

FILED
Marilyn Burgess
District Clerk

SEP 05 2023

10:51 AM

Time:

Harris County, Texas

By:

Anais Aquino
Deputy

281-224-1324 P.15

Your honor, I am
requesting an emergency order
to be heard regarding my
case # 2023-34281
~~Case # 2023-59075~~ But that
should have been case #
2023-34281

I saw the traveling judge in
your absence, Anais was present
the defendant was a no-show
at the TRO injunction hearing
and I was told to file a Summary
Judgement. I tried to serve
her and discovered there is
No Registered Agent.

I plead on the mercy of
this court to hear my
emergency case to STOP
the Auction happening now,
I had to wait 21 days from
service to file summary judgment
meanwhile she filed a new
Action Date Today.

James Parker
Plaintiff

~~A~~ See Attached for Proof or No
Registered Agent to Serve.

FILED

Marilyn Burgess
District Clerk

JUN 2 - 2023

Time:

By _____
Harris County, Texas

Deputy

2023 34281

No. _____

JAMIE PHELAN,	§	IN THE DISTRICT COURT
Plaintiff,	§	
v.	§	
	§	OF HARRIS COUNTY, TEXAS
KING PEAK, LLC and its assigns and or successors	§	
in interest	§	
Defendant.	§	<u>11</u> JUDICIAL COURT

**PLAINTIFF'S ORIGINAL PETITION & APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiff, **Jamie Phelan**, files this original petition and application for temporary restraining order against defendant, **King Peak LLC**, and alleges as follows:

~~DISCOVERY-CONTROL-PLAN~~

1. Plaintiff intends to conduct discovery under Level {2/3} of Texas Rule of Civil Procedure {190.3/190.4} and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because she seeks injunctive relief.

CLAIM FOR RELIEF

2. Plaintiff seeks injunctive, non-monetary relief and monetary relief within the jurisdictional limits of the court.

PARTIES AND SERVICE OF CITATION

3. **JAMIE PHELAN**, hereinafter referred to as "Plaintiff," may be served with citation at 3106 Little Bear Drive, Kingwood, Texas 77339.

4. **KING PEAK LLC**, its assigns and/or successors in interest hereinafter referred to as "Defendant," is a mortgage holder of the property in question located at 3906 Wildwood Valley Court, Kingwood, Texas 77345. Defendant may be served through its attorney GhidottiBerger, 9720 Coit Road, Ste 220-228, Plano, Texas 75025.

JURISDICTION AND VENUE

5. The Court has jurisdiction over Defendant because Defendant has done business in the State of Texas, including originating, servicing, and/or owning loans, which necessarily involves contracting with Texas Residents or Texas Entities by mail or otherwise when at least one of the parties is to perform the contract in Texas. Further, Defendant's conduct, giving rise to the causes of action set forth herein, occurred in whole or in part in Texas.

6. The damages sought in this action are within the jurisdictional limits of the court.

FACTS

7. Plaintiff owns property located at 3906 Wildwood Valley Court, Kingwood, Texas 77345 ("Property").

8. The Property is occupied by tenants of the Plaintiff.

9. Irreparable injury to real property" under Tex. R. Civ. P. 680

9a) No notice given to senior lien holders and low opening bid at sale. Statement of events of events:

There is a potential title issue under Texas law as to whether or not a junior lien holder is required to notify the senior lender of the intent to foreclose. And as to the minimum opening bid in such a case, should it be set above the 1st position note.

The law is clear in regards to the senior lender, absent a contractual agreement to the contrary by the senior lienholder, a senior lienholder has no obligation to notify junior lienholders of a pending foreclosure sale; but as such, a junior lienholder's obligation is not as clear.

The junior lien holder for untold reasons should indeed notify the senior lien holder of their intention to foreclose on the property, but are they under any legal obligation to do so? This matter in this case is in question. Since the opening bid on this property was set at \$30,000 far short of the obligation on the first note which is just shy of \$225,000. The question of malicious intent by King Peak, LLC is brought up. The attorney's representative Omar stated that his client was under no obligation to notify the senior lien holder of the sale and they had no intention to do so. That this would all be settled after closing. Most likely some legal action would have to be filed or title insurance policy paid for PHH to be made whole on their \$225,000 note. The loan has been modified to a low fixed rate in the 4's and I was in extremely good standing on the loan, completely up to date on my payments (both loans for that matter were in good standing with no missed payments at the time she purchased the note). The only missed payments on the 1st were offered to me by the bank PHH During COVID and I took advantage of the wonderful modification program available at the time. I will probably never be able to get any rate even close to that on any future loans.

