

**CAUSE NO. 2023-25961**

**GREENLEAF HOUSE LLC,**

**Plaintiff,**

**v.**

**NATIONSTAR MORTGAGE LLC,**

**Defendants.**

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**IN THE DISTRICT COURT**

**55TH JUDICIAL DISTRICT**

**HARRIS COUNTY, TEXAS**

**DEFENDANT/COUNTER-PLAINTIFF'S  
MOTION FOR FINAL SUMMARY JUDGMENT**

Defendant/Counter-Plaintiff Nationstar Mortgage LLC (“Nationstar”) files this its *Motion for Final Summary Judgment* and hereby moves the Court for final summary judgment in its favor against Plaintiff/Counter-Defendant, Greenleaf House LLC (“Greenleaf”). In support, Nationstar respectfully shows the Court as follows:

**I. BACKGROUND AND SUMMARY**

1. Greenleaf filed its *Original Petition, Application for Injunctive Relief, Demand for an Accounting, and Request for Disclosures* on April 25, 2023. (“Petition”) On July 20, 2023, Nationstar filed its *First Amended Answer and Original Counterclaim* (“Counterclaim”). The claims in the Petition and Counterclaim relate to the servicing and foreclosure of a loan secured by the real property located at 1901 Post Oak Boulevard, Unit #4508, Houston, TX 77056 (“Property”). Greenleaf makes claims for declaratory judgment, suit to quiet title, trespass to try title, fraudulent or invalid lien, violation of Texas Property Code § 51, and makes demand for an accounting. (See Petition at ¶¶ 12-28.) Nationstar’s Counterclaim requests an order allowing rescission of the vendor’s lien, non-judicial foreclosure of the Property, judicial foreclosure of the

Property, and a subsequent writ of possession should Nationstar be the winning bidder at the foreclosure sale. (See Counterclaim at ¶¶ 9-13.)

2. The Court should grant Defendant's Motion for Final Summary Judgment as there is no genuine issue of material fact and Defendant is entitled to judgment as a matter of law.

3. On or about March 16, 2007, Ighofasan Uvwo ("Uvwo") purchased the Property as evidenced by a Special Warranty Deed recorded as document number 20070185130 in the real property records of Harris County, Texas ("Warranty Deed with Vendor's Lien"). To purchase the property, Uvwo took out a loan from Choice Home Financing, LLC. The repayment of the purchase money debt was secured by a Deed of Trust ("Nationstar Deed of Trust") lien granted to Choice Home Financing, LLC by Uvwo and recorded as document number 20070185131 in the real property records of Harris County, Texas. The loan is secured by the Property which is more particularly described as follows:

UNIT NUMBER 4508, AND THE LIMITED COMMON ELEMENTS APPURTENANT THERETO, TOGETHER WITH AN UNDIVIDED 0.00315493 INTEREST IN THE GENERAL COMMON ELEMENTS, LOCATED IN AND BEING PART OF THE LOFTS ON POST OAK, A CONDOMINIUM PROJECT IN HARRIS COUNTY, TEXAS, AS FULLY DESCRIBED IN AND AS LOCATED, DELINEATED AND AS DEFINED IN THE DECLARATION OF CONDOMINIUM, TOGETHER WITH THE SURVEY PLAT, BY-LAWS AND EXHIBITS ATTACHED THERETO, RECORDED IN FILM CODE NO. 192195, AND AMENDED IN FILM CODE NO. 193014 OF THE CONDOMINIUM RECORDS OF HARRIS COUNTY, TEXAS.

4. Nationstar is the holder of the Note, endorsed in blank, and beneficiary of the Security Instrument pursuant to a series of assignments recorded as instrument numbers 20070555460, RP-2023-88039, RP-2020-288171, and RP-2022-336901 in the real property records of Harris County, Texas. As the assignee of record, Nationstar is the mortgagee of the Loan Agreement, as defined by Texas Property Code § 51.0001(4), and is authorized to enforce the terms of the Loan Agreement.

5. The Property is located in the Lofts on Post Oak Condominiums. The declarations of the condominium association, which are recorded as document number Y651572 in the real property records of Harris County, Texas, provide for the payment of assessments and for a lien following any non-payment of assessments by a property owner in the association. These declarations further provide, however, that the assessment lien is subordinate to any lien first lien indebtedness, such as the Nationstar Deed of Trust. These assessments were not paid and Greenleaf House, LLC purchased the property at an assessment lien foreclosure sale in 2021. Greenleaf's ownership—as the purchaser at an assessment lien foreclosure—is inferior and subject to the first lien Nationstar Deed of Trust.

