

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. Nesly Victor ("Victor") and his wife Marie purchased the Property on or about December 30, 2013. During the process of purchasing the Property, Victor 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. 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") which also acts as the loan servicer.

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

10. Victor was offered a loan modification by FGMC during June 2016. Victor began obtaining and submitting the requested documents. During the next several months, Victor continued to submit his financial documents in response to FGMC's requests for additional

financial information. Additionally, FGMC's representatives told Victor to cease making mortgage payments until the loan modification was completed. Victor became extremely worried about not making mortgage payments and frustrated that FGMC kept losing documents so he began contacting FGMC to make sure his home was safe. FGMC's representatives assured Victor that they would take no action to foreclose on his Property while in loan modification status even though he was not making payments.

11. Victor thought all was well and his loan modification was imminent until he began receiving advertisements from lawyers who informed him that his house was posted for foreclosure sale on June 6, 2017 and offered their representation. Apparently, FGMC had initiated foreclosure proceedings despite their assurances to Victor that FGMC would take no action to foreclose while Victor was in loan modification status. A true and correct copy of the related Notice of Substitute Trustee Sale, which was provided to Plaintiffs by the undersigned legal counsel, is attached hereto as Exhibit "3" and incorporated herein for all purposes. Victor has not received a Notice of Foreclosure Sale nor has he received a Notice of Acceleration.

12. Victor was approached by Brian A. Brewer - Trustee ("Brewer") who offered to help Victor if he transferred his interest in the Property to Brewer subject to the mortgage held by FGMC. A true and correct copy of the related Special Warranty Deed is attached hereto as Exhibit "4" and incorporated herein for all purposes.

13. Accordingly, Plaintiffs allege that FGMC is about to wrongfully sell their Property at a foreclosure sale on June 6, 2017 in violation of the agreements between the parties and without proper and timely notice as required by the Texas Property Code.

**FIRST CAUSE OF ACTION:**  
**NO NOTICE OF DEFAULT/ NOTICE OF ACCELERATION**

14. To the extent not inconsistent herewith, Nesly Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

15. 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 or else 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 homeowner a clear and unequivocal acceleration notice. Effective acceleration requires two acts: notice of intent to accelerate and notice of acceleration.

16. Here the borrowers never receive proper notice of default or notice of acceleration that would allow the noteholder to foreclose.

**SECOND CAUSE OF ACTION:  
BREACH OF CONTRACT**

17. To the extent not inconsistent herewith, Nesly Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

18. 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 his contractual obligations;
- D. FGMC breached the contract; and
- E. The breach of contract by FGMC caused Victor's injury.

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

19. To the extent not inconsistent herewith, Nesly Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

20. The actions committed by First Guaranty Mortgage Corporation ("FGMC") constitute common law fraud because FGMC made false and material representations to Victor when informing Victor that FGMC would take no action to foreclose on his Property and that he was not allowed to make mortgage payments while in loan modification status - Victor's account was still being reviewed for a loan modification yet FGMC posted his Property for foreclosure

sale on June 6, 2017. FGMC knew that the representations were false or made these representations recklessly, as a positive assertion, and without knowledge of its truth. In addition, FGMC made these representations with the intent that Victor act on them and Victor relied on these representations which caused Victor's injury.

**FOURTH CAUSE OF ACTION:  
PROMISSORY ESTOPPEL**

21. To the extent not inconsistent herewith, Nesly Victor ("Victor") incorporates by reference the allegations made in paragraphs 1 through 13 as if set forth fully herein.

22. 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 his detriment;
- C. Victor's reliance was foreseeable by FGMC; and
- D. Injustice can be avoided only by enforcing FGMC's promise.

**DAMAGES:  
ACTUAL DAMAGES**

23. 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.

**EXEMPLARY DAMAGES**

24. 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**

25. 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**

26. 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**

27. First Guaranty Mortgage Company is hereby requested to disclose to Nesly 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**

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

29. 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 June 6, 2017 thereby depriving Plaintiffs of ownership of the Property and potentially causing 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.

30. 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.

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

32. Plaintiffs are 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.

### **BOND**

34. 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;
- 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 Nesly Victor as well as Brian A. Brewer - Trustee against First Guaranty Mortgage Corporation for their 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 Plaintiffs may be entitled.

Respectfully submitted,

VILT AND ASSOCIATES, P.C.

By: /s/ Robert C. Vilt

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ATTORNEYS FOR PLAINTIFFS

Unofficial Copy Office of Marilyn Burgess District Clerk




1. "My name is Nesly 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 wife Marie 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.
8. Upon information and belief, the Note and Deed of Trust were subsequently transferred to First Guarantee Mortgage Corporation ("FGMC") which also acts as the loan servicer.
9. 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 FGMC in order to modify the terms and conditions of the loan.
10. I was offered a loan modification by FGMC during June 2016. I began obtaining and submitting the requested documents. During the next several months, I continued to submit my financial documents in response to FGMC's requests for additional financial information. Additionally, FGMC's representatives told me to cease making mortgage payments until the loan modification was completed. I became extremely worried about not making mortgage payments and frustrated that FGMC kept losing documents so I began contacting FGMC to make sure my home was safe. FGMC's representatives assured me that they would take no action to foreclose on my Property while in loan modification status even though I was not making payments.

11. I thought all was well and my loan modification was imminent until I began receiving advertisements from lawyers who informed me that my house was posted for foreclosure sale on June 6, 2017 and offered their representation. Apparently, FGMC had initiated foreclosure proceedings despite their assurances to me that FGMC would take no action to foreclose while I was in loan modification status. I have not received a Notice of Foreclosure Sale nor have I received a Notice of Acceleration.
12. I was approached by Brain A. Brewer - Trustee ("Brewer") who offered to help me if I transferred my interest in the Property to Brewer subject to the mortgage held by FGMC.

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.

  
NESLY VICTOR

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of June, 2017.

  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

My commission expires:

March 07, 2018

