FILED
21-0396
8/2/2021 1:58 PM
tex-55915500
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 21-0396

IN THE SUPREME COURT OF TEXAS

SUNIVERSE, LLC,
Petitioner,

v.

UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC.; U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3; NATIONSTAR MORTGAGE, LLC; BANK OF AMERICA, N.A.; AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
Respondents.

On Petition for Review from the Ninth Court of Appeals at
Beaumont, Texas, No. 09-19-00090-CV

MOTION FOR REHEARING

Jeffrey C. Jackson
State Bar No. 24065485
JEFFREY JACKSON & ASSOCIATES, PLLC
2200 North Loop West, Suite 108
Houston, Texas 77018
713-861-8833 (P)
713-682-8866 (F)
jeff@jjacksonllp.com
Counsel for Petitioners

RESTATEMENT OF THE CASE

Nature of the Case:	Petitioner obtained title to a residential property burdened by a facially valid deed of trust. Certain respondents claim the right to enforce the deed of trust as assigns of the original mortgage lender. Petitioner brought claims for, *inter alia*, quiet title and declaratory judgment alleging the chain of assignments from the original lender to respondents is broken and therefore respondents lack standing to foreclose.
Trial Court:	Hon. Jennifer Robin, 410th Judicial District Court of Montgomery County, Texas
Trial Court's Disposition:	Summary judgment ruling that Petitioner take nothing
Court of Appeals:	Ninth Court of Appeals at Beaumont, Texas
Court of Appeals Disposition:	The trial court judgment was affirmed in *Suniverse, LLC v. Universal American Mortgage Company, LLC*, No. 09-19-00090, 2021 WL 632603, (Tex. App.–Beaumont 2021, pet. filed) (memorandum opinion). TAB 1. The appeal was before a panel consisting of Kreger, Horton, and Johnson, JJ.
Rehearing:	Petitioner sought rehearing, TAB 2, and the court appeals asked Respondents to file a response, TAB 3. After the response was filed, the motion for rehearing was denied. TAB 4.
Supreme Court Disposition:	Petition for Review was denied on July 16, 2021.

I. ARGUMENT AND AUTHORITIES

The denial of Suniverse, LLC's ("Suniverse") petition should be withdrawn. In denying the petition, this court countenances the federal courts' decade-long gross mis-application of common law quiet title principles. The Beaumont Court of Appeals adopted the federal courts' flawed logic and now the floodgates are at risk of opening. This court must step in and correct the flawed application of the "tender" requirement to quiet title cases wherein the plaintiff seeks to invalidate a lien *before any foreclosure sale has taken place* under that lien. It is patently absurd to require a plaintiff to tender the payoff amount of a note secured by a lien *before* the plaintiff may prosecute a quiet title lawsuit seeking a declaration that the lien is invalid.

The court of appeals erroneously held that a prerequisite to Suniverse's quiet title claim is tender of whatever amount is owed to satisfy the lien. Rather, the prevailing case law applies the tender rule only when a prior owner attempts to regain title *after a foreclosure has already taken place*. *See e.g. Fillion v. David Silvers Co.*, 709 S.W.2d 240, 246 (Tex. App.–Houston [14th Dist.] 1986, writ ref'd n.r.e.) (applying the tender requirement to *post foreclosure sale* lawsuit by which the owner who had been foreclosed on sought to set the sale aside); *see also Santiago v. Bank of New York Mellon*, No. 05-17-00144-CV, 2017 WL 4946095, at *7 (Tex. App.–Dallas Nov. 1, 2017, no pet.) (Discussing the tender requirement's applicability to *post foreclosure sale* situations.)

Of the most recent forty-three cases which have cited to *Fillion*, all were federal courts with the sole exception of the court of appeals in this case. TAB 5. Of the most recent 100 citations to *Fillion*, all but four have been by federal courts. TAB 5. The federal courts have continuously mis-applied *Fillion* over the last decade and the error will only compound unless this court steps in.

The very purpose of a quiet title claim is for an owner or other interested party to remove an invalid lien from the title record. *Bell v. Ott*, 606 S.W.2d 942, 952 (Tex. Civ. App.–Waco 1980, writ ref'd n.r.e.) (quoting *Thomson v. Locke*, 66 Tex. 383, 1 S.W. 112, 115 (1886)). How could an owner be required to tender the amount owed to satisfy a note secured by a lien as a pre-condition to obtaining a quiet title judgment that the lien itself is unenforceable? The statute of limitations provides a good example of how applying the tender requirement to the pre-foreclosure situation results in absurdities. Quiet title is an appropriate cause of action to have a lien declared void for violation of the statute of limitations to foreclose. *See Cicero Smith Lumber Co. v. Sweat*, 224 S.W.2d 292, 292 (Tex. Civ. App.–Amarillo 1949, no writ). If the statute of limitations to foreclose has expired, the mortgage lien is void and the mortgage note becomes unsecured. *See Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001). How could the law be that a homeowner has to tender the amount owed on the note *before* they would be entitled to judgment that the lien is void under the statute of limitations?

Illegal home equity loans are also a good example. This court's decision in *Wood v. HSBC Bank USA, N.A.* requires a borrower to assert quiet title in order to clear an invalid home equity lien recorded in the county real property records. 505 S.W.3d 542, 547 (Tex. 2016). If a lender makes an illegal home equity loan, the lien is void at attachment and the lender must forfeit the principal and interest of the loan if the violation is not timely cured. *Id*. at 550-51. If the tender requirement is applied to quiet title claims for illegal home equity loans, in every case where a lender has committed a grievous violation of the Texas Constitution, the homeowner would have to tender the full payoff of the loan before being entitled to a judgment that the lien is void. Of course, this is absurd and would render the Constitution's provisions meaningless since paying off the loan would result in the lien being released anyway.

In conclusion, the denial of Suniverse's petition should be withdrawn and rehearing granted. This court must step in and correct the flawed application of the "tender" requirement to quiet title cases wherein the plaintiff seeks to invalidate a lien *before any foreclosure sale has taken place* under that lien. It is patently absurd to require a plaintiff to tender the payoff amount of a note secured by a lien *before* the plaintiff may prosecute a quiet title lawsuit seeking a declaration that the lien is invalid.

II. PRAYER

WHEREFORE, Petitioner, Suniverse, LLC, respectfully requests that this motion for rehearing be granted and the petition be granted. Petitioner, Suniverse, LLC, prays for such other and further relief to which it has shown itself justly entitled.

Respectfully submitted,

Jeffrey Jackson & Associates, PLLC

/s/ Jeffrey C. Jackson
Jeffrey C. Jackson
State Bar No. 24065485
2200 North Loop West, Suite 108
Houston, Texas 77018
713-861-8833 (T)
713-682-8866 (F)
jeff@jjacksonllp.com
ATTORNEY FOR PETITIONERS

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this motion contains 1,023 words, excluding those sections to which the word count is exempt. This is a computer-generated document created in Microsoft Word 2010, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document. The entire document, according to Word, contains 1,379 words.

/s/ Jeffrey C. Jackson
Jeffrey C. Jackson

Dated: August 2, 2021

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I certify that I have served this document on all other parties which are listed below on August 2, 2020 as follows:

Elizabeth J. Chandler
MCGUIREWOODS LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
214-932-6400 (P)
214-932-6499 (F)
echandler@mcguirewoods.com
Attorney for Respondents Bank of America, N.A., as successor by July 1, 2011 de jure merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, and U.S. Bank National Association, as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3

/s/ Jeffrey C. Jackson
Jeffrey C. Jackson

Dated: August 2, 2021

No. 21-0396

IN THE SUPREME COURT OF TEXAS

SUNIVERSE, LLC,
Petitioner,

v.

UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC.; U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3; NATIONSTAR MORTGAGE, LLC; BANK OF AMERICA, N.A.; AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
Respondents.

On Petition for Review from the Ninth Court of Appeals at Beaumont, Texas, No. 09-19-00090-CV

APPENDIX TO MOTION FOR REHEARING

2021 WL 632603
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Beaumont.

SUNIVERSE, LLC, Appellant

v.

UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, et al., Appellees

NO. 09-19-00090-CV
|
Submitted on December 22, 2020
|
Opinion Delivered February 18, 2021

On Appeal from the 410th District Court, Montgomery County, Texas, Trial Cause No. 17-06-08000-CV

Attorneys and Law Firms

Jeffrey C. Jackson, for Appellant.

Elizabeth Chandler, for Appellees.

Robert Brandon Hakari, for Universal American Mortgage Company, LLC, et al.

Before Kreger, Horton and Johnson, JJ.

MEMORANDUM OPINION

LEANNE JOHNSON, Justice

***1** Appellant Suniverse, LLC appeals summary judgment granted in favor of Appellees Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, and U.S. Bank National Association as Trustee for the CSAB 2006-3 Trust Fund.[1] We affirm.

Procedural Background

The Property

This lawsuit concerns real property located at 3 Etude Court, The Woodlands, in Montgomery County ("the Property"). In February 2006, Luis and Laura Nunez ("the Nunezes") obtained a $438,100 purchase money mortgage loan for the Property from Universal American Mortgage Company ("Universal American" or "original lender") and also executed a Deed of Trust in favor of Universal American pledging the Property as security for the loan. The Deed of Trust identified Mortgage Electronic Registration Systems, Inc. ("MERS") as a beneficiary and nominee for the lender Universal American and its successors and assigns.

A notice of foreclosure sale was filed on the Property by a Notice of Substitute Trustee's Sale on October 6, 2009, December 1, 2009, January 5, 2010, October 6, 2015, October 4, 2016, and July 4, 2017. In each of the foregoing notices of sale the notices listed the current mortgagee as U.S. Bank National Association, as Trustee on behalf of the Holders of CSAB 2006-3 Trust Fund. In another notice of sale dated April 3, 2012, the notice listed the current mortgagee as Bank of America N.A., successor by merger to BAC Home Loans Servicing LP, f/k/a Countrywide Home Loans Servicing LP. There is no evidence in the appellate record that a foreclosure sale has ever occurred, nor do any of the parties allege that a foreclosure sale has occurred. The Nunezes transferred the Property to the Nunez Family Trust on June 24, 2017, and Suniverse, LLC ("Suniverse") is the trustee of the Nunez Family Trust.

Suniverse's Petition

In December 2017, Suniverse filed a First Amended Petition[2] against six named defendants (collectively "Defendants" or "Appellees"): (1) Universal American, as the original lender for the Property; (2) U.S. Bank National Association ("US Bank"), as Trustee on behalf of the Holders of CSAB 2006-3 Trust Fund; (3) CSAB Mortgage-Backed Trust 2006-3 ("CSAB Trust"), as "purported mortgagee of Plaintiff's Note and Deed of Trust"; (4) Bank of America, N.A. ("BANA"), successor by merger to BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing LP as "former purported mortgagee and mortgage servicer of Plaintiff's Note and Deed of Trust"; (5) Nationstar Mortgage LLC ("Nationstar") as "former purported mortgagee and mortgage servicer of Plaintiff's Note and Deed of Trust"; and (6) MERS. In the First Amended Petition, Suniverse alleged the following causes of action against the various Defendants:

i. Declaratory Judgment of Lack of Standing to Foreclose against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

***2** ii. Quiet Title against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

iii. Violation of § 12.002 of the Texas Civil Practice and Remedies Code against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

iv. Negligence Per Se against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

v. Gross Negligence against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

vi. Fraud against Universal American, the [CSAB] Trust, BANA, Nationstar, and MERS;

vii. Request for an Accounting against the [CSAB] Trust and Nationstar;

viii. Violation of the Statute of Limitations to Foreclose Against the [CSAB] Trust and Nationstar.

Suniverse alleged that a controversy exists about which Defendant (or its agent) is a valid holder or owner of the underlying Note and who has standing to foreclose. The petition attached copies of three recorded assignments of the loan with markings reflecting that they were recorded in the Montgomery County Property Records: (1) an assignment from MERS to U.S. Bank as Trustee of the CSAB Trust on August 16, 2010 ("2010 Assignment"); (2) an assignment from MERS to BANA on December 1, 2011 ("2011 Assignment"); and (3) an assignment from BANA to Nationstar on February 11, 2014 ("2014 Assignment").

The 2010 Assignment from MERS to US Bank reflects that Tanny Hill signed for MERS. The 2011 Assignment from MERS to BANA reflects that Chester Levings signed for MERS. And the 2014 Assignment from BANA to Nationstar reflects that Susan Lindhorst signed for BANA.

The petition alleged that the three recorded assignments are "frauds and forgeries[ ]" because they were not actually signed by Hill, Levings, and Lindhorst, but by someone else and they were not signed with Hill's, Levings's, and Lindhorst's knowledge and authority. Suniverse also alleged the assignments are void for failure to identify all the real parties in interest to the assignments. Suniverse attached to its petition various documents reflecting "numerous differing notarized signatures" by Hill, Levings, and Lindhorst.

Suniverse also alleged that MERS lacked the authority under its corporate charter to transfer a Deed of Trust or to own or transfer an interest in a securitized mortgage, and that the 2010 and 2011 Assignments were never effective and are "a legal nullity." Suniverse attached to its petition various 2011 and 2013 Consent Orders issued by the Comptroller of the Currency of the United States of America identifying certain deficiencies and unsafe or unsound practices by MERS, US Bank, and BANA. In addition, Suniverse argued that, even if the 2010 Assignment was valid, because there was no assignment of the Deed of Trust back to MERS, MERS could not have assigned the Deed of Trust to BANA in December 2011. According to Suniverse, the Defendants do not have the right to foreclose on the Property because they falsely or fraudulently prepared documents, and Suniverse asked the trial court to declare that the power of sale contained in the Deed of Trust has no force and effect. Suniverse also alleged that any future foreclosure sale notice by the CSAB Trust and Nationstar would be void as time-barred.

***3** Suniverse based its negligence per se and gross negligence claims on alleged violations of the following statutes: (1) section 12.002 of the Civil Practice and Remedies Code, for filing false and deception mortgage assignments; (2) section 192.007 of the Local Government Code, for failing to properly record instruments in the same manner as the original; (3) section 41.008(c)(8) of the Civil Practice and Remedies Code, for injury to Plaintiff's title by forgery under section 32.21 of the Penal Code; and (4) section 41.008(c)(12) of the Civil Practice and Remedies Code, for injury to Plaintiff's title by fraudulent destruction, removal, or concealment of a writing under section 32.47 of the Penal Code. Suniverse's claim for fraud alleged that Defendants intentionally misrepresented to the Plaintiff that they were the holder and owner of the note or a valid beneficiary or assignee of the Deed of Trust and Defendants made such misrepresentations to induce Plaintiff to be a third-party buyer.

Suniverse's petition sought a declaration that:

a. Plaintiff is the prevailing party;

b. The First Deed of Trust is null and void and of no effect;

c. No Defendant has an enforceable lien interest against the Property;

d. No Defendant has an enforceable unsecured interest in the First Note;

e. Determines all adverse claims to the real property in this proceeding;

f. Plaintiff is entitled to the exclusive first-lien position on the Property;

g. Defendants, and each of them, and all persons claiming under them, have no estate, right, title, lien, or interest in or to the real property or any part of the Property.

Suniverse also pleaded the discovery rule and that its claims are not subject to limitations because they are "defensive counterclaim[s] to the [CSAB] Trust and Nationstar's illegal attempt at non-judicial foreclosure." Suniverse sought general, punitive, and exemplary damages and attorney's fees.

BANA and MERS's Motions for Summary Judgment

In October 2018, defendants BANA and MERS jointly filed a no-evidence and traditional motion for summary judgment. According to BANA and MERS, MERS was named the beneficiary under the original Deed of Trust, as nominee for the original lender, Universal American. They alleged the Deed of Trust authorized MERS to act as the lender's nominee, and in this capacity, MERS assigned Universal American's interest to the US Bank as Trustee for the CSAB Trust in August 2010. According to BANA and MERS the CSAB Trust was the last entity to which the Loan Agreement was validly assigned, and any other purported assignments regarding the Deed of Trust "are superfluous and of no consequence."

In their motion, BANA and MERS argued they no longer had any interest in the Property. BANA and MERS further argued that Suniverse lacked standing to challenge any assignment of the loan to which it was not a party because under Texas law, a plaintiff who is not a party to an assignment lacks standing to challenge the assignment on grounds that would render the assignment merely voidable (as opposed to void), and a deed procured by fraud is not void but only voidable at the election of the defrauded party. They alleged Suniverse lacked standing to challenge whether the person who executed the assignment on behalf of BANA had authority to do so.

