

2 CIT ESERVE

DC-22-08919

CAUSE NO. _____

JAMES EDWARD FROST,
Plaintiff,

v.

**JAMES EDWARD FROST, II and BETH
ELLEN FROST,**
Defendants.

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IN THE DISTRICT COURT

191st

____ **JUDICIAL DISTRICT**

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, JAMES EDWARD FROST, (hereinafter referred to as “JAMES”), Plaintiff, files this his Original Petition complaining of JAMES EDWARD FROST, II and BETH ELLEN FROST, (collectively hereinafter referred to as “THE FROSTS”), Defendants, and would respectfully show the Court as follows:

I.

DISCOVERY CONTROL PLAN

1. In accordance with TEXAS RULE OF CIVIL PROCEDURE 190.2 the Plaintiff designates this case as a level 2 case.

II.

MONETARY RELIEF DESIGNATION

2. In accordance with Tex. R. Civ. P 47(c)(2), the Plaintiff hereby give notice that it seeks monetary relief of over \$250,000 but not more than \$1,000,000, including damages of any kind, penalties, costs, expenses pre-judgment interest, and attorney's fees and all such

other and further relief to which Plaintiffs may show themselves to be justly entitled. The Plaintiffs further seek injunctive relief.

III.

PARTIES.

3. Plaintiff JAMES EDWARD FROST is an individual residing in Platte County, Missouri.
4. Defendant JAMES EDWARD FROST, II, is an individual who may be served with process at 6928 Lloyd Valley Lane, Dallas, Texas 75230 or wherever he may be found.
5. Defendant is BETH ELLEN FROST, is an individual who may be served with process at 6928 Lloyd Valley Lane, Dallas, Texas 75230 or wherever she may be found

IV.

JURISDICTION AND VENUE

6. The Court has jurisdiction over Defendants because the amount in controversy falls within jurisdictional limits of this Court.
7. Venue is proper in this Court because Defendants reside in Dallas County, Texas and Defendants are both natural persons.
8. Venue is therefore proper in Dallas County pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 15.002.

V.

FACTUAL BACKGROUND

9. Defendants THE FROSTS entered into multiple loans with Plaintiff JAMES.
10. In 2006 Plaintiff JAMES loaned Defendants \$140,925.00 to purchase a home in Marceline, MO.

11. In 2010 Plaintiff JAMES loaned Defendants \$120,147.00 to purchase another home in Marceline, MO.
12. On or about December 1, 2010, Plaintiff JAMES loaned Defendants \$33,267.00 to cover medical expenses.
13. Plaintiff JAMES loaned Defendants an additional \$9,530.00 for living expenses.
14. The total amount of loans made by Plaintiff JAMES to Defendants is \$303,869.00.
15. Defendants have made multiple payments spanning from 2010 through 2021 to repay portions of the loans. The payments total \$74,952.49.
16. The total amount owed after all just and lawful offsets, payments, and credits is \$228,916.51 exclusive of interest.

VI.

BREACH OF LOAN CONTRACTS

17. Plaintiff entered into a series of loan contracts (hereinafter “Loans”) with Defendants whereby Plaintiff agreed to provide Defendants with money to purchase property, pay medical and living expenses. Pursuant to the Loans, Plaintiff expected Defendants to repay the amounts owed.

18. A true and correct copy of all transactions related to the Loans is incorporated below:

2006	House Purchase, Marceline MO Loan	\$140,925.00
2010	House Purchase, Marceline MO Loan	\$120,147.00
12/1/2010	Medical Expenses Loan	\$33,267.00
	Payment	(\$5,021.39)
	Payment	(\$9,931.10)
6/1/2012	Payment	(\$40,000.00)
12/15/2012	Payment	(\$4,500.00)
1/15/2013	Payment	(\$4,500.00)
	Living Expense Loan	\$9,530.00
4/14/2019	Payment	(\$1,400.00)
6/17/2020	Payment	(\$4,600.00)
10/2/2020	Payment	(\$2,000.00)
2/24/2021	Payment	(\$3,000.00)
		\$228,916.51

19. As of the filing of this suit, the sum of two hundred twenty eight thousand nine hundred sixteen dollars and fifty-one cents (\$228,916.51) exclusive of interest, is due and owing from Defendants to Plaintiff. Defendants' failure to pay constitutes a breach of contract. Therefore, Plaintiff claims the sum of two hundred twenty eight thousand nine hundred sixteen dollars and fifty-one cents (\$228,916.51) as damages incurred by reason of Defendants' breach of contract, plus interest at the rate of 6.00% per annum pursuant to TEXAS FINANCE CODE §302.002).

