

CAUSE NO: 2022-39990

VITORINO, NICIA  
AS ASSIGNEE, OF WILLIAM  
CALLEDARE

*Plaintiff*

VS

POST OAK CROSSING COUNCIL OF CO-  
OWNERS  
WOODFOREST ASSOCIATION  
SEARS BENNETT \$ GERDES LLC  
GERDES SARAH

*Defendants*

Vs

KAPUR, RAMESH

*Intervenor*

§ IN THE DISTRICT COURT

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151<sup>ST</sup> JUDICIAL DISTRICT

HARRIS COUNTY

TEXAS

INTERVENOR'S SECOND AMENDED SWORN PETITION  
TO INCLUDE ANOTHER DEFENDANT, MOTION FOR  
INTERVENTION, REQUEST FOR  
INJUNCTIVE RELIEF AND FOR SANCTIONS  
AGAINST DEFENDANTS

TO THE HONORABLE JUDGE OF THE SAID COURT:

COME NOW Ramesh Kapur, the Intervenor in the above cause of action and pursuant to Rule 60 of Texas Rules of Civil Procedure intervenes by filing his Second Amended Pleadings, complaining of all of Defendants and now includes Sarah Gerdes as additional defendant along with Post Oak Crossing council of Co-owners, Woodforest Association and Sears Bennett & Gerdes LLC, in the above cause of action.

## 1. DISCOVERY LEVEL

1. Intervenor shall conduct discovery under Level 2 of the Discovery Control Plan as stated in Rule 190 of the Texas Rules of Civil Procedure.

## 2. PARTIES

2. Plaintiffs William Caledare and Nicia Vitorino are individuals who are residents of 3219 Ashton Park Drive., in Houston, TX 77082 in the Harris County.

3 Defendant Post Oak Council of Co-owners (“Post”) is a non-profit organization doing business in the State of Texas in the County of Harris. Post to be served through its registered agent HOA Management at 5850 San Felipe St., Ste 500 in Houston TX 77057

4. Defendant Woodforest Association (“Woodforest”) is also a Texas non-profit corporation to be served through Sarah Coleman at Prestige Association Management Group at 1419 Kingwood Dr., 103, Kingwood Texas 77339

5. Defendant Sears Bennett & Gerdes LLC., (“Sears”) is also a Texas Corporation in good standing to be served by serving its registered agent at 6548 Greatwood Parkway in Sugarland, TX 77479 in the Fort Bend County in Texas.

6. Sarah Gerdes (“Sarah”) is a licensed attorney who is a partner of Sears Bennett and Gerdes LLC and can be served at the same location 6548 Greatwood Parkway in Sugarland , TX in Fort Bend County.

7. Intervenor is Ramesh Kapur, a resident of Harris County whose resides at 323 W30th Street Houston, Tx 77018.

### 3. VENUE AND JURISDICTION

8. Venue is proper in Harris County, Texas as all or substantially all of the events giving rise to the claims of the Intervenor occurred in Harris County, Texas

9. Both Properties, subject matter of the controversy, were purchased by Intervenor in HOA foreclosure sale from Defendant Sarah on June,1, 2021, and funds were tendered by the Intervenor to Sarah Gerdes. The description of each property (“Condo”) follows and incorporated herein by reference :

a) Property-1 is a condominium and is described as:

1818 Augusta Dr., Unit 20 in Houston, TX 77057

Legal: Unit 20 Bldg. C :  
Post Oak Crossing Condo Amend  
In Harris County

b) Property-2 is also a Condominium and is described as  
12955 Woodforest Blvd., Apt. 33., Houston, TX 77015

- Legal: TH 33., BLDG D  
- Woodforest Condo in Harris County

10. The Court has the jurisdiction over the subject-matter as the amount in controversy is within the jurisdictional limits

## 5. INTRODUCTION

11. On Oct.3, 2022, the Intervenor Filed its First Petition in Intervention, alleging Defendants of certain actions which could be detrimental to the interest and rights of the Intervenor.

12 Although the Intervenor could have brought some or all of the same actions in his own name, the Rule 60 of TRCP allows to enter plea of intervention as being essential to protect the intervener's interest. See *Guar.Fed. Sav. Bank vs Horseshoe Operating Co.*, 793 SW.2d 652, 657 (Tex, 1990)

13 On October 4, 2022, the Intervenor moved for a Temporary Restraining Order to prevent Defendants to foreclose both properties in which the Intervenor was the party of interest having funded in full the purchase price of both properties, The Plaintiff's attorney also appeared to seek TRO which Ancillary Judge granted.

