



PARTNERS LLC, as Grantor, executed a Deed of Trust dated 07/16/20021 to secure payment of loan issued by CAPITAL FUND I, LLC, as Lender, in the original principal sum of \$350,000.00 and secured by the real property identified by street address as 5657 FLACK DR, HOUSTON, TX 77081 (the “Subject Property”). (Exhibit 1).

3. The Loan was a business purpose Loan and expressly provides that it is no way to be considered a “Consumer Loan.” (Exhibit 1; Pg. 11 of 12).

4. Thereafter the Deed of Trust was assigned to Capital Fund REIT, LLC. (Exhibit 2). The Loan went into default and Jack O’Boyle & Associates, PLLC (“JOA”) as foreclosure counsel noticed to be auctioned at a foreclosure sale to be held on 04/04/2023. (Exhibit 3).

5. On 04/04/2023 CAPITAL FUND REIT, LLC purchased the Subject Property at a non-judicial foreclosure sale. (Exhibit 4). Following its purchase of the Subject Property, CAPITAL FUND REIT, LLC further retained the law firm Jack O’Boyle & Associates, PLLC (“JOA”) to institute forcible detainer proceedings on its behalf. This eviction suit was filed in the Harris County Justice of the Peace Court, Precinct 5, Place 1 under Case Number 235100157881 and against TORRIN WILLIAMS AS MANAGER FOR FARMHOUSE REALTY PARTNERS LLC and/or ALL OCCUPANTS of the Subject Property. (Exhibit 4).

6. The Justice Court’s judgment in this forcible detainer action was then appealed to the County Court at Law to be tried de novo. (Exhibit 5). A trial was held before the presiding HARRIS County Court on 9/12/2023 and upon conclusion thereof the Presiding Judge entered judgment in favor of Plaintiff and awarding to it possession of the Subject Property. (Exhibit 5).

7. In response WILLIAMS filed the instant suit complaining of the foreclosure and a non-compliant and ineffective Lis Pendens. (Exhibit 6). This Lis Pendens is void and should be expunged by this Court.

### **III. DEFENDANT MOVES TO EXPUNGE THE LIS PENDENS**

8. Plaintiff's entire lawsuit seems to be nothing more than an insincere attempt to prevent the foreclosure sale of the Subject Property. Having not prevented the foreclosure sale and then being a party to the post-foreclosure eviction matter, the Plaintiff improperly filed a Lis Pendens whose sole purpose is to cloud title. Plaintiff's Lis Pendens is void and improper for the reasons explained below and should be expunged by this Court.

#### **A. LEGAL STAND FOR CREATING AND EXPUNGING A LIS PENDENS**

9. A Lis Pendens is a notice of litigation, placed in the real property records, asserting an interest in the property, and notifying third parties that ownership of the property is disputed. *In re Miller*, 433 S.W.3d 82, 84 (Tex.App.—Houston [1st Dist.] 2014, orig. proceeding). The doctrine is codified in Property Code section 12.007(a).

10. The notice must contain certain information, including the style and cause number of the proceedings, the court in which it is pending, the names of the parties, identification of the kind of proceedings, and a description of the property affected. Tex. Prop. Code Ann. § 12.007(b). *In re Rescue Concepts, Inc.*, 498 S.W.3d 190, 193 (Tex. App. 2016).

11. A notice of Lis Pendens may be expunged, however, if certain procedures are followed and the trial court determines that the party filing the notice either (1) has not pleaded a real-property claim or (2) has not demonstrated the probable validity of the claim. *Id.*

#### **B. PLAINTIFF DID NOT COMPLY WITH NOTICE REQUIREMENTS**

*i. Plaintiff did not name all the parties and failed to correctly identify the underling proceeding as required by the Rules*

12. The Lis Pendens did not name all parties to the lawsuit as required by Texas Property Code Section 12.007(b), did not name the case number or identify fully the correct Court. Additionally, the Lis Pendens names two parties not a party to the suit – the Justice Court Judge and County Court Judge who presided over the post-foreclosure forcible detainer suit filed against Plaintiff and/or All Occupants of the Property.

