25A72

IN THE SUPREME COURT OF THE UNITED STATES

MARTHA JANE FORD,

Petitioner,

v.

BANK OF NEW YORK MELLON, Trustee, for CWABS, Inc. Asset-Backed Certificates, Series 2007-2,

Respondent.

On Petition for a Writ of Certiorari

to the United States Court of Appeals for the Fifth Circuit

MOTION TO RECALL THE MANDATE

To the Honorable Justices of the Supreme Court of the United States:

Petitioner, Martha Jane Ford, respectfully submits this **Motion to Recall the Mandate** issued by the United States Court of Appeals for the Fifth Circuit on June 3, 2025. This motion is submitted in conjunction with Petitioner's **Petition for a Writ of Certiorari** and references the **Motion to Recall the Mandate** filed with the Fifth Circuit.

Martha Jane Ford, Pro Se
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MsJaneFord@gmail.com
July 3, 2025

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QUESTIONS PRESENTED

1. Whether the enforcement of a mediation agreement procured through fraud, coercion, and attorney misconduct—despite a prior court order barring foreclosure—violates the Due Process Clause of the Fourteenth Amendment.
2. Whether the Fifth Circuit's failure to address multiple motions and to consider evidence of fraud, attorney misconduct, and the petitioner's vulnerability constitutes a denial of due process and access to the courts under the U.S. Constitution.
3. Whether the systemic disadvantages faced by a pro se, disabled, senior military veteran in the face of coordinated attorney and bank misconduct raise issues of national importance regarding judicial integrity and access to justice.

PEOPLE OF INTEREST

- Petitioner: Martha Jane Ford, Pro Se
- Respondents: Bank of New York Mellon, Fred Ramos, Michael J. McKleroy, Hinshaw & Culbertson LLP

Other Interested Parties:

- Dan MacLemore, Beard-Kultgen, The Texas Law Firm
- Judge Alan Albright, U.S. District Court, Western District of Texas
- Magistrate Judge Jeffery C. Manske, U.S. District Court, Western District of Texas
- Judge Robert Stem (ret.), Mediator
- State District Judge Jack Jones, 146th District Court, Bell County, TX

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unpublished and is included in the Appendix at App.

JURISDICTION

The Fifth Circuit entered its judgment on April 4, 2025. A timely petition for rehearing en banc was denied on June 3, 2025. This motion is filed in conjunction with the Petition for a Writ of Certiorari, pursuant to Supreme Court Rule 13.1. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

This Court has the inherent authority to recall its mandate in extraordinary circumstances to prevent injustice. See *Calderon v. Thompson*, 523 U.S. 538, 549-50 (1998). A recall of the mandate is appropriate where:

1. The case raises substantial legal or constitutional questions;
2. The petitioner demonstrates good cause for failing to file a timely motion to stay the mandate; and
3. The petitioner will suffer irreparable harm if the mandate remains in effect.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amend. XIV, § 1 (Due Process Clause)
- Fed. R. Civ. P. 60(b)(3), 60(d)(3)
- Texas Constitution, Article XVI, Section 50

STATEMENT OF THE CASE

Petitioner, a senior disabled military veteran and primary caregiver for her elderly mother, has faced systemic barriers to justice throughout this litigation. Despite repeated requests for reasonable accommodations due to her caregiving responsibilities, the Fifth Circuit denied every motion for extensions or stays, including those supported by documentation of medical emergencies.

This case arises from a series of fraudulent and coercive actions by a major financial institution and Petitioner's own attorney, culminating in the enforcement of a mediation agreement procured through fraud, duress, and attorney misconduct. Despite a prior court ruling barring foreclosure, the bank and its attorneys withheld critical evidence, manipulated the mediation process, and coerced Petitioner into signing an agreement that set her up for further financial hardship and foreclosure.

PROCEDURAL HISTORY

Petitioner filed multiple motions with the Fifth Circuit to supplement the record with evidence of fraud and attorney misconduct. Each motion was denied, preventing Petitioner from adequately presenting her case. The Fifth Circuit issued its mandate on June 3, 2025, denying Petitioner's request for rehearing en banc.

REASONS FOR GRANTING THE MOTION

I. The Lower Courts' Enforcement of a Fraudulent Agreement Procured by Attorney Misconduct and Coercion Violates Due Process

The Supreme Court has long held that judgments obtained by fraud are void and that courts have an obligation to prevent enforcement of such judgments. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *Throckmorton v. Holt*, 180 U.S. 552 (1901), *Simon v. Southern Ry. Co.*, 236 U.S. 115 (1915)

II. Denial of Fair Hearing and Opportunity to Present Evidence Critical to the Case

Due process requires courts to allow parties to present evidence critical to their case. See *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970).

III. Systemic Disadvantages for Pro Se Litigants and Vulnerable Populations

As a pro se, disabled, senior military veteran, Petitioner faced significant systemic barriers in presenting her case.

IV. Broader Implications for Judicial Integrity and Homeowner Protections

This case raises significant issues regarding the protection of vulnerable homeowners from predatory lending practices and attorney misconduct.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court recall the mandate issued by the Fifth Circuit and grant the relief sought in the accompanying Petition for a Writ of Certiorari.

