

TWENTY-FIRST JUDICIAL DISTRICT COURT

PARISH OF TANGIPAHOA

STATE OF LOUISIANA

NUMBER: 2014-0002832

DIVISION "B"

LOTTIE GROUP, LLC AND J.A.H. ENTERPRISES, INC.

VERSUS

FIRST GUARANTY BANK

FILED: February 23, 2015 DY. CLERK: Jamie O'Rourke

ANSWER, OBJECTIONS AND MOTION TO STRIKE JURY

NOW INTO COURT, through undersigned counsel, comes First Guaranty Bank ("First Guaranty"), which answers the Petition (the "Petition") as follows:

FIRST DEFENSE

The Petition fails to state a claim or cause of action upon which relief can be granted.

SECOND DEFENSE

Plaintiffs' claims are time-barred by the applicable prescriptive and/or preemptive periods and/or statutes of limitations.

THIRD DEFENSE

Plaintiffs' claims are barred by applicable law including, but not limited to, the Louisiana Credit Agreement Statute, La. Rev. Stat. §§ 6:1121 *et seq.*

FOURTH DEFENSE

Pursuant to the Louisiana Credit Agreement Statute, La. Rev. Stat. §§ 6:1121 *et seq.*, the only obligations assumed or owed by the First Guaranty are those of written agreements, all of which First Guaranty complied.

FIFTH DEFENSE

First Guaranty owes no legal duty to Plaintiffs under the facts alleged.

SIXTH DEFENSE

First Guaranty has not breached any duty to Plaintiffs.

SEVENTH DEFENSE

The terms, conditions, and provisions of the applicable agreements between Plaintiffs and First Guaranty, and related documents, are specifically and affirmatively pled herein, as if set

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JULIANE DUFRECHE
CLERK OF COURT
TANGIPAHOA PARISH, LA

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forth *in extenso*, which terms, conditions, and provisions act to bar or limit the claims asserted by Plaintiffs.

EIGHTH DEFENSE

Plaintiffs failed to comply with the provisions of the applicable agreements and related documents.

NINTH DEFENSE

Plaintiffs have not alleged or sustained any actual damages that were proximately caused by First Guaranty or for which First Guaranty is liable.

TENTH DEFENSE

Any damages that Plaintiffs may have incurred (the existence of which First Guaranty denies) are the sole result of acts or omissions of parties other than First Guaranty, for which First Guaranty is not legally responsible and cannot be held liable.

ELEVENTH DEFENSE

The claims asserted by Plaintiffs should be dismissed, or alternatively, the alleged damages should be reduced, due to Plaintiffs' own negligent or culpable conduct.

TWELFTH DEFENSE

Plaintiffs are the cause of any loss they have suffered due to their negligence, inattention, failure to investigate, lack of review, lack of management, and/or lack of supervision of the operations of JAH Enterprises and Lottie Group, L.L.C., including the actions of its members.

THIRTEENTH DEFENSE

Plaintiffs are the cause of any loss they have suffered for failing to establish commercially reasonable security measures as necessary to protect against unauthorized access to their computers and networks used to access the internet banking system.

FOURTEENTH DEFENSE

Plaintiffs agreed to protect against unauthorized access to the internet banking system's administrative functions and personal computers or networks used to access this service in the Internet Wire Transfer Agreement.

FIFTEENTH DEFENSE

Plaintiffs assumed the risk of loss and damage in the Internet Wire Transfer Agreement arising from any unauthorized access to the internet banking system.

SIXTEENTH DEFENSE

Plaintiffs agreed to indemnify First Guaranty in the Internet Wire Agreement for any liability, loss, or damage resulting from transfers made by unauthorized persons when accompanied by the appropriate Internet Banking access ID and passcode, PIN and/or Repetitive Number assigned to Plaintiffs.

SEVENTEENTH DEFENSE

First Guaranty's conduct at all times complied with, and was in good faith and conformity with, all applicable contracts, laws, and regulations.

EIGHTEENTH DEFENSE

First Guaranty at all times acted in a commercially reasonable manner.