VII.

UNJUST ENRICHMENT

20. Plaintiff incorporates sections I-VI above as if fully rewritten herein.

21. Pleading in the alternative, Plaintiff provided loans of \$303,869.00 to Defendants.

Defendants accepted the Loans, and had reasonable notice that Plaintiff expected to be compensated for the full amount of the Loans. Defendants were fully aware that Plaintiff expected to be repaid for the Loans, yet Defendants have not fully paid Plaintiff for the Loans. To date, Defendants have paid \$74,952.49 towards the balance owed from the

Loans. Therefore, Defendants received a benefit and failed to fully compensate Plaintiff. Plaintiff is therefore entitled to recover his actual damages of two hundred twenty-eight thousand nine hundred sixteen dollars and fifty-one cents (\$228,916.51) plus interest, including pre-judgment and post-judgment interest, court costs and reasonable attorney's fees.

VIII.

PROMISSORY ESTOPPEL

22. Plaintiff incorporates sections I-VII above as if fully rewritten herein
23. Pleading in the alternative, Defendants made a promise to Plaintiff to repay the money loaned when Defendants entered into the loan agreements with Plaintiff. Plaintiff reasonably and substantially relied on the promise of Defendants to Plaintiff's detriment. Because of the size and nature of the loan transactions, Plaintiff's reliance was foreseeable by Defendants.
24. Injustice toward Plaintiff can only be avoided by enforcing the promises of Defendants.

IX.

ATTORNEY'S FEES

25. Plaintiff has demanded payment from Defendants for the amount owed Plaintiff by Defendants. Because of Defendants' refusal to pay the amount due and owing to Plaintiff, it has become necessary for Plaintiff to place his claim in the hands of the undersigned attorney for collection, and Plaintiff has agreed to pay said attorney a reasonable attorney's fee. Therefore, upon judgment being entered herein, Plaintiff is entitled to collect and hereby sues to recover its reasonable attorney's fees pursuant to TEX. CIV. PRAC. & REM. CODE. § 38.001 at the trial court level and on appeal.

X.

REQUIRED DISCLOSURES

26. Pursuant to Rule 194(a), Defendants JAMES EDWARD FROST, II and BETH ELLEN FROST are required to disclose, within 30 days of filing his first answer, the information or material described in TEX. R. CIV. P. 194.2.

XIII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff JAMES EDWARD FROST prays that Defendants JAMES EDWARD FROST, II and BETH ELLEN FROST be cited to appear and answer herein and that upon final hearing Plaintiff have judgment against Defendants for the following:

- a. The sum of two hundred twenty eight thousand nine hundred sixteen dollars and fifty-one cents (\$228,916.51) as damages for Defendants alternate theories of Breach of Contract, Unjust Enrichment, and Promissory Estoppel;
- b. Pre-judgment interest at the rate of 6.00% pursuant to TEXAS FINANCE CODE § 302.002;
- c. Post-judgment interest at the rate per annum as published by the Texas Office of Consumer Credit Commission at the time of Judgment;
- d. Attorney's fees in a reasonable amount pursuant to TEXAS CIVIL PRACTICE & REMEDIES CODE § 38.001 at the trial and on appeal;
- e. Cost of court;
- f. Costs of collection; and
- g. Such other and further relief, at law or in equity, to which Plaintiff may show itself justly entitled.

Respectfully submitted:

COOK KEITH & DAVIS,
A PROFESSIONAL CORPORATION

/s/ Darrell W. Cook _____
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ATTORNEY FOR THE PLAINTIFF

Automated Certificate of eService

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Darrell Cook on behalf of Darrell Cook

Bar No. 00787279

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Envelope ID: 66901848

Status as of 8/4/2022 11:11 AM CST

Associated Case Party: JAMES EDWARD FROST

Name	BarNumber	Email	TimestampSubmitted	Status
Darrell Cook		all@cookkeithdavis.com	8/2/2022 4:17:13 PM	SENT