

APPENDIX

Selected Publicly Filed Judicial Records

Appendix A

Document 91, N.D. Tex. No. 4:24-cv-00389-O, filed Aug. 28, 2026 - page 1

Case 4:24-cv-00389-O Document 91 Filed 08/28/26 Page 1 of 27 PageID 1649
Nicholson v. Barrett Daffin Frappier Turner & Engle LLP, et al., No. 4:24-cv-00389-O

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

HARRIET NICHOLSON,

Civil Action No. 4:24-cv-00389-O

Plaintiff,

v.

BARRETT DAFFIN FRAPPIER TURNER
& ENGLE LLP, et al.,

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE, AND PROPOSED MOTION FOR
RELIEF FROM JUDGMENT UNDER FED. R. CIV. P. 60(d)(3)**

Plaintiff Harriet Nicholson respectfully moves for leave to file the accompanying proposed motion for relief from the July 22, 2024 judgment. The requested leave is submitted out of caution and respect for the Court's July 22, 2024 order requiring leave before Plaintiff files additional complaints. This is not an additional complaint; it is a post-judgment motion in this closed action. The proposed motion is included below so the Court may evaluate its limited basis before granting leave.

If leave is granted, Plaintiff requests relief under Rule 60(d)(3) from the dismissal and, at minimum, from the vexatious-litigant filing restriction. The motion concerns a narrow, objectively verifiable payment-history representation used to portray Plaintiff as having made no mortgage payment for nearly twenty years. Defendants' own earlier filing in this Court states that Plaintiff made a regular payment on April 15, 2011 and that BNYM purchased the property at the July 3, 2012 foreclosure sale. The 2024 representation was therefore materially misleading in the context in which it was offered. Plaintiff does not allege, and asks the Court not to infer, any ex parte communication from the timing of the July 1, 2024 motion and the July 3, 2024 FCR.

REQUEST FOR LEAVE

1. The July 22, 2024 order provides that Plaintiff "shall seek leave of court by motion before she is permitted to file any additional complaints in this district." ECF No. 61 at 2. This filing seeks leave before presenting post-judgment relief. It is not a new complaint and does not seek to relitigate all prior foreclosure issues.
2. The proposed Rule 60(d)(3) motion rests on a discrete record contradiction and challenges the factual narrative that materially contributed to the Court's dismissal and filing restriction. The Court should grant leave and consider the proposed motion on its merits.

WHEREFORE, Plaintiff respectfully requests leave to file and have considered the following proposed Rule 60(d)(3) motion.

Page 1

Appendix B

Document 91 - page 3 (discussion of March 2025 foreclosure and Exhibit H)

Case 4:24-cv-00389-O Document 91 Filed 08/28/26 Page 3 of 27 PageID 1651
Nicholson v. Barrett Daffin Frappier Turner & Engle LLP, et al., No. 4:24-cv-00389-O

3. In the SDNY action, counsel for BNYM stated at the August 11, 2022 conference that Plaintiff “prevailed on her claim to vacate the deed and restore title to her name.” When the court asked whether Plaintiff had title, counsel answered, “Correct.” Nicholson v. BNYM, No. 1:22-cv-03177-PGG-KHP, Aug. 11, 2022 Tr. 12–13 (Ex. C). Plaintiff relies on this representation only as evidence of the Bank’s contemporaneous position concerning the effect of the Texas judgment.
4. In this case, BNYM and Nationstar moved to dismiss on July 1, 2024. Their motion stated that Plaintiff had pursued litigation “after failing to pay her mortgage for the last twenty (20) years.” ECF No. 52 at 2 (Ex. D).
5. Two days later, the FCR described Plaintiff as having “avoided paying her mortgage for nearly twenty years by using the judicial system to delay a lawful foreclosure.” ECF No. 57 at 1 (Ex. E). The FCR recommended both dismissal and a vexatious-litigant restriction.
6. On July 22, 2024, this Court accepted the FCR, dismissed the claims with prejudice, and declared Plaintiff a vexatious litigant. ECF No. 61 at 1–2 (Ex. F). The order relied on the asserted twenty-year litigation history and found that Plaintiff’s “twenty-year litigation certainly meets this threshold.” Id. at 2.
7. While the appeal in Nicholson v. BNYM, No. 24-586 (2d Cir.), remained pending, BNYM invoked this Court’s FCR in its September 30, 2024 respondent brief, quoting the nearly twenty-year payment narrative, BNYM 2d Cir. Br. 19 (Ex. G). During the same pending appeal, BNYM and/or its servicing agent pursued a new nonjudicial foreclosure involving the same property in Texas. The defendants’ Texas opposition identifies the March 4, 2025 foreclosure sale and the March 25, 2025 second-chance sale/auction position. (Ex. H.) Plaintiff offers this overlapping conduct as context demonstrating materiality and the Bank’s shifting use of the prior judgments, not as a request that this Court decide title to the property.

