

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICTS OF TEXAS  
BEAUMONT DIVISION

OCT 28 2021

Percy Twain Barber, and wife  
Maria Barber

BY  
DEPUTY \_\_\_\_\_

**Claimant,**

v.

§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 1:21cv539 \_\_\_\_\_

S.D.B. DEVELOPMENT, L.P., a  
Texas Limited Partnership, President  
Stephen D. Brown and

LAW OFFICES OF THOMAS J.  
BURBANK  
Attorney Thomas J. Burbank,

**Respondent.**

**PETITION, COMPLAINT, AND CLAIM IN THE NATURE OF A PETITION AND  
CLAIM FOR FALSE AND MISLEADING, BAD FAITH, AND FAIR DEALING.**

**TO THE HONORABLE JUDGE SAID OF COURT:**

**PARTIES**

**Percy Twain Barber and wife Maria Barber**  
C/O 9015 Mclean Street Beaumont, Texas [77707]

**and**

**S.D.B. DEVELOPMENT, L.P., a Texas Limited Partnership, President Stephen D. Brown**  
is an individual residing in, Jefferson County, 2970 West Lucas Drive Beaumont, Texas 77706

**LAW OFFICES OF THOMAS J. BURBANK Attorney Thomas J. Burbank,**  
Jefferson County, Attorney 505 West Lucas Drive Beaumont, Texas 77706

### **First cause of action**

I, the living man Percy Twain Barber and wife Maria Barber were done wrong by Stephen D. Brown. If S.D.B. DEVOLPMENT, LP President Stephen Brown had a change of mind after we had a meeting of the minds September 7, 2021, on agreement about crediting my account because we made several extra payments throughout the years, he should have advised me instead of contracting a lawyer, and we could have worked something out. He then called 6 days later, stating that his attorney advised him to not to credit my account. According to my books and records, the extra payments that were made totaled to \$9,900.00. He contracted Thomas J. Burbank to file a claim of NOTICE OF INTENT TO ACCELERATE, **which was not sent by Certified Mail as directed by the Texas Law.** (Exhibit A) Texas Property Code states that “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.”

### **Second cause of action**

After going back and reviewing the Notice of Intent to Accelerate, I have noticed an error within the letter. In the letter is states, we have not paid for months July, August, and September of 2021, but we made payments for July and September (You will see the following bank statements attached confirming that those months were paid) **Mistakes, like calculating the amounts due incorrectly, may be insufficient grounds for rescinding the foreclosure sale.** (Exhibit B) “Where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States.” *Powell v. Stacy*, 117 S.W.3d 70, 75–76

### **Third Cause of Action**

I found out that my property was going into foreclosure, by a THIRD AND UNKNOWN party/another firm named Barron & Barron, LLP, by receiving a Notice of Trustee's Sale in the mail on Tuesday, October 26, 2021. My property going into foreclosure was not discussed nor acknowledged, and I was not warned of the matter, until I received the foreclosure statement in the mail. **Failure to send notice of sale is sufficient reason for a trial court to set aside a foreclosure sale and hold the sale to be void.** (Exhibit C) "The right of the people to be secure in their persons, houses, papers, and effects." *Shearer v. Allied Live Oak Bank*, 758 S.W.2d 940, 942 (Tex. App.—Corpus Christi 1988); *Houston First American Sav. v. Musick*, 650 S.W.2d 764, 768 (Tex. 1983); *WTFO, Inc. v. Braithwaite*, 899 S.W.2d 709, 720–721 (Tex. App.—Dallas 1995, no writ).

### **Fourth Cause of Action**

Stephen D. Brown intentionally mislead Attorney Thomas J. Burbank to file a Notice of Acceleration, without verifying the account or balance. **Giving the debtor an opportunity to cure default before acceleration is particularly important.** I received the foreclosure statement from another firm October 26, 2021, and the date for foreclosure is November 2, 2021. Stephen D. Brown's deceitfulness caused Me, the living man Percy Twain Barber emotional anguish.

### **Fifth Cause of Action**

Stephen D. Brown acted with intentional malice to harm me the man opposing party. I, living man Percy Twain Barber's damages exceed ten thousand dollars (\$10,000.00).

**Claimant demands exemplary damages against the Respondent, together with costs, fees and other amounts deemed appropriate by this court.**

**Claimant demands a trial by jury.**

## VERIFICATION

I, Man Percy Twain Barber am the Claimant in this action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe to be true.

