

**CAUSE NO. 2023-10403**

**SAMURAI MARTIAL SPORTS, INC.** § **IN THE DISTRICT COURT OF**  
**and IHAB S. AHMED** §  
**v.** § **HARRIS COUNTY, TEXAS**  
§  
**BANKUNITED, N.A. AND** §  
**CRE PROPERTIES, INC.** § **165<sup>th</sup> JUDICIAL DISTRICT**

**PLAINTIFFS' FIRST AMENDED PETITION**

TO THE HONORABLE JUDGE URSULA A. HALL:

Samurai Martial Sports, Inc. as well as Ihab S. Ahmed hereby file their First Amended Petition complaining of BankUnited, N.A. as well as CRE Properties, Inc., Defendants 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. Samurai Martial Sports, Inc. ("Plaintiff" and "Samurai") 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. Ihab S. Ahmed ("Plaintiff" and "Ahmed") is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.
4. BankUnited, N.A. ("BU") has already made an appearance in this matter through its legal counsel.
5. CRE Properties, Inc. ("CRE") has already made in an appearance in this matter through its legal counsel.

## **JURISDICTION AND VENUE**

6. The parties do not dispute that this court has jurisdiction and venue over this matter.

## **RELEVANT FACTS**

7. The subject matter of the lawsuit is the fraudulent foreclosure sale of the real property and the improvements thereon located at 12500 Oxford Park Drive, Houston, TX 77077 (the "Property").

8. Samurai Martial Sports, Inc. purchased the Property on or about May 12, 2017. During the process of purchasing the Property, Samurai executed a U.S. Small Business Administration Note ("Note") in the amount of \$1,765,000.00, a Commercial Security Agreement, a Business Loan Agreement, and a Deed of Trust ("the Loan") in which BankUnited, N.A. is listed as the Lender. Ihab S. Ahmed is a guarantor on the Note. A true and correct copy of the Note, Commercial Security Agreement, Business Loan Agreement, and Deed of Trust is attached hereto as Exhibits "1" through "4" respectively and incorporated herein for all purposes.

9. Samurai made its regular payments to BU; however, BU mishandled those payments. After noticing that its mortgage statements weren't accurately reflecting the payments being made, Samurai requested an accounting of the Note – Samurai ended up having to file for Chapter 11 bankruptcy protection in order to save its Property while determining an accurate status of its loan.

10. Samurai further sought BU's cooperation in order to remedy the situation but to avail. Instead, BU proceeded with foreclosing on Samurai's Property. A true and correct copy of the Notice of Substitute Trustee's Sale is attached hereto as Exhibit "5" and incorporated herein for all purposes.

11. In furtherance of their plan, BankUnited conducted a foreclosure sale of Plaintiff's Property on January 03, 2023. The foreclosure sale was conducted by Louis Williams, Substitute Trustee. During the course of conducting the foreclosure sale, Mr. Williams announced that he was making the opening bid on behalf of BankUnited, N.A. for the amount of \$1,512,000. As reflected in the Affidavit of Aiman Abu Halaweh as well as the Affidavit of Osama Abdellatif, they heard Mr. Williams make this announcement and they subsequently bid the amount of \$1,512,001. After a protracted discussion between Messrs. Williams, Halaweh, and Abdellatif, they retracted their bid of \$1,512,001. There being no further bidders, the highest bidder at the foreclosure sale was BankUnited, N.A. Oddly, the related Substitute Trustee's Deed deceitfully reflects that the grantee of the Property at the foreclosure sale was CRE Properties, Inc. – not BankUnited, N.A. which is the actual buyer. A true and correct copy of the related Substitute Trustee's Deed is attached hereto as Exhibit "6" and incorporated herein for all purposes. This fact is further validated by the report of the January 03, 2023 foreclosure sale published by ForecloseHouston.com which clearly reflects that Samurai's Property was "foreclosed to lender for \$1,512,000". A true and correct copy of the aforementioned report is attached hereto as Exhibit "7" and incorporated herein for all purposes.

