

IN THE CHANCERY COURT OF COUNTY, MISSISSIPPI

PLAINTIFFS

VS.

CIVIL ACTION NO.

DEFENDANTS

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

COME NOW and (the " "), Plaintiffs, and file this Complaint against (" ") and (" "), to prevent and enjoin their proposed foreclosure under certain deeds of trust executed by the on lands located in and Counties, Mississippi. and are attempting to foreclose under the deeds of trust and take the 's property before the resolution of the question whether the promissory notes which the deeds of trust secure are due and payable. and the are presently involved in two suits over whether the promissory notes are due and payable, or whether agreed to forbear on the notes. and should not allowed to foreclose prior to a judgment that the promissory notes are in default.

The also seek to prevent and enjoin and from publishing any notices or other matters related to or connected with and 's attempted foreclosure under certain deeds of trust on lands located in and Counties, Mississippi. In support thereof, the state as follows:

PARTIES

1.

and , are adult resident citizens of , County, Mississippi.

2.

is a national banking association which is domiciled and has its principal place of business in , . may be served with process of this Honorable Court pursuant to Rule 4 of the Mississippi Rules of Civil Procedure by delivering a copy of the Summons and Complaint to , , , .

3.

is an adult resident citizen of , who may be served with process of this Honorable Court pursuant to Rule 4 of the Mississippi Rules of Civil Procedure by delivering a copy of the Summons and Complaint to him/her at his/her business address, Bank, , , , .

4.

The is a corporation with its principal place of business in , County, Mississippi and can be served with process of this Honorable Court pursuant to Rule 4 of the Mississippi Rules of Civil Procedure by delivering a copy of the Summons and Complaint to its registered agent, , , , .

5.

The may be served with process of this Honorable Court pursuant to Rule 4 of the Mississippi Rules of Civil Procedure by delivering a copy of the Summons and Complaint to its editor at its principal place of business in , County, Mississippi.

**JURISDICTION AND VENUE**

6.

The Court has jurisdiction and venue. does business in the State of Mississippi, including, but not limited to, making and extending loans and, in a systematic and ongoing way, acquiring and owning deeds of trust and security interests in properties in Mississippi, including , and Counties, Mississippi.

7.

has purposefully availed itself of the benefits of conducting business in Mississippi by entering into agreements with the to be performed in whole or in part in Mississippi. The agreements include loans against the deeds of trust on properties in , , and Counties, Mississippi.

8.

, as owner and holder of the deeds of trust at issue herein, substituted , as Trustee on said deeds of trust by an instrument entitled "Substitution of Trustee" dated , , and recorded in the Substituted Trustee Book , Pages - , on file in the office of the Chancery Clerk of County, Mississippi, and in Substituted Trustee Book , Pages - on file in the office of the Chancery Clerk of County, Mississippi. As Substituted Trustee, has instituted the foreclosure proceedings in and Counties and is subject to the jurisdiction of this Court.

9.

The does business in County, Mississippi. In addition, The has published and disseminated in County, that certain "Substituted Trustee's Notice of Sale" dated , , and attached to the hereto as Exhibit " " and incorporated herein by reference. Such publication occurred on and , .

10.

The does business in County, Mississippi. In addition, The has published and disseminated in and Counties, that certain "Substituted Trustee's Notice of Sale" dated , , and attached hereto as Exhibit " " and incorporated herein by reference. Such publication occurred on and , .

**FACTUAL BACKGROUND**

11.

For over \_\_\_\_\_ years, the \_\_\_\_\_ have been in the business of acquiring, developing, investing in, and selling properties and other assets which include mineral interests, oil and gas leases, oil and gas wells, real estate and timberland. The nature of this business is speculative and requires long-term loans, long-term financing, and long-term forbearance from a lending institution, which is willing to loan money long-term on and for speculative properties and to await the development or sale of the properties to be paid.

12.

The \_\_\_\_\_ began doing business with \_\_\_\_\_ in \_\_\_\_\_. The \_\_\_\_\_ relied on \_\_\_\_\_'s assurances that \_\_\_\_\_ would provide the \_\_\_\_\_ with long-term loans, financing, and, most importantly, the necessary forbearance which the \_\_\_\_\_ would need over a long period of time in order to acquire, develop, and sell properties at the most optimum prices available.

