

FILED P.13

Marilyn Burgess
District Clerk

SEP 25 2023

CAUSE NO. 2021-02915

Time: _____
By: Mills Deputy
Harris County, Texas
09-25-23

NICIA VITORINO
Plaintiff,

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IN THE DISTRICT COURT

VS.

RAMESH KAPUR INDIVIDUALLY
D/B/A AIC MANAGEMENT COMPANY, FORT
BEND MDS, LLC, RK PARIVAR HOLDING,
PLLC, BLUETEX MANAGEMENT SOLUTIONS,
INC, AND JERRY SCHUTZA
Defendants

334TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

FIRST AMENDED MOTION FOR RECONSIDERATION OF ORDER GRANTING A NEW TRIAL FOR FRAUD ON THE COURT

NOW COMES, Nicia Vitorino, Pro Se, asking this honorable court to reconsider its order of August 25, 2023, which granted defendant Ramesh Kapur d/b/a AIC Management Company a new trial based on the defendant's claims that were a fraud on the court and granted the disbursement to Anna Clement Sewart of Barry & Sewart, PLLC. \$18,365.09 of the funds in the Court Registry. The plaintiff additionally is herein complaining against defendant Ramesh Kapur and attorney David Barry of Barry & Sewart, PLLC. In consideration of the plaintiff's motion, I aver the following:

FACTS

I- PROPERTY DESCRIPTION

1) The property originator of the \$40,000.00 Excess Proceeds funds subject of this Intervention by defendant Ramesh Kapur is located at 11917 Bob White Dr, #14, Houston, TX 77035. It is alternatively referred to as "Tempo", "Tempo Townhomes", and "Bob White".

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

II- RAMESH KAPUR'S STATEMENT IN HIS PETITION IN INTERVENTION THAT HE SOLD THE PROPERTY TO ME FOR \$50,000.00 IS ENTIRELY FALSE.

- 1) As evidenced in the property's WARRANTY DEED WITH VENDOR'S LIEN and DEED OF TRUST, the property was transferred to me, under my previous married name, Nicia Calledare, from Grantor Abdul Zaveri and it was paid with a loan in the amount of \$12,000.00 from Aldens Acquisitions, LLC (Aldens), **(EXHIBIT A)**.
- 2) The property was given to me as compensation from Ramesh Kapur (Kapur), not sold.
- 3) Kapur owned the property under Abdul Zaveri's name. Kapur executed the transfer of the property to me from Abdul Zaveri.
- 4) Then, Kapur demanded that I signed a Deed of Trust accepting the \$12,000 loan from Aldens Acquisitions, LLC (Aldens) owned by his friend Mr. Mahendra Pandula (Pandula). Kapur kept the check from the loan.
- 5) The property was deeded to me in "as is" condition requiring repairs and approximate \$10,000.00 debt in HOA unpaid fees. As agreed, I rehabilitated the property, leased it, and started negotiations with the HOA's management company, Randall Management, on the HOA debt, **(EXHIBIT B)**.

II(i) - COMPENSATION BACKGROUND FACTS

- 1) As detailed in my PLAINTIFF'S ORIGINAL PETITION, TEMPORARY RESTRAINING ORDER, TEMPORARY AND PERMANENT INJUNCTION (PLAINTIFF'S ORIGINAL PETITION) filed in this court on January 18, 2021, Kapur, who I did not know, knocked on my door and introduced himself as my neighbor. During that time, I was going through a very challenging period with the death of a family member and a difficult divorce. Kapur took advantage of my vulnerable state to first persuade and pressure me to work for him not accepting a 'no' as an answer; then immediately after, Kapur harassed, manipulated, and coerced me into a personal relationship, and he moved in my home.
- 2) After approximately two years of being paid irregular and below federal mandated minimum wages; Kapur's unwillingness to contribute to living expenses at home; and repeated breached agreements, I

gave Kapur an ultimatum. I demanded fair and regular wages, properties in my name as agreed, and contribution to living expenses at home, or else, I would quit working for him, and have him move out of my home. Kapur then offered the Tempo property to me as initial supplementation to my wages and compensation.

