26A180

(No. 26-5170)

IN THE

SUPREME COURT OF THE UNITED STATES

HARRIET NICHOLSON,

Petitioner,

v.

THE BANK OF NEW YORK MELLON, formerly known as The Bank of New York, as Trustee for the Certificate Holders of CWMBS, Inc., CWMBS Reforming Loan REMIC Trust Certificates, Series 2005-R2, et al.,

Respondents.

EMERGENCY APPLICATION FOR AN ADMINISTRATIVE STAY AND INJUNCTION PENDING DISPOSITION OF THE PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Fifth Circuit

Harriet Nicholson
Petitioner, Pro Se
2951 Santa Sabina Drive
Grand Prairie, Texas 75052

August 3, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

No. 26-5170

IN THE SUPREME COURT OF THE UNITED STATES

HARRIET NICHOLSON,
Petitioner,

v.

THE BANK OF NEW YORK MELLON, et al.,
Respondents.

EMERGENCY APPLICATION FOR AN ADMINISTRATIVE STAY AND INJUNCTION PENDING DISPOSITION OF THE PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Pursuant to Supreme Court Rules 22 and 23 and the All Writs Act, 28 U.S.C. § 1651(a), Petitioner Harriet Nicholson respectfully applies for an administrative stay and an injunction preserving the status quo pending disposition of her Petition for a Writ of Certiorari in Nicholson v. Bank of New York Mellon, No. 26-5170. (Ex. 1a.)

EMERGENCY SUMMARY

Immediate relief is necessary to preserve this Court's prospective jurisdiction.

Respondents continue to market Petitioner's Texas homestead for sale, continue foreclosure-related collection activity, and continue asserting rights derived from foreclosure instruments that a final Texas judgment declared "INVALID and VOID IN ALL RESPECTS." (Exs. 9a–13a; Exs. 15a–18a; Ex. 23a; Ex. 24a.)

Unless temporarily restrained, Respondents may transfer or further encumber the Property before this Court determines whether to grant certiorari. Once third-party interests attach, this Court's ability to afford meaningful relief may be substantially impaired. The Property is presently listed for sale through Hubzu. (Ex. 23a.)

Petitioner seeks only temporary relief preserving the status quo. She does not ask this Court to adjudicate title, determine ownership, or resolve the merits of the parties' dispute. Rather, she requests a narrowly tailored injunction directed solely to Respondents to preserve this Court's jurisdiction while the Petition is pending. Such relief falls squarely within this Court's authority under Supreme Court Rules 22 and 23 and the All Writs Act.

The Petition presents substantial federal questions concerning the Full Faith and Credit Act, 28 U.S.C. § 1738, the limits of claim preclusion, and the continuing availability of independent equitable actions preserved by Federal Rule of Civil Procedure 60(d)(1). Because the traditional factors governing emergency relief strongly favor preserving the status quo, the Application should be granted.

COMPLIANCE WITH SUPREME COURT RULE 23.3

This Application complies with Supreme Court Rule 23.3.

Before filing this Application, Petitioner first sought substantially the same interim relief in the United States Court of Appeals for the Second Circuit. After issuance of the mandate, the Second Circuit concluded that it lacked jurisdiction to grant the requested relief, denied Petitioner's motion to recall the mandate, and later returned Petitioner's subsequent emergency submission unfiled because the mandate had already issued. (Exs. 19a–21a.)

Petitioner also previously sought emergency relief in this Court in Application No. 25A74. Justice Sotomayor denied the initial application on July 23, 2025. Following the conclusion of Petitioner's direct appeal, a renewed application was referred to the Court and denied on November 17, 2025. (Ex. 1a.)

Those prior applications arose before Petitioner's present Petition for a Writ of Certiorari was filed and docketed.

Petitioner's Petition for a Writ of Certiorari in No. 26-5170 was docketed on July 28, 2026. (Ex. 1a.)

This Application therefore arises in a materially different procedural posture. It is not a request for reconsideration of Application No. 25A74 or of this Court's prior orders denying emergency relief. Rather, it is an application under Supreme Court Rules 22 and 23 and the All Writs Act seeking temporary relief necessary to preserve the status quo and protect this Court's prospective jurisdiction while Petition No. 26-5170 is pending.

Accordingly, Petitioner has first sought relief in the appropriate court below, and this Application satisfies Supreme Court Rule 23.3. (Exs. 19a–21a.)

QUESTIONS PRESENTED

1. Whether 28 U.S.C. § 1738 permits a federal court to give a final state-court judgment greater claim-preclusive effect than the rendering State would recognize.

2. Whether claim preclusion bars claims arising from post-judgment conduct under Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955), and Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc., 590 U.S. 405 (2020).

3. Whether Federal Rule of Civil Procedure 60(d)(1) preserves an independent equitable action operating in personam to enforce rights established by a final state-court judgment, consistent with Massie v. Watts, 10 U.S. (6 Cranch) 148 (1810), Marshall v. Holmes, 141 U.S. 589 (1891), and United States v. Beggerly, 524 U.S. 38 (1998).

RELIEF REQUESTED

Petitioner respectfully requests that the Circuit Justice:

1. Enter an immediate administrative stay pending consideration of this Application.

2. Pursuant to Supreme Court Rules 22 and 23 and the All Writs Act, temporarily enjoin Respondents, together with their officers, trustees, servicers, agents, attorneys, successors, assigns, contractors, brokers, preservation companies, auctioneers, and all persons acting in active concert or participation with them who receive actual notice of the Order, from:

(a) selling, conveying, assigning, transferring, marketing, auctioning, or otherwise disposing of any legal or equitable interest in the Property (Ex. 23a);

(b) recording any deed, assignment, substitute trustee's deed, affidavit, lien, or other instrument affecting title or possession;

(c) conducting foreclosure-related collection activity, enforcing payoff demands, or pursuing additional foreclosure proceedings premised upon foreclosure instruments declared void by the Texas judgment (Exs. 9a–13a; Ex. 24a);

(d) entering upon, securing, preserving, altering, boarding, changing locks, or otherwise interfering with Petitioner's peaceable possession of the Property, except as reasonably necessary to prevent imminent physical injury or substantial property damage.

3. Continue such relief until disposition of the Petition for a Writ of Certiorari or further Order of this Court.

STATEMENT OF THE CASE

This case does not concern ownership of Texas real property. It concerns the proper preclusive effect of a final Texas judgment under the Full Faith and Credit Act, 28 U.S.C. § 1738, and the availability of independent equitable relief addressing Respondents' subsequent conduct.

The Texas trial court expressly limited the merits to Petitioner's wrongful-foreclosure claim. Following trial, the court declared the July 3, 2012 Substitute Trustee's Deed and the July 24, 2014 Notice of Rescission "INVALID and VOID IN ALL RESPECTS," awarded Petitioner possession and costs, authorized recordation of the judgment, and directed that corrective instruments restoring title be prepared. (Exs. 9a–13a.)

