



show U.S Bank's lien is valid and superior to JPN's interest in the property. As JPN is not a party to the loan agreement and did not receive written approval from the lender to be a successor in interest to the borrower, JPN is not entitled to notices of foreclosure. JPN, although provided with a payoff during the course of this litigation, has failed to tender the amounts past due. Consequently, JPN is not entitled to an equitable right of redemption. U.S. Bank is entitled to summary judgment on all of Plaintiff's claims.

### **SUMMARY JUDGMENT STANDARD**

2. The purpose of the traditional summary judgment procedure is to permit the trial court to dispose promptly of cases that involve unmeritorious claims or untenable defenses. See *City of Houston vs. Clear Creek Basin Authority*, 589 S.W.2d 671, 678 n.5 (Tex. 1979). It permits the court to weed out unmeritorious causes of action or defenses without the expense of time or money caused by protracted trials. See *Kain vs. Neuhaus*, 515 S.W.2d 45, 47 (Tex. App.— Corpus Christi 1974, no writ); see *Casso v. Brand*, 776 S.W.2d 551, 556 (Tex. 1989). A traditional summary judgment should be granted when the movant conclusively shows that: (1) there are no genuine issues of material fact; and (2) the moving parties are entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Rhone-Poulenc v. Steel*, 997 S.W.2d 217, 222 (Tex. 1999). The following well-established standards must be applied in determining whether summary judgment is proper:

- i. The movant has the burden of showing that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law;
- ii. In deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the non-movant is taken as true; and

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<sup>1</sup> Plaintiff incorrectly named "U.S. Bank Trust Company, National Association, as Trustee for GSAMP Trust 2006-HE3, Mortgage Pass-Through Certificates, Series 2006-HE3" as Defendant in this case. U.S. Bank National Association, as successor in interest to Bank of America National Association, successor by merger to LaSalle Bank National Association, as Trustee for GSAMP Trust 2006-HE3, Mortgage Pass-Through Certificates, Series 2006-HE3 is the current mortgagee and is appearing herein in its correct capacity.

- iii. Every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in his favor. *Nixon v. Mr. Property Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985).

3. A party may move for summary judgment under Texas Rule of Civil Procedure 166a(i), after an adequate time for discovery, on the ground that there is no evidence of one or more essential elements of a claim on which the adverse party has the burden of proof at trial. “The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.” Tex. R. Civ. P. 166a(i). In order to defeat a no-evidence summary judgment, the non-movant must produce evidence raising a genuine issue of material fact. *Id.*; see also *Howell v. Hilton Hotels*, 84 S.W.3d 708, 712 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

### **SUMMARY JUDGMENT EVIDENCE**

Defendant relies upon the following evidence in support of its summary judgment grounds:

Exhibit A. Affidavit of Franci Boothney

- A-1. Texas Home Equity Adjustable Rate Note (LIBOR Six-Month Index (As Published in the Wall Street Journal) – Rate Caps) (First Lien), March 10, 2006;
- A-2. Texas Home Equity Security Instrument (First Lien), March 10, 2006;
- A-3. Affidavit of Lost Assignment, February 20, 2012
- A-4. Spring Meadows Property Owners Association’s Restrictions, April 7, 1978;
- A-5. Trustee’s Deed from Association Foreclosure, April 18, 2024.

Exhibit B. Plaintiff’s Original Petition, Cause No. 2021-52860 in the 152<sup>nd</sup> Judicial District, Harris County, Texas;<sup>2</sup>

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<sup>2</sup> Defendant asks that the Court to take judicial notice of Exhibits B-E in accordance with Tex. R. Evid. 201 (d). A court may take judicial notice of the records in another court when it is provided with copies of those records. *See Brown v. Brown*, 145 S.W.3d 745, 750 (Tex. App.—Dallas 2004, pet. denied); *Surgitek, Inc. v. Adams*, 955 S.W.2d 884, 889 n.4 (Tex. App.—Corpus Christi 1997, pet. dismissed by agr.).

