

CAUSE NO. DC-16-16418

FINANCE OF AMERICA REVERSE, LLC,	§	IN THE DISTRICT COURT
<i>Plaintiff/Counter-Defendant,</i>	§	
	§	
	§	
v.	§	OF DALLAS COUNTY, TEXAS
	§	
CELIA A. HOPKEN,	§	
<i>Defendant/Counter-Plaintiff.</i>	§	162 ND JUDICIAL DISTRICT

FINAL JUDGMENT

1. On October 17, 2018, this case was called for trial. Plaintiff and Counter-Defendant Finance of America Reverse, LLC (“Finance of America”), appeared through its representative and through its attorney and announced ready for trial. Defendant and Counter-Plaintiff, Celia A. Hopken (“Hopken”), appeared in person and through her attorney and announced ready for trial.

2. A jury was impaneled and sworn, and the jury then heard the evidence and arguments of counsel. After Finance of America rested its case-in-chief, Hopken moved for a directed verdict as to Finance of America’s affirmative claims. After considering the motion, the evidence which had been admitted up to that point in the trial, and the arguments of counsel, the Court granted Hopken’s motion for directed verdict and dismissed Finance of America’s affirmative claims. Thereafter, Hopken presented her case-in-chief and then rested. The Court then submitted its charge to the jury. In response to the jury charge, the jury made findings that the Court received, filed, and entered of record. The questions submitted to the jury and the jury’s findings are attached hereto as **Exhibit A** and is incorporated herein by reference.

3. The Parties agreed to try the issue of attorney’s fees to the Court by affidavit. On December 4, 2018, Hopken filed her amended motion for attorney’s fees (the “Motion”). On December 7, 2018, Finance of America filed its response to Hopken’s Motion. On December 12,

2018, the Court heard the Motion. After considering Hopken's Motion, Finance of America's response, the affidavits and other evidence on file, the contents of the Court's file including the jury's verdict, and the arguments of counsel, the Court found that Hopken was entitled to an award of attorney's fees pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code, section 392.403(b) of the Texas Finance Code, and Section 17.50(d) of the Texas Business & Commerce Code and therefore granted the Motion and signed an order awarding Hopken her reasonable and necessary attorney's fees as well as conditional appellate fees. A true and correct copy of this order is attached hereto as **Exhibit B** and is incorporated herein by reference.

4. Hopken then filed a motion for judgment on the verdict.
5. The Court hereby RENDERS judgment for Hopken.
6. Therefore, the Court ORDERS that Finance of America take nothing by its suit.
7. The Court further ORDERS that Hopken recover from Finance of America:
 - a. Damages in the sum of \$31,800;
 - b. Prejudgment interest on the damages awarded above at the rate of 5.25% for the time period beginning on March 2, 2018, the first day Hopken asserted affirmative claims in the above-captioned case, and ending on the day preceding the date that this judgment is signed;
 - c. Exemplary damages in the sum of \$200,000;
 - d. Attorney's fees in the amount of \$59,497.08. If Finance of America appeals this judgment, then Hopken shall recover her appellate attorney's fees from Finance of America as follows:
 - i. If Finance of America were to unsuccessfully appeal this case to the Court of Appeals, then Hopken shall recover from Finance of

America \$15,000 for her reasonable and necessary attorney's fees in connection to the appeal;

ii. If Hopken prevails on an appeal to the Texas Supreme Court (regardless of which party filed the petition for review) then Hopken shall recover from Finance of America \$10,000 for her reasonable and necessary attorney's fees in connection to her filing or responding to a petition for review, \$10,000 in reasonable and necessary attorney's fees in connection to preparing and filing briefing on the merits, and \$5,000 in reasonable and necessary attorney's fees if this case is selected for oral argument; and

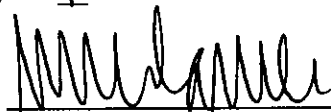
e. Post-judgment interest on the total sum of the damages, exemplary damages, attorney's fees, and court-costs awarded herein compounded annually at the annual rate of 5.25%.

