

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHELLE BASSETT,

Plaintiff,

vs.

PHH MORTGAGE CORPORATION,

Defendant,

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CIVIL ACTION NO. 4:23-CV-02952

**DEFENDANT’S MOTION FOR JUDGMENT ON THE PLEADINGS UNDER
FED. R. CIV. P. 12(c)**

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Defendant PHH Mortgage Corporation (“*PHH*” or “*Defendant*”) files its Motion for Judgment on the Pleadings as to the Original Petition (the “*Complaint*”) filed by Plaintiff Michelle Bassett (“*Plaintiff*”) and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. This is the second lawsuit brought by Plaintiff within the past three years. As she did in her prior lawsuit, Plaintiff advances meritless legal theories in an attempt to prevent the foreclosure of the property securing her mortgage loan (defined below). In her Complaint, Plaintiff asserts causes of action for breach of contract, violation of the duty of good faith and fair dealing, violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* (“*RESPA*”) and violations of the Texas Property Code §51.002. All of these claims are premised on Plaintiff’s contention that Defendant has failed to honor the terms of a trial payment plan. Notably, Plaintiff’s own exhibits demonstrate that she defaulted on the trial payment plan at issue. By virtue of this default, PHH was under no obligation to honor the plan. It necessarily

follows that Plaintiff cannot state legally cognizable claims against Defendant. For this reason, as set forth more fully below, the Court should dismiss the Complaint in its entirety, with prejudice pursuant to Rule 12(c).

II. FACTUAL BACKGROUND & PROCEDURAL HISTORY

2. On November 17, 2006, Plaintiff obtained a mortgage loan (the “*Loan*”) in the amount of \$292,000 by executing a promissory note (the “*Note*”) in favor of Harbourton Mortgage Investment Corporation (“*Harbourton*”). which is secured by a Purchase Money Deed of Trust (the “*Deed of Trust*”) encumbering the real property located at 3227 Ewing Street, Houston, Texas 77004 (the “*Property*”).¹ Defendant is the current mortgagee and servicer of the loan.²

3. As Plaintiff concedes in the Complaint, she has defaulted on her mortgage on multiple occasions since 2006, and subsequently sought loan modifications on or around September 2014, November 2018, and January 2023, respectively.³

4. In a letter dated December 13, 2022, Defendant informed Plaintiff that the loan was approved for a Trial Period Plan (“*TPP*”).⁴ As detailed in the TPP, the first payment of \$3,439.76 had to be made by February 1, 2023. *Id.* Additional payments of \$3,439.75 were due on or before March 1, 2023, and April 1, 2023. *Id.*

¹ See Complaint, ¶5.1; True and correct copies of the Note and Deed of Trust are attached hereto as **Exhibits A-B**. Plaintiff specifically refers to these documents in her Complaint and the documents are central to her claims. Additionally, the Court may take judicial notice of the Deed of Trust because it was filed of record in the real property records of Harris County, Texas on November 28, 2006, at Clerk’s File No. 20060220968. See *Perez v. Ocwen Loan Servicing, LLC*, No. 4:15-CV-1751, 2015 WL 7430920 (S.D. Tex. Nov. 20, 2015) (court takes judicial notice of documents filed of public record and attached to motion to dismiss).

² Complaint, ¶5.6.

³ Complaint, ¶¶5.2-5.12.

⁴ A copy of the TPP is attached to Plaintiff’s Complaint as Exhibit A.

