

CAUSE NO. 202454595

JULIUS LAMUNN NORTH,

Plaintiff,

v.

BRADEN BARNES,

Defendant.

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IN THE DISTRICT COURT

152ND JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

MOTION TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT

Pursuant Chapter 11 of the Texas Civil Practice and Remedies Code, Defendant Braden Barnes (“Defendant”) files this Motion to Declare Plaintiff Julius Lamunn North (“Plaintiff”) a Vexatious Litigant, and respectfully shows the Court as follows:

I.
INTRODUCTION

Enough is enough. Time and time again, for years, Plaintiff has continued to re-litigate his groundless claims relating to the foreclosure proceedings of the real property located at 22127 Nobles Crossing Dr., Spring, Texas (the “Property”). This is yet another of Plaintiff’s most recent lawsuits (he filed 8 lawsuits on the same day all related to the Property) in which he again makes unsubstantiated claims regarding purported fraudulent loan documents and other non-sensical allegations. The allegations are particularly specious against this particular Defendant, who is an attorney at the law firm representing the loan servicer and holder in the non-judicial foreclosure proceedings and has otherwise had nothing to do with the foreclosure process other than representing his clients. Plaintiff makes 13 requests for relief against Defendant in this suit, including but not limited to disgorgement of payments made under the subject mortgage loan (which were not made to Defendant), \$750,000 in unspecified damages, and injunctive relief not only precluding foreclosure of the Property, but also preventing Defendant from making any written or oral statement about Plaintiff.

Based on Plaintiff's lengthy history of filing baseless suits against dozens of defendants, including Defendant here, Defendant moves the Court to declare Plaintiff a vexatious litigant. As set forth below, Plaintiff exceeds the requirements to be declared a vexatious litigant and has threatened to continue filing litigation if Defendant did not acquiesce to his demands until he gets a judgment in his favor. Therefore, Defendant asks this Court to declare Plaintiff a vexatious litigant, require security, and enter a pre-filing order barring Plaintiff from filing suit in Texas as a *pro se* litigant without leave of court.

II. **ARGUMENTS AND AUTHORITIES**

Plaintiff has filed **more than 80 lawsuits** in Harris County District and Justice of the Peace Courts since 2022. *See* Exs. A and B.¹ Plaintiff has filed each of these lawsuits without paying a filing fee, instead relying upon pauper's affidavits. Approximately 30 of those lawsuits relate to the Property and arise from the foreclosure proceedings and/or mortgage debt. Indeed, Plaintiff filed 7 other cases on August 19, 2024, the same day that he filed the instant suit, with a "cut and paste" petition asserting identical allegations and claims.³

A. STANDARD OF REVIEW

Defendant moves this Court to declare Plaintiff a vexatious litigant based on his voluminous number of filings against Defendant and others, and his threat to "continue to file case after case until . . . judgment is made in [his] favor." *See* Ex. C. A defendant may seek a court's

¹ Pursuant to Rule 201 of the Texas Rules of Evidence, Defendant respectfully requests that the Court take judicial notice of Exhibits A and B, both of which are public records that be found, respectively, at the Harris County District Clerk's website <https://www.hcdistrictclerk.com/Edocs/Public/Search.aspx?Tab=tabCivilMobile> and the Harris County Justice Courts attached hereto as Exhibit B, which is a public record available at <https://jpodysseyportal.harriscountytexas.gov/OdysseyPortalJP/Home/WorkspaceMode?p=0>.

² Defendant respectfully requests that the Court take judicial notice of the pauper's affidavit filed by Plaintiff herein.

³ *See* Cause No. 202454420, *North v. Gerald Hunter*; Cause No. 202454620, *North v. Hilary Bonial*; Cause No. 202454611, *North v. Jack Palmer*; Cause No. 202454617, *North v. Chris Poston*; Cause No. 202454630, *North v. Sheri Walmer*; Cause No. 202454631, *North v. Chris Poston*; and Cause No. 202454948, *North v. Gary Ross*.

determination that a *pro se* plaintiff is a vexatious litigant and require security—in the amount of reasonable expenses, including costs and attorney’s fees—should the action proceed. TEX. CIV. PRAC. & REM. CODE §§ 11.051, 11.055; *see also In re Casey*, 589 S. W.3d 850, 852 (Tex. 2019); *McCann v. Spencer Plantation Invs. Ltd.*, No. 14-19-00242-CV, 2021 WL 451102, at *2 (Tex. App.—Houston [14th Dist.] Feb. 9, 2021). After making the determination that the plaintiff is a vexatious litigant, the court “shall order the plaintiff to furnish security for the benefit of the moving defendant.” TEX. CIV. PRAC. & REM. CODE § 11.055. If the plaintiff does not furnish security within the time set by the order, “the court shall dismiss [the] litigation.” *Id.* at § 11.056. Further, “[i]f the litigation is dismissed on the merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.” *Id.* § 11.057.

