

CAUSE NO. 2024-28726

MICHAEL GARCIA,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	80TH JUDICIAL DISTRICT
	§	
FAY SERVICING, LLC,	§	
	§	
Defendant.	§	HARRIS COUNTY, TEXAS

FAY SERVICING, LLC'S ORIGINAL ANSWER

Defendant Fay Servicing, LLC ("Fay") files this Original Answer and respectfully shows the Court as follows:

I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Fay generally denies each and every allegation in the Original Petition, Application for Injunctive Relief, and Request for Disclosures (the "Petition") filed by Plaintiff Michael Garcia ("Garcia"), 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, Fay asserts the following defenses without conceding which party bears the burden of proof on such defenses:

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

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

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

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

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

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

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

9. Garcia's claims are barred, in whole or in part, by the doctrine of proportionate responsibility and Chapter 33 of the Texas Civil Practice and Remedies Code.

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

11. Garcia's claims are barred, in whole or in part, by Garcia's prior material breach of contract.

12. Garcia's claims are barred, in whole or in part, because Garcia has not tendered the amount due and owing on the subject loan.

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

14. Garcia's claims are barred, in whole or in part, because Fay's acts and/or omissions were not the cause of Garcia's injury or damages, if any.

15. Garcia's damages are barred, in whole or in part, by Garcia's failure to mitigate.

16. Garcia's claims are barred by set-off, off-set, and recoupment, and Fay claims all credits available to them.

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

18. Fay denies liability for any actual, statutory, or exemplary damages. Further, any claim for punitive or exemplary damages is subject to the limitations and constraints of applicable Texas law and Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution.

19. Garcia's claim for attorney's fees is barred because Garcia has not asserted, and cannot prevail on, any cause of action that would support an award of attorney's fees. Fay also reserves the right to challenge the reasonableness and necessity of any attorney's fees, as well as whether the claim was properly presented or is barred by the excessive demand doctrine.

20. Fay 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

21. Fay seeks its attorneys' fees, costs, and expenses in this litigation. Fay is entitled to recover from Garcia the attorneys' fees, costs, and expenses that it has incurred, and will continue to incur, in enforcing its rights and remedies under the pertinent loan documents. A party may recover attorneys' fees when such recovery is provided for in a statute or contract. *See Holland v. Wal-Mart Stores, Inc.*, 1 S.W.3d 91, 95 (Tex. 1999); *Travelers Indem. Co. of Conn. V. Mayfield*, 923 S.W.2d 590, 593 (Tex. 1996). In this case, Fay is entitled to recover its attorneys' fees, costs, and expenses incurred in this litigation pursuant to the subject note and deed of trust.

22. In addition, Garcia seeks declaratory relief pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code. As a result of this lawsuit being filed, Fay has had to retain

counsel to defend this action and may also incur court costs in addition to attorneys' fees. Fay is, therefore, entitled to recover its costs and reasonable and necessary attorneys' fees from Garcia pursuant to Section 37.009 of the Texas Civil Practice and Remedies Code.

IV. RESERVATION OF RIGHTS

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

V. PRAYER

For these reasons, Fay respectfully requests that the Court, upon final hearing hereof, render a judgment that Garcia takes nothing by way of his claims against Fay, that this action be dismissed with prejudice, and that Fay recover its attorneys' fees and costs and have all other relief, at law or in equity, to which it may be justly entitled.

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Respectfully submitted,

/s/ Helen O. Turner

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CERTIFICATE OF SERVICE

The undersigned certifies that on June 5, 2024, a true and correct copy of the foregoing document was delivered to the following counsel of record *via eFile Texas and/or email* consistent with the Texas Rules of Civil Procedure.

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Filing Code Description: Answer/ Response / Waiver
Filing Description: Fay Servicing, LLC's Original Answer
Status as of 6/5/2024 3:12 PM CST

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