

CAUSE NO: _____

THE ESTATE OF GILBERTO A. ALCUNA	§	IN THE DISTRICT COURT
Plaintiff(s),	§	
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
REVERSE MORTGAGE FUNDING LLC,	§	
Defendant(s).	§	HARRIS COUNTY, TEXAS

**PLAINTIFF' ORIGINAL PETITION, APPLICATION FOR TEMPORARY
RESTRAINING ORDER & FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, THE ESTATE OF GILBERTO A. ALCUNA, Plaintiff(s) hereinafter, and files its Original Petition, Application for Temporary Restraining Order, and Temporary Injunction against **REVERSE MORTGAGE FUNDING LLC**, Defendant(s) hereinafter, and for cause of actions show unto the Court the following.

I. DISCOVERY

1. Plaintiff intends to conduct discovery in this action under Level 2 in accordance with Texas Rule of Civil Procedure 190. Plaintiff seeks monetary relief over \$100,000 but not more than \$200,000 and non-monetary relief.

II. PARTIES AND SERVICE

2. Plaintiffs, **THE ESTATE OF GILBERTO A. ALCUNA**, who may be served with the undersigned attorney.

3. Defendant **REVERSE MORTGAGE FUNDING LLC**, (hereinafter "RMF") is a Texas limited company and can be served by serving its registered agent **CORPORATE CREATIONS NETWORK INC.** at the registered office address of 5444 Westheimer #1000, Houston, Texas 77056 or wherever else they may be found.

III. JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. The court has jurisdiction over the parties because RMF conducts business in Harris County, Texas.

6. Venue is mandatory in Harris County, Texas, because this is a suit for damages to real property located therein. The real property is described as

LOT FOURTEEN (14), BLOCK SEVENTY-SEVEN (77), OF IRVINGTON ADDITION TO THE CITY OF HOUSTON, HARRIS COUNTY, TEXAS, AS PER MAP OR PLAT THEREFORE RECORDED IN VOLUME 56, PAGE 53, OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS. ALSO KNOWN AS 4605 SIEGEL ST, HOUSTON, TEXAS 77009 (hereinafter "Property").

IV. NATURE OF ACTION

7. This is a suit to stop a trustee's foreclosure sale due to defects in the foreclosure process specifically the Notice of Sale which contains material defects which prevent the sale from continuing.

V. STATEMENT OF FACTS

8. This action is a suit to set aside/ stop the scheduled foreclosure of the improved land and home scheduled for Tuesday **October 4, 2022** at the Bayou City Event Center Pavilion. *See* Exhibit A - Notice of Foreclosure Sale.

9. On or around OCTOBER 20, 2006, GILBERTO A. ACUNA AND ETTA R. ACUNA signed a reverse mortgage, executed by security note agreement with the predecessor of the RMF, *See* Exhibit B- Deed of Trust (hereinafter "Deed of Trust"), in the amount of \$198,000.00. The Deed of Trust was secured by the Property subject of this lawsuit.

10. GILBERTO A. ACUNA later died, which resulted in the remainder of Deed of Trust being due and owing. Jose Alcuna (hereinafter "Mr. Alcuna"), the heir to the decedent learned of the passing of Gilberto and the Property in question. *See* Exhibit C Affidavit of Small Estate.

11. On or around September 1, 2022, Jose Alcuna on behalf of THE ESTATE OF GILBERTO A. ALCUNA requested for an up-to-date payoff of the lien for the basis of the Deed of Trust, however, to no avail due partly in fault to material defects in the Notice of Sale described below which made it difficult to ascertain the actual holder of the underlying promissory note and deed of trust being foreclosed.

12. Thereafter, RMF pursued foreclosure action after payments were not timely made on the Deed of Trust. On August 25, 2022, a Notice of Trustee's Sale was filed with the Harris County records under Instrument number FRCL-2022-4301. *See* Exhibit A - Notice of Foreclosure Sale. There are defects in the Notice of Foreclosure Sale as described below.

13. As of filing this suit, RMF has not stopped the pending foreclosure sale, and as a result Plaintiffs file suit for violations as described below.

CAUSES OF ACTION

VI. DECLARATORY JUDGMENT –

DEFECTS IN THE FORECLOSURE NOTICES

14. Pursuant to Tex. Civ. P. & Rem. Code, Chapter 37. Plaintiff seeks a declaratory judgment. In addition, Plaintiff seeks clarification of the rights status, or legal relations existing between the Trustee, Lender, and Lienholders. Plaintiffs further seeks clarification of the amounts due and up to date payoff amount of the authorized debt to be collected under the Deed of Trust.

15. Thus, Plaintiffs specifically request that Court clarify and declare:

- a. The actual amount due and owing on the Note;
- b. The material defects contained in the Notice of Trustee's Sale to cause a foreclosure sale based upon it to be invalid; and

- c. That the Deed of Trust is unenforceable by nonjudicial foreclosure.

