

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS  
United States District Court  
Southern District of Texas

**ENTERED**

July 26, 2016

David J. Bradley, Clerk

D. Patrick Smitherman,

Plaintiff,

*versus*

Bayview Loan Servicing, LLC,

Defendant.

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Civil Action H-16-1927

### Injunction

1. *Hearing.* On July 19, 2016, the court heard the application for an injunction of Bayview Loan Servicing, LLC.

2. *Parties.*

A. The plaintiff is D. Patrick Smitherman.

B. The defendant is Bayview Loan Servicing, LLC.

3. *Background.*

Smitherman has sued Bayview Loan Servicing, LLC, three times – each time to prevent it from foreclosing on his property.

In August 2011, he sued Bayview claiming – amongst other things – that it did not properly notify him of the pending foreclosure. On March 15, 2014, the claims he brought and could have brought were dismissed with prejudice. He appealed; the judgment was affirmed.

On July 23, 2014, he filed another lawsuit to prevent a foreclosure set for August 5. Once again he claimed he was not properly notified of the default. The court dismissed the claims based on res judicata. He appealed; on December 21, 2015, the parties agreed to reverse and remand the judgment. On May 31, 2016, he voluntarily dismissed his claims with prejudice.

On February 22, 2016, while the remanded suit was pending, he filed suit to prevent the foreclosure set for March 1. He claimed the March 2011 notice of default was improper. This court dismissed his case with prejudice. He appealed; it is still pending.

On June 30, 2016, he filed this suit to prevent a July 5, 2016, foreclosure sale. That sale date was rescheduled to August 2, 2016.

All of the judges who have heard Smitherman's claims on the merits have rejected them. The evidence is overwhelming that he will persist in his meretricious and extortionate claims.

4. *Reasons.*

- A. He has not paid the principal, interest, insurance, or property taxes in over five years.
- B. Smitherman has filed four lawsuits, each have been dismissed with prejudice. He files a new lawsuit after Bayview sets a date for the foreclosure sale.
- B. Smitherman concedes that he owes Bayview the principal and interest; he indicates – by filing lawsuits and *lis pendens* – that he is holding the property hostage as leverage to negotiate a more favorable settlement.
- C. Smitherman concedes that he has received mail at his address from the court and from others; he only claims there is an error in delivery as an attempt to legitimize his claims against Bayview
- D. Because he used to be a licensed attorney, his intransigence may not be taken as an innocent mistake.
- E. Smitherman used to be a licensed attorney, his intransigence has no excuse.

5. *Injunction.*

D. Patrick Smitherman may not interfere with the foreclosure sale of the property described as:

Lot 5, in Block 1, of West 25th Street Addition, Replat, a Subdivision in Harris County, Texas, according to the map or plat thereof, recorded at Film Code No. 571138 of the Map Records of Harris County, Texas (actual Film Code No. 595901874).

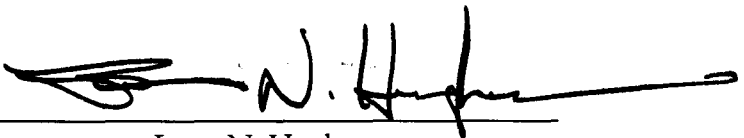
If D. Patrick Smitherman does not promptly vacate the premises when asked by Bayview, the court will assist in its recovering possession.

6. *Service.* This injunction was rendered in open court on July 19, 2016.

7. *Bond*

The injunction is effective when Bayview deposits a \$1,000.00 in court's registry.

Signed on July 25, 2016, at Houston, Texas.



Lynn N. Hughes  
United States District Judge