Exhibit H is offered against BNYM and Nationstar as their own court filing through counsel. It is not offered for hearsay; it is a statement of an opposing party, made by the party or its authorized agent in the course of the litigation. Fed. R. Evid. 801(d)(2)(A), (C), (D).

8. The same attorney, Grant M. Figari, signed the July 1, 2024 N.D. Texas motion to dismiss in this action. ECF No. 53 at 21 (Ex. D). He also signed the March 16, 2025 Texas opposition. Ex. H at 11. The March opposition again asserted that Plaintiff had lived in the home without required payments for twenty years, while also acknowledging that a recorded reconveyance deed would prevent BNYM and Nationstar from foreclosing. Id. at 6, 11. These signatures make the contradiction a direct issue of counsel’s knowledge and representations to courts, rather than a generalized contention about unrelated corporate records.

IV. ARGUMENT

A. The payment narrative was materially false or misleading in the record before this Court.

The statement that Plaintiff had failed to pay a mortgage for “the last twenty years” conveyed that she had made no payment over that period. But Defendants’ own 2014 filing says she made a regular mortgage payment on April 15, 2011. July 2024 was approximately thirteen years and two months later—not twenty years. The same filing identifies a 2012 foreclosure sale at which

Appendix C

BNYM/Nationstar Opposition, Mar. 16, 2025 - page 6 (reconveyance passage)

trial court plenary power to revise the judgment through November 16, 2020. *See* Exhibit C. Nicholson, in fact, took advantage of this 30 day period, filing numerous post-judgment motions, including a motion to amend the 2020 Judgment. (*Id.*) The Court rejected all of her post-judgment motions, and on November 30, 2020, Nicholson appealed the 2020 Judgment.⁵ “[U]pon perfection of the appeal, the trial court loses jurisdiction of the case, pending the appeal, in respect to all matters that interfere with the appellate functions.” *Thompson v. Davis*, No. 12-19-00348-CV, 2020 WL 6065984, at *1 (Tex. App. Oct. 14, 2020), *review denied* (Jan. 22, 2021) (citing *Panhandle Const. Co. v. Lindsey*, 72 S.W.2d 1068, 1072 (Tex. 1934)). Accordingly, the Court lost its plenary powers as of November 30, 2020, when Nicholson appealed over four years ago. This Court can only correct clerical errors, not vacate an entire Order as Nicholson demands.

Furthermore, while Nicholson contends she is only seeking to correct clerical errors, this is patently false. Nicholson is seeking title to the property free and clear of BNYM's lien, so that she can stop foreclosure. She specifically asks for a judgment requiring Nationstar/BNYM “to execute and record a deed of reconveyance restoring title to Plaintiff.” Such an order is a fundamental, material, and substantive revision that would invalidate the lien and prevent BNYM and Nationstar from foreclosing. Because this Court does not have plenary power to reconsider the 2020 Judgment and Nicholson is not requesting correction of clerical errors, Nicholson's March 7, 2025 Request should be denied.

B. Even if the Court Had Such Power, the Proposed Motion to Reopen is Barred by *Res Judicata*.

Even if this Court had jurisdiction to revise the 2020 Judgment, which it does not, such a revision to grant her title to the property free and clear of the lien, would require this Court to

⁵ A copy of the Notice of Appeal is attached as Exhibit D.

Appendix D

BNYM/Nationstar Opposition - page 11 (conclusion and counsel signature)

to pay off the amount owed. Accordingly, BNYM was entitled to foreclose. *See Id.*

CONCLUSION

Nicholson is exactly the type of litigant that the Texas Vexatious Litigant Statute seeks to prevent filing meritless actions. Nicholson has been fighting the lawful foreclosure for over a decade -- filing sixteen lawsuits involving the same property, the same loan, and the same parties. She has been living in the home without making the required payments for twenty years -- enough is enough. Nicholson's charade should be put to an end, and her Requests denied.

