

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

**ROBERT G. WIELAND AND
KRISTINA M. WIELAND**
Plaintiffs,

VS.

**JPMORGAN
CHASE BANK, NATIONAL
ASSOCIATION, ATTORNEY-IN-FACT
FOR DEUTSCHE BANK NATIONAL
TRUST COMPANY AS TRUSTEE FOR
NEW CENTURY HOME EQUITY LOAN
TRUST, SERIES 2003-B**

Defendant.

§
§
§
§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:14-cv-00695

DEFENDANT CHASE’S AMENDED MOTION FOR SUMMARY JUDGMENT

WM. LANCE LEWIS
Texas Bar No. 12314560
TRAVIS LEE RICHINS
Texas Bar No. 24061296
**QUILLING, SELANDER, LOWNDS,
WINSLETT & MOSER, P.C.**
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)
llewis@qslwm.com
trichins@qslwm.com

ATTORNEYS FOR DEFENDANT

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Statement of Issues	2
1. Whether Plaintiffs can maintain a claim for breach of the First Repayment Plan despite their failure to perform under the loan agreement or the repayment plan.....	2
2. Whether the repayment plan is an enforceable agreement despite requiring nothing of Plaintiffs other than the payment of past-due amounts owed under the loan.	2
3. Whether Plaintiffs were harmed by Chase’s alleged breach of the repayment plan even though full performance of the repayment plan would have left Plaintiffs in the same position they were in when they started it.....	2
4. Whether the repayment plan is unenforceable as a result of a mutual Mistake that the plan payments were sufficient to cure Plaintiffs arrearage	3
5. Whether Plaintiffs could reasonably rely on the First Repayment Plan	3
6. Whether Plaintiffs’ performance of a pre-existing duty can constitute detrimental reliance.....	3
7. Whether Chase owed Plaintiffs any duty not arising out of contract	3
Summary Judgment Evidence.....	3
Statement of Undisputed Facts	3
Standard for Summary Judgment.....	9
Argument and Authorities.....	9
A. Plaintiffs’ breach of contract claim fails as a matter of law.	9
1. The First Repayment Plan fails for lack of consideration.....	10
2. Plaintiffs did not perform under the Loan Agreement or the First Repayment Plan.....	12
3. Plaintiffs were not harmed by Chase’s alleged breach	14

..

4.	Plaintiffs are not entitled to specific performance	16
5.	To the extent the First Repayment Plan required waiver of arrearages, that term was the result of mutual mistake.....	18
6.	Chase did not waive the arrearage by accepting payments.....	19
B.	The economic loss rule bars Plaintiffs’ gross negligence and negligent misrepresentation claims.....	19
C.	Plaintiffs’ negligent misrepresentation claim fails as a matter of law	20
D.	Plaintiffs’ promissory estoppel claim fails as a matter of law	23
E.	Plaintiffs’ gross negligence claim fails as a matter of law.....	24
F.	Plaintiffs’ TDCA claim fails as a matter of law	25
1.	Chase did not violate 392.304(a)(8) or (9).....	25
2.	Chase did not violate section 392.303(a)(2)	28
3.	Chase did not violate section 392.301(a)(8)	28
4.	Plaintiffs were not harmed by Chase’s alleged TDCA violations	29
G.	Plaintiffs are not entitled to declaratory relief	29
H.	The statute of frauds bars any claims seeking the benefit of an alleged oral promise to modify the Loan Agreement.....	30

...

