

process through its registered Agent for Service, CT Corporation System, located at 350 N. St. Paul Street, Dallas, Texas 75201.

III.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to (without limitation) Chapter 37 of the Texas Civil Practice and Remedies Code and Texas Government Code Section 25.0592(a). Venue in this Court is proper in that the transactions and events made the basis of this suit relate to real property located in Collin County, Texas.

IV.

FACTS

5. This lawsuit involves property located in the City of Little Elm, Denton County Texas with a local address 2776 Hacienda Lake Drive, Little Elm, Texas 75068 and more particularly described as follows:

Being Lot 17, Block 37, Sunset Pointe Phase Ten, an addition to the Town of Little Elm, Denton County, Texas, according to the map or plat thereof recorded in Cabinet W, Page 526, of the Map Records of Denton County, Texas.

(the "Property").

6. The Property is part of the "Two Sunset Pointe Home Owners Association, Inc." (the Association) and, at all times relevant to this lawsuit, was subject to the Association's Rules and Regulations. The foregoing rules -/to which this Property was subject - created an obligation of all homeowners in the association to pay assessments to the Association. Additionally, it granted the Association lien rights securing payment of said assessments.

7. The Property was purchased by Marinna Davis (Davis) on or about July 3, 2006.



8. On or about that same date, Davis, as borrower, executed and delivered a Deed of Trust to Scott R. Valby, Trustee for Universal American Mortgage Corporation in order to secure payment of a promissory note (using the Property to secure the loan) in the original principal amount of \$148,164.00. The Deed of Trust was recorded as Instrument No. 2006-84918 in the Official Records of Denton County, Texas on July 13, 2006.

9. Thereafter, Davis executed a Second Deed of Trust in favor of Countrywide Bank FSB on January 18, 2008. The assignment was recorded as Instrument No. 2008-9349 in the Official Records of Denton County, Texas on January 29, 2008.

10. Thereafter, on or about February 20, 2008, third party Mortgage Electronic Registration Systems Inc. (MERS), claiming to be the beneficial owner under the First Deed of Trust, executed a Release of Lien relating to the First Deed of Trust (recorded as Instrument No. 2006-84918). The Release directed return to a completely different third party (Wells Fargo Home Mortgage).

11. Upon information and belief, MERS maintained no such beneficial ownership interest in the promissory note secured by the First Deed of Trust and released by it. Furthermore, there is no assignment of record indicating any interest on the part of the other third party - Wells Fargo Home Mortgage.

12. On June 1, 2010 the Association, holding an assessment lien against the Property conducted a sale to foreclose the Association's assessment lien and to collect past due assessments owed to the Association by Davis.

17. Kingman Holdings L.L.C. was the high bidder at the foreclosure sale and Plaintiff's bid was accepted by the duly authorized representative of the Association who conducted the sale. The assessment lien purchaser paid the amount of the bid and accepted



delivery of an Assessment Lien Deed conveying title to the Property to it on June 1, 2010. Kingman Holdings thereafter recorded the Assessment Deed on June 3, 2010 as document number 2010-52835 in the Official Records of Denton County, Texas.

13. In November, 2010, Plaintiff issued written correspondence to Countrywide Bank FSB. Upon information and belief, since the date of the execution of the Second Deed of Trust, Countrywide has dissolved and some of its assets acquired by Defendant – although there is nothing of record to indicate whether the acquisition included the subject Property. The letter notified Countrywide (and Defendant) of Plaintiff's ownership of the property and advised Defendant. The letter requested that the claimed lien-holder of record verify its interest in the Property and, subject to said verification, asserted the Plaintiff's right of equitable redemption, requesting information on the subject Property's loan payoff amount. Finally, the letter indicated that time was of the essence and requested a written response. There was no response to Plaintiff's letter in any form or fashion.

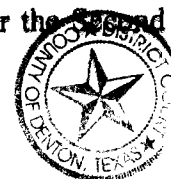
14. As of the date of the filing of this lawsuit, neither Defendant, nor its apparent predecessor have responded to Plaintiff's correspondence requesting verification of Defendant's claimed interest in the property and, the assertion of Plaintiff's right of equitable redemption subject thereto.

V.
CAUSES OF ACTION

COUNT ONE: CLAIM FOR DECLARATORY JUDGMENT FOR ACCOUNTING AND OPPORTUNITY TO SERVICE:

15. Plaintiff repeats and re-alleges paragraphs 1 – 14 as if set forth fully below.

16. As set forth above, Defendant has no recorded claim of interest in the subject Property. However, should Defendant establish its rights under the ~~Second~~ Deed of Trust and



Note, as the purchaser of the Property at the foreclosure sale of a lien that is potentially capable of being proven subordinate, Plaintiff seeks this Court declare that it has the right to service any existing, superior lien and that Plaintiff is entitled to verify that such lien still affects the property. *See Conversion Properties, LLC v. Kessler*, 994 S.W.2d 810 (Tex. App.—Dallas 1999, pet. denied).

