

CAUSE NO. DC-21-12504

HARRIET NICHOLSON,
Plaintiff

v.

NATIONSTAR MORTGAGE, LLC.,
Defendant

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IN THE DISTRICT COURT

192ND JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

AMENDED PETITION FOR DECLARATORY JUDGMENT

To THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Harriet Nicholson and files this, her *Amended Petition for Declaratory Judgment* seeking declaration the judgments rendered in cause 048-276347-15 styled *Harriet Nicholson v. Nationstar Mortgage* in the 48th Judicial District of Tarrant County, Texas after March 17, 2021, are void and should be vacated because the 48th District Court had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court. In support of the Petition, Plaintiff would show the Court as follows:

I. **DISCOVERY LEVEL AND RULE 47 DISCLOSURE**

1. Pursuant to Rule 190.3 of the TEXAS RULES OF CIVIL PROCEDURE, discovery in this matter is intended to be conducted under Level 2 of the TEXAS RULES OF CIVIL PROCEDURE.

2. Plaintiff does not seek damages (other than attorneys' fees and costs

associated with this action); however, for the sake of compliance, the value of the interest related to this matter is under \$100,000 and non-monetary relief.

3. Plaintiff reserves the right to amend its declaration under Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE.

II. PARTIES

4. Plaintiff, Harriet Nicholson, is a resident of Tarrant County, Texas having a mailing address of 2951 Santa Sabina Drive, Grand Prairie, Texas 75052.

5. Defendant, Nationstar Mortgage, LLC, is a limited liability company that may be served by serving Jay Bray, Chief Executive Officer, or any officer at 8950 Cypress Waters Blvd, Coppell, Texas 75019.

III. JURISDICTION AND VENUE

6. A void judgment of a court of general jurisdiction, is subject to collateral attack in another court of equal jurisdiction." *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985). As courts of general and equal jurisdiction, the Dallas Court has authority to set aside the Fort Worth court's void orders because the Court lacked jurisdiction over the parties or subject matter, jurisdiction to enter the order, or capacity to act as a court after March 17, 2021. *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex. 2010). An order is void when the issuing court lacked jurisdiction over the parties or subject matter, jurisdiction to enter the order, or

capacity to act as a court. Id.

7. Venue of this cause is proper in Dallas County, Texas, in that a court of general jurisdiction can vacate a void judgment of a court of equal jurisdiction in Tarrant County, Texas District Court if the court had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court. *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985).

IV. SUMMARY OF THE ACTION

8. This is an action to vacate a void order and judgment rendered in the 48th Judiciary District Court, Tarrant County, Texas because the Court had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court in cause 048-276347-15 styled *Harriet Nicholson v. Nationstar Mortgage, LLC after March 17, 2021*.

9. The 48th Judiciary District of Tarrant County rendered void orders in cause 048-276347-15 while the Second Court of Appeals had exclusive plenary jurisdiction after Plaintiff perfected an appeal of “Order Denying Plaintiff’s Motion to Set Status Conference for Want of Jurisdiction” on March 17, 2021.

V. BACKGROUND FACTS

10. On January 18, 2015, Plaintiff filed suit against Nationstar Mortgage, LLC for unlawful servicing practices asserting causes of action for violation of the Texas Debt Collection Practices Act for deceptive debt collection activity and threatening unlawful foreclosure assigning case to the 48th District Court, 048-276347-15.

11. On February 8, 2016, Plaintiff filed her Fourth Amended Petition asserting causes of action for deceptive debt collection efforts, negligence and gross negligence per se, negligence, gross negligence, negligent misrepresentation and fraud.
12. On February 8, 2016, Nationstar Mortgage filed its Amended Answer and counterclaim for attorney's fees.
13. On May 17, 2016, the trial court granted Nationstar No-Evidence Motion for Summary Judgment against Plaintiff's Fourth Amended Petition dismissing all claims with prejudice without disposing of Nationstar's counterclaim for attorney's fees.
14. On February 23, 2021, Plaintiff filed a "Motion to Set Status Conference" because Nationstar's counterclaim for attorney's fees remained pending for more than five years.
15. On March 12, 2021, the 48th District Court signed "Order Denying Plaintiff's Motion to Set Status Conference for Want of Jurisdiction" determining Nationstar No-Evidence Motion for Summary Judgment was final without disposing of Nationstar's counterclaim for attorney's fees.¹
16. On March 15, 2021, Plaintiff filed a Writ of Mandamus with the Second Court of Appeals numbered 02-21-00068-CV arguing the Court had plenary power to set a status conference because the Order Granting Nationstar's No-Evidence Motion for Summary Judgment was interlocutory.
17. On March 17, 2021, the Second Court of Appeals denied Plaintiff's Writ of Mandamus in case 02-21-00068-CV.

