

CAUSE NO. 2022-58560

DAVID SOLIZ

Plaintiff,

v.

**PHH MORTGAGE CORPORATION
AND OCWEN LOAN SERVICING,
LLC,**

Defendants.

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IN THE DISTRICT COURT

165th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

Defendant PHH Mortgage Corporation ("PHH") and Defendant Ocwen Loan Servicing, LLC ("Ocwen") (collectively, "Defendants") file this *Original Answer* and respectfully show the Court as follows:¹

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny each and every allegation in *Plaintiff's Original Petition and Request for Disclosures* (the "Petition") filed by Plaintiff David Soliz ("Plaintiff"), as well as any and all amended or supplemental petitions, and demands strict proof thereof.

II. AFFIRMATIVE AND OTHER DEFENSES

2. In addition to its general denial, Defendants assert the following defenses without conceding which party bears the burden of proof on such defenses:

¹ Ocwen has not been properly served with a citation and a copy of the petition in this matter. Plaintiff purportedly served Ocwen through a purported registered agent, Corporation Service Company ("CSC"). However, the Texas Secretary of State's records show Ocwen's entity and name status as terminated and inactive, respectively. Accordingly, Plaintiff's attempted service of process on Ocwen through CSC was improper.

3. Plaintiff fails to state a claim on which relief can be granted, and therefore, each of Plaintiff's claims should be dismissed.

4. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to allege and prove all conditions precedent to recovery.

5. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to allege facts sufficient to state a claim for any damages.

6. Plaintiff's claims and damages are subject to and/or barred by the terms of any relevant and applicable contracts and agreements.

7. Plaintiff's claims are barred, in whole or in part, by doctrines of unclean hands, laches, and/or other equitable doctrines.

8. Plaintiff's claims are barred, in whole or in part, by limitations.

9. Plaintiff's claims are barred, in whole or in part, by the statute of frauds.

10. Plaintiff's claims are barred, in whole or in part, by reason of Defendants' compliance with applicable statutes, regulations, agency interpretations, and other provisions of the law.

11. Plaintiff's claims are barred, in whole or in part, because Defendants' acts and/or omissions were not the cause of Plaintiff's injury or damages, if any.

12. Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

13. Plaintiff's claims are barred, in whole or in part, by Plaintiff's prior material breach of contract.

14. Any loss or damage allegedly suffered by Plaintiff was caused, in whole or in part, by his own conduct, acts, and/or omissions.

15. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, quasi-estoppel, waiver, release, and/or other equitable doctrines.

16. Plaintiff's claim for attorney's fees is barred because Plaintiff has not asserted, and cannot prevail on, any cause of action that would support an award of attorney's fees. Defendants also reserve the right to challenge the reasonableness and necessity of any attorney's fees.

17. The actions of Defendants were taken in good faith, and Defendants did not knowingly, intentionally, or maliciously violate any laws.

18. Plaintiff's damages are barred, in whole or in part, by Plaintiff's failure to mitigate.

19. Plaintiff's claims are barred by set-off, off-set, and recoupment, and Defendants claim all credits available to them.

20. Defendants deny liability for actual, statutory, punitive, or exemplary damages. Further, any claim for punitive or exemplary damages is subject to the limitations and constraints of applicable Texas law, and Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution.

21. Defendants reserve the right to plead such other and/or affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery.

III. ATTORNEYS' FEES AND COURT COSTS

22. Defendants seek their attorneys' fees, costs, and expenses in this litigation. Defendants are entitled to recover from Plaintiff the attorneys' fees, costs, and expenses that they have incurred, and will continue to incur, in enforcing their rights and remedies under the pertinent loan documents. A party may recover attorneys' fees when such recovery is provided for in a statute or contract. *See Holland v. Wal-Mart Stores, Inc.*, 1 S.W.3d 91, 95 (Tex. 1999); *Travelers*

Indem. Co. of Conn. V. Mayfield, 923 S.W.2d 590, 593 (Tex. 1996). In this case, Defendants are entitled to recover their attorneys' fees, costs, and expenses incurred in this litigation pursuant to the subject note and deed of trust.

23. In addition, Plaintiff seeks declaratory relief pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code. As a result of this lawsuit being filed, Defendants have had to retain counsel to defend this action and may also incur court costs in addition to attorneys' fees. Defendants are, therefore, entitled to recover their costs and reasonable and necessary attorneys' fees from Plaintiff pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IV. RESERVATION OF RIGHTS

24. As authorized by the Texas Rules of Civil Procedure, Defendants reserve the right to amend this pleading before the trial of this cause on the merits.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants request that the Court, upon final hearing hereof, render a judgment that Plaintiff take nothing by way of his claims against Defendants, that this action be dismissed with prejudice, and that Defendants recover their attorneys' fees and costs and have all other relief, at law or in equity, to which they may be entitled.

Respectfully submitted,

/s/ Helen O. Turner

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2022, a true and correct copy of the foregoing instrument was served on the following counsel of record *via eFile Texas and/or e-mail* according to the Texas Rules of Civil Procedure:

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/s/ Helen O. Turner

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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.

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