3) In a message dated February 18, 2023, Kapur states that he gave the Tempo property "free" to me among other things on the list. Kapur refers to the property as "Tempo Townhomes" in paragraph thirteen (13) of his AMENDED PETITION IN INTERVENTION filed in this court on September 16, 2023, (EXHIBIT C).

III- FORECLOSURE AND AUCTION SALE OF THE PROPERTY

1) I was never presented with the loan documents nor the \$12,000 check from Aldens Acquisitions; Kapur had kept them. I contacted Pandula on March 1, 2016, to inquire about the loan terms and the funds issued in my name; however, I never received any information, (EXHIBIT D).

2) I did not receive any foreclosure notices.

3) The property was foreclosed in my name falsely and sold at a Trustee's sale on June 2, 2020, by trustee Jerry Schutza (Schutza) on behalf of Aldens.

4) Schutza failed to respond to my demands for the excess proceeds funds, (EXHIBIT E)

IV- KAPUR'S STATEMENT THAT I AGREED TO GIVE THE \$40,000.00 EXCESS PROCEEDS FUNDS TO HIM, NONSUIT, PLUS GIVE HIM \$50,000.00 IN EXCHANGE FOR ONLY TWO PROPERTIES BOUGHT AT AUCTIONS IS ENTIRELY FALSE.

IV(I) – The Agreement:

1) On February 21, 2021, Mr. Humayun Jon Durrani (Durrani), a mutual friend who was working diligently mediating a settlement between Kapur and I, emailed me and delivered a copy in my home, a CONFIDENTIAL SETTLEMENT, RELEASE, ASSIGNMENT, AND INDEMNITY AGREEMENT(Agreement) from Kapur prepared by his attorney, Kapur's son, Anuj Kapur, (EXHIBIT F).

2) On page two (2), section II titled AGREEMENT, under paragraph one (1), sub-paragraph (e) in the said Agreement in EXHIBIT F, it is stated that the \$40,000.00 deposited in the Court Registry is to be for my sole benefit.

3) Thus, Kapur's statement that I agreed to practically pay him to nonsuit him by giving \$40,000.00 excess proceeds plus \$50,000.00 is entirely false.

V- DISQUALIFICATION OF PLAINTIFF'S ATTORNEY BY KAPUR TO COERCE PLAINTIFF INTO NONSUITING.

1) I forwarded the Agreement to Steven Engelhardt (Engelhardt), the attorney representing me on contingency fees, (EXHIBIT G).

2) Kapur had previously sued Engelhardt, who had represented Kapur in one of his innumerable lawsuits, under claim of legal malpractice. Engelhardt had fail to disclose to me the possibility of being disqualified by Kapur.

3) On April 16, 2021, while Englehart negotiated the Agreement with Anuj Kapur; Kapur (Defendant) filed a MOTION TO DISQUALIFY STEVEN ENGELHARDT. Facing disqualification, Engelhardt was forced to withdraw.

4) As intimidation and adding insult to injury, Kapur forwarded to me an email from one of his attorneys, Kathleen H. Boll, sent to him and to Anuj Kapur about Engelhardt's disqualification, (EXHIBIT H).

5) Shortly after having Engelhardt disqualified, Kapur brought to my home a NOTICE OF PARTIAL NON-SUIT WITH PREJUDICE demanding that I signed it and, that in exchange he would enter into an agreement with me. Frantically, creating confusion and pressure, Kapur also coerced me stating that if I didn't sign the nonsuit right then that he would have to immediately proceed to his attorney's office to pay additional legal fees of \$40,000.00 being demanded by his attorney to proceed with his defense, (Anuj Kapur was no longer representing his father). Kapur further threatened that if I did not sign the nonsuit, he and his attorneys would tear me apart in court, and that I would not get a single penny from him.

6) Realizing that I was completely vulnerable without an attorney; broke financially and emotionally; mentally exhausted; my home under foreclosure caused by Kapur; without transportation as Kapur was in

possession of my car, and the just then diagnosis cancer of my five-year-old grandson, Kapur insisted that I had no choice but to sign the nonsuit.

