

CAUSE No. 2023-54391

RENE GUERRON	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	HARRIS COUNTY TEXAS
	§	
ERICK BORLASCA, PT-PATRIOT TITLE, LLC, KARLA JIMENEZ, WESTER SURETY COMPANY, AND PATRICIA GARZA	§	11th JUDICIAL DISTRICT

DEFENDANT PATRICIA GARZA’S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PATRICIA GARZA, a Defendant in the above styled and numbered cause, and for answer to Plaintiff’s Petition would respectfully show the Court:

I.

Defendant specially excepts to the allegations contained in Plaintiff’s original petition and more particularly those allegations contained in Section IV which provide:

In Late August 2019, Plaintiff and Defendant Borlasca met to discuss a real estate business opportunity involving the investment in a property in need of repairs in order to repair and sell at a profit. The property presented by Defendant Borlasca for Plaintiff’s consideration was 319 Camp Lilli Rd. Humble, Texas 77346 (“Property”).

such allegation contains improper matter as to the physical address of this Property; fails to plea all the elements of a cause of action from this Defendant Patricia Garza by Plaintiff not apprising this Defendant of the manner in which Defendant is alleged to have caused Plaintiff’s injury at this Property when this Defendant was not the Escrow Officer for this transaction; such allegation fails to allege any facts or circumstances from which the Court can provide relief whatsoever from this Defendant Patricia Garza; such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

II.

Defendant specially excepts to the allegations of Plaintiff’s petition and more particularly allegations contained in Section IV which provide:

On August 26th, 2019, a Real Estate Purchase Agreement (“Agreement”) was executed whereby Plaintiff as “Buyer” and

Defendant Borlasca as “Seller” agreed to buy and Sell Property for \$65,000.00. Paragraphs 7 and 8 of the Agreement specifically list Defendant Patriot Title as the Title Company to furnish as owner’s policy of title insurance and corresponding Title Commitment.

such allegations contain improper matter as to Title Company, fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff’s injury at this Property at Camp Lilli when Defendant was not the Escrow Officer for this transaction. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

III.

Defendant specially excepts to the allegations of Plaintiff’s petition and more particularly allegations contained in Section IV which provide:

The Agreement was executed on August 26th, 2019, by both Defendant Borlasca and Plaintiff. Also, on August 28th, 2019, Plaintiff requested Cashier’s Check # 1655513622 (“Check”) from Bank of America in the amount of \$35,000 payable to the order of Defendant Patriot Title. On that same day, Plaintiff and Defendant Borlasca visited Defendant’s Patriot Title location at 2323 S. Voss Rd Ste 260, Houston, Texas 77057, where they met with Defendant Patricia Garzas, Escrow Officer, Patriot Title and entrusted the \$35,000 Check to Patricia Garza as the earnest money deposit for the purchase of Property.

such allegations contain improper matter as to Title Company, which was not Patriot Title; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant is alleged to have caused Plaintiff’s injury at this Property when Defendant was not the Escrow Officer for this transaction nor did she receive the earnest money for this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against her by Plaintiff of which exception prays judgment of the Court.

Defendant, Patricia Garza, was the Escrow Officer for a different transaction between Plaintiff, Rene Guerron, and Defendant, Eric Borlasca. Defendant, Patricia Garza, did receive \$35,000.00 from Plaintiff for a specific Property, located at 11227 Ribstone Dr., Houston, Texas 77016 in accordance to the purchase agreement provided to Patriot Title, which did not include Plaintiff as a Party.

IV.

Defendant specially excepts to the allegations of Plaintiff’s petition and more particularly allegations contained in Section IV which provide:

“At all times relevant to this transaction, Plaintiff was led to believe both verbally and through the action of all defendants acting in concert that defendant Patriot Title was acting as the title company for this transaction.”

such allegations contain improper matter as to the Title Company, which was not Patriot Title; this Defendant Patricia Garza was not the Escrow Officer for this Property at 319 Camp Lilli Rd. Humble, Texas 77346; and this Defendant Patricia Garza did not receive any earnest money for this Property; such allegation fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff’s injury at this property when this Defendant was not the escrow agent for this transaction nor did she receive the earnest money for this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against her by Plaintiff of which exception prays judgment of the Court.

V.

