

NO. 2023-30972

IN RE: ORDER FOR FORECLOSURE	§	IN THE DISTRICT COURT OF
CONCERNING 7512 DEL MONTE DR	§	
HOUSTON, TX 77063 UNDER TEX. R.	§	
CIV. PROC. 736	§	
PETITIONER:	§	
	§	
NATIONSTAR MORTGAGE LLC	§	
D/B/A MR. COOPER	§	
	§	
RESPONDENT (S)	§	
	§	HARRIS COUNTY, TEXAS
LINDA S. ALLAN A/K/A LINDA	§	
ALLAN; ZIAD A. ALLAN A/K/A	§	
ZIAD ALLAN	§	
	§	157 th JUDICIAL DISTRICT

RESPONDENT’S MOTION TO VACATE

TO THE HONORABLE COURT:

LINDA S. ALLAN A/K/A LINDA ALLAN Respondent, files this Motion to Vacate the Home Equity Foreclosure Order entered on March 8, 2024, in the above styled and numbered cause, under Texas Rules of Civil Procedure Rule 736.11(c) and would respectfully show the court the following:

I.

FACTUAL AND PROCEDURAL HISTORY

Petitioner filed a Tex. R. Civ. P. 736 Home Equity Foreclosure Application with this Court on or about May 18, 2023. On March 8, 2024, Petitioner was granted an Order by this Court pursuant to its Application for an Expedited Order under Rule 736 on a Home Equity Loan

On April 29, 2024, Respondent filed a separate, original proceeding that put in issue, servicing and enforcement of the loan agreement, contract, or lien sought to be foreclosed in accordance with Tex. R. Civ. P. 736.11 (a). That new proceeding bears Cause No. 2024-27605

and the case is pending in the 11th Judicial District of Harris County, Texas. Respondent hereby gives notice of her filing in accordance with Tex. R. Civ. P. 736.11(c).

II.

THE LAW – ORDER MUST BE VACATED

The plain language of Tex. R. Civ. P. 736.11(c) creates a mandatory duty for the court to vacate a Rule 736 order if the Respondent (borrower) timely files both an independent action under Rule 736.11(a) and a motion to vacate under Rule 736.11(c).

Specifically, Rule 736.11(c) states that "If an order has been signed, the court must vacate the Rule 736 order." This mandatory language requires the court to vacate a signed Rule 736 expedited foreclosure order if the Respondent meets the filing requirements under Rule 736.11(c). Therefore, if the respondent has timely filed the required independent action and motion to vacate, the court does not have discretion and must vacate the Rule 736 order pursuant to the plain language of Rule 736.11(c).

WHEREFORE, Respondent requests that the Court, after due notice and hearing, grant this motion and:

1. Order that the Home Equity Foreclosure Order entered on March 8, 2024 be vacated.
2. Such other relief to which movant may be justly entitled.

MANFRED STERNBERG & ASSOCIATES, P.C.



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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing document to be served upon all parties to this lawsuit in accordance with Rule 21a of the Texas Rules of Civil Procedure by electronic mail and/or facsimile on this 30th day of April, 2024.

Manfred Sternberg

Manfred Sternberg

Unofficial Copy Office of Marilyn Rurg's District Clerk

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing 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.

Manfred Sternberg on behalf of Manfred Sternberg
Bar No. 19175775
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Envelope ID: 87230308
Filing Code Description: Motion (No Fee)
Filing Description: Motion to Vacate per 736.11
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
James frappier		austinF@bdfgroup.com	4/30/2024 4:09:20 PM	SENT
MANFRED STERNBERG		MANFRED@MSTERNBERG.COM	4/30/2024 4:09:20 PM	SENT

Unofficial Copy Office of Marilyn Burgess District Clerk