

NO. 2024-83591

TNS ENTERPRISES
Plaintiff,

V.

TCHL INVESTMENTS INC.
Defendant.

§ **IN THE DISTRICT COURT**
§
§
§ **334TH JUDICIAL DISTRICT**
§
§
§ **OF HARRIS COUNTY, TEXAS**

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendant/Counter-Plaintiff, TCHL INVESTMENTS INC., Movants herein, and request the Court to enter Summary Judgment in favor of Movants on the counterclaims set forth herein and against Plaintiff EARNEST TAYLOR, individually and doing business as “TNS ENTERPRISES” (hereinafter Non-Movant or “TAYLOR”), and in support thereof, show the Court the following:

I.

FACTS/PROCEDURAL HISTORY

A. On or about June 29, 2010, Defendant TAYLOR purchased a commercial real property located at 4110 Airport Blvd., Houston, TX 77047 from TCHL. TCHL financed the purchase for TAYLOR.

B. On or about June 29, 2010, Defendant TAYLOR executed a Promissory Note (the “Note”) in the original principal amount of \$390,000.00 payable to TCHL, as Lender. A copy of the Note is attached as **Exhibit A** and incorporated by reference.

C. To secure repayment of the Note, Defendant TAYLOR executed a Deed of Trust (the “Deed of Trust”) and a Collateral Assignment encumbering the real property located at 4110 Airport Blvd., Houston, Texas 77047 (the “Property”), more fully described as follows:

Legal Description of the Property: All of Villa At Bethel Apartments, a subdivision location in the John White Survey, Abstract No. 1011, Harris County, Texas as recorded under Film Code 591209 of the Map Records of Harris County, Texas.

A copy of the Deed of Trust is attached as **Exhibit B** and incorporated by reference.

D. Plaintiff TCHL is the legal holder or servicer of the Note and Deed of Trust.

E. Defendant TAYLOR defaulted on their obligations under the Note by failing to make the payment due on June 29, 2023, and all subsequent payments.

F. Pursuant to the terms of the Deed of Trust, Counter-Plaintiff is entitled to foreclose on the Property.

G. Plaintiff sent Defendant a written Notice of Default and Intent to Accelerate on August 2, 2024, in compliance with the Deed of Trust and Texas Property Code § 51.002. A copy of the notice is attached as **Exhibit C** and incorporated by reference.

H. Defendant failed to cure the default within the allotted time.

I. Plaintiff then sent a Notice of Acceleration and Notice of Foreclosure Sale on November 8, 2024. A copy of the notice is attached as **Exhibit D** and incorporated by reference.

II.

ARGUMENTS & AUTHORITIES

A. Movants can demonstrate Movants are entitled to summary judgment as a matter of law on the counterclaims set forth herein.

B. When a Movant moves for summary judgment, it is not required to prove the amount of the damages, only that damages were incurred. Tex. R. Civ. P. 166a(a). Because Movants can prove the case as a matter of law, and because Movants need not prove the amount of damages, Movants are entitled to summary judgment.

C. There are no genuine issues of material fact in this case; therefore, the Court may

decide this case on the summary judgment evidence included in the appendix to this motion, which evidence is incorporated herein by reference.

III. Breach of Contract and Judicial Foreclosure

A. Movants filed a counterclaim against Non-Movant seeking affirmative reliefs for Breach of Contract and Judicial Foreclosure. Non-Movant executed a real estate lien note in the original principal amount of \$390,000.00 payable to TCHL, as Lender. Non-Movant failed to pay TCHL on the Note for the year of 2023 and 2024, along with other charges and fees due and owing under the Note and Deed of Trust despite repeated demands for payment. Non-Movant executed a Deed of Trust as security for the payment of \$390,000.00 owed to TCHL. Non-Movant admits the Note and Deed of Trust sued upon by Movant TCHL is a true and correct copy of said Note and Deed of Trust. **See Exhibit E, page 8, Deemed Admission 1 – 7 and page 9, Admission 10, 13, and 14, page 10-11, Admission 16-24** attached hereto and incorporated by reference. Movant served Non-Movant (Plaintiff) with Request for Admission on or about January 28, 2025. Plaintiff/Non-Movant failed to respond and answer the Request for Admission despite actual knowledge of same and outstanding status. As such the request for admissions are deemed admitted pursuant to Tex. R. Civ. P. 198.2. See also *Marshall v. Vise*, 767 S.W.2d 699, 700 (Tex. 1989) (discussing former Rule 169).

