

CAUSE NO. _____

JEFFREY PAYNE

v.

CARRINGTON MORTGAGE
SERVICES, LLC

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

Jeffrey Payne, Plaintiff, hereby files his Original Petition, Application for Injunctive Relief, and Request for Disclosures complaining of Carrington Mortgage Services, LLC, Defendant, and for causes of action would respectfully show the Court as follows:

DISCOVERY

1. Plaintiff intends to conduct discovery under Texas Rules of Civil Procedure 190.3 (Level 2).

PARTIES

2. Jeffrey Payne is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.

3. Carrington Mortgage Services, LLC is an entity formed under the laws of the State of Delaware which conducts business in Harris County, Texas and may be served with process as follows:

Carrington Mortgage Services, LLC
c/o Branch Manager or Corporate Officer
1500 South Douglas Road, Ste 150
Anaheim, CA 92806

JURISDICTION AND VENUE

4. The Court has jurisdiction over Carrington Mortgage Services, LLC because the Defendant is an entity formed under the laws of the State of Delaware which conducts business in Harris County, Texas.

5. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. Venue is mandatory in Harris County, Texas because the subject matter of this lawsuit involves real property which is located in Harris County, Texas. Further, all or a substantial part of the events or omissions giving rise to Plaintiff's causes of action occurred in Harris County, Texas thus venue is proper under §15.002(a)(1) of the Texas Civil Practice and Remedies Code.

RELEVANT FACTS

6. The subject matter of this lawsuit is the real property and the improvements thereon located at 8123 17th Green Drive, Humble, TX 77346 (the "Property").

7. Jeffrey Payne ("Plaintiff" or "Payne") and his wife purchased the Property on or about September 29, 2017. During the process of purchasing the Property, Plaintiff executed a Note in the amount of \$293,092 as well as a Deed of Trust through a Federal Housing Administration loan (FHA Case No. 512-2877893-703-203B) in which LenderOne Financial Corporation is listed as the Lender. A true and correct copy of the Note and Deed of Trust is attached hereto as Exhibits "1" and "2" respectively and incorporated herein for all purposes.

8. Upon information and belief, the Note and related Deed of Trust were subsequently transferred to Carrington Mortgage Services, LLC ("Carrington") which also services the loan.

9. Plaintiff and his wife contracted Covid-19 during the pandemic – both lost multiple months of income. Even worse, Plaintiff's mother-in-law developed dementia and subsequently passed placing thereby causing even greater financial hardship on him and his family. Realizing that he was at risk

of becoming delinquent on his mortgage loan payments, Payne began exploring various loss mitigation options with Carrington during which he was told that he would receive a Mortgage Assistance Application in the mail and to simply complete and submit the application and await Carrington's approval – he is still awaiting a response from Carrington.

10. Plaintiff became alarmed when he began receiving numerous amounts of advertisements from potential buyers and investors informing him that his Property was posted for the July 05, 2023 foreclosure sale – irrespective of the fact that he never received a notice of default, notice of acceleration, or notice of foreclosure sale from Carrington. A true and correct copy of Notice of Substitute Trustee's Sale, which was provided to Plaintiff by the undersigned legal counsel, is attached hereto as Exhibit "3" and incorporated herein for all purposes.

11. Instead of following proper procedure pursuant to the Texas Property Code as well as the related Deed of Trust, Carrington violated HUD Regulations, which are incorporated into the Deed of Trust in Section 22(d), by failing to offer to provide a face-to-face interview with Plaintiff to discuss potential loss mitigation options prior to starting the foreclosure process – this is a necessary condition precedent. Further, Carrington did not follow the proper notice protocol required for posting his Property for foreclosure sale as required pursuant to Sections 14 and 24 of the Deed of Trust thereby depriving Plaintiff of his opportunity to cure pursuant to Section 18 of the Deed of Trust.

12. Accordingly, Plaintiff alleges that Carrington is about to wrongfully sell his Property at a foreclosure sale on July 05, 2023 without providing the proper notices required by the Deed of Trust as well as the Texas Property Code in violation of Payne's due process rights.

**FIRST CAUSE OF ACTION:
DECLARATORY JUDGMENT**

13. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 12 as if set forth fully herein.

14. Plaintiff seeks a determination of the rights of the parties pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001, *et seq.* (West). In particular, Plaintiff seeks a determination that the pending foreclosure sale of his Property is wrongful because Defendant violated HUD Regulations by failing to offer to provide a face-to-face interview with Plaintiff to discuss potential loss mitigation options prior to starting the foreclosure process and did not follow the proper notice protocol required for posting his Property for foreclosure sale as required pursuant to Sections 14 and 24 of the Deed of Trust as well as the Texas Property Code.

