

Case: 14-23-00391-CV

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FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS

**IN THE FOURTEENTH COURT OF APPEALS**

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DEBORAH M. YOUNG  
Clerk of The Court

**ANTHONY L. HUTCHISON AND ALL OCCUPANTS,**

**Appellants,**

**V.**

**KENSINGTON STATION, LLC ,**

**Appellee**

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**From the County Civil Court at Law No. 3  
Harris County, Texas, Cause No. 1201868  
Honorable Lashawn A. Williams**

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**APPELLANTS' BRIEF**

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**APPELLANTS REQUEST ORAL ARGUMENT**

## **IDENTITY OF PARTIES AND COUNSEL**

Pursuant to Tex. R. App. P. 38.1(a), the following is a complete list of the names and addresses of all parties to the trial court's final judgment and their legal counsel in the trial court. This list is furnished so that the members of the Court may determine whether they are disqualified to serve or should recuse themselves from participating in the decision of this appeal.

### **ANTHONY L. HUTCHISON AND ALL OCCUPANTS**

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**TO THE HONORABLE COURT OF APPEALS:**

**NOW COME, ANTHONY L. HUTCHISON AND ALL OCCUPANTS,**  
**Appellants** in the above-entitled and numbered cause, and file this, their Brief, for which they would respectfully show the Court of Appeals the following:

**STATEMENT OF THE CASE**

***Nature of the case:*** Plaintiff sued the Defendants in a forcible detainer action in the justice court based on a mortgage foreclosure sale and sought to evict the Defendants from the residential premises (CR 5-22).

***Course of proceedings:*** The justice court conducted a bench trial and entered a no-answer default judgment against the Defendants awarding possession of the subject real estate to the Plaintiff (CR 27-28). Defendants paid the appeal bond and expenses and appealed the case *de novo* to the County Court at Law No. 3, Harris County, Texas (CR 29-30, 31-34).

***Trial Court Disposition:*** In the *de novo* appeal, Defendants filed an “Original Answer” and subsequently filed a “First Amended Answer, Affirmative Defenses and Verified Denials” (CR 43-45 and 63-66, respectively). Defendants’ verified denials asserted that: (1) Plaintiff acquired the property which Defendants “maintained and is paying a senior lien with Ocwen Mortgage Servicing with deed [of] trust on the same property”; (2) pursuant to Tex. Prop. Code §51.002, *et seq.*, the Plaintiff is not a bona fide third person entitled to possession and only took the

title subject to the rights of the senior lien holder and Defendant”; and (3) “Defendants deny that Plaintiff is entitled to possession on the basis of purchasing a junior lien at a contested foreclosure sale” (CR63-64). After conducting a bench trial, the County Court entered and signed a “Final Judgment and Order of Possession” ordering that Plaintiff recover possession of the premises from Defendants (CR 67-68). The Final Judgment authorized the issuance of a writ of possession, if necessary, and also ordered a supersedeas bond in the amount of \$14,600 (*Id.*). Defendants timely filed the supersedeas bond (CR 72). On May 31, 2023, Defendants filed their Notice of Appeal, appealing the Final Judgment to the Fourteenth Court of Appeals (CR 73-74).

## STATEMENT OF ORAL ARGUMENT

The court should grant oral argument for the following reasons:

- a. Oral argument would give the Court a more complete understanding of the facts presented in this appeal. See *Tex. R. App. P. 39.1(c)*.
- b. Oral argument would allow the Court to better analyze the complicated legal issues presented in this appeal. See *Tex. R. App. P. 39.1(c)*.
- c. Oral argument would significantly aid the Court in deciding this case. See *Tex. R. App. P. 38.1(e)*.

## ISSUES PRESENTED FOR REVIEW

**POINT OF ERROR NO. 1:** Whether Appellee Kensington's foreclosure was a nullity and, therefore, void?

**POINT OF ERROR NO. 2:** Whether title passed between the parties as a result of Appellant Kensington's void foreclosure sale?



## STATEMENT OF FACTS

### Case Background

#### *a. Appellee Kensington's Allegations*

On January 11, 2023, Plaintiff, Kensington Station, LLC (“Kensington”), filed a forcible detainer lawsuit in the Justice Court, Precinct 1, in Harris County against Anthony L. Hutchison and All Occupants at 4241 Purdue Street, Houston, Texas 77005 (“Hutchison”)<sup>1 2</sup> (CR 5-22). Kensington claimed to be the “Property Owner” and specifically claimed to be “the legal and equitable title holder of the Premises” by referring to a “Foreclosure Sale Deed” filed stamped January 11, 2023 (CR 6 at ¶ 7 and CR 8-17). Kensington claimed that it sent out to Hutchison a 3-day Notice to Vacate Letter and contends that Hutchison “failed to comply with Property Owner’s demand that Defendants surrender possession of the Premises” (CR 6 at ¶s 8 & 9). Kensington also alleged that “Defendants and ALL OCCUPANTS of the Premises have no legal or equitable right to possession of the Premises” (CR 6 at ¶ 9). Kensington claimed that Hutchison “committed a forcible detainer and Property Owner is entitled to immediate possession of the Premises” (CR 7 at ¶ 10). Finally,

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<sup>1</sup> The real property in question is referred to herein as “the Premises” or “the subject Property.”

<sup>2</sup> The legal description for the subject Property is:

“LOT ONE (1), BLOCK ONE (1), HUTCHISON TEN SUBDIVISION, AN ADDITION TO THE CITY OF HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN FILM CODE NO. 565215, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.”

(CR 6, 11)

Kensington prayed for a judgment against Hutchison for (1) possession of the Premises; (2) a writ of possession for the Premises; and (3) other unspecified relief (CR 7 at “Prayer”).

***b. Lower Court Disposition***

On February 15, 2023, the Justice Court held a bench trial and entered a no-answer default judgment against Hutchison, awarding possession of the Premises to Kensington, however, the court did not award rent or attorney’s fees (CR 27). The court set the appeal bond at \$500.00 and it ordered that “[n]o writ of possession will issue before 3/22/23” (*Id.*; RR Vol. 1 at 16:17).

On February 20, 2023, Hutchison filed in the Justice Court a “Notice of Appeal” relative to the court’s judgment of February 15, 2023 (CR 29-30).<sup>3</sup> By virtue of a *de novo* appeal, the case was assigned to the County Court at Law No. 3, Harris County, Texas, Cause No. 1201868. Hutchison also filed a Cash Appeal Bond in the amount of \$500.00 (CR 31; RR Vol. 1 at 15:6-16).

In the County Court case, Hutchison filed of record “Defendant’s Original Answer” (CR 43-45). Hutchison asserted a general denial and, importantly, he alleged the following verified denial:

***“Defendant pleads partial accord and satisfaction to the amount of alleged mortgage judgment debt that initiated the foreclosure sale and as such Plaintiff cannot establish clear title and ownership as there***

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<sup>3</sup> At this point, attorney Ray L. Shackelford effectively made his entry of appearance on behalf of Hutchison and All Occupants (CR 29-30).



*exists a justiciable claim against the junior mortgage lienholder that Plaintiff purchased the interest in the subject property...*”

(CR 43) (*emphasis added*).

On May 19, 2023, Hutchison filed of record “Defendant’s First Amended Answer, Affirmative Defenses and Verified Denials” (CR 63-66). The following verified denials alleged by Hutchison are key to this appeal:

(1) “[A]t all times prior to the manner in which the Plaintiff acquired the property that he maintained and is paying a senior lien with Ocwen Mortgage Servicing with deed of trust on the same subject property. ...

(2) [P]ursuant to Texas Property Code Section 51.002, et seq., the Plaintiff is not a bona fide third person entitled to possession and *only took title subject [to] the rights of the senior lien holder and Defendant. SHUMWAY VS. HORIZON CREDIT CORP.* 802 SW2d 890 (Tex. 1991).

(3) To wit, *Defendants deny that Plaintiff is entitled to possession on the basis of purchasing a junior lien at a contested foreclosure sale.*”

(CR 63-64) (*emphasis added*).

On May 22, 2023, the County Court, the Honorable Judge Lashawn A. Williams presiding, held a one-day bench trial with legal counsel for Hutchison in attendance (CR 67).<sup>4</sup> During the trial, Hutchison’s counsel made it clear to the court that the matter in question was not a landlord/tenant matter but, rather, was a “post-foreclosure issue” (RR Vol. 1 at 4:18-21—Apdx. Tab B). The owner of Kensington, Caroline Allison, testified that Kensington purchased the subject real property at a

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<sup>4</sup> The transcript from the Trial on the Merits has been made part of the appellate record. See RR Vol. 1 of 2—see Apdx. Tab B.

foreclosure sale on September 6, 2022 for \$146,000.00 (*Id.* at 5:14-23—Apx. Tab B). Mrs. Allison claims to have received a foreclosure sale deed as a result of this sale (*Id.* at 6:2-12-- Apx. Tab B). She asked the court to grant Kensington possession of the subject Property as the purchaser at the foreclosure sale (*Id.* at 7:20-23—Apx. Tab B). Importantly, Hutchison’s counsel informed the court:

“... the property currently has a senior lien that Mr. Anthony L. Hutchison pays and I’ve confirmed with Opland Loan Services that he’s current on the two loans on contiguous properties totaling almost \$800,000. ...”

(*Id.* at 9:10-13—Apx. Tab B)

Mrs. Allison conceded that she researched the property before the foreclosure sale and noticed that there were other liens on the property, which included a prior lien by Opland Loan Services-- “I know that there’s a First Trust or first mortgage” (*Id.* at 8:13-22—Apx. Tab B). She denies that Kensington purchased the first mortgage but, rather, claims “I purchased the second mortgage” (*Id.* at 8:23-24-- Apx. Tab B). She claims to have paid \$146,000 for the second mortgage (*Id.* at 8:25 through 9:1-- Apx. Tab B) and her attorney concedes that **Kensington purchased the property at the foreclosure sale “pursuant to a second lien deed of trust”** (*Id.* at 4-5—Apx. Tab B).

