TABLE OF APPENDICES

TABLE OF APPENDICES

United States Court of Appeals for the Fifth Circuit

No. 22-50427

United States Court of Appeals
Fifth Circuit
FILED
June 27, 2022
Lyle W. Cayce
Clerk

CARLOS ANTONIO RAYMOND,

Plaintiff—Appellant,

versus

JP MORGAN CHASE BANK,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:19-CV-596

Before SMITH, ELROD, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 27, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50427 Raymond v. JP Morgan
USDC No. 5:19-CV-596

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Ms. Rachel Lee Hytken
Mr. William Lance Lewis
Mr. Adam Poncio
Ms. Marcie Lynn Schout

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CARLOS ANTONIO RAYMOND,	§	
	§	
Plaintiff,	§	
	§	
v.	§	SA-19-CA-596-OLG (HJB)
	§	
J.P. MORGAN CHASE BANK, and FLAG STAR BANK,	§	
	§	
Defendants.	§	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

To the Honorable Orlando L. Garcia, Chief United States District Judge:

This Report and Recommendation concerns the Motion for Summary Judgment filed in this case by Defendant JPMorgan Chase Bank, N.A. ("JPMorgan"). (Docket Entry 203.) This case was referred to the undersigned for consideration of pretrial matters. (Docket Entry 22.) For the reasons set out below, I recommend that JPMorgan's motion (Docket Entry 203) be **GRANTED**, and that Plaintiff's case be **DISMISSED WITH PREJUDICE**.

I. Jurisdiction.

This Court has jurisdiction over Plaintiff's claims against Defendants under 28 U.S.C. §§ 1331 and 1332(a). The undersigned has authority to issue this Report and Recommendation pursuant to 28 U.S.C. § 636(b).

II. Background.

The undersigned has discussed the background of this case in previous orders and in a previous Report and Recommendation. (*See* Docket Entries 63, 103, 157.) A summary of the facts relevant to JPMorgan's pending motion are set out below.

Plaintiff took out a residential mortgage loan in October 2009 to purchase the property located at 8054 Silver Grove in San Antonio, Texas. (Docket Entry 40, at 2.) JPMorgan was the servicer of Raymond's loan, and it made automatic monthly withdrawals from Plaintiff's bank account to cover his mortgage payments. (Docket Entry 52, at 2; *cf.* Docket Entry 40, at 3.)

Between 2013 and 2016, Plaintiff fell delinquent in his payments. (*See* Docket Entry 204-1, at 126–31.) In August 2016, JPMorgan offered Plaintiff a 12-month repayment plan, which Plaintiff accepted. (*Id.* at 48–61.) After bringing his loan current in September 2017, Plaintiff re-enrolled in an automatic monthly payment program. (*Id.* at 62–63.)

In November 2018, two events occurred that led to the current dispute between the parties. On November 19, 2018, JPMorgan sent Plaintiff a notice that the serving of the loan would be transferred to Flagstar Bank, FSB ("Flagstar").[1] (Docket Entry 204-1, at 64.) The notice advised Plaintiff that his automatic payments would cease, but that he could contact Flagstar to see if a similar service was available. (*Id.* at 64–65.) The notice provided Plaintiff with Flagstar's contact and payment information.

Meanwhile, Plaintiff contacted JPMorgan to request that automatic payments be paused for December 2018 and January 2019. (Docket Entry 204-1, at 69.) On November 20, 2018, the day after the transfer-notice letter, JPMorgan granted his request and sent a letter to Plaintiff instructing him to mail his payments to JPMorgan at an address in Arizona. (*Id.* at 72.)

