

CAUSE NO. 2024-77037

GREEN TREE PLACE HOLDINGS LLC, RIDGEPOINT APTS HOLDINGS LLC, AND PINE LAKE PROPERTY LP,	§	IN THE DISTRICT COURT OF
	§	
	§	
Plaintiffs,	§	HARRIS COUNTY, TEXAS
	§	
v.	§	
	§	
LUMENT REO LLC,	§	164TH JUDICIAL DISTRICT
	§	
Defendant.		

**DEFENDANT LUMENT REO LLC'S EMERGENCY
MOTION TO MODIFY TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 680 of the Texas Rules of Civil Procedure, Defendant Lument REO LLC ("Defendant") files this Emergency Motion to Modify the Temporary Restraining Order entered by the Court on November 4, 2024 (the "Order") on the application of Plaintiffs Green Tree Place Holdings LLC ("Green Tree"), Ridgepoint Apts Holdings LLC ("Ridgepoint") and Pine Lake Property LP ("Pine Lake") (collectively "Plaintiffs"), and for this Motion, Defendant would show the Court as follows:

SUMMARY OF MOTION AND RELIEF REQUESTED

1. Plaintiffs requested and obtained the Order to enjoin Defendant from conducting November 5, 2024 foreclosure sales of three apartment projects which secure loans obtained by Plaintiffs and which are in default based on Plaintiffs' failure to make payments when due. The Order sets the hearing on Plaintiffs' Application for Temporary Injunction on November 14, 2024 at 11:00 a.m. The last day to post property for a December 3, 2024 foreclosure sale is November 12, 2024, two days before the temporary injunction hearing. The Order requires Defendant to "cease and desist from all foreclosure proceedings . . .," and could be read to preclude Defendant from posting the three properties for a December 3, 2024 foreclosure. Plaintiffs'

counsel has refused to modify the Order to permit any posting for a December 3, 2024 foreclosure sale and contends that the Order precludes Defendant from doing so. If Plaintiffs are correct, the Order is overbroad because it enjoins Defendants from foreclosing for 64 days and violates Rule 680 of the Texas Rules of Civil Procedure. Therefore, Defendant seeks an Order modifying the Order to limit the scope of the Order to the November 5, 2024 sales or to expressly permit Defendant to post each of the three properties for a December 3, 2024 foreclosure sale.

FACTUAL AND PROCEDURAL BACKGROUND

2. Each of the Plaintiffs is a borrower under a loan secured by an apartment project located in Harris County. Specifically, Green Tree is the borrower under a loan in the original principal amount of \$20,121,000.00 (the "Green Tree Loan") originated by OREC Structured Finance Co., LLC, ("OREC") and secured by the real property and improvements located at 700 Dunson Glen, Houston, Texas 77090 (the "Green Tree Property"), Ridgpoint is the borrower under a loan in the original principal amount of \$18,798,000.00 (the "Ridgpoint Loan") originated by OREC and secured by the real property and improvements located at 2700 Westridge Drive, Houston, Texas 77504 (the "Ridgpoint Property"), and Pine Lake is the borrower under a loan in the original principal amount of \$10,587,000.00 (the "Pine Lake Loan") originated by OREC and secured by the real property and improvements located at 1325 Greens Parkway, Houston, Texas 77067 (the "Pine Lake Property").

3. Each of the Green Tree Loan, Ridgpoint Loan and Pine Lake Loan (collectively, the "Loans") was accelerated on August 22, 2024, based upon the respective Plaintiff's failure to make payments when due. Specifically, Plaintiffs failed to make the payments due in July 2024, and with the exception of one payment for the Pine Lake Loan, no further payments have been made under any of the three Loans. In addition, Plaintiffs continue to collect rent from the Green Tree Property, the Ridgpoint Property and the Pine Lake Property (collectively, the "Properties").

The collected rent is not being paid to the Lender, and on information and belief, is being dissipated by Plaintiffs. Not only have Plaintiffs failed to pay the rent to the Lender in accordance with the loan documents for the Loans, Plaintiffs have failed to use rent for maintenance of and capital improvements to the Properties resulting in significant waste and the deterioration of each of the three Properties.

4. Each of the three Loans was accelerated on August 22, 2024, and on October 15, 2024, Plaintiffs were provided with notices that the three Properties were posted for November 5, 2024 foreclosure sales.¹

5. On November 4, 2024, Plaintiffs filed this suit against Defendant asserting (i) a claim for tortious interference based upon Plaintiffs' contention that the postings tortiously interfere with a purported sales contract between Plaintiffs and a buyer, (ii) a declaratory judgment claim seeking a declaration with regard to the parties' rights under an escrow account agreement and the specific amounts Plaintiffs are required to maintain under that agreement, and (iii) a claim seeking unspecified damages for breach of contract based on the vague allegations that Defendant charged improper fees, failed to perform in connection with advances for improvements and somehow breached the loan documents by posting the Properties for foreclosure.