The Texas Court of Appeals affirmed that limited judgment. (Exs. 15a–18a.)

Respondents represented that corrective instruments would be prepared. No corrective conveyance was ever executed. Instead, Respondents subsequently assigned the deed of trust, resumed foreclosure-related activity, conducted a second foreclosure, pursued eviction, demanded payment under the purported loan, and continue to market the Property for resale. (Exs. 15a–18a; Ex. 23a; Ex. 24a.)

Petitioner thereafter commenced an independent federal action seeking equitable relief directed solely to Respondents' post-judgment conduct. The federal action did not seek to reopen or relitigate the Texas judgment. Rather, it sought equitable relief operating in personam based upon Respondents' subsequent conduct occurring after entry of that final judgment. (Exs. 3a–8a.)

The courts below nevertheless concluded that the action was barred by claim preclusion. The Petition contends that those courts enlarged the preclusive effect of the Texas judgment beyond what § 1738 permits by treating Respondents' subsequent conduct as though it had been adjudicated in the Texas litigation. (Exs. 3a–5a; Exs. 15a–18a.)

While the Petition is pending, Respondents continue to market the Property, continue foreclosure-related collection activity, and continue asserting rights inconsistent with the Texas judgment, creating an imminent risk that the Property will be transferred before this Court determines whether review is warranted. (Exs. 9a–13a; Ex. 23a; Ex. 24a.)

I. THIS COURT SHOULD PRESERVE THE STATUS QUO PENDING DISPOSITION OF THE PETITION

This Court has both the authority and the responsibility to preserve its prospective jurisdiction where necessary to ensure that its eventual judgment is not rendered ineffectual. The requested relief is temporary, narrowly tailored, and directed solely to maintaining the status quo while the Court determines whether to grant the Petition. Because the Petition presents substantial federal questions, Petitioner faces irreparable injury absent immediate relief, and the balance of equities overwhelmingly favors preserving existing conditions, the Application should be granted.

A. This Court Possesses Authority Under Supreme Court Rules 22 and 23 and the All Writs Act to Preserve Its Prospective Jurisdiction

Supreme Court Rule 22 authorizes a Circuit Justice to entertain applications for interim relief. Rule 23 expressly authorizes a Circuit Justice to stay or enjoin enforcement of a judgment pending disposition of a petition for a writ of certiorari. The Rules implement this Court's longstanding equitable authority to preserve the status quo where necessary to protect its jurisdiction.

That authority is reinforced by the All Writs Act, 28 U.S.C. § 1651(a), which empowers this Court to issue "all writs necessary or appropriate in aid of" its jurisdiction. The Act extends not only to jurisdiction already acquired but also to this Court's prospective jurisdiction where interim relief is necessary to preserve the effectiveness of future review. FTC v. Dean Foods Co., 384 U.S. 597, 603–05 (1966); Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4, 9–10 (1942).

Petitioner does not ask this Court to determine title to Texas real property, resolve competing ownership claims, or grant ultimate relief. Rather, Petitioner seeks only a temporary order directed in personam to Respondents prohibiting further transfers, foreclosure-related collection activity, and interference with Petitioner's possession until disposition of the Petition. Respondents presently continue to market the Property for sale while simultaneously demanding payment under the purported loan. (Ex. 23a; Ex. 24a.)

B. The Petition Presents a Reasonable Probability That Certiorari Will Be Granted

The Petition presents important and recurring questions concerning the Full Faith and Credit Act, 28 U.S.C. § 1738, the limits of claim preclusion, and the continuing availability of independent equitable actions preserved by Federal Rule of Civil Procedure 60(d)(1).

Congress directed that state-court judgments receive the same—not greater—preclusive effect in federal court as they receive in the courts of the rendering State. The decision below instead afforded the Texas Amended Final Judgment broader claim-preclusive effect than Texas law permits. (Exs. 9a–13a; Exs. 15a–18a; Exs. 3a–5a.)

The Petition likewise presents the recurring question whether claim preclusion extinguishes claims arising from Respondents' post-judgment conduct. The federal action challenged only conduct occurring after entry of the final Texas judgment and sought equitable relief operating in personam. (Exs. 3a–8a.)

These questions concern the proper relationship between state and federal courts, the scope of § 1738, and the historic equitable powers preserved by Rule 60(d)(1). They therefore warrant this Court's review.

C. There Is a Fair Prospect That the Judgment Below Will Be Reversed

The decision below cannot readily be reconciled with this Court's precedents.

The Texas Amended Final Judgment adjudicated only Petitioner's wrongful-foreclosure claim, declared the July 3, 2012 Substitute Trustee's Deed and the July 24, 2014 Notice of Rescission "INVALID and VOID IN ALL RESPECTS," awarded possession and costs, and became final after affirmance by the Texas Court of Appeals. (Exs. 9a–13a; Exs. 15a–18a.)

The federal action did not seek to reopen or relitigate that judgment. Rather, it sought equitable relief directed solely to Respondents' subsequent conduct, including failure to execute corrective conveyances, subsequent assignments, renewed foreclosure activity, eviction proceedings, continuing collection efforts, and ongoing marketing of the Property. (Exs. 3a–8a; Ex. 23a; Ex. 24a.)

By treating those later claims as barred, the courts below effectively extinguished claims that had not accrued when the Texas litigation concluded, contrary to § 1738 and this Court's decisions in Lawlor and Lucky Brand.

D. Absent Immediate Relief, Petitioner Will Suffer Irreparable Harm and This Court's Prospective Jurisdiction May Be Impaired

"Irreparable injury is the single most important prerequisite for the issuance of a stay." Nken v. Holder, 556 U.S. 418, 434 (2009).

That requirement is satisfied here.

Respondents continue publicly to market Petitioner's Texas homestead for sale, continue foreclosure-related collection activity, and continue asserting rights derived from foreclosure instruments declared "INVALID and VOID IN ALL RESPECTS" by the Texas judgment. (Exs. 9a–13a; Ex. 23a; Ex. 24a.)

Respondents have issued a payoff statement dated July 16, 2026 demanding payment of $483,219.71 while simultaneously marketing the Property for sale. (Ex. 24a; Ex. 23a.)

The threatened injury is immediate and concrete. If Respondents transfer or otherwise convey an interest in the Property while the Petition is pending, additional purchasers or lienholders may acquire interests that materially impair this Court's ability to afford meaningful relief. The Property is presently being actively marketed for sale. (Ex. 23a.)

Real property is unique. Once transferred or further encumbered, restoration of the status quo may prove impossible even if certiorari is granted and the judgment below is ultimately reversed.

