFENDANTS' MOTION TO DISMISS PURSUANT TO TEX. R. CIV. P. 91a

Defendants, BankUnited N.A. (“BankUnited”) and CRE Properties, Inc. (“CRE”) (collectively “Defendants”) file this Motion to Dismiss Pursuant to Tex. R. Civ. P. 91a against Plaintiff Samurai Martial Sports, Inc. (“Plaintiff” or “Samurai”) and, in support thereof, would respectfully show the Court as follows:

SUMMARY OF MOTION

1. Plaintiff has no right, title or interest in the Property it claims because (1) Plaintiff’s purported claim to the Property was fully and finally divested by a proper foreclosure sale; (2) Plaintiff cannot couch its claims as a declaratory judgment when the claim should be a trespass to try title; and (3) there can be no statutory fraud claim without a contract Plaintiff was induced to enter. Therefore, none of Plaintiff’s claims have a basis in law or fact. Indeed, the Court will recall the parties entered into a Rule 11 Agreement to satisfy Plaintiff’s alleged defects in the foreclosure sale. Yet, Plaintiff’s claims are still pending. This is precisely the type of baseless claims that a Rule 91a motion to dismiss was created to dispose of early in a case.

BACKGROUND

2. This lawsuit was filed as a delay tactic. This is not the first attempt by Samurai or its attorneys to try to delay a foreclosure sale. This is the fourth lawsuit. Simply put,

Samurai failed in paying its monetary obligations to BankUnited from a loan it took out to purchase a piece of property. BankUnited has been trying to exercise its rights to foreclose and take possession of this property for almost 3 years.

3. Samurai no longer holds title to property located at 12500 Oxford Park Drive, Houston, Texas 77082 (hereinafter referred to as the “Property”). The Property was foreclosed on January 3, 2023. Samurai no longer has any interest or title regarding the Property. Samurai has no proof it has any interest either.

4. At the foreclosure sale, BankUnited was the highest bidder with a credit bid in the amount of \$1,512,000, and as authorized by BankUnited, CRE, its affiliate and assign, was conveyed the Property, as evidenced by the Substitute Trustee’s Deed filed in the Harris County public records. *See Exhibit A.*

5. Therefore, as of January 3, 2023, CRE became the legal owner of record of the Property. Samurai refused to leave the Property. Plaintiff filed for an application for injunctive relief attempting to stop the eviction proceedings. The Court denied the temporary restraining order. At the temporary injunction hearing, the parties entered into a Rule 11 Agreement to resolve the alleged issues at the foreclosure sale. *See Exhibit B.* As a result of the Rule 11 Agreement, Defendants filed a Correction Substitute Trustee’s Deed. *See Exhibit C.*

6. As discussed more fully below, all of Plaintiff’s claims have no basis in law or fact and should be dismissed pursuant to Tex. R. Civ. P.91a.

EVIDENCE IN SUPPORT OF MOTION

7. Defendants attach true and correct copies of the following public records in

support of this Motion to Dismiss and incorporates same herein for all purposes:¹

- Exhibit A:** Substitute Trustee’s Deed
- Exhibit B:** Rule 11 Agreement
- Exhibit C:** Correction Substitute Trustee’s Deed
- Exhibit D:** Plaintiff’s Original Petition, Application for Injunctive Relief, and Request for Disclosures

ARGUMENTS AND AUTHORITIES

8. Defendants move to dismiss Plaintiff’s causes of action for Declaratory Judgment, Suit to Quiet Title, Statutory Fraud, and Trespass to Try Title under the authority of Texas Rule of Civil Procedure 91a. Texas Rule of Civil Procedure 91a(1) provides that “a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them do not entitle the claimant to the relief sought.” The purpose of Rule 91a is to allow the Court to quickly dispose of a baseless cause of action as a matter of law without the need for evidence. *See* 2013 Cmt. to Tex. R. Civ. P. 91a. “Whether the dismissal standard is satisfied depends ‘solely on the pleading of the cause of action’.” *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016) (quoting Tex. R. Civ. P. 91a.6).

9. “[T]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” to defeat a rule 91a motion to dismiss. *Ruth v. Crow*, 03-16-00326-CV, 2018 WL 2031902, at *5 (Tex. App.—Austin May 2, 2018, pet. denied) (quoting and citing *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 754 (Tex. App.—

¹ The Court may properly consider documents which are referred to in Plaintiff’s pleading, central to his claims, or are matters of public record. *See GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 754, 55 (Tex. App. – Beaumont 2014, pet. denied) (“While not identical, [TRCP] 91a is analogous to [FRCP] 12(b)(6); therefore, we find case law interpreting Rule 12(b)(6) instructive.”); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (Documents “attache[d] to a motion to dismiss are [also] considered part of the pleadings, if they are referred to in the plaintiff’s complaint and are central to her claim.”); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n. 9 (5th Cir. 2007) (“It is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”).

