

CHAPTER 11

CAUSE NO. 19-10412 (JLG)

IN RE:	IN THE UNITED STATES BANKRUPTCY COURT
	SOUTHERN DISTRICT OF NEW YORK
DITECH HOLDING CORPORATION, ET AL.	
DEBTORS	
REVERSE MORTGAGE SOLTUTIONS, INC.	

**DR. ELIE NASSAR'S THIRD AMENDMENT TO ORIGINAL
OBJECTION TO**

**NOTICE OF HEARING ON REORGANIZED RMS'S SECOND OMNIBUS MOTION TO
ENFORCE INJUNCTIVE PROVISIONS OF PLAN AND CONFIRMATION ORDER**

**JUDICIAL ESTOPEL PROHIBITS RMS AND IT'S ATTORNEYS
FROM TAKING INCONSISTANT LEGAL STANDING BETWEEN
FEDERAL COURT OF SOUTHERN DISTRICT OF TEXAS HOUSTON
DIVISION AND UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

**REQUEST TO DISMISS RMS' SECOND OMNIBUS MOTION IN
FULL DUE TO JUDICIAL ESTOPEL VIOLATION**

TO HONORABLE JUDGE GARITTY:

In my third amendment response to RMS' second omnibus motion here I use:

REVERSE MORTGAGE SOLUTIONS, INC. (hereafter referred to as RMS)

and their attorney CHRISTOPHER A. LYNCH of REED and SMITH (here after referred to as CL)

and Jared Roach also with REED and SMITH (here after JR)

and internal counsel for RMS MARC SPEZZANO (here after referred to as MS)

and Branch Sheppard local attorney for RMS in Houston (hereafter referred to as BS) **WHO
ATTENDED THE APRIL 22, 2020 HEARING.**

and also I use SO to refer to RMS' and CL's SECOND OMNIBUS MOTION in front of your honor.

Here, I incorporate my ORIGINAL OBJECTION, my FIRST AMENDMENT TO MY ORIGINAL OBJECTION and SECOND AMENDMENT TO MY ORIGINAL OBJECTION in my response here as if they are part of this response.

YOUR HONOR I would like to FILE MY THIRD AMENDMENT TO MY ORIGINAL OBJECTION TO RMS' SECOND OMNIBUS MOTION requesting complete dismissal of SO based on the following proves and JUDICIAL ESTOPPEL violation of RMS:

1- **MY STATE LAW SUIT 20-CV-00774 (DCV-271742) FILED IN FORT BEND
COUNTY ON FEBRUARY 25, 2020) and REMOVED TO FEDERAL COURT IN
HOUSTON AND CONSOLIDATED WITH MY OLDER SUIT:**

This law suit was filed way after dismissal of RMS from chapter 11 on September 30, 2019 (FILED ON February 25, 2020) and it has nothing related to collecting any MONETARY DEBT that RMS owes me before September 30, 2019 RMS' dismissal date and even after September 30, 2019.

EXHIBIT 1 shows page 7 of the APRIL 17, 2020 filing of BS asking the Federal judge in Houston to STRIKE this law suit in it's entirety and I have filed a response to it and I DO NOT BELIEVE FOR A SECOND that the Federal judge in Houston will STRIKE this law suit.

IN EXHIBIT 1 and where the BLUE ARROW is pointing I underlined to your honor where BS local attorney of RMS has stated that on March 5, 2020 RMS, FAR and CELINK removed from my loan balance the illegal \$ 2766 insurance that RMS added to my loan on December 24, 2017.....BS claims that since this has happened then MY LAW

SUIT IS MOOT (if it is MOOT what is CL and JR doing in front of your honor).

RMS added illegally \$ 8,064.88 (which I discovered December 25, 2019) to the balance of my loan of which is the \$ 2766 illegal insurance they added to the balance of my loan December 24, 2017 while I had AMICA insurance and I provided the proof to RMS and they did not take of the \$ 2766 (plus related illegal fees) from my loan even though they told me then that now that they have proof of insurance they were going to correct everything but they never did...i.e. your honor with all due respect to your honor RMS lied to me and deceived me.

Even though the \$ 2766 is MONEY WITH \$\$\$\$\$\$ SIGNS but IT IS NOT MONETARY DEBT I AM SEEKING TO RECOVER FROM RMS FOR ANY DEBT RMS OWES ME BEFORE SEPTEMBER 30, 2019.

RMS HAS ADDED THIS ILLEGAL \$ 2766 TO MY LOAN December 24, 2017 and if it is not taken of the balance of my loan then my monthly payment and my monthly interest will get to be higher and higher every month and for the next 40 years the equity of my home will be robbed of at least \$ 72,000 (all in the future).

