

CAUSE NO. 2024-83750

NICOLE TRAHAN,

Plaintiff,

vs.

BANK OF AMERICA, N.A.,

Defendant

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

164th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

BANK OF AMERICA, N.A.'S ANSWER

Bank of America, N.A. ("BANA" or "Defendant") hereby files this answer in response to the *Original Petition* filed by Plaintiff Nicole Trahan ("Plaintiff").

I.

GENERAL DENIAL

1. BANA generally denies the allegations in Plaintiff's Original Petition and all amendments and supplements thereto, and BANA demands strict proof thereof as required by the Texas Rules of Civil Procedure.

II.

AFFIRMATIVE DEFENSES

2. Without waiving any special exceptions or its general denial, BANA asserts the following affirmative defenses to Plaintiff's live petition, and BANA reserves the right to plead further any and all defenses, affirmative or otherwise, verified denials, special denials, matters of avoidance, and any and all counterclaims to which BANA may be entitled by this pleading or any amendment to this pleading.

3. Plaintiff fails to state a claim upon which relief can be granted, and her claims fail as a matter of law.

4. Plaintiff's damages, if any, were caused by her own actions, conduct or failure to act.

5. Plaintiff's claims are barred, in whole or in part, because BANA's actions or omissions, if any, were not the proximate or producing cause of Plaintiff's injuries, if any. BANA asserts that any injuries or damages alleged in this lawsuit resulted from an intervening, existing superseding, independent cause, each of which was proximate cause, producing cause, or sole proximate cause of the alleged damages.

6. To the extent Plaintiff's claims rely upon one or more alleged representation, promise, or understanding purporting to modify the parties' rights and obligations under, or other terms of, the loan agreement, her claims are barred, in whole or in part, because the alleged representation, promise, or understanding is barred by the statute of frauds, lacks new, independent and/or adequate consideration, and/or is too vague, ambiguous and/or indefinite to enforce.

7. Plaintiff's damages, if any, were caused in whole or in part by the actions of others over whom BANA exercised no right of control.

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

9. Plaintiff's claims are barred, in whole or in part, because Plaintiff is proportionately responsible for any damages it claims. Should Plaintiff prove she is entitled to any damages, BANA hereby invokes Chapter 33 of the Texas Civil Practice and Remedies Code and requests that the trier of fact determine the proportion of responsibility for said damages by Plaintiff, BANA, any other party to this suit, and any person or entity who may be designated as a

responsible third-party, and to grant judgment against BANA, if at all, for only those damages for which BANA is found to be proportionately responsible, if any, and as reduced by any settlement amounts.

10. Plaintiff's claims are barred, in whole or in part, by the doctrine of election of remedies.

11. Plaintiff's claims are barred, in whole or in part, by the economic loss rule and/or because the claimed loss is the subject matter of a contract between the parties to the loan agreement made the basis of Plaintiff's claims in this suit.

12. To the extent that Plaintiff is entitled to recover any damages, those damages are barred for failure to mitigate any alleged damages.

13. Plaintiff's claims are barred, in whole or in part, because she lacks standing, capacity, or authority to assert any claim.

14. Plaintiff's claims are barred, in whole or in part, because Plaintiff has unclean hands.

15. Plaintiff's claims are barred, in whole or in part, because the actions complained of, if in error at all, were the result of a bona fide error.

16. Plaintiff is not entitled to the recovery of attorneys' fees under Texas law.

17. BANA is entitled to an offset and/or setoff against any damages to be awarded to Plaintiff for, among other things, the use and occupation of the subject property, the reasonable rental value of the subject property, rental income received on the subject property, BANA's payment of taxes and/or insurance for the benefit of the subject property, BANA's attorneys' fees incurred in this suit, and amounts Plaintiff recovered pursuant to the settlement of any claims related to this matter.

18. Plaintiff's claims are barred, in whole or in part, by the doctrines of privilege, consent, knowledge, waiver, ratification, and/or estoppel.

III.

PRAYER

WHEREFORE, PREMISES CONSIDERED, BANA prays that Plaintiff take nothing against it and that judgment be granted against Plaintiff as follows:

- (a) Plaintiff takes nothing by way of its claims against BANA;
- (b) costs of court and reasonable and necessary attorneys' fees and costs; and
- (c) all further relief, both in law and in equity, to which BANA may be entitled.

Dated: December 27, 2024

Respectfully submitted,

/s/ Grant M. Figari

GRANT M. FIGARI, SBN: 24119480

gfigari@mcguirewoods.com

MCGUIREWOODS LLP

2601 Olive Street, Suite 2100

Dallas, Texas 75201

Telephone: 214.932.6400

Facsimile: 214.932.6499

**ATTORNEY FOR DEFENDANT,
BANK OF AMERICA, N.A.**

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2024, a copy of the foregoing was served was served in accordance with *Texas Rule of Civil Procedure* 21(a) on all parties of record:

/s/ Grant M. Figari

GRANT M. FIGARI

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.

Lisha Parham on behalf of Grant Figari
Bar No. 24119480
lparham@mcguirewoods.com
Envelope ID: 95663253
Filing Code Description: Answer/ Response / Waiver
Filing Description: Bank of America, N.A.'s Answer
Status as of 12/27/2024 9:36 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Chris CPerry		cperry@mcguirewoods.com	12/27/2024 9:18:12 AM	SENT
Grant MFigari		gfigari@mcguirewoods.com	12/27/2024 9:18:12 AM	SENT
Cindy Smith		csmith@mcguirewoods.com	12/27/2024 9:18:12 AM	SENT
Lisha Parham		lparham@mcguirewoods.com	12/27/2024 9:18:12 AM	SENT

Unofficial Copy Office of Maryland District Clerk