

IN THE SUPREME COURT OF THE
UNITED STATES

APPENDIX TO PETITION FOR A
WRIT OF CERTIORARI

JOSEF M. LAMELL, *PETITIONER*

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Appendix A

Opinion Appealed from
Fifth Circuit Court of Appeals
Case No: 25-20056

March 15, 2026
(*not published*)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 16, 2026

Lyle W. Cayce
Clerk

No. 25-20056

U.S. BANK NATIONAL ASSOCIATION, *As Trustee for CSMC*
MORTGAGE-BACKED TRUST 2007-3; PHH MORTGAGE
CORPORATION, *Individually* AND *AS Successor in Interest to OCWEN*
LOAN SERVICING,

Plaintiffs—Appellees,

versus

JOSEF M. LAMELL, *also known as* ARPAD LAMELL, *also known as* J. M.
ARPAD LAMELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-2402

Before SOUTHWICK, HIGGINSON, and DOUGLAS, *Circuit Judges.*

Stephen A. Higginson, *Circuit Judge:**

Pro se Defendant-Appellant Josef Lamell appeals the judgment in favor of Plaintiffs-Appellees (“Appellees”) after a two-day bench trial following our decision in *U.S. Bank National Association v. Lamell*, 2022 WL

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

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1800860 (5th Cir. June 2, 2022) (*Lamell I*). There, we reversed the district court's summary judgment determination that Lamell was barred by res judicata from asserting his affirmative statute of limitations defense.

After remand and trial, the district court found that Lamell released his limitations defense and Appellees were entitled to foreclose on Lamell's property. It also found that Appellees were entitled to pay taxes on the property and that the \$92,582.06 Appellees had paid to Harris County for property taxes on Lamell's property was debt secured by the Deed of Trust. The district court also awarded attorneys' fees to Appellees, and it concluded that any claims to proceeds of an insurance settlement were not properly before it. Because we do not find reversible error in the district court's decision, we AFFIRM.

I.

The history of this loan and foreclosure dispute spans almost two decades and multiple loan servicers.

On September 25, 2006, Josef Lamell (Lamell) signed a promissory Note in the original principal amount of \$566,000.00 to pay off four prior secured debts totaling \$554,873.25. The Note was payable to the Home123 Corporation. Lamell also executed a Deed of Trust granting Home123 a security interest in his home at 5131 Glenmeadow Drive, in Houston, Texas (the "Property"). On April 11, 2010, Home 123 assigned the Deed of Trust to Appellee United States Bank National Association ("USBNA").

During his testimony at trial, Lamell testified that he had disputed his property tax appraisal and stated he paid only the undisputed portion of his property taxes while the protest was being resolved. The trial exhibits reflect that Lamell filed one prior state lawsuit in 2008, and then another on February 22, 2010, also in state court against certain Harris County entities and officials based on his tax dispute (the "2010 Lawsuit").

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IndyMac Mortgage Services, a division of OneWest Bank, was the servicer of Lamell's loan at that time, and IndyMac paid the disputed property taxes according to a letter Lamell sent to IndyMac on March 30, 2010. On April 8, 2010, IndyMac sent a default notice to Lamell that outlined his failure to pay \$14,532.07 including late fees and informed him of the Note's acceleration if he did not cure the default. Upon receipt of the default notice, Lamell amended the 2010 Lawsuit and added IndyMac as an additional defendant. On April 14, 2010, Lamell sent an additional letter to IndyMac stating that he had settled his 2008 lawsuit and anticipated a reduction in his property taxes.

On November 1, 2013, Ocwen Loan Servicing, LLC ("Ocwen"), assumed IndyMac's obligations to service the loan. CIT Group Inc. acquired One West Bank on August 3, 2015, and operated it as a subsidiary and lender named CIT Bank, N.A. ("CIT"). On April 9, 2019, Lamell supplemented his 2010 Lawsuit ("Third Supplement") and raised his statute of limitations affirmative defense as a complaint against any possible future foreclosure by CIT, or its successors or assigns. Lamell also requested declaratory relief against CIT on the same limitations basis.

On May 16, 2019, CIT and Lamell executed a *Settlement Agreement and Mutual Release of All Claims* (the "Settlement Agreement"), resolving the 2010 Lawsuit. As consideration for the \$40,000 settlement payment to him by CIT, Lamell agreed to an expansive release and forever discharge of,

any and all past, present, or future claims, demands, obligations, actions, causes of action, rights . . . of any nature whatsoever, whether based in statute, in tort, on a contract, a statutory or non-statutory lien, or on other theory of recovery, related to or arising out of any and all claims which were brought or could have been brought by [Defendant Lamell] in connection with the Dispute of the Lawsuit.

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Meanwhile, on April 11, 2019, a notice went out to Lamell informing him that Appellee PHH Mortgage Corporation (“PHH”) would assume service of his loan starting May 1, 2019. On July 2, 2019, PHH sent Lamell a foreclosure notice, alerting him that he was in default for failing to make mortgage payments since February 1, 2010; he had to pay \$644, 361.99 to cure the default; and that “failure to cure the default by 08/06/2019 will result in acceleration of the sums secured by the Security Instrument and sale of the property.” Appellees sent Lamell an acceleration notice on August 20, 2019, which stated, “the maturity date of the Note was accelerated effective 8/20/2019,” that “all unpaid principal and accrued interest of the Note are due and payable at this time,” and that his “total balance due as of August 16, 2019, is \$1,289, 102.72.”

USBNA and PHH filed the instant lawsuit against Lamell in the district court on July 3, 2019, seeking declaratory relief that: (1) the statute of limitations does not bar their right to foreclose on the Property or collect on the Note; (2) the waivers and releases contained in the Settlement Agreement prevent Lamell from asserting any affirmative defense to foreclosure or collection on the Note; (3) res judicata barred Lamell from raising the statute limitations defense against enforcing the Loan Agreement; or (4) in the alternative, Appellees are entitled to contractual and/or equitable subrogation and permitted to foreclose on the property.

On August 21, 2019, Appellees filed a motion for summary judgment. The district court granted the summary judgment motion based solely on the ground that res judicata barred Lamell’s limitations argument and entered final judgment in the case.

Lamell appealed the judgment, and our court reversed the district court’s determination that Lamell was “barred by res judicata from asserting his statute of limitations affirmative defense,” and the district court’s

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“determination that the Appellees are entitled to foreclosure under the theories of contractual and equitable subrogation.” *Lamell I*, 2022 WL 1800860 at *7. We remanded the case for the district court to determine “the abandonment, foreclosure, and subrogation issues.” *Id.*

On remand, the district court conducted a two-day bench trial. In a detailed forty-page opinion, the district court held that: (1) Lamell released his limitations defense in the Settlement Agreement with CIT,¹ entitling Appellees to enforce the release, and therefore, Appellees were entitled to foreclose on the Property; (2) Lamell failed to timely pay property taxes and this coupled with his escrow waiver, authorized Appellees to pay the property taxes; (3) Lamell failed to make payments required under the Note, which as an event of default, entitled Appellees to foreclose under the terms of the Note and Deed of Trust; (4) the Deed has a contractual subrogation clause that treats unpaid advanced property taxes by the Appellees as debt of Lamell; and Appellees had proved a valid claim for contractual subrogation totaling \$92, 582.06.

Lamell appeals that judgment, raising four principal arguments. First, he argues that the expired statute of limitations rendered Appellees’ property lien void. Second, he argues that Appellees’ foreclosure and collection claims predate the CIT Settlement Agreement and were released by it. Third, and relatedly, he argues that Appellees are not authorized to enforce the Settlement Agreement. Fourth, he argues that the insurance settlement fund belongs to Lamell because Appellees’ powers of sale under the Deed are

¹ As part of this determination, the district court held that the applicable statute of limitations under Tex. Civ. Prac. & Rem. Code § 16.035 was tolled for 755 days, that Appellees and their predecessors did not foreclose or abandon acceleration within four years plus tolling, and thus the foreclosure statute of limitations expired before the CIT Settlement Agreement.

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“forever void, barred, and unenforceable” and hence no foreclosure can occur. In his reply, Lamell refines his fourth argument, stating that the tax subrogation claim is “illegitimate” and “barred by the law of the case doctrine and by the mandate rule.” Given the interrelatedness of the first three issues, we bifurcate our review between the Settlement Agreement, limitations and foreclosure issues on the one hand, and Lamell’s objection to Appellees’ amended complaint that includes the contractual and equitable subrogation claims, on the other.

II.

Because the district court conducted a bench trial, we review its findings of fact for clear error and conclusions of law *de novo*. *Matter of Ritz*, 832 F.3d 560, 565 (5th Cir. 2016).

“After a bench trial, findings of fact are reviewed for clear error while conclusions of law and mixed questions of law and fact are reviewed *de novo*.” *Eni US Operating Co. v. Transocean Offshore Deepwater Drilling, Inc.*, 919 F.3d 931, 934 (5th Cir. 2019) (citation omitted). “We will disturb a factual finding ‘only if we are left with the definite and firm conviction that a mistake has been committed.’” *SEC v. World Tree Fin., L.L.C.*, 43 F.4th 448, 459 (5th Cir. 2022) (quoting *Deloach Marine Servs., L.L.C. v. Marquette Transp. Co.*, 974 F.3d 601, 606-07 (5th Cir. 2020)). However, “[w]e cannot reverse a district court’s factual finding after a bench trial ‘simply because we are convinced that we would or could decide the case differently.’” *Appliance Liquidation Outlet, L.L.C. v. Axis Supply Corp.*, 105 F.4th 362, 374 (5th Cir. 2024) (quoting *Guzman v. Hacienda Recs. & Recording Studio, Inc.*, 808 F.3d 1031, 1036 (5th Cir. 2015)). “The clear-error standard following a bench trial requires even greater deference to the trial court’s findings when they are based on determinations of credibility.” *World Tree Fin.*, 43 F.4th at 459 (citation omitted).

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III.

The first issue before us is whether the district court erred when it found that Lamell released his statute of limitations defense to foreclosure in the Settlement Agreement. Because the underlying dispute deals with interpreting the parties' contractual obligations, we look to state law. *Weber v. PACT XPP Technologies, AG*, 811 F.3d 758, 770 (5th Cir. 2016). Texas law instructs that a secured lender must sue for the recovery or the foreclosure of a real property lien "not later than four years after the day the cause of action accrues." TEX. CIV. PRAC. & REM. CODE § 16.035(a). Upon expiration of the four-year limitations period, both the real property lien and power of sale to enforce it become void. *Id.* at § 16.035(d). Notwithstanding this statutory language, both state and federal courts in Texas have concluded that statute of limitations "may be waived by agreement either before or after expiration of the prescribed time limit" so long as "any agreement made before the statutory bar expires [is] specific and for a reasonable time." *American Alloy Steel, Inc. v. Armco, Inc.*, 777 S.W.2d 173, 177 (Tex. App.—Houston [14th Dist.] 1989); *Griffin v. BAC Home Loans Servicing, LP*, 2011 WL 675285, at *2 (S.D. Tex. Feb. 16, 2011).

During the bench trial, Lamell sought declarations that limitations had expired, that Appellees had no authority to foreclose or enforce any claim on the Note, and that the deed was void. The district court extensively analyzed the limitations issue. Relevant here, the district court found that USBNA was entitled to enforce the Settlement Agreement because it expressly released "any predecessors in interest." This finding was buttressed by the fact that the servicing rights on the mortgage originated from USBNA and its predecessor, Home123, supporting its contractual rights and obligations within the Settlement Agreement. Next, referencing the broad language in

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the CIT Settlement Agreement that released all of Lamell’s “claims” and “rights” “of any nature whatsoever”—the district court also found that Lamell’s limitations defense counted as “a right related to a claim that he brought—[i.e.] his [state court] declaratory judgment claim.”

We find no error in the district court’s findings of fact on the limitations issue given the expansive language in the Settlement Agreement and the legal relationship between the predecessors and successors contemplated in the Settlement Agreement. Lamell contends that our court’s prior decision held that his 2010 Lawsuit was “not really a claim at all,” because “his request was not accompanied by a related claim of ‘coercive’ effect, [and] it did not represent the ‘end of the road’ for Plaintiffs’ claims.” Lamell argues that the district court “effectively overruled” our prior decision on the declaratory relief issue “by treating [his] declaratory request as something it was not: a real and fully dispositive claim with coercive end-of-the-road force.”

Lamell takes this portion of our prior opinion out of context. That portion of the opinion focused on whether res judicata applied to declaratory judgment dismissals. *Lamell I*, 2022 WL 1800860 at *6. For context, Appellees had originally asserted multiple grounds for declaratory relief in their summary judgment motion before the district court, including abandonment of acceleration, release via the Settlement Agreement, and res judicata. After holding that res judicata barred Lamell from enforcing his limitations defense, the district court did not address the remaining grounds for relief in its prior decision.

Finding that neither the Supreme Court of Texas nor any other Texas intermediary appellate courts had addressed the exact res judicata question at issue, *Lamell I* turned to a closely related question that had state precedents, namely: “whether judgments awarding only declaratory relief

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have claim preclusive effect in subsequent suits for coercive relief stemming from the declaratory judgment.” *Id.* at *3-5, (citing to *Martin v. Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998); *CBS Outdoor, Inc. v. Potter*, No. 01-11-00650-CV, 2013 WL 269091 at *1 (Tex. App. –Houston [1st Dist.] Jan. 24, 2013, pet. denied) (mem. op.); *Alsheikh v. Arabian Nat’l Shipping Corp.*, No. 01-08-00007-CV, 2009 WL 884795, at *2 (Tex. App. — Houston [1st Dist.] Apr. 2, 2009, no pet.) (mem. op.); *Valley Oil Co. v. City of Garland*, 499 S.W.2d 333, 335 (Tex. Civ. App. — Dallas 1973, no writ)). Reasoning that the weight of the case law and gravamen of the Texas Uniform Declaratory Judgments Act cut against finding that Lamell’s prior state court declaratory judgment action on the limitations issue had preclusive effect, our court reversed the district court’s res judicata basis for granting summary judgment and remanded. *Lamell I*, 2022 WL 1800860, at *7.

It was against this backdrop that the district court, after trial, ruled that Appellees had not waived their Settlement Agreement release argument, they were successors or assigns of CIT entitled to enforcement, and the release covered the limitations defense. We agree.

As to the waiver argument, Lamell avers that the district court conflated his state court request for declaratory relief with his affirmative defense of limitations. Relying on *United States v. Agofsky*, 516 F.3d 280, 283 (5th Cir. 2008) and *Harte v. Bd. of Commissioners of Cnty. of Johnson, Kansas*, 940 F.3d 498, 510 (10th Cir. 2019), he maintains that this alleged conflation violated the law of the case doctrine and the mandate rule. Neither doctrine is implicated here. Our court reversed the district court’s specific determination that res judicata barred Lamell from asserting his limitations defense and remanded the case “for determination of the abandonment, foreclosure, and subrogation issues and for further proceedings not inconsistent with this opinion.” *Lamell I*, 2022 WL 1800860, at *7.

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Appellees had advanced three bases for declaratory relief originally in their summary judgment motion. Recall however, that the district court ruled only on res judicata grounds. Our court reversed that determination, whereafter the district court made determinations on the remaining issues “not inconsistent” with our decision. The district court avoided inconsistency by granting relief based on the Settlement Agreement’s limitations release and not res judicata.

The district court ruled that the Settlement Agreement’s release covered Lamell’s limitations defense because the parties expressly bargained to “resolve all claims for declarations and for damages . . .” On the dispositive question of whether the release in the Settlement Agreement covered limitations, the district court relied on the broad release language, coupled with the arguments Lamell advanced in his state court action. In his third supplement in state court against CIT, Lamell had specifically pled that the limitations period for “all of CIT’s available enforcement remedies began running as of the date of acceleration on June 4, 2010,”—and thus had expired. As previously noted, Lamell is correct that our court’s prior decision held that “declaratory relief does not necessarily constitute the ‘full measure of relief to be accorded between the same parties on the same ‘claim’ or ‘cause of action.’” *Lamell I*, 2022 WL 1800860, at *4. Our decision, however, was focused on the issue of res judicata. Lamell filed his amended supplement five weeks before entering the Settlement Agreement. Indeed, the Settlement Agreement contained language stating that Lamell agrees to release, “any and all claims which were brought or could have been brought by Plaintiff in connection with the Dispute or the Lawsuit.” As the district court explained, Lamell’s limitations defense counted as a “right related to a claim that he brought”—namely his state court declaratory judgment claim and prayers for relief—and that the Settlement Agreement represented a

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“complete and unconditional settlement, release, and compromise . . . regarding all of [Lamell’s] claims arising out of . . . the Lawsuit.”

Lamell cites *Godoy v. Wells Fargo Bank*, 575 S.W.3d 531, 537 (Tex. 2019), for the proposition that “an agreement in advance not to plead the defense of limitations is void as against public policy” unless “specific and for a limited period of time.” He argues that the Settlement Agreement lacks effect because it did not satisfy the required conditions of specificity and limited duration. The district court addressed Lamell’s specificity and duration arguments under *Godoy* but distinguished it as inapposite as applied to waiver of an “already-expired statute of limitations.” *Id.* at 533, 534 (Tex. 2019).² We agree.

As to the successors and assigns issue, the district court found that Appellees maintained a corporate relationship with CIT after analyzing the specific language of the Settlement Agreement and its express inurement to CIT’s successors and assigns. The court found, there was an ordinary succession of corporate entities whereby One West Bank merged with CIT

² While the district court considered the import of *Godoy*, it nonetheless found the question of whether the Settlement Agreement released post-settlement running of limitations immaterial because “less than four years passed between the settlement” and Appellees’ filing of their foreclosure action. It also found that the limitations period reset by operation of law when Appellees sent a new notice of default in 2019. *See Boren v. U.S. National Bank Ass’n*, 807 F.3d 99, 106 (5th Cir. 2015) (explaining that a new default notice indicating intent to abandon prior acceleration reset the four-year statutory clock under §16.035(a)). Under Texas law however, a new notice of default, standing alone, does not reset limitations. Instead, § 16.038 requires lenders to rescind their prior acceleration in writing, via certified mail before the limitations period expires. TEX. CIV. PRAC. & REM. CODE § 16.038(a), (b). While this statutory method is not the exclusive method for waiver or rescission of the acceleration, it has been interpreted as best practice. *Id.* § 16.038(e). *See also Boren*, 807 F.3d 99, 106 (5th Cir. 2015). The district court also determined that PHH, as mortgagee, had standing to bring non-judicial foreclosure pursuant to Texas Property Code § 51.0025 after they sent Lamell a default notice with intent to accelerate plus a notice of acceleration.

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Bank, N.A., and the rights and obligations passed on to CIT. Finally, the district court examined the terms “successor” and “assign.” *Black’s Law Dictionary* (12th ed. 2024). In applying the dictionary definition of the two terms, the district court determined that Ocwen (and its “successor-by-merger PHH”) could enforce the Settlement Agreement. The district court also found that USBNA is a predecessor in interest entitled to enforce the Settlement Agreement. We find no error.

IV.

The district court also found that Appellees advanced \$92,582.06 of Lamell’s property taxes and that this sum was secured by the Deed of Trust under Appellees’ contractual subordination claim. The Deed of Trust states in relevant part that:

If . . . (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Security instrument . . . Lenders actions can include, but are not limited to (b) appearing in court; and (c) paying reasonable attorney’s fees to protect its interest in the Property and/or rights under this Security instrument, including its secured position in a bankruptcy proceeding . . . *Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security instrument.* (emphasis added).

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Lamell argues that Appellees' subrogation claims³ are illegitimate and invokes again the mandate rule⁴ and law of the case doctrine,⁵ asserting that Appellees waived claims by not raising them in connection with his prior appeal. As Appellees highlight however, Lamell does not challenge the validity of the district court's finding that Appellees advanced over ninety thousand dollars in unpaid taxes, and we find no clear error as to that fact determination by the district court. We agree with the district court's conclusion that the Deed of Trust has an enforceable contractual subrogation clause, applicable here.

³ The district court treated separately Appellees' equitable subrogation claim they pled in the alternative to their contractual subrogation claim. We do not reach the equitable subrogation claim because we agree with the district court's contractual subrogation determination.

⁴ Lamell cites *Edd Potter Coal Co., Inc. v. Dir., Off. of Workers' Comp. Programs, United States Dep't of Lab.*, 39 F.4th 202, 210 (4th Cir. 2022) for the proposition that the mandate rule commands any issue which "could have been but was not raised on appeal is waived and thus not remanded." However, he fails to grapple with the fact that Appellees had no obligation to raise the subrogation arguments in the first instance. It was Lamell who appealed the final judgment that ruled solely on res judicata grounds. Moreover, as Appellees highlight in their brief, when the district court ordered Lamell to respond to their motion for leave to file a second amended complaint, he stated that he is "not opposed to the granting of leave for [Appellees] to file their proposed amended complaint."