The court entered and signed a “Final Judgment and Order of Possession,” awarding possession of the property to Kensington (CR 67-68—Apx. Tab A). The court requested a supersedeas bond to stay execution in the amount of \$14,600.00



(CR 68—Apx. Tab A; RR 15-17—Apx. Tab B). Hutchison timely paid the supersedeas bond (CR 72) and proceeded to file of record on May 31, 2023 his “Notice of Appeal,” challenging the County Court’s Final Judgment (CR 73-74).

***c. Additional Explanation of Priority of Senior Lien Over Inferior and Extinguished Junior Lien***

On September 20, 2023, Anthony L. Hutchison filed an “Original Petition and Jury Request” in the 125<sup>th</sup> Judicial District Court, Harris County, Texas, against Kensington Station, LLC and Franklin Credit Management Corporation, Cause No. 2023-64003. (See Apx. Tab C). Mr. Hutchison sued both of these Defendants alleging causes of action for wrongful foreclosure; failure to pay excess proceeds from a foreclosure sale; unjust enrichment; violations of the Real Estate Settlement Procedures Act (“RESPA”) and its consumer protection statute 12 U.S.C. § 2605, RESPA Sec. 6(f) § 261, et al.; and RESPA’s implementing regulations at 12 C.F.R. §§ 1023.39 ABD 1024,39 ABD 1924.41; violation of the Texas Property Code Ann. Sec. 51.002, et seq.; breach of the duty of good faith and fair dealing, negligence and gross negligence. (*Id.* at § IV, 4.1).

Hutchison’s Original Petition explains in more detail the facts that relate to the priority senior lien and inferior and extinguished junior liens that serve as the basis of the underlying appeal, to wit:

“5.1 On or about March 9, 2006, Plaintiff entered into two contracts for the purchase of the house and lot located at 4241 Purdue, Houston, Texas.

Plaintiff executed a primary note to Green Point Mortgage in the amount of \$480,000.00 and a secondary lien note in the amount of \$60,000.00 payable to Greenpoint Mortgage.

5.2 Subsequently, the primary note of Plaintiff in the amount of \$480,000.00 was sold, assigned and transferred to Bank of America, N.A. and the Plaintiff directed his payments to the new entity. The secondary lien note of Greenpoint Mortgage remained the same after the primary note was sold and transferred.

5.3 In or around February 2012, Bank of American as successor-in-interest and owner of the primary note foreclosed on the property at 4241 Purdue and as a result extinguished all inferior liens including the junior lien of Greenpoint Mortgage with this action.

5.4 Plaintiff retained counsel and contested the foreclosure of the primary note on the property and after several years of litigation resulted in the Plaintiff obtaining a Rescission of the Foreclosure Sale, Cancellation of Foreclosure Sale deed and Re-conveyance Special Warranty Deed on or about December 2014.

5.5 Thereafter, from December, 2014 through the present, Plaintiff has continued to pay the senior lien/primary note on the real property located at 4341 Purdue to Ocwen Mortgage Servicing, LLC and is presently current in all principal and escrow payments.

5.6 During the same period of time, Plaintiff did not receive any communications from the Defendant, Franklin regarding the existence of the secondary lien previously owned by Greenpoint Mortgage that was dissolved by the above referenced foreclosure in February, 2012.

5.7 Plaintiff would show that when he was contacted by Defendant Franklin during 2018, it did not present any reinstatement documents for the extinguished junior lien previously held by Greenpoint Mortgage.

5.8 As such, Defendant Franklin's only actions were to renew sending mortgage statements to Plaintiff alleging a principal mortgage balance of \$56,293.30 which was more than six (6) years after the foreclosure sale of February, 2012.

\* \* \*

5.10 Further, Plaintiffs would show that in spite of several inquiries over several months, regarding the validity of a secured interest as it relates to the secondary lien acquired by Defendant Franklin it initiated foreclosure proceedings on this basis on September 6, 2022.

5.11 To wit, as a result of the actions by Defendant Franklin through its Substitute Trustee, the Plaintiff's real property at 4241 Purdue, was sold to Defendant Kensington for the below value consideration of approximately one-hundred & forty-six thousand dollars (\$146,000.00).

5.12 At the time of the foreclosure sale on or about September 6, 2022, the appraised value assigned to Plaintiff's property by the Harris County Appraisal District was approximately Four hundred thousand dollars (\$413,000.00).

5.13 Further, Plaintiff would show that at the time of the foreclosure sale when his property was sold to a third party buyer, namely Defendant Kensington, the Plaintiff was current and still paying the primary lien which superseded this alleged debt."



## SUMMARY OF THE ARGUMENT

Kensington's legal counsel conceded at the trial that Kensington purchased the subject Property "pursuant to a second lien deed of trust." (RR Vol. 1) This admission was supported by verified affirmative defenses raised by Hutchison in his Original Answer and First Amended Answer. (CR 43 & 63-64) At trial, Hutchison's legal counsel argued that the subject Property "currently has a senior lien that Mr. Anthony L. Hutchison pays and ... confirmed ... he's current on the two loans on contiguous properties totaling almost \$800,000." (RR Vol. 1 at 9:9-13-- Apdx. Tab B) However, in spite of this uncontroverted evidence, the verified denials alleged by Hutchison and the admissions of Kensington's legal counsel, as corroborated by Hutchison's attorney at trial, the trial court committed reversible error by ignoring the legal effect of the holder of the senior lien foreclosing on the subject Property in February of 2012, which effectively extinguished the junior lien held by Kensington. For this reason, in spite of the subsequent January 2022 foreclosure sale from which Kensington purchased the subject Property, the sale was void as a matter of law and no title to the Property transferred to Kensington. In the alternative, the foreclosure sale and resulting Foreclosure Sale Deed is voidable. For these reasons, the final Judgment of the trial court should be reversed and a judgment in favor of Hutchison should be rendered.



## ARGUMENT AND AUTHORITIES

**POINT OF ERROR NO. 1:** Whether Appellee Kensington’s foreclosure was a nullity and, therefore, void?

**POINT OF ERROR NO. 2:** Whether title passed between the parties as a result of Appellant Kensington’s void foreclosure sale?

### **Discussion**

#### *a. Standard of Appellate Review*

The judge made an irrelevant finding of fact concluding that Hutchison was a tenant at sufferance who, if necessary, could “be removed from the premises by writ of possession or other court proceeding.” (RR Vol. 1 at 13 – 15 and 17:6-7—Apx. Tab B)<sup>5</sup> Based on this irrelevant finding, the court committed reversible error by entering its “Final Judgment and Order of Possession” awarding possession of the property to Kensington. (CR at 67-68—Apx. Tab A) This erroneous finding of fact and conclusion of law, as set out in the subject final Judgment (*Id.*), was harmful because the foreclosure sale on September 6,

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<sup>5</sup> The trial judge reviewed a Deed of Trust introduced by Kensington’s attorney in making the following factual conclusion:

“... It’s basically if the property is sold pursuant to Section 20, borrower or any person holding possession of the property through the borrower shall immediately surrender possession of the property to the purchaser at that sale. If possession is not surrendered, borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

So Subpart B applies.”

(RR Vol. 1 at 13-15)

2022, when Kensington purchased the subject real property for \$146,000.00 (RR Vol. 1 at 5:14-23 & 6:2-12), was a nullity and, therefore, void as a matter of law and title never passed to Kensington. See Appellant’s “Argument and Authorities” relative to Points of Error Nos. 1 and 2, *infra*.

Findings of fact in a bench trial have the same force as a jury’s verdict upon jury questions. *Estate of Norma L. Bessire*, 399 S.W.3d 642, 648 (Tex. App.-- Amarillo 2013, pet. denied). However, the findings are not conclusive when, as in the instant case, a complete statement of facts appears in the record if the contrary is established as a matter of law or if there is no evidence to support the findings. *Id.* Findings of fact are reviewable for factual and legal sufficiency under the same standards that are applied in reviewing evidence supporting a jury’s answer. *Id.*

A trial court’s conclusions of law are not binding on an appellate court. Rather they are reviewed *de novo*, with the court exercising its own judgment and analyzing each conclusion for its correctness. *Byrd v. Est. of Nelms*, 154 S.W.3d 149, 155 (Tex. App.-- Waco 2004, pet. denied) (citing *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002)). Conclusions of law will be upheld if the judgment can be sustained on any legal theory supported by the evidence. *McAllen Police Officer’s Union v. Tamez*, 81 S.W.3d 401, 404-05 (Tex. App.-- Corpus Christi 2002, pet. dism’d).

*b. Kensington's foreclosure on its junior lien was a nullity and, therefore, void and title did not pass to Kensington as a result of the void foreclosure sale.*

Whether a trustee's deed at a foreclosure sale is void or voidable depends on its effect upon the title at the time it was executed and delivered. *Diversified, Inc. v. Walker*, 702 S.W.2d 717, 721 (Tex. App.-- Houston [1<sup>st</sup> Dist.] 1985, writ ref'd n.r.e.).

