

CAUSE NO. DC-21-12504

HARRIET NICHOLSON,

Plaintiff,

vs.

NATIONSTAR MORTGAGE LLC,

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

192nd JUDICIAL DISTRICT

**DEFENDANT NATIONSTAR MORTGAGE LLC’S RESPONSE
IN OPPOSITION TO PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Defendant Nationstar Mortgage LLC (“Nationstar” or “Defendant”) and respectfully files its response in opposition to the Motion for Summary Judgment (the “Motion”) filed by Plaintiff Harriet Nicholson (“Plaintiff”) on October 28, 2021.

I. INTRODUCTION

1. Defendant opposes the Motion on the basis that Plaintiff is without standing to bring this lawsuit in Dallas County. Simply put, Plaintiff filed the instant action in the wrong county—thereby stripping the Court of any jurisdiction to provide the relief sought. *See* TEX. CIV. PRAC. & REM. CODE § 15.011-15.020.¹ It is well-settled that where a party lacks standing, the court subsequently lacks subject matter jurisdiction to hear the claims asserted. *See Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993) (holding that standing is a constitutional prerequisite to pursuing legal claims in a lawsuit).

2. Further, after filing her Petition in Dallas County on September 7, 2021, Plaintiff subsequently filed a Notice of Appeal in the Second Court of Appeals of Texas—on October 11, 2021. *See Nicholson v. Nationstar Mortg. LLC*, No. 02-21-00323-CV.² Consequently, “upon

¹ It is obvious from simply reading the first page of Plaintiff’s Motion that this particular lawsuit relates to litigation that occurred solely in Tarrant, not Dallas, County.

² Discussed in more detail below. *See* n.4, *infra*.

perfection of the appeal, the trial court loses jurisdiction of the case, pending the appeal, in respect to all matters that interfere with the appellate functions.” *Thompson v. Davis*, No. 12-19-00348-CV, 2020 WL 6065984, at *1 (Tex. App. Oct. 14, 2020), *review denied* (Jan. 22, 2021) (citing *Panhandle Const. Co. v. Lindsey*, 72 S.W.2d 1068, 1072 (Tex. 1934)).

3. Alternatively, Defendants oppose summary judgment in Plaintiff’s favor on the basis that the undisputed material facts and law establish Plaintiff cannot conclusively prove her claims. In sum, Plaintiff’s claims fail as a matter of law.

II. EXECUTIVE SUMMARY

4. Upon information and belief, this is Plaintiff’s first action filed in Dallas County. However, Plaintiff has an extensive filing history in Tarrant County and the appellate courts of Texas—with all of the lawsuits involving real property commonly known as 2951 Santa Sabina Drive, Grand Prairie, Tarrant County, Texas 75052 (the “Property”).

5. On November 5, 2012, Plaintiff filed her first lawsuit to challenge, among other things, the validity of a substitute trustee’s deed. *See Nicholson v. The Bank of N.Y. Mellon f/k/a The Bank of N.Y., as Trustee for the Certificateholders of CWMBS, Inc., CWMBS Reforming Loan REMIC Trust Certificates, Series 2005-R2*, Cause No. 342-262692-12, in the 342nd Judicial District Court, Tarrant County, Texas.³

6. Not even a month later, on December 3, 2012, Plaintiff filed a second action alleging wrongful foreclosure of the Property. *See Nicholson v. BAC Home Loans Servicing L.P.*,

³ A copy of the docket for this action is attached as **Exhibit A**. On November 30, 2020, Plaintiff filed a Notice of Appeal to the Second Court of Appeals, where the matter remains pending and is set for submission on the briefs without oral argument on November 22, 2021. *See Nicholson v. The Bank of N.Y. Mellon, et al.*, No. 02-20-00379-CV. A copy of the docket for this appeal is attached as **Exhibit B**.

et al., Cause No. 096-263055-12, in the 96th Judicial District Court, Tarrant County, Texas.⁴ This second lawsuit was removed to federal court and voluntarily dismissed on April 16, 2013.

