

CAUSE NO. _____

TREY LEWIS
Plaintiff,

VS.

CITADEL SERVICING CORPORATION
Defendant.

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IN THE DISTRICT COURT OF

_____ JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THE DISTRICT COURT:

COMES NOW Trey Lewis, Plaintiff herein, complaining of Citadel Servicing Corporation, Defendant herein, and for cause of action, would show unto the Court as follows:

I.

DISCOVERY CONTROL PLAN DESIGNATION

1. By this action, Plaintiff seeks monetary relief of \$500,000 or more, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney's fees. The damages sought are within the jurisdictional limits of this court.
2. Discovery in connection with this action is intended to be conducted under Level 2 of the Texas Rules of Civil Procedure.

II.

PARTIES AND SERVICES OF CITATION

3. Trey Lewis resides at 3712 North Broadway, Chicago IL 60613, who is identified by Texas Driver's License Number xxxxxxxx2335 and Social Security number xxx-xx-8649.

4. Citadel Servicing Corporation is a domestic foreign corporation registered in California. Defendant may be served by and through its registered agent Corporation Service Company, 211 E 7th Street, Suite 620, Austin, TX 78701 USA.

III.

JURISDICTION AND VENUE

5. Venue of this action is proper in Harris County, Texas because Defendant conducted business in Harris County, Texas and the events made the basis of this lawsuit and giving rise to Plaintiff's cause of action occurred, in whole or in part, in Harris County, Texas.

IV.

NOTICE; CONDITIONS PRECEDENT

6. Defendants were given notice in writing of the claims made in this petition including a statement of Plaintiff's economic damages, mental anguish damages and expenses, including attorney's fees before this suit was filed.
7. All conditions precedent to recovery by Plaintiff herein have been performed, have occurred, or have been excused.

V.

AGENCY AND JOINT VENTURE

8. Unless otherwise stated, whenever it is alleged that Defendant committed an act, failed to perform an act, made a representation or a statement, or failed to make a disclosure, it is alleged that Defendant acted or failed to act through its authorized agents, servants, employees or representatives acting with either expressed, implied, apparent, direct and/or ostensible authority, or Defendant subsequently ratified these acts, failures to act, representations, statements or conduct.

VI.

FACT OF THE CASE

9. This lawsuit arises out of the following transaction, acts and events:
10. On or about July 15, 2013, Plaintiff purchased the real estate property located at 4730 Ivanhoe Street, Houston, Texas 77027 (“4730 Ivanhoe”) from a private seller. On or about December 5th, 2016, Plaintiff purchased the real estate property located at 4734 Ivanhoe Street, Houston, Texas 77027 (“the property” and/or “4734 Ivanhoe”). 4730 Ivanhoe has a home (“improvement”) on it and 4734 Ivanhoe is a vacant lot. 4730 Ivanhoe sits on Tract I of Lot 5 and 4734 Ivanhoe sits on Tract II of Lot 5.
11. On or about December 18, 2018, Plaintiff refinanced the mortgage on 4730 Ivanhoe with Defendant. During the refinance of 4730 Ivanhoe, Defendant, mis-transcribed and erroneously placed an invalid lien upon 4734 Ivanhoe. Plaintiff did not refinance 4734 Ivanhoe with Defendant and both properties contained separate mortgages on it.
12. Defendants should remove the invalid lien from the track listed as II and survey the property to include the correct property.
13. On June 20, 2021, Plaintiff entered into a sales contract with a private buyer to purchase 4734 Ivahnoe in the amount of \$885,000. However, the title company found that erroneously, the Defendant placed a lien on tracts I and II of Lot 5, instead of only Tract I. Consequently, Defendant’s erroneous lien on 4734 Ivanhoe caused the purchase/sale contract to fall through and be terminated, resulting in damages to Plaintiff.
14. Around August 2020, Plaintiff began sending email correspondence to the Defendant’s representatives alerting them of the error and requesting the lien be removed. To date the Defendants have failed to act on Plaintiff’s request.

VII.

CAUSES OF ACTION

15. Paragraphs 9-14 are incorporated herein as if fully set forth.

COUNT 1- BREACH OF CONTRACT

16. Defendant breached its contract (“promissory note and deed of trust”) with Plaintiff and Plaintiff formally demands attorneys’ fees pursuant to Tex. Civ. Prac. & Rem. Code §38.001.