Foreclosure of a lien on property causes legal and equitable title to merge. *Conseco Fin. Servicing Corp. v. J & J Mobile Homes, Inc.*, 120 S.W.3d 878, 883 (Tex. App.-- Fort Worth 2003, pet. denied); see *Flag-Redfern Oil Co. v. Humble Exploration Co.*, 744 S.W.2d 6, 9 (Tex. 1987). Foreclosure on a senior lien against property extinguishes a junior lien, if not satisfied from proceeds on the sale, and the purchaser at the sale acquires the property free of any such junior lien. See *Nat'l W. Life Ins. Co. v. Acreman*, 425 S.W.2d 815, 817-18 (Tex. 1968); *Mortgage & Trust, Inc. v. Bonner & Co.*, 572 S.W.2d 344, 352 (Tex. Civ. App.-- Corpus Christi 1978, writ ref'd n.r.e.). When a senior lienholder forecloses on property subject to its lien, all junior lienholders are divested of title to the property and their liens are extinguished. *Diversified Mort. Investors v. Lloyd D. Blaylock Gen. Contractor, Inc.*, 576 S.W.2d 794, 808 (Tex. 1978); *Mays v. Bank One, N.A.*, 150 S.W.3d 341, 344 (Tex. App.-- Dallas 2004, no pet.); *Jones v. Bank United of Texas*, 51 S.W.3d 341, 344 (Tex. App.-- Houston [1<sup>st</sup> Dist.] 2001, pet. denied). Therefore, when a



senior lienholder forecloses, the purchaser acquires title to the property free from the claims of any junior lienholders. *Conseco*, 120 S.W.3d at 883.

When a junior lien is extinguished by foreclosure on a superior lien, the unpaid portion of the loan that was secured by the junior lien becomes an unsecured debt for which the lender may obtain a money judgment. *Diversified Mortgage*, 576 S.W.2d at 808; *Wesley v. Amerigo, Inc.*, No. 10-05-00041-CV, 2006 Tex. App. LEXIS 54, 2006 WL 22213, at \*3-4 (Tex. App.-- Waco Jan. 4, 2006, no pet.) (mem. op.).

In the case of *Wesley v. Amerigo, Inc.*, *supra*, the Wesleys entered into a mechanic's lien with Universal Home Care. The lien was secured by the Wesleys' property and this was the first lien on the property. Subsequently, the Wesleys entered into a retail installment contract with Amerigo secured by a mechanic's and materialman's lien contract and deed of trust on the Wesleys' property. Universal Home Care foreclosed on the Wesleys' property. Subsequently, the Wesleys defaulted on their obligations with Amerigo, therefore, Amerigo accelerated the note and conducted another foreclosure sale on the Wesleys' property. At the foreclosure sale, Amerigo purchased the property for the balance that the Wesleys owed on the note. Subsequently, Amerigo discovered that the property had been previously foreclosed upon by Universal Home Care. Amerigo sued the Wesleys seeking judgment for the amount owed under the retail installment contract and executed an



affidavit to purge real property records. At the bench trial, the court found that the foreclosure on the property by Amerigo was a nullity and entered judgment for Amerigo for the remaining balance on the note, \$10,412.27, plus accrued interest for \$3,634.74.

On appeal, the Wesleys challenged the trial court's finding that its foreclosure sale was a nullity. The Waco appeals court upheld the trial court's finding based on the following reasoning:

“...when Universal Home Care, as the senior lien holder, foreclosed upon the Wesleys ... property, the Trustee of the sale had no title to transfer to Amerigo. Because title never passed to Amerigo, the foreclosure sale is void. *Slaughter*, 162 S.W.2d at 674; *Diversified, Inc.*, 702 S.W.2d at 721. A purchaser obtains no greater interest in the property than the debtor himself could have conveyed at the time of the sale. *Allied First Nat. Bank of Mesquite v. Jones*, 766 S.W.2d 800, 804 (Tex. App.-- Dallas 1988, no writ). Here, the Wesleys had no title to convey, and Amerigo had no lien upon which to foreclose. The trial court was correct in holding that Amerigo's foreclosure sale was a nullity. *Martin v. Cadle Co.*, 133 S.W.3d 897, 904 (Tex. App.-- Dallas 2004, pet. denied) (‘Because the lien was released, there was no lien to foreclose, and the substitute trustee had no power to transfer title to the property.’); *Chale Garza Investments, Inc. v. Madaria*, 931 S.W.2d 597, 600 (Tex. App.-- San Antonio 1996, writ denied) (‘When a foreclosure sale is void, the purchaser does not acquire title to the property.’); *Jones*, 766 S.W.2d at 804 (‘Jones had no valid lien because the record reflects that the purchase was made after Flanery had purchased the property from Shelton,’); *Diversified, Inc.*, 702 S.W.2d at 721 (‘Since the conditions and limitations on the trustee's power to convey the land were never fulfilled, such power never lawfully came into being, and the foreclosure sale and trustee's deed were therefore void.’).”

*Wesley*, 2006 Tex. App. LEXIS 54, at \* 5-7.

In the instant case, the “Foreclosure Sale Deed” under which Kensington claims legal title to the subject Property (CR Vol. 2, Plaintiff’s Exhibit “A”) is a mere nullity, passing no title and conferring no rights whatsoever to Kensington; therefore, it is void *ab initio*. However, if the subject foreclosure sale deed passed title to Kensington, subject only to the rights of Hutchison to have it set aside because it was improperly made, then the deed is voidable. *Id.* (citing *Slaughter v. Qualls*, 139 Tex. 340, 162 S.W.2d 671, 674 (1942)). “That which is void is without vitality or legal effect. That which is voidable operates to accomplish the thing sought to be accomplished, until the fatal vice in the transaction has been judicially ascertained and declared.” *Wesley v. Amerigo, Inc.*, No. 10-05-00041-CV, 2006 Tex. App. LEXIS 54, 2006 WL 22213 (Tex. App.-- Waco 2006, no pet.) (citing *Slaughter*, 162 S.W.2d at 674).

The trial court’s irrelevant factual finding that Hutchison was a tenant at sufferance and, therefore, he and the occupant of the subject Property should be removed and possession awarded to Kensington, serves as the basis of the trial court’s reversible error and its erroneous Judgment. This error was harmful as a matter of law and repugnant to well-established lienholder law cited above. For these reasons, the trial court’s final Judgment should be reversed and the case should be rendered in favor of Hutchison.

## CONCLUSION

The trial judge made an irrelevant finding of fact concluding that Hutchison was a tenant at sufferance who could be removed from the premises by writ of possession, if necessary. This erroneous factual finding served as the basis for the trial court's "Final Judgment and Order of Possession" awarding the property to Kensington. These findings by the trial court resulted in harmful error because the foreclosure sale of September 6, 2022, when Kensington purchased the subject real property for \$146,000, was a nullity and, therefore, void as a matter of law because legal title to the property never passed to Kensington. For these reasons, the Honorable Fourteenth Court of Appeals should reverse the final Judgment of the trial court and judgment should be rendered in favor of Hutchison.

## PRAYER

Appellants, Anthony L. Hutchison and All Occupants at 4241 Purdue Street, Houston, Texas 77005, request that the Honorable Court of Appeals reverse the final Judgment of the County Court at Law No. 3 and render judgment in Appellants' favor. Appellants also request that the Court grant them such other and further relief, at law or in equity, which the Court may deem appropriate.



Respectfully submitted,

/s/ Ray L. Shackelford

**RAY L. SHACKELFORD**

Attorney at Law

Texas Bar No.: 18071500

Shackelford & Associates, L.L.C.

1406 Southmore Blvd.

Houston, Texas 77004

(713) 520-8484 [Office]

(713) 520-8192 [Facsimile]

E-Mail: [rshackctic@yahoo.com](mailto:rshackctic@yahoo.com)

Attorney for Appellants

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this **25<sup>th</sup> day of September, 2023**, I efiled of record Appellants' Brief by utilizing an e-filing system which has been approved for use by the Clerk of the Fourteenth Court of Appeals, which will provide a true and correct copy to the following attorney of record:

Eric Days

Guerra Days Law Group, PLLC

515 N. Sam Houston Pkwy. E, Suite #250

Houston, Texas 77060

E-Mail: [service@guerradays.com](mailto:service@guerradays.com)

E-Mail: [eric@guerradays.com](mailto:eric@guerradays.com)

/s/ Ray L. Shackelford

**Ray L. Shackelford**

**CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4(i)(3)**

I, the undersigned legal counsel for Appellants, hereby certify that the word count total for Appellants' Brief, as reported by Microsoft Word 2019, is **4,197**.

/s/ Ray L. Shackelford

**Ray L. Shackelford**



## APPENDIX

**Tab 1:** Final Judgment and Order of Possession, signed May 22, 2023 (CR 67-68).

**Tab 2:** Transcript of Trial on Merits, May 22, 2023 (RR Vol. 1).

**Tab 3:** “Plaintiff’s Original Petition and Jury Request” in Cause No. 2023-64003, styled *Anthony L. Hutchison v. Franklin Credit Management Corporation and Kensington Station, LLC*, pending in the 125<sup>th</sup> Judicial District Court, Harris County, Texas.

/s/ Ray L. Shackelford  
Ray L. Shackelford

TAB

A

SIC

DOCKET NUMBER 1201868

Kensington Station, LLC }  
Plaintiff(s), }  
vs. }  
Anthony L. Hutchison }  
Defendant(s). }

IN THE COUNTY  
COURT AT LAW  
NUMBER THREE (3)  
HARRIS COUNTY, TEXAS

**FINAL JUDGMENT and ORDER OF POSSESSION**

On May 22, 2023, the above entitled and numbered cause, came Plaintiff(s) and announced ready for trial. Defendant(s),

also appeared and announced ready for trial.

\_\_\_\_\_ having been duly notified of this trial setting, failed to appear.