COUNT TWO: DECLARATORY JUDGMENT TO ENFORCE EQUITY OF REDEMPTION:

17. Plaintiff repeats and re-alleges paragraphs 1 – 16 as if set forth fully below.

18. As the successor in interest to the maker of any valid and subsisting promissory note executed by Davis, Plaintiff has the right to cure any default in the payment of Davis' note. In the event Defendant has possession of the original promissory notes and Defendant verifies the validity of an assignment to the Deed of Trust, Plaintiff seeks to have the Court declare the Plaintiff's right to be provided with the opportunity to cure the default under the note and service the note in accordance with its right to assert the equity of redemption.

19. Accordingly, Plaintiff hereby requests a judicial declaration from this Court that determines the question of the validity of the lien purportedly established by the Second Deed of Trust as well as Defendant's authority to legally act under the Deed of Trust, and that in the event that the lien created by the Deed of Trust is declared valid and enforceable *by the Defendant*, that Plaintiff's right to equitable redemption be judicially declared to be in full force and effect.

COUNT THREE: DECLARATORY JUDGMENT TO DECLARE PLAINTIFF'S LIEN SUPERIORITY

20. Plaintiff repeats and re-alleges paragraphs 1 – 20 as if set forth fully below.

21. Plaintiff is a person or entity who is interested under a deed, written contract and/or other writings constituting a contract whose rights, ~~status and~~ other legal relations are



affected thereunder. As such, Plaintiff seeks to have this Court determine certain questions of construction or validity arising under the hereinafter described instruments pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code.

22. Specifically, the alleged lien created by the Deed of Trust recorded as Document No. 2008-9349 by Countrywide Bank FSB creates a cloud upon the title to the Property now rightfully owned by Plaintiff.

24. Plaintiff hereby alleges that upon information and belief, the Defendant's apparent predecessor in interest Countrywide held a deed of trust that did not supercede the First Deed of Trust and has been extinguished based upon the homeowner's association assessment lien foreclosure sale. To wit, third party MERS alleged release of the First Deed of Trust was ineffective as this entity did not possess legal ownership of the interest claimed to have been released.

25. Furthermore, Plaintiff alleges that there is no evidence of a valid assignment of the Countrywide note or deed of trust to Defendant.

26. Plaintiff further alleges that, based upon information and belief, Defendant is not in possession of the original promissory note which supports the Deed of Trust at issue in this matter and as required by Texas law. Accordingly, Defendant should not be entitled to enforce any note or the Deed of Trust. See *Texas National Corporation v. United Systems International*, 493 S.W.2d 738 (Tex. 1973); *Mercer v. Daoran*, 676 S.W.2d 580 (Tex. 1984); and *Life Ins. Co. of Virginia v. Gar-Dal, Inc.* 570 S.W.2d 378 (Tex. 1978).

27. Based upon the multiple defects in Defendants' supposed, but unrecorded interest, Plaintiff hereby requests a judicial declaration from this Court that Plaintiff's ownership interests are superior to any claimed by Defendant and that the lien created by the Second Deed of Trust



allegedly in favor of Defendant be discharged and extinguished and declared of no force and effect.

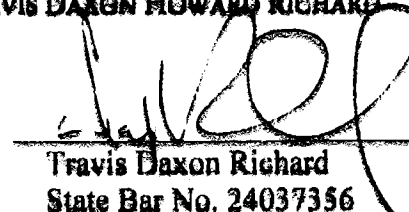
WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that citation be issued and served upon Defendant Bank of America N.A., and that:

- a) Defendant be cited to appear and answer and that upon final hearing the Court shall enter an order declaring the rights of the parties in and to the Property in the manner set forth above;
- b) Granting Plaintiff judgment declaring the status of Defendant's claimed lien on the Property, including but not limited to discharging the same based upon the foregoing factual recitations;
- c) Additionally, and in the alternative, Granting Plaintiff judgment declaring the Plaintiff's entitlement to assert its equitable right of redemption on the Property subject to any declaration in support of Defendant's claimed lien; and
- d) For all such further relief, both in law and in equity, to which the Plaintiff may be justly and lawfully entitled.



Respectfully submitted,

LAW OFFICES OF
TRAVIS DAXON HOWARD RICHARD

By: 
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ATTORNEY FOR PLAINTIFF
KINGMAN HOLDINGS L.L.C.



CERTIFIED A TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE IN MY OFFICE

SHERRI ADELSTEIN

DENTON COUNTY DISTRICT CLERK

1/20/11 By:  Deputy Clerk
Date