17. The elements of a breach of contract action are: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) material breach by the defendant and (4) damages sustained by the plaintiff as a result of that breach. All conditions precedent for recovery have been performed. As a result of the breaches by Defendant, the Plaintiff has suffered damages in an amount which does not exceed the jurisdictional limits of this Court for which Plaintiff sues.

18. Plaintiff and Defendant entered into a valid and enforceable agreement.

19. The Defendant materially breached the contract by erroneously placing a lien upon property that was not included in the contract, as collateral.

20. Defendant breached the contract with Plaintiff as evidenced by not recognizing the wrong tract was included in the closing documents and placed a vendor’s lien on the wrong tract of land.

21. As a direct and proximate result of Defendant’s breach, Plaintiff has suffered actual damages.

22. Plaintiff seeks damages within the jurisdictional limits of this Court.

COUNT 2-FORFEITURE AND REMOVAL OF INVALID LIEN

23. Plaintiff pleads paragraphs 1 through 22 are incorporated herein as if fully set forth. Defendant has placed an invalid lien on Plaintiff's property located at 4734 Ivanhoe.
24. Plaintiff pleads forfeiture of principal and interest under Section 50(c) Tex. Const. art. XVI §50.
25. Despite numerous requests and notice to Defendant the invalid lien is still in place on 4734 Ivanhoe.

COUNT 3- STATUTORY FRAUD

26. Plaintiff and Defendant were parties to a transaction involving real estate. During the transaction, Defendant made false, material promises regarding ownership interest in 4734 Ivanhoe that Defendant knew was false at the time its representative(s) made the promises. Specifically, Defendant agreed to refinance the mortgage and place a lien on 4730 Ivanhoe but erroneously also placed lien on 4734 Ivanhoe which is not a covered property under the agreement between the parties. Defendant's false promises directly and proximately caused injury to Plaintiff, which resulted in the following damages: dispossession of property rights in the Property, termination of a purchase/sale agreement and closing on 4734 Ivanhoe, attorney fees, and all value of the property.
27. Plaintiff seeks liquidated and unliquidated damages within the jurisdictional limits of this court.
28. Exemplary damages. Defendant violated Texas Business & Commerce Code Section 27.01, which is the basis of this suit, with actual awareness of the falsity of Defendant's representations or promises, which entitles Plaintiff to exemplary damages under section 27.1 (c).

29. Attorney fees & other costs. Plaintiff is entitled to recover reasonable and necessary attorney fees, expert-witness fees, court costs, and costs for copies of deposition under Texas Business & Commerce Code section 27.01(e).

COUNT 4- QUIET TITLE ACTION

30. Plaintiff pleads Quiet Title against Defendant. A litigant who seeks to remove a cloud from a title to property must plead and prove three basic elements. The petition must show (1) an interest in specific property, (2) that title to the property is affected by a claim by the defendant, and (3) that the claim, although facially valid, is invalid or unenforceable. *See, e.g. Sadler v. Duvall*, 815 S.W. 2d 285, 293 n.2 (Tex. App.-Texarkana 1991, den.; *La Fleaur v. Kinard*, 161 S.W.2d 144, 147 (Civ. App.-Beaumont 1942, ref. w.o.m.).

COUNT 5 -TRESPASS TO TRY TITLE

31. Plaintiff asserts a claim for trespass to try title against Defendant. To maintain an action of trespass to try title, the person bringing the suit must have title to the land sought to be recovered. *Ramsey v. Grizzle*, 313 S.W.3d 498, 505 (Tex. App.--Texarkana 2010, no pet.). A plaintiff's right to recover depends on the strength of his or her own title, not the weaknesses of the title of his or her adversary. In a trespass-to-try-title action, the plaintiff is required to prove his or her title by proving (1) a regular chain of title of conveyances from the sovereign to the plaintiff; (2) a superior title to that of the defendant out of a common source; (3) title by limitations; or (4) prior possession which has not been abandoned. *Teon Mgmt., LLC v. Turquoise Bay Corp.*, 357 S.W.3d 719, 728 (Tex. App.--Eastland 2012, no pet. h.).

