

CAUSE NO. 23-CV-1921

AETNA LIFE INSURANCE CO.,	}	IN THE DISTRICT COURT OF
Plaintiff,	}	
v.	}	GALVESTON COUNTY, TEXAS
ADDISON OAKS HOLDINGS LLC,	}	
DANIEL HAMANN, EDWARD PRITCHETT	}	
AND ALLYSON PRITCHETT,	}	
Defendants.	}	405 th JUDICIAL DISTRICT

**DEFENDANTS' COUNTERCLAIM AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY AND PERMANENT INJUNCTION**

Addison Oaks Holdings LLC, Edward Pritchett, and Allyson Pritchett (collectively, "Defendants") file their Counterclaim and Application for Temporary Restraining Order and Temporary and Permanent Injunction as follows:

SUMMARY OF THE CASE

This case involves a borrower who has never made a payment default on its obligations to the lender. The borrower has experienced various covenant defaults which were all timely cured or which have not been cured because of the intervention of a wrongfully appointed receiver. The lender seeks a non-judicial foreclosure of the property which will eliminate the borrower's estimated \$4,000,000.00 equity in the property.

Defendants bring this declaratory judgment action as persons interested under a written contract, whose rights, status or other legal relations are affected by the contract to have the Court determine questions of construction or validity arising under the contract.

Defendants also seek the issuance of a temporary restraining order restraining Plaintiff and its substitute trustee from conducting a non-judicial foreclosure sale of the property on November

7, 2023, and a temporary injunction enjoining Plaintiff and its substitute trustee from conducting a non-judicial foreclosure sale of the property for a period of 90 days.

FACTUAL BACKGROUND

Plaintiff, Aetna Life Insurance Co. (“Aetna”) alleges defaults by Addison Oaks Holdings, LLC (“Addison”) under the loan documents.

Addison’s Alleged Change of Ownership

In paragraph 32 of Aetna’s Original Petition and Emergency Application for Appointment of Receiver (“Petition”) Aetna alleges: “Borrower changed ownership and composition without Aetna’s prior written approval.” This allegation is false. Addison did not change ownership. Addison is the Borrower in the Loan Agreement. Petition Ex. A-1. Addison is the Maker of the Promissory Note. Petition Ex. A-2. Addison and Addison Oaks Syndicate LLC (“AOS”) are shown as the Trustor in the Deed of Trust. Petition Ex. A-3.

Addison is a single member entity that is wholly owned by AOS. Both entities are managed by Addison Oaks Management, LLC. None of that ownership structure has changed. The only change that has taken place is that Daniel Hamann resigned as Managing Member of Addison Oaks Management, LLC which appointed Allyson Pritchett as the new Managing Member of Oaks Management, LLC.

The Trustor is Addison and AOS and NOT Addison Oaks Management, LLC. No change in “ownership, form of business association or composition” took place with Addison Oaks Holdings, LLC. The Loan Documents do not require Aetna’s approval to change the Manager of the Trustor. Nevertheless, Aetna asked Addison to “cure” the alleged default by submitting documents for them to approve Allyson Pritchett as the Managing Member of the Manager entity. Such documents were submitted and on July 11, 2023, Addison received an email from Aetna’s

servicer confirming that the “default” was “cured.” However, Addison never received correspondence directly from Aetna regarding the matter nor did Addison receive any subsequent correspondence that the “default” was not “cured.”

Addison’s Alleged Failure to Maintain Insurance

Aetna alleges that Addison has failed to maintain insurance. There are 4 policies in total – Wind Insurance, General Liability, Excess Liability and Property Insurance. Addison was able to get 3 of the 4 policies put into place within the 10 days given for the cure.

For the property insurance, underwriting typically takes 30-45 days and Addison is still awaiting a quote to bind that insurance. Addison currently has 3 different brokers working on getting that policy into place as well as a new Shared Limits policy that can go into effect immediately if Addison changes to a new property manager, replacing Asset Living. Addison would like to change to the new property manager to get cover immediately bound but cannot because of the wrongful Receivership currently in place. If Addison was able to make the changes contemplated, all 4 insurance policies would be bound and in place.

