

**IN THE FIFTH JUDICIAL CIRCUIT COURT
BUCHANAN COUNTY, MISSOURI**

ARK CAPITAL BROOKSIDE, LLC,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	Division
DASILVA HAWK LLC,)	
Serve Registered Agent:)	
Garrett Hawk)	
320 Commercial Street, Suite 406)	
Branson, MO 65616)	
)	
GARRETT HAWK,)	
Serve:)	
320 Commercial Street, Suite 406)	
Branson, MO 65616)	
)	
JOEL HANE, Not individually, but as)	
Successor Trustee of the Deed of Trust,)	
dated August 5, 2021)	
Serve:)	
702 Felix Street)	
St. Joseph, MO 64501)	
)	
Defendants.)	

VERIFIED PETITION FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Ark Capital Brookside, LLC (hereinafter “Plaintiff Ark Capital Brookside”) hereby states and alleges as follows:

PARTIES

1. Plaintiff Ark Capital Brookside is a Nebraska limited liability company, registered as a foreign limited liability company with Missouri Secretary of State. Plaintiff Ark Capital Brookside is owned by its two members: (i) Shiba Prop Limited Liability Company, a Nebraska limited liability company (hereinafter “Shiba”); and (ii) Ravara Group, LLC, a Nebraska limited liability company (hereinafter “Ravara”). Shiba is owned by its two members: (i) Anand Karney;

and (ii) Sudha Karney. Ravara is owned by its three members: (i) Rajasekhar Bodduluri; (ii) Vamseedhar Ravi; and (iii) Rambabu Kallepalli.

2. Defendant DaSilva Hawk LLC (hereinafter “Defendant DaSilva”) is a Missouri limited liability company with its Registered Agent, Garrett Hawk, and its principal place of business located at 320 Commercial Street, Suite 406, Branson, Missouri 65616.

3. Defendant Garrett Hawk (hereinafter “Defendant Hawk”) is an individual and resident of Missouri. On information and belief, Defendant Hawk is a member and manager of Defendant DaSilva. Defendant Hawk may be personally served at 320 Commercial Street, Suite 406, Branson, Missouri 65616.

4. Defendant Joel Hane (hereinafter “Defendant Hane”) is the Successor Trustee of the Deed of Trust, dated August 5, 2021, and, upon information and belief, is a Missouri resident residing in St. Joseph, Buchanan County, Missouri, and may be served at 702 Felix Street, St. Joseph, Missouri 64501.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court because Plaintiff Ark Capital Brookside is registered to do business in Missouri, and Defendants are each a resident of and domiciled in Missouri.

6. Venue is proper in this Court, pursuant to R.S. Mo. § 508.010.4, because this Verified Petition alleges a tort action against Defendants and because Plaintiff Ark Capital Brookside was first injured by the tortious and wrongful acts of Defendants in Buchanan County, Missouri. Venue is also proper in this Court because the real property at issue is situated in Buchanan County, Missouri.

GENERAL ALLEGATIONS

7. Plaintiff Ark Capital Brookside is the owner of real property commonly known as the Brookside Apartments, 1602 Brookside Drive, St. Joseph, Missouri, 64506 (the “Property”).