Ultimately, Plaintiff made no December or January mortgage payments to either JPMorgan of Flagstar. Indeed, he made no further payment to either bank, except for one attempt to pay three months' worth of payments to Flagstar in April 2019. (Docket Entry 204-1, at 13.) This offer was not accepted, and ultimately Flagstar sought to foreclose on the loan. Proceeding *pro se*, Plaintiff

[1] Plaintiff's claims against Flagstar, a codefendant in these proceedings, were dismissed on October 6, 2020. (Docket Entry 158.)

filed this suit against JPMorgan and Flagstar in an effort to stop the foreclosure sale, which ultimately occurred on January 7, 2020. (Docket Entry 10; Docket Entry 130, at 1.)[2]

JPMorgan and Flagstar filed motions to dismiss. (Docket Entries 52, 53.) In his previous Report and Recommendation, the undersigned recommended that Flagstar's motion be granted in its entirety, and that JPMorgan's motion be granted in part. (Docket Entry 103.) The undersigned recommended that two of Plaintiff's claims against JPMorgan be allowed to go forward: a claim of fraudulent misrepresentation and a statutory claim that Plaintiff was not provided proper notice that his loan was transferred to another servicer. (*Id.* at 19.) The District Court adopted the recommendation over objection. (Docket Entry 158.)

JPMorgan has now moved for summary judgment on the two remaining claims. (Docket Entry 203.) Plaintiff has filed six pleadings in response. (Docket Entries 211, 217, 223, 224, 225, 229, and 231), and JPMorgan has filed a reply (Docket Entry 232).

III. Analysis.

A. *Applicable Legal Standard.*

A party is entitled to summary judgment under Federal Rule of Civil Procedure 56 if the record shows no genuine issue as to any material fact exists and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). A party against whom summary judgment is sought may not rest on the allegations or denials in his pleadings, but instead must come forward with sufficient evidence to demonstrate a "genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute concerning a material fact is "genuine," and therefore sufficient to overcome a summary judgment motion, "if the evidence is such that a reasonable jury could return

[2] Plaintiff also filed another lawsuit against the same parties, SA-20-CA-161-OLG, which was removed to this Court, transferred to Chief District Judge Garcia, and consolidated with the instant case. He also has a separate case against Flagstar pending before District Judge Fred Biery, SA-20-CA-1439-FB (HJB).

a verdict for the nonmoving party." *Id.* The moving party "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting FED. R. CIV. P. 56).

"When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citations omitted). "Although the evidence is viewed in the light most favorable to the nonmoving party, a nonmovant may not rely on 'conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence' to create a genuine issue of material fact sufficient to survive summary judgment." *Barrera v. MTC, Inc.*, No. SA-10-CV-665-XR, 2012 WL 1202296, at *2 (W.D. Tex. Apr. 10, 2012) (quoting *Freeman v. Tex. Dep't of Crim. Justice*, 369 F.3d 854, 860 (5th Cir. 2004)).

B. *JPMorgan's Motion for Summary Judgment.*

JPMorgan moves for summary judgment on both of Plaintiff's outstanding claims: (1) fraudulent misrepresentation and (2) failure to provide notice of the loan transfer as statutorily required. (Docket Entry 203, at 2.) This Report and Recommendation considers each claim in turn.

1. *Fraudulent Misrepresentation.*

In order to go forward on a claim of fraudulent misrepresentation, Plaintiff must raise a genuine issue as to the following elements under Texas law: (1) the defendant made a false, material representation; (2) the defendant knew the representation was false or made it recklessly

as a positive assertion without any knowledge of its truth; (3) the defendant intended to induce the plaintiff to act upon the representation; and (4) the plaintiff actually and justifiably relied upon the representation and (5) suffered injury as a result. *Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 577 (Tex. 2001). JPMorgan argues that Plaintiff cannot raise a genuine dispute as to meet the first, third, or fourth elements of this claim. (Docket Entry 203, at 9.) Construing the evidence favorably to Plaintiff, the undersigned disagrees with JPMorgan as to the first and third elements, but agrees with it as to the fourth.