6. On the same date, Plaintiffs presented their application for a temporary restraining order to the Court ex parte and obtained the Order.

7. After learning of the Order, counsel for Defendant contacted Plaintiffs' counsel and noted that certain language of the Order could be interpreted to preclude Defendant from posting the Properties for a December 3, 2024 foreclosure sale. Plaintiffs' counsel stated that it was his intention to preclude the reposting even though a December 3, 2024 foreclosure sale is well outside

¹ On November 1, 2024, the Green Tree Loan was assigned to LSF GTP Houston, LLC, the Ridgepoint Loan was assigned to LSF RPA Houston, LLC, and the Pine Lake Loan was assigned to LSF PCU Houston, LLC.

of the maximum 14 day duration of the Order, and Plaintiffs' counsel has refused to modify the Order to permit the reposting.

ARGUMENTS AND AUTHORITIES

8. Rule 680 of the Texas Rules of Civil Procedure provides that "[o]n two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require." Tex. R. Civ. P. 680.

9. By rule a temporary restraining order expires "by its terms within such time after signing, not to exceed fourteen (14) days" Tex. R. Civ. P. 680.

The purpose of a temporary restraining order is to preserve the status quo of the subject matter of the litigation until a hearing can be held on the application for a temporary injunction. *See In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004). Because a foreclosure can only occur on the first day of the month, the Order effectively precludes Defendant from foreclosing on any of the Properties in November. Tex. Prop. Code §51.002(a). Defendant has no issue with the inability to foreclose in November. However, the Property Code also requires a notice of a foreclosure sale to be posted, filed and served at least twenty-one days before the date of the sale. Tex. Prop. Code §51.002(b). Therefore, in order to post the Properties for a December 3, 2024 sale, Defendant must post the Properties on or before November 12, 2024.

10. The temporary injunction hearing is set for November 14, 2024, two days after the deadline for posting. If, as Plaintiffs' counsel contends, the Order precludes Defendant from posting the Properties for December 3, 2024 sale, Defendant will be precluded from foreclosing in December even if the Order expires on November 14, 2024, and even if the Court denies Plaintiffs' application for a temporary injunction. Therefore, to the extent the Order can be

interpreted as precluding Defendant from posting for a December 3, 2024 sale, it is overly broad and improper. *See In re Newton* 146 S.W.3d at 652.

11. The Order effectively enjoins Defendant from foreclosing for an additional thirty four days when, in the absence of an extension, a temporary restraining order can last no more than fourteen days. Tex. R. Civ. P. 680. Modifying the Order to limit its scope to the November 5, 2024 foreclosures or to expressly permit a posting for December 3, 2024 sales is proper, and is consistent with the Rules of Civil Procedure and the purposes of injunctive relief. Moreover, Plaintiff will suffer no detriment from the requested modification. If Plaintiffs prevail at the temporary injunction hearing, Defendant will be precluded from foreclosing on December 3, 2024 notwithstanding the modification of the Order to permit postings for that date. Alternatively, if the Order is not modified and Defendants are prohibited from posting for December 3, 2024 foreclosure sales, Defendants will be precluded from foreclosing until January 7, 2025, even if Defendant prevails and Plaintiffs' application for a temporary injunction is denied.

12. Based on the foregoing, the requested modification is proper, the Order without the modification is overly broad and the Court should modify the Order as requested herein.

WHEREFORE, PREMISES CONSIDERED, Lument REO LLC requests that the Court set this Motion for hearing in no more than two days, and that following the hearing, the Court enter an order limiting the scope of the Order to the November 5, 2024 foreclosure or to expressly permit Defendant to post each of the Properties for December 3, 2024 foreclosures sales. Defendant requests such other and further relief, both at law and in equity, as to which it may show itself to be justly entitled.

Respectfully submitted,

WINSTEAD PC

By: /s/ Tom Van Arsdel

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**ATTORNEYS FOR DEFENDANT
LUMENT REO LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served upon counsel via the Court's electronic filing system on November 7, 2024.

/s/ Brian T. Morris

Brian T. Morris

CERTIFICATE OF CONFERENCE

The undersigned certifies that on November 4, 2024, he conferred with Jason A. LeBoeuf, counsel for Plaintiffs, regarding the relief requested in the Motion and that he followed up with emails on November 4, 2024 and November 5, 2024, but Plaintiffs will not agree to the requested relief.

/s/ Brian T. Morris

Brian T. Morris

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Status as of 11/7/2024 3:38 PM CST

Case Contacts

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