8. The Property is situated in Buchanan County, Missouri and has the following legal description:

PART OF LOTS NINETEEN (19) AND TWENTY (20), BROOKSIDE ADDITION, AN ADDITION TO THE CITY OF ST. JOSEPH, BUCHANAN COUNTY, MISSOURI, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 20 BROOKSIDE ADDITION, THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 20 A DISTANCE OF 245.17 FEET TO THE SOUTHEAST CORNER OF SAID LOT 20, SAID CORNER BEING ON THE WEST LINE OF BROOKSIDE DRIVE AS NOW DEDICATED; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOTS 20 AND 19 AND THE WESTERLY LINE OF BROOKSIDE DRIVE, A DISTANCE OF 139.77 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 19 THAT IS 30.47 FEET NORTHERLY FROM THE SOUTH CORNER OF SAID LOT 19, MEASURED ALONG THE EASTERLY LINE OF SAID LOT 19; THENCE NORTH 69 DEGREES 30 MINUTES WEST, A DISTANCE OF 42.17 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID LOT 19 THAT IS 48.44 FEET NORTHWESTERLY FROM THE SOUTH CORNER OF SAID LOT, MEASURED ALONG THE SOUTHWESTERLY LINE, SAID POINT ALSO BEING ON THE NORTHEASTERLY LINE OF SAID LOT 20; THENCE NORTH 31 DEGREES 00 MINUTES WEST, ALONG THE NORTHEASTERLY LINE OF SAID LOT 20, A DISTANCE OF 273.06 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH THE NORTH LINE OF SAID BROOKSIDE ADDITION AND 254.01 FEET SOUTH THEREOF; THENCE WEST ALONG SAID LINE A DISTANCE OF 105.05 FEET TO THE WEST LINE OF SAID LOT 20; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT 20 A DISTANCE OF 385.14 FEET TO THE POINT OF BEGINNING.

9. On August 5, 2021, Defendant DaSilva recorded a *Deed of Trust With Future Advances and Future Obligations Governed by Section 433.055 RSMO* (the “Deed of Trust”) against the Property with the Buchanan County Recorder of Deeds. A copy of the Deed of Trust is submitted herewith as Exhibit 1.

10. Defendant DaSilva recorded the Deed of Trust at the direction of Defendant Hawk.

11. The Deed of Trust purports to secure “ALL OBLIGATIONS” of Plaintiff Ark Capital Brookside in the amount of \$250,000.00. (*See* Ex. 1, at Page 1).

12. The Deed of Trust was purportedly executed by “Amogh Karney, Managing Member, ARK CAPITAL BROOKSIDE LLC” on June 22, 2021. No other individuals purportedly executed the Deed of Trust for Plaintiff Ark Capital Brookside. (*See* Ex. 1, at Pages 17-18).

13. Amogh Karney is the son of Anand Karney and Sudha Karney, the two owners and members of Shiba.

14. Amogh Karney is not now and has never been a Managing Member, manager, or member of Plaintiff Ark Capital Brookside.

15. Amogh Karney is not now and has never been authorized by Plaintiff Ark Capital Brookside to encumber the Property with deeds of trust, including the Deed of Trust.

16. The Deed of Trust identifies Plaintiff Ark Capital Brookside as the “Borrower” and “Grantor” and indicates that the Deed of Trust is being conveyed by Plaintiff Ark Capital Brookside to secure obligations under a “Note” and “Related Documents” between Plaintiff Ark Capital and Defendant DaSilva. (*See* Ex. 1, at “CONVEYANCE AND GRANT”, Page 1, and “DEFINITIONS”, Pages 16-17).

17. Plaintiff Ark Capital Brookside has never entered into a “Note” or “Related Documents” with Defendant DaSilva and has never incurred any indebtedness or undertaken any obligations owed to Defendant DaSilva.

18. The “Note” referenced in the Deed of Trust is a Secured Promissory Note (the “Note”) executed by and between Shiba and Defendant DaSilva (and not Plaintiff Ark Capital Brookside) on June 22, 2021. A copy of the Note is submitted herewith as Exhibit 2.

19. Plaintiff Ark Capital Brookside has, however, incurred indebtedness and undertaken obligations related to the Property in favor of its actual lender Bank of the West (hereinafter, the “Bank”).

20. The Bank recorded its own deed of trust on the Property in March of 2020. A copy of the Bank’s deed of trust is submitted herewith as Exhibit 3. Unlike Defendant DaSilva’s Deed of Trust, the Bank’s deed of trust is executed by the two members of Shiba and the three members of Ravara. The Bank’s deed of trust is not executed by Amogh Karney.