- Exhibit C. Final Judgment, Cause No. 2021-52860 in the 152<sup>nd</sup> Judicial District, Harris County, Texas;
- Exhibit D. Application for Expedited Foreclosure Order under Rule 736 on a Property Owners' Association Assessment Lien, Cause No. 2023-30916 in the 11<sup>th</sup> Judicial District, Harris County, Texas;
- Exhibit E. Final Default Judgment, Cause No. 2023-30916 in the 11<sup>th</sup> Judicial District, Harris County, Texas;

Defendant also relies upon the pleadings, motions and other papers on file in this cause and public records of which the Court may take judicial notice.

### **SUMMARY JUDGMENT GROUNDS**

- A. Plaintiff's quiet title claim fails as a matter of law.**
- B. Plaintiff is not a party to the loan and thus not entitled to receive notice or payoff amounts.**
- C. Plaintiff is not entitled to an equitable right of redemption.**
- D. Plaintiff has no viable cause of action to support its request for injunctive and declaratory relief.**

### **FACTS**

4. On or about March 10, 2006, for value received, Decedent Chris Cadamar Wilson ("Borrower") executed that certain *Texas Home Equity Adjustable Rate Note (LIBOR Six-Month Index (As Published in the Wall Street Journal) – Rate Caps) (First Lien)* (the "Note") in the principal amount of \$105,600.00 originally payable to Aames Funding Corporation DBA Aames Home Loan and bearing interest at the initial rate of 10.660% per annum. *See* Exhibit A, A-1

5. Concurrently with the Note, Decedent Chris Cadamar Wilson and Decedent Debra A. Wilson ("Decedents") executed that certain *Texas Home Equity Security Instrument (First Lien)* (the "Security Instrument" and together with the Note, the "Loan Agreement"), as grantor, granting a security interest in the 12014 S. Youngwood Houston, Texas, 77043 and more

particularly described as:

LOT 12, IN BLOCK 3 OF SPRING MEADOWS, SECTION ONE (1), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 258, PAGE 36 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS. (the “Property”).

6. The Security Instrument was recorded under Document No. 201118039 in the Real Property Records of Harris County, Texas. *See* Exhibit A, A-2. Aames Funding Corporation DBA Aames Home Loan transferred and assigned the Loan Agreement to U.S. Bank as evidenced by the Affidavit of Lost Assignment, recorded in the Real Property Records of Harris County, Texas under Document No. 20120079348. *See* Exhibit A, A-3.

7. U.S. Bank is the current legal owner and holder of the Note and the beneficiary of the Deed of Trust. U.S. Bank is a mortgagee as that term is defined in section 51.0001(4) of the Texas Property Code. *See* Exhibit A at ¶7.

8. On August 23, 2021, U.S. Bank initiated suit seeking an order to proceed with nonjudicial foreclosure against Decedent's heirs under Cause No. 2021-52860 in the 152<sup>nd</sup> Judicial District, Harris County, Texas. *See* Exhibit B

9. On August 22, 2023, the Court entered Final Judgment in U.S. Bank's favor allowing U.S. Bank to enforce the Deed of Trust against the Property through a non-judicial foreclosure against Decedents' heirs. *See* Exhibit C.

10. The Property is part of the Spring Meadow Property Owners Association (“Association”) and subject to its deeds and covenants (the “HOA Restrictions”). As part of the Borrower's ownership obligations, the HOA Restrictions required Borrower to pay assessments to the Association. To secure payment of the assessments, the HOA Restrictions reserved a vendor's lien (the “HOA Lien”) interest in the Property and provided that the Association may enforce the HOA Lien through a foreclosure sale. The HOA Restrictions subordinated the HOA

Lien to any first mortgage. *See* Exhibit A, A-4.

11. Borrower's heirs at law purportedly defaulted under the HOA obligations, which prompted the Association to file a foreclosure action against the Borrower's heirs in the 11<sup>th</sup> Judicial District Court of Harris County, Texas as Cause No. 2023-30916 (the "HOA Foreclosure Suit"). *See* Exhibit D. No other lienholders were made a party to the HOA Foreclosure Suit.