12. Even more egregious, after BankUnited, N.A. submitted the opening bid, Messrs. Halaweh and Abdellatif submitted a higher bid. However, this prompted Mr. Williams to engage in a heated discussion with Messrs. Halaweh and Abdellatif during which Mr. Williams made spurious accusations that there were many liens against the property and that owning this property would cause them nothing but grief thereby causing them to retract the highest bid from the auction.

13. The Court convened this matter for a Temporary Injunction hearing on March 02, 2023 during which time it was determined that the Substitute Trustee's Deed was defective for the exact reasons stated in this lawsuit – the subject Property was in fact sold to BankUnited, N.A. not CRE Properties, Inc. as reflected in the Substitute Trustee's Deed. That hearing culminated in a Rule 11 Agreement between Samurai, BU, and CRE – Ahmed is not a party to the Rule 11 Agreement. A true and correct copy of the Rule 11 Agreement is attached hereto as Exhibit “8” and incorporated herein for all purposes.

14. Mr. Williams filed a Correction Substitute Trustee's Deed in the Harris County Real Property Records on March 08, 2023 which does not accurately reflect the Rule 11 Agreement of the parties. In particular, the Correction Substitute Trustee's Deed is supposed to be in two steps: (1) transfer the Property to BankUnited, N.A. on January 03, 2023 and then (2) transfer the Property from BankUnited, N.A. on March 07, 2023 (the date of the Rule 11 Agreement). BU and CRE didn't follow the Rule 11 Agreement and, in the process, have created yet another cloud on the title of the subject Property. A true and correct copy of the Correction Substitute Trustee's Deed is attached hereto as Exhibit “9” and incorporated herein for all purposes.

**FIRST CAUSE OF ACTION:  
DECLARATORY JUDGMENT**

15. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

16. Plaintiffs seek a determination of the rights of the parties pursuant to Tex. Civ. Prac. & Rem. Code Ann. §37.001 (West).

17. In particular, Plaintiffs seek a determination that the foreclosure sale of the subject Property conducted on January 03, 2023 was wrongful and thus is deemed void ab initio.

18. Ahmed further seeks a determination that the Correction Substitute Trustee's Deed filed in the Harris County Real Property Records on March 08, 2023 does not comply with the Rule 11 Agreement and thus is void ab initio.

19. Plaintiffs further seek a determination that Samurai Martial Sports, Inc. is the current lawful owner of the subject Property.

20. For a sale under a deed of trust to be valid, the terms set out in the deed of trust must be strictly followed. *Kouros Hemyari v. Stephens*, 355 Sw3d 623 (Tex. 2011). "A trustee has no power to sell the debtor's property, except as may be found in the deed of trust". *Slaughter v. Qualls*, 162 SW2d 671, 675 (Tex. 1942). "Because a power of sale under a deed of trust is a harsh method of collecting debts and disposing of another's property, it can only be exercised by strict compliance with the note and conditions of sale". *Bonilla v. Roberson*, 918 SW2d 17, 21 (Tex.App.-Corpus Christi 1996)(emphasis added). The proper relief for an improper sale is to set aside the sale and the resulting deed. See *Wells Fargo Bank NA v. Robinson*, 391 SW3d 590 (Tex.App.-Dallas 2012). Failure to strictly adhere to the terms of the Deed of the Trust and/or to follow applicable law invalidates the trustee's sale. See *Lido Intern, Inc. v. Lambeth*, 611 SW2d 622 (Tex. 1981). If the Substitute Trustee's Deed as well as the Correction Substitute Trustee's Deed are deemed void ab initio, or if the January 03, 2023 foreclosure sale of the subject Property is set aside, then title remained with Samurai Martial Sports, Inc. Furthermore, pursuant to the terms of the Substitute Trustee's Deed as well as the Correction Substitute Trustee's Deed, CRE took title at its own risk subject to the terms of Tex. Prop. Code § 51.002 and 51.009 and subject to rescission for defects in the foreclosure process.