21. Defendants DaSilva and Hawk have had several previous business deals with, and are familiar with, Shiba and Amogh Karney, and knew or should have known that Amogh Karney was not a Managing Member, manager, or member of Plaintiff Ark Capital Brookside and was not authorized to encumber Plaintiff Ark Capital Brookside’s Property. Defendants DaSilva and Hawk were also familiar with the individuals who are the members of Plaintiff Ark Capital Brookside and knew of their connection with Plaintiff Ark Capital Brookside.

22. Furthermore, Defendants DaSilva and Hawk knew or should have known that Plaintiff Ark Capital Brookside had never and has never: (i) entered into a “Note” or “Related Documents” with Defendant DaSilva, (ii) incurred any indebtedness to Defendant DaSilva, or (iii) undertaken any obligations owed to Defendant DaSilva.

23. Despite the knowledge of Defendants DaSilva and Hawk outlined in Paragraphs 21 and 22 above, Defendant DaSilva, at the direction of Defendant Hawk, drafted the Deed of Trust for Amogh Karney to sign as the only signatory and as the purported “Managing Member” of Plaintiff Ark Capital Brookside and accepted and recorded the same against the Property owned by Plaintiff Ark Capital Brookside.

24. On October 29, 2021, Defendant Hane, as counsel for Defendant DaSilva and as the purported successor trustee under the Deed of Trust, provided notice to Shiba of a trustee's sale of the Property. Neither Defendant DaSilva nor the successor trustee provided similar notice of the trustee's sale to Plaintiff Ark Capital Brookside.

25. The trustee's sale is noticed to occur at 2:00 p.m. on November 29, 2021 at the East Front Door of the Buchanan County Circuit Courthouse.

26. The Deed of Trust requires that any foreclosure sale shall take place in Nodaway County, Missouri and that any appointment of Successor Trustee be recorded in Nodaway County, Missouri and not Buchanan County, Missouri.

27. Defendant DaSilva is attempting to sell the Property at the trustee's sale in order to apply the sales proceeds against a purported promissory note between Defendant DaSilva and Shiba. Plaintiff Ark Capital Brookside is not a party to any promissory notes with Defendant DaSilva or Shiba.

28. Nothing of value has ever been provided to Plaintiff Ark Capital Brookside from Defendant DaSilva, nor were any loan proceeds ever disbursed by Defendant DaSilva to Shiba.

29. On November 17, 2021, Plaintiff Ark Capital Brookside sent correspondence to Defendant Hane, counsel for Defendant DaSilva and successor trustee under the Deed of Trust, demanding a release of the invalid Deed of Trust and cancellation of the trustee's sale of the Property. The letter identified several dispositive reasons for the invalidity of the Deed of Trust, including: (i) failure of consideration for the Deed of Trust between Plaintiff Ark Capital and Defendant DaSilva, (ii) failure of consideration for the purported promissory note between Defendant DaSilva and Shiba, (iii) no authorization for Amogh Karney to encumber the Property, (iv) inadequate due diligence by Defendant DaSilva as to the authorization of Amogh Karney to

encumber the Property, and (v) no ratifying acts by Plaintiff Ark Capital Brookside related to the Deed of Trust.

30. In addition, the purported trustee's sale is invalid because Defendants DaSilva and Hane intend to ignore the material terms of the Deed of Trust and hold a nonjudicial foreclosure in Buchanan County, Missouri, as opposed to Nodaway County, Missouri, as required by the Deed of Trust. (*See* Ex. 1, at "Foreclosure, Page 11).

31. As of the filing of this Verified Petition, Defendants DaSilva and Hawk have not released the invalid Deed of Trust and have elected to maintain the invalid Deed of Trust as a recorded document with the Buchanan County Recorder of Deeds.

32. As of the filing of this Verified Petition, Defendants DaSilva, Hawk, and Hane have not taken any steps to cancel the proposed trustee's sale of the Property.

COUNT I – DECLARATORY RELIEF, R.S.MO. § 527.010, et seq.
(Against Defendant DaSilva)

33. Plaintiff Ark Capital Brookside re-states and incorporates Paragraphs 1-32 of this Verified Petition as if those Paragraphs were fully set forth herein.