6. Uvwo defaulted by failing to make the purchase money Loan Agreement payments when due. The Loan Agreement is currently due for the September 1, 2017 payment and all subsequent monthly payments. As a result of the default, Defendant sent all required notices in accordance with the Loan Agreement and the Texas Property Code.

7. On May 2, 2023, the Property was scheduled for a non-judicial foreclosure sale, but that sale was cancelled upon receipt of the temporary restraining order signed by this Court. Although the temporary restraining order has expired, no subsequent foreclosure sale has been scheduled.

8. Nationstar is entitled to final summary judgment against Greenleaf. The summary judgment evidence conclusively proves that Nationstar is the owner and holder of the subject note and the mortgagee of the security instrument; that Nationstar is the mortgage servicer; that, by failing to make all of the payments on the Loan Agreement debt, Ovwo defaulted; that all necessary notices pursuant to the Loan Agreement and Texas Property Code were sent; that at no time during the default did any party pay an amount sufficient to reinstate the loan.

## II. EVIDENCE IN SUPPORT

9. In support of its Motion for Summary Judgment, Plaintiff relies on the following evidence, true and correct copies of which are attached hereto and incorporated herein by reference as if set forth in full.

- Exhibit A. Affidavit of \_\_\_\_\_
- A-1. Warranty Deed with Vendor's Lien
  - A-2. Note
  - A-3. Deed of Trust
  - A-4. Assignments of Deed of Trust
  - A-5. Notice of Default and Intent to Accelerate
  - A-6. Notice of Acceleration of Loan Maturity
  - A-7. Notice of Foreclosure Sale
  - A-8. Declaration of Condominium
  - A-9. Payoff Statement
  - A-10. Trustee's Deed

Plaintiff also relies on the pleadings on file in this cause and other public records where specifically referenced herein.

## III. FACTS

10. On or about March 16, 2007, Ighofasan Uvwo, ("Uvwo") purchased real property, evidenced by a Special Warranty Deed recorded as document number 20070185130 in the real property records of Harris County, Texas. (*See Exhibits A, A-1.*) To purchase the property, Uvwo executed a Note in the principal amount of \$272,000.00 ("Note") (*See Exhibits A, A-2.*) payable to Choice Home Financing, LLC dba CHF Mortgage as lender on a loan secured by the real

property commonly known as 1901 Post Oak Boulevard, Unit #4508, Houston, TX 77056 (“Property”) and more particularly described as follows:

UNIT NUMBER 4508, AND THE LIMITED COMMON ELEMENTS APPURTENANT THERETO, TOGETHER WITH AN UNDIVIDED 0.00315493 INTEREST IN THE GENERAL COMMON ELEMENTS, LOCATED IN AND BEING PART OF THE LOFTS ON POST OAK, A CONDOMINIUM PROJECT IN HARRIS COUNTY, TEXAS, AS FULLY DESCRIBED IN AND AS LOCATED, DELINEATED AND AS DEFINED IN THE DECLARATION OF CONDOMINIUM, TOGETHER WITH THE SURVEY PLAT, BY LAWS AND EXHIBITS ATTACHED THERETO, RECORDED IN FILM CODE NO. 192195, AND AMENDED IN FILM CODE NO. 193014 OF THE CONDOMINIUM RECORDS OF HARRIS COUNTY, TEXAS.

11. Concurrently with the Note, Uvwo, executed a Deed of Trust (“Security Instrument” and together with the Note, “Loan Agreement”) as grantor, granting Choice Home Financing, LLC dba CHF Mortgage and its successors and assigns, a security interest in the Property. The Security Instrument is recorded as instrument number 20070185131 in the real property records of Harris County, Texas. (See Exhibits A, A-3.)

12. Nationstar is the holder of the Note, endorsed in blank, and beneficiary of the Security Instrument pursuant to a series of assignments recorded as instrument numbers 20070555460, RP-2023-88039, RP-2020-288171, and RP-2022-336901 in the real property records of Harris County, Texas. (See Exhibits A, A-4.) As the assignee of record, Defendant is the mortgagee of the Loan Agreement, as defined by Texas Property Code § 51.0001(4), and is authorized to enforce the terms of the Loan Agreement.