⁵ Lamell quotes language from *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, that reads, "once a court decides an issue, the same issue may not be re-litigated in subsequent proceedings in the same case." 114 F.3d 1513, 1520 (10th Cir. 1997). The difficulty, however, is that Appellees' subrogation claims were not litigated on the merits in the first order he appealed. Given the prior panel's broad remand to the district court, Appellees acted within their right to amend their complaint as permitted under Fed. R. Civ. P. 15(a).

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V.

Because we find no clear error in the district court's findings of fact and assess its conclusions of law as correct, we AFFIRM the district court's judgment.

Appendix B

Prior *Opinion* Appealed from
Fifth Circuit Court of Appeals
Case No: 21-20325

June 24, 2022
(*not published*)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 2, 2022

Lyle W. Cayce
Clerk

No. 21-20326

U.S. BANK NATIONAL ASSOCIATION, *as trustee for CSMC Mortgage-Backed Trust 2007-3*; PHH MORTGAGE CORPORATION, *individually as successor in interest to OCWEN LOAN SERVICING*,

Plaintiffs—Appellees,

versus

JOSEF M. LAMELL, *also known as J. M. ARPAD LAMELL*,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-2402

Before STEWART, CLEMENT, and ELROD, *Circuit Judges*.

PER CURIAM:

It is ORDERED that our prior panel opinion, *U.S. Bank National Association v. Lamell*, No. 21-20326, 2022 WL 1044055 (5th Cir. Apr. 7, 2022), is WITHDRAWN and the following opinion is SUBSTITUTED therefor.

It is further ORDERED that Appellant Josef Lamell's petition for panel rehearing is DENIED as MOOT.

* * *

EDITH BROWN CLEMENT, *Circuit Judge*:*

Appellant Josef Lamell has not made the monthly mortgage payment on his house for over a decade. Following the settlement of a protracted state court proceeding initiated by Mr. Lamell, Appellees United States Bank National Association (USBNA) and PHH Mortgage Corporation (PHH) filed a declaratory judgment action in federal district court. The Appellees sought declarations that (a) they were not time-barred from foreclosing on Mr. Lamell's property or collecting on the mortgage note; (b) they were entitled to pay taxes on the property; (c) they were entitled to non-judicial foreclosure; and (d) they were entitled to foreclosure under the theories of equitable and contractual subrogation.

The district court granted summary judgment in the Appellees' favor, and Mr. Lamell timely appealed. For the following reasons, we AFFIRM in part, REVERSE in part, and REMAND for further proceedings.

I.

In September 2006, Mr. Lamell refinanced the real property located at 5131 Glenmeadow Drive, Houston, Texas 77096. To do so, he executed a promissory note and a deed of trust, which granted a security interest in the property to Home123 Corporation (Home123). The deed of trust was assigned to USBNA in 2010, which is the current holder of the note and beneficiary of the deed of trust.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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In February 2010, Mr. Lamell defaulted on the loan. That same month, he (pro se) filed a state court petition against the Harris County Appraisal District, its Review Board, and the Harris County Tax Assessor, alleging fraud-related claims arising from certain tax assessments and charges on his property. In April 2010, the then-mortgage servicer of Mr. Lamell's property, CIT Bank, N.A. (CIT), sent Mr. Lamell a notice of default, demand to cure, and notice of intent to accelerate the loan. In response, Mr. Lamell amended his state court petition to add CIT as a defendant.¹ But he did not cure his default.

Because of Mr. Lamell's failure to cure, USBNA sent him a first notice of acceleration in June 2010. In it, USBNA accelerated the maturity of the loan and declared the entire loan amount due and payable. Over the next three years, USBNA sent Mr. Lamell at least five more notices of acceleration, all to the same effect. But Mr. Lamell never cured his default.

In October 2013, CIT transferred its mortgage servicing rights to Ocwen Loan Servicing, LLC (Ocwen). Between January and April 2014, Ocwen sent Mr. Lamell four separate mortgage account statements demanding less than the full amount of the accelerated loan. Mr. Lamell still did not cure, nor did he pursue the mortgage foreclosure alternatives that Ocwen offered.

Five years later, in May 2019, Ocwen transferred the mortgage servicing rights to PHH. Around that same time, there were several developments in the state court proceeding. First, Mr. Lamell supplemented his state court petition, seeking a declaration that any pending or future

¹ The "Amended 2009 Petition" purported to assert the following claims: "Violation of Due Process, Violation of Fair and Uniform Tax Appraisal, Fraud and Misrepresentation, Unlawful Tax Collection, Failure to Disclose, Conversion, and False Agency."

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foreclosure or collection actions by CIT or its successors or assigns were time-barred. Second, the parties settled, releasing all claims and counterclaims that were part of the state court suit. Third, the state court entered final judgment on the parties' agreement, dismissing with prejudice all claims that were or could have been asserted.

On July 2, 2019, PHH sent a first notice of foreclosure to Mr. Lamell. The very next day, the Appellees commenced the present action in federal district court, seeking a declaratory judgment "to confirm that the Statute of Limitations does not prevent them from enforcing the Loan Agreement, that Defendant released any claims he may have had to bar the enforcement of the Loan Agreement, and for foreclosure so it may enforce its security interest in the Property." The Appellees also sought a declaration that they were equitably or contractually subrogated to the rights of prior lienholders. Mr. Lamell, again proceeding pro se, counterclaimed for both declaratory and monetary relief.

Despite the July 2, 2019 notice of foreclosure, Mr. Lamell still did not cure his default. So, in August 2019, PHH accelerated the loan. Meanwhile, the Appellees moved for summary judgment on their claims for declaratory relief.

The district court granted the Appellees' motion in part and denied it in part. It denied the Appellees' request for a declaration that they unilaterally abandoned their acceleration of the loan. *U.S. Bank Nat'l Ass'n as Tr. for CSMC Mortgage-Backed Tr. 2007-3 v. Lamell*, No. 4:19-CV-2402, 2021 WL 1133154, at *3-5 (S.D. Tex. Feb. 4, 2021), *report and recommendation adopted*, No. CV H-19-2402, 2021 WL 1141247 (S.D. Tex. Mar. 24, 2021). Specifically, it held that the Appellees failed to present sufficient summary judgment evidence of an unequivocal intent to abandon their prior accelerations. *Id.* at *5.

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On the other hand, it granted the Appellees' request for a declaration that claim preclusion barred Mr. Lamell's statute of limitations affirmative defense, *id.* at *6-9; that the Appellees were entitled to non-judicial foreclosure, *id.* at *9-10; and that the Appellees were entitled to foreclose on Mr. Lamell's property under the doctrines of contractual and equitable subrogation, *id.* at *10-13.

Mr. Lamell then moved for a new trial under Federal Rule of Civil Procedure 59.² At the same time, the Appellees moved to amend the judgment, asking the district court to enter summary judgment in their favor on the issue of abandonment of acceleration. The district court denied both motions.

Mr. Lamell timely appealed the district court's summary judgment order and its order denying his motion for a new trial. Mr. Lamell is pro se on appeal.

II.

We review a district court's order granting a motion for summary judgment de novo, applying the same standard as the district court. *Hyatt v. Thomas*, 843 F.3d 172, 176 (5th Cir. 2016). Summary judgment is appropriate when "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 disputed fact is material if it "might affect the outcome of the suit under the governing law." *Hyatt*, 843 F.3d at 177 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "We construe all facts and inferences in the light most

² The district court construed Mr. Lamell's motion as a Rule 60(b) motion for relief from a final judgment, order, or proceeding.

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favorable to the nonmoving party.” *Dillon v. Rogers*, 596 F.3d 260, 266 (5th Cir. 2010) (quoting *Murray v. Earle*, 405 F.3d 278, 284 (5th Cir. 2005)).

III.

A.

This case hinges on whether the Appellees timely filed suit to foreclose on Mr. Lamell’s property. The district court did not reach that issue, however, because it held that the state court order dismissing Mr. Lamell’s action with prejudice was res judicata as to his statute of limitations affirmative defense. Considering the issue de novo, we disagree. *See Liberto v. D.F. Stauffer Biscuit Co.*, 441 F.3d 318, 326 (5th Cir. 2006).

Texas preclusion law applies. *Anderson v. Wells Fargo Bank, N.A.*, 953 F.3d 311, 314 (5th Cir. 2020). Like federal law, Texas law creates two varieties of res judicata: (1) true res judicata, otherwise known as claim preclusion; and (2) collateral estoppel, otherwise known as issue preclusion. *Barr v. Resol. Tr. Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 628 (Tex. 1992); *see also Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005). Claim preclusion bars “the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit.” *Barr*, 837 S.W.2d at 628.

The judgment that the Appellees contend has claim preclusive effect is the state court’s consent decree dismissing with prejudice Mr. Lamell’s action, which included his request for a declaratory judgment that the Appellees were time-barred from foreclosing on his property. The Supreme Court of Texas has not directly ruled on whether judgments dismissing claims for declaratory relief are entitled to claim preclusive effect. So, “we must make an ‘*Erie* guess’ as to how [it] would rule upon the issue[.]” *Am.*

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Int'l Specialty Lines Ins. Co. v. Rentech Steel LLC, 620 F.3d 558, 564 (5th Cir. 2010) (Elrod, J.). To do so, we consider the following factors:

(1) decisions of the [Supreme Court of Texas] in analogous cases, (2) the rationales and analyses underlying [Supreme Court of Texas] decisions on related issues, (3) dicta by the [Supreme Court of Texas], (4) lower state court decisions, (5) the general rule on the question, (6) the rulings of courts of other states to which Texas courts look when formulating substantive law and (7) other available sources, such as treatises and legal commentaries.

Id. (citations omitted).

The Supreme Court of Texas' first and only brush with the issue came in *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998) (per curiam). The precise issue before the Court was "whether a dismissal with prejudice of a suit to declare a contract valid bars an action for a breach occurring after the dismissal." *Id.* at 357. It ultimately held that it did not. *Id.* at 359. But in deciding that question, the Court first considered the issue more germane to our case: the preclusive effect, if any, that courts ought to afford judgments dismissing claims for declaratory relief. *Id.* at 358. In evaluating *that* question, the Court looked to comment c of Section 33 of the Restatement (Second) of Judgments, which provides:

Effects as to matters not declared. When a plaintiff seeks solely declaratory relief, the weight of authority does not view him as seeking to enforce a claim against the defendant. Instead, he is seen as merely requesting a judicial declaration as to the existence and nature of a relation between himself and the defendant. The effect of such a declaration, under this approach, is not to merge a claim in the judgment or to bar it. Accordingly, regardless of outcome, the plaintiff or defendant

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may pursue further declaratory or coercive relief in a subsequent action.

Based on the language of comment c, the Court suggested in dicta that judgments denying declaratory relief “without determining the matters presented . . . should not preclude subsequent claims or issues.” *Id.* at 359.

There are no intermediary Texas appellate courts of which we are aware holding that res judicata applies to declaratory judgment dismissals. However, there are a handful of intermediary Texas appellate courts that have addressed a closely related question: whether judgments awarding only declaratory relief have claim preclusive effect in subsequent suits for coercive relief stemming from the declaratory judgment. *See, e.g., CBS Outdoor, Inc. v. Potter*, No. 01-11-00650-CV, 2013 WL 269091, at *1 (Tex. App.—Houston [1st Dist.] Jan. 24, 2013, pet. denied) (mem. op.); *Alsheikh v. Arabian Nat’l Shipping Corp.*, No. 01-08-00007-CV, 2009 WL 884795, at *2 (Tex. App.—Houston [1st Dist.] Apr. 2, 2009, no pet.) (mem. op.); *Valley Oil Co. v. City of Garland*, 499 S.W.2d 333, 335 (Tex. Civ. App.—Dallas 1973, no writ).

Each recognizes “[a]n exception to the application of res judicata . . . when the original suit sought only a declaratory judgment.”³ *CBS Outdoor*, 2013 WL 269091, at *4; *Alsheikh*, 2009 WL 884795, at *2; *Valley Oil Co.*, 499 S.W.2d at 335. Quite a few other courts agree. *See Andrew Robinson Int’l, Inc. v. Hartford Fire Ins. Co.*, 547 F.3d 48, 56 (1st Cir. 2008)

³ But as the *CBS Outdoor* court explained, *issue preclusion* would apply to prior declaratory judgment actions with respect to “what was actually considered and ruled on.” *CBS Outdoor*, 2013 WL 269091, at *4 (citing *Alsheikh*, 2009 WL 884795, at *2).

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(collecting cases from nineteen different states, as well as five federal cases applying state law and seven federal cases applying federal “common law”).

Crucially, this exception applies even when the relief sought in the subsequent suit “could have been granted in the original action.” *Alsheikh*, 2009 WL 884795, at *2 (quoting *State v. Anderson Courier Serv.*, 222 S.W.3d 62, 66 (Tex. App.—Austin 2005, pet. denied)). In other words, as suggested by comment c of the Restatement, the traditional principle of merger at the heart of claim preclusion does not apply with equal force to claims for declaratory relief as it does to claims for coercive relief. *State v. Fuller*, 451 S.W.2d 573, 576 (Tex. Civ. App.—Beaumont 1970), *aff’d*, 461 S.W.2d 595 (Tex. 1970). That is because, unlike coercive relief, declaratory relief does not necessarily constitute the “full measure of relief to be accorded between the same parties on the same ‘claim’ or ‘cause of action.’” *MJR’s Fare of Dall., Inc. v. City of Dallas*, 792 S.W.2d 569, 572 (Tex. App.—Dallas 1990, pet. denied); *see also ASARCO, L.L.C. v. Mont. Res., Inc.*, 858 F.3d 949, 955–56 (5th Cir. 2017) (“The whole point of a declaratory judgment action is to decide only a single issue in a dispute, one that is often preliminary as subsequent events will need to occur before a traditional lawsuit can be pursued.”).

This very concept is baked into the Texas Uniform Declaratory Judgments Act (TUDJA), which provides: “Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper.” TEX. CIV. PRAC. & REM. CODE ANN. § 37.011. Such language implies that a declaratory judgment proceeding is not the end of the road with respect to the claim at issue; a plaintiff can still seek “further

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relief” on that claim in a subsequent suit, even relief that would ordinarily be barred if the initial suit had been one for coercive relief.

And indeed, that is exactly what this court explained over four decades ago in *Kaspar Wire Works, Inc. v. Leco Engineering & Machine, Inc.*, 575 F.2d 530 (5th Cir. 1978). Because of *Kaspar Wire*’s similarity to our case, it is worth illustrating at length.

There, Kaspar sued Leco for patent infringement (Suit 1). *Id.* at 533. Leco then brought a declaratory judgment action against Kaspar, seeking a declaration that a different patent was invalid (Suit 2). *Id.* Suit 1 proceeded to trial, but before the court entered final judgment, the parties agreed to settle in exchange for Leco’s agreement to dismiss Suit 2. *Id.* Kaspar later filed a third suit (Suit 3), this time for infringement of the patent that was the subject of Suit 2. *Id.* In Suit 3, Leco asserted the affirmative defense of patent invalidity. *Id.* Kaspar argued that the consent decree dismissing Suit 2 with prejudice was res judicata as to the validity of the patent at issue. *Id.* The district court disagreed, holding that the consent decree dismissing with prejudice Suit 2—the declaratory judgment action—did not bar Leco from contesting the patent’s validity in Suit 3. *Id.* at 532–33.

We affirmed, holding that res judicata does not attach to a prior declaratory judgment action that was dismissed with prejudice via a consent decree, so long as it was not coupled with a request for coercive relief arising out of the same claim. *See id.* at 534–37; *ASARCO*, 858 F.3d at 955–56 (“[W]hen coercive claims are added to declaratory actions [arising from the same claim], the policy underlying the declaratory judgment exception must give way to the policy underlying traditional res judicata principles, namely,

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to protect defendants and the courts from a multiplicity of suits arising from the same cause of action.”) (internal quotation marks omitted).

Two aspects of our decision are noteworthy. First, we looked to the language of the federal Declaratory Judgments Act, which is identical in substance to TUDJA: “*Further* necessary or proper relief based on a declaratory judgment or decree may be granted . . . against any adverse party whose rights have been determined by such judgment.” *Kaspar Wire*, 575 F.2d at 537 (quoting 28 U.S.C. § 2202) (emphasis added). We explained that the supplementary nature of declaratory relief—as indicated by the statute’s inclusion of the word “further”—“suggests the inappropriateness of applying rules of claim preclusion in the usual way [to declaratory judgments].” *Id.*

Second, we discussed the conceptual difficulties that arise when applying the traditional rules of claim preclusion to declaratory judgment proceedings—particularly when the declaratory judgment plaintiff’s “claim” is, in reality, an anticipated defense repurposed as a declaratory judgment claim. *Id.* at 536. Applying claim preclusion in the usual way in that circumstance would theoretically permit clever litigants to anticipate suit, bring a future defense as a declaratory judgment “claim,” and thereby preclude the would-be plaintiff from being able to bring her claim for coercive relief. *Id.* “Undoubtedly no court would sanction such a result.” *Id.*

Kaspar Wire is our case, in a nutshell. Like in *Kaspar Wire*, Mr. Lamell’s declaratory judgment “claim” was not really a claim at all; it was an “anticipatory defense to a potential claim.” *Id.* Moreover, the declaratory judgment proceeding in *Kaspar Wire* ended in a dismissal with prejudice pursuant to a consent decree, just like Mr. Lamell’s declaratory judgment proceeding. *Id.* at 537–38. Thus, *Kaspar Wire* counsels against applying res

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judicata to the state court's consent decree dismissing Mr. Lamell's declaratory judgment action with prejudice.⁴

Granted, federal court decisions are not ordinarily our primary *Erie*-guess authorities. And the *Kaspar Wire* court applied the federal common law of res judicata, not Texas preclusion law. However, its underlying reasoning is persuasive and aligns with Texas authority on the question whether res judicata applies to declaratory judgment dismissals. We are convinced that, were the Supreme Court of Texas faced with the question, it would hold that declaratory judgment dismissals are not entitled to claim preclusive effect, so long as the declaratory judgment request was not coupled with a claim for coercive relief arising from the same cause of action.

B.

Given that Mr. Lamell is not claim precluded from asserting his statute of limitations affirmative defense, we next address whether the Appellees are time-barred from bringing suit to foreclose.

In Texas, “[a] person must bring suit for . . . the foreclosure of a real property lien not later than four years after the day the cause of action accrues.” *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.035(a). Where, as here, the note or deed of trust contains an optional acceleration clause, a cause of action for foreclosure accrues when the holder exercises its

⁴ To be sure, *Kaspar Wire* involved a standalone declaratory judgment claim, whereas Mr. Lamell's declaratory judgment claim was part of a larger case that also included claims for coercive relief. But that does not affect the outcome here. As previously explained, res judicata applies to declaratory judgments only when the claim for declaratory relief was coupled with claims for coercive relief *arising out of the same cause of action*. Mr. Lamell's request for a declaration that the Appellees were time-barred from bringing a foreclosure action was distinct from his claims for coercive relief, which arose out of allegedly improper tax assessments on his property, as well as various chain of title issues related to enforcement of the loan.

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option to accelerate. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 566 (Tex. 2001). It is undisputed that the Appellees accelerated the refinanced loan's maturity on June 4, 2010. It is equally undisputed that they did not bring suit to foreclose on Mr. Lamell's property within four years of that date.⁵

To avoid this statute of limitations dilemma, the Appellees asserted before the district court—and again before this court—that they abandoned their acceleration of the loan's maturity by sending four monthly statements to Mr. Lamell purporting to demand less than the full amount of the loan. The district court didn't buy their argument, holding that the Appellees had not presented sufficient summary judgment evidence of an unequivocal intent to abandon their prior accelerations. We agree.

It is well settled in this circuit that a lender can unilaterally abandon its prior acceleration of a loan by later requesting payment of less than the full amount of the loan. *Boren v. U.S. Nat'l Bank Ass'n*, 807 F.3d 99, 106 (5th Cir. 2015). But, critically, the request must “demonstrate an unequivocal manifestation of [the lender's] intent to no longer accelerate the loan.” *Colbert v. Wells Fargo Bank, N.A.*, 850 F. App'x 870, 875 (5th Cir. 2021) (internal quotation marks omitted).