12. On October 9, 2023, the Association obtained a default judgment against the Borrowers' heirs, which provided for a foreclosure sale of the Property. *See* Exhibit E.

13. The Association proceeded with a trustee's sale of the Property on November 7, 2023. According to the Trustee's Deed ("HOA Deed"), Plaintiff JPN Holdings LLC, as Trustee of the 2023 2AS1J Trust was the highest bidder at the sale. The HOA Deed was recorded in the official public records of Harris County, Texas under Instrument No. RP-2024-140114. *See* Exhibit A, A-5.

14. The lien held by U.S. Bank on the Property was set for foreclosure sale on May 7, 2024. The filing of this lawsuit prevented U.S. Bank from foreclosing on its superior lien.

### **ARGUMENT AND AUTHORITIES**

#### **A. Plaintiff's quiet title claim fails as a matter of law.**

15. A suit to quiet title is an equitable action. *Fricks v. Hancock*, 45 S.W.3d 322, 327 (Tex. App.—Corpus Christi 2001, no pet.). To sustain a claim to quiet title, "a plaintiff must show '(1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable.'" *Davis v. Bank of Am., NA*, No. 3:11-CV-3276-B, 2012 U.S. Dist. LEXIS 93731, \*9 (N.D. Tex. July 6, 2012) (citing *Bell v. Bank of Am. Home Loan Servicing*, No. 4:11-CV-02085, 2012 U.S. Dist. LEXIS

21274, 2012 WL 568755, at \*7 (S.D. Tex. Feb. 21, 2012)). Plaintiffs must prove and recover on the strength of their own title, not the weakness of their adversary's title. *Id.* “The defendant is not required to show title in [it]self, nor may the plaintiff rely on the defendant's failure to do so.” *Wall v. Carrell*, 894 S.W.2d 788, 797 (Tex. App.—Tyler 1994, writ denied). The plaintiff must also “allege right, title, or ownership in himself or herself with sufficient certainty to enable the court to see he or she has a right of ownership that will warrant judicial interference.” *Wright v. Matthews*, 26 S.W.3d 575, 578 (Tex. App.—Beaumont 2000, pet. denied).

16. The purchaser of real property at a junior-lien foreclosure sale takes the property, conditioned by the requirement that the purchaser must service any pre-existing senior lien in order to prevent loss of the property through foreclosure. *See Conversion Props., L.L.C. v. Kessler*, 994 S.W.2d 810, 813 (Tex. App.—Dallas 1999, pet. denied) (citing Restatement (Third) of Property: Mortgages § 7.1); *DTND Sierra Invs., LLC v. Deutsche Bank Nat'l Trust Co.*, No. 04-12-00817-CV, 2013 Tex. App. LEXIS 10460, at \*10 (Tex. App.—San Antonio Aug. 21, 2013, pet. denied) (mem. op.) (citing *Conversion Properties* and *Williams v. Nationstar Mortg., LLC*, 349 S.W.3d 90, 95 (Tex. App.—Texarkana 2011, pet. denied)); *KCB Equities, Inc. v. HSBC Bank USA*, No. 05-10-01648-CV, 2012 Tex. App. LEXIS 4418, at \*4 (Tex. App.—Dallas June 4, 2012, no pet.) (mem. op.).

17. The HOA lien, from which Plaintiff claims its interest in the property, is subject to the Spring Meadows Property Owners Association Declaration of Restrictions. Section 5.09 of the Declaration states: “The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.” *See* Exhibit D, §5.09. Therefore, the HOA foreclosure did not extinguish U.S. Bank's superior lien on the property. *See DTND Sierra Investments LLC v. Bank of Am., N.S.*, 871 F.Supp.2d 567, 575 (W.D. Tex. 2012) (holding HOA lien was subordinate to

mortgage lien and HOA foreclosure did not extinguish superior mortgage lien even though superior lienholder failed to redeem). Therefore, Plaintiff cannot show an essential element of its quiet title claim, that U.S. Bank's lien is invalid or unenforceable. As a result, Plaintiff's claim for quiet title fails as a matter of law.

