

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

MAY 31 2006

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

MICHAEL N. MILBY, CLERK OF COURT

AMERICAN HOME MORTGAGE
ACCEPTANCE, INC., a Maryland
Corporation,

Plaintiff,

v.

ALLTEX LENDING SERVICES, LLC,
a Texas limited liability company,
MY HOUSE MORTGAGE, LLC,
a Texas limited liability company, and
DIANE BELL

Defendants.

H - 06 - 1851
CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT AND
JURY DEMAND

Plaintiff, American Home Mortgage Acceptance, Inc., files its Original Complaint against Alltex Lending Services, LLC, My House Mortgage, LLC, and Diane Bell and in support respectfully shows as follows:

Parties, Jurisdiction, and Venue

1. Plaintiff American Home Mortgage Acceptance, Inc. ("American Home") is a Maryland Corporation with its principal place of business in Melville, New York. American Home is engaged in the business of mortgage lending and transacts business in Texas and within this Judicial District.

2. Defendant Alltex Lending Services, LLC ("Alltex") is a Texas limited liability company with its principal place of business in Houston, Texas. On information and belief, all of the principals of Alltex are citizens of Texas. Under the trade name Alltex Realty Services, Alltex is engaged in the business of appraising residential properties, including properties located in Harris

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County, Texas. It may be served with summons and citation through its registered agent for service, Thomas G. Sumner, at 9610 Long Point, Suite 150, Houston, Texas 77055.

3. Defendant My House Mortgage, LLC (“My House”) is a Texas limited liability company with its principal place of business in Houston, Texas. On information and belief, all of the principals of My House are citizens of Texas. My House is engaged in the business of providing residential mortgage services for customers in Harris County, Texas. It may be served with summons and citation through its registered agent for service, Guillermo Rodriguez, at 11999 Katy Freeway, No. 300, Houston, Texas 77079.

4. Defendant Diane Bell (“Bell”) is an individual who is a citizen of the State of Texas. In or about October 2003, Bell was an employee or independent contractor of Alltex who performed appraisals of residential properties located in Harris County, Texas. She may be served with summons and citation at 14622 Kellywood Lane, Houston, Texas 77079.

5. This Court has subject matter jurisdiction over this civil action pursuant to 28 U.S.C. §1332(a)(1), as the parties are of diverse citizenship and the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2), as a substantial part of the events or omissions giving rise to this claim occurred in this Judicial District, and the property that is the subject matter of this action is situated in this Judicial District.

Count I
(Negligence -- Alltex and Bell)

7. In July 2004, American Home made a loan to Lena Patty (“Patty”) in the principal amount of \$380,000. The loan was secured by a mortgage on a residential property owned by Patty commonly known as 5150 Hidalgo Street, Unit 1902, Houston, Harris County, Texas (the “Property”). The Property is located within this Judicial District.

8. On or about December 16, 2003 Alltex issued an appraisal of the Property's value as of October 21, 2003 (the "Appraisal"). A true and correct copy of the Appraisal is attached as **Exhibit A**.

9. Bell signed the Appraisal as the primary "appraiser."

10. The Appraisal estimated the market value of the Property at \$441,000.

11. American Home was provided and reviewed the Appraisal in connection with its decision of whether to make the mortgage loan to Patty.

12. American Home relied upon the Appraisal in connection with its decision to make the mortgage loan to Patty. Specifically, American Home relied upon the Appraisal's conclusion that the estimated market value of the Property was \$441,000 in making its determination that the mortgage on the Property would constitute sufficient security for Patty's debt in the event of a default on her \$380,000 loan.

13. Alltex and Bell each knew that potential lenders such as American Home would review and rely upon the Appraisal in connection with the making of a loan secured by the Property.

14. Alltex and Bell each owed American Home a duty to perform the Appraisal in a manner consistent with the standard of care possessed by reasonably prudent appraisers within the State of Texas.

15. The Appraisal did not accurately reflect the value of the Property, and it grossly over-estimated that value.

16. Alltex and Bell each breached the applicable standard of care and were negligent in their performance of the Appraisal in one or more of the following respects:

- (a) Basing its valuation of the Property on inappropriate "comparable" properties, and failing to account for appropriate "comparable" properties in its valuation;

- (b) Making inappropriate adjustments to the value of comparable properties; and
- (c) Inaccurately describing and inflating the sales price of a comparable property in the same building as the Property.

17. American Home would not have made a loan in the amount of \$380,000 to Patty if Alltex or Bell had accurately appraised the fair market value of the Property.