13. Under the terms of the Note and security Instrument, Uvwo was required to pay when due the principal and interest on the debt evidenced by the Note as well as any applicable charges and fees under the Note. (See Exhibits A, A-1, A-2.)

14. The Loan Agreement further provides that should Uvwo fail to make payments on the Note as they became due and payable, or should they fail to comply with any or all of the

covenants and conditions of the Security Instrument, then the lender may enforce the Security Instrument through foreclosure. (*See id.*)

15. Uvwo has defaulted on his obligations to Nationstar on the Note by failing to make the September 1, 2017 payment and all subsequent payments. (*See Exhibits A, A-5.*) On November 17, 2022, a notice of default and intent to accelerate with the required opportunity to cure was mailed by certified mail to Uvwo's last known mailing address in accordance with the Loan Agreement and the Texas Property Code. (*See id.*) The default has never been cured. (*See Exhibit A.*) On February 7, 2023, a Notice of Acceleration of Loan Maturity was sent to Uvwo's last known address and the Property address in accordance with the Loan Agreement and the Texas Property Code. (*See Exhibits A, A-6.*) A notice of substitute trustee's sale was sent to Uvwo via certified mail, posted at the Harris County courthouse, and filed with the Harris County Clerk in accordance with the Loan Agreement and the Texas Property Code. (*See Exhibits A, A-7.*)

16. Greenleaf House LLC acquired title to the property by Trustee's Deed when The Lofts on Post Oak Condominium Owners, Association, Inc. ("Association") foreclosed on their lien and sold the property at non-judicial foreclosure sale on December 7, 2021. (*See Exhibit A, A-10.*) The Association's lien was subordinate to Nationstar's lien securing the payment of First Lien indebtedness in accordance with the Declaration of Condominium ("Declaration") filed as instrument number Y651572 in the real property records of Harris County, Texas. (*Exhibits A, A-8.*)

17. The total amount owed on the Loan Agreement debt good through December 27, 2023 is \$374,138.93. (*See Exhibit A, A-9.*)

18. Since purchasing the property in 2021, Greenleaf's only attempt at settling Nationstar's superior lien was in April of 2023 when they requested a payoff. (*See Petition at ¶ 8*)

and Exhibit 2.) Additionally, Greenleaf has no evidence that the loan had been accelerated prior to the Notice of Default and Intent to Accelerate sent on November 17, 2022. (*See* Petition generally.)

#### IV. GROUNDS FOR SUMMARY JUDGMENT

19. Nationstar asserts the following grounds for summary judgment:

Nationstar is entitled to summary judgment for the following reasons:

- a. Greenleaf's request for declaratory judgment and claim for violation of Texas Property Code § 51 fail as Greenleaf has not plead sufficient facts to support its claims, Nationstar's lien has not been voided by the statute of limitations, and claims that Nationstar failed to provide proper notice under the Texas Property Code are an attempted wrongful foreclosure claim in disguise that Texas does not recognize;
- b. Greenleaf's suit to quiet title fails as Greenleaf has not pled sufficient facts to support its claim and Nationstar's lien has not been voided by the statute of limitations;
- c. Greenleaf's claim of trespass to try title fails as Greenleaf has not plead sufficient facts to support its claim and Nationstar's lien has not been voided by the statute of limitations;
- d. Greenleaf's claim for fraudulent or invalid lien fails as Greenleaf has not plead sufficient facts to support its claim and Nationstar's lien has not been voided by the statute of limitations;
- e. Greenleaf's demand for an accounting fails as it fails to plead facts sufficient to prove that an accounting is necessary;
- f. Greenleaf's claim to the property is subordinate to Nationstar's lien securing the payment of First Lien indebtedness.
- g. Greenleaf's request for injunctive relief fails because the foreclosure sale complained of has been cancelled, no future foreclosure sale is pending, and without another claim, the injunctive relief cannot stand on its own.
- h. Summary judgment evidence conclusively establishes that there is a default under the terms of the Loan Agreement;
- i. Summary judgment evidence conclusively establishes that Nationstar has complied with the notice requirements to foreclose;
- j. Summary judgment evidence conclusively establishes that Nationstar is the

owner and holder of the Loan Agreement and is entitled to proceed with foreclosure against the Property in accordance with the Loan Agreement and the Texas Property Code, or through judicial foreclosure.

