

048-276347-15

CAUSE NO. 048-276347-15

HARRIET NICHOLSON
Plaintiff

V

NATIONSTAR MORTGAGE LLC
Defendant

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IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48th JUDICIAL DISTRICT

MOTION FOR SANCTIONS

COMES NOW Harriet Nicholson, and moves this Court pursuant to Texas Rules of Civil Procedure 10, 13 and 215 enter an order sanctioning Kelly Harvey and Nationstar, and in support thereof would respectfully show this Court as follows:

FACTUAL BACKGROUND

This instant case was filed protesting a debt Nationstar contends they were acting in the capacity as servicer for the Bank of New York Mellon. Defendant's counsel has been playing fast and loose with the Court.

ARGUMENT

Defendant's counsel made false and misleading statements at the Oral Hearing on

February 17, 2016 referencing 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. Defendant's Counsel made the following statements: (See Exhibit A)

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.

On May 10, 2016, I discovered correspondence sent from Nationstar Mortgage dated December 22, 2014, titled "YOU ARE IN DEFAULT UNDER THE TERMS OF YOUR NOTE AND MORTGAGE /DEED OF TRUST". (See Exhibit B).

On April 20, 2016, Defendant counsel's affidavit affirmed they sent Plaintiff a "Rescission of Acceleration of Maturity of the Indebtedness". (See Exhibit C)

The Notice of Default and the "Rescission of Acceleration of Maturity of the Indebtedness" contradicts her statements at the oral hearing on February 17, 2016.

On April 6, 2015, Nationstar responded to the Request for Production of Documents that did not include the "Notice of Default. (See Exhibit D)

Harvey's and Nationstar's improper conduct is sanctionable pursuant to the Texas Rules of Civil Procedure. Specifically, Texas Rule of Civil Procedure 13 provides,

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

TEX. R. CIV. P. 13.

Similarly, to award sanctions under **Chapter 10**, it must be shown that: (1) the pleading or motion was brought for an improper purpose; (2) there were no grounds for the legal arguments advanced; or (3) the factual allegations or denials lacked evidentiary support. See TEX. CIV. PRAC. & REM. CODE ANN. § 10.001 (Vernon 2002); Low, 221 S.W.3d at 614; Armstrong v. Collin County Bail Bond Bd., 233 S.W.3d 57, 62 (Tex. App.-Dallas 2007, no pet.). Chapter 10 specifies that one of the aims for imposition of sanctions for the filing of frivolous or groundless pleadings is to "deter repetition of the conduct or comparable conduct by others similarly situated." TEX. CIV. PRAC. & REM. CODE ANN. § 10.004(b) (Vernon 2002). We construe the phrase "improper purpose" as the equivalent of "bad faith" under Rule 13. See TEX. R. CIV. P. 13; cf. Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Util. Dist. ex rel. Bd. of Directors, 198 S.W.3d 300, 321 (Tex. App.-Texarkana 2006, pet. denied) ("nonfrivolous" requirement is same as "good faith" requirement); Elwell v. Mayfield, No. 10-04-00322-CV, 2005 WL 1907126, at *5 (Tex. App.-Waco Aug. 10, 2005, pet. denied) (mem.op.)

TEX. R. CIV. P. 10

This Court should impose sanction available under Texas Rule of Civil

Procedure 10, 13 and 215.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that this matter be set for hearing and that upon hearing this motion, the motion be granted in its entirety, sanctions be imposed against Defendant and their counsel and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ Harriet Nicholson

Harriet Nicholson
2951 Santa Sabina Drive
Grand Prairie, Texas 75052
817-217-0245
harrietnicholson@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion for Sanctions was sent to all parties and/or attorneys of record, as listed below, by regular and certified mail, return receipt requested, in accordance with the Texas Rules of Civil Procedure, or by e-file electronic delivery and e-mail on this the 11th day of May, 2016.

/s/ Harriet Nicholson

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 --

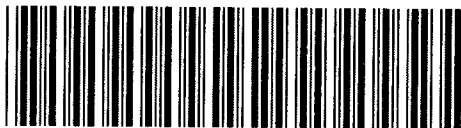
17 MS. HARVEY: That's the one in federal
18 court. Sorry.

