

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MORLOCK, LLC A TEXAS	§	
LIMITED LIABILITY COMPANY	§	
<i>Plaintiff(s),</i>	§	
	§	
v.	§	CIVIL ACTION NO. 4:21-cv-03202
	§	
REGINALD PETTEWAY AND	§	
THE BANK OF NEW YORK-MELLON,	§	
FKATHE BANK OF NEW YORK, AS	§	
TRUSTEE FOR THE	§	
CERTIFICATEHOLDERS OF THE	§	
CWABS, INC., ASSET-BACKED	§	
CERTIFICATE SERIES 2006-08	§	
<i>Defendant(s)</i>		

**DEFENDANT THE BANK OF NEW YORK-MELLON'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

TO THE HONORABLE JUDGE OF SAID COURT:

The Bank of New York-Mellon, FKA The Bank of New York, As Trustee for The Certificateholders of The CWABS, Inc., Asset-Backed Certificate Series 2006-08 (“**BONY**”), files this Proposed Findings of Fact and Conclusions of Law and believes the evidence supports the following findings:

Proposed Findings of Fact:

1. BONY holds a lien on real property located at 14431 Daly Drive, Houston, Texas 77077 (the “**Property**”). Specialized Loan Servicing, LLC (“**SLS**”) is the mortgage servicer for BONY.
2. The Property was owned by Reginald Petteway (“Petteway”) who lost title when his homeowners association foreclosed its lien October 4, 2011.
3. Morlock, LLC (“**Morlock**”) purchased the Property at that foreclosure.

4. BONY had accelerated its note more than once, including on January 2, 2007, on May 5, 2016, and again on June 21, 2021.

5. Morlock argues when BONY accelerated the Note May 5, 2016, it never abandoned acceleration and thus the four-year statute of limitations to foreclose has expired. Morlock seeks declaratory relief arguing BONY is barred by the statute of limitations from foreclosing on the Property.

6. On June 16, 2016, Morlock sued Petteway and BONY in Cause No. 2016-37756 in the 80th Dist. Court of Harris County. Morlock non-suited the case the week trial was to begin on September 13, 2019.

7. Despite being dispossessed of ownership of the Property in 2011, Petteway, or someone holding themselves out to be Petteway, continued requesting loss mitigation from BONY/SLS.

8. For instance, on June 17, 2017, after the May 5, 2016 prior acceleration, SLS sent Petteway a responsive letter acknowledging a recent request for loss mitigation. **BONY MSJ, Ex. N.** This was during the time litigation in Cause No. 2016-37756 was still pending.

9. On June 14, 2017, SLS sent Petteway a notice he had been approved for a trial modification and had until July 1, 2017 to accept. The modification required three monthly payments beginning July 2017 in the amount of \$5,255.73 each to proceed. **BONY MSJ, Ex. O.**

10. Petteway failed to make the required payments and on September 7, 2017, SLS advised Petteway the modification was denied for failure to make the required payments. **BONY MSJ, Ex. P.**

11. On August 17, 2018, SLS contacted Petteway with further loss mitigation assistance. **BONY MSJ, Ex. Q.**

12. On December 29, 2020, SLS again reached out to Petteway by mail offering to engage in loss mitigation. **BONY MSJ, Ex. R.**

13. On December 31, 2020, Morlock files suit in Cause No. 2020-83940 in the 21th District Court of Harris County. It was dismissed for want of prosecution July 13, 2021.

14. On June 21, 2021, BONY served another Notice of Acceleration and Sale advising Petteway and Morlock of acceleration and sale to be held August 3, 2021. **BONY MSJ, Ex. U.**

15. On July 29, 2021, Morlock filed this instant lawsuit, the third time Morlock filed a lawsuit raising the claims therein.

Proposed Conclusions of Law:

Morlock’s request for declaratory relief predicated on the argument BONY accelerated its Note May 5, 2016 and never abandoned acceleration, thus the four-year statute of limitations has expired, fails because the evidence shows that the May 5, 2016 acceleration was clearly abandoned and the Note was later accelerated June 21, 2021, thus the four-year statute of limitations did not expire.