Your honor I already disclosed to your honor that I am suing RMS because it added behind my back and knowledge \$ 8,064.88 to the balance of my loan which they charged illegally to the balance of my loan and this increased the balance on my loan and if it is not reversed as I am requesting in my law suit and my loan recalculated my monthly payment will become higher every month for the rest of my life (the interest and mortgage insurance will be higher every month) and (for span of my life years) THEY WILL TAKE FOR THE NEXT 40 YEARS MINIMUM \$ 72,000 FROM THE EQUITY OF MY HOME....please remember that I discovered that they added this \$ 8,064.88 to the balance of my loan on December 25, 2019 when my CPA RONALD RIGGS examined the history of the transactions to my loan (way after the September 30, 2019).

There is severe contradiction and misrepresentation in what CL and MS are claiming in the SO and what they are presenting to your honor with what BS has admitted in EXHIBIT 1....BS admitted removal of the \$ 2766 and that the \$ 2766 is not MONETARY DEBT that RMS owes me before September 30, 2019 as CL and MS have stated in their SO....and this is true of the whole \$\$\$\$\$\$ I am suing RMS for.

RMS local attorney has just done a judicial and legal admission that the \$ 8,064.88 I am suing RMS for is not by any means a MONETARY DEBT anywhere related to money that RMS owes me before September 30, 2019 as CL and MS stated in their SO.

Further, both CL and MS in EXHIBIT 3 of their SO classify my law suit as ALL PUNITIVE DAMAGES FOR PRE-PETITION MONETARY MONEYTARY DEBT and this is false and I am outraged that they make such false accusations.

EXHIBIT 2 shows what BS, the local attorney of RMS has just filed on May 1, 2020...this is page 5 of DKT 163 filed in Federal Court of Southern Houston district court.

Please see where the BLUE arrow is pointing where RMS has claimed that I AM NOT PLEADING ANY ALLEGATIONS TO ALLOW ME TO RECOVER ANY PUNITIVE DAMAGES.

Now your honor please see EXHIBIT 3 showing the e-mail from JR of RMS with copy to CL where RMS is asserting that I have PUNITIVE DAMAGES, STATORY DAMAGES, TREBLE DAMAGES.....etc. which is in direct contradiction with what RMS has judicially and legal admitted in Federal court that I AM NOT PLEADING FOR ANY PUNITIVE DAMAGES.

JR AND CL ARE ASKING ME IN THEIR SO TO DROP PUNITIVE DAMAGES ALLEGATIONS THAT THEIR OWN RMS LOCAL ATTORNEY IS CONTRADICTING THEM AND STATING THAT I AM NOT FILING FOR THAT IN MY LAW SUIT AND I AM NOT ENTITLED TO ANY PUNITIVE DAMAGES.

I WOULD LIKE MR. JR AND MR. CL TO EXPLAIN TO YOUR HONOR THIS SEVERE CONTRADICTION AND INCONSISTENCY IN THE LEGAL STAND OF RMS FROM

HOUSTON FEDERAL COURT TO NEW YOORK BANKRUPTCY COURT.

In Federal Houston Court RMS states that I have not filed any PUNIVE DAMSAGES, STATORY DAMAGES.....etc. but the same RMS states in Federal Bankruptcy court that I have filed for PUNITIVE DAMES, STATUORY DAMAGES.....this is INCONSISTENT POSITION in the previous legal position they taking in Federal Court in Houston and it is MOCKERY of the judicial system and it invokes JUDICIAL ESTOPL.

Actually what is happening here is best ground for dismissal of SO due to Judicial Estoppel which strictly prohibits RMS from taking a stand in FEDERAL BANKRUTCY COURT that is INCONSISTENT with the RMS legal stand they took or taken in Federal Houston District court.

Such an inconsistency requires dismissal by JUDICIAL ESTOPEL as RMS is making MOCKERY of the justice system: they claim something in the Federal Houston Court and they claim exactly an opposite standing on the same issue in federal court. Thus RMS' second omnibus should be dismissed due to Judicial Estoppel.

Further, I have attached a copy of my signed DECLARATION AS EXHIBIT 4 as I noticed that CL filed the unsigned one.

Lastly I attached the 2 UPS proves of delivery showing that my original filings of the OBJECTION and FIRST AMENDMENT were delivered to this honorable court but obviously misplaced.

Bottom line , your honor, RMS' local attorney tried to get me to dismiss ALL MY CLAIMS AGAINST RMS WITH PREJUDICE (I PRODUCED HIS LETTER IN MY SECOND AMENDMENT) AND HE SCHEDULED AN EXPEDITED HEARING INFRONT OF FEDERAL JUDGE AND BS DID NOT SUCCEED DISMISSING ALL MY CLAIMS IN THE BLIND AGAINST RMS SO HE CALLED ON THE HIGHER TIRER OF HELP: MR. CL AND MR. JR SOLICITING THEIR HELP TO SEE IF WHAT THEY FAILED TO DO IN HOUSTON FEDERAL COURT MAY BE THEY CAN SLIP IT BY THE FEDERAL COURT.