The weight of our precedent suggests that monthly statements demanding less than the full amount of a loan are not *alone* sufficient to constitute abandonment. *E.g., Bank of N.Y. Mellon Tr. Co. Nat'l Ass'n v. Meachum*, No. 21-10766, 2022 WL 1171059, at *3 (5th Cir. Apr. 20, 2022); *Colbert*, 850 F. App'x at 875; *Lyons v. Select Portfolio Servicing Inc.*, 748 F.

⁵ Mr. Lamell concedes in his brief that some tolling occurred, which pushed back the deadline to bring suit by around two years. Even accepting that as true, any such tolling is immaterial here.

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App'x 610, 612 (5th Cir. 2019); *see also* *Ocwen Loan Servicing, L.L.C. v. REOAM, L.L.C.*, 755 F. App'x 354, 359 (5th Cir. 2018) (explaining that a lender's notice to a borrower that the loan can be brought current by payment of amount in arrears rather than the full accelerated amount is sufficient to constitute abandonment); *King v. Select Portfolio Servicing, Inc.*, 740 F. App'x 814, 818 (5th Cir. 2018) (lender's notice to borrower stating that borrower could avoid acceleration by remitting only amount in arrears was sufficient to constitute abandonment); *Sexton v. Deutsche Bank Nat'l Tr. Co. for GSAMP Tr. 2007-FM2, Mortg. Pass-Through Certificates, Series 2007-FM2*, 731 F. App'x 302, 308 (5th Cir. 2018) (lender manifested unequivocal intent to abandon acceleration by requesting "only the amount overdue to cure the default" and advising borrower that it *would* accelerate in the future if default not cured); *see also* *Leonard v. Ocwen Loan Servicing, L.L.C.*, 616 F. App'x 677, 679–80 (5th Cir. 2015) (account statements demanding less than the full outstanding loan amount, plus letter to borrowers explicitly stating that they could avoid acceleration by remitting payment of amount in arrears, constituted abandonment).

There is no dispute that the Appellees sent Mr. Lamell four monthly mortgage statements requesting an amount less than the full amount of the loan. But those are not enough, by themselves, to constitute abandonment as a matter of law. We agree with the district court that there is at least a genuine dispute of material fact as to whether the Appellees provided Mr. Lamell with requisite notice to reflect their *unequivocal intent* to abandon their prior accelerations.

C.

Finally, we turn to the issue of subrogation. The district court held that the Appellees were entitled to foreclose under the doctrines of contractual and equitable subrogation because their predecessor in interest—

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Home123, the original refinancing lender—advanced funds that were used to discharge existing liens on Mr. Lamell’s property.

Subrogation actions do not carry a specific statute of limitations. *See, e.g., Brown v. Zimmerman*, 160 S.W.3d 695, 700 (Tex. App.—Dallas 2005, no pet.). “Instead, [subrogation] actions generally are subject to the same statute which would apply had the action been brought by the subrogee.” *Id.* (citing *Guillot v. Hix*, 838 S.W.2d 230, 233 (Tex. 1992)). Because the action at issue here is one for foreclosure, the Appellees’ subrogation claims accrued when their foreclosure claims accrued—four years after the underlying loan’s maturity.⁶

And a loan matures when it is accelerated. *See, e.g., Howard*, 2021 WL 4236873, at *4; *Gen. Motors Acceptance Corp. v. Uresti*, 553 S.W.2d 660, 663 (Tex. Civ. App.—Tyler 1977, writ ref’d n.r.e.) (“‘Acceleration’ is a change in the date of maturity from the future to the present.”). Thus, absent abandonment of acceleration, the statute of limitations for Appellees’ subrogation claims ran at the same time as it ran for their foreclosure claim.

Whether the Appellees have actionable foreclosure and/or subrogation claims is therefore an issue to be decided on remand, after the question of abandonment of acceleration has been resolved.

* * *

Accordingly, we AFFIRM that part of the district court’s order holding that a genuine dispute of material fact exists as to whether the

⁶ The Supreme Court of Texas has not decided definitively which maturity date controls: that of the refinancing loan, or that of the original loan. In *PNC Mortgage v. Howard*, No. 05-17-01484-CV, 2021 WL 4236873, at *4 (Tex. App.—Dallas Sept. 17, 2021, pet. filed), the Texas Court of Appeals held that the refinancing loan’s maturity date controls. PNC filed a petition for review of that decision in the Supreme Court of Texas, which remains pending.

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Appellees abandoned their acceleration of the underlying loan's maturity. We REVERSE the district court's determination that Mr. Lamell is barred by res judicata from asserting his statute of limitations affirmative defense, as well as its determination that the Appellees are entitled to foreclosure under the theories of contractual and equitable subrogation. This action is REMANDED for determination of the abandonment, foreclosure, and subrogation issues and for further proceedings not inconsistent with this opinion.⁷

⁷ In light of this holding, we need not rule on the district court's denial of Mr. Lamell's Rule 60(b) motion for a new trial.

Appendix C

Memorandum Opinion and Order
District Court Case
No. 4:10-cv-02402
USBNA, PHH v. Lamell

January 29, 2025

ENTERED

January 29, 2025

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S. BANK NATIONAL ASSOCIATION	§	
as Trustee for CSMC MORTGAGE-	§	
BACKED TRUST 2007-3, and PHH	§	
MORTGAGE CORPORATION,	§	
Individually and as Successor-	§	
in-Interest to OCWEN LOAN	§	
SERVICING, LLC,	§	
	§	CIVIL ACTION NO. H-19-2402
Plaintiffs,	§	
	§	
v.	§	
	§	
JOSEF M. LAMELL a/k/a J. M.	§	
ARPAD LAMELL,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER

U.S. Bank National Association ("U.S. Bank") and PHH Mortgage Corporation ("PHH") (collectively, "Plaintiffs") brought this action against Josef M. Lamell ("Defendant").¹ Plaintiffs seek declaratory judgments including a declaration that the statute of limitations does not bar them from foreclosing on Defendant's property.² In December of 2024 the court held a two-day bench

¹Plaintiffs' Second Amended Complaint, Docket Entry No. 164, p. 1. All page numbers reference the pagination printed at the top of the page by the court's Electronic Case Filing system.

²Id. at 7 ¶ 28. The property at issue is a residence located at 5131 Glenmeadow Drive, Houston, Texas 77096 ("the Property"). Id. at 2 ¶ 4. For the Property's plat description, see page 2 ¶ 4 of Plaintiffs' Second Amended Complaint, Docket Entry No. 164.

trial. This Memorandum Opinion and Order addresses all claims raised by the parties.

I. The Parties and Claims

U.S. Bank is the current owner of a Note and a Deed of Trust executed by Defendant, and PHH services Defendant's mortgage on U.S. Bank's behalf.³ Plaintiffs' Second Amended Complaint alleges five claims: (1) a declaratory judgment claim that the "Statute of Limitations does not bar Plaintiffs from foreclosing on the Property or collecting on the Note[;]"⁴ (2) a declaratory judgment claim that "Plaintiffs had and have the right to pay taxes on the Property and that Defendant is not entitled to deferral of payment of his property taxes under the terms of the Note and Deed of Trust[;]"⁵ (3) a claim for "an order confirming that [Plaintiffs] may foreclose . . ., or alternatively, a judgment for judicial foreclosure[;]"⁶ (4) "contractual subrogation" of property taxes advanced by Plaintiffs;⁷ and, in the alternative, (5) "equitable subrogation" for said taxes.⁸ The court previously entered a summary judgment holding that Plaintiffs are entitled to pay

³Joint Pretrial Order, Docket Entry No. 186, p. 4 ¶ 7, p. 5 ¶ 19.

⁴Second Amended Complaint, Docket Entry No. 164, p. 7 ¶ 28.

⁵Id. at 9 ¶ 37.

⁶Id. at 11 ¶ 44.

⁷Id. at 12 ¶ 49.

⁸Id. ¶ 52.

taxes on the Property.⁹ Defendant alleges four claims for declaratory judgment:

a. That the Court DECLARE that the 6-year Statute of Limitations period for bringing a claim or suit to enforce collection on the Note has expired.

b. That the Court DECLARE that the enforcement/foreclosure provisions of the Deed of Trust and the Deed of Trust lien itself are VOID.

c. That the Court DECLARE that Plaintiffs have no authority to foreclose against Lamell's property or to bring a suit or a claim to enforce collection on the Note.

d. That the Court DECLARE that Plaintiffs are permanently barred from bringing any suit or claim to enforce collection on the Note.¹⁰

Defendant also alleges a claim for "Release of Deed of Trust Lien," asking "that the Court ORDER Plaintiffs to file a release of lien in the public records of Harris County."¹¹

II. Legal Standard

"It is the function of the district court at bench trial to listen to the testimony of each witness, weigh his or her

⁹Order Adopting Amended Memorandum and Recommendation, Docket Entry No. 99; Final Judgment, Docket Entry No. 100. This part of the court's order was not addressed by the Fifth Circuit on appeal. See Opinion, Docket Entry No. 125, pp. 15-16.

¹⁰Defendant's Answer to Second Amended Complaint and Counterclaims ("Defendant's Live Answer"), Docket Entry No. 168, pp. 13-14.

¹¹Id. at 15. Defendant's Live Answer also alleged claims under the Texas Debt Collection Practices Act, the Texas Deceptive Trade Practices Act, and claims involving insurance funds connected to the Property, but they were stricken by the court. Id. at 11-14; Memorandum and Recommendation, Docket Entry No. 171, p. 16; Order Adopting Memorandum and Recommendation, Docket Entry No. 181.

credibility, and make factual findings." Garr v. Western Sizzler, 273 F.3d 1108 (5th Cir. 2001) (per curiam).

"[T]he court must find the facts specially and state its conclusions of law separately." Fed. R. Civ. P. 52(a)(1). "The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court." Id. "The court need only make brief, definite, and pertinent findings and conclusions upon contested matters." 9C Wright & Miller, Federal Practice & Procedure § 2579 (3d ed. 2008). "It need not make findings on stipulated or undisputed facts, although it may have to make a finding if conflicting inferences can be drawn from the undisputed facts." Id.

III. Findings of Fact

After carefully considering the evidence, the relevant authorities, and the parties arguments, the court makes the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a)(1).

On September 25, 2006, Defendant took out a loan from Home123 Corporation ("Home123") to pay off other liens on the Property.¹² Defendant signed a Deed of Trust granting Home123 a lien on the

¹²InterestFirst Note (the "Note"), Plaintiffs' Exhibit 1, p. 1; Transcript of Trial Day 1 ("Trial Day 1 Transcript"), Docket Entry No. 213, p. 9 lines 4-9; Joint Pretrial Order, Docket Entry No. 186, p. 3 ¶ 6.1.

Property as security for the Note.¹³ The Deed of Trust has an optional acceleration clause, which states:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach . . . The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date . . . by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice will result in acceleration of the sums secured by this Security Instrument and sale of the Property. . . . If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale . . . Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including . . . reasonable attorneys' fees . . .¹⁴

Relevant to contractual subrogation, the Deed of Trust states:

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument . . . then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument . . . Lender's actions can include . . . (a) paying any sums secured by a lien which has priority over this Security Instrument . . .

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument.¹⁵

Defendant signed a "Waiver of Escrow," in which he "agree[d] to be solely responsible for the timely payment of any and all

¹³Deed of Trust, Plaintiffs' Exhibit 2, pp. 3, 15; Trial Day 1 Transcript, Docket Entry No. 213, p. 10 lines 7-15; Joint Pretrial Order, Docket Entry No. 186, p. 4 ¶ 6.3.

¹⁴Deed of Trust, Plaintiffs' Exhibit 2, p. 13; Joint Pretrial Order, Docket Entry No. 186, p. 4 ¶ 10.

¹⁵Deed of Trust, Plaintiffs' Exhibit 2, pp. 7-8.

property taxes[.]”¹⁶ The Waiver of Escrow states that “Lender shall have the right to establish or reestablish an escrow account for the payment of the Escrow Items . . . in the event that . . . 1. Borrower(s) fail(s) to pay any of the Escrow Items in a prompt and timely manner[.]”¹⁷

On June 29, 2010, Home123 executed an Assignment of Mortgage “[e]ffective as of April 11, 2010[,]” assigning the Deed of Trust to U.S. BANK.¹⁸

In 2010 IndyMac Mortgage Services, a Division of OneWest Bank (“OneWest”) serviced Defendant’s mortgage on behalf of U.S. Bank.¹⁹

A dispute arose regarding payment of property taxes early in 2010. Defendant states that he protested the Property’s tax appraisal and, as permitted by law, paid only the taxes on the undisputed portion of the Property’s value while the protest was being resolved.²⁰ According to Defendant, the Harris County Tax Assessor incorrectly reported the unpaid taxes to OneWest as a tax

¹⁶Waiver of Escrow, Plaintiffs’ Exhibit 3; Trial Day 1 Transcript, Docket Entry No. 213, p. 35 lines 21-24, p. 36 lines 8-9.

¹⁷Waiver of Escrow, Plaintiffs’ Exhibit 3.

¹⁸Assignment of Mortgage, Plaintiffs’ Exhibit 5, pp. 1-2; Trial Day 1 Transcript, Docket Entry No. 213, p. 11 lines 13-19.

¹⁹See Notice of Default, Plaintiffs’ Exhibit 6, p. 2; Trial Day 1 Transcript, Docket Entry No. 213, p. 18 lines 22-25, p. 19 lines 1-2.

²⁰Transcript of Trial Day 2 (“Trial Day 2 Transcript”), Docket Entry No. 215, p. 39 lines 11-17.

delinquency.²¹ On February 22, 2010, Defendant filed an action in state court against various Harris County entities and officials based on the allegedly improper reporting of disputed taxes.²²

Benjamin Verdooren, a senior loan analyst employed by PHH's parent company,²³ testified that because a Texas property tax lien is senior to a deed of trust, mortgage servicers want to avoid tax liens.²⁴ OneWest paid the reported tax deficiency and established a tax escrow account for Defendant.²⁵ Defendant argued to OneWest that the taxes were not due and ultimately amended his state court action to add OneWest as a defendant.²⁶

In February of 2010 Defendant stopped making his mortgage payments.²⁷ On April 8, 2010, OneWest sent Defendant a notice of default stating that he had failed to make payments totaling \$14,219.59 plus late fees and that the Note would be accelerated if

²¹Id. lines 17-24.

²²See Plaintiff's Original 2009 Petition, Plaintiffs' Exhibit 26, pp. 19-20; Trial Day 2 Transcript, Docket Entry No. 215, p. 40 lines 3-6.

²³Trial Day 1 Transcript, Docket Entry No. 213, p. 7 lines 10-15, 20-24, p. 8 lines 11-13.

²⁴Id. at 39 line 25, p. 40 lines 1-12, p. 41 lines 2-6.

²⁵Id. at 40 lines 20-22, p. 41 lines 7-13.

²⁶March 30, 2010, Letter, Defendant's Exhibit 26, p. 2; Plaintiff's Amended 2009 Petition, Plaintiffs' Exhibit 27, p. 1.

²⁷Notice of Default, Plaintiffs' Exhibit 6, p. 2; Trial Day 1 Transcript, Docket Entry No. 213, p. 10 lines 21-25, p. 11 lines 11-12.

he failed to cure the default.²⁸ On June 4, 2010, U.S. Bank's attorneys sent Defendant a Notice of Acceleration, stating that it "hereby accelerates the maturity of your loan, and declares the entire balance of the loan due and payable without further demand[.]"²⁹

On October 16, 2013, OneWest sent Defendant a Notice of Servicing Transfer (RESPA) and Welcome to Ocwen Loan Servicing, LLC ("OneWest-Ocwen Transfer Letter"), stating:

Effective 11/01/2013, [OneWest] will transfer the servicing of your mortgage loan to Ocwen Loan Servicing, LLC (Ocwen). The transfer of the servicing of your loan does not affect any term or condition of your mortgage contract, other than terms directly related to the servicing of your account.³⁰

From January through April of 2014 Ocwen sent four Mortgage Account Statements to Defendant. The statements list a "Principal Balance" of \$566,000.00, a maturity date of October 1, 2036, and a "Total Amount Due" ranging from \$407,963.05 due on February 1, 2014, to \$441,940.99 due on May 1, 2014.³¹ Each one states: "Our

²⁸Notice of Default, Plaintiffs' Exhibit 6, p. 2; Trial Day 1 Transcript, Docket Entry No. 213, p. 18 lines 22-25, p. 19 lines 1-2.

²⁹Notice of Acceleration and Enclosing Notice of Substitute Trustee's Sale ("Notice of Acceleration"), Defendant's Exhibit 12, p. 2 ¶ 1; Trial Day 1 Transcript, Docket Entry No. 213, p. 19 lines 14-18.

³⁰OneWest-Ocwen Transfer Letter, Plaintiffs' Exhibit 8, p. 1; Trial Day 1 Transcript, Docket Entry No. 213, p. 12 lines 9-15.

³¹Mortgage Account Statement, Plaintiffs' Exhibit 9, p. 1; Mortgage Account Statement, Plaintiffs' Exhibit 12; Mortgage
(continued...)

records indicate that your loan is in foreclosure. Accordingly, this statement may be for informational purposes only.”³²

On January 22 and February 10, 2014, Ocwen sent Defendant Mortgage Assistance Resources letters (“MAR Letters”).³³ The MAR Letters state:

We are pleased to assist you in identifying solutions for your mortgage. . . .

1. Schedule time with your Relationship Manager

* * *

2. Send us your Application materials

Please continue to email any application documents . . . to your Relationship Manager . . .

* * *

Important Information About Foreclosure

We will review your fully complete application for assistance, including all completed forms and financial documents, even if a foreclosure sale date is scheduled within 30 days. . . .

* * *

³¹(...continued)

Account Statement, Plaintiffs’ Exhibit 13; Mortgage Account Statement, Plaintiffs’ Exhibit 14, p. 1; Trial Day 1 Transcript, Docket Entry No. 213, p. 22 lines 6-14, 22-25; p. 23 lines 1, 5-9, 17-25; p. 24 line 1.

³²Mortgage Account Statement, Plaintiffs’ Exhibit 9, p. 1; Mortgage Account Statement, Plaintiffs’ Exhibit 12; Mortgage Account Statement, Plaintiffs’ Exhibit 13; Mortgage Account Statement, Plaintiffs’ Exhibit 14, p. 1.

³³MAR Letter, Plaintiffs’ Exhibit 10, p. 1; MAR Letter, Plaintiffs’ Exhibit 11, p. 1; Trial Day 1 Transcript, Docket Entry No. 213, p. 24 lines 12-20.

ALTERNATIVES TO FORECLOSURE

No matter what your situation, you may have options. We offer multiple solutions to help you through difficult times, including, but not limited to, the Home Affordable Modification Program (HAMP) . . . We also offer our own modification options and foreclosure alternatives.³⁴

Defendant applied for a loan modification, but the parties never reached an agreement.³⁵

Plaintiffs introduced a document associated with the Note titled "Comments," an internal record in which loan activity is logged.³⁶ An entry dated August 1, 2014, states that "[t]he loan has been de-accelerated for purposes of displaying the amount due on the periodic account statement. The foreclosure process on the loan has stopped or been reset."³⁷ Mr. Verdooren testified that the Comments are not communicated to the borrower.³⁸

"Effective as of August 3, 2015," OneWest was merged into CIT Bank, N.A ("CIT").³⁹ On April 9, 2019, Defendant filed an amended

³⁴MAR Letter, Plaintiffs' Exhibit 10, pp. 1-3; MAR Letter, Plaintiffs' Exhibit 11, pp. 1-3.

³⁵See Joint Pretrial Order, Docket entry No. 186, p. 5 ¶ 6.17.

³⁶Comments, Plaintiffs' Exhibit 56; Trial Day 1 Transcript, Docket Entry No. 213, p. 28 lines 20-25, p. 29 lines 1-3, p. 30 lines 11-19.

³⁷Comments, Plaintiffs' Exhibit 56; Trial Day 1 Transcript, Docket Entry No. 213, p. 29 lines 24-25, p. 30 lines 1-4.

³⁸Trial Day 1 Transcript, Docket Entry No. 213, p. 30 lines 16-19.