## V. SUMMARY JUDGMENT STANDARD

20. The purpose of the traditional summary judgment procedure is to permit the trial court to dispose promptly of cases that involve unmeritorious claims or untenable defenses. *See City of Houston vs. Clear Creek Basin Authority*, 589 S.W. 2d 671, 678 n.5 (Tex. 1979). It permits the court to weed out unmeritorious causes of action or defenses without the expense of time or money caused by protracted trials. *See Kain vs. Neuhaus*, 515 S.W. 2d 45, 47 (Tex.Civ.App. – Corpus Christi 1974, no writ); *see Casso v. Brand*, 776 S.W. 2d 551, 556 (Tex. 1989). A traditional summary judgment should be granted when the movant conclusively shows that: (1) there is no genuine issue of material fact; and (2) the moving parties are entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Rhone-Poulenc v. Steel*, 997 S.W. 2d 217, 222 (Tex. 1999).

## VI. ARGUMENTS AND AUTHORITIES

21. The summary judgment evidence proves conclusively that Nationstar is entitled to an order granting summary judgment in its favor as:

- a. **Greenleaf's request for declaratory judgment and claim for violation of Texas Property Code § 51 fail as Greenleaf has not plead sufficient facts to support its claims, Nationstar's lien has not been voided by the statute of limitations, and claims that Nationstar failed to provide proper notice under the Texas Property Code are an attempted wrongful foreclosure claim in disguise that Texas does not recognize.**

22. Nationstar incorporates by reference all facts and arguments contained in the sections above.

23. Much of what Greenleaf claims is based on its assertion that the statute of limitations has voided Nationstar's lien. Greenleaf provides no evidence that this is the case.

24. Texas Civil Practice and Remedies Code § 16.035 states that "[a] person must bring



suit for the recovery of real property under a real property lien or the foreclosure of a real property lien not later than four years after the day the cause of action accrues." (TEX. CIV. PRAC. & REM. CODE § 16.035(a).) The statute also provides that "[a] sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien must be made not later than four years after the day the cause of action accrues." (TEX. CIV. PRAC. & REM. CODE § 16.035(b).) A cause of action does not accrue until "the maturity date of the last note, obligation, or installment." (*Id.* § 16.035(e).) However, if, as here, the note or deed of trust contains an optional acceleration clause, the cause of action accrues—and the limitations period begins to run—when the holder "actually exercises" its option to accelerate. (*Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 566-67 (Tex. 2001).)

25. In this case, the maturity date in the deed of trust is April 1, 2037. (Exhibit A-3 at ¶ E.) Therefore, this cannot be the basis for the statute of limitations beginning to run. As most deeds of trust do, the deed of trust in question contains a clause that allows the beneficiary to accelerate the loan. (*Id.* at ¶ 22.) As stated above, only when the beneficiary exercises its option to accelerate does the cause of action accrue.

26. Greenleaf alleges that because "the loan is due and owing for the August 1, 2017 payment" that this default alone began the running of the statute of limitations, that "more than 4 years has occurred since the last payment was made and the last attempt to collect the debt had been attempted thus the statute of limitations on this debt has run its course." (Petition at ¶ 9.) The beneficiary had not exercised its option to accelerate when the borrower failed to make a payment. The beneficiary under the loan mailed its Notice of Default and Intent to Accelerate—the necessary prerequisite to acceleration—to the borrower on November 17, 2022. (*See* Exhibit A-5.) This Notice of Default and Intent to Accelerate states that the borrower had until December 17, 2022 to

pay the amount owed or Nationstar would “accelerate the entire sum of both principal and interest due and payable.” (*Id.* at p. 4.) Because December 17, 2022 is well within the four-year statute of limitations, Nationstar’s lien is not void. Greenleaf has not plead any facts or provided any evidence indicating that Nationstar accelerated the loan at any time before the November 17, 2022 Notice of Default and Intent to Accelerate was mailed to the borrower. Therefore, any claim based on the running of the statute of limitations fails, including this request for a declaratory judgment stating that Nationstar’s lien is void.

27. Also, Greenleaf makes claims that proper notices were not sent in accordance with Texas Property Code § 51.002. The required notice of default and intent to accelerate was sent on November 17, 2022 and is attached as Exhibit A-5. The required notices of foreclosure sale were mailed on March 17, 2023, posted on March 23, 2023, and filed with the County on March 23, 2023, are attached as Exhibit A-7.