8. All relief not expressly granted herein is denied.

9. This judgment finally disposes of all claims and all parties and is appealable.

10. The Court orders execution to issue for this judgment.

SIGNED on January 4, 2019.

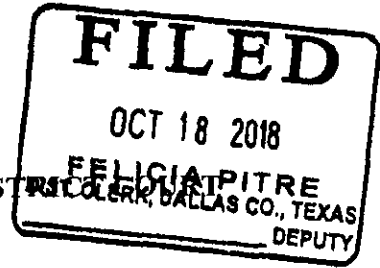


Judge Maricela Moore



ORIGINAL

CAUSE NO. DC-16-16418



**FINANCE OF AMERICA
REVERSE MORTGAGE, LLC,**

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IN THE DISTRICT CLERK, DALLAS CO., TEXAS

VS.

162nd JUDICIAL DISTRICT

CELIA A. HOPKEN.

DALLAS COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. In discharging your responsibility on this jury, you will observe all the instructions that have previously been given you. I shall now give you additional instructions that you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. Base your answers only on what was presented in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not presented in the Courtroom, or admitted into evidence by me.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony.
4. All the questions and answers are important. No one should say that any question or answer is not important.
5. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer again must be based on a preponderance of the evidence.
6. Do not decide whom you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
7. Do not answer questions by any method of chance.
8. One question asks you for a dollar amount. Do not agree in advance to



decide on a dollar amount by adding up each juror's amount and then figuring the average.

9. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

10. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Therefore, you may not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

11. "PREPONDERANCE OF THE EVIDENCE" means the greater weight of credible evidence admitted in this case. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

12. "DIRECT AND CIRCUMSTANTIAL EVIDENCE" A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by witnesses who saw the act done or heard the words spoken or by documentary evidence. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

13. Certain presentations are illustrations prepared by a party to describe something involved in this trial. If your recollection of the evidence differs from the exhibit, rely on your recollection.

14. Any notes you have taken are for your personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes. You must leave your notes with the Bailiff when you are not deliberating. The Bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the Bailiff will collect your notes. When you are released from jury duty, the Bailiff will promptly destroy your notes so that nobody can read what you wrote.

15. "Deed of Trust" means the Fixed Rate Home Equity Conversion Deed of Trust dated December 22, 2011, executed by Celia A. Hopken, including any riders attached thereto.

16. "Note" means the Fixed Rate Note Closed End (Home Equity Conversion) dated December 22, 2011, signed by Celia A. Hopken.

17. "Loan" means the loan represented by the Note (as defined above).
18. "Defendant" or "Hopken" means Celia A. Hopken.
19. "Plaintiff" or "Finance of America" means either Finance of America LLC, or anyone acting on its behalf.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

QUESTION NO. 1

Did Finance of America violate the Texas Debt Collection Act by attempting to collect a consumer debt from Hopken while using any of the following wrongful acts?

“Consumer debt” means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.

Answer “Yes” or “No” for each alleged wrongful act.

- (a) Employing a fraudulent, deceptive, or misleading representation.

As used above, “fraudulent, deceptive, or misleading representation” means (a) misleading the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt’s status in a judicial or governmental proceeding; or (b) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

Answer: YES

- (b) Employing unfair or unconscionable means.

As used above, “unfair or unconscionable means” means collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer.

Answer: YES

- (c) Using threats, coercion, or attempts to coerce.

As used above, “threats, coercion, or attempts to coerce” means threatening to take an action prohibited by law.

Answer: YES

If you answered "Yes" to any part of Question No. 1, then answer the following question. Otherwise, do not answer the following question.

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QUESTION NO. 2

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Hopken for her damages, if any, that resulted from such conduct? DEPUTY

Consider the following elements of damages, if any, and none other:

- The amount wrongfully charged to the Hopken's mortgage account in the past, if any.
- Lost time. The reasonable value of the time spent by Hopken correcting or attempting to correct the problems caused by Finance of America's conduct.
- Mental anguish.