2- **MY FEDERAL LAW SUIT 18-CV-4695 (18-DCV-256646 WAS REMOVED FROM FORT BEND):**

This has been consolidated with the case above and same argument applies.

Respectfully submitted,

Dr. ELIE T. NASSAR

4525 CLAYHEAD RD.

RICHMOND, TEXAS 77406

CELLULAR PHONE: (281) 690-8333

E-MAIL: ELIN@WWSOFTWARESYSTEMS.COM

EXHIBIT 1

CELINK/FAR FOR THE \$568.08 FOR THE LENDER PLACED INSURANCE. On April 16, 2020, Plaintiff finally tendered, UNDER PROTEST, the \$568.08 to cure his default.

NO
18. On March 5, 2020, Defendants FAR and Celink notified Plaintiff that his insurance issues are resolved and that the \$2,766 in lender placed insurance is now refunded, but, in the letter, Celink and FAR advised Plaintiff that his loan remains in default. See Exhibit J. The \$2,766 which is the basis for Plaintiff's new lawsuit is now resolved. Plaintiff's claims in his new lawsuit are MOOT. Plaintiff alleges other vague, unsubstantiated damages stemming from the \$2,766 and presumably the \$7,680 in this lawsuit. Nevertheless, ALL these claims are claims that Plaintiff raised originally in his November 5, 2018 Original Petition and abandoned. He cannot raise them now in a Fifth Amended Complaint. He cannot raise them now in a new lawsuit after this Court rightfully struck his Fifth Amended Complaint.

NO
BIG
LIE

II. ARGUMENT AND AUTHORITIES

> { 19. This Court cannot allow Plaintiff to ignore the Federal Rules of Civil Procedure and this Court's Order or, at a minimum, the spirit of this Court's Order striking his Fifth Amended Complaint that directly relates back, like this new lawsuit, to claims that Plaintiff could have raised, DID raise, and subsequently ABANDONED in this lawsuit.

A. THE CONTINUOUS VIOLATION DOCTRINE DOES NOT APPLY.

20. Plaintiff may attempt to argue that the claims in the new lawsuit are "new" claims and allegations. It is abundantly clear, however, that they are not "new" at all. Plaintiff raises the "continuous violation doctrine." He may try to argue against striking this new lawsuit by arguing that these claims in the new lawsuit are "new" claims based on this continuous violation doctrine. Simply, they are not. This doctrine does not apply.

EXHIBIT 2

other than stating that he ran an amortization from 2012 to 2052, which would make him over 100 years old by the time the amortization stops. This goes way beyond the bounds of legitimacy, and under no circumstances can the Court allow Plaintiff to present such damages to the jury.

13. **Statutory damages** – In his live Fourth Amended Complaint, Plaintiff does not plead any claims or causes of action that afford him statutory damages. Under no circumstances can the Court allow Plaintiff to present such damages to the jury.

14. **Treble damages** – In his live Fourth Amended Complaint, Plaintiff does not plead any claims or causes of action that afford him statutory damages. Under no circumstances can the Court allow Plaintiff to present such damages to the jury.

15. **Exemplary and/or punitive damages** – In his live Fourth Amended Complaint, Plaintiff does not plead malice or gross negligence. Plaintiff's fraud claim is grossly deficient in that it fails to plead with specificity as Fed. R. Civ. P. 9 requires. Plaintiff does not plead allegations that allow him to recover punitive damages. See *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 275 (5th Cir. 2018) citing *Formosa Plastics Corp. USA v. Presidio Eng. & Contractors*, 960 S.W.2d 41, 49 (Tex.1998) (under Texas law, to recover damages for fraud, such damages must be properly plead and proved); see also, *Amoco Production Co. v. Alexander*, 622 S.W.2d 563, 571 (Tex. 1981)(In Texas, punitive damages are not recoverable for breach of contract). In fact, in an effort to force the Court to remand this case to state court, Plaintiff pled and stipulated that the damages he seeks in this litigation are less than \$75,000. Judge Hittner refused to remand the case because jurisdiction in this case is not based on diversity but based on federal question jurisdiction from Plaintiff's previously filed Complaints. Stipulations in Complaints that purport to limit prospective theories of recovery are binding judicial admissions. A binding stipulation limits Plaintiff's potential recovery. *Richard v. Time Warner Cable Media, Inc.*, 960 F.Supp.2d 659, 662

EXHIBIT 3

RE: DRAFT Stipulation - Message (HTML)

Message

Ignore X Reply Reply Forward More
Junk Delete All Respond
Delete Quick Steps
RMS - elin@wwsof... To Manager
Team E-mail Reply & Delete
Create New
Rules OneNote Mark Follow Translate Find
Unread Up Select Zoom
Move Actions Tags Editing Zoom

This message has been replied to or forwarded.