**B. Plaintiff is not a party to the loan and thus not entitled to receive notice or payoff amounts.**

18. Only parties to deeds of trust are generally entitled to notice of foreclosure when security instruments are accelerated. *See* Tex. Prop. Code § 51.002(d); *American Sav. & Loan Ass'n v. Musick*, 531 S.W.2d 581, 588 (Tex. 1975); *Stanley v. CitiFinancial Mortg. Co.*, 121 S.W.3d 811, 817 (Tex. App.—Beaumont 2003, pet. denied); *Lawson v. Gibbs*, 591 S.W.2d 292, 295 (Tex. Civ. App.—Houston [14th Dist.] 1979, writ ref'd n.r.e.). Notice to a property owner who is not a party to a deed of trust, however, generally is not required. *See Lawson*, 591 S.W.2d at 295 (plaintiff presented no authorities to support his contention that landowners are entitled to notice of foreclosure sale; on the contrary, debtors, according to records of the debt holder, must be given notice); *see Elbar Invs., Inc. v. Wilkinson*, No. 14-99-00297-CV, 2003 Tex. App. LEXIS 8182, at \*6 (Tex. App.—Houston [14th Dist.] Sept. 23, 2003, pet. denied) (mem. op.) (noting that "no requirement that personal notice be given to those who were not parties to the deed of trust").

19. To become a party to a deed of trust and obtain the rights of a borrower under a deed of trust, such as the right to notice and reinstatement, a purchaser of real property must take the affirmative steps of requesting and receiving written approval from the lender to assume the borrower's obligations under the deed of trust. *See Montenegro v. Ocwen Loan Servicing, LLC*, 419 S.W.3d 561, 564, 571 (Tex. App.—Amarillo 2013, pet. denied) (even though plaintiff had been making monthly payments on property and made one lump-sum payment to cure default of



debtor, plaintiff was not entitled to notice of foreclosure because he had not assumed debtor's obligations in writing and assumption had not been approved by lender, as required in deed of trust); *Schlotte v. Option One Mortg. Corp.*, No. 09-11-00208-CV, 2012 Tex. App. LEXIS 4289, at \*12, 17-18 (Tex. App.—Beaumont May 31, 2012, pet. denied) (mem. op.) (even though plaintiff allegedly purchased property and had attempted to negotiate an assumption of mortgage, lender did not ratify transfer of duties to plaintiff under deed of trust, and, thus, no evidence of privity between plaintiff and lender existed and lender was not required to provide plaintiff with notice of foreclosure).

20. Here, the Deed of Trust conforms with these principles of law. The parties to the Deed of Trust are defined as the lender, Aames Funding Corporation DBA Ammes Home Loan and its successors and assigns and the borrowers, Chris Cadamar Wilson and wife, Debra A. Wilson. See Exhibit A, A-2. The Deed of Trust allows a successor in interest to the borrowers but *only upon written approval by the lender*. See Ex A, A-2 at ¶¶12 and 17. The Deed of Trust further provides that “any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument.” Finally, the Deed of Trust provides for notices to be sent between the lender and the borrower only, and, “[i]f all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.” *Id.* at ¶17. JPN failed to receive written approval from the lender to assume the borrowers’ obligations under the Deed of Trust.

21. Accordingly, the summary judgment conclusively shows that JPN was not a borrower or party under the Deed of Trust, *see Musick*, 531 S.W.2d at 588; *Stanley*, 121 S.W.3d at 817; *Lawson*, 591 S.W.2d at 295. Consequently, JPN was not entitled to notice of foreclosure, nor of information to protect its property interest. *Williams*, 349 S.W.3d at 94; *Lawson*, 591 S.W.2d at 295; *see also* Tex. R. Civ. P. 166a(c); *DTND Sierra Invs. LLC v. Bank of Am., N.A.*, 871 F. Supp. 2d 567, 579 (W.D. Tex. 2012) (citing *Stanley*, 121 S.W.3d at 817) (concluding that purchaser at junior-lien foreclosure sale did not have right to personal notice under Texas Property Code section 51.002(d) “because he did not allege that he was a debtor according to the records of the mortgage servicer of the debt”).