¹ EX.-1, 03.2.21 048-276347-15 Order Denying Motion to Set Status Conference for Want of Jurisdiction

18. On March 17, 2021, Plaintiff appealed the “Order Denying Plaintiff Motion to Set Status Conference for Want of Jurisdiction”. The Second Court of Appeals assigned case number 02-21-00074-CV.²

19. The filing of a notice of appeal by any party invokes the appellate court's jurisdiction over all parties to the trial court's judgment or order appealed from." Tex. R. App. P. 25.1. Once a case has been appealed, the appellate court has plenary jurisdiction over the subject matter of the appeal and, in the absence of express authorization by rule or statute, the trial court generally has no jurisdiction to change or modify its judgment during the pendency of the appeal. See *Robertson v. Ranger Ins. Co.*, 689 S.W.2d 209, 210 (Tex. 1985) (*per curiam*); *Carrillo v. State*, 480 S.W.2d 612, 616 (Tex. 1972); *Ammex Warehouse Co. v. Archer*, 381 S.W.2d 478, 482 (Tex. 1964); see also *Stubbs v. Stubbs*, 657 S.W.2d 10, 11-12 (Tex. App.-Dallas 1983, no writ) (recognizing that district court had no jurisdiction to consider a motion to modify an order on appeal because a trial court "generally has no jurisdiction to vacate or change a judgment once the case has been appealed")

20. The 48th District Court rendered orders at a time when the Second Court of Appeals had exclusive plenary jurisdiction over the case concerning the “Order Denying Plaintiffs Motion to Set Status Conference for Want of Jurisdiction” on March 17, 2021.³ See *Davis v. Huey*, 571 S.W.2d 859 (Tex.1978); *Carrillo v. State*, 480 S.W.2d 612 (Tex.1972); *Amex Warehouse Company v. Archer*, 381 S.W.2d 478 (Tex.1964). The 48th District Court had no power to change or modify its order once an appeal had been

² Ex-2, 03.17.21 048-276347-15 Notice of Appeal “Order Denying Motion to Set Status Conference for Want of Jurisdiction”

³ EX-3, 04.05.21 02-21-00074-CV LETTER [SECOND COURT OF APPEALS LETTER RE JURISDICTION TC 04827634715](#)

taken therefrom. Carrillo, 480 S.W.2d at 616.

21. A judgment is void when it is apparent that the court rendering the judgment had no jurisdiction of the parties, no jurisdiction of the subject matter, no jurisdiction to enter the judgment, or no capacity to act as a court. *Cook v. Cameron*, 733 S.W.2d 137, 140 (Tex.1987); *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex.1985). *A void judgment is one entirely null within itself, and which is not susceptible of ratification or confirmation, and its nullity cannot be waived. Easterline v. Bean*, 121 Tex. 327, 49 S.W.2d 427, 429 (1932); *American Universal Ins. Co. v. D.B. & B., Inc.*, 725 S.W.2d 764, 766 (Tex. App.-Corpus Christi 1987, writ ref'd n.r.e.). Furthermore, if a court has not acquired jurisdiction of both the parties and the subject matter of the litigation, the judgment is void and is subject to both direct and collateral attack. *Browning*, 698 S.W.2d at 363; *Martin v. Sheppard*, 145 Tex. 639, 201 S.W.2d 810, 812 (1947); *American Universal Ins.*, 725 S.W.2d at 766.

22. If a trial court enters a judgment before it acquires jurisdiction of the parties, the judgment is void. *In re Mask*, 198 S.W.3d at 235; *In re B.A.G.*, 794 S.W.2d 510, 511-12 (Tex. App.-Corpus Christi 1990, no writ) (citing *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985)).

23. All orders entered by the 48th District Court after March 17, 2021, in cause 048-276347-15 is void; since that court, as shown by the record, had no jurisdiction to render those orders. *Austin Independent School District v. Sierra Club*, 495 S.W.2d 878 (Tex.1973)

VI. DECLARATORY RELIEF

24. Plaintiff seeks declaratory relief the 48th District Court's May 21, 2021

“Order Vacating Order Denying Plaintiff’s Motion to Set Status Conference”⁴ and the July 13, 2021, “Final Judgment”⁵ are void because the Second Court of Appeals had exclusive plenary jurisdiction over the “Order Denying Plaintiff’s Status Conference for Want of Jurisdiction” and, in the absence of express authorization by rule or statute, the trial court had no jurisdiction to render its May 21, 2021 “Order Vacating Order Denying Plaintiff’s Motion to Set Status Conference” during the pendency of the appeal. See *Robertson v. Ranger Ins. Co.*, 689 S.W.2d 209, 210 (Tex. 1985) (*per curiam*); *Carrillo v. State*, 480 S.W.2d 612, 616 (Tex. 1972); *Ammex Warehouse Co. v. Archer*, 381 S.W.2d 478, 482 (Tex. 1964); see also *Stubbs v. Stubbs*, 657 S.W.2d 10, 11-12 (Tex. App.-Dallas 1983, no writ) (recognizing that district court had no jurisdiction to consider a motion to modify an order on appeal because a trial court "generally has no jurisdiction to vacate or change a judgment once the case has been appealed")

25. On August 12, 2021, the Second Court of Appeals entered its Memorandum Opinion and Judgment in case 02-21-00074-CV.⁶

VII. CAUSES OF ACTION

Count 1 - Declaratory Judgment

26. Plaintiff adopts and re-alleges the allegations contained in the paragraphs above herein as if restated verbatim.

27. Pursuant to CIVIL PRACTICE & REMEDIES CODE chapter 37, and

⁴ EX.-4, 05.21.21 048-276347-15 ‘Order Vacating Order Denying Motion to Set Status Conference for Want of Jurisdiction’.

