

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**SHARON COUCH AND
DICKEY COUCH,**

Plaintiffs,

v.

**THE BANK OF NEW YORK MELLON,
f/k/a THE BANK OF NEW YORK as
Successor in Interest to JPMORGAN
CHASE BANK, N.A. as Trustee for
NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2005-4, NOVASTAR
HOME EQUITY LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-4,**

Defendant.

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§ NO. 2:24-cv-00085-O
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**PLAINTIFFS’ SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiffs Dickey Couch and Roland Couch (“Plaintiffs” or the “Couches,” collectively) respectfully submit this supplement brief in support of our request for preliminary injunction with additional information regarding the claim for adverse possession.

I. INTRODUCTION

1.1 The Plaintiffs are Dickey Roland Couch and Sharon Gale Couch (“The Couches” or “Plaintiffs,” hereinafter).

1.2 The Defendant is The Bank of New York Mellon f/k/a The Bank of New York, as trustee for Novastar Mortgage Funding Trust, Series 2005-4 Novastar Home Equity Loan Asset-Backed Certificates, Series 2005-4 (“BONYM” or “Defendant”, hereinafter).

1.3 Plaintiffs allege that Defendant has no claim to the property at 9845 Ray White Rd, Keller, Texas 76248, in Tarrant County (the "Property") because Defendant failed to exercise its power of sale before the applicable limitations period of four (4) years required by Tex. Civ. Prac & Rem. Code passed and also because Plaintiffs have a claim of adverse possession.

1.4 On January 31, 2024, Plaintiffs learned there is a pending sale on the Property pursuant to the listing of the Property on www.Hubzu.com.

1.5 Plaintiffs ask the Court to take judicial notice of the Appendix in Support of Plaintiffs' Response to Defendant's Motion to Dismiss (ECF 15).

ARGUMENT

2.1 A preliminary injunction is appropriate if the Plaintiffs can establish that: (1) they are likely to succeed on the merits of their case; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tip in their favor; and (4) that an injunction is not against the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *Whirlpool Corp. v. Shenzhen Sanlida Elec. Tech. Co., Ltd.*, 80 F.4th 536, 543 (5th Cir. 2023) See *Munaf v. Geren*, 553 U.S. 674, 689-690 (2008); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-312 (1982).

i. Plaintiffs are likely to succeed on the merits of their case.

2.2 "In order to establish adverse possession as a matter of law, the claimant must show by undisputed evidence his actual peaceable and adverse possession of the property" *Bywaters v. Gannon*, 686 S.W.2d 593, 595 (Tex. 1985) (citations omitted). Peaceable possession is "possession of real property that is continuous and is not interrupted by an adverse suit to recover the property." Tex. Civ. Prac. & Rem. Code §16.021(3). Adverse possession is "actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is

hostile to the claim of another person." *Tex. Civ. Prac. & Rem. Code* § 16.021(1). A party claiming title by adverse possession must demonstrate "(1) actual and (2) visible possession that is (3) under a claim of right, (4) hostile to another's claim to the property, and (5) peaceable for the applicable limitations period." *Tex. Civ. Prac. & Rem. Code* § 16.021; *see Nat. Gas Pipeline Co. of Am. v. Pool*, 124 S.W.3d 188, 193 (Tex. 2003).

2.3 If the party "cultivates, uses, or enjoys the property" and "pays applicable taxes on the property" while "claim[ing] the property under a duly registered deed[,]" the applicable limitations period is five years. *Tex. Civ. Prac. & Rem. Code* § 16.025(a); *see Natural Gas Pipeline Co. v. Pool*, 124 S.W.3d 188, 193 (Tex. 2003). The Couches claim the Property under a duly registered deed, they are the only party to use the Property since at least 2001, and they have been the only party to pay taxes on the property from at least 2001-2023. Therefore, the applicable statute of limitations period is five years.

2.4 The statute of limitations begins to run at the point that the right of action accrues. *Warnecke v. Broad*, 138 Tex. 631, 634 161 S.W.2d 453, 454 (1942); *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp.*, 522 U.S. 192, 201 (1997). This language incorporates the standard rule that the limitations period commences when the Plaintiff has "a complete and present cause of action." *Rawlings v. Ray*, 312 U.S. 96, 98 (1941); *see also Clark v. Iowa City*, 87 U.S. 583, 589 (1875) ("All statutes of limitation begin to run when the right of action is complete"). Unless Congress has stated otherwise, a cause of action does not become "complete and present" for limitations purposes until the plaintiff can file suit and obtain relief. *See Reiter v. Cooper*, 507 U.S. 258, 267 (1993). To satisfy the limitation statutes, "adverse possession" must be not only "an actual and visible appropriation of the land" but it also must be "commenced and continued under a claim of right inconsistent with and hostile to the claim of another." *Tex. Civ.*

Prac. & Rem. Code § 16.021(1). No matter what the use and occupancy of the land may be, the possessor must intend to appropriate it. *Wright v. Vernon Compress Co.*, 156 Tex. 474, 296 S.W.2d 517 (1956). BONYM obtained the right to foreclose on the Property on November 1, 2015, from the U.S. District Court for the Northern District of Texas. This began tolling the 5-year statute of limitations for adverse possession.

