

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

Federal National Mortgage Association v. Fercan E. Kalkan

Kalkan · No. 4:25-CV-01132 · Decided March 9, 2026

SUMMARY

The United States District Court for the Southern District of Texas adopts a magistrate judge’s Memorandum and Recommendation in an action by Federal National Mortgage Association against Fercan E. Kalkan for breach of guaranty. The court overrules Kalkan’s objections, grants summary judgment for the plaintiff, and grants the plaintiff’s motion to strike.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Houston Division
WRITING FOR THE COURT	Alfred H. Bennett
JURISDICTION	United States District Court for the Southern District of Texas
DECIDED	March 9, 2026
DOCKET	4:25-CV-01132
DISPOSITION	other
PROCEDURAL POSTURE	Defendant objected under Federal Rule of Civil Procedure 72(b) to a magistrate judge's Memorandum and Recommendation recommending that plaintiff's motion for summary judgment and motion to strike be granted. The district court reviewed the objections de novo, overruled them, adopted the Memorandum and Recommendation, and granted both motions.
STANDARD OF REVIEW	De novo review of objections to a magistrate judge's Memorandum and Recommendation under Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b).
PRECEDENTIAL VALUE	Unpublished federal district court order; precedential status is not stated in the opinion.
PARTIES	Fercan E. Kalkan v. Federal National Mortgage Association

TOPICS

summary judgment

civil procedure

breach of contract

contracts

PRACTICE AREAS

civil procedure

contracts

commercial litigation

real estate

QUESTIONS PRESENTED

1. Whether the district court should review defendant's objections to the magistrate judge's Memorandum and Recommendation de novo.
2. Whether defendant forfeited arguments raised for the first time in objections to the Memorandum and Recommendation.
3. Whether the district court was required to consider evidence submitted for the first time in defendant's objections.
4. Whether plaintiff was entitled to summary judgment on its breach-of-guaranty claim and whether defendant's rebuttal to plaintiff's sur-reply should be stricken.

HOLDINGS

1. The district court reviews the magistrate judge's findings and conclusions de novo.
2. Arguments not raised before the magistrate judge are forfeited even if raised for the first time in objections to the Memorandum and Recommendation.
3. The district court is not required to accept evidence submitted for the first time in objections to a magistrate judge's Memorandum and Recommendation.
4. The court adopted the magistrate judge's Memorandum and Recommendation and granted plaintiff's motion for summary judgment and motion to strike.

KEY QUOTATIONS

“But new arguments “are forfeited if they are not raised before a magistrate judge,” even if they are raised in objections to the memorandum and recommendation.”

“Upon review, Defendant’s objections are nothing more than an effort to “muddy the factual record.””

“In conclusion, the Court adopts the Memorandum and Recommendation (Doc. #35) as its Order. Accordingly, Plaintiff’s Motion for Summary Judgment (Doc. #11) and Motion to Strike (Doe. #33) are GRANTED”

FACTUAL BACKGROUND

Defendant signed a guaranty agreement requiring him to pay the full indebtedness on a note owned by plaintiff if the borrower filed for bankruptcy. After the borrower filed for bankruptcy, defendant did not repay the loan. Plaintiff sued for breach of guaranty and sought the outstanding principal, interest, and attorney's fees.

PROCEDURAL HISTORY

Plaintiff brought a breach-of-guaranty action seeking the outstanding principal on a note, interest, and attorney's fees after the borrower filed for bankruptcy and defendant allegedly failed to pay under the guaranty. Plaintiff moved for summary judgment and also moved to strike defendant's rebuttal to plaintiff's sur-reply. Magistrate Judge Peter Bray recommended granting both motions. Defendant objected, largely presenting arguments and evidence for the first time, and the district court adopted the recommendation and granted the motions.

DISPOSITION

other

CASES CITED

- United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989)
- Shambaugh & Son, LP. v. Steadfast Ins. Co., 91 F.4th 364, 369 (5th Cir. 2024)
- Reuter v. XTO Energy, Inc., 4:20-cv-474, 2022 WL 2712860, at *2 (S.D. Tex. July 13, 2022)
- Freeman v. Cnty. of Bexar, 142 F.3d 848, 852-53 (5th Cir. 1998)

OPINION

□ Southern District of Texas ENTERED March 09, 2026 UNITED STATES DISTRICT COURT Nathan Ochsner, Clerk SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION FEDERAL NATIONAL MORTGAGE § ASSOCIATION, § § Plaintiff, § § VS. § CIVIL ACTION NO, 4:25-CV-01132 § FERCAN E KALKAN, § § Defendant. § ORDER Before the Court are United States Magistrate Judge Peter Bray's Memorandum and Recommendations filed on February 4, 2026 (Doc. #35), Defendant Fercan E. Kalkan's Objections (Doc. #36), and Plaintiff Federal National Mortgage Association's Response (Doc. #37).

The Magistrate Judge's findings and conclusions are reviewed de novo. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(); United States v. Wilson, 864 F.2d 1219, 1221 (Sth Cir. 1989), Having reviewed the parties' arguments and the applicable legal authority, the Court adopts the Memorandum and Recommendation as its Order.

In this case, Defendant signed a guaranty agreement obligating him to pay the full amount of indebtedness on a note owned by Plaintiff in the event the borrower filed for bankruptcy. Doc. #35 at 2. Then, after the borrower filed for bankruptcy, Defendant did not repay the loan. Id. Accordingly, Plaintiff brought a breach of guaranty action in this Court, seeking to recover the outstanding principal on the note, plus interest and attorney's fees.

Doc. #1. On August 26, 2025, Plaintiff filed its Motion for Summary Judgment, to which Defendant responded on November 21, 2025. Doc. #11; Doc, #28; Doc. #29, Plaintiff also filed the pending Motion to Strike, which asks the Court to strike Defendant's "rebuttal" to Plaintiffs sur-reply in support of its Motion for Summary Judgment. Doc. #33, The Magistrate Judge recommended the Court grant Plaintiff's Motion for Summary Judgment and Motion to Strike.

Doc. #35, Defendant objects to the Magistrate Judge's Memorandum and Recommendations. Doc. #36. Nearly all of Defendant's objections, however, present new arguments and evidence that were not raised before the Magistrate Judge during summary judgment. But new arguments "are forfeited if they are not raised before a magistrate judge," even if they are raised in objections to the memorandum and recommendation.

Shambaugh & Son, LP. v. Steadfast Ins. Co., 91 F.4th 364, 369 (Sth Cir. 2024). Similarly, this Court is not required to accept evidence submitted for the first time in an objection. *Reuter v. XTO Energy, Inc.*, 4:20-cv-[474, 2022 WL 2712860, at *2 (S.D. Tex. July 13, 2022) (citing *Freeman v. Cnty. Of Bexar*, 142 F.3d 848, 852-53 (5th Cir. 1998)), Upon review, Defendant's objections are nothing more than an effort to "muddy the factual record." See Doc. #35 at 5.

The objections to the Memorandum and Recommendation are therefore overruled. In conclusion, the Court adopts the Memorandum and Recommendation (Doc. #35) as its Order. Accordingly, Plaintiff's Motion for Summary Judgment (Doc. #11) and Motion to Strike (Doe. #33) are GRANTED, It is so ORDERED. lu / MAR 0.9 2026 Date The Honorable Alfred H. Bennett
United States District Judge