B. Movants claim there is no genuine issue of material fact as to any element of Breach of Contract and Judicial Foreclosure claims filed by Movant TCHL. Movant TCHL includes affidavits, discovery and documentary evidence as summary judgment evidence, referenced in an appendix attached hereto, filed with this motion and incorporated by such reference for all purposes as if recited verbatim herein.

C. As a matter of law, Non-Movant TAYLOR has breached the agreement made the

basis of this lawsuit, and Movant TCHL is entitled to relief, including an order for judicial foreclosure.

IV. Attorney's Fees

A. Because a claim for attorney's fee is included in a suit for breach of a written contract, which is a claim listed in Texas Civil Practice and Remedies Code section 38.001, attorneys' fees are appropriate. Moreover, pursuant to the parties' written contract contained in the Note and Deed of Trust, Movant is entitled to attorney's fees.

B. Attached herein and incorporated by reference as **Exhibit F** is the affidavit of Kevin H. Pham in support of Movant's claim for attorney's fee in the sum of \$5,9484.48 which is a reasonable and necessary amount for Movant's attorney's fees in this matter. Movant seeks judgment in favor of TCHL for attorney's fees and court costs.

C. If Non-Movant unsuccessfully appeals this case to the court of appeals, Movant is entitled to additional attorney fees in the sum of \$10,000.00. If Non-Movant unsuccessfully appeals this case to the Texas Supreme Court, Movant TCHL is entitled to additional attorney fees in the sum of \$10,000.00

V.

A. Non-Movant has asserted a claim for breach of contract in Non-Movant's original petition; however, Movants are entitled to a summary judgment as a matter of law because Movants can prove the counterclaim and disprove at least one element of Non-Movant's claim of breach of contract.

1. Movants can disprove the following element of Non-Movant's claim of breach of contract:

a. Performance by Movant and Non-performance by Non-movant. As stated herein, Movant financed the purchase of the Property for Non-Movant. Non-

Movant received good and clear title for the Property but failed to make payment on the Note.

B. Non-Movant asserted a claim for Fraud in Non-Movant's original petition; however, Movants are entitled to a partial summary judgment as a matter of law because Movants can prove their cause of action.

C. Non-Movant has asserted a claim for Violation of Texas Property Code in Non-Movant's original petition; however, Movants are entitled to a summary judgment as a matter of law because Movants can prove the counterclaim and disprove at least one element of Non-Movant's claim of Violation of Texas Property Code.

1. Movants can disprove the following element of Non-Movant's claim of Violation of Texas Property Code:

a. Compliance by Movant. Non-Movant TAYLOR defaulted on the obligations under the Note by failing to make payments due to TCHL for the year of 2023 and 2024, along with other charges and fees due and owing under the Note and Deed of Trust despite repeated demands for payment. Pursuant to the terms of the Deed of Trust, Movant is entitled to foreclose on the Property. Movant sent Non-Movant written Notice of Default and Intent to Accelerate on August 2, 2024, in compliance with the Deed of Trust and Texas Property Code § 51.002. Defendant failed to cure the default within the allotted time. Movant then sent a Notice of Acceleration of Loan Maturity and Notice of Foreclosure on November 8, 2024.

VI. Attorney's Fees

A. As shown by Defendant TCHL's Counterclaim and Answer on file in this cause, Movant has plead for attorney's fees in a reasonable amount as provided by applicable statute. There is no genuine issue of material fact about the basis for recovery of attorney's fees in this

cause or about the amount thereof, and as a matter of law TCHL is entitled to recover attorney's fees as alleged in TCHL's Counterclaim on file and as evidenced by Attorney's Affidavit in Support of Fees attached hereto.

B. A money judgment rendered on a contract that provides for interest or a time-price differential earns post-judgment interest at the same rate specified in the contract or 18 percent per year, whichever is less. Tex. Fin. Code § 304.002. Movant is therefore entitled to post-judgment interest at the rate of 18% per year, as provided by the Note and Deed of Trust.

