

CAUSE NO. 202302423

QUEEN COCHRAN, INDIVIDUALLY, AND ON BEHALF OF WILHEMINA ZENOBIA ZENON	§	IN THE DISTRICT COURT OF
	§	
	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
DARTS REAL ESTATE, TIMOTHY TOLLIVER, ANGELA MARIA AGUIRRE, UMATIYA LAW FIRM, PLLC, AND TRANSACT TITLE, LLC LLC	§	125TH JUDICIAL DISTRICT

**ORIGINAL ANSWER AND SPECIAL EXCEPTIONS
OF DEFENDANT TIMOTHY TOLLIVER**

Defendant Timothy Tolliver (hereafter “Defendant Tolliver”) files this his Original Answer and Special Exceptions to Plaintiffs’ Original Petition.

GENERAL DENIAL

1. Pursuant to Tex. R. Civ. P. 92, Defendant Tolliver generally denies each and every, all and singular, the allegations contained in Plaintiffs’ Original Petition against him, and demands strict proof thereof.

SPECIAL EXCEPTIONS

2. Pursuant to TEXAS RULES OF CIVIL PROCEDURE 90 and 91, Defendant Tolliver specially excepts to Plaintiffs’ general fraud allegations against Defendant Tolliver which are wholly unsupported by specific fact or conduct by Defendant Tolliver which would meet the elements of a cause of action for common law or statutory fraud. A special exception may be used to challenge the sufficiency of a pleading. *Friesenhahn v. Ryan*, 960 S.W.2d 656, 658 (Tex. 1998). A special exception may be used to “compel clarification of pleadings,” or seek dismissal of claims that “fail to plead a clause of action.” *Baylor University v. Sonnichsen*, 221 S.W.3d 632, 635 (Tex. 2007).

3. More specifically, Defendant Tolliver specially excepts to the general use of the term “Defendants” to include Defendant Tolliver in paragraphs 24, 25, 36, 44, 45, and 47 where conclusory allegations of fraud or deceptive trade practices are alleged against all Defendants collectively, without providing any factual basis for asserting such naked allegations against Defendant Tolliver.

4. Importantly, Plaintiff admits in paragraph 20 that she had never met Defendant Tolliver until he visited her at the property on September 3, 2022, nearly eight months after Plaintiff signed numerous documents and a Lease pertaining to the sale of the subject property. Also, in paragraph 22, and certain prior paragraphs, Plaintiff admits that the individuals she spoke with concerning her property were from Defendant Darts Real Estate. Additionally, in paragraph 22, Plaintiff admits that she met with individuals affiliated with Darts Real Estate, not Defendant Tolliver, and she signed a contract with the representatives of Darts Real Estate on January 5, 2022 — not Defendant Tolliver who she stated she never met until September 3, 2022. In paragraph 23, Plaintiff acknowledges that on January 18, 2022, Defendant Darts Real Estate assigned its interest in the property [assigned the purchase contract] to Defendant Tolliver.

4. Additionally, Plaintiff knowingly has falsely pled to this Court in paragraphs 27 and 51 that that Defendant Tolliver did not pay any sum for the purchase of the property from Plaintiff, “Defendant Tolliver paid neither cash nor any other good and valuable consideration for the transfer of the real property at issue in this matter.” *See* paragraph 51 of Plaintiffs’ Original Petition. In point of fact, Defendant Tolliver paid the total cash sum of \$51,738.52 at the closing of his purchase of the subject property. *See* purchaser’s [Borrower’s] Settlement Statement attached hereto as Exhibit A. *Also see*, Seller’s Settlement Statement attached hereto as Exhibit B.

5. Plaintiffs' Petition makes numerous allegations of fraud against Defendant Tolliver without specific fact allegations to support the naked fraud allegations. Plaintiff also makes false representations to this Court stating that Defendant Tolliver did not pay any purchase money for the subject property, when in fact he paid in excess of \$50,000. *See* Borrower's [Purchaser's] Settlement Statement, **Exhibit A** hereto.

6. Due to the purchase contract assigned to Defendant Tolliver and his purchase money in excess of \$50,000, *four years* of unpaid ad valorem taxes in the aggregate sum of \$2,738.37 was paid on behalf of Plaintiffs who had not paid such taxes for tax years 2018, 2019, 2020, and 2021. *See* line 1307 on Seller's Settlement Statement, **Exhibit B** hereto. Additionally, an Abstract of Judgment against Plaintiff Cochran was paid and released. *See* line 1305 on Seller's Settlement Statement, **Exhibit B** hereto, showing that the sum of \$4,825.26 was placed in escrow at closing to satisfy the Judgment against Plaintiff Cochran.