⁵ EX.-5, 07.13.21 048-276347-15 “Final Judgment”

⁶ EX-6, 08.12.21, [02-21-00074-CV Memorandum Opinion and Judgment, Second Court of Appeals TRIAL COURT CASE 048-276347-15](#)

specifically, but not limited to CIV. PRAC. REM. CODE section 37.004(a), Plaintiff seeks judicial declaration that the 48th District Court's "Order Vacating the Order Denying Plaintiff's Motion to Set Status Conference" signed on May 21, 2021, is void for lack of jurisdiction.

Count 2 - Declaratory Judgment

28. Plaintiff adopts and re-alleges the allegations contained in the paragraphs above herein as if restated verbatim.

29. Pursuant to CIVIL PRACTICE & REMEDIES CODE chapter 37, and specifically, but not limited to CIV. PRAC. REM. CODE section 37.004(a), Plaintiff seeks judicial declaration that the 48th District Court's "Final Judgment" signed on July 3, 2021, is void for lack of jurisdiction.

VIII. Request for Attorneys' Fees and Expenses

30. Plaintiff adopts and re-alleges the allegations contained in the paragraphs above herein as if restated verbatim.

31. Pursuant to CIVIL PRACTICE & REMEDIES CODE section 37.009. Plaintiff is entitled to attorneys' fees and costs.

IX. REQUEST FOR DISCLOSURES

32. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Required Disclosures **194.1Duty to Disclose; Production.**

(a)Duty to Disclose. Except as exempted by Rule 194.2(d) or as otherwise agreed by the parties or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties the information or material described in Rule 194.2, 194.3, and 194.4.

(b)Production. Copies of documents and other tangible items ordinarily

must be served with the response.

X. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendant be cited to appear and answer herein, and upon final judgment hereof, Plaintiff have and recover from Defendant as follows:

- a. Judicial declaration that the 48th Judicial District Court's "Order Vacating the Order Denying Plaintiff's Motion to Set Status Conference" signed on May 21, 2021 and "Final Judgment" signed on July 3, 2021" in cause 048-276347-15 are void for lack of jurisdiction; and
- b. the 48th Judicial District Court's "Order Vacating the Order Denying Plaintiff's Motion to Set Status Conference" signed on May 21, 2021 and "Final Judgment" signed on July 3, 2021" in cause 048-276347-15 are VACATED, and
- c. Reasonable attorneys' fees, costs and expenses incurred by Plaintiff in the course of prosecuting this action, *and*
- d. Such other and further relief, at law, contract or in equity, to which Plaintiff may show herself to be justly entitled.

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

EX-1



CAUSE NO. 048-276347-15

HARRIET NICHOLSON

~ versus ~

NATIONSTAR MORTGAGE, LLC

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

ORDER DENYING PLAINTIFF'S MOTION TO SET STATUS CONFERENCE

On the 5th day of March, 2021 came on to be considered Plaintiff's Motion to Set Status Conference filed on February 23, 2021. A final judgement was signed in this case on May 17, 2016. An appeal of the final judgement was dismissed on August 10, 2016. The mandate of the Court of Appeal issued on November 4, 2016. The appeal was unsuccessful therefor the final judgement was not vacated in whole or in part. The district court lost plenary jurisdiction in this August 30, 2016. This court is without jurisdiction to set a status conference.

The Court, having considered the motion, the evidence, the record of the case and the arguments of the parties, has determined that the motion should be DENIED for want of jurisdiction.

IT IS THEREFORE ORDERED that the motion is DENIED for want of jurisdiction.

Signed this 12th day of March, 2021.

DAVID L. EVANS, JUDGE PRESIDING



A CERTIFIED COPY
ATTEST: 09/09/2021
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

THOMAS A. WILDER
DISTRICT CLERK
2021 MAR 12 PM 2:35
TARRANT COUNTY
FILED



E-MAILED
3-12-2021

EX-2



CAUSE NO. 048-276347-15

HARRIET NICHOLSON,
Plaintiff Counter Defendant,
v.
NATIONSTAR MORTGAGE, LLC,
Defendant Counter Plaintiff

48th District Court

Tarrant County, Texas

PLAINTIFF’S NOTICE OF APPEAL

COMES NOW, Plaintiff, Harriet Nicholson, and files this timely Notice of Appeal to the Second Court of Appeals of Texas.