**C. Plaintiff is not entitled to an equitable right of redemption.**

22. The equity of redemption doctrine provides a mortgagor with a reasonable time to cure a default and require a reconveyance of the mortgaged property. *Louisville Joint Stockland Bank v. Radford*, 295 U.S. 555, 579, 79 L. Ed. 1593, 55 S. Ct. 854 (1935); *Scott v. Schneider Estate Trust*, 783 S.W.2d 26, 28 (Tex. App.--Austin 1990, no writ).

23. To enforce an equity of redemption, a party must sue for that purpose and plead such equities that would authorize recovery. *Parks v. Worthington*, 39 Tex. Civ. App. 421, 87 S.W. 720, 721 (Tex. Civ. App. 1905, no writ). A party must (1) prove that he has a legal or equitable interest in the property subject to the mortgage; (2) prove that he is “ready, able or willing to redeem the properties in controversy by paying off the amount of valid and subsisting liens to which the properties [are] subject”; and (3) assert the claim before a foreclosure sale because the equity of redemption terminates once a foreclosure sale occurs. *Scott*, 783 S.W.2d at 28 (citing *Houston v. Shear*, 210 S.W. 976, 981 (Tex. Civ. App. 1919, writ dism'd)).

24. Plaintiff does not have an equitable right of redemption. Furthermore, Plaintiff's counsel was provided a payoff on May 9, 2024. Plaintiff has failed to tender the outstanding balance owed on the loan. Without showing that it stood ready, willing, and able to redeem the property by satisfying the superior lien, Plaintiff has no equitable right of redemption.

**D. Plaintiff has no viable cause of action to support its request for injunctive and declaratory relief.**

25. Plaintiff seeks both a declaration of its rights in the Property, and an injunction preventing U.S. Bank from foreclosing on the Property. See Petition at ¶¶21-29. An award of injunctive or equitable relief must be supported by at least one viable cause of action. *Devoll v. Demonbreun*, No. 04-14-00116-CV, 2014 Tex. App. LEXIS 13865, 2014 WL 7440314, at \*3 (Tex. App.—San Antonio Dec. 31, 2014, no pet.) (mem. op.); *Vista Bank v. Nelezer, Inc.*, No. 05-21-00348-CV, 2021 Tex. App. LEXIS 8807, 2021 WL 5027764, at \*3 (Tex. App.—Dallas Oct. 29, 2021, no pet.) (mem. op.).

26. Because Plaintiff has no viable cause of action, neither declaratory nor injunctive relief is available to Plaintiff. *Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd.* 99 F.3d 746, n. 3 (5th Cir. 1996) ("The Texas Uniform Declaratory Judgments Act, Tex.Civ.Prac. & Rem.Code Ann. § 37.001 *et seq.* (Vernon 1986), is merely a procedural device; it does not create any substantive rights or causes of action."); *Ayers v. Aurora Loan Services, L.L.C.*, 787 F.Supp.2d 451, 457 (E.D. Tex. 2011) (dismissing claim for declaratory judgment where all underlying substantive claims had been dismissed); *James v. Wells Fargo Bank, NA.*, 2012 U.S. Dist. LEXIS 32599, 2012 WL 778510, at \*4 (N.D. Tex. 2012) (dismissing claim for declaratory relief where the "arguments for declaratory relief are unsupported by the facts alleged"). Therefore, Plaintiff's claims for declaratory and injunctive relief fail as a matter of law.

**WHEREFORE, PREMISES CONSIDERED,** Defendant prays that this Court grant summary judgment in Defendant's favor on all claims and defenses, order that Plaintiffs take nothing on its claims, and award costs and such other and further relief to which Defendant may be justly entitled at law or in equity.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 11, 2025, a true and correct copy of the foregoing document was delivered via electronic case notification to the counsel of record listed below:

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