From: Roach, Jared S. <JRoach@ReedSmith.com>
To: 'elin@wwsoftwaresystems.com'
Cc: Lynch, Christopher A.
Subject: RE: DRAFT Stipulation

Message: Nassar Stipulation (with comments from E. Nassar).DOCX (52 KB)

Eli,

Based on the 2018 Complaint, I think the following damages listed in your complaint should be dismissed: punitive damages, statutory damages, treble damages, fees and costs, and in corrections) would remain. I revised the Stipulation to reflect this.

Let me know your thoughts on Monday.

Thanks,
Jared

Jared S. Roach
412.288.3277

From: elin@wwsoftwaresystems.com <elin@wwsoftwaresystems.com>
Sent: Friday, April 17, 2020 5:28 PM
To: Roach, Jared S. <JRoach@ReedSmith.com>
Cc: Lynch, Christopher A. <CLynch@ReedSmith.com>
Subject: Re: DRAFT Stipulation

EXTERNAL E-MAIL - From elin@wwsoftwaresystems.com

Please do not file any appearance in the state of Texas as this might convey that RMS is right and the judge here refused to dismiss RMS and they are not right.

Sent from my T-Mobile 4G LTE device

EXHIBIT 4

CHAPTER 11

CAUSE NO. 19-10412 (JLG)

IN RE:	IN THE UNITED STATES BANKRUPTCY
COURT	
	SOUTHERN DISTRICT OF NEW YORK
DITECH HOLDING CORPORATION, ET AL.	
DEBTORS	
REVERSE MORTGAGE SOLTUTIONS, INC.	

DR. ELIE NASSAR'S DECLARATION

ABOUT RMS' CHAPTER 11 BANKRUPTCY

TO HONORABLE JUDGE:

- 1- My name is Dr. Elie Nassar, and I am not disqualified from testifying in this cause for any reason. I am resident of Fort Bend County, TEXAS. Each statement made in the foregoing is within my personal knowledge true and correct.
- 2- I am a doctor in computer software engineering and I work for a computer company called Worldwide Software Systems (www.wwsoftwaresystems.com) located at 4525 Clayhead rd., Richmond, TX 77406 in FORT BEND COUNTY. I am it's 100% owner.
- 3- RMS had a legal duty towards me if they considered me a CREDITOR (I am not) specially:

- Under chapter 11 RMS is supposed to list all their LIABILITIES and ASSETS which includes all of their CREDITORS.
- RMS never ever listed me as a CREDITOR and never listed my 2 law suits and this is to the best of my knowledge.
- Under the law of chapter 11 and upon the approval of the disclosure statement RMS must mail to all creditors:
 - a- The plan or a court approved summary of the plan
 - b- The disclosure statement that the court approved
 - c- Notice of the time within which acceptances and rejections of the plan may be filed.
 - d- Any opinion of the court approving the disclosure statement or a court approved summary of opinion. Fed R, Bankr.P.3017(d).
 - e- Notification advising the creditors of their right to file proofs of their claims and that their failure to do so may prevent them from voting upon RMS's plan of reorganization
 - f- Many other items to be sent to the creditors such as and not limited to voting on the plan.

I NEVER EVER RECEIVED ANYTHING FROM RMS OR EVEN THE COURT ITSELF ABOUT THEIR CHAPTER 11 PROVING THAT RMS DID NOT CONSIDER ME A CREDITOR.

- 4- The only knowledge I have about RMS' chapter 11 is when their attorney BS notified the court that has my case with a NOTICE OF STAY and I never ever heard or got anything directly from the bankruptcy court or RMS itself.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this day of April 5, 2020.


DR. EL NASSAR

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZE424190186819999

Weight

0.40 LBS

Service

UPS Next Day Air®

Shipped / Billed On

04/03/2020

Delivered On

04/06/2020 9:59 A.M.

Delivered To

NEW YORK, NY, US

Received By

BROWN

Left At

Front Desk

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 04/23/2020 1:49 P.M. EST

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1ZE424190120194699

Weight

0.30 LBS

Service

UPS Next Day Air®

Shipped / Billed On

04/07/2020

Delivered On

04/08/2020 9:47 A.M.

Delivered To

NEW YORK, NY, US

Received By

PORTER

Left At

Mail Room

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS: 04/22/2020 1:21 P.M. EST