7) In response to my opposition, Kapur then stated that if I signed the nonsuit document, that he would give the \$40,000.00 attorney's fees to me as part of a settlement that he would agree to. Then, I demanded that Kapur agree with and sign the CONFIDENTIAL SETTLEMENT, RELEASE, ASSIGNMENT AND INDEMNITY AGREEMENT (Agreement) sent previously, with modifications as stated in the email sent to Engelhardt in EXHIBIT G.

8) Additionally, I demanded a check for \$50,000.00 towards the settlement as a down payment; very angrily, Kapur agreed. Insulting me with profanities name calling, Kapur stated that he had told me that I would not see a penny from him. Kapur then issued a \$35,000.00 predate check for May 28, 2021, made to my son, William Caledare (William), who Kapur had always proclaimed as a son to him, (EXHIBIT I).

9) Kapur continued to pressure me to sign the nonsuit while he wrote the \$35,000.00 check. I signed the nonsuit document as Kapur told me. When questioned, Kapur stated that the remaining \$15,000.00 was being held by Durrani and that it would be delivered to me.

10) Kapur then hurriedly left stating that he would come back to sign the Agreement soon after firing his attorney, but Kapur never came back to sign the Agreement as promised.

11) Later, Kapur called me on the phone calling me more profanities, and said that my five-year-old grandson's cancer was his curse on me and on my family, and proceeded to remind me of his words and curses as in his manipulative intimidating messages. To inflict fear, Kapur claims to have special powers and powerful curses (EXHIBIT J).

12) Kapur proceeded to use profane name calling and stated that he was not going to sign the Agreement, and for me to go to hell, and that he had warned me that if I sued him that I would not see a penny from him.

13) On June 3, 2021, Kapur's \$35,000.00 predated check for May 28, 2021, to William was deposited in William's Capital One bank account.

14) On June 7, 2021, Kapur's \$35,000.00 check to William bounced. Capital One Bank declared William "high Risk" and that the bank would not do business with William ever again, and closed William's account (EXHIBIT K).

15) Kapur failed to anticipate the need of an Affidavit from me to file together with the nonsuit document. Consequently, Kapur contacted me stating that he needed me to sign an affidavit among other documents. I instructed Kapur to email the documents for my analyses. Kapur emailed only the document titled AFFIDAVIT OF NICIA VITORINO (EXHIBIT L).

16) I took the opportunity to get Kapur to comply with at least part of the Agreement. I edited the affidavit sent by Kapur removing from paragraph five (5) the false statement, "...as all these matters in the controversy have been resolved" among other corrections. On or about August 2, 2021, Kapur called me on the phone at about 7:00 P.M. while I was preparing dinner for my family, pressuring me to meet with him right then to sign the affidavit. Coerced and under tremendous pressure, I met with Kapur at a CVS drugstore at the corner street by my home to have the Affidavit notarized by a notary over the phone arranged by Kapur. Kapur had me sign other documents but did not give me time to read them claiming it was late past the notary hours. Kapur tricked me again; up to present, Kapur has not honored the full Agreement in exchange for nonsuiting.

VI- INTERVENOR'S ADMISSION OF FUNDS TO BE RELEASED TO NICIA VITORINO AND EVIDENCE OF CONSPIRACY TO DEFRAUD.

1) Kapur states in paragraph thirteen (13) of his AMENDED PETITION IN INTERVENTION filed in this court on September 18, 2023, that "unfortunately" the excess proceeds funds were "on hold in a trust account by Jerry Schutza". Contradictorily, Kapur states in paragraph fourteen (14) that, "Despite various conference calls and hours of time spent by Jerry Schutza, the funds were not released by Intervenor, Alden's Acquisitions, to the Defendant, Nicia Vitorino".

- 2) I had repeatedly requested the release of the excess proceeds from Schutzta, **(EXHIBIT E)**.
- 3) Kapur and Schutzta conspired to defraud me of the excess proceeds funds.
- 4) Of the total \$46,000.00 excess proceeds funds generated from the foreclosure sale, Schutzta finally deposited only \$40,000.00 in the Court Registry and only after being sued.

