

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

ALTHEA SHACKELFORD,

Plaintiff,

v.

**SPECIALIZED LOAN SERVICING
LLC, and U.S. BANK, N.A.,**

Defendants.

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Civil Action No. 4:22-cv-3496

**DEFENDANTS’ MOTION TO STRIKE PLAINTIFF’S SURREPLY TO DEFENDANTS’
REPLY IN SUPPORT OF SUMMARY JUDGMENT**

Defendants U.S. Bank National Association, as Trustee for TBW Mortgage-Backed Trust Series 2007-2, TBW Mortgage Pass-Through Certificates, Series 2007-2¹ (“U.S. Bank”), and Specialized Loan Servicing, LLC (“SLS” and together with U.S. Bank, “Defendants”) file this their Motion to Strike Plaintiffs’ Surreply to Defendants’ Motion for Summary Judgment, and shows as follows:

I. PROCEDURAL BACKGROUND

1. Defendants filed their Motion for Summary Judgment against Plaintiff Althea Shackelford on June 23, 2023. [ECF Doc. No. 10.] Due to an oversight of Plaintiff’s counsel not being registered in the ECF system, Defendants’ counsel was unable to complete service initially. On August 30, 2023, Plaintiff filed an amended certificate of service serving Defendants’ Motion for Summary Judgment on Plaintiff’s counsel via certified mail, U.S. mail and by email. [ECF Doc. No. 12].

¹ Defendant U.S. Bank National Association, as Trustee for TBW Mortgage-Backed Trust Series 2007-2, TBW Mortgage Pass-Through Certificates, Series 2007-2, is appearing herein in its correct capacity and is defending all claims against the named “U.S. Bank N.A.” in this action.

2. Pursuant to Local Rule 7.4(A), and Court Procedures 15(e)², Plaintiff's response to Defendant's Motion for Summary Judgment was due within 21 days on September 20, 2023. Local Rule 5(g). Plaintiff failed to timely file a response to Defendant's Motion for Summary Judgment.

3. The Court set a status conference on November 9, 2023, at 2:30 P.M. [ECF Doc. No. 15]. On November 8, 2023, Plaintiff's counsel sent a letter advising the Court that he would be filing his Response to Defendant's Motion for Summary Judgment and his Pro Hac Vice motion. The Court cancelled the status conference.

4. After Plaintiff failed to file his Response to Defendants' Motion for Summary Judgment and submit a motion to appear pro hac vice, the Court notified both parties that a Show Cause Hearing would be set on November 16, 2023 at 1:15 P.M. [ECF Doc. No. 16].

5. On November 14, 2023, Plaintiff's counsel filed a Response to Defendants' Motion for Summary Judgment. [ECF Doc. No. 17].

6. On November 21, 2023, Defendants' filed a Reply in Support of its Motion for Summary Judgment. [ECF Doc. No. 20].

7. On December 1, 2023, Plaintiff filed her *Response to Defendant's Reply in Support of Motion for Summary Judgment* (hereinafter "Surreply") [ECF Doc. No. 21].

II. ARGUMENT AND AUTHORITIES

8. Defendants move to strike Plaintiff's Surreply because Plaintiff failed to ask leave of court to file it. "Surreplies are heavily disfavored by courts." *Warrior Energy Servs. Corp. v. ATP Titan M/V*, 551 F. App'x 749, 751 n.2 (5th Cir. 2014). Neither the Federal Rules nor the Local Rules provide for the right to file a surreply. Hence, Plaintiff should have

requested leave to file and explained why the surreply was appropriate. *See McClyde v. Jackson*, No. CIV.A.H-07-4244, 2010 U.S. Dist. LEXIS 11082, 2010 WL 519763, at *9 (S.D. Tex. Feb. 9, 2010), *aff'd*, 405 F. App'x 891 (5th Cir. 2010) (Ellison, J.) (striking surreply because the party did not obtain leave of the court to file it).

9. Furthermore, pursuant to this Court's Procedures, parties are required to seek advanced permission from this Court to file a surreply to any motion. *See Court Procedures* 15(e). Plaintiff has failed to obtain such permission. Therefore, Plaintiff's Surreply should be stricken from the record.

WHEREFORE, Defendants request that the Court grant their Motion to Strike Plaintiff's Surreply to Defendants' Motion for Summary Judgment and grant such other relief to which Defendants may be entitled.

Respectfully submitted,

By: /s/ Nicholas M. Frame
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned certifies that on December 4, 2023, a true and correct copy of the foregoing document was delivered to the following via the method prescribed below:

Via Email: rhsactic@yahoo.com

ECF And Regular Mail

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