

CAUSE NO. 2023-34281

JAMIE PHELAN	§	IN THE DISTRICT COURT
Plaintiff	§	
v.	§	
	§	11TH JUDICIAL DISTRICT
KING PEAK, LLC, its assignees	§	
and successors	§	
Defendant	§	OF HARRIS COUNTY, TEXAS

DEFENDANT’S COUNTERCLAIM AND CROSS-ACTION

King Peak, LLC, Defendant herein (Defendant), hereby files its counterclaim as against the Plaintiff Jamie Phelan, and cross-action Michael G. Phelan. Michael G. Phelan is believed to be the Plaintiff’s spouse and is a co-maker on the secured real property note(s) which are the at the heart of this litigation.

I. PARTIES AND SERVICE

The Plaintiff and Counter-Defendant Jamie Phelan is already before the Court in this cause of action and does not need to be personally served.

SERVICE ON THIRD PARTY CROSS-DEFENDANT MICHAEL G. PHELAN: Michael G. Phelan may be served with process at what is believed to be his regular place of abode of 3106 Little Bear Dr., Kingwood, Tx 77339.

II. AS TO ALL COUNTS

All pleadings are in the alternative. King Peak, LLC seeks joint and several liability as to both Jamie Phelan and Michael G. Phelan. Whenever in this Petition it is alleged that in addition to any act or omission of either the Counter-Defendant Jamie Phelan or the third party Cross-Defendant Michael G. Phelan (collectively hereafter referred to hereafter as “Phelan” unless specifically noted otherwise), it is meant that in addition to the named Phelan, their managing partners, general partners, agents, servants, directors, employees, independent contractors, spouse (current or

former) or representatives of the Phelan did such act or thing and that at the time such act or thing was done, it was done with the knowledge and/or authorization and/or ratification of said Phelan and was done in the normal and routine course and scope of employment of Phelan or one or more of Phelan's respective officers, partners, directors, shareholders, managing members, managing partners, general partners, agents, servants, directors, employees or representatives, or was done with actual and/or apparent and/or implied authority, and/or was later ratified by Phelan). All conditions precedent to Counter-Plaintiff King Peak, LLC's right of recovery on each cause of action and/or affirmative defense occurred, were performed, or were excused or waived, including but not limited to timely providing all required written notices. Counter-Plaintiff King's Peak, LLC pleads the discovery rule as to any cause of action against which Phelan may assert a defense of an expired statute of limitations. Notice is given under Rule 193.7 TRCP that documentation produced by any party may be used at the time of trial or in any hearing or other legal proceeding in this lawsuit. All factual allegations are asserted for all causes of action. As to all causes of action, Phelan's acts and omissions were the direct proximate cause of Plaintiff's damages.

III. FACTUAL BACKGROUND

Plaintiff and Counter-Defendant Jamie Phelan and her spouse, the Defendant Michael G. Phelan (collectively "Phelan" unless specifically noted otherwise) entered into a secured second lien real property note on or about February 15, 2007 related to real property with a street address of 3906 Wildwood Valley Court, Houston, Tx 77345 (the "Property"). The Note and secured interest (Note) were assigned to King Peak, LLC (King Peak) in 2022. King Peak is the lawful owner and holder in due course of said Note.

The Phelans defaulted on the Note. The Note was accelerated and is currently posted for foreclosure on Tuesday, September 5, 2023.

IV. DAMAGES SOUGHT

If, at the time of trial, the Property has not yet been foreclosed upon, King Peak seeks an order of foreclosure and all other necessary relief in a final judgment which will allow King Peak to foreclose upon the subject property.

In the event the subject Property has been foreclosed upon before the time of trial, King Peak seeks to cover any deficiency sums due and owing after first applying all net sales proceeds from the subject sale to all sums due and owing on the subject Note, including but not limited to the principal sum due, all costs, attorneys fees, pre and post judgment interest, and all other sums allowed by law.

King Peak seeks all other damages to which it may be entitled, both legal and special, at law and/or in equity, both direct and direct, special and/or consequential damages, and all other relief to which King Peak may be justly entitled.

V. ATTORNEYS' FEES

King Peak seeks recovery of its reasonable and necessary attorneys' fees and costs related to the foreclosure of the subject property and in the litigation of this matter, including appellate fees and costs.

WHEREFORE PREMISES CONSIDERED, King Peak, LLC requests this court grant joint and several judgment against both Jamie Phelan and Michael G. Phelan the relief prayed for herein and grant all relief to which King Peak, LLC is entitled, both legal and special, at law and/or in equity, both direct and direct, special and/or consequential damages, and all other relief to which King Peak may be justly entitled.

Respectfully submitted,

/S/ Glen Nordt

Glen Nordt

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Attorney for King Peak, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Counter-Claim and Third Party Cross-Action was served upon the pro se Plaintiff in accordance with the Texas Rules of Civil Procedure on the 4th day of September, 2023.

/S/ Glen Nordt

Glen Nordt

Automated Certificate of eService

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Action/Interpleader/Intervention/Third Party

Filing Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party (\$80.00)

Status as of 9/5/2023 9:28 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jamie Phelan		kingwoodkastles@gmail.com	9/4/2023 12:00:34 PM	SENT