5. Plaintiff does not contest the offer or acceptance of the TPP.⁵ Rather, she complains that Defendant improperly rejected payments she purportedly tendered between April 1, 2023, and June 14, 2023.⁶

6. Notably, the Complaint does not allege that Plaintiff tendered any payments on or before February 1, 2023 and March 1, 2023.⁷

7. On July 3, 2023, Plaintiff filed her Complaint to halt the July 5, 2023 foreclosure sale of the Property.⁸ Thereafter, on August 10, 2023, Defendant timely removed the matter to this Court.⁹

III. STANDARD OF REVIEW

A. Dismissal is Proper Under Fed. R. Civ. P. 12(c).

1. When ruling on a motion under FED. R. CIV. P. 12(c), the court must “accept all material allegations of the complaint and construe the complaint in favor of the complaining party. A motion under Rule 12(c) is subject to the same standard as a motion to dismiss under Rule 12(b)(6). The Court must limit its inquiry to facts stated in the complaint and documents either attached to or incorporated into the complaint.”¹⁰

8. The purpose of a Fed. R. Civ. P. 12(b)(6)) motion is to test the formal sufficiency of the statement of the claim for relief, not to determine the facts or merits of the case.¹¹ A complaint must contain more than an unadorned, the-defendant-unlawfully-harmed-me

⁵ See Complaint, ¶6.2.

⁶ See Exhibit B attached to Plaintiff’s Complaint.

⁷ See generally Complaint.

⁸ See Doc. 1.

⁹ See *id.*

¹⁰ *Kiper v. BAC Home Loans Servicing, LP*, No. H-11-3008, H-11-3363, 2012 WL 3185968 at *3 (S.D.Tex., Aug. 2, 2012) (internal quotations and citations omitted).

¹¹ See *Campbell v. Wells Fargo Bank, N.A.*, 781 F.2d 440, 442 (5th Cir. 1986); *Goldin, Peiser & Peiser, L.L.P. v. Delta Brands, Inc.*, No. 3:02-CV-0127-M, 2002 WL 550450, at *1 (N.D. Tex. Apr. 11, 2002).

accusation.¹² A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not suffice.¹³ Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.¹⁴ To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.¹⁵ It must contain more than a sheer possibility that a defendant has acted unlawfully.¹⁶ As described below, Plaintiff's allegations fail to meet this standard and dismissal is appropriate.

IV. ARGUMENTS & AUTHORITIES

9. As noted above, Plaintiff's Complaint asserts causes of action for breach of contract, breach of the duty of good faith and fair dealing, violations of RESPA, and violations of the Texas Property Code.¹⁷ Plaintiff's allegations in support of these enumerated claims fail to state a claim upon which relief may be granted.

A. Plaintiff's Breach of Contract Claim Fails as a Matter of Law.

10. Plaintiff's breach of contract claim fails due to her admission that she failed to perform under the contract at issue; namely, the TPP. Under Texas law, a plaintiff claiming a breach of contract must establish: (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of contract by the defendant; and (4) resulting damages to the plaintiff. *Lewis v. Bank of Am. NA*, 343 F.3d 540, 544- 45 (5th Cir. 2003). It is well established that "a party to a contract who is himself in default cannot maintain a suit for its breach." *Dobbins v. Redden*, 785 S.W.2d 377, 378 (Tex. 1990) (citations omitted). Where a

¹² *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (citations omitted)).

¹³ *Id.* (quoting *Twombly*, 550 U.S. at 555).

¹⁴ *Id.*

¹⁵ *Id.* (quoting *Twombly*, 550 U.S. at 570).

¹⁶ *Id.*

¹⁷ Complaint, ¶4.2.

plaintiff cannot allege she performed her contractual obligations by remaining current on her mortgage payments up through the mortgagee's alleged breach, the plaintiff cannot prevail on a claim seeking to assert that the mortgage contract was breached. *See Von Scheele v. Wells Fargo Bank, N.A.*, No. SA-12-CV- 00690-DAE, 2013 WL 5346710, at *5 (W.D. Tex. Sept. 23, 2013); *see also Hernandez v. Gulf Group Lloyds*, 875 S.W.2d 691, 692 (Tex. 1994) (“A fundamental principle of contract law is that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from any obligation to perform.”).

11. Turning to the facts of this case, the TPP expressly provides that the first Trial Period Payment is due on or before “02/01/2023,” and the subsequent payments are due on or before March 1, 2023, and April 1, 2023, respectively.¹⁸ The TPP further states that **“this offer will be revoked and foreclosure proceedings may continue and a foreclosure sale may occur”** if the first Trial Period Plan payment is not made on or before February 1, 2023, or if the other payments are not made by the last day of the month in which they are due.