7. Next, on August 23, 2013, Plaintiff filed a Motion for Judicial Review of [Documents] or Instruments Purporting to Create a Lien or Claim. *See In Re: Purported Lien or Claim Against Harriet Nicholson*, Cause No. 352-267626-13, in the 352nd Judicial District Court, Tarrant County, Texas.⁵

8. Then, Plaintiff filed her fourth lawsuit in Tarrant County—the one that produced the order and judgment she is presently demanding this Court to vacate. *See Nicholson v. Nationstar Mortg. LLC*, Cause No. 048-276347-15, in the 48th Judicial District Court, Tarrant County, Texas;⁶ *see also* Mot. ¶ 1.

9. Undeterred, Plaintiff filed yet another lawsuit—on June 21, 2016—in Tarrant County alleging she was not notified by the substitute trustee of the filing of a rescission deed in July 2014. *See Nicholson v. Stockman, Substitute Trustee*, Cause No. 048-286132-16, in the 48th Judicial District Court, Tarrant County, Texas.⁷ This matter was ultimately severed into two separate actions on November 28, 2018 and January 17, 2019—with each case being disposed of on summary judgment shortly thereafter. *See Nicholson v. Bank of Am., N.A., et al.*, Cause No. 048-304598-18, in the 48th Judicial District Court, Tarrant County, Texas;⁸ *see also Nicholson v.*

⁴ A copy of the dockets (state and federal) for this action is attached as **Exhibit C**.

⁵ A copy of the docket for this matter is attached as **Exhibit D**.

⁶ A copy of the docket for this action is attached as **Exhibit E**. On October 11, 2021, Plaintiff filed a Notice of Appeal to the Second Court of Appeals. *See Nicholson v. Nationstar Mortg. LLC*, No. 02-21-00323-CV. A copy of the docket for this appeal is attached as **Exhibit F**.

⁷ A copy of the docket for this matter is attached as **Exhibit G**. On June 30 2020, Plaintiff filed a Notice of Appeal to the Second Court of Appeals, where the matter was affirmed, on March 25, 2021. *See Nicholson v. Harvey Law Group, et al.*, No. 02-20-00180-CV. On August 20, 2021, Plaintiff filed a Petition for Review with the Supreme Court of Texas that was denied on October 8, 2021. A copy of the Court of Appeals docket is attached as **Exhibit H**.

⁸ A copy of the docket for this action is attached as **Exhibit I**. On March 8, 2019, Plaintiff filed a Notice of Appeal in the Second Court of Appeals. *See Nicholson v. Bank of Am., N.A., et al.*, No. 02-19-00085-CV. Court of Appeals docket attached as **Exhibit J**.

Stockman, Substitute Trustee, et al., Cause No. 048-305585-19, in the 48th Judicial District Court, Tarrant County, Texas.⁹

10. In the Motion, Plaintiff seeks declaratory relief to render void an order and judgment of the 48th District Court of Tarrant County, Texas. (Mot. ¶¶ 1, 2.) Specifically, Plaintiff contends that—because she filed a Notice of Appeal in the Second Court of Appeals of Texas on March 17, 2021¹⁰—Tarrant County did not have jurisdiction to enter its May 21, 2021 Order Vacating Order Denying Motion to Set Status Conference and its July 13, 2021 Final Judgment. However, as is clear from the Second Court of Appeals’ Abatement Order dated April 19, 2021, the appeal was abated “for thirty days to allow the trial court to clarify whether it intended its May 17, 2016 ‘Order Granting Defendant’s No-Evidence Motion for Summary Judgment’ to be a final judgment disposing of all claims and parties or whether it intended it to be a nonappealable, interlocutory order.” *Nicholson v. Nationstar Mortg. LLC*, No. 02-21-00074-CV, Order at 2-3 (attached as **Exhibit N**).