When I notified the senior lien holder PHH mortgage of the looming foreclosure; they stated that the junior holder was indeed obliged to notify them in this case prior to the foreclosure sale. The question remains under the circumstances and conduct from King Peak, LLC were they acting in a malicious manner. Especially since they clearly and intentionally failed to follow the law which clearly states at least 21 days notice must be given to cure when served a Notice of Default and Intent to Accelerate. Because of this and her absolute refusal to talk or engage in any dialogue other than demanding full payoff on a note she provided no proof as to where she even got these numbers. Furthermore since the opening bid on this property is set at only \$30,000 from King Peak LLC the senior lien holder PHH mortgage would very likely not be made whole at closing. And the likelihood of any substantial monetary gain to King Peak, LLC by foreclosing is extremely slim. The tax value of the home is only \$265,000. When you combine this with the overall conduct by King Peak thus far there is a clear pattern of malicious intent.

At the time I notified PHH last month of the foreclosure less than 21 days prior to the sale date, they indeed had absolutely no clue of such action. They were also unaware that their note had never been recorded. So there is no public record of their loan. When I informed them of the oversight, they immediately took action to rectify it.

All said it is highly unlikely that King Peak, LLC would gain monetarily by foreclosing on this property and they are simply trying to squeeze out a quick return on the very recent purchase of the note in September 2022. In September I was up to date on the note and had made consistent on-time payments since my COVID deferment ended 11 months earlier. This foreclosure is an attempt to intimidate me into paying off the note in full at almost \$20,000 more than my records show. They have refused to stop the sale for anything less than full payment of the unverified amount of over \$58,000. I have received 2 documents from them:

Certificate of Service

I will give a copy of this document to my ~~attorney~~ ^{here} and ~~my spouse~~ ^{her} (if my ~~spouse~~ ^{husband} does not have an attorney) on the same day this document is filed with (turned in to) the Court as follows

If I file this document electronically, I will send a copy of it to my ~~attorney~~ ^{King Peak LLC LLC} through the electronic file manager if possible. If not possible, I will ~~give~~ ^{mail} a copy to ~~my spouse~~ or my spouse's attorney in person, by mail, by commercial delivery service, by fax, or by email.

If I file a paper copy of this document, I will give a copy of it to my ~~spouse~~ or ~~my spouse's~~ attorney in person, by mail, by commercial delivery service, by fax, or by email.

Janna M. Pheasant
Signature of Plaintiff

7/17/23

Certificate of Conference

I certify that I made a reasonable effort to talk with ~~my spouse's~~ ^{and her} attorney or ~~my spouse~~ (if my ~~spouse~~ ^{husband} has an attorney) about the date and time of this hearing before setting this hearing.

I tried to call both Deepta Hiremath @ Ghidotti Berger to notify of the hearing on 7/20/23. I emailed and Faxed on that day as well.

email: deeptahiremath@gmail.com - King Peak, LLC

email: oreynosa@ghidottiberger.com - Omar - Rep for her lawyer @ Ghidotti Berger.

FAX: 469-713-3194 Ghidotti Berger

FAX: 949-427-2732 Fax King Peak, LLC

Also mailed to King Peak, LLC
P.O. Box 594
Itorsham, PI 19044

and
Omar Reynosa
Legal Department
Ghidotti Berger
16801 Addison Road Suite 350
Addison, TX 75001

1)

"The notice default and intent to accelerate", mailing date the 16th of December 2022. But it was not mailed out until the 19th and didn't arrive in my mailbox until 3 days after Christmas on the 28th of December 2022. I was given until the 30th to pay almost \$10,000 more than I owed on. I had a total of 18 months missing payments due to a COVID sanctioned deferment at \$355 a month I owed \$6390, Not almost \$16,000. The old lender FCI and I were in the process of modifying the note and I have written correspondence from them of intent to modify but what was holding up the modification was the uncertainty of the actual amount owed. The agreement was to actually wave those 18 months missed payments on as part of the modification and reduce the interest rate to the high 4's or low 5's I had several options to choose from as to the exact rate. The only missed payments on this loan were those 18 months. This note has changed hands approximately a dozen times or more since I bought the home in 2007. This second was the 20% lein of the 80/20 program, it has a very high interest rate of 9.9%. ~~These loans were always held by the same lender. These 2nds were intended to be very~~ temporary, just as soon as the home acquired enough equity it would get rolled into the main loan at the original loan's interest rate which was in the 5's, there were no additional qualifications to meet and no closing cost. But that was right around the time when GMAC, the original note holder of both loans, filed for bankruptcy and as a consequence of this the 2nd was sold off and was now a separate note at a very high interest rate and with rates rising and our financial position at the time, we were unable to qualify to refinance both loans into one as was originally planned. It has been an unending cycle of frequently changing lenders most often with inaccurate information from the old lender ever since. Thus the confusion about the true payoff on the note.