VII- ADDITIONAL DENIAL

- 1) I am not aware of an Affidavit by me claiming no interest in the property as Kapur states.

VIII- VEXATIOUS LAWSUITS AS VENDETTA AND EVIDENCE OF FRAUD ON COURTS

- 1) Kapur threatened, that if I sued him, he would take revenge on me by taking me to court on any chance he got and make my life miserable; and that to teach me a lesson he would pay the best attorneys to make sure that I would not get or keep a penny from him. Kapur is presently fulfilling his threat by vexatiously and, using the same deceptive and fraudulent tactics on the courts as in this instant case, suing William, an innocent already injured bystander, and me as evidenced in the following paragraphs.

VIII(i) - COURT OF APPEALS CASE No. 01-23-00509-CV:

- 2) Kapur is appealing a Writ of Re-Entry case against William after two (2) previous Courts' ruling against Kapur. Kapur have been fraudulently attempting to gain possession of a property belonging to me deeded to William by Kapur.
- 3) On March 15, 2023, in a court hearing of the referenced case, Kapur deceitfully used the Honorable Judge's African American ethnicity in a deceptive attempt to gain advantage. Kapur's false and deceitful first statement to Honorable Judge Lucia Bates, Harris County Justice of the Peace in Precinct 3, was: "I gave this property to this woman, but she said she didn't want it because there were too many blacks there". Kapur's manipulations, lies, and fabricated exhibits turned against him as the Judge ruled against him. Kapur committed perjury and fraud on the court attempting to influence the Judge's ruling against me. Hypocritically, Kapur himself is an avid prejudiced racist who insistently refer to African Americans, among other groups, with punishable slurs and disrespect. In respect, such offensive statement is being omitted as exhibit; it will be provided upon request.

4) In this same referenced case, Kapur with deliberate intention to mislead the court and to cause harm, provided the First Court of Appeals with only a wrong address for the defendant, William Caledare, to be served. Self-incriminating, the address to serve the defendant provided by Kapur is the address of the same property Kapur is fraudulently attempting to prove he was occupying in his petitions for Writ of Re-Entry. **(EXHIBITS M).**

5) Kapur threatened, blackmailed, and attempted to coerce Rejeana Maldonado, the tenant of the property subject of Kapur's Writ of Re-Entry case, to commit perjury in his favor, **(EXHIBIT N).**

VIII (ii) CASE NO. 2022-39990

6) Kapur connived to have this lawsuit filed against the defendants. Kapur is the cause and mastermind behind it; he drafted, typed, and filed it in court. However, Kapur has filed an Intervention in the case also, and is falsely claiming that both properties subject of the lawsuit, including the property referenced in case No. 01-23-00509-CV above, belong to him, **(EXHIBIT O).**

7) Also, fraudulently, Kapur hired attorney Kristopher Rabie (Rabie), who I had never heard of, to represent me without my knowledge in Case No. 2022-39990 referenced above. Consequently, Rabie filed a motion to withdraw alleging nonpayment by me. I contacted Rabie via email demanding the withdraw of his false statements. Rabie responded blaming Kapur, and although Rabie committed to amend his motion clearing my name, up to now he has not. **(EXHIBIT P).**

IX- DAMAGES AND BREACH OF AGREEMENTS

1) In addition to the damaging facts already disclosed above, as complained in my PLAINTIFF'S ORIGINAL PETITION, I am the victim of severe and prolonged harassment; stalking; sexual assault; financial, physical, mental, and psychological abuse, inflicted by the Defendant, Ramesh Kapur, **(EXHIBIT Q-VIDEO).**

2) Kapur premeditated to first trapped me under his control and then to maintain gained control by mentally and psychologically incapacitating me using abuse; stalking; mental torture; gaslighting; financial deprivation; and causing foreclosure proceedings of my home. As I started demanding my rights, among other insults, Kapur said that I didn't deserve it asking, "who do you think you are? you are no Sofia Loren"

and accused me of prostitution among other derogatory profane insults. On the third page of the attached exhibit, Kapur admits calling me hitting me, calling me names, and stalking me and my family, **(EXHIBIT R)**.