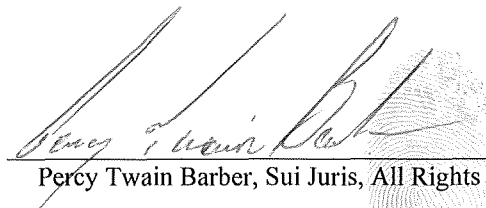
I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

WHEREFORE claimant demands judgment for damages against respondent.

DATED this 28 day of October 2021

TRIAL BY JURY DEMANDED

Prepared and submitted by:

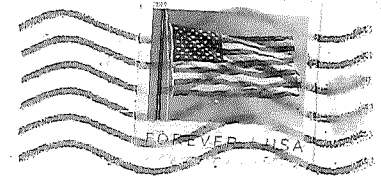
  
\_\_\_\_\_  
Percy Twain Barber, Sui Juris, All Rights Reserved.

Percy Twain Barber  
c/o 9015 Mclean Street  
Beaumont, Texas [77707]

Thomas J. Burbank  
505 West Lucas Drive  
Beaumont, Texas 77706

NORTH HOUSTON TX 773

22 SEP 2021 PM 8 L



Percy and Maria Barber  
9015 McLean  
Beaumont, TX  
77707

77707-122015

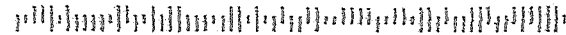


Exhibit A

# LAW OFFICES OF THOMAS J. BURBANK

ATTORNEY

505 West Lucas at Calder  
Beaumont, Texas 77706  
(409) 892-8200 Telephone  
(409) 895-0080 Fax

September 17, 2021

Percy and Maria Barber  
9015 McLean  
Beaumont, Texas 77707

Re: **NOTICE OF INTENT TO ACCELERATE**  
Indebtedness evidenced by that certain Real Estate Lien Note dated December 13, 2011, in the original principal amount of \$142,000.00 (the "Note") due and unpaid to S.D.B. DEVELOPMENT, LP (the "Lender"), executed by Percy and Maria Barber ("Borrower"), (Hereinafter the "Indebtedness") and secured by that certain Deed of Trust dated December 13, 2011 and filed for record in the Real Property Records of Jefferson County, Texas.

Dear Percy and Maria Barber:

This firm represents S.D.B. Development, LP (the "Lender"), the current owner and holder of the indebtedness. According to the records of Lender, you are in default under the Note and Deed of Trust for failure to make your payments as they come due. The amount due as of SEPTEMBER 17, 2021 is **\$5,143.62**, which includes the following:

Mortgage payments for July, August and September 2021, are **\$3,976.62** (\$1325.54 per month); late fees for July, August and September 2021 are **\$198.00** (\$66.00 per month); taxes for July, August and September 2021 are **\$654.00** (\$218.00); and, attorney fees **\$315.00**.

**PAYMENT MUST BE RECEIVED BY THE UNDERSIGNED OR STEPHEN BROWN ON OR BEFORE OCTOBER 12, 2021 TO ENSURE PROPER CREDIT.**

**ATTORNEY'S FEES MAY BE PAID DIRECTLY AT THE ABOVE-REFERENCED ADDRESS.**

**Exhibit B**

**Percy and Maria Barber**  
**September 17, 2021**  
**Page two**

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The default must be fully cured on or before 5:00 p.m. central standard time on **OCTOBER 12, 2021**. Failure to cure the default by this date will result in possible foreclosure of the properties covered by the Deed of Trust and/or suit being filed to collect the amounts due under the Note. If you fail to pay the total amount due on or before the date and time specified above, the entire unpaid balance of the indebtedness, together with accrued but unpaid interest, attorney's fees and expenses, will be accelerated and will be fully due.

Furthermore, if now or at any time or times in the future you tender payment of less than the total amount due on the date of the payment, the Lender will accept the payment as a payment "on account" and (regardless of any notation or endorsement form placed on any check) in satisfaction only of the amount actually paid (subject, of course, to collection), and will apply that partial payment as far as it goes towards payment of the amounts then due on the indebtedness. However, no such partial payment will be effective to cure or prevent any payment default arising from your failure to pay the entire amount due when due, and Lender hereby expressly reserves Lender's rights to thereunder pursue any and all of its rights and remedies provided for in the Indebtedness and the instruments securing the payment thereof, at law and in equity, including, without limitation, the right to accelerate the Indebtedness and to foreclose the Note and/or to file suit for collection of the Note.