Respectfully submitted,

S/*Martha Jane Ford*

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141 Mighty Oak Lane
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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2025, I served a true and correct copy of the foregoing Motion to Recall the Mandate on the following parties by UPS according to Respondent's email instructions: **Bank of New York Mellon, Trustee for CWABS, Inc. Asset-Backed Certificates, Series 2007-2**

Michael J. McKleroy, Hinshaw & Culbertson LLP
1717 Main St., Ste 3625
Dallas, TX 75201

S/***Martha Jane Ford***
Martha Jane Ford, Pro Se
141 Mighty Oak Lane
Killeen, TX 76542
(254) 251-8991
MsJaneFord@gmail.com

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the word limit set forth in Supreme Court Rule 33. The total number of words in this motion, excluding the parts exempted by Rule 33.1(d), is **738**.

S/***Martha Jane Ford***
Martha Jane Ford, Pro Se
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DECLARATION OF TRUTHFULNESS

I, Martha Jane Ford, declare under penalty of perjury that the information contained in this Motion to Recall the Mandate is true and correct to the best of my knowledge and belief. Executed on July 3, 2025.

S/***Martha Jane Ford***
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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 03, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 24-50053 Ford v. Bank of New York Mellon
USDC No. 6:18-CV-299

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

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

Ms. Martha Jane Ford
Mr. Michael J. McKleroy Jr.
Mr. Alfredo Ramos

United States Court of Appeals
for the Fifth Circuit

No. 24-50053

United States Court of Appeals
Fifth Circuit
FILED
June 3, 2025
Lyle W. Cayce
Clerk

MARTHA JANE FORD,

Plaintiff—Appellant,

versus

BANK OF NEW YORK MELLON, *Trustee*, FOR CWABS, INCORPORATED ASSET-BACKED CERTIFICATES, SERIES 2007-2,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:18-CV-299

ON PETITION FOR REHEARING EN BANC

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

*Judge Patrick E. Higginbotham, did not participate in the consideration of the rehearing en banc.

APPENDIX

App. 1 United States Court of Appeals for the Fifth Circuit, No. 24-50053. Judgment entered April 4, 2025. Petition for rehearing en banc finally denied June 3, 2025

App. 2 United States District Court for the Western District of Texas, No. 6:18-CV-299. Final judgment entered December 19, 2024

App. 3 District Court, Bell County, Texas, 146th District Court, Case No. 298-331-B. Order Allowing Foreclosure filed April 25, 2018; rescinded by the Order Vacating and Setting)

App. 4 Opposing Attorney Coercion Letters Before Deadlines
(Dated December 26,2023 and April 24, 2024)

App. 5 Bait and Switch Tactics: Email confession of a first agreement (Jan 6, 2024); The 2nd switched agreement (fraud) (July 14, 2023); The 3rd switched assumption documents (more fraud) (July 19, 2023)

App. 6 Professional Mental Evaluation of PTSD and Update (Dated March 1, 2017 and September 19, 2024) Restorative Hope Sanctuary - Jo Anne (Newton) Harrison LPC, EAP

App. 7 Email Conversation of Attorney Deception of Mediation Dates, Manipulation and PTSD Counselor Denied Access (April 5, 2022; April 24, 2023; May 11, 2023)

App. 8 Email: Do NOT put House in my Name 05/25/22 @ 9:53am; Betrayed, House Put in my Name by my Atty. 05/25/22 @ 10:05am (He was also told 'no' numerous times prior, even on day one. This was NO mistake.)

App. 9 Tax Foreclosure Intent Letter (due to attorney betrayal)

App. 10 Affidavits concerning mediation
(Detailing the mediation during the proceedings and just after on the same day)

App. 11 Motions and Petitions Submitted and Denied (8 documents)
(Comprising selected motions for extensions, stays, attached medical statements and other relevant filings. Much more upon request and found in the Supplement Records. (Most Crucial ones between February and June of 2025)

App. 12 Letter between the attorneies outlining the case

United States Court of Appeals for the Fifth Circuit

No. 24-50053

MARTHA JANE FORD,

Plaintiff—Appellant,

versus

BANK OF NEW YORK MELLON, *Trustee*, FOR CWABS, INCORPORATED ASSET-BACKED CERTIFICATES, SERIES 2007-2,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:18-CV-299

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

After Defendant-Appellee Bank of New York Mellon ("BoNYM") filed an application in Texas court for an order authorizing it to foreclose on Plaintiff-Appellant Martha Jane Ford's home, Ford filed an independent suit in a different Texas court to stay the foreclosure application. BoNYM removed the suit to federal court and the parties entered into mediation

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

culminating in a settlement agreement. Ford moved to set aside the agreement, and after conducting a hearing, the district court denied that motion. Ford now appeals the district court's denial of her motion to set aside. We AFFIRM.

I.

We review a district court's exercise of its inherent power to encourage and enforce settlement agreements for abuse of discretion. *See Bell v. Schexnayder*, 36 F.3d 447, 449 (5th Cir. 1994). "A district court abuses its discretion if it: (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; or (3) misapplies the law to the facts." *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 310 (5th Cir. 2008) (quoting *McClure v. Ashcroft*, 335 F.3d 404, 408 (5th Cir. 2003)).

Ford raises four arguments on appeal: (a) that BoNYM engaged in fraud in the handling of the mortgage, (b) that her counsel engaged in manipulative practices that constituted a conflict of interest or coercion, (c) that the "high pressure-tactics" of mediation coerced her into entering the agreement, and (d) that her counsel's actions constituted negligence and a breach of fiduciary duty. She has waived each argument.