11. Subsequently, on May 20, 2021, the Hon. David L. Evans, Judge of the 48th District Court of Tarrant County, requested an extension of the Abatement Order.¹¹ Judge Evans sought the extension “to vacate the order under appeal” by entering the May 21, 2021 Order Vacating Order Denying Motion to Set Status Conference “and proceed with the case to final judgment in the trial court.” **Exhibit O** at 1. The appellate court granted the request the same day and extended the abatement by sixty days until July 19, 2021. This enabled Judge Evans to enter the July 13, 2021 Final Judgment while the case remained abated in the Second Court of Appeals.

⁹ A copy of the docket for this matter is attached as **Exhibit K**. On March 21, 2019, Plaintiff filed a Notice of Appeal in the Second Court of Appeals. See *Nicholson v. Stockman, Substitute Trustee, et al.*, No. 02-19-00103-CV. Court of Appeals docket attached as **Exhibit L**.

¹⁰ A copy of this appellate docket is attached as **Exhibit M**.

¹¹ A copy of the Request for Extension of Abatement is attached as **Exhibit O**.

12. Thus, Plaintiff's request for declaratory relief fails because: (i) Plaintiff has no standing to bring her claims in Dallas County; (ii) jurisdiction presently lies with the Second Court of Appeals of Texas, and (iii) the trial court had jurisdiction when the order and judgment were entered. For these reasons and those discussed below, the Court should deny Plaintiff's Motion in its entirety as a matter of law.

III. LEGAL STANDARD

13. A traditional summary judgment is proper when the summary judgment proof establishes as a matter of law that there is no genuine issue of material fact as to one or more of the essential elements of the plaintiff's cause of action or when the defendant has conclusively established all elements of its affirmative defense. *Am. Tobacco Co., Inc., v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997); *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996); *Crain v. Smith*, 22 S.W.3d 58, 59 (Tex. App.—Corpus Christi 2000, *no pet.*); *see* TEX. R. CIV. P. 166a(c).

14. The summary judgment evidence shows that Plaintiff's claims should be denied as a matter of law, as she lacks standing and the Court lacks jurisdiction. Furthermore, Plaintiff cannot establish one or more elements of the declaratory relief asserted in the Motion. Thus, Plaintiff cannot meet her burden and the Motion should be denied in its entirety.

IV. POINTS AND AUTHORITIES

A. Plaintiff has No standing to Bring her Claims in Dallas County.

15. As a matter of law, a lawsuit must be filed in a county of mandatory venue. TEX. CIV. PRAC. & REM. CODE § 15.011-15.020. TEX. CIV. PRAC. & REM. CODE § 15.011 provides the following the mandatory rule:

[a]ctions for recovery of real property or an estate or interest in real property, for partition of real property, to remove encumbrances from the title to real property, for recovery of damages to real property, or to quiet

title to real property shall be brought in the county in which all or a part of the property is located.

16. Even if not expressly alleged as a trespass to try title suit, if the prevailing party's remedy is title to, and possession of, the real property at issue, it is treated as such. *Teon Management, LLC v. Turquoise Bay Corp.*, 357 S.W.3d 719, 723 (Tex. App.—Eastland 2012, no pet. h.). A trespass to try title action is the exclusive method of determining title to lands, tenements, or other real property. *Martin v. Amerman*, 133 S.W.3d 262, 267 (Tex. 2004). Therefore, suits effecting title to land must be brought in the county where all or a substantial part of the land is located. In this instance, the lawsuit, should have been brought in Tarrant County.

17. Moreover, the subject deed of trust (the “Deed of Trust”) expressly states that jurisdiction and Governing Law are where the Property is located—in Tarrant County. Paragraph 14 of the Deed of Trust provides:

14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

Exhibit P, attached.¹² Here, Plaintiff is prohibited from bringing this lawsuit in Dallas County because the Property is located in Tarrant County. Any questions of law affecting title to the Property or the mortgage loan must be brought in the jurisdiction in which the Property is located. (*See id.*) In this case, since the Petition should have been brought in Tarrant County, the Petition should be denied in its entirety as this court lacks subject matter jurisdiction over Plaintiff's claims.