28. In addition to the proper notices being sent to the debtor, Uvwo, as required under the Texas Property Code and in accordance with the Loan Agreement, such claims of failure to send foreclosure notices, when no foreclosure has occurred, are essentially claims for attempted wrongful foreclosure, which Texas does not recognize. (*See Felchak v. JP Morgan Chase Bank, N.A.*, No. H-12-2847, 2013 WL 1966972, at \*4 n.1 (S.D. Tex. May 10, 2013) (dismissing wrongful foreclosure claim because no foreclosure had occurred); *Sauer v. Wells Fargo Bank, N.A.*, No. SA-12-CV-1085-XR, 2013 WL 1824094, at \*2 (W.D. Tex. Apr. 30, 2013) (same); *Westbrooks v. GMAC Mortgage, LLC*, No. 3:12-CV-3719-M (BF), 2013 WL 2093062, at \*3 (N.D. Tex. Apr. 16, 2013) (“Texas courts have yet to recognize a claim for ‘attempted wrongful foreclosure.’”); *Mortberg v. Litton Loan Servicing, L.P.*, No. 4:10-CV-668, 2011 WL 4431946, at \*6 (E.D. Tex. Aug. 30, 2011) (“Texas law does not recognize an action for attempted wrongful foreclosure.”);

*Biggers v. BAC Home Loans Servicing, LP*, 767 F. Supp. 2d 725, 729 (N.D. Tex. 2011); *Peterson v. Black*, 980 S.W.2d 818, 823 (Tex. App.—San Antonio 1998, no pet.).)

29. As such, Greenleaf's claims for declaratory judgment based on conclusory allegations that Nationstar's lien has been voided by the statute of limitations and that Nationstar failed to send pre-froeclosure notices fail, and summary judgment should be granted in Nationstar's favor on these claims.

**b. Greenleaf's suit to quiet title fails as Greenleaf has not pled sufficient facts to support its claim and Nationstar's lien has not been voided by the statute of limitations.**

30. Nationstar incorporates by reference all facts and arguments contained in the sections above.

31. "The elements of the cause of action to quiet title are that the plaintiff must show (1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable." (*U.S. Nat'l Bank Ass'n v. Johnson*, 2011 Tex. App. LEXIS 10253 at \*7.)

32. Greenleaf does have an interest in the property and Greenleaf's interest in the property is undoubtedly affected by Nationstar's superior lien, but, as stated above, Nationstar's lien is not invalid. The four-year statute of limitations did not begin running when the borrower failed to pay, but instead when Nationstar exercised its option to accelerate by sending the Notice of Default and Intent to Accelerate followed by notice of acceleration. (*See* Exhibits A-5, A-6.)

33. As such, Greenleaf's suit to quiet title fails and Nationstar's summary judgment based on this claim should be granted.

**c. Greenleaf's claim of trespass to try title fails as Greenleaf has not plead sufficient facts to support its claim and Nationstar's lien has not been voided by the statute of limitations.**

34. Nationstar incorporates by reference all facts and arguments contained in the sections above.

35. “In a trespass-to-try-title action, a plaintiff may prove legal title by establishing: (1) a regular chain of title of conveyances from the sovereign to the plaintiff; (2) a superior title to that of the defendant out of a common source; (3) title by limitations (i.e., adverse possession); or (4) possession that has not been abandoned.” (*Brumley v. McDuff*, 616 S.W.3d 826 at 832 (Tex. 2021.))

36. Greenleaf claims that it has “prior possession and superior title in the Property following a regular chain of conveyances” but fails to provide sufficient evidence to prove that this is the case. (Petition at ¶ 19(A).) Also, Greenleaf again attempts to base this claim on the untrue assertion that Nationstar’s lien is “statutorily expired.” (*Id.* at ¶ 19(B).) As stated above, this assertion is simply not true. The statute of limitations did not begin to run until December of 2022. (See Exhibit A-5.)

37. As such, Greenleaf’s claim for trespass to try title fails and Nationstar’s summary judgment based on this claim should be granted.

**d. Greenleaf’s claim for fraudulent or invalid lien fails as Greenleaf has not plead sufficient facts to support its claim and Nationstar’s lien has not been voided by the statute of limitations.**

38. Nationstar incorporates by reference all facts and arguments contained in the sections above.

39. It’s unclear what cause of action Greenleaf is pleading in this section of its petition as it appears to simply repeat the same elements it used for its cause of action to quiet title.