14. The Intervenor attempted to reach Sarah Gerdes immediately upon signing of the order by the Ancillary Judge and rushed to the foreclosure site at Knights Street, the venue for foreclosures. Sarah could not be reached but her

office was notified of a Court Ordered TRO.. It is also believed the Plaintiff's attorney took similar action.

## 5. FACTS

15. Intervenor is an investor who was the successful bidder on foregoing two properties foreclosed by Sarah Gerdes, a partner with Sears law firm, one of the Defendants. Such non-judicial sale was conducted on **June 1, 2021** in Harris County, TX .

16. Both sales generated substantial amount of overage, well over \$20,000 each, it is believed. Even though Sears claims the overage is always returned to the prior owner (since deceased in this case and possibly mail returned to Sears ), there is no evidence those funds were escheated to State of Texas in Unclaimed Money division.

17. Intervenor is the party of interest as the funds to purchase both properties were tendered to Sarah Gerdes by the Intervenor, not by the Plaintiff. The Plaintiff did not contribute any amount towards the purchase of both properties and did not, any time, participate in the bidding process.(see **Exhibit-A** Affidavit of Nicia Vitorino page-4 which stated as follows *“ he ( attorney Rabie) had been hired by Mr. **Ramesh Kapur, who has interest in this case, as he invested on both properties**”*

The Affidavit (Page-1. Para 4 further states:

“The purchase at the auction was assisted by Mr, Ramesh Kapur, a longtime acquaintance of mine and experienced real estate investor who had an extensive professional relationship with Sarah Gerdes”

The Plaintiff has been burnt so badly by the Defendants’ action that Intervenor provided funds to even hire the attorney representing her currently.

18, As recently as July, 2022 , the Plaintiff in an email to Sears acknowledged the amount having been financed by the Intervener and thus Plaintiff had no interest in both properties (Exhibit. B) except to protect Intervenor’s interest

19. While Plaintiff is in possession and control of Property-1, Property-2 has recently been taken possession by the Intervener as the Plaintiff declined to own this property because of the following reasons :

a. Vacancy loss for minimum of 11 months on Woodforest Condominium from the sale date (loss of almost \$16,500) because of 11 months of delays caused by Sears/Sarah Gerdes in issuance of deed, foreclosure action, adding outrageous,, unreasonable and unheard foreclosure fees of about \$15,000, a deceitful action and misconduct of Sears/Sarah Gerdes. Demanding \$19,000 including posting and foreclosure fees of about \$15,000

b, Failure to intervene into Tax lawsuit (Cause Number 2020-36848 pending in 157<sup>th</sup> District of Harris County ) because Plaintiff/Intervenor had no legal standing to intervene in absence of any deed, the property continued to be in the name of deceased Linda Dillard’s name. The tax liability and burden

have increased substantially to over \$16,000 (Exhibit-C) because of 11 months of inordinate delays caused by Sarah Gerdes in issuance and recording of deed.

c. On October 4, 2022, in retaliation and in defiance of court orders, Sarah conducted sale of the Woodforest property and sold to third party for a minimum opening bid of \$19,000 (assessment dues were less \$4500)

20. The Property-2 was offered for sale but there being no bidder, the property-2 was struck off to Post., the Defendant. The Mortgage lien holder, in the meantime, accelerated the note, posted for foreclosure on October 4, 2022 because Plaintiff/Intervenor had failed to establish the ownership rights, there being no deed for 11 months. Last minute intervention by the Plaintiff/Intervenor prevented the lender to foreclose on October 4, 2022.

21. The Plaintiff refused to reimburse the Intervenor, there being no deeds having been issued by Sarah within reasonable time and hence on June 11, 2021, Defendant Sarah Gerdes was requested to issue the deeds in the name of Intervenor.

22. On July 6, 2021, the Intervenor met Sarah, the partner of Sears, at a subsequent foreclosure sale who promised to provide deeds in Intervenor's name once 90 days of the redemption period had expired.

23. On Sept. 27, 2021, Intervenor reminded of issuance of deeds because redemption period had expired (Exhibit D)

24. Instead, Sears recorded and issued deeds on or about May 23, 2022 (after 11 months) on each property in Plaintiff's name with the sole intentions to

foreclose both the properties on July 5, 2022, in violation of Property Code requiring 45 days notice from HOA to cure alleged default, if any, followed by a demand letter from Sears. Between issuance of deed and foreclosure, there exists a window of 40 days and during this period the foreclosure fees of over \$15,000 were added on each property.

