

NO. 2022-34299

ALL ABOUT PROPERTY, LLC, Plaintiff	§	IN THE DISTRICT COURT
	§	
VS.	§	11 TH JUDICIAL DISTRICT
	§	
SELECT PORTFOLIO SERVICING, INC. AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. Defendants	§ § § §	HARRIS COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

Defendants, Mortgage Electronic Registration Systems, Inc. (“**MERS**”) and Select Portfolio Servicing, Inc. (“**SPS**”) (collectively, “**Defendants**”) file this Original Answer to Plaintiff All About Property, LLC (“**Plaintiff**”) Original Petition, and would respectfully show unto the Court as follows:

GENERAL DENIAL

Defendants, pursuant to Rule 92 of the Texas Rules of Civil Procedure, generally deny all of the claims as alleged by Plaintiff and respectfully prays that Plaintiff be required to prove its claims as alleged by a preponderance of the evidence or such higher standard as may be applicable.

AFFIRMATIVE DEFENSES

1. Plaintiff failed to state a claim upon which relief may be granted and therefore each of Plaintiff’s claims should be dismissed.
2. Defendants plead that Plaintiff has failed to plead and prove conditions precedent to recovery herein.
3. Defendants plead the statute of frauds.
4. Defendants plead waiver, estoppel and ratification.

5. Defendants plead a failure of consideration for any breach of contract claim, if any.

6. Defendants plead that Plaintiffs lack standing.

7. Defendants plead the statute of limitations.

8. Defendants plead *res judicata* and collateral estoppel.

9. Defendants plead judicial estoppel and all forms of estoppel.

10. Defendants plead that the “economic loss rule” precludes all tort claims by Plaintiff.

11. Plaintiff’s claims are precluded, in whole or part, because any alleged acts and/or omissions of Defendants were not the cause of Plaintiff’s alleged damages. Rather, Plaintiff’s damages, if any, were proximately caused by the act, omissions or breaches of other persons and/or entities, including Plaintiff, and the acts, omissions or breaches were intervening and superseding causes of Plaintiff’s damages, if any.

12. Plaintiff’s damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and entities, including Plaintiff, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiff’s damages, if any. Defendants plead the doctrine of comparative responsibility as provided in Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, and its application to any tort claim (intentional or otherwise) of the Plaintiff that may be alleged against Defendants.

13. Plaintiffs have failed to mitigate its damages, if any.

14. Defendants are not liable for the act, omissions, or conduct of other persons or entities not authorized to act on behalf of them and Defendants are not liable for the act, omissions of its agents, if any, who exceeded the scope of their authority.

15. Any claim for punitive or exemplary damages is subject to the limitations and constraints of Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution.

16. Defendants plead bankruptcy tolling, common law tolling, equitable tolling, abandonment of any alleged acceleration of the subject loan obligations, and all tolling of the statute of limitations available at law or in equity, including but not limited to tolling under §16.063 of the Texas Civil Practice and Remedies Code.

17. Defendants plead waiver and release and specific reference is made to a prior Settlement Agreement and Release signed by the parties.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that Plaintiff takes nothing by reason of the claims alleged against it, that Defendants recover their taxable court costs, and that Defendants recover such other and further relief to which this Court deems it to be justly entitled.

Respectfully submitted,

HIRSCH & WESTHEIMER, P.C.

By: /s/ Michael F. Hord Jr.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this June 22, 2022, a true and correct copy of the foregoing document was served as follows:

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Via E-Service

/s/ Michael F. Hord Jr. _____
Michael F. Hord Jr.

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