**SECOND CAUSE OF ACTION:
BREACH OF CONTRACT**

15. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

16. The actions committed by Defendant constitutes breach of contract because:

- A. There exists a valid, enforceable contract between Plaintiff and Defendant;
- B. Plaintiff has standing to sue for breach of contract;
- C. Plaintiff performed his contractual obligations under the Deed of Trust;
- D. Defendant breached the Deed of Trust between the parties' by violating the HUD Regulations incorporated in section 22(d) as well as the notice requirements in sections 14 and 24 and the cure opportunity requirement set forth in section 18; and

E. The breaches of contract by Defendant caused Plaintiff's injury – actual damages which include, but are not limited to, loss of alternative loss mitigation options, violating Plaintiff's due process rights, litigation cost, interest on the balance of unpaid mortgage payments since the filing of this lawsuit, and damage to Plaintiff's credit.

**FOURTH CAUSE OF ACTION:
VIOLATION OF TEXAS PROPERTY CODE §51**

17. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 16 as if set forth fully herein.

18. Pursuant to the provisions of the Texas Property Code, the holder of a note must ordinarily give notice to the maker of the holder's intent to accelerate the time for payment as well as notice of acceleration. If the mortgagee intends to accelerate the maturity of the debt, the notice must unequivocally inform the mortgagor of the mortgagee's intention. A proper notice of default must give the borrower notice that the alleged delinquency must be cured; otherwise, the loan will be accelerated, and the property will go to foreclosure. Prior to a foreclosure action, the noteholder is also required to give the homeowners clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

19. The actions committed by Defendant constitutes violations of the Texas Property Code §51 because Defendant never received proper and timely notice of default, the opportunity to cure the default, notice of intent to accelerate the debt, notice of acceleration, and notice of foreclosure sale which are required in order for Defendant to foreclose on its lien rights to the Property.

**FIFTH CAUSE OF ACTION:
PROMISSORY ESTOPPEL**

20. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 19 as if set forth fully herein.

21. The actions committed by Defendant constitute promissory estoppel because:

- A. Defendant promised to give Plaintiff a good faith loan modification review including written approval or denial as well as the opportunity to appeal their decision and provide supplemental documentation;
- B. Plaintiff reasonably and substantially relied on the promise to his detriment;
- C. Plaintiff's reliance was foreseeable by Defendant; and
- D. Injustice can be avoided only for enforcing Defendant's promise.

**DAMAGES:
ACTUAL DAMAGES**

22. Plaintiff is entitled to recover his actual damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23. Plaintiff endured stress, anxiety, and loss of sleep as a result of Defendant's misconduct. Accordingly, Plaintiff is entitled to recover mental anguish damages from Defendant for which he pleads in an amount which does not exceed the jurisdictional limits of this Court.

EXEMPLARY DAMAGES

24. Plaintiff is entitled to recover his exemplary damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

ATTORNEYS' FEES

25. Plaintiff was forced to employ the undersigned attorneys and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover reasonable attorneys' fees pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

CONDITIONS PRECEDENT

26. All conditions precedent to the Plaintiff's right to bring these causes of action have been performed, have occurred, or have been waived.

REQUEST FOR DISCLOSURES

27. Carrington Mortgage Services, LLC is hereby requested to disclose to Jeffrey Payne, within 50 days of service of this request, the information and material described in Rule 194 of the Texas Rules of Civil Procedure.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

28. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraph 1 through paragraph 26 as if set forth fully herein.

29. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable since Defendant is about to sell Plaintiff's Property at a foreclosure sale on July 05, 2023 thereby depriving Plaintiff of ownership of the Property. Plaintiff has no adequate remedy at law because the subject matter is real property and any legal remedy of which Plaintiff may avail himself will not give him as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

30. Therefore, Plaintiff request that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from selling the real property which is the subject matter of this lawsuit commonly known as 8123 17th Green Drive, Humble, TX 77346.

31. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 30 above.

32. Plaintiff is likely to prevail on the merits of the lawsuit as described above.

33. The granting of the relief requested is not inconsistent with public policy considerations.

BOND

34. Plaintiff is willing to post a reasonable temporary restraining order bond and requests that the Court set such bond.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- A. Defendant be cited to appear and answer herein;
- B. The Court conduct a hearing on Plaintiff's Application for Injunctive Relief;
- C. A Temporary Restraining Order be issued restraining Defendant, its agents, employees, officers, directors, shareholders, and legal counsel, and those acting in concert or participation with them who receive actual notice of the Order, by personal service or otherwise, from selling the real property which is the subject matter of this lawsuit and is commonly known as 8123 17th Green Drive, Humble, TX 77346;

- D. A Permanent Injunction be entered enjoining Defendant from the same acts listed in Paragraph C above; and
- E. Upon final hearing or trial hereof, the Court order a judgment in favor of Jeffrey Payne against Carrington Mortgage Services, LLC for his actual damages, mental anguish damages, exemplary damages, reasonable attorneys' fees, all costs of court, and such other and further relief, both general and special, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

VILT LAW, P.C.

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ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Morilyn Purdies District Clerk