

CAUSE NO. 2022-33207

EDWARD WEST and PAMELA WEST,	§	IN THE DISTRICT COURT
Plaintiffs	§	
	§	
v.	§	165TH JUDICIAL DISTRICT
	§	
DOVENMUEHLE MORTGAGE, INC.,	§	
and LNV CORPORATION,	§	
Defendants.	§	HARRIS COUNTY, TEXAS

DEFENDANT LNV CORPORATION'S MOTION FOR DISCOVERY SANCTIONS

Defendant LNV Corporation files this motion for sanctions against Plaintiff Pamela West in the form of attorney’s fees and expenses for discovery abuse and for impeding the discovery process.

I. BACKGROUND

1. Plaintiffs sued LNV and Dovenmuehle Mortgage Inc. (“DMI”) for fraud on June 6, 2022 to stop foreclosure of their property. Plaintiffs’ claims have quickly been revealed to be meritless and brought in bad faith. Specifically, Plaintiffs allege in their verified petition, sworn to under penalty of perjury, that Plaintiffs voluntarily allowed their bankruptcy in 2021 to be dismissed after “Defendants” purportedly told Edward West that Plaintiffs “had loss mitigation options and that they would work with him outside of the bankruptcy.”¹ There is no record, however, of the Wests *ever* speaking to LNV.

2. Plaintiffs also seek a declaratory judgment that LNV “fraudulently prepared documents required for Defendants to foreclose” and LNV lacks authority to foreclose.² Notably, Plaintiffs have never identified what documents LNV purportedly “fraudulently prepared.” Moreover, Mr. West signed two loan modification agreements, in 2016 and 2017, acknowledging

¹ Plaintiffs’ Petition, ¶ 11.

² *Id.* at ¶¶ 15, 19.

LNV's authority as owner of the loan and waiving any challenges to the same.³ Plaintiffs signed verifications under penalty of perjury in support of the allegations in their petition, yet multiple prior documents signed by Mr. West himself directly demonstrate Plaintiffs' allegations in the petition are false. Notably, Mr. West's signature on the loan modification agreements is notarized and the loan modification agreements are also publicly available in the real property records.

3. Despite the egregious issues with the allegations in their verified petition, Plaintiffs have refused to dismiss their case⁴, forcing LNV to appear and prepare its defense. LNV filed an answer on June 24, 2022 and has been diligently working to defend against Plaintiffs' claims, pursue discovery, and generally move litigation forward.

4. To that end, on July 1, 2022, LNV noticed the oral depositions of Plaintiffs to occur on August 11, 2022 at the law offices of LNV's counsel; Edward West's deposition to begin at 9:00 am and Pamela West's deposition to begin at 1:00 pm.⁵ Plaintiffs failed to object to the time or place of the noticed depositions; therefore, LNV prepared to move forward with the depositions.

5. Although Mrs. West was scheduled to appear in person for her deposition, Plaintiffs' attorney informed LNV's counsel at the eleventh hour that Mrs. West did not understand she had to be at the deposition in person but would be able to attend via video conference. LNV's counsel was able to contact the court reporter to accommodate Pamela West via video conference; however, LNV's representative was already enroute to Houston to attend the deposition. Therefore, on August 11, 2022, Plaintiffs' counsel, LNV's counsel, and LNV's representative convened in person to depose Mrs. West; however, Mrs. West appeared on the video conference from the grocery store. She was unable to get to a quiet location or provide her full attention to

³ See **Exhibit A**: 2016 Loan Modification; **Exhibit B**: 2017 Loan Modification.

⁴ See **Exhibit C**: June 23, 2022 Demand Letter to Plaintiffs.

⁵ **Exhibit D**: LNV's Notice of Oral Deposition of Pamela West; LNV's Notice of Oral Deposition of Edward West.

her deposition, despite having notice of the deposition nearly a month and a half prior. Therefore, due to Mrs. West's unpreparedness, LNV was unable to proceed with the deposition as scheduled on August 11th and was forced to reschedule the deposition for a later date.⁶

6. LNV incurred attorneys' fees due to the inability of Mrs. West's deposition to proceed as scheduled on August 11th. Additionally, LNV's representative incurred travel costs that were ultimately unnecessary because Mrs. West's deposition had to be rescheduled. Based on the foregoing and for the reasons described herein, LNV asks the Court to impose sanctions against Plaintiff Pamela West in the amount of the attorneys' fees and expenses LNV incurred as a result of Plaintiff's failure to participate in her deposition scheduled for August 11, 2022.