COUNT 6-TORTIOUS INTERFERENCE WITH A CONTRACT

32. Plaintiff pleads tortious interference with a contract against Defendant due to the loss of a purchase/sale contract on 4734 Ivanhoe, on or about June 20, 2020. Plaintiff asserts that the purchase/sale contract failed and was terminated due to Defendant's erroneous lien on 4734 Ivanhoe. More than 90 days has elapsed since Plaintiff requested that Defendant remove the erroneous lien, yet, Defendant has failed to do so.
33. There are two general types of tortious interference: interference with an existing contract, and interference with a prospective contract or business relation. The requisite elements of both. The elements of tortious interference with an existing contract are: (1) the existence of a contract subject to interference; (2) the occurrence of an act of interference that was willful and intentional; (3) the act was a proximate cause of the plaintiff's damage; and (4) actual damage or loss occurred. *Baty v. ProTech Ins. Agency*, 63 S.W.3d 841, 857 (Tex. App.-Houston [14th Dist.] 2001). "To prevail on a tortious-interference claim, a plaintiff must present evidence that the defendants interfered with a specific contract." *Funes v. Villatoro*, 352 S.W.3d 200, 213 (Tex. App.-Houston [14th Dist.] 2011, pet denied).
34. "To prevail on a claim for tortious interference with a prospective business relationship, the plaintiff must establish that the defendant intentionally prevented the formation of the business relationship." *Baty*, 63 S.W.3d at 860. The elements of tortious interference with a prospective business relationship are: (1) a reasonable probability that the plaintiff would have entered into a business relationship; (2) an independently tortious or unlawful act by the defendant that prevented the relationship from occurring; (3) the defendant did such act with a conscious desire to prevent the relationship from occurring or the defendant knew

the interference was certain or substantially certain to occur as a result of the conduct; and
(4) the plaintiff suffered actual harm or damages as a result of the defendant's interference.

COUNT 7-DECLARATORY JUDGMENT

35. Plaintiff pleads and seeks a declaratory judgment that Defendant has no authority to maintain a lien upon 4734 Ivanhoe, has no ownership interest in 4734 Ivanhoe, Defendant must remove its lien from 4734 Ivanhoe, and Plaintiff has suffered damages due to Defendant's breach of contract between the parties.
36. A declaratory judgment is a remedial measure that determines the rights of the parties and affords relief from uncertainty with respect to rights, status, and legal relations. *See Halliburton Energy Servs., Inc. v. Axis Tech., LLC*, 444 S.W.3d 251, 262 (Tex. App.-Dallas 2014, no pet.) (citing *Ysasaga v. Nationwide Mut. Ins. Co.*, 279 S.W.3d 858, 863 (Tex. App.-Dallas 2009, pet. denied)). The Texas Uniform Declaratory Judgments Act is contained in chapter 37 of the Texas Practice and Remedies Code. See TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.001-37.011. Under section 37.004(a) of the declaratory judgments act, "[a] person interested under a deed . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder." *Id.* § 37.004(a).

VIII.

CONDITIONS PRECEDENT

37. All conditions precedent have occurred or been performed under the agreement at issue.

IX.

DAMAGES

38. Both Defendants are in breach of the contract they had with Plaintiff. Accordingly, Plaintiff seeks an award of additional damages under breach of contract claims in an amount not to exceed three times the amount of his [her] economic damages.
39. Plaintiff wishes to settle this matter amicably and requests that the Defendants: remove the lien from his property; compensate him for the loss of profit caused by the invalid lien on Plaintiff's property and reimbursement for attorney's fees.

X.

ATTORNEY'S FEES

40. As a result of the Defendants' conduct, Plaintiff has been required to obtain the services of the undersigned attorney for the filing, prosecution and trial of this cause, and therefore seeks an award of reasonable and necessary attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code Sec. 38.001, Tex. Civ. Prac. & Rem. Code Sec. 37.009, the contract between the parties, and all applicable law.

XI.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff seeks monetary relief over \$500,000 but not more than \$1,000,000 and all other relief to which Plaintiff deems himself entitled. Plaintiff respectfully requests that Plaintiff be awarded a judgment against Defendant for the following:

- a. Actual damages;
- b. Liquidated damages
- c. Unliquidated damages
- d. Loss of equity in property

- e. Title and possession of Real Property
- f. Modified/corrected deed
- g. Compensatory damages;
- h. Punitive damages;
- i. Equitable relief;
- j. Court Costs;
- k. Pre-judgment and post-judgment interest on all sums awarded as permitted by law;
- l. Treble Damages;
- m. Reasonable and necessary attorney's fees;
- n. damages for clouding title/slander of title concerning property;
- o. harm to credit worthiness;
- p. harm to credit history;
- q. market value of property; and
- r. All other relief to which Plaintiff is justly entitled.

Respectfully Submitted,

Jarrett Law Firm, PLLC

/s/ LaToya Jarrett

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