No jury fee having been paid, the parties proceeded to trial without the intervention of a jury. The Court, after considering the pleadings, evidence and arguments of the parties, is of the opinion that Defendant(s) are guilty of forcible detainer of the hereinafter described premises and that Plaintiff(s), have and recover from Defendant(s) as follows,

ORDERED, ADJUDGED AND DECREED that PLAINTIFF(S) and/or PROPERTY OWNER: Kensington Station, LLC does have and recover possession of the premises from DEFENDANT(S) and/or TENANT(S):

Name: Anthony L. Hutchison  
Located at:  
Street Address: 4241 Purdue Street  
Apartment and/or Unit Number: \_\_\_\_\_  
City/State/Zip Code: Houston, TX 77005

in Harris County, Texas; that a WRIT OF POSSESSION issue to the proper officer commanding him to seize possession of said premises and deliver same to Plaintiff(s) after said Writ of Possession has been duly filed by Plaintiff(s) if Defendant(s) have not vacated the herein



described premises by June 1, 2023  
(Date)


It is further ORDERED, ADJUDGED AND DECREED that Plaintiff(s) does have recover from Defendant(s) in the amount of \$ \_\_\_\_\_, together with post-judgment interest in the rate of 5.25% per annum from the date of judgment until paid in full, and court costs.

The Supersedeas Bond to stay execution of this Judgment is hereby set at \$ 14,600.00. Said bond to be either in cash or corporate surety bond.

The Clerk of the Court is hereby ORDERED to issue all writs and processes, including but not limited to Writs of Execution, in aid of satisfaction of this Judgment.

This is a FINAL JUDGMENT disposing of all issues and all parties. All prior Interlocutory Orders of the Court in this cause are hereby made final.

SIGNED this 22 day of May, 2023

  
LASHAWN A. WILLIAMS  
PRESIDING JUDGE

Plaintiff's Attorney  
(Making an appearance)  
Eric Days  
Bar# 24082907

Defendant's Attorney  
(Making an Appearance):  
Ray Shackelford  
Bar# 18071500

Plaintiff(s)/Prose  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. No: \_\_\_\_\_

Defendant(s)/Prose  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. No: \_\_\_\_\_

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REPORTER'S RECORD  
VOLUME 1 OF 2 VOLUMES  
TRIAL COURT CAUSE NO. 1201868  
APPELLATE CAUSE NO. 14-23-00391

FILED IN  
14th COURT OF APPEALS  
HOUSTON, TEXAS  
7/11/2023 7:59:15 PM  
CIVIL COURT  
DEBORAH M. YOUNG  
Clerk of The Court

KENSINGTON STATION, LLC ) IN THE COUNTY  
)  
)  
vs. ) AT LAW NUMBER THREE (3)  
)  
ANTHONY L. HUTCHISON ) HARRIS COUNTY, TEXAS

---

**TRIAL ON MERITS**

---

On the 22nd day of May, 2023, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable LaShawn A. Williams, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.



**APPEARANCES**

1  
2  
3 Mr. Eric Days  
4 SBOT NO. 24082907  
5 Guerra Days Law Group, PLLC  
6 515 N. Sam Houston Parkway E., Suite 250  
Houston, Texas 77060  
Telephone: (281)760-4295  
Attorney for Plaintiff

7 Mr. Ray L. Shackelford  
8 SBOT NO. 18071500  
9 Shackelford & Associates, LLC  
10 1406 Southmore Blvd.  
Houston, Texas 77004  
Telephone: (713)520-8484  
Attorney for Defendant

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CHRONOLOGICAL INDEX

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CAROLINE ALLISON Direct Cross 5v1 8v1		
Court's ruling	14	1
Court Reporter's Certificate	18	1

INDEX OF EXHIBITS

PLAINTIFF'S EXHIBIT NO.	DESCRIPTION	OFFERED	ADMITTED
A	Foreclosure sale deed	6v1	6v1
B	Notice to vacate	7v1	7v1
D	Deed of trust	14v1	14v1

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**P R O C E E D I N G S**

*THE COURT:* State your appearance for the record.

*MR. DAYS:* Eric Days appearing on behalf of the plaintiff, Kensington Station, LLC.

*MR. SHACKELFORD:* Ray L. Shackelford on behalf of the defendant, Anthony L. Hutchison and any and all occupants.

*THE COURT:* Mr. Days, how are we proceeding today?

*MR. DAYS:* We would like to proceed to trial, Your Honor.

*THE COURT:* I assume y'all conferred and you weren't able to come to an agreement?

*MR. DAYS:* We did, Your Honor.

*THE COURT:* Really? Is Mr. Hutchison not coming?

*MR. SHACKELFORD:* Judge, he is coming back into town; but since this is a different type of issue versus the normal landlord/tenant, this is a post-foreclosure issue.

*THE COURT:* All right. Let me swear in whoever is going to testify. Please raise your right hand.

\*





1 A. Yes, I do.

2 Q. And what is this document?

3 A. This is a foreclosure sale deed.

4 Q. And this is the document that was given to you at  
5 the time or after the sale that was filed in the real  
6 property records?

7 A. That's correct.

8 MR. DAYS: Your Honor, I'll offer this as  
9 Plaintiff's Exhibit A.

10 THE COURT: Any objection?

11 MR. SHACKELFORD: No objection, Judge.

12 THE COURT: Admitted.

13 MR. DAYS: I filed those already, Your  
14 Honor. Do you want me to bring up a copy?

15 THE COURT: I see it.

16 MR. DAYS: Okay.

17 Q. (BY MR. DAYS) Ms. Allison, I would like to  
18 reference you to the next part of this. Did you retain a  
19 law firm called The Weaver Law Firm to assist you in  
20 proceeding with an eviction?

21 A. Yes, I did.

22 Q. And as part of that eviction, did The Weaver Law  
23 Firm prepare notices to vacate?

24 A. Yes, they did.

25 Q. If I show you what's been marked as Plaintiff's

1 Exhibit B, do you recognize this document?

2 A. Yes, I do.

3 MR. DAYS: Your Honor, I would like to  
4 have this document admitted to the record as well.

5 THE COURT: Any objection?

6 MR. SHACKELFORD: No objection.

7 THE COURT: Admitted.

8 MR. DAYS: Thank you.

9 Q. (BY MR. DAYS) Pursuant to your agreement with  
10 The Weaver Law Firm, as we discussed, they sent out this  
11 notice to vacate?

12 A. That's correct.

13 Q. And this notice was sent by both certified mail  
14 and first class mail?

15 A. Yes.

16 Q. And prior to the hearing, we were able to confirm  
17 that these notices were, in fact, delivered to the  
18 occupant; is that correct?

19 A. Absolutely correct.

20 Q. What we are trying to find out today, Ms.  
21 Allison, are you asking this Court to grant you possession  
22 of the property as the purchaser at the foreclosure sale?

23 A. That's correct.

24 Q. Are you asking the Court grant -- issue a bond in  
25 the amount of \$30,000 for purposes of an appeal if an

1 appeal was going to be done; is that correct?

2 A. Yes.

3 Q. That is based on a 146,000-dollar purchase price  
4 and 20 percent basically of that; is that correct?

5 A. That's correct.

6 MR. DAYS: Your Honor, I'll pass the  
7 witness at this time.

8 THE COURT: Mr. Shackelford, do you have  
9 any questions for the witness?

10 MR. SHACKELFORD: Yes, Judge.

11 **CROSS-EXAMINATION**

12 **BY MR. SHACKELFORD:**

13 Q. Ms. Allison, when you purchased the property, did  
14 you have an occasion to do a title search on the property?

15 A. Yes.

16 Q. Did you find out that there were other liens on  
17 the property?

18 A. Yes.

19 Q. In fact, that there's a lien that's prior to  
20 yours owned by Opland Loan Services?

21 A. I know that there's a First Trust or first  
22 mortgage, yes.

23 Q. Did you purchase the first mortgage?

24 A. I purchased the second mortgage.

25 Q. And you paid how much for it?



1           A. 146,000.

2                   MR. SHACKELFORD: Pass the witness, Judge.

3                   THE COURT: Any redirect?

4                   MR. DAYS: No, Your Honor. I mean, at  
5 this time we are asking for possession of the property  
6 and the bond.

7                   THE COURT: All right. Mr. Shackelford,  
8 any response?

9                   MR. SHACKELFORD: Judge, other than the  
10 fact that the property currently has a senior lien that  
11 Mr. Anthony L. Hutchison pays and I've confirmed with  
12 Opland Loan Services that he's current on the two loans  
13 on contiguous properties totaling almost \$800,000. If  
14 the Court does -- I have an argument regarding the  
15 bond -- if the Court does choose, because this was not a  
16 rent case, she paid \$146,000, we would suggest to the  
17 Court and ask the Court that my client pay 1 percent  
18 times ten months which is generally standard.

19                   THE COURT: And this is a foreclosure  
20 sale, so it's not a tax foreclosure, not a trustee's  
21 foreclosure.

22                   MR. SHACKELFORD: No.

23                   THE COURT: Neither of those two.

24                   MR. DAYS: It's a substitute trustee's  
25 foreclosure, yes, Your Honor, but not a --

1                   THE COURT: So was 30 days' notice  
2 required or just the 30?

3                   MR. DAYS: It would depend on whether or  
4 not the person was claiming it as a person under a lease.  
5 But I don't believe Mr. Hutchison is claiming he was the  
6 leaseholder of the property. He is claiming to be the  
7 owner of the property, Your Honor.

8                   THE COURT: Do I have a tenant at  
9 sufferance language in the deed?

10                  MR. DAYS: In the deed?

11                  THE COURT: Of trust or the trustee's.  
12 Usually there's a tenant at sufferance language.

13                  MR. SHACKELFORD: There's not one in what  
14 they've admitted into evidence.

15                  THE COURT: There was no leasing  
16 agreement, right?

17                  MR. DAYS: That's correct, Your Honor.  
18 There was no leasing agreement.

19                  THE COURT: And usually I have a tenant at  
20 sufferance language. Otherwise, I think she was entitled  
21 to 30 days.