BANA and MERS argued that courts have consistently upheld MERS's authority to enforce or assign interests under deeds of trust that name MERS beneficiary. In addition, BANA and MERS argued that the person who signed the assignment for MERS was an authorized signer, and there is no evidence to support Suniverse's allegation that her signature was forged. In an attached affidavit, Susan Magaddino, an officer of MERS, attested that Tanny Hill was authorized to sign the 2010 Assignment from MERS to US Bank as Trustee of the CSAB Trust in her capacity as Assistant Secretary and Vice President for MERS, as reflected in the Mortgage Electronic Registration Systems, Inc. Certifying Officers List attached as an exhibit to the affidavit.

***4** BANA and MERS also alleged that Suniverse's fraudulent lien claim fails as a matter of law because (1) the claim is barred by the statute of limitations and (2) an alleged improper or fraudulent assignment is not a fraudulent lien under section 12.002 of the Civil Practice and Remedies Code. BANA and MERS argued that the four-year residual limitations period applies to a claim under section 12.002, and a claim relating to the assignment recorded on September 13, 2010 must have been brought by September 13, 2014, and Suniverse's June 2017 petition was untimely. According to BANA and MERS, because the assignment was recorded and a matter of public record, the discovery rule does not toll the statute of limitations.

BANA and MERS argued that Suniverse's tort claims are barred by the economic loss doctrine because Suniverse's alleged injuries stem from the Loan Agreement. They also argued that the two-year statute of limitations for a negligence claim bars Suniverse's tort claims, which arise from the 2010 assignment. BANA and MERS also alleged that Suniverse's gross negligence claim fails as a matter of law because under Texas common law, the relationship between a lender and borrower does not create a duty that would support a negligence claim. BANA and MERS contend that Suniverse has alleged no facts nor has it produced any evidence that BANA or MERS acted with an extreme degree of risk. BANA and MERS further argued that Suniverse's negligence per se claim fails because Suniverse alleged no facts nor presented any evidence to support the alleged statutory violation, Suniverse's fraud claim fails because Suniverse did not allege or prove that it relied on any alleged misrepresentation by BANA or MERS, and the claim for quiet title fails as a matter of law because neither BANA nor MERS asserted any interest in the Property. BANA and MERS argued that Suniverse's request for declaratory relief regarding standing to foreclose should be denied because Suniverse's evidence shows that neither BANA nor MERS was seeking to foreclose and there

was no justiciable controversy between Suniverse and BANA or MERS.

Nationstar and US Bank's Motions for Summary Judgment

Nationstar and US Bank as Trustee for the CSAB Trust jointly filed a no-evidence and traditional motion for summary judgment. According to their motion, Luis Nunez filed for bankruptcy in April 2012, and in April 2015, US Bank obtained relief from the automatic stay in the bankruptcy court to proceed with collection on the mortgage and deed of trust. In the motion, Nationstar alleged that after obtaining relief from the automatic stay, Nationstar sent a letter in May 2015 to Nunez demanding payment and stating it would accelerate the loan if payment was not received, and in September 2016, a letter was sent rescinding the acceleration of the note and deed of trust.

Nationstar and US Bank stated in their motion that Suniverse is "at best a third-party to the assignment transaction" in which MERS assigned the Deed of Trust to US Bank and that Suniverse lacked standing to challenge the assignment to US Bank because any alleged "fraudulent assignment would result in merely a voidable, not void assignment." According to the Nationstar motion, Suniverse failed to produce any summary judgment evidence showing that it had any right, title, or ownership in the Property that would be superior to Defendants' claimed mortgage liens represented by the Deed of Trust. And they argued that because Suniverse had not tendered the amount owed on the loan, it could not maintain a quiet title claim. An affidavit of Ryan Cable, a Document Execution Associate for Nationstar, was attached to the motion in which Cable attested that, as of June 15, 2018, the Nunez mortgage loan was "due for the February 1, 2011 payment and all subsequent payments[ ]" and the amount owed totaled $843,100.75.

***5** Nationstar and US Bank argued that section 12.001 does not apply to assignments of deeds of trust, so that Suniverse's claim under that statute fails as a matter of law and that, even if section 12.001 applies to the challenged assignments, Suniverse produced no evidence that the assignments were fraudulent or forged. Nationstar and US Bank also argued there was no evidence that they intended to cause injury to Suniverse.

Nationstar and US Bank alleged that Suniverse's negligence per se claim under section 192.007 of the Local Government Code fails because there is no private right of action under that statute and the statute does not require that an assignment of a deed of trust must be recorded. They argued that any negligence per se claim under section 12.002 of the Civil Practice and Remedies Code should be dismissed because an assignment does not constitute a lien under the statute. They also argued that Suniverse had not established that it belongs to the class of persons that the statutes were intended to protect, nor had it cited any authority that a violation of the statutes constitutes negligence per se. And they argued there is no evidence of forgery or fraudulent destruction, removal, or concealment of a writing, nor any evidence that the Defendants intended to harm Suniverse.

As to Suniverse's claim for gross negligence, Nationstar and US Bank argued that Suniverse had produced no evidence of a duty owed to Suniverse, a breach thereof, that Suniverse suffered damages therefrom, or subjective knowledge of any risk. They also argued that, under Texas law, a debtor-creditor relationship does not impose any duty by the lender towards the borrower and that they could not have a negligence cause of action.

The Defendants also argued that Suniverse's fraud claim fails because Suniverse produced no evidence that Nationstar or US Bank made representations that were false or reckless, and no evidence that Nationstar or US Bank intended to induce Plaintiff to act upon any false or reckless representation, or that Plaintiff actually relied upon any such representation.

Nationstar and US Bank argued that Suniverse's claim for an accounting fails for lack of statutory authority or case law to support the claim. They also argued that a request for an accounting is not a claim for affirmative relief. Attached to the motion were exhibits purporting to be "a breakdown of the amount owing on the loan." Nationstar and US Bank argued that Suniverse's claim that Defendants were in violation of the applicable statute of limitations fails because Luis Nunez's bankruptcy filing in April 2012 tolled the statute of limitations until US Bank obtained relief from the automatic stay in April 2015, Nationstar mailed Nunez a demand letter in May 2015, and a letter was sent in September 2016 unilaterally abandoning acceleration of the loan. According to Nationstar and US Bank, the total accrual time between the first alleged acceleration date and the recission letter was less than four years, and Suniverse presented no evidence that the statute of limitations expired.

Suniverse's Response to the Motions for Summary Judgment

In its response to the motions for summary judgment, Suniverse stated that a dispute existed concerning the July

4, 2017 notice of non-judicial foreclosure on the Property by US Bank and Nationstar. Suniverse argued that it had no contractual relationship with US Bank and Nationstar. According to Suniverse the most recent notice of sale indicates that US Bank is the mortgagee, but the most recent recorded assignment indicates that Nationstar is the mortgagee.

***6** Suniverse argued that it has standing to challenge the 2010 Assignment (from MERS to US Bank) because in the petition Suniverse had alleged that the 2010 Assignment was forged, and a property owner may challenge mortgage assignments on grounds that render them void, such as forgery. Suniverse also argued that US Bank and Nationstar do not have the right to foreclose on the Property because MERS failed to disclose for whom it was acting in the 2010 Assignment and because the three recorded assignments constitute a broken chain of title. In addition, Suniverse argued that because MERS never owned the note or Deed of Trust in any capacity other than as nominee, it had nothing to assign, and the 2010 Assignment did not effectively assign anything.

As to its claims that the assignments were forgeries, Suniverse alleged that the Defendants had "refused to respond to forgery discovery" and a fact issue about forgery existed. According to Suniverse, Tanny Hill, whose signature appears on the 2010 Assignment "was never an employee of MERS [and] was a robosigner who worked for ReconTrust Company, N.A." In support of this allegation, Suniverse identified Taniya (Tanny) Hill's name on an exhibit to the BANA and MERS motion for summary judgment. BANA and MERS had characterized this exhibit as "[a] true and correct copy of the MERS Corporate Resolution and Certifying Officers List" and the affidavit of Susan Magaddino, an officer of MERS stated that Tanny Hill was an authorized signer for MERS. Suniverse also challenged US Bank's standing to foreclose because the three recorded but unexplained assignments, in addition to the alleged forgeries, create a substantial controversy as to the parties' rights that declaratory judgment is appropriate to address, despite BANA and MERS having identified the 2011 and 2014 Assignments as superfluous.

As to its fraudulent lien claim under section 12.002 of the Civil Practice and Remedies Code, Suniverse argued that the Defendants had failed to negate any element of its claim. According to Suniverse, the assignments of the Deed of Trust, while not liens, are fraudulent claims covered by section 12.002 and by having pleaded the discovery rule, its claim under section 12.002 is not barred by limitations because the forged documents were inherently undiscoverable. Suniverse argued its injury was to its title to the Property and it admitted it did not have evidence of forgery because Defendants had not responded to discovery requests.

Suniverse argued that the economic loss rule does not defeat its tort claims because the Defendants "are not actual counterparties to the deed of trust and note as a matter of law[ ]" and they are "strangers to the original contracts" who lack standing to contractual remedies. It also argued that because section 12.002 defines a mandatory standard of conduct, it may serve as a basis for a negligence per se claim. For the same reason, Suniverse argued that its negligence per se claims under section 192.007 of the Local Government Code and Chapter 32 of the Penal Code should survive summary judgment. Suniverse conceded that it could not prove negligence or gross negligence because Defendants had not responded to forgery-related discovery requests.

As to Suniverse's quiet title claim, Suniverse argues that it is not required to demonstrate fee simple or an uncontestable interest to prevail in a suit to quiet title as Nationstar and US Bank had argued. Suniverse conceded that BANA and MERS no longer claim an interest in the Property but challenged the argument that quiet title as to BANA and MERS is moot because any future attempt to foreclose by Nationstar and US Bank "comes ultimately from the former claims of BANA and MERS." Suniverse also stated that it sought declaratory judgment to determine that BANA and MERS no longer have any rights to the Property.

***7** Suniverse attached to its response copies of the 2006 Deed of Trust, the 2006 Warranty Deed, the 2010 Assignment, the 2011 Assignment, the 2014 Assignment, the 2017 Notice of Sale, and the Warranty Deed from the Nunezes to Suniverse.

Suniverse's Motions for Continuance and to Compel

Prior to filing its response to the motions for summary judgment, Suniverse filed a motion to continue the date for the summary judgment hearing. Suniverse stated that it could not present evidence essential to justify its opposition to the motions for summary judgment and needed more time to resolve discovery disputes. In particular, Suniverse focused on the need for additional evidence that the assignments in question were forged and that the chain of title had been broken. The motion for continuance also alleged that the parties had agreed on a mediation date of October 29, 2018—

the same date as the summary judgment hearing—but the date had to be changed because the mediator had an unavoidable conflict.

About a week later, Suniverse filed motions to compel against Nationstar, MERS, US Bank, and BANA. Suniverse alleged that it could not come to an agreement about the production of documents with the Defendants, and that the discovery it sought to compel was central to Suniverse's claims that the chain of assignments of the Deed of Trust included fraudulent or forged assignments.

The Trial Court's Orders

On November 20, 2018, the trial court granted BANA and MERS's traditional and no-evidence motions for summary judgment. The same day, the trial court also granted Nationstar and US Bank's traditional and no-evidence motions for summary judgment.

Suniverse filed a motion for new trial, objecting that the trial court did not rule on its motions for continuance and to compel discovery. The motion for new trial was set for submission, and the trial court denied the motion the same day. Suniverse timely filed its notice of appeal.

Issues

In two issues, Suniverse argues that (1) the trial court erred by refusing to rule on Suniverse's motion for continuance and motions to compel and (2) if the trial court implicitly denied these motions, the implicit denials were an abuse of discretion.

In three additional issues, Suniverse challenges the court's grants of summary judgment. Specifically, Suniverse argues that: (3) US Bank and Nationstar are not entitled to summary judgment because they failed to demonstrate their standing to conduct nonjudicial foreclosure as a matter of law or, in the alternative, a fact issue exists on this issue, and a fact issue also exists on Nationstar's liability under section 12.002; (4) MERS is not entitled to summary judgment on Suniverse's claims for declaratory judgment and quiet title, and a fact issue exists on MERS's liability under section 12.002; and (5) BANA is not entitled to summary judgment on Suniverse's claims for declaratory relief and quiet title, and a fact issue exists on BANA's liability under section 12.002.

Motion for Continuance and Motion to Compel

In Appellant's first issue, Suniverse argues that the trial court abused its discretion by refusing to rule on its motion for continuance and related motions to compel. Appellees' motions for summary judgment were set for hearing on October 29, 2018, and Appellant's motion for continuance was set for hearing the same day. Appellant's motions to compel were set for hearing on November 13, 2018. The trial court did not enter an order ruling on the motions for continuance and to compel, and it granted Appellees' motions for summary judgment on November 20, 2018. Suniverse filed a motion for new trial after the court granted summary judgment for the Defendants, and in the motion for new trial, among other things, it objected that the court had refused to rule on the motion for continuance and motions to compel that had been set for submission. Appellant argues that the trial court abused its discretion by failing to rule on these motions because trial courts "have no discretion to refuse to rule[.]"

***8** We review a trial court's ruling on a motion for continuance of a summary judgment hearing for an abuse of discretion. *See Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004); *D.R. Horton-Tex., Ltd. v. Savannah Props. Assocs., L.P.*, 416 S.W.3d 217, 222 (Tex. App.—Fort Worth 2013, no pet.) (citing *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002)). We also review a trial court's ruling on a motion to compel discovery for an abuse of discretion. *Dillard Dep't Stores, Inc. v. Hall*, 909 S.W.2d 491, 492 (Tex. 1995); *Stewart v. Lexicon Genetics, Inc.*, 279 S.W.3d 364, 373 (Tex. App.—Beaumont 2009, pet. denied). When reviewing under an abuse-of-discretion standard, we determine whether the trial court's action "was so arbitrary and unreasonable as to amount to a clear and prejudicial error of law[ ]" or without reference to guiding rules or principles, and we do not substitute our judgment for that of the trial court. *See BMC Software*, 83 S.W.3d at 800; *In re Nitla S.A. de C.V.*, 92 S.W.3d 419, 422 (Tex. 2002) (orig. proceeding); *D.R. Horton-Tex., Ltd.*, 416 S.W.3d at 222 (citing *Two Thirty Nine Joint Venture*, 145 S.W.3d at 161; *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004)). Absent a showing that the trial court acted arbitrarily and unreasonably, we will not disturb its decision on appeal. *See State v. Wood Oil Dist., Inc.*, 751 S.W.2d 863, 865 (Tex. 1988); *MKC Energy Invs., Inc. v. Sheldon*, 182 S.W.3d 372, 378 (Tex. App.—Beaumont 2005, no pet.).

Rule 33.1 provides that an implicit ruling may be sufficient to present an issue for appellate review. *See* Tex. R. App. P. 33.1. When a court fails to rule on a motion but takes other action inconsistent with what the motion requests, the motion is implicitly overruled. *See In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003) (recognizing an implicit ruling on a request for a bench warrant where the trial court proceeded to trial without issuing a bench warrant or issuing a ruling on the request); *Conely v. Tex. Bd. of Criminal Justice*, No. 03-11-00094-CV, 2012 WL 1959320 at *5, 2012 Tex. App. LEXIS 4354 at **13-14 (Tex. App.—Austin May 30, 2012, pet. denied) (mem. op.) (by granting the dispositive motion to dismiss without ordering the defendants to answer discovery, the district court implicitly denied the motion to compel); *Stauder v. Nichols*, No. 01-08-00773-CV, 2010 WL 2306385, 2010 WL 2306385 at *5, 2010 Tex. App. LEXIS 4369 at **12-13 (Tex. App.—Houston [1st Dist.] June 10, 2010, no pet.) (mem. op.) ("[B]y proceeding to submission of the motion for summary judgment as scheduled, the trial court necessarily implicitly denied appellants' request for a continuance."). The record in this case supports an inference that, by proceeding with the submission of the motions for summary judgment as scheduled and by granting the motions for summary judgment, the trial court necessarily implicitly denied Appellant's request for a continuance and motion to compel. *See Conely,* 2012 WL 1959320 at *5, 2012 Tex. App. LEXIS 4354, at *14; *Stauder,* 2010 WL 2306385, at *5, 2010 Tex. App. LEXIS 4369, at **12-13.

In deciding whether the trial court abused its discretion in denying a motion for continuance seeking additional time to conduct discovery or to obtain evidence, a court should consider the following nonexclusive factors: the length of time the case has been on file, the materiality and purpose of the discovery sought, and whether the party seeking the continuance exercised due diligence to obtain the requested discovery. *See Two Thirty Nine Joint Venture*, 145 S.W.3d at 161; *D.R. Horton-Tex. Ltd.*, 416 S.W.3d at 223 (citing *Two Thirty Nine Joint Venture*, 145 S.W.3d at 161).