13.

Since \_\_\_\_\_, the \_\_\_\_\_ have been one of the substantial customers of \_\_\_\_\_. \_\_\_\_\_ has provided the \_\_\_\_\_ with long-term loans, financing, and the necessary forbearance for the \_\_\_\_\_' acquisition, development, investment, and sale of various properties. Pursuant to written and verbal agreements, including modifications and amendments of notes, and the long-standing course of dealing between the parties, \_\_\_\_\_, e.g., has loaned money to the \_\_\_\_\_, has advanced monies to the \_\_\_\_\_ in anticipation of sale, has encouraged the \_\_\_\_\_ to acquire properties, has paid debts owed by the \_\_\_\_\_ and has rolled the payments into the \_\_\_\_\_'s account, and has paid down the \_\_\_\_\_'s account with proceeds received from time to time from the \_\_\_\_\_'s income producing properties and the \_\_\_\_\_'s periodic sales of properties.

\_\_\_\_\_ has repeatedly waived the strict enforcement of the default provisions of the written agreements between them and the \_\_\_\_\_ have relied to their detriment on these agreements.

14.

For example, the [redacted] are presently involved in selling approximately [redacted] acres of timberland in [redacted] on which [redacted] holds a [redacted] mortgage. The [redacted] have at all times kept [redacted] fully apprised of the [redacted]'s efforts to sell the timberland and of the proposed sale, with the agreement and understanding that the [redacted] will use a portion of the sale proceeds to bring current the accrued interest on the [redacted]'s debt to the Bank. This course of dealing between the [redacted] and the [redacted] has been followed since [redacted].

15.

The [redacted] have secured [redacted] with various mortgages, deeds of trust, and security interests in properties located in [redacted], [redacted], and [redacted], [redacted], and [redacted] Counties, Mississippi. These properties include mineral interests, real estate, oil and gas leases, oil and gas wells, and timberlands. The value of these properties more than secures the [redacted]'s debt to [redacted].

16.

The relationship between the [redacted] and [redacted] has been a long-standing fiduciary relationship of mutual trust and confidence for the mutual benefit and profit of both the [redacted] and [redacted]. [redacted] has exercised a degree of control and influence over the [redacted]'s business activities. The [redacted] and [redacted] have both benefited from the relationship. Since [redacted], the [redacted] have paid [redacted] over \$ [redacted] in interest and \$ [redacted] in principal in connection with loans made by [redacted] to the [redacted].

17.

Although the [redacted] are not in default, [redacted], in breach of its agreements with the [redacted] and its fiduciary duties and its duties of good faith and fair dealing, has demanded that the [redacted] immediately pay the Bank \$ [redacted] in claimed principal and interest. On [redacted], [redacted], the [redacted]

filed suit in the United States District Court for the District of Mississippi against for various claims including, breach of contract and a declaratory judgment that the indebtedness to is not due (the "Mississippi case"). A copy of the complaint filed by the in the Mississippi case is attached hereto as Exhibit " " and incorporated herein by reference. Subsequently, sued the in the United States District Court for the District of for recovery of the amount claimed to be due (the " case"). A copy of the complaint filed by in the case is attached hereto as Exhibit " " and incorporated herein by reference. The case is presently on appeal to the United States Court of Appeals for the Circuit. The case is still active in the district court. Neither the court in the case nor the court in the case has ruled that is entitled to demand the immediate payment of the amount claimed to be due.

18.

's demand for immediate payment is a breach of the agreements between the and the Bank for the Bank to provide the with long-term loans, financing, and the necessary forbearance while the , e.g., develop and sell various properties, so as to apply the proceeds received to reduce the 's debt to . should be held to be estopped to deny, dispute, renege on or breach its agreements with the and from demanding or receiving the immediate payment of the 's outstanding account, an account which is fully secured by various deeds of trust, mortgages and security interests; and to have waived strict enforcement of the default provisions of the written agreements between them.

19.

