

CAUSE NO. 2025-00193

G. RODNEY TURNER,
Plaintiff,

V.

LJC FINANCIAL LLC,
Defendant/Counter-Plaintiff,

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

DEFENDANT, LJC FINANCIAL LLC'S
ORIGINAL ANSWER AND COUNTERCLAIM

COMES NOW, LJC FINANCIAL LLC, as Defendant and Counter-Plaintiff ("**LJC Financial**") and files its Original Answer and Counterclaim against G. RODNEY TURNER ("**Turner**" or "**Plaintiff**") and in support thereof, will show the Court as follows:

I. GENERAL DENIAL

1. Pursuant to Tex. R. Civ. P. 92, Defendant, LJC Financial enters a general denial to the allegations contained in Plaintiff's Original Petition (and all amendments thereto) and demands strict proof thereof.

II. SPECIFIC DENIALS

2. LJC Financial specifically denies that all conditions precedent for recovery by Plaintiff have occurred or were performed.

3. LJC Financial specifically denies that Plaintiff is entitled to assert a claim for violation of Tex. Prop. Code § 51.002(d) because the loan at issue is a commercial loan that is not secured by the debtor's residence.

4. LJC Financial asserts that all specific denials are also affirmative defenses.

III. AFFIRMATIVE DEFENSES

5. LJC Financial affirmatively asserts that Plaintiff fails to state any claim upon which relief may be granted.

6. LJC Financial affirmatively asserts that Plaintiff's claims against LJC Financial are barred, in whole or in part, because Plaintiff failed to comply with the terms of the loan with LJC Financial that is the subject of this litigation.

7. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, due to Plaintiff's failure to mitigate damages.

8. LJC Financial affirmatively asserts that any damages allegedly sustained by Plaintiff were caused by persons for whose conduct LJC Financial was not responsible.

9. LJC Financial affirmatively asserts that the conduct of LJC Financial was not the proximate and/or producing cause of any injury or damage sustained by Plaintiff.

10. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, because Plaintiff's own acts and/or omissions caused its injury, if any.

11. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, under the doctrine of proportionate responsibility pursuant to Tex. Civ. Prac. & Rem. Code §§ 33.001 *et. seq.*

12. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, by the doctrines of laches and unclean hands.

13. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and estoppel, expressed and implied.

14. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff expressly waived demand, presentment, dishonor, notice of dishonor, notice of protest, protest, notice of acceleration or intent to accelerate.

15. LJC Financial affirmatively asserts that Plaintiff's claims are barred, in whole or in part, due to the lack of reliance or reasonable reliance by Plaintiff.

16. LJC Financial affirmatively asserts that Plaintiff's attorneys' fees are not reasonable nor necessary.

17. LJC Financial affirmatively asserts that Plaintiff's claim for an injunction fails because Plaintiff does not meet the requirements for injunctive relief.

18. **LJC Financial affirmatively asserts that all affirmative defenses are also specific denials.**

LJC FINANCIAL, LLC'S ORIGINAL COUNTERCLAIM

I. DISCOVERY CONTROL PLAN

19. Pursuant Tex. R. Civ. P. 47, LJC Financial seeks monetary relief of \$250,000 or less and non-monetary relief. The damages sought are within the jurisdictional limits of the Court.

II. PARTIES

20. Counter-Plaintiff, LJC Financial LLC ("**LJC Financial**") is a Texas limited liability company that is doing business in Harris County, Texas.

21. Counter-Defendant, G. Rodney Turner ("**Turner**") is an individual residing in Harris County, Texas. Pursuant to Tex. R. Civ. P. 21 and 21a, a copy of this counterclaim may be served on Turner's attorney of record, James Minerve, 13276 N. Highway 183, Ste. 209, Austin, Texas 78750, Email: jgm@minervelaw.com.

III. JURISDICTION AND VENUE

22. The amount in controversy is within the jurisdictional limits of this Court.

23. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code § 15.062 as the main action filed by Turner is pending in this Court.

IV. FACTUAL BACKGROUND

A. The Note and Deed of Trust dated April 25, 2023 in favor of LJC Financial related to the Property at 6109 Grace Lane, Houston, Texas 77021.

24. At all times relevant, LJC Financial was and is the holder and owner of a promissory note dated April 25, 2023, in the original principal amount of \$180,000.00, (the “Note”). The Note was duly executed and delivered to LJC Financial by Turner as Borrower. A true and correct copy of the Note is attached hereto as Exhibit 1 and is incorporated by reference herein. Turner obtained this loan related to the investment property at 6109 Grace Lane, Houston, Texas 77021.