22                  MR. DAYS: I'm looking at the deed of  
23 trust.

24                  THE COURT: Do you want me to give you a  
25 moment? Let me do this: I'm pretty sure it's always

1 either in the trustee's -- that's why I asked you if this  
2 was a trustee's or if this was a -- I just see a  
3 foreclosure sales deed. It's not going to be there.

4 MR. DAYS: It was pursuant to a second  
5 lien deed of trust.

6 THE COURT: You might have a problem with  
7 your notice. You might have to do your notice over. I  
8 am looking at 24.005 of the property code. I'll give you  
9 a moment, if you would like to step back, and take a look  
10 or talk with Mr. Shackelford. But if so, we have a  
11 notice problem, then, of course, you may have to do this  
12 over.

13 MR. DAYS: I do, Your Honor. Let me take  
14 a look at this.

15 THE COURT: Okay. Verify that.

16 (Proceedings adjourned.)

17 THE COURT: Mr. Days, did you look at what  
18 I'm talking about?

19 MR. DAYS: I did, Your Honor; and I don't  
20 believe that that section is applicable to Mr. Hutchison  
21 for the reason that he is the actual mortgagor and he is  
22 the person that was foreclosed. I do understand the  
23 premise that if there were a valid written lease -- and  
24 it's been represented to me that there is a lease with  
25 someone, but I have not seen that lease. I am not aware



1 of that lease. I don't know anything about the lease.

2           *THE COURT:* Okay. So the part that the  
3 Court was wanting you to look at is you have to give me  
4 evidence that the occupant is either a tenant at will or  
5 at sufferance. That is Subpart B. 24.005, Subpart B.  
6 Because this is a case where it was a forcible detainer  
7 filed after the property was purchased, right?

8           *MR. DAYS:* Correct.

9           *THE COURT:* And so either there was a  
10 lease or there wasn't. If there was no lease with the  
11 purchaser, then you have to show that the tenant was at  
12 will or by sufferance.

13           *MR. DAYS:* I understand what you are  
14 saying, Your Honor. The person that is occupying the  
15 property is the person that signed the deed of trust,  
16 then who is the one that pledged the property as an asset  
17 for purposes of the foreclosure? They are not somebody  
18 that is occupying the property pursuant to some sort of  
19 lease or otherwise. They are the original borrowers  
20 under this.

21           *THE COURT:* That's what usually happens in  
22 a foreclosure. There's usually another document in  
23 Provision 11 or Provision 22 or something in the deed or  
24 the trustee's deed says, you know, once a default and  
25 foreclosure occurs, the person then becomes a tenant at



1 sufferance, right, because they are still possessing the  
2 property.

3 Do you have any anything to add,  
4 Mr. Shackelford?

5 MR. SHACKELFORD: No, Judge.

6 THE COURT: Okay. What you gave me was  
7 only one part that I usually get. You just gave me the  
8 foreclosure sale deed, especially since you are saying  
9 he's the mortgagor. That means there was a deed of  
10 trust, right?

11 MR. DAYS: Sure, Your Honor. I have it  
12 right here.

13 THE COURT: Well, give me that. Let me  
14 see that.

15 MR. SHACKELFORD: I am not going to help  
16 him do it.

17 MR. DAYS: I had it, Your Honor, and I  
18 just hadn't submitted it with my exhibits previously.  
19 That's why I didn't want to do it now.

20 THE COURT: There we go. Deed of trust.  
21 It's probably somewhere in here, I'm pretty sure. Let's  
22 see. It's usually number 9, 11 or 22. Let me go there.  
23 Look at three, number 9. Let's see if that's it.

24 MR. DAYS: My apologies, Your Honor. I  
25 had intended to include that; but since I didn't submit

1 it in advance, I wanted to bring it with me.

2           THE COURT: Hold on. I am glad you did  
3 because I know it's in here. It's actually right down  
4 from the part that you underlined. It's basically if the  
5 property is sold pursuant to Section 20, borrower or any  
6 person holding possession of the property through the  
7 borrower shall immediately surrender possession of the  
8 property to the purchaser at that sale. If possession is  
9 not surrendered, borrower or such person shall be a  
10 tenant at sufferance and may be removed by writ of  
11 possession or other court proceeding.

12           So Subpart B applies. And the other thing  
13 is, you gave a three-day notice, written notice.

14           MR. DAYS: That's correct.

15           THE COURT: How was it given?

16           MR. DAYS: Your Honor, I believe Ms.  
17 Allison testified previously that the notice was sent via  
18 certified mail return receipt requested and regular first  
19 class mail. We have a tracking on that as well.

20           THE COURT: Okay. That is sufficient.  
21 That is admitted as an exhibit. Was it already in the  
22 record?

23           MR. DAYS: It was not, Your Honor.

24           THE COURT: Are you proffering it as an  
25 exhibit?

1 MR. DAYS: I am, Your Honor.

2 THE COURT: Any objection, Mr.

3 Shackelford?

4 MR. SHACKELFORD: No, Judge.

5 THE COURT: All right. It's admitted.

6 Let's go to the bond issue. Mr.

7 Shackelford, you had asked for a different bond.

8 MR. SHACKELFORD: As the Court is well  
9 aware and as I specifically pointed the client to the  
10 tenant at sufferance language, generally in a  
11 post-foreclosure eviction, it's 1 percent of the sales  
12 price times ten months. And that is what we are asking  
13 for. Sales price was \$146,000. That would be 1460 times  
14 ten. We would like credit for the \$500 already in the  
15 registry.

16 THE COURT: Mr. Days?

17 MR. DAYS: Your Honor, I asked for 30  
18 based on the rental version of things.

19 THE COURT: You asked for 30 grand?

20 MR. DAYS: Yes. That's what I initially  
21 asked for.

22 THE COURT: Instead of 14,600 is what  
23 you're saying it should be, 1 percent of the value of the  
24 property. I do either. I have done either. But why do  
25 you say it's 30? What was the testimony or evidence of



1 that?

2 MR. DAYS: There isn't any, Your Honor.

3 THE COURT: Okay. But we know the sales  
4 price, so I'm going to go with 1 percent. The bond is at  
5 14,600. And you will need to give me an order.

6 MR. DAYS: I submitted one when I filed  
7 everything, Your Honor. I sent in one that I thought  
8 would work.

9 THE COURT: This one does work and if you  
10 want to do it the easy way, it's the one we have here.  
11 You can write it all in.

12 MR. DAYS: I'll do it right now.

13 THE COURT: Okay. Perfect.

14 MR. SHACKELFORD: We are getting credit  
15 for what's in the registry already?

16 CLERK OF THE COURT: \$500 in the court's  
17 registry.

18 MR. SHACKELFORD: That was to do the  
19 appeal from the J.P.

20 THE COURT: You want that -- when you say  
21 give you credit for?

22 MR. SHACKELFORD: Judge, instead of  
23 14,600, it will be 14,100.

24 THE COURT: You can apply it that way or  
25 you got to tell me if you object.



1                   MS. ALLISON: We object.

2                   THE COURT: Hold on.

3                   MR. SHACKELFORD: That's fine, Judge. I  
4 mean, it's done both ways. If they want to be  
5 objectionable to it, that's fine.

6                   THE COURT: I was going to say, he is a  
7 tenant at sufferance. It is money in the registry. It  
8 is supposed to go to the landlord. Thank you.

9                   (Proceedings concluded)

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1 STATE OF TEXAS  
2 COUNTY OF HARRIS

3  
4 I, Laura M. Cutherell, Official Court Reporter in  
5 and for County Civil Court at Law No. 3 of Harris  
6 County, State of Texas, do hereby certify that the above  
7 and foregoing contains a true and correct transcription  
8 of all portions of evidence and other proceedings  
9 requested in writing by counsel for the parties to be  
10 included in this volume of the Reporter's Record in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the  
14 proceedings truly and correctly reflects the exhibits,  
15 if any, offered by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$77.00 and will  
18 be paid by Harris County.

19  
20 /s/Laura M. Cutherell

21 Laura M. Cutherell, CSR  
22 Texas CSR 3049  
23 Official Court Reporter  
24 County Civil Court at Law No. 3  
25 Harris County, Texas  
201 Caroline, 5th Floor  
Houston, Texas 77002  
Telephone: (832)927-1733  
Expiration: 07/31/2025

TAB

C

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

**ANTHONY L. HUTCHISON**  
*Plaintiff,*

v.

**FRANKLIN CREDIT MANAGEMENT  
CORPORATION  
AND  
KENSINGTON STATION, LLC**  
*Defendants.*

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

\_\_\_\_ **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION AND JURY REQUEST**

**TO THE HONORABLE COURT:**

COMES NOW, ANTHONY L. HUTCHISON, Plaintiff complaining of FRANKLIN CREDIT MANAGEMENT CORPORATION, and KENSINGTON STATION, LLC, Defendants and for cause of action would respectfully show unto the Court the following:

**I.**

**SELECTION OF DISCOVERY LEVEL**

1.1 Plaintiff pleads that discovery should be conducted in accordance with a discovery control plan under Texas Civil Procedure Rule 190.3.

**II.**

**PARTIES & SERVICE OF CITATION**

2.1 Plaintiff is an individual residing in Harris County, Texas.

2.2 Defendant FRANKLIN CREDIT MANAGEMENT CORPORATION, (hereinafter referred to as "Franklin") a corporation authorized to do business in Texas. Defendant Franklin may be served with process through its registered agent John H. Pelletier, 701 Brazos St. Ste. 1050, Austin, TX 78701.