"Although pro se briefs are afforded liberal construction, even pro se litigants must brief arguments in order to preserve them." *Mapes v. Bishop*, 541 F.3d 582, 584 (5th Cir. 2008) (citation omitted). First, Ford cites to *no* legitimate[1] authority to support any of these issues throughout her brief, which constitutes waiver of those issues. *See Sindhi v. Raina*, 905 F.3d 327,

[1] The five "cases" Ford cites in her table of authorities do not appear to exist. "An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system." *Park v. Kim*, 91 F.4th 610, 615 (2d Cir. 2024) (quoting *Mata v. Avianca, Inc.*, 678 F. Supp. 3d 443, 461 (S.D.N.Y. 2023)).

334 (5th Cir. 2018). Further, the issues raised either fail to challenge the bases of the district court's decision, which itself constitutes waiver, *see Jones v. Nueces Cnty., Tex.*, 589 F. App'x 682, 685 (5th Cir. 2014) (per curiam), or were not raised before the district court and therefore cannot be raised for the first time on appeal, *see Webster v. Kijakazi*, 19 F.4th 715, 720 (5th Cir. 2021).

Ford faces a difficult situation, but even had she not waived these issues, she has demonstrated no right to relief. Although Ford may have felt coerced by BoNYM's practices or the stress of mediation, "emotional strain and negotiation pressures" are not enough. *Lee v. Hunt*, 631 F.2d 1171, 1178 (5th Cir. 1980). Ford may have felt manipulated or neglected by her attorney, but under Texas law that provides no basis to invalidate her contract with BoNYM. *See King v. Bishop*, 879 S.W.2d 222, 224 (Tex. App.—Houston [14th Dist.] 1994, no writ). And Ford's mistaken beliefs about the terms of the settlement agreement or her ability to cancel it are similarly irrelevant. *See id.*; *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 425 (Tex. 2015).

II.

Because Ford has demonstrated no error on the part of the district court, we AFFIRM.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MARTHA J. FORD,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
THE BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2007-2	§	**CIVIL NO. 6:18-CV-00299-JCM**
	§	
	§	
Defendant/Third-Party Plaintiff,	§	
	§	
v.	§	
	§	
ROLANDO FORD,	§	
	§	
Third-Party Defendant.	§	

ORDER ON TRUSTEE'S RENEWED MOTION FOR SUMMARY JUDGMENT

Before the Court is Defendant Bank of New York Mellon as Trustee for CWABS, Inc. Asset-Backed Certificates, Series 2007-2's ("Trustee") Renewed Motion for Summary Judgment (ECF No. 49), Plaintiff Martha Ford's Response to Trustee's Renewed Motion for Summary Judgment (ECF No. 50), and Trustee's Reply to Plaintiff's Response to Trustee's Motion for Summary Judgment (ECF No. 52). For the following reasons, Trustee's Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

In 1997, Martha and Rolando Ford purchased a home in Killeen, Texas for use as their homestead. Pl.'s Resp. at 2. The couple financed the purchase with a 30-year note secured by a

Deed of Trust with First Community Mortgage. *Id.* The couple later refinanced their mortgage in 2004 with a second 30-year mortgage from Amerigroup Mortgage Corporation. Amerigroup Mortg. Deed of Trust at 2, ECF No. 49-6.

The Fords later executed a third 30-year note with Countrywide. Texas Home Equity Adj. Rate Note at 19, ECF No. 49-2. Countrywide's note was a home equity loan secured by a lien on the couple's home. Texas Home Equity Security Instrument at 24–25, ECF No. 49-2. The Fords appear to have used $111,743.09 of the $168,000 Countrywide loan principal to pay principal on a loan to National City Mortgage. HUD-1 Statement at 4, ECF No. 49-5. The record is unclear, however, what lender National City Mortgage is affiliated with or whether that lender released its real property lien after the payment.

The Countrywide home equity loan application included a Texas Home Equity Security Instrument that both Rolando and Martha Ford signed. Texas Home Equity Security Instrument at 34. The security instrument named Mortgage Electronic Registration Systems, Inc. as beneficiary and nominee, granting it the right to foreclose and sell the property if the Fords defaulted. *Id.* at 24. Mortgage Electronic Registration Systems subsequentially assigned its interest under the Security Instrument to the Trustee. Assignment of Deed of Trust at 39, ECF No. 49-2.

Countrywide also had the Fords sign a Texas Home Equity Affidavit and Agreement, which averred that they executed the loan documents in the office of the lender, an attorney, or a title company. Aff. and Agreement at 5, ECF No. 49-4. Nevertheless, Martha Ford claims that they actually executed the loan documents in her home. Aff. of Martha Ford at ¶ 7, ECF No. 50. Martha Ford provided two affidavits that support her claim that Countrywide and the Fords executed the loan documents in her home. The first affidavit provides Martha Ford's own

statement. *Id.* The second affidavit provides Elena S. Reynolds's statement. Aff. of Elena S. Reynolds, ECF No. 50. Reynolds was the Notary Public for the Affidavit and Agreement. *Id.* at ¶¶ 4, 8–9.

The Trustee mailed the Fords a notice of default on the Countrywide note. Shortly thereafter, Martha Ford filed suit *pro se* against the Trustee in the 169th District Court of Bell County, Texas. Pl.'s Orig. Pet., ECF No. 1-1. The Trustee removed the action to this Court. Def.'s Not. Removal, ECF No. 1. The Trustee counter-claimed against Martha Ford and asserted a third-party claim against Rolando Ford seeking judicial foreclosure and attorney's fees. Def.'s Second Am. Answer, ECF No. 30.