40. A claim for use of a fraudulent lien requires proof of the following elements: (1) a person made, presented, or used a document purporting to create a lien; (2) knowing that the lien

was fraudulent; (3) with intent that the fraudulent lien be given legal effect; and (4) with intent to cause another person to suffer physical injury, financial injury, mental anguish, or emotional distress. (*Napoleon v. Strategic Dealer Servs., LP*, 2017 Tex. App. LEXIS 1856 (citing TEX. CIV. PRAC. & REM. CODE ANN. § 12.002(a) (West Supp. 2016).))

41. It does not appear that Greenleaf properly plead the elements of a claim for fraudulent lien. As such, Greenleaf has plead no facts which would be sufficient to prove that Nationstar made the lien knowing that it was fraudulent with the intent to defraud Greenleaf. Greenleaf's only argument is that the statute of limitations ran, which, as stated above, is incorrect.

42. As such, Greenleaf's claim for trespass to try title fails and Nationstar's summary judgment based on this claim should be granted.

**e. Greenleaf's demand for an accounting fails as it fails to plead facts sufficient to prove that an accounting is necessary.**

43. Nationstar incorporates by reference all facts and arguments contained in the sections above.

44. In Texas, Courts have found that an "[a]ccounting is appropriate when 'the facts and accounts presented are so complex adequate relief may not be obtained at law.'" (*Williams v. Wells Fargo Bank, N.A.*, 560 Fed.Appx. 233, 243 (5th Cir. 2014) (quoting *T.F.W. Mgmt, Inc. v. Westwood Shores Prop. Owners Ass'n*, 79 S.W.3d 712, 717 (Tex. App.—Houston [14th Dist.] 2002, pet. denied))

45. Other than simply demanding an accounting, Greenleaf fails to plead any facts to show why an accounting is needed or how the accounts are so complex that adequate relief cannot be obtained.

46. As such, Greenleaf's demand for an accounting fails and Nationstar's summary judgment based on this claim should be granted.

**f. Greenleaf's claim to the property is subordinate to Nationstar's lien securing the payment of First Lien indebtedness.**

47. Nationstar incorporates by reference all facts and arguments contained in the sections above.

48. As stated previously, Greenleaf House LLC acquired title to the property by Trustee's Deed when The Lofts on Post Oak Condominium Owners Association, Inc. ("Association") foreclosed on their lien and sold the property at non-judicial foreclosure sale on December 7, 2021. (See Petition at ¶ 7 and Exhibit 1.) The Association's lien was subordinate to Nationstar's lien securing the payment of First Lien indebtedness in accordance with the Declaration of Condominium ("Declaration") filed as instrument number Y651572 in the real property records of Harris County, Texas. (Exhibits A, A-8.)

49. Nationstar's lien is superior based on its status as securing the payment of the first lien indebtedness. Greenleaf never pleads any facts claiming that its lien is superior to Nationstar's other than stating over and over again that Nationstar's lien is void because of the statute of limitations, which, as stated above, is incorrect.

50. As such, any claim that Greenleaf's lien is superior fails and summary judgment should be granted in favor of Nationstar.

**g. Summary judgment evidence conclusively establishes that there is a default under the terms of the Loan Agreement.**

51. Nationstar incorporates by reference all facts and arguments contained in the sections above.

52. Greenleaf requests injunctive relief to stop Nationstar from conducting the May 2, 2023 foreclosure sale of the real property that is the subject of his Petition. (See Petition at ¶¶ 34-38.) Nationstar pulled the Property from sale and has not scheduled another sale of the Property.

Greenleaf's claim that there is an imminent threat of harm from the sale of the Property is moot as no current threat exists. Without a threat of imminent harm, injunctive relief is not necessary.

53. Additionally, in the absence of a viable substantive claim, injunctive relief is unavailable. (*Sid Richardson Carbon & Gasoline Co. v. Interenergy Res., Ltd.* 99 F.3d 746, 752 n. 3 (5th Cir. 1996).) The failure of Plaintiff's other claims would automatically cause his request for injunctive relief to fail.

