

CAUSE NO. \_\_\_\_\_

CONRELL HADLEY

v.

U.S. BANK, N.A.

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§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

\_\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, APPLICATION FOR INJUNCTIVE RELIEF,  
AND REQUEST FOR DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Conrell Hadley, Plaintiff herein, filing this his Original Petition, Application for Injunctive Relief, and Request for disclosures complaining of U.S. Bank, N.A., Defendant herein, and for causes of action would respectfully show the Court as follows:

**DISCOVERY**

1. Plaintiff intends to conduct discovery under Texas Rules of Civil Procedure 190.3 (Level 2).

**PARTIES**

2. Conrell Hadley is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.

3. U.S. Bank, N.A. is an entity which conducts business in Harris County, Texas and may be served with process as follows:

U.S. Bank, N.A.  
c/o Corporation Service Company  
800 Nicollet Mall, BC-MN, H190  
Minneapolis, MN 55402

## **JURISDICTION AND VENUE**

5. The Court has jurisdiction over U.S. Bank, N.A. because this is an entity which conducts business Harris County, Texas.

6. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. Venue is mandatory in Harris County, Texas because the subject matter of the lawsuit involves real property which is located in Harris County, Texas. Further, all or a substantial part of the events or omissions giving rise to Plaintiff's causes of action against Defendant occurred in Harris County, Texas thus venue is proper under §15.002(a)(1) of the Texas Civil Practice and Remedies Code.

## **RELEVANT FACTS**

6. The subject matter of this lawsuit is the real property and the improvements thereon located at 4835 Canyon Shore Drive, Humble, TX 77396 (the "Property").

7. Conrell Hadley ("Hadley") purchased the Property on or about June 27, 2006. During this process, Hadley executed a Note ("Note") as well as a Deed of Trust (the "Deed of Trust") in which Mortgage Electronic Registration Systems, Inc. is listed as the Lender.

8. Upon information and belief, the Deed of Trust was subsequently transferred to U.S. Bank, N.A. ("U.S. Bank"), for which Specialized Loan Servicing, LLC ("SLS") the loan servicer, under assignment, but the original Deed of Trust was not assigned properly.

9. The alleged assignment of the Deed of Trust does not meet the requisites of a valid assignment and, therefore, the chain of title is broken from the original lender.

10. Hadley was very consistent about paying his mortgage; however, when COVID 19 struck the U.S., Hadley began to have financial difficulties. He immediately called U.S. Bank to inform them of the circumstances and obtain financial help. U.S. Bank informed him that

because his loan was a federally backed loan, he was eligible for relief programs such as forbearance. Without explaining in detail how a forbearance works, and without offering any other relief programs such as loan modification, U.S. Bank immediately put him into a 12-month forbearance program.

11. More importantly, while informing Hadley that his loan would be put into forbearance, they DID NOT explain to him what would happen at the end of the forbearance period. They simply told him that he would be able to resume his mortgage payments once the forbearance expired. In fact, they specifically informed him that he would not need to submit a large lump sum payment at the end of the forbearance.

12. Accordingly, Hadley agreed and the forbearance was initiated in November 2020 and was scheduled to end in November 2021. In December 2021, Hadley received correspondence from U.S. Bank informing him that his forbearance was about to end. He contacted U.S. Bank and was told that in order for him to resume payments, he would need to submit a lump sum payment of approximately \$40,000, which represents the amount of deferred mortgage payments due to the forbearance. This was not the same thing he was told when U.S. Bank offered to put him into a forbearance program. Hadley inquired as to if he could apply for a loan modification but was told he did not qualify.

14. Hadley felt lied to. He was confused as to why he was told he could resume his mortgage payments upon expiration of the forbearance if he would first be required to submit a large lump sum payment. Even more confusing was why U.S. Bank would put his loan into forbearance if he was never eligible for a loan modification to begin with. U.S. Bank failure to explain the process for getting out of forbearance as well as their lack of diligence to provide a relief program that would actually allow Hadley to keep his Property is shocking to say the least.

15. Hadley continued contact with U.S. Bank hoping to resolve the situation and save his home; however, in June 2023, he began receiving phone calls/mail from investors and attorneys offering to help him stop the coming foreclosure sale scheduled for July 5, 2023. Hadley was shocked because he had not received a notice of default, notice of acceleration, or notice of foreclosure sale. Apparently, U.S. Bank posted his Property for foreclosure sale in violation of the Texas Property Code by failing to do so which effectively prevent them from foreclosing as this is also a violation of the Deed of Trust and Hadley's due process rights.

16. Further, Plaintiff is informed and believes, and thereon alleges, that in order to conduct a foreclosure action, a person or entity must have standing under the deed of trust and statute. Plaintiff is informed and believes, and thereon alleges, that in order to assign a deed of trust, some person or entity must rightfully hold the note that the deed of trust secures payment on; an assignment of the mortgage note carries the deed of trust with it, while an assignment of the deed of trust alone is a nullity.