In this interim period, Aetna has put a gap policy in place for the property insurance which Addison is currently paying through cash flow from the Property.

Addison’s Alleged Failure to Inform Aetna of the Casualty and Alleged Failure to Restore the Property

Aetna alleges that it was not informed of a fire at the Property for over one year. It also alleges that Addison has not restored the Property after the fire.

Aetna was notified of the fire on January 31, 2022, the morning after the fire occurred.

From: Daniel Hamann
Sent: Monday, January 31, 2022 2:54 PM
To: Dan Wahlstedt <dwahlstedt@Northmarq.com>
Cc: Lacie Crumbley <Lacie.Crumbley@AssetLiving.com>
Subject: Savan Villas - Fire

Dan,

We had a major event last night and unfortunately 24 units were completely burned.

We will start the insurance process but I wanted to make you aware.

Thanks,
Daniel Hamann

Since then, Addison has made every reasonable effort to repair the Property after such a “Casualty” event including:

- 1) Immediately notifying lender, property manager and insurance company of fire incident- January of 2022;
- 2) Working with local fire investigators to provide access and determine cause – February of 2022;
- 3) Working to relocate residents and help them gather their things that remained after the fire – February to March of 2022;
- 4) Opening the insurance claim to obtain the proceeds to rebuild – February of 2022;
- 5) Hiring a public adjuster to challenge the initial low offer from the insurer - April of 2022;
- 6) Closing out the claim with the insurer and receiving proceeds – August of 2022;
- 7) Getting insurance proceeds to the lender to set up an escrow reserve for rebuild -| October of 2022;
- 8) Having the initial burn site fenced off to prevent looting and potential liability of

individuals entering the burned building which investigations / insurance inspections were still underway – February to October of 2022;

9) Having the burned building demolished and debris removed to clear the slab for rebuild – November to December of 2022;

10) Having architects develop plans for the rebuild of the structure and selecting a design scheme for rebuild - May to June of 2023;

11) Sending out plans to general contractor firms to solicit bids to rebuild – June to July 2023;

12) Selecting a general contractor for the rebuild and executing a contract for the work to begin – July of 2023;

13) Developing a capex budget reallocation plan and submitting the request to the lender to cover some of the gap between the rebuild cost and the insurance proceeds beyond what the borrower would cover – July of 2023;

14) Meeting with the city of Texas City Building and Planning department to determine permitting needed and any changes needed to plans before permit submission -| June of 2023; and

15) Drafting materials for investors to raise needed capital to close any remaining funding gaps in cost for rebuild – August to September 2023.

16) As of October 19, 2023, the Servicer Northmarq took possession of the insurance funds dedicated to restore the property, and to Defendants' knowledge, still holds the funds.

From: Dan Wahlstedt <dwahlstedt@Northmarq.com>

Sent: Wednesday, October 19, 2022 2:02 PM

To: Daniel Hamann <dhamann@magnoliapropertyholdings.com>; Warren Hitchcock <WHitchcock@Northmarq.com>

Subject: RE: Insurance 211795

Hi Daniel,

We have the insurance loss check now. Please send the other items when you are ready for a disbursement request to take place.

Thanks,

Dan Wahlstedt

Loan Portfolio Analyst II, Loan Servicing

Please note, I am working remotely. Please use email or the phone listed below.



C 651.323.4174

E dwahlstedt@northmarq.com

LinkedIn

Contrary to Aetna's allegations, Addison has steadily and consistently worked to get this building rebuilt over the last 18 months and would have shovels in the ground today if Aetna would not have withheld approval of the rebuild since July 2023.

Aetna Wrongfully Obtains Appointment of Receiver

On October 9, 2023, Aetna filed its Emergency Application for Appointment of Receiver ("Application") against Defendants.

On October 10, 2023, the Court entered its Order Appointing Receiver ("Order"). The Order was entered *ex parte*. No notice regarding Aetna's Emergency Application for Appointment of Receiver was provided to the Defendants as required by TRCP 695. Further, the Order did not require Aetna to post an Applicant's Bond as required by TRCP 695a.

