

CAUSE NO. 2023-67785

LARRY PRESTON,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	190TH JUDICIAL DISTRICT
	§	
PHH MORTGAGE CORPORATION,	§	
	§	
Defendant.	§	HARRIS COUNTY, TEXAS

DEFENDANT’S ORIGINAL ANSWER

Defendant PHH Mortgage Corporation (“PHH”) files this Original Answer and respectfully shows the following:

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, PHH generally denies each and every allegation in the Original Petition, Application for Injunctive Relief, and Request for Disclosures (the “Petition”) filed by Plaintiff Larry Preston (“Plaintiff”), as well as any and all amended or supplemental petitions, and demands strict proof thereof.

II. AFFIRMATIVE AND OTHER DEFENSES

In addition to its general denial, PHH asserts the following defenses without conceding which party bears the burden of proof on such defenses:

2. Plaintiff fails to state a claim on which relief can be granted, and therefore, each of Plaintiff’s claims should be dismissed.

3. Plaintiff’s claims are barred, in whole or in part, because Plaintiff has failed to allege and prove all conditions precedent to recovery.

4. Plaintiff’s claims are barred, in whole or in part, by Plaintiff’s failure to allege facts sufficient to state a claim for any damages.

5. Plaintiff's claims and damages are subject to and/or barred by the terms of any relevant and applicable contracts and agreements.

6. Plaintiff's claims are barred, in whole or in part, by doctrines of unclean hands, laches, and/or other equitable doctrines.

7. Plaintiff's claims are barred, in whole or in part, by the statute of frauds.

8. Plaintiff's claims are barred, in whole or in part, by reason of PHH's compliance with applicable statutes, regulations, agency interpretations, and other provisions in the law.

9. Plaintiff's claims are barred, in whole or in part, because PHH's acts and/or omissions were not the cause of Plaintiff's injury or damages, if any. Rather, Plaintiff's damages were proximately caused by the acts, omissions, or breaches of other persons and/or entities, including Plaintiff himself, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiff's damages.

10. Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine.

11. Any loss or damage allegedly suffered by Plaintiff was caused, in whole or in part, by his own conduct, acts, and/or omissions.

12. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, quasi-estoppel, waiver, ratification, release, and/or other equitable doctrines.

13. The actions of PHH were taken in good faith, and PHH did not knowingly, intentionally, or maliciously violate any laws.

14. Plaintiff's damages are barred, in whole or in part, by Plaintiff's failure to mitigate.

15. Plaintiff's claims are barred by set-off, off-set, and recoupment, and PHH claims all credits available to it.

16. Plaintiff's attorney's fees are not recoverable, reasonable, or necessary and are barred, in whole or in part, by failing to present a demand or making an excessive demand. PHH also reserves the right to challenge the reasonableness and necessity of any attorney's fees.

17. PHH reserves the right to plead such other and/or affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery.

III. ATTORNEYS' FEES AND COURT COSTS

18. Plaintiff seeks declaratory relief pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code. As a result of this lawsuit being filed, PHH has had to retain counsel to defend this action and may also incur court costs in addition to attorneys' fees. PHH is, therefore, entitled to recover its costs and reasonable and necessary attorneys' fees from Plaintiff pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IV. RESERVATION OF RIGHTS

19. As authorized by the Texas Rules of Civil Procedure, PHH reserves the right to amend this pleading before the trial of this cause on the merits.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, PHH requests that the Court, upon final hearing hereof, render a judgment that Plaintiff take nothing by way of his claims against PHH, that this action be dismissed with prejudice, and that PHH recover its attorneys' fees and costs and have all other relief, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

/s/ Helen O. Turner _____

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**COUNSEL FOR DEFENDANT
PHH MORTGAGE CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2023, a true and correct copy of the foregoing instrument was served on the following counsel of record *via eFile Texas and/or email* according to the Texas Rules of Civil Procedure:

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/s/ Helen O. Turner

Counsel for Defendant

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.

Raquel Garza on behalf of Helen Turner
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Envelope ID: 80502906
Filing Code Description: Answer/ Response / Waiver
Filing Description: Defendant's Original Answer
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Case Contacts

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