1. Plaintiff is appealing the Order Denying Plaintiff’s Motion to Set Status Conference signed on March 12, 2021. (Ex. A)
2. On May 17, 2016, the Court signed an Interlocutory Order Granting Nationstar Mortgage’s No-Evidence Motion for Summary Judgment. (Ex. B)
3. On June 16, 2016, Plaintiff filed a premature appeal of the Interlocutory Order Granting Nationstar Mortgage’s No-Evidence Motion for Summary Judgment to the Second Court of Appeals <https://search.txcourts.gov/Case.aspx?cn=02-16-00210-CV&coa=coa02> that was subsequently transferred to the Eighth Court of Appeals on July 7, 2016. [Nicholson v. Nationstar Mortg., LLC, No. 08-16-00148-CV, 2016 WL 4208100, at *1 \(Tex. App. Aug. 10, 2016\)](#)
4. On July 8, 2016, Kelly Harvey sent a Letter to the 48th District Trial and the Eighth Court of Appeals advising the appeal was premature because Nationstar Mortgage’s counterclaim for attorney’s fees was pending and she was planning to pursue counterclaim in a summary judgment within thirty days. (Ex. C)

[07.08.16 Kelly Harvey Letter to 48th District Court and Eighth Court of Appeals](#)

RE: Court of Appeals No.: 02-16-00210-CV

Trial Court Case No.: 048-276347-15

Style: Harriet Nicholson vs. Nationstar Mortgage LLC

Dear Clerk of Courts:

The Notice of Appeal filed by Plaintiff Harriet Nicholson is premature. The Order granting Defendant's Motion for Summary Judgment from which Ms. Nicholson appeals is not a final judgment. The Defendant filed a counterclaim for its attorney's fees which it intends to pursue. The Defendant expects to file a motion for summary judgment on its counterclaim within the next 30 days.

Sincerely,

/s/ Kelly J. Harvey

Kelly J. Harvey

Attorney for Nationstar Mortgage LLC

5. The Texas Supreme Court held in *McNally v. Guevara*, 52 S.W.3d 195, 196 (Tex. 2001) that summary judgment in favor of defendants was not final and appealable without disposing of their claim for attorney fees. (Ex. D)

6. A litigant has the fundamental right to fairness in every proceeding. Fairness is upheld by avoiding even the appearance of partiality. See, e.g., *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980). When a judge's actions stand at odds with these basic notions, we must act or suffer the loss of public confidence in our judicial system. "[J]ustice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 99 L.Ed. 11 (1954). *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 883 (5th Cir. 2021)

7. On August 10, 2016, the Eighth Court of Appeals dismissed the appeal for want of prosecution. [Nicholson v. Nationstar Mortg., LLC, No. 08-16-00148-CV, 2016 WL 4208100, at *1 \(Tex. App. Aug. 10, 2016\)](#)

Respectfully submitted,

/s/ Harriet Nicholson

Harriet Nicholson

2951 Santa Sabina Drive

Grand Prairie, Texas 75052

817-217-0245

harrietcholson@yahoo.com

CERTIFICATE OF SERVICE

On March 17, 2021, I certify I served all counsel of record pursuant to TRCP 21.

/s/ Harriet Nicholson



A CERTIFIED COPY
ATTEST: 09/09/2021
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

EX. A



A CERTIFIED COPY
 ATTEST: 09/09/2021
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Kathy Ballard

CAUSE NO. 048-276347-15

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|--------------------------|---|------------------------------------|
| HARRIET NICHOLSON | § | IN THE DISTRICT COURT |
| ~ versus ~ | § | |
| | § | TARRANT COUNTY, TEXAS |
| | § | |
| NATIONSTAR MORTGAGE, LLC | § | 48 TH JUDICIAL DISTRICT |


ORDER DENYING PLAINTIFF'S MOTION TO SET STATUS CONFERENCE

On the 5th day of March, 2021 came on to be considered Plaintiff's Motion to Set Status Conference filed on February 23, 2021. A final judgement was signed in this case on May 17, 2016. An appeal of the final judgement was dismissed on August 10, 2016. The mandate of the Court of Appeal issued on November 4, 2016. The appeal was unsuccessful therefor the final judgement was not vacated in whole or in part. The district court lost plenary jurisdiction in this August 30, 2016. This court is without jurisdiction to set a status conference.

The Court, having considered the motion, the evidence, the record of the case and the arguments of the parties, has determined that the motion should be DENIED for want of jurisdiction.

IT IS THEREFORE ORDERED that the motion is DENIED for want of jurisdiction.

Signed this 12th day of March, 2021.



 DAVID L. EVANS, JUDGE PRESIDING

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 TARRANT COUNTY
 2021 MAR 12 PM 2:35
 THOMAS A. WILDER
 DISTRICT CLERK



E-MAILED
3-12-2021



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ATTEST: 09/09/2021
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

EX. B



A CERTIFIED COPY
 ATTEST: 09/09/2021
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Kathy Ballard

CAUSE NO. 048-276347-15

HARRIET NICHOLSON

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IN THE DISTRICT COURT

V.

TARRANT COUNTY, TEXAS

NATIONSTAR MORTGAGE, LLC

48TH JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANT'S NO-EVIDENCE
 MOTION FOR SUMMARY JUDGMENT**

On the 27th day of April 2016 came on to be considered Defendant's No-Evidence Motion for Summary Judgment.

The Court, having considered the motion, the evidence, and the arguments of Counsel and the Plaintiff, has determined that the motion should be Granted.

IT IS THEREFORE ORDERED that Defendant's No-Evidence Motion for Summary Judgment is **GRANTED**.

Signed this the 17th day of May 2016.

