

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**SHARON COUCH and DICKEY COUCH,** §  
§  
**Plaintiffs,** §

v. §  
§

**THE BANK OF NEW YORK MELLON** §  
**FKA THE BANK OF NEW YORK, AS** §  
**SUCCESSOR TRUSTEE FOR** §  
**JPMORGAN CHASE BANK, N.A., AS** §  
**TRUSTEE FOR NOVASTAR MORTGAGE** §  
**FUNDING TRUST, SERIES 2005-4** §  
**NOVASTAR HOME EQUITY LOAN** §  
**ASSET-BACKED CERTIFICATES,** §  
**SERIES 2005-4,** §  
  
**Defendant.** §

**Civil Action No. 4:24-cv-00085-O**

**DEFENDANT’S SUPPLEMENTAL BRIEF IN COMPLIANCE  
WITH COURT’S ORDER AT ECF NO. 19**

Defendant The Bank of New York Mellon, f/k/a The Bank of New York, as Trustee for NovaStar Mortgage Funding Trust, Series 2005-4 NovaStar Home Equity Loan, Asset-Backed Certificates, Series 2005-4 (“Defendant” or “BNYM”) files this its *Supplemental Brief in Compliance with Court’s Order at ECF No. 19* and respectfully shows the Court as follows:

**I. BACKGROUND**

1. This action relates to the judicial foreclosure of real property commonly known as 9845 Ray White Road, Keller, Texas 76248 (the “Property”). (ECF No. 1, Exhibit E-2 at ¶¶ 3.1-4.11.) Plaintiffs Sharon and Dickey Couch (“Plaintiffs” or the “Couches”) challenge Defendant’s foreclosure and purchase of the Property and bring a quiet title claim. (*Id.* at ¶¶ 5.1-5.11.)

2. Plaintiffs argue that they are the rightful title owners of the Property based on adverse possession. This argument fails as a matter of law because the doctrine of adverse

possession does not apply to lienholders, such as the Defendant. Further, Defendant became the title owner only seven months ago, following a judicial foreclosure sale. Therefore, there it is impossible that Plaintiffs could comply with any of the adverse possession thresholds. Plaintiffs' claims must be dismissed.

3. On March 8, 2021, Judge John McBryde entered an Amended Final Judgment allowing BNYM to proceed with judicial foreclosure of the Property. (ECF No. 5, *Exhibit W, Appx. at p. 480.*)

4. Following the domestication of Judge McBryde's Amended Final Judgment, a Constable's Sale of the Property took place on August 1, 2023. BNYM acquired title to the Property at the Constable's sale. (ECF No. 5, *Exhibit X, Appx. at p.485.*)

5. On October 9, 2023, BNYM filed suit to evict Plaintiffs from the Property in Justice Court No. 3, Cause No., JP03-23-E00072506 and obtained a *Judgment* of possession in favor of BNYM. (ECF No. 5, *Exhibit Y, Appx. at p. 488.*)

6. On October 25, 2023, Plaintiffs filed an appeal to County Court at Law No. 1 of Tarrant County, Texas under Cause No. 2023-007641-1. On January 23, 2024, County Court at Law No. 1 entered a *Judgment* of possession in favor of BNYM. (ECF No. 5, *Exhibit Z, Appx. at p.490*)

7. On January 22, 2024, Plaintiffs filed this action against Defendant in the County Court at Law No. 1 of Tarrant County, Texas, as Cause No. 2024-000558-1 in the matter styled *Sharon Couch and Dickey Couch v. The Bank of New York Mellon, f/k/a the Bank of New York as Successor in Interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2005-4, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2005-4* (the

“State Court Action”). Defendant removed the State Court Action to this Court on January 25, 2024. (ECF No. 1.)

8. Plaintiffs challenge in their Petition Defendant’s right to foreclose and its purchase of the Property. (ECF No. 1, E-2, Petition at ¶ 5.4.). Plaintiffs claim that Defendant failed to initiate a foreclosure sale on the Property “before the applicable limitations period,” and in the alternative, that Defendant’s claim is “invalid or unenforceable because Defendant’s claim of title is barred by adverse possession.” (*Id.* at ¶¶ 5.5-5.6.) Based on these allegations, Plaintiffs bring a quiet title claim. (*Id.* at ¶¶ 5.1-5.11.)