³⁹Form 8-K/A, Plaintiffs' Exhibit 21, p. 2; Trial Day 1 Transcript, Docket Entry No. 213, p. 16 lines 11-18.

pleading in the state court action, alleging a declaratory judgment claim regarding the foreclosure statute of limitations:

10. Lamell now raises the expiration of limitations in defense against pending and possible future foreclosure or collection actions related to his loan being continually in foreclosure. Accordingly, he seeks specific declarations that limitations have gone beyond statutory limits as to each of the foreclosure or collection actions that had formerly been available to CIT.⁴⁰

On May 16, 2019, Defendant and CIT executed a Settlement Agreement and Mutual Release of All Claim (the "CIT Settlement").⁴¹

The settlement states in relevant part:

1.1 . . . [Defendant] completely RELEASES AND FOREVER DISCHARGES [CIT] and its past and present agents, servants, employees, officers, directors, shareholders and representatives, along with all related companies, including any parent, subsidiaries, affiliates, as well as any predecessors in interest, including without limitation IndyMac Federal Bank, FSB (collectively, the "CIT Released Parties") from any and all past, present, or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether based in statute, in tort, on a contract, a statutory or non-statutory lien, or on other theory of recovery, related to or arising out of any and all claims which were brought or could have been brought by [Defendant] in connection with the Dispute or the Lawsuit for any and all compensatory, punitive, or statutory damages which [Defendant] now has, which may hereafter accrue, or which may be otherwise acquired, on account of or in any way connected to, related to, or arising out of the Dispute or the Lawsuit . . . This Settlement Agreement shall be a fully binding, enforceable, and complete and unconditional settlement, release, and compromise between [Defendant] and [CIT] regarding all of

⁴⁰Plaintiff's Third Supplement to Plaintiff's Supplemental Petition, Plaintiffs' Exhibit 29, p. 4.

⁴¹CIT Settlement, Plaintiffs' Exhibit 31, p. 1.

[Defendant]'s claims arising out of the Dispute, the Lawsuit, and the Released Claims.

* * *

6.2 The Settlement Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, personal representatives, heirs, insurers, successors, and assigns of each of the parties hereto.

* * *

IX. CONSTRUCTION OF AGREEMENT

It is intended that this Settlement Agreement shall be comprehensive in nature and shall be construed liberally to effect its purpose. . . .⁴²

On April 11, 2019, Ocwen notified Defendant that it had combined with PHH and that "[e]ffective 5/1/2019, PHH will be the new servicer for this account and will be collecting the mortgage payments going forward."⁴³ On July 2, 2019, PHH sent Defendant a Notice of Intention to Foreclose, which notified Defendant that he was in default for failing to make mortgage payments since February 1, 2010, that Defendant had to pay \$644,361.39 to cure the default, and that "[f]ailure to cure the default by 08/06/2019 will result in acceleration of the sums secured by the Security Instrument and sale of the property."⁴⁴ On August 20, 2019,

⁴²Id. at 2-3, 5-7 (emphasis added).

⁴³April 11, 2019, Correspondence, Plaintiffs' Exhibit 15, p. 1; see also Agreement and Plan of Merger, Plaintiffs' Exhibit 24; Trial Day 1 Transcript, Docket Entry No. 213, p. 17 lines 11-25, p. 18 lines 1-2.

⁴⁴Notice of Intention to Foreclose, Plaintiffs' Exhibit 16, pp. 1-2; Trial Day 1 Transcript, Docket Entry No. 213, p. 32 line 25, p. 33 lines 1-2, 10-12.

Plaintiffs' attorneys sent Defendant a Notice of Acceleration of Loan Maturity, which states that "the maturity date of the Note was accelerated effective 08/20/2019" and that "[a]ll unpaid principal and accrued interest on the Note are due and payable at this time."⁴⁵

IV. Analysis

A. Plaintiffs' Claim for Declaratory Judgment on Limitations

The evidence establishes that the Note was accelerated on June 4, 2010, and that foreclosure did not occur within four years. Plaintiffs argue that the statute of limitations does not bar foreclosure, however, because (1) they reset the limitations period by abandoning acceleration, (2) the statute of limitations was tolled during the state court action, and (3) Defendant released his limitations defense in the CIT Settlement.⁴⁶

Texas Civil Practice & Remedies Code § 16.035(b) states that "[a] sale of real property under a . . . deed of trust that creates a real property lien must be made not later than four years after the day the [foreclosure] cause of action accrues."⁴⁷ "Generally, the [foreclosure] accrual date is the maturity date of the loan."

⁴⁵Notice of Acceleration of Loan Maturity ("2019 Acceleration Notice"), Plaintiffs' Exhibit 17; Trial Day 1 Transcript, Docket Entry No. 213, p. 35 lines 7-20.

⁴⁶Plaintiffs' Second Amended Complaint, Docket Entry No. 164, p. 7 ¶ 30, p. 8 ¶¶ 31-32; Plaintiffs' Memorandum of Law for Trial ("Plaintiffs' Trial Brief"), Docket Entry No. 185, pp. 2-6, 12.

⁴⁷When this period expires the lien becomes void. Id. § 16.035(d).

Moore v. Wells Fargo Bank, N.A. as trustee for MASTR Asset Backed Securities Trust 2004-OPT2, Mortgage Pass-Through Certificates, 685 S.W.3d 843, 846 (Tex. 2024) (citing Tex. Civ. Prac. & Rem. Code § 16.035(e)). But loans “often also contain acceleration clauses that permit the lender to accelerate the loan upon the borrower’s default.” Id. “When a lender chooses to accelerate, the cause of action for foreclosure of the lien accrues at the time of acceleration.” Id. (citing Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 566 (Tex. 2001)).⁴⁸

“Not all accelerations are carried through to foreclosure. A lender may abandon or rescind acceleration of the note, restore the original maturity date, and reset the limitations period, thus giving the borrower an opportunity to cure the default.” Id.⁴⁹

1. Abandonment of Acceleration

In their Trial Brief and at trial Plaintiffs argued that they abandoned the 2011 acceleration in five ways: (1) requesting, in the Mortgage Account Statements, payment on less than the full amount of the loan; (2) cancelling a scheduled foreclosure sale; (3) changing mortgage servicers after acceleration; (4) sending the

⁴⁸See also HSBC Bank USA, N.A. as Trustee for Merrill Lynch Mortgage Loan v. Crum, 907 F.3d 199, 203 (5th Cir. 2018).

⁴⁹See also Boren v. U.S. National Bank Association, 807 F.3d 99, 104 (5th Cir. 2015) (An acceleration may be abandoned, “‘restoring the contract to its original condition,’ thereby ‘restoring the note’s original maturity date’ for purposes of [foreclosure] accrual.”).

MAR Letters to Defendant; and (5) by logging in the Note's Comments that the loan was de-accelerated.

"[A]cceleration can be abandoned by agreement or other action of the parties." Khan v. GBAK Properties, Inc., 371 S.W.3d 347, 353 (Tex. App.—Houston [1st Dist.] 2012).⁵⁰ "'Texas courts have framed the issue of abandonment of acceleration by reference to traditional principles of waiver.'" DeFranceschi v. Seterus, Inc., 731 F. App'x 309, 311 (5th Cir. 2018) (quoting Boren, 807 F.3d at 105). Under Texas law "[t]he elements of waiver include (1) an existing right, benefit, or advantage held by a party; (2) the party's actual knowledge of its existence; and (3) the party's actual intent to relinquish the right, or intentional conduct inconsistent with the right." Thompson v. Bank of America National Association, 783 F.3d 1022, 1025 (5th Cir. 2015) (quoting Ulico Casualty Co. v. Allied Pilots Association, 262 S.W.3d 773, 778 (Tex. 2008)).

"Intent [to abandon] is the critical element, and its manifestation must be unequivocal." Swoboda v. Ocwen Loan Servicing, LLC, 579 S.W.3d 628, 633 (Tex. App.—Houston [14th Dist.] 2019); see also Colbert v. Wells Fargo Bank, N.A., 850 F. App'x 870, 875 (5th Cir. 2021) (per curiam) ("the request for payment must have demonstrated an 'unequivocal manifestation' of Wells Fargo's intent to no longer accelerate the loan").

⁵⁰Boren, 807 F.3d at 104 (same).

The party asserting the affirmative defense of limitations has the burden of proving the elements of the defense, including the date the cause of action accrued. Holland v. Lovelace, 352 S.W.3d 777, 788 (Tex. App.-Dallas 2011). But a mortgagee contesting limitations on the basis that it abandoned acceleration has the burden of proving abandonment. See Swoboda, 579 S.W.3d at 637 ("the Bank did not carry its burden of proving abandonment").

"Waiver is a question of law when the facts that are relevant to a party's relinquishment of an existing right are undisputed." Boren, 807 F.3d at 106.⁵¹

a. The Mortgage Account Statements

Some opinions have stated that a "request for payment of less than the full [loan] obligation—after initially accelerating the entire obligation—[is] an unequivocal expression of the bank's intent to abandon or waive its initial acceleration." Jatera Corp. v. US Bank National Association as Trustee for Registered Holders of Citigroup Mortgage Loan Trust, 917 F.3d 831, 835 (5th Cir. 2019)

⁵¹See also G.T. Leach Builders, LLC v. Sapphire V.P., LP, 458 S.W.3d 502, 511 (Tex. 2015) ("When, as here, the relevant facts are undisputed, whether a party waived its right to arbitrate is a question of law."); Florey v. U.S. Bank National Association, Trustee for RMAC Trust, Series 2016-CCT, No. 05-20-00306, 2021 WL 2525457, at *4 (Tex. App.-Dallas June 21, 2021) ("Whether acceleration has been effectively abandoned is a question of law when the relevant facts are undisputed."); Brannick v. Aurora Loan Services, LLC, No. 03-17-00308, 2018 WL 5729104, at *3 (Tex. App.-Austin Nov. 2, 2018) ("Because the contents of the letters are not disputed but only their legal effect, whether [abandonment] occurred is a question of law.").

(quoting Martin v. Federal National Mortgage Association, 814 F.3d 315, 318 (5th Cir. 2016); see also Boren, 807 F.3d at 106 ("A lender waives its earlier acceleration when it 'put[s] the debtor on notice of its abandonment . . . by requesting payment on less than the full amount of the loan.'") (quoting Leonard v. Ocwen Loan Servicing, L.L.C., 616 F. App'x 677, 680 (5th Cir. 2015) (per curiam))).

But as the Fifth Circuit stated on appeal in this action, "the [payment] request must 'demonstrate an unequivocal manifestation of [the lender's] intent to no longer accelerate the loan.'" U.S. Bank National Association as trustee for CSMC Mortgage-Backed Trust 2007-3 v. Lamell, No. 21-20326, 2022 WL 1800860, at *6 (5th Cir. June 2, 2022) (per curiam). "The weight of our precedent suggests that monthly statements demanding less than the full amount of a loan are not alone sufficient to constitute abandonment." Id. (collecting cases).

In particular, a request for payment of less than the full accelerated amount is not sufficient if the request states that the loan is in foreclosure. In Bank of New York Mellon Trust Co. National Association v. Meachum, No. 21-10766, 2022 WL 1171059, at *3 (5th Cir. Apr. 20, 2022) (per curiam), the Fifth Circuit held that a monthly statement did not abandon acceleration, reasoning:

[T]he monthly statements BNYM sent to Meachum stated, "your loan has been referred to an attorney to start foreclosure proceedings" and included the total payment amount required to bring the account current, as required under 12 C.F.R. § 1026.41(d)(8)(vi). The statements also

displayed the accelerated amount and stated, "The first notice or filing required by applicable law for the foreclosure process has been made." These statements demonstrated that BNYM was still proceeding with acceleration and foreclosure.

Id.

Ocwen's Mortgage Account Statements include conflicting information. On the one hand, they state a Total Amount Due less than the full accelerated balance and a Maturity Date in 2036 – both of which are consistent with acceleration being abandoned.⁵² But similar to the monthly statements in Meachum, they state that Defendant's loan was "in foreclosure."⁵³ Because acceleration is a precondition to foreclosure, this is inconsistent with abandonment. Ocwen's Mortgage Account Statements from 2014 therefore do not satisfy the "'unequivocal manifestation'" standard and did not abandon acceleration. Colbert, 850 F. App'x at 875.

b. Cancellation of a Scheduled Foreclosure Sale

Plaintiffs' Trial Brief argues that "a noteholder can abandon acceleration by taking a voluntary non-suit in [a judicial foreclosure] action on the note. . . . The same principle – nonsuit of [] an expedited Rule 736 action is abandonment – applies when a mortgage lender stops moving forward on a non-judicial sale."⁵⁴

⁵²Mortgage Account Statement, Plaintiffs' Exhibit 9, p. 1.

⁵³Id.

⁵⁴Plaintiffs' Memorandum of Law for Trial ("Plaintiffs' Trial Brief"), Docket Entry No. 185, p. 2.

Several opinions appear to have held that a creditor abandoned acceleration by bringing an action for judicial foreclosure and then voluntarily non-suiting. See Denbina v. City of Hurst, 516 S.W.2d 460, 463 (Tex. Civ. App.—Tyler 1974); Costello v. U.S. Bank Trust, N.A. for LSF9 Master Participation Trust, 689 F. App'x 253, 255 (5th Cir. 2017) (per curiam). But Plaintiffs do not cite, and the court has not found, any authority holding that cancellation of a non-judicial foreclosure sale accomplishes abandonment. Absent any authority, the court is not persuaded. A lender might cancel a specific sale date for any number of logistical or other reasons while still planning to pursue foreclosure at a later date.

c. Change of Servicer

Plaintiffs argue that U.S. Bank communicated its intent to abandon by changing its servicer after acceleration. Plaintiff cites two opinions for this proposition.

Plaintiff summarizes Leonard, 616 F. App'x 677 as "finding that the new loan servicer abandoned the prior servicer's acceleration when it did not pursue foreclosure but, rather, sought payments of less than the entire balance owed[.]"⁵⁵ In Leonard the Fifth Circuit held that a mortgage servicer abandoned an acceleration entered by its predecessor. 616 F. App'x at 680. But the court's holding was based on the latter servicer's communications to the borrower. See id. Nothing in the Fifth

⁵⁵Plaintiffs' Trial Brief, Docket Entry No. 185, p. 2.

Circuit's opinion suggests that the servicer change itself was relevant to abandonment.

In McDougal v. Trinity Financial Services, LLC, No. 3:19-CV-2256-E-BK, 2023 WL 3573319, at *3 (N.D. Tex. May 19, 2023), report and recommendation adopted, 2023 WL 3575646 (N.D. Tex. May 19, 2023), the court stated:

[W]hile MERS accelerated the debt owed under the Deed in 2009, MERS did not foreclose on the Property, and its subsequent assignment of the [deed] to a new loan servicer in 2012 unilaterally abandoned its acceleration of the Deed and, thereby, reset the SOL. See Bliss [v. Bank of America N.A., No. 05-18-00476-CV], 2019 WL 2353445, at *3 [(Tex. App.-Dallas June 4, 2019)] (finding that abandonment may occur in various forms).

This court respectfully disagrees with McDougal's reading of Texas abandonment law. The court does not understand how a change in servicer implies a change in the status of the underlying mortgage. A borrower has no way of knowing whether the change is based on a new plan for his mortgage or for unrelated business reasons. The servicer changes in this case had nothing to do with the particulars of Defendant's mortgage or U.S. Bank's plan for the mortgage; Ocwen bought the "mortgage servicing rights" for \$78 billion worth of mortgages from OneWest.⁵⁶ But even if a servicer change could communicate abandonment, the OneWest-Ocwen Transfer Letter disclaims any such intent.⁵⁷ The court concludes

⁵⁶Form 8-K, Plaintiffs' Exhibit 23, p. 2.

⁵⁷OneWest-Ocwen Transfer Letter, Plaintiffs' Exhibit 8, p. 1 ("The transfer of the servicing of your loan does not affect any term or condition of your mortgage contract, other than terms directly related to the servicing of your account.").

that the change in servicer was not an “unequivocal manifestation” of an intent to abandon acceleration. See Colbert, 850 F. App’x at 875.

d. The MAR Letters

The MAR Letters encouraged Defendant to apply for mortgage assistance, promised that Ocwen “will review” a “fully complete application,” and stated that the Defendant “may have options.”⁵⁸ As the court stated in its summary judgment ruling, “a mere offer of loan modification is more like a ‘conditional abandonment’ that, standing alone, does not constitute an unequivocal manifestation of intent to abandon the acceleration.”⁵⁹ The MAR Letters are not offers of modification. They merely invite Defendant to apply for a modification, which Ocwen could accept or reject. The MAR Letters also state that Ocwen “may also continue any pending foreclosure proceedings on the property.”⁶⁰

The court is not aware of any authority holding that communications akin to the MAR Letters constitute abandonment. Several opinions have held that similar letters did not constitute abandonment. See Watson v. CitiMortgage, Inc., 530 F. App’x 322, 327 (5th Cir. 2013) (per curiam) (“Although it is evident that

⁵⁸MAR Letter, Plaintiffs’ Exhibit 10, pp. 1-3; MAR Letter, Plaintiffs’ Exhibit 11, pp. 1-3.

⁵⁹Amended Memorandum and Recommendation, Docket Entry No. 86, p. 11.

⁶⁰MAR Letter, Plaintiffs’ Exhibit 10, p. 2; MAR Letter, Plaintiffs’ Exhibit 11, p. 2.

CitiMortgage repeatedly invited and even encouraged the Watsons to apply for modification and sent several requests for additional documentation, none of its conduct is evidence that CitiMortgage intended to [abandon acceleration].").⁶¹ The court concludes that the MAR Letters did not abandon acceleration.

e. The Note's Comments

As Mr. Verdooren testified at trial, the Comments are an internal document and not available to the borrower. Mr. Verdooren testified that he "did not see any communication to [Defendant] about the abandonment."⁶²

The court is not aware of any authority holding that a lender can effectively abandon acceleration without communicating the abandonment to the borrower. In fact, the court is not aware of any opinion that has even considered a lender's internal records in evaluating abandonment.

To accomplish abandonment "the lender must 'so act as to justify the borrower in believing . . . that the effect of the failure to pay an installment was to be disregarded[.]'" Swoboda v. Ocwen Loan Servicing, LLC, 579 S.W.3d 628, 636 (Tex. App.—Houston [14th Dist.] 2019) (quoting San Antonio Real Estate

⁶¹See also Morlock, LLC v. Petteway, No. 4:21-CV-03202, 2024 WL 4265811, at *6 (S.D. Tex. Sept. 23, 2024); Penta v. Cenlar Capital Corp., No. 1:21-CV-01019-LY, 2022 WL 18110067, at *5 (W.D. Tex. Oct. 19, 2022), report and recommendation adopted, 2022 WL 19076402 (W.D. Tex. Nov. 30, 2022).

⁶²Trial Day 2 Transcript, Docket Entry No. 215, p. 16 lines 18-25.

Building & Loan Association v. Stewart, 94 Tex. 441, 61 S.W. 386, 389 (Tex. 1901)) (internal brackets omitted). A lender's "subjective belief [that acceleration has been abandoned] is insufficient by itself to prove abandonment as a matter of law." Id.; see also Boren, 807 F.3d at 106 ("A lender waives its earlier acceleration when it 'puts the debtor on notice of its abandonment . . .'"). The court understands Texas law to judge abandonment of acceleration according to the lender's outward communications and conduct – not internal documents that are unknown to the borrower. Plaintiffs cite no authority to the contrary. The court concludes that the de-acceleration entry in the Comments did not abandon acceleration.

Having carefully considered Plaintiffs' arguments the court concludes that Plaintiffs and their predecessors did not abandon acceleration of the Note within four years (plus tolling)⁶³ of the June 4, 2010, acceleration.

2. Tolling

Defendant acknowledges certain amounts of litigation-related tolling that adds up to 755 days.⁶⁴ But Plaintiffs argue that the

⁶³As explained below, Defendant acknowledges 755 days of tolling, and the court concludes that no other tolling occurred.

⁶⁴Defendant's Trial Memorandum of Law ("Defendant's Trial Brief"), Docket Entry No. 187, p. 25 n.40. The record is inconsistent as to how much tolling is agreed upon. See, e.g., Joint Pretrial Order, Docket Entry No. 186, p. 10 ¶ 6 ("The parties agreed that limitations was tolled for at least 638 days between August 2011 and July 2013."). But these differences would not change whether the statute of limitations expired.

statute of limitations was tolled for the entirety of the state court action because a foreclosure sale could not occur. “[T]he equitable tolling doctrine pauses the limitations clock when ‘a party is prevented from exercising its legal remedy by the pendency of legal proceedings[.]’” Jorrie v. Bank of New York Mellon Trust Co., N.A., 740 F. App’x 809, 813 (5th Cir. 2018) (per curiam) (quoting Hughes v. Mahaney & Higgins, 821 S.W.2d 154, 157 (Tex. 1991)). Called the “legal-impediment rule[,]” the Texas Supreme Court recently clarified that it tolls the statute of limitations only “where an injunction prevent[ed] a claimant from bringing” a claim. Levinson Alcoser Associates, L.P. v. El Pistolon II, Ltd., 670 S.W.3d 622, 630 (Tex. 2023). The portions of the state court record introduced at trial showed that injunctions restrained Plaintiffs from foreclosing for discrete periods,⁶⁵ but there is no evidence that Plaintiffs were restrained from foreclosing for the entire duration of the action. The court therefore concludes that the statute of limitations was equitably tolled, at most, for 755 days.