Defendant specially excepts to the allegations of Plaintiff’s petition and more particularly allegations contained in Section IV which provide:

“Furthermore, the earnest money deposit of \$35,000 entrusted to Defendant Patriot Title was released to defendant Borlasca instead of to Plaintiff as required under the Agreement.”

such allegations contain improper matter as to Title Company, fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant is alleged to have caused Plaintiff’s injury at this Property at Camp Lilli when Defendant was not the escrow officer for this transaction nor did she ever receive such Agreement. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

Further, Plaintiff’s petition Section IV indicates that Agreement was between Plaintiff and Defendant Eric Borlasca. However, the transaction for which Patriot Title opened title at 11227 Ribstone Dr., Houston, Texas 77016 and Patricia Garza, Escrow Officer, received \$35,000.00 in earnest money had Eric Borlasca as Buyer and APH Investment Properties, LLC as Seller in accordance with the purchase agreement provided. Escrow Officer Patricia Garza received a Notice of Buyer’s Termination of Contract and Release of Earnest Money duly signed by both Buyer Eric Borlasca and Seller APH Investment Properties, LLC and pursuant to the purchase agreement and agreement of the parties on the release of earnest money the funds were released to Eric Borlasca. Plaintiff, Rene Guerron fails to disclose that any agreement he may have had between with Eric Borlasca was independent from the purchase agreement provided to Patriot Title for the Ribstone Property. Plaintiff Rene Guerron was not a party to the purchase agreement for Ribstone provided to Patriot Title and therefore no funds could be released to him from the title company on the Ribstone property. Three years after the earnest money was released in accordance to the purchase agreement and agreement of the Parties to Buyer Eric Borlasca, Plaintiff Rene Guerron went to Patriot Title to inquire with Patricia Garza about the \$35,000.00 that had been released three years earlier.

VI.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section IV which provide:

“Despite multiple requests for the return of \$65,000 paid by Plaintiff towards the purchase and repair of Property, defendants have failed to return the money to Plaintiff. As a result Plaintiff has filed suit.”

such allegations contain improper matter as to the Plaintiff being a party to a transaction involving patriot Title and with this Patricia Garza who did not open title for the Camp Lilli Property; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this Property when Defendant was not the escrow officer for this transaction nor did she ever receive such Agreement or funds for this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

VII.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section V which provide:

Defendants are liable to Plaintiff for breach of contract. Plaintiff entered into an agreement for the purchase Property. Defendants failed to comply with their contractual obligations and engaged in multiple and continuing breaches. The breaches of contract by Defendants were the cause of actual damages to Plaintiff, for which Plaintiff now sues.

such allegations are vague and general by including all Defendants; such allegations contain improper matter as to breach of contract when Patriot Title did not open title for this transaction; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when this Defendant was not the escrow officer for this transaction nor did she ever receive such Purchase Agreement or earnest money for this Property, nor did she owe duty to

Plaintiff on this Property of Camp Lilli. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

Patricia Garza received \$35,000 earnest money for the Ribstone transaction. However, Plaintiff was not a Party to the purchase agreement provided to Patriot Title.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

VIII.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section VI which provide:

Defendants made material misrepresentations to Plaintiff regarding the ownership of property and Defendant Borlasca's ability to enter into a contract for the sale of Property.

Defendants made material misrepresentations to Plaintiff regarding Patriot Title's role, involvement, and obligations in the transaction.

Defendant's made the misrepresentation to Plaintiff with the intention that Plaintiff act upon such misrepresentations and Plaintiff, in reliance on the misrepresentations, agreed to enter into this transaction by paying \$65,000 for a property he never received. Defendants have shown a pattern of gross dishonesty in their dealings with Plaintiff.

Defendants made misrepresentations to Plaintiff with knowledge of its falsity or without knowledge of its truth.

As a result, Plaintiff, has suffered substantial injury and suffered damages.

such allegations are general as to all defendants; such allegations contain improper matter as to Title Company for this Property, fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when Defendant was not the escrow officer for this transaction nor did she ever receive such Agreement or funds for this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

IX.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section VII which provide:

Defendant Patriot Title and Defendant Garza owed a fiduciary duty to Plaintiff by virtue of their role as title company and escrow officer.

Defendant Patriot Title and Defendant Garza breached this duty when in their role as title company and escrow officer they accepted the earnest money deposit of \$35,000 from Plaintiff and failed to return these funds to Plaintiff when the real estate transaction failed to close.

As a result, Plaintiff, has suffered substantial injury and suffered damages.

such allegations contain improper matter as to the Title Company and this Defendant Patricia Garza; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant is alleged to have caused Plaintiff's injury at this property when Defendant was not the escrow officer for this transaction nor did she ever receive such Agreement or funds for this Property; nor did she owe fiduciary duty for the transaction in this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

X.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section IX which provide:

"Defendants are jointly and severally liability for the recoverable damages caused by their acts. Defendants acted in concert in committing the above pleaded wrongful acts against Plaintiff, causing Plaintiff to suffer significant economic injuries and damages."

such allegations are vague and general as to all Defendants; such allegations contain improper matter as to Title Company, fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may

have caused Plaintiff's injury at this property when Defendant was not the escrow officer for this transaction nor did she ever receive such Agreement or earnest money for this Property. Under the Statute of Frauds for the sale of real property to be enforceable it must be in writing. Even if a person is able to enforce an oral agreement it is only enforced in equity and therefore only for specific performance.

Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

XI.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section XI which provide:

"Plaintiff's injuries resulted from Defendant's malice, fraud, or gross negligence which entitles Plaintiff to exemplary damages under Texas Civil Practice and Remedies Code section 41.003."

such allegations are vague and general as to all Defendants; such allegations contain improper matter as to Title Company and as to this Defendant, Patricia Garza; fails to plea all the elements of a cause of action from this Defendant; by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when Defendant was not the Escrow Officer for this transaction nor did she ever receive such Agreement or funds for this Property. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

XII.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section XI which provide:

"Defendant Patriot Title and Defendant Garza knew or should have known that Defendant Borlasca did not own the Property for which he presented a contract for purchase and sale."

such allegations contain improper matter as to Title Company and this Defendant, Patricia Garza, fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when Defendant was not the Escrow Officer for this transaction nor did she ever receive such Agreement or earnest money for this Property, nor does she owe duty in her capacity as Escrow Officer. Such allegation wholly fails to apprise this Defendant of the claim being made against it by Plaintiff of which exception prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

XIII.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section XI which provide:

Furthermore, upon realizing that the transaction was not closing, Defendant Patriot Title and Defendant Garza knew or should have known that earnest money deposit of \$35,000 received from Plaintiff could only be rightfully returned to Plaintiff. None of these actions could have occurred without malice, fraud, or gross negligence.

such allegations contain improper matter as to Title Company and this Defendant, Patricia Garza; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when Defendant was not the Escrow Officer for this transaction nor did she ever receive such Agreement or earnest money for this Property, nor does she owe any duty in her capacity as Escrow Officer; such allegation wholly failing to apprise this Defendant of the claim being made against it by Plaintiff of which exception Defendant prays judgment of the Court.

- a) which statutory laws Plaintiff alleges that Patricia Garza has failed to observe;
- b) which ordinances Plaintiff contends Patricia Garza failed to observe causing Plaintiff's injuries;
- c) in what manner Defendant, Patricia Garza, is alleged to have been negligent in this Property whose title company was not Patriot Title, nor was earnest money received, nor purchase agreement;

of which exception defendant prays judgment of the Court.

This Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances. This Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible. In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

XIV.

Defendant specially excepts to the allegations of Plaintiff's petition and more particularly allegations contained in Section V

"All condition precedent to recovery by Plaintiff under the contract have been performed, have occurred, or are excused."

Such allegations are vague and general as to what condition precedent to recovery by Plaintiff under the contract have been performed, have occurred or are excused; fails to plea all the elements of a cause of action from this Defendant, Patricia Garza, by Plaintiff not apprising this Defendant of the manner in which Defendant may have caused Plaintiff's injury at this property when Defendant was not the Escrow Officer for this transaction nor did she ever receive such Agreement or funds for this Property, nor does she owe any duty in her capacity as Escrow Officer; such allegation wholly failing to apprise this Defendant of the claim being made against it by Plaintiff of which exception Defendant prays judgment of the Court.

XV.

As authorized by Rule 92 of the Rules of Civil Procedure, this Defendant denies the allegations of Plaintiff's petition.

XVI.

For further and special answers herein, if such be necessary, and in the alternative, this Defendant, avers that such injuries and damages as Plaintiff may have sustained were proximately caused by the failure of Plaintiff to exercise that degree of care which would have been exercised by persons of ordinary prudence in the exercise of ordinary care under the same or similar circumstances.

XVII.

In the further alternative, if such be necessary, this Defendant avers that the sole proximate cause of the occurrence made the basis of Plaintiff's suit was the act or omission of some third person or the condition of some instrumentality over which this Defendant had or exercised no control and for which this Defendant is not in law responsible.

XVIII.

In the further alternative, if such be necessary, this Defendant avers that the occurrence made the basis of Plaintiff's suit was avoidable by Plaintiff or by some other third person.

WHEREFORE, premises considered, Defendant prays that it go hence without day, with its cost and for general relief.

Respectfully submitted,

/s/: Rayito O. Stephens

Rayito O. Stephens

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Attorney for Defendant, Patricia Garza

CERTIFICATE OF SERVICE

This is to certify that I, Rayito O. Stephens, attorney for Defendant, Patricia Garza, has this date served a true and correct copy of the above and foregoing Defendant Patricia Garza's Original Answer to the Counsels of Record for Plaintiff Rene Guerron by Efiling service to the following persons and emails:

Roshun Phipps at Roshun@pgfirm.net

Erik Garza at Erik@pgfirm.net

Ashley Brown Rios at Ashley@pgfirm.net

SIGNED on this the 11th day of September, 2023.

/s/: Rayito O. Stephens

Rayito O. Stephens

Automated Certificate of eService

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Rayito Stephens on behalf of Rayito Stephens

Bar No. 24121841

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Envelope ID: 79387055

Filing Code Description: Answer/ Response / Waiver

Filing Description: Defendant Patricia Garzas Original Answer Rene Guerron v. Eric Borlasca, PT Patriot Title, LLC, Karla Jimenez, Western Surety Company, and Patricia Garza

Status as of 9/11/2023 8:57 AM CST

Case Contacts

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