VII. TEXAS DEBT COLLECTION

16. Plaintiffs incorporates by reference the factual allegations contained in the preceding paragraphs.

17. Plaintiffs asserts a cause of action against Defendant for violations of the Texas Debt Collection Act (Texas Finance Code title 5, sections 392.001-392.404)

18. At all relevant times, Plaintiffs acted as a consumer because Plaintiffs held a consumer debt, namely a home loan on a residential property. At all relevant times, Defendant served as debt collectors and/or third-party debt collectors because Defendant scheduled the Property for foreclosure sale to collect alleged debt owed.

19. Defendant violated the Texas Debt Collection Act because Defendant failed to cease all collection efforts, namely continuing to foreclose on the Property, until after an investigation of the disputed debt was complete pursuant to Section 392.202 (a) of the Texas Finance Code. In addition, Defendant failed to properly verify, calculate, or itemize the alleged debt; and misrepresented the amount allegedly due.

20. As direct and proximate result of Defendant's violation of the Texas Debt Collection Act, Plaintiffs seek actual damages within the jurisdictional limits of this court injunctive relief, attorney's fees, and \$100 for each violation under Section 392.403 of the Texas Finance Code.

VIII. REQUEST FOR TEMPORARY RESTRAINING ORDER

21. Plaintiffs incorporates by reference the factual allegations contained in the preceding paragraphs.

22. Plaintiffs' application for a temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code § 65.011(1) because the Plaintiffs are entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to the Plaintiffs and Tex. Civ. Prac. & Rem. Code § 65.011(5) irreparable injury to real or personal property is threatened, irrespective of any remedy at law.

23. Additionally, under section Tex. Civ. Prac. & Rem. Code § 65.011 (2), the Plaintiffs are entitled to an injunction to preserve the subject matter of the suit until the suit is resolved by final judgment.

24. Plaintiffs ask the court to prevent Defendant from foreclosing on the Deed of Trust until the suit is resolved on the merits.

A. Imminent Harm

25. If Plaintiff's application is not granted, harm is imminent because the Plaintiff's interest will be wiped out in the real estate which is the only guaranty of Defendant's collateral and return of money.

B. Irreparable Harm

26. The harm that will result if the temporary restraining order is not issued is irreparable because if Defendant is allowed to foreclose and the Property is sold then Plaintiffs recovery rights will be wiped out. Plaintiffs' primary concern is interested in buying out the interest of the superior lienholder for just amounts. The Plaintiffs request injunctive relief so that injustice may be done, not merely for delay. The Plaintiffs have performed all conditions precedent and are ready, willing, and able to perform each and every obligation imposed by the note and deed of trust and to perform and equitable acts as the court deems necessary.

C. Inadequate Remedy at Law

27. Plaintiff has no adequate remedy at law because of the loss of the lien on the Property would leave Plaintiffs with no collateral to collect against.

28. Thus, for the reasons stated herein, Plaintiff requests this Court immediately issue a temporary restraining order and that pending trial in this matter, or other agreement between the parties, the court temporarily restrain or enjoin Defendant together with his agents, employees, representatives, and those persons in active concert or participation with any of them, from directly or indirectly:

- a. Selling the property at a public auction at a non-judicial foreclosure sale; and
- b. Transferring or otherwise encumbering the Property.

IX. REQUEST FOR TEMPORARY INJUNCTION

29. Plaintiff asks the court to set their application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants. Plaintiff have joined all indispensable parties under Texas Rule of Civil Procedure 39.

X. ATTORNEYS FEES

Pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code, Plaintiffs are entitled to recover his legal fees as a result of bringing this action. Plaintiffs have obtained the legal services of undersigned attorney to institute legal proceedings and have agreed to pay the law firm reasonable attorneys' fees, for which Plaintiff herein seeks recovery. Furthermore, Plaintiff is entitled to recover attorney's fees pursuant to the provisions of the Deed of Trust identified above.

XI. CONDITIONS PRECEDENT

30. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred or have been waived.

XII. RULE 193.7 NOTICE

31. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby gives notice that all documents produced by any party to this case may be used at any pretrial proceeding or at the trial of this matter.

XII. REQUEST FOR DISCLOSURES

32. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described Rule 194.2.

PRAYER

WHEREFORE PREMISES CONSIDERED, Plaintiff, THE ESTATE OF GILBERTO A. ALCUNA, prays that Defendants, REVERSE MORTGAGE FUNDING LLC, be cited to appear and show cause, and that on hearing, a temporary injunction be issued enjoining DEFENDANT, REVERSE MORTGAGE FUNDING LLC, their agents, servants, and employees, from directly or indirectly selling or attempting to foreclose or otherwise sell or transfer the Property.

Furthermore, for the reasons stated above, Plaintiffs ask the Court to declare:

- a) Actual and exemplary damages including economic;
- b) Pre and post judgment interest at the maximum rates permitted by law;
- c) All costs of suit;
- d) Reasonable and necessary attorney's fees;
- e) Exemplary/punitive damages; and
- f) All other relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

By: /s/ *Kamelia Namazi*
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