Nothing contained in this letter shall be deemed a waiver of any default or event of default not specifically listed above, nor a waiver of any rights, remedies or recourse available to Lender, nor any election of remedies resulting from the defaults listed above or any other defaults which may exist with respect to the Indebtedness and obligations secured by the Deed of Trust. Nothing in this letter shall be construed as a charge of or demand for more interest than applicable usury laws allow, or any amount which is not recoverable or chargeable by the Lender under the loan papers or the law, and if any amount is stated or referred to in this letter as being due, owing or payable which exceeds the maximum amount of interest allowed by applicable law, or which is not lawfully recoverable or chargeable under the loan papers or the law, then only so much of that amount as does not exceed such maximum amount and is lawfully chargeable or recoverable shall be considered as being demanded by this letter, and the sentence governs and controls over any conflicting or inconsistent provision of this letter.

**Exhibit B**

**Percy and Maria Barber**  
**September 17, 2021**  
**Page three**

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In the event the Deed of Trust is foreclosed upon, and a deficiency is created as a result of the difference between the indebtedness and the sums received at the foreclosure, you and any of the other obligors and guarantors of the indebtedness may be personally liable for such deficiency. This firm will not delay or cease proceeding with the foreclosure and sale of the real estate securing the indebtedness or otherwise cease any other collection efforts of the debt, unless and only for the period prohibited by applicable law.

You are hereby cautioned that, whether you elect to mail or personally deliver such sums to us, such sums must be received in our office on or before the required payment date or by **OCTOBER 12, 2021**. Any failure to actually deliver such sums to us on or before the required payment date because of any act or omission by you, the U.S. Postal Service, or any other person or entity, shall not be considered an excuse. Please mail payments to the attention of the undersigned at the above address, or deliver payment to the above address during our business hours. It is not our desire to deprive you of your property or your investment. We urge you to pay the amount due immediately so that no further action will be necessary. In the event you have questions relative to any of the foregoing, please do not hesitate to contact the undersigned.

**THIS IS AN ATTEMPT TO COLLECT A DEBT; ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Sincerely yours,



Thomas J. Burbank  
Attorney at Law

TJB/trt  
Enclosure

cc: S.D.B. Deveolpment  
2970 West Lucas  
Beaumont, Texas 77706

**Exhibit B**



## FAIR DEBT COLLECTION PRACTICES ACT - CONSUMER NOTICES

You are hereby afforded the following notice pursuant to the Fair Debt Collection Practices Act, 15 USC, §1601 et seq.

1. The amount of the debt as of September 17, 2021 is as follows:
  - a. amount in arrears is **\$5,143.62** which includes past due house payments, late fees, taxes, attorney fees, plus interest, if any.
  - b. principal balance of note is \$121,751.59.  
**THIS AMOUNT REFLECTS THE \$9,721.00 EXTRA THAT HAS BEEN PAID TOWARDS THE PRINCIPAL.**
2. The name of the creditor to which the debt is owed is S.D.B. Development, LP.
3. Please be advised that unless you dispute the validity of the above-described debt or any portion thereof within thirty (30) days after receipt of this notice, the above-described debt will be assumed valid by the debt collector.
4. Furthermore, you are advised that you have the right to contact the debt collector to dispute the debt.
5. In the event that you notify the debt collector in writing within the aforesaid thirty (30) day time period, that the debt or any portion thereof is disputed, the debt collector will take no further action to collect the debt until he has obtained a verification of the debt or a copy of the judgment against you the consumer whereupon the debt collector shall mail a copy of said verification or judgment to you.
6. Furthermore, upon your written request within the above-described thirty (30) day period, the debt collector will provide you with the name and address of the original creditor, if the creditor seeking to collect the debt is different from the original creditor.
7. Any post dated checks sent to the debt collector will be deposited or placed for collection.
8. **Finally, please be advised that the debt collector is attempting to collect the monies referred to above and that any information obtained will be used for purposes of collecting said debt.**

**Exhibit B**

PERCY BARBER  
MARIA BARBER  
2015 MCLEAN ST  
BEAUMONT, TX 77707-1220

1051  
88-77723101  
877713

Date 7/10/2021

Pay to the Order of SDB Development \$ 1,325.00  
ONE THOUSAND THREE HUNDRED TWENTY FIVE <sup>00</sup>/<sub>100</sub> Dollars

MobilOil  
FEDERAL CREDIT UNION  
210 East 12th St  
Beaumont, Texas 77720-2049

For Mortgage for 9015 Mclean St Paul J. Barber / Off/Corp

⑆ 3 3 3 2 7 7 7 2 7 ⑆ 2 0 2 0 0 0 0 0 2 2 2 9 9 2 1 0 5 1

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13616100028500

13616100028500 07-14-2021 13111983  
CommunityBank of Texas  
Beaumont, TX

SDB DEVELOPMENT LP  
21449667

PERCY BARBER  
MARIA BARBER  
2015 MCLEAN ST  
BEAUMONT, TX 77707-1220

1052  
88-77723101  
877713

Date 7/10/2021

Pay to the Order of SDB Development \$ 222.00  
Two Hundred Twenty Two <sup>00</sup>/<sub>100</sub> Dollars