17. U.S. Bank cannot produce any evidence that the Hadley's mortgage note has ever been transferred to them. Any attempt to transfer the beneficial interest of a deed of trust without actual ownership of the underlying mortgage note is void under the law. Therefore, U.S. Bank cannot establish that is entitled to assert a claim in this case such that the assignment to U.S. Bank was effective at all. As such, Defendant U.S. Bank does not have standing to foreclosure on the Property.

18. Accordingly, Plaintiff alleges that Defendant is attempting to sell his Property at a foreclosure sale on July 5, 2023 in violation of the Deed of Trust, the Texas Property Code and Plaintiff's due process rights.

## CLAIMS

### **AGENCY & RESPONDEAT SUPERIOR**

19. Wherever it is alleged that Defendant did anything, or failed to do anything, it is meant that such conduct was done by Defendant's employees, vice principals, agents, attorneys, affiliated entities, and/or previous owners of the Note, in the normal or routine scope of their authority, or ratified by Defendant, or done with such apparent authority so as to cause Plaintiff to reasonably rely that such conduct was within the scope of their authority. Plaintiff did rely to Plaintiff's detriment on Defendant's representatives being vested with authority for their conduct. Defendant is vicariously liable for the conduct of their employees, vice principals, agents, attorneys, affiliated entities, representatives of Defendant's affiliated entities, and previous owners of the Note by virtue of respondeat superior, apparent authority, and estoppel doctrines.

### **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

20. To the extent not inconsistent herewith, Conrell Hadley ("Hadley") incorporates by reference the allegations made in paragraphs 1 through 19 as if set forth fully herein.

21. Plaintiffs made, presented, or used the assignment associated with the mortgage loan with knowledge that the documents or other records are fraudulent court records or fraudulent liens or claims against the real property. Additionally, Defendant falsely and fraudulently prepared documents required for Defendant to foreclose as a calculated and fraudulent business practice.

22. Therefore, Plaintiff seeks a determination of the rights of the parties pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001 (West). An actual controversy has arisen and now exists between Plaintiff and Defendant regarding their respective rights and duties, in that

Plaintiff contends that Defendant did not have the right to foreclose on the Property because Defendant has failed to perfect any security interest in the mortgage note as a real party in interest. Thus, the purported power to foreclose, or even to collect monetarily on the note, does not now apply.

23. Plaintiff seeks a determination that Defendant is liable for having failed to properly record all releases, transfers, assignments or other actions relating to instruments Defendant filed or caused to be filed, registered or recorded in the deed of records of Texas in the same manner as the original instrument was required to filed, registered or recorded.

24. Plaintiff seeks a determination that the power of sale in the Deed of Trust has no force and effect at this time as to Defendant because Defendant's actions in processing, handling, and foreclosure of this loan involved fraudulent, false, deceptive and/or misleading practices including, but not limited to, violations of Texas laws meant to protect the property records and property owner's/mortgage borrowers.

24. Plaintiff seeks a determination that because Defendant does not have standing to initiate foreclosure of the property, that any and all notices sent by Defendant regarding default or foreclosure be declared invalid.

25. Plaintiff seeks a declaratory judgment for quiet title, thereby voiding all documents on file indicating any interest of Defendant in the Property pursuant to the Deed of Trust, subsequent assignment thereof, appointment of substitute trustee documents and voiding any interest in the name of Defendant in the Property. Furthermore, Plaintiff is entitled to peaceful and quiet possession of the Property against Defendant now and forever.

26. Plaintiff seeks a declaratory judgment that U.S. Bank had the duty to fully inform Plaintiff of what a forbearance was, what would be required to resume mortgage payments upon

expiration of the forbearance, and to make sure Plaintiff would meet the prerequisites to obtain a loan modification once the forbearance expired.

**SECOND CAUSE OF ACTION:  
BREACH OF CONTRACT**

26. To the extent not inconsistent herewith, Conrell Hadley (“Hadley”) incorporates by reference the allegations made in paragraphs 1 through 18 as if set forth fully herein.

27. The actions committed by U.S. Bank, N.A. (“U.S. Bank”) constitute breach of contract because:

- A. There exists a valid, enforceable contract between Hadley and U.S. Bank;
- B. Hadley has standing to sue for breach of contract;
- C. Hadley performed, tendered performance, or was excused from performing his contractual obligations;
- D. U.S. Bank breached the contract; and
- E. The breach of contract by U.S. Bank caused Hadley’s injury.

**THIRD CAUSE OF ACTION:  
COMMON LAW FRAUD**

28. To the extent not inconsistent herewith, Conrell Hadley (“Hadley”) incorporates by reference the allegations made in paragraphs 1 through 19 as if set forth fully herein.