12. Significantly, Plaintiff's own exhibits demonstrate that she did not tender the requisite trial plan payments on or before February 1, 2023, and on or before March 1, 2023. Indeed, Plaintiff includes payment receipts with her Complaint evidencing that she made the following payments: (a) a payment in the amount of \$3,439.76 on April 1, 2023; (b) payments in the amount of \$939.76 and \$2,500 on April 30, 2023; and (c) a payment in the amount of \$3,439.76 on June 14, 2023.¹⁹ Plaintiff does not allege that she tendered any other payments toward the TPP. Because Plaintiff's own exhibits demonstrate that she failed to make timely payments under the TPP, she cannot establish that she performed under the contract. As a consequence, Plaintiff does not and cannot plead a plausible claim for breach of contract.

¹⁸ See Complaint, Ex. A.

¹⁹ See Complaint, Ex. B.

13. Moreover, Plaintiff does not otherwise identify any provision of a contract that she claims Defendant breached. This is fatal to her claim.²⁰ Nor does Plaintiff allege facts showing that she suffered actual damages as a result of Defendant's alleged breach of contract. Plaintiff cannot state a viable claim for breach of contract absent allegations plausibly establishing that she suffered damages. In short, Plaintiff's breach of contract claim fails as a matter of fact and law due to her failure to: (a) establish a breach on the part of Defendant; (b) identify a provision that she claims Defendant breached; and (c) allege facts plausibly establishing that she suffered damages. Her breach of contract claim should therefore be dismissed with prejudice.

B. Defendant Does Not Owe Plaintiff a Duty of Good Faith and Fair Dealing.

14. Plaintiff's breach of good faith and fair dealing claim fails as a matter of law because under Texas law there is not a duty of good faith and fair dealing between a mortgagor and mortgagee.²¹ Indeed, a duty of good faith and fair dealing "does not exist in Texas unless intentionally created by express language in a contract or unless a special relationship of trust and confidence exists between the parties to the contract."²² The Texas Supreme Court has held that there is no such special relationship between a mortgagor and mortgagee.²³ Accordingly, the Court should dismiss Plaintiff's claim for breach of good faith and fair dealing on the basis that the the facts of this case do not support the imposition of a duty of good faith and fair dealing.

²⁰ See *Innova Hosp. San Antonio, L.P. v. Blue Cross & Blue Shield of Georgia, Inc.*, 995 F.Supp.2d 587, 602 (N.D. Tex. 2014) ("To plead a breach of contract claim, a plaintiff must identify a specific provision of the contract that was allegedly breached.") (collecting authorities).

²¹ *Sqroe v. Wells Fargo Bank, N.A.*, 941 F. Supp. 2d 731, 748-49 (E.D. Tex. 2013) (noting that there is no authority "to support [the] view that there is a duty of good faith and fair dealing in the mortgage context")' *Lovell v. W. Nat. Life Ins. Co.*, 754 S.W.2d 298, 302 (Tex. App. 1988), *writ denied* (Nov. 30, 1988).

²² *Id.* (citing *Arnold v. Nat'l Cnty. Mut. Fire Ins. Co.*, 725 S.W.2d 165, 167 (Tex. 1987), *holding modified by Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826 (Tex. 1990)).

²³ *Id.*

C. Plaintiff's RESPA Claims are Unsupported by Factual Allegations and Should Be Dismissed.

15. Plaintiff does not state a cognizable claim for violation of the RESPA. Instead, Plaintiff makes vague, confusing, and conclusory allegations that Defendant violated RESPA by:

1) failing to provide Plaintiff with a specific reason or reasons for PHH Mortgage Corp.'s determination for each such trial permanent loan modification option; 2) in failing to provide accurate information to Plaintiffs for loss mitigation options and foreclosure as required by 12 C.F.R. § 1024.39.3; 3) in failing to provide the Plaintiffs with a specific reason or reasons for denial of all loan workout alternative prior to posting their home for foreclosure; 4) in moving for foreclosure judgment or order or sale or conduct a foreclosure sale prior to posting their home for foreclosure; 5) in moving for foreclosure judgment or order of sale or conduct a foreclosure sale prior to providing a specific reason or reasons for denial of all loan workout alternatives.²⁴

16. Based on these allegations, Plaintiff generally concludes that Defendant violated 12 U.S.C. § 2614, 12 C.F.R. § 1024.35, 12 C.F.R. § 1024.39, and 12 C.F.R. § 1024.41. Because Plaintiff's claim is supported by conclusory allegations and she fails to specify the statutory provisions that Defendant is alleged to have violated, she has failed to state a viable claim for violation of RESPA.²⁵ Regardless, Defendant did not violate any of the statutes or regulations identified in the Complaint, as addressed below in seriatim.

i. Plaintiff Does Not State a Cognizable Claim for Violation of 12 U.S.C. § 2605(f).

17. Plaintiff alleges that Defendant violated RESPA section 6(f), which is codified at 12 U.S.C. § 2605(f). Section 2605(f) provides, in relevant part:

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

²⁴ Complaint, ¶ 6.8.

²⁵ See *Motten v. Chase Home Finance*, 831 F.Supp.2d 988, 995 (S.D. Tex. 2011) (dismissing a RESPA claim for failure to state a claim where the plaintiffs failed to specify any particular provision of RESPA that the defendant purportedly violated).

(1) Individuals

In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000. 12 U.S.C. § 2605(f).

18. Plaintiff offers no facts to support her conclusory suggestion that she is entitled to relief under section 2605. To the contrary, Plaintiff does not allege facts to plausibly establish that Defendant violated any provision of RESPA.²⁶ Nor has Plaintiff alleged facts to establish that Defendant violated any of RESPA's implementing regulations, as detailed more fully below. It necessarily follows that Plaintiff has not stated sufficient facts to establish a right to the remedies prescribed by section 2605.

ii. Plaintiff Does Not State a Cognizable Claim for Violation of 12 U.S.C. § 2614.

19. Within the context of her RESPA claim, Plaintiff also alleges that Defendant violated 12 U.S.C. § 2614. Section 2614 provides, in relevant part:

Any action pursuant to the provisions of section 2605, 2607, or 2608 of this title may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within 3 years in the case of a violation of section 2605 of this title and 1 year in the case of a violation of section 2607 or 2608 of this title from the date of the occurrence of the violation, except that actions brought by the Bureau, the Secretary, the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.²⁷

20. The Complaint does not elaborate on how Defendant violated section 2614. This is likely because section 2614 merely sets forth where and under what limitations period an action for violations of other provisions of RESPA may be brought. Plaintiff has not identified

²⁶ See Compl., ¶¶ 6.8-6.9.

²⁷ 12 U.S.C. § 2614.

any basis for seeking relief based on a violation of section 2614. Simply put, Plaintiff does not have a cognizable claim for violation of 12 U.S.C. § 2614.

iii. Plaintiff Does Not State a Cognizable Claim for Violation of 12 C.F.R. § 1024.35.

21. Plaintiff alleges Defendant violated 12 C.F.R. § 1024.35, which sets forth certain “Error Resolution Procedures” and provides, in relevant part:

(a) *Notice of error.* A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.²⁸

22. In short, section 1024.35 sets forth the procedures mortgage servicers are required to follow when they receive written notice from a borrower that asserts that the mortgage servicer made an error relating to the mortgagor's account, which is commonly known as a “qualified written request” or “QWR.” Notably, “courts have held § 1024.35 does not provide a private right of action.”²⁹ This alone is fatal to Plaintiff's claim. Beyond the lack of a private right of action, Plaintiff's claim fails for the additional reason that she has not alleged that she submitted a written notice of error to Defendant, which is a prerequisite to alleging a claim for violation of section 1024.35.³⁰ The Complaint is otherwise devoid of any factual allegations demonstrating that Defendant made an error in its servicing of the Loan. Thus, Plaintiff does not state a cognizable claim for violation of 12 C.F.R. § 1024.35.