16. Morlock’s claims that the four-year statute of limitations has expired, precluding BONY from foreclosing on the Property, fail and are denied.

17. “If acceleration is abandoned before the limitations period expires, the note’s original maturity date is restored and the noteholder is no longer required to foreclose within four years from the date of acceleration.” *Bracken v. Wells Fargo Bank, N.A.*, No. 05-16-01334-CV, 2018 WL 1026268, at *3 (Tex. App.—Dallas Feb. 23, 2018, pet. denied) (mem. op.) (quoting *Leonard v. Ocwen Loan Servicing, L.L.C.*, 616 F. App’x. 677, 679 (5th Cir. 2015) (per curiam)).

18. Despite being dispossessed of ownership in 2011, the evidence supports that Petteway, or someone holding themselves out to be Petteway, requested loss mitigation from BONY in June 2017. BONY responded to the request with an acknowledgement letter June 17, 2017. **BONY MSJ, Ex. N.**

19. The evidence shows BONY offered Petteway a loan modification July 1, 2017. **BONY MSJ, Ex. O.** In doing so, BONY clearly agreed to accept three monthly payments beginning July 1, 2017 in the amount of \$5,255.73 each. **Id.** This was a clear abandonment of the prior acceleration of May 5, 2016 in that BONY expressly agreed to accept less than the full balance due on the Note. Accordingly, the May 5, 2016 acceleration had been abandoned.

20. The evidence shows BONY offered Petteway loss mitigation August 17, 2018. **BONY, MSJ, Ex. Q.**

21. The evidence shows BONY offered Petteway loss mitigation December 29, 2020. **BONY, MSJ, Ex. R.**

22. BONY then accelerated the Note June 21, 2021. **BONY, MSJ, Ex. U.**

23. The four-year statute of limitations has not expired for BONY to foreclose on the Property.

24. Further, in filing this Complaint, Morlock requested attorney fees. **DK# 1-3, p. 4.** In doing so, even if the statute of limitations had expired as to BONY's foreclosure, it was revived by Tex. Civ. Prac. & Rem. Code § 16.069 when Plaintiff sued not only for declaratory relief, but also attorney fees and costs. A request for attorney fees is a request for affirmative relief. See, e.g., *Drc Constr. v. Pickle*, 2022 Tex. App. LEXIS 1132

At the time the trial court signed the written order dismissing DRC Construction's DTPA claim with prejudice on August 4, Pickle had an outstanding request for attorney's fees pursuant to Rule 91a.7. See [HN3 TEX. R. CIV. P. 91a.7](#) (permitting trial court to award party prevailing on motion to dismiss "all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court"). This is an affirmative claim for relief. See *Polansky v. Berenji*, 393 S.W.3d 362, 367 (Tex. App.—Austin 2012, no pet.) (stating that attorney's fees claim is request for affirmative relief if it is based on independent ground or sanction, rather than based solely on defending against other party's claims).

25. Accordingly, Morlock's claims for declaratory relief fail and are denied.

BONY is entitled to judgment in its favor for breach of contract and foreclosure.

26. BONY counterclaimed for judicial foreclosure.

27. The evidence established the existence of a Note, that the Note was in Default, and that foreclosure was a remedy under the Note. **See, e.g., BONY MSJ, Ex.'s A, V.**

28. BONY's summary judgment evidence conclusively establishes the existence of the debt, and that the debt is secured against the Property, the existence of a default, and that the Property that BONY seeks to foreclose is the same Property that is subject to the lien.

29. Consequently, BONY is entitled to a judgment for foreclosure.

Respectfully submitted,

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ATTORNEYS FOR BONY

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was forwarded to all parties and/or their attorneys of record, in accordance with the Federal Rules of Civil Procedure, on this the 13TH day of May, 2024, addressed as follows:

Via Efile and Email: schutzalaw@yahoo.com

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MORLOCK, LLC, A TEXAS

LIMITED LIABILITY COMPANY

/s/ Michael Weems _____

Michael Weems