3. Release of Defendant’s Limitations Defense

Defendant brought a claim against CIT in the prior state-court action for declaratory judgment that the statute of limitations

⁶⁵E.g., Order Denying Plaintiff’s Application for Temporary Injunction, Defendant’s Exhibit 21, p. 1 (dissolving the February 28, 2012, TRO on April 3, 2012). The parties do not appear to have referenced at trial the documents relevant to some of the agreed tolling.

barred foreclosure. Plaintiffs argue that even if Defendant had a statute of limitations defense, he released it in the CIT Settlement. Defendant argues that Plaintiffs waived their release argument, that Plaintiffs are not entitled to enforce the CIT Settlement, and that the CIT Settlement did not cover his limitations defense.

a. Whether Plaintiffs Waived Their Release Argument

Defendant argues that Plaintiffs waived their release argument by not appealing a denial of their motion for summary judgment on that issue.

Plaintiffs' First Amended Complaint (the live complaint at the time of the Final Judgment and appeal) sought declaratory judgment that the statute of limitations did not bar foreclosure.⁶⁶ Plaintiffs alleged several bases for declaratory relief, including that Defendant released his limitations defense in the CIT Settlement.⁶⁷ Plaintiffs moved for summary judgment on their declaratory judgment claim on multiple grounds, including abandonment of acceleration, release via the CIT Settlement, and res judicata.⁶⁸ The court granted summary judgment in Plaintiffs' favor based on res judicata, entered a declaratory judgment that

⁶⁶Plaintiffs' First Amended Complaint, Docket Entry No. 18, p. 7 ¶ 29.

⁶⁷Id. at 9 ¶ 33.

⁶⁸Plaintiffs' Motion for Summary Judgment and Brief in Support, Docket Entry No. 32, p. 11.

res judicata barred Defendant's statute of limitations defense, but declined to rule on Plaintiffs' release argument.⁶⁹ Plaintiffs filed a Motion to Amend Judgment, asking the court to hold that acceleration was abandoned and that Defendant released any statute of limitations defense in the CIT Settlement, but the court declined to do so.⁷⁰ The Fifth Circuit reversed the court's holding that res judicata barred Defendant's statute of limitations defense.⁷¹

Plaintiffs prevailed on their declaratory judgment claim based on their res judicata argument. Defendant cites no authority that a party, prevailing on summary judgment, must raise on appeal alternative legal theories that the district court declined to address. Moreover, the issue falls within the broadly worded remand of "the abandonment, foreclosure, and subrogation issues and for further proceedings not inconsistent with this opinion."⁷² The court is not persuaded that Plaintiffs have waived their release argument.

⁶⁹Amended Memorandum and Recommendation, Docket Entry No. 86, p. 18 n.6, p. 25; Order Adopting Amended Memorandum and Recommendation, Docket Entry No. 99; Final Judgment, Docket Entry No. 100.

⁷⁰Plaintiffs' Motion to Amend Judgment and Brief in Support, Docket Entry No. 105, p. 8; Memorandum Opinion and Order, Docket Entry No. 118, p. 1.

⁷¹Opinion, Docket Entry No. 125, p. 16.

⁷²Id.

b. Whether Plaintiffs Are Successors or Assigns of CIT

Plaintiffs were not signatories to the CIT Settlement, but they argue that they are successors or assigns of CIT. Defendant argues that the dates of assignment and settlement prevent Plaintiffs from enforcing the CIT Settlement – specifically, that CIT (or more specifically, its predecessor OneWest Bank)⁷³ sold its servicing rights to Defendant's mortgage to Ocwen before the settlement, as illustrated in Defendant's Exhibit 2.

Defendant's argument appears to be premised on his assumption that CIT – no longer the servicer of the Note – had no reason to settle Defendant's limitations defense for the benefit of Ocwen and U.S. Bank. But instead of speculating about CIT's motivation, the court determines the effect of the CIT Settlement based on what it says. The CIT Settlement expressly inures to CIT's successors and assigns. Ocwen is a "successor" or "assign" to CIT with respect to the Note as those terms are commonly understood. See SUCCESSOR, Black's Law Dictionary (12th ed. 2024) ("1. Someone who succeeds to the office, rights, responsibilities, or place of another; one who replaces or follows a predecessor."); ASSIGNEE, Black's Law

⁷³Defendant also argues that Plaintiffs cannot be successors or assigns because CIT never serviced the loan and never had contractual privity with Plaintiffs. But the evidence shows nothing more than the ordinary succession of corporate entities. There is no dispute that OneWest merged with CIT Bank, N.A., with the merged entity keeping the latter's name. The rights and obligations of OneWest became those of CIT Bank, N.A. Defendant fails to explain why this evolution affects Plaintiffs' right to enforce the CIT Settlement.

Dictionary (12th ed. 2024) ("Someone to whom property rights or powers are transferred by another. . . . Also termed assign."). Ocwen (and its successor-by-merger PHH)⁷⁴ can therefore enforce the CIT Settlement against Defendant.

U.S. Bank is entitled to enforce the CIT Settlement because it expressly releases "any predecessors in interest," and the servicing rights were originally held by the mortgagee.⁷⁵

c. Whether the Release Covers Limitations

"In order to effectively release a claim in Texas, the releasing instrument must 'mention' the claim to be released." Victoria Bank & Trust Co. v. Brady, 811 S.W.2d 931, 938 (Tex. 1991). But a settlement agreement need not "anticipate and identify each potential cause of action relating to the release's subject matter." Keck, Mahin & Cate v. National Union Fire Insurance Co. of Pittsburgh, Pa., 20 S.W.3d 692, 698 (Tex. 2000). "As a defense to a civil action, the statute of limitations is a personal privilege and may be waived by agreement either before or after expiration of the prescribed time limit." American Alloy Steel, Inc. v. Armco, Inc., 777 S.W.2d 173, 177 (Tex. App.—Houston [14th Dist.] 1989). The foreclosure statute of limitations may be

⁷⁴Trial Day 1 Transcript, Docket Entry No. 213, p. 17 lines 11-25, p. 18 lines 1-2; Agreement and Plan of Merger, Plaintiffs' Exhibit 24.

⁷⁵In this case, the servicing rights originated either from U.S. Bank or its predecessor Home123.

waived after it expires. See Brown v. EMC Mortgage Corp., 326 S.W.3d 648, 653 (Tex. App.-Dallas 2010).⁷⁶

The CIT Settlement releases all of Defendant's "claims" and "rights" "of any nature whatsoever" "related to or arising out of any and all claims which were brought or could have been brought[.]"⁷⁷ Defendant's limitations defense was a right related to a claim that he brought – his declaratory judgment claim. The CIT Settlement states that it is "complete and unconditional settlement, release, and compromise . . . regarding all of [Defendant]'s claims arising out of . . . the Lawsuit[.]"⁷⁸

⁷⁶The Texas Supreme Court has stated "[b]lanket pre-dispute waivers of all statutes of limitation are unenforceable, but waivers of a particular limitations period for a defined and reasonable amount of time may be enforced." Godoy v. Wells Fargo Bank, N.A., 575 S.W.3d 531, 538 (Tex. 2019). The Court was addressing a waiver entered as part of a loan – before the lender's cause of action accrued and therefore before any statute of limitations started to run. See id. at 533-34. It is not clear that the "defined and reasonable amount of time" requirement applies to waiver of an already-expired statute of limitations. See id. at 538 (quoting Titus v. Wells Fargo Bank & Union Trust Co., 134 F.2d 223, 224 (5th Cir. 1943)) ("'Waiver before the [limitations] bar has fallen must be specific and only for a reasonable time . . .'" (emphasis added)). Even if it does, the "amount of time" waived by an after-the-fact waiver at least includes the past running of limitations. To the extent the Settlement Agreement purports to waive post-settlement running of limitations, Godoy may limit its enforceability as to that period. But because less than four years passed between the settlement and Plaintiffs' filing of this foreclosure action (and because Plaintiffs reset limitations by sending a new notice of default in 2019), it is immaterial whether the CIT Settlement can waive post-settlement running of limitations.

⁷⁷CIT Settlement, Plaintiffs' Exhibit 31, pp. 2-3.

⁷⁸Id. at 3.

Defendant argues that the Fifth Circuit's opinion in this case disposes of Plaintiffs' release argument. The Fifth Circuit, in analyzing whether res judicata barred Plaintiffs' limitations defense, stated that "Mr. Lamell's [state court] declaratory judgment 'claim' was not really a claim at all; it was an 'anticipatory defense to a potential claim.'"⁷⁹

The quoted language from the Fifth Circuit, in context, meant that Defendant's declaratory judgment claim – not coupled with a request for coercive relief – was not a claim for purposes of the claim preclusion doctrine.⁸⁰ The definition of a claim for purposes of claim preclusion has little bearing on the scope of claims released by the CIT Settlement. Two aspects of the settlement evidence a broader release that covers Defendant's limitations defense. The settlement's recitals reveal that the parties considered requests for declaratory judgment to be "claims": "WHEREAS, Defendant herein agrees to settle with Plaintiff to resolve all claims for declarations and for damages . . ."⁸¹ Moreover, Defendant released not only "claims" but also "rights" related to his claims, which covers his limitations defense.⁸²

⁷⁹Opinion, Docket Entry No. 125, p. 11.

⁸⁰Id.

⁸¹CIT Settlement, Plaintiffs' Exhibit 31, p. 2 (emphasis added).

⁸²Id. at 3. If there were any doubt, the settlement's statement that it is meant to be "comprehensive in nature" confirms that the parties intended to finally resolve all of Defendant's claims. See id. at 6.

The CIT Settlement released Defendant's limitations defense to foreclosure. The court will therefore enter declaratory judgment that the statute of limitations does not bar Plaintiffs from foreclosing.

B. Plaintiffs' Claim for Declaratory Judgment on Taxes

In its March 24, 2021, Order Adopting Amended Memorandum and Recommendation, the court granted summary judgment to Plaintiffs on their claim for declaratory judgment on past due taxes.⁸³ The Fifth Circuit mentioned this ruling but did not definitively state whether Defendant had appealed it and did not rule on it.⁸⁴ To the extent that the court's summary judgment ruling on the issue was within the scope of the remand, the trial evidence confirms the court's prior ruling. The Waiver of Escrow authorizes Plaintiffs to pay property taxes that Defendant fails to "timely" pay.⁸⁵ Defendant argued at trial that he timely paid or obtained deferral for all taxes. But the court concludes that deferred property taxes are not timely paid. Even if deferral prevents foreclosure on the government's tax lien, interest nevertheless accrues on the unpaid taxes, thereby increasing the size of the lien. Tex. Tax Code § 33.06(d). When the tax lien is ultimately satisfied, the

⁸³Amended Memorandum and Recommendation, Docket Entry No. 86, pp. 24-25; Order Adopting Amended Memorandum and Recommendation, Docket Entry No. 99.

⁸⁴See Opinion, Docket Entry No. 125, pp. 2, 15-16.

⁸⁵Waiver of Escrow, Plaintiffs' Exhibit 3.

accrued interest will reduce the proceeds available to satisfy Plaintiffs' lien. See Tex. Tax Code § 32.05(b)(1) (making tax liens senior to creditors' liens). The court will therefore enter declaratory judgment that Plaintiffs are entitled to pay taxes on the Property and that Defendant is not entitled to deferral of taxes under the Note and Deed of Trust.⁸⁶

C. Plaintiffs' Cause of Action for Foreclosure

The Deed of Trust provides U.S. Bank, as successor to Home123, with a security interest in the Property.⁸⁷ Because PHH is the mortgage servicer,⁸⁸ it may administer a foreclosure on U.S. Bank's behalf pursuant to Texas Property Code § 51.0025. Defendant has defaulted on the Note by failing to make monthly payments.⁸⁹ PHH sent Defendant a notice of default and intent to accelerate and a notice of acceleration as required by Texas law.⁹⁰ The court will therefore enter an order confirming that Plaintiffs may foreclose in accordance with the Deed of Trust and Texas Property Code § 51.002.

⁸⁶The court does not hold that Defendant cannot apply for and receive a deferral under Texas law; the court merely addresses Defendant's contractual obligations under the Note and Deed of Trust.

⁸⁷Joint Pretrial Order, Docket Entry No. 186, p. 4 ¶¶ 6.3, 6.7.

⁸⁸Id. at 5 ¶ 6.19.

⁸⁹Id. at 4 ¶ 6.11.

⁹⁰Id. at 5 ¶ 6.21, p. 6 ¶ 6.22.

D. Plaintiffs' Claim for Contractual Subrogation

"Contractual subrogation arises when 'a person advances money to take up and extend indebtedness secured by a vendor's lien on land under an agreement that such person shall stand in the place of the original holder of the indebtedness.'" Vogel v. Veneman, 276 F.3d 729, 735 (5th Cir. 2002). A valid deed of trust executed by both the borrower and lender establishes contractual subrogation. Id. Paragraph 9 of the Deed of Trust authorizes U.S. Bank to take certain actions to protect its security interest when Defendant breaches the Deed of Trust, including "paying any sums secured by a [senior] lien[.]"⁹¹ Paragraph 9 states that these sums "become additional debt of Borrower secured by" the Deed of Trust.⁹² Plaintiffs proved at trial that they advanced \$92,582.06 in property taxes.⁹³ That amount is therefore debt secured by the Deed of Trust.⁹⁴

⁹¹Deed of Trust, Plaintiffs' Exhibit 2, p. 7.

⁹²Id. at 8.

⁹³Total Escrow Breakdown, Plaintiffs' Exhibit 36, p. 4; Trial Day 1 Transcript, Docket Entry No. 213, p. 42 lines 14-17, p. 43 lines 6-7, 14-16.

⁹⁴Among the contested propositions of law in the Joint Pretrial Order is "whether contractual [and equitable] subrogation bars the statute of limitations defense[.]" Docket Entry No. 186, p. 9 ¶¶ 4-5. As the Fifth Circuit stated on appeal, Plaintiffs' "subrogation claims accrued when their foreclosure claims accrued[.]" Opinion, Docket Entry No. 125, p. 15. "Thus, absent abandonment of acceleration, the statute of limitations for Appellees' subrogation claims ran at the same time as it ran for their foreclosure claim." Id. In other words, Plaintiffs' (continued...)

E. Equitable Subrogation

In the alternative, Plaintiffs seek equitable subrogation for the advanced property taxes. "Equitable subrogation 'is a legal fiction' whereby 'an obligation, extinguished by a payment made by a third person, is treated as still subsisting for the benefit of this third person, so that by means of it one creditor is substituted to the rights, remedies, and securities of another.'" Murray v. Cadle Co., 257 S.W.3d 291, 299 (Tex. App.-Dallas 2008) (quoting First National Bank of Houston v. Ackerman, 70 Tex. 315, 319-20 (1888)). "There are two key elements to equitable subrogation: (1) the person whose debt was paid was primarily liable on the debt, and (2) the claimant paid the debt involuntarily." Bank of America v. Babu, 340 S.W.3d 917, 925 (Tex. App.-Dallas 2011). "Texas courts are 'liberal in their determinations that payments were made involuntarily.'" Frymire Engineering Co. ex rel. Liberty Mutual Insurance Co. v. Jomar International, Ltd., 259 S.W.3d 140, 145 (Tex. 2008). "The doctrine of equitable subrogation allows a lender who pays the property taxes owed by a debtor to step into the shoes of the taxing authority and assume the tax lien attached to the secured property." Bank of New York Mellon v. Maniscalco, No. 1:15-CV-035,

⁹⁴(...continued)
contractual subrogation claim affects the amount secured by the Deed of Trust, but it does not affect limitations. See also PNC Mortgage v. Howard, 668 S.W.3d 644, 650 (Tex. 2023) (rejecting the argument that subrogation gives a lender a separate foreclosure claim with an independent statute of limitations).

2016 WL 3584423, at *5 (E.D. Tex. Mar. 3, 2016) (applying Texas law). Defendant, as owner of the Property, was primarily liable for his property taxes. Because late taxes accrue interest and thereby increase the size of the senior tax lien, the court concludes that Plaintiffs' payment of the taxes was involuntary.

Because Plaintiffs are entitled to contractual subrogation, equitable subrogation is unnecessary and therefore unavailable. See LaSalle Bank National Association v. White, 246 S.W.3d 616, 619 (Tex. 2007) ("[E]quitable remedies apply only when there is no remedy at law[.]"). But to the extent contractual subrogation is later held to be unavailable, Plaintiffs would be entitled to equitable subrogation for the \$92,582.06 in taxes.

F. Attorneys' Fees

The Deed of Trust states that "Lender may charge Borrower fees for services performed in connection with Borrower's default" and that "Lender shall be entitled to collect all expenses incurred in pursuing [acceleration and foreclosure], including, but not limited to, reasonable attorneys' fees[.]"⁹⁵ The parties stipulated at trial that Plaintiffs have incurred \$174,492.19 of attorneys' fees to date.⁹⁶ Defendant has not challenged the reasonableness of Plaintiffs' attorneys' fees, and the court concludes that the amount is reasonable in light of the length and complexity of this

⁹⁵Deed of Trust, Plaintiffs' Exhibit 2, p. 10 ¶ 14, p. 13 ¶ 22.

⁹⁶Trial Day 2 Transcript, Docket Entry No. 215, p. 69 lines 16-24.

action. The amount secured by the Deed of Trust includes \$174,492.19 in attorneys' fees.

G. Defendant's Claims

Defendant's declaratory judgment claims and claim for release of lien are based on his limitations defense. Because Defendant released his limitations defense, Defendant's claims fail.

H. Insurance Funds

One of the contested propositions of law in the Joint Pretrial Order is "the distribution of funds from Dykema's IOLTA account[,]" and the parties presented argument at trial regarding insurance funds. But aside from a declaratory judgment claim that the court struck from Defendant's Live Answer, the pleadings do not contain any claims regarding the insurance funds. Although Defendant acknowledged at trial that the funds "go with the property" and that he does not have a claim to the funds "independent of the property,"⁹⁷ any claim regarding the insurance funds depends on the foreclosure sale price and will therefore ripen only after the foreclosure sale occurs.⁹⁸ Therefore, the court's Final Judgment includes no disposition regarding the insurance funds.

⁹⁷Trial Day 2 Transcript, Docket Entry No. 215, p. 55 lines 10-21.

⁹⁸See Plaintiffs' Trial Brief, Docket Entry No. 185, p. 13.

V. Conclusion and Order

The court concludes that the Note was accelerated on June 4, 2010, that the statute of limitations was tolled for 755 days, that Plaintiffs and their predecessors did not foreclose or abandon acceleration within four years plus tolling, and therefore that the foreclosure statute of limitations expired. The court concludes that Defendant released his limitations defense in the CIT Settlement and that Plaintiffs are entitled to enforce that release. Therefore, the applicable statute of limitations (Tex. Civ. Prac. & Rem. Code § 16.035) does not bar Plaintiffs from foreclosing on the Property or collecting on the Note.

The court concludes that property taxes deferred under Tex. Tax Code § 33.06 are not "timely" paid within the meaning of the Waiver of Escrow and Deed of Trust, that Defendant failed to timely pay property taxes, and that the Waiver of Escrow authorizes Plaintiffs to pay the taxes. Plaintiffs therefore have the right to pay taxes on the Property, and Defendant was not entitled to deferral of payment of his property taxes under the terms of the Note and Deed of Trust.

The court concludes that Plaintiffs have shown that they hold the Note and Deed of Trust, which allows them to conduct a non-judicial foreclosure in the event of default on the Note; that Defendant has failed to make the payments required under the Note,

which constitutes an event of default; that Plaintiffs have accelerated the Note and sent all notices required to do so; that Plaintiffs have standing to foreclose; and that Plaintiffs may therefore foreclose on the Property. Plaintiffs may therefore foreclose on the Property in accordance with the Deed of Trust and Texas Property Code § 51.002.

The court concludes that the Deed of Trust has a contractual subrogation clause such that unpaid property taxes advanced by Plaintiffs are debt of Defendant and secured by the Deed of Trust. The court concludes that Plaintiffs have advanced \$92,582.06 in unpaid property taxes. Plaintiffs therefore have a valid claim for contractual subrogation in the amount of \$92,582.06.

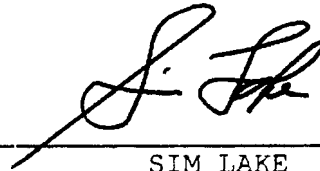
Because the court concludes that Defendant released his limitations defense, Defendant's claims for declaratory judgment and for a release of the Deed of Trust lien will be dismissed with prejudice.