DAVID L. EVANS, Judge Presiding

cc: Harriet Nicholson
 2951 Santa Sabina Drive
 Grand Prairie, Texas 75052
Via First Class Mail

Kelly J. Harvey
Via Fax No. (832) 922-6262

MAILED COPY TO ALL ATTORNEYS
 AND PRO SE PARTIES OF RECORD
5-19-2016



E-MAILED
5-19-2016

Court's Minutes
 Transaction # 199

Send Result Report

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THOMAS A. WILSON
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

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CAUSE NO. 048-276347-15

HARRIET NICHOLSON

V.

NATIONSTAR MORTGAGE, LLC

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT'S NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT

On the 27th day of April 2016 came on to be considered Defendant's No-Evidence Motion for Summary Judgment.

The Court, having considered the motion, the evidence, and the arguments of Counsel and the Plaintiff, has determined that the motion should be Granted.

| No. | Date and Time | Destination | Times | Type | Result | Resolution/ECM |
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| 001 | 05/18/16 10:46 | 88329226262 | 0°00'28" | FAX | OK | 200x100 Normal/Off |



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THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

EX. C



A CERTIFIED COPY
 ATTEST: 09/09/2021
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 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Kathy Ballard

048-276347-15

FILED
 TARRANT COUNTY
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 THOMAS A. WILDER
 DISTRICT CLERK



KELLY HARVEY PC. | P.O. Box 131407 | Houston, Texas 77219 | P:(832) 922-4000 | F:(832) 922-6262

July 8, 2016

Tarrant County District Clerk
 100 N. Calhoun, 2nd Floor
 Ft. Worth, Texas 76196

Eighth Court of Appeals
 500 E. San Antonio Ave., Room 1203
 El Paso, Texas 79901-2408

RE: Court of Appeals No.: 02-16-00210-CV

Trial Court Case No.: 048-276347-15

Style: Harriet Nicholson vs. Nationstar Mortgage LLC

Dear Clerk of Courts:

The Notice of Appeal filed by Plaintiff Harriet Nicholson is premature. The Order granting Defendant's Motion for Summary Judgment from which Ms. Nicholson appeals is not a final judgment. The Defendant filed a counterclaim for its attorney's fees which it intends to pursue. The Defendant expects to file a motion for summary judgment on its counterclaim within the next 30 days.

Sincerely,

/s/ Kelly J. Harvey

Kelly J. Harvey

Attorney for Nationstar Mortgage LLC

cc: Harriet H. Nicholson
 2951 Santa Sabina Drive
 Grand Prairie, TX 75052 and email

Ms. Cori Balderas
 Coordinator, 48th District Court, via email

Ms. Sandy Carter, Civil Appeals Administrator, via email

Mr. Khayan Williams, Asst. District Attorney, via email



A CERTIFIED COPY
 ATTEST: 11/24/2020
 THOMAS A. WILDER
 DISTRICT CLERK
 TARRANT COUNTY, TEXAS
 BY: /s/ Kathy Ballard



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ATTEST: 09/09/2021
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

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TARRANT COUNTY
2/8/2016 11:29:27 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 048-276347-15

HARRIET NICHOLSON
Plaintiff

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IN THE DISTRICT COURT OF

VS.

TARRANT COUNTY, TEXAS

NATIONSTAR MORTGAGE, LLC
Defendant

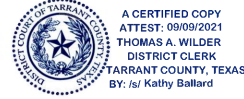
48TH JUDICIAL DISTRICT

**DEFENDANT'S FIRST AMENDED ANSWER,
AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

Comes now Defendant Nationstar Mortgage LLC, also hereinafter referred to as Defendant, and file its Affirmative Defenses, Amended Answer and Counterclaim and would show the Court as follows:

AFFIRMATIVE DEFENSES

1. Defendant alleges the affirmative defense of laches and waiver.
2. Defendant asserts the affirmative defense of the statute of limitations.
3. Defendant asserts the affirmative defense of judicial estoppel.
4. Defendant asserts the affirmative defense of lack of consideration.
5. Defendant asserts the affirmative defense of failure to mitigate damages by the Plaintiff.
6. Defendant asserts that Plaintiff lacks standing to assert some of her claims and causes of action.
7. Defendant asserts that Plaintiff's claims are barred by the economic loss doctrine.
8. Defendant asserts that Plaintiff's claims are barred by collateral estoppel.
9. Defendant asserts that Plaintiff is not a consumer as that term is defined in the Texas Deceptive Trade Practices Act.
10. Defendant asserts that Plaintiff has not satisfied all conditions precedent for recovery under her claims and causes of action.