E. The Balance of Equities and the Public Interest Decisively Favor Preserving the Status Quo

Petitioner seeks only a temporary injunction preserving existing conditions during the pendency of the Petition.

The requested injunction neither adjudicates title nor alters the substantive rights of the parties. It merely prevents Respondents from taking actions that could frustrate this Court's review before the Court determines whether certiorari should be granted. (Ex. 23a; Ex. 24a.)

By contrast, denial of interim relief creates a substantial risk that Respondents will complete additional transfers or encumbrances that could render this Court's eventual review substantially less effective. Preserving the status quo imposes only a temporary delay; denying relief risks permanently impairing this Court's ability to provide meaningful judicial review.

The public interest likewise favors preserving this Court's jurisdiction and ensuring that federal courts accord state-court judgments the same preclusive effect required by Congress under 28 U.S.C. § 1738.

Accordingly, each of the equitable considerations identified in Hollingsworth, Nken, and Winter weighs decisively in favor of temporary relief.

F. The Requested Relief Is Narrowly Tailored and Preserves—Rather Than Alters—the Status Quo

The requested injunction is carefully limited to preserving existing conditions pending disposition of the Petition.

Petitioner does not request that this Court determine title to Texas real property, invalidate any judgment, or resolve the parties' ultimate rights.

Instead, Petitioner requests only an order temporarily prohibiting Respondents from transferring, marketing, conveying, foreclosing upon, or otherwise materially altering the status of the Property while this Court considers the Petition. (Ex. 23a.)

Petitioner likewise requests only temporary suspension of continuing foreclosure-related collection activity reflected in the July 16, 2026 payoff statement. (Ex. 24a.)

Such relief is directed in personam, operates solely upon Respondents, and preserves—rather than alters—the status quo.

CONCLUSION

The Petition presents important and recurring questions concerning the proper application of the Full Faith and Credit Act, the limits of claim preclusion, and the continuing availability of independent equitable actions preserved by Rule 60(d)(1).

Immediate relief is warranted because Respondents continue to market the Property for sale, continue foreclosure-related collection activity, and remain free to transfer or further encumber the Property before this Court determines whether to grant certiorari. (Exs. 9a–13a; Exs. 15a–18a; Ex. 23a; Ex. 24a.)

The requested injunction is narrowly tailored. Petitioner does not ask this Court to adjudicate title, determine ownership, vacate any judgment, or grant ultimate relief. Rather, Petitioner requests only a temporary administrative stay and an injunction preserving the status quo until disposition of Petition No. 26-5170. (Ex. 1a; Exs. 19a–21a.)

For the foregoing reasons, the Circuit Justice should enter an immediate administrative stay and grant the requested injunction pending disposition of the Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Harriet Nicholson

Petitioner, Pro Se

DECLARATION OF HARRIET NICHOLSON

2. On August 3, 2026, I personally accessed and reviewed the Hubzu website. The property listing attached as Exhibit 23a is a true and correct copy of the listing as it appeared on that date. (Ex. 23a.)

3. On July 27, 2026, I received the Rocket Mortgage payoff correspondence attached as Exhibit 24a. The copy reproduced as Exhibit 24a is a true and correct copy of the correspondence I received. (Ex. 24a.)

5. The certified exemplified Texas Amended Final Judgment attached as Exhibits 9a–13a is a true and correct certified copy issued by the District Clerk of Tarrant County, Texas. (Exs. 9a–13a.)

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

Executed on August 3, 2026.

/s/ Harriet Nicholson

Petitioner, Pro Se

APPENDIX

The following exhibits are submitted in support of Petitioner's Emergency Application for an Administrative Stay and Injunction Pending Disposition of the Petition for a Writ of Certiorari. Each exhibit is cited throughout the Application and demonstrates Petitioner's compliance with Supreme Court Rule 23.3, the substantial federal questions presented, the finality and scope of the Texas judgment, Respondents' continuing post-judgment conduct, and the imminent irreparable harm requiring preservation of the status quo.

EXHIBIT 1a

Supreme Court Docket Sheet
Nicholson v. Bank of New York Mellon, No. 26-5170

Description:

Official docket of the Supreme Court of the United States reflecting that Petition No. 26-5170 was docketed on July 28, 2026, establishing this Court's prospective jurisdiction over the pending Petition for a Writ of Certiorari.

EXHIBITS 3a–5a

United States Court of Appeals
Second Circuit Summary Order

Description:

Opinion under review affirming dismissal on claim-preclusion grounds. These pages identify the federal judgment from which certiorari is sought and frame the questions presented concerning 28 U.S.C. § 1738, claim preclusion, and Petitioner's independent equitable action under Rule 60(d)(1).

EXHIBITS 9a–13a

Certified Exemplified Texas Amended Final Judgment
342nd Judicial District Court
Tarrant County, Texas

Description:

Certified exemplified copy of the final Texas judgment entitled to full faith and credit under 28 U.S.C. § 1738. The judgment:

• declares the July 3, 2012 Substitute Trustee's Deed "INVALID AND VOID IN ALL RESPECTS";

• declares the July 24, 2014 Notice of Rescission "INVALID AND VOID IN ALL RESPECTS";

• awards Petitioner possession of the Property;

• awards court costs;

• authorizes recordation of the judgment; and

• incorporates the October 26, 2017 Final Judgment into the final appealable judgment.

This exhibit establishes the final state-court judgment whose preclusive effect is at issue in the Petition.

EXHIBITS 15a–18a

Second Court of Appeals
Fort Worth, Texas
Opinion (Selected Excerpts)

Description:

Selected excerpts demonstrating that:

• the trial court expressly limited the merits to Petitioner's wrongful-foreclosure claim;

• Petitioner prevailed on that claim;

• the foreclosure instruments were declared void;

• possession was awarded to Petitioner; and

• the Court of Appeals affirmed that limited judgment.

These excerpts establish the precise scope of the Texas judgment entitled to full faith and credit under 28 U.S.C. § 1738.

EXHIBITS 19a–21a

Second Circuit Rule 23.3 Materials

Description:

Orders and filings demonstrating Petitioner's compliance with Supreme Court Rule 23.3, including:

• Petitioner's motion seeking substantially the same emergency relief in the Court of Appeals;

• the Second Circuit's denial of the motion after issuance of the mandate;

• the court's determination that it lacked jurisdiction to grant further emergency relief; and

• return of Petitioner's subsequent emergency filing because jurisdiction had terminated.

These materials establish that relief was first sought in the appropriate court below before filing this Application.

EXHIBIT 23a

Hubzu Property Listing
August 3, 2026

Description:

Current public listing advertising Petitioner's Texas homestead for sale as a "CWCOT–SECOND CHANCE" property.

This exhibit demonstrates that Respondents continue actively marketing the Property while the Petition for a Writ of Certiorari is pending, creating an imminent risk that third-party interests will attach before this Court can determine whether review should be granted.