2.3 Defendant KENSINGTON STATION, LLC (hereinafter referred to as "Kensington") is a domestic limited liability company formed in Texas. Defendant Kensington may be served with process through its registered agent, Rejas Hua & Hoang, PLLC, 4909 Bissonnet St. Ste. 100A, Bellaire, TX 77401.



**III.**  
**JURISDICTION AND VENUE**

3.1 This Court has subject matter jurisdiction over the controversy because the claims asserted in this Petition arose, in whole or in part, in Harris County, Texas and the amount in controversy exceeds the minimal jurisdictional limits of the court.

3.2 This Court has personal jurisdiction over the Defendants because the acts and omissions complained of herein occurred in Texas, the Defendants conducted business in the past and/or presently conduct business in the State of Texas, have committed a tort, in whole or in part, in Texas, are residents and citizens of Texas, and they had minimal contacts with the State of Texas during the period of time complained of herein.

3.3 Venue is properly laid in the Harris County, Texas because all or a substantial part of Plaintiffs' causes of action arose in Harris County, Texas. Further, the real property in dispute is located in Harris County, Texas.

**IV.**  
**NATURE OF SUIT**

4.1 Plaintiffs bring this lawsuit against the Defendants Franklin Credit Management Corp. and Kensington Station, LLC alleging wrongful foreclosure; failure to pay excess proceeds from a foreclosure sale; unjust enrichment; violations of the Real Estate Settlement Procedures Act ("RESPA") and its consumer protection statute 12 U.S.C. § 2605 (which requires loan servicers to provide timely written responses to borrowers under certain circumstances in this case), R.E.S.P.A. Section 6 (f) § 2614, et.al; and RESPA's implementing regulations at 12 C.F.R. §§ 1024.35, 1024.39 and 1024.41; violation of the Texas Property Code Ann. Section 51.002, et. seq; breach of its duty of good faith and fair dealing, negligence and gross negligence; actual damages, statutory damages, exemplary/punitive damages; attorney fees and costs.

**V.**  
**EXISTENCE OF CONTRACT AND PERFORMANCE**

5.1 On or about March 9, 2006, Plaintiff entered into two contracts for the purchase of the house and lot located at 4241 Purdue, Houston, Harris County, Texas. Plaintiff executed a primary note

to Green Point Mortgage in the amount of \$480,000.00 and a secondary lien note in the amount of \$60,000.00 payable to Greenpoint Mortgage.

5.2 Subsequently, the primary note of Plaintiff in the amount of \$480,000.00 was sold, assigned and transferred to Bank of America, N.A. and the Plaintiff directed his payments to the new entity. The secondary lien note of Greenpoint Mortgage remained the same after the primary note was sold and transferred.

5.3 In or around February 2012, Bank of America as successor-in-interest and owner of the primary note foreclosed on the property at 4241 Purdue and as a result extinguished all inferior liens including the junior lien of Greenpoint Mortgage with this action.

5.4 Plaintiff retained counsel and contested the foreclosure of the primary note on the property and after several years of litigation resulted in the Plaintiff obtaining a Rescission of the Foreclosure Sale, Cancellation of Foreclosure Sale deed and Re-conveyance Special Warranty Deed on or about December 2014.

5.5 Thereafter, from December, 2014 through the present, Plaintiff has continued to pay the senior lien/primary note on the real property located at 4241 Purdue to Ocwen Mortgage Servicing, LLC and is presently current in all principal and escrow payments.

5.6 During this same period of time, Plaintiff did not receive any communications from the Defendant, Franklin regarding the existence of the secondary lien previously owned by Greenpoint Mortgage that was dissolved by the above referenced foreclosure in February, 2012.

5.7 Plaintiff would show that when he was contacted by Defendant Franklin during 2018, it did not present any reinstatement documents for the extinguished junior lien previously held by Greenpoint Mortgage.

5.8 As such, Defendant Franklin's only actions were to renew sending mortgage statements to Plaintiff alleging a principal mortgage balance of \$56,292.30 which was more than six (6) years after the foreclosure sale of February, 2012.



5.9 With no results after several months, Plaintiffs retained legal counsel, who forwarded an “Error Resolution Notice” under 12 C.F.R. § 1024.35 and 1024.41 to address potential foreclosure proceedings.

5.10 Further, Plaintiffs would show that in spite of several inquiries over several months, regarding the validity of a secured interest as it relates to the secondary lien acquired by Defendant Franklin it initiated foreclosure proceedings on this basis on September 6, 2022.

5.11 To wit, as a result of the actions by Defendant Franklin through its Substitute Trustee, the Plaintiff’s real property at 4241 Purdue, was sold to Defendant Kensington for the below value consideration of approximately One hundred & forty-six thousand dollars (\$146,000.00).

5.12 At the time of the foreclosure sale on or about September 6, 2022, the appraised value assigned to Plaintiff’s property by the Harris County Appraisal District was approximately Four hundred & thirteen thousand dollars (\$413,000.00).

5.13 Further, Plaintiff would show that at the time of the foreclosure sale when his property was sold to a third party buyer, namely Defendant Kensington, the Plaintiff was current and still paying the primary lien which superseded this alleged debt.

5.14 To date, Defendant Franklin has failed to inform the Plaintiff of the amount of excess proceeds from the foreclosure sale as this amount is in contest by the Plaintiff, which is the underlying issue that caused the premature foreclosure action. A copy of correspondence from Defendant Franklin evidencing their failure to respond to Plaintiff’s contested issues concerning the default amount and right to proceed with foreclosure, is attached as **Exhibit “A.”**

5.15 In spite of these outstanding and unresolved issues concerning any default alleged by Defendant Franklin, the foreclosure proceeded with Defendant Kensington purchasing the Plaintiff’s property and is now seeking to evict him based on a “flawed and wrongful sale”.

## **VI. ALL PARAGRAPHS INCORPORATED**

6.1 All paragraphs incorporated. Each of the proceeding and succeeding paragraphs are incorporated as part of the following causes of action.

## VII. CAUSES OF ACTION

### A. WRONGFUL FORECLOSURE

7.1 Plaintiff maintains that Defendant Franklin wrongfully foreclosed on the property. Texas recognizes an action for wrongful foreclosure. An action for wrongful foreclosure may be brought by individuals suffering harm due to irregularities in a foreclosure sale. *See Leggette v. Washington Mutual Bank, Fa*, No. 3:03-CV-2909-D, 2005 WL 2679699. At \*2 (N.D.Tex. Oct. 19, 2005) (Fitzwater, J); *Peterson v. Black*, 980 S.W.2d 818, 823 (Tex.App.-San Antonio 1998, no writ); *Wieler v. United Savings Assoc. of Tex.*, 887 S.W.2d 155, 158 (Tex.App.- Texarkana 1994) writ denied, 907 S.W. 2d 454 (Tex.1995) (“a person who suffers loss or material injury because of irregularities in a foreclosure sale is entitled to maintain a suit for wrongful foreclosure”). To state a claim for wrongful foreclosure, a plaintiff must allege the following elements: (1) a defect in the foreclosure proceedings; (2) a grossly inadequate selling price, and (3) a causal connection between the defect and the grossly inadequate selling price. *See Charter Nat’l Bank-Houston v. Stevens*, 781 S.W.2d 368, 371 (Tex.App.-Houston [14<sup>th</sup> Dist.] 1989, writ denied).

7.2 In the case at bar, Plaintiff alleges that the notice of foreclosure sale was mailed prematurely in contravention of Chapter 51 of the Texas Property Code in that the Defendants failed to forward a debt validation letter-thirty (30) days prior to the sale notice.

7.3 Further, as previously stated, the sales price between Defendants Franklin and Kensington was grossly inadequate to the fair market value and worth of Plaintiff’s property. As such, these actions by the Defendant Franklin compounded the flawed foreclosure sale on September 6, 2022.

7.4 Defendants engaged in a civil conspiracy by allowing Defendant Kensington to not only purchase the subject property at a flawed foreclosure sale, but, moreover, by allowing it to purchase the property at a grossly inadequate price, significantly lower than the property’s fair market value.

### B. MISAPPROPRIATION OF SURPLUS FORECLOSURE PROCEEDS AS A MATTER OF LAW

7.5 Defendant Franklin holds in its possession, the surplus foreclosure proceeds from the sale of Plaintiff’s property. Defendant Franklin never informed Plaintiff of the existence of excess proceeds from the sale of his home on or about October, 2022.



7.6 Texas case law has well established that trustees designated to conduct mortgage foreclosure sales are not entitled to recover excess proceeds from the sale. Typically, under Texas law, “if there are surplus proceeds generated by the foreclosure sale after paying the trustee’s fees and expenses and the existing indebtedness secured by the forecloses lien, they are distributed to inferior lienholders, or to the holder of the equity of redemption if there are no inferior lienholders.” *Conversion Props. V. Kessler*, 994 S.W.2d 810. See *Pearson v. Teddlie*, 235 S.W.2d 757, 759 (Tex. Civ. App.—Eastland 1950, no writ); *Jeffery v. Bond*, 509 S.W. 2d 563 (Tex. 1974).

7.7 Texas Courts maintain that a Plaintiff may bring suit against a mortgagee based on a cause of action for recovery of surplus foreclosure sale proceeds. *Conversion Props. v. Kessler*, 994 S.W. 2d 810; *Pearson v. Teddlie*, 235 S.W. 2d 757, 759 (Tex. Civ. App.—Eastland 1950, no writ). Plaintiffs request all excess proceeds, after paying the trustee’s fees and expenses and the existing indebtedness secured by the foreclosed lien, as a matter of right.