JPMorgan argues that it made no false statement because, consistent with its November 20, 2018, letter, it actually did cease automatic withdrawals from Plaintiff's account in December 2018 and January 2019. (Docket Entry 203, at 10.) However, that is not the only representation that JPMorgan made. The November 20, 2018, letter also indicated that automatic payments would be paused "until February 2019," which strongly suggests that automatic payments would resume at that time. (*See* Docket Entry 204-1, at 72.) Indeed, the letter goes on to say that Plaintiff should send his December 2018 and January 2019 payments to JPMorgan at a physical address "until your payments resume." (*Id.*) Taken together, these statements tend to indicate that Plaintiff's automatic payments to JPMorgan would resume in February 2019. This indication is further corroborated by the email message sent to Plaintiff on the same date as the letter by JPMorgan employee Abraham Gutierrez; the email indicates that the two-month pause in automatic payments was "the only time [Plaintiff could] make this request in a 12-month period." (*Id.* at 71.) There would be no reason to send such a message if automatic payments would not resume after the two-month pause. Finally, Plaintiff has presented as evidence a JPMorgan letter from April 2019, stating that automatic mortgage payments would resume in February 2019. (Docket Entry 211-1, at 10.)

Contrary to the representations made on November 20, 2018, it is clear that no automatic payments would resume to JPMorgan. Just one day earlier, JPMorgan sent Plaintiff a notice that the serving of the loan would be transferred to Flagstar, and that after December 4, 2018, no payments would be accepted by to JPMorgan. (Docket Entry 204-1, at 64.) The notice further advised Plaintiff that the automatic-payment would not merely be paused, but canceled, and that any new automatic-payment system would have to be established with Flagstar. (*Id.* at 64–65.) Accordingly, significant evidence exists that any representation that the suspension in payments for December 2018 and January 2019 was merely a "pause" was false.[3]

JPMorgan also contends that it did not intend to induce Plaintiff's reliance on its false statements, citing the "reason-to-expect" standard that applies under Texas law. (Docket Entry 203, at 12 (citing *Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 219 (Tex. 2011)). However, construing the evidence in Plaintiff's favor, there is a genuine dispute as whether JPMorgan should have had a reason to expect that its statements would induce Plaintiff to believe that his automatic payments had merely been paused until February 2019, rather than stopped altogether. *See Renfroe v. Parker*, 974 F.3d 594, 599 (5th Cir. 2020) (on summary judgment, "[a]ll facts and reasonable inferences are construed in favor of the nonmovant") *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009) (same).

As to the fourth element of the cause of action, however, JPMorgan is correct: there is no genuine dispute that Plaintiff actually relied on JPMorgan's misstatement as to the "pause" in

[3] JPMorgan also suggests that the "pause" misrepresentation was not material. It points out that it had already notified Plaintiff that automatic payments would terminate once the loan was transferred to Flagstar. (Docket Entry 203, at 10.) However, the mere fact that the November 20 statement contradicted JPMorgan's previous statement does not render it immaterial. JPMorgan also suggests that the representation was immaterial because the automated payment system was independent from Plaintiff's obligation to pay, and because JPMorgan had the right to suspend automatic payment service if Plaintiff failed to make payments in December and January. (*See id.*) These arguments are related to the reliance prong of the fraudulent-misrepresentation claim, as set out below.

automatic payments. As noted above, to meet the reliance element of a fraudulent misrepresentation claim, a plaintiff must establish both actual and justifiable reliance. *Ernst*, 51 S.W.3d at 577; *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010). Reliance requires a change in position based on an alleged misrepresentation. *See Coffel v. Stryker Corp.*, 284 F.3d 625, 636 (5th Cir. 2002) ("[F]raud does not exist unless the defendant's representations induced the plaintiff to take a particular course of action." (citing *Johnson & Johnson Med., Inc. v. Sanchez*, 924 S.W.2d 925, 930 (Tex. 1996))). Here, Plaintiff did not take a course of action in reliance on JPMorgan's statements in the November 20, 2018, letter. The letter instructed Plaintiff to mail his payments in lieu of an automatic deduction; however, the evidence is undisputed that Plaintiff did not mail any payments. Nor did Plaintiff rely on the November 19, 2019, letter, which instructed him to pay Flagstar. To the contrary, the record makes clear that Plaintiff made no mortgage payments to either bank until his attempt at a partial payment in April 2019, four months later. (Docket Entry 204-1, at 12–13.)[4]