EXHIBIT 24a

Rocket Mortgage Payoff Statement
July 16, 2026

Description:

Current payoff statement identifying Loan No. 0619301724 and demanding payment of $483,219.71.

This exhibit demonstrates that Respondents continue foreclosure-related collection activity based upon foreclosure instruments that the Texas Amended Final Judgment declared "INVALID AND VOID IN ALL RESPECTS," thereby establishing the continuing post-judgment conduct giving rise to irreparable harm and the need to preserve the status quo pending this Court's review.

PROOF OF SERVICE

I, Harriet Nicholson, certify that on August 3, 2026, I served a true and correct copy of the foregoing Emergency Application for an Administrative Stay and Injunction Pending Disposition of the Petition for a Writ of Certiorari, together with the accompanying Appendix, upon counsel for Respondents by electronic mail, with counsel's written authorization to accept service by email, addressed as follows:

Brian P. Scibetta
McCalla Raymer Leibert Pierce, LLP
Email: brian.scibetta@mccalla.com

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

Executed on August 3, 2026.

/s/Harriet Nicholson
Petitioner, Pro Se

Search documents in this case: Search

No. 26-5170

Title:	**Harriet Nicholson, Petitioner** **v.** **Bank of New York Mellon, fka Bank of New York, Trustee for the Certificate Holders of CWMBS, Inc., CWMBS Reforming Loan Remic Trust Certificates Series 005-R2**
Docketed:	July 28, 2026
Linked with:	25A616
Lower Ct:	United States Court of Appeals for the Second Circuit
Case Numbers:	(24-586)
Decision Date:	July 1, 2025
Rehearing Denied:	September 4, 2025

Proceedings and Orders

Nov 20 2025	Application (25A616) to extend the time to file a petition for a writ of certiorari from December 3, 2025 to February 1, 2026, submitted to Justice Sotomayor. **Main Document** **Lower Court Orders/Opinions** **Proof of Service**
Dec 01 2025	Application (25A616) granted by Justice Sotomayor extending the time to file until February 2, 2026.
Dec 01 2025	Petition for a writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due August 27, 2026) **Motion for Leave to Proceed in Forma Pauperis** **Petition** **Appendix** **Proof of Service**

Attorneys

Attorneys for Petitioner

Harriet Nicholson

2951 Santa Sabina Dr
Grand Prarie, TX 75052

Party name: Harriet Nicholson

24-586-cv
Nicholson v. Bank of N.Y. Mellon

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

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

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

HARRIET NICHOLSON,

Plaintiff-Appellant,

v. 24-586-cv

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

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT: Harriet Nicholson, *pro se*, Grand Prairie, Texas.

FOR DEFENDANT-APPELLEE: Brian P. Scibetta, McCalla

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

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

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

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

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

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

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

* * *

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

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

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

Catherine O'Hagan Wolfe

2) if the state court lacked jurisdiction over the subject matter of the suit; 3) if the state court lacked jurisdiction to enter the particular judgment rendered; or 4) if the state court lacked the capacity to act as a court. Steph v. Scott, 840 F.2d 267, 270 (5th Cir. 1988).

Similarly, in O'Boyle v. Bevil, 259 F.2d 506 (5th Cir., 1958) the Court looked to the law of Texas to determine the permissible scope of collateral attack on a judgment rendered by a court of that state. Judge Tuttle, speaking for the Court, stated:

> "* * * Questions as to the setting aside of judgments are difficult at best. This difficulty is increased when attack is made in a federal court on a state court judgment. There is one principle, however, that stands out clearly in this area of controversy. That is that in diversity cases, a federal court may set aside a state court judgment for equitable grounds that are recognized by the state as a basis for such action. When, as is true in Texas, a judgment can be set aside for want of jurisdiction or for fraud, the federal court, exercising its equity jurisdiction, can act similarly in a diversity case." 259 F.2d 506, at pp. 511-512.
> *Alleghany Corp. v. Kirby*, 218 F.Supp. 164, 184 (S.D.N.Y.1963)

Under Texas Law, and we have said that Rooker-Feldman does not preclude review of void state court judgments. Burciaga v. Deutsche Bank Nat'l Tr. Co., 871 F.3d 380, 386 (5th Cir. 2017). United States v. Shepherd, 23 F.3d 923, 925 (5th Cir. 1994) (observing that the Rooker-Feldman doctrine would likely not bar federal court review of void state court judgments).

This is an independent action. This action does not seek to reverse the decision of the State Court b2ut rather to prevent a grave miscarriage of justice:

i. then-Judge Wade Birdwell committed fraud upon the Court by abusing his power in striking jurisdictionally indispensable parties that had been served and appeared in the Court; and
ii. Judge Kimberly Fitzpatrick refused to rejoin Nationstar Mortgage and Harvey Law Group as necessary parties, yet, let them appear under the guise of "special appearances" to oppose Nicholson's motions against them; and
iii. Kelly Harvey, Texas attorney, fabricated evidence, "Abandonment of Acceleration" post-foreclosure - that was material in procuring judgment against Nicholson's claims for quiet title, trespass-to-try title, and declaration the note was time barred for BONYM and its agents.

Officers of the court, trial judges and attorneys, used the Courts as vehicles of fraud; attempting to steal Nicholson's homestead without due process by striking jurisdictionally indispensable parties from the lawsuit after proper service and appearance in the lawsuit; failing to rejoin jurisdictionally indispensable parties as parties aft8er repeated requests; and BONYM's attorney fabricated evidence (Abandonment of Acceleration Letter post-foreclosure) that was material in obtaining judgment against Nicholson's claims for quiet title, trespass-to-try-title and time barred loan documents.

The Savings Clause of Rule 60(b) allows for an independent action asserting that judgment has been obtained by fraud perpetrated upon the court by a court officer.

The savings clause of Rule 60(b) allows for an independent8 action asserting that a judgment has been obtained by fraud perpetrated upon the court by a court officer. See Fed. R. Civ. P. 60(b); Gleason, 860 F.2d at 558; Miller v. Shelton, 2006 WL 753187, at *4-*5 (W.D.N.Y. March 20, 2006). Under the theory that "a decision produced by fraud on the court is not in essence a decision at all and never becomes final," Kenner v. Comm'r of Internal Revenue, 387 F.2d 689, 691 (7th Cir. 1968), "[t]here is no statute of limitations for bringing a fraud upon the court claim." Williams v. Vaughn, 2005 WL 3348863, at * 2, n. 3 (E.D. Pa. Dec. 8, 2005)(citing Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944)). This equitable p8ower to vacate a judgment obtained by a fraud upon the court was recognized by the Supreme Court in the Hazel-Atlas decision. See Leber-Krebs, Inc. v. Capitol Records, 779 F.2d 895, 899 (2d Cir. 1985).