9. On February 1, 2024, Defendant filed its Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) arguing that Plaintiffs’ claims were all barred by *res judicata*. (ECF No. 6.) Also on February 1, 2023, Plaintiffs file a Brief in Support of Motion for Temporary Restraining order requesting this Court restrain Defendant from evicting Plaintiffs and selling the Property to a third party. (ECF No. 4.)

10. On February 28, 2024, this Court entered a *Memorandum Opinion & Order* granting in part and denying in part Defendant’s Motion to Dismiss. (ECF No. 19.) The Court dismissed with prejudice Plaintiffs’ quiet title claim based on statute of limitations as barred by *res judicata*. *Id.* The Court denied Defendant’s Motion to Dismiss based on Plaintiffs’ alternative argument that they may they have acquired title to the Property though adverse possession. *Id.*

11. Further, the Court’s Order granted Plaintiffs’ Motion for Temporary Restraining order and requested supplemental briefing on the Plaintiffs’ remaining quiet title claim as to the alleged adverse possession in preparation for the Temporary Injunction hearing on March 5, 2024. (ECF No. 19.)

## II. SUPPLEMENTAL BRIEF

### B. Plaintiffs' Request for a Temporary Injunction fails.

12. "To obtain a temporary injunction, the applicant must plead and prove three elements: "(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *EXFO Am. Inc. v. Herman*, No. 4:12-CV-201, 2012 U.S. Dist. LEXIS 65706, at \*3 (E.D. Tex. May 10, 2012) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)).

13. Plaintiffs have not shown a probable right to the relief sought. Plaintiffs' sole claim is for quiet title based on the doctrine of adverse possession. Plaintiffs argue in their Petition that they have acquired title to the Property based on the doctrine of adverse possession. (ECF No. 1, E-2, Petition at ¶ 5.6.) To support this contention, Plaintiffs argue that their adverse possession claim accrued the day the foreclosure judgment was entered in 2015. (ECF No. 1, E-2, Petition at ¶ 5.9.)

14. Plaintiffs restate this contention in their Supplemental Brief filed this day . (ECF No. 20, pp.2-3, ¶2.4.) Plaintiffs, however, cite to no legal authorities in support of this proposition because this is simply an erroneous statement of the law. (*Id.*)

15. Plaintiffs' quiet title claim fails as the statute of limitations for their quiet title claim did not begin until Defendant acquired title to the Property through the judicial foreclosure sale on August 1, 2023. Further, Plaintiffs' claim fails as they have not met the minimum three-year period to adversely possess the Property.

16. "The law is well-settled in Texas that, for adverse possession purposes, the statute of limitations does not run against the mortgagee out of possession and in favor of an adverse claimant until the mortgagee acquires title to land at the foreclosure sale."

*Tex. Capital Bank, N.A. v. Hoppe*, No. 14-98-00621-CV, 2000 Tex. App. LEXIS 5331, at \*2 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (citing *Warnecke v. Broad*, 138 Tex. 631, 161 S.W.2d 453 (1942)).

17. “Under sections 16.024 through 16.026 of the Texas Civil Practices & Remedies Code, a party must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title within three, five, or ten years of the date the cause of action accrues.” *Coates Energy Tr. v. Frost Nat’l Bank*, No. 04-11-00838-CV, 2012 Tex. App. LEXIS 9718, at \*23 (Tex. App.—San Antonio November 28, 2012, pet denied) (citing to Tex. Civ. Prac. & Rem. Code §§ 16.024 (three years), 16.025 (five years), 16.026 (ten years)).

18. In this case, Defendant did not acquire title to the Property until the judicial foreclosure sale occurred on August 1, 2023. *Tex. Capital Bank, N.A. v. Hoppe*, No. 14-98-00621-CV, 2000 Tex. App. LEXIS 5331, at \*2 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Therefore, the statute of limitations for Plaintiffs’ adverse possession claim did not begin until August 1, 2023.

19. To be considered adverse possessors under the Texas Civil Practice and Remedies Code § 16.024, Plaintiffs would be required to have hostile possession for a minimum of three years, among other requirements. Up until August 1, 2023, Plaintiffs were the rightful title owners of the Property; therefore, their ownership was not hostile and their adverse possession claims fails.