2.5 A “claim of right” is defined as the claimant’s intention to appropriate or claim the land. *see Calfee v. Duke*, 544 S.W.2d 640, 642 (Tex. 1976); *Schuhardt Consulting Profit Sharing Plan v. Double Knobs Mt. Ranch, Inc.*, 426 S.W.3d 800, 807–808 (Tex. App.—San Antonio 2014, pet. denied) (claim of right depends on owner’s intent to claim land, so mere possession without such intent is not sufficient to support adverse possession). This claim is necessarily hostile or adverse to any claims to the land by other parties. A claim of right may be established by a public declaration of the claim or by open and visible acts. The verbal assertion of a claim is unnecessary. *see Ramirez v. Wood*, 577 S.W.2d 278, 287 (Tex. Civ. App.—Corpus Christi 1978, no writ).

2.6 There is no dispute that the Couches have actually, visibly, and peaceably possessed the Couch Property since at least 2001. Because the Couches enjoyed the Property under a duly registered deed and were the sole taxpayers on the Property through 2023, the applicable limitations period started on November 1, 2015, and ran through 2023, amounting to a period of 8 years. The Couches are likely to succeed on the merits of the case because the Couches have fulfilled all the elements to claim title to the Property through adverse possession.

ii. Plaintiffs will suffer irreparable harm in the absence of preliminary relief.

2.7 The loss of a home will be irreparable harm. *Euristhe v. Beckmann*, No. 4:23-cv-00653-O-BP, 2023 U.S. Dist. LEXIS 113095 *11 (N.D. Tex. 2023); *see Belknap v. Bank of America, N.A.*, G-12-198, 2013 U.S. Dist. LEXIS 201231, 2012 WL 3150271, at *3 (S.D. Tex. Aug. 1, 2012); *see*

also *U.S. v. Goltz*, SA-06-CA-503-XR, 2007 U.S. Dist. LEXIS 5322, 2007 WL295558, at *3 (W.D. Tex. Jan. 25, 2007) (loss of property is usually considered an irreparable injury). The Couches will suffer irreparable harm if a preliminary injunction is not issued because BONYM will not only sell the Property but evict the Couches as well while this case is being heard on the merits. This will deprive the Couches, a nearly 70-year-old couple of the home they have lived in for over 20 years, causing irreparable harm.

iii. Plaintiffs can demonstrate that the balance of equities tip in their favor.

2.8 Plaintiffs seeking a preliminary injunction must demonstrate that the balance of equities tips in their favor. *Vanderstok v. Garland*, No. 23-10718, 2023 U.S. App. LEXIS 26499 *6 (5th Cir. 2023); see *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). Plaintiffs face losing the Property where they have lived for over twenty years while a preliminary injunction would only delay Defendant, a large banking conglomerate, from selling one of its numerous properties until the end of trial.

iv. A preliminary injunction is not against the public interest.

2.9 Issuance of a preliminary injunction would not adversely affect the public interest as this is a matter relating to the ownership of one single family property which only affects the parties at suit; courts consider a preliminary injunction for a private foreclosure sale in favor of public interest and at worst neutral to public interest. See *Opulent Life Church v. City of Holly Springs Miss.*, 697 F.3d 279, 298 (5th Cir. 2012); *Euristhe v. Beckmann*, No. 4:23-cv-00653-O-BP, 2023 U.S. Dist. LEXIS 113095 *12 (N.D. Tex. 2023); *Maria Eugenia Enters. v. Wells Fargo Bank, N.A.*, Civil Action No. 3:19-CV-2729-BH, 2020 U.S. Dist. LEXIS 255868 *13 (N.D. Tex. 2020).
In fact

CONCLUSION

The Plaintiffs have established the need for a preliminary injunction to enjoin Defendant from evicting the Couches and selling the Couch Property while this case is at trial. Plaintiffs have a strong likelihood to succeed on the merits of their adverse possession claim. Plaintiffs will suffer irreparable harm if Defendant is not enjoined from evicting the Couches and selling the Couch Property. The balance of equities shifts in favor of the Plaintiffs because they are at risk of losing the only home they own, a home that they have lived in for over 20 years. And finally, a delayed private foreclosure sale is not adverse to the public interest. For these reasons, Plaintiffs ask the Court to issue a preliminary injunction enjoining Defendant and its agents from attempting to sell the Couch Property until the close of this suit.

Respectfully submitted,

/S/Debra Edmondson

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

On March 1, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, along with all attorneys of record, using the electronic case filing system of the court.

/S/Debra Edmondson
Debra Edmondson