

CAUSE: 048-276347-15

FILED
TARRANT COUNTY
2/19/2021 8:02 AM
THOMAS A. WILDER
DISTRICT CLERKHarriet Nicholson,
Plaintiff48th District Court

v.

Nationstar Mortgage, LLC.,

Tarrant County, Texas

Defendant

PLAINTIFF'S MOTION FOR SANCTIONS

TO THE HONORABLE COURT:

Plaintiff files this her Motion for Sanctions and would show unto the Court the following:

I. Defendant's Summary Judgment Evidence, the "**April 19, 2016 Abandonment of Maturity of Indebtedness**" filed in this Court on April 20, 2016 was fabricated one day before it was appended to the Harvey Law Group's Affidavit¹ to support **DEFENDANT'S RESPONSE AND OBJECTIONS TO PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**. Kelly Harvey's fabricated evidence was material in defeating claims in Plaintiff's Partial Motion for Summary Judgment on April 20, 2016. Generally speaking, only the most egregious misconduct, such as fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944).

II. Nationstar's and Harvey's deception warrants death penalty sanctions.

Conduct demonstrating "flagrant bad faith" warrants imposition of "death penalty" sanctions. See *Cire v. Cummings*, 134 S.W.3d 835, 83 (Tex. 2004). Where, as here, a party fabricates evidence concerning the basis of its claims, courts *routinely* hold that death penalty sanctions and an award of attorney's fees is the just and proper disposition of the case. *JNS Enter., Inc. v. Dixie Demolition, LLC*, 430 S.W.3d

¹ See Ex. A, Harvey Law Group's Affidavit, Plaintiff respectfully request this court to take judicial notice of its own records pursuant to TRE 201(d).

444, 456 (Tex. App.—Austin 2013), *reh'g overruled* (May 16, 2014); *Response Time, Inc. v. Sterling Commerce (N. Am.), Inc.*, 95 S.W.3d 656, 659-64 (Tex. App.—Dallas 2002, no pet.); *Vaughn v. Texas Employment Com'n*, 792 S.W.2d 139, 144 (Tex. App.—Houston [1st Dist.] 1990, no writ). In determining whether such a sanction is warranted, a court must ensure that (1) there is a direct relationship between the improper conduct and the sanctions—*i.e.*, the sanctions must be directed against the abuse and abuser and be tailored to remedy any prejudice the abuse caused—and (2) the sanctions are not excessive. *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). In other words, the punishment should fit the crime.

Consider the facts. (1) Kelly J. Harvey, Nationstar's attorney, fabricated evidence "Abandonment of Acceleration was created on April 19, 2016 one day before appending to support Nationstar's Response (2) On April 20, 2016 Nationstar appended the Kelly J. Harvey's affidavit to **DEFENDANT'S RESPONSE AND OBJECTIONS TO PLAINTIFF'S PARTIAL MOTION FOR SUMMARY JUDGMENT**; and (3) The false testimony is made all the more egregious by the fact that it was designed to mislead the Court. This false testimony constitutes "flagrant bad faith" and a violation of judicial standards and processes that plainly warrants sanctions. See *Howell v. Texas Workers' Comp. Com'n*, 143 S.W.3d 416, 446 (Tex. App.—Austin 2004, pet. denied).

This Court should respond as the *Dixie Demolition* court did to hauntingly similar facts. There, the evidence showed that the plaintiffs "had committed fraud on the court by fabricating and submitting back-dated contracts" to establish a basis for their suit. *Dixie Demolition*, 430 S.W.3d at 454. Their representatives "also gave false testimony about when these documents were created." *Id.* The court noted that, if the evidence had been authentic, it would have been "principal evidence" the plaintiffs needed to succeed in their claims. *Id.* The trial court dismissed those claims with prejudice and awarded over \$600,000 in attorneys' fees. *Id.* at 451.

The court of appeals agreed with that result, finding that "the punishment dismissing [plaintiffs'] claims was directly related to the offensive conduct of fabricating the evidence critical to those claims," and that since plaintiffs "participated in the scheme, the punishment was properly directed at the perpetrators of the offensive conduct." *Id.* at 455-56. The court expressly held that "it was not necessary under the circumstances here for the district court to first employ lesser sanctions," because fabrication of the contracts was "certainly an egregious act and an exceptional case." *Id.* at 456 (citing *First Nat. Bank of Louisville v. Lustig*, 96 F.3d 1554, 1573 (5th Cir. 1996) (characterizing evidence fabrication as "the most

egregious conduct”)).