A party may move for a no-evidence summary judgment after adequate time for discovery has passed. Tex. R. Civ. P. 166a(i); *Specialty Retailers, Inc. v. Fuqua*, 29 S.W.3d 140, 145 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). "Adequate time" is determined by the nature of the cause of action, the evidence necessary to controvert the no-evidence motion, and the length of time that the case has been active. *See Specialty Retailers, Inc.*, 29 S.W.3d at 145. An affidavit seeking a continuance to obtain additional evidence must describe the evidence sought, explain its materiality, and demonstrate that the party requesting the continuance has used due diligence to timely obtain the evidence. *D.R. Horton-Tex., Ltd.*, 416 S.W.3d at 222-23; *MKC Energy Invs., Inc.*, 182 S.W.3d at 379.

***9** Suniverse filed its motion for continuance on October 11, 2018, and it filed its motion to compel on October 18, 2018. The motions for summary judgment were set for hearing on October 29, 2018. Suniverse attached the affidavit of Jeffrey C. Jackson to its motion for continuance. Therein, Jackson attested in relevant part:

> ... Plaintiff Suniverse needs more time to secure discovery and resolve discovery disputes before hearing or submission is had or made.
>
> [ ] I must receive the discovery and resolve discovery disputes in order to obtain essential summary judgment evidence of my own to challenge Defendants' evidence and produce Plaintiff's own evidence in a summary judgment response. Suniverse has made good faith attempts to resolve discovery disputes but has been so far unsuccessful. While I am trying to obtain discovery responses informally as of this filing, Suniverse may soon file motions to compel.
>
> [ ] I have used due diligence to obtain the discovery from all Defendants, and I cannot get the evidence before the hearing any other way or from any other source.

Suniverse alleged that it needed more time for additional discovery on the Defendants' procedures and internal controls concerning assignments and appointment of substitute trustee, the veracity of signatures on the assignments, and discrepancies between notices of sale and recorded assignments. It also sought a continuance because mediation was pending. Suniverse's motion to compel alleged that Nationstar "did not respond adequately" to requests for production.

BANA and MERS filed a response to Suniverse's motion for continuance and argued that Suniverse had served written discovery on December 7, 2017, and that the discovery period had closed. Appellants BANA and MERS's alleged that Suniverse was not entitled to a continuance because

> All defendants have responded to Plaintiff's Discovery Requests and defendant Nationstar produced over 500 pages of documents. BANA and MERS produced approximately 100 pages of documents in response to the Discovery Requests. On or about June 15, 2018,

> Defendants produced an additional 1200 documents in response to discussions with Plaintiff's counsel concerning an alleged "discovery dispute." Plaintiff did not raise any concerns about discovery since the supplemental production, and has only done so now as a means of stalling the Court's ruling on [the] Motions for Summary Judgment.

When Suniverse filed its motion for continuance and motion to compel, the case had been on file for almost a year since Plaintiff had filed its First Amended Petition in December 2017.[3] The parties do not dispute that Defendants had produced over 1000 documents by mid-June 2018. Suniverse did not request a continuance until October 11, 2018—eleven days before the motions for summary judgment were set for hearing. Suniverse did not move to compel discovery until October 29, 2018—the same day that the motions for summary judgment were set for hearing. The trial court could have determined that the affidavit supporting the motion for continuance did not describe the evidence sought or explain its materiality. *See D.R. Horton-Tex., Ltd.*, 416 S.W.3d at 222-23; *McMahan v. Greenwood*, 108 S.W.3d 467, 498 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). "In a summary judgment context, it is generally not an abuse of discretion to deny a motion for continuance if the party has received the twenty-one days' notice required by Texas Rule of Civil Procedure 166a(c)." *MKC Energy Invs., Inc.*, 182 S.W.3d at 378-79 (citing *White v. Mellon Mortg. Co.*, 995 S.W.2d 795, 803 (Tex. App.—Tyler 1999, no pet.); *McAllister v. Samuels*, 857 S.W.2d 768, 773 (Tex. App.—Houston [14th Dist.] 1993, no writ)). On this record, we conclude the trial court did not abuse its discretion by implicitly denying Suniverse's motion for continuance and motion to compel. *See D.R. Horton-Tex., Ltd.*, 416 S.W.3d at 222-23; *Stewart*, 279 S.W.3d at 373; *MKC Energy Invs., Inc.*, 182 S.W.3d at 387-79. We overrule issues one and two.

Standard of Review for Summary Judgment

***10** Suniverse's remaining issues challenge the trial court's grant of summary judgment for the Defendants. We review grants of summary judgment de novo. *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015). We take as true all evidence favorable to the non-movant, indulge every reasonable inference in favor of the non-movant, and resolve any doubts in the non-movant's favor. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). "When a trial court's order granting summary judgment does not specify the grounds relied upon, the reviewing court must affirm summary judgment if any of the summary judgment grounds are meritorious." *See FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872-73 (Tex. 2000) (citing *Star-Telegram, Inc. v. Doe*, 915 S.W.2d 471, 473 (Tex. 1995)).

When a party moves for both traditional and no-evidence summary judgments, we first consider the no-evidence motion. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). If the non-movant fails to meet its burden under the no-evidence motion, there is no need to address the challenge to the traditional motion because it necessarily fails. *Merriman v. XTO Energy, Inc.*, 407 S.W.3d 244, 248 (Tex. 2013).

On appeal, we review a no-evidence summary judgment de novo, viewing the evidence in a light that tends to support the finding of the disputed fact and disregard all evidence and inferences to the contrary. *See Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002). A no-evidence summary judgment motion is improperly granted when the respondent brings forth more than a scintilla of probative evidence that raises a genuine issue of material fact. *See King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003); *see also Ridgway*, 135 S.W.3d at 600. A genuine issue of material fact exists if the evidence " 'rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.' " *Merrell Dow Pharm., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997) (quoting *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995)). The evidence does not create an issue of material fact if it is " 'so weak as to do no more than create a mere surmise or suspicion' " that the fact exists. *First United Pentecostal Church of Beaumont v. Parker*, 514 S.W.3d 214, 220 (Tex. 2017) (quoting *Kia Motors Corp. v. Ruiz*, 432 S.W.3d 865, 875 (Tex. 2014)). A party moving for traditional summary judgment meets its burden by proving that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c).

Summary Judgment for US Bank and Nationstar

In issue three, Suniverse argues that US Bank and Nationstar were not entitled to summary judgment under the claims for declaratory relief and quiet title. In this issue, Suniverse contends that a fact issue exists as to Nationstar's liability under section 12.002 for recording the 2014 Assignment.

Declaratory Judgment

Suniverse contends that it has the right to seek declaratory judgment declaring that US Bank and Nationstar lack standing to conduct nonjudicial foreclosure. According to Suniverse, the three recorded assignments of the Deed of Trust indicate a broken chain of title and raise a fact issue on US Bank's and Nationstar's standing to conduct a nonjudicial foreclosure.

When an assignee of a security interest tries to foreclose on its interest in property, the mortgagor has a limited ability to prevent foreclosure by challenging the assignment. *Ybarra v. Ameripro Funding, Inc.*, No. 01-17-00224-CV, 2018 WL 2976126 at *3, 2018 Tex. App. LEXIS 4367 at **6-7 (Tex. App.—Houston [1st Dist.] June 14, 2018, pet. denied) (mem. op.) (citing *Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015)). A mortgagor who is not a party to an assignment or a third-party beneficiary of the assignment cannot defend against an assignee's efforts to enforce an obligation (such as foreclosure) on a ground that renders the assignment merely *voidable* at the election of the assignor —rather than *void*. *See Morlock, L.L.C. v. Bank of N.Y.*, 448 S.W.3d 514, 517 (Tex. App.—Houston [1st Dist.] 2014, pet. denied); *see also Ferguson*, 802 F.3d at 780-81. A mortgagor who is not a party to the assignment of a deed of trust must allege a ground that would render the assignment void in order to have standing to challenge the assignment. *See Ybarra,* 2018 WL 2976126, at *3, 2018 Tex. App. LEXIS 4367, at *7; *Standiford v. CitiMortgage, Inc.*, No. 03-14-00344-CV, 2015 WL 6831578 at *4, 2015 Tex. App. LEXIS 11269 at **9-10 (Tex. App.—Austin Nov. 3, 2015, pet. denied) (mem. op.).

***11** Suniverse argued to the trial court that a property owner may challenge mortgage assignments on the ground of forgery, which would render the assignments void. Suniverse stated it had been unsuccessful in obtaining evidence of forgery but nevertheless suggested a fact issue existed on forgery. An officer of MERS attested by affidavit that Tanny Hill was authorized to sign the 2010 Assignment from MERS to US Bank as Trustee of the CSAB Trust in her capacity as Assistant Secretary and Vice President for MERS, as reflected in the Mortgage Electronic Registration Systems, Inc. Certifying Officers List attached as an exhibit to the affidavit. Suniverse did not present evidence to the contrary. On this record, the trial court could have concluded that Suniverse did not bring forth more than a scintilla of probative evidence on fraud or forgery. *See Ridgway*, 135 S.W.3d at 600; *King Ranch*, 118 S.W.3d at 751.

Suniverse also argued that the 2010 Assignment to US Bank was void because MERS failed to disclose for whom it was acting and because the assignment was forged. Suniverse cites to no legal authority in support of its argument. *See* Tex. R. App. P. 38.1(i) (requiring that a brief be supported by citations to legal authority). Moreover, the Deed of Trust, signed by the Nunezes and recorded in the property records of Montgomery County, provided:

> ... MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is a beneficiary under this Security Instrument.
>
> ...
>
> The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the [Property].
>
> ...
>
> Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

Suniverse presented no evidence to support its position that MERS's assignment was void. *See Ybarra,* 2018 WL 2976126, at *1, *8, 2018 Tex. App. LEXIS 4367, at **2-3, 15-16 (rejecting a similar argument where the original deed of trust identified MERS as lender's nominee and stated that MERS's assignee would become the deed's beneficiary). When MERS executed the 2010 Assignment to US Bank, US Bank obtained all of MERS's rights and interests in the deed of trust, including the right to foreclose and sell the Property. *See Bierwirth v. BAC Home Loans Servicing, L.P.*, No. 03-11-00644-CV, 2012 WL 3793190 at *5, 2012 WL 3793190, 2012 Tex. App. LEXIS 7506 at **16-17 (Tex. App.—Austin Aug. 30, 2012, pet. denied) (mem. op.) (citing

Campbell v. Mortg. Elec. Registration Sys., No. 03-11-00429-CV, 2012 WL 1839357 at *5, 2012 Tex. App. LEXIS 4030 at *15 (Tex. App.—Austin May 18, 2012, pet. denied) (mem. op.)).

Suniverse urges us to apply the approach taken by the Supreme Court of Washington in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash. 2012). In *Bain*, the Washington high court addressed MERS's argument that it should be deemed to be the beneficiary under the deed of trust and concluded that MERS had not established that it was an agent for a lawful principal because MERS had failed to identify for whom it was acting as agent. *See* 285 P.3d at **44-46. We find *Bain* distinguishable because in our case, there is no evidence that MERS was seeking to foreclose or otherwise act as beneficiary under the deed of trust. According to Suniverse, the Houston Fourteenth Court "generally support[ed] the *Bain* logic[ ]" in *Davis-Lynch, Inc. v. Asgard Technologies, LLC*, 472 S.W.3d 50, 60 (Tex. App.—Houston [14th Dist.] 2015, no pet.). We disagree. In *Davis-Lynch* the court addressed a different issue, that is, that an agency-principal relationship must exist in order to impose fiduciary duties on the agent. *See* 472 S.W.3d at 60-61. As we have discussed herein, in the facts now before us, the 2006 Deed of Trust specifically named MERS as nominee for the lender and its assigns.

***12** Suniverse also argues on appeal that there is insufficient evidence that Nationstar is a mortgage servicer for US Bank, that US Bank is a mortgagee, or that Nationstar was the last party to whom the Nunezes were instructed to send their payments. Suniverse did not make these arguments to the trial court, and on appeal we may not consider new arguments not presented to the trial court because summary judgments may only be granted upon grounds expressly asserted in the trial court by motion or response. *See Dealer Comput. Servs., Inc. v. DCT Hollister RD, LLC*, 574 S.W.3d 610, 624 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (citing Tex. R. Civ. P. 166a(c); *G & H Towing Co. v. Magee*, 347 S.W.3d 293, 297 (Tex. 2011)); *McConnell v. Southside Indep. Sch. Dist.*, 858 S.W.2d 337, 343 (Tex. 1993); *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 677 (Tex. 1979)); *see also In re A.M.*, No. 09-19-00075-CV, 2019 WL 4064579 at *16, 2019 Tex. App. LEXIS 7941 at *46 (Tex. App.—Beaumont Aug. 29, 2019, pet. denied) (mem. op.) (a party's argument on appeal must comport with its argument in the trial court); *Wohlfahrt v. Holloway*, 172 S.W.3d 630, 639-40 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (same).

Nevertheless, we note that in his affidavit attached to Nationstar and US Bank's motion for summary judgment, Ryan Cable attested that Nationstar is the servicing agent for US Bank. Also attached were demand letters to Luis Nunez dated May 28, 2015, indicating that he was in default under the note and that payment should be sent to Nationstar. The Notices of Substitute Trustee Sale dated October 6, 2009, December 1, 2009, January 5, 2010, October 6, 2015, October 4, 2016, and July 4, 2017 show US Bank as the current mortgagee. The Notices of Substitute Trustee Sale dated October 6, 2015, October 4, 2016, and July 4, 2017 show Nationstar as mortgage servicer. Suniverse did not present more than a scintilla of evidence of probative evidence that raises a genuine issue of material fact on US Bank and Nationstar's standing to foreclose, and the trial court did not err in granting US Bank and Nationstar's no-evidence motion for summary judgment. *See Ridgway*, 135 S.W.3d at 600; *King Ranch*, 118 S.W.3d at 751.

Quiet Title

As to its claim for quiet title, Suniverse argued that Appellees incorrectly argued to the trial court that the plaintiff must recover on the strength of its own title and not the weakness of its adversary. "A suit to clear title or quiet title—also known as a suit to remove cloud from title—relies on the invalidity of the defendant's claim to the property." *Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). An equitable suit to quiet title "exists 'to enable the holder of the feeblest equity to remove from his way to legal title any unlawful hindrance having the appearance of better right.' " *Hahn v. Love*, 321 S.W.3d 517, 531 (Tex. App.—Houston [1st Dist.] 2009, pet. denied) (quoting *Thomson v. Locke*, 66 Tex. 383, 1 S.W. 112, 115 (Tex. 1886)). The elements of a quiet title claim include: "(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*, No. 01-10-00837-CV, 2011 WL 6938507 at *3, 2011 Tex. App. LEXIS 10253 at *7 (Tex. App.—Houston [1st Dist.] Dec. 30, 2011, no pet.) (mem. op.). The plaintiff bears the burden to prove its superior equity and right to relief, and it is not enough to attack the weakness of the defendant's title. *See Hahn*, 321 S.W.3d at 531; *Fricks v. Hancock*, 45 S.W.3d 322, 327 (Tex. App.—Corpus Christi 2001, no pet.) ("A plaintiff in a suit to quiet title must prove and recover on the strength of his own title, not the weakness of his adversary's title."); *Wright v. Matthews*, 26 S.W.3d 575, 578 (Tex. App.—Beaumont 2000, pet. denied). "A cloud on title exists when an outstanding claim or encumbrance is

shown, which on its face, if valid, would affect or impair the title of the owner of the property." *Hahn*, 321 S.W.3d at 531.

***13** Under these circumstances, a prerequisite to the Suniverse claim of equitable title is the tender of whatever amount is owed on the note. *See Wright*, 26 S.W.3d at 578 (explaining that the plaintiffs had no equitable title because the purchase price had not been paid in full); *Fillion v. David Silvers Co.*, 709 S.W.2d 240, 247 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.) (concluding mortgagors were not entitled to judgment for title because they had not tendered the amount owed on the mortgage debt); *see also Campo v. Bank of Am., N.A.*, No. H-15-1091, 2016 WL 1162199 at *5, 2016 U.S. Dist. LEXIS 38874 at *14 (S.D. Tex. Mar. 24, 2016), *aff'd by* 678 Fed. App'x 227 (5th Cir. Mar. 2, 2017) (under Texas law, tender of the amount owed on the note is a prerequisite to recovery of title) (citing *Cook-Bell v. Mortg. Elec. Registration Sys., Inc.*, 868 F. Supp. 2d 585, 591 (N.D. Tex. 2012)); *see also Johnson v. Wood*, 138 Tex. 106, 157 S.W.2d 146, 148 (Tex. 1941) ("So long as Johnson had not performed his covenants by the payments of the purchase price, he had but an equitable right, but upon his performance that right ripened into an equitable title superior to that of Wood.").