7.8 Defendants engaged in a civil conspiracy in the misappropriation of surplus foreclosure proceeds.

### **C. UNJUST ENRICHMENT**

7.9 Defendants took undue advantage of Plaintiff by withholding all information about excess foreclosure proceeds that Plaintiff is rightfully entitled to by law.

7.10 Defendant Franklin obtained the benefit of the surplus foreclosure proceeds by taking undue advantage of Plaintiff’s ignorance of the sale price. Defendant Kensington obtained the benefit of paying less than 40% below the fair market value of Plaintiff’s property by taking undue advantage of Plaintiff’s innocence about the foreclosure sale price.

7.11 Seemingly, Defendants Franklin and Kensington conspired and bargained that Kensington would pay extremely below fair market value for the house, while still bidding at a price to compensate Franklin over the amount owing on the property. Defendants completed this deal without factoring in Plaintiff’s equity interest in excess proceeds from the foreclosure sale. In equity and law,

Plaintiff is entitled to recover the surplus foreclosure proceeds as restitution from the sale conducted on September 6, 2022.

**D. RESPA (REAL ESTATE SETTLEMENT PROCEDURES ACT) VIOLATIONS/  
FRANKLIN'S PATTERN AND PRACTICE OF NONCOMPLIANCE UNDER RESPA**

7.12 Defendant Franklin committed several violations under RESPA and its consumer protection statute, 12 U.S.C. § 2605 (which requires loan servicers to provide timely written responses to borrowers under certain circumstances in this case), RESPA, Section 6 (f) § 2614, et.al; and RESPA's implementing regulations at 12 C.F.R. §§ 1024.35, 1024.39 and 1024.41. Defendant Franklin has violated RESPA in the following ways: (1) In failing to provide Plaintiff with a specific reason or reasons for Franklin determinations for each such trial or permanent loan modification option; (2) In failing to provide accurate information to Plaintiff for loss mitigation options and foreclosure as required by 12 C.F.R. § 1024.39; (3) In failing to provide the Plaintiff with a specific reason or reasons for denial of all loan workout alternatives prior to posting his property for foreclosure; (4) In moving for foreclosure judgment or order of sale by conducting a foreclosure sale prior to providing a specific reason or reasons for denial of all loan workout alternatives.

7.13 Under 12 U.S.C. § 2605 (f), Regulation Z 24 C.F.R. § 3500, if the servicer fails to take one of the required actions within the time limits provided under the statute, under RESPA a borrower may recover:

- Any actual damages suffered by the borrower,
- If there is a pattern or practice of servicer noncompliance, additional damages not to exceed \$2000, and
- Attorney's fees and costs.

12 U.S.C. §§ 2605(f)(1) and (3). Here, Plaintiff asserts that Defendant Franklin has violated several RESPA procedures causing Plaintiff to suffer actual damages. Therefore, Plaintiff brings a private cause of action against Defendant Franklin for its violation of 12 U.S.C. § 2605(e)(1)(A) and (B) and 12 CFR §1024.39(a), by its failure to respond to the Plaintiff's inquiries for information related to the servicing of his mortgage loan and disputed charges within the time constraints mandated under 12 U.S.C. § 2605(e)(1) and (2), and 12 CFR §§ 1024.35 and 1024.39; and further by failing to fulfill its duty of good



faith under 12 CFR §1024.39(a), by failing to “establish live contact with a delinquent borrower no later than 36 days of a borrower’s delinquency and again no later than 36 days after each payment due date so long as the borrower remains delinquent,” which thereafter required the mortgage servicer to “Promptly after establishing live contact with a borrower, the servicer shall inform the borrower about the available loss mitigation options, if appropriate, and take the actions described in paragraph (e) of this section [“Temporary COVID-19-related live contact”], ...” As a direct result of Defendant’s failure to fulfill its duty of good faith by taking the initiative to make live contact with the Plaintiff under 12 CFR § 1024.39(a), Defendant left the Plaintiff in the dark by failing to apprise them of his loss mitigation options, which under 12 CFR § 1024.39(e), included COVID-19-related a “forbearance program available to borrowers experiencing a COVID-19-related hardship,” which included apprising the Plaintiff of (1) forbearance programs available to the Plaintiff attributed to COVID-19 economic hardships, and (2) “At least one way the borrower can find contact information for homeownership counseling services.”

7.14 Defendant Franklin further violated the RESPA by its breach of its duty of good faith and fair dealing by not only failing to respond to the Plaintiff’s “Error Resolution Notice,” on or about August 15, 2022, but further by failing to comply with the mandate under 12 CFR § 1024.39(a) that “a servicer shall establish or make a good faith effort to establish live contact with a delinquent borrower” within the mandated time constraints of this regulation, which resulted in the Plaintiffs being left in the dark by the mortgage loan servicer never advising Plaintiffs of loss mitigation and forbearance options available to them under 12 CFR §§1024.39 and 1024.41. As Defendant Franklin is shrouded by evidence of its bad faith in dealing with the Plaintiff, under the law it had “unclean hands.” Finally, as the Defendant never apprised the Plaintiff of the above-referenced loss mitigation/forbearance options which were available, the mandated written loss mitigation application and the procedures under 12 CFR §1024.41(a), (c), (d) were never triggered.

7.15 12 CFR § 1024.41(a) makes it clear that “A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 USC 2605(f)).” Therefore, Plaintiff seeks enforcement of these provisions.

7.16 In the case at bar, Plaintiff's mortgage loan included a Deed of Trust, which set out terms of default and acceleration in its covenants and, as such, the Plaintiff never received the debt validation letter prior to a notice of the foreclosure sale and, in fact, were preparing to resolve the delinquency after communicating with Defendant Franklin's representatives when he received a "notice to vacate" his property because Defendant Kensington had purchased the property at the September 6, 2022 foreclosure sale.

7.17 Based on the facts as alleged above, the Plaintiff is entitled to bring a private cause of action for damages under 12 U.S.C. § 2605(f)(1) and (3) for:

- (a) their actual damages which resulted from the Defendants' failure(s);
- (b) any additional damages to the Plaintiff, as the Court may allow, in the case of a pattern or practice of noncompliance with the requirements on this section, in an amount not to exceed \$2,000; and
- (c) in the event the Plaintiff is successful under this section, Plaintiff is entitled to recover the costs of the action, together with any attorney's fees incurred in connection with such action as the Court may deem to be reasonable under the circumstances.

7.18 Defendant Franklin engaged in a pattern and practice of noncompliance with its duty as a loan servicer, requiring that it respond to Mr. Hutchison as borrower under 12 U.S.C. § 2605(e), which the uncontroverted evidence establishes that Defendant violated by wholly failing to respond to the Plaintiff's inquiries, specifically:

- (a) Their claim in their "Error Resolution Notice" by letter from Plaintiff's attorney, on or about August, 2022 [12 CFR § 1024.35-- "Error resolution procedures"];
- (b) Their claim that Franklin "failed to provide accurate information ... for loss mitigation options and foreclosure as required by 12 CFR § 1024.39 ["Early intervention requirements for certain borrowers"];
- (c) Their claim that Franklin "failed to provide a specific reason or reasons for denial of all loan workout alternatives prior to posting ... [the Plaintiff's] home for foreclosure" in violation of 12 CFR § 1024.41(f) and (g) [Loss mitigation procedures"]; and
- (d) Their claim that Franklin "moved for foreclosure or order of sale or conducted a foreclosure sale prior to providing a specific reason or reasons for denial of all loan workout alternatives" in violation of 12 CFR § 1024.41(g) or (j) ["" Loss mitigation procedures"].

For the above-stated reasons, Plaintiff is entitled to, and hereby ask for, damages under 12 U.S.C. § 2605(f)(1) (A) and (B), in an amount equal to the sum of:



- (a) Their actual damages as a result of the Defendant Franklin's failure; and
- (b) Any additional damages, as the Court may allow, in the case of a pattern and practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

**E. DEFENDANT'S VIOLATIONS OF TEXAS PROPERTY CODE**

7.19 The Texas Property Code requires notice of foreclosure to be posted on the property which is listed on the Substitute Trustee's Deed. Texas Property Code 51.002 lists several pre-requisites mortgagees must fulfill before instituting foreclosure proceedings, including notice, of which Defendants have failed to fulfill. Plaintiff alleges that Defendant Franklin did not abide by the rules and requirements of the Plaintiff's mortgage loan, as required by the express terms of the Deed of Trust and by Chapter 51 of the Texas Property Code.

7.20 Section 51.002(d) of Texas Property Code states:

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (d) is excluded in computing the 20-day notice period.

Sec. 51.002(d), Tex. Prop. Code Ann.

7.21 A mortgage servicer must comply with all provisions of §51.002 of Texas Property Code in order for a valid right to foreclose to arise. The Property Code provides that notice of default has a 20-day notice period required for notice of sale.

7.22 Here, Defendant Franklin has not forwarded a debt validation letter to Plaintiff prior to their receipt of the foreclosure notice and as such, Plaintiff has not been able to reconcile his mortgage balance and account history. In spite of these errors by the Defendant, it has posted his property which circumvents the Texas Property Code and specifically is not in compliance with § 51.002 of the Texas Property Code.

7.23 Clearly, significant federal legal issues remain related to Defendant Franklin's negligence, failure to act in good faith and its bad faith with respect to its failure to respond and inform the Plaintiff, in compliance with its duty under federal statutes and regulations, cited in Plaintiff's cause of action (D), *supra*, and (F), *infra*. Such breach(es) by Defendant Franklin had the effect of depriving the Plaintiff of available early intervention options for loss mitigation and foreclosure forbearance programs, particularly considering the economic hardship which the Plaintiff faced because of the COVID-19 pandemic. The result was that Defendant Franklin's foreclosure on the Plaintiff's property was improper, as it could have been avoided had Franklin fulfilled its duties under the applicable federal statutes and regulations.