Further, **lesser sanctions would not have effectively punished this wrongdoing**, nor would they have redressed the harm to Dixie, AAR, and Velez. For example, **simply excluding the fabricated evidence would have been ineffective** because, although it would have deprived INS and Leesboro of critical evidence, **it would have merely placed them both in the same position they were in before having manufactured the contracts and performance guarantee. To constitute punishment, the wrongdoer must be placed in a worse position.**

Dixie Demolition, 430 S.W.3d at 456 (internal citations omitted).

The fabrication of evidence deserves more than a slap on the wrist. Nationstar and Harvey did not get caught with their hand in a cookie jar. It got caught fabricating the only evidence proffered to defeat claims in Plaintiff’s Partial Motion for Summary Judgment. “Fabricating evidence is a third degree felony. An act so destructive of the integrity of our judicial process, such as the fabrication of physical evidence, deserves serious punishment.” *Daniel v. Kelley Oil Corp.*, 981 S.W.2d 230, 235 (Tex. App.—Houston [1st Dist] 1998, *pet. denied*) (internal citations omitted) (upholding sanctions striking pleadings and assessing fees after finding that plaintiff had intentionally fabricated false evidence). Such conduct “warrants punishment that places the guilty party in a worse position than that from which she began.” *Id.*

The case for death penalty sanctions is strengthened here because the “very act of fabricating evidence strongly suggests that [Nationstar] had no legitimate evidence to support [its] claims.” *Daniel*, 981 S.W.2d at 235; *Morgan v. Verlander*, 08-00-00556-CV, 2003 WL 22360942, at *8 (Tex. App—El Paso Oct. 16, 2003, *pet. struck*); *Response Time*, 95 S.W.3d at 663 (upholding death penalty sanctions in trade secret case because a party’s false interrogatory responses, a “fabricated” letter, and “irreconcilable testimony” “justif[ied] the presumption that” the party’s claims lacked merit). The eleventh hour appearance of this now-key document was no coincidence. It was a desperate attempt to defeat Plaintiff’s claims and mislead the Court.

Because Nationstar and Harvey have committed a fraud on the Court, the Court should strike Nationstar’s pleadings. Ms. Harvey brazenly fabricated evidence and knowingly offered a false affidavit

to this Court.

On **February 17, 2016**² Ms. Harvey judicially admitted to this court, “they [Nationstar] haven’t sent a notice of acceleration”; it’s impossible to “abandon acceleration” absent an acceleration.

MS. HARVEY: Except that Nationstar has not instituted foreclosure proceedings. All they did is respond to her debt dispute letter. They didn't -- they haven't sent a notice of default, they haven't sent a notice of acceleration, they haven't sent her a notice of foreclosure.

This Court possesses the discretion to remedy the harm imposed on the adversarial system and on Plaintiff by Harvey’s dereliction as an officer of the Court.

CONCLUSION

For the foregoing reasons, Plaintiff asks the Court to Order all of the following relief, along with such other and further relief to which it is justly entitled:

1. Strike Nationstar’s pleadings; and
2. Admonish and sanction Kelly J. Harvey for fabricating evidence committing fraud upon the Court.

Respectfully submitted,
/s/ Harriet Nicholson
Harriet Nicholson
2951 Santa Sabina Drive
Grand Prairie, Texas 75052
harrietcholson@yahoo.com
817-217-0245

² See Ex. B, 048-276347-15 Transcript 021716E, Plaintiff respectfully requests this court to take judicial notice of its own records pursuant to TRE 201(d).

CERTIFICATE OF CONFERENCE

On February 17, 2021, I conferred with counsel of record referencing the merits of this motion, she's opposed.

/s/ Harriet Nicholson

CERTIFICATE OF SERVICE

On February 18, 2021, I certify I served all counsel of record pursuant to TRCP 21.