“Texas’s vexatious litigation statute permits a court to designate a plaintiff a vexatious litigant if the defendant proves that (1) in reasonable probability, the plaintiff will not prevail in the case against the defendant and (2) the plaintiff has a history of *pro se* litigation covered by the statute.” *In re Casey*, 589 S.W.3d at 852. Pursuant to Section 11.054, a court may declare a plaintiff a vexatious litigant if:

[T]he defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

- (1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a *pro se* litigant other than in a small claims court that have been:
 - a. finally determined adversely to the plaintiff;
 - b. permitted to remain pending at least two years without having been brought to trial or hearing; or
 - c. determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;
- (2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, *pro se*, either:
 - a. the validity of the determination against the same defendant as to whom the litigation was finally determined; or

- b. the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined.

TEX. CIV. PRAC. & REM. CODE § 11.054; *see also* *McCann*, 2021 WL 451102, at *2. Using either standard, Plaintiff is clearly a vexatious litigant and must be stopped from continuing to file suit after suit relating to the Property.

B. PLAINTIFF’S FILINGS MEET THE “NUMEROSITY METHOD” OF SECTION 11.054(1)

Plaintiff has commenced, prosecuted, and maintained more than five cases as a *pro se* litigant that were determined adversely against him in the seven years preceding this motion. TEX. CIV. PRAC. & REM. Code § 11.054(1). Plaintiff’s filings include:

- (1) *In re Julius Lamunn North*, Case No. 4:22-cv-04393, which was filed on December 20, 2022, in the U.S. District Court for the Southern District of Texas, and dismissed on the Court’s initiative for failure to establish a basis for federal subject matter jurisdiction on January 20, 2023. *See In re North*, No. 4:22-cv-04393, 2023 WL 348345, at *2 (S.D. Tex. Jan. 20, 2023).
- (2) *North v. HomeLoanServ, et al.*, Cause No. 2023-48766 filed in the 151st Judicial Court of Harris County, Texas, on August 1, 2023, and removed to the U.S. District Court for the Southern District of Texas and assigned Case No. 4:23-cv-03211. This case relates to the Property and foreclosure, and contained nearly identical allegations as the instant case. The case was dismissed on the defendants’ motion to dismiss on December 14, 2023. *See* Ex. D.
- (3) *North v. Central Houston Cadillac*, Cause No. 2023-48782, in the 333rd District Court of Harris County, Texas, which was filed on August 1, 2023, and dismissed on defendant’s motion to dismiss pursuant to Rule 91a on February 14, 2024. *See* Ex. E.

- (4) *North v. Discover Financial Services*, originally filed in the 215th District Court of Harris County, Texas, as Cause No. 2023-48740 on August 1, 2023, and removed to federal court and assigned Case No. 4:23-cv-03313. The case was dismissed on the defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on October 25, 2023. *See North v. Discover Financial Services*, No. 4:23-cv-03313 at ECF No. 6 (S.D. Tex., Oct. 24, 2023). Plaintiff filed a motion to reinstate the case on December 27, 2023, which was denied on January 23, 2024. *Id.* at ECF No. 8 (S.D. Tex., Jan. 23, 2024).
- (5) *North v. Spring Independent School District*, originally filed in the 190th District Court of Harris County, Texas, on August 1, 2023, as Cause No. 2023-48753 and removed to federal court and assigned Case No. 4:23-cv-03749. The case was dismissed on the defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on March 8, 2024. *See North v. Spring Independent School District*, No. 4:23-cv-03749 at ECF No. 14 (S.D. Tex., Mar. 14, 2024).
- (6) *North v. TransUnion*, originally filed in the 125th District Court of Harris County, Texas, on August 1, 2023, and removed to federal court and assigned Case No. 4:23-cv-03220. Plaintiff twice failed to appear at Court-ordered conferences, and the Court therefore dismissed the case with prejudice for lack of prosecution on February 6, 2024. *See North v. TransUnion*, No. 4:23-cv-03220 at ECF No. 18 (S.D. Tex., Feb. 6, 2024).
- (7) *North v. Capital One Auto Finance*, originally filed in the 55th District Court of Harris County, Texas, as Cause No. 2023-48777, on August 1, 2023, and removed to federal court and assigned Case No. 4:23-cv-03307. The case was dismissed with prejudice on the defendant's motion to dismiss pursuant to Federal Rule of Civil

Procedure 12(b)(6) on January 3, 2024. *See North v. Capital One Auto Finance*, No. 4:23-cv-03307 at ECF No. 16 (S.D. Tex., Jan. 3, 2024).

