

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

JENNIFER NASH,

Plaintiff,

v.

NEWREZ LLC D/B/A SHELLPOINT  
MORTGAGE SERVICING,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY TEXAS

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Jennifer Nash ("Plaintiff" herein), filing this Original Petition and Application for Injunctive Relief complaining of Newrez LLC d/b/a Shellpoint Mortgage Servicing ("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. Plaintiff a resident of Harris County, Texas and may be served with process on the undersigned legal counsel.

3. Newrez LLC d/b/a Shellpoint Mortgage Servicing, is a foreign entity which conducts business in Harris County, Texas and may be served with process as follows:

Newrez LLC dba Shellpoint Mortgage Servicing  
c/o Corporation Service Company d/b/a CSC-Lawyers Incorporating  
Service Company  
211 E. 7th Street, Suite 620  
Austin, TX 78701 USA

## **JURISDICTION AND VENUE**

4. The Court has jurisdiction over Defendant because this defendant is a foreign entity which conducts business in Harris County, Texas. The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.

5. Venue is mandatory in Harris County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiff's cause 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. Jennifer Nash ("Plaintiff") is an heir of Richard Field (the "Borrower"). On or about March 10, 2004, Richard Field purchased the real property and improvements located at 16230 Dunmoor Drive, Houston, TX 77059 (the "Property") and received title via General Warranty Deed with Vendor's Lien which is recorded in the real property records of Harris County, Texas under file number X472057. In conjunction with the purchase of the Property, Borrower executed a Note and Deed of Trust dated April 29, 2013 in the amount of \$102,950, wherein Bank of America, N.A. was the lender ("Deed of Trust"), which was recorded in the real property records of Harris County, Texas under instrument number 20130264739. The Note and Deed of Trust are collectively the Loan.

7. Borrower died on or about August 15, 2023. Borrower is survived by his heir, Plaintiff Jennifer Nash, who has resided at the Property for many years and continues to reside there as her homestead.

8. Defendant is the alleged owner of the Loan, which is the lien at issue in this lawsuit.

9. There was no written will for Borrower, so upon his death the Property passed via intestate succession to Plaintiff. Plaintiff has tried to get the Loan current. However, she has been

unable to do so with Defendant. Instead, Defendant has posted the property for foreclosure. However, Defendant has not sent the proper notices of default and intent to accelerate as required by the Deed of Trust and Texas law, as the Borrower is deceased and Plaintiff is now the owner of the Property.

10. Defendant has also charged improper fees to the Loan that were not authorized by the Deed of Trust.

11. Unable to rectify the Loan issues, Plaintiff entered into a one to four family residential contract for the sale of a different Property she inherited from Borrower. The Sales Contract is set to close soon and with the proceeds from that sale, Plaintiff will be able to cure any Loan issues with Defendant.

12. However, Defendant has posted the Property for a foreclosure sale set to occur on October 1, 2024. Plaintiff has requested that the foreclosure sale be cancelled so that the sale of the other property could be concluded and the payoff funds sent to Defendant to resolve Defendant's lien issues. Unfortunately, Defendant has refused to cancel the foreclosure sale.

13. By foreclosing on the Property before Plaintiff can complete the Sales Contract, Defendant is interfering with and preventing the Sales Contract from being completed and preventing Plaintiff from paying off the loan in full.

14. The Plaintiff also has substantial equity in the Property that is in jeopardy of being lost due to Defendant's actions.

### **CLAIM**

#### **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 Plaintiff to reasonably rely that such conduct was within the scope of their authority. Plaintiff did rely to Plaintiff's 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, Plaintiff incorporates by reference the allegations made above as if set forth fully herein.

The actions committed by Defendant constitutes breach of contract because:

- A. There exists a valid, enforceable contract between Plaintiffs and Defendant, namely the Deed of Trust;
- B. Plaintiffs have standing to sue for breach of contract;
- C. Plaintiffs performed, tendered performance, or were excused from performing the contractual obligations;
- D. Defendant breached their contract by refusing to accept monies from Plaintiff to bring the loan current, and not properly accounting for monies paid by Plaintiff, and not providing the correct notices of default and acceleration; and
- E. The breach of contract by Defendant caused Plaintiff's injury – numerous erroneous expenses, overcharges, penalties, attorney fees and interest on the Loan.

**SECOND CAUSE OF ACTION:  
VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT**

16. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made above as if set forth fully herein.

17. This includes an action for violations of the Texas Debt Collection Act (“TDCA”) against Defendants. *See* Tex. Fin. Code §§ 392.001 et seq.

18. Plaintiff is a “consumer” within the meaning of Section 392.001 of the Texas Finance Code, and the debt in question relating to the Property is a “consumer debt” within the meaning of such statute.