3) Kapur caused foreclosure proceedings against my home causing me devastating damages. That is why the compensation of up to \$200,000.00 to be paid to Chase Bank is part of the **CONFIDENTIAL SETTLEMENT, RELEASE, ASSIGNMENT, AND INDEMNITY AGREEMENT** which Kapur has breached, **(EXHIBIT F)**.

4) Kapur together with defendants of CASE NO. 2022-39990 are responsible for the foreclosure of the two (2) properties subjects of that case mentioned herein under section VIII(ii).

5) Kapur's revengeful vexatious Intervention in this case and fraudulent withholding of the Excess Proceeds Funds belonging to me continues to cause me severe financial damages, stress, anxiety, and mental anguish.

6) In response to demands for my rights and compliance with promises and agreements, Kapur instructed me to register a corporation in my and his name, and said that he would acquire some properties for me under it for my sole benefit, **(EXHIBIT S)**.

6.1) I coined the name and registered BlueTex Management Solutions, Inc., and Kapur bought a few properties in auctions under it. On the property located at 2431 Spring Dusk Ln, Spring, Texas, 7737, I spent time, effort, and funds to rehabilitate the property. However, Kapur connived, and behind my back, transferred all the corporation's shares to his name cheating me completely out of it. **(EXHIBIT T)**.

7) On or about July 2016, Kapur filed a false Hostage Report with the Houston Police irresponsibly squandering vital law enforcement resources. On a Saturday morning, at about 7:00 A.M, I was awakened being ordered out of my home by a SWAT Team fully armed and ready to act. It was painfully traumatizing to me and to William, who at the time was only fourteen-years old. Several Houston Police's vehicles surrounded my home and blocked my street. Kapur was at the Police Station filing a false report that I was being held hostage in my home.

8) The intervenor Kapur continues to disseminate havoc in my and William's lives causing me, the plaintiff, incapacitating Mental Anguish, Chronic Stress, Anxiety leading to Complex-Post Traumatic Stress Disorder. I sought professional psychological help with Gardner Counseling Services. I have been too disturbed psychologically and emotionally; overwhelmed with Kapur's torment of me; and was financially unable to continue with treatment, **(EXHIBIT U)**.

X – BARRY & SEWART, PLLC'S WRONGFUL CLAIM TO THE EXCESS PROCEEDS FUNDS

1) On January 31, 2023, attorney David Barry (Barry) representing HREAL and Aldens sent me an email with a JOINT MOTION FOR TRADITIONAL AND NO EVIDENCE MOTION FOR SUMMARY JUDGMENT (MSJ), **(EXHIBIT V)**.

2) I had no agreement with, nor have I ever had one with attorney David Barry who was claiming \$18,000.00 plus 45% of accrued interest of my money held in escrow by the court. This is a blatantly false claim.

3) On March 2, 2023, I responded to Barry's email questioning the amount of \$18,000.00 plus 45% interest he was claiming from my funds, **(EXHIBIT W)**.

4) On March 10, 2023, Barry replied by email with his bill to Aldens and HReal attached. **(EXHIBIT X)**.

5) On or about March 13, 2023, I called Barry to question as to why I was being charged for his legal fees as he was hired and representing Aldens and HReal, not me, as I was Pro Se as stated on the MSJ prepared by him. I indicated to Barry that I was not in agreement with the amounts and that I was not signing the MSJ he proposed. Barry then threatened stating that if I didn't sign, he would take me to court.

6) I then discussed the issue with Pandula who advised that to avoid further emotional distress to me fighting Barry in court, that I signed the MSJ. Intimidated by Barry's threat and to avoid further emotional distress to me, coerced, I signed the MSJ.

7) On March 23, 2023, a final ORDER GRANTING HREAL COMPANY, LLC AND ALDENS ACQUISITIONS, LLC

AND NICIA VITORINO NO EVIDENCE MOTION FOR SUMMARY JUDGMENT was signed by the Honorable Judge of this court.

8) Kapur proceeded to file appeals and Motions to Reinstate and stopped the disbursement of the funds already in progress.