²⁸ 12 C.F.R. § 1024.35.

²⁹ *Solis v. U.S. Bank, N.A.*, 2017 WL 4479957, at *3 (S.D. Tex. 2017).

³⁰ *See id.* (dismissing claim for violation of 1024.35 where the plaintiffs failed to allege they submitted a written notice of error to their servicer).

iv. Plaintiff Does Not State a Cognizable Claim for Violation of 12 C.F.R. § 1024.39.

23. Plaintiff alleges Defendant violated 12 C.F.R. § 1024.39, which is entitled “Early intervention requirements for certain borrowers,” and provides in relevant part:

(a) *Live contact.* A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower’s delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.

(b) *Written notice.* (1) Notice required. Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower’s delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.³¹

24. Plainly stated, section 1024.39(a) and (b) set forth certain loss mitigation procedures that mortgage servicers are required to follow after a borrower defaults. As a threshold matter, Plaintiff does not have a private right of action for violation of section 1024.39.³² The Complaint is otherwise devoid of any factual allegations establishing that: (a) Defendant did not make good faith efforts to establish live contact with Plaintiff before the 36th day of her delinquency; and (b) Defendant did not provide Plaintiff with the written notice required under Section 1024.39(b) before the 45th day of her delinquency. Moreover, Plaintiff concedes that she was offered (and failed to perform under) a loss mitigation option – namely, the TPP. Given this concession, Plaintiff cannot establish that she was damaged by any alleged violation of section 1024.39 as Defendant clearly fulfilled the purpose of section 1024.39 by offering the TPP. For the foregoing reasons, Plaintiff fails to state a cognizable claim for violation of 12 C.F.R. § 1024.39.

³¹ 12 C.F.R. § 1024.39.

³² See *Solis*, 20178 WL 4479957, at , 20178 WL 4479957, at *4.

iv. Plaintiff Does Not State a Cognizable Claim for Violation of 12 C.F.R. § 1024.41.

25. Plaintiff alleges Defendant violated 12 C.F.R. § 1024.41, which is entitled “Loss mitigation procedures” and provides in relevant part:

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. § 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(b) *Receipt of a loss mitigation application.* (1) *Complete loss mitigation application.* A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application. (2) *Review of loss mitigation application submission.* (i) *Requirements.* If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall...

...

(c) *Evaluation of loss mitigation applications.* (1) *Complete loss mitigation application.* If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall: (i) Evaluate the borrower for all loss mitigation options available to the borrower; and (ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage...³³

As discussed below, Plaintiff’s claim for violation of Section 1024.41 fails for several reasons.

26. Although not entirely clear, Plaintiff’s claim for violation of section 1024.41 appears to be based on her belief that PHH is prohibited from initiating or continuing with foreclosure proceedings until it reviews her for loss mitigation options. The problem with Plaintiff’s position is that her own allegations demonstrate that she was, in fact, considered for

³³ 12 C.F.R. § 1024.41 (a)-(c).

loss mitigation options. Indeed, Plaintiff readily acknowledges that she was offered the TPP, which is indisputably a form of loss mitigation.³⁴ She also implicitly acknowledges that she did not perform under the TPP. Under the express terms of 12 C.F.R. § 1024.41, PHH was entitled to move forward with foreclosure proceedings due to Plaintiff's lack of performance under the TPP.³⁵ Plaintiff has not otherwise alleged sufficient facts to plausibly establish that Defendant violated any provision of RESPA or its implementing regulation. In light of all of the foregoing, Plaintiff's claim for violation of RESPA should be dismissed.

