

CAUSE NO. 2024-76386

LARRY PRESTON,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	333rd JUDICIAL DISTRICT
	§	
PHH, BERRY GROUP,	§	
	§	
Defendants.	§	HARRIS COUNTY, TEXAS

DEFENDANT PHH MORTGAGE CORPORATION'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 Motion for Judicial Review of a Documentation Purporting to Create a Judgment Lien (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 with prejudice.
3. Plaintiff's claims are barred, in whole or in part, by res judicata.
4. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to allege and prove all conditions precedent to recovery.

5. 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.

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

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

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

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

10. Plaintiff's claims are barred, in whole or in part, by lack of standing.

11. 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.

12. 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.

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

14. 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.

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

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

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

18. 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.

19. 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

20. PHH seeks its attorneys' fees, court costs, and expenses in this litigation. PHH is entitled to recover from Plaintiff the attorneys' fees, court costs, and expenses that it has incurred, and will continue to incur, in enforcing its rights and remedies. 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, PHH, as the mortgage servicer of the subject mortgage loan, is entitled to recover its attorneys' fees, court costs, and expenses incurred in this litigation

21. In addition, 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

22. 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

For these reasons, 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 court costs and have all other relief, at law or in equity, to which it may be justly entitled.

Unofficial Copy Office of Marilyn Burgess District Clerk

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 December 3, 2024, 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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Pro Se Plaintiff

/s/ Helen O. Turner

Counsel for Defendant
PHH Mortgage Corporation

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling 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.

Helen Turner on behalf of Helen Turner

Bar No. 24094229

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Envelope ID: 94906324

Filing Code Description: Answer/ Response / Waiver

Filing Description: PHH Mortgage Corporation's Original Answer

Status as of 12/4/2024 10:15 AM CST

Case Contacts

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