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

048-276347-15

Nationstar Mortgage, LLC
PO Box 9095
Temecula, CA 92589-9095



2292408127

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
Nationstar Mortgage
350 Highland Drive
Lewisville, TX 75067-4177

20141222-160



HARRIET H NICHOLSON
2951 SANTA SABINA DR
GRAND PRAIRIE, TX 75052-8730



EXHIBIT B

TX_NOI



048-276347-15

12/22/2014

HARRIET H NICHOLSON
2951 SANTA SABINA DR
GRAND PRAIRIE, TX 75052-8730

Loan Number: 619301724
Property Address: 2951 SANTA SABINA DRIVE
GRAND PRAIRIE, TX 75052

Dear HARRIET H NICHOLSON:

YOU ARE IN DEFAULT UNDER THE TERMS OF YOUR NOTE AND MORTGAGE / DEED OF TRUST

Federal law requires us to advise you that Nationstar Mortgage LLC is a debt collector and that this is an attempt to collect a debt. Any information obtained may be used for that purpose. To the extent your obligation has been discharged or is subject to the automatic stay in a bankruptcy proceeding, this notice is for informational purposes only and does not constitute a demand for payment or an attempt to collect an indebtedness as your personal obligation. If you are represented by an attorney, please provide us with the attorney's name, address and telephone number.

Your account is now due for the **04/01/2011** payment, and subsequent payments. This is a demand for a payment of **\$80,603.28**, which is the total amount due and owing as of the date of this letter, including all late payments, any late charges, periodic adjustments to the payment amount (if applicable), attorney fees and expenses of collection.

You have the right cure the default by paying the total amount due listed above, within 30 days from the date of this letter which is **01/21/2015** (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). You are also responsible for paying any additional payments, fees, and charges that become due after the date of this letter. Please contact Nationstar Mortgage LLC at 1-888-480-2432 on the day that you intend to pay the total amount due to confirm the amount you should submit.

Payments must be made in **certified funds, cashier's check or money order(s) payable and mailed to:**

Nationstar Mortgage LLC
ATTN: Payment Processing
350 Highland Drive
Lewisville, TX 75067-4177

If you tender funds that are not honored for any reason, the default will not be cured. Nationstar Mortgage LLC's acceptance, if any, of any amounts less than the total amount due shall not constitute a waiver of our rights and/or remedies under the loan documents or applicable law.

Unless we receive full payment of all past-due amounts by the date above, we will accelerate the entire sum of both principal and interest due and payable, and invoke any remedies provided for in the Note and Security Instrument, including but not limited to the foreclosure sale of the property. This could result in the loss of your property.



You have the right to reinstate your loan after acceleration. You also have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale.

This default and any other legal action that may occur as a result thereof may be reported to one or more local and national credit reporting agencies by Nationstar Mortgage LLC.

You may have options available to you to help you avoid foreclosure. Please call Nationstar's Foreclosure Prevention Department at 1-888-480-2432 for additional information or to request an interview for the purpose of resolving the past due account. You may also visit <https://www.nationstarmtg.com/PaymentAssistance/> for additional information, to see what options may be available to you, and to submit an application for assistance. Additionally, if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. To obtain a list of HUD approved counseling agencies, please call 1-800-569-4287 or by visiting <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You may also contact the Homeownership Preservation Foundation's HOPE hotline at 1-888-995-HOPE (4673).

ATTENTION SERVICEMEMBERS AND DEPENDENTS: We are committed to supporting our customers who serve in the military. If you or a member of your family are currently on active duty, or have been recently discharged within the last 12 months, you may be eligible for certain benefits and protections under the Servicemembers' Civil Relief Act (SCRA). These include: (1) interest rate limitation to 6% on your loan during, and for 12 months following, active duty if you provide your orders no later than 180 days after your termination or release from military service, and (2) additional protections in connection with foreclosure during and for twelve months following active duty. **If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as 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.** You can forward these papers with your account number to:

Nationstar Mortgage LLC
ATTN: SCRA
350 Highland Drive
Lewisville, TX 75067-4177

Servicemembers and dependents with questions about the SCRA should contact their unit's Judge Advocate, or their installation's Legal Assistance Officer. Homeowner counseling is also available at agencies such as Military OneSource (www.militaryonesource.mil; 1-800-342-9647) and Armed Forces Legal Assistance (<http://legalassistance.law.af.mil>), and through HUD-certified housing counselors (<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>). You can also contact us toll-free at 1-888-480-2432 if you have questions about your rights under SCRA.

