

**CAUSE NO. 2022-45490**

**ROBERT PARKER III**  
*Plaintiff,*

v.

**NEXBANK SSB**  
*Defendant*

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**IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
11<sup>th</sup> JUDICIAL DISTRICT**

**DEFENDANT'S ORIGINAL ANSWER AND COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, NEXBANK SSB ("Defendant"), Defendant in the above styled and numbered action and files this Original Answer and Counterclaim and for cause would respectfully show:

**I.**  
**GENERAL DENIAL**

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant denied each, every allegation contained in Plaintiff's Original Petition, Application for Injunctive Relief, and Request for Disclosures. Defendant demands strict proof by a preponderance of the evidence and/or by clear and convincing evidence as required by the laws and constitutions of the State of Texas and of the United States.

**II.**  
**AFFIRMATIVE DEFENSES**

2. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense that Plaintiff's claims are barred by contract and state law.

3. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of estoppel.

4. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of waiver.

5. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of laches.

6. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of justification.

7. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts that Plaintiffs claims are barred in whole or in part by the statute of frauds.

8. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of prior material breach.

9. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts that its alleged acts and/or omissions were not the producing cause of any injury or damages allegedly suffered by Plaintiff.

10. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts that there were independent or intervening causes of Plaintiff's damages.

11. Pursuant to TEX. R. CIV. P. 94, Respondent invokes the limitations on exemplary damages pursuant to TEX. CIV. PRAC. & REM. CODE §§ 41.001 et seq., including, without limitation, TEX. CIV. PRAC. & REM. CODE § 41.008 and pursuant to the due process clauses of the United States and Texas Constitutions.

13. Defendant reserves the right to amend this Answer to assert other and further defenses.

**III.**  
**COUNTERCLAIM**

A. DISCOVERY PLAN

14. In accordance with Tex. R. Civ. P. 190.3 and Plaintiff's Original Petition, this suit is governed by Level 2 Discovery Plan.

B. PARTIES

15. Plaintiff is Robert Parker III, an individual residing in Harris County, Texas, who may be served by serving his attorney of record.

16. Defendant, NEXBANK SSB, is an entity which conducts business in the State of Texas and is the current mortgagee of the Mortgage lien encumbering the property made the subject of this suit. It may be served by serving the undersigned counsel.

C. JURISDICTION & VENUE

17. Defendant do not challenge Plaintiffs' recitations relating to jurisdiction and venue but reserves its right to remove this proceeding to federal court if it is able to establish federal jurisdiction.

D. FACTS

18. On July 12, 2017, Robert Parker III executed and delivered to Commonwealth Mortgage of Texas LP, Limited Partnership a Note in the original principal amount of \$327,250.00. Commonwealth mortgage of Texas LP indorsed the Note by specific indorsement making it payable to the order of Nexbank, SSB. Nexbank has possession of the Note.

19. Contemporaneously with the signing of the Note, Robert Parker III executed and delivered to Commonwealth Mortgage of Texas LP, Limited Partnership a Deed of Trust to secure the indebtedness against certain real property. (The Note and Deed of Trust will be

collectively known as the “Loan”).

20. Robert Parker III granted to Commonwealth Mortgage of Texas LP, Limited Partnership or the holder of the Note a security interest in the property commonly known as 3210 Freshmeadows Dr., Houston, Texas 77063 (the “Property”).

21. On June 14, 2022, Mortgage Electronic Registration Systems, Inc., acting as nominee for Commonwealth Mortgage of Texas LP, Limited Partnership, assigned its interest in the Deed of Trust to NEXBANK. The assignment was recorded on July 1, 2022, in the real property records of Harris County as Document No. PR-2022-342643.

22. Defendant is the holder of the Note and is entitled to enforce the Note and Deed of Trust.

23. Robert Parker III defaulted on the Note by failing to make payments as they became due. Prior to acceleration, the loan was contractually due for the March 1, 2020, payment and all subsequent payments.

24. On July 11, 2022, Defendant notified Plaintiff of the acceleration of the Loan and of a foreclosure sale scheduled for August 2, 2022. On July 11, 2022, Defendant also filed and posted a Notice of Sale.

25. On July 29, 2022, Plaintiff filed this lawsuit and secured an ex parte restraining order preventing Defendant from conducting the August 2, 2022, foreclosure sale.

26. Defendant seeks a judgment fixing and establishing the amount due under the Loan. Defendant also seeks an order allowing Defendant to exercise the power of sale under the Deed of Trust and TEX. PROP. CODE §51.002. In the alternative, Defendant seeks judicial foreclosure and an order instructing the constable or sheriff to sell the Property to the highest bidder for cash in accordance with applicable Texas law. Finally, Defendant seeks an award of

its reasonable and necessary attorney's fees incurred in defending this lawsuit and in prosecuting its counterclaim.

#### E. CAUSES OF ACTION

27. Declaratory Judgment: Defendant holds a valid and subsisting lien on the property, an interest superior to the title claimed by Plaintiff. Plaintiff challenges Defendant's standing to enforce the power of sale in the Deed of Trust. Accordingly, Defendant seeks a declaration that:

- a. Defendant holds a valid security interest in the Property by virtue of the Deed of Trust;
- b. Defendant's security interest in the Property is superior to any interest claimed by Plaintiff;
- c. Plaintiff took any interest he currently holds subject to the Deed of Trust and Defendant's security interest;
- d. Defendant is entitled to conduct a non-judicial foreclosure sale in accordance with the provisions of the Deed of Trust and the Texas Property Code, where a trustee shall convey the Property to the highest bidder at public auction;
- e. When the Property is sold at a foreclosure sale, Defendant may submit a credit bid at the sale; and
- f. The effect of a foreclosure sale conducted in accordance with the Deed of Trust and the Texas Property Code shall be to divest Plaintiff of all rights and title to the Property.

