

CAUSE NO. _____

MARIE M. VICTOR AND
BRIAN A. BREWER - TRUSTEE

v.

FIRST GUARANTY MORTGAGE
CORPORATION

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Marie M. Victor and Brian A. Brewer - Trustee, Plaintiffs herein, filing this their Original Petition, Application for Injunctive Relief, and Request for Disclosures complaining of First Guaranty Mortgage Corporation, Defendant herein, and for causes of action would respectfully show the Court as follows:

DISCOVERY

1. Plaintiffs intend to conduct discovery under Texas Rules of Civil Procedure 190.3 (Level 2).

PARTIES

2. Marie M. Victor as well as Brian A. Brewer - Trustee are individuals who reside and/or conduct business in Harris County, Texas and may be served with process on the undersigned legal counsel.

3. First Guaranty Mortgage Corporation is an entity formed under the laws of the State of Virginia which conducts business in Harris County, Texas and may be served with process as follows:

First Guaranty Mortgage Corporation
C/O National Registered Agents, Inc.
1999 Bryan Street, Suite 900
Dallas, TX 75201

JURISDICTION AND VENUE

4. The Court has jurisdiction over First Guaranty Mortgage Corporation because the Defendant is an entity formed under the laws of the State of Virginia 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 Plaintiffs' 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 20703 Cameo Rose Drive, Cypress, TX 77433 (the "Property").

7. Marie M. Victor ("Victor") and her husband Nesly purchased the Property on or about December 30, 2013. During the process of purchasing the Property, Victor executed a Note in the amount of \$273,319 as well as a Deed of Trust in which Everett Financial, Inc. is listed as the Lender. A true and correct copy of the Note and 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 First Guarantee Mortgage Corporation ("FGMC") for which Roundpoint Mortgage Servicing Corporation ("Roundpoint") acts as the loan servicer.

9. Victor began to have financial difficulties during the term of the loan. Realizing that she may soon become in default on her mortgage payments, Victor entered into debt restructuring negotiations with Roundpoint in order to modify the terms and conditions of the loan.

10. Victor was offered a loan modification by Roundpoint during October 2016. A Roundpoint representative assured Victor that if she gathered and submitted all of the required documents along with a loan modification application at least 37 days prior to a foreclosure sale, FGMC would not be able to foreclose on her Property until her application had been accepted or denied and she had been provided the opportunity to appeal that decision if needed. Additionally, Roundpoint's representative told Victor to cease making mortgage payments until the loan modification was completed. Further, the Roundpoint representative stated that she was memorializing the conversation in her notes and that the agreement to defer any foreclosure proceedings pending loan modification review would be signed by her supervisor and mailed to Victor - Victor continues to await that agreement.

11. In reliance on the agreement, Victor promptly gathered and submitted all the required documents along with a loan modification application on November 16, 2016. Victor contacted Roundpoint on November 20, 2016 to confirm receipt of the loan modification application and supplemental documents. A Roundpoint representative confirmed that the application was complete and under review - this was Victor's first complete loan modification application. As such, Victor ceased all other loss mitigation options.

12. Victor was approached by Brian A. Brewer - Trustee ("Brewer") in May 2017 who offered to help Victor with her mortgage issues by paying off her mortgage loan, purchasing the Property from her, and renting the property back to her. To facilitate the process, Victor executed

a Special Warranty Deed whereby she transferred her ownership interest in the Property to Brewer subject to the existing mortgage with FGMC. A true and correct copy of the related Special Warranty Deed is attached hereto as Exhibit "3" and incorporated herein for all purposes.

13. Because Victor had not received a formal acceptance or denial of her loan modification application, she believed her loan modification was imminent until she received a Notice of Trustee's Sale informing her that Roundpoint posted her Property for foreclosure sale on April 3, 2018. A true and correct copy of the Notice of Trustee Sale is attached hereto as Exhibit "4" and incorporated herein for all purposes. Apparently, Roundpoint initiated foreclosure proceedings despite their assurances to Victor that FGMC would not be able to foreclose on the Property if a complete loan modification application was submitted at least 37 days prior to a foreclosure sale and without approving or denying the loan modification application as well as providing the required appeal period.

14. Accordingly, Plaintiffs allege that FGMC is about to wrongfully sell their Property at a foreclosure sale on April 3, 2018 in violation of the agreements between the parties and without proper and timely notice as required by the Texas Property Code.

