

CAUSE NO. 2023-40032

MANUELA AUGUSTINA PACHUCA,
Plaintiff,

v.

MORTGAGE ASSETS MANAGEMENT,
LLC,
Defendant.

IN THE DISTRICT COURT

11th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**DEFENDANT’S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES AND
COUNTERCLAIM**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MORTGAGE ASSETS MANAGEMENT, LLC (“MAM” or “Defendant”), in the above-styled and numbered cause, and files this its Original Answer and Affirmative Defenses to the Original Petition (the “Petition”) filed by Plaintiff Manuela Augustina Pachuca (“Plaintiff”) and Counterclaim against Plaintiff and, in support hereof, respectfully shows this Honorable Court the following:

I.
GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant denies each, every, all and singular, allegation contained in the Petition. Defendant demands strict proof by a preponderance of the evidence and/or by clear and convincing evidence as required by the laws and constitutions of the State of Texas and of the United States.

II.
AFFIRMATIVE DEFENSES

2. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of release.

3. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense that Plaintiff's claims are barred by contract.

4. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of waiver.

5. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of justification.

6. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of reliance upon information from other sources pursuant to TEX. BUS. & COM. CODE §17.506(a).

7. If this Court finds that Defendant committed error, pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense of *bona fide* error.

8. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the defense that the economic loss rule applies and bars Plaintiff from recovery in this litigation.

9. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant asserts the statute of frauds applies in this matter and bars Plaintiff from recovery in this litigation.

10. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Defendant is entitled to an offset against Plaintiff's damages, if any, for the amount due and owing under the subject Note and Deed of Trust.

11. Pursuant to Rule 94 of the Texas Rules of Civil Procedure, Plaintiff's equitable claims are barred, in whole or in part, because Plaintiff has unclean hands.

12. Defendant reserves the right to amend this Answer to assert other and further defenses.

III.
COUNTERCLAIM

COMES NOW MORTGAGE ASSETS MANAGEMENT, LLC (“MAM” or “Counter-Plaintiff”) and its successors and/or assigns and files this Counterclaim seeking Judicial Foreclosure on behalf of itself and its successors and/or assigns against Manuela Augustina Pachuca (“Plaintiff” or “Counter-Defendant”) and in support thereof, respectfully shows this Court as follows:

A. BACKGROUND FACTS

13. On or about October 27, 2008, Jesus Pachuca executed and delivered to Generation Mortgage Company, a Fixed-Rate Note Home Equity Conversion Loan Agreement with a maximum principal limit of \$200,000 (the “Note”).

14. To secure payment of the Note, Jesus Pachuca and his wife, Counter-Defendant, executed a Fixed Rate Home Equity Conversion Deed of Trust (the “Deed of Trust”), granting a lien on the real property located at 12914 Blue Haven Road, Houston, Texas 77042 (the “Property”) which is legally described as:

**LOT 438 IN BLOCK 14 OF FAIRGREEN, SECTION THREE, A
SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE
MAP OR PLAT THEREOF RECORDED IN VOLUME 155, PAGE 16 OF
THE MAP RECORDS OF HARRIS COUNTY, TEXAS.**

15. The deed of trust was subsequently assigned to MAM. In 2014, Jesus Pachuca died which is a default under the terms of the Note and Deed of Trust. The Note and Deed of Trust permit the lender to require immediate payment in full of all sums secured by the Deed of Trust if a condition of default occurs. In this instance, the death of the borrower and failure to occupy the Property.

16. The Deed of Trust was subsequently assigned to MAM, and together with the Note, MAM is entitled to enforce their terms. Jesus Pachuca defaulted under the Note and Deed of Trust upon death and by failing to occupy the Property. The lender served all requisite notices, the debt remains due and owing.

17. After allowing all just and lawful payments, offsets and credits against the Note, including advances for property taxes, insurance, attorney's fees, and other costs, the total debt secured is approximately \$98,837.70 through February 2, 2022. Other loan charges, as permitted under the terms of the Note and Deed of Trust, reasonable and necessary attorney's fees, and costs of court continue to accrue.

18. All conditions precedent to recovery of Judgment against Counter-Defendant have occurred or been performed.

B. CAUSES OF ACTION AGAINST COUNTER-DEFENDANT.

a. Breach of Contract.

19. MAM sues Counter-Defendant for breach of contract. Jesus Pachuca and Counter-Defendant breached the terms of the Note and Deed of Trust by failing to pay off the reverse mortgage upon death and the borrower's failure to occupy the Property pursuant to the terms of the Note and Deed of Trust. The breach caused damages to MAM in amount within the jurisdictional limits of the Court.

20. The Deed of Trust provides for foreclosure of the Property upon default. MAM's relief and remedy under the terms of the Note and Deed of Trust is foreclosure of its security interest in the Property pledged as collateral for the Note. MAM's only recourse is foreclosure because the Note is non-recourse.

21. MAM on behalf of itself and its successors and/or assigns, seeks (i) a judgment fixing the and establishing the amount due under the non-recourse loan and (ii) an order allowing MAM and its successors and/or assigns, to exercise its power of sale remedy under the Deed of Trust and Tex. Prop. Code § 51.002 and foreclose nonjudicially with a substitute trustee. Alternatively, MAM and its successors and/or assigns seek judicial foreclosure and an order instructing the Constable or Sheriff to sell the Property to the highest bidder for cash in accordance with Texas law. Further, pursuant to the terms of the Note and Deed of Trust, MAM seeks reimbursement of reasonable and necessary attorneys' fees and costs and approval from the Court to assess such attorneys' fees and costs to the reverse mortgage.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, MAM prays that:

- (1) Plaintiff takes nothing by reason of this suit;
- (2) The Court enters Judgment allowing MAM and its successors and/or assigns to proceed with non-judicial foreclosure of the Deed of Trust through a substitute trustee;
- (3) The Court awards Defendant its reasonable and necessary attorneys' fees and costs incurred in its defense; and
- (4) The Court award Defendant such other and further relief at law, and in equity, to which it is justly entitled.

Respectfully submitted,

GALLOWAY JOHNSON TOMPKINS BURR & SMITH
A Professional Law Corporation

By: //s// Branch M. Sheppard

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**ATTORNEYS FOR DEFENDANT/COUNTER-
PLAINTIFF**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer was delivered via e-filing to the following on July 10, 2023.

VIA E-FILING

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//s// Branch M. Sheppard
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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.

Haley Sheppard on behalf of Branch Sheppard

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Filing Code Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party

Filing Description: Original Answer Affirmative Defenses and Counterclaim

Status as of 7/10/2023 4:21 PM CST

Case Contacts

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