

CAUSE NO. 2024-27903

FLORENCE BANKS

Plaintiff,

v.

PHH MORTGAGE CORPORATION,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

165TH JUDICIAL DISTRICT

DEFENDANT’S ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF SAID COURT:

PHH Mortgage Corporation (“*PHH*”) files this Original Answer and Affirmative Defenses in response to Plaintiff’s Original Petition and Application for Temporary Restraining Order (the “*Petition*”) and respectfully states the following:

I. GENERAL DENIAL

1. Pursuant to Rule 92 the Texas Rules of Civil Procedure, PHH generally denies every allegation contained in the Petition and respectfully prays that Plaintiff be required to prove her claims as alleged by a preponderance of the evidence or such higher standard as may be applicable.

II. AFFIRMATIVE DEFENSES

2. Without waiving any special exceptions or the general denial set forth above, and without waiving or excusing Plaintiff’s burden of proof or admitting that any of the following are defenses upon which PHH has any burden of proof (as opposed to denials of matters to which Plaintiff has the burden of proof), or that PHH has any burden of proof at all, PHH asserts the following affirmative defenses:

3. Plaintiff's claims are barred in whole or in part because Plaintiff is unable to prove her alleged losses, damages, or injuries in accordance with federal or Texas law.

4. Plaintiff's claims are barred, in whole or in part, due to her failure to satisfy one or more conditions precedent.

5. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, ratification, unclean hands, the statute of frauds, and/or estoppel.

6. Plaintiff's claims are barred, in whole or in part, due to her failure to tender or offer to tender the full amount due on the loan that is the subject of this action. *See Waggoner v. Deutsche Bank Nat'l Bank Tr. Co.*, 181 F.Supp.3d 445, 449 (S.D. Tex. 2016).

WHEREFORE, PREMISES CONSIDERED, Defendant PHH Mortgage Corporation respectfully requests that Plaintiff take nothing on her claims as alleged and for such other and further relief to which this Court deems it to be justly entitled.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ
A Professional Corporation**

By: /s/ Georgia Berthelot

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***Attorneys for Defendant PHH Mortgage
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been forwarded in accordance with the Texas Rules of Civil Procedure on June 20, 2024, as follows:

Via eFile Texas
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Attorney for Plaintiff

/s/ Georgia Berthelot

Georgia Berthelot

Unofficial Copy Office of Marilyn Burges District Clerk

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Julia O'Boyle on behalf of Georgia Bauer
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Envelope ID: 89015502
Filing Code Description: Answer/ Response / Waiver
Filing Description: Defendant's Original Answer and Affirmative Defenses
Status as of 6/21/2024 9:45 AM CST

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