

NO. 202326878

WALTER DOYLE ET AL

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IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

**NATIONSTAR, DBA
MR. COOPER**

334TH JUDICIAL DISTRICT

**PLAINTIFF'S MOTION TO COMPEL DISCOVERY 215 SANCTIONS AND
CONTINUANCE OF DEFENDANTS MOTION FOR SUMMARY JUDGMENT.**

COMES NOW, Walter Doyle, complaining of Defendant, and its abuse of discovery to gain an advantage. Defendant has failed to produce relevant discover, filed a premature motion for summary judgment, and refuses to provide monthly mortgage statement and denied requests for admissions that should have been admitted and are supported by evidence, necessitating this expensive hearing.

A. HISTORY OF LITIGATION

This case was originally filed as 202044954-7 September 18, 2020 in this Court. October 23, 2020 Defendant Nationstar removed this case to Federal Court and filed a motion to dismiss dated October 26, 2020. February 24, 2021 Nationstar filed their motion to dismiss the second amended complaint. June 16, 2021 The Federal Court Denied the Defendants relief and remanded this case back to this State Court. Indeed, Judge Rosenthal, found evidence that the Doyles had paid their property taxes, to which Defendant erroneously claimed they had not.¹

¹ See ex A this very case in Federal Court Doyle v. Nationstar Civil Action H-20-3633 The parties dispute whether the Doyles paid the 2018 property taxes due on their home. (Docket Entry No. 12-1, ¶ 8). Nationstar attached public tax records to its motion to dismiss, arguing that the record showed that the Doyles did not pay their taxes on time. The Doyles attached to their response receipts purporting to show that they did timely pay the 2018 taxes. (...). The Doyles attach tax receipts for the relevant year, 2018, that show that they paid the taxes on time. The

This Court finally reinstated this case April 5, 2022 after Plaintiff's counsel brought the error to the Courts attention. August 16, 2022 Plaintiff filed a motion for summary judgment. October 18, 2022 this court filed a generic order claiming this case could be dismissed because no answer had been filed. January 30, 2023 this court dismissed the case. The case was refilled as cause number 202326878.

B. FACTS

Kelly and Walter Doyle originated a mortgage for their home. One of the key elements of the loan was that it did not have an escrow account, a feature which enables the homeowner to pay their own taxes and insurance costs outside of the mortgage. Over the last several years the mortgage has been bought and sold by various lenders. Based on information and belief, the last time it was purchased by Nationstar, doing business as Mr. Cooper, on or about July 1 2020, the Defendant began illegally withholding amounts for escrow, not crediting payments properly and threatening foreclosure on a perfectly performing loan. Each month since July 1, 2020 Defendant has continued to demand higher payments than agreed, sent monthly statements with incorrect information specifically a payment higher than the contract amount. On or about July 1, 2020 and continuing each month, Mr. Cooper has been reporting delinquent payments to the credit reporting agencies, when no payments were late, or in the alternative claiming payments where 30, 60, 90, or 120 days late when they were not late at all. Defendant has repeatedly threatened foreclosure, refused to accept and apply payments, demanded payments that were not due, misrepresented the balance due, and threatened foreclosure.

Doyles have plausibly alleged that they performed under the contract.

DISCOVERY ISSUES

Defendant has failed to provide necessary documents, such as the monthly mortgage statements they sent to Plaintiff, but they also have specifically denied requests for admissions that should have been admitted and are supported by evidence in clear violation of the rules of civil procedure but also the rules of professional responsibility.

A. REQUESTS FOR PRODUCTION

Plaintiff had three simple requests for production, pertinent to the case and highly relevant, necessary to authenticate the documents and prove up the violations of the fair debt collection act.

1. Copy of Doyles entire loan file, including but not limited to bills or statements, notices or demands, all checks written or transfer of funds related to this account.

In response to this request Defendant produced 1831 pages of non responsive documents and ***not one copy of a check or payment, (which they claim they have been paying my clients taxes) or a monthly statement which proves the misrepresentation and violation of the fair debt collection act.*** Further counsel claims Defendant paid the taxes on this property, yet failed to produce a check which showed the payment he claims.

2. Copy of all payments made by the Plaintiff to Defendant.

No responsive documents were produced.

3. List of all payments returned to Plaintiff by Defendants.

No responsive documents were produced.

REQUESTS FOR ADMISSION

2. Admit or deny that the portion of Defendant's motion referenced in the previous request for admission was denied by the Federal Judge as the Plaintiff provided evidence showing the taxes in question had been paid.

RESPONSE: ***Denied.***

Defendant's response is completely wrong, and requires this very expensive hearing to

correct Defendant misrepresentation. ² See exhibit A **Judge Rosenthal's Judgment in this case when it was remanded to Federal Court.**

3. Admit or deny that Texas Rules of Professional responsibility Rule 3.01 Meritorious Claims and Contentions states that A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so that is not frivolous.