In response to JPMorgan's summary judgment motion, Plaintiff argues for a broader reading of JPMorgan's alleged misrepresentations. He claims that, rather than agreeing merely to pause automatic payments in December 2018 and January 2019, JPMorgan had agreed to forbear from requiring any payments at all during those months. (*See* Docket Entry 223, at 5–6; *cf.* Docket Entry 211, at 4.) The summary judgment evidence does not support such a reading. The November 20, 2018, letter from JPMorgan—which Plaintiff includes as an exhibit to his response—does not

[4] The cited docket entry refers to requests for admission propounded by JPMorgan to Plaintiff on March 1, 2021. (*See* Docket Entry 204-1, at 1.) Uncontradicted affidavit evidence shows that Plaintiff did not respond to the requests (*see id.* at 2); thus, the matters are deemed admitted under Federal Rule of Civil Procedure 36(a)(3) and therefore conclusively established under Federal Rule of Civil Procedure 36(b). Additionally, Plaintiff has submitted bank records which confirm that no payments were made to JPMorgan or Flagstar during the relevant period, by automatic withdrawal or otherwise. (*See* Docket Entry 211-1, at 33–54.)

agree to postpone any payment. To the contrary, it plainly instructs Plaintiff to send the December and January payments to Chase. (Docket Entry 231, at 12; *cf.* Docket Entry 204-1, at 72, 169.)[5] Nothing in JPMorgan's written communications with Plaintiff supports the claim that the bank agreed to allow him to entirely forego payments for those months.

Plaintiff argues that a promise to forbear in requiring payment, along with a promise not to foreclose, was made by JPMorgan employee Abraham Gutierrez in telephone communications leading up to the November 20, 2018, written communications. (*See* Docket Entry 228, at 16.) Plaintiff does not support this argument with any evidence other than his own "Affidavit of Non-Receipt and Implied Undertaking." (*See* Docket Entry 211, at 4–7.) Assuming that this is proper summary judgment evidence, it fails to support Plaintiff's claim. As JPMorgan correctly argues, promises not to require payment and not to foreclose would vary the terms of the loan; under the statute of frauds, an agreement regarding the modification of a loan must be in writing to be valid. *See Martins v. BAC Home Loans Serv., L.P.*, 722 F.3d 249, 256 (5th Cir. 2013) (citing TEX. BUS. & COMM. CODE § 26.02(b)). A fraudulent-misrepresentation theory cannot be used to circumvent the statute. *Nagle v. Nagle*, 633 S.W.2d 796, 801 (Tex. 1982); *Wilson v. Dallas Cowboys Football Club, Inc.*, 50 F.3d 1033 (5th Cir. 1995).

For all these reasons, JPMorgan is entitled to summary judgment on Plaintiff's fraudulent misrepresentation claim.

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[5] Plaintiff repeatedly claims that counsel for JPMorgan has fabricated or doctored the documentary evidence that has been presented to the Court. (*See, e.g.*, Docket Entry 223, at 9; Docket Entry 224, at 3.) Such claims are frivolous. Although some documents have been redacted in accordance with the Court's rules for the redaction of identifying information, the documents submitted are properly supported by a sworn business record affidavit and an affidavit attesting to Plaintiff's admissions as to their authenticity. (Docket Entry 204-1, at 1–2, 86–90.) This is proper summary judgment evidence. *See* FED. R. CIV. P. 56(c)(1)(A). Indeed, Plaintiff himself often relies on the same records in arguing his case.

2. *Statutory notice violations.*

In its motion to dismiss, JPMorgan did not seek to dismiss Plaintiff's claim that it failed to provide Plaintiff with proper statutory notice that his loan was being transferred to Flagstar; it indicated that such a claim was more appropriately resolved by summary judgment. (*See* Docket Entry 52, at 3; Docket Entry 103, at 6 n.1.) It has now moved for summary judgment on this claim.