D. Plaintiff's Texas Property Code Claim Fails Because it is not a Recognized Claim in Texas.

27. Plaintiff's claim for violation of Texas Property Code §51.002 should be dismissed for failure to state a claim because it is not a cognizable claim under Texas law. Indeed, Texas does not recognize a cause of action for "violation of Texas Property Code §51.002."³⁶ Allegations that a mortgage servicer failed to comply with the Texas Property Code and/or a deed of trust are properly asserted as wrongful foreclosure or breach of contract claims.³⁷ Moreover, although a foreclosure sale was scheduled, the sale was not completed due to the filing of this lawsuit. Thus, Plaintiff's claims are not ripe, and Defendant cannot be held liable for statutory violations under § 51.002 even if she had a private right of action under the statute.³⁸ Based

³⁴ See 12 C.F.R. § 1024.31 (Defining "loss mitigation option" as "an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.").

³⁵ See 12 C.F.R. § 1024.41(f)(2)(iii) (permitting a servicer to initiate with foreclosure where a "borrower fails to perform under an agreement on a loss mitigation option"); 12 C.F.R. § 1024.41(g)(3) (permitting a servicer to continue with foreclosure proceedings where a "borrower fails to perform under an agreement on a loss mitigation option").

³⁶ See *Rucker v. Bank of Am., N.A.*, 806 F.3d 828, FN 2 (5th Cir. 2015) (courts conclude that Texas Property Code §51.002(d) does not intend an independent private cause of action).

³⁷ *Id.* at 830; see also *Anderson v. CitiMortgage, Inc.*, No. 4:13CV369, 2014 WL 2983366, at *5 (E.D. Tex. July 2, 2014); *Ashton v. BAC Home Loans Servicing, L.P.*, No. 4:13-CV-810, 2013 WL 3807756, at *4 (S.D. Tex. July 19, 2013).

³⁸ See *Ayers v. Aurora Loan Servs., LLC*, 787 F. Supp.2d 451, 454 (E.D. Tex. 2011) ("absent a sale, Plaintiff cannot state a claim under [the statutory notice provisions of § 51.002] of the Property Code"); *Kew v. Bank of Am., N.A.*, Case No. H-11-2824, 2012 WL 1414978, at *6 (S.D. Tex. Apr. 23, 2012)(collecting cases).

upon the foregoing, the Court should dismiss Plaintiff's claim for violation of the Texas Property Code with prejudice.

E. Because Plaintiff's Substantive Claims Fail as a Matter of Law, Plaintiff's Requests for Injunctive and Declaratory Relief, Damages and Attorney's Fees Must Be Denied.

28. In the Complaint, Plaintiff asks the Court to enjoin Defendant from proceeding with a foreclosure sale, and seeks damages and attorney's fees.³⁹ Under Texas law, claims for damages and attorney's fees are not independent causes of action but instead depend on viable substantive claims.⁴⁰ Similarly, because Plaintiff's underlying claims against Defendant fail for the reasons discussed above, Plaintiff is not entitled to declaratory and/or injunctive relief.⁴¹ Because all of Plaintiff's underlying claims fail as a matter of law and are susceptible to dismissal, Plaintiff's requests for injunctive and declaratory relief, damages, and attorney's fees should likewise be dismissed.

V. PRAYER

For the foregoing reasons, Plaintiff has failed to state any claim for relief against Defendant upon which relief may be granted and Defendant respectfully requests that the Court dismiss her claims with prejudice and for all relief at law or equity to which Defendant has shown itself entitled.

³⁹ See generally Complaint.

⁴⁰ See *Wildy v. Wells Fargo Bank, NA*, 2013 WL 246860, at *6 (N.D. Tex. Jan. 21, 2013) (citing *Green Int'l, Inc. v. Solis*, 951 S.W.2d 384, 290 (Tex. 1997)).

⁴¹ See *Marsh v. JPMorgan Chase Bank, N.A.*, 888 F. Supp. 2d 805, 815 (W.D. Tex. 2012) (dismissing claims for injunctive and declaratory relief where the plaintiffs failed to state viable, antecedent claims).

Respectfully submitted,

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***ATTORNEYS FOR DEFENDANT PHH
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2023, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing has been forwarded to all counsel of record by operation of the Court's electronic filing system.

Via Email

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