

**CAUSE NO. 2023-10403**

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

**PLAINTIFF’S MOTION TO SET ASIDE FORECLOSURE SALE**

TO THE HONORABLE JUDGE URSULA A. HALL:

Samurai Martial Sports, Inc. hereby files its Motion to Set Aside Foreclosure Sale and respectfully shows the Court as follows:

**FACTUAL BACKGROUND**

1. The subject matter of this lawsuit is the fraudulent foreclosure sale of the real property and the improvements thereon located at 12500 Oxford Park Drive, Houston, Texas 77077 (the “Property”).

2. Samurai Martial Sports, Inc. (“Samurai”) purchased the Property on May 12, 2017 as is evidenced by the U.S. Small Business Administration Note (“Note”), Commercial Security Agreement, Business Loan Agreement, and Deed of Trust in which BankUnited, N.A. is listed as the Lender. 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.

3. Louis Williams, BankUnited, N.A.’s legal counsel, conducted a foreclosure sale of Samurai’s Property on January 03, 2023. During the course of conducting the foreclosure sale, Mr. Williams announced that he was making the opening bid as a credit 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. Their higher bid prompted Mr. Williams to confront Messrs. Halaweh and Abdellatif and instigate a heated discussion during which Mr. Williams deceived them into believing that there were numerous liens encumbering the Property which would substantially impair the value of the Property if they purchased it and that he would personally make their lives miserable if they continued down the path of purchasing the Property at the foreclosure sale – they promptly retracted their highest bid for the Property from the auction irrespective of the fact that they had promised Samurai’s representative that they would buy the Property and lease it back to Samurai. A true and correct copy of the Affidavit of Aiman Abu Halaweh as well as the Affidavit of Osama Abdellatif is attached hereto as Exhibits “5” and “6” respectively and incorporated herein for all purposes.

4. To make matters even worse for Samurai, all other prospective bidders witnessed Mr. Williams’ threatening actions and refused to participate any further in the foreclosure sale lest they be caught in his crosshairs. As a direct result, by default, BankUnited, N.A. was the highest bidder for the Property at the January 03, 2023 foreclosure sale.

#### **PROCEDURAL STATUS**

5. Plaintiff filed its Original Petition, Application for Injunctive Relief, and Request for Disclosures on February 16, 2023.

6. The ancillary court held a Temporary Restraining Order hearing on February 17, 2023; however, the proposed TRO was denied.

7. The Court set a Temporary Injunction hearing on March 02, 2023 which culminated in a Rule 11 Settlement Agreement and Correction Substitute Trustee’s Deed – a true

and correct copy of each is attached hereto as Exhibits “7” and “8” respectively and incorporated herein for all purposes.

8. Defendants filed their Original Answer on April 03, 2023.

9. Defendant BankUnited, N.A. filed it’s Counterclaim and Third Party Petition on June 06, 2023.

10. Defendants filed their Motion to Dismiss Pursuant to Rule 91a on May 05, 2023.

11. Plaintiff filed its Response to Defendants’ Motion to Dismiss under Rule 91a on June 09, 2023.

12. Plaintiffs filed their First Amended Petition on June 09, 2023.

13. Counter-Defendant as well as Cross-Defendants filed their Original Answer and Affirmative Defenses on June 09, 2023.

14. The Court conducted a hearing on Defendants’ Motion to Dismiss on June 16, 2023 – the Court took this matter under advisement at that time.

### **LEGAL ANALYSIS**

15. To establish a wrongful foreclosure claim, a plaintiff must show: (a.) defect in the foreclosure proceedings; (b.) a grossly inadequate selling price; and (c.) a causal connection between the defect and the grossly inadequate selling price. *Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, No. 12-20559, (5<sup>th</sup> Cir. June 26, 2013). As demonstrated above, Samurai has already proven by a preponderance of the evidence that a defect in the foreclosure proceedings occurred and that a causal connection between the defect and the grossly inadequate selling price. Therefore, the only element remaining is whether or not the Property was sold for a grossly inadequate selling price – that answer is yes. To demonstrate that fact, Samurai points out to the Court that according to the Harris County Appraisal District, the current appraised value of

the Property is currently \$2,020,242 which is over \$500,000 more than BankUnited, N.A. paid for the Property at the January 03, 2023 foreclosure sale. Attached hereto as Exhibit “9” and incorporated herein for all purposes is the HCAD Real Property Account Information Report as of January 13, 2023.

16. Moreover, the mortgagee in Texas has been required to hold a fair sale; that is, the mortgagee must not take affirmative steps to adversely affect the sale price at the foreclosure. *Biddle v. National Old Lines Ins. Co.*, 513 S.W.2d 135, 138 (Tex.Civ.App. 1974, writ ref’d n.r.e.). See also *Charter Nat’l Bank v. Stevens*, 781 S.W.2d 369, 371 (Tex.App. 1989, writ denied). These are the so-called “chilled bidding” cases in which courts have recognized that a mortgagor, even though in default, has a right to an orderly disposition of the property, and if a defect or irregularity deters third parties from bidding, then an action for damages should lie under a theory that the wrong committed resembles that of conversion. *Charter*, 781 S.W.2d at 374. These cases require the mortgagee “not to discourage bidding by acts or statements made before or during the sale.” *Biddle*, 513 S.W.2d at 138.

### **PRAYER**

Based on the above taking into consideration the totality of the circumstances, Plaintiff Samurai Martial Sports, Inc. respectfully prays that the Court grant it’s motion, set aside the January 03, 2023 foreclosure sale of it’s Property, and grant such other and further relief to Plaintiffs as the Court deems appropriate.

Respectfully submitted,

VILT LAW, P.C.

By: /s/ Robert C. Vilt

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was forwarded to all parties of record pursuant to Rule 21a of the Texas Rules of Civil Procedure on July 13, 2023.

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

/s/ Robert C. Vilt  
ROBERT C. VILT

### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing 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.

Nicolas Vilt on behalf of Robert Vilt

Bar No. 788586

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Filing Code Description: Motion (No Fee)

Filing Description: Plaintiff's Motion to Set Aside Foreclosure Sale

Status as of 7/14/2023 8:08 AM CST

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