Beaumont 2014, pet. denied)); *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Dismissal is appropriate when the plaintiff’s claims do not support the elements of the asserted causes of action. *Ruth*, 2018 WL at *7. Mere recitation of a cause of action’s elements without the allegation of supportive facts are insufficient, and in such instances the court should dismiss under Rule 91a. *Zheng v. Vacation Network, Inc.*, 468 S.W.3d 180, 186-87 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). Additionally, only a plaintiff’s factual allegations are taken as true, the court does “not afford the same deference to plaintiff’s legal conclusions or conclusory statements.” *Vasquez v. Legend Nat. Gas III, LP*, 492 S.W.3d 448, 451 (Tex. App.—San Antonio 2016, pet. denied) (emphasis added).²

10. Plaintiff’s claims have no basis in law because the allegations, take as true together with all reasonable inferences, do not entitle them to the relief sought. Plaintiff is not entitled to any relief because it clearly has no right or interest in the Property nor any evidence it has any right or interest in the Property. Further, a declaratory judgment and statutory fraud are not proper causes of action here. There is no contract here, and Plaintiff is also not entitled to any relief because it makes no allegations supporting any cause of action in its favor. For these reasons, the claims should be dismissed in their entirety.

I. Plaintiff’s quiet title claim and trespass to try title claim is barred as a matter of law.

11. Plaintiff’s quiet tile claim is barred as a matter of law because Plaintiff has no ownership interest in the Property. To prevail on a quiet title claim, Plaintiff must establish: (1) an interest in specific property, (2) title to the property is affected by a claim by Defendant, (3) the claim although facially valid is invalid and unenforceable. *Vernon v. Perrien*, 390 S.W.3d 47, 61 (Tex. App. – El Paso 2012, pet. denied). Among other things,

² Defendants wholly deny and do not agree with, admit, or stipulate to Plaintiff’s allegations.

“[t]he Plaintiff must prove, as a matter of law, that it has a right of ownership in the Property. *Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Tex. App. – Houston [1st Dist.] 2012, pet. denied). It cannot.

12. Here, Plaintiff cannot prove it has a right of ownership in the Property. On the contrary, the deeds clearly show the Property was conveyed to CRE. The Substitute Trustee’s Deed was recorded on January 4, 2023, and CRE has been the record title owner of the Property since that time. Plaintiff’s claim to the Property has been fully and finally divested by the foreclosure sale. Plaintiff no longer has any right, title or interest in the Property as a matter of law. Consequently, Plaintiff’s quiet title claim is fatally defective and lacks any legal or factual basis and must be dismissed.

13. To prove an action for trespass to try title, a plaintiff must include in its petition (1) the parties' real names and residences, (2) a legally sufficient description of the premises, (3) the plaintiff's claimed interest in the property, (4) that the plaintiff possesses the premises or is entitled to possession, (5) that the defendant unlawfully entered and dispossessed the plaintiff of the premises and withholds possession, and (6) a prayer for relief. Tex. R. Civ. P. 783; *Stelly v. DeLoach*, 644 S.W.3d 657, 659 (Tex. 2022). None of these facts a properly plead.

14. However, Samurai cannot prove any interest in the Property after the foreclosure sale, and it cannot prove BankUnited or CRE unlawfully entered and dispossessed Samurai of the premises. Notably, Samurai makes no claims of wrongful foreclosure. Samurai had no interest in this Property once the foreclosure sale concluded. It does not matter who the Property was sold to at the foreclosure sale. Samurai had the chance to bid. In fact, affiliates or friends of Samurai did bid, but they retracted their bid. *See Exhibit*

D. Samurai and the public were given a fair shot at bidding on the Property. BankUnited bid its credit bid and authorized the substitute trustee to convey the Property to its real estate holding company affiliate, CRE.

15. Samurai can present nothing to show this is improper. There is no case law or statutes indicating this action by BankUnited and CRE was improper. Furthermore, Samurai can show no harm or damage because of the transfer. The foreclosure sale ended once BankUnited credit bid was determined to be the highest bid at the foreclosure sale. CRE taking title to the Property afterwards had no effect on Samurai. *See Peterson v. Black*, 980 S.W.2d 818, 822 (Tex. App.—San Antonio 1998, no pet.) (holding that a sale in accordance with the law and provisions of a deed of trust transfers equitable title to the purchaser in the absence of a deed and that a foreclosure was complete at the conclusion of the bidding).

II. Plaintiff’s declaratory judgment claim and statutory fraud claim are baseless.

16. Samurai seeks a declaratory judgment on who the owner of the Property is. First, title to the Property is clearly held with CRE. However, Texas case law is clear that one cannot use the declaratory judgment act when claim should be a trespass to try title. *Jinkins v. Jinkins*, 522 S.W.3d 771, 786 (Tex. App.—Houston [1st Dist.] 2017, no pet.). “Disputes based on claims of superior title are trespass to try title actions.” *Mid Pac Portfolio, LLC v. Welch*, No. 01-15-00404-CR, 2016 WL 828150, at *4 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (mem. op.). If a dispute involves a claim of superior title and the determination of possessory interests in property, it must be brought as a trespass-to-try-title action. *See Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 926 (Tex. 2013). “[A] litigant’s couching its requested relief in terms of declaratory relief does not alter the underlying nature of the suit.” *Tex. Parks & Wildlife Dept. v. Sawyer Trust*, 354 S.W.3d

384, 388 (Tex. 2011). *Jinkins*, 522 S.W.3d at 786.

