

**CAUSE NO. 2023-75352**

**GILBERTO CANGAS, JR.  
AND JUSTINA DE  
PASQUALE – TRUSTEE**  
*Plaintiffs,*

vs.

**GUARANTEED RATE, INC.**  
*Defendant.*

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**157<sup>TH</sup> JUDICIAL DISTRICT**

**DEFENDANT GUARANTEED RATE, INC.’S RESPONSE TO PLAINTIFFS’  
APPLICATION FOR INJUNCTIVE RELIEF AND ANSWER TO PLAINTIFFS’  
ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Guaranteed Rate, Inc. (“Guaranteed Rate” or “Defendant”), Defendant in the above-styled and numbered action, and makes and files this its Response to Plaintiffs’ Application for Injunctive Relief and Answer to Plaintiffs’ Original Petition (“Petition”), and for such would respectfully show the Court as follows:

**I.**

**RELEVANT FACTUAL BACKGROUND**

1. This matter comes before the Court nearly one year after an almost identical request for a Temporary Restraining Order<sup>1</sup> (the “2022 Action”) by the same Plaintiff, against the same Defendant, related to the same property located at 25502 Forest Springs Lake, Spring, TX 77377 (the “Property”). The 2022 Action was removed to Federal Court and subsequently dismissed by Plaintiff on August 30, 2023.<sup>2</sup>

2. After more than a year of failing to make mortgage payments and engaging in dilatory tactics, on October 23, 2023, Plaintiff received a Partial Claim (the “Partial Claim”)

<sup>1</sup> See Plaintiff’s Original Petition, Application for Injunctive Relief, and Request for Disclosures, attached hereto as **Exhibit A**.

<sup>2</sup> See Order Granting Unopposed Stipulation of Dismissal without Prejudice, attached hereto as **Exhibit B**.

proposal from Guaranteed Rate in the amount of \$36,481.37.<sup>3</sup> This Partial Claim listed an effective date of November 1, 2023, with the first payment due on December 1, 2023. The date by which the executed Partial Claim documents were due was November 7, 2023. The borrower never returned the executed documents which voided the Partial Claim offer. This was at least the second time that the borrower failed to return properly executed Partial Claim documents after having already received a loan modification in 2021, on which he defaulted. The borrower would have to submit a new loss mitigation package for a new review.

3. As a result of Plaintiffs' failure to agree to the Partial Claim, the Property was listed for foreclosure sale on November 7, 2023<sup>4</sup>; however, even before this Court granted the *ex parte* Temporary Restraining Order ("TRO"), Defendant had pulled the foreclosure hearing due to the ongoing discussions with Plaintiffs related to the Partial Claim.

4. Now, Plaintiffs are asking this Court to grant their request for a Temporary Injunction ("TI") to continue running out the clock and refusing Defendant any remedy to the current situation except to continue in fruitless negotiations with Plaintiffs.

5. Indeed, Plaintiffs say the quiet part out loud in Paragraphs 42 and 43 of their Petition wherein they request the Court to grant a TI prohibiting any foreclosure of the Property and, after a trial on the merits, permanently enjoin Defendant from foreclosing on the Property.<sup>5</sup> Further, Plaintiffs state, in Paragraph 45, that "[t]he granting of the relief requested is not inconsistent with public policy considerations."<sup>6</sup> It goes without saying that removing the only remedy available to Defendant—that of foreclosure—completely undercuts Defendant's position as the primary lien

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<sup>3</sup> See Partial Claim, dated October 23, 2023, attached hereto as **Exhibit C**.

<sup>4</sup> See Certified Mailing of Notice of Default and Intent to Accelerate, dated March 7, 2023, attached hereto as **Exhibit D**; See Certified Mailing of Additional Statutory Required Disclosures, dated March 8, 2023, attached hereto as **Exhibit E**; See File Stamped Notice of Foreclosure Sale, dated August 24, 2023, attached hereto as **Exhibit F**.

<sup>5</sup> See Plaintiffs' Original Petition, Application for Injunctive Relief, and Request for Disclosures, on file with the Court, at paragraphs 42–43. Emphasis added.

<sup>6</sup> *Id.* at paragraph 45.

holder and certainly cuts against all reasonable public policy considerations.

6. For those reasons, Plaintiffs' Request for a TI should be denied, and the TRO should be dissolved.

**IV.**  
**GENERAL DENIAL**

Defendant generally denies each and every material allegation contained in Plaintiffs' Original Petition, demands strict proof thereof, and, to the extent such matters are questions of fact, says Plaintiffs should prove such facts by a preponderance of the evidence to a jury.

**V.**  
**PRAYER**

Defendant Guaranteed Rate, Inc. respectfully requests that the Court deny Plaintiffs' request for a Temporary Injunction, dissolve the Temporary Restraining Order, and for such other and further relief, both at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

/s/ Connor L. Ballinger

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**ATTORNEY FOR GUARANTEED RATE, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served on all known counsel of record in this cause in accordance with the TEX. R. CIV. P. on this 28th day of November 2023.

/s/ Connor L. Ballinger

### Automated Certificate of eService

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