25. The Plaintiff, protecting Intervenor's interest, authorized Intervenor to make payment to Sears even though outrageous legal fees had been included. The request to make payment in three instalments pursuant to property code section 209, was denied and Sears demanded cashier's checks sharp at 900 AM on July 5, 2022. It was humanly impossible, the bank being closed on 4<sup>th</sup> July week-end.

26. On July 6, 2021, the Intervenor met Sarah at a subsequent foreclosure sale who committed to deed both properties in Intervenor's name once the redemption period has expired

27 While the purchase was made on June 1, 2021, Sears named William Caledare as being the Grantee on both the properties, issued and recorded deeds almost a year later. However, it appears both the deeds were notarized by an in-house Notary, back-dating to June, 2021, but recorded in May 2022.

28 In the meantime, the Intervenor could not intervene in a tax lawsuit against the prior owner, No answer having been filed, the default judgment once rendered would



create a lien on the subject property and foreclosed upon. The incidence of additional penalties, legal fees, interest payments are continuing to rise for which Sears is liable,

## 6. DEFENDANT SEARS INDULGING INTO DECEPTIVE TRADE PRACTICES

29. Sears and Sarah in collaboration have indulged into Deceptive Trade Practices by adding between \$12,000 to \$14,000 as being his legal fees on Property- 1 and almost identical amount on Property -2.

30 These fees are outrageous, unreasonable and tantamount to Deceptive Trade Practices, A written request to allow a payment plan, a minimum of three payments allowed under the Texas Property Code 209, was denied in order to deprive Intervenor of his interest in the properties. Both the properties were scheduled to be foreclosed upon on October 4, 2022. (Exhibit-E)

31 .Both the prior owners having died interstate, Sears have taken advantage of the situation as no excess proceeds have been deposited with Controller of Public Accounts in Unclaimed Money division.

32 Sears, in a similar situation, when the excess proceeds remain unclaimed, had paid over six months of the association dues following foreclosure and made the

Plaintiff/Intervener believe the assessment dues have been paid or being paid from the excess proceeds as being the practice in the past (Exhibit- F )

33. It is most likely , Sears decided to improperly pocket every penny of the excess proceeds and changed the practice of paying six months of dues from the excess proceeds. Sears when informed of the past practice was expected to notify of the new policy in force.

7. DEFENDANTS IN VIOLATION OF PROPERTY CODE AND THEIR DECLARATION

34. On Property-2, the outstanding amount as of June 16, 2022 is shown as \$6850.24 (Exhibit -G) including legal fees and other unexplained amount of \$ 2367.34 having been posted to account between June 7 and June 10, 2022 as under

Attorney fees:	\$210.84
May 22 Attorney fees:	\$708.00
O&E Report	\$265.50 (Unexplained)
Foreclosure document	\$1062.00
Courier Fee	\$ 121.00 (Unexplained)
Total:	\$2367.34 (Exhibit-G)

That would leave an unpaid assessment dues , including any late fess etc., as being \$ 4482.90 as of July 5, 2022. whereas the demand was made in the amount of \$ 11,077.59 .( Exhibit-G) to prevent October sale. Sears added additional \$8000 as being the minimum opening bid as foreclosure fees.

35. .In other words Sears has conveniently added \$6,594.69 as being his legal fees. Still being not satisfied for his greed, he has attempted to deceive and cheat by indicating that amount being good through September 23, 2022 (paragraph-3 of Exhibit-H) . The amount now well stood as \$ 8594.69 with the additional \$1500 claimed for “Preparation for Sale” work. It is not understandable what that would mean by Preparation for Sale

36. The Intervener witnessed the foreclosure sale of Woodforest condominium conducted by Sarah Gerdes on October 4, 2022 although her office was advised of granting of TRO . Surprisingly, the property was offered at an opening bid of \$19,000. In other words, Sarah Gerdes added between \$12,000 and \$14,000 as being foreclosing fees. The only bidder who purchased the property at \$19,000 was one Mr. Patel who tendered the funds to Sarah Gerdes. The amount of attorney fees being ridiculous, outrageous and unreasonable, the Intervenor requests this court to reprimand Sarah Gerdes and her law firm of Sears Bennet and Gerdes and upon finding Sarah and her law firm guilty impose sanctions.

37, Sarah Gerdes , in one year period has foreclosed over 32 properties in Harris County alone, collecting, according to one estimate, over 3 million dollars from homeowners, This amount is the fraction of the amount otherwise exorted by this firm

from owners who succumbed to their unethical or illegal practices to save their homestead being foreclosed upon.