Dated: March 16, 2025

Respectfully submitted,

/s/ Grant M. Figari

Grant M. Figari, SBN: 24119480

gfigari@mcguirewoods.com

Matthew D. Durham, SBN: 24040226

mdurham@mcguirewoods.com

MCGUIREWOODS LLP

2601 Olive Street, Suite 2100

Dallas, Texas 75201

Telephone: 214.932.6400

Facsimile: 214.932.6499

*Counsel for The Bank of New York Mellon
f/k/a The Bank of New York, as Trustee for
the Certificateholders of CWMBS, Inc.,
CWMBS Reforming Loan Remic Trust
Certificates Series 2005-R2 through its
servicing agent Nationstar Mortgage LLC
d/b/a Mr. Cooper*

Appendix E

BNYM/Nationstar Opposition - page 12 (certificate of service)

CERTIFICATE OF SERVICE

I hereby certify that on the undersigned date, an electronically filed copy of the foregoing instrument was served as follows:

Harriet Nicholson
harrietcholson@yahoo.com

Dated: March 16, 2025

Respectfully submitted,

/s/ Grant M. Figari
Grant M. Figari, SBN: 24119480
Matthew D. Durham, SBN: 24040226

Appendix F

SDNY ECF No. 209, filed Aug. 27, 2026 - page 1 (supplemental notice supporting ECF No. 207)

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 1 of 16

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

HARRIET NICHOLSON,
Plaintiff,

Case No. 1:22-cv-03177-PGG-KHP

v.

**PLAINTIFF'S SUPPLEMENTAL
NOTICE AND DECLARATION
AUTHENTICATING EXHIBIT A IN
SUPPORT OF ECF NO. 207**

THE BANK OF NEW YORK MELLON,
f/k/a THE BANK OF NEW YORK, Trustee
for the Certificateholders of CWMBS, Inc.,
CWMBS Reforming Loan REMIC Trust
Certificates Series 2005-R2,

Defendant.

Plaintiff Harriet Nicholson, proceeding pro se, submits this supplemental notice and declaration in support of her Renewed Post-Judgment Motion for In-Personam Enforcement, ECF No. 207. This filing does not seek to relitigate the Texas merits or alter the Texas judgment. It supplies a Texas filing by Defendant that is directly relevant to whether a recordable corrective instrument has material consequences for Defendant's asserted foreclosure authority.

1. Exhibit A is a true and correct copy of the twelve-page document Plaintiff received electronically on March 16, 2025, entitled "The Bank of New York Mellon Through Its Servicing Agent Nationstar Mortgage LLC d/b/a Mr. Cooper's Opposition to Vexatious Litigant Harriet Nicholson's Requests for Prefiling Orders," in Texas Cause No. 342-262692-12.

Appendix G

SDNY ECF No. 209 - page 2 (BNYM/Nationstar reconveyance and foreclosure position)

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 2 of 16

2. Exhibit A is signed by Grant M. Figari, counsel for BNYM through its servicing agent Nationstar Mortgage LLC d/b/a Mr. Cooper. Its certificate of service states that an electronically filed copy was served on Plaintiff on March 16, 2025.

3. At page 6, BNYM argued that an order requiring BNYM/Nationstar "to execute and record a deed of reconveyance restoring title to Plaintiff" would be "a fundamental, material, and substantive revision that would invalidate the lien and prevent BNYM and Nationstar from foreclosing." Exhibit A at 6.

4. That statement is relevant to ECF No. 207 because it acknowledges the material connection between a recordable corrective instrument and the foreclosure authority BNYM and Nationstar later asserted. Plaintiff offers the statement as an opposing-party statement under Federal Rule of Evidence 801(d)(2), not for any impermissible hearsay purpose. Plaintiff authenticates the attached copy from personal knowledge under Rule 901(b)(1).

5. Plaintiff respectfully requests that the Court consider Exhibit A with ECF No. 207. Plaintiff does not ask the Court to infer from Exhibit A alone any particular subjective motive. The document speaks for itself as to BNYM's stated position regarding the legal consequence of the requested corrective instrument.

DECLARATION OF HARRIET NICHOLSON

I, Harriet Nicholson, declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

Appendix H

SDNY ECF No. 209 - page 3 (declaration authenticating Exhibit A)

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 3 of 16

1. I am the Plaintiff in this action. I have personal knowledge of the facts stated in this declaration.

2. On March 16, 2025, I received electronically the Texas opposition attached as Exhibit A. Exhibit A is a true and correct copy of the document I received. The document identifies BNYM, acting through Nationstar, as the filing party; identifies Grant M. Figari as counsel; and bears his electronic signature.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 28, 2026, in Grand Prairie, Texas:

/s/ Harriet Nicholson

Harriet Nicholson, Plaintiff Pro Se

CERTIFICATE OF SERVICE

I certify that on August 28, 2026, I served a true and correct copy of this Supplemental Notice and Declaration, with Exhibit A, on counsel for Defendant by the authorized method of service used in this action.

