

**No.2021-03881**

**CHARLES MOSELY,**  
**Plaintiff,**

v.

**NEWREZ MORTGAGE LLC D/B/A**  
**SHELLPOINT MORTGAGE**  
**SERVICING**  
**Defendant.**

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**IN THE DISTRICT COURT**  
  
**OF HARRIS COUNTY, TEXAS**  
  
**215<sup>TH</sup> JUDICIAL DISTRICT**

**PLAINTIFF'S MOTION TO VACATE SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Plaintiff, Charles Mosely, (hereinafter "Plaintiff"), in the above-entitled and numbered cause, and respectfully moves this Court to vacate and set aside the order for summary judgment previously entered by the court in this action on July 15, 2024. As ground for this motion, plaintiff states that the judgment was erroneously and improperly entered for the following reasons:

**INTRODUCTION**

2. Plaintiff, sued defendant, NewRez Mortgage LLC, d/b/a Shellpoint Mortgage Servicing, for escrow account dispute. Subsequently, defendant filed Motion for Summary Judgment. The motion for summary judgment was set for submission/hearing on July 15, 2024.

**BACKGROUND**

3. Defendant served its motion for summary judgment and notice of submission/hearing on plaintiff on June 28, 2024, by mail. The notice of submission/hearing identified the date for the submission/hearing July 15, 2024.

4. Plaintiff was given 16 days' notice. Plaintiff received Notice and Motion for hearing on June 28, 2024, eight days less than the requirement, pursuant to Tex. R. Civ. P. 4, 21a(c), 166a(c).

6. Plaintiff moves this Court to vacate the summary judgment pursuant to Texas Rule of Civil Procedure 329b(d) on the grounds that Plaintiff was not served with notice as required by law, which constitutes a violation of Plaintiff's due process rights. *Clarent Energy Servs. v. Icon Bank of Tex.*, No. 01-18-00854-CV (Tex. App. Nov. 7, 2019); *Gutierrez v. Lone Star National Bank*, 960 S.W.2d 211 (Tex. App. 1997)

7. A copy of the envelope is attached to the affidavit in support of this motion as Exhibit (A).

### LEGAL STANDARD

8. The legal standard for setting aside a summary judgment due to inadequate notice primarily governed by the Texas Rules of Civil Procedure, specifically Rule 166a. This rule outlines the requirements for summary judgment motions, including notice provisions

### ARGUMENTS AND AUTHORITIES

9. Generally, a nonmovant is entitled to 21 days' notice of the date set for hearing or submission of the motion. Tex. R. Civ. P. 166a(c); *Lewis v. Blake*, 876 S.W.2d 314, 316 (Tex. 1994). But if the motion is served by mail, the nonmovant is entitled to 24 days' notice. see

Tex. R. Civ. P. 4, 21a(c), 166a(c); Lewis, 876 S.W.2d at 315-16; Chadderdon v. Blaschke, 988 S.W.2d 387, 388 (Tex. App.—Houston [1st Dist.] 1999, no pet.).

10. Because summary judgment is a harsh remedy, the notice requirements of Rule 166a are strictly construed. Chadderdon, 988 S.W.2d at 388; Luna v. Estate of Rodriguez, 906 S.W.2d 576, 582 (Tex. App.—Austin 1995, no writ). The notice provisions of the rule are intended to prevent the rendition of a judgment without allowing the opposing party a full opportunity to respond on the merits. Chadderdon, 988 S.W.2d at 388.

11. Rule 166a(c) allows a party to file a late motion only "on leave of court, with notice to opposing counsel." Tex. R. Civ. P. 166a(c). Defendant did not secure leave of court to file the motion with less than 21 days'/24 days' notice.

12. In computing the deadline to give proper notice, the day of the hearing is counted, but the day the motion and notice of hearing are served is not. Tex. R. Civ. P. 4; Lewis, 876 S.W.2d at 316; see Tex. R. Civ. P. 166a(c).