VII.

A. Movants are entitled to summary judgment as a matter of law because there is no genuine issue of material fact and Movant can prove each element of its cause of action as a matter of law. Non-Movant failed to make timely payments on the Note and defaulted on at least two (2) payments on the Note. Non-Movant also failed to make payments of the real property taxes, along with other payment obligations owed to TCHL. See **Exhibit G** attached herein and incorporated by reference. Pursuant to the Deed of Trust, Non-Movant is authorized to both judicial and non-judicial foreclosure against the Property.

B. If summary judgment for Movants is not rendered on the entire cause or for all relief requested, and if a trial is necessary on some of the issues in this cause, Movants request the Court, after examining the pleadings and summary judgment evidence before it and after interrogating counsel to ascertain those material facts that are in good faith actually controverted, to make an order specifying those facts that appear to be without substantial controversy and directing such further proceedings in the action that are just.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Movants pray that:

The Court set this matter for hearing, with notice to Non-Movant, and that upon completion of said hearing the Court grants Movants' Motion for Summary Judgment, and that Movants have the following:

1. Judgment against Plaintiff/Counter-Defendant, EARNEST TAYLOR and TNS ENTERPRISES, for Breach of Contract, or alternatively, should the Court find some facts to be controverted, Movants be granted a partial summary judgment specifying those facts that appear to be without substantial controversy;

2. Judgment against Plaintiff/Counter-Defendant, EARNEST TAYLOR and TNS ENTERPRISES, for Judicial Foreclosure and entering an Order for Judicial Foreclosure and Sale of the Property, or alternatively, should the Court find some facts to be controverted, Movants be granted a partial summary judgment specifying those facts that appear to be without substantial controversy;

3. Pre-judgment and post-judgment interest as provided by law;

4. Judgment for attorney's fees as prayed for and proved by affidavit attached hereto;

5. Costs of suit; and

6. Movants be granted such other and further relief, special or general, at law or in equity, as may be shown that Movants are justly entitled to receive.

Respectfully submitted,

PHAM & NGUYEN LAW GROUP, P.C.

10260 Westheimer Rd., Ste 207

Houston, TX 77042

Tel. (713) 789-8010

By: /s/ Kevin H. Pham

Kevin H. Pham

Attorney for TCHL INVESTMENTS INC.

CERTIFICATE OF SERVICE

I certify that on April 29, 2205, a true and correct copy of Defendant/Counter-Plaintiff's Motion for Summary Judgment was served on Erick Delarue electronically through the electronic filing manager.

By: /S/ Kevin H. Pham

Kevin H. Pham

Unofficial Copy Office of Marilyn Burgess District Clerk

TNS ENTERPRISES
Plaintiff,

V.

TUONG HUYNH AND TCHL
INVESTMENTS INC.
Defendants.

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APPENDIX TO
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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All summary judgment evidence in this appendix is incorporated by reference into Defendant TCHL's Motion for Summary Judgment.

Promissory Note (Real Estate Lien Note)	Exhibit A
Deed of Trust	Exhibit B
Notice of Default and Intent to Accelerate (August 2, 2024)	Exhibit C
Notice of Acceleration and Notice of Foreclosure (November 8, 2024)	Exhibit D
Request for Admission to Plaintiff – Deemed Admission	Exhibit E
Affidavit of Kevin H. Pham (Attesting to reasonableness of attorney fees)	Exhibit F
Affidavit of Tuong Huynh for TCHL (Attesting to Business Records – Custodian of Record)	Exhibit G
Affidavit of Kevin H. Pham (Attesting to the authenticity of the documents attached hereto)	Exhibit H

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling 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.

Kevin Pham on behalf of Kevin Pham

Bar No. 791438

kpham@phamnguyenlaw.com

Envelope ID: 100215632

Filing Code Description: Motion (No Fee)

Filing Description: TCHL's Motion for Summary Judgment

Status as of 4/29/2025 1:35 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Erick DelaRue		erick.delarue@delaruelaw.com	4/29/2025 12:38:18 PM	SENT
Kevin H.Pham		Kpham@phamnguyenlaw.com	4/29/2025 12:38:18 PM	SENT