

**ATTENTION SERVICE MEMBERS: ASSERT AND PROTECT YOUR RIGHTS AS A MEMBER OF THE ARMED FORCES OF THE UNITED STATES. IF YOU ARE OR YOUR SPOUSE IS SERVING IN ACTIVE MILITARY DUTY, INCLUDING ACTIVE MILITARY DUTY AS A MEMBER OF THE TEXAS NATIONAL GUARD OR THE NATIONAL GUARD OF ANOTHER STATE OR A MEMBER OF A RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES, PLEASE SEND WRITTEN NOTICE OF THE ACTIVE DUTY MILITARY SERVICE TO THE SENDER OF THIS NOTICE IMMEDIATELY.**

**NOTICE OF SUBSTITUTE TRUSTEE'S SALE**

**WHEREAS, MICHAEL PUENTE, A SINGLE PERSON** delivered that one certain Deed of Trust dated JULY 27, 2018, which is recorded in INSTRUMENT NO. 2018045461 of the real property records of GALVESTON County, Texas, conveying to the Trustee(s) therein named the real property therein described, to secure the payment of a Promissory Note in the principal amount of \$180,405.00 payable to the order of GATEWAY MORTGAGE GROUP, LLC, to which reference is hereby made for a description of the Promissory Note, the terms and covenants of the Deed of Trust, and the property therein conveyed; and

**WHEREAS, default, as same is defined in the Promissory Note and/or the Deed of Trust, has occurred** and the outstanding indebtedness on same is now wholly due; and

**WHEREAS, the undersigned has been appointed Substitute Trustee in place of the original Trustee, upon the contingency and the manner authorized by the Deed of Trust; and**

**WHEREAS, GATEWAY MORTGAGE, A DIVISION OF GATEWAY FIRST BANK, the Mortgagee, or the Mortgage Servicer, has instructed a Substitute Trustee(s) to sell real property described in the Deed of Trust in order to satisfy the indebtedness secured thereby.**

**NOTICE IS HEREBY GIVEN** that on APRIL 2, 2024, beginning at 10:00 AM, or not later than three (3) hours after that time, a Substitute Trustee(s) will sell, to the highest bidder submitting cashier's check, certified check or money order, the following described real property:

LOT TWENTY-ONE (21), IN BLOCK TWO (2), OF RAINSONG, SECTION TWO (2), AN ADDITION IN GALVESTON COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT RECORD 2005A, PAGE 128 IN THE OFFICE OF THE COUNTY CLERK OF GALVESTON COUNTY, TEXAS.

The sale will occur at that area designated by the Commissioners Court of GALVESTON County, Texas, for such sales (OR AT OUTSIDE THE WEST ENTRANCE TO THE LOBBY OF THE GALVESTON COUNTY COURTHOUSE, 722 MOODY (21ST STREET) ).

**NOTICE IS FURTHER GIVEN** that the address of GATEWAY MORTGAGE, the Mortgagee or Mortgage Servicer, is P.O. BOX 1560, JENKS, OK 74037. Pursuant to the Texas Property Code, the Mortgagee or Mortgage Servicer is authorized to administer a foreclosure sale. The name and address of a substitute trustee is Michael J. Schroeder, 3610 North Josey Lane, Suite 206, Carrollton, Texas 75007. A Substitute Trustee is authorized by the Texas Property Code to set reasonable conditions for the foreclosure sale. If the sale is set aside, the Purchaser will be entitled only to a return of the purchase price, less any applicable fees and costs, and shall have no other recourse against the mortgagor, the mortgagee, or the substitute trustee.

Dated: MARCH 11, 2024.



SUBSTITUTE TRUSTEE(S)  
MICHAEL J. SCHROEDER OR STEVE LEVA OR  
SANDY DASIGENIS OR JEFF LEVA OR PATRICIA  
POSTON

FILE NO.: GMG-2778  
PROPERTY: 3301 CLOVER HILL LN  
TEXAS CITY, TEXAS 77591

MICHAEL PUENTE

NOTICE SENT BY:  
MICHAEL J. SCHROEDER  
3610 NORTH JOSEY LANE, SUITE 206  
CARROLLTON, TEXAS 75007  
Tele: (972) 394-3086  
Fax: (972) 394-1263

United States District Court  
Southern District of Texas

**ENTERED**

February 06, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

MICHAEL PUENTE,

Plaintiff,

VS.

GATEWAY MORTGAGE,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

3:23-cv-376

United States District Court  
Southern District of Texas  
February 06, 2024  
Nathan Ochsner, Clerk

**ORDER**

Before the court is Gateway Mortgage's motion to dismiss all the claims that Michael Puente asserts against it. Dkt. 6. Puente has not responded to the motion, which Gateway filed on November 27, 2023. The court will grant the motion.

As Gateway explains:

[Puente] asserts causes of action for alleged violations of Chapter 51 of the Texas Property Code and breach of the Deed of Trust. The Petition also makes vague and conclusory references to negligence, alleged violations of the Real Estate Settlement Procedures Act ("RESPA"), and alleged violations of unspecified federal regulations promulgated by the United States Department of Housing and Urban Development ("HUD").

*Id.* at 2; see Dkt. 1-3 at 6-14 All five of Puente's claims against Gateway fail for the following reasons.

Puente's Chapter 51 claim fails, among other reasons, because "[s]ection 51.002 of the Texas Property Code . . . does not provide [Puente] with a private right of action." *Carey v. Fargo*, No. CV H-15-1666, 2016 WL 4246997, at \*3 (S.D. Tex. Aug. 11, 2016); see Dkt. 6 at 7-8.

Puente's breach-of-contract claim fails, among other reasons, because he "does not allege he paid Gateway all sums due and owing under the Deed of Trust, or that he cured the default under the Note." See Dkt. 6 at 8-14.

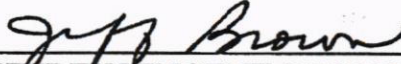
Puente's apparent claim for violation of HUD regulations fails because "HUD regulations do not give the borrower a private cause of action unless the regulations are expressly incorporated into the lender-borrower agreement," *Johnson v. World All. Fin. Corp.*, 830 F.3d 192, 196 (5th Cir. 2016), and Puente does "not cite to any section of the Deed of Trust incorporating HUD regulations," Dkt. 6 at 14.

Puente's apparent RESPA claim fails because it "is conclusory and not plausible on its face." See *id.* at 14-16.

Finally, Puente's apparent negligence claim fails, among other reasons, because "mere nonfeasance under a contract creates liability only for breach of contract." *Crawford v. Ace Sign, Inc.*, 917 S.W.2d 12, 13 (Tex. 1996); see Dkt. 6 at 16-18.

For the reasons stated above, the court grants Gateway's motion to dismiss. Dkt. 6.

Signed on Galveston Island this 6th day of February, 2024.

  
\_\_\_\_\_  
JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE

**FILED**

Instrument Number: FILED2024000317

Filing Fee: 2.00

Number Of Pages:5

Filing Date: 03/11/2024 11:27AM

I hereby certify that this instrument was FILED on the date and time stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Galveston County, Texas.



*Dwight D. Sullivan*

**Dwight D. Sullivan, County Clerk**  
Galveston County, Texas

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the clerk.

**DO NOT DESTROY** - *Warning, this document is part of the Official Public Record.*