

**CAUSE NO. 2021-53589**

<b>TARWONIA ALBROW</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>SANDY ANN FORSYTHE;</b>	§	
<b>NEW MILLENIA PROPERTIES, LLC;</b>	§	
<b>JUSTINA DE PASQUALE,</b>	§	
<b>INDIVIDUALLY AND AS TRUSTEE</b>	§	
<b>FOR LOST THICKET TRUST AND</b>	§	
<b>ROBERT C. VILT</b>	§	<b>157<sup>th</sup> JUDICIAL DISTRICT</b>

**ROBERT C. VILT'S TRADITIONAL MOTION FOR SUMMARY JUDGMENT  
AND MOTION FOR SANCTIONS**

TO THE HONORABLE JUDGE TANYA GARRISON:

COMES NOW Robert C. Vilt, Defendant, filing his Traditional Motion for Summary Judgment under Texas Rule of Civil Procedure 166(c) as well as his Motion for Sanctions under Texas Rules of Civil Procedure 13 and Texas Civil Practice and Remedies Code Sections 9 and 10 and in support thereof would respectfully show the Court the following:

**I. NATURE OF THE CLAIMS**

1. Tarwonia Albrow ("Plaintiff") filed her Second Amended Petition for Deceptive Trade Practices, Common Law Fraud, Negligent Misrepresentation, Breach of Contract, Violation of Texas Property Code Section 41.006, and Violation of Regulation O on November 2, 2022.

2. Robert C. Vilt filed his Original Answer, Affirmative Defenses, and Request for Disclosures on January 11, 2023 in which he asserts a general denial as well as a plethora of affirmative defenses.

3. This Motion for Traditional Summary Judgment and Motion for Sanctions seeks a traditional summary judgment regarding Plaintiff's causes of action against Robert C. Vilt as well sanctions against Plaintiff and her counsel for filing of a frivolous pleading.

## **II. STANDARDS OF REVIEW**

### **A. SUMMARY JUDGMENT**

4. A party who moves for traditional summary judgment must establish that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Nixon v. Mr. Prop. Mgmt. Co., Inc.*, 690 S.W.2d 546, 548 (Tex. 1985). The movant may do so in either of two ways: (1) by disproving at least one essential element of the plaintiffs cause of action; or (2) conclusively establishing each essential element of an affirmative defense, thereby defeating the plaintiffs cause of action. *See Cunningham v. Tarski*, 365 S.W.3d 179, 186 (Tex. App.-Dallas 2012, pet. denied); *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494, 508 (Tex. 2010); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995). A matter is conclusively established if reasonable minds cannot differ as to the conclusion to be drawn from the evidence. *City of Keller v. Wilson*, 168 S.W.3d 802,816 (Tex. 2005).

### **B. SANCTIONS**

5. TEX. R. CIV. P. 13 authorizes the imposition of sanctions against an attorney, a represented party, or both, who filed a pleading that is either: (1) groundless and brought in bad faith; or (2) groundless and brought to harass. TEX. R. CIV. P. 13; see also *Rudisell v. Paquette*, 89 S.W.3d 233, 236 (Tex. App.-Corpus Christi 2002, no pet.). The rule defines "groundless" as having "no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law." Tex. R. Civ. P. 13. Sanctions may only be imposed for good cause under Rule 13, the particulars of which must be stated in the order. TEX. R. CIV. P.

13; Rudisell, 89 S.W.3d at 237.

6. Similarly, to award sanctions under Chapter 10 of the TEX. CIV. PRAC. & REM. CODE, it must be shown that: (1) the pleading or motion was brought for an improper purpose; (2) there were no grounds for the legal arguments advanced; or (3) the factual allegations or denials lacked evidentiary support. See TEX. CIV. PRAC. & REM. CODE ANN. § 10.001 (Vernon 2002); Low, 221 S.W.3d at 614; *Armstrong v. Collin County Bail Bond Bd.*, 233 S.W.3d 57, 62 (Tex. App.- Dallas 2007, no pet.). Chapter 10 specifies that one of the aims for imposition of sanctions for the filing of frivolous or groundless pleadings is to "deter repetition of the conduct or comparable conduct by others similarly situated." TEX. CIV. PRAC. & REM. CODE ANN. § 10.004(b) (Vernon 2002). We construe the phrase "improper purpose" as the equivalent of "bad faith" under Rule 13. See TEX. R. CIV. P. 13; cf. *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Util. Dist. ex rel. Bd. of Directors*, 198 S.W.3d 300, 321 (Tex. App.- Texarkana 2006, pet. denied) ("nonfrivolous" requirement is same as "good faith" requirement); *Elwell v. Mayfield*, No. 10-04-00322-CV, 2005 WL 1907126, at \*5 (Tex. App.-Waco Aug. 10, 2005, pet. denied) (mem. op.) (same). An order imposing a sanction under Chapter 10 "shall describe...the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed." TEX. CIV. PRAC. & REM. CODE ANN. § 10.005 (Vernon 2002).