9) I then contacted Pandula who advised me not to worry that Barry was taking care of it.

10) Barry responded to Kapur's fillings getting the court to deny Kapur's motions.

11) Without any notice, Barry stopped including my name on responses to Kapur's fillings as in HREAL COMPANY, LLC and ALDEN'S ACQUISITIONS, LLC'S RESPONSE TO RAMESH KAPU'S MOTION TO REINSTATE filed on June 14, 2023, and HREAL COMPANY, LLC and ALDEN'S ACQUISITIONS, LLC'S RESPONSE TO RAMESH KAPU'S MOTION TO FOR A NEW TRIAL filed on July 14, 2023.

12) Without any notice, while still claiming from me \$18,000.00 plus 45% interest, Barry formed an agreement with Kapur leaving me out as stated and evidenced in Kapur's August 23, 2023, AGREED ORDER GRANTING NEW TRIAL ON THE INTERVENTION AND RELEASING DEFENDANTS HREAL COMPANY, LLC AND ALDENS ACQUISITIONS, LLC.

13) On September 14, 2023, I filed in this court a MOTION FOR RECONSIDERATION OF ORDER GRANTING A NEW TRIAL FOR FRAUD ON THE COURT with duly attached exhibits as evidences. In that Motion I requested this Honorable Court to disburse the full amount of \$40,000.00 deposited in the Court Registry to me. However, on September 27, 2023, \$18,365.09 was disbursed to Anna Clement Sewart of Barry & Sewart, PLLC from the funds in the Court Registry legally belonging to me.

SUMMARY STATEMENT

It is clear from the facts presented above that Kapur has intentionally and willfully, lied, misrepresented, and deceived the court to prove that he has an intervening interest in the instant case committing fraud on the court. The fact is that Kapur's intentions are solely and completely predicated on a vendetta with the plaintiff. That he has no legal or real interest in the facts and rulings of the instant

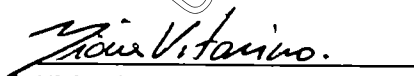
case. That the continued attempts by Kapur to cause harm to me, the plaintiff, while committing fraud on the court, have resulted in the plaintiff developing a Complex-Post Traumatic Stress Disorder.

David Barry of Barry & Sewart, PLLC extorted from me exorbitant legal fees for representing not me but Aldens and HREAL. Barry threatened and coerced me into signing the Joint Motion for Summary Judgment to take 45% plus interest of the excess proceeds funds belonging to me. Then, Barry entered into an agreement with the opposing party's Defendant against me.

WHEREFORE THE ABOVE CONSIDERED, I respectfully request this honorable court the following relief:

1. Immediately release of \$22,000.00 plus interest of the remaining Excess Proceeds funds deposited in the Court Registry to me, Nicia Vitorino.
2. Issue and order to Anna Clement Sewart of Barry & Sewart, PLLC, to deposit the amount of \$18,369.09 belonging to me back into the Registry of the Court.
3. Issue an order for the immediate release of the redeposited amount by Anna Clement Sewart of \$18,369.09 into the Registry of the Court to me, Nicia Vitorino.
4. Issue an order of reconsideration and deny Kapur's Motion for intervention and a New Trial dismissing it with prejudice.
5. Grant me punitive damages in the amount of \$250,000.00 against Intervenor Kapur for continued pain and suffering as he has caused me incapacitating Mental Anguish, Chronic Stress, Anxiety, and Complex-Post Traumatic Stress Disorder duly documented with Gardner Counseling Services.
6. Sanction the defendant Intervenor Kapur for his fraud on the court.
7. Any other relief as the court may deem necessary and prudent.

Respectfully submitted,



Nicia Vitorino, Pro Se
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Houston, TX, 77082
Tel: (832)202-4397
nicia.vitorino@gmail.com

Dated this 20th day of October 2023.

CERTIFICATE OF SERVICE

I, Nicia Vitorino, do hereby certify that a copy of the above and foregoing has been served upon all parties and counsel of record on this 20th of October 2023.

Nicia Vitorino.
Nicia Vitorino, Pro Se

Unofficial Copy Office of Marilyn Burgess District Clerk