

constitute a flagrant disregard for the duty of candor owed to this Court and an oppressive tactic against a pro se litigant.

II. Factual Background

1. On July 1, 2024, Attorney Grant, representing Defendants Nationstar Mortgage, LLC and the Bank of New York Mellon, filed a motion to dismiss Nicholson's Second Amended Complaint, asserting that the acceleration of the loan post-foreclosure was timely abandoned.
2. The Defendant's motion hinges on an alleged abandonment of acceleration in 2016, which relies on a void 2014 notice of rescission post-foreclosure. (See Document 60, 60-1)
3. The evidence before the Court unequivocally demonstrates that the 2014 notice of rescission (D214164490) is legally null and void, rendering any subsequent abandonment based thereon equally void.
4. On July 3, 2024, the Magistrate Judge issued a report recommending the dismissal of Nicholson's Second Amended Complaint with prejudice, predicated on the Defendant's argument of timely abandonment of acceleration.
5. Plaintiff, acting pro se, was deprived of an opportunity to respond to the erroneous and misleading assertions presented by the Defendant.

III. Legal Standard

Federal Rule of Civil Procedure 11(b) mandates that attorneys ensure pleadings, motions, and other papers submitted to the court are well-founded in fact, legally tenable, and not interposed for improper purposes. Specifically, Rule 11(b) requires attorneys to certify that, to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. The motion is not being presented for any improper purpose, such as to harass or cause unnecessary delay.
2. The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law. *Federal Rule of Civil Procedure 11(b)*. (*emphasis added*).
3. The factual contentions have evidentiary support.
4. The denials of factual contentions are warranted on the evidence.

IV. Argument

A. Defendant's Motion to Dismiss is Grounded in False and Misleading Information

The Defendant's motion to dismiss is predicated on the assertion that the acceleration of the loan was timely abandoned in 2016, based on a void 2014 notice of rescission. The evidence unequivocally demonstrates that the 2014 notice of rescission is legally null and void, and thus, any purported abandonment based thereon is equally void. Consequently, the arguments advanced in the Defendant's motion to dismiss are devoid of factual or legal merit.

B. Violation of Rule 11(b) Standards

Attorney Grant and McGuireWoods LLP have contravened Rule 11(b) by:

1. Advancing arguments that are legally implausible and unsupported by existing law.
2. Asserting factual contentions that lack evidentiary support.
3. Misleading the Court and causing unnecessary delay and prejudice to the Plaintiff by relying on a void legal document to support their motion.
4. Each obligation must be satisfied; violation of either justifies sanctions. *See, e.g., [Walker v. City of Bogalusa](#), 168 F.3d 237, 241 (5th Cir.1999).*

C. Oppressive Conduct Against a Pro Se Litigant

The conduct of Attorney Grant and McGuireWoods LLP is particularly egregious given that Plaintiff is a pro se litigant. The presentation of false and misleading information, coupled with the lack of an opportunity for Plaintiff to respond, constitutes an oppressive tactic aimed at exploiting Plaintiff's lack of legal representation and understanding.

D. Denial of Opportunity for Plaintiff to Respond

The Magistrate Judge's reliance on the Defendant's arguments, without affording Plaintiff an opportunity to respond to the misleading and false information, further compounds the prejudice suffered by the Plaintiff. This undermines the integrity of

the judicial process and denies the Plaintiff a fair opportunity to contest the motion on its merits.

V. Conclusion

In light of the evidence before the Court and the clear violations of Rule 11(b) by Attorney Grant and McGuireWoods LLP, Plaintiff respectfully requests that the Defendant withdraw its motion to dismiss within the 21-day safe harbor period. Should the Defendant fail to do so, Plaintiff will seek appropriate sanctions against Attorney Grant and McGuireWoods LLP, for a public reprimand and costs incurred in defending against the frivolous motion to dismiss.

Respectfully submitted,
/s/ Harriet Nicholson
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CERTIFICATE OF SERVICE

I hereby certify that on this July 22, 2024, a true and correct copy of the foregoing Motion to Take Judicial Notice of Public Records was served upon all counsel of record via the Court's electronic filing system.

/s/ Harriet Nicholson