As a portion of the security for their indebtedness to the , the on , executed a certain Land Deed of Trust to , Trustee, for the benefit of Bank, which is recorded in Book , Pages , Record of Mortgages and Deeds of Trust on

Land, County, Mississippi, and in Book , Pages - , Record of Mortgages and Deeds of Trust on Land, County, Mississippi. By instrument dated , , as owner and holder of the said Land Deed of Trust substituted , as Substituted Trustee, in place of and in lieu of , which instrument is recorded in Substituted Trustee Book , Pages - , on file in the office of the Chancery Clerk of County, Mississippi, and in Substituted Trustee Book , Pages - , on file in the office of the Chancery Clerk of County, Mississippi.

20.

On , , commenced foreclosure of said Land Deed of Trust by posting a "Substituted Trustee's Notice of Sale" on the main bulletin board at the County Courthouse in , Mississippi, and by commencing publication of said "Substituted Trustee's Notice of Sale" in The and . The "Substituted Trustee's Notice of Sale" was published by said newspapers on and , .

21.

has instituted these foreclosure proceedings on the 's properties in and Counties, Mississippi, and has threatened to foreclose on the 's other properties, including the timberland in which the are in the process of selling, in an effort to obtain prejudgment attachment of the property and to otherwise unfairly gain an advantage over the prior to a determination of their rights by the Federal Courts. 's demands, suits attempting foreclosure and threats of foreclosure constitute breaches of the 's agreements with and duties to the and threaten the with substantial and irreparable damages and losses.

### **FIRST CLAIM**

INJUNCTIVE RELIEF

22.

The allegations of paragraphs 1 through 21 are incorporated herein by reference.

23.

In order to preserve the status quo and prevent irreparable harm,            and            should be enjoined, both by a temporary restraining order and a preliminary injunction, from attempting to foreclose on and from foreclosing on any of the            's lands and properties until after a judgment has been rendered determining whether the            are in default and whether the promissory notes are due and payable. If it is decided that            agreed to forbear on the collection of the notes and that the            are not in default, then            and            do not have a right to foreclose.

24.

The            and the            should be enjoined from proceeding with any further publications of the foreclosure notices.

25.

The            are also entitled such other injunctive relief as may be necessary pending a final judgment on the dispute between the            and            .

**SECOND CLAIM**

**DUE PROCESS**

26.

The allegations of paragraphs 1 through 25 are incorporated herein by reference.

27.



The [redacted] are not in default to [redacted]. [redacted] and [redacted]'s attempted foreclosure constitutes an attempted prejudgment seizure and attachment of property in violation of the due process provisions of the Mississippi Constitution.

28.

The [redacted] and the [redacted] should be enjoined from proceeding with any further publications of the foreclosure notices.

29.

The [redacted] are entitled to injunctive relief to maintain the status quo and to prevent the irreparable harm and injury which would result from a violation of their due process rights under the Mississippi Constitution if [redacted] is permitted to foreclose on the properties listed in Exhibit "[redacted]" hereto.

WHEREFORE, PREMISES CONSIDERED, the [redacted] pray that summons issue to the Defendants in accordance with law, and that the Court will grant the following relief to the [redacted]:

(1) Immediately issue a temporary restraining order and a preliminary injunction against the [redacted], and the [redacted] prohibiting them from proceeding or taking any other actions related to or connected with the foreclosure of the properties set forth in Exhibit "[redacted]" attached hereto and incorporated herein by reference pending a final determination of this case on the merits;

(2) Other appropriate temporary, preliminary and permanent injunctive relief, as may be needed to protect the [redacted] rights to due process under the Mississippi Constitution; and

(3) A judgment for the [redacted] against [redacted] for attorney's fees and costs of Court herein.

AND the            pray for such further additional, general or specific relief to which they  
may be entitled.

THIS, the            day of            , 20            .

Respectfully submitted,

By: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the county and state aforesaid, the within named \_\_\_\_\_, who being by me first duly sworn, acknowledged that he/she signed and delivered the above and foregoing Complaint on the day and year therein mentioned and for the intent and purposes therein expressed.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
\_\_\_\_\_