20. Following the judicial foreclosure sale on August 1, 2023, Defendant has only owned the Property for seven months. Therefore, it is impossible that Plaintiffs have adversely possessed the property for three years, the minimum threshold under Section 16.024 of the Texas

Civil Practice and Remedies Code to be considered adverse possessors. Accordingly, Plaintiffs' claim for quiet title fails as a matter of law and they are not entitled to injunctive relief.

**B. The Court lacks jurisdiction to interfere with the Final Judgment entered in the eviction proceedings.**

21. Under the Rooker-Feldman doctrine, "federal district courts lack jurisdiction to entertain collateral attacks on state court judgments, such as where the losing party in a state court action seeks what in substance would be appellate review of the state judgment." *Weaver v. Tex. Cap. Bank N.A.*, 660 F.3d 900, 904 (5th Cir. 2011).

22. Prior to the filing of the Current Action, on October 9, 2023, BNYM filed suit to evict Plaintiffs from the Property in Justice Court No. 3, Cause No. JP03-23-E00072506 and obtained a *Judgment* of possession in favor of BNYM. (ECF No. 7, Exhibit Y, Appx at p.488.) Subsequently, on October 25, 2023, Plaintiffs filed an appeal to County Court at Law No. 1 of Tarrant County, Texas under Cause No. 2023-007641-1. On January 23, 2024, County Court at Law No. 1 entered a *Judgment* of possession in favor of BNYM. (ECF No. 7, Exhibit Z, Appx at p. 490.) The state court stated that after considering the testimony and evidence, BNYM was entitled to judgment. The state court ordered that BNYM shall have judgment for possession of the Property. (*Id.*)

23. Plaintiffs' request for preliminary injunction must be denied because this Court lacks jurisdiction to intervene in any state court forcible detainer action. *Knoles v. Wells Fargo Bank, N.A.*, 513 Fed. App'x 414, 416, 2013 WL 617010, 2 (5th Cir. 2013). The Rooker-Feldman doctrine bars cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,

544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). When a litigant loses in state court, they are barred from subsequently bringing that same claim in federal court. (*Id.*)

24. The Rooker-Feldman doctrine bars the review of state court eviction proceedings. *Sherman v. Johnson*, No. 22-30693, 2023 U.S. App. LEXIS 18821 at \*1 (5th Cir. 2023). Here, a Final Judgment of possession was entered in favor of BNYM by the state court. (ECF No. 7, Exhibit Z, Appx at p. 490.) Plaintiffs now seek a preliminary injunction from this Court enjoining Defendant from evicting Plaintiff and from selling the Property. A preliminary injunction against Defendant restraining it from evicting Plaintiffs would be a direct bar to their eviction pursuant to the Judgment entered by the County Court at Law No. 1, Tarrant County, Texas and is barred under the Rooker-Feldman doctrine. *Price v. Porter*, 351 F. App'x 925, 926 (5th Cir. 2009).

25. It is evident that Plaintiffs are directly attacking the state court judgment entered in the eviction proceedings and their underlying claims herein are inextricable intertwined with the state court judgment of possession. The Rooker-Feldman doctrine precludes this Court from interfering with a state court proceeding and the Court has no authority to grant the injunctive relief requested. *Chamberlain v. 625 Orleans, LP*, No. 1:11-CV-140, 2011 U.S. Dist. LEXIS 45876 at \*11 (E.D. Tex. Apr. 18, 2011); *see also Bradley v. PNC Bank, N.A.*, No. 4:14CV37, 2014 U.S. Dist. LEXIS 136649, at \*16 (E.D. Tex. Sep. 26, 2014) (denying plaintiff's request for injunctive relief to restrain eviction since the court lacked authority to exercise subject-matter jurisdiction over a collateral attack on a state court judgment).

**WHEREFORE, PREMISES CONSIDERED,** Defendant respectfully requests that the Court deny Plaintiffs' request for preliminary injunction and grant it all other relief to which it is entitled.

Respectfully submitted,

By: /s/ Mark D. Cronenwett

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2024, a true and correct copy of the foregoing was served via ECF service on the following:

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