The court concludes that the amount secured by the Deed of Trust includes the outstanding balance of the loan, \$1,679,882.94 as of November 14, 2024 (including the advanced taxes),⁹⁹ pre-judgment and post-judgment interest at the Note interest rate

⁹⁹Payoff Quote, Plaintiffs' Exhibit 57, pp. 1-2.

of 6.625% per annum,¹⁰⁰ \$174,492.19 in attorneys' fees, and costs of court.¹⁰¹

SIGNED at Houston, Texas, on this 29th day of January, 2025.



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

¹⁰⁰Post-judgment interest on a money judgment is set by 28 U.S.C. § 1961(a). But Defendant's requested relief does not include a money judgment but instead a declaratory judgment regarding the amount secured by Deed of Trust. That amount is dictated by the terms of the Note and Deed of Trust. The Note states that Defendant "will pay interest at a yearly rate of 6.625%. The interest rate . . . is the rate I will pay both before and after any default . . ." Note, Plaintiffs' Exhibit 1, p. 1. That interest is secured by the Deed of Trust. Plaintiffs' Exhibit 2, p. 4 ¶ 1.

¹⁰¹The court has allowed the parties extraordinary leeway in submitting lengthy briefs and other written materials in connection with this case. As the length of this Memorandum Opinion and Order indicates, the court has expended considerable time reading these papers and performing a significant amount of independent research to be as fully informed as possible when addressing the parties' arguments. While, because of the sheer volume of information presented, it is not impossible that some arguments were overlooked, the parties should assume that failure to expressly address a particular argument in this Memorandum Opinion and Order reflects the court's judgment that the argument lacked sufficient merit to warrant discussion. Accordingly, the court strongly discourages the parties from seeking reconsideration based on arguments they have previously raised or that they could have raised.

Appendix **D**

Order of *Final Judgment*

District Court Case
No. 4:10-cv-02402,
USBNA, PHH v. Lamell

January 29, 2025

ENTERED

January 29, 2025

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

U.S. BANK NATIONAL ASSOCIATION §
as Trustee for CSMC MORTGAGE- §
BACKED TRUST 2007-3, and PHH §
MORTGAGE CORPORATION, §
Individually and as Successor- §
in-Interest to OCWEN LOAN §
SERVICING, LLC, §

Plaintiffs, §

v. §

JOSEF M. LAMELL a/k/a J. M. §
ARPAD LAMELL, §

Defendant. §

CIVIL ACTION NO. H-19-2402

FINAL JUDGMENT

In accordance with the court's findings and conclusions set out in its Memorandum Opinion and Order, after hearing the evidence at trial, the court enters the following Final Judgment. It is therefore,

ORDERED, ADJUDGED, AND DECREED that an event of default has occurred on that certain InterestFirst Note (the "Note") in the original principal amount of \$566,000.00 payable to Home123 Corporation ("Home123") and bearing interest at the initial rate of 6.625% per annum executed by Defendant on or about September 25, 2006. It is further,

ORDERED, ADJUDGED, AND DECREED that that certain Deed of Trust dated September 25, 2006, executed by Defendant and recorded in the Official Records of Harris County, Texas, as Instrument No. 20060088945, provides Mortgage Electronic Registration Systems, Inc. (as the nominee of Homel23) and Homel23 and its successors and assigns with a first lien security interest on that certain real property commonly known as 5131 Glenmeadow Drive, Houston, Texas 77096 (the "Property"), and more particularly described as follows:

LOT SEVEN (7), IN BLOCK TWENTY-SIX (26) OF REPLAT "1" OF MEYERLAND, SECTION EIGHT (8), A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 84, PAGE 64, OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

It is further,

ORDERED, ADJUDGED, AND DECREED that U.S. Bank is the current holder and owner of the Note and beneficiary of the Deed of Trust.

It is further,

ORDERED, ADJUDGED, AND DECREED that PHH is the mortgage servicer for U.S. Bank and thus has standing to foreclose pursuant to Texas Property Code Section 51.0025. It is further,

ORDERED, ADJUDGED, AND DECREED that the following are secured by the Deed of Trust on the Property: the outstanding balance of the Note, which through November 14, 2024, is \$1,679,882.94; prejudgment and post-judgment interest at the Note interest rate of 6.625% per annum; attorneys' fees; and costs of court. It is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiffs or their successors or assigns, may proceed with foreclosure on the Property as provided in the Deed of Trust and Texas Property Code § 51.002. It is further,

ORDERED, ADJUDGED, AND DECREED that all foreclosure notices may be mailed to Defendant at 5131 Glenmeadow Drive, Houston, Texas 77096. It is further,

ORDERED, ADJUDGED, AND DECREED that Defendant released any claim or defense that the statute of limitations bars the foreclosure of the Property and therefore that Defendant's statute of limitations defense presents no impediment to Plaintiffs' proceeding with foreclosure of the Property as provided in this Judgment. It is further,

ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall have and recover from Defendant reasonable attorneys' fees in the amount of \$174,492.19.

Defendant's claims for declaratory judgment in § VIII, subsections 2(a)-(d) and for Release of Deed of Trust Lien in § X of Defendant's Answer to Second Amended Complaint and Counterclaims dated May 7, 2024,¹ are **DISMISSED WITH PREJUDICE**.

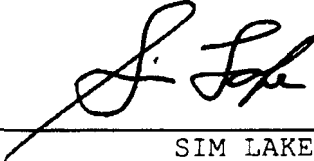
¹Docket Entry No. 168, pp. 13-15. See also Joint Pretrial Order, Docket Entry No. 186, p. 2 ¶ 2 ("Mr. Lamell counterclaimed against Plaintiffs for declarations that: the limitations for a suit on the Note has expired; the enforcement/foreclosure provisions of the Deed of Trust are void; Plaintiffs have no authority to foreclose; and Plaintiffs are permanently barred from (continued...)

This is a **FINAL JUDGMENT** that disposes of all parties and all claims.

All relief not specifically granted herein is **DENIED**.

Costs will be taxed against Defendant.

SIGNED at Houston, Texas, on this 29th day of January, 2025.



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE

¹(...continued)
bringing a suit or claim to collect on the Note. He also seeks release of insurance settlement funds held in an IOLTA account of Plaintiffs' appellate counsel."). Defendant's claim for release of the IOLTA insurance funds was struck by the court for the reasons stated in the May 15, 2024, Memorandum and Recommendation, Docket Entry No. 171, pp. 15-16.

Appendix E

Order Denying Petitioners' Petition for Panel Rehearing

April 23, 2026

United States Court of Appeals
for the Fifth Circuit

No. 25-20056

United States Court of Appeals
Fifth Circuit

FILED

April 23, 2026

Lyle W. Cayce
Clerk

U.S. BANK NATIONAL ASSOCIATION, *As Trustee for CSMC*
MORTGAGE-BACKED TRUST 2007-3; PHH MORTGAGE
CORPORATION, *Individually as Successors in Interest to OCWEN*
LOAN SERVICING,

Plaintiffs—Appellees,

versus

JOSEF M. LAMELL, *also known as* ARPAD LAMELL, *also known as* J. M.
ARPAD LAMELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-2402

UNPUBLISHED ORDER

Before SOUTHWICK, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:

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

IT IS FURTHER ORDERED that the petition for rehearing is
DENIED.

IT IS FURTHER ORDERED that Appellant's motion to recall this Court's mandate to permit consideration of the petition is DENIED AS MOOT.

Appendix **F**

Settlement Agreement

Josef Lamell, CIT Bank, N.A.

May 16, 2019

CAUSE NO. 2010-11491

J.M. ARPAD LAMELL as the
PROPERTY OWNER.

Plaintiff,

v.

HARRIS COUNTY APPRAISAL DISTRICT, THE APPRAISAL REVIEW BOARD OF HARRIS COUNTY APPRAISAL DISTRICT, THE HARRIS COUNTY TAX ASSESSOR-COLLECTOR AND INDYMAC MORTGAGE SERVICES, A DIVISION OF ONE WEST BANK, FSB, A FOREIGN CORPORATION,

Defendants.

IN THE DISTRICT COURT

127TH JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims ("Settlement Agreement")
is made and entered into by:

- (1) Plaintiff **J.M. ARPAD LAMELL**, and his heirs, past, present and future representatives, successors and assigns, as well as any predecessors or successors in interest (collectively referred to as “Plaintiff”); and
- (2) Defendant **CIT BANK, N.A. f/k/a OneWest Bank, N.A. f/k/a OneWest Bank, FSB, incorrectly named as Indymac Mortgage Services, a division of One West Bank, FSB, a foreign corporation** (collectively referred to as “Defendant”).

RECITALS

WHEREAS, Plaintiff closed on a loan in a principal amount of \$566,000 on September 25, 2006 (the “Loan”); and

WHEREAS, servicing of the Loan was eventually transferred to Defendant; and

WHEREAS, a dispute arose between Plaintiff and Defendant as to the servicing of the Loan, including but not limited to the advancement of property taxes by Defendant, the establishment of an escrow account, and the chain of title related to enforcement of the Loan (the "Dispute") and Plaintiff sued Defendant in the above styled and numbered case (the "Lawsuit"); and

WHEREAS, Plaintiff and Defendant (the "Parties") now desire to enter into this Settlement Agreement in order to reach a full and final settlement and to discharge the Parties' claims or counterclaims asserted in the Lawsuit and the Dispute under the terms and conditions set forth herein; and

WHEREAS, it is expressly understood and agreed that this Settlement Agreement shall not be construed as an admission of liability on the part of Defendant nor as an admission or judicial determination that Plaintiff's claims and causes of action were not meritorious, were improperly brought, or were improperly founded; and

WHEREAS, Defendant herein agrees to settle with Plaintiff to resolve all claims for declarations and for damages arising from the Dispute and the Lawsuit based on Plaintiff's willingness to accept the terms and conditions contained in this Settlement Agreement.

THEREFORE, Plaintiff and Defendant enter into this Settlement Agreement according to the terms and conditions set forth below.

AGREEMENT

I. RELEASES AND DISCHARGES

1.1 In consideration of the payment by Defendant called for herein, the sufficiency of which is hereby expressly acknowledged and confessed, Plaintiff completely RELEASES AND FOREVER DISCHARGES Defendant and its past and present agents, servants, employees,

officers, directors, shareholders and representatives, along with all related companies, including
Type text here
any parent, subsidiaries, affiliates, as well as any predecessors in interest, including without
limitation IndyMac Federal Bank, FSB (collectively, the "CIT Released Parties") from any and
all past, present, or future claims, demands, obligations, actions, causes of action, rights,
damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether
based in statute, in tort, on a contract, a statutory or non-statutory lien, or on other theory of
recovery, related to or arising out of any and all claims which were brought or could have been
brought by Plaintiff in connection with the Dispute or the Lawsuit for any and all compensatory,
punitive, or statutory damages which Plaintiff now has, which may hereafter accrue, or which
may be otherwise acquired, on account of or in any way connected to, related to, or arising out of
the Dispute or the Lawsuit, including, without limitation, any and all known or unknown claims,
past and future, including claims for punitive damages, attorneys' fees, or costs of court, which
have resulted or may have resulted from the alleged acts or omissions of the Defendant, on
account of, or in any way growing out of, arising from, or in connection with the Dispute or the
Lawsuit (the "Released Claims"). This Settlement Agreement shall be a fully binding,
enforceable, and complete and unconditional settlement, release, and compromise between
Plaintiff and Defendant regarding all of Plaintiff's claims arising out of the Dispute, the Lawsuit,
and the Released Claims.

1.2 Plaintiff further agrees that with respect to this Settlement Agreement and
Release, no liability shall attain in favor of Plaintiff against any officer, director, member agent,
or employee of Defendant as a result of damages arising from the Dispute or the Lawsuit.

II. SETTLEMENT PAYMENT

2.1 In consideration of the releases, waivers, covenants, and agreements set forth herein, Defendant hereby agrees to pay the total sum of FORTY THOUSAND DOLLARS (\$40,000.00) (the "Settlement Payment") to Plaintiff. The Settlement Payment shall be paid within 14 days of execution of this Settlement Agreement by Plaintiff and Defendant and receipt by counsel for Defendant of the executed dismissal order and a completed W-9 from Plaintiff. The Settlement Payment shall be made in one check in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) made payable to J.M. ARPAD LAMELL.

2.2 As further consideration for the releases, waivers, covenants, and agreements set forth herein, Defendant hereby agrees to the release to Plaintiff of \$31,837.73 currently held in the registry of the Harris County District Court in account No. 68870 and \$1,867.29 currently held in the registry of the Harris County District Court in account No. 69652. Plaintiff and Defendant agree to execute and submit an agreed order or whatever documentation is required of the Court to release the funds from the registry of the Court.

III. ATTORNEY FEES AND COSTS

Each party hereto shall bear all of its own respective taxable costs and attorneys' fees in connection with the Dispute, the Lawsuit, this Settlement Agreement, and the matters and documents referred to herein.

IV. GENERAL RELEASE

4.1 Plaintiff hereby acknowledges and agrees that the release set forth in Section I hereof is a general and total release of the CIT Released Parties from all claims or counterclaims of any nature, which arise out of the Dispute and the Lawsuit; and Plaintiff further expressly waives and assumes the risk of any and all claims for damages against the CIT Released Parties

arising from the Dispute and the Lawsuit which exist as of this date but of which Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect his decision to enter into this Settlement Agreement.

4.2 It is understood and agreed by Plaintiff and Defendant that this Settlement Agreement is a compromise of disputed claims and is not to be construed as an admission of liability on the part of the CIT Released Parties regarding the Dispute and the Lawsuit, including, but not limited to, alleged bad faith acts or omissions on the part of the CIT Released Parties regarding the Dispute and the Lawsuit, nor is it to be construed as an admission on Plaintiff's part or judicial determination that Plaintiff's claims and causes of action were not meritorious, were improperly brought, or were improperly founded.

V. WARRANTIES

Plaintiff and Defendant expressly warrant that each party has the sole right and exclusive authority to execute this Settlement Agreement, and has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

VI. ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

6.1 This Settlement Agreement constitutes the entire agreement between Plaintiff and Defendant with regard to the matters set forth herein. There are no other agreements, oral or written, which supersede, contradict or alter any provision of this Settlement Agreement. This Settlement Agreement may only be altered by a subsequent written agreement that is executed by all Parties to this Settlement Agreement.

6.2 The Settlement Agreement shall be binding upon and shall inure to the benefit of the executors, administrators, personal representatives, heirs, insurers, successors, and assigns of each of the parties hereto.

VII. REPRESENTATION OF COMPREHENSION OF DOCUMENT

7.1 In entering into this Settlement Agreement, Plaintiff represents that he has had the opportunity to obtain and to rely on the legal advice of an attorney of his own choice, and that he fully understands the terms of this Settlement Agreement and that he voluntarily accepts such terms. Plaintiff further represents that he has not relied upon any representations by Defendant regarding this Settlement Agreement and that he has not been coerced or induced into execution of this Settlement Agreement as a result of any inducement to do so, other than pursuant to the terms and considerations set forth in this Settlement Agreement.

7.2 Plaintiff further expressly acknowledges that he could have proceeded with a trial by jury of all claims against Defendant, upon conclusion of which he could have received more money than provided for in this Settlement Agreement, or he could have received less money, or he could have received no money at all.

VIII. GOVERNING LAW

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Texas. Should any provision of this Settlement Agreement be declared or be determined by any court of competent jurisdiction or arbitrator to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby.

IX. CONSTRUCTION OF AGREEMENT

It is intended that this Settlement Agreement shall be comprehensive in nature and shall

be construed liberally to effect its purposes. Headings used in this Settlement Agreement are for convenience only and shall not affect the construction. This Settlement Agreement shall not be construed or interpreted against any Party, either by having drafted this agreement or otherwise, but shall be construed and interpreted as to give the fullest effect to the undertakings set forth herein.

X. ADDITIONAL DOCUMENTS

Plaintiff and Defendant agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and conditions of this Settlement Agreement.

XI. TAX CONSEQUENCES

By execution of this Agreement, Plaintiff represents that Defendant has not given any tax opinions, advice or assurances in connection with the Settlement Payment, nor is Defendant in any way liable for tax consequences, if any, which are associated with the Settlement Payment.

XII. DISMISSAL OF ENTIRE ACTION

Plaintiff agrees to dismiss with prejudice his claims and causes of action raised in the above-captioned Lawsuit concurrent with the execution of this Agreement pursuant to the attached dismissal order. Said dismissal will not in any way refer to the terms and conditions of this document or any other agreements between the parties.

XIII. COVENANT NOT TO SUE

Plaintiff agrees that he will not now or at any time in the future bring any suit, claim, or action related to or arising out of the Dispute or the Lawsuit against the CIT Released Parties.

XIV. RELEASE BY CIT

Defendant CIT releases Plaintiff Lamell from any and all claims asserted by CIT in the Lawsuit, if any, to the extent that such claim is releasable by CIT.

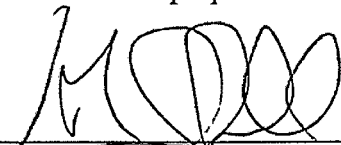
signatures on the following pages

STATE OF TEXAS

COUNTY OF HARRIS

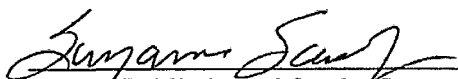
§
§
§

BEFORE ME, the undersigned authority, on this day appeared **J.M. ARPAD LAMELL** known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed this document for the purposes and consideration herein expressed.

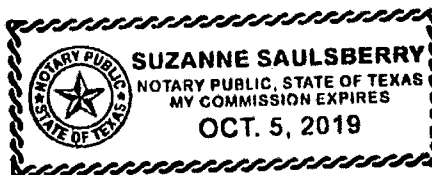


J.M. ARPAD LAMELL

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16th day of May, 2019.



Notary Public in and for the State of Texas
Printed Name: Suzanne Saulsberry
My Commission Expires: October 5, 2019



Appendix G

Notice of Bankruptcy Case Filing

August 3, 2026

United States Bankruptcy Court
Southern District of Texas

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 08/03/2026 at 2:09 PM and filed on 08/03/2026.

Josef Manfred Lamell
5131 Glenmeadow Drive
Houston, TX 77096
713-857-2483
SSN / ITIN: xxx-xx-5053
aka J.M. Arpad Lamell
dba Lamell & Associates
aka Josef Manfred A Lamell
dba Grand Legacy Studio
aka Josef Lammel



The bankruptcy trustee is:

David Peake
David G. Peake Chapter 13 Trustee
One Sugar Creek Center Boulevard, Ste 300
Sugar Land, TX 77478
713-283-5400

The case was assigned case number 26-35690 to Judge Christopher M. Lopez.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.txs.uscourts.gov/> or at the Clerk's Office, United States Bankruptcy Court, PO Box 61010, Houston, TX 77208.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Nathan Ochsner
Clerk, U.S. Bankruptcy Court

Appendix H

Selected Excerpt Pages
From Record on Appeal
Case No: 25-20056

Related to
Opinion Appealed from
Fifth Circuit Court of Appeals

Lamell's claims are also moot. CIT is not the current servicer of Lamell's mortgage loan. *Ex. 5 at ¶39 & Exhibit E*. There is simply nothing to adjudicate with regard to CIT's current rights to service or enforce the loan on behalf of the investor.

Finally, Lamell's claims are improper requests for declaratory judgment. A declaratory judgment requires a justiciable controversy as to the rights and status of parties actually before the court for adjudication, and the declaration sought must actually resolve the controversy. *The M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W. 3d 704, 708 (Tex. 2001); *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517-18 (Tex. 1995). A judicial decision reached without a case or controversy is an advisory opinion, which is barred by the separation of powers provision of the Texas Constitution. TEX. CONST. art. II, § 1; *see Southwestern Elec. Power Co. v. Grant*, 73 S.W. 3d 211 (Tex. 2002). Lamell seeks declarations that certain claims which have not been brought are barred by limitations based on the actions and inactions of non-parties to the suit. His supplemental claims do not present a justiciable controversy as to the rights of parties actually before the court. Neither Ocwen (Lamell's current mortgage servicer) nor US Bank, N.A., as Trustee for CSMC Mortgage-Backed Trust 2007-3 (the current investor) are before the Court. Those parties, and not CIT, currently own and service the loan and the lien. Lamell has not sought—nor should he be given—leave to add any new parties to this action on the eve of trial following nine years of litigation. Documents have not been sought from those entities relating to Lamell's statute of limitations defense because CIT did not know until after the close of discovery of Lamell's new theory. *Exs. 1, 2*. CIT has not serviced Lamell's mortgage loan since 2013, and it is unfair to require CIT to adjudicate Lamell's statute of limitations claims when discovery is closed, CIT is no longer the servicer, and the current loan servicer's documents have not been requested or produced. Lamell cannot adjudicate the rights of non-parties to this action through requests for declaratory relief. And CIT cannot speak for the rights

“acceleration abandoned” status would have been a major development in any context and under any circumstances. Counsel’s letter confirmed not only that acceleration was still in effect, but also that anything that might have transpired or been issued by anyone prior to their letter had no effect on changing the status of the *Note* from “Accelerated” to “Acceleration Abandoned.”