The parties do not dispute that the Nunezes were obligated to make payments under the note but failed to do so. Neither does Appellant argue that Nunez or Suniverse tendered the funds necessary to cure the default. Therefore, Suniverse did not meet its burden to provide evidence of its superior title or evidence raising a fact issue thereon. *See Campo,* 2016 WL 1162199, at *5, 2016 U.S. Dist. LEXIS 38874, at *16; *Wright*, 26 S.W.3d at 578. As explained above, Suniverse also failed to provide more than a scintilla of evidence that fraud or forgery by Nationstar and US Bank renders the 2014 Assignment void and creates a cloud on title.

Section 12.002 Claim

Suniverse argues that a fact issue precluding summary judgment exists as to Nationstar's liability under section 12.002 for recording the 2014 Assignment. According to Suniverse an assignment of a deed of trust, while not a lien, is nonetheless a claim under section 12.002.

Chapter 12 of the Civil Practice and Remedies Code prohibits a person from making, presenting, or using a " 'document or other record' " with:

> (1) knowledge that the document or other record is a fraudulent court record or a fraudulent lien or claim against real or personal property or an interest in real or personal property;
>
> (2) intent that the document or other record be given the same legal effect as a court record or document of a court created by or established under the constitution or laws of this state or the United States or another entity listed in Section 37.01, Penal Code, evidencing a valid lien or claim against real or personal property or an interest in real or personal property; and
>
> (3) intent to cause another person to suffer:
>
> (A) physical injury;
>
> (B) financial injury; or
>
> (C) mental anguish or emotional distress.

Lance v. Robinson, 543 S.W.3d 723, 744 (Tex. 2018) (quoting Tex. Civ. Prac. & Rem. Code § 12.002(a)).

Assuming without deciding that the 2014 Assignment fell within the definition of a "document or other record" for purposes of a claim under section 12.002, Suniverse failed to produce more than a scintilla of probative summary judgment evidence that Nationstar or US Bank *intended* to cause physical or financial injury, mental anguish, or emotional distress to Suniverse (or to the Nunezes). *See Ybarra,* 2018 WL 2976126, at *8, 2018 Tex. App. LEXIS 4367, at **19-20 (affirming no-evidence summary judgment on a section 12.002 where appellants failed to present evidence of intent to cause injury); *see also Lassberg v. Bank of Am., N.A.*, 660 F. App'x 262, 268-69 (5th Cir. 2016) (affirming summary judgment on section 12.002 claim where mortgagor provided no evidence that assignment of deed or appointment of substitute trustees were executed with intent to cause injury to mortgagor); *Preston Gate, LP v. Bukaty*, 248 S.W.3d 892, 897 (Tex. App.—Dallas 2008, no pet.) (affirming summary judgment on debtor's claim under section 12.002 where there was no evidence that appellees intended to cause injury). According to Suniverse, intent can be inferred from the act of filing, but it cites no legal authority for this argument. *See* Tex. R. App. P. 38.1(i). Under Texas law, the purpose of recording instruments conveying an interest in property is to give notice and to protect intended purchasers or encumbrancers *against* fraud due to secret grants or liens and to protect against debtors defrauding creditors by placing assets beyond their reach. *See KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 89

(Tex. 2015); *Corpus v. Arriaga*, 294 S.W.3d 629, 635 (Tex. App.—Houston [1st Dist.] 2009, no pet.).

***14** In addition, Suniverse's own evidence—attached to its petition—reflects that the Nunezes were in default on the note as early as the October 6, 2009 Notice of Substitute Trustee Sale, and there is no evidence that the 2014 Assignment was intended to cause injury. *See Lassberg*, 660 F. App'x at 269 ("Lassberg's loan was long delinquent, and there is no evidence that the foreclosure was intended to cause injury."). We conclude that the trial court did not err in granting summary judgment for Nationstar and US Bank, and we overrule Suniverse's third issue.

Summary Judgment for MERS and BANA

Appellant's fourth issue argues that MERS was not entitled to summary judgment on the claims for declaratory relief and quiet title and that there is a fact issue precluding summary judgment on MERS's liability under section 12.002. According to Appellant, "the MERS assignments are void as a matter of law for failure to identify for whom MERS was acting as a nominee and for forgery." However, Appellant cites no legal authority for this argument. *See* Tex. R. App. P. 38.1(i). As we have already discussed above, the original deed of trust identified MERS as the lender's nominee and stated that MERS's assignee would become a beneficiary. *See Ybarra,* 2018 WL 2976126, at *1, *7, 2018 Tex. App. LEXIS 4367, at **2-3, 15-16; *Bierwirth,* 2012 WL 3793190, at *5, 2012 Tex. App. LEXIS 7506, at **16-17; *Campbell,* 2012 WL 1839357, at *5, 2012 Tex. App. LEXIS 4030, at *15. We find no legal support for Suniverse's contention that the MERS assignments were void.

As to Suniverse's claim under section 12.002, Suniverse failed to present more than a scintilla of probative summary judgment evidence of intent to harm on the part of MERS. *See Lance*, 543 S.W.3d at 744 (quoting Tex. Civ. Prac. & Rem. Code § 12.002(a)) (explaining that the party asserting a claim under section 12.002 bears the burden to prove intent to harm, among other things). The trial court did not err in granting a no-evidence summary judgment in favor of MERS on Suniverse's section 12.002 claim where Suniverse failed to present evidence creating a fact issue on intent to harm. *See Lassberg*, 660 F. App'x at 268-69; *Ybarra,* 2018 WL 2976126, at *8, 2018 Tex. App. LEXIS 4367, at **19-20; *Preston Gate*, 248 S.W.3d at 897. We overrule Appellant's fourth issue.

In Appellant's fifth issue, Suniverse argues that BANA was not entitled to summary judgment on the declaratory judgment claim and quiet title claim because BANA did not clarify the chain and validity of the assignments upon which Nationstar and US Bank rely. Appellant also argues that a fact issue exists as to BANA's liability under section 12.002.

A declaratory judgment is appropriate if a justiciable controversy exists concerning the rights and status of the parties that may be resolved by the declaration sought, and there must be a real and substantial controversy involving a genuine conflict of tangible interests and not merely a theoretical dispute. *See Syphrett v. Nationstar Mortg. Co., L.L.C.*, No. 09-18-00451-CV, 2020 WL 6600973 at *13, 2020 Tex. App. LEXIS 8787 at *40 (Tex. App.—Beaumont Nov. 12, 2020, no pet.) (mem. op.) (citing *EWB-I, LLC v. PlazAmericas Mall Tex., LLC*, 527 S.W.3d 447, 471 (Tex. App.—Houston [1st Dist.] 2017, pet. denied)). In their motion for summary judgment, BANA and MERS declared that they no longer had any interest in the Property. On the record before us, we conclude that the trial court did not err in granting summary judgment for BANA on the declaratory judgment claim because Suniverse failed to offer evidence of a "real and substantial controversy" between the parties. *See id.*

***15** As to the quiet title claim, we further conclude that the trial court did not err in granting no-evidence summary judgment for BANA on Suniverse's claim for quiet title because Suniverse failed to offer more than a scintilla of probative evidence that there is any outstanding claim by BANA or MERS that would affect or impair Suniverse's title to the property. *See Hahn*, 321 S.W.3d at 531; *Johnson,* 2011 WL 6938507, at *3, 2011 Tex. App. LEXIS 10253, at *7. In its response to the motions for summary judgment, Suniverse argued that the 2017 Notice of Sale of the Property constituted evidence of a claim by the Defendants that affected title to the Property. The 2017 Notice of Substitute Trustee Sale does not name BANA, names MERS as nominee for the original lender, names US Bank as the current beneficiary, and names Nationstar as the current mortgage servicer. As to BANA and MERS, Suniverse argued only that "BANA and MERS have claimed an interest on the Property in the past." Therefore, we cannot say Suniverse offered more than a scintilla raising a genuine issue of material fact that Defendants BANA and MERS's have a claim on the property that would affect or impair the title of the owner of the property. *See Hahn*, 321 S.W.3d at 531.

As to its claim under section 12.002, Appellant argues that intent to harm may be inferred from the act of filing. As we have already discussed herein, Appellant has offered no legal authority in support of this position. *See* Tex. R. App. P. 38.1(i); *Lance*, 543 S.W.3d at 744; *Ybarra,* 2018 WL 2976126, at *8, 2018 Tex. App. LEXIS 4367, at **19-20. We overrule Appellant's fifth issue.

Having overruled all of Appellant's issues, we affirm the judgments of the trial court.

AFFIRMED.

All Citations

Not Reported in S.W. Rptr., 2021 WL 632603

Footnotes

1 On November 30, 2018, the trial court dismissed for want of prosecution defendant Universal American Mortgage Company, LLC, which was never served. We discuss Universal American herein only as necessary.

2 The appellate record does not include a copy of an original petition. We will refer to the First Amended Petition which appears in our record.

3 The Appellant chose not to include the Original Petition in the record Appellant designated for inclusion on appeal.

No. 09-19-00090-CV

IN THE NINTH COURT OF APPEALS
BEAUMONT, TEXAS

SUNIVERSE, LLC,

Appellant,

v.

UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, ET. AL.,

Appellees.

APPEAL FROM THE 144TH DISTRICT COURT
MONTGOMERY COUNTY, TEXAS

APPELLANT'S MOTION FOR REHEARING

JEFFREY C. JACKSON
Jeffrey Jackson & Associates, PLLC
Texas State Bar No. 24065485
2200 North Loop West, Suite 108
Houston, Texas 77018
713-861-8833 (T)
713-682-8866 (F)
jeff@jjacksonllp.com

ATTORNEY FOR APPELLANT

TO THE HONORABLE NINTH COURT OF APPEALS:

I. The Court did not Address Suniverse's Contention of a Broken Chain of Title

In its memorandum and opinion, *Suniverse, LLC v. Universal American Mortgage Company, LLC*, the Court recognized that Suniverse complained that "the three recorded assignments of the Deed of Trust indicate a broken chain of title and raise a fact issue on US Bank's and Nationstar's standing to conduct a nonjudicial foreclosure." No. 09-19-00090-CV, 2021 WL 632603, at *10 (Tex. App.–Beaumont 2021, no pet. h.). There were three recorded assignments of the subject mortgage loan: (1) an assignment from MERS to U.S. Bank as Trustee of the CSAB Trust on August 16, 2010 ("2010 Assignment"); (2) an assignment from MERS to BANA on December 1, 2011 ("2011 Assignment"); and (3) an assignment from BANA to Nationstar on February 11, 2014 ("2014 Assignment"). *Id*. at *2.

Despite recognizing that Suniverse had raised the issue of a broken chain of title, the Court only discussed Suniverse's complaints regarding the validity of the individual assignments. In its briefing, Suniverse was careful to separate the issue of a "broken chain of title" from Suniverse's attacks on the validity of individual assignments. *See e.g.* Reply Brief at 3 ("The allegation that the assignment chain is broken is not a direct attack on any one assignment, rather it is an attack on the chain of assignments as a whole. Therefore, the cases holding that a non-party to an assignment may only challenge the assignment on grounds which would render it

void and not merely voidable do not apply to Suniverse's 'broken chain of assignments' allegation."). Despite Suniverse making the distinct allegation that, taking all the individual assignments as valid, there was a broken chain of title, the Court did not analyze or discuss that issue. Rather, the court treated Suniverse's "broken chain of title" contention as an impermissible attack on the validity of individual assignments. *See Hernandez*, 2021 WL 632603, at *10 ("A mortgagor who is not a party to an assignment or a third-party beneficiary of the assignment cannot defend against an assignee's efforts to enforce an obligation (such as foreclosure) on a ground that renders the assignment merely *voidable* at the election of the assignor—rather than *void*. (citing *Morlock, L.L.C. v. Bank of N.Y.*, 448 S.W.3d 514, 517 (Tex. App.—Houston [1st Dist.] 2014, pet. denied)).

In *Everbank, N.A. v. Seedergy Ventures, Inc.*, the 14th Court of Appeals recognized the distinction that this Court failed to recognize. 499 S.W.3d. 534, 542 ("Although a homeowner has standing to challenge whether there is a complete chain of assignments, a homeowner does not necessarily have the right to challenge an individual assignment within that chain."). As Suniverse previously pointed out in its briefing, determining mortgagee status is easy when the party is named as grantee or beneficiary in the original deed of trust, mortgage, or contract lien, but factual disputes may arise when the party seeking to foreclose is not the original mortgagee, as is most often the case these days. *Miller v. Homecomings Fin., LLC,*

881 F.Supp.2d 825, 829 (S.D. Tex. 2012) (collecting Texas state cases). In such cases, the foreclosing party must be able to trace its rights under the loan documents back to the original mortgagee. *Id*.; *see, e.g., Leavings v. Mills*, 175 S.W.3d 301, 309 (Tex. App.–Houston [1st Dist.] 2004, no pet.); *see also De La Garza v. Bank of New York Mellon*, No. 02-17-00427-CV, 2018 WL 5725250, at *6-7 (Tex. App.—Ft. Worth 2018, no pet.) (mem. op.) (Finding broken chain of mortgage assignments created fact question as to who had standing to foreclose).

The chain of mortgage assignments that Nationstar and US Bank expressly rely on is facially broken. MERS assigned the same loan twice to two different parties without an intervening assignment. Suniverse's attack on the chain of assignments assumes each assignment's validity and therefore cannot be an improper attack on an assignment which would render the assignment merely voidable as opposed to void. Rather, the law is clear that any party with an interest in a property has standing to allege that a broken chain of title prevents a party from foreclosing. *See Morlock, L.L.C. v. Nationstar Mortg., L.L.C.*, 447 S.W.3d 42, 45-46 (Tex. App.–Houston [14th Dist.] 2014, pet. denied) ("The trial court erred to the extent it granted summary judgment on the ground that Morlock lacks standing to challenge whether the defendant is the owner and holder of the Note or Deed of Trust."). If the Court's current opinion is not withdrawn, it would represent a departure from the overwhelming majority of existing opinions which recognize

interested parties have standing to bring a challenge to a broken chain of title of the mortgage loan documents. *See Everbank*, 499 S.W.3d at 542 (citing *Miller*, 881 F. Supp.2d at 832 (collecting cases)).

II. The Court Improperly Applied the Tender Requirement to Suniverse's Quiet Title Claim

The Court's holding that a prerequisite to the Suniverse's quiet title claim is the tender of whatever amount is owed on the note is erroneous. Rather, the prevailing case law applies the tender requirement to a mortgagor's attempt to regain title after a foreclosure has already taken place, not before.

The court said the following in support of its application of the tender rule to Suniverse:

> Under these circumstances, a prerequisite to the Suniverse claim of equitable title is the tender of whatever amount is owed on the note. *See* [*Wright v. Matthews*, 26 S.W.3d 575, 578 (Tex. App.—Beaumont 2000, pet. denied)] (explaining that the plaintiffs had no equitable title because the purchase price had not been paid in full); *Fillion v. David Silvers Co.*, 709 S.W.2d 240, 247 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.) (concluding mortgagors were not entitled to judgment for title because they had not tendered the amount owed on the mortgage debt); *see also Campo v. Bank of Am., N.A.*, No. H-15-1091, 2016 WL 1162199 at *5, 2016 U.S. Dist. LEXIS 38874 at *14 (S.D. Tex. Mar. 24, 2016), *aff'd by* 678 Fed. App'x 227 (5th Cir. Mar. 2, 2017) (under Texas law, tender of the amount owed on the note is a prerequisite to recovery of title) (citing *Cook-Bell v. Mortg. Elec. Registration Sys., Inc.*, 868 F. Supp. 2d 585, 591 (N.D. Tex. 2012)); *see also Johnson v. Wood*, 138 Tex. 106, 157 S.W.2d 146, 148 (Tex. 1941) ("So long as Johnson had not performed his covenants by the payments of the purchase price, he had but an equitable right, but upon his performance that right ripened into an equitable title superior to that of Wood.").

Hernandez, 2021 WL 632603, at *13. The Court would be correct in its application of the tender requirement if Suniverse had already been foreclosed on and Suniverse had brought a quiet title claim to set the sale aside and be restored to title. However, the record is clear that no foreclosure sale has yet taken place. Of the five, cases cited by the Court, two of them do not even involve a mortgage transaction. Of the three that do involve a mortgage transaction, two involve pre-foreclosure lawsuits for quiet title. Those two both rely on the remaining case: *Fillion v. David Silvers Co.*, 709 S.W.2d 240, 246 (Tex. App.—Houston [14th Dist.] 1986, writ re''d n.r.e.). But *Fillion* involves a *post-foreclosure* lawsuit to set a foreclosure sale aside and restore a mortgagor to title, not a pre-foreclosure case where the mortgagor is challenging the validity of the lien *before* any foreclosure has occurred. The propagation of the erroneous application of the tender requirement to pre-foreclose quiet title claims stems from a misapplication (largely by federal courts sitting in diversity) of the *Fillion* case to the pre-foreclosure quiet title lawsuit.