RESPONSE: Defendant objects to this request because a party's request for admission may not compel an opposing party to answer legal conclusions, and such conclusions do not bind the court. Credit Car Center, Inc. v. Chambers, 969 S.W.2d 459 (Tex. App.—El Paso 1998). Defendant objects that the referenced document speaks for itself and this Request demanding Defendant's interpretation of a document is improper. Subject to and without waiving this objection, Defendant responds as follows: **Denied.**

The admission does not ask for a legal conclusion, it's simply black letter law, which the Defendant has violated trying to relitigate a fact issue, its further evidence of counsel's violation of the rules of Professional Responsibility and 215 of the Texas Rules of Civil Procedure.

4. Admit or deny that Texas Rules of Professional responsibility Rule 3.02 Minimizing the Burdens and Delays of Litigation states in the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter.

RESPONSE: Defendant objects to this request because a party's request for admission may not compel an opposing party to answer legal conclusions, and such conclusions do not bind the court. Credit Car Center, Inc. v. Chambers, 969 S.W.2d 459 (Tex. App.—El Paso 1998). Defendant objects that the referenced document speaks for itself and this Request demanding Defendant's interpretation of a document is improper. Subject to and without waiving this objection, Nationstar responds as follows: **Denied.**

The admission does not ask for a legal conclusion, it's simply black letter law, which the Defendant has violated trying to relitigate a fact issue, evidence of counsel's violation of the rules

² See this very case in Federal Court Doyle v. Nationstar Civil Action H-20-3633 The parties dispute whether the Doyles paid the 2018 property taxes due on their home. (Docket Entry No. 12-1, ¶ 8). Nationstar attached public tax records to its motion to dismiss, arguing that the record showed that the Doyles did not pay their taxes on time. The Doyles attached to their response receipts purporting to show that they did timely pay the 2018 taxes. ...). The Doyles attach tax receipts for the relevant year, 2018, that show that they paid the taxes on time. The Doyles have plausibly alleged that they performed under the contract.

of Professional Responsibility and 215 of the Texas Rules of Civil Procedure.

5. Admit or deny that Defendant returned payments and refused to credit Plaintiff's account.
RESPONSE: **Denied.**

Defendant's monthly statements, which they failed to produce, show that the account was not credited because the erroneous amounts Defendant claims the Plaintiff owes has increased every month. See attached exhibit C payments and a letter from the Defendant which states Defendant refuses to accept partial payments.

THE LAW

Rule 215 - Abuse of Discovery; Sanctions, Tex. R. Civ. P. 215

b) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 198 and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorney fees. **The court shall make the order** unless it finds that (1) the request was held objectionable pursuant to Rule 193, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had a reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

CONTINUANCE

This continuance is not sought for delay only, but that justice may be done. If the court fails to grant this continuance, Defendants will suffer substantial harm or prejudice in the presentation of Defendants' case. Filed a motion for summary judgment and has a hearing date of December 13, 2023, he has abused the discovery process causing substantial delays, while withholding information necessary to be used during the deposition of the Defendant.

WHEREFORE, Plaintiff requests that the above-entitled and numbered cause be removed from its present setting and not reset until Defendant complies with discovery and allows his clients to be deposed. Plaintiff prays that this honorable court will sanction Defense counsel for his violation of rule 215 and abusing the discovery process.

Respectfully submitted,

s/ DavidMcKeand
David "Mac" McKeand
TBN 24037782
Fed ID 34183
16203 S. Temple
Houston, TX 77095
713 956 0023
713 956 0093 fax

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been sent to Defendants, in accordance with Texas Rules of Civil Procedure, on the 27th day of October, 2023.

CERTIFICATE OF CONFERENCE

Plaintiff has contacted Defendant's counsel and he is opposed to the continuance, however, indeed he has refused to put off the hearing to allow him time to comply with the rules.

VERIFICATION

STATE OF TEXAS §
HARRIS COUNTY §

“My name is David McKeand. I am capable of making this verification. I read the motion. The facts stated in it are within my personal knowledge and are true and correct.”

"My name is David McKeand, my date of birth is February 27, 1967.

and my address is 16203 S. Temple, Houston Texas 77095, USA

I declare under penalty of perjury that the foregoing is true and correct.
Executed in Harris County, State of Texas, on the 23rd day of October, 2023.

s/ DavidMcKeand

Unofficial Copy Office of Marilyn Burgess District Clerk

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

David mckeand on behalf of David mckeand
Bar No. 24037782
mac.mckeand@yahoo.com
Envelope ID: 81150033
Filing Code Description: Motion (No Fee)
Filing Description: discovery sanctions
Status as of 10/31/2023 1:35 PM CST

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|---------------|-----------|--------------------------|------------------------|--------|
| David McKeand | | mac.mckeand@yahoo.com | 10/31/2023 12:53:38 PM | SENT |
| Grant Figari | | gfigari@mcguirewoods.com | 10/31/2023 12:53:38 PM | SENT |
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