- (8) *North v. Capital One, N.A.*, originally filed in the 189th District Court of Harris County, Texas, as Cause No. 2023-48788, on August 1, 2023, and removed to federal court and assigned Case No. 4:23-cv-03309. The case was dismissed on the defendant's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) on May 22, 2024. *See North v. Cap. One, N.A.* No. 4:23-CV-03309, 2024 WL 1996130, at *1 (S.D. Tex. May 6, 2024), *report and recommendation adopted*, 2024 WL 2332934 (S.D. Tex. May 22, 2024).
- (9) *North v. Lamar University, et al.*, Cause No. 2023-48773, in the 270th District Court of Harris County, Texas, which was filed on August 1, 2023, and dismissed on the defendant's plea to the jurisdiction on March 12, 2024. *See Ex. F.*
- (10) *North v. Post Wood Municipal Utility District.*, Cause No. 2023-48768 in the 165th District Court of Harris County, Texas, which was filed on August 1, 2023, and dismissed on the defendant's plea to the jurisdiction on June 14, 2024. *See Ex. G.*
- (11) *North v. Harris Central Appraisal District*, originally filed in the 80th District Court of Harris County, Texas, on August 1, 2023, and removed to federal court and assigned Case No. 4:23-cv-04067. The case was dismissed on August 27, 2024, on the defendant's motion to dismiss. *See North v. Harris Central Appraisal District*, No. 4:23-cv-04067, 2024 WL 3976853 (S.D. Tex. Aug. 27, 2024).
- (12) *North v. Idaho Housing and Finance Association, et al.*, Cause No. 2023-49064 filed in the 133rd Judicial District Court of Harris County, Texas, on August 2, 2023, and removed to the U.S. District Court for the Southern District of Texas and assigned Case No. 4:23-cv-03216. This case relates to the Property and foreclosure,

and contained nearly identical allegations as the instant case. The case was consolidated with and into Case No. 4:23-cv-03211, which was dismissed on the defendants' motion to dismiss on December 14, 2023. *See Ex. D.*

- (13) *North v. Bonial & Associates, P.C.*, Cause No. 2023-49065 filed in the 125th Judicial District Court of Harris County, Texas, on August 2, 2023, and removed to the U.S. District Court for the Southern District of Texas and assigned Case No. 4:23-cv-03669. This case relates to the Property and foreclosure, and contained nearly identical allegations as the instant case. The case was consolidated with and into Case No. 4:23-cv-03211, which was dismissed on the defendants' motion to dismiss on December 14, 2023. *See Ex. D.*
- (14) *North v. Mohela*, Cause No. 2023-49068 filed on August 2, 2023, in the 55th District Court of Harris County, Texas. On August 20, 2024, final summary judgment was entered in favor of the defendant that Plaintiff take nothing on any and all of his claims asserted in the matter. *See Ex. H.*
- (15) *North v. USA Fact, Inc.*, Cause No. 2023-50486, in the 189th District Court of Harris County, Texas, which was filed on August 7, 2023, and which was dismissed on December 12, 2023 on the defendant's Rule 91a motion to dismiss. The Court entered an order awarding the defendant approximately \$32,000 in attorneys' fees to be paid by Plaintiff. *See Ex. I.*
- (16) *North v. American Express Company*, Cause No. 2023-50461 filed on August 7, 2023, in the 234th District Court of Harris County, Texas, which was dismissed on July 29, 2024, when the Court sustained the defendant's special appearance. *See Ex. J.*

- (17) *North v. Texas Department of Savings and Mortgage Lending*, Cause No. 2023-50470, which was filed on August 7, 2023, in the 270th District Court of Harris County, Texas, and which was dismissed with prejudice on the defendant's plea to the jurisdiction and Rule 91a motion on April 1, 2024. *See* Ex. K.
- (18) *North v. Experian, et al.* Cause No. 2023-49060, in the 189th District Court of Harris County, Texas, which was filed on August 7, 2023, and dismissed on March 19, 2024, on the defendant's Rule 91a motion to dismiss. *See* Exhibit L.
- (19) *North v. HomeLoanServ, et al.*, Case No. 24-20283, Plaintiff's appeal of the related, consolidated Case No. 4:23-cv-03211 to the Fifth Circuit Court of Appeals, which was dismissed on July 17, 2024, due to Plaintiff's failure to pay the required fee. Plaintiff filed a motion to reopen this case on August 27, 2024, which was denied on August 28, 2024. *See* Ex. M.