38. In addition, Sarah Gerdes has placed lien on as many as 90 properties of homeowners during one year period in Harris County alone. The Intervener sues the Defendants for indulging into Deceptive Trade Practices. taking appropriate action under the statue.

39. The Property-1 , was also put to auction in contempt of court on October 4, 2022 with the opening bid at \$20,000 while the assessment dues being 1/3<sup>rd</sup> of the opening bid . In other words, the attorney fees once again being charged between \$13,000 to \$14,000.

40 Further, in absence of a deed or proof of ownership to seek possession or file eviction on Woodforest property, the Intervenor/Plaintiff could not petition any eviction or take any possession action . The JP court required proof of ownership and there being none, the Intervenor/Plaintiff failed to Petition court and seek possession which could only be had after May 13, 2022 when Defendant Sears recorded the Deed.

#### 8. ARGUMENT IN SUPPORT OF INTERVENOR'S INTEREST

41. Intervenor has justiciable interest in the matters in controversy in this litigation. An Intervenor may intervene is suit if it could have brought all or part of the same suit in its own name. See *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990). Intervenor could have sued and recovered against Plaintiff and Defendants in its own name. Additionally, this intervention will not complicate or cause

undue delay in this case as the underlying case is in its infancy. The allegations in this petition overlap and to further illustrate the appropriateness of this intervention, if Intervenor were to bring its *claims in separate lawsuit, the parties would be situated just as would be before this Court. See Inter-Continental Corp. v. Moody, Intervenor's Petition in Intervention, Page Electronically Filed 8/2/2022 4:59 PM Hidalgo County District Clerks Reviewed By: Alejandra Medina 411 S.W.2d 578, 589 (Tex. Civ. App.—Houston 1966)* (allowing intervention where intervenor shareholder could have initiated the suit, and where intervention would prevent the need to file separate suit). Indeed, “[j]udicial economy requires that [the intervenors] intervene and participate in the trial in order to avoid multiplicity of lengthy lawsuits.” *Guar. Fed. Sav. Bank, 793 S.W.2d at 658.* 3.3 Additionally, intervention is proper even if plaintiff could not have sued the intervening party directly; the proper consideration is the intervenor's interest in the outcome of the case. *Jenkins v. Entergy Corp., 87 S.W.3d 785, 797 (Tex. App.—Corpus Christi 2006, pet. denied)* (“Even where an intervenor has not or could not have been sued directly, if judgment for the plaintiff may lead to an action against the intervenor or otherwise seriously prejudice the intervenor, the intervention is necessary to assure proper defense against the claim.”); *Evan 's World Travel, Inc. v. Adams, 978 S.W.2d 225, 234 (Tex. App.—Texarkana 1998, no pet.) (same); see also Stansell v. Fleming, 16 S.W. 1033, 1034 (Tex. 1891)* (explaining that party is entitled to intervene in an action when their rights are implicated by the subject—matter of the litigation making it necessary for the party “to come into the case for the preservation of that right”). Here, Intervenor is entitled to intervene in this case because (a) it has justiciable interests in the controversy sufficient to have “brought the same action or defeated any part thereof” even

if it could not have been sued directly b) "the intervention will not complicate the case by an excessive multiplication of the issues," and (c) this intervention is "essential to effectively protect this Court has jurisdiction . *Tex. Civ. Prac. Rem. Code 15.002(a)(1 detail herein.*

## 9. REQUEST FOR INJUNCTIVE RELIEF

42. Intervenor incorporates by reference the preceding paragraphs as if set forth fully herein. In light of the above-described facts, Intervenor seeks damages from the Defendants. The nature of this lawsuit is to obtain payment from the Plaintiff of his \$30,000 paid on Property-1, in addition to a deed on Woodforest property. The Defendant Sears is liable for issuance of the Deed after 11 months and posting of outrageous legal fees, violation of the Uniform Condominium Act and indulgence into Deceptive Trade Practice. Intervenor's claims are set forth in more detail above.

43. Unless this Court immediately restrains Sears, Intervenor will suffer immediate and irreparable injury for which there is no adequate remedy at law to give Intervenor complete final and equal relief. More specifically, Intervenor will show the Court the following:

- a. It is highly likely that Sears is employing all fraudulent tactics to deprive other homeowners.

b) There is no adequate remedy at law that will give Intervenor complete, final, and equal relief unless the Plaintiff and Defendants answer to Intervenor's complaint . *See Castilleja, 414 S.W.2d at 433.*

44. Intervenor has met its burden by establishing each element for injunctive relief and provide precedent for this relief in this situation. Therefore, Intervenor is entitled to the Injunctive relief. The Intervenor is willing to post the bond , the amount of bond to be determined by the court.