7. In determining whether sanctions are appropriate, the trial court must examine the facts available to the litigant and the circumstances existing when the litigant filed the pleading. *Robson v. Gilbreath*, 267 S.W.3d 401, 405 (Tex. App.-Austin 2008, pet. denied); *Alejandro v. Robstown Indep. Sch. Dist.*, 131 S.W.3d 663, 669 (Tex. App.-Corpus Christi 2004, no pet.). Courts should presume parties and their counsel file all papers in good faith, and the party seeking sanctions must overcome that presumption. See TEX. R. CIV. P. 13; *GTE Commc'ns*

Sys. Corp. v. Tanner, 856 S.W.2d 725, 731 (Tex. 1993). The party seeking sanctions has the burden of showing its right to relief. Tanner, 856 S.W.2d at 731; Elkins v. Stotts-Brown, 103 S.W.3d 664, 668 (Tex. App.-Dallas 2003, no pet.).

### **III. DEFENDANT'S ALLEGATIONS, RELEVANT FACTS, AND EVIDENCE IN SUPPORT OF SUMMARY JUDGMENT AND SANCTIONS**

8. The subject matter of this lawsuit is the real property and the improvements thereon located at 6822 Lost Thicket Drive, Houston, Texas 77085 (the "Property").

9. Plaintiff was at risk of losing the Property at a foreclosure sale to occur on September 03, 2019. Accordingly, Plaintiff hired Vilt and Associates, P.C. ("Vilt") to audit the mortgage loan file to determine whether or not a justiciable cause of action exists between Plaintiff and her lender, prepare and file the appropriate lawsuit, prepare and file the appropriate proposed Temporary Restraining Order, attend a TRO hearing, and prosecute the lawsuit with the exit strategy of restructuring the underlying mortgage loan debt.

10. Contrary to the allegations set forth in Plaintiff's Second Amended Petition, Vilt performed its services exactly as requested. Defendant provides the following documents, a true and correct copy of which is attached hereto as Exhibits "1" through "19" and incorporated herein for all purposes, to demonstrate the validity of this statement:

- A. Plaintiff's Original Petition, Application for Injunctive Relief, and Request for Disclosures – Exhibit "1". The Court should note that this pleading contains the Affidavit of Tarwonia Albrow which was signed by her and notarized in Vilt's office on August 28, 2019.
- B. Temporary Restraining Order signed by the Court on August 30, 2019 – Exhibit "2".
- C. Clerk's Certificate of Cash Deposit of Injunction Bond Per Order of the Court signed on August 30, 2019 – Exhibit "3".
- D. Motion to Extend Temporary Restraining Order filed on September 11, 2019 – Exhibit "4".