**F. FRANKLIN'S BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING/ BAD FAITH/ "UNCLEAN HANDS"/ESTOPPEL**

7.24 Texas Courts have long recognized a cause of action for breach of the duty of good faith and fair dealing between parties in equity as it relates to contracts and agreements. The elements are: (1) the existence of an agreement between the parties, (2) the breach and/or failure of a party to bargain in good faith, and (3) the reliance of the other party to suffer a loss in equity in reliance on the duty of the other party's actions.

7.25 With regard to the relationship between the mortgagor and mortgage servicer, Defendant Franklin, the latter had a common law and/or statutory duty of good faith. Statutorily, its duty of good faith is based on 12 CFR § 1024.39(a), which required that it "establish or make good faith efforts to establish live contact with a delinquent borrower" within the time constraints provided in this provision, requiring that the "servicer shall inform the borrower about the availability of loss mitigation options," including COVID-19 economic hardship related forbearance programs and contact information for homeownership counseling services" under subsection (e)(1)(i) and (ii) of this regulation.

7.26 As established above in Sections 7.110, 7.11, 7.12 and 7.13, the Defendant mortgage loan servicer breached its duty of good faith and/or duty of good faith and fair dealing, proximately resulting in damages to the Plaintiffs. Defendant's conduct rose to the level of constituting bad faith and/or exhibited



its actual conscious indifference (i.e., gross negligence) to the rights of the Plaintiff. It is undisputed that Defendant Franklin never established or made a good faith effort to make live contact with the Plaintiff, as delinquent borrowers. Defendant Franklin's conduct was unconscientious, unjust, marked by a want of good faith or violated the principles of equity and righteous dealing.

7.27 Defendant Franklin's lack of good faith, bad faith and/or gross negligence conclusively establishes that it had "unclean hands" with regard to the matters at issue.

7.28 Finally, Plaintiff invokes the doctrine of equitable estoppel because Defendant Franklin's conduct of simply ignoring the Plaintiff, when it had a duty to come forward and reach out to borrowers with information on loss mitigation and foreclosure forbearance measures and programs, homeowner counseling, particularly when the borrowers were delinquent in their mortgage payments because of Covid-19-related hardships. By leaving the Plaintiff totally in the dark, Franklin made it impossible for the Plaintiff to take advantage of remedial, loss mitigation and early intervention and foreclosure forbearance measures, and, further, prevented the Plaintiff from being able to complete the requirements of loan loss mitigation and foreclosure forbearance measures. Yet, Defendant Franklin, shrouded by its lack of good faith and/or bad faith because of its failure to inform the Plaintiff, now conveniently contends that the Plaintiff failed to comply with the requirements of loss mitigation measures of which Franklin never advised the Plaintiff was available at the relevant time period in question. In fact, Defendant Franklin's lack of good faith, bad faith and/or gross negligence resulted in the Plaintiff sustaining serious damages, and the wrongs complained of by the Plaintiff cannot be corrected without applying the doctrine of equitable estoppel.

**G. DEFENDANT FRANKLIN WAS NEGLIGENT AND GROSSLY NEGLIGENT IN DEALING WITH THE PLAINTIFF**

7.29 Defendant Franklin had a duty of care to the Plaintiff to exercise reasonable care to avoid a foreseeable risk of injury or damage to him. In this regard, Defendant Franklin's duty to the Plaintiff was imposed by law, specifically by the following federal statutes and regulations: 12 U.S.C. § 2605(e) and 12 CFR §§ 1024.35, 1024.39 and 1024.41. By Defendant Franklin's failure to provide the Plaintiff

with a response to their mortgage loan error resolution notice, and COVID-19-related loss mitigation options/safeguards available which would have permitted the Plaintiff to delay paying covered amounts and/or loan modification options, mortgage resolution information, loss mitigations options and early intervention measures, as alleged above in Sec. VII, causes of action (A), (B), (C), (D), (E) and (F), *supra*. Therefore, Defendant Franklin breached its duty of care to the Plaintiff, as evidenced by the Defendant's premature and defective foreclosure and ultimate sale of the Plaintiff's property to Defendant Kensington.

7.30 With or without a "special" or fiduciary relationship between the mortgage servicer, Defendant Franklin, and the borrows, the Plaintiff, the former still had a duty to inform the Plaintiff and exercise reasonable care to avoid a foreseeable risk of injury to the Plaintiff. In this regard, it was foreseeable to Defendant Franklin that by failing to fulfill its statutory and regulatory informative duties under 12 U.S.C. § 2605(e) and 12 CFR §§ 1024.35, 1024.39 and 1024.41, it was foreseeable that the Plaintiff would be damaged as a result of the subject unauthorized, premature, and defective foreclosure and sale of their homestead with the backdrop of the Plaintiff's COVID-19-related economic hardship, which the Defendants completely ignored.

7.31 Defendants' conduct constituted gross negligence and/or reckless conduct in that such conduct constituted a reckless indifference and was more than momentary thoughtfulness, inadvertence, or error of judgement but, rather, constituted an entire want of care as to establish that the acts or omissions complained of were the result of actual conscious indifference to the right, safety, or welfare of the Plaintiff. Therefore, in addition to the actual damages asked for by the Plaintiff, he also asks that the trier of fact award him exemplary damages.

### **VIII. DECLARATORY JUDGMENT**

8.1 Based on the facts alleged above, and pursuant to Texas Civil Practice and Remedies Code Section 37.001 *et. seq.*, Plaintiff seeks a declaration of his legal rights with respect to 1) whether they are entitled to payment of surplus foreclosure sale proceeds under the terms of the Deed of Trust and



Texas Law, because Defendant Franklin did not release the excess foreclosure proceeds or notify Plaintiff that surplus proceeds existed.

8.2 Furthermore, Plaintiff seeks a declaration that the Deed of Trust document requires Defendant Franklin to apply any excess proceeds to the person or persons legally entitled to him. Plaintiff seeks a declaration that Defendant Franklin, by breaching the Deed of Trust, has lost the right to hold the surplus foreclosure proceeds in question.

8.3 Finally, Plaintiff seeks a declaration that (a) there was a defect in the subject foreclosure proceedings; (b) the selling price which Defendant Kensington paid to purchase the subject real property at the foreclosure sale on September 6, 2022, was grossly inadequate; and (c) there is a causal connection between the defect in the foreclosure proceedings and the grossly inadequate selling price paid by Defendant Kensington.

#### **IX. DAMAGES**

9.1 All paragraphs incorporated. Each of the proceeding and succeeding paragraphs are incorporated as part of the following cause of action.

9.2 For the misappropriation of foreclosure proceeds, wrongful foreclosure, negligence/gross negligence, violations of RESPA provisions, lack of good faith, bad faith, and other causes of action alleged, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the Defendant's breach of duty, bad faith and gross negligence, such as additional costs, economic hardship, losses due to nonpayment of the amount the Defendant owed, mental anguish damages, exemplary damages and reasonable costs and attorney's fees.

9.3 For unjust enrichment, Plaintiff is entitled to restitution and all relief at equity.

9.4 Plaintiff has been required to obtain legal counsel to prosecute this action. The Plaintiff is, therefore, entitled to recover a reasonable amount as attorney's fees for the services rendered by Plaintiff's legal counsel. The event of an appeal, the Plaintiff will be entitled to additional reasonable sums as reasonable attorney's fees for services to be rendered or appealed.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that the Court:

- (a) Award Plaintiff damages as alleged above under Section X (9.2) and (9.3).
- (b) Invalidate the foreclosure sale that took place on September 6, 2022, and abate the eviction proceeding scheduled on Tuesday, February 15, 2023.
- (c) Order the Defendants to be cited to appear and answer herein and that upon final hearing, this Court grant declaratory judgment that no foreclosure sale of Plaintiff's property be validated during the pendency of this cause and the eviction case be abated and enter a permanent injunction to prevent Defendant, its employees, or agents from foreclosure validation on the property, and evicting Plaintiff from his property.
- (d) That Plaintiff be granted cost of court and such other and further relief to which he may himself justly entitled.

Respectfully submitted,  
**SHACKELFORD & ASSOCIATES, LLC**

/s/Ray L. Shackelford  
**RAY L. SHACKELFORD**  
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### Automated Certificate of eService

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Ray Shackelford on behalf of Ray Shackelford

Bar No. 18071500

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Envelope ID: 79761833

Filing Code Description: Petition

Filing Description: PLAINTIFFS ORIGINAL PETITION AND JURY REQUEST

Status as of 9/20/2023 2:49 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Ray LShackelford		rshackctic@yahoo.com	9/20/2023 2:40:53 PM	SENT
TAMMY RICHARD		tammy.richard59@yahoo.com	9/20/2023 2:40:53 PM	SENT

Case: 14-23-00391-CV

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**IN THE FOURTEENTH COURT OF APPEALS**

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**ANTHONY L. HUTCHISON AND ALL OCCUPANTS,**

**Appellants,**

**V.**

**KENSINGTON STATION, LLC ,**

**Appellee**

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**From the County Civil Court at Law No. 3  
Harris County, Texas, Cause No. 1201868  
Honorable Lashawn A. Williams**

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**APPELLANTS' BRIEF**

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**APPELLANTS REQUEST ORAL ARGUMENT**



### Automated Certificate of eService

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Ray Shackelford on behalf of Ray Shackelford  
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Filing Code Description: Brief Requesting Oral Argument  
Filing Description: Brief Requesting Oral Argument  
Status as of 9/26/2023 12:20 PM CST

#### Case Contacts

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