2) The second and only other correspondence I received was right under the deadline of 21 days prior to the sale date "The notice of foreclosure sale".

Please be aware I was literally given no other documents:

Not an introduction letter: i. e. Hi I'm your new lender. Here's where to submit your payments.

No payment statement.

Absolutely no communication between her or her attorney as to where she came up with these numbers or dates of missing payments which are completely inaccurate. I have the statements to prove it. No payment history. Zero paperwork but the two above mentioned documents.

FAX TX REPORT

TRANSMISSION OK

JOB NO. 4491
DESTINATION ADDRESS 9494272732
SUBADDRESS
DESTINATION ID
ST. TIME 06/05 14:31
TX/RX TIME 09' 59
PGS. 21
RESULT OK

FILED
Marilyn Burgess
District Clerk

2023 34281

No. _____

Time: JUN 2 - 2023
By _____
Deputy
Harris County, Texas

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

**PLAINTIFF'S ORIGINAL PETITION & APPLICATION FOR
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1. Plaintiff intends to conduct discovery under Level {2/3} of Texas Rule of Civil Procedure {190.3/190.4} and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because she seeks injunctive relief.

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CAUSE NO. 2023-59075

JAMIE PHELAN
Plaintiff

v.

KING PEAK, LLC
Defendant

§
§
§
§
§
§

IN THE DISTRICT COURT
215TH JUDICIAL DISTRICT
OF HARRIS COUNTY, TEXAS

ORDER DENYING PLAINTIFF'S REQUEST FOR TEMPORARY RESTRAINING ORDER

On this the 5th day of September 2023, the Plaintiff Jamie Phelan sought a Temporary Restraining Order to enjoin the foreclosure of certain real property located in Harris County, Texas by the Defendant King Peak, LLC and/or its representatives. After hearing the argument of the pro se Plaintiff and the Defendant's counsel and any evidence, the Court finds that the Plaintiff has not established the necessary criteria to be entitled to a temporary restraining order.

It is therefore ORDERED that the request for Temporary Restraining Order requested by the Plaintiff Jamie Phelan as against King Peak, LLC and its representatives is DENIED.

IT IS SO ORDERED

Signed this the 5th day of September 2023.

The Honorable Ancillary Judge Presiding

Approved and entry requested:

/S/ Glen Nordt
Glen Nordt
TBN 15076600
13115 Turnbridge Trail
Houston, Tx 77065
713 302 8890
nordtlaw@gmail.com
Attorney for King Peak, LLC

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order Denying Temporary Restraining Order was hand delivered to the Plaintiff at the time of the hearing on this matter before the Ancillary Court of Harris County, Texas on September 5th, 2023.

/S/ Glen Nordt
Glen Nordt

FILED

Marilyn Burgess
District Clerk

SEP 05 2023

Time: _____
Harris County, Texas

By: _____
Deputy

Cause No. 2023-59075

PHELAN, JAMIE § IN THE DISTRICT COURT OF
vs. § HARRIS COUNTY, TEXAS
KING PEAK LLC § ^{11th}
-215th JUDICIAL DISTRICT

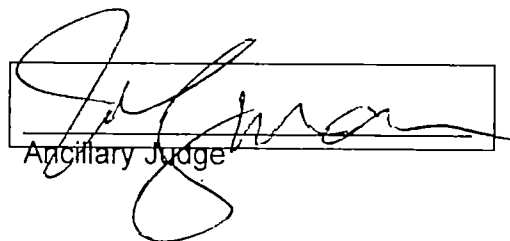
ORDER DENYING APPLICATION FOR TEMPORARY RESTRAINING
ORDER

On this day came on to be heard Plaintiff's Application for a Temporary Restraining Order. After having reviewed the motions, responses and arguments of the parties, the Court finds that Plaintiff's Application for Temporary Restraining Order should be denied. It is therefore,

ORDERED, that Plaintiff's Application for a Temporary Restraining Order is **Denied**.