- E. Order Granting Motion to Extend Temporary Restraining Order filed on September 11, 2019 – Exhibit “5”.
- F. Show Cause Order filed on September 11, 2019 – Exhibit “6”.
- G. Order Granting Motion to Extend Temporary Restraining Order signed by the Court on September 12, 2019 – Exhibit “7”.
- H. Show Cause Order signed by the Court on September 12, 2019 – Exhibit “8”.
- I. CitiMortgage, Inc. filed its Original Answer on September 13, 2019 – Exhibit “9”.
- J. CitiMortgage filed its Notice of Filing of Removal on September 20, 2019 - Exhibit “10”.
- K. CitiMortgage filed its Notice of Removal on September 20, 2019 - Exhibit “11”.
- L. Vilt filed Plaintiff’s Rule 26(a)(1) Initial Disclosures on February 04, 2020 – Exhibit “12”.
- M. Vilt filed Plaintiff’s Certificate of Interested Parties on February 04, 2020 – Exhibit “13”.
- N. Vilt filed Plaintiff’s Designation of Experts on February 04, 2020 – Exhibit “14”.
- O. The Court issued an Order on February 07, 2020 whereby the parties were ordered to report to the Court on or before March 07, 2020 the status of any settlement discussions – Exhibit “15”.
- P. The parties filed a Joint Settlement Status Report on March 06, 2020 – Exhibit “16”.
- Q. The parties entered into a settlement on April 17, 2020 whereby CitiMortgage agreed to review Plaintiff for a loan modification whereby her mortgage loan debt would be restructured provided that Plaintiff submitted documents in a timely manner – Exhibit “17”.
- R. Pursuant to the settlement agreement, Vilt filed an Unopposed Stipulation of Dismissal without Prejudice on April 20, 2020 – Exhibit “18”.
- S. The Court signed the related Order Granting Unopposed Stipulation of Dismissal without Prejudice on April 20, 2020 – Exhibit “19”.

11. Section 12 of Plaintiff's Second Amended Petition states "In June 2021, Plaintiff first learned that she had been defrauded and deceived by Defendants individually and/or collectively as follows: ...". Plaintiff's allegation is disingenuous as is demonstrated by the evidence presented above. To the contrary, Defendant did exactly what he was supposed to do and achieved the result requested by Plaintiff; therefore, Defendant did not defraud or deceive Plaintiff. Plaintiff's allegation is further debunked by Section 18 of Plaintiff's Second Amended Petition wherein she states "At that time Plaintiff learned from the mortgage company that a loan modification had previously been approved but that no payments had been made." – Defendant achieved the result being sought by Plaintiff and, as such, could not have been defrauded or deceived by Defendant.

12. Section 20 of Plaintiff's Second Amended Petition states "Plaintiff was never contacted by an attorney to inform her of his representation or the outcome of any court proceedings". Plaintiff's allegation is spurious as is demonstrated by the evidence presented above. In particular, Exhibit "1" contains the Affidavit of Tarwonia Albrow which was signed by Plaintiff and notarized in Vilt's office on August 28, 2019. As further evidence of this fact, the notary in Vilt's office made a copy of Plaintiff's driver license as part of the notary process – a true and correct copy of Plaintiff's driver license is attached hereto as Exhibit "20" and incorporated herein for all purposes. Moreover, it is readily apparent that Plaintiff was apprised of the outcome of the court proceedings since the settlement required the affirmative act of Plaintiff completing the loan modification application and submitting the requested documents - Plaintiff did just that which culminated in Plaintiff's loan being modified as is ratified by Section 18 of Plaintiff's Second Amended Petition wherein she states "At that time Plaintiff learned from the mortgage company that a loan modification had previously been approved but

that no payments had been made.”

13. Section 21 of Plaintiff’s Second Amended Petition states “Despite having never contacted Plaintiff ...”. Plaintiff’s allegation likewise is spurious as is demonstrated by the evidence presented above. In particular, Exhibit “1” contains the Affidavit of Tarwonia Albrow which was signed by her and notarized in Vilt’s office on August 28, 2019. As further evidence of this fact, the notary in Vilt’s office made a copy of Plaintiff’s driver license as part of the notary process – a true and correct copy of Plaintiff’s driver license is attached hereto as Exhibit “20”. Moreover, it is readily apparent that Plaintiff interacted with Vilt’s office since the settlement required the affirmative act of Plaintiff completing the loan modification application and submitting the requested documents - Plaintiff did just that which culminated in Plaintiff’s loan being modified as is ratified by Section 18 of Plaintiff’s Second Amended Petition wherein she states “At that time Plaintiff learned from the mortgage company that a loan modification had previously been approved but that no payments had been made.”

14. Plaintiff and her counsel knew or should have known that bringing suit for their causes of action against Defendant were groundless, brought in bad faith, and brought for the purpose of harassment.