In deciding an independent action, the Court "looks to traditional equitable principles." LinkCo, Inc. v. Akikusa, 615 F.Supp.2d 130, 134 (S.D.N.Y.2009) (internal quotation marks omitted) (quoting Campaniello Imports, Ltd. v. Saporiti Italia S.p.A., 117 F.3d 655, 661 (2d Cir.1997)), aff'd sub nom. LinkCo, Inc. v. Naoyuki Akikusa, 367 Fed.Appx. 180 (2d Cir.2010). Under these principles, "[c]laimants must (1) show that they have no other available or adequate remedy; (2) demonstrate that movants' own fault, neglect, or carelessness did not create the situation for which they seek equitable relief; and (3) establish a recognized ground—such as fraud, accident, or mistake—for the equitable relief." Campaniello Imports, 117 F.3d at 662. Furthermore, "[a] party seeking to vacate a judgment in an independent action must show that permitting the judgment to stand would be a grave miscarriage of justice." LinkCo, 615 F.Supp.2d

18, 2020) IX.Some Final Thoughts. which stated, "We confess to an impulse to safeguard an industry that is vital to Texas's economic well-being."[3] A litigant has the fundamental right to fairness in every proceeding. Fairness is upheld by avoiding even the appearance of partiality. See, e.g., Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980).

Secondly, Nicholson vehemently contested the trial court proceeding to judgment in the absence of jurisdictionally indispensable parties. Nicholson has clean hands. On May 18, 2017, Nicholson added David Stockman, Nationstar Mortgage, Harvey Law Group, and Countrywide Home Loans, Inc. as parties in the Sixth Amended Petition.

Third, Nicholson is entitled to equitable relief because officers of the Court (the trial court judges, justices, and Defendants' attorney) committed fraud upon the court by denying Nicholson procedural due process; BONYM's attorney manufactured evidence that was material in obtaining judgment against Nicholson; and proceeding to judgment without Nationstar and HLG, jurisdictionally indispensable parties that were sued, served, and repeatedly appeared in the trial court under the guise of "special appearances".

Lastly, permitting the "Amended Final Judgment" procured by fraud to stand would be inequitable because Nicholson was denied due process; trial court judges struck and failed to rejoin Nationstar and Harvey to the lawsuit to afford complete relief; attorneys fabricated and used evidence that was material in procuring the fraudulent judgment against Nicholson's quiet title, trespass-to-try title, and declaratory relief.

The United States Supreme Court in Marshall v. Holmes, 141 U.S. 589, 12 S. Ct. 62, 35 L.Ed. 870 (1891), pointed out, as to the jurisdiction of the Federal Court in such an action:

> "* * * While it cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge t8hat Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of

[3] Justice Wallach concluded in Nicholson v. THE BANK OF NEW YORK MELLON, No. 02-20-00379-CV (Tex. App. Mar. 31, 2022). "Under the circumstances presented here, we cannot say that the trial court abused its broad discretion by granting the motion to strike. *See* Bennett, 525 S.W.3d at 653-54.."By the time Nicholson sought to add Nationstar and Harvey Law Group in May 2017, the case had already been pending for five years. Justice Wallach further stated, **"Having exhausted a decade in litigation, Nicholson might be more successful taking her arguments to the Legislature."**

CERTIFIED EXEMPLIFIED COPY

THE STATE OF TEXAS
COUNTY OF TARRANT

I, Thomas A. Wilder, Clerk of the District Courts of said County of Tarrant in the State Of Texas, do hereby certify that the within and proceeding pages contain a full, complete, true and exact copy of the **AMENDED FINAL JUDGMENT**

in Cause No.342-262692-12, HARRIET NICHOLSON ,Plaintiff vs THE BANK OF NEW YORK MELLON ,Defendant.

Given under my hand and seal of office, at Fort Worth, in said County of Tarrant, State Of Texas, this date of April 07, 2025.

Thomas A. Wilder
CLERK OF THE DISTRICT COURTS
TARRANT COUNTY, TEXAS

By _______________ Deputy

THE STATE OF TEXAS
COUNTY OF TARRANT

I, JUDGE Kimberly Fitzpatrick, Judge of the 342nd DISTRICT COURT of the State Of Texas, presiding in the County Of Tarrant, do hereby certify that the Deputy Clerk whose name appears to be signed to the above certificate, is and was at the time of signing the same, the Deputy Clerk of said District Court therein mentioned, and as such was the proper person to make said certificate, and that the same is in due form.

Given under my hand officially this date of April 07, 2025.

_______________, Judge
342nd District Court
Tarrant County, Texas

THE STATE OF TEXAS
COUNTY OF TARRANT

I, Thomas A. Wilder, Clerk of the District Courts, Tarrant County,Texas, do hereby certify JUDGE Kimberly Fitzpatrick Judge of the 342nd DISTRICT COURT of Tarrant County,Texas, is, and was, at time of signing same, the duly elected, qualified and acting Judge of said Court herein mentioned and as such was the proper person to make said certificate, and that the same is in due form.

Given under my hand and seal of office, at Fort Worth, in said Tarrant, State Of Texas, this date of April 07, 2025.

Thomas A. Wilder
CLERK OF THE DISTRICT COURTS
TARRANT COUNTY, TEXAS

By _______________ Deputy

342-262692-12

FILED
TARRANT COUNTY
9/15/2020 12:17 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 342-262692-12

HARRIET NICHOLSON,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
v.	§	
	§	**OF TARRANT COUNTY, TEXAS**
THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., CWMBS REFORMING LOAN REMIC TRUST CERTIFICATES SERIES 2005-R2, et al.	§	
	§	
Defendants.	§	**342nd JUDICIAL DISTRICT**

FILED
TARRANT COUNTY
2020 SEP 16 PM 2:08
THOMAS A. WILDER
DISTRICT CLERK

AMENDED FINAL JUDGMENT

On this day the Court considered the following: (1) Defendant David Stockman's Motion for Summary Judgment; and (2) Defendant Countrywide Home Loans, Inc.'s Traditional and No-Evidence Motion for Summary Judgment. After reviewing the motions, all objections and replies filed therewith, the summary judgment evidence presented, arguments of the parties and applicable law, the Court enters the following orders:

(1) IT IS ORDERED THAT DEFENDANT DAVID STOCKMAN'S MOTION FOR SUMMARY JUDGMENT IS GRANTED;

(2) IT IS ORDERED THAT DEFENDANT COUNTRYWIDE HOME LOANS, INC.'S TRADITIONAL MOTION FOR SUMMARY JUDGMENT AND NO-EVIDENCE MOTION FOR SUMMARY JUDGMENT ARE GRANTED;

(3) IT IS FURTHER ORDERED THAT COSTS OF COURT AND ATTORNEYS' FEES ARE TO BE BORNE BY THE PARTY INCURRING SAME.

