

CAUSE NO. 202270312

THE ESTATE OF JOSE AGUILAR –	§	IN THE DISTRICT COURT
DECEASED and CHRISTIAN AGUILAR	§	
– SUCCESSOR IN INTEREST TO JOSE	§	
AGUILAR	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
BANK OF AMERICA, N.A.	§	234th JUDICIAL DISTRICT

BANK OF AMERICA, N.A.'S ANSWER WITH AFFIRMATIVE DEFENSES

Bank of America, N.A. ("BANA") hereby files this answer in response to the *Petition, Application for Injunctive Relief, and Request for Disclosures* filed by Plaintiffs, The Estates of Althea Jose – Deceased and Christian Aguilar – Successor in Interest to Jose Aguilar.

I.
GENERAL DENIAL

1. BANA generally denies the allegations in Plaintiffs' original petition and all amendments and supplements thereto, and BANA demands strict proof thereof as required by the Texas Rules of Civil Procedure.

II.
AFFIRMATIVE DEFENSES

2. Without waiving any special exceptions or its general denial, BANA asserts the following affirmative defenses to Plaintiffs' live petition, and BANA reserves the right to plead further any and all defenses, affirmative or otherwise, verified denials, special denials, matters of avoidance, and any and all counterclaims to which BANA may be entitled by this pleading or any amendment to this pleading.

3. Plaintiffs fail to state a claim upon which relief can be granted, and his claims fails as a matter of law.

4. Plaintiffs' damages, if any, were caused by his own actions, conduct or failure to act.

5. Plaintiffs' claims are barred, in whole or in part, because BANA's actions or omissions, if any, were not the proximate or producing cause of Plaintiffs' injuries, if any. BANA asserts that any injuries or damages alleged in this lawsuit resulted from an intervening, existing superseding, independent cause, each of which was proximate cause, producing cause, or sole proximate cause of the alleged damages.

6. To the extent Plaintiffs' claims rely upon one or more alleged representation, promise, or understanding purporting to modify the parties' rights and obligations under, or other terms of, the loan agreement, his claims are barred, in whole or in part, because the alleged representation, promise, or understanding is barred by the statute of frauds, lacks new, independent and/or adequate consideration, and/or is too vague, ambiguous and/or indefinite to enforce.

7. Plaintiffs' damages, if any, were caused in whole or in part by the actions of others over whom BANA exercised no right of control.

8. Plaintiffs' claims are barred, in whole or in part, by the parole evidence rule and the statute of frauds.

9. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs are proportionately responsible for any damages it claims. Should Plaintiffs prove they are entitled to any damages, BANA hereby invokes Chapter 33 of the Texas Civil Practice and Remedies Code and requests that the trier of fact determine the proportion of responsibility for said damages by Plaintiffs, BANA, any other party to this suit, and any person or entity who may be designated as a responsible third-party, and to grant judgment against BANA, if at all, for only those damages for which BANA is found to be proportionately responsible, if any, and as reduced by any settlement amounts.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrine of election of remedies.

11. Plaintiffs' claims are barred, in whole or in part, by the economic loss rule and/or because the claimed loss is the subject matter of a contract between the parties to the loan agreement made the basis of Plaintiffs' claims in this suit.

12. To the extent that Plaintiffs are entitled to recover any damages, those damages are barred for failure to mitigate any alleged damages.

13. Plaintiffs' claims are barred, in whole or in part, because it lacks standing, capacity, or authority to assert any claim.

14. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have unclean hands.

15. Plaintiffs' claims are barred, in whole or in part, because the actions complained of, if in error at all, were the result of a bona fide error.

16. Plaintiffs are not entitled to the recovery of attorneys' fees under Texas law.

17. Plaintiffs are not entitled to recovery of exemplary damages.

18. BANA is entitled to an offset and/or setoff against any damages to be awarded to Plaintiffs for, among other things, the use and occupation of the subject property, the reasonable rental value of the subject property, rental income received on the subject property, BANA's payment of taxes and/or insurance for the benefit of the subject property, BANA's attorneys' fees incurred in this suit, and amounts Plaintiffs recover pursuant to the settlement of any claims related to this matter.

19. Plaintiffs' claims are barred, in whole or in part, by the doctrines of privilege, consent, knowledge, waiver, ratification, and/or estoppel.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, BANA prays that Plaintiffs take nothing against it and that judgment be granted against Plaintiffs as follows:

- (a) Plaintiffs take nothing by way of its claims against BANA;
- (b) costs of court and reasonable and necessary attorneys' fees and costs; and
- (c) all further relief, both in law and in equity, to which BANA may be entitled.

Dated: December 19, 2022

Respectfully submitted,

/s/ Grant M. Figari

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2022, a copy of the foregoing was served via the e-service system as follows:

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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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