In *Fillion*, a non-judicial foreclosure sale was conducted on the mortgage borrower's property whereat the property was purchased by the lender for $45,000. *Id*. at 243. The borrower brought suit against the lender and the substitute trustee to set the sale aside under various theories. *Id*. The trial court set the sale aside and restored the borrower to title and the lender and third-party purchaser appealed, arguing, *inter alia*, that "the trial court erred in cancelling the foreclosure sale and

trustee's deed and vesting title to the property in appellees, because appellees have never made a valid tender of the balance owed to the appellants on the deed of trust note." *Id*. In analyzing the tender requirement issue, the *Fillion* court said, "Tender of whatever sum is owed on the mortgage debt is a condition precedent to the mortgagor's recovery of title from a mortgagee who is in possession and claims title under a void foreclosure sale. *Id*. at 246 (citing *Willoughby v. Jones,* 151 Tex. 435, 251 S.W.2d 508 (1952)). Ultimately, the *Fillion* court held that the borrower had not sufficiently tendered in order to regain title after the foreclosure sale and reversed the trial court. *Id*. at 247.

Thus, according to *Fillion* itself, the tender requirement only applies "to the mortgagor's recovery of title from a mortgagee who is in possession and claims title under a void foreclosure sale." *Id*. at 246. Suniverse never lost title since no foreclosure sale has taken place. Suniverse is still in possession of the property. Suniverse has no claim for reversal or setting aside of a void foreclosure sale. As such, the tender requirement applied in *Fillion* is not properly applied to Suniverse.

The cases of *Campo v. Bank of Am., N.A.*, No. H-15-1091, 2016 WL 1162199 at *5, 2016 U.S. Dist. LEXIS 38874 at *14 (S.D. Tex. Mar. 24, 2016) and *Cook-Bell v. Mortg. Elec. Registration Sys., Inc.*, 868 F. Supp. 2d 585, 591 (N.D. Tex. 2012) are two federal cases which also wrongly apply the tender requirement to the pre-foreclosure situation. Both of these cases cite to *Fillion* and to other federal court

cases which themselves cite to *Fillion* and other federal court cases which cite to *Fillion*. All of these cases have wrongly applied the tender requirement discussed in *Fillion* to the pre-foreclosure situation. Applying the tender requirement to quiet title claims in the pre-foreclosure situation makes no sense. The very purpose of a quiet title claim is for an owner or other interested party to remove an invalid lien from the title record. How could an owner be required to tender the amount owed on the mortgage as a pre-condition to getting a quiet title judgment that the mortgage lien is void and unenforceable?

The statute of limitations provides a good example of how applying the tender requirement to the pre-foreclosure situation results in absurdities. Quiet title is an appropriate cause of action to have a lien declared void for violation of the statute of limitations to foreclose. *Cicero Smith Lumber Co. v. Sweat*, 224 S.W.2d 292, 292 (Tex. Civ. App.–Amarillo 1949, no writ). If the statute of limitation to foreclose has expired, the mortgage lien is void and the mortgage note becomes unsecured. *See Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001). How could the law be that the homeowner has to tender the amount owed on the note *before* he is entitled to judgment that the mortgage lien is void under the statute of limitations?

Illegal home equity loans are also a good example of how applying the tender requirement to the pre-foreclosure situation results in absurdities. The Texas

Supreme Court's decision in *Wood v. HSBC Bank USA, N.A.* requires a borrower to assert quiet title in order to clear an invalid home equity lien recorded in the county real property records. 505 S.W.3d 542, 547 (Tex. 2016). A bank that makes an illegal home equity loan must forfeit the principal and interest of the loan. *Id*. at 550-51. If the tender requirement is applied to quiet title claims for illegal home equity loans, in every case where a lender has made grievous violations of the Texas Constitution's home equity provisions and rendered its own lien invalid, how can it be that a borrower has *no remedy or recourse at all* unless the borrower first pays off the whole loan!?

The historical precedent, including *Fillion*, involved protecting innocent, good-faith purchasers at foreclosure sales:

> It is settled in this state that a mortgagee who has purchased the land at foreclosure sale, irregular or void as to the mortgagor (or as to one having title under the mortgagor), and who has taken possession under and in reliance upon such foreclosure and purchase, may retain possession against the suit of the mortgagor, or one holding under him, until his debt is paid.

Jasper State Bank v. Braswell, 130 Tex. 549, 557, 111 S.W.2d 1079, 1083 (Tex. Comm'n App. 1938). In that case, "[t]he bank in good faith believed that it had acquired full title to both tracts, and in that belief went into possession of the property at a time when none of the notes was more than four years past due." *Id*. at 559. A 2017 decision of the Dallas Court of Appeals denied a bank summary judgment precisely because the bank failed to establish it had taken title as a good-faith

purchaser after a foreclosure sale. *See Santiago v. Bank of New York Mellon*, No. 05-17-00144-CV, 2017 WL 4946095, at *7 (Tex. App. – Dallas Nov. 1, 2017, no pet.) ("BONY and Ocwen provided no summary judgment establishing that, following the foreclosure sale, the Santiagos failed to tender any amount due on the loan."). That is the correct reading of *Fillion* and *Jasper State Bank* and the correct application of the tender requirement.

Lastly, with regard to the two remaining case cited by the Court but not yet addressed, those cases did not even deal with mortgage transactions. In *Wright v. Matthews*, the case involved an appeal from a judgment quieting title to certain real estate in favor of Nicholas Matthews. 26 S.W.3d 575, 576 (Tex. App.—Beaumont 2000, pet. denied). In 1983, D.M. Henderson and Garland Smith Matthews entered into a contract with Clark and Fannie Wright, in which they agreed to execute a general warranty deed transferring certain property to the Wrights upon their payment of a designated monthly installment over a ten-year period. *Id*. at 576-77. The contract also provided that Henderson and Matthews would execute a general warranty deed to the Wrights to the property upon payment of a total of $1000 per lot, including principal and interest. *Id*. at 77. The Wrights discontinued making payments under the contract in May, 1985 contending that Henderson and Matthews did not perform as promised because they did not convey any of the lots. *Id*. The Wrights recorded the contract in the deed records on March 6, 1998. *Id*. After the

Wrights recorded the contract, and Henderson and Matthews brought an action to quiet title claiming the recorded contracts for deed were clouds on their title. *Id*.

The court found that, Henderson and Matthews "established their legal title by deed, through stipulation of the parties." *Id*. at 578. "The Wrights sought to refute [Henderson and Matthews'] contention their claim was superior by presenting evidence they were not in default on their payments under the contract because [Henderson and Matthews] (or their predecessors in title) had not performed under the contract, since they had failed to convey certain lots as the Wrights contend the contract required." *Id*. However, the court held that Henderson and Matthews' failure to deed the property under the contract was irrelevant since "regardless of the reason for their non-payment under the contract, the Wrights have no equitable title in the property." *Id*. If the Wrights had continued to perform as required by the contract even after Henderson and Matthews failed to deed the property, that "would constitute a showing of a greater right in the property than the legal right shown by Appellees." *Id*. However, that was not the case. *Id*.

Wright is inapplicable because it does not involve a quiet title case related to a mortgage transaction. *Wright* involved a contract for deed and payments under a contract for deed. In *Wright*, Henderson and Matthews were both the title owners and the creditors under the contract for deed. However, in quiet title cases involving a homeowner's claim a mortgage lien is invalid, the plaintiff is the contract debtor

as opposed to the creditor. This is meaningful since applying the tender requirement against the party that is both the title holder and contract debtor would deprive the title holder of any ability to invalidate the mortgage lien without having first tendered the amount due on the very mortgage note which the case is brought to invalidate. As exemplified above in the statute of limitations and home equity loan examples, this would be absurd.

Finally, with regard to *Johnson v. Wood*, that case also involved a contract for deed. 157 S.W.2d 146, 147 (Tex. 1941). In *Johnson*, Wood sued Johnson to remove a cloud and by cross-action Johnson sued Wood for trespass to try title. *Id*. On March 5, 1928, Wood and Johnson entered into a written contract by the terms of which Wood agreed to convey the lot above mentioned to Johnson by warranty deed upon the payment by Johnson to him of the agreed purchase price of $125. *Id*. The contract recited that $10 of the purchase price was paid in cash and provided that the remainder should be paid in 23 monthly installments of $5 each. *Id*. Johnson contended that he paid the note in full to Walker. *Id.* *Wood* contended that Johnson had made default on the note and Wood mailed a notice to Johnson of his intention to terminate the contract and about fifteen days later Wood took possession of the premises and retained that possession through the lawsuit. *Id*. After Wood repossessed the property, Johnson asserted no claim thereto until February 9, 1932, on which date Johnson went before a notary public and acknowledged the contract

of sale above mentioned and caused same to be recorded. *Id*. Wood sued Johnson to remove the contract for deed from the public records as a cloud on title. *Id*. The court said:

> It is our opinion that upon the jury's findings judgment should have been entered in favor of Johnson against Wood on his cross action. According to those findings Johnson had paid the purchase price and fully performed his obligations under the contract before Wood sought to cancel same. Upon such performance he became vested with an equitable title to the property sufficient to enable him to maintain his action in trespass to try title, as to which action the statute of limitation above referred to governing suits for specific performance is not applicable. It is not claimed that any other limitation statute is applicable. So long as Johnson had not performed his covenants by the payment of the purchase price, he had but an equitable right, but upon his performance that right ripened into an equitable title superior to that of Wood. An equitable title, as distinguished from a mere equitable right, will support an action of trespass to try title.

Id. at 148.

Johnson is inapplicable for the same reasons that *Wright* is inapplicable. In *Johnson*, Johnson was both the title owner and the creditor under the contract for deed. However, in quiet title cases involving a homeowner's claim a mortgage lien is invalid, the plaintiff is the contract debtor as opposed to the creditor.

In conclusion, the Court's application of the tender requirement to Suniverse is a departure from the prevailing state court authorities. Should the Court's current opinion stand, it would fundamentally alter the law by depriving a homeowner subject to a facially valid mortgage lien of the ability to judicially invalidate a

mortgage lien without first performing what for most would be impossible: a full tender of the amount owed on the note.

PRAYER FOR RELIEF

For the reasons set forth above, Appellant requests that this Court grant motion for rehearing, and for such further relief at law or equity to which Suniverse may be justly entitled.

Respectfully submitted,

Jeffrey Jackson & Associates, PLLC

/s/ Jeffrey C. Jackson
Jeffrey C. Jackson
Texas State Bar No. 24065485
2200 North Loop West, Suite 108
Houston, Texas 77018
713-861-8833 (T)
713-682-8866 Fax
jeff@jjacksonllp.com
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 6.3 and 9.5(b), (d), (e), I certify that I have served this document on all other parties which are listed below on March 5, 2021 as follows:

Elizabeth J. Chandler
MCGUIREWOODS LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
214-932-6400 (P)
214-932-6499 (F)
echandler@mcguirewoods.com
Attorney for Defendants Bank of America, N.A., as successor by July 1, 2011 de jure merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, and U.S. Bank National Association, as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3

/s/ Jeffrey C. Jackson
Jeffrey C. Jackson

Dated: March 5, 2021

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.

Myra Nguyen on behalf of Jeffrey Jackson
Bar No. 24065485
myra@jjacksonllp.com
Envelope ID: 51212966
Status as of 3/5/2021 4:02 PM CST

Associated Case Party: Bank of America, N.A.

Name	BarNumber	Email	TimestampSubmitted	Status
Elizabeth JChandler		echandler@mcguirewoods.com	3/5/2021 3:43:13 PM	SENT
Stephanie J.Peel		SPeel@mcguirewoods.com	3/5/2021 3:43:13 PM	SENT
Louise Tamberg		mtamberg@mcguirewoods.com	3/5/2021 3:43:13 PM	SENT

No. 09-19-00090-CV

IN THE NINTH COURT OF APPEALS
BEAUMONT, TEXAS

SUNIVERSE, LLC,
Appellant,
v.
UNIVERSAL AMERICAN MORTGAGE COMPANY, LLC, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGEBACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3; NATIONSTAR MORTGAGE, LLC; BANK OF AMERICA, N.A.; AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
Appellees.

On Appeal from the 410th Judicial District Court
Montgomery County, Texas
Trial Court Cause No. 17-06-08000

APPELLEES' RESPONSE TO MOTION FOR REHEARING

Elizabeth J. Chandler, SBN: 24097484
EChandler@mcguirewoods.com
MCGUIREWOODS LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
Telephone: 214.932.6400
Facsimile: 214.932.6499
Counsel for Appellees U.S. Bank National Association, As Trustee For CSAB Mortgagebacked Pass-Through Certificates, Series 2006-3, Nationstar Mortgage LLC, Bank Of America, N.A., And Mortgage Electronic Registration Systems, Inc

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

On February 18, 2021, this Court issued its Memorandum Opinion, which affirmed the order of the 144th District Court, Montgomery County, Texas, granting Appellees' motion for summary judgment. The Appellant, Suniverse, LLC, has moved for a rehearing on two grounds. First, Suniverse asserts that this Court erred in failing to recognize its argument that the chain of assignments was broken. Second, Suniverse asserted that this Court erred in determining that tender is a prerequisite to a quiet title claim in a pre-foreclosure case. Neither of these grounds supports an order granting a rehearing.

The sole purpose of a motion for rehearing is to provide the appellate court an opportunity to correct any errors on issues already presented. *Canal Ins. Co. v. Hopkins*, 238 S.W.3d 549, 560 n. 3 (Tex.App.-Tyler 2007, pet. denied); *Phifer v. Nacogdoches County Cent. Appraisal Dist*., 45 S.W.3d 159, 166 (Tex.App.-Tyler 2000, pet. denied); *see Mapco, Inc. v. Carter*, 817 S.W.2d 686, 687 (Tex.1991). "A motion for rehearing does not afford a party an opportunity to raise new issues." *In re M.T.*, 290 S.W.3d 908, 910 (Tex.App.-Tyler 2009, no pet.), op'n on rehearing.

This Court did not err in its decision because, contrary to Appellant's assertion, there is no break in the chain of assignments of the Deed of Trust. Suniverse's argument that a gap in assignments exists improperly relies on two void assignments, which were recorded after a valid assignment was recorded. Because

an assignor can only pass the title it has to its assignee, MERS could only pass its interest in the Deed of Trust one time—the first time. Any subsequent assignment from MERS (or flowing from that assignment) was a nullity as MERS no longer had any interest in the Deed of Trust.

Moreover, the Court did not err in determining that tender is a prerequisite to asserting a quiet title claim, even in the pre-foreclosure context. Suniverse supports its arguments with cases that do not deal with quiet title claims. Nor does it offer any reasoned support for its assertion. Instead, Suniverse asserts hypothetical questions, unsupported by case law, that are not before this Court in a fruitless attempt to ask this Court to review issues that were not raised in the appeal and to issue an advisory opinion. This Court should reject the invitation and overrule Suniverse's request for a rehearing.

BACKGROUND

This case concerns real property located at 3 Etude Court, The Woodlands, in Montgomery County, Texas ("Property"). The original purchasers, the Nunezes, obtained a loan from Universal American Mortgage Company ("Universal American") for the purchase of the Property. The Nunezes also executed a deed of trust ("Deed of Trust"), which identified Universal American as the lender and Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary, and as a nominee for Universal American and its successors and assigns. The Nunezes

defaulted on their loan obligations and later transferred the Property to the Nunez Family Trust on June 24, 2017. Suniverse, LLC ("Suniverse") is the trustee of the Nunez Family Trust.

MERS assigned its interest in the Deed of Trust to U.S. Bank, National Association, as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3 ("U.S. Bank") through a corporate assignment of the Deed of Trust dated August 16, 2010. There were two later assignments of the Deed of Trust in December 2011 and February 2014 that were ineffective to transfer any interest in the Deed of Trust. U.S. Bank is the current mortgagee and Nationstar LLC ("Nationstar") is the current mortgage servicer.

Suniverse filed a petition naming Universal American, MERS, U.S. Bank, Nationstar, and Bank of America, N.A. ("Bank of America")[1], the previous loan servicer, which asserted eight counts in an effort to forestall the foreclosure on the Property. Bank of America, MERS, U.S. Bank, and Nationstar moved for traditional and no evidence summary judgment on all claims. The motions were granted by the trial court and Suniverse appealed.