7. Defendant Tolliver hereby demands that Plaintiffs be required to amend their Original Petition to include specific facts of conduct performed by Defendant Tolliver to support and justify their naked, unsupported, unexplained overly broad fraud allegations against all Defendants generically without any fact which support a basis for any fraud claims or any other claim against Defendant Tolliver.

WHEREFORE, Defendant Tolliver requests that the Court sign an Order pursuant to TEXAS RULE OF CIVIL PROCEDURE 91 sustaining these special exceptions and requiring Plaintiffs to re-plead their claims against Defendant Tolliver with specificity within 7 days after the Court enters its Order. Additionally, Defendant Tolliver prays that upon a final hearing/trial of this cause, the Court enter a final judgment denying Plaintiffs all relief sought, and awarding Defendant

Tolliver his costs of court from Plaintiffs, and such other and further relief, at law and/or in equity, general or special, to which Defendant Tolliver may show himself to be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

BY: Janet D Chafin
JANET DOUVAS CHAFIN
State Bar No. 02785200
1401 McKinney, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4230 direct
Facsimile: (713) 308-4108 direct fax

ATTORNEYS FOR DEFENDANT
TIMOTHY TOLLIVER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Original Answer and Special Exceptions of Defendant Timothy Tolliver was served on February 16, 2023, upon all attorneys of record in this cause by the Court's E-filing system, and additionally by Email on Plaintiffs' attorney of record as shown below:

Valerie G. Jewett
Jewett and Associates, P.C.
3801 Kirby, Suite 605
Houston, Texas 77098

Via Email: legal@jewettandassociates.com
Via Email: service@jewettandassociates.com

Janet D Chafin
Janet Douvas Chafin

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.

Melanie McClenathen on behalf of Janet Chafin
Bar No. 2785200
mmcclenathen@jw.com
Envelope ID: 72857240
Status as of 2/17/2023 7:52 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Valerie GJewett		service@jewettandassociates.com	2/16/2023 8:09:01 PM	SENT
Janet DouvasChafin		jchafin@jw.com	2/16/2023 8:09:01 PM	SENT
Melanie McClenathen		mmcclenathen@jw.com	2/16/2023 8:09:01 PM	SENT

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

1. FHA 2. FmHA 3. Conv Unins 4. VA 5. Conv Ins 6. Seller Finance 7. Cash Sale

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)*" were paid outside the closing, they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower: Timothy Tolliver, 1539 Plumwood Dr, Houston, TX 77014. E. Name & Address of Seller: Queen E Cochran, 9423 Balsam Ln, Houston, TX 77078. F. Name & Address of Lender: [Blank]

G. Property Location: LAKE FOREST SEC 2, Block 8, Lot 2, Harris County, 9423 Balsam Ln, Houston, TX 77078. H. Settlement Agent Name: TransAct Title - Galleria, 1001 W. Loop South, Suite 100, Houston, TX 77027. I. Settlement Date: 2/7/2022.

Table with columns for Borrower's Transaction (100-209) and Seller's Transaction (400-509). Rows include Contract Sales Price, Personal Property, Settlement Charges, Adjustments for items paid by seller in advance, and Cash At Settlement From/To Borrower/Seller.

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate...