On October 16, 2023, the Receiver filed an Oath of Receiver and attached to the Oath a Receiver's Bond.

No Applicant's Bond has been filed.

The actions of the wrongfully appointed Receiver have harmed Defendants.

CAUSES OF ACTION

Declaratory Judgment

Defendants re-allege the allegations set forth above.

Defendants are persons interested under a written contract, whose rights, status or other legal relations are affected by the contract. Defendants seek to have this Court declare that Defendants have performed, substantially performed, or that Aetna and the wrongfully appointed Receiver have made it impossible to perform pursuant to the terms of their contracts with Aetna. to have the Court determine questions of construction or validity arising under the contract.

Request for Temporary Restraining Order, Temporary Injunction and Permanent Injunction

Defendants re-allege the allegations set forth above.

Defendants seek a temporary injunction under Texas Civil Practice and Remedies Code § 65.011 and Texas Rules of Civil Procedure 680 and 681 to preserve the status quo pending a final trial on the merits.

Defendants ask the Court to enjoin Aetna and its substitute trustee, as identified in its Notice of Sale by Substitute Trustee dated September 29, 2023, from the non-judicial foreclosure of the property described in the Notice of Sale by Substitute Trustee at any time between the date of the Order and February 6, 2024.

It is probable that Defendants will recover from Plaintiffs after a trial on the merits because Plaintiffs have breached their agreements with the Defendants.

Legal Standard for Injunctive Relief Generally

To establish the right to a temporary injunction in state court, the applicant must show (1) immediate and irreparable injury; (2) the absence of an adequate legal remedy; and (3) probable right to recover. *Cooper Valves, LLC v. Valvetechnologies, Inc.*, 531 S.W.3d 254, 262 (Tex. App. Houston [14th Dist.] 2017, no pet.).

The purpose of a permanent injunction is to give final or permanent relief following final adjudication of the merits of the action in the trial court. *Cooper Valves*, 531 S.W.3d at 262.

Evidence in Support of Temporary Restraining Order

Defendants re-allege and incorporate the allegations in previous sections above by reference as if fully stated herein.

Defendants have provided significant evidence for the allegations provided in this petition. Defendants have shown that Defendants have not made a payment default in their obligations to Aetna. Further, Defendants have cured, are in the process of curing, or have been prevented by the actions of the wrongfully appointed Receiver from curing the defaults alleged.

Aetna cannot be allowed to foreclose the Property thereby wiping out Defendants' equity in the Property.

Defendants Have Pled a Cause of Action

Defendants have pled a likelihood of success on the merits of its claims.

Defendants have shown that Defendants have not made a payment default in their obligations to Aetna. Further, Defendants have cured, are in the process of curing, or have been prevented by the actions of the wrongfully appointed Receiver from curing the defaults alleged.

Defendants have pled each of the elements of their causes of action. Defendants have met the first requirement to obtain a temporary restraining order and temporary injunction.

Defendants Have a Probable Right to Relief

To show a probable right of recovery, the applicant must plead a cause of action and present some evidence that tends to sustain it. *Camp v. Shannon*, 162 Tex. 515, 348 S.W.2d 517, 519 (1961); *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W.3d 887, 897 (Tex. App. Houston [1st Dist.] 2011, no pet.); *TNT Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 23-24 (Tex. App. – Houston [1st Dist.] 1998, pet. dism'd).

In this regard, pursuant to TEX. R. CIV. P. 680, Defendants would show that a temporary injunction is absolutely necessary to stop foreclosure and sale of the Property.

Defendants are likely to succeed on the merits of their claim because the evidence submitted in support of the temporary restraining order shows that Plaintiffs have breached their agreements with the Defendants as Defendants have cured, are in the process of curing, or have been prevented by the actions of the wrongfully appointed Receiver from curing the defaults alleged.

Defendants' property is unique. Defendants have no adequate remedy at law. Defendants have shown a likelihood of success on the merits.

Probable, Imminent, and Irreparable Injury

An adequate remedy at law is one that is as complete, practical, and efficient to the prompt administration of justice as is equitable. *Intercontinental Terminals Co., LLC v. Vopak N. Am., Inc.*, 354 S.W. 3d 887, 897 (Tex. App. – Houston [1st Dist.] 2011, no pet.).