18. Patty has defaulted on her loan from American Home. At the time of the default, the unpaid balance on her loan was in excess of \$380,000. That amount exceeds the fair market value of the Property.

19. As a direct and proximate result of the above alleged negligent acts of Alltex and Bell, American Home has suffered damages in the approximate amount of \$166,612.26.

20. The nature of the actions of Alltex and Bell were inherently undiscoverable. Because American Home did not know of the misinformation provided concerning the appraisal and, with the exercise of reasonable diligence, could not know until the property was foreclosed, the discovery rule should apply to this matter.

WHEREFORE, Plaintiff American Home Mortgage Acceptance, Inc. requests that the Court enter judgment in its favor and against Defendants Alltex Lending Services, LLC and Diane Bell, jointly and severally, in an amount to be established by the evidence at trial, award Plaintiff its costs of suit, and grant Plaintiff such other and further relief as the Court deems just.

Count II
(Breach of Contract - My House)

21. American Home incorporates paragraphs 7-12, 15, 17, and 18 of Count I as paragraph 21 of Count II.

22. My House acted as the broker on American Home's loan to Patty, and it received a fee for its services from the proceeds of the loan to Patty.

23. In or about June 2004, My House submitted to American Home a loan application package for Patty. The loan application package included the Appraisal.

24. American Home and My House are parties to a written contract made and entered into as of June 29, 2004 (the "Brokerage Agreement"). A true and correct copy of the Brokerage Agreement is attached as **Exhibit B**.

25. My House represented and warranted to American Home that the Appraisal was accurate and correct. In that regard, paragraph 9 of the Brokerage Agreement provides in relevant part that:

Mortgage Broker represents, warrants and covenants to HLB that in connection with each Application Package as of the date it submits the Application Package to HLB and as of the date that the Mortgage Loan is closed:

- a. All signatures, names, addresses, amounts, credit information, property appraisal, and other statements of fact contained in and associated with the Application Package are complete, accurate, true, correct and genuine, in all material respects.

26. My House agreed to indemnify American Home from all losses suffered as a result of its submission of inaccurate information contained within appraisals. In that regard, paragraph 11 of the Brokerage Agreement provides in relevant part that:

Mortgage Broker acknowledges that HLB shall have relied upon the representations and warranties expressed in this Agreement in connection with Application Packages, Mortgage Loans, and the relationship and transactions provided for under this Agreement.

Therefore, Mortgage Broker agrees to indemnify, defend, and hold HLB harmless from all loss, damage, cost, or expense resulting from failure of Mortgage Broker, its directors, officers, agents, or employees to comply with the warranties, representations, and covenants of Mortgage Broker in this Agreement, the inaccuracy of any warranties or representations of Mortgage Broker in this Agreement . . . For purposes of Mortgage Broker's indemnify obligations, costs and expenses shall include but not be limited to attorney's fees incurred by HLB, court costs, and judgments.

27. My House breached its warranty to American Home by submitting to it the inaccurate Appraisal.

28. As a result of My House's breach of its obligations under the Brokerage Agreement, American Home has suffered damages in the approximate amount of \$166,612.26.

29. As a proximate and producing result of My House's breach of contract, American Home has incurred and continues to incur reasonable and necessary attorneys' fees. In accordance with the express terms of the contract and pursuant to TEX. CIV. PRAC. & REM. CODE §38.001, *et seq.*, American Home is entitled to recovery of its reasonable and necessary attorneys fees.

30. All conditions precedent to the bringing of this lawsuit have been met or performed.

31. Plaintiff hereby demands a trial by jury.

WHEREFORE, Plaintiff American Home Mortgage Acceptance, Inc. requests that the Court enter judgment in its favor and against Defendant My House Mortgage, LLC in an amount to be established by the evidence at trial, award Plaintiff its attorneys' fees and costs of suit, and grant Plaintiff such other and further relief as the Court deems just.

Respectfully submitted,

By:  _____

Dale M. "Rett" Holiday,
Attorney in Charge
State Bar No. 00792937
Federal Bar No. 21382
GERMER GERTZ, L.L.P.
333 Clay Street, Suite 4950
Houston, Texas 77002
(713) 650-1313 - Telephone
(713) 739-7420 - Facsimile

**ATTORNEYS FOR AMERICAN HOME
MORTGAGE ACCEPTANCE, INC.**

Of Counsel:

Michael D. Hayes
Harold B. Hilborn
VARGA BERGER LEDSKY HAYES & CASEY
A Professional Corporation
224 South Michigan Avenue
Suite 350
Chicago, Illinois 60604
(312) 341-9400
(312) 341-2900 (facsimile)