

CAUSE NO. 2025-06664

ANTHONY HUTCHISON
Plaintiff,

v.

**FRANKLIN CREDIT MANAGEMENT
CORPORATION and KENSINGTON
STATION, LLC**

Defendants.

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IN THE DISTRICT COURT OF

125th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION
TO DISSOLVE TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Anthony Hutchison, Plaintiff in the above action responding to Defendant Kensington Station, LLC's Motion to Dissolve Temporary Restraining Order. Plaintiff asks the Court to deny Defendant Kensington's motion and strike its exhibit A to said motion.

CASE BACKGROUND

1. This was a suit to enjoin and restrain a writ of possession proceeding based on a wrongful foreclosure by the Defendant Kensington Station, LLC scheduled on or after Friday, January 31, 2025. Plaintiff brought the lawsuit against Defendants Franklin and Kensington alleging wrongful foreclosure, trespass to try title, violation of Texas Property Code Section 51.002 et. seq, violation of the Texas Finance Code Section 156 et. seq and Sections 343.106 et. seq.
2. From December 2014 through the present, Plaintiff has continued to pay the senior lien/primary note on the real property located at 4241 Purdue, Houston, TX 77005 to Ocwen Mortgage Servicing, LLC and is presently current in all principal and escrow payments.
3. During the above mentioned time period, Plaintiff did not receive any communication from Defendant Franklin regarding the existence of the secondary lien previously owned by Greenpoint

Mortgage. In fact, the Greenpoint Mortgage secondary lien/junior lien was extinguished in 2012 by the foreclosure proceedings initiated by Bank of America who originally held the senior lien.

4. In spite of several inquiries made by Plaintiff's attorney over the course of several months, regarding the validity of the purported junior lien security interest as it relates to the note Defendant Franklin had acquired it unilaterally initiated foreclosure proceedings on or about September 6, 2022.

5. As a result, through a Substitute Trustee, Defendant Franklin wrongfully sold the Plaintiff's real property at 4241 Purdue with a flawed and questionable title to Defendant Kensington well below its market value at the price of \$146,000.00.

6. At the time of the foreclosure sale, the appraised value of the Plaintiff's property was approximately \$413,000.00.

7. Currently, because of the wrongful foreclosure sale, Plaintiff has been involved in contested eviction proceedings with Defendant Kensington fighting for the right of possession in spite of the flawed foreclosure sale. Defendant Kensington has no right to evict the Plaintiff from his home as if the Plaintiff is a tenant living on Defendant Kensington's property.¹

8. The Plaintiff has stated from his first encounter with Defendant Kensington that its eviction should not be lawful as the foreclosure and sale of the Defendants property was flawed. The foreclosure sale was from a junior lien which does not supersede the rights of the senior lien holder and the Plaintiff's homestead rights. Therefore, neither Defendant had the right of possession of Plaintiff's property.

¹ *Fandey v. Lee*, the court found that a landlord/tenant relationship did not exist between the parties, which led to the denial of the appellants' requested relief, including the right to possession of the property *Fandey v. Lee*, 880 S.W.2d 164.

9. The Plaintiff filed an original petition and motion for injunctive relief with the Harris County Clerk on January 30, 2025 and faxed the Defendants a copy of the same. The Defendants were served electronically on February 11, 2025 to date neither defendant has filed an answer, nor have they filed an appearance.

10. The 127th District Court granted Plaintiff's temporary restraining order on January 31, 2025 and set the Plaintiff's Original Application for Temporary Injunction for hearing on February 14, 2025 at 11:00 a.m. in the 125th District Court.

11. Subsequently, on February 3, 2025 this case was transferred to the 125th District Court and notice was sent to all parties involved.

12. On February 14, 2025 the Court signed the order extending the Plaintiff's Temporary Restraining Order to February 28, 2025.

13. Plaintiff's attorney received a notice of hearing via email on Friday evening (February 14, 2025) regarding a filing on behalf of Defendant Kensington stating there is a hearing scheduled Tuesday, February 18, 2025 in an ancillary court.