If Defendants' application is not granted, harm is imminent because there is an immediate danger that Aetna will continue on its planned course to foreclose and sell the property.

Aetna's sale of the property cannot be rectified with an award of damages.

Unless Plaintiff is enjoined from the acts complained of, Defendants will suffer

irreparable harm, for which Defendants have no adequate remedy at law.

Request for Injunctive Relief

Defendants ask the Court to issue a temporary restraining order to enjoin Plaintiff from foreclosing and selling the property.

Defendants are willing to post a reasonable bond under Tex. R. Civ. P. 684, as directed by the Court.

Defendants ask the Court to set their application for a temporary injunction for a hearing no more than fourteen (14) days after the signing of the temporary restraining order requested in this petition and, after the hearing, issue a temporary injunction against Aetna.

Defendants further request a trial on the merits and, at the conclusion thereof, entry of a permanent injunction if Defendants prevail.

Defendants have joined all indispensable parties under Texas Rule of Civil Procedure 39.

Accordingly, Defendants request that this Court award judgment against Plaintiff for the following:

1. A declaration of Defendants rights pursuant to the contracts with Plaintiffs;
2. An injunction pursuant to Texas Rule of Civil Procedure 680, to enjoin Plaintiff and its substitute trustee from foreclosing and selling the property;
3. A temporary restraining order pursuant to Texas Rule of Civil Procedure 680, to enjoin Plaintiff and its substitute trustee from foreclosing and selling the property;
4. All other relief to which Defendants may show themselves entitled, in law or in equity.

Respectfully submitted,

By: /s/Robert Kruckemeyer
Robert J. Kruckemeyer

State Bar No. 11735700
244 Malone Street
Houston, Texas 77007
bob@kruckemeyerlaw.com
Telephone: (713) 600-3473
Fax: (713) 600-7579

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record on November 2, 2023, by electronic filing.

By: /s/Robert Kruckemeyer
Robert J. Kruckemeyer

VERIFICATION

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day did personally appear Allyson Pritchett, who being first duly sworn by me, upon his oath did depose and state as follows:

"My name is Allyson Pritchett. I am the Managing Member of Addison Oaks Management LLC, which is the Manager of Addison Oaks Holdings, LLC and I am authorized on its behalf to make this Affidavit.

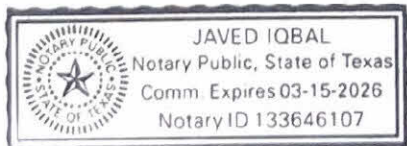
"I have read the above and foregoing Defendants' Counterclaim and Application for Temporary Restraining Order and Temporary and Permanent Injunction, and every statement contained therein is within my personal knowledge and true and correct.

Further affiant sayeth not."

ADDISON OAKS MANAGEMENT, LLC
MANAGER OF ADDISON OAKS HOLDINGS, LLC

By: Allyson Pritchett
Allyson Pritchett
Its: Managing Member

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this 2 day of November, 2023.



Javed Iqbal
NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS, HARRIS county

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Kruckemeyer on behalf of Robert Kruckemeyer

Bar No. 11735700

bob@kruckemeyerlaw.com

Envelope ID: 81239899

Filing Code Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party

Filing Description: Application for a TRO to stop a foreclosure set for November 7, 2023.

Status as of 11/3/2023 8:40 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Marlene Rangel		mrangel@huntonak.com	11/2/2023 12:20:57 PM	SENT
Michael ThomasKruckemeyer		mike@kruckemeyerlaw.com	11/2/2023 12:20:57 PM	SENT
Robert JosephKruckemeyer		bob@kruckemeyerlaw.com	11/2/2023 12:20:57 PM	SENT

Associated Case Party: Aetna Life Insurance Company

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Morfey		michaelmorfey@huntonak.com	11/2/2023 12:20:57 PM	SENT
Paige Dusthimer		pdusthimer@huntonak.com	11/2/2023 12:20:57 PM	SENT