**SECOND CAUSE OF ACTION:  
STATUTORY FRAUD**

21. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 20 as if set forth fully herein.

22. The actions committed by BU constitute statutory fraud since during the course of the foreclosure sale, a real estate transaction, BU's representative made false representations of material fact by making spurious accusations to Messrs. Halaweh and Abdellatif that there were many liens against the property and that owning this property would cause them nothing but grief thereby causing them to retract the highest bid from the auction and chilling the bidding process.

23. Further, BU's representative claimed that CRE purchased the subject Property (as reflected on the Substitute Trustee's deed) when in fact CRE did not bid on the Property. This false representation caused Samurai's injury – the pending forcible detainer lawsuit which is set for trial to occur on July 11, 2023 and is styled Docket No. 1204081; CRE Properties, Inc. v. Samurai Martial Sports, Inc.; In the County Court at Law No. 4 of Harris County, Texas. A true and correct copy of related Order for Trial Reset via Video Conference, is attached hereto as Exhibit "10" and incorporated herein for all purposes.

**THIRD CAUSE OF ACTION:  
WRONGFUL FOTECLOSURE**

24. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 23 as if set forth fully herein.

25. The actions committed by BU constitute wrongful foreclosure since, due to the misconduct of BU's representative, the highest bidder at the foreclosure auction of the subject Property retracted their bid following a heated discussion with BU's representative thus chilling the foreclosure sale process ... nobody else was willing to bid once Messrs. Halaweh and

Abdellatif retracted their bid.

**FOURTH CAUSE OF ACTION:  
SUIT TO QUIET TITLE**

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

27. The actions committed by BankUnited and CRE necessitate a suit to quiet title because:

- A. Samurai has an interest in specific real property;
- B. Title to the specific real property is affected by a claim by CRE; and
- C. The claim, although facially valid, is invalid or unenforceable.

**FIFTH CAUSE OF ACTION:  
TRESPASS TO TRY TITLE**

28. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made in paragraphs 1 through 27 as if set forth fully herein.

29. Pleading in the alternative to the quiet title claim above, Plaintiffs bring a claim for trespass to try title. A trespass to try title claim is a statutory and governed by Texas Property Code § 22.002. The actions committed by Defendants necessitate a suit for trespass to try title because:

- A. Samurai has prior possession and superior title in the Property following a regular chain of conveyances;
- B. Samurai's claim to title is clouded by CRE's apparent property rights following BankUnited's purchase of the Property at the foreclosure sale; and
- C. The foreclosure sale was ultimately done wrongfully, was void, and is therefore ineffective to pass title.

30. As such, Defendants cannot prove the foreclosure was proper. See *Kaldis v. Aurora Loan Svcs*, 424 SW3d 729, 732 (Tex.

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

31. Plaintiffs are entitled to recover their actual damages from Defendants for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

**EXEMPLARY DAMAGES**

32. Plaintiffs are 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**

33. Plaintiffs were forced to employ the undersigned attorneys to represent them and have agreed to pay them reasonable attorneys' fees for their services. Plaintiffs are entitled to recover their reasonable attorneys' fees for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

**CONDITIONS PRECEDENT**

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



## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that, upon final hearing or trial hereof, the Court order a judgment in favor of Plaintiffs against BankUnited, N.A. as well as CRE Properties, Inc., jointly and severally, for their 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 Plaintiffs may be entitled.

Respectfully submitted,

VILT LAW, P.C.

By: /s/ Robert C. Vilt  
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 PLAINTIFFS

## **CERTIFICATE OF SERVICE**

I certify that the above foregoing document was served upon all counsel and/or parties of record in accordance with the Texas Rules of Civil Procedure via electronic and/or hand delivery on the 9th day of June, 2023.