34. A justiciable controversy exists that presents a real, substantial, and presently-existing controversy between Plaintiff Ark Capital Brookside and Defendant DaSilva regarding the validity of the Deed of Trust and the propriety of the proposed trustee's sale of the Property based upon a foreclosure of the Deed of Trust.

35. As the owner of the Property subject to the invalid Deed of Trust and the proposed trustee's sale, Plaintiff Ark Capital Brookside has a pecuniary and personal interest directly at issue and subject to immediate or prospective consequential relief under this Count I for Declaratory Relief.

36. The issues presented under this Count I for declaratory relief present a controversy with sufficient immediacy to warrant the issuance of declaratory relief, and therefore, the issues presented hereunder are ripe for judicial determination by this Court.

37. Plaintiff Ark Capital Brookside does not have an adequate remedy at law.

38. Without immediate declaratory relief and an injunction from the Court enforcing the same, Plaintiff Ark Capital Brookside will suffer irreparable harm through the improper sale of its Property based upon the foreclosure of an invalid Deed of Trust.

39. Given the frivolous and reckless nature of Defendant DaSilva's attempted foreclosure of an unauthorized Deed of Trust that secures phantom indebtedness purportedly owed by Plaintiff Ark Capital Brookside, this Count I for declaratory relief presents "special circumstances" warranting the award of attorney's fees, expenses, and costs in favor of Plaintiff Ark Capital Brookside, pursuant to R.S. Mo. § 527.100, Mo. R. Civ. P. 87.09, and attendant case law.

WHEREFORE, Plaintiff Ark Capital Brookside seeks a declaratory judgment from this Court, finding that the Deed of Trust is invalid, ordering the release and discharge of the Deed of Trust by Defendant DaSilva, and enjoining the trustee's sale or any other attempted sales of the Property by Defendant DaSilva, as well as the costs, expenses, and attorney's fees incurred by Plaintiff Ark Capital Brookside in securing such declaratory judgment, and such other and further relief as the Court deems just and proper under the circumstances.

COUNT II – SLANDER OF TITLE
(Against Defendants DaSilva and Hawk)

40. Plaintiff Ark Capital Brookside re-states and incorporates Paragraphs 1-39 of this Verified Petition as if those Paragraphs were fully set forth herein.

41. Plaintiff Ark Capital Brookside is the owner of the Property.

42. Defendant DaSilva, at the direction of Defendant Hawk, recorded an invalid Deed of Trust against the Property.

43. Despite demands from Plaintiff Ark Capital Brookside to release and discharge the invalid Deed of Trust, Defendants DaSilva and Hawk have maintained the invalid Deed of Trust on the Property.

44. Defendants' recording and maintenance of the invalid Deed of Trust on the Property constitutes the publication of false statements regarding the Property and disparages the title regarding the same.

45. Defendants' false statements contained in the invalid Deed of Trust were made without legal justification or excuse, were not innocently or ignorantly made, and were maliciously published and maintained by Defendants.

46. Plaintiff Ark Capital Brookside has suffered pecuniary losses and injuries as a result of the false statements made by Defendants.

47. In the alternative to Paragraph 45, Plaintiff Ark Capital Brookside has suffered at least nominal damages in support of its universal demand for punitive damages under this Count II. *See Tongay v. Franklin Cty. Mercantile Bank*, 735 S.W.2d 766, 770 (Mo. App. E.D. 1987).

48. Furthermore, Plaintiff Ark Capital Brookside has and will expend attorney's fees in clearing the disparaged title, and such attorney's fees are recoverable as special damages under this Count II. *See Lau v. Pugh*, 299 S.W.3d 740, 750 (Mo. App. S.D. 2009).

WHEREFORE, Plaintiff Ark Capital Brookside seeks judgment in its favor and against Defendants DaSilva and Hawk in an amount that is fair and reasonable, punitive damages against Defendants DaSilva and Hawk, the costs, expenses, and attorney's fees incurred by Plaintiff Ark

Capital Brookside in clearing its disparaged title, and such other and further relief as the Court deems just and proper under the circumstances.

