

No. 2024-13928

ALEJANDRO DEL VALLE DE LA VEGA \* IN THE DISTRICT COURT  
\*  
v. \* HARRIS COUNTY, TEXAS  
\*  
INDEPENDENT BANK \* 157<sup>th</sup> DISTRICT COURT

**ORIGINAL ANSWER OF INDEPENDENT BANK  
AND RESPONSE TO APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND INJUNCTIVE RELIEF**

Defendant, Independent Bank, answers the Petition filed by the Plaintiff, Alejandro del Valle de la Vega, and responds to the Application for Temporary Restraining Order and Injunctive Relief, as follows:

**Answer**

1. Independent Bank generally denies the Plaintiff's claims, in accordance with TEX. R. CIV. P. 92 and asserts any defenses required to be affirmatively pled in accordance with TEX. R. CIV. P. 94.

2. Independent Bank specifically denies that any of the alleged conditions precedent, have been performed by Plaintiff, in accordance with TEX. R. CIV. P. 54.

**Response to Application for TRO and Injunctive Relief**

3. On March 4, 2024, a Temporary Restraining Order and Order Setting Hearing on Application for Temporary Injunction was granted in this case. A hearing is currently scheduled on March 18, 2024 at 8:30 a.m. on the Plaintiff's Application for Temporary Injunction. The undersigned counsel for Independent Bank spoke to counsel for the Plaintiff early in the day on March 4, 2024, but there was no mention of the plans to request a Temporary Restraining Order, and

no call was received by the undersigned counsel for Independent Bank prior to the *ex parte* presentation of the Application for Temporary Restraining Order. This is despite the undersigned counsel providing his cell phone number to Plaintiff's counsel on the morning of March 4, 2024. As a part of the Temporary Restraining Order, Independent Bank is ordered not to "re-post" the property for any future foreclosure sale.

4. Independent Bank is barred from "re-posting" the property for foreclosure, despite the fact that the basis for the relief requested by the Plaintiff was a contract for the sale of the property which was scheduled to close on March 8, 2024. The Temporary Restraining Order which was signed on March 4, 2024 is therefore overly broad in the relief granted to the Plaintiff, by barring the "re-posting" of the property for foreclosure, and there is no known basis for the granting of a temporary injunction at the hearing scheduled for March 18, 2024 at 8:30 a.m.

5. This lawsuit was filed despite the fact that just five (5) days earlier, on February 29, 2024, the Plaintiff filed another lawsuit in Case No. 2024-13262, in the 152<sup>nd</sup> District Court, which is still pending.

6. At this point, the undersigned counsel for Independent Bank is not sure who is representing the Plaintiff. The Plaintiff has filed two (2) lawsuits, has two (2) different attorneys representing the Plaintiff, and there are reportedly at least two (2) contracts for the sale of the property which are pending.

7. In the mean time, Independent Bank is restrained from posting the property for foreclosure and was therefore unable to post for a foreclosure sale in the month of April. As long as a temporary injunction is not granted by this Court on March 18, 2024, Independent Bank will be able to post for a foreclosure sale on the first Tuesday in May, 2024. Independent Bank must give notice to the

Internal Revenue Service of any foreclosure sale at least twenty-five (25) days before any scheduled foreclosure sale, because the Plaintiff has IRS liens.

8. The property is not the homestead of the Plaintiff. The Deed of Trust includes a Second Home Rider, which provides “Borrower shall occupy, and shall only use, the Property as Borrower’s Second Home.” The property is not designated as homestead with the Harris County Appraisal District. The Plaintiff lives in Mexico, and his visa to enter and spend time in the United States, is believed to have expired, or been revoked.

9. The loan is due for the September 25, 2023 monthly installment, and installments due after September 25, 2023. There is also a negative escrow balance of \$19,880.35.

10. The Bank has posted the property for foreclosure on several occasions in the past, and on February 6, 2024, the Bank agreed to postpone the foreclosure scheduled for that day because of a confirmation received that the Plaintiff was wiring funds to pay the amounts past due on the loan. But, this was an apparent misrepresentation, because no funds were ever received, so the property was posted for foreclosure for a sale on March 5, 2024.

11. The Plaintiff is believed to be in Mexico and the Plaintiff’s visa to enter and spend time in the United States is believed to have expired or been revoked.

12. The Plaintiff admits in paragraph 6 of the Plaintiff’s Original Petition and Application for Temporary Restraining Order that the loan is due for the September, 2023 monthly installment. The Plaintiff also admits in paragraph 7 of the same Petition that the sale of the property was scheduled to close on March 8, 2024. In paragraph 9, the Plaintiff states that he has a cash buyer who can pay the amounts owed to Independent Bank, however, the copy of the contract is for less than the amounts owed to the Bank and the price also does not include an amount sufficient to pay

the amounts owed to the Internal Revenue Service.

13. Needless to say, the Plaintiff does not come to this Court with “clean hands” and is therefore not entitled to equitable relief to restrain and enjoin the scheduled foreclosure sale.

**Motion to Dismiss**

14. Independent Bank respectfully requests that these claims be dismissed under TEX. R. CIV. P. 91a, because there is no basis in law or fact with respect to any liability of Independent Bank, and it is further requested that Independent Bank recover its attorneys fees and costs incurred in accordance with Rule 91a.

Wherefore, Defendant, Independent Bank, respectfully requests that the Plaintiff take nothing in this case, and that Independent Bank recover reasonable attorneys fees and costs incurred; and that Independent Bank be awarded such other and further relief to which Independent Bank may be entitled to receive, including but not limited to the denial of the Application for Temporary Restraining Order and Injunctive Relief.

Respectfully submitted,

Goodwin & Harrison, L.L.P.

/s/ Josh M. Harrison

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**Certificate of Service**

This is to certify that a true and correct copy of the above pleading has been served on the following, on the date of filing:

Branch M. Sheppard  
Annarose M. Harding  
1301 McKinney, Suite 1400  
Houston, Texas 77010  
Galloway, Johnson, Tompkins, Burr & Smith  
By E-Service

/s/ Josh M. Harrison  
Josh M. Harrison

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Josh Harrison on behalf of Josh Harrison  
Bar No. 9116300  
josh@goodwin-harrison.com  
Envelope ID: 85513570  
Filing Code Description: Answer/ Response / Waiver  
Filing Description: Original Answer of Independent Bank and Response to Application for Temporary Restraining Order and Injunctive Relief  
Status as of 3/13/2024 1:54 PM CST

#### Case Contacts

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