

CAUSE NO. 2022-71589

STANLEY ABBOTT, JR.,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	164TH JUDICIAL DISTRICT
	§	
REVERSE MORTGAGE FUNDING, LLC	§	
	§	
Defendant.	§	HARRIS COUNTY, TEXAS

DEFENDANT’S ORIGINAL ANSWER AND SPECIAL EXCEPTIONS

Defendant Reverse Mortgage Funding, LLC (“RMF or “Plaintiff”), files this Original Answer to *Plaintiff’s Application for Temporary Restraining Order* (the “Petition”), and states as follows:

I. GENERAL DENIAL

Pursuant to Texas Rule of Civil Procedure 92, RMF generally denies each and every allegation of the Petition and demands strict proof thereof.

II. DEFENSES

RMF asserts the following affirmative defenses:

1. RMF denies that all conditions precedent to a right of recovery have been satisfied.
2. Plaintiff’s claims are barred or any failure to perform is excused by the doctrines of affirmation, ratification, and waiver.
3. Plaintiff’s claims are barred or any failure to perform is excused by the doctrine of accord and satisfaction.
4. Plaintiff’s claims are barred by the election of rights doctrine.

5. One or more of Plaintiff's claims are barred by the "one satisfaction" and "con-tort" doctrines, or "economic loss" rule.

6. Plaintiff failed to mitigate his damages.

7. RMF claims all offsets and credits available to it.

8. RMF is not liable for the acts, omissions, or conduct of other persons or entities not authorized to act on behalf of them; pleading further, and in the alternative, RMF is not liable for the acts, omissions, or conduct of its agents who exceeded the scope of their authority.

9. Plaintiff's damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and entities, including Plaintiff himself, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiff's damages, if any.

10. RMF's actions and omissions, if any, were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the business purposes of RMF. Any purported conduct of individuals who were or are agents of RMF were privileged, and those individuals were and are justified in engaging in the conduct attributed to them. RMF pleads all statutory and common law privileges that may apply to its conduct and those of its agents.

11. Any allegedly wrongful acts or omissions of RMF, if and to the extent such acts and omissions occurred, were legally excused or justified.

12. Plaintiff has failed to state a claim upon which relief may be granted.

III. SPECIAL EXCEPTIONS

Special Exception No. 1: Plaintiff's petition fails allege a cause of action.

13. Plaintiff's petition asserts that he was unable to obtain a current payoff nor complete intestate proceedings prior to foreclosure sale. (*Pls' Orig. Pet.* at ¶6.) Although Plaintiff fails to state a cause of action, Plaintiff seeks a temporary restraining order and injunctive relief.

14. An injunction is an equitable remedy, not a cause of action. *Brittingham v. Ayala*, 995 S.W.2d 199, 201 (Tex. App.--San Antonio 1999, pet. denied). To obtain injunctive relief, a party must first assert a claim or cause of action. *See id.* If no claim or cause of action is alleged, the trial court lacks authority to issue an injunction. *See id.* Accordingly, Plaintiff has failed to provide fair notice of what cause(s) of action his claims arise under and his suit should be dismissed or Plaintiff should be required to re-plead his claims and specify the cause(s) of action he claims to assert against Defendant. *See Holt v. Hale*, No. 04-14-00113-CV, 2014 Tex. App. LEXIS 12236, at *5 (Tex. App.—San Antonio Nov. 12, 2014, no pet.) (citing *Trevino v. Ortega*, 969 S.W.2d 950, 951-52 (Tex. 1998)).

Special Exception No. 2: The relief requested by Plaintiff is moot.

15. Furthermore, the relief requested by Plaintiff is moot. The mootness doctrine applies to cases in which a justiciable controversy exists between the parties when the case arose, but the live controversy ceases because of subsequent events. *Matthews v. Kountze Indep. Sch. Dist.*, 484 S.W.3d 416, 418 (Tex. 2016). An issue becomes moot “when one seeks a judgment on some matter which, when rendered for any reason cannot have any practical legal effect on a then-existing controversy.” *Thomas v. Cook*, 350 S.W.3d 382, 389 (Tex. App.—Houston [14th Dist.] 2011, pet. denied); *see O’Shea v. Littleton*, 414 U.S. 488, 495-96, (1974). “If a case

becomes moot, the parties lose standing to maintain their claims.” *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001).

16. Plaintiff failed to obtain a temporary restraining order enjoining foreclosure. Consequently, the foreclosure sale occurred on November 1, 2022 rendering the relief sought by Plaintiff and this entire case pending before this Court moot.

WHEREFORE, PREMISES CONSIDERED, RMF prays the Court enter judgment that Plaintiff take nothing on her claims and RMF recover its interest and attorney fees, and all costs of suit. RMF further requests such other and further relief to which it may be entitled.

Respectfully submitted,

By: /s/ Nicholas M. Frame
MARK D. CRONENWETT
Texas Bar No. 00787303
mcronenwett@mwzmlaw.com

NICHOLAS M. FRAME
Texas Bar No. 24093448
nframe@mwzmlaw.com

MACKIE WOLF ZIENTZ & MANN, P. C.
14160 North Dallas Parkway, Suite 900
Dallas, TX 75254
Telephone: (214) 635-2650
Facsimile: (214) 635-2686

Attorneys for RMF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on December 1, 2022 as stated below on the following counsel of record:

Via electronic mail:

George A. Oggero

Michaela E. Kee

1220 Blalock Rd., Suite 300

Houston, Texas 77055

Phone: 713.364.5759

Fax: 844.438.6546

george@golawtexas.com

michaela@golawtexas.com

Attorneys for Plaintiff

/s/ Nicholas M. Frame

NICHOLAS M. FRAME

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing 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.

Alma Cruz on behalf of Nicholas Frame
Bar No. 24093448
acruz@MWZMlaw.com
Envelope ID: 70593409
Status as of 12/1/2022 11:42 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark D. Cronenwett		mcronenwett@mwzmlaw.com	12/1/2022 8:52:00 AM	SENT
Susan Taplin		staplin@mwzmlaw.com	12/1/2022 8:52:00 AM	SENT
Alma Cruz		acruz@mwzmlaw.com	12/1/2022 8:52:00 AM	SENT
Nicholas Frame		Nframe@mwzmlaw.com	12/1/2022 8:52:00 AM	SENT
Vanee Alfred		Valfred@mwzmlaw.com	12/1/2022 8:52:00 AM	SENT
George AOggero		george@golawtexas.com	12/1/2022 8:52:00 AM	SENT
Michaela Ekee		michaela@golawtexas.com	12/1/2022 8:52:00 AM	SENT