/s/ Harriet Nicholson

EX. A

CAUSE NO. 048-276347-15

HARRIET NICHOLSON
Plaintiff

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IN THE DISTRICT COURT OF

V

TARRANTCOUNTY, TEXAS

NATIONSTAR MORTGAGE, LLC
Defendant

48TH JUDICIAL DISTRICT

AFFIDAVIT OF HARVEY LAW GROUP

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned authority, personally appeared Kelly J. Harvey who, being by me duly sworn, deposed as follows:

1. “My name is Kelly J. Harvey. I am of sound mind, over the age of twenty-one (21) years, capable of making this affidavit, and have personal knowledge of the facts herein stated, which are true and correct. I am the managing attorney employed by the Harvey Law Group and one of its custodian of records.

2. Attached hereto as Exhibit “A” is a true and correct copy of the Rescission of Acceleration of the Maturity of Indebtedness (“Notice of Rescission”), regarding the indebtedness therein stated, dated April 19, 2016, which according to our records was sent by our firm on April 19, 2016, via regular and certified mail, return receipt requested, postage pre-paid, to the Plaintiff, Harriet H. Nicholson. Attached hereto as Exhibit “B” is a true and correct copy of the post-marked Postal Form 3877 (“Firm Mailing Book”) indicating the acceptance of the certified mail containing the Notice of Rescission and shipment by the United States Postal Service.

EXHIBIT "2"

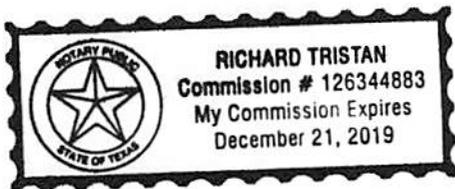
3. The attached Exhibits "A" through "B" are records that are kept by the Harvey Law Group in the regular course of business, and it was the regular course of business of the Harvey Law Group for an employee or representative of the Harvey Law Group, with knowledge of the act, event, condition, opinion, or diagnosis that was recorded, to make this record or to transmit the information to be included in this record. The records were made at or near the time or reasonably soon after the act, event, condition, opinion, or diagnosis that was recorded.

4. Further Affiant sayeth naught."



Kelly J. Harvey

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of April, 2016, to certify which witness my hand and seal of office.



[SEAL]



Notary Public in and for said the State of Texas

My Commission Expires: 12/21/19

Personally known or
Produced Identification _____

Type of identification produced



KELLY HARVEY P.C.

P.O. Box
131407

Houston, Texas
77219

P:(832) 922-
4000

F:(832) 922-
6262

April 19, 2016

Via Certified and Regular Mail

Harriet H. Nicholson
2951 Santa Sabina Drive
Grand Prairie, TX 75052

RE: Indebtedness evidenced by Note in the original principal amount of \$125,048.00, originally payable to the order of Mid America Mortgage, Inc., dated January 16, 2001, and modified by the Amended and Restated Note in the principal amount of \$146,335.14 executed by Harriet H. Nicholson and payable to Countrywide Home Loans, Inc., secured by property with the address of 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Last 4 Digits of Loan No. 1724

RESCISSION OF ACCELERATION OF MATURITY OF INDEBTEDNESS

**** This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose. ****

This law firm represents the current lienholder and Nationstar Mortgage LLC, the mortgage servicer, with respect to the above referenced Indebtedness.

As you may be aware prior demand was made to cure the default in regard to the above referenced Indebtedness. In the event the default was not cured, the letter gave notice of intent to accelerate the entire amount due and owing under the Note. The Note was subsequently accelerated on April 24, 2012 by notice of acceleration.

Pursuant to Section 16.038 of the Texas Civil Practice and Remedies Code ("Section 16.038"), Nationstar Mortgage LLC and the lienholder have elected to rescind the acceleration of the maturity of the Indebtedness. A notice served under Section 16.038 does not affect a lienholder's right to accelerate the maturity of the debt in the future nor does it waive past defaults.

Please see the additional information below that may be applicable to this Indebtedness.