17. Because a declaratory action is improper, Samurai also brings a trespass to try title claim, which as described above should also be dismissed.

18. Samurai then tries to make the leap to a statutory fraud claim. To prove an action for statutory fraud, the plaintiff must establish the defendant made the false representation or promise for the purpose of **inducing the plaintiff to enter into a contract**. Tex. Bus. & Com. Code § 27.01(a)(1)(A), (a)(2)(C). To prove an action for statutory fraud, the plaintiff must establish she relied on the false representation or promise **by entering into the contract**. Tex. Bus. & Com. Code § 27.01(a)(1)(B), (a)(2)(D); *Schlumberger Tech. v. Swanson*, 959 S.W.2d 171, 182 (Tex.1997); *see Van Duren v. Chife*, 569 S.W.3d 176, 185 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *see, e.g., Loeffler v. Lytle ISD*, 211 S.W.3d 331, 345 (Tex. App.—San Antonio 2006, pet. denied) (Plaintiff could not have relied on inaccurate representation of property because Plaintiff knew Defendant did not own property as described in contract); *National Resort Cmty., Inc. v. Holleman*, 594 S.W.2d 195, 196–97 (Tex. App.—Austin 1980, writ ref'd n.r.e.) (Plaintiffs induced to purchase lot after agent said road would be paved). The element of reliance is the same for both common-law and statutory fraud; the plaintiff's reliance must be both actual and justifiable. *See Nelson v. McCall Motors, Inc.*, 630 S.W.3d 141, 148 (Tex. App.—Eastland 2020, no pet.); *Procter v. RMC Capital Corp.*, 47 S.W.3d 828, 831 (Tex. App.—Beaumont 2001, no pet.); *Fisher v. Yates*, 953 S.W.2d 370, 380 n.7. (Tex. App.—Texarkana 1997, pet. denied), *disapproved on other grounds, Agar Corp. v. Electro Circuits Int'l*, 580 S.W.3d 136 (Tex. 2019).

19. There can clearly be no statutory fraud claim because Samurai has not entered into a new contract with any of the Defendants. There can be no reliance if there is no

contract. Furthermore, Samurai cannot meet the causation element. None of the conduct described by BankUnited or CRE has caused it any damage. Samurai has not paid its obligations to BankUnited for this Property in almost three years (except for minimal payments under the bankruptcy plan). If anything, Samurai has had a windfall because it has not had to pay rent, mortgage payments, tax payments, or insurance payments on this Property. It is currently wrongfully occupying the Property for **free** and placing Defendants at risk by Samurai occupying the Property without permission.

20. Simply put, Plaintiff's claims for declaratory judgment and statutory fraud are baseless in law and fact and must be dismissed. Plaintiff has not even plead sufficient facts to recover on either claim.

PRAYER

For these reasons, Defendants respectfully requests that this Court grant their Motion to Dismiss Plaintiff's claims pursuant to Tex. R. Civ. P. 91a, dismiss all of Plaintiff's claims, and for such other and further relief to which Defendant may be justly entitled.

Respectfully submitted,

CLARK HILL PLC

/s/ Louis Williams

LOUIS W. WILLIAMS

State Bar No. 24088645

lwilliams@clarkhill.com

909 Fannin Street, Suite 2300

Houston, Texas 77010

(713) 951-5600 Telephone

(713) 951-5660 Facsimile

ANDREW G. EDSON
State Bar No. 24076364
aedson@clarkhill.com
901 Main Street, Suite 6000
Dallas, Texas 75202
(214) 651-4300 Telephone
(214) 651-4330 Facsimile

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that the foregoing document has been forwarded to all parties and/or counsel of record pursuant to Texas Rules of Civil Procedure 21 and/or 21a on May 5, 2023.

/s/ Louis Williams

LOUIS WILLIAMS

Automated Certificate of eService

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Becky Delancy on behalf of Louis Williams

Bar No. 24088645

bdelancy@clarkhill.com

Envelope ID: 75352894

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Tex.R.Civ.P. 91a

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Louis Williams		LWilliams@clarkhill.com	5/5/2023 11:00:28 AM	SENT
Robert C. Vilt		clay@viltlaw.com	5/5/2023 11:00:28 AM	SENT
Nicolas Vilt		nicolas@viltlaw.com	5/5/2023 11:00:28 AM	SENT
Robert CVilt		clay@viltlaw.com	5/5/2023 11:00:28 AM	SENT