#### **IV. ARGUMENTS AND AUTHORITIES**

15. Defendant is entitled to summary judgment on Plaintiff’s Deceptive Trade Practices Claim as follows:

- a. Defendant has not violated the Texas Deceptive Trade Practices Act, specifically, all services and work done by Defendant for the benefit of Plaintiff were performed exactly as requested.
- b. Defendant did not engage in any “unconscionable action or course of action” as

defined by Section 17.45(5) of the Texas Business and Commerce Code.

- c. Defendant did not breach any warranties under section 17.50(a)(2) of the Texas Business and Commerce Code.
- d. Plaintiff has failed to produce cause to support this cause of action against Defendant.
- e. The statute of limitations has expired on this of action which Plaintiff has alleged against Defendant.

16. Defendant is entitled to summary judgment on Plaintiff's common law fraud, and negligent misrepresentation claims as follows:

- a. Plaintiff's common law fraud, and negligent misrepresentation claims are barred by the Statute of Frauds.
- b. Alternatively, Plaintiff's negligent misrepresentation claim is barred by the economic loss doctrine.
- c. Defendant did not defraud Plaintiff nor did he make any misrepresentations either negligently or otherwise.

17. Defendant is entitled to summary judgment on Plaintiff's breach of contract claim because no legally binding contract exists between Plaintiff and Defendant.

18. Defendant is entitled to summary judgment on Plaintiff's violation of Texas Property Code Section 41.006 claim as follows:

- a. Defendant was not involved in any conveyances of the Property.
- b. Defendant has never held the Deed or Title to the Property.
- c. Defendant was not involved in any lease of the Property to Plaintiff.



19. Defendant is entitled to summary judgment on Plaintiff's violation of Regulation O claim as follows:

- a. Plaintiff does not have standing to prosecute a cause of action for violation of Regulation O. As stated in Plaintiff's Second Amended Petition, only "The Bureau has authority to enforce Regulation O pursuant to the CFPB Section 1097 and Section 1054, 12 U.S.C. Sections 5538, 5564."
- b. Robert C. Vilt is not a "mortgage assistance relief service provider" as defined by Regulation O of the Code of Federal Regulations Chapter 16. To the contrary, Robert C. Vilt was Plaintiff's legal counsel in a matter regarding the pending foreclosure sale of the Property.
- c. Regulation O's prohibition on mortgage assistance relief providers representing or implying that the consumer should not contact or communicate with their lender would not apply to Defendant as such claims would be barred by the No Contact Rule pursuant to the Texas Disciplinary Rule of Professional Conduct.
- d. Further the enforcement of the Texas Disciplinary Rule of Professional Conduct is carried out by the State Bar of Texas and not private parties.

#### **V. CONCLUSION & PRAYER**

Defendant Robert C. Vilt has established, through his summary judgment evidence, that (a) there is no genuine issue of material fact as to each of causes of action brought against him by Tarwonia Albrow and that he is entitled to summary judgment against Plaintiff as a matter of law and (b) Tarwonia Albrow as well as Keitha Hamilton should be sanctioned by this court for the filing of frivolous pleadings. As such, Robert C. Vilt's Traditional Motion for Summary Judgment and Motion for Sanctions should be granted.

**WHEREFORE, PREMISES CONSIDERED,** Defendant Robert C. Vilt respectfully requests that the Court set a hearing on this motion and, upon final hearing:

1. The Court enter a final summary judgment on behalf of Robert C. Vilt against Tarwonia Albrow in the amount of \$10,000 for reasonable and necessary attorney's fees as well as post-judgment interest at the rate of 5% per annum;
2. Order that Keitha Hamilton, counsel for Plaintiff, pay \$10,000 in sanctions to Robert C. Vilt;
3. Order that Plaintiff's claims against Robert C. Vilt be dismissed with prejudice; and
4. Grant all other relief, both at law and in equity, that the Court deems appropriate.

Respectfully submitted,

VILT LAW, P.C.

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ATTORNEYS FOR ROBERT C. VILT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been provided to all counsel of record via hand delivery, certified mail, return receipt requested, regular mail and/or facsimile transmission in accordance with the Texas Rules of Civil Procedure on this the 16th day of January, 2023.

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/s/ Robert C. Vilt  
ROBERT C. VILT

### Automated Certificate of eService

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Nicolas Vilt on behalf of Robert Vilt  
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