On August 1, 2018, the Trustee moved for summary judgment for the first time. Def.'s Mot. Summ. J., ECF No. 18. The Trustee argued that Martha Ford failed to state a claim under the Federal Rules of Civil Procedure. *Id.* On its counter-claims, the Trustee argued that it was entitled to a court-ordered foreclosure, writ of possession, and its reasonable attorney's fees. *Id.* In the alternative, the Trustee requested leave to file an amended answer counter-claiming for equitable subrogation and fraud.

The District Court granted the Trustee's motion in part and denied in part. Order Granting in Part and Den. in Part, ECF No. 22. The District Court denied the Trustee's motion with regards to Martha Ford's claims and the Trustee's counter-claims because Martha Ford's and Reynolds's statements raised a fact issue as to whether Countrywide's lien was constitutionally valid. *Id.* at 7. Likewise, the District Court held that Martha Ford was not estopped from challenging the validity of the lien. *Id.* The District Court, however, granted the Trustee's alternative request to amend its answer. *Id.* at 9.

After the District Court ruled on the Trustee's motion, the parties consented to the Magistrate Judge's jurisdiction. Notice and Statement Regarding Consent to Magistrate Judge, ECF Nos. 16, 17. Accordingly, the District Court reassigned the case to the Undersigned. Order Reassigning Case, ECF No. 23. The Trustee then amended its answer and re-urged its motion for summary judgment.

II. LEGAL STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is not genuine if the trier of fact could not, after an examination of the record, find for the nonmoving party. *Matsushita Elec. Indus., Co. v. Zenith Radio Corp.*, 475 U.S. 574, 578 (1986). The moving party bears the burden of showing that no genuine dispute of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). That said, the moving party can satisfy its burden either by producing evidence negating a material fact or pointing out the absence of evidence supporting a material element of the nonmovant's claim. *Duplantis v. Shell Offshore, Inc.*, 948 F.2d 187, 190 (5th Cir. 1991). Throughout this analysis, the Court must view the evidence and all factual inferences in a light most favorable to the party opposing summary judgment. *Tolan v. Cotton*, 134 S. Ct. 1861, 1866 (2014).

III. DISCUSSION

A. The Trustee is not entitled to summary judgment on its counterclaims and third-party claims.

The Trustee argues that it is entitled to a court-ordered foreclosure and its reasonable attorney's fees for three reasons. First, the Trustee argues that the Affidavit and Agreement Martha Ford signed when the parties originated the Countrywide note conclusively establishes that the note was executed consistent with Texas's constitutional requirements. Def.'s Renewed

Mot. Summ. J. at 10. Second, the Trustee argues that, in any event, estoppel bars Martha Ford from contradicting the loan's constitutionality. *Id.* at 12. Third, the Trustee argues that even if the Court determines that the Countrywide lien violates the Texas Constitution, the Trustee can still foreclose on the property under equitable subrogation. *Id.* at 17.

1. Martha Ford raises a genuine issue of material fact on the constitutional validity of the Trustee's lien.

Under the Texas Constitution, parties must close a home equity loan secured by a lien against a homestead at the office of the lender, an attorney, or a title company. Tex. Const. art. XVI, § 50(a)(6)(N). Closing a home equity loan anywhere else renders the lien invalid. *Id.*

The Trustee argues that the language of the Affidavit and Agreement that Martha Ford signed conclusively establishes that the parties closed the Countrywide loan at the office of the lender, an attorney, or a title company. *Id.* at 10. Martha Ford, however, argues that her affidavit and Reynolds's affidavit raise a fact issue on the lien's validity. Pl.'s Resp. at 5.

The Court holds that, despite the statements in the Affidavit and Agreement, Martha Ford's affidavit and Reynolds's affidavit raise a material issue of fact concerning where the closing occurred. The Court agrees that Martha Ford cannot create a genuine issue of material fact by merely contradicting her previous statement. *See Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999). Martha Ford, however, is not merely contradicting her previous sworn statement. She has also presented the affidavit of a separate individual who was present at the time and place where the Fords executed the Countrywide note and its related documents. *See* Aff. of Reynolds. Courts have recognized that people may remember where they signed a loan several years later. *See Priester v. Long Beach Mortgage Co.*, 4:16-CV-449, 2018 WL 4469679, at *4 (E.D. Tex. Sept. 18, 2018). Notaries may remember where they notarized loans several

years later as well. The sworn statements of two individuals present at the closing—one disinterested in the litigation—creates a fact issue that precludes summary judgment.