CLAIMS

AGENCY & RESPONDEAT SUPERIOR

15. 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 Plaintiffs to reasonably rely that such conduct was within the scope of their authority. Plaintiffs did rely to Plaintiffs' 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**

16. To the extent not inconsistent herewith, Marie Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

17. The actions committed by First Guaranty Mortgage Corporation ("FGMC") constitute breach of contract because:

- A. There exists a valid, enforceable contract between Victor and FGMC;
- B. Victor has standing to sue for breach of contract;
- C. Victor performed, tendered performance, or was excused from performing her contractual obligations;
- D. FGMC breached the contract; and
- E. The breach of contract by FGMC caused Victor's injury.

**SECOND CAUSE OF ACTION:
COMMON LAW FRAUD**

18. To the extent not inconsistent herewith, Marie Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

19. The actions committed by First Guaranty Mortgage Corporation ("FGMC") [by and through its agent Roundpoint Mortgage Servicing Corporation ("Roundpoint")] constitute common law fraud because Roundpoint made false and material representations to Victor when informing her that FGMC would take no action to foreclose on her Property until her loan modification application was accepted or denied and she was afforded the required appeal

opportunity (if needed) - Victor's account was still being reviewed for a loan modification yet FGMC posted her Property for foreclosure sale on April 3, 2018. Roundpoint knew that the representations were false or made these representations recklessly, as a positive assertion, and without knowledge of its truth. In addition, Roundpoint made these representations with the intent that Victor act on them and Victor relied on these representations which caused Victor's injury.

**THIRD CAUSE OF ACTION:
PROMISSORY ESTOPPEL**

20. To the extent not inconsistent herewith, Marie Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

21. The actions committed by First Guaranty Mortgage Corporation ("FGMC") constitute promissory estoppel because:

- A. FGMC made a promise to Victor;
- B. Victor reasonably and substantially relied on the promise to her detriment;
- C. Victor's reliance was foreseeable by FGMC; and
- D. Injustice can be avoided only by enforcing FGMC's promise.

**FOURTH CAUSE OF ACTION:
VIOLATION OF RESPA/REGULATION X**

22. To the extent not inconsistent herewith, Marie Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

23. The Real Estate Settlement Procedures Act ("RESPA") dictates that "[a] loan servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application." 12 C.F.R. § 1024.41(b)(1). Additionally, a loan servicer must "[n]otify the borrower in writing within 5 days after receiving the loss mitigation application ... that the servicer has determined that the loss mitigation application is incomplete". *Id.*

§ 1024.41(b)(2)(i)(B).

24. Further, RESPA prohibits a loan servicer from *making* the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process if the borrower submits a “complete loss mitigation application” during the 120-day pre-foreclosure review period or before the servicer has made the first notice of filing. *Id.* § 1024.41(f). Additionally, RESPA prohibits a loan servicer from *moving* for foreclosure if the borrower submits a “complete loss mitigation application” after the servicer has made the first notice or filing but more than 37 days before a foreclosure sale unless:

- (a) the servicer has sent the borrower a notice that the borrower is not eligible for any loss mitigation option and the appeal process of the pertinent section is not applicable;
- (b) the borrower has not requested an appeal within the applicable time period, or
- (c) the borrower’s appeal has been denied. *Id.* § 1024.41(f) - (g).

25. As such, the actions committed by First Guaranty Mortgage Corporation (“FGMC”) [by and through its agent Roundpoint Mortgage Servicing Corporation (“Roundpoint”)] are a violation of RESPA because:

- A. Victor was working with FGMC pursuing loss mitigation options;
- C. Victor submitted a complete loss mitigation application prior to FGMC’s first notice of filing;
- D. Alternatively, Victor submitted a complete loss mitigation application more than 37 days prior to the foreclosure sale;

- E. FGMC failed to provide formal notice of acceptance or denial of the loan modification application and the required 30-day appeal period (if needed) prior to the foreclosure sale;
- F. FGMC completed the violation by posting Victor's Property for foreclosure sale on April 3, 2018.

**FIFTH CAUSE OF ACTION:
BREACH OF DUTY OF COOPERATION**

26. To the extent not inconsistent herewith, Marie Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 14 as if set forth fully herein.

27. Texas law recognizes a duty to cooperate that is implied in every contract in which cooperation is necessary for performance of the contract." This duty "requires that a party to a contract may not hinder, prevent, or interfere with another party's ability to perform its duties under the contract." *Case Corp. v. Hi-Class Bus Sys. of Am., Inc.*, 184 S.W.3d 760, 770 (Tex. App.—Dallas 2005, pet. denied).