Sincerely,
Harvey Law Group

EXHIBIT "A"

ADDITIONAL IMPORTANT INFORMATION THAT MAY BE APPLICABLE

***If you have received a bankruptcy discharge** - *If you have filed bankruptcy and received a discharge of the above referenced debt, and if the debt was not reaffirmed in the bankruptcy case, the foregoing Notice is not an attempt to collect or offset the debt but is sent for information only and to proceed with foreclosure of the lien securing the debt.*

****If your loan is a Texas Home Equity or Reverse Mortgage Loan** - *If your loan is a Texas home equity loan or reverse mortgage, Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that the loan is given without personal liability against each owner of the property and against the spouse of each owner unless the owner or spouse obtained the loan by actual fraud. This means that, absent such actual fraud, the lender may enforce its rights under the security instrument solely against the property securing the loan and it may not seek a deficiency judgment against the owner of the property or the spouse of an owner. Therefore, if your loan is a Texas home equity loan or reverse mortgage, the foregoing Notice is not an attempt to collect the debt against you personally but is provided for information only and to proceed with foreclosure of the lien securing the debt. However, the lender reserves its right to seek a deficiency in the event of actual fraud in obtaining the loan. If you have received any notice concerning this loan from anyone that claims the lender may seek a deficiency without a finding of actual fraud, this notice shall act as a "cure" of such notice.*

***** If you are not a borrower, obligor or guarantor** - *If you have received the foregoing Notice and you are not a borrower, guarantor or an obligor under the terms of the loan, the notice is being sent for informational purposes only.*

048-276347-15

Harvey Law Group
P. O. Box 131407
Houston TX 77219



PS Form 3877

Type of Mailing: CERTIFIED
04/19/2016



Firm Mailing Book ID: 0122.2156

Line	Article Number	Name, Street & P.O. Address	Postage	Fee	R.R.Fee	Reference	Rest.Del.Fee Contents
✓							
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8	9314 8699 0430 0022 4827 41	Harriet H. Nicholson 2951 Santa Sabina Drive Grand Prairie TX 75052	\$0.68	\$3.30	\$1.35	rit/0215-1841deaccel	\$0.00
Totals:			<u>\$6.07</u>	<u>\$26.40</u>	<u>\$10.80</u>		<u>\$0.00</u>
Grand Total:							\$43.27



List Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	Postmaster: Name of receiving employee	Dated:
8 ✓			

EXHIBIT "B"

EX. B

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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 048-276347-15

HARRIET NICHOLSON,
PLAINTIFF,

- versus -

NATIONSTAR MORTGAGE, LLC,
DEFENDANT.

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

PLAINTIFF'S MOTION TO STRIKE OR, IN THE ALTERNATIVE,
MOTION FOR PROTECTIVE ORDER REGARDING UNTIMELY SERVED
DISCOVERY REQUESTS; DEFENDANT'S PLEA TO THE
JURISDICTION CONCERNING DECLARATORY JUDGMENT CLAIMS;
AND DEFENDANT'S MOTION FOR CONTINUANCE OF TRIAL SETTING

On the 17th day of February, 2016, the
following proceedings came on to be heard in the
above-entitled and -numbered cause before the
Honorable Fred W. Davis, Judge Presiding, held in
Fort Worth, Tarrant County, Texas:

Proceedings reported by machine shorthand.

1 THE COURT: The same property -- same real
2 estate property?

3 MS. HARVEY: Except that Nationstar has not
4 instituted foreclosure proceedings. All they did is
5 respond to her debt dispute letter. They didn't --
6 they haven't sent a notice of default, they haven't
7 sent a notice of acceleration, they haven't sent her a
8 notice of foreclosure.

9 But in that lawsuit, she is claiming
10 several things: That the foreclosure sale was invalid,
11 that it was void, and she is seeking to quiet title to
12 her proprietary in that lawsuit.

13 THE COURT: This -- this lawsuit?

14 MS. HARVEY: No, the lawsuit against Bank
15 of America.

16 THE COURT: Okay. That's what --

17 MS. HARVEY: That's the one in federal
18 court. Sorry.

19 So in this lawsuit, her problem is that she
20 is arguing the exact opposite position. She is arguing
21 that the property was foreclosed on. And I'm not sure
22 of the consequences of that, not really sure what she
23 is arguing. I'll let you argue that.

24 But that's why she is not wanting to assert
25 a declaratory judgment claim as to the note, because