2. Martha Ford is not estopped from challenging the lien's constitutionality.

Next, the Trustee argues that Martha Ford is estopped from contradicting the lien's constitutionality. Def.'s Renewed Mot. Summ. J. at 12. The Trustee argues that because Martha Ford signed the Affidavit and Agreement stating the lien documents were signed in accordance with the Texas Constitution, she is now estopped from challenging the constitutionality of the lien. *Id.*

Previously, the District Court ruled that estoppel does not bar Martha Ford from challenging the lien's constitutionality. Order Granting in Part and Den. in Part at 7–8. The District Court's holding relied on Supreme Court of Texas precedent that a homestead lienholder has the burden of first proving that a lien exists by some reason other than estoppel. *Id.* at 7; *see also Hruska v. First State Bank of Deanville*, 747 S.W.2d 783, 785 (Tex. 1988). If a homestead lienholder can carry this burden, then estoppel may prevent the homeowner from denying the lien's validity. *Id.* The District Court held that because Martha Ford raised a fact issue about whether the Security Instrument was unconstitutionally closed in the Fords' home, the Trustee had not carried its initial burden of showing that a valid lien existed for a reason besides estoppel. *Id.*

The Trustee raises its estoppel argument anew by asserting that the District Court misapplied *Hruska*. The Trustee argues that *Hruska* concerned the *existence* of a homestead lien, not its validity. Def.'s Renewed Mot. Summ. J. at 12–13. The Trustee argues that the present case is different because its dispute with Martha Ford concerns the validity of the homestead lien, not the lien's existence. *Id.* at 13–14. The Trustee argues that, rather than attempting to

estop a lien into existence, it is attempting to estop Martha Ford from challenging that lien's constitutionality. *Id.* at 14.

Yet the Trustee's characterization of the dispute is inconsistent with the Supreme Court of Texas's interpretation of home equity liens. In particular, the Supreme Court of Texas has expressly recognized that liens securing constitutionally non-compliant home-equity loans are void unless cured. *Wood v. HSBC Bank USA, N.A.*, 505 S.W.3d 542, 548–49 (Tex. 2016). Thus, absent strict compliance with Texas's constitutional provisions, no valid lien exists. *See id.* This Court has already recognized that Martha Ford has raised a fact issue as to whether the Countrywide note strictly adhered to Texas's constitutional provisions for home equity loans. Accordingly, Martha Ford has raised a fact issue about whether or not a valid lien exists. *See id.* As a result, Martha Ford can challenge the constitutionality of the lien.

A loan created under Section 50(a)(6) of the Texas Constitution is only eligible for foreclosure if the loan satisfies an exacting list of terms and conditions. *Fed. Home Loan Mortg. Corp. v. Zepeda*, 601 S.W.3d 763, 766 (Tex. 2020); *see also* Tex. Const. art. XVI, § 50(a)(6). One of those exacting terms is that the parties must close the loan in the office of the lender, an attorney, or a title company. Tex. Const. art. XVI, § 50(a)(6)(N). Because a fact issue exists as to whether the parties complied with this exacting term, the Trustee is not entitled to foreclosure on summary judgment.

3. The Trustee has not conclusively established that equitable subrogation applies.

Finally, the Trustee argues that it is entitled to equitable subrogation because a portion of the home equity loan proceeds were used to pay the Fords' outstanding mortgage. Def.'s Renewed Mot. Summ. J. at 17. To support this argument, the Trustee provides a HUD-1 Settlement Statement showing that proceeds from the home equity loan were used to pay

$111,743.09 to National City Mortgage. HUD-1 Settlement Statement at 4, ECF No. 49-5. Martha Ford argues that the HUD-1 is unauthenticated and that the Trustee may not rely on the statements therein because no privity exists between the Trustee and the title company. Pl.'s Resp. at 9.

Equitable subrogation is a legal fiction that allows a subsequent lienholder to take the lien-priority status of a prior lienholder in certain circumstances. *Bank of Am. v. Babu*, 340 S.W.3d 917, 925 (Tex. App.—Dallas 2011, pet. denied). Equitable subrogation aims to prevent the unjust enrichment of the debtor by substituting the rights, remedies, and securities of the subsequent lienholder with those of the prior lienholder. *Id.*

Texas courts recognize a limited application of equitable subrogation in the homestead loan context. *Zepeda*, 601 S.W.3d at 766–67. A subsequent lender whose homestead lien is constitutionally void must satisfy three requirements for equitable subrogation to apply. *Id.* at 766–67. First, an original lender must have a constitutionally valid lien asserted against the homeowner's homestead. *Id.* Second, the homeowner must use a portion of the proceeds from the subsequent lender's loan to pay off the remaining balance on the original lender's loan. *Id.* Finally, the original lender must release its lien after the homeowner pays off the remaining balance on the original loan. *Id.*

If these three requirements are met, the subsequent lender "steps into the shoes" of the original lender. *Id.* at 766. Even though the subsequent lender cannot foreclose on its own lien, the subsequent lender gets an equitable lien equal to the amount that the homeowner used to satisfy the original loan. *Id.* The subsequent lender can foreclose on the homestead under this equitable lien. *Id.* After the foreclosure, the subsequent lender is entitled to sales proceeds up to

the value of its equitable lien (i.e., the amount of the subsequent loan that the homeowner used to pay off the original loan). *Id.* at 767.

The Trustee produced a HUD-1 Settlement Statement to support its equitable subrogation claim. Martha Ford argues that the Court should not consider the HUD-1 Settlement Statement because it is not authenticated and because the Trustee lacks the privity required to rely on its assertions. But even if the Court does consider the HUD-1 statement, the HUD-1 statement, standing alone, is not sufficient to conclusively establish that the Trustee is entitled to equitable subrogation.