29. The actions committed by U.S. Bank, N.A. (“U.S. Bank”) constitute common law fraud because U.S. Bank made false and material representations to Hadley when informing Hadley that his loan would be put into forbearance upon the expiration of which he would be able to resume mortgage payments. It wasn’t until the forbearance was about to expire that U.S. Bank informed Hadley that he would need to “qualify” for the loan modification... or pay a very large lump sum payment. U.S. Bank then used this deception to create the default they eventually are

now attempting to foreclose on. U.S. Bank knew that the representations were false or made these representations recklessly, as a positive assertion, and without knowledge of its truth. In addition, U.S. Bank made these representations with the intent that Hadley act on them and Hadley relied on these representations which caused Hadley's injury.

**FOURTH CAUSE OF ACTION:  
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT**

30. To the extent not inconsistent herewith, Conrell Hadley ("Hadley") incorporates by reference the allegations made in paragraphs 1 through 17 as if set forth fully herein.

31. This includes an action for violations of the Texas Debt Collection Act ("TDCA") against Defendants. *See* Tex. Fin. Code § 392.001 et seq.

32. Taylor is a "consumer" within the meaning of Section 392.001 of the Texas Finance Code, and the debt in question relating to the Property is a "consumer debt" within the meaning of such statute.

33. Defendants are debt collectors. "Debt collection" is defined as the act or practice "in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor." A "debt collector" therefore includes a creditor who is collecting its own debt. *Smith v. Heard*, 980 S.W.2d 693, (Tex. App.—San Antonio, 1998, pet. denied) (A creditor is not excused from following the provisions of the TDCA on the basis that the debt is owed directly to the creditor).

34. The acts, omissions, and conduct of Defendants, as alleged above, herein, and below, constitute violations of the following provisions of the TDCA:

- a. Using a fraudulent, deceptive, or misleading representation that misrepresent[s] the character, extent, or amount of a consumer debt."

Tex. Fin. Code § 392.304(a)(8).



- b. Misrepresenting the status or nature of the services rendered by the debt collector. *See* Tex. Fin. Code § 392.304(a)(14).
- c. Using other false representation or deceptive means to collect a debt. *See* Tex. Fin. Code § 392.304(a)(19).

35. Defendants seek to sell the Property at a foreclosure sale while at the same time committing fraud, breach of contract, and violating the Texas Property Code. This is a violation of state law, which in turn is also a violation of TDCA Section 392.301(a)(8). While Defendants may have had contractual authority under the deed of trust to conduct a nonjudicial foreclosure sale in certain circumstances, Defendants sought to foreclose while committing acts in violation of state law. Therefore, by moving forward with foreclosure proceedings, Defendants are taking an action prohibited by law and in violation of the TDCA.

36. Defendants also made a significant misrepresentation to Plaintiff about the status of his loan and their own services constituting violations of TDCA Sections 392.304(a)(8) and 392.304(a)(14).

37. Defendants misrepresented to Plaintiff that he would be able to resume payments on his mortgage upon expiration of the forbearance program knowing he would first need to either pay a lump sum payment OR qualify for a loan modification. Each time this representation was made, it was false, misleading, and deceptive in violation of TDCA Section 392.304(a)(8).

38. These statements were misrepresentations not only about the status and delinquency of Plaintiff's loan but also the status and nature of services that Defendant and its representatives were providing. Therefore, these misrepresentations also violated TDCA Section 392.304(a)(14).

39. As a result of these violations of the TDCA, Plaintiff is entitled to relief provided by Section 392.403, including but not limited to recovery of all actual damages sustained as a

result of violations of the TDCA, all actual direct and indirect economic damages, damages for lost time, damages for mental anguish and emotional distress, damages resulting from payment of excess or additional interest, and any consequential damages. Plaintiff is also entitled to exemplary damages and attorneys' fees. *See* Tex. Fin. Code § 392.403.

#### Actual Damages

40. Plaintiff has lost the opportunity to build equity in the Property. Plaintiff suffered lost time damages as a direct result of attempting to save the Property and in connection with the threat of foreclosure.

41. Further, Plaintiff suffered mental anguish damages in connection with Defendant's violation and threat to foreclose on his Property. Plaintiff's mental anguish caused him a substantial disruption in his daily routine. Specifically, the mental anguish caused by the threatened foreclosure sale interfered with Plaintiff's ability to sleep and perform his normal daily activities.

#### Exemplary Damages

41. Plaintiff is also entitled to exemplary damages under the TDCA. *See Morante v. Am. Gen. Fin. Ctr.*, 157 F.3d 1006, 1011 (5th Cir. 1998); *Enis v. Bank of Am., N.A.*, No. 3:12-CV-0295-D, 2012 WL 4741073, at \*8 (N.D. Tex. Oct. 3, 2012) (Fitzwater, J.).