28. As described above, First Guaranty Mortgage Corporation ("FGMC") misled Victor with oral and written representations regarding her Loan, representations that were untrue. FGMC did not provide Victor with the proper information she needed to ensure her home was safe. Additionally, Victor attempted to fulfill her obligations by submitting a complete loan modification and was thwarted by FGMC, who instead improperly posted her Property for foreclosure sale on April 3, 2018. FGMC has therefore breached the implied duty of cooperation.

**SIXTH CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION**

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

30. The elements of a claim for negligent misrepresentation are: (1) the representation is made by a defendant in the course of its business, or in a transaction in which it has a pecuniary interest; (2) the defendant supplies "false information" for the guidance of others in their business; (3) the defendant does not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffers pecuniary loss by justifiably relying on the representation. *Fed. Land Bank Ass'n of Tyler v. Sloane*, 825 S.W.2d 439, 442 (Tex. 1991).

31. In the course of its business and in a transaction in which it had a pecuniary interest, FGMC represented to Victor that they were not going to foreclose on her loan without first accepting or denying the loan modification application and providing the required appeal period. Victor relied on these representations from FGMC and acted accordingly. FGMC then pursued foreclosure against Victor. The information provided by FGMC to Victor was false. At best, FGMC supplied this information without exercising reasonable care or competence in their communications with Victor. Victor relied on these representations which caused Victor's injury.

DAMAGES:
ACTUAL DAMAGES

32. Plaintiffs are entitled to recover their actual damages from Defendant for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

NOMINAL DAMAGES

33. Plaintiffs are entitled to recover their nominal damages from Defendant associated with Plaintiffs' cause of action for Violation of RESPA/Regulation X, for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

EXEMPLARY DAMAGES

34. Plaintiffs are entitled to recover their exemplary damages from Defendant for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

ATTORNEYS' FEES

35. Plaintiffs were forced to employ the undersigned attorneys to represent them and have agreed to pay them reasonable attorneys' fees for their services. Plaintiffs are entitled to recover their reasonable attorneys' fees pursuant to Chapter 38 of the Texas Civil Practices & Remedies Code for which Plaintiffs plead in an amount which does not exceed the jurisdictional limits of this Court.

CONDITIONS PRECEDENT

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

REQUEST FOR DISCLOSURES

37. First Guaranty Mortgage Company is hereby requested to disclose to Marie M. Victor as well as Brian A. Brewer Trustee, 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

38. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made in paragraph 1 through paragraph 36 as if set forth fully herein.

39. Unless Defendant is enjoined, Plaintiffs will suffer probable harm which is imminent and irreparable since Defendant is about to sell Plaintiffs' Property at a foreclosure sale on April 3, 2018 thereby depriving Plaintiffs of ownership of the Property. Further, Defendant

may take legal action to evict or otherwise cause Plaintiffs to be dispossessed of the Property. Plaintiffs have no adequate remedy at law because the subject matter is real property and any legal remedy of which Plaintiffs may avail themselves will not give them as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

40. Therefore, Plaintiffs 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 20703 Cameo Rose Drive, Cypress, TX 77433 as well as from taking any legal action to evict Plaintiffs and any other occupants from, or enforcing a writ of possession regarding, the aforementioned property.

41. Plaintiffs further requests that, upon trial on the merits, Defendant be permanently enjoined from the same acts listed in Paragraph 40 above.

42. Plaintiffs are likely to prevail on the merits of the lawsuit as described above.

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

BOND

44. Plaintiffs are willing to post a reasonable temporary restraining order bond and requests that the Court set such bond.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that:

- A. Defendant be cited to appear and answer herein;
- B. The Court conduct a hearing on Plaintiffs' Application for Injunctive Relief;

- C. A Temporary Restraining Order be issued restraining Defendant, 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 20703 Cameo Rose Drive, Cypress, TX 77433 as well as from taking any legal action to evict Plaintiffs and any other occupants from, or enforcing a writ of possession regarding, the aforementioned property;
- 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 Marie M. Victor as well as Brian A. Brewer - Trustee against First Guaranty Mortgage Corporation for their actual damages, nominal 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 Plaintiffs may be entitled.

Respectfully submitted,

VILT AND ASSOCIATES, P.C.