Louis W. Williams  
Andrew G. Edson  
Clark Hill, PLLC  
909 Fannin St, Suite 2300  
Houston, TX 77010

/s/ Robert C. Vilt  
Robert C. Vilt

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

SAMURAI MARTIAL SPORTS, INC. § IN THE DISTRICT COURT OF  
v. § HARRIS COUNTY, TEXAS  
BANKUNITED, N.A. § \_\_\_\_\_ JUDICIAL DISTRICT

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**AFFIDAVIT OF IHAB S. AHMED**

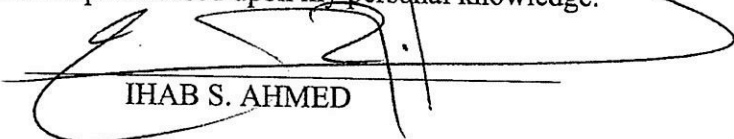
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STATE OF TEXAS §  
COUNTY OF HARRIS § KNOW ALL MEN BY THESE PRESENTS  
§

BEFORE ME, the undersigned authority, on this day personally appeared Ihab S. Ahmed who, after being duly sworn, deposes and says:

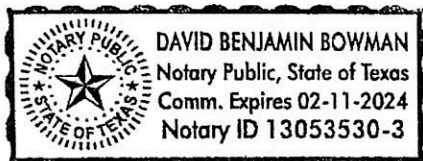
1. My name is Ihab S. Ahmed. I am the President of Samurai Martial Sports, Inc, which is the Plaintiff in the above-captioned lawsuit. I have read the Original Petition, Application for Injunctive Relief, and Request for Disclosures to which this Affidavit relates and offer this Affidavit in support of the statements and arguments asserted therein.
2. The subject matter of the lawsuit is the fraudulent foreclosure sale of real property and the improvements thereon located at 12500 Oxford Park Drive, Houston, TX 77077 (the "Property").
3. Samurai Martial Sports, Inc. ("Samurai") purchased the Property on or about May 12, 2017. During the process of purchasing the Property, Samurai executed a U.S. Small Business Administration Note ("Note") in the amount of \$1,765,000.00, a Commercial Security Agreement, a Business Loan Agreement, and a Deed of Trust ("the Loan") in which BankUnited, N.A. ("BankUnited") is listed as the Lender.
4. Samurai made its regular payments to Defendant; however, Defendant mishandled those payments. After noticing that its mortgage statements weren't accurately reflecting the payments being made, Samurai requested an accounting of the Note – Samurai ended up having to file for Chapter 11 bankruptcy protection in order to save its Property while determining an accurate status of its loan.
5. Samurai further sought BankUnited's cooperation in order to remedy the situation but to avail. Instead, BankUnited decided to take the simple path by proceeding to foreclose on Samurai's Property.
6. Accordingly, BankUnited conducted a foreclosure sale of Samurai's Property on January 03, 2023.

I have read the foregoing Affidavit and attest that the information contained therein is true and correct in all respects based upon my personal knowledge.

  
\_\_\_\_\_  
IHAB S. AHMED

SUBSCRIBED AND SWORN TO BEFORE ME on this the 16th day of February, 2023.

  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



My commission expires:

02 / 11 / 2024

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

SAMURAI MARTIAL SPORTS, INC. § IN THE DISTRICT COURT OF  
v. § HARRIS COUNTY, TEXAS  
BANKUNITED, N.A. § \_\_\_\_\_ JUDICIAL DISTRICT

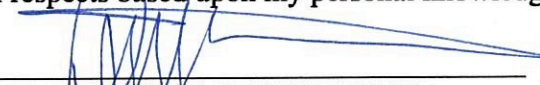
AFFIDAVIT OF AIMAN ABU HALAWEH

STATE OF TEXAS §  
COUNTY OF HARRIS § KNOW ALL MEN BY THESE PRESENTS  
§


BEFORE ME, the undersigned authority, on this day personally appeared Aiman Abu Halaweh who, after being duly sworn, deposes and says:

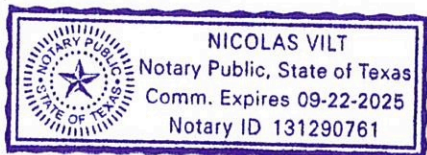
1. My name is Aiman Abu Halaweh. I am over the age of 18 years, have never been convicted of a felony, am capable of making this affidavit, and hereby do so based on information that is true and within my personal knowledge.
2. I attended the foreclose auction which was held on January 03, 2023 at 9401 Knight Road, Houston, Texas 77054.
3. I participated in the foreclose sale of the property located at 12500 Oxford Park Drive, Houston, TX 77077 which was conducted by Louis Williams.
4. During the course of conducting the foreclosure sale, Mr. Williams announced that he was making the opening bid on behalf of Bank United for the amount of \$1,512,000. I personally heard Mr. Williams make this announcement and subsequently bid the amount of \$1,512,001 in conjunction with Osama Abdellatif. After a protracted discussion between with Mr. Williams, Mr. Abdellatif and I retracted our bid. There being no further bidders, the highest bidder at the foreclosure sale was BankUnited, N.A.

I have read the foregoing Affidavit and attest that the information contained therein is true and correct in all respects based upon my personal knowledge.

  
AIMAN ABU HALAWEH

SUBSCRIBED AND SWORN TO BEFORE ME on this the 16th day of February, 2023.

  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS  
My commission expires: 29-22-2025



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

SAMURAI MARTIAL SPORTS, INC. § IN THE DISTRICT COURT OF  
v. § HARRIS COUNTY, TEXAS  
BANKUNITED, N.A. § \_\_\_\_\_ JUDICIAL DISTRICT

AFFIDAVIT OF OSAMA ABDELLATIF

STATE OF TEXAS §  
COUNTY OF HARRIS § KNOW ALL MEN BY THESE PRESENTS  
§

BEFORE ME, the undersigned authority, on this day personally appeared Osama Abdellatif who, after being duly sworn, deposes and says:

1. My name is Osama Abdellatif. I am over the age of 18 years, have never been convicted of a felony, am capable of making this affidavit, and hereby do so based on information that is true and within my personal knowledge.
2. I attended the foreclose auction which was held on January 03, 2023 at 9401 Knight Road, Houston, Texas 77054.
3. I participated in the foreclose sale of the property located at 12500 Oxford Park Drive, Houston, TX 77077 which was conducted by Louis Williams.
4. During the course of conducting the foreclosure sale, Mr. Williams announced that he was making the opening bid on behalf of Bank United for the amount of \$1,512,000. I personally heard Mr. Williams make this announcement and subsequently bid the amount of \$1,512,001 in conjunction with Aiman Abu Halaweh. After a protracted discussion between with Mr. Williams, Mr. Halaweh and I retracted our bid. There being no further bidders, the highest bidder at the foreclosure sale was BankUnited, N.A.

I have read the foregoing Affidavit and attest that the information contained therein is true and correct in all respects based upon my personal knowledge.

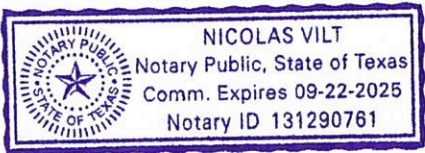
*Osama Abdellatif*  
OSAMA ABDELLATIF

SUBSCRIBED AND SWORN TO BEFORE ME on this the 16th day of February, 2023.

*Nicolas Vilt*

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: 09-22-2025



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Vilt on behalf of Robert Vilt  
Bar No. 788586  
clay@viltlaw.com  
Envelope ID: 76468784  
Filing Code Description: Amended Filing  
Filing Description: Amended Filing  
Status as of 6/9/2023 1:14 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Louis Williams		LWilliams@clarkhill.com	6/9/2023 1:06:44 PM	SENT
Nicolas Vilt		nicolas@viltlaw.com	6/9/2023 1:06:44 PM	SENT
Robert C. Vilt		clay@viltlaw.com	6/9/2023 1:06:44 PM	SENT
Robert CVilt		clay@viltlaw.com	6/9/2023 1:06:44 PM	SENT