#### Attorneys' Fees

42. Pursuant to Section 392.403 of the Texas Finance Code, Plaintiff is entitled to recover attorneys' fees reasonably related to the amount of work performed and costs, for all actions in the trial court, the Court of Appeals, and the Texas Supreme Court.

**FIFTH CUASE OF ACTION:  
BREACH OF FIDUCIARY DUTY**

43. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 17 as if set forth fully herein.

44. First, it is axiomatic that to establish a breach of fiduciary duty, a plaintiff must first show a fiduciary relationship between herself and the Defendant. See *Jones v. Blume*, 196 S.W.3d 440, 447 (Tex. App—Dallas 2006, pet. Denied). The elements of a breach of fiduciary duty claim are: (i) a fiduciary relationship between the Plaintiff and Defendant; (ii) the Defendant must have breached his fiduciary duty to Plaintiff; and (iii) Defendant's breach must result in injury to Plaintiff or benefit to Defendant. *Id.*

45. The loan documents between Defendant and Plaintiff create a fiduciary relationship in which Defendant was/is required to act in Plaintiff's best interest ahead of its own. Plaintiff sought financial assistance from Defendant believing that they would in fact, put his interest ahead of their own. Defendant did not fully disclose what a forbearance program was nor what was needed to resume mortgage payments. Additionally, knowing a loan modification would be needed in order for Plaintiff to resume mortgage payments, a modification he was never eligible for, Defendant put Plaintiff into a forbearance program anyway. This conduct caused injury to Plaintiff - specifically equity in the Property, default interest, loss of reputation, mental and emotional health, and litigation costs.

**DAMAGES:  
ACTUAL DAMAGES**

46. Plaintiff is entitled to recover his actual damages from Defendants for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**EXEMPLARY DAMAGES**

47. Plaintiff is entitled to recover his exemplary damages from Defendants for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**ATTORNEYS' FEES**

48. Plaintiff was forced to employ the undersigned attorneys to represent his and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover his reasonable attorneys' fees pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**CONDITIONS PRECEDENT**

49. All conditions precedent to the Plaintiff's right to bring these causes of action have been performed, have occurred, or have been waived.

**REQUEST FOR DISCLOSURES**

50. Defendants are hereby requested to disclose to Plaintiff, within 50 days of service of this request, the information and material described in Rule 194 of the Texas Rules of Civil Procedure.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

51. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraph 1 through paragraph 49 as if set forth fully herein.

52. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable. More specifically, if not enjoined, Defendant may sell the Property at any time during the pendency of this matter thus depriving Plaintiff of ownership of the Property

and potentially causing Plaintiff to be dispossessed of the Property. Defendant has posted Plaintiff's Property at a foreclosure sale scheduled for July 5, 2023. Additionally, the posting of the foreclosure sale will negatively impact Plaintiff's credit. Plaintiff has no adequate remedy at law because the subject matter is real property, and any legal remedy of which Plaintiff may avail himself will not give her as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

53. Therefore, Plaintiff requests that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from taking any further foreclosure action to sell the Property (including, but not limited to, sending notices of default, acceleration, and foreclosure sale) and is commonly known as 4835 Canyon Shore Drive, Humble, TX 77396.

54. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 53 above.

55. Plaintiff is likely to prevail on the merits of the lawsuit as described above.

56. The granting of the relief requested is not inconsistent with public policy considerations.

#### **BOND**

57. Plaintiff is willing to post a reasonable temporary restraining order bond and requests that the Court set such bond

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- A. Defendant be cited to appear and answer herein;
- B. The Court conduct a hearing on Plaintiff's Application for Injunctive Relief;

- C. A temporary restraining order be issued restraining Defendant, their agents, employees, and legal counsel, and those acting in concert or participation with Defendant who receive actual notice of the Order, by personal service or otherwise, from taking any further foreclosure action to sell the Property (including, but not limited to, sending notices of default, acceleration, and foreclosure sale) and is commonly known as 4835 Canyon Shore Drive, Humble, TX 77396;
- D. A Permanent Injunction be entered enjoining Defendant from the same acts listed in Paragraph C above; and
- E. Upon final hearing or trial hereof, the Court order a judgment in favor of Plaintiff against Defendant for his actual damages, exemplary damages, reasonable attorneys' fees, all costs of court, and such other and further relief, both general and special, at law or in equity, to which Plaintiff may be entitled.

Respectfully Submitted by,

**Law Office of Erick DeLaRue, PLLC**

By: /s/ Erick DeLaRue

**ERICK DELARUE**

Texas Bar No: 24103505

2800 Post Oak Boulevard, Suite 4100

Houston, TX 77056

Telephone: 713-899-6727

Email: [erick.delarue@delaruelaw.com](mailto:erick.delarue@delaruelaw.com)

**ATTORNEY FOR PLAINTIFF**