Answer separately in dollars and cents for damages, if any.

1. The amount wrongfully charged to the Plaintiff's mortgage account in the past, if any.

Answer: \$17,800.00

2. Lost time damages sustained in the past.

Answer: \$4,000.00

3. Mental anguish that Hopken sustained in the past.

Answer: \$10,000.00

4. Hopken's mental anguish that, in reasonable probability, she will sustain in the future.

Answer: \$0.00

If you answered "Yes" to any part of Question No. 1, then answer the following question. Otherwise, do not answer the following question.

QUESTION NO. 3

Did Finance of America engage in any such conduct either knowingly or intentionally?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception. Specific intent may be inferred where objective manifestations indicates that a person acted intentionally.

Answer "Yes" or "No."

Answer: YES

If you answered "Yes" to Question 3, then answer the following question. Otherwise, do not answer the following question.

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QUESTION NO. 4

CLERK OF DISTRICT COURT
DALLAS COUNTY, TEXAS
DEPUTY

What sum of money, if any, in addition to actual damages, should be awarded to Hopken against Finance of America because Finance of America's conduct was committed either knowingly or intentionally, or both?

Answer in dollars and cents:

Answer: \$ 10,000.00

Answer the following question only if you unanimously answered "Yes" to Question No. 1. Otherwise, do not answer the following question.

To answer "Yes" to the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer the following question.

QUESTION NO. 5

Do you find by clear and convincing evidence that the harm to Hopken resulted from either malice, gross negligence, or fraud on the part of Finance of America?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Malice" means a specific intent by the defendant to cause substantial injury or harm to the claimant.

"Gross negligence" means an act or omission: (a) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and (b) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

"Fraud" occurs when—

1. a party makes a material misrepresentation, and
2. the misrepresentation is made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation is made with the intention that it should be acted on by the other party, and
4. the other party relies on the misrepresentation and thereby suffers injury.

Answer "Yes" or "No."

Answer: YES

Answer the following question only if you unanimously answered "Yes" to Question No. 5. Otherwise, do not answer the following question.

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DALLAS CO., TEXAS
DEPUTY

You must unanimously agree on the amount of any award of exemplary damages.

QUESTION NO. 6

What sum of money, if any, if paid now in cash, should be assessed against Finance of America and awarded to Hopken as exemplary damages, if any, for Finance of America's conduct found in response to Question No. 5?

"Exemplary damages" means an amount that you may in your discretion award as a penalty or by way of punishment.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of Finance of America.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of Finance of America.

Answer in dollars and cents, if any:

Answer: \$500,000.00

When you go into the jury room to answer the questions, the first thing you will need to do is choose a Presiding Juror.

The Presiding Juror has these duties:

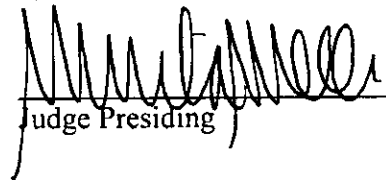
- a. Have the complete charge read aloud if it will be helpful to your deliberations.
- b. Preside over your deliberations. This means the Presiding Juror will manage the discussions, and see that you follow these instructions.
- c. Give written questions or comments to the Bailiff who will give them to me.
- d. Write down the answers you agree on.
- e. Get the signatures for the verdict certificate.
- f. Notify the Bailiff that you have reached a verdict.

Do you understand the duties of the Presiding Juror? If you do not, please tell me now.

If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the Presiding Juror signs the verdict.

All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.


Judge Presiding

Verdict Certificate

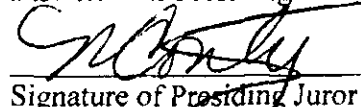
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Our verdict is unanimous. All twelve of us have agreed to each and every answer. The Presiding Juror has signed the certificate for all twelve of us.