DEF. TOLLIVER EXHIBIT A

File No 1220813

I. Settlement Charges				Paid From	Paid From
700. Total Sales/Broker's Commission based on price		@ % =		Borrower's Funds at Settlement	Seller's Funds at Settlement
Division of Commission (line 700) as follows:					
701.	to				
702.	to				
703.					
800. Items Payable in Connection with Loan					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Insurance Application		to			
807. Assumption Fee		to			
900. Items Required by Lender To Be Paid in Advance					
901. Interest from	2/7/2022	to	3/1/2022 @ \$0/day		
902. Mortgage Insurance Premium for	months	to			
903. Hazard Insurance Premium for	years	to			
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months @		per month		
1002. Mortgage insurance	months @		per month		
1003. City property taxes	months @		per month		
1004. County property taxes	months @		\$60.82 per month		
1005. Assessment Taxes	months @		per month		
1006. School property taxes	months @		per month		
1007. MUD taxes	months @		per month		
1008. Other taxes	months @		per month		
1011. Aggregate Adjustment					
1100. Title Charges					
1101. Settlement or closing fee	to	TransAct Title, LLC-Settlement Fees		\$790.00	
1102. Abstract or title search	to				
1103. Title examination	to				
1104. Title insurance binder	to	TransAct Title, LLC			
1105. Warranty Deed Prep	to	Umatiya Law Firm, PLLC		\$250.00	
1106. Notary fees	to				
1107. Attorney's fees	to	Umatiya Law Firm, PLLC			
(includes above items numbers.)					
1108. Title insurance	to	TransAct Title, LLC		\$496.00	
(includes above items numbers.)					
1109. Lender's coverage	\$0.00/\$0.00				
1110. Owner's coverage	\$50,000.00/\$496.00				
1111. Escrow fee	to	TransAct Title, LLC			
1112. Guaranty Assessment Recoupment Fee	to	Texas Title Insurance Guaranty Association		\$2.00	
1113. Courier Service	to	TransAct Title-Courier		\$35.00	
1114. Recording Fee	to	TransAct Title, LLC-Recording		\$8.52	
1115. Document Review	to	Umatiya Law Firm, PLLC			
1116. Doc Prep-Curative Items	to	TransAct Title, LLC-Recording			
1200. Government Recording and Transfer Charges					
1201. Recording Fees	Deed \$34.00 ; Mortgage , Rel	to	TransAct Title, LLC-Recording	\$34.00	
1202. City/county tax/stamps	Deed Mortgage	to			
1203. State tax/stamps	Deed ; Mortgage	to			
1204. Tax certificates	to	Kirby TaxNet, Inc.		\$89.00	
1205. Recording Fee for Restriction Notice	to	TransAct Title, LLC-Recording		\$34.00	
1206. Recording Affidavit of Heurship	to	TransAct Title, LLC-Recording			
1207. Recording Correction Deed	to	TransAct Title, LLC-Recording			
1208. Recording Release of AJ	to	TransAct Title, LLC-Recording			
1300. Additional Settlement Charges					
1301. Survey	to				
1302. Pest Inspection	to				
1303. HOA Transfer Fee	to				
1304. Home Warranty	to				
1305. Escrow Hold AJ 1608.42 X 3	to	Escrow Hold			
1306. Assignment Fee	to	Darts Real Estate		\$34,500.00	
1307. 2018-2021 Taxes- 0850890000002	to	Harris County-Tax Collector			
1308.	to				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section IC)				\$36,238.52	

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

Timothy Tolliver
Timothy Tolliver

SETTLEMENT AGENT CERTIFICATION

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Stephen M. [Signature] 2/7/22
Settlement Agent Date

Warning: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see Title 18 U.S. Code Section 1001 and Section 1010.

A. Settlement Statement

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan			
1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input type="checkbox"/> Conv Unins	6. File Number 1220813
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv Ins	6. <input type="checkbox"/> Seller Finance	7. Loan Number
7. <input checked="" type="checkbox"/> Cash Sale	8. Mortgage Ins Case Number		
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.			
D. Name & Address of Borrower Timothy Talliver 1439 Flamingo Dr Houston, TX 77014		E. Name & Address of Seller Queen K Cochran 9423 Baham Ln Houston, TX 77078	
G. Property Location LAKE FOREST SEC 2, Block 8, Lot 2, Harris County 9423 Baham Ln Houston, TX 77078		H. Settlement Agent Name TransAct Title - Galleria 1001 W. Loop South, Suite 100 Houston, TX 77027 Tax ID: 45-3483105 Underwritten By: Agents National Title Insurance Company	
		I. Settlement Date 2/7/2022 Fund: 2/7/2022	
J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
106. Gross Amount Due from Borrower		400. Gross Amount Due to Seller	
101. Contract Sales Price		401. Contract Sales Price	\$15,500.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to borrower		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City property taxes		406. City property taxes	
107. County property taxes		407. County property taxes	
108. Assessment Taxes		408. Assessment Taxes	
109. School property taxes		409. School property taxes	
110. MUD taxes		410. MUD taxes	
111. Other taxes		411. Other taxes	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
120. Gross Amount Due From Borrower		420. Gross Amount Due to Seller	\$15,500.00
200. Amounts Paid By Or in Behalf Of Borrower		500. Reductions in Amount Due to Seller	
201. Deposit or earnest money		501. Excess Deposit	
202. Principal amount of new loan(s)		502. Settlement Charges to Seller (line 1400)	\$8,727.41
203. Existing loan(s) taken subject to		503. Existing Loan(s) Taken Subject to	
204. Loan Amount 2nd Lien		504. Payoff of first mortgage loan to	
205.		505. Payoff of second mortgage loan to	
206.		506.	
207. Leaseback		507. Leaseback	\$3,000.00
208. Seller Credit		508. Seller Credit	\$3,000.00
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City property taxes		510. City property taxes	
211. County property taxes	01/01/22 thru 02/07/22	511. County property taxes	01/01/22 thru 02/07/22 \$75.99
212. Assessment Taxes		512. Assessment Taxes	
213. School property taxes		513. School property taxes	
214. MUD taxes		514. MUD taxes	
215. Other taxes		515. Other taxes	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower		520. Total Reduction Amount Due Seller	\$14,803.40
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)		601. Gross Amount due to seller (line 420)	\$15,500.00
302. Less amounts paid by/for borrower (line 220)		602. Less reductions in amt. due seller (line 520)	\$14,803.40
303. Cash From Borrower		603. Cash To Seller	\$696.60
Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.		Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper. The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.	
Previous Editions are Obsolete	Page 1	form HUD-1 (3/86) Handbook 4305.2	