After briefing, this Court issued its Memorandum Opinion on February 18, 2021. This Court affirmed the decision of the trial court holding that: (1) Suniverse did not raise more than a mere scintilla of evidence on its claim that U.S. Bank and

[1] Universal American was dismissed for failure to prosecute.

Nationstar lacked standing to foreclose; (2) tender is a prerequisite to a quiet title claim and Suniverse failed to establish superior title because the loan was in default; (3) Suniverse failed to present evidence sufficient to raise an issue of fact as to Nationstar and MERS's liability under Section 12.02; and (4) the Court did not err in granting summary judgment on Suniverse's declaratory judgment claim in favor of Bank of America and MERS because neither had a current interest in the loan.

Suniverse moved for rehearing on March 5, 2021, claiming that this Court failed to consider its broken chain of assignments argument and that this Court erred in finding that tender is a prerequisite to a quiet title claim in the pre-foreclosure context. This Court requested a response from the Appellees to be filed by March 19, 2021.

ARGUMENT

A. The Chain Of Assignments Is Unbroken.

The chain of assignments in this case is not broken, so Suniverse's argument fails as a matter of law. On August 16, 2010, MERS, as nominee for Universal American and its successors and assigns, assigned its interest in the Deed of Trust to U.S. Bank through a corporate assignment of the Deed of Trust. This valid Assignment forecloses Suniverse's allegations that a gap in the chain of assignments exists. *See Morlock, L.L.C. v. JPMorganChase Bank*, N.A., 586 Fed. App'x 631, 634 (5th Cir. 2013) (affirming dismissal of claim based on chain of title challenge

where defendant presented evidence of standing to foreclose through a recorded assignment); *Jemison v. CitiMortgage, Inc.*, No. H-13-2475, 2014 WL 2739351, at *3-5 (S.D. Tex. June 17, 2014) (rejecting chain of title challenge in motion to dismiss context where right to foreclose was established by proving an unbroken chain of assignments of the deed of trust).

"An unexplained gap in the chain of title may present a fact issue on the question of ownership." *Martin v. New Century Mortg. Co.*, 377 S.W.3d 79, 85 (Tex.App.-Houston [1st Dist.] 2012, no pet.). The chain of assignments between MERS, the original beneficiary designated in the Deed of Trust, and U.S. Bank, the current beneficiary of record, is unbroken and without gaps. *See* TEX. PROP. CODE 51.001 (4)(C) ("if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record. . ." is the mortgagee). Because Suniverse cannot show a gap in the chain of assignments from the original beneficiary to U.S. Bank, any challenge based on this theory is incorrect here.

"It is axiomatic that a grantor cannot convey to a grantee a greater or better title than he holds. Thus, a deed conveys nothing where no title rests in the grantor." *Day & Co., Inc. v. Texland Petroleum, Inc.,* 718 S.W.2d 384, 391 (Tex.App.-Amarillo 1986) aff'd, 786 S.W.2d 667 (Tex.1990); (internal citations omitted); *accord Tamondong v. Mortgageit, Inc.,* No. 16-CV-03722-RS, 2016 WL 9223834,

at *1 (N.D. Cal. Oct. 21, 2016) (finding that a prior assignment by MERS was not undermined by a later assignment "because a party cannot effectively assign that which it no longer owns. Accordingly, the fact that defendant MERS recorded an assignment in 2011 through apparent error is not sufficient to show a factual or legal issue that any relevant assignment of the deed of trust was void.").

Suniverse incorrectly argues that it had standing to challenge the chain of assignments based on two later, ineffective assignments of the Deed of Trust. It relies on an assignment from MERS to Bank of America that was executed in December 2011, over a year after the date of the first MERS assignment to U.S. Bank. Because MERS no longer had any interest under the Deed of Trust, the December 2011 assignment to Bank of America was ineffective and could not assign any interest in the Deed of Trust to Bank of America. Suniverse also points to a subsequent assignment from Bank of America to Nationstar that was executed in February 2014. Likewise, Bank of America could not convey any interest in the Deed of Trust through the February 2014 assignment because its title could be no greater than MERS's title at the time the prior assignment was made; thus, the assignment to Nationstar was also a nullity. That being the case, the only effective assignment was the August 2010 assignment from MERS to U.S. Bank, the current mortgagee.

In its rehearing motion, Suniverse states that its "attack on the chain of assignments assumes each assignment's validity and therefore cannot be an improper attack on an assignment which would render the assignment merely voidable as opposed to void." (Mot. p. 4). Suniverse fails to explain why it assumes the validity of the December 2011 and February 2014 assignments, which the Appellees have conceded are ineffective and outside the chain of title. In essence, Suniverse attempts to do a reverse attack on the chain of assignments by resurrecting void assignments to manufacture its claim regarding a gap in the chain. Accordingly, the chain of assignments challenge fails as a matter of law and the decision of this Court is in accord with Texas precedent.

B. Tender Is A Prerequisite For Asserting A Quiet Title Action, Even In The Pre-foreclosure Context.

Suniverse makes a convoluted argument that this Court erred in finding that tender is a prerequisite to asserting a quiet title claim in the pre-foreclosure context. Suniverse claims that the federal courts reviewing quiet title claims applying Texas law have erred in extending the holding in *Fillion v. David Silvers Co.,* 709 S.W.2d 240, 246 (Tex. App.-Houston [14th Dist.] 1986, writ rev'd n.r.e.) to pre-foreclosure cases. In particular, it asserts that that "[t]he cases of *Campo v. Bank of Am., N.A.*, No. H-15-1091, 2016 WL 1162199 at *5, 2016 U.S. Dist. LEXIS 38874 at *14 (S.D. Tex. Mar. 24, 2016) and *Cook-Bell v. Mortg. Elec. Registration Sys., Inc.*, 868 F.

Supp. 2d 585, 591 (N.D. Tex. 2012) are two federal cases which [ ] wrongly apply the tender requirement to the preforeclosure situation." (Mot. p. 7).

Suniverse's argument has been soundly rejected before by Texas Courts. *See Moore v. Ameriquest Mortg. Co.,* No. 4:16CV380, 2017 WL 603323, at *5 (E.D. Tex. Feb. 15, 2017). In *Moore*, the plaintiff's counsel (also Suniverse's counsel),argued that a borrower is not required to make a tender in a pre-foreclosure quiet title claim and that the Magistrate Judge "erred by relying on a 'botched' opinion from the Southern District of Texas when it held tender was required even before the sale of a property has occurred." *Id.* The District Court dismissed this argument and recognized that other district courts applying Texas law also had dismissed the argument. *Id.* In addition, the District Court held that the plaintiffs failed to satisfy any of the requirements of a quiet title claim, even if the tender requirement was misapplied.

Suniverse chastises this Court for relying on federal district court cases and cases that do not deal with quiet title claims. (Mot. p. 6). After doing so, Suniverse states that the only case to correctly apply the holding in *Fillion* is *Santiago v. Bank of New York Mellon*, No.05-17-00144-CV, 2017 WL 4946095, at *7 (Tex. App.-Dallas Nov. 1, 2017, no pet.). In *Santiago*, however, the plaintiffs did not assert a quiet title claim. Instead, they asserted a claim to set aside a foreclosure sale and trespass to try title. *Id.* Additionally, the *Santiago* Court did not interpret the holding

in *Fillion*. In fact, *Santiago* does not reference *Fillion* at all. Accordingly, Suniverse has not pointed to any error in this Court's ruling.

As this Court noted, the federal district courts in Texas have uniformly held that tender of the amount owed under a mortgage lien is a necessary prerequisite to maintaining a quiet title action even in the pre-foreclosure context. (Mem. Op. p. 33). This Court properly recognized and applied the law requiring tender to Plaintiff's quiet title action, and held that the Plaintiff must recover on the strength of his own title and not the weakness of the defendant's title. *See Fricks v. Hancock*, 45 S.W.3d 322, 327 (Tex.App.-Corpus Christi 2001, no pet.). The party seeking to quiet title must show that it has superior title by demonstrating that there has been no default or that it has tendered the amount owing on the debt. *See Stephens v. LNV Corp.,* 488 S.W.3d 366, 378 (Tex. App.-El Paso 2015 no pet.) (noting that assignee of deed of trust, which requested summary judgment on borrowers' quiet title claim, bore "the burden of proving default, and by extension superior title."). As this Court held in its Memorandum Opinion (p. 33), Suniverse cannot establish that its title to the Property is superior to U.S. Bank's title where the mortgage is, admittedly, in default.

Moreover, the Fifth Circuit Court of Appeal has held that "arguments that merely question the validity of an assignment of a deed of trust from MERS to another mortgage servicer are not a sufficient basis for a quiet title action under

Texas law." *Warren v. Bank of America, N.A.,* 566 Fed. Appx. 379 (5th Cir. 2014); *see also Morlock*, 586 Fed. App'x at 633 (the borrower's "argument, however, merely questions whether Chase or MERS has authority to enforce the Deed of Trust. Because Morlock does not challenge the Deed of Trust's validity or otherwise assert title superior to that of Chase or MERS, Morlock fails to advance a plausible quiet-title claim.").[2] As discussed above, Suniverse's argument in its motion for rehearing merely questions whether the assignments of the Deed of Trust are valid and not the validity of the Deed of Trust itself. Therefore Suniverse's motion for rehearing of the appeal on its quiet title claim must fail for that reason as well.

Additionally, Suniverse sets out two hypothetical situations, regarding the statute of limitations and illegal home equity loans, in which it claims that the tender requirement would be unfair or would require an absurd result. (Mot. pp. 8-9). Neither of the scenarios is present in this case; thus, Suniverse requests that this Court render an advisory opinion about issues that are not applicable here. *Dix v. State,* 289 S.W.3d 333, 335 (Tex. App.-Eastland 2009, pet. ref'd) ("Deciding an issue that is unnecessary to the disposition of a case is advisory in nature."). As a

[2] Federal law is "particularly persuasive in this type of case, as much home mortgage litigation in Texas is being tried in the federal courts." *Robeson v. Mortgage Elec. Registration Sys., Inc.,* No. 02-10-00227-CV, 2012 WL 42965, at *4 n. 4 (Tex. App.-Fort Worth Apr. 12, 2012, pet. denied) (mem. op.); *Bierwirth v.BAC Home Loans Servicing, LP,* No. 03-11-00644-CV, 2012 WL 3793190, at *1 n. 3 (Tex. App.—Austin Aug. 30, 2012, rehearing denied) (mem. op.); *Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 253 n. 2(5th Cir. 2013).

result, this Court should overrule Suniverse's request that the Court issue an advisory opinion through its motion for rehearing.

This Court's Memorandum Opinion correctly concluded that the tender requirement is a prerequisite to a quiet title case, even in the pre-foreclosure context.

PRAYER FOR RELIEF

Suniverse has failed to provide any basis for this Court to grant rehearing. Therefore, Appellees respectfully request that this Court deny Suniverse's motion.

Dated: March 19, 2021

Respectfully submitted,

/s/ Elizabeth J. Chandler

Elizabeth J. Chandler, SBN: 24097484
EChandler@mcguirewoods.com
MCGUIREWOODS LLP
2000 McKinney Avenue, Suite 1400
Dallas, Texas 75201
Telephone: 214.932.6400
Facsimile: 214.932.6499

Counsel for Appellees U.S. Bank National Association, As Trustee For CSAB Mortgagebacked Pass-Through Certificates, Series 2006-3, Nationstar Mortgage LLC, Bank Of America, N.A., And Mortgage Electronic Registration Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served via Electronic Court Filing on March 19, 2021, as follows:

Jeffrey C. Jackson
JEFFREY JACKSON & ASSOCIATES, PLLC
2200 N. Loop West, Ste. 108
Houston, Texas 77018
jeff@jjacksonllp.com
Telephone: (713) 861-8833
Facsimile: (713) 682-8866
Attorney for Appellant Suniverse, LLC

/s/ Elizabeth J. Chandler
Elizabeth J. Chandler, SBN: 24097484

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.

Elizabeth Chandler on behalf of Elizabeth Chandler
Bar No. 24097484
echandler@mcguirewoods.com
Envelope ID: 51631431
Status as of 3/19/2021 10:23 AM CST

Associated Case Party: Suniverse, LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Jeffrey Jackson	24065485	jeff@jjacksonllp.com	3/19/2021 10:13:12 AM	SENT

Associated Case Party: Bank of America, N.A.

Name	BarNumber	Email	TimestampSubmitted	Status
Elizabeth JChandler		echandler@mcguirewoods.com	3/19/2021 10:13:12 AM	SENT
Stephanie J.Peel		SPeel@mcguirewoods.com	3/19/2021 10:13:12 AM	SENT
Louise Tamberg		mtamberg@mcguirewoods.com	3/19/2021 10:13:12 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Robert Hakari	24107552	bhakari@mccarthyholthus.com	3/19/2021 10:13:12 AM	SENT

Court of Appeals
State of Texas
Ninth District

CLERK
CARLY LATIOLAIS

OFFICE
SUITE 330
1085 PEARL ST.
BEAUMONT, TEXAS 77701
409/835-8402 FAX 409/835-8497
WWW.TXCOURTS.GOV/9THCOA.ASPX

March 24, 2021

Elizabeth Chandler
McGuireWoods LLP
2000 McKinney Avenue, Suite 1400
Dallas, TX 75201
* DELIVERED VIA E-MAIL *

Jeffrey C. Jackson
Jeffrey Jackson & Associates, PLLC
2200 North Loop W Ste 108
Houston, TX 77018-1753
* DELIVERED VIA E-MAIL *

RE: Case Number: 09-19-00090-CV
Trial Court Case Number: 17-06-08000-CV

Style: Suniverse, LLC
v.
Universal American Mortgage Company, LLC, et al

Appellant's Motion for Rehearing was denied this date in the above styled and numbered cause.

Sincerely,

CARLY LATIOLAIS
CLERK OF THE COURT

cc: Judge Jennifer James Robin (DELIVERED VIA E-MAIL)
Melisa Miller (DELIVERED VIA E-MAIL)
Jill Driscoll (DELIVERED VIA E-MAIL)
Robert Brandon Hakari (DELIVERED VIA E-MAIL)

Citing References (100)