/s/ Harriet Nicholson

Appendix I

BNYM/Nationstar Opposition, Mar. 16, 2025 - page 6, as filed with SDNY ECF No. 209

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 10 of 16

trial court plenary power to revise the judgment through November 16, 2020. *See* Exhibit C. Nicholson, in fact, took advantage of this 30 day period, filing numerous post-judgment motions, including a motion to amend the 2020 Judgment. (*Id.*) The Court rejected all of her post-judgment motions; and on November 30, 2020, Nicholson appealed the 2020 Judgment.⁵ “[U]pon perfection of the appeal, the trial court loses jurisdiction of the case, pending the appeal, in respect to all matters that interfere with the appellate functions.” *Thompson v. Davis*, No. 12-19-00348-CV, 2020 WL 6065984, at *1 (Tex. App. Oct. 14, 2020), *review denied* (Jan. 22, 2021) (citing *Panhandle Const. Co. v. Lindsey*, 72 S.W.2d 1068, 1072 (Tex. 1934)). Accordingly, the Court lost its plenary powers as of November 30, 2020, when Nicholson appealed over four years ago. This Court can only correct clerical errors, not vacate an entire Order as Nicholson demands.

Furthermore, while Nicholson contends she is only seeking to correct clerical errors, this is patently false. Nicholson is seeking title to the property free and clear of BNYM’s lien, so that she can stop foreclosure. She specifically asks for a judgment requiring Nationstar/BNYM “to execute and record a deed of reconveyance restoring title to Plaintiff.” Such an order is a fundamental, material, and substantive revision that would invalidate the lien and prevent BNYM and Nationstar from foreclosing. Because this Court does not have plenary power to reconsider the 2020 Judgment and Nicholson is not requesting correction of clerical errors, Nicholson’s March 7, 2025 Request should be denied.

B. Even if the Court Had Such Power, the Proposed Motion to Reopen is Barred by *Res Judicata*.

Even if this Court had jurisdiction to revise the 2020 Judgment, which it does not, such a revision to grant her title to the property free and clear of the lien, would require this Court to

⁵ A copy of the Notice of Appeal is attached as Exhibit D.

Appendix J

BNYM/Nationstar Opposition - page 11 (conclusion and counsel signature), as filed with

SDNY ECF No. 209

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 15 of 16

to pay off the amount owed. Accordingly, BNYM was entitled to foreclose. *See Id.*

CONCLUSION

Nicholson is exactly the type of litigant that the Texas Vexatious Litigant Statute seeks to prevent filing meritless actions. Nicholson has been fighting the lawful foreclosure for over a decade – filing sixteen lawsuits involving the same property, the same loan, and the same parties. She has been living in the home without making the required payments for twenty years – enough is enough. Nicholson’s charade should be put to an end, and her Requests denied.

Dated: March 16, 2025

Respectfully submitted,

/s/ Grant M. Figari

Grant M. Figari, SBN: 24119480

gfigari@mcguirewoods.com

Matthew D. Durham, SBN: 24040226

mdurham@mcguirewoods.com

MCGUIREWOODS LLP

2601 Olive Street, Suite 2100

Dallas, Texas 75201

Telephone: 214.932.6400

Facsimile: 214.932.6499

*Counsel for The Bank of New York Mellon
f/k/a The Bank of New York, as Trustee for
the Certificateholders of CWMBS, Inc.,
CWMBS Reforming Loan Remic Trust
Certificates Series 2005-R2 through its
servicing agent Nationstar Mortgage LLC
d/b/a Mr. Cooper*

Appendix K

BNYM/Nationstar Opposition - page 12 (certificate of service), as filed with SDNY ECF

No. 209

Case 1:22-cv-03177-PGG-KHP Document 209 Filed 08/27/26 Page 16 of 16

CERTIFICATE OF SERVICE

I hereby certify that on the undersigned date, an electronically filed copy of the foregoing instrument was served as follows:

Harriet Nicholson
harrietcholson@yahoo.com

Dated: March 16, 2025

Respectfully submitted,

/s/ Grant M. Figari
Grant M. Figari, SBN: 24119480
Matthew D. Durham, SBN: 24040226