25. The stated annual interest rate in the Note for unpaid principal is 12.5% per annum. See Exhibit 1. Pursuant to the Note: Installments in the amount of accrued and unpaid interest only shall be due and payable, the first such installment to be due and payable on June 1, 2023, with like installments to be due and payable on the first day of each month thereafter, until April 25, 2024 (the “Maturity Date”), when all remaining principal plus accrued and unpaid interest shall be due and payable. *Id.*

26. On April 26, 2024, the parties executed a Modification of Real Estate Note and Lien (“Modification”) which extended the Maturity Date of the Note to October 26, 2024. A true and correct copy of the Modification is attached hereto as Exhibit 2 and is incorporated by reference herein.

27. The Note was secured by a Deed of Trust dated April 25, 2023 (“Deed of Trust”). A true and correct copy of the Deed of Trust is attached hereto as Exhibit 3 and is incorporated by reference herein. Under the Deed of Trust, Borrower granted LJC Financial a deed of trust lien against the real estate located at 6109 Grace Lane, Houston, Texas 77021 and legally described in the attached Exhibit A (“Property”).

B. Turner signed a Business Purpose Affidavit and confirmed that the loan was a business loan and that the Property was not used as homestead or for personal, family, or household use.

28. In connection with the LJC Financial loan, on April 25, 2023, Turner signed a Business Purpose Affidavit. The affidavit confirmed, among other things, that: “Borrower holds the Property for a business investment and/or resale purposes and **not to be used as a residential homestead for Borrower or any affiliate of Borrower, or for any other personal, family, household or agricultural use.** ...” (Emphasis added). A true and correct copy of the Business Purpose Affidavit is attached as **Exhibit 4** and incorporated herein by reference.

C. Turner signed an Anti-Fraud and Default Agreement, confirming that the Property is being used for business purposes only.

29. On April 25, 2023, in connection with the Loan, Turner signed and delivered to LJC an Anti-Fraud and Default Agreement (“**Anti-Fraud Agreement**”). A true and correct copy of the Anti-Fraud Agreement is attached as **Exhibit 5** and is incorporated herein by reference. The Anti-Fraud Agreement states that Turner is not using the Property as a residence, and that Turner holds the Property for rental, resale, or other business purpose only. See **Exhibit 5**; emphasis added. The Anti-Fraud Agreement further states that, if any of the representations, warranties, or agreements stated in Section 1 above is breached, the \$180,000 Loan from LJC to Turner shall become immediately due and payable, without notice or opportunity to cure. *Id.* Moreover, Turner acknowledged and agreed that: “[T]he representations, warranties, and agreements made in Section 1 above are to induce Lender to make the Loan,” and that “Lender only makes business-purpose loans, and does not make loans for personal, family, or household purposes.” *Id.*; emphasis added. Significantly, Turner acknowledged that a breach of the representations made in the Anti-Fraud Agreement “may constitute civil and/or criminal fraud, and subject the undersigned to the full penalties of the law for the commission of intentional fraud on a lender in connection with a loan application.” See **Exhibit 5** (emphasis added).

D. Turner defaulted under the Note and Deed of Trust. LJC Financial posted the Property for foreclosure on January 7, 2025 and duly sent out all notices under the Deed of Trust and Texas Property Code.

30. On October 26, 2024, the Note matured by its terms. Turner defaulted under the Note and Deed of Trust, by failing to pay the indebtedness under the Note when due. As a result of the default, LJC Financial duly posted the Property for foreclosure on Tuesday, January 7, 2025, between the hours of 10:00 A.M. and 1:00 P.M.¹

V. ENFORCEMENT OF THE PROMISSORY NOTE

31. LJC Financial incorporates the previous facts herein by reference.

32. LJC Financial seeks to enforce the Note under the theory of breach of contract. To recover for breach of contract, a plaintiff must show: (i) the existence of a valid contract; (ii) that the plaintiff performed or tendered performance; (iii) that the defendant breached the contract; and (iv) that the plaintiff suffered damages because of the defendant's breach. *Parker Drilling Co. v. Romfor Supply Co.*, 316 S.W.3d 68, 72 (Tex. App.—Houston [14th Dist.] 2010, pet. denied).