14. Plaintiff's counsel was never served with the document(s) this Defendant filed with the ancillary court. As mentioned above the Defendant's counsel was served Plaintiff's original petition and application for temporary restraining order directly on February 11, 2025 and thereby having plenty of notice as to where it should challenge Plaintiff's temporary restraining order and application for injunction.

Violation of Texas Rules of Civil Procedure

15. Defendant Kensington violated Texas Rules of Civil Procedure Rule 21. It is a violation of the Texas Rules of Civil Procedure for an opposing party to file a brief in opposition to a temporary

injunction in an ancillary court without serving the plaintiff and setting a motion for hearing with less than three days' notice when they have not filed an answer or appearance in the original case.

16. According to Rule 21 of the Texas Rules of Civil Procedure, a motion and notice of hearing must be served on all other parties not less than three days before the time specified for the hearing, unless otherwise provided by the rules or shortened by the court *Approximately \$1,589.00 v. State*, 230 S.W.3d 871, *In re Cnty. of Hidalgo*, 655 S.W.3d 44. Additionally, Rule 21 requires that a motion and notice of hearing be served on opposing parties at the time of filing *Approximately \$ 1,589.00 v. State*, 230 S.W.3d 871.

17. Furthermore, local rules, such as those in Bell County, specify that any party may request a setting for a trial or pretrial hearing only after the filing of an answer or entry of an appearance by the opposing party, and such requests must be accompanied by a certificate of service to opposing counsel Tex. Dist. Ct. Bell Cty Lr 2.2, PRETRIAL AND TRIAL SETTINGS. This indicates that without an answer or appearance, the opposing party should not be setting hearings.

Failure to follow Texas Rules of Civil Procedure 685

18. *A defendant cannot file a motion in opposition and set a hearing on their motion in an ancillary court and only serve a notice of hearing when the original petition and motion for temporary injunction were filed and assigned to a different court. According to Tex. R. Civ. P. 685, upon the grant of a temporary restraining order or an order fixing a time for hearing upon an application for a temporary injunction, the party to whom the same is granted must file their petition, together with the order of the judge, with the clerk of the proper court. If such orders do not pertain to a pending suit in said court, the cause shall be entered on the docket of the court in its regular order in the name of the party applying for the writ as plaintiff and of the opposite party as defendant Tex. R. Civ. P. 685, Filing and Docketing.*

19. Additionally, Tex. R. Civ. P. 686 specifies that when a petition for injunction is filed and the petition is not ancillary to an action then pending in that court, the clerk of the court shall issue a citation and cause it to be served on the defendant and returned as in other civil cases *In re Poe*, 996 S.W.2d 281. *This indicates that proper service and filing procedures must be followed in the court where the original petition and motion were filed.*

20. Furthermore, the case of *Ft. Worth v. Ft. Worth Acid Works Co.*, 259 S.W. 919 clarifies that the filing of an answer to an application for a temporary injunction on legal notice to do so only has the effect of entering appearance for the purpose of trying the issue as to whether an injunction should be issued, which would operate until the case is finally disposed of *Ft. Worth v. Ft. Worth Acid Works Co.*, 259 S.W. 919. *This implies that any motions or hearings related to the temporary injunction should be handled within the jurisdiction of the court where the original petition was filed.*

Jurisdiction is proper

21. In Texas, a wrongful foreclosure claim requires proving a defect in the foreclosure sale proceedings, a grossly inadequate selling price, and a causal connection between the defect and the grossly inadequate selling price *Houle v. Casillas*, 594 S.W.3d 524. If the junior lienholder foreclosed without proper notification, this could constitute a defect in the foreclosure process. Texas law generally does not require a senior lienholder to notify a junior lienholder of foreclosure proceedings *Jones v. Bank United of Tex.*, 51 S.W.3d 341, *Chandler v. Orgain*, 302 S.W.2d 953. However, if the junior lienholder failed to notify the original property owner, this could be a significant defect, especially if it led to a grossly inadequate sale price.

22. Additionally, the rescission of the senior lienholder's foreclosure proceedings restores the parties to their respective rights and obligations as they existed before the sale Sec. 51.016.

