

24-586-cv

Nicholson v. Bank of N.Y. Mellon

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION SUMMARY ORDER). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand twenty-five.

PRESENT:

JOSEPH F. BIANCO,
EUNICE C. LEE,
ALISON J. NATHAN,
Circuit Judges.

HARRIET NICHOLSON,

Plaintiff-Appellant,

v.

24-586-cv

THE BANK OF NEW YORK MELLON,
FORMERLY KNOWN AS THE BANK OF NEW
YORK TRUSTEE FOR THE CERTIFICATE
HOLDERS OF CWMBS, INC., CWMBS
REFORMING LOAN REMIC TRUST
CERTIFICATES SERIES 005-R2,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:

Harriet Nicholson, *pro se*,
Grand Prairie, Texas.

FOR DEFENDANT-APPELLEE:

Brian P. Scibetta, McCalla

Raymer Leibert Pierce, LLP,
New York, New York.

Appeal from a judgment of the United States District Court for the Southern District of New York (Paul G. Gardephe, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Appellant Harriet Nicholson, proceeding *pro se*, appeals from the district court's judgment dismissing her action on *res judicata* grounds. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues on appeal, to which we refer only as necessary to explain our decision to affirm.

"We review the grant of a motion to dismiss *de novo*, accepting as true all factual claims in the complaint and drawing all reasonable inferences in the plaintiff's favor." *Fink v. Time Warner Cable*, 714 F.3d 739, 740–41 (2d Cir. 2013). We also review *de novo* a district court's application of *res judicata*. See *Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017).

Here, a review of the record and relevant case law reveals that the district court properly dismissed Nicholson's action.¹ We affirm for substantially the reasons stated by the district court in its thorough and well-reasoned August 28, 2023 Order.

¹ Nicholson has filed various motions for judicial notice. The motions are granted as to the nonjudicial foreclosure sale of her home and the substitute trustees' deed awarded to Nationstar Mortgage LLC, as well as the docket sheet and final judgment in the lawsuit brought in the United States District Court for the Northern District of Texas. The motions for judicial notice are otherwise denied as to her remaining requests.

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We have considered all of Nicholson's remaining arguments and motions and find them to be without merit. Accordingly, we **GRANT** Nicholson's motion for judicial notice as to the nonjudicial foreclosure sale of her home, Nationstar Mortgage LLC's substitute trustees' deed, and the docket sheet and final judgment in the lawsuit brought in the United States District Court for the Northern District of Texas. We **DENY** the remaining motions and **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

The image shows a handwritten signature in cursive script, "Catherine O'Hagan Wolfe", written over a circular official seal. The seal is for the United States Second Circuit Court of Appeals, featuring the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "JULY 16, 1789" at the bottom. The signature is written in dark ink.

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of September, two thousand twenty-five.

Harriet Nicholson,

Plaintiff - Appellant,

v.

The Bank of New York Mellon, formerly known as The
Bank of New York Trustee for the Certificate holders of
CWMBS, Inc., CWMBS Reforming Loan Remic Trust
Certificates Series 005-R2,

Defendant - Appellee.

ORDER

Docket No: 24-586

Appellant, Harriet Nicholson, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe

The seal of the United States Court of Appeals for the Second Circuit is circular. It features the words "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, separated by small stars.

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