71. With respect to Plaintiffs’ claim that abandonment was accomplished by the sending of their *Mortgage Assistance Resources* announcements as it relates to their grounds for summary judgment, their claim is negated by the evidence. At the very least, Lamell has raised substantial and genuine issues of material fact sufficient to deny summary judgment as to this claim.

ISSUE No. 2: Did the Statutes of Limitations as to Plaintiffs’ enforcement remedies expire before July 2, 2019? *Lamell Concludes YES.*

72. Lamell’s Limitations cause of action accrued on June 4, 2010 with the sending of Plaintiffs’ *First Notice*.

73. As shown Supra at ¶¶ 26-46, acceleration had NOT been abandoned by any actions taken or notices sent by Plaintiffs between June 4, 2010 and July 2, 2019.

74. As explained in greater detail in Lamell’s *Affidavit* (Exhibit F-02 at ¶¶39-44), but for being briefly “toll” by three specific circumstances, Limitations continued to run until they expired in mid-2016. After allowing for the three applicable tollings, the respective statutes of limitations for each of Plaintiffs’ enforcement remedies expired as follows: a) the 4-year Limitations for Non-Judicial Foreclosure expired on June 28, 2016, b) the 4-year Limitations for Judicial Foreclosure expired on March 3, 2016, and c) the 6-year Limitations for bringing a suit or claim to enforce collection on the note expired on June 4, 2016.

ISSUE No. 3: Is either Plaintiff in privity with CIT such that *res judicata* would apply? *The Conclusion is NO.*

75. As Plaintiffs themselves explained (*See Plaintiffs’ MSJ – ECF-32 p.29*):

AFFIDAVIT of J. M. ARPAD LAMELL

State of Texas §
 §
County of Harris §

Before me, the undersigned Notary of Public, on this day, personally appeared
J. M. Arpad Lamell. Upon his oath, he stated as follows:

1. My name is J.M. Arpad Lamell. I am over 21 years of age and have never been convicted of a felony or a crime of moral turpitude. My primary residence address is in Houston, Harris County, Texas. I am of sound mind and competent in all respects to make this affidavit. I am the Defendant in the matter of Plaintiffs PHH (OCWEN) and USBNA versus Defendant J. M. Arpad Lamell (No. 4:19-cv-02402).
2. The documents referred to in this Affidavit are attached hereto in certified document form as Exhibits E-1, E-2, E-3, E-4, E-5, and E-6. Each was originally sent to me via mail or email by USBNA's former mortgage servicer CIT Bank, N. A. ("CIT"), by the clerk, or by the court reporter. The documents and representations made in them are matters of public record. The facts and statements recited herein are true and correct and within my personal knowledge.
3. In the filings and documents attached hereto as Exhibits E-1 through E-6, former mortgage servicer CIT, through its attorneys Ms. Melanie Fry and Mr. Brett Schouest, clearly represented that neither OCWEN (PHH) nor USBNA were parties in the former State Court Action No. 2010-11491, that CIT had not had any connection with USBNA since November 1, 2013, that CIT did not represent OCWEN (PHH) or USBNA, and that the law firm of Dykema Gossett did not represent OCWEN (now PHH) in the dismissed state court action.
4. The following is a review of specific representations CIT made to me and to the Court through its attorneys Ms. Melanie Fry and Mr. Brett Schouest of the Dykema Gossett law firm.
5. In CIT's *Defendant's Motion to Strike and Response to Plaintiff's Motion for Partial Traditional Summary Judgment, and Objections and Motion to Strike Plaintiff's Summary Judgment Evidence* filed on April 24, 2019 and attached here to as Exhibit E-1, CIT represented as follows:
 - a. "As noted above, CIT stopped servicing Lamell's mortgage loan in 2013. *Ex. 5 at Exhibit E*. Lamell's mortgage is now serviced by Ocwen, and the investor is US Bank, N.A., as Trustee for CSMC Mortgage-Backed Trust 2007-3." (E-1 p.6)
 - b. "Lamell seeks declarations regarding the running of limitations against possible future efforts to foreclose or collect in a lawsuit to which [OCWEN (PHH) and US Bank, N.A.] are not parties." (E-1 p.7)
 - c. "CIT should not be called on—on the eve of trial and after discovery is closed—to prepare a defense to claims involving the actions of nonparties which are necessarily moot as to CIT. Plaintiff's supplement should be struck." (E-1 p.7)

2020-09-08 *Affidavit of J. M. Arpad Lamell*

all pleading amendments and supplements to be filed by September 25, 2017. *Ex. 8.* No further Docket Control Orders have been signed by the Court. *See Ex. 2.*

On February 18, 2019 the case was for set trial beginning May 20, 2019. *Ex. 9.* On April 9, 2019, one and a half years after the deadline to supplement pleadings in the Court's Docket Control Order, and only 41 days before trial, and without seeking leave of court, Plaintiff filed his *Third Supplement to Plaintiff's Supplemental Petition*, which, for the first time, sought relief based on the running of the applicable limitations period. *Ex. 1.* Lamell's new causes of action are not valid causes of action at all; as Lamell admits in his petition, his new claims are affirmative "defenses" against "possible future foreclosure or collection actions." *Ex. 1 at ¶10.* Lamell styles his claims as requests for declaratory judgments that (1) "CIT, whether directly or through its successors or assigns, is hereby permanently barred from bringing any suit or claim to enforce collection on the Note"; (2) the enforcement/foreclosure provisions of the Deed of Trust and the Deed of Trust lien itself are void based on statute of limitations; and (3) CIT has no authority to foreclose or bring suit to enforce collection on the Note. *Ex. 1.* It is undisputed that CIT has never filed claims in this action seeking to foreclose or collect the Note from Lamell.

Simultaneously with his Third Supplement, Plaintiff filed his Motion for Partial Traditional Summary Judgment on each newly asserted claim, arguing that the limitations period had run and that he was entitled to a judgment that any attempt to enforce the underlying note or deed of trust was barred.

As noted above, CIT stopped servicing Lamell's mortgage loan in 2013. *Ex. 5 at Exhibit E.* Lamell's mortgage is now serviced by Ocwen, and the investor is US Bank, N.A., as Trustee for CSMC Mortgage-Backed Trust 2007-3. *Id.* Lamell has known about the transfer of mortgage servicing from CIT to Ocwen since before the effective date of the transfer. *Id.* And Lamell has made a conscious decision since 2013 not to sue the investor or his current mortgage

the court for adjudication, and the declaration sought must actually resolve the controversy. *The M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W. 3d 704, 708 (Tex. 2001); *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517-18 (Tex. 1995). A judicial decision reached without a case or controversy is an advisory opinion, which is barred by the separation of powers provision of the Texas Constitution. TEX. CONST. art. II, § 1; *see Southwestern Elec. Power Co. v. Grant*, 73 S.W. 3d 211 (Tex. 2002). Lamell seeks declarations that certain claims which have not been brought are barred by limitations based on the actions and inactions of non-parties to the suit. His supplemental claims do not present a justiciable controversy as to the rights of parties actually before the court. Neither Ocwen (Lamell's current mortgage servicer) nor US Bank, N.A., as Trustee for CSMC Mortgage-Backed Trust 2007-3 (the current investor) are before the Court. Those parties, and not CIT, currently own and service the loan and the lien. Lamell has not sought—nor should he be given—leave to add any new parties to this action on the eve of trial following nine years of litigation. Documents have not been sought from those entities relating to Lamell's statute of limitations defense because CIT did not know until after the close of discovery of Lamell's new theory. *Exs. 1, 7*. CIT has not serviced Lamell's mortgage loan since 2013, and it is unfair to require CIT to adjudicate Lamell's statute of limitations claims when discovery is closed, CIT is no longer the servicer, and the current loan servicer's documents have not been requested or produced. Lamell cannot adjudicate the rights of non-parties to this action through requests for declaratory relief. And CIT cannot speak for the rights of the investor or current servicer or what they intend to do in the future. Lamell expressly acknowledges this fact: "It now appears . . . that [CIT] has since become a stranger to this matter – at least with respect to issues involving current mortgage servicing rights such as litigating a motion for summary judgment involving the right to pursue foreclosure and/or collection that has not yet taken place." *Ex. 12 at ¶38*.

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is a nullity.”); *In re T.G.*, 68 S.W.3d 171, 177 (Tex. App.—Houston [1st Dist.] 2002, pet. denied) (“Judicial action taken after the trial court’s plenary power has expired is void.”). Plaintiff’s Motion to Reform, filed August 21, 2019, is likewise untimely and should be struck. The Court lacks jurisdiction to consider or rule on Plaintiff’s motion.

II. Lamell’s request to reform or set-aside the Settlement Agreement is inappropriate.

Lamell asks this court to “reform or set-aside” a settlement agreement between CIT and Lamell. According to Lamell, he is involved in another lawsuit that does not involve CIT in federal court. According to Lamell, the “*Federal Plaintiffs*” in that suit are arguing that certain actions taken—or not taken—by Lamell in this case impact his claims and defenses in the federal court lawsuit. Whether that is correct or not is for the federal district court judge to decide. The relevant parties—U.S. Bank National Association, PHH Mortgage Corporation, and Lamell—are already parties to a dispute before that federal court.

The litigation between CIT and Lamell in this cause number terminated in May. The advisory opinion Lamell seeks from this Court on whether parties in a federal case—who are not before this Court and have never been before this Court in this matter—have a valid claim is improper. The majority of Lamell’s Motion to Reform is spent refuting the Federal Plaintiffs’ claims in the federal court action. *See, e.g.*, Lamell’s Motion at p.3 (asserting that the “Federal Plaintiffs” (which do not include CIT) “res judicata claims and argument are completely unfounded”). That dispute is not before this Court. Lamell’s concerns about an “ambiguity” and surprise at the Federal Plaintiffs’ position are defenses to the arguments of those plaintiffs that should be brought by Lamell in the proper forum—the United States District Court, where the claims are pending.



Ratings Services
55 Water Street, 41st Floor
New York, NY 10041
212-438-2000 Tel
212-438-2661 Fax

***Revised & Amended
as of September 30, 2013***

September 26, 2013

OneWest Bank
888 E. Walnut Street
Pasadena, California 91101
Attention: Mr. Aaron Wade

Re: Mortgage Servicing Rights Purchase and Sale Agreement for Securities listed in Schedule A

Dear Mr. Wade:

Standard & Poor's Ratings Services ("Ratings Services") hereby confirms its long-term credit ratings on the securities for the transactions listed in Schedule A.

This letter is being provided in connection with the Mortgage Servicing Rights Purchase and Sale Agreement dated as of June 13, 2013, between OneWest Bank, FSB, a federal savings bank (the "Seller") and Ocwen Loan Servicing, LLC, a Delaware limited liability company (the "Purchaser"). The Mortgage Servicing Rights Purchase and Sale Agreement will not in and of itself result in a downgrade, withdrawal or qualification of the ratings assigned to the securities for the transactions listed in Schedule A.

The rating confirmation letter does not address the effect of the Mortgage Servicing Rights Purchase and Sale Agreement on the rights or interests of holders of the securities or whether it is permitted by the terms of the documents governing the securities.

This letter constitutes Ratings Services' permission for you to disseminate the above-assigned ratings to interested parties in accordance with applicable laws and regulations. Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable. To the extent that regulatory authorities allow a rating agency to acknowledge in one jurisdiction a rating issued in another jurisdiction for certain regulatory purposes, Ratings Services may choose to acknowledge such a rating and denote such acknowledgement on www.standardandpoors.com with an alphabetic or other identifier affixed to such rating or by other means.

Lamell's claims are also moot. CIT is not the current servicer of Lamell's mortgage loan. *Ex. 5 at ¶39 & Exhibit E*. There is simply nothing to adjudicate with regard to CIT's current rights to service or enforce the loan on behalf of the investor.

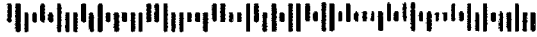
Finally, Lamell's claims are improper requests for declaratory judgment. A declaratory judgment requires a justiciable controversy as to the rights and status of parties actually before the court for adjudication, and the declaration sought must actually resolve the controversy. *The M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W. 3d 704, 708 (Tex. 2001); *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 517-18 (Tex. 1995). A judicial decision reached without a case or controversy is an advisory opinion, which is barred by the separation of powers provision of the Texas Constitution. TEX. CONST. art. II, § 1; see *Southwestern Elec. Power Co. v. Grant*, 73 S.W. 3d 211 (Tex. 2002). Lamell seeks declarations that certain claims which have not been brought are barred by limitations based on the actions and inactions of non-parties to the suit. His supplemental claims do not present a justiciable controversy as to the rights of parties actually before the court. Neither Ocwen (Lamell's current mortgage servicer) nor US Bank, N.A., as Trustee for CSMC Mortgage-Backed Trust 2007-3 (the current investor) are before the Court. Those parties, and not CIT, currently own and service the loan and the lien. Lamell has not sought—nor should he be given—leave to add any new parties to this action on the eve of trial following nine years of litigation. Documents have not been sought from those entities relating to Lamell's statute of limitations defense because CIT did not know until after the close of discovery of Lamell's new theory. *Exs. 1, 2*. CIT has not serviced Lamell's mortgage loan since 2013, and it is unfair to require CIT to adjudicate Lamell's statute of limitations claims when discovery is closed, CIT is no longer the servicer, and the current loan servicer's documents have not been requested or produced. Lamell cannot adjudicate the rights of non-parties to this action through requests for declaratory relief. And CIT cannot speak for the rights



10/16/2013

**NOTICE OF SERVICING TRANSFER (RESPA) and
WELCOME TO OCWEN LOAN SERVICING, LLC**

02 HB 0.402 **AUTO T2 0 1814 77096-411931
0004446 -C01-P04450-I 2



J M ARPAD LAMELL
5131 GLENMEADOW DR
HOUSTON TX 77096-4119

OCWEN LOAN #: 7191038715
PRIOR LOAN#: 3002368425
PROPERTY ADDRESS: 5131 GLENMEADOW DRIVE
HOUSTON TX 77096

Dear Customer(s):

Effective 11/01/2013, IndyMac Mortgage Services, a division of OneWest Bank, FSB (IndyMac) will transfer the servicing of your mortgage loan to Ocwen Loan Servicing, LLC (Ocwen). The transfer of the servicing of your loan does not affect any term or condition of your mortgage contract, other than terms directly related to the servicing of your account. Your account number will change, and the new account number is noted above. Key information regarding the servicing of your account is provided below.

Should you have questions relating to the transfer of servicing or need information regarding your account prior to 11/01/2013, please contact IndyMac's Customer Call Center at (800) 781-7399.

New Servicer Contact Information:

As of 11/01/2013, Ocwen's Customer Care Center will assist you with questions regarding the transfer of servicing or any other questions relating to your account. You may reach Ocwen's Customer Care Center at (800) 746-2936, Monday through Friday between 8:00 a.m. - 9:00 p.m. ET, Saturday 8:00 a.m. - 5:00 p.m. ET or Sunday 9:00 a.m. - 9:00 p.m. ET. Information concerning Ocwen and your mortgage loan may also be found online at WWW.OCWEN.COM. You can also obtain information using Ocwen's Automated Telephone system or by speaking with a Customer Care Center Representative. Please be sure to have your account number available when you call.

As of 11/01/2013, all written inquiries should be sent to Ocwen at the following address. Please be sure to indicate your account number on all correspondence to ensure prompt response to your inquiry.

Ocwen Loan Servicing, LLC
Attn: Customer Service Department
PO Box 24738
West Palm Beach, FL 33416-4738

Making Payments:

The date that IndyMac will stop accepting a payment from you is 10/31/2013. The date that Ocwen will start accepting payments from you is 11/01/2013. Please make all checks payable to Ocwen and send all payments due on or after 11/01/2013 to the address on the reverse side. If you use a Bill Pay Service, you will also need to inform them of this new payment address.

For Western Union Quick Collect users, you can find the location nearest to you by calling (800) 238-5772 or visiting www.westernunion.com and clicking on "Find a Location". At the location, please pay to name "OCWEN" and provide the Loan Number.

ACH (Automated Payments) or One-time Web Payments

Automatic monthly payments or one-time web payments can be setup and managed from our website at WWW.OCWENCUSTOMERS.COM.



Office of the Comptroller of the Currency

Western District
1225 17th St., Suite 300
Denver, CO 80202

Conditional Approval #1090
March 2014

February 20, 2014

Mr. David Fawer
Vice Chairman
OneWest Bank, FSB
888 East Walnut Street
Pasadena, CA 91101

Re: Application to convert OneWest Bank, FSB, Pasadena, California, to a national banking association with the title of OneWest Bank, National Association, charter number 25079 and to conduct fiduciary activities.
OCC Control Numbers: 2013-WE-Conversion-134538
2013-WE-Fiduciary-134772

Dear Mr. Fawer:

The Comptroller of the Currency (OCC) has reviewed your application to convert OneWest Bank, FSB to a national bank and retain all its branches. After a thorough review of all information available, and reliance upon the representations and commitments made in the application and by the bank's representatives, we find that your conversion application meets the requirements for conditional approval to convert to a national banking association pursuant to 12 CFR 5.24. The converting bank will operate under the title of OneWest Bank, National Association, headquartered in Pasadena, California, charter number 25079.

This conversion approval is subject to the following special condition:

Within ten (10) days after consummation of the conversion, OneWest Bank, National Association's Board of Directors shall execute a Stipulation and Consent to the Issuance of a Consent Order agreeing to the OCC's issuance of a Consent Order ("OCC Order") requiring OneWest Bank, National Association to adhere to the provisions of OTS Order WN-11-011 issued by the Office of Thrift Supervision on April 13, 2011 ("OTS Order"), which requires OneWest Bank, FSB to take certain actions to address its residential mortgage servicing and its initiation and handling of foreclosure proceedings. The provisions of the OTS Order shall be incorporated by reference into the OCC Order as if fully set forth therein. The OTS Order is administered by the OCC, pursuant to the

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA

Initials: 

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

Initials: 



Ocwen Loan Servicing, LLC
PO Box 24736
West Palm Beach, FL 33416-4736

www.ocwencustomers.com

10076728 IN 3 000173 211013244X10040501 1 1000000000 14001400

J M ARPAD LAMELL
5131 GLENMEADOW DR
HOUSTON TX 77098-4119



Mortgage Account Statement

Property Address	5131 Glenmeadow Dr Houston, TX 77098
Statement Date	01/20/14
Account Number	
Payment Due Date	02/01/14
Amount Due	\$407,963.05
<i>If payment is received after 02/17/14, a \$156.24 late fee will be charged.</i>	
Customer Care	800-746-2936
Insurance	866-825-9265

Account Information		Explanation of Amount Due	
Principal Balance*	\$588,000.00	Interest	\$3,124.79
Escrow Balance	\$107,987.75	Escrow	\$8,185.69
Maturity Date	October 1, 2036	Total Regular Payment	\$11,310.48
Interest Rate	6.62500%	Past Due Payment(s) Amount	\$398,852.57
Prepayment Penalty	No	Total Amount Due	\$407,963.05

* This is your Principal Balance only, not the amount required to pay the loan in full.

Transaction Activity Since Last Statement (11/30/02 to 01/20/14)

Tran Date	Pmt Date	Description	Tran Total	Principal	Interest	Escrow	Opt Prods	Late Charges	Fees/Other	Unapplied Funds
-----------	----------	-------------	------------	-----------	----------	--------	-----------	--------------	------------	-----------------

Past Payments Breakdown			Special Notices	
Principal	Paid Since Last Statement	\$0.00	Paid Year to Date	\$0.00
Interest		\$0.00		\$0.00
Escrow (Taxes & Insurance)		\$0.00		\$0.00
Fees/Other Charges		\$0.00		\$0.00
Unapplied Funds**		\$0.00		\$0.00
Total		\$0.00		\$0.00

Important News

You must use this address for all qualified written requests, notices of error, and/or requests for information. Research Department, PO Box 24736, West Palm Beach, FL 33416-4736.
Our records indicate that your loan is in foreclosure. Accordingly, this statement may be for informational purposes only. Payments received are to be applied in accordance with your mortgage note. Payments will be first applied to bring your loan contractually current. Any additional funds received will be applied to outstanding fees and advances prior to being applied to principal. If you have any questions about your loan, please call 1-800-746-2936 (ext:54024) and ask to set up an appointment with Uday P., your relationship manager, or schedule an appointment at Ocwencustomers.com.