NINETEENTH DEFENSE

Plaintiffs agreed in the Internet Banking and Bill Payment Agreement that the Internet Banking and Bill Payment Service included security measures which are commercially reasonable.

TWENTIETH DEFENSE

Plaintiffs contractually agreed in the Internet Banking and Bill Payment Agreement to notify First Guaranty in the event that their use of the Internet Banking and Bill Payment Service would require a level of security that exceeded that offered by the Service. In absence of such notification, Plaintiffs acknowledged that the security offered were appropriate for their needs and provided commercially reasonable security against unauthorized use.

TWENTY-FIRST DEFENSE

Plaintiffs are not entitled to the relief sought in the Petition against First Guaranty due to Plaintiffs' breaches of the applicable agreements.

TWENTY-SECOND DEFENSE

Plaintiffs not entitled to equitable relief against First Guaranty.

TWENTY-THIRD DEFENSE

First Guaranty is not liable to Plaintiffs to the extent that there has been deliberate, intentional or negligent conduct on the part of Plaintiffs giving rise to the damages sought herein.

TWENTY-FOURTH DEFENSE

Plaintiffs' actions and their claims and demands herein are barred by the doctrines of unclean hands, estoppel, release, extinguishment, compromise, waiver, acquiescence, ratification, and/or Plaintiffs' fault, negligence and/or contributory negligence.

TWENTY-FIFTH DEFENSE

To the extent that Plaintiffs may be entitled to damages, if any, which First Guaranty expressly denies, Plaintiffs failed to mitigate their damages.

TWENTY-SIXTH DEFENSE

First Guaranty reserves the right to assert any additional defenses that may be discovered during the course of any of its additional investigation and discovery in this case.

TWENTY-SEVENTH DEFENSE

Unless admitted or otherwise qualified, First Guaranty denies each and every allegation contained in the Petition.

MOTION TO STRIKE JURY TRIAL

Plaintiffs are not entitled to a trial by jury. Plaintiffs waived their right to a trial by jury in the Internet Banking and Bill Payment Agreement. The terms, conditions, and provisions of the Internet Banking and Bill Payment Agreement are specifically and affirmatively pled herein, as if set forth *in extensor*. Specifically, the parties agreed as follows:

The parties hereby knowingly, voluntarily and intentionally waive any right they may have to a trial by jury with respect to any litigation brought based upon this Agreement, or arising out of, under or in connection with this Agreement and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements or actions of the parties. This provision is a material inducement for the parties entering this Agreement.

Accordingly, Plaintiffs' request for a trial by jury should be stricken.

ANSWER:

AND NOW, in further answer to Plaintiffs' Petition, First Guaranty responds as follows:

1.

No response to the allegations of paragraph 1 of the Petition is required because that paragraph contains only identifying information regarding the Plaintiffs. To the extent that a further response is required, First Guaranty denies the allegations in paragraph 1 of the Petition for lack of sufficient information to justify a belief therein.

2.

No response to the allegations of paragraph 2 of the Petition is required because that paragraph contains only procedural allegations regarding whom Plaintiffs purport to name as a defendant. However, to the extent a response may be required, First Guaranty admits its name and that it is doing business in the Parish of Tangipahoa. First Guaranty further admits that it is regulated by the Federal Deposit Insurance Company.

3.

With respect to the allegations of paragraph 3, First Guaranty admits that venue is proper in Tangipahoa Parish.

4.

With respect to the allegations of paragraph 4 of the Petition, First Guaranty admits that JAH and Lottie Group are customers of First Guaranty Bank and possess accounts ending in 4476, 5806, and 8510. First Guaranty additionally admits that Plaintiffs and FGB entered written deposit agreement for the subject accounts including, but not limited to, the following agreements: Internet Wire Transfer Agreements, Internet Banking and Bill Payment Agreement, as well as agreeing to the Terms and Conditions for Deposit Accounts by signing the relevant account documentation/signature cards.

5.