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Amburgey v. Corhart Refractories Corp.</i> , 936 F.2d 805 (5th Cir.1991)	9
<i>Arthur J. Gallagher & Co. v. Dieterich</i> , 270 S.W.3d 695 (Tex. App.—Dallas 2008, no pet.).....	10
<i>Ass’n of Am. Physicians & Surgeons, Inc. v. U.S. Dept. Of Health & Human Services</i> , 224 F. Supp. 2d 1115 (S.D. Tex. 2002) <i>aff’d</i> , 67 Fed. Appx. 253 (5th Cir. 2003).....	30
<i>Bracken v. Wells Fargo Bank, N.A.</i> , 13 F. Supp. 3d 673 (E.D. Tex. 2014), <i>aff’d sub nom. Bracken v. Wells Fargo Bank Nat. Ass’n</i> , 612 Fed. Appx. 248 (5th Cir. 2015).....	10, 11, 30
<i>Butnaru v. Ford Motor Co.</i> , 84 S.W.3d 198 (Tex. 2002)	16
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986)	9
<i>Collier v. Wells Fargo Home Mortg. as Successor in Interest to Norwest & Parker Square Bank</i> , 7:04-CV-086-K, 2006 WL 1464170 (N.D. Tex. May 26, 2006).....	19, 20
<i>Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue</i> , 271 S.W.3d 238 (Tex. 2008)	24
<i>Davis v. Grammer</i> , 750 S.W.2d 766 (Tex. 1988).....	18
<i>Evans v. United Air Lines, Inc.</i> , 62 F.3d 395 (5th Cir. 1995).....	21
<i>Fields v. JP Morgan Chase Bank, N.A.</i> , 15-10034, 2016 WL 197191 (5th Cir. Jan. 15, 2016)	26
<i>Geske v. Wells Fargo Bank, Nat. Ass’n</i> , 3:11-CV-3337-L, 2012 WL 1231835 (N.D. Tex. Apr. 12, 2012)	16
<i>Guajardo v. JP Morgan Chase Bank, N.A.</i> , 605 Fed. Appx. 240 (5th Cir. 2015).....	23
<i>Guzman v. Acuna</i> , 653 S.W.2d 315 (Tex. App.—San Antonio 1983, writ dism’d)	16
<i>James v. Wells Fargo Bank, N.A.</i> , 533 F. App'x 444 (5th Cir. 2013)	11
<i>Little v. Liquid Air Corp.</i> , 37 F.3d 1069 (5th Cir. 1994) (en banc)	9
<i>Lowe v. Ingalls Shipbldg.</i> , 723 F.2d 1173 (5th Cir. 1984).....	30

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574 (1986)9

Mayes v. Stewart, 11 S.W.3d 440 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).....20

McAllister v. BAC Home Loans Servicing, LP, 4:10-CV-504,
2011 WL 2200672 (E.D. Tex. Apr. 28, 2011),
report and recommendation adopted, 4:10-CV-504,
2011 WL 2183844 (E.D. Tex. June 6, 2011).....24, 25

McCallum Highlands, Ltd. v. Washington Capital Dus, Inc.,
66 F.3d 89 (5th Cir.) *opinion corrected on denial*
of reconsideration, 70 F.3d 26 (5th Cir. 1995).....10

Miller v. CitiMortgage, Inc., 970 F. Supp. 2d 568 (N.D. Tex. 2013).....30

Mobil Oil Corp. v. Ellender, 968 S.W.2d 917 (Tex.1998).....24

Neeley v. Bankers Trust Co. of Texas, 757 F.2d 621 (5th Cir. 1985).....16, 17

Pennbright Indus., Inc. v. Dist. Dir., I.R.S., Sw. Region, CIV. A. H-88-487,
1990 WL 18061 (S.D. Tex. Jan. 22, 1990).....10

Pennington v. HSBC Bank USA, Nat’l Ass’n, No. A-10-CA-785 LY,
2011 WL 6739609 (W.D. Tex. Dec. 22, 2011), *aff’d*
493 F. App’x 548 (5th Cir. 2012).....22

Praesel v. Johnson, 967 S.W.2d 391 (Tex. 1998)24

Rackley v. JPMorgan Chase Bank, Nat. Ass’n, SA-11-CV-387-XR,
2011 WL 2971357 (W.D. Tex. July 21, 2011).....11

Reid v. Aransas Cnty., Civil Action No. C-10-144,
2011 WL 1337108 (S.D. Tex. Apr. 6, 2011).....30

Rhodes v. Wells Fargo Bank, N.A., 3:10-CV-02347-L,
2013 WL 2090307 (N.D. Tex. May 14, 2013).....11, 13

Richardson v. Wells Fargo Bank, N.A., 873 F.Supp. 2d 800 (N.D. Tex. 2012).....12

Rucker v. Bank of Am., N.A., 806 F.3d 828 (5th Cir. 2015).....25, 29

Singer v. Carrington Labs., Inc., CIV.A. 301CV1776L, 2003 WL 22300140
(N.D. Tex. Oct. 3, 2003).....10

Singh v. JP Morgan Chase Bank, NA, 4:11-CV-607, 2012 WL 2013019
(E.D. Tex. Apr. 5, 2012), *report and recommendation adopted*,

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.