19. Defendant is a debt collector. “Debt collection” is defined as the act or practice “in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.” A “debt collector” therefore includes a creditor who is collecting its own debt. *Smith v. Heard*, 980 S.W.2d 693, (Tex. App.—San Antonio, 1998, pet. denied) (A creditor is not excused from following the provisions of the TDCA on the basis that the debt is owed directly to the creditor).

20. The acts, omissions, and conduct of Defendant, as alleged above, herein, and below, constitute violations of the following provisions of the TDCA:

A. Using a fraudulent, deceptive, or misleading representation that misrepresent[s] the character, extent, or amount of a consumer debt.”

Tex. Fin. Code § 392.304(a)(8).

B. Misrepresenting the status or nature of the services rendered by the debt collector. *See* Tex. Fin. Code § 392.304(a)(14).

C. Using other false representation or deceptive means to collect a debt. *See* Tex. Fin. Code § 392.304(a)(19).

23. Defendant made significant types of misrepresentations to Plaintiff about the status of the loan and its own services constituting violations of TDCA Sections 392.304(a)(8), 392.304(a)(19), and 392.304(a)(14).

24. Further, Defendant made misrepresentations about the information in the Loan, the incorrect amount owed on the Loan, and Plaintiff's ability to reinstate the Loan. These statements were misrepresentations not only about the status of Plaintiffs' Loan, but also the status and nature of services that Defendant and its representatives could provide. Therefore, these misrepresentations also violated TDCA Section 392.304(a)(14).

25. As a result of these violations of the TDCA, Plaintiff is entitled to relief provided by Section 392.403, including but not limited to recovery of all actual damages sustained as a result of violations of the TDCA, all actual direct and indirect economic damages, damages for lost time, damages for mental anguish and emotional distress, damages resulting from payment of excess or additional interest, and any consequential damages. Plaintiff is also entitled to exemplary damages and attorneys' fees. *See* Tex. Fin. Code § 392.403.

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

26. To the extent not inconsistent herewith, Plaintiffs incorporate by reference the allegations made above 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, Defendant misled Plaintiff with oral and written representations regarding the Loan, representations that were untrue. Defendant did not provide Plaintiff with the information needed to properly perform the obligations of the Loan. Plaintiff is attempting to reinstate the Loan, as well as payoff the Loan in full. Defendant is preventing Plaintiff from being able to do that. Defendant has therefore breached the implied duty of cooperation. Plaintiff suffered damages as a result as more fully described in the Damages section below.

29. Defendant has an obligation to account for funds received from Plaintiff on the request of the Plaintiff – lender refused to do so in breach of its duty to Plaintiff.

**FIFTH CAUSE OF ACTION:  
ACCOUNTING**

30. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made above as if set forth fully herein.

31. Due to the discrepancies in what Defendant states that Plaintiff owes, or the refusal to provide Plaintiff with the reinstatement amount Plaintiff believes they more likely owe on the Loan, Plaintiff request an order that Defendant account for all transactions on Plaintiffs' Loan.

**DAMAGES:**

**ACTUAL DAMAGES**

32. Plaintiff is entitled to recover actual damages from Defendant for which Plaintiff pleads in an amount which does not exceed the jurisdictional limits of this Court.

**CONDITIONS PRECEDENT**

33. All conditions precedent to the Plaintiff's right to bring this cause of action have been performed, have occurred, or have been waived.

**EX-PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER**

34. To the extent not inconsistent herewith, Plaintiff incorporates by reference the allegations made in above as if set forth fully herein.

35. Unless Defendant is enjoined, Plaintiff will suffer probable harm which is imminent and irreparable. More specifically, if not enjoined, Defendant may sell the Property at any time during the pendency of this matter thus depriving Plaintiff of ownership of the Property. Plaintiff has no adequate remedy at law because it involves real property, which is Plaintiff's homestead, which is unique and irreplaceable, and any legal remedy of which Plaintiff may avail itself will not give as complete, equal, adequate, and final a remedy as the injunctive relief sought in this Application.

36. Plaintiff also seeks this restraining order ex-parte, as the foreclosure sale is set to occur on Tuesday October 1, 2024, and there is not adequate time to notice, serve defendant and conduct a hearing on the restraining order, and for Plaintiff to then be able to post the bond before the close of business of the court prior to the foreclosure sale being conducted.

37. Therefore, Plaintiff requests 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 and is commonly known as 16230 Dunmoor Drive, Houston, TX 77059 during the pendency of this lawsuit.

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

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



## **BOND**

40. 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 Defendant, their agents, employees, and legal counsel, and those acting in concert or participation with Defendant who receive actual notice of the Order, by personal service or otherwise, from selling the real property commonly known as 16230 Dunmoor Drive, Houston, TX 77059;
- D. A Temporary 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 Plaintiff against Defendant for the damages listed, and such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

/s/ Jason A. LeBoeuf

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ATTORNEY FOR PLAINTIFF

Unofficial Copy Office of Marilyn Burgess District Clerk