The Real Estate Settlement Procedures Act ("RESPA") requires a loan servicer to notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person. 12 U.S.C. § 2605(b)(1). Generally, the notice must be made no less than 15 days before the effective date of the servicing transfer. 12 U.S.C. § 2605(b)(2). The notice must set out a number of items, including:

- The effective date of transfer of the servicing described in such paragraph;
- The name, address, and toll-free or collect call telephone number of the transferee servicer;
- The date on which the transferor servicer will cease to accept payments relating to the loan;
- The date on which the transferee servicer will begin to accept such payments; and
- A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to servicing the loan.

12 U.S.C. § 2605(b)(3). Any violation of these notice requirements is harmless absent a showing of resulting damages. *Kareem v. Am. Home Mtg. Serv., Inc.*, 479 F. App'x 619, 620 (5th Cir. 2012); *see* 12 U.S.C. § 2605(f).

JPMorgan's November 19, 2018, letter to Plaintiff complies with the above requirements. It was sent 15 days before the listed effective date of December 4, 2018. (Docket Entry 204-1, at

64.) It provides the name, address, and toll-free telephone number for Flagstar, the transferee servicer, as well as the last date JPMorgan will accept payment and the first date Flagstar will accept payment. (*Id.* at 65.) And it expressly stated that the transfer did not "affect any of the terms of [Plaintiff's] loan, other than the terms directly related to the servicing of [the] loan." (*Id.* at 64.) Given this undisputed evidence, Plaintiff can show no RESPA notice violation.

Even if Plaintiff could show a violation, he fails to show any damages. Indeed, Plaintiff himself submits a copy of a letter sent to him by Flagstar on December 4, 2018, likewise providing him with notice of the transfer. (Docket Entry 225, at 16.)[6] And, as discussed above, Plaintiff did not make any payments to either servicer in December, January, February, or March. In such circumstances, any claim of damages resulting from improper notice must fail.

IV. Conclusion and Recommendation.

For the foregoing reasons, I recommend that JPMorgan's Motion for Summary Judgment (Docket Entry 203) be **GRANTED**, and that Plaintiff's case be **DISMISSED WITH PREJUDICE**.

V. Instructions for Service and Notice of Right to Object.

The United States District Clerk shall serve a copy of this Report and Recommendation on all parties by either (1) electronic transmittal to all parties represented by attorneys registered as a "filing user" with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this Report and Recommendation must be filed **within fourteen (14) days** after being served with a copy of same, unless this time period is modified by the district court. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The party shall file the objections with the clerk of the court, and serve the objections on all other parties. A party

[6] The letter was first submitted to the Court by Flagstar in support of its original motion to dismiss in this case. (*See* Docket Entry 24-2.)

filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party's failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000). Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this Report and Recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

SIGNED on September 17, 2021.

Henry J. Bemporad
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CARLOS ANTONIO RAYMOND,	)	
	)	
Plaintiff,	)	
	)	
V.	)	**CIVIL ACTION NO. SA-19-CA-596-FB**
	)	
J.P. MORGAN CHASE BANK, and FLAG STAR BANK,	)	
	)	
Defendants.	)	

ORDER ACCEPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Before the Court are the Report and Recommendation of United States Magistrate Judge (docket no. 250) concerning the motion for summary judgment (docket no. 203) filed by the remaining defendant in this case, JPMorgan Chase Bank ("defendant"), along with plaintiffs' written objections and filings in response (docket nos. 255, 257, 258, 261, 262, and 264) thereto, and defendants' written responses (docket nos. 260 & 263) to plaintiff's objections and filings.

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of the Report and Recommendation. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether it is clearly erroneous or contrary to law. *United States v. Wilson,* 864 F.2d 1219, 1221 (5th Cir.), *cert. denied,* 492 U.S. 918 (1989).

On the other hand, any Report and Recommendation to which objection is made requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review

when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n,* 834 F.2d 419, 421 (5th Cir. 1987).