COUNT III – INJUNCTION
(Against Defendants DaSilva and Hane)

49. Plaintiff Ark Capital Brookside re-states and incorporates Paragraphs 1-48 of this Verified Petition as if those Paragraphs were fully set forth herein.

50. On August 5, 2021, Defendant DaSilva recorded an invalid Deed of Trust against the Property with the Buchanan County Recorder of Deeds.

51. The Deed of Trust is invalid because Amogh Karney lacked authority to bind Plaintiff Ark Capital Brookside or encumber Plaintiff Ark Capital Brookside's Property with deeds of trust, including the Deed of Trust.

52. Defendant DaSilva knew or should have known that Amogh Karney lacked authority to bind Plaintiff Ark Capital Brookside and/or encumber its Property.

53. The Deed of Trust is also invalid because it is not supported by consideration, as Plaintiff Ark Capital Brookside never received any loan proceeds pursuant to the purported underlying note.

54. Despite the obvious invalidity of the Deed of Trust, Defendants DaSilva and Hane issued a letter on October 29, 2021, purporting to give notice of a trustee's sale for the Property, based upon a foreclosure of the Deed of Trust.

55. Defendant Hane, as counsel for Defendant DaSilva, owes his client the duty of loyalty, said duty being in conflict with his duty as Successor Trustee to properly call the foreclosure sale, based on his knowledge and belief as to the facts and law

56. Given the invalidity of the Deed of Trust, Defendants DaSilva and Hane have no legal basis upon which to proceed with the trustee's sale, and, therefore, Plaintiff Ark Capital Brookside is likely to succeed on the merits of preventing the trustee's sale of the Property.

57. If preliminary relief is not granted, Plaintiff Ark Capital Brookside would be irreparably harmed, as a trustee's sale of the Property would strip Plaintiff Ark Capital Brookside of its rightful ownership of the Property.

58. This potential harm to Plaintiff Ark Capital Brookside greatly outweighs any harm Defendants DaSilva and Hane would suffer if an injunction is issued.

59. Finally, the issuance of an injunction would not adversely affect the public interest, but instead would serve the public interest's in the protection of rightful property ownership and compliance with the laws of the State of Missouri.

WHEREFORE, Plaintiff Ark Capital Brookside seeks a temporary restraining order, preliminary injunction, and permanent injunction against Defendants DaSilva and Hane, preventing Defendants DaSilva and Hane from proceeding with a trustee's sale of the Property, based upon an invalid Deed of Trust, and enjoining any other attempted sales of the Property by Defendants DaSilva and Hane, as well as the costs, expenses, and attorney's fees incurred by Plaintiff Ark Capital Brookside in securing such injunctive relief, and such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

SEIGFREID BINGHAM, PC

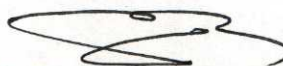
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VERIFICATION

STATE OF Nebraska)
) ss.
COUNTY OF Dawson)

Anand Karney, of lawful age, being duly sworn on his oath and on behalf of Shiba Prop, LLC as a member of Ark Capital Brookside, LLC, states that the facts stated in the Verified Petition are true according to his best knowledge and belief.

Subscribed and sworn to before me this 19 day of November, 2021.



Notary Public

My Commission Expires:

2-4-23

TRAVIS LANDWEHR
General Notary - State of Nebraska
My Commission Expires Feb 4, 2023



Anand Karney
11/19/2021

VERIFICATION

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

Rambabu Kallepalli, of lawful age, being duly sworn on his oath and on behalf Ravara Group, LLC as a member of Ark Capital Brookside, LLC, that the facts stated in the Verified Petition are true according to his best knowledge and belief.

Subscribed and sworn to before me this 19 day of November, 2021.



Notary Public

My Commission Expires:
July 19 2025

