

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UMB BANK, N.A.,)
)
Plaintiff,)
)
v.) Case No. 22-CV-00550-BCW
)
MICHAEL W. COLEMAN,)
)
Defendant.)

DEFENDANT’S ANSWER TO VERIFIED AMENDED COMPLAINT

COMES NOW Defendant Michael W. Coleman (“Coleman”), by and through his attorney Robert D. Maher of the law firm of McDowell, Rice, Smith & Buchanan, and for his Answer to the Verified Amended Complaint, states as follows:

Preliminary Statement

1. With respect to the allegations contained in paragraph 1 of the Verified Amended Complaint (“Complaint”), Coleman denies Plaintiff is entitled to the relief sought, denies the amounts owed and denies the remaining allegations, if any, contained therein.

2. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 2 of the Complaint and, as a result, denies each and every allegation therein contained.

3. Coleman admits that this action was brought solely against him. Coleman is without sufficient knowledge and information to determine the truth or falsity of the remaining allegations in paragraph 3 of the Complaint and, as a result, denies each and every other allegation therein contained.

Coleman Answer

The Parties

4. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 4 of the Complaint and, as a result, denies each and every allegation therein contained.

5. Coleman admits the allegations in paragraph 5 of the Complaint.

Jurisdiction and Venue

6. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 6 of the Complaint and, as a result, denies each and every allegation therein contained.

7. Coleman admits the allegations in paragraphs 7 and 8 of the Complaint.

8. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 9 of the Complaint and, as a result, denies each and every allegation therein contained.

9. Paragraphs 10 and 11 contain legal conclusions to which no response is required. To the extent a response is required, Coleman denies the allegations of paragraphs 10 and 11.

Factual Allegations

10. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 12, 13 and 14 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

11. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 15 and subparagraphs 15a., b., c. and d. of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

12. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

13. Coleman denies the allegations contained in paragraph 26 of the Complaint.

14. Coleman denies the allegations contained in paragraph 27 of the Complaint.

15. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 28, 29, 30, 31 and 32 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

A. The Defaults and Misrepresentations

16. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 33, 34, 35, 36, 37, 38, 39 and 40 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

17. In response to the allegations contained in paragraph 41 of the Complaint, whether Borrowers are in default, is not a fact but a legal conclusion to which no response is required. To the extent a response is required, Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 41 and, as a result, denies each and every allegation therein contained.

18. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57,

58, 59 and 60 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

B. Bankruptcy Liquidation

19. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 61, 62, 63, 64, 65, 66 and 67 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

20. Coleman denies the allegations contained in paragraph 68 of the Complaint.

21. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraphs 69 and 70 of the Complaint as none of the allegations pertain to Coleman, and, as a result, Coleman denies each and every allegation therein contained.

COUNT I – BREACH OF GUARANTY

22. In response to paragraph 71 of the Complaint, Coleman reasserts and re-alleges all defenses stated herein to paragraphs 1 through 70.

23. Coleman denies the allegations contained in paragraph 72 of the Complaint.

24. Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 73 of the Complaint, and as a result, Coleman denies each and every allegation therein contained.

25. In response to the allegations contained in paragraph 74 of the Complaint, whether Borrowers are in default, is not fact but a legal conclusion to which no response is required. To the extent a response is required, Coleman is without sufficient knowledge and information to determine the truth or falsity of the allegations in paragraph 74, and, as a result, denies each and every allegation therein contained.

26. In response to the allegations contained in paragraph 75 of the Complaint, whether Coleman materially breached the Guaranty, is not a fact but a legal conclusion to which no response is required. To the extent a response is required, Coleman denies each and every allegation contained in paragraph 75 of the Complaint.

27. In response to the allegations contained in paragraph 76 of the Complaint, whether Coleman breached a contract, is not a fact but a legal conclusion to which no response is required. To the extent a response is required, Coleman denies each and every allegation contained in paragraph 76 of the Complaint.

28. Defendant denies the allegations contained in the unnumbered WHEREFORE paragraph in the Petition located after paragraph 76.

29. Coleman denies each and every allegation contained in the Complaint which is not expressly admitted herein.

AFFIRMATIVE DEFENSES

In further response to Plaintiff's Complaint, Coleman hereby asserts the following affirmative defenses, without conceding that he bears the burden of persuasion as to any of them. In so asserting these affirmative defenses, Coleman specifically reserves the right to assert other, additional defenses which may become known or available to him with respect to Plaintiff's claims through the course of discovery.