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DEPUTY


Signature of Presiding Juror

NOEHA COUNTRY
Printed Name of Presiding Juror

Our verdict is not unanimous. Either eleven or ten of us have agreed to each and every answer and have signed the certificate below.

SIGNATURE

NAME PRINTED

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____

Additional Verdict Certificate

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If you answered "yes" unanimously to any part of Question No. 1, then you must sign this certificate also.

I certify that the Jury was unanimous in answering "yes" to any part of Question No. 1. All twelve of us agreed to the answer. The Presiding Juror has signed this Additional Verdict Certificate for all twelve of us.

[Handwritten Signature]
Signature of Presiding Juror

NOEHA COURT
Printed Name of Presiding Juror

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DALLAS COUNTY, TEXAS
DEPUTY

Additional Verdict Certificate

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If you answered "yes" unanimously to Question No. 5, the jury must sign this certificate also.

I certify that the Jury was unanimous in answering "yes" to ~~Question No. 5~~ ~~to~~ ~~twelve of us~~ ~~agreed to the answer.~~ The Presiding Juror has signed this Additional Verdict Certificate for all twelve of us.

noeha
Signature of Presiding Juror

NOEHA COUNTRY
Printed Name of Presiding Juror

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DISTRICT CLERK
DALLAS COUNTY TEXAS

CAUSE NO. DC-16-16418

FINANCE OF AMERICA REVERSE, LLC, §

Plaintiff,

v.

CELIA A. HOPKEN,

Defendant.

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IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

162ND JUDICIAL DISTRICT

ORDER ON DEFENDANT’S MOTION FOR ATTORNEY’S FEES

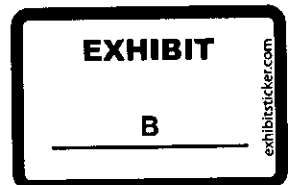
During the trial of the above captioned lawsuit, the parties announced on the record that they had agreed to try the issue of attorney’s fees to the Court by affidavit.

On December 4, 2018, Defendant Celie A. Hopken (“Defendant”) filed her amended motion for attorney’s fees (the “Motion”). On December 7, 2018, Plaintiff Finance of America Reverse, LLC (“Plaintiff”) filed its response to Defendant’s Motion (the “Response”). On December 12, 2018, the Court heard the Motion.

At the hearing, the Court took judicial notice of its file. After considering Plaintiff’s Motion, the Response, the affidavits and other evidence on file, the contents of the Court’s file including the jury’s verdict, and the arguments of counsel, the Court hereby GRANTS the Motion.

The Court FINDS that Plaintiff is entitled to recover her attorney’s fees pursuant to Section 37.009 of the Texas Civil Practice & Remedies Code, Section 392.403(b) of the Texas Finance Code, and Section 17.50(d) of the Texas Business & Commerce Code.

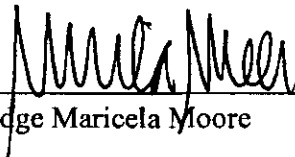
The Court therefore ORDERS that Plaintiff shall pay Defendant the sum of \$ 59,497.08 for her reasonable and necessary attorney’s fees.



The Court further ORDERS that if Plaintiff unsuccessfully appeals this case to the Court of Appeals, then Plaintiff shall pay to Defendant the sum of \$ 15,000.00 for her reasonable and necessary attorney's fees in connection to the appeal.

The Court further ORDERS that if Defendant prevails on an appeal to the Texas Supreme Court (regardless of which party filed the petition for review) then Plaintiff shall pay Defendant the sum of \$ 10,000.00 for her reasonable and necessary attorney's fees in connection to the filing or responding to a petition for review, \$ 10,000.00 in reasonable and necessary attorney's fees in connection to preparing and filing briefing on the merits, and \$ 5,000.00 in reasonable and necessary attorney's fees if the case is selected for oral argument.

SIGNED on December 12, 2018.



Judge Maricela Moore