DEF. TOLLIVER EXHIBIT B

File No. 1220813

L. Settlement Charges			@ % =	Paid From	Paid From
706. Total Sales/Broker's Commission based on price				Borrower's	Seller's
Division of Commission (line 700) as follows:				Funds at	Funds at
701.	to			Settlement	Settlement
702.	to				
703.					
800. Items Payable in Connection with Loan					
801. Loan Origination Fee	%	to			
802. Loan Discount	%	to			
803. Appraisal Fee		to			
804. Credit Report		to			
805. Lender's Inspection Fee		to			
806. Mortgage Insurance Application		to			
807. Assumption Fee		to			
900. Items Required by Lender To Be Paid in Advance					
901. Interest from	2/1/2022	to	3/1/2022 @ 50/day		
902. Mortgage Insurance Premium for months		to			
903. Hazard Insurance Premium for years		to			
1000. Reserves Deposited With Lender					
1001. Hazard insurance	months @		per month		
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1006. School property taxes	months @		per month		
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1011. Aggregate Adjustment					
1100. Title Charges					
1101. Settlement or closing fee		to	TransAct Title, LLC-Settlement Fees		
1102. Abstract or title search		to			
1103. Title examination		to			
1104. Title insurance binder		to	TransAct Title, LLC		
1105. Warranty Deed Prep		to	Umattya Law Firm, PLLC		
1106. Notary fees		to			
1107. Attorney's fees		to	Umattya Law Firm, PLLC		
(includes above items numbers:)					
1108. Title insurance		to	TransAct Title, LLC		
(includes above items numbers:)					
1109. Lender's coverage			\$0.00/\$8.00		
1110. Owner's coverage			\$50,000.00/\$496.00		
1111. Escrow fee		to	TransAct Title, LLC		
1112. Guaranty Assessment Recoupment Fee		to	Texas Title Insurance Guaranty Association		
1113. Courier Service		to	TransAct Title-Courier		
1114. Recording Fee		to	TransAct Title, LLC-Recording		\$12.78
1115. Document Review		to	Umattya Law Firm, PLLC		
1116. Doc Prep-Curative Items		to	TransAct Title, LLC-Recording		\$1,045.00
1200. Government Recording and Transfer Charges					
1201. Recording Fees	Deed \$34.00 ; Mortgage ; Ref		to	TransAct Title, LLC-Recording	
1202. City/county tax/stamps	Deed ; Mortgage		to		
1203. State tax/stamps	Deed ; Mortgage		to		
1204. Tax certificates		to	Kirby TaxNet, Inc.		
1205. Recording Fee for Restriction Notice		to	TransAct Title, LLC-Recording		
1206. Recording Affidavit of Heirship		to	TransAct Title, LLC-Recording		\$38.00
1207. Recording Correction Deed		to	TransAct Title, LLC-Recording		\$34.00
1208. Recording Release of AJ		to	TransAct Title, LLC-Recording		\$34.00
1300. Additional Settlement Charges					
1301. Survey		to			
1302. Pest Inspection		to			
1303. HOA Transfer Fee		to			
1304. Home Warranty		to			
1305. Escrow Hold AJ 1608.42 X 3		to	Escrow Hold		\$4,825.26
1306. Assignment Fee		to	Darts Real Estate		
1307. 2018-2021 Taxes- 0850890000002		to	Harris County-Tax Collector		\$2,738.37
1308.		to			
1400. Total Settlement Charges (enter on lines 103, Section J and 592, Section K)					\$8,727.41

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

Queen E Cochran

Queen E Cochran

SETTLEMENT AGENT CERTIFICATION

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused the funds to be disbursed in accordance with this statement.

Stephan [Signature] 2/7/22

Settlement Agent Date

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