

CAUSE NO. 2023-69776

ANTHONY WELCH DBA	§	IN THE DISTRICT COURT
SUPERIOR CONSULTING GROUP	§	
AND ANTHONY JACKSON	§	
Plaintiffs	§	
v.	§	270th JUDICIAL DISTRICT
PLANET HOME LENDING,	§	
CATAMOUNT PROPERTIES 2018, LLC,	§	
PRESTIGE DEFAULT SERVICES, LLC	§	
AUCTION.COM, INC, AND JEFF LEVA	§	
Defendants	§	HARRIS COUNTY, TEXAS

PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Anthony Welch dba Superior Consulting Group, Plaintiff ("Plaintiff") and files this Amended Petition, complaining of Planet Home Lending ("Planet"), Catamount Properties 2018, LLC ("Catamount"), Prestige Default Services, LLC ("Prestige") Auction.com, Inc. ("Auction") and Jeff Leva ("Leva") would show the Court as follows:

I. SUMMARY

1. Plaintiff, Anthony Welch dba Superior Consulting Group is the owner of a tract of land described as *Lot Forty-Eight (48) in Block One (1) of Balmoral Park Lakes East, Section 1, a subdivision in Harris County, Texas according to the map or plat thereof, recorded in film code 679291 of the map records of Harris County, Texas* (Property). The street address of the property is 15407 Arrowhead Ridge Drive, Humble, TX 77396.

2. Defendants, Planet Home Lending, Prestige Default Services, LLC and Jeff Leva conducted a secret, fraudulent and wrongful foreclosure sale of the property on September 5, 2023, and allegedly sold the property to the Defendant, Catamount Properties 2018 LLC.

3. Plaintiff, nor the prior owner and mortgage holder, Plaintiff Anthony Jackson received any Notice of Sale, nor Notice of Intent to Accelerate as required by Texas law before

Defendants sought foreclosure. Additionally, Planet has not provided proof of the current amount owed either through a payment history or detailed description of outstanding debt. The Notice of Sale was not posted properly at the Harris County Courthouse.

4. It has been reported based upon the Substitute Trustee's Deed that the alleged sale was conducted on September 5, 2023, by the Defendant, Jeff Leva. There is no evidence, record or reporting that this sale was conducted on September 5, 2023 other than the Substitute Trustee's Deed filed by Defendant, Leva.

4. As such, Defendants did not have standing to seek non-judicial foreclosure of the property that was allegedly scheduled and wrongfully held on September 5, 2023.

II. DISCOVERY

5. Plaintiff intends that discovery be conducted under Level 2 pursuant to Texas Rules of Civil Procedure 190.3.

III. PARTIES

6. Plaintiff, Anthony Welch dba Superior Consulting is a sole proprietorship doing business in Harris County, Texas and may be served with process at the address listed in this pleading.

7. Defendant Planet Home Lending is a Delaware corporation doing business in the State of Texas and is the loan servicer of the note and maybe served with process through its Registered Agent, Registered Agent Corporation Service Company dba CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, TX 78701. The Defendant has appeared and answered in this matter.

8. Defendant, Catamount Properties 2018, LLC is a Delaware Corporation doing business in the State of Texas and maybe served through its registered agent in Texas, Cogency

Global, Inc., 1601 Elm Street, Suite 4360 Dallas, TX 75201. The Defendant has appeared and answered in this matter.

9. Defendant, Prestige Default Services, LLC is a California Corporation doing business in the State of Texas and maybe served through its registered agent in Texas, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201.

10. Defendant, Auction.Com, LLC is a California Corporation doing business in the State of Texas and maybe served through its registered agent in Texas, Corporation Service Company dba CSC-Lawyers Incorporated, 211 E. 7th Street, Suite 620, Austin, TX 78701.

11. Defendant, Jeff Leva is an individual residing in Harris County, Texas and maybe served at 1225 North Loop West, Suite 127, Houston, TX 77008.

12. All of the Plaintiff's claims and allegations against the name Defendants include, but are not limited to, acts and omissions of such Defendant's officers, directors, mortgage servicers, operators, managers, supervisors, employees, affiliates, subsidiaries, vice-principals, partners, agents, servants, nominees, and owners; and that such acts and omissions were committed with express and/or implied authority of such Defendants, or were ratified or otherwise approved by such Defendants; or that such acts or omissions were made in the routine normal course and scope of their agency and employment as such Defendants; or that such acts or omission were made in the routine normal course and scope of their agency and employment as such Defendants' officers, directors, operators, managers, supervisors, employees, affiliates, subsidiaries, vice-principals, partners, agents, servants, nominees, and owners.

IV. JURISDICTION AND VENUE

13.. The Court has jurisdiction over Defendants because Defendants have done business in Harris County, including originating, servicing and/or owning loans, which necessarily involves contracting with Texas residents by mail or otherwise when at least one of the parties is to perform the contract in Texas. Further, Defendants' conduct, giving rise to the causes of action as set forth herein, occurred in whole or in part in Texas. The damages sought in this action are within the jurisdictional limits of the Court.

14 Harris County is the proper venue for this case, pursuant to the mandatory venue provision under TEX. CIV. PRAC. & REM. CODES 15.011, which states that "actions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet title to real property shall be brought in the county in which all or a part of the property is located." The property is located in Harris County.

V. FACTS

15. Plaintiff purchased the property in March of 2023 having acquired the interest in the property from the prior owner, Anthony Jackson. Plaintiffs were not served with any of the foreclosure papers nor did Defendant Planet through its counsel advise the Plaintiff's counsel of the foreclosure sale even though inquiries has been made for the payoff amount.