45. Intervenor requests the Court to order Defendants to provide an item-wise basis for posting outrageous legal fees and amount for alleged violations that occurred when the properties were not in control or in possession of the Plaintiff/Intervenor in absence of any deeds.

46. Intervenor has attempted under authorization from the Plaintiff to make payments from the date the deeds were recorded. The other two Defendants refused to accept any amount, the accounts being in legal with Sears.

10. RELIEF REQUESTED

47 . Intervenor seeks to avoid any risk that the associations will seek foreclosure, or any other improper relief concerning the debt or other violations baselessly asserted by the associations . The Intervenor seeks judgment against the Defendants for the damages

48. Intervenor requests this court to declare deed on Woodforest void and deed issued to the Intervenor. The property being under tax lawsuit is at risk to a judgment and unless intervened, the property would be foreclosed upon for unpaid taxes.
- 49-. The Property -2 was posted for foreclosure on October 4, 2022 by the superior lien holder. The Intervenor has managed to get it postponed and unless court has ordered a deed on the property-2 , the damage would be irreversible if the deeds.
50. Intervenor further requests this court to ask sears and other Defendants to explain their conduct for issuing and recording deeds after 11 months of sale and be held accountable for damages, loss of rent, and other damages as justly entitled.
51. Defendants be held responsible for the legal fees to be incurred by the Intervenor pursuant to Rule 37.001 of Civil Practices and Remedies Code.
52. Court provide further monetary relief for additional legal fees, interest payments , penalties and increased amount of taxes due to Plaintiff/Intervenor's failure to intervene in the ongoing tax lawsuit in absence of any deed to Property -2.
53. Intervenor further seeks damages for which it may show itself justly entitled
54. The court is further requested to order acceptance of assessment from the date the deeds were recorded in County Clerk record.. All legal fees, fines, late fees .and so forth may kindly be ordered waived and Plaintiff/Intervener allowed to deposit assessment dues in the registry of court.



55. The foreclosure sale of Woodforest property to third party in contempt of court be declared void.

11. PRAYER

WHEREFORE PREMISES CONSIDERED Intervenor requests that all parties to this lawsuit be cited to appear and answer, and that this court enter judgment for the Intervenor for the relief requested above ,

-An INJUNCTION compelling the Defendants to issue a true statement of account beginning May 22, 2022

-Appropriate attorney's fees when deployed, costs of the court and such other and further relief, both general and special, at law or in equity, to which Intervenor may show itself justly entitled ,

RESPECTFULLY SUBMITTED

/s/Ramesh Kapur\

Intervenor

323 W30th Street, Houston TX 77018

[kapurhouston@yahoo.com](mailto:kapurhouston@yahoo.com)

281-455-7998

COUNTY OF HARRIS

STATE OF TEXAS

VERIFICATION

Subscribed and sworn before me, the undersigned authority on \_15th day of October, 2022 by Ramesh Kapur that the statements made in the foregoing petition and the Exhibits attached thereto are within his personal knowledge and are true and correct

Notary Public

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. VERIFICATION JURAT/UNSWORN DECLARATION (Texas Civil Practice and Remedies Code, Section 132.001) NOTICE: THIS FORM CONTAINS SENSITIVE DATA.

MY NAME is Ramesh Kapur. My address is 323 W30th Street Houston, Texas 77018 , Harris County. I declare under penalty of perjury that the foregoing document and every statement contained therein, is within my personal knowledge and is true and correct. Executed in Harris County, State of Texas, on this date: 10/15/22. \_\_\_\_\_

*/s/Ramesh Kapur*

Pursuant to Texas Civil Practice and Remedies Code Section 132.001, an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law. This provision does not apply to an oath of office or an oath required to be taken before a specified official other than a notary public. An unsworn declaration made under this section must be 1) in writing, 2) signed by the person making the declaration as true under penalty of perjury and 3) in substantially the form used above.

*/s/Ramesh Kapur*

#### Certificate of Service

Certified that a true and correct copy of this hearing has been forwarded to Plaintiff and the Defendants on this 17<sup>th</sup> day of October 22, pursuant to rule 21a of TRCP

*/s/Ramesh Kapur*

Unofficial Copy Office of Marilyn Burgess District Clerk

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