

2024V-0124

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

BI HOLDINGS, LLC

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IN THE DISTRICT COURT OF

v.

AUSTIN COUNTY, TEXAS

TEXAS FIRST BANK

**155th**  
\_\_\_\_\_ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW BI Holdings, LLC, Plaintiff herein, filing this its Original Petition, Application for Injunctive Relief, and Request for Admissions against Texas First Bank, 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. BI Holdings, LLC is an individual who resides in Austin County, Texas and may be served with process on the undersigned legal counsel.
3. Texas First Bank is an entity which conducts business in Austin County, Texas and may be served with process as follows:

Texas First Bank  
c/o The Secretary of the State of Texas  
1100 Congress, Capitol Bldg., Rm 1E.8  
Austin, Texas 78701

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over Texas First Bank because this Defendant is an entity which conducts business Austin County, Texas.

5. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court. Venue is mandatory in Austin County, Texas because the subject matter of the lawsuit involves real property which is located in Austin 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 Austin 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 the lawsuit is the real property and the improvements thereon located at 25642 & 25200 Bernard Road, New Ulm, Texas 78950 (the "Property").

7. Plaintiff purchased the Property on or about July 27, 2022. During the process of purchasing the Property, Plaintiff executed a Note as well as a Deed of Trust in which Texas First Bank ("Defendant") is listed as the Lender.

8. Plaintiff consistently made its mortgage payments in a timely manner; however, Plaintiff began to have financial difficulties due to COVID related financial issues. Realizing that Plaintiff may soon become in default on its mortgage payments, Plaintiff reached out to Defendant to obtain options to get the loan current. Initially, Defendant placed Plaintiff's account into a forbearance which ultimately did more harm than good and is the main reason Plaintiff is in the position it is in currently. Defendant unilaterally placed Plaintiff's account into a forbearance without explaining what a forbearance was or what would be required for Plaintiff to successfully come out of the forbearance. Therefore, when Plaintiff's forbearance was completed and they

were ready to resume mortgage payments, Defendant first explained that Plaintiff would be required to submit all mortgage payments covered by the forbearance up front before mortgage payments could be resumes. Again, this was not something that Defendant explained to Plaintiff prior to the forbearance so Plaintiff was more than frustrated with the situation. That being said, it put Plaintiff in a bigger whole which no required a greater response to prevent foreclosure of its Property.

9. Accordingly, Plaintiff began researching other options including, but not limited to, selling the Property. In the interim, Plaintiff attempted to submit payment to Defendant but they told Plaintiff that they would have to pay the complete default amount and reinstate the loan if Plaintiff wanted to keep its Property. Thankfully, Plaintiff has found a buyer for the Property and has executed a sales contract with an expected closing of September 10, 2024. As such, Plaintiff requested an up-to-date payoff so the sale could be finalized. Unfortunately, the payoff Plaintiff received was approximately \$200,000 more than was calculated by Plaintiff and the title company. Caught of guard by such a large discrepancy, Plaintiff immediately requested an accounting of the loan to determine where the charge is coming from and if it is accurate.

10. Everything is in place for the sale to close; however, the large discrepancy is causing the sale to be delayed and the lack of cooperation from Defendant in providing the requested accounting is preventing Plaintiff from finalizing the sale. Failure by a lender to provide a response after a qualified written request for verifiable information from a borrower is a direct violation of the Real Estate Settlement Procedures Act (“RESPA”).

11. In late August 2024, Plaintiff began to receive a barrage of mail and phone calls from investors wishing to purchase its Property to prevent the coming foreclosure sale scheduled for September 3, 2024. Apparently, Defendant posted Plaintiff’s Property for foreclosure sale

without sending its proper and timely notice of default, an opportunity to cure the default, notice of intent to accelerate, notice of acceleration, and notice of foreclosure sale as required by the Texas Property Code thereby violating Plaintiff's due process rights as well as the Deed of Trust.

12. Accordingly, Plaintiff alleges that Defendant is attempting to wrongfully sell its Property at a foreclosure sale on May 7, 2024 in violation of the Deed of Trust, Texas Property Code, Plaintiff's due process rights, and without standing.

### **CLAIMS**

#### **AGENCY & RESPONDEAT SUPERIOR**

13. 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, 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, vice principals, agents, attorneys, affiliated entities, and representatives of Defendant's affiliated entities by virtue of respondeat superior, apparent authority, and estoppel doctrines.