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**1.** **Sampson v. U.S. Bank NA as Trustee for Truman 2016 SC6 Title Trust** 2021 WL 1321343, *14 , E.D.Tex. Pending before the Court is Defendant U.S. Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust's Motion for Summary Judgment [Dkt. 20]. After reviewing...	Mar. 15, 2021	Case		4 S.W.2d
Cited by	**2.** **Suniverse, LLC v. Universal American Mortgage Company, LLC** 2021 WL 632603, *13 , Tex.App.-Beaumont Appellant Suniverse, LLC appeals summary judgment granted in favor of Appellees Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., Nationstar Mortgage LLC, and...	Feb. 18, 2021	Case		4 S.W.2d
Mentioned by	**3.** **ROGER E. MIDDAUGH and HEATHER NICHOLE MOORE MIDDAUGH, Plaintiffs, v. INTERBANK, Defendant.** 2021 WL 1523457, *29 , N.D.Tex. By a standing order of reference, United States District Judge James Wesley Hendrix referred this civil action to the undersigned for pretrial management under 28 U.S.C. § 636(b)....	Feb. 05, 2021	Case		4 S.W.2d
Mentioned by	**4.** **Moore v. Bank of New York Mellon** 2021 WL 1096278, *9 , E.D.Tex. Pending before the Court is Defendants' Motion for Summary Judgment [Dkt. 27]. Plaintiffs Diane Moore and James Moore filed a Response [Dkts. 34; 34-1], and Defendants a Reply...	Feb. 02, 2021	Case		4 S.W.2d
Cited by	**5.** **MOSES KOVALCHUK, Plaintiff, v. WILMINGTON SAVINGS FUND SOCIETY, FSB A TRUSTEE OF UPLAND MORTGAGE LOAN TRUST A, Defendant.** 2021 WL 1523011, *11+ , E.D.Tex. Pending before the Court is Defendant Wilmington Savings Fund Society, FSB a Trustee of Upland Mortgage Loan Trust A's ("Defendant") Motion for Judgment on the Pleadings ("Motion")...	Jan. 25, 2021	Case		4 S.W.2d
Mentioned by	**6.** **Hakizimana v. Wells Fargo Bank, N.A.** 2020 WL 8366981, *6 , E.D.Tex. Pending before the Court is Defendant Wells Fargo Bank, N.A.'s Motion for Summary Judgment [Dkt. 16]. Plaintiff Liliane Hakizimana failed to file any response to the Motion. After...	Dec. 30, 2020	Case		4 S.W.2d
Cited by	**7.** **Gregg v. Anderson** 2020 WL 7318088, *4 , E.D.Tex. Pending before the Court is pro se Plaintiff' Brian C. Gregg's Emergency Application for Temporary Restraining Order and Plaintiff's Verified Original Complaint, Motion for Remand...	Dec. 11, 2020	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**8. Tafacory v. Deutsche Bank National Trust Company** 2020 WL 7658070, *14 , E.D.Tex. Pending before the Court is Defendant Deutsche Bank National Trust Company, as Trustee, in Trust for Registered Holders of Long Beach Mortgage Loan Trust 2006-6, Asset-backed...	Nov. 06, 2020	Case		—
Cited by	**9. Smith v. Guild Mortgage Company** 2020 WL 1686274, *6+ , S.D.Tex. Before the court is PennyMac Loan Services, LLC's and Mortgage Electronic Registration Systems, Inc.'s (collectively "defendants") motion for summary judgment. Dkt. 12. For the...	Apr. 06, 2020	Case		4 S.W.2d
Mentioned by	**10. Logan v. Carrington Mortgage Services, LLC** 2020 WL 853857, *6 , S.D.Tex. Pending before the court are Defendant's Motion for Summary Judgment (Doc. 24) and Plaintiffs Jock O. Logan ("Logan") and Angela Chimel's ("Chimel") (collectively, "Plaintiffs")...	Jan. 14, 2020	Case		—
Mentioned by	**11. THOMAS SATTERTHWAITE, Plaintiff, v. FIRST BANK MORTGAGE, N.A., Defendant.** 2019 WL 5703455, *7 , E.D.Tex. Pending before the Court is Defendant First Bank Mortgage, N.A.'s ("Defendant") Motion for Summary Judgment [Dkt. 33]. After reviewing the Motion for Summary Judgment [Dkt. 33],...	Oct. 15, 2019	Case		4 S.W.2d
Cited by	**12. Villarreal v. Ocwen Loan Servicing, LLC** 2019 WL 4998694, *8+ , W.D.Tex. On November 21, 2017, the Plaintiffs Mario Villarreal and Norma Villarreal filed suit in state court after the Defendant Ocwen Loan Servicing, LLC ("Ocwen") foreclosed on their...	Sep. 25, 2019	Case		4 6 S.W.2d
Cited by	**13. Tolliver v. Bank of New York Mellon as Trustee for Certificate Holders of CWABS Inc., Asset Backed Certificates, Series 2007-3** 2019 WL 3937341, *6 , N.D.Tex. Before the Court are the Motion to Dismiss (ECF No. 8) with Brief and Appendix in Support (ECF Nos. 9–10) filed February 11, 2019 by Defendant Bank of New York Mellon fka The Bank...	Aug. 05, 2019	Case		4 S.W.2d
Cited by	**14. Stoerner v. Wells Fargo Bank, N.A.** 2019 WL 3553912, *3+ , S.D.Tex. Pending before the court is a motion for summary judgment filed by defendant Wells Fargo Bank, N.A. ("Wells Fargo"). Dkt. 14. Plaintiff Ronnie Stoerner has not responded to the...	Aug. 05, 2019	Case		4 S.W.2d
Cited by	**15. Norton v. Wells Fargo Bank, N.A.** 2019 WL 3937142, *3 , N.D.Tex. Before the Court is the Motion for Judgment on the Pleadings and Brief in Support (ECF No. 15) and Appendix in Support (ECF No. 16) filed by Defendant Wells Fargo Bank, N.A....	Aug. 02, 2019	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**16.** **Jordan v. U.S. Bank Home Mortgage** 2019 WL 5105450, *5 , W.D.Tex. Before the court are Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), MERSCORP Holdings, Inc. , and U.S. Bank National Association's ("U.S. Bank")...	Aug. 01, 2019	Case		4 S.W.2d
Mentioned by	**17.** **Dean v. Crosscountry Mortgage, Inc.** 2019 WL 4047500, *10 , E.D.Tex. Pending before the Court is Defendants Crosscountry Mortgage, Inc. ("Crosscountry"), Federal National Mortgage Association ("Fannie Mae"), and Dovenmuehle Mortgage, Inc.'s ("DMI")...	July 08, 2019	Case		4 S.W.2d
Mentioned by	**18.** **Daniel v. Ocwen Loan Servicing LLC** 2019 WL 2719286, *6 , N.D.Tex. Before the Court are U.S. Bank National Association, as Trustee for TBW Mortgage-Backed Trust Series 2006-5, TBW Mortgage Pass-Through Certificates, Series 2006-5 ("U.S. Bank"),...	June 13, 2019	Case		4 S.W.2d
Mentioned by	**19.** **Rose v. Select Portfolio Servicing, Inc.** 2019 WL 2565279, *3 , W.D.Tex. Before the court are Plaintiff's Motion for Final Summary Judgment (Dkt. #26), Defendants' Motion for Summary Judgment on All Claims and Counterclaims and Brief in Support (Dkt....	Apr. 29, 2019	Case		4 S.W.2d
Cited by	**20.** **Sivertson v. Citibank, N.A. as Trustee for Registered Holders of WAMU Asset-Back Certificates WAMU Series Number 2007-HE2 Trust** 390 F.Supp.3d 769, 790 , E.D.Tex. REAL PROPERTY — Mortgages and Deeds of Trust. Mortgagor failed to adequately allege his interest in property was superior to mortgagee's interest as needed to state Texas-law claim...	Mar. 20, 2019	Case		4 S.W.2d
Cited by	**21.** **Rivera v. First Franklin Financial Corporation** 2019 WL 2098089, *3+ , W.D.Tex. Before the Court is Defendant First Franklin Financial Corporation's ("First Franklin") Motion for Summary Judgment. (Dkt. 11). Having considered the parties' submissions, the...	Mar. 07, 2019	Case		4 S.W.2d
Mentioned by	**22.** **King v. Select Portfolio Servicing, Inc.** 2019 WL 1141933, *6+ , E.D.Tex. Pending before the Court is Plaintiff John C. King's Amended Motion for Preliminary Injunction, filed on February 11, 2019 [Dkt. 36]. Defendants filed their Response to the Motion...	Feb. 26, 2019	Case		4 S.W.2d
Cited by	**23.** **U.S. Bank National Association v. Garza** 2019 WL 311872, *3 , S.D.Tex. The Court now considers the motion for default judgment filed by U.S. Bank National Association, as Trustee, Successor in Interest to Wachovia Bank, N.A. (Formerly Known as First...	Jan. 24, 2019	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**24.** **Santiago v. Bank of New York Mellon** 2018 WL 7138389, *9 , E.D.Tex. Pending before the Court is Defendants the Bank of New York Mellon, as Successor Trustee to JPMorgan Chase Bank, as Trustee for Novastar Mortgage Funding Trust, Series 2004-2,...	Dec. 27, 2018	Case		4 S.W.2d
Mentioned by	**25.** **Onabajo v. Household Finance Corp. III** 2018 WL 6739070, *3 , W.D.Tex. Before the court are Defendants Household Finance Corporation III ("Household"), HSBC Mortgage Services Inc. ("HSBC") (collectively "HSBC Defendants"), and Wilmington Savings Fund...	Nov. 19, 2018	Case		4 S.W.2d
Cited by	**26.** **Shastry v. U.S. Bank National Association** 2018 WL 4090426, *2+ , N.D.Tex. After making an independent review of the pleadings, files and records in this case, and the Findings and Recommendation of the United States Magistrate Judge dated July 27, 2018...	Aug. 27, 2018	Case		4 S.W.2d
Cited by	**27.** **Coe v. Ditech Financial LLC** 2018 WL 4963289, *4 , N.D.Tex. Before the court is Plaintiff's Motion for Injunction or Restraining Order (Doc. 12), filed August 22, 2018. After considering the motion, the exhibits to the motion, Plaintiff's...	Aug. 24, 2018	Case		4 S.W.2d
Mentioned by	**28.** **McGowan v. Ditech Financial, LLC** 2018 WL 4346722, *5 , N.D.Tex. Before the Court is a Rule 12(b)(6) Motion to Dismiss [ECF No. 31], filed by Defendant Ditech Financial, LLC. For the reasons stated, the District Court should GRANT Defendant's...	Aug. 24, 2018	Case		4 S.W.2d
Mentioned by	**29.** **Santiago v. Bank of New York Mellon** 2018 WL 4677916, *6+ , E.D.Tex. Pending before the Court is Plaintiffs Luis A. Santiago and Linda A. Santiago's Motion for a "Temporary Restraining Order and Preliminary Injunction" ("Motion for Temporary...	Aug. 06, 2018	Case		4 S.W.2d
Mentioned by	**30.** **Douglas v. Wells Fargo Bank, N.A.** 2018 WL 3570097, *4 , N.D.Tex. Before the Court is Defendant Wells Fargo Bank, N.A.'s (Wells Fargo) motion to dismiss. Doc. 29. For the reasons that follow, the Court GRANTS the motion. This is a foreclosure...	July 24, 2018	Case		4 S.W.2d
Cited by	**31.** **Inge v. Bank of America, N.A.** 2018 WL 4224918, *7+ , E.D.Tex. Pending before the Court is Defendant Bank of America, N.A.'s ("Defendant") Motion for Summary Judgment [Dkt. 31]. Having considered the Motion for Summary Judgment [Dkt. 31],...	July 19, 2018	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**32. Lewis v. U.S. Bank, National Association** 2018 WL 3544797, *3 , W.D.Tex. Before the court is Defendant's Motion to Dismiss for Failure to State a Claim (Dkt. #6) and related pleadings. After reviewing the pleadings, the relevant case law, as well as...	July 03, 2018	Case		4 S.W.2d
Cited by	**33. Slocum v. Sebring Capital Partners, LP** 2018 WL 3470300, *9+ , E.D.Tex. Pending before the Court is Defendants' Renewed Motion to Dismiss [Dkt. 26], and Plaintiffs' Motion to Vacate Foreclosure Sale [Dkt. 33]. Having reviewed the Motions [Dkts. 26,...	June 27, 2018	Case		4 6 S.W.2d
Cited by	**34. Thomas v. Wells Fargo Bank, N.A.** 2018 WL 1898455, *3+ , S.D.Tex. Pending before the Court in this property dispute are two motions: Defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") Motion to Dismiss (the "WF Motion") [Doc. # 21] and Defendant...	Apr. 20, 2018	Case		4 6 S.W.2d
Cited by	**35. Vick v. Select Portfolio Servicing, Inc.** 2018 WL 2321992, *3+ , N.D.Tex. Before the court is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") (Doc. 11), filed February 23, 2018. After carefully reviewing the...	Feb. 28, 2018	Case		4 S.W.2d
Mentioned by	**36. Maldonado v. Wells Fargo Bank, N.A.** 2017 WL 4950063, *3 , S.D.Tex. Pending before the court is a motion for summary judgment filed by defendants Wells Fargo Bank, National Association ("Wells Fargo") and Ocwen Loan Servicing, L.L.C. (collectively...	Nov. 01, 2017	Case		4 S.W.2d
Cited by	**37. Henderson v. Wells Fargo Bank, N.A.** 2017 WL 4513124, *3 , N.D.Tex. Before the court is Defendant's Motion to Dismiss Plaintiff[s'] First Amended Complaint (Doc. 20), filed October 19, 2016. After careful consideration of the motion, response,...	Oct. 10, 2017	Case		4 S.W.2d
Mentioned by	**38. FFGGP, Inc. v. Deutsche Bank National Trust Company** 2017 WL 4404460, *5 , N.D.Tex. Pursuant to Special Order 3 and 28 U.S.C. § 636(b)(1)(B) & (C), this case is now before the Court for the submission of findings of fact and a recommendation for the disposition of...	Sep. 06, 2017	Case		4 S.W.2d
Mentioned by	**39. TFHSP LLC v. Deutsche Bank National Trust Co. for Morgan Stanley ABS Capital I Inc. Trust 2007-NC1 Mortgage Pass-Through Certificates, Series 2007-NC1, 1761 East St. Andrews Place, Santa Ana, CA 92705** 2017 WL 4075189, *2+ , N.D.Tex. Before the Court is Defendant's Motion for Judgment on the Pleadings (ECF No. 6), filed June 26, 2017. After Plaintiff failed to respond to Defendant's Motion, the Court ordered...	Aug. 29, 2017	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**40.** **Ricardo v. Bank of New York Mellon** 2017 WL 3424975, *14 , S.D.Tex. Pending before the Court in the above referenced cause, timely removed from the 189 Judicial District Court in Harris County, Texas purportedly on diversity jurisdiction, alleging...	Aug. 09, 2017	Case		4 S.W.2d
Mentioned by	**41.** **Goulla v. Ditech Financial LLC** 2017 WL 7945736, *3 , W.D.Tex. Before the court are Defendants' Motion to Dismiss and Brief in Support (Dkt. #10), Plaintiffs' Response in Opposition (Dkt. #19), Defendants' Reply in Support (Dkt. #20), and...	Aug. 02, 2017	Case		4 S.W.2d
Mentioned by	**42.** **Fisher v. Wells Fargo Bank, N.A.** 2017 WL 3225491, *2+ , N.D.Tex. Before the Court is Defendant's Motion to Dismiss and Brief in Support (ECF No. 10) with Appendix in Support (ECF No. 11), filed on June 6, 2017. After Plaintiff failed to respond...	July 12, 2017	Case		4 S.W.2d
Mentioned by	**43.** **Solis v. U.S. Bank, N.A.** 2017 WL 4479957, *5 , S.D.Tex. Pending before the Court is Defendant U.S. Bank's Motion to Dismiss (Document No. 40). Having considered the motion, submissions, and applicable law, the Court determines the...	June 23, 2017	Case		4 S.W.2d
Cited by	**44.** **Cantu v. Elbar Investments, Inc.** 2017 WL 2180715, *3 , Tex.App.-Hous. (1 Dist.) Seeking to set aside a tax-foreclosure sale of real property, appellant Arsenio Cantu filed a wrongful-foreclosure and declaratory-judgment action against appellees Elbar...	May 18, 2017	Case		4 S.W.2d
Cited by	**45.** **Schor v. Select Portfolio Servicing, LLC** 2017 WL 2486090, *3 , E.D.Tex. Pending before the Court is Defendants Select Portfolio Servicing, LLC ("SPS") and U.S. Bank N.A., successor trustee to Bank of America, N.A., successor in interest to LaSalle Bank...	May 11, 2017	Case		4 S.W.2d
Mentioned by	**46.** **Washington Trustee for Misty Mountain Land Trust v. Wells Fargo Bank, N.A.** 2017 WL 2999761, *2 , N.D.Tex. Before the Court is Defendant Wells Fargo Bank, N.A.'s Motion for Summary Judgment and Brief and Appendix in Support (ECF Nos. 8–10), filed January 23, 2017. Plaintiff Mark...	Apr. 20, 2017	Case		4 S.W.2d
Mentioned by	**47.** **Hudson v. Texas Western Mortgage, LLC** 2017 WL 928134, *4 , S.D.Tex. Pending before the Court are (1) Defendants' Motion to Dismiss (Document No. 20); (2) United States Magistrate Judge Frances Stacy's Memorandum and Recommendation (Document No. 29)...	Mar. 09, 2017	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**48.** Palomino v. Wells Fargo Bank, N.A. 2017 WL 989300, *5 , E.D.Tex. This suit challenges a bank's foreclosure sale of a mortgaged property. The original property owners initially sued the bank and trustee in state court to void the foreclosure...	Feb. 17, 2017	Case		4 S.W.2d
Mentioned by	**49.** Carey v. Fargo 2016 WL 4246997, *3 , S.D.Tex. Pending before the court is defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") motion to dismiss. Dkt. 30. Because Raymond Carey and Mary Shelvin-Carey ("Plaintiffs") have not...	Aug. 11, 2016	Case		4 S.W.2d
Mentioned by	**50.** Sam v. Wells Fargo Bank, N.A. 2016 WL 4470111, *5 , S.D.Tex. On October 30, 2015, Defendant Wells Fargo, N.A. ("Wells Fargo" or "Lender") filed a Notice of Removal with the District Court (Doc. No. 1) ("Notice"). Pending before the Court are...	July 15, 2016	Case		4 S.W.2d
Cited by	**51.** Powe v. Deutsche Bank National Trust Company for Residential Asset Securitization Trust Series 2004-A7 Mortgage Pass-Through Certificates 2004-G 2016 WL 11259077, *6+ , E.D.Tex. Pending before the Court is Defendant Deutsche Bank National Trust Company's ("Defendant") Motion to Dismiss [Dkt. 11]. After reviewing the Motion [Dkt. 11], Response [Dkt. 15] and...	June 15, 2016	Case		4 S.W.2d
Mentioned by	**52.** Kingman Holdings, LLC v. US Bank 2016 WL 3545536, *5 , E.D.Tex. The above-referenced cause of action was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636. Before the Court is...	June 15, 2016	Case		4 S.W.2d
Cited by	**53.** Campo v. Bank of America, N.A. 2016 WL 1162199, *5 , S.D.Tex. Lenardo Campo sued when his home was posted for nonjudicial foreclosure after he defaulted on the mortgage obligations. On October 4, 2007, Campo signed a $102,387.00 Texas Home...	Mar. 24, 2016	Case		4 S.W.2d
Cited by	**54.** Antony v. United Midwest Savings Bank, 2016 WL 914975, *5 , S.D.Tex. Andrew Antony and Jensy Antony challenge the foreclosure of their home. On March 12, 2010, Jensy Antony signed a Texas Home Equity Note in the amount of $129,000 in favor of United...	Mar. 10, 2016	Case		4 S.W.2d
Distinguished by NEGATIVE	**55.** Bauder v. Alegria 480 S.W.3d 92, 98+ , Tex.App.-Hous. (14 Dist.) REAL PROPERTY — Mortgages and Deeds of Trust. Equity warranted setting aside void foreclosure sale without requiring borrower to tender entire amount due on note.	Nov. 17, 2015	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**56. 9900 Coolidge Trust v. Ocwen Loan Servicing, LLC** 2015 WL 6522824, *2 , E.D.Tex. Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge...	Oct. 27, 2015	Case		—
Cited by	**57. Breitling v. LNV Corporation** 2015 WL 5896131, *9 , N.D.Tex. Before the Court is Defendants LNV Corporation's ("LNV") and MGC Mortgage, Inc.'s ("MGC") Motion to Dismiss (doc. 6), filed on March 9, 2015. For the reasons that follow, the...	Oct. 05, 2015	Case		4 S.W.2d
Cited by	**58. Alvarado v. U.S. Bank Nat. Ass'n ex rel. Structured Asset Securities Corp. Mortg. Pass-Through Certificates, Series 2006-BCI** 2015 WL 5608077, *6 , W.D.Tex. Before the Court are Plaintiff's Motion for Partial Summary Judgment, filed July 17, 2015 (Clerk's Dkt. # 9); Defendant's Motion for Summary Judgment, filed August 14, 2015...	Sep. 23, 2015	Case		4 S.W.2d
Cited by	**59. Johnson v. Aurora Loan Services, LLC** 2015 WL 5009228, *3 , S.D.Tex. Pending before the court is defendant Aurora Loan Service, LLC's ("Aurora") motion to dismiss (Dkt.23), and defendants U.S. Bank, N .A. ("U.S.Bank") and DLJ Mortgage Capital,...	Aug. 21, 2015	Case		4 S.W.2d
Cited by	**60. Wade v. Household Finance Corp.** 2015 WL 3540421, *6 , W.D.Tex. Before the Court are Defendant Household Finance Corporation III's Renewed Motion to Dismiss and Brief in Support, filed April 17, 2015 (Clerk's Dkt. # 7); Plaintiff's Response to...	June 04, 2015	Case		—
Cited by	**61. Jacob v. BAC Home Loans Servicing** 2015 WL 3407387, *7 , W.D.Tex. Before the Court are a Motion for Summary Judgment filed by Defendant Bank of America, N.A. ("Defendant") (Dkt.# 21) and various Motions for Relief filed by Plaintiffs Cesar...	May 26, 2015	Case		4 S.W.2d
Mentioned by	**62. Wood v. Bank of America** 2015 WL 2378958, *15 , N.D.Tex. Pending before the Court is Defendant Bank of America, N.A.'s ("BANA" or "Defendant") Motion for Summary Judgment [doc. 44], filed on January 14, 2015. After reviewing the...	Apr. 23, 2015	Case		—
Mentioned by	**63. Wood v. Bank of America** 2015 WL 2378964, *14 , N.D.Tex. Pending before the Court is Defendants Ocwen Loan Servicing, LLC ("Ocwen"); HSBC Bank USA, N.A., as Trustee for Certificate Holders of Deutsche ALT–A Securities Mortgage Loan...	Apr. 23, 2015	Case		—

