

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ROBERT STRANGE

v.

U.S. BANK TRUST COMPANY, N.A.

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Civil Action No. 4:23-cv-00796

PLAINTIFF’S FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE ANDREW S. HANEN:

Robert Strange hereby files his First Amended Complaint complaining of U.S. Bank Trust Company, N.A. and for causes of action shows the Court as follows:

PARTIES

1. Robert Strange is an individual who resides in Harris County, Texas and may be served with process on the undersigned legal counsel.
2. U.S. Bank Trust Company, N.A. has already been served in this matter and filed an answer.

JURISDICTION AND VENUE

3. The parties do not dispute that this Court has jurisdiction and venue in this matter.

RELEVANT FACTS

4. The subject matter of this lawsuit is the real property and the improvements thereon located at 1310 Riverview Circle, Houston, TX 77077 (the “Property”). The Property is utilized as an assisted care living facility.
5. Robert Strange (“Plaintiff”) and his wife Lana Strange purchased the Property on or about December 29, 2005. During the process of purchasing the Property, Plaintiff executed a Promissory Note (“Note”) in the amount of \$539,910 as well as a Deed of Trust in which Fremont

Investment & Loan is listed as the Lender. A true and correct copy of the Deed of Trust is attached hereto as Exhibit “1” and incorporated herein for all purposes.

6. The Note and related Deed of Trust were subsequently transferred to U.S. Bank Trust Company, N.A. (“Defendant”) for which Wells Fargo Bank, N.A. (“Wells Fargo”) acts as the loan servicer.

7. As Plaintiff was starting to face financial difficulties due to the COVID-19 pandemic, he contacted Wells Fargo to pursue loss mitigation options - Defendant granted him a Covid-19 Forbearance and promised him that the debt would be restructured once the forbearance period expired. After the forbearance period expired, Plaintiff contacted Wells Fargo to see when his payment was going to resume. Defendant then informed him that they no longer were able to approve loan modifications resulting from Covid-19 forbearances so he was required to pay the total amount of the arrearages in one lump sum or face foreclosure.

8. Instead of following proper procedure pursuant to the Texas Property Code as well as the related Deed of Trust, Defendant failed to send proper notices. Instead, Defendant violated Plaintiff’s due process rights by simply posting the Property for foreclosure sale. As such, the foreclosure scheduled to be conducted by Defendant should be void as a matter of law because Defendant did not provide Plaintiff with the statutory notices pursuant to Sections 15 and 22 of the Deed of Trust. Defendant’s failure to provide Plaintiff with the statutory notices deprives Plaintiff of his due process rights and the opportunity to cure pursuant to Sections 19 and 22 of the Deed of Trust.

9. Accordingly, Plaintiff alleges that Defendant was about to wrongfully sell his Property at a foreclosure sale on February 07, 2023 in violation of the agreement between the parties. A true and correct copy of the related Notice of Substitute Trustee Sale, which was

provided to Plaintiff by the undersigned legal counsel, is attached hereto as Exhibit “2” and incorporated herein for all purposes.

10. During the pendency of the instant lawsuit, Defendant issued a Notice of Rescission of Acceleration dated May 16, 2023 - a true and correct copy is attached hereto as Exhibit “3” and incorporated herein for all purposes.

CLAIMS
AGENCY & RESPONDEAT SUPERIOR

11. 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, principals, agents, attorneys, and/or affiliated entities, 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, principals, agents, attorneys, affiliated entities, and representatives of Defendant’s affiliated entities by virtue of respondent superior, apparent authority, and estoppel doctrines.

FIRST CAUSE OF ACTION:
DECLARATORY JUDGMENT

12. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 11 as if set forth fully herein.

13. Plaintiff seeks a determination of the rights of the parties pursuant to Rule 57 of the Federal Rules of Civil Procedure. In particular, Plaintiff seeks a determination that the four year statute of limitation for Defendant to collect on the underlying mortgage loan debt has expired pursuant to Section 16.004 of the Texas Civil Practices and Remedies Code, that the

underlying mortgage loan debt is deemed void, that Defendant's lien rights are void, and that Defendant no longer has the legal right to foreclose on its lien rights to the Property.

**SECOND CAUSE OF ACTION: COMMON LAW FRAUD
FRAUD IN THE INDUCEMENT OR FRAUD BY NONDISCLOSURE**

14. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

15. Plaintiff shows that Defendant made material, false representations to Plaintiff with the knowledge of their falsity or with reckless disregard of the truth with the intention that such representations be acted upon by Plaintiff and that Plaintiff relied on these representations to her detriment.

