

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

NAP RESORTS, LLC § IN THE DISTRICT COURT OF  
v. §  
§ HARRIS COUNTY, TEXAS  
§  
WILMINGTON SAVINGS FUND, §  
SOCIETY, FSB § \_\_\_\_\_ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

Nap Resorts, LLC hereby files its Original Petition, Application for Injunctive Relief, and Request for Disclosures complaining of Wilmington Savings Fund Society, FSB, 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. Nap Resorts, LLC is an entity formed under the laws of the State of Delaware and may be served with process on the undersigned legal counsel.

3. Wilmington Savings Fund Society, FSB is an unregistered foreign entity domiciled in the State of Delaware which extralegally conducts business in Harris County, Texas and pursuant to §17.044 Civil Practice and Remedies Code may be served with process as follows:

Wilmington Savings Fund Society, FSB  
c/o Service of Process -Texas Secretary of State  
P.O. Box 12079  
Austin, TX 78711-2079

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over Wilmington Savings Fund Society, FSB because the Defendant is an entity domiciled in the State of Delaware which conducts business in Harris 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 Harris County, Texas because the subject matter of this 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 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 826 Bunker Hill Road, Houston, TX 77024 (the "Property").

7. Vindustrialist, LLC ("Vindustrialist") purchased the Property on or about July 02, 2021. During the process of purchasing the Property, Vindustrialist executed a Promissory Note ("Note") in the amount of \$576,000 as well as a Commercial Deed of Trust, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing ("Deed of Trust") in which Finance of America Commercial LLC is listed as the Lender. A true and correct copy of the Note as well as the Deed of Trust is attached hereto as Exhibits "1" and "2" respectively and incorporated herein for all purposes.

8. Upon information and belief, the Note and Deed of Trust were subsequently transferred to Wilmington Savings Fund Society, FSB ("Wilmington" or "Defendant") which also services the loan.

9. Nap Resorts, LLC (“Nap Resorts” or “Plaintiff”) subsequently purchased the Property on July 16, 2024 from Vindustrialist; therefore, Nap Resorts is the lawful owner of the Property and, as such, is entitled to receive notice from Defendant if they choose to pursue legal action affecting Plaintiff’s rights – Defendant failed to do so. A true and correct copy of the related General Warranty Deed is attached hereto as Exhibit “3” and incorporated herein for all purposes. Moreover, Plaintiff does not owe any money to Defendant since Plaintiff purchased the Property from Vindustrialist free and clear of any debt ~ Plaintiff did not assume purchase the Property “subject to” any potential existing debts owed by Vindustrialist for which the Property was utilized as collateral.

10. Oddly, Plaintiff started receiving an overwhelming volume of text messages and phone calls informing them that their Property is posted for foreclosure sale to occur October 01, 2024. Alarmed, Plaintiff contacted the undersigned legal counsel who provided them with a copy of the related Notice of Substitute Trustee’s Sale and Appointment of Substitute Trustees – a true and correct copy is attached hereto as Exhibit “4” and incorporated herein for all purposes. Accordingly, Plaintiff asserts that Defendant is about to wrongfully sell its Property on October 01, 2024 in violation of its due process rights as well as Texas Property Code Section 51.002.

## **CLAIMS**

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

11. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in paragraphs 1 through 10 as if set forth fully herein.

12. Plaintiff seeks a determination of the rights of the parties pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001, *et seq.* (West). In particular, Plaintiff seeks a determination

that the pending foreclosure sale of its Property is wrongful because Defendant failed to properly follow the procedures as set forth in the Texas Property Code as well as the Texas Constitution. Specifically, Defendant failed to provide proper notice to Plaintiff in violation of Texas Property Code 51.002.

13. Plaintiff seeks a determination that the pending foreclosure sale of its Property is wrongful because Defendant is precluded from taking any action whatsoever to foreclose on Plaintiff's Property without first complying with the Texas Property Code.

**SECOND CAUSE OF ACTION:  
VIOLATION OF TEXAS PROPERTY CODE SECTION 51.002**

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. Section 51.002 of the Texas Property Code governs the sale of real property under deeds of trust or other contract liens. Tex. Prop. Code Ann. § 51.002 (West); Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 569 (Tex. 2001). In particular, section 51.002(d) provides that “[n]otwithstanding any agreement to the contrary, the mortgage servicer ... shall serve a debtor in default ... with written notice by certified mail stating that the debtor is in default ... and giving the debtor at least 20 days to cure the default before notice of the sale can be given.” *Id.* § 51.002(d). Section 51.002(b) states that notice of sale, in turn, must be given at least twenty-one days before the date of the sale and specifies various locations where the notice must be made available. *Id.* §§ 51.002(b)(1)-(3). In addition to the minimum statutory requirements, the Deed of Trust executed by the debtor-mortgagor usually details the agreed contractual terms and conditions for foreclosure of real property. By purchasing the Property from Vindustrialist and in the process becoming the owner of the Property, Nap Resorts stands in the shoes of Vindustrialist for purposes of Texas Property Code Section 51.002 and, as such, is likewise entitled to receive

the foreclosure sale notice in order to protect its due process and other legal rights.

**DAMAGES:  
ACTUAL DAMAGES**

16. 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**

17. 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**

18. 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 for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**CONDITIONS PRECEDENT**

19. 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**

20. Wilmington Savings Fund Society, FSB is hereby requested to disclose to Nap Resorts, LLC, 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**

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

22. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable since Defendant is about to sell Plaintiff's Property at a foreclosure sale on October 01, 2024 thereby depriving Plaintiff of ownership of the Property. Plaintiff has no adequate remedy at law because the subject matter is real property and any legal remedy of which Plaintiff may avail itself will not give it as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

23. Therefore, Plaintiff request that this Court issue a Temporary Restraining Order and, thereafter, a Temporary Injunction, to restrain Defendant from selling the real property which is the subject matter of this lawsuit commonly known as 826 Bunker Hill Road, Houston, Texas. 77024.

24. Plaintiff further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 23 above.

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

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

**BOND**

27. 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 Wilmington Savings Fund Society, FSB, its agents, employees, officers, directors, shareholders, and legal counsel, and those acting in concert or participation with them who receive actual notice of the Order, by personal service or otherwise, from selling the real property which is the subject matter of this lawsuit and is commonly known as 826 Bunker Hill Road, Houston, Texas 77024;
- D. A Permanent Injunction be entered enjoining Wilmington Savings Fund Society, FSB, 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 Nap Resorts, LLC against Wilmington Savings Fund Society, FSB 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,

VILT LAW, P.C.

By: 

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ATTORNEYS FOR PLAINTIFF