First Guaranty denies the allegations of paragraph 5 of the Petition as written and for lack of sufficient information to justify a belief therein. Paragraph 5 additionally states a legal conclusion to which no response is required.

6.

First Guaranty denies the allegations of paragraph 6 of the Petition.

7.

First Guaranty denies the allegations of paragraph 7 as written. Further responding, the procedure to initiate a wire transfer is outlined in the Internet Wire Transfer Agreement which is referenced herein as if copied *in extenso*.

8.

First Guaranty admits that it allowed Plaintiffs to submit payment orders by phone or in person at the Bank. The remaining allegations of paragraph 8 are denied.

9.

First Guaranty denies the allegations of paragraph 9 as written.

10.

First Guaranty denies the allegations of paragraph 10 of the Petition for lack of sufficient information to justify a belief therein.

11.

First Guaranty denies the allegations of paragraph 11 of the Petition for lack of sufficient information to justify a belief therein.

12.

First Guaranty denies the allegations of paragraph 12 of the Petition for lack of sufficient information to justify a belief therein.

13.

First Guaranty denies the allegations of paragraph 13 of the Petition for lack of sufficient information to justify a belief therein.

14.

First Guaranty denies the allegations of paragraph 14 of the Petition.

15.

First Guaranty denies the allegations of paragraph 15 of the Petition.

16.

First Guaranty denies the allegations of paragraph 16 of the Petition.

17.

First Guaranty denies the allegations of paragraph 17 of the Petition.

18.

With respect to the allegations of paragraph 18 of the Petition, First Guaranty admits that Janet Cagley and Jeff Henderson gave notice to the bank of the disputed transfers. The remaining allegations are denied.

19.

First Guaranty denies the allegations of paragraph 19 of the Petition.

20.

First Guaranty denies the allegations of paragraph 20 of the Petition.

21.

First Guaranty denies the allegations of paragraph 21 of the Petition.

22.

First Guaranty denies the allegations of paragraph 22 of the Petition.

23.

First Guaranty denies the allegations of paragraph 23 of the Petition.

24.

First Guaranty denies the allegations of paragraph 24 of the Petition.

25.

First Guaranty denies the allegations of paragraph 25 of the Petition.

26.

First Guaranty denies that the Plaintiffs are entitled to a trial by jury. Plaintiffs' request for a jury trial should be stricken as outlined in the above Motion to Strike.

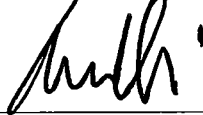
27.

No response to the prayer, or "Wherefore" paragraphs, of the Petition is necessary. Out of an abundance of caution, however, to the extent that a response may be required, First Guaranty denies that the Plaintiffs are entitled to the relief requested therein.

WHEREFORE, FIRST GUARANTY BANK PRAYS that this Answer be deemed good and sufficient and that after due proceedings are had and legal delays elapse, there be judgment in favor of First Guaranty Bank (i) dismissing Plaintiffs' suit and claims, with prejudice and Plaintiffs' costs, and (ii) granting First Guaranty Bank all other relief to which it may be justly entitled.

Respectfully submitted,

CASHE COUDRAIN & SANDAGE



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer has been served on counsel of record, Eric J. Lockridge by electronic transmission and/or email transmission and/or regular mail, on this 23rd day of February, 2015.



Andre G. Coudrain

CASHE COUDRAIN & SANDAGE
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February 23, 2015

Hon. Julian Dufreche
Clerk of Court
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RE: Lottie Group, LLC and J.A.H.
Enterprises, Inc.
Versus #2014-0002832
First Guaranty Bank

JULIAN E. DUFRACHE
CLERK OF COURT
TANGIPAHOLA PARISH, LA

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Dear Mr. Dufreche:

Please file the enclosed Answer, Objections and Motion to Strike Jury on behalf of defendant in the captioned matter, thereafter returning a filed copy to our office.

Thank you for your attention and assistance. If you have any questions concerning this, please do not hesitate to contact my office.

Very truly yours,


Andre G. Coudrain

AGC/sfp
Enclosure