33. The above elements of the cause of action for breach of contract have been met. LJC Financial will show the Court that: (1) a valid contract, *i.e.*, the Note, exists between LJC Financial and Turner; (2) that LJC Financial performed or tendered performance under the Note by lending Turner the \$180,000.00; (3) that Turner breached the Note by failing to pay the indebtedness due and owing and by using the Property as his personal residence; and (4) that LJC Financial suffered damages as a result of Turner's breach of the Note.

¹ Texas Property Code § 51.002's notice requirements provide "a minimum level of protection for the debtor, and provide for only constructive notice of the foreclosure." *Gossett v. Fed. Home Loan Mortg. Corp.*, 919 F. Supp. 2d 852, 859-60 (S.D. Tex. 2013) (quoting *Onwuteaka v. Cohen*, 846 S.W.2d 889, 892 (Tex. App.—Houston [1st Dist.] 1993, no pet.). Thus, "[s]ervice of a notice under [§ 51.002] by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor and the debtor's last known address." Tex. Prop. Code § 51.002(e) (emphasis added). "Actual receipt of the notice is not necessary." *WMC Mortg. Corp. v. Moss*, No. 01-10-00948-CV, 2011 Tex. App. LEXIS 3853, at *23 (Tex. App.—Houston [1st Dist.] May 19, 2011, no pet.).

VI. DAMAGES AND ATTORNEY'S FEES

34. LJC Financial seeks the following damages on its counterclaim and third-party claims as follows:

- A. Under the Note and Deed of Trust, for judgment against Turner for all sums due under the Note and Deed of Trust in an amount within the jurisdictional limits of the Court;
- B. For attorney's fees under (i) the Loan Documents and (ii) Texas law and equity;
- C. For pre and post judgment interest as allowed by law and court costs; and
- D. For such other and further relief to which LJC Financial may be entitled at law or in equity.

VII. FORECLOSURE

35. LJC Financial incorporates the previous facts herein by reference.

36. Additionally and/or alternatively, LJC Financial seeks to assert its right to proceed with the foreclosure of the Property pursuant to the terms of the Deed of Trust and the Texas Property Code.

IX. CONDITIONS PRECEDENT

37. All conditions precedent to LJC Financial's recovery have occurred or have been performed.

X. TEX. R. CIV. P. 193.7 NOTICE

38. This paragraph serves as notice, pursuant to Tex. R. Civ. P. 193.7, that documents produced in response to written discovery requests served by LJC Financial will be used against the producing party in any pretrial proceeding and/or trial.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, LJC FINANCIAL LLC respectfully prays that Plaintiff/Counter-Defendant, G. RODNEY TURNER be cited to appear

and answer herein, and that upon a final hearing in this case, that judgment be entered in favor of LJC Financial as requested herein, and that the Court grant such other and further relief to which LJC Financial may be entitled at law or in equity.

Respectfully submitted,

INVICTA LAW FIRM

By: /s/ Alicia M. Matsushima

Alicia M. Matsushima

Texas Bar No. 24002546

1923 Washington Ave., Ste. 2275

Houston, Texas 77007

(713) 955-4559 Tel.

alicia@invictalawfirm.com

ATTORNEYS FOR DEFENDANT,
AND COUNTER-PLAINTIFF,
LJC FINANCIAL LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2025, Defendant's Original Answer and Counterclaim was served in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure to all parties and/or counsel of record as follows:

Via Texas eFile:

James Minerve
13276 N. Highway 183, Ste. 209
Austin, Texas 78750
Email: jgm@minervelaw.com

ATTORNEY FOR PLAINTIFF,
G. RODNEY TURNER

/s/ Alicia M. Matsushima
Alicia M. Matsushima

Unofficial Copy Office of Marilyn Burgess District Clerk

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.

Alicia Matsushima on behalf of Alicia Matsushima

Bar No. 24002546

alicia@invictalawfirm.com

Envelope ID: 96110910

Filing Code Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party

Filing Description: Counter Claim/Cross

Action/Interpleader/Intervention/Third Party

Status as of 1/13/2025 8:53 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mia Shimaj		mia@invictalawfirm.com	1/11/2025 5:03:08 PM	SENT
Alicia M.Matsushima		alicia@invictalawfirm.com	1/11/2025 5:03:08 PM	SENT
James Minerve	24008692	jgm@minervelaw.com	1/11/2025 5:03:08 PM	SENT