

CAUSE NO. 2022-64253

THE ESTATE OF GILBERTO A.	§	IN THE DISTRICT COURT
ALCUNA,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	133rd JUDICIAL DISTRICT
	§	
REVERSE MORTGAGE FUNDING,	§	
LLC	§	
	§	
Defendant.	§	HARRIS COUNTY, TEXAS

**DEFENDANT’S ORIGINAL ANSWER AND
SPECIAL EXCEPTION TO PLAINTIFFS’ ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT AND ALL PARTIES:

COMES NOW Defendant Reverse Mortgage Funding, LLC (“Defendant”), pursuant to the Texas Rules of Civil Procedure, and files this Original Answer and Special Exception to Plaintiffs’ Original Petition, and respectfully shows the Court as follows:

I. GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every allegation contained in Plaintiffs’ Original Petition, and any amendments or supplements thereto, and demands strict proof thereof.

II. DEFENSES

In addition, Defendant pleads the following defenses:

1. Plaintiff’s claims are moot because the foreclosure sale has already occurred.
2. Plaintiff lacks standing to its claims as Plaintiff is neither an obligor on the subject loan nor a mortgagee.

3. Plaintiff's claims are barred, in whole or in part, by the doctrines of judicial estoppel, collateral estoppel, quasi estoppel, contractual estoppel, equitable estoppel and res judicata.

III. SPECIAL EXCEPTIONS

Defendant's Special Exception should be sustained under TEX. R. CIV. P. 91 because of defects in form and substance. Defendant's Special Exception is that Plaintiff is suing in an improper capacity.

An estate is not a legal entity and may not be sued [or sue] in that capacity. *Henson v. Estate of Crow*, 734 S.W.2d 648, 649 (Tex. 1987); *Price v. Estate of Anderson*, 522 S.W.2d 690, 691 (Tex. 1975). A suit seeking to establish the liability of an estate, and subject its property to a judgment, should ordinarily be filed by the personal representative, or in certain circumstances the heirs or beneficiaries. *Price*, 522 S.W.2d at 691; *Dueitt v. Dueitt*, 802 S.W.2d 859, 861 (Tex. App.—Houston [1st Dist.] 1991, no writ). *Estate of C.M. v. S.G.*, 937 S.W.2d 8 (Tex. App.—Houston [14th Dist.] 1996). Plaintiff the Estate of Gilberto A. Alcuna claims to be an estate, not the personal representative of an estate; therefore, Plaintiff the Estate of Gilberto A. Alcuna does not have standing to sue as an estate is not a legal entity. Defendant asks the Court to dismiss Plaintiff the Estate of Gilberto A. Alcuna's suit with prejudice.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays the Court sustain its Special Exceptions, dismiss Plaintiff's suit with prejudice, and award such other and further relief to which Defendant may be justly entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 21, 2022, a true and correct copy of the foregoing document was delivered via electronic notification to the counsel of record listed below:

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