A HUD-1 Settlement Statement is a document that lists all charges and credits to the buyer and to the seller in a real estate settlement, or all the charges in a mortgage refinance. Consumer Fin. Prot. Bureau, *What is a HUD-1 Settlement Statement* (2020), https://www.consumerfinance.gov/ask-cfpb/what-is-a-hud-1-settlement-statement-en-178/. Although a HUD-1 Settlement Statement will indicate if proceeds from refinancing are used to pay an existing lender, it will not show the outstanding balance on that prior loan. *See id.* Likewise, a HUD-1 statement will not indicate whether any existing lien that secures a prior loan is released as a result of the payment. *See id.*

To carry its summary judgment burden, the Trustee must conclusively establish all three homestead equitable subrogation requirements. *See Zepeda*, 601 S.W.3d at 767. Here, neither party disputes that Amerigroup Mortgage had a valid lien on the Ford homestead. But the HUD-1 statement does not reflect that Amerigroup Mortgage received a payment from the proceeds of the home equity loan. *See* HUD-1 Statement at 4, ECF No. 49-5. Rather, the HUD-1 Statement reflects $111,743.09 was paid to National City Mortgage. *Id.* The record lacks any indication as to which lender National City Mortgage is affiliated with. And even if the Court assumes that

National City Mortgage is affiliated with Amerigroup Mortgage—as the Trustee seems to indicate—the HUD-1 statement does not show whether Amerigroup Mortgage released its lien as a result of the payment. *See id.* Thus, the Trustee has produced no evidence of two of the three homestead equitable subrogation requirements. *See Zepeda*, 601 S.W.3d at 766–67. Accordingly, the Trustee has not conclusively established that equitable subrogation applies.

B. The Trustee is not entitled to summary judgment on Martha Ford's claims.

The Trustee also argues that it is entitled to summary judgment on Martha Ford's claims. As discussed, the Court finds that Martha Ford has raised a genuine issue of material fact on the constitutionality of the home equity lien. Accordingly, summary judgment on Martha Ford's claims is inappropriate.

IV. CONCLUSION

For the foregoing reasons, the Trustee's Renewed Motion for Summary Judgment (ECF No. 49) is **DENIED**.

SIGNED this 26th day of April, 2022.

JEFFREY C. MANSKE
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MARTHA FORD,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO. 6:18-CV-00299-JCM**
	§	
BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2007-2,	§	
	§	
Defendant.	§	

ORDER

Came before the Court to be considered Plaintiff's Motion to Set Aside the Mediated Settlement Agreement (ECF No. 79), Plaintiff's Counsel's Motion to Withdraw as Attorney (ECF No. 80), and Plaintiff's Counsel's Oral Motion to Withdraw as Attorney made at the October 31, 2023, hearing in this cause. For the following reasons, these Motions are **DENIED.**

I. BACKGROUND

This is a case about a litigant who got cold feet after entering into a mediated settlement agreement and desires a chance to renegotiate. The Court has held two hearings on this matter. The first was a status conference held on October 31, 2023. The second was a hearing on all motions currently pending which the Court held on December 11, 2023.

At the first hearing, the Court heard testimony that Ms. Ford was displeased with the settlement agreement and felt that her attorney, Dan MacLemore, and the mediator, Judge Robert Stem, had unintentionally pressured or coerced her into entering a settlement agreement that she did not agree with after having additional time to review it. Based on these allegations, Mr. MacLemore orally moved to withdraw as Ms. Ford's attorney. The Court gave the parties

additional time to discuss a potential resolution of the relevant disputes. After those discussions proved fruitless, the Court directed Plaintiff to file a written motion to withdraw or motion to set aside the settlement agreement by November 15, 2023.

Plaintiff filed her Motion to Set Aside the Settlement Agreement on November 15, 2023. Plaintiff then filed a Renewed Motion to Withdraw on November 20, 2023. ECF No. 80. Defendant responded to the Motion to Set Aside on November 22, 2023. ECF No. 81. The Court set the motions for a hearing on December 11, 2023. At the hearing, the Court heard testimony from Judge Robert Stem, Plaintiff, and Letawna St. George (Plaintiff's mother who attended the mediation). Judge Stem and Plaintiff are the key witnesses in resolving this dispute.

Judge Stem testified that he is a retired Texas District Judge who serves as a visiting judge in central Texas and as a mediator in several central Texas counties including McLennan County. The Court finds all of Judge Stem's testimony credible. Judge Stem also testified that he mediated this case on July 14, 2023, resulting in the mediated settlement agreement ("MSA") in dispute. Judge Stem testified that Mr. MacLemore, Plaintiff, and Ms. St. George attended the mediation in one room and Defendant's lawyer and representative attended in a different room. He specifically noted that nothing about this mediation was meaningfully different from typical mediations.

When the Court asked about Judge Stem's mediation procedures, Judge Stem testified that he makes sure the parties have sufficient time to confer with their attorneys to understand the terms of a MSA, he discusses the terms of the MSA, gives additional time for the parties to ask their attorneys and Judge Stem questions about terms, and advises the parties at the beginning of the mediation that any MSA entered is binding and not subject to revocation. Judge Stem also testified that he had no concerns that Plaintiff did not understand the agreement, that he had no

competency concerns about Plaintiff, and that he was satisfied that Plaintiff understood and agreed to the terms of the MSA.

The Court then heard testimony from Plaintiff. Plaintiff testified that the MSA was entered under undue stress and pressure which started the moment she arrived at the mediation. She testified that Judge Stem introduced his wife to Plaintiff. Judge Stem's wife then left to shop while Judge Stem mediated this case. Plaintiff testified that during the mediation she was very concerned about Judge Stem's wife because of the record setting summer heat and that this caused her to experience severe stress and pressure. Plaintiff also testified that Mr. MacLemore knew Plaintiff could not think straight under severe stress and pressure.