Rescission of Nonjudicial Foreclosure Sales. This means that the original property owner retains their interest in the property, which could be a basis for challenging the junior lienholder's foreclosure and subsequent sale to a third party.

23. Therefore, the original property owner has a valid basis to claim wrongful foreclosure due to the lack of proper notification and the potential defects in the foreclosure process by the junior lienholder *Houle v. Casillas*, 594 S.W.3d 524, Sec. 51.016. Rescission of Nonjudicial Foreclosure Sales.

24. Thus, if the issue of possession is intertwined with a genuine issue of title, such as a claim of wrongful foreclosure, the justice court and county court at law lack jurisdiction, and the matter must be resolved in a district court *Aguilar v. Weber*, 72 S.W.3d 729, *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, *Terra XXI, LTD. v. Ag Acceptance Corp.*, 280 S.W.3d 414. For example, in *Aguilar v. Weber*, 72 S.W.3d 729, the court found that the case involved a right to possession dependent on a contract for deed, thus depriving the lower courts of jurisdiction *Aguilar v. Weber*, 72 S.W.3d 729. Similarly, in *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, the court noted that the justice and county courts lacked jurisdiction because the title issue was intertwined with the issue of possession *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277.

25. A junior lienholder can initiate a forcible detainer action however their ability to evict the property owner is contingent upon first foreclosing their own lien and addressing the senior lienholder's superior rights *Davis v. Walker*, 233 S.W. 521, *Elbar Invs., Inc. v. Wilkinson*, 2003 Tex. App. LEXIS 8182, *Jones v. Bank United of Tex.*, 51 S.W.3d 341.

26. When a junior lien is purchased at foreclosure sale, the purchaser becomes the new junior lienholder. The new junior lienholder does not however, automatically become the landlord or acquire the rights of a landlord if there is a senior lienholder in good standing. Under Texas common

law, foreclosure does not terminate interests in the foreclosed property that are senior to the lien being foreclosed. Consequently, the purchaser at a junior lien foreclosure sale takes title subject to the prior liens and must service the prior liens to prevent loss of the property by foreclosure of the prior liens *DTND Sierra Invs., LLC v. Deutsche Bank Nat'l Trust Co.*, 2013 Tex. App. LEXIS 10460, 402 Lone Star Prop., LLC v. Bank of Am., N.A., 2014 Tex. App. LEXIS 8758. Nor does the new junior lienholder have the rights of a landlord under Section 24 of the Texas Property Code if there is a senior lienholder in good standing. Additionally, the Texas Property Code § 24.005(b) specifies the notice requirements for tenants at will or by sufferance, but it does not confer landlord rights to a junior lienholder in the presence of a senior lienholder Sec. 24.005. Notice to Vacate Prior to Filing Eviction Suit.

CONCLUSION

For the reasons stated above, the Defendant's motion to dissolve the Plaintiff's temporary injunction against Defendant Kensington Station, LLC. should be denied. The Defendant failed to comply with Texas Rules of Civil Procedure notice requirements when filing its brief in support of its motion to dissolve the Plaintiff's TRO and temporary injunction. The Plaintiff was never served with said document and it should be barred from being used as an argument before this Court. The Plaintiff also prays that the Court finds for the reasons stated herein, jurisdiction is proper.

Respectfully Submitted,

/s/Ray L. Shackelford

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Ray Shackelford, do hereby certify that a true and correct copy of the foregoing instrument has been served to all parties shown below, under the Texas Rules of Civil Procedure, via electronic service on this 18th day of February 2025.

/s/Ray L. Shackelford

RAY L. SHACKELFORD

Unofficial Copy Office of Marilyn Burgess District Clerk

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Ray Shackelford on behalf of Ray Shackelford

Bar No. 18071500

rshackctic@yahoo.com

Envelope ID: 97497538

Filing Code Description: Answer/ Response / Waiver

Filing Description: Plaintiff's Response in Opposition to Defendant's

Motion to Dissolve Temporary Restraining Order

Status as of 2/18/2025 2:26 PM CST

Case Contacts

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