11. Defendant asserts that Plaintiff's claims are barred by the anti-waiver provision contained in Plaintiff's note, deed of trust, prior loan modification agreements, and loan modification negotiation agreement.
12. Plaintiff's claims are barred in whole or in part by Chapter 33 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because Plaintiff and third parties are responsible for a percentage of the harm for which relief is sought by Plaintiff. *See* TEXAS CIVIL PRACTICE & REMEDIES CODE §§ 33.001—33.016.
13. Plaintiff's claims and damages are barred in whole or in part due to pre-existing injuries and conditions of the Plaintiff.
14. Plaintiff's claims are barred in whole or in part because Defendant's conduct was not the producing cause of Plaintiff's alleged losses, damages, and/or injuries.
15. Plaintiff's claims are barred in whole or in part because Defendants' conduct was not the proximate cause of Plaintiff's alleged losses, damages, and/or injuries.
16. Plaintiff's claims are barred in whole or in part because Plaintiff has unclean hands.
17. Defendant asserts the affirmative defense of bona fide error.
18. Plaintiff's claims are barred in whole or in part because Plaintiff is unable to prove her alleged losses, damages, and/or injuries in accordance with Texas law.
19. Plaintiff is not entitled to recovery of her attorneys' fees.
20. Plaintiff is not entitled to recovery of exemplary damages.
21. Defendant is entitled to offset and recoupment in the amount the funds due and owing on the debt in the event Plaintiff is awarded any damages.
22. Defendant asserts that the Court lacks jurisdiction to determine all or some of Plaintiff's claims and causes of action.
23. Defendant asserts that Plaintiffs' claims are barred all or in part by the doctrine of ratification.
24. Defendant asserts that Plaintiff's claims are barred all or in part because Plaintiff have not sustained any damages.
25. Defendant asserts that Plaintiff's claims are barred all or in part due to Plaintiff's fraud.
26. Defendant further asserts that any damages allegedly suffered by Plaintiff, which damages Defendant vigorously denies, is the result of Plaintiff's own errors, breaches, prior breaches, misrepresentations, omissions, fraud, and any concealment thereof.



27. Defendant asserts the applicability of Chapter 41 of the Texas Civil Practice and Remedies Code as an affirmative defense and further asserts that the exemplary damages, if any, which might be awarded are capped under Tex. Civ. Prac. Rem. Code, Section 41.008(b). Moreover, Defendant affirmatively asserts that any award of exemplary damages in this case would be grossly excessive and would not comply with due process under the Constitutions of either the United States or Texas.

GENERAL DENIAL

28. Subject to any special exceptions, Defendant enters a general denial to each and every allegation contained in Plaintiff’s Original Petition, and any amendments and supplements thereto hereafter filed, pursuant to Rule 92 of the Texas Rules of Civil Procedure. Defendant also reserves the right to amend its answer.

COUNTERCLAIM

29. Defendant counterclaims for its reasonable and necessary attorneys’ fees and costs from Plaintiff pursuant to the Texas Finance Code and the Texas Declaratory Judgment Act.

WHEREFORE PREMISES CONSIDERED, Defendant prays that the court render a take nothing judgment against Plaintiff, assess costs against Plaintiff and award Defendant its attorneys’ fees and all other relief to which it is entitled.

Respectfully submitted

HARVEY LAW GROUP

/s/ Kelly J. Harvey
Kelly J. Harvey
SBN: 09180150
kelly@kellyharvey.com
Mia D. Searles
SBN: 24068544
mia@kellyharvey.com
Jerry Mason
SBN: 24081794
Jerry@kellyharvey.com

048-276347-15



A CERTIFIED COPY
ATTEST: 09/09/2021
THOMAS A. WILDER
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing responses to requests for admissions have been duly served on all parties and/or their counsel of record, as listed below, by certified mail, return receipt requested, or via electronic delivery or via email, through e-file notification, in accordance with the Texas Rules of Civil Procedure, on this the 8th day of February, 2016, and a true copy of said notice was promptly filed in the office of the Clerk of Court together with this proof of service.

Harriet Nicholson
2951 Santa Sabina Drive
Grand Prairie, TX 75052

/s/ Kelly J. Harvey



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BY: /s/ Kathy Ballard

EX. D



 KeyCite Yellow Flag - Negative Treatment

Distinguished by *In re Certain Underwriters at Lloyd's London*, Tex.App.-Hous. (1 Dist.), January 15, 2010

52 S.W.3d 195
Supreme Court of Texas.

R. Stephen **McNALLY**, Petitioner,
v.
Joseph **GUEVARA** and Maria Trevino, Respondents.

No. 99-0230.

|
June 28, 2001.

|
Rehearing Overruled Sept. 20, 2001.

Synopsis

Driveway easement holder filed action against landowners for declaratory and injunctive relief concerning alleged right to park on driveway, and landowners counterclaimed for declaration that easement was for ingress and egress only. The District Court, Travis County, 250th Judicial District, *John K. Dietz, J.*, granted summary judgment in favor of landowners. Easement holder appealed. The Austin Court of Appeals, *Aboussie, C.J.*, *989 S.W.2d 380*, affirmed. On petition for review, the Supreme Court held that the summary judgment was not final and appealable without disposing of the claim for attorney fees.

Reversed and remanded.

West Headnotes (3)

[1] Judgment  Motion or Other Application

A party's omission of one claim from a motion for summary judgment does not waive the claim since a party can always move for partial summary judgment. *Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(e)*.

[20 Cases that cite this headnote](#)

[2] Judgment  Motion or Other Application

There can be no presumption that a motion for summary judgment addresses all of the movant's claims since a party can always move for partial summary judgment. *Vernon's Ann.Texas Rules Civ.Proc., Rule 166a(e)*.