#### **FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

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. The actions committed by Defendant constitute breach of contract because:

- A. There exists a valid, enforceable contract between Plaintiff and Defendant;
- B. Plaintiff has standing to sue for breach of contract;

- C. Plaintiff performed, tendered performance, or was excused from performing its contractual obligations;
- D. Defendant breached the contract; and
- E. The breach of contract by Defendant caused Plaintiff's injury.

**SECOND CAUSE OF ACTION:**  
**VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT**  
**("RESPA") AND REGULATION X**

16. The acts, conduct, and/or omissions of Defendant, which at all material times hereto was acting in its alleged capacity as a "mortgage holder and servicer", also constitute violations of Regulation X of the Code of Federal Regulations established by the Consumer Financial Protection Bureau, 12, C.F.R. 1024.41 et. Seq., which became effective as of January 10, 2014, because Defendant made several material misrepresentations of fact to Plaintiff, who relied upon those misrepresentations to their detriment, and which are a producing cause of the actual damages sustained and incurred by Plaintiff in excess of the minimum jurisdictional limits of this Court.

17. Pursuant to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. 2605(f), Plaintiff has a private right of action providing for remedies for the claimed breaches of Regulation X, including actual damages, costs, statutory damages, and attorney's fees.

18. Plaintiff's loan is a "federally related loan" as that term is defined by 12 C.F.R. 1026.41(e)(4), and Defendant is subject to these regulations and does not qualify for the exception for a "qualified lender" as defined by 12 C.F.R. 617.700.

19. As to each of the acts, conduct and/or omissions of Defendant, as the mortgage holder and servicer, as described herein constitute violations of RESPA and

Regulation X and were committed intentionally, knowingly, and/or with malice, or a conscious indifference as to the rights of the Plaintiff, Plaintiff is entitled to and hereby seeks an award of exemplary damages in excess of the minimum jurisdictional limits of this Court.

**THIRD CAUSE OF ACTION:  
VIOLATION OF TEXAS PROPERTY CODE §5.065**

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

21. Pursuant to the provisions of the Texas Property Code, the holder of a note must ordinarily give notice to the maker of the holder's intent to accelerate the time for payment as well as notice of acceleration. If the mortgagee intends to accelerate the maturity of the debt, the notice must unequivocally inform the mortgagor of the mortgagee's intention. A proper notice of default must give the borrower notice that the alleged delinquency must be cured; otherwise, the loan will be accelerated and the property will go to foreclosure. Prior to a foreclosure action, the noteholder is also required to give the home owners clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

22. The actions committed by Defendant constitute violations of the Texas Property Code §5.065 because Defendant never sent proper and timely notice of default, the opportunity to cure the default, notice of intent to accelerate the debt, notice of acceleration, and notice of foreclosure sale which are required in order for Defendant to foreclose on their lien rights to the Property.

**DAMAGES:  
ACTUAL DAMAGES**

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

**EXEMPLARY DAMAGES**

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

**ATTORNEYS' FEES**

25. Plaintiff was forced to employ the undersigned attorneys to represent him and has agreed to pay them reasonable attorneys' fees for their services. Plaintiff is entitled to recover its 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**

26. 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**

27. Defendant is 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.

**EX-PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER**

28. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraph 1 through paragraph 26 as if set forth fully herein.

29. 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 on September 3, 2024. 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 him as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

30. Therefore, Plaintiff requests that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from selling, or re-posting, the real property which is the subject matter of this lawsuit and is commonly known as 25642 & 25200 Bernard Road, New Ulm, Texas 78950 at a foreclosure sale. Additionally, Defendant is hereby ordered to immediately provide an up-to-date accounting of the loan to Plaintiff to address the discrepancy in the payoff so the sale of the Property may close according to the sales contract.

31. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 30 above.

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

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

34. 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 selling, or re-posting, the real property which is the subject matter of this lawsuit and is commonly known as 25642 & 25200 Bernard Road, New Ulm, Texas 78950 at a foreclosure sale. Additionally, Defendant is hereby ordered to immediately provide an up-to-date accounting of the loan to Plaintiff to address the discrepancy in the payoff so the sale of the Property may close according to the sales contract;
- 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 its 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

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**ATTORNEY FOR PLAINTIFF**