FIRST AFFIRMATIVE DEFENSE

30. Coleman demands proof that the Plaintiff possesses the original blue-ink loan documents. The Plaintiff has provided copies of the loan documents, including, the "Guaranty"

with the Complaint. If the Plaintiff cannot prove actual possession of the original Loan Documents, the Plaintiff cannot enforce the instruments and Coleman demands strict proof thereof in the form of presentment of the original Notes and loan documents for inspection by Coleman.

SECOND AFFIRMATIVE DEFENSE

31. Plaintiff did not present Coleman with any loan documents directly to execute after the spring of 2018. Plaintiff failed to notify Coleman of the incurrence of increasing and additional guaranteed debt after the spring of 2018. The failure to notify Coleman of the incurrence of increasing debt by the Borrowers through numerous modifications and amendments releases Coleman from any alleged obligations to Plaintiff.

THIRD AFFIRMATIVE DEFENSE

32. Plaintiff materially increased the scope-of-risk to Coleman with numerous modifications of the loan to Borrowers after the disputed execution of the Third Amended and Restated Guaranty Agreement (Exhibit H to the Complaint) and, therefore, any obligation of Coleman to Plaintiff is discharged.

FOURTH AFFIRMATIVE DEFENSE

33. Coleman is informed, believes and states that a portion of Plaintiff's alleged damages may be barred by the doctrine of waiver. Coleman intends to further base this affirmative defense on facts that he anticipates will come to light through the course of discovery.

FIFTH AFFIRMATIVE DEFENSE

34. Coleman denies execution of the Third Amended and Restated Guaranty Agreement (Exhibit H to the Complaint) as the signatures contained on the document are not like his other signatures.

SIXTH AFFIRMATIVE DEFENSE

35. Coleman's obligation to Plaintiff under any loan documents was revoked by Coleman in the spring of 2018 through direct communications with Plaintiff's representatives, and all debt incurred after the revocation is not covered by any guaranty. Coleman intends to further base this affirmative defense on facts that he anticipates will come to light through the course of discovery.

SEVENTH AFFIRMATIVE DEFENSE

36. The execution and delivery of the Loan Agreement in December of 2020, as defined in paragraph 12 of the Complaint, or any subsequent agreement or amendment between Plaintiff and Borrowers, was a new agreement between Borrowers and Plaintiff with those parties thereby effecting a novation and extinguishing Coleman's alleged obligation to Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

37. Plaintiff has failed to mitigate its damages. Plaintiff failed to exercise reasonable diligence to mitigate damages as it continued to recklessly provide Borrower with access to funds as the Borrowers spiraled towards bankruptcy. The extent of the damages, allegedly over \$38.5 million and growing after liquidation of most of its collateral, was caused by Plaintiff's own failure to monitor the business of the Borrowers as admitted by Plaintiff in paragraphs 33 through 59 of the Complaint. Coleman intends to further base this affirmative defense on facts that he anticipates will come to light through the course of discovery.

NINTH AFFIRMATIVE DEFENSE

38. The Plaintiff has failed to provide consideration to Coleman for the Guaranty. The Guaranty was not executed at the same time as any of the Loan Agreement, the Loans, the Amendments, the Revolving Note or the Term Note. Coleman has been provided nothing of value under

the Guaranty by the Plaintiff, nor at the time of any subsequent purported executions of loan documents.

TENTH AFFIRMATIVE DEFENSE

39. Plaintiff has not established with any degree of accuracy the true and actual amount owed and Coleman demands strict proof thereof. Absent accurate and verifiable proof of amounts due, Plaintiff cannot bring this action seeking an amount of \$38,514,005.81, together with all accruing interest and costs, including, without limitation, default interest, prepayment premiums, attorneys' fees and all expenses incurred by Plaintiff in collecting the obligations.

ELEVENTH AFFIRMATIVE DEFENSE

40. Plaintiff has not provided sufficient evidence of default, acceleration and amounts owed. Coleman disputes amounts Plaintiff alleges is owed.

TWELFTH AFFIRMATIVE DEFENSE

41. Plaintiff has failed to state a claim upon which relief may be granted.

THIRTEENTH AFFIRMATIVE DEFENSE

42. Coleman reserves any rights he may have to assert or maintain any affirmative defenses identified in discovery or otherwise permitted by law.

WHEREFORE, having fully answered, Coleman requests judgment be entered in his favor and against Plaintiff, that Plaintiff be denied any relief herein, that the costs and expenses of this action be taxed against Plaintiff, and for such other and further relief as the Court deems just and proper under the circumstances.

McDOWELL, RICE, SMITH & BUCHANAN,
a Professional Corporation

By: /s/ Robert D. Maher

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was sent via the Court's electronic filing system, e-mail and United States Mail, postage prepaid, this 20th day of January, 2023.

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