28. Second Cause of Action – Judicial Foreclosure. A default exists under the Note and Deed of Trust for Robert Parker III's failure to pay the regular monthly installments as they

came due. After giving proper notice of default and opportunity to cure, Defendant accelerated the Note and notified the Borrower that the balance of the Note was due and payable in full.

29. Pursuant to the Note, interest has continued to accrue on the principal balance owed since the default on the loan. Costs to protect the collateral, costs of collection, including attorney fees and late charges are also due.

30. All proper notices required under the Note and Deed of Trust have been given.

31. Defendant seeks a judgment fixing and establishing the amount of Defendant's lien against the Property and (1) final judgment that includes an order allowing foreclosure under the Deed of Trust and Tex. Prop. Code §51.002; or, alternatively, (2) judicial foreclosure of its lien and an order instructing the constable or sheriff to sell the Property to the highest bidder for cash in accordance with applicable Texas law. Defendant also seek the following judicial declarations:

- a. Defendant holds a valid security interest in the Property by virtue of the Deed of Trust;
- b. Defendant's security interest in the Property is superior to any interest claimed by Plaintiff;
- c. Plaintiff took any interest they currently hold subject to the Deed of Trust and Defendant's security interest;
- d. Defendant is entitled to conduct a non-judicial foreclosure sale in accordance with the provisions of the Deed of Trust and the Texas Property Code, where a trustee shall convey the Property to the highest bidder at public auction;
- e. When the Property is sold at a foreclosure sale, Defendant may submit a credit bid at the sale; and

- f. The effect of a foreclosure sale conducted in accordance with the Deed of Trust and the Texas Property Code shall be to divest Plaintiffs of all rights and title to the Property.

32. Third Cause of Action – Claim for Attorney’s Fees: By its terms, the Note permits the lender to recover, in addition to unpaid principal and accrued interest, late charges and lender’s costs of collection, including reasonable attorney’s fees. In addition, the Deed of Trust permits the lender to recover costs to preserve the collateral such as insurance and taxes, and to charge interest thereon.

33. Paragraph 6(C) of the Note also permits the lender to accelerate the Note if the borrower fails to cure a default after notice. Paragraph 6(E) of the Note provides that the Lender to recover its costs of collection, including reasonable attorney’s fees. Similarly, the Deed of Trust provides at paragraph 9, in relevant part, that:

9. **Protection of Lender’s Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender’s actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court, and (c) paying reasonable attorneys’ fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

34. Defendant seeks an award of its fees and costs under the terms of the Note and Deed of Trust, Chapter 38 of the Texas Civil Practices and Remedies Code, and Chapter 37 of the Texas Civil Practice and Remedies Code.

**IV.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, NEXBANK SSB, prays that Plaintiff take nothing by his claims and that Defendant be dismissed from this lawsuit. Additionally, Defendant asks the Court to enter:

- a. A judgment establishing the validity and fixing the amount of Defendant 's lien on the Property, including interest, costs of court, and reasonable and necessary attorney's fees incurred in enforcing the lien;
- b. An order authorizing Defendant to non-judicially foreclose its lien on the Property under the Security Instrument and TEX. PROP. CODE §51.002; or
  - i. Alternatively, and at Defendant's election, an order foreclosing Defendant's lien and ordering the judicial sale of the Property by the sheriff or constable of Harris County, Texas, and authorizing Defendant to credit bid at such sale up the amount of the debt evidenced by the Loan and that the Order of Sale shall have the force and effect of a writ of possession, and the sheriff or constable of Harris County, Texas, shall place the purchaser of the Property in possession thereof within thirty days after the day of sale; and
- c. A judicial declaration stating:
  - i. Defendant holds a valid security interest in the Property by virtue of the Deed of Trust;
  - ii. Defendant's security interest in the Property is superior to any interest claimed by Plaintiff;
  - iii. Plaintiff took any interest they currently hold subject to the Deed of Trust and Defendant's security interest;
  - iv. Defendant is entitled to conduct a non-judicial foreclosure sale in accordance with the provisions of the Deed of Trust and the Texas Property Code, where a trustee shall convey the Property to the highest bidder at public auction;
  - v. When the Property is sold at a foreclosure sale, Defendant may submit a credit bid at the sale; and
  - vi. The effect of a foreclosure sale conducted in accordance with the Deed of Trust and the Texas Property Code shall be to divest Plaintiff of all rights and title to the Property.
- d. A judgment awarding Defendant its reasonable and necessary attorney's fees and taxable costs of court; and



- e. A judgment providing Defendant with any other relief to which Defendant may be entitled in law or equity.

Respectfully submitted,

**HUGHES WATTERS ASKANASE, LLP**

By 

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**ATTORNEY FOR DEFENDANT,  
NEXBANK SSB**


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served upon all parties and/or their attorneys of record, in accordance with the Texas Rules of Civil Procedure, on this the 16<sup>th</sup> day of August 2022, as follows:

*Via Efile and Email: erick.delarue@delaruelaw.com*

Erick DeLaRue  
LAW OFFICE OF ERICK DELARUE, PLLC  
2800 Post Oak Boulevard, Suite 4100  
Houston, Texas 77056

**ATTORNEY FOR PLAINTIFF**



Damian W. Abreo

### **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.

Nucharee Perez on behalf of Damian Abreo

Bar No. 24006728

NPerez@hwa.com

Envelope ID: 67329590

Status as of 8/16/2022 11:12 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Damian W.Abreo		dabreo@hwa.com	8/16/2022 11:09:15 AM	SENT