This Final Judgment, together with the court's prior "Final Judgment" date October 26, 2017, attached hereto as **Exhibit A**, is incorporated herein and together constitute a final, appealable judgment. All relief not expressly granted herein is denied. This Final Judgment disposes of all parties and all claims before the court. It is, therefore, a final and appealable judgment.

SIGNED: 9/16/20

DISTRICT JUDGE PRESIDING

A CERTIFIED COPY
ATTEST: 04.07.2025
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY, TEXAS
BY: [signature]
DEPUTY
BIANCA N. ABREGO

E-MAILED MT
9-16-20

DISTRICT COURT OF TARRANT COUNTY, TEXAS

EXHIBIT "A"

CAUSE NO. 342-262692-12

HARRIET NICHOLSON, Plaintiff, v. THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., CWMBS REFORMING LOAN REMIC TRUST CERTIFICATES SERIES 2005-R2, et al. Defendants.	§ § § § § § § § § § § § § § §	IN THE DISTRICT COURT OF TARRANT COUNTY, TEXAS 342nd JUDICIAL DISTRICT

FINAL JUDGMENT

On October 26, 2017, the Court held a hearing in the above-entitled and numbered cause and entered orders related to all prior matter before the Court. The Court finds that all matters are now resolved and enters this Final Judgement. *It is therefore,*

ORDERED, ADJUDGED AND DECREED that Instrument Nos. D212187326 and D214164490, both recorded in the Real Property Records of Tarrant County, Texas, are both **INVALID** and **VOID** in all respects. *It is further,*

ORDERED, ADJUDGED AND DECREED that this Final Judgment may be recorded in the Real Property Records of Tarrant County, Texas. *It is further,*

ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded court costs ~~in the amount of \$~~ . *It is further,*

ORDERED, ADJUDGED AND DECREED that all of Plaintiff's remaining claims are dismissed with prejudice. *It is further,*

ON 10/26/17, ALL SERVED VIA:
X HAND DELIVERY Baker, Warner
___ MAIL
___ FAX
___ __________, WHO IS TO SERVE COPIES ON ALL OTHERS
EMAILED
Baker, Warner,
Fennell, Anderson

TARRANT COUNTY, TEXAS DISTRICT COURT

ORDERED, ADJUDGED AND DECREED that all relief not expressly granted herein is denied.

SIGNED: October 26, 2017

JUDGE WADE BIRDWELL, PRESIDING

**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-20-00379-CV

HARRIET NICHOLSON, Appellant

V.

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., CWMBS REFORMING LOAN REMIC TRUST CERTIFICATES SERIES 2005-R2; MELANIE COWAN; BANK OF AMERICA, N.A.; RECONTRUST COMPANY, N.A.; COUNTRYWIDE HOME LOANS, INC., AND DAVID STOCKMAN, Appellees

---

On Appeal from the 342nd District Court
Tarrant County, Texas
Trial Court No. 342-262692-12

Before Bassel, Wallach, and Walker, JJ.
Memorandum Opinion by Justice Wallach

MEMORANDUM OPINION

I. Introduction

This case originated almost a decade ago with pro se[1] appellant Harriet Nicholson's 2012 lawsuit challenging a wrongful home foreclosure. Nicholson,[2] who still lives in the home at issue, prevailed on the wrongful-foreclosure issue but

---

[1]Pro se litigants are held to the same standards as licensed attorneys and must comply with all applicable rules. *Barcroft v. Walton*, No. 02-16-00110-CV, 2017 WL 3910911, at *5 (Tex. App.—Fort Worth Sept. 7, 2017, no pet.) (mem. op.). This is to ensure fairness in our treatment of all litigants through use of a single set of rules. *Id.* The parties and this court are bound by the statutes, cases, and rules of procedure that apply to the case. *Id.*

[2]Nicholson and the parties she has sued in this case are not strangers to this court. *See Nicholson v. NationStar Mortg., LLC*, No. 02-21-00074-CV, 2021 WL 3557080, at *1 (Tex. App.—Fort Worth Aug. 12, 2021, no pet.) (per curiam) (mem. op.) (granting Nicholson's unopposed motion to dismiss appeal); *Nicholson v. Harvey Law Grp.* (*Nicholson I*), No. 02-20-00180-CV, 2021 WL 1134455, at *1 (Tex. App.—Fort Worth Mar. 25, 2021, pet. denied) (mem. op.); *In re Nicholson*, No. 02-21-00068-CV, 2021 WL 1011902, at *1 (Tex. App.—Fort Worth Mar. 17, 2021, orig. proceeding) (per curiam) (mem. op.) (denying petition for writ of mandamus); *In re Nicholson*, 02-20-00272-CV, 2020 WL 5525330, at *1 (Tex. App.—Fort Worth Sept. 15, 2020, orig. proceeding) (per curiam) (mem. op.) (same); *Nicholson v. Stockman* (*Nicholson II*), No. 02-19-00103-CV, 2020 WL 241420, at *1 (Tex. App.—Fort Worth Jan. 16, 2020, pet. denied); *Nicholson v. Bank of Am., N.A.* (*Nicholson III*), No. 02-19-00085-CV, 2019 WL 7407739, at *1 (Tex. App.—Fort Worth Dec. 31, 2019, pet. denied) (mem. op.); *In re Nicholson*, No. 02-19-00163-CV, 2019 WL 2111848, at *1 (Tex. App.—Fort Worth May 14, 2019, orig. proceeding) (per curiam) (mem. op.) (denying petition for writ of mandamus); *In re Nicholson*, No. 02-19-00022-CV, 2019 WL 490132, at *1 (Tex. App.—Fort Worth Feb. 7, 2019, orig. proceeding) (per curiam) (mem. op.) (same); *Nicholson v. Bank of New York Mellon as Tr. for Certificateholders of CWMBS, Inc.*, No. 02-18-00035-CV, 2019 WL 406165, at *1 (Tex. App.—Fort Worth Jan. 31, 2019, pet. denied) (per curiam) (mem. op.) (dismissing appeal for want of jurisdiction); *see also Nicholson v. Nationstar Mortg., LLC*, No. 08-16-00148-CV, 2016 WL 4208100, at *1 (Tex. App.—El Paso Aug. 10, 2016, no pet.) (mem. op.) (dismissing appeal for want of prosecution after docket-equalization transfer).

conclusively established that it was entitled to immunity for its actions taken on Nationstar's behalf. *Id.* at *3.