Nonetheless, Plaintiff testified that no one intentionally threatened or coerced her into entering the MSA. She also testified that no one made any promises to her outside of the MSA. Plaintiff testified that she was told that this was the best deal she was going to get. Plaintiff clarified that items two and six of the MSA confused her because she thought that she had three days to revoke any agreement reached. Finally, and most importantly, Plaintiff reiterated that neither Judge Stem nor Mr. MacLemore intentionally coerced or pressured her into entering the agreement.

II. DISCUSSION

Plaintiff requests this Court to set aside the MSA on the grounds that (1) she felt pressured by Mr. MacLemore and Judge Stem to enter into the agreement which she believes was a bad deal, (2) she believed she had three days to withdraw from the settlement agreement, and (3) she did not understand the settlement agreement and it was not adequately explained to her. Pl.'s Mot. Set Aside at 2–4. Defendant argues that none of these arguments provides a legal basis for the Court to set aside the MSA.

A. Plaintiff has failed to establish the affirmative defense of duress.

Plaintiff argues that the MSA should be set aside because she entered it under pressure, duress, and coercion. Pl.'s Motion to Set Aside at 1–2. Defendant argues that Plaintiff has failed to establish legal duress or coercion sufficient to set aside the MSA. Def.'s Resp. at 9.

Courts have limited discretion to set aside mediated settlement agreements. *Bell v. Schexnayder*, 26 F.3d 447, 449 (5th Cir. 1994). In Texas, duress is an affirmative defense that must be proved by the party seeking to avoid the contract. *F.D.I.C. v. White*, 76 F. Supp. 2d 736, 739 (N.D. Tex. 1999) (citations omitted). To prove the affirmative defense of duress or undue influence, a plaintiff must prove that (1) there is a threat to do some act which the party threatening has no legal right to do, (2) there must be some illegal exaction or some fraud or deception, and (3) the restraint must be imminent and such as to destroy free agency without present means of protection. *Lee v. Hunt*, 631 F.2d 1171, 1178 (5th Cir. 1980) citing *Tower Contracting Co., Inc., of Tex. v. Bruden Bros., Inc.*, 482 S.W.2d 330, 335 (Tex. Civ. App. Dallas 1972, writ ref. n. r. e.). The plaintiff must also demonstrate that the "'persuasion, entreaty, importunity, argument, intercession, and solicitation' were so strong as to 'subvert and overthrow the will of the person to whom they are directed.'" *Id.* citing *DeGrassi v. DeGrassi*, 533 S.W.2d 81, 85 (Tex. Civ. App. Amarillo 1976, writ ref. n.r.e.). Finally, "emotional strain and negotiation pressures are not by themselves enough to overcome the will of the party to a contract." *Id.* Especially where there is no evidence that the emotional strain and negotiation pressures "resulted from threats, illegal exaction, fraud or deception." *Id.*

Here, Plaintiff has undoubtedly produced evidence showing that she suffered from emotional strain and negotiation pressures which affected her greatly. But Plaintiff was abundantly clear that neither Judge Stem nor Mr. MacLemore made any threats or intentionally

coerced or pressured her. The only evidence Plaintiff produced that could be construed as a threat was being told that the MSA was the best deal Plaintiff was going to get. But statements such as those, unsupported by any allegation or evidence that it was intended as a threat or intentional coercion, cannot establish duress and coercion by themselves. The Court also notes that Plaintiff signed the MSA which expressly states that, "Each party to this agreement has entered into this settlement agreement freely and voluntarily, and without any duress. . . . [E]ach party has fully read and understand [sic] the attached agreement." ECF No. 81-2 at 2. Accordingly, Plaintiff has failed to carry her burden of establishing the affirmative defense of coercion or duress.

The Court also notes that even if Plaintiff's testimony were enough to prove undue influence and duress by Judge Stem or Mr. MacLemore, the settlement agreement would still be enforceable. To set aside a contract based on duress, "the duress must come from the other party to the contract," "not the claimant's attorney." *Kosowska v. Khan*, 929 S.W.2d 505, 508 (Tex. App.—San Antonio 1996, writ denied). Here, Mr. McKleroy, counsel of record for Defendant, testified by declaration that, "[He] never saw [Plaintiff] or her mother during the mediation. At no time during the mediation did [he] or anyone acting on [Defendant's] behalf see, speak to or communicate in any way with Ms. Ford and or her mother." McKleroy Decl. (ECF No. 81-1) at ¶ 3. The only potential wrongdoing Plaintiff identified on Defendant's part was a conclusory allegation that Defendant retained new counsel as part of the bait-and-switch tactics Defendant has allegedly employed throughout litigation. Even if that is true, it does not amount to duress or coercion. Accordingly, Plaintiff has failed to establish the affirmative defense of duress or coercion.

B. Plaintiff's mistake of law is not a legal basis for invalidating the MSA.

Plaintiff also argues that the Court should set aside the MSA because "it was her understanding that she, as a consumer had three days to withdraw from the settlement agreement" under § 601.052 of the Texas Business and Commerce Code. Pl.'s Mot. Set Aside at 2. She claims she did not know that the statute did not apply to mediated settlement agreements and that "had she known this was the case, she would not have executed the MSA." *Id.* Defendant argues that, even if this is true, the MSA cannot be set aside because of Plaintiff's mistake of the law. Def.'s Resp. at 6.