II. ARGUMENT & AUTHORITIES

7. The purpose of sanctions is to secure compliance with the rules, to deter future violation of the rules, and to punish parties that violate the rules.⁷ Pursuant to Texas Rule of Civil Procedure 215.1, a court can impose sanctions when a party or other deponent fails to appear for a properly noticed deposition.⁸

8. Sanctions must be "just."⁹ In other words, the punishment must fit the crime.¹⁰ When determining whether the requested sanctions are just, Texas courts use a two-part test. First, the sanction must be directly related to the offensive conduct.¹¹ Thus, a just sanction is directed

⁶ **Exhibit E:** LNV's Amended Notice of Oral Deposition by Remote Audio-Video Conference of Plaintiff Pamela West.

⁷ *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992).

⁸ Tex. R. Civ. P. 215.1(b)(2)(A).

⁹ Tex. R. Civ. P. 215.2(b); *Paradigm Oil, Inc. v. Retamco Oper., Inc.*, 372 S.W.3d 177, 184 (Tex. 2012); *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 882 (Tex. 2003); *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992).

¹⁰ *Paradigm Oil*, 372 S.W.3d at 187.

¹¹ *Id.* at 184.

against the abuse and toward remedying the prejudice caused to the innocent party.¹² Second, the sanction must not be excessive.¹³

9. In this case, the Court should impose sanctions against Mrs. West because she was unable to participate in her properly noticed deposition scheduled for August 11, 2022. In accordance with the Court's power to impose sanctions under Texas Rule of Civil Procedure 215.1, LNV asks the Court to impose sanctions in the amount of \$876.60.

10. This amount is based on (1) the attorney's fees LNV incurred for Pamela West's deposition that was unable to move forward on August 11, 2022 in the amount of \$320, and (2) the cost of travel for LNV's representative to appear for Pamela West's deposition on August 11, 2022 in the amount of \$556.60. Such a sanction is just because it directly relates to Plaintiff's failure to attend her deposition. Additionally, requiring Plaintiff to pay for the attorney's fees and expenses LNV incurred for Plaintiff's failure to participate in her deposition as noticed is directed against Plaintiff's abuse of the discovery process, and toward remedying the prejudice caused to LNV. The sanction LNV seeks herein is not excessive. Rather, it fairly and reasonably places the consequences of Plaintiff's behavior on Plaintiff.

III. PRAYER

11. For these reasons, LNV respectfully requests the Court grant this motion, order Plaintiff Pamela West to pay LNV \$876.60 in reasonable and necessary attorney's fees and costs, and grant LNV such other relief to which it may be justly entitled.

¹² *American Flood Research, Inv. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006).

¹³ *Paradigm Oil*, 372 S.W.3d at 187.

Respectfully submitted,

By: /s/ Valerie Henderson

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**Attorneys for Defendant
LNV Corporation**

CERTIFICATE OF CONFERENCE

I certify that on August 31, 2022, I made a reasonable effort to confer with counsel for Plaintiff regarding the relief sought herein. Plaintiff's counsel has not responded.¹⁴

/s/ Valerie Henderson

Valerie Henderson

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served upon all counsel of record via electronic filing pursuant to the Texas Rules of Civil Procedure on September 23, 2022.

/s/ Valerie Henderson

Valerie Henderson

¹⁴ See **Exhibit F**: August 31, 2022 Demand Letter.

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EDWARD WEST and PAMELA WEST,
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IN THE DISTRICT COURT

165TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

VERIFICATION

STATE OF TEXAS

§

COUNTY OF HARRIS

§

§

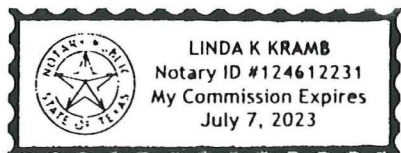
BEFORE ME, the undersigned authority, personally appeared Kirsten Vesel, counsel for Defendant LNV Corporation in the above referenced matter, whose identity is known to me. After I administered the oath, affiant testified as follows:

“My name is Kirsten Vesel. I am counsel of record for Defendant LNV Corporation in the above entitled and number cause. I have read Defendant LNV Corporations Motion for Sanctions. The facts stated in it are within my personal knowledge and are true and correct.”



Kirsten Vesel

SWORN TO AND SUBSCRIBED before me this 22nd day of September, 2022.



Notary Public

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Cecilia Bravo on behalf of Valerie Henderson

Bar No. 24078655

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Envelope ID: 68557150

Status as of 9/23/2022 12:26 PM CST

Case Contacts

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