By: 

ROBERT C. VILT

Texas Bar Number 00788586

Email: clay@viltlaw.com

ERICK DELARUE

Texas Bar Number 24103505

Email: erick@viltlaw.com

5177 Richmond Avenue, Suite 1142

Houston, Texas 77056

Telephone: 713.840.7570

Facsimile: 713.877.1827

ATTORNEYS FOR PLAINTIFFS

Unofficial Copy Office of Marilyn Burges District Clerk

CAUSE NO. _____

MARIE M. VICTOR AND
BRIAN A. BREWER - TRUSTEE

v.

FIRST GUARANTY MORTGAGE
CORPORATION

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

STATE OF TEXAS

COUNTY OF HARRIS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

AFFIDAVIT OF MARIE M. VICTOR

BEFORE ME, the undersigned authority, on this day personally appeared Marie M. Victor who, being duly sworn, deposes and says:

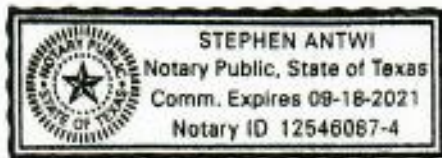
1. "My name is Marie M. Victor. I am the Plaintiff in the above-captioned lawsuit. I have read the Plaintiff's Original Petition, Application for Injunctive Relief, and Request for Disclosures to which this Affidavit relates and offer this Affidavit in support of the statements and arguments asserted therein.
2. The subject matter of this lawsuit is the real property and the improvements thereon located at 20703 Cameo Rose Drive, Cypress, TX 77433 (the "Property").
3. My husband Nesly and I purchased the Property on or about December 30, 2013. During the process of purchasing the Property, I executed a Note in the amount of \$277,319 as well as a Deed of Trust in which Everett Financial, Inc. is listed as the Lender.
4. Upon information and belief, the Note and Deed of Trust were subsequently transferred to First Guarantee Mortgage Corporation ("FGMC") for which Roundpoint Mortgage Servicing Corporation ("Roundpoint") acts as the loan servicer.
5. I began to have financial difficulties during the term of the loan. Realizing that I may soon become in default on my mortgage payments, I entered into debt restructuring negotiations with Roundpoint in order to modify the terms and conditions of the loan.

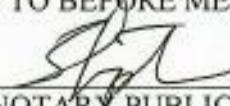
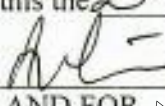
6. I was offered a loan modification by Roundpoint during October 2016. A Roundpoint representative assured me that if I gathered and submitted all of the required documents along with a loan modification application at least 37 days prior to a foreclosure sale, FGMC would not be able to foreclose on my Property until my application had been accepted or denied and I had been provided the opportunity to appeal that decision if needed. Additionally, Roundpoint's representative told me to cease making mortgage payments until the loan modification was completed. Further, the Roundpoint representative stated that she was memorializing the conversation in her notes and that the agreement to defer any foreclosure proceedings pending loan modification review would be signed by her supervisor and mailed to me - I continue to await that agreement.
7. In reliance on the agreement, I promptly gathered and submitted all the required documents along with a loan modification application on November 16, 2016. I contacted Roundpoint on November 20, 2016 to confirm receipt of the loan modification application and supplemental documents. A Roundpoint representative confirmed that the application was complete and under review - this was my first complete loan modification application. As such, I ceased all other loss mitigation options.
8. I was approached by Brian A. Brewer, Trustee ("Brewer") in May 2017 who offered to help me with my mortgage issues by paying off my mortgage loan, purchasing the Property from me, and renting the property back to me. To facilitate the process, I executed a Special Warranty Deed whereby I transferred my ownership interest in the Property to Brewer subject to the existing mortgage with FGMC.
9. Because I had not received a formal acceptance or denial of my loan modification application, I believed my loan modification was imminent until I received a Notice of Trustee's Sale informing me that Roundpoint posted my Property for foreclosure sale on April 3, 2018. Apparently, Roundpoint initiated foreclosure proceedings despite their assurances to me that FGMC would not be able to foreclose on the Property if a complete loan modification application was submitted at least 37 days prior to a foreclosure sale and without approving or denying the loan modification application as well as providing the required appeal period.

I have read the foregoing Affidavit and attest that the information contained therein is true and correct in all respects based upon my personal knowledge.


MARIE M. VICTOR

SUBSCRIBED AND SWORN TO BEFORE ME on this the 25TH day of March, 2018.



 
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
My commission expires:
09-18-2021

Unofficial Copy Office of Marilyn Burgess District Clerk