The Court has thoroughly analyzed the parties' submissions in light of the entire record. As required by Title 28 U.S.C. § 636(b)(1)(c), the Court has conducted an independent review of the entire record in this cause and has conducted a de novo review with respect to those matters raised by the objections. After due consideration, the Court concludes the objections lack merit.

This suit arises from a residential mortgage loan that defendant previously serviced and real property located in San Antonio, Texas. Plaintiff, who is proceeding *pro se*, argues that he was promised the ability to pause his mortgage payments by defendant, and that, after accepting the officer, servicing of his mortgage loan was transferred to Flag Star Bank without notice. He filed this suit, seeking $1 million in damages, in an effort to stop the foreclosure sale, which ultimately occurred on January 7, 2020.

Defendant has moved for summary judgment on the two claims remaining in this case: (1) fraudulent misrepresentation, and (2) alleged violations of the Real Estate Settlement Procedures Act ("RESPA"). The Court agrees with the Magistrate Judge that, having failed to make the loan payments, plaintiff cannot prevail on his fraudulent misrepresentation claim because he did not actually and justifiably rely on the alleged misrepresentation. The Court also agrees with the Magistrate Judge that the undisputed evidence shows that defendant complied with RESPA by providing plaintiff with proper statutory notice that his loan was being transferred. Alternatively, even if plaintiff could show a violation, he fails to show any damages because, as discussed in the Report and Recommendation, he did not make any payments either servicer.

In his objections, plaintiff reurges his arguments that defendant fabricated or doctored the documentary evidence it presented to the Court in support of its motion for summary judgment. As

explained in the Report and Recommendation, these claims are frivolous. Although some documents have been redacted in accordance with the Court's rules for redaction of identifying information, the documents submitted are properly supported by a sworn business record affidavit and an affidavit attesting to plaintiff's admissions as their authenticity. (Docket no. 250, page 8, fn.5) (citing docket no. 204-1, pages 1-2, 86-90). This is proper summary judgment evidence. *Id.* (citing FED. R. CIV. P. 56(c)(1)(A)). Indeed, as set forth in the Report and Recommendation, plaintiff "himself often relies on the same records in arguing his case." (Docket no. 250, page 8, fn.5). Moreover, defendant served its request for admissions to authenticate these documents on plaintiff and he did not respond. *Id.* at page 7, fn.4. The documents are thus deemed admitted under Federal Rule of Civil Procedure 36(a)(3). *Id.* For these and the reasons stated in defendant's responses to plaintiff's filings, the objections are overruled.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge (docket no. 250) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that Defendant JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment (docket no. 203) is GRANTED and plaintiff's case is DISMISSED WITH PREJUDICE.

IT IS FINALLY ORDERED that motions pending with the Court, if any, are Dismissed as Moot and this case is CLOSED.

It is so ORDERED.

SIGNED this 14th day of February, 2022.

FRED BIERY
UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 02, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-50427 Raymond v. JP Morgan
USDC No. 5:19-CV-596

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Ms. Rachel Lee Hytken
Mr. William Lance Lewis
Mr. Carlos Antonio Raymond
Ms. Marcie Lynn Schout

United States Court of Appeals for the Fifth Circuit

No. 22-50427

CARLOS ANTONIO RAYMOND,

Plaintiff—Appellant,

versus

JP MORGAN CHASE BANK,

Defendant—Appellee.

Appeal from the United States District Court
Western District of Texas
USDC No. 5:19-CV-596

MOTION FOR RECONSIDERATION

Before SMITH, ELROD, and HIGGINSON, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that Appellant's motion for leave to file motion for reconsideration out of time is GRANTED.

IT IS FURTHER ORDERED that Appellant's motion for reconsideration is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to appoint pro bono counsel is DENIED.

IT IS FURTHER ORDERED that Appellant's motion to stay district court proceedings pending outcome of motion to appoint counsel is DENIED AS MOOT.

Additional material from this filing is available in the Clerk's Office.