Plaintiff presented an Application for Temporary Injunction. It is ordered that the clerk of this court issue notice to Defendants to appear before the 11th Judicial District Court, in the Civil Courts Building, 201 Caroline, Houston, Harris County, Texas, on **September 18, 2023** at **3:00 pm** to show cause why Plaintiff should not be granted a temporary injunction, as set out in the application, pending final determination of this cause on its merits.

Signed September 5, 2023.


Auxiliary Judge

KEARNEY & KEARNEY SPECIALIZED SERVICES

6345 WOODLAWN ROAD
VERONA, PENNSYLVANIA 15147

CALL/ TEXT 412-491-7230

Jamie Phelan
3106 Little Bear Drive
Kingwood, Texas 77339

August 11, 2023

In Re: Invoice/ Return
King Peak two addresses

Dear Madam/ Sirs:

Enclosed please find the Return of Service for the above captioned. By this date you should have received via email copies of the same. Please note the invoice below for services rendered and thank you for your consideration.

Respectfully,
Ken Kearney

INVOICE		
King Peak, 1207 Fifth Ave	Allegheny County	\$70.00
King Peak 6000 Brooktree, Wexford		\$70.00
	TOTAL DUE	\$140.00

Affidavit of Process Server

(NAME OF COURT)

PLAINTIFF/PETITIONER VS DEFENDANT/RESPONDENT CASE NUMBER

I Kenneth Kearney being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Non-Serve KingPAK R/A Foster Law Group
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) notice of Final Hearing motion for Continuance

by leaving with NON SERVE At

Residence _____
 Business 1207 Fifth Ave P. HSBURGH PA 15219
ADDRESS CITY / STATE

On 8-11-23 AT 9:59 AM
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____ DATE
 from _____ CITY STATE ZIP

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other: NO ONE AT ADDRESS SUITE 380 ACCORDING TO FIRST FLOOR LAW FIRM - ONLY COMES IN A FEW TIMES

Service Attempts: Service was attempted on: (1) _____ DATE TIME (2) _____ DATE TIME
 (3) _____ DATE TIME (4) _____ DATE TIME (5) _____ DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Kenneth Kearney
 SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 11 day of AUGUST, 2023, by Kenneth Kearney.
 Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Dana M. Pcolar
 SIGNATURE OF NOTARY PUBLIC

Commonwealth of Pennsylvania - Notary Seal
 Dana M. Pcolar, Notary Public
 Westmoreland County
 My commission expires July 12, 2024
 Commission number 1270686
 Member, Pennsylvania Association of Notaries

NOTARY PUBLIC for the state of Pennsylvania



Affidavit of Process Server

(NAME OF COURT)

PLAINTIFF/PETITIONER VS DEFENDANT/RESPONDENT CASE NUMBER

Kenneth Kearney, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served Nonserve King Peak R/A Dornish Law Group
NAME OF PERSON / ENTITY BEING SERVED

with (list documents) notice of Final Hearing - motion for Continuance

by leaving with Nonserve At
NAME RELATIONSHIP

Residence
 Business 6000 Brookline Rd suite 301 Wexford Pa 15090
ADDRESS CITY/STATE

On 8-11-23 AT 2:50 PM
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____ DATE
from _____ CITY STATE ZIP

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
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- Moved, Left no Forwarding.
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other MR. DORNISH STATES he has his LAW GROUP ARE THE R/A OF KING PEAK

Service Attempts: Service was attempted on: (1) _____ DATE TIME (2) _____ DATE TIME
(3) _____ DATE TIME (4) _____ DATE TIME (5) _____ DATE TIME

Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

Kenneth Kearney
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me this 11 day of August, 2023, by Kenneth Kearney
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me

Commonwealth of Pennsylvania - Notary Seal
Dana M. Pcolar, Notary Public
Westmoreland County
My commission expires July 12, 2024
Commission number 1270688
Pennsylvania Association of Notaries

Dana M. Pcolar
SIGNATURE OF NOTARY PUBLIC
NOTARY PUBLIC for the state of Pennsylvania



The plaintiff has filed an emergency request, she is trying to stop an auction on her home scheduled for today at 10 am (case # 2023-34281). We had a TI hearing with Judge Matthews on August 1st, she made a docket sheet entry.

She also filed an original petition on Friday and got a TRO hearing for today with the ancillary judge, TRO was denied. (2023-59075)

I've explained we are in a jury trial but she stated she would wait in the suite. Are you willing to fit her in today or how should I proceed?

The TI was denied.

If ancillary has denied the TRO, I am not going to re-visit the ruling by the ancillary judge.

No emergency hearing.
She had one with ancillary.