B. The Instant Case

This case took a detour of several years in federal court. In her sixth amended petition, filed in May 2017, Nicholson sued BONY, Cowan, Bank of America, ReconTrust, Stockman, Nationstar, Countrywide, and Harvey Law Group. The trial court granted the BONY Appellees' motion to strike Nationstar and Harvey Law Group from the case and their motion to strike Nicholson's seventh amended petition, denied Nicholson's motion for leave to file her seventh amended petition, declared the foreclosure and rescission void and granted a partial summary judgment to Nicholson on that basis, granted the BONY Appellees' traditional and no-evidence motion for summary judgment "with regard to all remaining claims," and awarded costs to Nicholson as the prevailing party on the wrongful-foreclosure issue.

Two years passed while the parties and courts debated whether the trial court's judgment was final and appealable,[12] and in 2019, a trial date was set as to Stockman and Countrywide. Stockman filed a motion for summary judgment in April 2019.

[12]During the interim, the then-judge of the 342nd Court, the Honorable J. Wade Birdwell, was appointed to this court. *See* Office of the Governor of Texas, *Governor Abbott Appoints Birdwell Justice of the Second Court of Appeals* (Nov. 10, 2017), https://gov.texas.gov/es/news/post/governor-abbott-appoints-birdwell-justice-of-the-second-court-of-appeals (last visited Mar. 23, 2022). The Honorable Kimberly Fitzpatrick was appointed to the 342nd Court on June 26, 2018. *See* Office of the Governor of Texas, *Governor Abbott Appoints Fitzpatrick Judge of the 342nd Judicial District Court* (June 26, 2018), https://gov.texas.gov/news/post/governor-abbott-appoints-fitzpatrick-judge-of-the-342nd-judicial-district-court (last visited Mar. 23, 2022).

In her response, Nicholson argued that Nationstar and Harvey Law Group were necessary and indispensable parties, that her claims against Nationstar were not barred by res judicata, and that her claims against Harvey Law Group were not barred by attorney immunity. *Cf. Nicholson I*, 2021 WL 1134455, at *3–4.

At the June 15, 2017 hearing on the motion, when Nicholson complained that her other lawsuit involving Nationstar "was for a different account," the trial court replied that she had "had a reasonable opportunity to bring whatever lawsuit and whatever claims [she] had against Nationstar" in her case in the 48th Court. *See id.*; *see also Barr v. Resol. Tr. Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 628 (Tex. 1992) (explaining that claim preclusion prevents the relitigation of a claim that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit and that issue preclusion prevents relitigation of particular issues already resolved in a prior suit).

In response to the trial court's question about the underlying promissory note, BONY's counsel stated that while there might be a new loan number, there was only one promissory note that related to the property—it was not a different loan—and that Nationstar was the post-foreclosure loan servicer. The trial court informed Nicholson that the only issue in the case was wrongful foreclosure and not any post-foreclosure conduct because if the foreclosure was wrongful, then "that will have effects with regard to everything else, including Nationstar." The trial court granted the BONY Appellees' motion, struck Nationstar and Harvey Law Group from more than one independent ground or defense, the aggrieved party must assign error to each ground, or we will affirm the judgment on the uncomplained-of ground. *Scott v. Galusha*, 890 S.W.2d 945, 948 (Tex. App.—Fort Worth 1994, writ denied). And Nicholson did not direct the trial court to evidence to raise a genuine issue of material fact in response to any of Countrywide's no-evidence grounds.[29] *See* Tex. R. Civ. P. 166a(i) & 1997 cmt.; *Hamilton v. Wilson*, 249 S.W.3d 425, 426 (Tex. 2008). Accordingly, the trial court did not err by granting summary judgment for Countrywide on Nicholson's Section 12.002 claim or any of her other claims against it, and we overrule this portion of Issue 8/Point 1.

VI. Conclusion

Having overruled all of Nicholson's issues that were fairly included in the points she raised in her opening brief, we affirm the trial court's judgment.

/s/ Mike Wallach
Mike Wallach
Justice

Delivered: March 31, 2022

---

[29]If a nonmovant wishes to assert that, based on the record evidence, a fact issue exists to defeat a no-evidence motion for summary judgment, the nonmovant must timely file a response to the motion raising this issue. *Imkie v. Methodist Hosp.*, 326 S.W.3d 339, 343 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (op. on reh'g). Absent a timely response, a trial court must grant a no-evidence motion for summary judgment that meets the requirements of Rule 166a(i). *Id.*

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of January, two thousand twenty-six,

Before: Joseph F. Bianco,
Eunice C. Lee,
Alison J. Nathan,
Circuit Judges.

Harriet Nicholson,

Plaintiff - Appellant,

v.

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

Defendant - Appellee.

ORDER

Docket No. 24-586

Appellant moves for a recall of the Court's mandate issued on September 11, 2025.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 24-586

Caption [use short title]: Nicholson v. The Bank of New York

Motion for: EMERGENCY MOTION TO RECALL MANDATE TO PRESERVE SUPREME COURT'S JURISDICTION

Set forth below precise, complete statement of relief sought:
Recall of the mandate issued September 11, 2025;
restoration of possession;
enforcement of Texas Amended Final Judgment; and
injunction against further eviction activity.

MOVING PARTY: Harriet Nicholson

OPPOSING PARTY: The Bank of New York

☐ Plaintiff ☐ Defendant

☒ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY:

OPPOSING ATTORNEY: Brian Scibetta

[name of attorney, with firm, address, phone number and e-mail]

brian.scibetta@mccalla.com

Court- Judge/ Agency appealed from:

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☒ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☒ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☒ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ☒ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ☒ No

Requested return date and explanation of emergency: TO BE SET BY COURT
Immediate action required to preserve Supreme Court jurisdiction.

Is the oral argument on motion requested? ☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set? ☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:
/s/ Harriet Nicholson Date: 12/10/25 Service: ☐ Electronic ☒ Other [Attach proof of service]

Form T-1080 (rev. 10-23)

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: June 8, 2026
Docket #: 24-586
Short Title: Nicholson v. The Bank of New York Mellon

DC Docket #: 1:22-cv-3177
DC Court: SDNY (NEW YORK CITY)
DC Judge: Trial Judge - Paul G. Gardephe