54. As such, Greenleaf's request for injunctive fails and Nationstar's summary judgment should be granted.

**h. Summary judgment evidence conclusively establishes that there is a default under the terms of the Loan Agreement.**

55. Nationstar incorporates by reference all facts and arguments contained in the sections above.

56. The Loan Agreement is due and owing for over six years of monthly payments. (*See* Exhibit A, A-5.) The Note provides that the Uvwo was to make monthly payments beginning on May 1, 2007 and ending on April 1, 2037. (*See* Exhibit A, A-1.) The Security Instrument secures payment of this debt and contains a power of sale should a default occur. (*See* Exhibit A, A-3.) Uvwo's failure to make the payments when due is a default under the terms of the Loan Agreement. (*Id.*)

**i. The summary judgment evidence conclusively establishes that Nationstar has complied with the notice requirements to foreclose.**

57. Nationstar incorporates by reference all facts and arguments contained in the sections above.

58. Demand for payment after default is governed by the Note, Security Instrument and Texas Property Code 51.002. The Note and Security Instrument require that Plaintiff give Uvwo,

as obligor, thirty (30) days' notice of default and opportunity to cure before acceleration. (*See* Exhibits A, A-2, A-3.) Furthermore, Texas Property Code section 51.002 provides as follows:

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.

TEX. PROP. CODE § 51.002.

59. On November 17, 2022, a compliant notice of default and intent to accelerate with the required opportunity to cure was mailed by certified mail to Uvwo's last known mailing address in accordance with the Loan Agreement and the Texas Property Code section 51.002, advising him of, among other things, the amount in default, the time period to cure the default, and that if the default was not cured that the balance of the debt would be accelerated. (*See* Exhibit A, A-5.) Neither Uvwo nor Greenleaf ever cured the default or attempted to cure the default by paying all past due amounts including all amounts that have come due since September 1, 2017. (*See* Exhibit A.)

60. The default was not cured and the maturity of the debt was accelerated. (*See* Exhibits A, A-5, A-6.) At no time have Uvwo or Greenleaf paid all sums secured by the Security Instrument. (*See* Exhibit A.) Accordingly, after providing notice of default and accelerating the maturity of the debt, foreclosure may proceed. (*See* Exhibits A, A-2, A-3.) No genuine issues of material fact exist as to whether Nationstar, or its agent or mortgage servicer, provided all notices required to proceed with foreclosure under the terms of the Loan Agreement and Texas law.

**j. The summary judgment evidence conclusively establishes that Nationstar**



**is the owner and holder of the Loan Agreement and is entitled to proceed with foreclosure against the Property in accordance with the Loan Agreement and the Texas Property Code, or through judicial foreclosure.**

61. Nationstar incorporates by reference all facts and arguments contained in the sections above.

62. Nationstar is the proper party to enforce the remedies afforded to the lender under the terms of the Loan Agreement. Plaintiff is entitled to proceed with foreclosure as a “mortgagee,” as that term is defined under Chapter 51 of the Texas Property Code. TEX. PROP. CODE § 51.0025. The Property Code specifically gives a mortgagee and mortgage servicer the authority to exercise the power of sale through its authority to appoint a substitute trustee under Texas Property Code section 51.0075. To qualify as a mortgagee, one must, among other qualifications, either be the grantee, beneficiary, owner, or holder of a security instrument, or they may also be the last person to whom the security interest was assigned of public record. TEX. PROP. CODE § 51.0001(4). Plaintiff qualifies as a mortgagee as the owner of the Security Instrument. (See Exhibits A, A-2, A-3.) Furthermore, Nationstar, is entitled to administer the foreclosure as the current mortgage servicer of the Loan Agreement. (See Exhibits A, see also TEX. PROP. CODE § 51.0025.) Accordingly, there is no genuine issue of material fact as to whether Plaintiff as mortgagee, or as mortgage servicer, is the proper party to administer the foreclosure process under the terms of the Loan Agreement and Texas law as a result of Uvwo’s default and failure to cure.

#### **PRAYER**

For these reasons, Defendant Nationstar Mortgage LLC prays that the Court grant its Motion, enters final judgment against Plaintiff, and awards such other and further relief it may be just entitled at law or in equity.

Respectfully submitted,

/s/ Bradley Conway

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*Attorney for Plaintiff Nationstar Mortgage  
LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 19, 2024, a true and correct copy of the foregoing was served in accordance with the Texas Rules of Civil Procedure on the following:

VIA E-SERVICE:

**Robert C. Vilt**

[clay@viltlaw.com](mailto:clay@viltlaw.com)

*Attorney for Plaintiff*

/s/ Bradley Conway

**Bradley Conway**

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Envelope ID: 83580472  
Filing Code Description: Motion (No Fee)  
Filing Description: Defendant/Counter-Plaintiff's Motion For Final  
Summary Judgment  
Status as of 1/19/2024 12:05 PM CST

#### Case Contacts

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