See reverse side for Important Information and state specific disclosures.



Payment Coupon

J M Arpad Lamell
Account Number:



Notes: If your loan is current, any excess funds will first be applied to outstanding amounts due and then additional principal.

If this payment is made via automatic drafting, this statement is for informational purposes only.

AMOUNT DUE	\$407,963.05
If received after 02/17/14 add Late Charge of	\$156.24
Total Amount Due with Late Charge	\$408,119.29
Additional Principal	
Additional Escrow	
Late Charges	
Other (Please Specify)	

Total Enclosed

OCWEN
PO BOX 6440
CAROL STREAM IL 60197-6440





Ocwen Loan Servicing, LLC
WWW.OCWEN.COM
Helping Homeowners is What We Do!™

1661 Worthington Road, Ste 100
West Palm Beach, FL 33409
Toll Free: (800) 746-2936

1/22/2014

J M Arpad Lamell
5131 Glenmeadow Dr
Houston, TX 77096

Loan Number:

Property Address: 5131 Glenmeadow Dr, Houston, TX 77096

MORTGAGE ASSISTANCE RESOURCES

Your Relationship Manager is assigned and ready to help

Dear Borrower(s),

We are pleased to assist you in identifying solutions for your mortgage. No matter what your situation, we are committed to working with you. We have also assigned a dedicated mortgage assistance expert to help you, your personal Relationship Manager, Uday P. Uday P will carefully review your situation and application materials, make sure your information is complete, and work with you to identify the best options.

1. Schedule time with your Relationship Manager

Schedule a dedicated phone appointment at your convenience – schedule, re-schedule, or cancel your phone appointment online or by phone:

- Go online – www.ocwencustomers.com. Log into your account and click 'Talk to Your Relationship Manager'.
- Call us toll-free – (800) 74-Ocwen / (800) 746-2936. We're available Monday through Friday 8 am to 9 pm, Saturday 8 am to 5 pm and Sunday 9 am to 9 pm ET.

2. Send us your Application materials

Please continue to email any application documents and/or attachments to your Relationship Manager at mod@ocwen.com

- Be sure to put your name and loan number on all documents and communications.
- Your Relationship Manager can receive your emailed documents, but cannot reply to you by email. Please give us a call to ask questions or schedule an appointment at (800) 746-2936.

For fastest processing, email or fax documents to:

Email mod@ocwen.com

Fax (407) 381-6906

Or mail documents to:

Ocwen Loan Servicing, LLC. Attn: Home Retention
Department
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409

RMLETTER - VER -

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is purely provided to you for informational purposes only with regard to our debt collection services. This communication is not intended as an attempt to collect a debt.

Page 1 of 4



Ocwen Loan Servicing, LLC
WWW.OCWEN.COM
Helping Homeowners is What We Do!™

1661 Worthington Road, Ste 100
West Palm Beach, FL 33409
Toll Free: (800) 746-2936

2/10/2014

J M Arpad Lamell
5131 Glenmeadow Dr
Houston, TX 77096

Loan Number:

Property Address: 5131 Glenmeadow Dr, Houston, TX 77096

MORTGAGE ASSISTANCE RESOURCES

Your Relationship Manager is assigned and ready to help

Dear Borrower(s),

We are pleased to assist you in identifying solutions for your mortgage. No matter what your situation, we are committed to working with you. **We have also assigned a dedicated mortgage assistance expert to help you, your personal Relationship Manager, Carlos Rosario.** Carlos Rosario will carefully review your situation and application materials, make sure your information is complete, and work with you to identify the best options.

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- Go online – www.ocwencustomers.com. Log into your account and click 'Talk to Your Relationship Manager'.
- Call us toll-free – (800) 74-Ocwen / (800) 746-2936. We're available Monday through Friday 8 am to 9 pm, Saturday 8 am to 5 pm and Sunday 9 am to 9 pm ET.

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Please continue to email any application documents and/or attachments to your Relationship Manager at mod@ocwen.com

- Be sure to put your name and loan number on all documents and communications.
- Your Relationship Manager can receive your emailed documents, but cannot reply to you by email. Please give us a call to ask questions or schedule an appointment at (800) 746-2936.

For fastest processing, email or fax documents to:

Email mod@ocwen.com

Fax (407) 381-6868

Or mail documents to:

Ocwen Loan Servicing, LLC, Attn: Home Retention
Department
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409

NMLS # 1852

RMLETTER – VER – 07/30/2013

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is purely provided to you for informational purposes only with regard to our not intended as an attempt to collect a debt

Page 1 of 4

5131 GLENMEADOW DR HOUSTON TX 77095-4119	Property Address 5131 Glenmeadow Dr												
J M ARPAD LAMELL 5131 GLENMEADOW DR HOUSTON TX 77095-4119	<table border="1"> <tr> <td>Statement Date</td> <td>02/17/14</td> </tr> <tr> <td>Account Number</td> <td></td> </tr> <tr> <td>Payment Due Date</td> <td>03/01/14</td> </tr> <tr> <td>Amount Due</td> <td>\$419,384.03</td> </tr> <tr> <td>Customer Care</td> <td>800-746-2936</td> </tr> <tr> <td>Insurance</td> <td>866-625-9265</td> </tr> </table>	Statement Date	02/17/14	Account Number		Payment Due Date	03/01/14	Amount Due	\$419,384.03	Customer Care	800-746-2936	Insurance	866-625-9265
Statement Date	02/17/14												
Account Number													
Payment Due Date	03/01/14												
Amount Due	\$419,384.03												
Customer Care	800-746-2936												
Insurance	866-625-9265												

Account Information		Explanation of Amount Due	
Principal Balance*	\$566,000.00	Interest	\$3,124.79
Escrow Balance	\$107,687.75-	Escrow	\$8,185.69
Maturity Date	October 1, 2036	Total Regular Payment	\$11,310.48
Interest Rate	6.62500%	Past Due Payment(s) Amount	\$407,973.55
Prepayment Penalty	No	Fees/Other Charges	\$100.00
		Total Amount Due	\$419,384.03

* This is your Principal Balance only, not the amount required to pay the loan in full.

Transaction Activity Since Last Statement (01/20/14 to 02/17/14)

Tran Date	Pmt Date	Description	Tran Total	Principal	Interest	Escrow	Opt Prods	Late Charges	Fees/Other	Unapplied Funds
-----------	----------	-------------	------------	-----------	----------	--------	-----------	--------------	------------	-----------------

Past Payments Breakdown			Special Notices	
Principal	Paid thru last payment	\$ 0.00	Paid for this Mo	\$ 0.00
Interest		\$ 0.00		\$ 0.00
Escrow (Taxes & Insurance)		\$ 0.00		\$ 0.00
Fees/Other Charges		\$ 0.00		\$ 0.00
Unapplied Funds**		\$ 0.00		\$ 0.00
Total		\$ 0.00		\$ 0.00

Important News

You must use this address for all qualified written requests, notices of error, and/or requests for information. Research Department, PO Box 24735, West Palm Beach, FL 33418-4735.

Our records indicate that your loan is in foreclosure. Accordingly, this statement may be for informational purposes only. Payments received are to be applied in accordance with your mortgage note. Payments will be first applied to bring your loan contractually current. Any additional funds received will be applied to outstanding fees and advances prior to being applied to principal. If you have any questions about your loan, please call 1-800-748-2935 (ext.) and ask to set up an appointment with Carlos Rosario, your relationship manager, or schedule an appointment at Owencustomers.com.

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* This is your Principal Balance only, not the amount required to pay the loan in full.

Tran Date	Pmt Date	Description	Tran Total	Principal	Interest	Escrow	Opt Prods	Late Charges	Fees/Other	Unapplied Funds
-----------	----------	-------------	------------	-----------	----------	--------	-----------	--------------	------------	-----------------

	Per Month	Per Year
Principal	\$ 0.00	\$ 0.00
Interest	\$ 0.00	\$ 0.00
Escrow (Taxes & Insurance)	\$ 0.00	\$ 0.00
Fees/Other Charges	\$ 0.00	\$ 0.00
Unapplied Funds**	\$ 0.00	\$ 0.00
Total	\$ 0.00	\$ 0.00

Important News

You must use this address for all qualified written requests, notices of error, and/or requests for information. Research Department, PO Box 24735, West Palm Beach, FL 33418-4735.

Our records indicate that your loan is in foreclosure. Accordingly, this statement may be for informational purposes only. Payments received are to be applied in accordance with your mortgage note. Payments will be first applied to bring your loan contractually current. Any additional funds received will be applied to outstanding fees and advances prior to being applied to principal. If you have any questions about your loan, please call 1-800-746-2935 (ext.) and ask to set up an appointment with Carlos Rosario, your relationship manager, or schedule an appointment at Ocwencustomers.com.



O C W E N

Ocwen Loan Servicing, LLC
PO Box 24738
West Palm Beach, FL 33416-4738

www.ocwencustomers.com

Mortgage Account Statement

Property Address 5131 Glenmeadow Dr
Houston, TX 77096

Statement Date 04/17/14
Account Number
Payment Due Date 05/01/14
Amount Due **\$441,940.99**

Customer Care 800-746-2836
Insurance 866-825-9265

10/17/14 03:14:15 10/17/14 03:14:15 10/17/14 03:14:15 10/17/14 03:14:15 10/17/14 03:14:15

J M ARPAD LAMELL
5131 GLENMEADOW DR
HOUSTON TX 77096-4119

Account Information		Explanation of Amount Due	
Principal Balance*	\$566,000.00	Interest	\$3,124.79
Escrow Balance	\$107,987.75	Escrow	\$8,185.69
Maturity Date	October 1, 2036	Total Regular Payment	\$11,310.48
Interest Rate	6.62500%	Past Due Payment(s) Amount	\$430,815.51
Prepayment Penalty	No	Fees/Other Charges	\$15.00
		Total Amount Due	\$441,940.99

* This is your Principal Balance only, not the amount required to pay the loan in full.

Transaction Activity Since Last Statement (03/17/14 to 04/17/14)										
Date Applied	Date Received	Description	Tran Total	Principal	Interest	Escrow	Opt Prods	Late Charges	Fees/Other	Unapplied Funds
03/31/14	03/28/14	Suspense Payment	\$100.00							\$100.00
04/01/14	04/01/14	Suspense Transfer	\$100.00							\$100.00
04/01/14	04/01/14	Expense Payment	\$100.00							
04/01/14	04/01/14	Property Valuation Fee - BPO							\$100.00	

Past Payments Breakdown			Special Notices	
Principal	Paid Loan Last Statement	\$0.00	Paid Due To Date	\$0.00
Interest		\$0.00		\$0.00
Escrow (Taxes & Insurance)		\$0.00		\$0.00
Fees/Other Charges		\$0.00		\$100.00
Unapplied Funds**		\$100.00		\$0.00
Total		\$100.00		\$100.00

Important News	
You must use this address for all qualified written requests, notices of error, and/or requests for information. Research Department, PO Box 24736, West Palm Beach, FL 33416-4736. Our records indicate that your loan is in foreclosure. Accordingly, this statement may be for informational purposes only. Payments received are to be applied in accordance with your mortgage note. Payments will be first applied to bring your loan contractually current. Any additional funds received will be applied to outstanding fees and advances prior to being applied to principal. If you have any questions about your loan, please call 1-800-746-2936 (ext.) and ask to set up an appointment with Carlos Rosario, your relationship manager, or schedule an appointment at Ocwencustomers.com.	

See reverse side for important information and state specific disclosures.



O C W E N

Payment Coupon

J M Arpad Lamell
Account Number:

AMOUNT DUE	\$441,940.99
Additional Principal	
Additional Escrow	
Late Charges	
Other (Phone Script)	
Total Enclosed	

Note: If your loan is current, any excess funds will first be applied to outstanding amounts due and then additional principal.

If this payment is made via automatic drafting, this statement is for informational purposes only.

OCWEN
PO BOX 6440
CAROL STREAM IL 60197-6440



4/18/24, 2:06 PM

Section 2 – Financial Information**Item 2.01. Completion of Acquisition or Disposition of Assets.**

Effective as of August 3, 2015, CIT Group Inc. (“CIT”) completed the acquisition of IMB HoldCo LLC and its wholly owned subsidiary, OneWest Bank N.A. (collectively “OneWest”), with OneWest Bank surviving as a wholly owned subsidiary of CIT with the name CIT Bank, National Association (the “Bank Merger”). This Form 8-K/A is being filed to amend the Form 8-K filed on August 3, 2015 and includes the pro forma financial information of the combined CIT and OneWest and financial statements of OneWest.

Section 7 – Regulation FD**Item 7.01. Regulation FD Disclosure.**

This Form 8-K/A includes a copy of the Company’s presentation to analysts and investors of its Unaudited Pro Forma Condensed Combined Statements of Operations for the six months ended June 30, 2015 and the year ended December 31, 2014 and the Unaudited Pro Forma Condensed Combined Balance Sheet as of June 30, 2015, which is attached as Exhibit 99.2. The information included in Exhibit 99.2 shall not be considered filed for purposes of the Exchange Act.

Section 9 – Financial Statements and Exhibits**Item 9.01. Exhibits.****(a) Financial statements of business acquired.**

The audited consolidated financial statements of OneWest at and for the years ended December 31, 2014 and 2013 are attached hereto as Exhibit 99.3. The unaudited condensed consolidated financial statements of OneWest at and for the quarters and six months ended June 30, 2015 and 2014 are attached hereto as Exhibit 99.4. Each of Exhibits 99.3 and 99.4 is incorporated herein by reference.

(b) Pro forma financial information.

The required Unaudited Pro Forma Condensed Combined Financial Information relating to the OneWest Bank acquisition is attached hereto as Exhibit 99.1 and is incorporated herein by reference. The Unaudited Pro Forma Condensed Combined Statements of Income for the six months ended June 30, 2015 and the year ended December 31, 2014 include the results of operations for OneWest for such periods. The Unaudited Pro Forma Condensed Combined Balance Sheet as of June 30, 2015 includes the financial position of OneWest as of such date.

(d) Exhibits.

- 99.1 Unaudited Pro Forma Condensed Combined Statements of Income for the six months ended June 30, 2015 and the year ended December 31, 2014 and the Unaudited Pro Forma Condensed Combined Balance Sheet as of June 30, 2015 for CIT Group Inc.
 - 99.2 Investor Presentation: Pro Forma Financials Presentation Reflecting the Acquisition of OneWest Bank.
 - 99.3 Audited Consolidated Financial Statements of IMB HoldCo LLC and Subsidiaries at and for the years ended December 31, 2014 and 2013.
 - 99.4 Unaudited Condensed Consolidated Financial Statements of IMB HoldCo LLC and Subsidiaries at and for the quarters and six months ended June 30, 2015 and 2014.
 - 99.5 Consent of Independent Accountants.
-

collection on the *Note*, CIT could NOT have relied on the simultaneously VOIDED *Deed of Trust* lien to effect foreclosure against the Lamell property either.

9. CIT has had more than enough time to take advantage of and bring to conclusion any of the enforcement remedies that had been available to it from the very beginning. For whatever reason, CIT simply chose not to do so.

V. REQUESTS FOR DECLARATORY RELIEF

10. Lamell now raises the expiration of limitations in defense against pending and possible future foreclosure or collection actions related to his loan being continually in foreclosure. Accordingly, he seeks specific declarations that limitations have gone beyond statutory limits as to each of the foreclosure or collection actions that had formerly been available to CIT.

VI. PRAYER

WHEREFORE,

Plaintiff Lamell requests that Defendant CIT be cited to appear and answer, and that on final trial, the Court render judgment that:

- (1) Pursuant to TEX. BUS. & COM. CODE ANN. §3.118(A), TEX. CIV. PRAC. & REM. CODE ANN. §§16.035 - .037, and TEX. CIV. PRAC. & REM. CODE § 37.002(b), the 6-year Statute of Limitations period for bringing a suit to enforce collection on the *Note* has expired. Defendant CIT, whether directly or through its successors or assigns, is hereby permanently barred from bringing any suit or claim to enforce collection on the *Note*.
- (2) The enforcement/foreclosure provisions of the *Deed of Trust* and the *Deed of Trust* lien itself are hereby deemed VOID by virtue of the fact that the 6-year Statute of Limitations for bringing a claim or suit to enforce collection on the *Note* has expired.

2019-04-09 Plaintiff's Third Supplement to Plaintiff's Supplemental Petition

31. Secondly, any limitations period that may have been running on Plaintiffs' obligations to enforce the Note was tolled during the pendency of the State Court Action. Defendant filed his claims in that suit against CIT on May 3, 2010, and that suit was not dismissed until May 16, 2019. Accordingly, with respect to the alleged June 24, 2010 notice of acceleration, any limitations period was tolled for approximately nine years during the pendency of that suit, meaning that any deadline for Plaintiffs to foreclose non-judicially or file a suit for foreclosure would not expire until 2023. *See Jorrie v. Bank of New York Mellon Tr. Co., N.A.*, 740 F. App'x 809, 813 (5th Cir. 2018). The July 2, 2019 notice of default was sent within the limitations period from the alleged acceleration as tolled, and as such was effective to abandon the acceleration. *See Devdara L.L.C. v. Wells Fargo Bank, N.A.*, No. 4:16-CV-00140, 2017 U.S. Dist. LEXIS 88790, *13 (S.D. Tex. 2017) (citing *Meachum v. Bank of N.Y. Mellon Trust Co.*, No. 3:13-cv-2322-N, 2015 U.S. Dist. LEXIS 21046, 2015 WL 765982 *3 (N.D. Tex. Feb. 20, 2015)); *Boren v. U.S. Nat. Bank Ass'n*, 807 F.3d 99, 106 (5th Cir. 2015).

32. Thirdly, when Defendant voluntarily entered into a settlement agreement in the State Court Action, he released any claims he had at that time. At the time of the settlement, Defendant had asserted a claim that the Loan Agreement was no longer enforceable pursuant to the Statute of Limitations. While Plaintiffs were not signatories to that settlement agreement, the express language of the agreement stated that it would inure to the benefit of the parties' successors and assigns. *See Griffin v. BAC Home Loans Servicing, L.P.*, No. H-09-03842, 2011 U.S. Dist. LEXIS 15297, 2011 WL 675285, at *2 (S.D. Tex. Feb. 16, 2011) (holding that borrower released contention that foreclosure was time-barred when he sign a repayment plan agreement that included a provision for the release of claims). Plaintiffs ask the Court to construe the provisions of the settlement agreement and determine whether, under the plain

language of the agreement, Plaintiffs are “successors and assigns” who were released of claims by Defendant.

33. Finally, Defendant’s claim regarding the Statute of Limitations is barred by *res judicata* or collateral estoppel. Pursuant to the settlement agreement in the State Court Suit, Defendant voluntarily dismissed his claims with prejudice. The State Court granted Defendant his requested relief and entered a final Agreed Order Dismissing All Claims with Prejudice on May 16, 2019, including Defendant’s then-pending claim that the Loan Agreement was no longer enforceable pursuant to the Statute of Limitations. *Energy Dev. Corp. v. St. Martin*, 112 F. App’x 952, 957 (5th Cir. 2004) (holding that a party’s successors may assert *res judicata*).

34. For the foregoing reasons, Plaintiffs’ rights to enforce the Loan Agreement are not barred by the Statute of Limitations, and Plaintiffs are entitled to their request for a declaratory judgment.

VII. CAUSE OF ACTION – DECLARATORY JUDGMENT ON TAXES

35. The foregoing paragraphs are incorporated by reference for all purposes.

36. This Court has the power and authority, pursuant to 28 U.S.C. §§2201-2202, to declare the rights of Plaintiffs and Defendant as to the Note and Deed of Trust.

37. Plaintiffs seek declarations from this Court that Plaintiffs had and have the right to pay taxes on the Property and that Defendant is not entitled to deferral of payment of his property taxes under the terms of the Note and Deed of Trust.

38. At the initiation of the Loan, Defendant signed a Waiver of Escrow agreement for payment of taxes and insurance. The Waiver of Escrow specifically provides that “Lender shall have the right to establish or reestablish an escrow account...” if Defendant fails to pay escrow items in a prompt and timely manner, fails to provide proof of timely payments, or is otherwise in default under the terms of the Note or Security Instrument. As noted earlier, Defendant