*ii. Plaintiff did not send copy to parties*

13. The Plaintiff did not send a copy of the Lis Pendens to Defendants as required by Texas Property Code Section 12.007(d).<sup>2</sup>

14. If a party fails to comply with the requirements for establishing a valid Lis Pendens, then the party against whom the Lis Pendens was filed may have it expunged. *See* Texas Property Code 12.0071(c).<sup>3</sup>

**C. PLAINTIFF DID NOT PLEAD A REAL PROPERTY CLAIM**

15. Texas Property Code Section 12.0071 (c) requires that a trial court “shall” expunge a Lis Pendens if the pleading on which the notice is based does not have a real property claim. *Id.*

16. Plaintiff’s original petition lists alleged cause of action under 18 U.S.C. 241, 18 U.S.C. 242, Violation of the IRS Code and Deprivation of Rights.

17. The petition does not address the elements of the Plaintiff’s purported property claim, nor does it adduce facts in support of the purported claim. Conclusory statements, even if

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<sup>2</sup> “(d) Not later than the third day after the date a person files a notice for record under this section, the person must serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice.” Tex. Prop. Code §12.007 (d).

<sup>3</sup> “A trial court "shall" expunge the Lis Pendens if: (1) the pleading on which the notice is based does not contain a real property claim; (2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or (3) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d).” Tex. Prop. Code § 12.0071(c).

sworn, “are insufficient to establish the existence of a fact.” *Lenoir v. Marino*, 469 S.W.3d 669, 686 (Tex. App. — Houston [1st Dist.] 2015), *aff’d*, *Marino v. Lenoir*, No. 15-0610, 526 S.W.3d 403, 2017 WL 1553095 (Tex. Apr. 28, 2017). A statement is conclusory if it provides no facts to support its conclusion. *Lenoir* 469 S.W.3d at 686.

18. Moreover, Plaintiff’s failure to plead a cognizable property claim cannot be cured because the relief the relief Plaintiff sought has subsequently been rendered moot by the 3/07/2023 foreclosure sale.

**D. PLAINTIFF DID NOT ESTABLISH VALIDITY OF CLAIM**

19. The court still must expunge even if the Court finds that the Plaintiff’s claim is a real property claim.

20. Texas Property Code section 12.0071(c) requires the trial court to order a notice of Lis Pendens expunged if the court determines that the claimant fails to establish by a preponderance of the evidence the *probable validity* of the real property claim. While the trial court may determine the sufficiency of the evidence, it has no discretion if the claimant provides no evidence.

21. All of Plaintiff’s allegations that can any in way be connected to a real property claim, are predicated on Defendants allegedly failing to have the requisite authority to foreclosure and allegedly failing to provide Plaintiff with the predicate foreclosure notices.

22. Here, the Plaintiff has submitted no evidence that proves the probable validity of its purported real property claim by the preponderance of the evidence standard required by the Texas Property Code. Accordingly, Plaintiff has failed to meet its burden of proof.

**IV. CONCLUSION & PRAYER**

The Notice of Lis Pendens filed by WILLIAMS in the real property records of HARRIS County, Texas at Instrument Doc# RP-2024-51113 is void and should be immediately cancelled by the Court. Accordingly, Defendant herein respectfully request that the Court immediately cancel the Notice of Lis Pendens attached to this motion as Exhibit 6.

*Respectfully Submitted,*

**JACK O'BOYLE & ASSOCIATES**

*/s/ Travis H. Gray*

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*ATTORNEYS FOR DEFENDANT CAPITAL  
FUND REIT, LLC*

**CERTIFICATE OF SERVICE**

This is to certify that a true, correct and complete copy of the foregoing document has been served in accordance with the Federal Rules of Civil Procedure on April 4, 2024 to:

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*Plaintiff, Pro Se*

/s/ Travis H. Gray  
Travis H. Gray