¹² The Deed of Trust was filed in the Real Estate Records Office of Tarrant County, Texas on May 22, 2012 as Instrument No. D202032012. The Deed of Trust is a self-authenticating document in accordance with Tex. R. Evid. 902(4). *See Kyle v. Countrywide Home Loans, Inc.*, 232 S.W.3d 355, 362 (Tex. App.—Dallas [5 Dist.] 2007), *review denied*.

Accordingly, this Court should deny the Motion and dismiss Plaintiff's claims for want of jurisdiction.

B. The Motion Should be Denied Because Plaintiff Recently Appealed the Underlying Trial Court Action to the Second Court of Appeals of Texas.

18. Even if Plaintiff's claims could proceed in this lawsuit, Plaintiff's Motion should be denied because of the Notice of Appeal she filed in Tarrant County on October 11, 2021. *See Exhibit Q*, attached. As a matter of law, "[a] trial court's plenary power expires thirty days after the judgment is signed, unless a plenary-power extending motion is filed." *NMF P'ship v. City of Dallas*, No. 05-19-01578-CV, 2021 WL 1015862, at *2 (Tex. App. Mar. 17, 2021), *review denied* (July 23, 2021) (citing TEX. R. CIV. P. 329b(d), (e)). Moreover, "[a]fter the trial court loses its jurisdiction, it can only correct clerical errors in a judgment but cannot correct a jurisdictional error made in rendering a judgment." *NMF P'ship*, 2021 WL 1015862, at *2 (citing TEX. R. CIV. P. 329b(d), (e)). Therefore, any "[j]udicial action[—whether in Tarrant County or Dallas County—]taken after the trial court's plenary power has expired is void." *NMF P'ship*, at *2 (citing *In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding)).

19. Here, Tarrant County entered its Final Judgment on July 13, 2021. Thirty days later, on August 12, 2021, the trial court—any trial court—lost its jurisdiction. Plaintiff filed this lawsuit in Dallas County on September 7, 2021 and this Court cannot now void the subject order and judgment, even if this lawsuit were brought in the proper venue. Consequently, the Motion should be denied and the Court should dismiss the action for lack of jurisdiction.

C. The Motion Should be Denied Because the Tarrant County Trial Court had Jurisdiction When the Order and Judgment were Entered.

20. The April 19, 2021 Abatement Order stated the appeal was abated "for thirty days to allow the trial court to clarify whether it intended its May 17, 2016 'Order Granting Defendant's

No-Evidence Motion for Summary Judgment’ to be a final judgment disposing of all claims and parties or whether it intended it to be a nonappealable, interlocutory order.” **Exhibit N** at 2-3.

21. Thereafter, on May 20, 2021, Judge Evans requested and received an extension of the Abatement Order. *See Exhibit O.* Judge Evans sought the extension of the abatement so that Tarrant County could enter the May 21, 2021 Order and later the July 13, 2021 Final Judgment in the trial court.” (*Id.* at 1.) When the Court of Appeals granted the request and extended the abatement by sixty days until July 19, 2021, Tarrant County had jurisdiction to enter the above-mentioned order and judgment. Accordingly, the Motion is meritless and should be denied.

V. CONCLUSION

22. For the reasons stated herein, Defendant respectfully requests that the Court deny Plaintiff’s Motion in its entirety.

DATED: November 12, 2021

Respectfully submitted,

/s/ Heather N. Sutton

Heather N. Sutton, SBN: 24072378

hsutton@mcguirewoods.com

Brenda Hard-Wilson, SBN: 24059893

bhard-wilson@mcguirewoods.com

McGUIREWOODS LLP

2000 McKinney Avenue, Suite 1400

Dallas, Texas 75201

Telephone: 214.932.6400

Facsimile: 214.932.6499

**ATTORNEYS FOR DEFENDANT
NATIONSTAR MORTGAGE LLC**