"Generally, a contract cannot be avoided for a mistake of law." *In re Bettis*, 97 B.R. 344, 348 (Bankr. W.D. Tex. 1989) citing *Ussery v. Hollebeke*, 391 S.W.2d 497 (Tex. Civ. App.—El Paso 1965, writ ref. n.r.e.). "All persons of sound mind are presumed to know the law." *Id.* citing *Roberts v. Lucas*, 388 S.W.2d 764 (Tex. Civ. App.—Tyler 1965). Accordingly, Plaintiff is presumed to know the law and the MSA cannot be avoided because of her mistake of it.

C. Plaintiff's confusion expressed after entering the MSA is not a basis to avoid the MSA.

Plaintiff also argues that "she did not understand the MSA and that the MSA was not explained to her before she signed it." Pl.'s Mot. Set Aside at 2. The Court first notes that the testimony from the hearing establishes that Judge Stem and Mr. MacLemore explained the MSA to Plaintiff. Judge Stem provided Plaintiff with time to discuss the MSA's terms with Mr. MacLemore. Judge Stem gave Plaintiff the opportunity to ask him questions about the MSA, and that Judge Stem had no concerns that Plaintiff did not understand the MSA.

Absent "fraud, misrepresentation, or deceit, a party is bound by the terms of the contract he signed, regardless of whether he read it or thought it had different terms." *In re McKinney*,

167 S.W.3d 833, 835 (Tex. 2005) (citations omitted). As discussed above, Plaintiff maintains that no one intentionally coerced her or committed fraud. Plaintiff is, therefore, bound by the terms of the MSA even though she was confused about whether the agreement was revocable.

III. CONCLUSION

For the reasons discussed above, Plaintiff's Motion to Set Aside the Mediated Settlement Agreement (ECF No. 79) is **DENIED**. The Court holds that the Mediated Settlement Agreement is enforceable. Since the Mediated Settlement Agreement expressly provides that, "The undersigned parties to this Mediated Settlement Agreement have agreed to fully compromise and settle all claims and controversies between the Parties," this Order constitutes a final judgment. *See GeoSouthern Energy Corp. v. Chesapeake Operating, Inc.*, 241 F.3d 388, 391 (5th Cir. 2001) (holding that decisions are final when they end the litigation on the merits and leave nothing for the court to do but execute the judgment).

Since the Court's Order denying Plaintiff's Motion to Set Aside the Mediated Settlement Agreement is a final judgment, Plaintiff's Renewed Motion to Withdraw is **DENIED** as moot. The Clerk of the Court is hereby **DIRECTED** to close this case.

IT IS SO ORDERED.

SIGNED this 19th day of December 2023.

JEFFREY C. MANSKE
UNITED STATES MAGISTRATE JUDGE

Filed 4/25/2018 10:22 AM
Joanna Staton, District Clerk
District Court - Bell County, TX
by Melissa Wallace , Deputy

ORIGINAL

CAUSE NO. 298,331-B

IN RE: ORDER FOR FORECLOSURE CONCERNING 141 MIGHTY OAK LN, KILLEEN, TX 76542-5681 UNDER TEX. R. CIV. PROC. 736	§	**IN THE DISTRICT COURT**
PETITIONER:	§	
THE BANK OF NEW YORK MELLON AS TRUSTEE FOR CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2007-2	§	**BELL COUNTY, TEXAS**
RESPONDENT(S):	§	
ROLANDO FORD, MARTHA J FORD	§	**146TH DISTRICT COURT**

DEFAULT ORDER ALLOWING FORECLOSURE

1. On this day, the Court considered Petitioner's motion for a default order granting its application for an expedited order under Rule 736. Petitioner's application complies with the requirements of Texas Rule of Civil Procedure 736.1.

2. The name and last known address of each Respondent subject to this order is Rolando Ford, whose last known address is 141 Mighty Oak Ln, Killeen, TX 76542-5681. Each Respondent was properly served with the citation, but none filed a response within the time required by law. The return of service for each Respondent has been on file with the court for at least ten days.

3. The property that is the subject of this foreclosure proceeding is commonly known as 141 Mighty Oak Ln, Killeen, TX 76542-5681 with the following legal description:

LOT FOURTEEN (14), BLOCK TWO (2), TANGLEWOOD ESTATES ADDITION, PART III, A SUBDIVISION IN BELL COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT OF RECORD IN CABINET A, SLIDE 24-B, PLAT RECORDS OF BELL COUNTY, TEXAS.

4. The lien to be foreclosed is indexed or recorded at Instrument Number: 2007-00004195 and recorded in the real property records of Bell County, Texas.

5. The material facts establishing Respondent's default are alleged in Petitioner's application and the supporting affidavit. Those facts are adopted by the court and incorporated by reference in this order.

6. Based on the affidavit of Petitioner, no Respondent subject to this order is protected from foreclosure by the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et seq.

7. Therefore, the Court grants Petitioner's motion for a default order under Texas Rules of Civil Procedure 736.7 and 736.8. Petitioner may proceed with foreclosure of the property described above in accordance with applicable law and the loan agreement, contract, or lien sought to be foreclosed.

8. This order is not subject to a motion for rehearing, a new trial, a bill of review, or an appeal. Any challenge to this order must be made in a separate, original proceeding filed in accordance with Texas Rule of Civil Procedure 736.11.

SIGNED this 13th day of July, 2018.

JUDGE PRESIDING

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