[20 Cases that cite this headnote](#)

[3] Appeal and Error  Determination of Part of Controversy

Summary judgment in favor of defendants was not final and appealable without disposing of their claim for attorney fees; even though the court awarded costs to the defendants, nothing suggested an intend to deny their claim for attorney fees.

[69 Cases that cite this headnote](#)



Attorneys and Law Firms

*195 R. Stephen McNally, Austin, pro se.

James P. Wallace, Jr., Georgetown, for respondents.

Opinion

PER CURIAM.

R. Stephen McNally owns an easement “for driveway purposes” on land owned by Joseph Guevara and Maria Trevino. McNally sued Guevara and Trevino for a declaration that the easement could be used not only for access but also for parking. The defendants counterclaimed for a declaration that the easement could not be used for parking and for attorney fees. The defendants filed a motion for summary judgment that addressed only the easement issues and not their claim for attorney fees. The trial court granted the motion and signed a document captioned “Judgment” that: recited that the defendants’ *196 motion “should be in all things granted”; stated that defendants were entitled as a matter of law to “prevail on their claims for relief under the Uniform Declaratory Judgments Act”; declared the extent of the easement in dispute; and taxed all costs against the plaintiff. The judgment did not refer to the defendants’ claim for attorney fees.

McNally appealed but also moved to dismiss his own appeal on the ground that the judgment was not final because it did not dispose of the defendants’ claim for attorney fees. The defendants argued to the court of appeals that they had abandoned their claim for attorney fees by not including it in their motion for summary judgment. A divided court of appeals agreed with the defendants, noting that the award of costs also indicated finality. 989 S.W.2d 380 (Tex.App.—Austin 1999). The court affirmed the trial court’s judgment.

[1] [2] [3] We agree with the dissenting Justice in the court of appeals that a party’s omission of one of his claims from a motion for summary judgment does not waive the claim because a party can always move for partial summary judgment, *Tex.R. Civ. P. 166a(e)*, and thus there can be no presumption that a motion for summary judgment addresses all of the movant’s claims. See *New York Underwriters Ins. Co. v. Sanchez*, 799 S.W.2d 677, 678–679 (Tex.1990). Nothing in the trial court’s judgment, other than its award of costs to the defendants, suggests that it intended to deny the defendants’ claim for attorney fees. The award of costs, by itself, does not make the judgment final. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191 (Tex.2001).

Because the judgment does not appear final on its face, and because it did not dispose of the defendants’ claim for attorney fees, it was not an appealable judgment. Accordingly, without hearing oral argument, *Tex.R.App. P. 59.1*, we reverse the judgment of the court of appeals and remand the case to that court to determine whether to abate the appeal to permit the trial court to render a final judgment, *Tex.R.App. P. 27.2*, or to dismiss the appeal for want of jurisdiction.

All Citations

52 S.W.3d 195, 44 Tex. Sup. Ct. J. 998

End of Document

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EX-3



COURT OF APPEALS
SECOND DISTRICT OF TEXAS

CHIEF JUSTICE
BONNIE SUDDERTH

JUSTICES
ELIZABETH KERR
J. WADE BIRDWELL
DABNEY BASSEL
DANA WOMACK
MIKE WALLACH
BRIAN WALKER

TIM CURRY CRIMINAL JUSTICE CENTER
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CLERK
DEBRA SPISAK

CHIEF STAFF ATTORNEY
LISA M. WEST

GENERAL COUNSEL
CLARISSA HODGES

April 5, 2021

Harriet Nicholson

* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 02-21-00074-CV
Trial Court Case Number: 048-276347-15

Style: Harriet Nicholson
v.
NationStar Mortgage, LLC

The court has received a copy of the notice of appeal in this case. *See* Tex. R. App. P. 25.1(e). The court is concerned it may not have jurisdiction over this appeal from the trial court's Order Denying Plaintiff's Motion to Set Status Conference signed March 12, 2021, because it does not appear to be a final judgment or an appealable interlocutory order.

Unless appellant(s) or any party desiring to continue the appeal files with the court, on or before **Thursday, April 15, 2021**, a response showing grounds for continuing the appeal, this appeal may be dismissed for want of jurisdiction. *See* Tex. R. App. P. 42.3(a), 44.3.

Respectfully yours,

DEBRA SPISAK, CLERK

A handwritten signature in cursive script that reads "Debra Spisak".

By: Tammy Cooper, Deputy Clerk

02-21-00074-CV
April 5, 2021
Page 2

cc: Kelly Harvey
Harvey Law Group
P.O. Box 131407
Houston, TX 77219-1407

Civil District Clerk, Tarrant County
Tom Vandergriff Civil Courts Bldg.
100 N. Calhoun St., 2nd Floor
Fort Worth, TX 76196

Hon. David L. Evans
Judge, 48th District Court
Tom Vandergriff Civil Courts Bldg.
100 N. Calhoun St., 4th Floor
Fort Worth, TX 76196

Court Reporter, 48th District Court
Tom Vandergriff Civil Courts Bldg.
100 N. Calhoun St., 4th Floor
Fort Worth, TX 76196

EX-4



CAUSE NO. 048-276347-15

HARRIET NICHOLSON

~ versus ~

NATIONSTAR MORTGAGE, LLC

§
§
§
§
§

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48TH JUDICIAL DISTRICT

ORDER VACATING ORDER DENYING PLAINTIFF'S MOTION
TO SET STATUS CONFERENCE

On the 21st day of May 2021 came on to be considered the Abatement Order dated April 19, 2021, in No. 02-21-00074-CV, Harriet Nicholson v. NationStar Mortgage, LLC in The Court of Appeals, Second Appellate District of Texas at Fort Worth.