13. Because the motion and notice of submission/motion and notice of hearing/ notice of submission/notice of hearing were served by mail, Plaintiff is entitled to 24 days' notice of the hearing, counting from the day after the notice/motion and notice was mailed. Lewis, 876 S.W.2d at 388; see Tex. R. Civ. P. 4, 21a(c), 166a(c).

14. Plaintiff did not receive the 21/24} days' notice of the summary-judgment submission/hearing}; Plaintiff was given only 16 days' notice. Plaintiff received Notice and Motion for hearing on June 28, 2024, four days less than the requirement, pursuant to Tex. R. Civ. P. 4, 21a(c), 166a(c).

## PREJUDICE TO PLAINTIFF

15. This lack of notice prevent plaintiff from preparing and filing a timely response, which is crucial for opposing the motion effectively.
16. Due process violation plaintiff is entitled to receive adequate notice and an opportunity to be heard.
17. Impeded plaintiff, ability to gather and present evidence and affidavits that could raise a genuine issue of material fact, which is necessary to defeat a motion for summary judgment

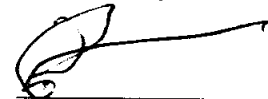
## CONCLUSION

18. Due to the insufficiency of the Notice period, plaintiff request a new hearing date that complies with the Texas Rules of Civil Procedure.

## PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Court grant the Motion to Vacate Summary Judgment and for such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,



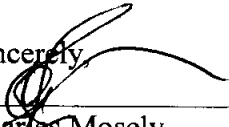
Charles Mosely  
P. O. Box 450662  
Houston, Texas 77245  
*Plaintiff Pro per*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record on August 14, 2024 in accordance with the Texas Rules of Civil Procedure.

R. Martin Dungan  
2001 Ross Ave., Ste. 3600  
Dallas, Texas 75201

Sincerely,



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Charles Mosely  
P. O. Box 450662  
Houston, Texas 77245  
830-522-5836  
Plaintiff Pro per

**PLAINTIFF'S MOTION TO VACATE SUMMARY JUDGMENT**

**VERIFICATION**

STATE OF TEXAS

COUNTY OF Harris

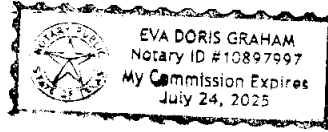
BEFORE ME, the undersigned Notary Public, on this day personally appeared Charles Mosely, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Charles Mosely, I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME on this 13 day of Aug, 2024 by Charles Mosely to certify which witness my hand and seal of office.

*Eva Doris Graham*

Notary Public in and for the State of Texas



**ORDER**

After considering plaintiff Charles Mosely's Motion to Reset Hearing and affidavits. the Court finds there is evidence to Reset Hearing.

Therefore, by this order, the Court does the following:

Granted: \_\_\_\_\_

SIGNED on \_\_\_\_\_, 2024, at a.m./p.m.

\_\_\_\_\_  
PRESIDING JUDGE

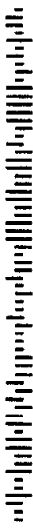
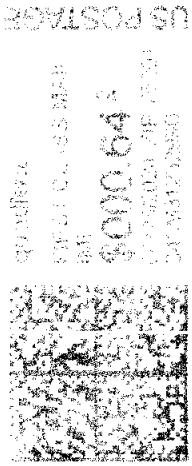
Unofficial Copy Office of Marilyn Burgess District Clerk

**PLAINTIFF'S EXHIBIT**

Defendant's envelope (copy) ..... (A)

Unofficial Copy Office of Marilyn Burgess District Clerk

**akerman**



Charles Mosely  
3005 Nita Street  
Houston, TX 77051

Unofficial Copy Office of Marilyn Burgess District Clerk



### 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.

Envelope ID: 90864259  
Filing Code Description: Motion to Reinstate  
Filing Description: Motion to Reinstate  
Status as of 8/14/2024 8:26 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
MARTIN DUNGAN		martin.dungan@akerman.com	8/13/2024 5:01:41 PM	SENT

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