16. During the process of purchasing the Property, Anthony Jackson executed a note in the amount of \$295,948.00 as well as a Deed of Trust with Amcap as the mortgage holder.

17.. Sometime thereafter, Defendant Planet became the mortgage servicer.

18. Instead of following proper procedure pursuant to the Texas Property Code as well as the related Deed of Trust, Defendants Planet and Prestige failed to send a notice of default, provide the opportunity to cure or a notice of intent to accelerate the debt to the borrower and to the Plaintiff prior to sending the notice of acceleration of debt. Instead, Defendants violated the Plaintiff's due process rights by simply accelerating the debt and conducting a wrongful and secret foreclosure sale. Defendants Planet and Prestige failed to post and record the notice of sale in two places at the Harris County Courthouse and then conducted a secret foreclosure sale. The foreclosure sale that was illegally held by Defendants and should be void as a matter of law because Defendants held an illegal sale.

19. Plaintiff obtained a copy of the notice of sale that was prepared by Defendant, Prestige and the Plaintiff states that it is defective and failed to provide the borrower or the Plaintiff with an effective mechanism to reach the Substitute Trustee.

20. At this time several foreclosure posting companies in the Harris County area were contacted and none have reported the posting of this foreclosure and subsequent sale to Defendant Catamount. The purchase price by Defendant Catamount is far below the market value of the property, giving proof to the Plaintiff's belief that the sale never took place as set forth in the Substitute Trustee's Deed.

21. The alleged "secret" sale was conducted by either Leva or Auction.com supposedly at the Bayou Event Center on September 5, 2023. There has been no time given for the sale as required by the Texas Property in the Substitute Trustee's Deed and Affidavit. Auction.com has in the past been the assumed name for Auction.com, Inc., but on September 5, 2023, there was no valid assumed name certificate on file with the Texas Secretary of State, thus essentially making auction.com a non-existent entity wrongfully conducting business in Texas. See attached Exhibit A, verification from the Texas Secretary of State.

22. Plaintiff seeks to set aside the wrongful and illegal foreclosure sale that claims to have been held on September 5, 2023. Defendant Catamount is colluding with Defendants Planet, Prestige and Leva by seeking possession of the property as having allegedly purchased the property at the “secret sale”.

VI. FIRST CAUSE OF ACTION
STATUTORY FRAUD

23. Plaintiff hereby adopts by reference each and every paragraph above as if fully and completely set forth herein.

24. The actions committed by Defendants, constitute statutory fraud because:

A. There was a transaction involving real estate:

B. During the transaction, Defendants

(1) made a false representation of fact,

(2) made a false promise, or

(3) benefitted by not disclosing that a third party’s representation or promise was false;

25. Plaintiff would further show and represent to this Court, that the Defendants are not the actual holders of a properly perfected security instrument, that they failed to properly accelerate the note and post the notice of foreclosure sale and therefore Defendants were not entitled to foreclose or collect on the debt.

VII. SECOND CAUSE OF ACTION
B. COMMON LAW FRAUD

26. Plaintiff hereby adopts by reference each and every paragraph above as if fully and completely set forth herein.

27. The actions committed by Defendants constitute common law fraud because Defendants' representatives made false and material representations about the posting of the notice of the foreclosure and recording of a foreclosure deed.

28. Defendants' representatives knew that that the representations were false or made these representations recklessly as a positive and without knowledge of truth.

VIII. THIRD CAUSE OF ACTION
QUIET TITLE AGAINST ALL DEFENDANTS

29. Plaintiff hereby adopts by reference each and every paragraph above as if fully and completely set forth herein.

30. Defendants Planet, Prestige and Leva wrongfully foreclosed on a secured monetary interest in the Property that is adverse to the Plaintiff's legal title to the property.

31. The claim of all Defendants herein name, and each of them to any estate, right title, lien or interest in or to the Property, is adverse to the Plaintiff's legal title and constitutes clouds on the Plaintiff's rightful title to the Property.

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

33. Plaintiff pleads the discovery rule, which tolls the Texas statute of limitations applicable to claims.

IX. FOURTH CAUSE OF ACTION
VIOLATION OF TEXAS BUSINESS AND COMMERCE CODE

34. Plaintiff hereby adopts by reference each and every paragraph above as if fully and completely set forth herein.

35. Plaintiff states that Defendant Auction.com, Inc. a California corporation that conducts business under the assumed name of Auction.com does not have on file with the Texas Secretary of State which is in violation of Sec. 71.103 of the Texas Business and Commerce Code.

DAMAGES
ACTUAL DAMAGES

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

EXEMPLARY DAMAGES

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

CONDITIONS PRECEDENT

38. 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

39. 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

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

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF RESPECTFULLY REQUESTS:

- A. Defendants be cited to appear and answer herein;
- B. Actual damages;
- C. Exemplary damages where applicable;
- D. Treble damages where applicable;
- E. That this Court declares that the Defendants conducted a fraudulent and wrongful foreclosure sale on September 5, 2023, of the property and order that all foreclosure deeds recorded be rescinded.
- F. All other relief to which Plaintiff is entitled;
- G. Plaintiff's pray for general relief.

Respectfully Submitted,

/s/ Anthony Welch

Anthony Welch dba Superior Consulting
Group Pro Se
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Houston, TX 77074

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Certificate of Service

The undersigned hereby certifies that on the 15th day of March, 2024, a true and correct copy of the foregoing instrument was forwarded on all parties and counsel of record in accordance with the Texas Rules of Civil Procedure:

/s/ Anthony Welch
Anthony Welch

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 85614932
Filing Code Description: Amended Filing
Filing Description: Amended Petition
Status as of 3/15/2024 3:29 PM CST

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