16. Plaintiff would further show that Defendant concealed or failed to disclose material facts within the knowledge of Defendant, that Defendant knew that Plaintiff did not have knowledge of the same and did not have equal opportunity to discover the truth, and that Defendant intended to induce Plaintiff to enter into multiple transactions which made the basis of this suit by such concealment or failure to disclose.

17. Defendant used deceit or trickery to induce Plaintiff to act to his disadvantage, by causing him to enter into a forbearance but failed to disclose that once the forbearance was up all months that had been part of the forbearance would need to be paid in one lump sum. But for the deceit and trickery of Defendant, Plaintiff would not have entered into said forbearance agreement. The deceit and trickery used by Defendant, when made, was known to contain false and misleading representations or were recklessly asserted by Defendant without any knowledge of truth. Furthermore, Defendant was aware, or should have been aware, of Plaintiff's lack of sophistication with financial and/or real estate transactions.

18. A confidential or “informal fiduciary” relationship existed between the parties. Defendant had a duty to disclose these facts to Plaintiff and was deliberately silent when Defendant had a duty to speak.

19. Defendant used such trickery and deceit and false representations with the intent that Plaintiff would end up defaulting on the loan so that Defendant could eventually post the Property for a Foreclosure Sale.

20. Plaintiff acted in reliance on the misrepresentations and the reliance on such misrepresentations were justifiable and reasonable.

21. Furthermore, Defendant knew Plaintiff was ignorant of the nondisclosed facts and lacked opportunity to discover the truth.

22. As a result of the unconscionable actions and intentional nondisclosure of Defendant set out above, Plaintiff was harmed, and should be allowed recovery of his actual damages. In order to fully compensate Plaintiff, equitable relief in the form of rescission is also proper. The actions of the Defendant also warrant exemplary damages to deter such conduct in the future.

**THIRD CAUSE OF ACTION:
BREACH OF CONTRACT**

23. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 22 as if set forth fully herein.

24. The actions committed by Defendant constitutes breach of contract because:

- A. There exists a valid, enforceable contract (in addition to the Deed of Trust) between Plaintiff and Defendant whereby Defendant agreed to provide a modification to the Note after the forbearance had ended;
- B. Plaintiff has standing to sue for breach of contract;

- C. Plaintiff performed his contractual obligations under the Deed of Trust;
- D. Defendant breached the parties' agreement by not providing a modification to his loan; and
- E. The breaches of contract by Defendant caused Plaintiff's injury – actual damages which include, but are not limited to, loss of alternative loss mitigation options, violating Plaintiff's due process rights, litigation cost, interest on the balance of unpaid mortgage payments since the filing of this lawsuit, damage to Plaintiff's credit, and numerous erroneous expenses, overcharges, and penalties.

**FOURTH CAUSE OF ACTION:
PROMISSORY ESTOPPEL**

- 25. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 24 as if set forth fully herein.
- 26. The actions committed by Defendant constitute promissory estoppel because:
 - A. Defendant made a promise to Plaintiff to modify his loan to move the arrearages from the Forbearance to the end of the note and extend the term;
 - B. Plaintiff reasonably and substantially relied on the promise to his detriment;
 - C. Plaintiff's reliance was foreseeable by Defendant; and
 - D. Injustice can be avoided only by enforcing Defendant's promise.

**DAMAGES:
ACTUAL DAMAGES**

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

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

28. Plaintiff endured stress, anxiety, and loss of sleep as a result of Defendant's misconduct. Accordingly, Plaintiff is entitled to recover mental anguish damages from Defendant for which he pleads in an amount which does not exceed the jurisdictional limits of this Court.

EXEMPLARY DAMAGES

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

ATTORNEYS' FEES

30. Plaintiff was forced to employ the undersigned attorneys and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover 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

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

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that upon final hearing or trial hereof, the Court order a declaratory judgment that the four year statute of limitation for Defendant to collect on the underlying mortgage loan debt has expired pursuant to Section 16.004 of the Texas Civil Practices and Remedies Code, that the underlying mortgage loan debt is deemed void, that Defendant's lien rights are void, and that Defendant no longer has the legal right to foreclose on its lien rights to the Property as well as a judgment in favor of Robert Strange against U.S. Bank Trust Company, N.A. for his actual damages, mental anguish, 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,

VILT LAW, P.C.

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded to all parties of record pursuant to the Federal Rules of Civil Procedure on August 14, 2023.

Robert T. Mowrey
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/s/ Robert C. Vilt
ROBERT C. VILT