

(“AVTTS”), and RF MORTGAGE SERVICES CORPORATION (“RFMSC”)¹, the applicable law, the Court makes the following factual determinations and based thereon, is of the opinion that the request for TRO should be granted.

Based on the evidence before the Court, the Court FINDS as follows:

1. On or about November 1, 2022, Plaintiff borrowed the amount of \$360,500.00 from RFLF 4, LLC (“RFLF4”), a Delaware limited liability company (the “Loan”), the original lender, for the purpose of facilitating the purchased and/or construction of a house on certain real property located in Houston, Texas described in the *Notice of Foreclosure Sale* attached to the Verified Petition as **Exhibit “1”** and incorporated herein by reference as if fully set forth (the “Property”). The street address of the Property is 3306 Bacchus Street, Houston, Texas 77022.
2. The Loan provided for interest only payments for 12 months and then a balloon payment due of \$360,500.00.
3. The Loan was secured by a Deed of Trust in favor of RFLF4. See **Exhibit “2”** hereto.
4. On information and belief, USBTNA is the current mortgagee of the Loan and beneficiary of the Deed of Trust, not in its individual capacity but solely as trustee of Grove Funding I Trust.
5. RFMSC is the mortgage servicer of the Loan.
6. RFMSC appointed AVTTS as the substitute trustee to act under and by virtue of the Deed of Trust.
7. Plaintiff timely made all payments under the Loan, except the final payment due thereunder in the amount of \$360,500.00.

¹ Unless otherwise noted, USBTNA, AVTTS and RFMSC will be referred to collectively herein as the “Defendants.”

8. Plaintiff advised Defendants that it intended to refinance the balance of the Loan and that that refinance would close by the end of January 2024.

9. Defendants advised Plaintiff that they had no objection to Plaintiff refinancing the Loan and provided a payoff amount through the end of January 2024.

10. To Plaintiff's knowledge there was no notification received from Defendants that the Loan was declared to be in default or any notification that Plaintiff had an opportunity to cure any such default.

11. The Notice of Foreclosure Sale (**Exhibit "1"** to the Verified Petition) and the Notice of Acceleration (**Exhibit "3"** to the Verified Petition), both dated December 11, 2023, deceptively and unlawfully fail to mention the existence of a default, the grounds for acceleration or the amount due and owing under the Loan. Plaintiff believes and has information to believe that the Loan was accelerated because Defendants had foreclosed on real property of another unrelated entity who then filed a lawsuit against Defendants to set aside the foreclosure, neither of which is grounds for declaring a default, let alone posting the Property for foreclosure sale less than two (2) weeks after the final payment on the Loan was due, to permit Defendants could take ownership and control of the Property to realize any equity to the detriment of Plaintiff whom they knew was attempting to obtain refinancing to take out the Loan.

12. Defendants were aware that Plaintiff was in the process of refinancing the Loan and would be paying the entire indebtedness through this refinancing.

13. At all times relevant to this action, Robert Wiseman was the authorized agent and custodian of records of Plaintiff.

14. Had Plaintiff been made aware that Defendants never intended to recognize their agreement to Plaintiff refinancing the Loan any making payment by the end of January, Plaintiff would have paid off the Loan by December 1, 2023.

15. There is equity in the Property.

16. Plaintiff does not want to lose the equity in the Property.

17. Plaintiff would suffer substantial harm were they to lose the equity in the Property.

18. Plaintiffs have demonstrated a *prima facie* case evidencing a substantial likelihood of success on the merits of their claims against Defendants.

19. There is a risk of irreparable harm to Plaintiffs. If the foreclosure sale were to proceed, Plaintiff would lose most, if not all, of the equity in the Property and its plans for the Property will have been thwarted.

20. It is in the public interest to issue the TRO because Texas values rights of its citizens and residents in real property and the value of real property, if there is a threat to the realization of the value of that property, which proceeds would be otherwise exempt from attachment by Plaintiffs' creditors.

21. Finally, the threatened harm to Plaintiff is outweighed by the threatened harm to Defendants. Given the intention of Plaintiff to pay off the Loan in its entirety by January 31, 2024, as well as an equity cushion in the Property, abating the foreclosure would not harm Defendants because they are protected by the imminent payment of the Loan and the non-diminishing value of the Property. On the other hand, the sale of the Property at foreclosure would jeopardize Plaintiff's ability to realize the equity in the Property.

Based on the foregoing, the Court finds that Plaintiff will suffer immediate and irreparable injury in the form of a loss of equity in the Property unless this Order is granted without notice. It is, accordingly, ORDERED as follows:

1. The Motion is GRANTED; and

2. Defendants, together with their respective owners, members, shareholders, affiliates, subsidiaries, customers, agents, officers, subsidiaries, assign, attorneys, and banking or financial institutions, and any person or entity receiving notice of this Order are hereby enjoined from engaging in any action, and engaging in, committing or performing directly and indirectly, any action to take possession of and/or sell the Property until such time as this Order is dissolved or terminates by operation of law;

3. Given the equity in the property and current valuations obtained by Defendant, Defendant's interest in the Property is adequately protected and, therefore, no bond in this matter will be required.

4. Plaintiff, through counsel, shall serve a true and correct copy of this Order on Defendants directly or through any counsel of record, known officer or authorized agent, or their registered agents, if any, and any other parties who may be subject to the Order.

5. A hearing to determine whether a preliminary injunction should be entered shall be held before the Court on **January 05**, 2024, at **1:00** o'clock **p**.m. **Bond \$500.00**

Signed this _____ day of _____, 2024, at _____ o'clock ____ .m.,

Harris County, Texas.

Signed:
12/28/2023
10:35 PM



Judge Presiding

PRESENTED BY:

AKERLY LAW PLLC

By: /s/ Bruce W. Akerly
Bruce W. Akerly
Texas Bar No. 00953200

ATTORNEYS FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burgess District Clerk