Sincerely,

Garian Lucas
Dedicated Loan Specialist
Nationstar Mortgage LLC
1-877-783-7491 ext. 5493085
350 Highland Drive
Lewisville, TX 75067-4177

CAUSE NO. 048-276347-15

HARRIET NICHOLSON
Plaintiff

V

NATIONSTAR MORTGAGE, LLC
Defendant

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IN THE DISTRICT COURT OF

TARRANTCOUNTY, TEXAS

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



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.*

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



048-276347-15

048-276347-15

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 |
|--------------|-----------------------------|---|---------|---------|---------|----------------------|--------------------------|
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| ✓ | | | | | | | |
| 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/0215-184 deaccel | \$0.00 |
| Totals: | | | \$6.07 | \$26.40 | \$10.80 | | \$0.00 |
| 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"

CAUSE NO. 048-276347-15

HARRIET NICHOLSON

Plaintiff

VS.

NATIONSTAR MORTGAGE, LLC

Defendant§
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§
§

IN THE DISTRICT COURT OF

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT**NATIONSTAR MORTGAGE, LLC RESPONSES
TO REQUESTS FOR PRODUCTION**

TO PLAINTIFF, Harriet Nicholson, 2951 Santa Sabina Drive, Grand Prairie, TX 75052. Defendant serves these responses and objections to Plaintiff's Request for Production and would show the following:

REQUEST FOR PRODUCTION NO. 1:

All documents that establish the identity of the servicer of Plaintiffs' mortgage loan that is the subject of this action.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome and vague. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege. Subject to the objection see documents attached and stamped NS 8-24.

REQUEST FOR PRODUCTION NO. 2:

All contracts between YOU and any person or entity regarding the servicing of the deed of trust and/or note at issue in this matter.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege

EXHIBIT D

REQUEST FOR PRODUCTION NO. 3:

All documents, records and transaction books maintained by YOU for the mortgage loan at issue in this matter.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Subject to the objections, see payment histories produced stamped NS1-14.

REQUEST FOR PRODUCTION NO. 4:

All documents recording, reflecting or otherwise relating to visits which YOU or YOUR agents made to the Subject Property.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit.

REQUEST FOR PRODUCTION NO. 5:

All account servicing transaction records, ledgers, registers and similar items detailing how Plaintiffs' account has been serviced from the inception of the account to the present date. If none, state "none".

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Subject to the objection, see payment histories attached stamped NS1-14.

REQUEST FOR PRODUCTION NO. 6:

All payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made by Plaintiffs or others on Plaintiffs' account.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome and vague. Subject to the objection, see payment histories attached stamped NS1-14.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant additionally objects to this request on the basis that it would require the Defendant to create documents to respond to the request other than records kept in the normal course of business. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Subject to the objections, Defendant will produce a transaction code if one is available for the subject loan.

REQUEST FOR PRODUCTION NO. 11:

All account servicing records, payment payoffs, payoff calculations, ARM audits, interest rate, adjustments, payment records, transaction histories, account histories, accounting records, ledgers, and documents that relate to the accounting of Plaintiffs' account from the inception of his account to the present date. If none, state "none".

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, and vague. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Subject to the objection, see payment histories attached stamped NS1-14.

REQUEST FOR PRODUCTION NO. 12:

All payment receipts, checks, money orders, drafts, automatic debits and written evidence of payments made by Plaintiffs' or others on his account. If none, state "none".

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome and vague. Defendant additionally objects to this request on the basis that it would require the Defendant to create documents to respond to the request other than records kept in the normal course of business. Subject to the objections, see payment histories attached stamped NS1-14.

REQUEST FOR PRODUCTION NO. 13:

YOUR entire file related to Plaintiffs' mortgage loan.

RESPONSE: Defendant objects to this request as being over broad, unduly burdensome, vague and lacking specificity. Defendant objects to this request to the extent it seeks the disclosure of information or documents covered by the applicable rule of privilege, including, but not limited to, the attorney client and work product privilege. Defendant additionally objects to this request on the basis that it asks for information outside the scope of discovery in that it is not relevant to the claims made in this lawsuit. Subject to the objection, see documents attached and stamped **NS1-24.**