MobilOil  
FEDERAL CREDIT UNION  
210 East 12th St  
Beaumont, Texas 77720-2049

For TAXES for 9015 Mclean St Paul J. Barber / Off/Corp

⑆ 3 3 3 2 7 7 7 2 7 ⑆ 2 0 2 0 0 0 0 0 2 2 2 9 9 2 1 0 5 2

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13616100028400

13616100028400 07-14-2021 13111983  
CommunityBank of Texas  
Beaumont, TX

SDB DEVELOPMENT LP  
21449667

Exhibit B

10/26/21, 11:49 AM

TOTALLY FREE CHECKING 0010 Check #001061

PERCY BARBER  
 MARIA BARBER  
 9015 MCLEAN ST  
 BEAUMONT, TX 77707-1220

1061  
 88-7772/3131  
 877713

Date 9/10/21

Pay to the Order of SDB Development \$ 1,325.00  
One Thousand Three Hundred Twenty Five 00/100 Dollars

MobilOil  
 FEDERAL RESERVE OFFICE  
 BEAUMONT BRANCH  
 PO BOX 12049  
 BEAUMONT, TEXAS 77726-2849

For Mortgage for 9015 Mclean St By: Percy Barber / Maria Barber  
 ⑆ 3 1 3 1 7 7 7 2 7 ⑆ 2 0 2 0 0 0 0 0 1 1 2 9 4 2 ⑆ 2 0 6 2

13582650004600

13582650004600 10-12-2021 111983  
 CommunityBank of Texas  
 Beaumont, TX

SDB DEVELOPMENT LP  
 21449667

10/26/21, 11:52 AM

TOTALLY FREE CHECKING 0010 Check #001062

PERCY BARBER  
 MARIA BARBER  
 9015 MCLEAN ST  
 BEAUMONT, TX 77707-1220

1062  
 88-7772/3131  
 877713

Date 9/10/2021

Pay to the Order of SDB Development \$ 222.00  
Two Hundred Twenty Two 00/100 Dollars

MobilOil  
 FEDERAL RESERVE OFFICE  
 BEAUMONT BRANCH  
 PO BOX 12049  
 BEAUMONT, TEXAS 77726-2849

For TAXES for 9015 Mclean St By: Percy Barber / Maria Barber  
 ⑆ 3 1 3 1 7 7 7 2 7 ⑆ 2 0 2 0 0 0 0 0 1 1 2 9 4 2 ⑆ 2 0 6 2

13582650004700

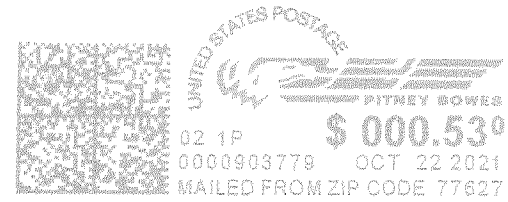
13582650004700 10-12-2021 111983  
 CommunityBank of Texas  
 Beaumont, TX

SDB DEVELOPMENT LP  
 21449667

Exhibit B



P.O. Box 1347  
Nederland, TX 77627



# ADVERTISEMENT

October 22, 2021



Mr. & Mrs. Percy Barber  
9015 McLean St.  
Beaumont, TX 77707

YOU CAN SAVE YOUR HOME

7770781220 C048

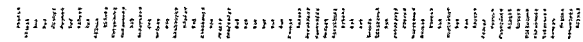


Exhibit C

ROBERT W. "ROBBY" BARRON  
J.D., B.B.A.  
Board Certified Consumer Bankruptcy Law  
Texas Board of Legal Specialization



DIANE S. BARRON-CARTER  
J.D., M.P.P.A., B.S.  
Board Certified Consumer Bankruptcy Law  
Texas Board of Legal Specialization

ROBERT E. "BOB" BARRON  
Founder 1950-2018

October 22, 2021

Mr. & Mrs. Percy Barber  
9015 McLean St.  
Beaumont, TX 77707

Dear Mr. & Mrs. Barber:

I must assume by now you know your real estate has been posted for foreclosure on **November 2, 2021**. You may feel frustrated and confused; however, I may be able to help resolve this foreclosure as well as any other financial troubles you may be facing. Federal Law may allow you to stop this foreclosure and allow you time to catch up the past due payments. This same law may allow you to lower your vehicle notes and consolidate your other debts to allow you to afford your house note. **Please call my office today at 409-727-0073 for a free, no obligation consultation.**

I'm sure you have or will be bombarded with letters from attorneys promising similar relief. What to make of this? First, a lot of trees have been killed to solicit your business. Second, there are too many attorneys in Texas. Third, if you call every attorney that sends you a letter, you will probably waste several hours. My office can promise you several things. First, I am a specialist in this area. I am Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization. Certification is very important. It means I have met certain requirements and have demonstrated a degree of knowledge, experience and ethical conduct required by the Texas Board of Legal Specialization. Only a very small percentage of attorneys who handle bankruptcy are actually Board Certified. My law firm has a combined 30 years of legal expertise advocating for consumers.

I can promise you that my reputation in this field is impeccable. My practice is limited exclusively to representing Debtors in the U.S. Bankruptcy Court.

**Your first visit to my office to discuss your situation is free.** Should you decide to retain my services, my fees are very reasonable. In addition, we offer affordable payment plans, and we immediately begin taking creditors' calls once you have decided to retain our services.

If you want assistance in stopping this foreclosure and/or any other financial problems, please **call us at 409-727-0073 or 1-800-547-0073, for a free, no obligation appointment.** You may also want to visit our website at [www.rbarronlaw.com](http://www.rbarronlaw.com) for further information.

Sincerely,

Robert W. Barron

RWB/kl  
Enclosure

**DISCLAIMER:** If you are currently represented by an attorney, I do not want you to call me. This letter is directed only to those persons who do not currently have an attorney representing them in this matter. We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.

NEDERLAND OFFICE: 2000 Hwy. 69 • P.O. Box 1347 • Nederland, TX 77627 • (409) 727-0073 • FAX (409) 724-7739

LUFKIN OFFICE: 415 South First St., Suite 405 • Lufkin, TX 75901 • 1-800-547-0073

PLANO OFFICE: 660 N. Central expressway, suite 101 • Plano, TX 75074 • (972) 422-9377 • FAX (972) 578-9707

Website: [www.rbarronlaw.com](http://www.rbarronlaw.com)

Notice to Bankruptcy Creditors: Please address all correspondence and pleadings to Nederland office or [ecffiling@rbarronlaw.com](mailto:ecffiling@rbarronlaw.com)

ADVERTISEMENT

Exhibit C



2 pgs  
NOTTS

2021036825

**NOTICE OF TRUSTEE'S SALE**

DATE: OCTOBER 12, 2021

DEED OF TRUST

DATE: DECEMBER 13, 2011

GRANTOR: PERCY BARBER and MARIA BARBER

GRANTOR'S COUNTY: JEFFERSON COUNTY, TEXAS

BENEFICIARY: S.D.B. DEVELOPMENT, LP

SUB. TRUSTEE: THOMAS J. BURBANK

RECORDING INFORMATION: Clerk's File No. 2011040248, Real Property Records of Jefferson County, Texas.

PROPERTY: Lot Fourteen (14, in Block Five (5), of the GULF TERRACE ADDITION to the City of Beaumont, Jefferson County, Texas, as per the map or plat of said addition on file and of record in Volume 5, Pages 49 and 50, of the Map Records in the Office of the County Clerk of Jefferson County, Texas.

NOTE

DATE: DECEMBER 13, 2011

AMOUNT: \$142,000.00

DEBTOR: PERCY BARBER and MARIA BARBER

HOLDER: S.D.B. DEVELOPMENT, LP

DATE OF SALE OF PROPERTY (1st Tuesday of Month): NOVEMBER 2, 2021

EARLIEST TIME OF SALE OF PROPERTY: 1:00 o'clock P.M. or within 3 hours thereof.

PLACE OF SALE OF PROPERTY: The most northerly door of the new addition to the County Court House is the entrance nearest the entrance to the quarters occupied by the Justice of the Peace and the Constable.

Because of default in performance of the obligations of the deed of trust, Trustee will sell the property by public auction to the highest bidder for cash at the place and date specified to satisfy the debt secured by the deed of trust. The sale will begin at the earliest time stated above or within three hours after that time.

As a material part of the consideration for this Agreement, Seller and Purchaser agree that Purchaser is taking the Property "AS IS" with any and all latent and patent defects and that there is no warranty by Seller that the Property is fit for a particular purpose. Purchaser acknowledges that it is not relying upon any representation, statement or other assertion with

**Exhibit C**