In addition to the cases above which have been finally adjudicated adversely to Plaintiff, Plaintiff has also filed more than 40 additional lawsuits as a *pro se* litigant in the Justice Court of Harris County. *See* Ex. B. In total, Plaintiff has filed more 40 cases in Harris County District Courts, including those above, as well as others that are currently pending. *See* Ex. A.

Based on the above, Plaintiff has certainly commenced, prosecuted, and maintained more than five cases as a *pro se* litigant that were determined adversely against him in the seven years preceding this motion. TEX. CIV. PRAC. & REM. Code § 11.054(1). Plaintiff is exactly the type of abusive litigant the Texas Legislature sought to thwart pursuant to Chapter 11 of the Texas Civil Practice and Remedies Code. Such numerous litigations, and relitigations, including the present suit, establish the requirements of Section 11.054(1), sufficient to declare Plaintiff a vexatious litigant, require security, and the entry of a pre-filing order.

C. PLAINTIFF’S FILINGS MEET THE “RELITIGATION METHOD” OF SECTION 11.054(2)

In addition to filing numerous lawsuits which have been finally adjudicated adversely to Plaintiff, Plaintiff nonetheless continues to repeatedly relitigate or attempt to relitigate, *pro se*, a cause of action, claim, controversy, or any of these issues of fact or law determined or concluded by the final determination. Such attempted relitigations, including the present suit, establish that Plaintiff should be declared a vexatious litigant pursuant to Section 11.054(2) as well.

Specifically, Plaintiff filed three separate lawsuits against the mortgage servicer, the holder of the loan, and the law firm handling the non-judicial foreclosure of the Property, which, after removal, were consolidated into one case. *See North v. HomeLoanServ, Inc.*, No. 4:23-cv-03211 at ECF No. 7 (S.D. Tex., Oct. 13, 2023). The Southern District of Texas dismissed Plaintiff’s claims against all three defendants in their entirety on December 14, 2023. *See Ex. D.* After dismissal, Plaintiff has filed 13 post-judgment motions or other documents in that federal case seeking to have the Court reconsider the same or similar relief as originally requested—all of which have been denied. *See North v. HomeLoanServ, Inc.*, No. 4:23-cv-03211 at ECF Nos. 26, 30, 32, 34, 36, 40-47. Plaintiff simultaneously appealed the federal court’s ruling to the Fifth Circuit Court of Appeals, which was dismissed due to Plaintiff’s failure to pay the required fee. *Id.*, ECF No. 29; *see also North v. HomeLoanServ, Inc.*, Case No. 24-20283 (5th Cir., June 21, 2024).

During the same time period, on April 24, 2024, Plaintiff filed a motion to reinstate Cause No. 2023-49065 (*North v. Bonial & Associates, P.C.*) in the 125th District Court seeking to have the case reopened despite the removal and final judgment entered in the federal court, which was denied. *See Ex. N.* Even after Judge Carter denied Plaintiff’s motion to reinstate the case, Plaintiff filed a motion seeking injunctive relief precluding, among other things, foreclosure of the Property in the same case. *See Ex. O.*

Moreover, Plaintiff has threatened that he will “continue to file case after case until . . . a judgment is made in my favor.” *See* Ex. C. Plaintiff has thereby admitted that he intends to continue relitigating the same issues, despite final determinations against him. *Id.* To prevent future abuse of the state’s judicial system while Defendant (and others) continue to incur fees and expenses fighting his baseless claims, this Court should declare Plaintiff a vexatious litigant, require security, and enter a pre-filing order barring Plaintiff from filing suit as a *pro se* litigant without leave of court.