The Court, having considered the order and the file in this case, is of the opinion that the Order Denying Plaintiff's Motion to Set Status Conference should be vacated.

IT IS THEREFORE ORDERED that the Order Denying Plaintiff's Motion to Set Status Conference be and is hereby Vacated.

Signed this 21st day of May 2021.

DAVID L. EVANS, JUDGE PRESIDING



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TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

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THOMAS A. WILDER
DISTRICT CLERK



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5-21-21

EX-5



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TARRANT COUNTY
2021 JUL 13 PM 1:37
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 048-276347-15

HARRIET NICHOLSON,
Plaintiff,

vs.

NATIONSTAR MORTGAGE LLC,
Defendant.

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

48th JUDICIAL DISTRICT

FINAL JUDGMENT

On December 1, 2015, the Court entered an Order Denying Plaintiff's Motion for Summary Judgment concerning Plaintiff's declaratory judgment claims (the "December 1, 2015, Order").

On April 27, 2016, Defendant Nationstar Mortgage LLC's Amended No-Evidence Motion for Summary Judgment and the Plaintiff's Motion for Partial Summary Judgment Regarding the Effects [sic] of Rescission Deed (the "Plaintiff's Motion") were heard.

On May 17, 2016, the Court signed an order granting Nationstar's Amended No-Evidence Motion for Summary Judgment disposing of all of Plaintiff's claims, and an order denying the Plaintiff's Motion (the "May 17, 2016, Orders").

On June 16, 2021, Defendant Nationstar Mortgage LLC filed its non-suit of its counterclaim for attorney's fees and costs (the "Non- Suit").

On June 30, 2021, the Court signed its Order Regarding Objections to Summary Judgment Evidence (the "June 30, 2021, Order").

On July 1, 2021, the Court signed its Order Regarding Pending Matters as of June 23, 2021.

On July 13, 2021, the Court signed an Order Regarding Motion for Leave To Set Plaintiff's Cross-Motion For Summary Judgment signed on April 20, 2016.

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THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

The December 1, 2015, Order, May 17, 2016, Orders, June 30, 2021, Order, the Order Regarding Pending Matters as of June 23, 2021, and the order of July 13, 2021, entitled "Order Regarding Motion for Leave to Set Plaintiff's Cross-Motion For Summary Judgment" are all incorporated herein.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff shall take nothing on her claims against Defendant Nationstar Mortgage LLC, and said claims are dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all of Plaintiff's pending motions are DENIED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Defendant Nationstar Mortgage LLC's Non-Suit is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this judgment disposes of all claims and parties and is a final appealable judgment.

SIGNED this 13th day of July, 2021. @ 1:15



DAVID L. EVANS, JUDGE PRESIDING



A CERTIFIED COPY
ATTEST: 09/09/2021
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: /s/ Kathy Ballard

EX-6



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-21-00074-CV

HARRIET NICHOLSON, Appellant

v.

NATIONSTAR MORTGAGE, LLC, Appellee

On Appeal from the 48th District Court
Tarrant County, Texas
Trial Court No. 048-276347-15

Before Bassel, Wallach, and Walker, JJ.
Per Curiam Memorandum Opinion

MEMORANDUM OPINION AND JUDGMENT

We have considered “Appellant’s Unopposed Motion to Dismiss Appeal Pursuant to Tex. R. App. P. 42.1(a).” We grant the motion and dismiss the appeal. *See* Tex. R. App. P. 42.1(a)(1), 43.2(f).

Per Curiam

Delivered: August 12, 2021



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS**

CHIEF JUSTICE
BONNIE SUDDERTH

JUSTICES
ELIZABETH KERR
J. WADE BIRDWELL
DABNEY BASSEL
DANA WOMACK
MIKE WALLACH
BRIAN WALKER

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CLERK
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CHIEF STAFF ATTORNEY
LISA M. WEST

GENERAL COUNSEL
CLARISSA HODGES

August 12, 2021

Harriet Nicholson
* DELIVERED VIA E-MAIL *

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Hon. David L. Evans
Regional Presiding Judge
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Fort Worth, TX 76196
* DELIVERED VIA E-MAIL *

Civil District Clerk, Tarrant County
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Fort Worth, TX 76196
* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 02-21-00074-CV
Trial Court Case Number: 048-276347-15

Style: Harriet Nicholson
v.
NationStar Mortgage, LLC

Today the Second Court of Appeals issued an opinion and judgment in the above-referenced cause. Copies of the opinion and judgment are attached and can also be viewed on our Court's webpage at: <http://www.txcourts.gov/2ndcoa>.

Respectfully yours,

DEBRA SPISAK, CLERK

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