NOTICE OF NON-JURISDICTION

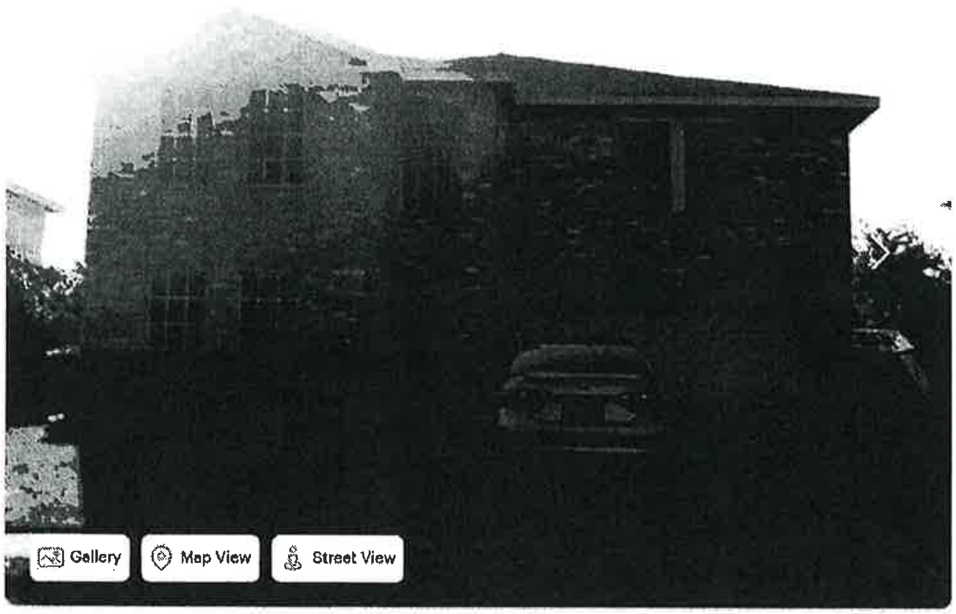
This is to acknowledge receipt of papers received 06/06/2026, in the case referenced above. Because this case was mandated on 09/11/2025, this Court no longer has jurisdiction to entertain your request. For this reason, your papers are returned unfiled.

Inquiries regarding this case may be directed to 212-857-8522.

12:32 Mon, Aug 3 71%

New cha App Nic Sea App 202 iLo

hubzu.com/second-chance-home/94317602357-295



CWCOT-SECOND CHANCE

2951 SANTA SABINA DR

Grand Prairie, TX 75052 Get Directions

3	2	2,819
Beds	Baths	Square Feet

Description

Great Opportunity to own this single-family home oozing with potential. This home was built in 2000 and has 3 bedrooms and 2 bathrooms. ***SPECIAL NOTES: (1) This is a CASH ONLY transaction. (2) Seller to pay Property Taxes, HOA, and Municipal/Utility Liens. All closing costs including transfer taxes are to be paid by the buyer at closing. (3) Please read the Auction disclaimers carefully before placing a bid or submitting an offer. ***

CWCOT

Originally created in 1987, the CWCOT program aims to reduce the number of homes in the U.S. Department of Housing's inventory. Learn more

Property Details for 2951 SANTA SABINA DR

113 Views

Beds: Full Baths: Air Conditioning:

Rocket Mortgage

Payoff quote

RETURN SERVICE ONLY
PLEASE DO NOT SEND MAIL TO THIS ADDRESS
PO Box 818060 | 5801 Postal Road | Cleveland, OH 44181

8208 T22 P2 AUTO 449622.2-NNNN-32420482

HARRIET H NICHOLSON
PRO SE
2951 SANTA SABINA DRIVE
GRAND PRAIRIE, TX 75052

Loan number
0619301724

Property address
2951 SANTA SABINA DRIVE
GRAND PRAIRIE, TX 75052

Notice date
7/16/26

Thank you for requesting your payoff quote. We've enclosed a detailed breakdown of your quote along with some helpful FAQs. Please review carefully and let us know if you have any questions.

Before you dive in, though, we wanted to give you a brief explanation of how your interest is calculated. Your FHA loan requires interest to be calculated through the end of the calendar month. This means that if we receive your payoff after the first of the month, you will be charged interest for the remainder of that month per the loan documents. It is to your advantage to make sure we receive the payoff funds as close to the end of the month as possible but no later than the first day of the next month.

We will need to receive your payoff payment before 5 p.m. (CT) on the first of August or an extra month's interest will be charged.

If you have any questions, please contact us at (800) 4-ROCKET or via mail at 8950 Cypress Waters Blvd., Coppell, TX 75019. Our hours of operation are Monday through Friday from 8:30 a.m. to 9 p.m. ET and Saturday from 9 a.m. to 4 p.m. ET. Visit us on the web at www.RocketMortgage.com for more information.

Sincerely,

Your Rocket Servicing Team

Enclosure(s)

Rocket Mortgage

RETURN SERVICE ONLY
PLEASE DO NOT SEND MAIL TO THIS ADDRESS
PO Box 818060 | 5801 Postal Road | Cleveland, OH 44181

Payoff quote

Loan number
0619301724

Property address
2951 SANTA SABINA DRIVE
GRAND PRAIRIE, TX 75052

Notice date
7/16/26

HARRIET H NICHOLSON
PRO SE
2951 SANTA SABINA DRIVE
GRAND PRAIRIE, TX 75052

Hi HARRIET H NICHOLSON,

Enclosed is the payoff statement you requested. We can only accept certified funds. Acceptable payment methods are wire transfers and cashier's checks. We can't accept ACH payments, bank bill pay or personal checks, as these are not considered certified funds. The payoff figures are valid through 8/31/26. Certified funds received after 8/31/26 will require an additional month of interest. If we don't receive certified funds by 8/31/26, you'll need to call us for an updated payoff quote.

The amount to payoff your loan is below:

Payoff statement

Loan type: FHA

Payoff breakdown

Principal balance as of 8/31/26:	$161,098.95
Interest - from 3/1/11 to 8/31/26	$173,543.58
Late Fees	$96.64
Deferred Late Fees	$208.92
Advances on your behalf	$41,310.64
Escrow Advances	$106,936.98
County Recording Fee	$24.00
Total amount to payoff to Rocket Mortgage	**$483,219.71**

*** How is this calculated?**
Interest is calculated on a monthly basis. Therefore, if we receive the payoff funds after the first of the month, you will be charged interest for the remainder of that month per your loan agreement.

Monthly interest calculation:
Current Unpaid Principal Balance X Annual Interest Rate / 12 = Monthly Interest.
Monthly Interest X Number of Months Due = Interest Due.

Partial payments (unapplied)
These are funds in your account that haven't been allocated or credited to your loan. Please see Important Notes to Remember section for more information.

$713.09

We reserve the right to correct any errors or omissions in this payoff quote regardless of when funds are received. We also reserve the right to correct any portion of this statement due to changing balances and interest rates on this loan. A payment that is less than the full amount will delay processing, and you will be held responsible for any additional interest.

Please reference the client name, loan number and property address and send certified funds or a wire using the following information:

Wiring instructions:
Beneficiary name: Rocket Mortgage
Account number: 10000016372775
ABA/Routing number: 021000021
Bank name: JPMorgan Chase Bank, N.A.
270 Park Ave New York, NY 10017

Rocket Mortgage – Overnight address:
Attn: Cash Management Team
8950 Cypress Waters Blvd.
Coppell, TX 75019

Wires and certified funds received by 6:00 p.m. ET will be processed on the date of receipt. All funds received after 6:00 p.m. ET will be processed on the next business day.

22.2-NNNN-728346205-8208.2