C. PLAINTIFF CANNOT AND WILL NOT PREVAIL IN THE CURRENT SUIT

As set forth above, Defendant has established that Plaintiff is a vexatious litigant and serial filer in Texas state courts. Plaintiff has filed numerous frivolous and repetitive lawsuits concerning the Property and mortgage debt, which is the subject of the instant suit. Relative to the Property and mortgage debt at issue herein, Plaintiff originally filed suit against the mortgage servicer, the mortgage holder, and Defendant’s law firm which is handling the non-judicial foreclosure proceedings. This case was finally adjudicated and dismissed by the Southern District of Texas on December 14, 2023. *See* Ex. D. Since that time, Plaintiff has filed at least a dozen new cases asserting the same bogus claims seeking to avoid the foreclosure of the Property, including the instant matter.⁴

In a recent order in a related case in the Southern District of Texas, Judge Eskeridge held that Plaintiff was not entitled to a temporary restraining order precluding foreclosure of the Property because “Plaintiff failed to show a substantial likelihood of prevailing on the merits” and that “Plaintiff failed to show a substantial threat of suffering irreparable injury if the injunction

⁴ *See* Cause No. 202454420, *North v. Gerald Hunter*; Cause No. 202454620, *North v. Hilary Bonial*; Cause No. 202454611, *North v. Jack Palmer*; Cause No. 202454617, *North v. Chris Poston*; Cause No. 202454630, *North v. Sheri Walmer*; Cause No. 202454631, *North v. Chris Poston*; Cause No. 202454948, *North v. Gary Ross*; *North v. Idaho Housing and Finance Association*, No. 241100221746, Harris County Justice Court 1-1; Cause No. 202444147, *North v. Cardinal Financial Company LP*; Cause No. 202444150, *North v. MERSCORP Holdings Inc.*; Cause No. 202437616, *North v. Bonial & Associates, P.C.*

isn't granted." See Ex. P. Judge Eskeridge also found that it was "established—and conceded by Plaintiff—that he is in substantial arrears on amounts owed on his mortgage, and that he's unable to make up the amount in arrears." *Id.*

His claims fare no better here. As an initial matter, Defendant is an attorney representing the mortgage servicer and owner in non-judicial foreclosure proceedings, and therefore enjoys qualified immunity from suit by Plaintiff, a party adverse to his clients. See *Chapman Children's Tr. v. Porter & Hedges, LLP*, 32 S.W. 3d 429, 440 (Tex. App.—Houston [14th Dist.] 2000, pet. denied); *Villanueva v. Wells Fargo Home Mortgage*, No 4:16-CV-320, 2016 WL 3917641, at *2 (E.D. Tex. Jul. 20, 2016); *Campbell v. Mortg. Elec. Registration Sys., Inc.*, No. 03-11-00429-CV, 2012 WL 1839357, at *5 (Tex. App.—Austin 2012, pet. denied). Plaintiff's claims for conversion and trespass to chattel also fail because they do not apply to real property. See *Corral-Lerma v. Border Demolition & Env't Inc.*, 467 S.W.3d 109, 124 (Tex. App.—El Paso) ("Texas does not recognize conversion claims for real property."); see also *Gaylor v. Stiver*, No. 10-12-00305-CV, 2014 WL 1778416, at *4 (Tex. App.—Waco May 1, 2014) (setting forth elements for trespass to chattels claim versus trespass to real property). Further, Plaintiff's claims are barred by *res judicata* from the Southern District of Texas order dismissing Plaintiff's virtually identical claims against the same or similar parties. See Ex. E; see also *Barr v. Resol. Tr. Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 629 (Tex. 1992) ("[R]es judicata 'is not only final as to the matter actually determined, but as to every other matter which the parties might litigate in the cause, and which they might have decided.'" (quoting *Foster v. Wells*, 4 Tex. 101, 104 (1849))). Finally, Plaintiff's Deceptive Trade Practices Act ("DTPA") claims fail because they are based on the mortgage debt, and "a person who seeks only to borrow money is not a consumer because the lending of money involves neither a good nor a service." *La Sara Grain Co. v. First Nat. Bank of Mercedes*, 673

S.W.2d 558, 566 (Tex. 1984). Consequently, Plaintiff has no reasonable probability to prevail on his claims in this suit.

III.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant requests that the Court declare Plaintiff a vexatious litigant, require security, and enter a pre-filing order prohibiting Plaintiff from filing any new suit in Texas as a *pro se* litigant without first obtaining permission from a local administrative judge. Defendant further requests such other and further relief, at law and in equity, to which she may be justly entitled.

Respectfully submitted,

/s/ Elizabeth Hayes

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**ATTORNEYS FOR DEFENDANT
BRADEN BARNES**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all counsel of record pursuant to the Texas Rules of Civil Procedure *via e-service* on this 11th day of September, 2024.

/s/ Elizabeth Hayes

Attorney for Defendant

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.

Kristi Russelburg on behalf of Elizabeth Hayes

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Filing Code Description: Motion (No Fee)

Filing Description: Defendant's Motion to Declare Plaintiff A Vexatious Litigant

Status as of 9/11/2024 4:33 PM CST

Case Contacts

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