Treatment	Title	Date	Type	Depth	Headnote(s)
Mentioned by	**64. Russell v. Bac Home Loans Servicing, L.P.** 2015 WL 11545023, *8 , W.D.Tex. Before the Court are the Report and Recommendation of the United States Magistrate Judge (docket no. 15), plaintiff's written objections (docket no. 16) thereto, defendants'...	Mar. 11, 2015	Case		4 S.W.2d
Cited by	**65. Contreras v. SFMC, Inc.** 2015 WL 1011763, *4 , N.D.Tex. Before the Court is a Motion to Dismiss (doc. 5), filed by Defendants CitiMortgage, Inc. and Mortgage Electronic Registration Systems, Inc. (collectively, "Defendants") on July 3,...	Mar. 09, 2015	Case		4 S.W.2d
Mentioned by	**66. Conrad v. SIB Mortg. Corp.** 2015 WL 1026159, *5 , N.D.Tex. Came on for consideration the motion to dismiss plaintiffs' amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, filed in the above action by...	Mar. 06, 2015	Case		—
Mentioned by	**67. Barrett v. Bank of America, N.A.** 2015 WL 668488, *2 , N.D.Tex. Before the Court is Wells Fargo Bank, N.A., as Trustee for the Certificateholders of Banc of America Alternative Loan Trust 2005–10, Mortgage Pass–Through Certificates, Series...	Feb. 17, 2015	Case		4 S.W.2d
Cited by	**68. Ermisch v. HSBC Bank, N.A.** 2015 WL 12862878, *5 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court are PNC Bank, National Association and HSBC, National Association, as Trustee for Deutsche Alt–A...	Feb. 09, 2015	Case		4 S.W.2d
Mentioned by	**69. Sanchez v. Bank of America, N.A.** 2015 WL 418084, *7 , N.D.Tex. Before the Court is Defendant Bank of America, N.A.'s ("BANA") Motion to Dismiss Plaintiff's First Amended Complaint ("Motion to Dismiss"), filed September 2, 2014 (doc. 12)....	Jan. 30, 2015	Case		4 S.W.2d
Cited by	**70. Miceli v. The Bank of New York Mellon** 2015 WL 300671, *16 , W.D.Tex. Before the Court is a Report and Recommendation filed by Magistrate Judge Mark Lane on November 13, 2014 (Dkt.# 20). Plaintiffs Jill and Frank Miceli (collectively, "Plaintiffs")...	Jan. 21, 2015	Case		4 S.W.2d
Mentioned by	**71. Jemison v. CitiMortgage, Inc.** 2015 WL 251754, *2 , S.D.Tex. The plaintiff, John Jemison, defaulted on his mortgage loan. On July 19, 2013, Jemison, representing himself, filed a state-court petition to stop the lender, CitiMortgage, from...	Jan. 20, 2015	Case		4 S.W.2d
Cited by	**72. Rucker v. Bank of America, N.A.** 2014 WL 11310156, *8 , N.D.Tex. This Order addresses Defendants Bank of America, N.A. ("Bank of America") and Wells Fargo Bank, N.A.'s ("Wells Fargo") motion for summary judgment [Doc. 20]. The Court grants the...	Dec. 18, 2014	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**73.** **Farley v. DHI Mortgage Company, Ltd** 2014 WL 12214320, *9 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court are Defendants' Motion for Summary Judgment, filed September 22, 2014 (Clerk's Dkt. #38); Plaintiff's...	Nov. 13, 2014	Case		4 S.W.2d
Cited by	**74.** **Parker v. JPMorgan Chase Bank** 2014 WL 12490003, *7 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court are Defendant JPMC's Motion to Dismiss, filed August 11, 2014 (Clerk's Dkt. #4); Plaintiffs' Motion for...	Oct. 28, 2014	Case		—
Mentioned by	**75.** **Lyons v. America's Wholesale Lender** 2014 WL 5460453, *12 , N.D.Tex. Before the Court is an Amended Motion for Summary Judgment (doc. 37) filed by Defendant Polymathic Properties, Inc. ("Polymathic") on June 17, 2014 and a Motion for Summary...	Oct. 28, 2014	Case		4 S.W.2d
Cited by	**76.** **Marroquin v. Spring Capital Partners, LP** 2014 WL 4700018, *6 , S.D.Tex. The plaintiffs, Mainor Marroquin and Maria Marroquin, defaulted on their mortgage loan and sued in state court to stop the lender from foreclosing. HSBC Mortgage Services (HSBC)...	Sep. 19, 2014	Case		4 S.W.2d
Mentioned by	**77.** **Lombardi v. Bank of America** 2014 WL 4798424, *3 , N.D.Tex. Pursuant to the order dated May 14, 2013, this case was referred for pretrial management. Before the Court is Intervenor's Motion for Summary Judgment, filed September 30, 2013...	Sep. 05, 2014	Case		4 S.W.2d
Cited by	**78.** **Brinson v. Universal American Mortg. Co.** 2014 WL 4354451, *6 , S.D.Tex. This is one of the many cases challenging a mortgage foreclosure. The claims and arguments are well-presented versions of claims and arguments that have become routine in such...	Sep. 02, 2014	Case		4 S.W.2d
Cited by	**79.** **Sanchez v. Wells Fargo Bank NA** 2014 WL 4181337, *2+ , N.D.Tex. The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The District Court reviewed the proposed findings,...	Aug. 22, 2014	Case		4 S.W.2d
Cited by	**80.** **Jemison v. CitiMortgage, Inc.** 2014 WL 2739351, *6 , S.D.Tex. The plaintiff, John Jemison, defaulted on his mortgage loan and sued to stop the lender from foreclosing. On July 19, 2013, Jemison, representing himself, filed a state-court...	June 17, 2014	Case		4 S.W.2d
Cited by	**81.** **James v. Wells Fargo Bank, N.A.** 2014 WL 2123060, *8+ , S.D.Tex. Plaintiffs Perry Alan James and Mary Lynn James ("Plaintiffs") brought this action against defendant Wells Fargo Bank, N.A. ("Wells Fargo") in the 284th Judicial District Court of...	May 21, 2014	Case		3 4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**82.** **Staten v. GE Money Bank, FSB** 2014 WL 11697161, *8 , S.D.Tex. This matter was referred by United States District Judge Vanessa D. Gilmore, for full pre-trial management, pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). (Docket Entry #24). In...	May 13, 2014	Case		—
Cited by	**83.** **Siens v. Trian, LLC** 2014 WL 1900737, *7 , W.D.Tex. Before the Court are: Plaintiffs' First Amended Complaint (Dkt. No. 12); Defendants' Motion for Judgment on the Pleadings, or in the Alternative, Motion for Summary Judgment (Dkt....	May 13, 2014	Case		4 S.W.2d
Cited by	**84.** **Cavada v. Bank of America, N.A.** 2014 WL 12876089, *10 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court is Bank of America, N.A.'s Motion To Dismiss, filed April 7, 2014 (Clerk's Dkt. #5). The matter was...	Apr. 24, 2014	Case		4 S.W.2d
Cited by	**85.** **Williams v. Wells Fargo Bank, N.A.** 2014 WL 1461974, *4 , N.D.Tex. Before the court is Defendant's Motion for Summary Judgment, filed November 18, 2013. Plaintiff's response was originally due on December 9, 2013, but by court order the due date...	Apr. 14, 2014	Case		4 S.W.2d
Cited by	**86.** **Lopez v. Sovereign Bank, N.A.** 2014 WL 1315834, *5 , S.D.Tex. This case arises from the housing crisis. It is one of the many disputes between homeowners seeking to stave off foreclosure and retain their home, and lenders seeking to enforce a...	Mar. 31, 2014	Case		4 S.W.2d
Cited by	**87.** **Saravia v. Benson** 433 S.W.3d 658, 663+ , Tex.App.-Hous. (1 Dist.) REAL PROPERTY - Liens. Foreclosure sale of commercial property was valid.	Mar. 27, 2014	Case		4 5 S.W.2d
Cited by	**88.** **Sanchez v. Wells Fargo Bank, N.A.** 2014 WL 1168912, *2+ , N.D.Tex. The United States Magistrate Judge made findings, conclusions and a recommendation in this case. No objections were filed. The District Court reviewed the proposed findings,...	Mar. 21, 2014	Case		4 S.W.2d
Cited by	**89.** **Hofrock v. Federal National Mortgage Association** 2014 WL 12586366, *7 , W.D.Tex. Before the Court are the Motion to Dismiss of Defendant Federal National Mortgage Association, filed December 2, 2013 (Clerk's Dkt. #5); Plaintiff's Answer to Defendant's Motion to...	Mar. 18, 2014	Case		4 S.W.2d
Cited by	**90.** **Laguette v. U.S. Bank** 2014 WL 11498178, *7 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court are Defendant U.S. Bank's Motion for Summary Judgment, filed January 27, 2014 (Clerk's Dkt. #12);...	Feb. 28, 2014	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**91.** **Godine V. Bank of America, N.A.** 2014 WL 12586364, *10 , W.D.Tex. Before the Court are Defendant Cindee Chard's Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Brief in Support,...	Feb. 26, 2014	Case		4 S.W.2d
Mentioned by	**92.** **Greer v. Bank of America, N.A.** 2014 WL 940338, *8 , N.D.Tex. Pursuant to Title 28, United States Code, Section 636(b), and a Standing Order of Reference from the District Court [D.E. 6], this case has been referred to the United States...	Feb. 20, 2014	Case		4 S.W.2d
Cited by	**93.** **Vanberg v. Ameripro Funding, Inc.** 2014 WL 12537169, *10 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court are Defendants' Motion for Summary Judgment, filed December 12, 2013 (Clerk's Dkt. #20); Plaintiff's...	Jan. 23, 2014	Case		4 S.W.2d
Cited by	**94.** **Paulette v. Lozoya** 2014 WL 12461964, *2 , W.D.Tex. BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendants Bank of America, N.A., Countrywide Home Loans, Inc., MERSCORP...	Jan. 07, 2014	Case		4 S.W.2d
Cited by	**95.** **Smith v. CH Mortgage Company I** 2014 WL 12542928, *3 , W.D.Tex. BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendant Bank of America, N.A.'s Motion for Summary Judgment [#7], to which...	Jan. 03, 2014	Case		4 S.W.2d
Cited by	**96.** **Mcauley v. Ameripro Funding, Inc.** 2013 WL 12130363, *7 , W.D.Tex. Before the Court are Wells Fargo's Motion to Dismiss Plaintiffs' Verified Petition, filed August 19, 2013 (Clerk's Dkt. #6); AmeriPro Funding, Inc. d/b/a Land Mortgage's Motion to...	Dec. 03, 2013	Case		4 S.W.2d
Cited by	**97.** **Wells v. IndyMac Bank** 2013 WL 12106211, *6 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court is Defendants OneWest Bank, FSB, Mortgage Electronic Registration Systems, Inc., and Federal National...	Nov. 18, 2013	Case		4 S.W.2d
Cited by	**98.** **Wells v. Bank of America, N.A.** 2013 WL 12106218, *4 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court is Defendant's Motion for Summary Judgment and Brief in Support, filed October 15, 2013 (Clerk's Dkt....	Nov. 12, 2013	Case		4 S.W.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
Cited by	**99.** **Wells v. Bank of America** 2013 WL 12106220, *2 , W.D.Tex. TO: THE HONORABLE LEE YEAKEL UNITED STATES DISTRICT JUDGE Before the Court is Defendant's Motion for Final Summary Judgment, filed October 9, 2013 (Clerk's Dkt. #12). The motion...	Nov. 12, 2013	Case		4 S.W.2d
Cited by	**100.** **Godine v. Bank of America, N.A.** 2013 WL 12129927, *10 , W.D.Tex. Before the Court are AmeriPro Funding Inc.'s Motion to Dismiss Plaintiffs' Complaint, filed September 26, 2013 (Clerk's Dkt. #13); Defendants Bank of America, N.A., Merscorp...	Nov. 01, 2013	Case		4 S.W.2d

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:

Myra Nguyen on behalf of Jeffrey Jackson
Bar No. 24065485
myra@jjacksonllp.com
Envelope ID: 55915500
Status as of 8/2/2021 2:10 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elizabeth Chandler	24097484	echandler@mcguirewoods.com	8/2/2021 1:58:56 PM	SENT
Stephanie J.Peel		SPeel@mcguirewoods.com	8/2/2021 1:58:56 PM	SENT
Louise Tamberg		mtamberg@mcguirewoods.com	8/2/2021 1:58:56 PM	SENT
Karen Wiley		kwiley@mcguirewoods.com	8/2/2021 1:58:56 PM	SENT