

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

James Nicholson v. PHH Mortgage Corporation

No. 3:25-cv-1596-X-BN · No. No. 3:25-cv-1596-X-BN · Decided February 5, 2026

SUMMARY

The document is a magistrate judge’s findings, conclusions, and recommendation in a mortgage-foreclosure dispute involving James Nicholson, PHH Mortgage Corporation, and Codilis & Moody, P.C. It recommends granting PHH’s motion to dismiss, dismissing Nicholson’s negligence claim with prejudice, dismissing his wrongful foreclosure claim and claims against Codilis without prejudice, and allowing amendment. The recommendation also addresses notice of default, homestead protection, and requests for injunctive relief.

CASE DETAILS

COURT	United States District Court for the Northern District of Texas, Dallas Division
WRITING FOR THE COURT	David L. Horan
JURISDICTION	United States District Court for the Northern District of Texas, Dallas Division
DECIDED	February 5, 2026
DOCKET	No. 3:25-cv-1596-X-BN
DISPOSITION	other
PROCEDURAL POSTURE	Findings, conclusions, and recommendation by a United States magistrate judge on a referred Rule 12(b)(6) motion to dismiss. The recommendation proposes dismissal of certain claims with prejudice, dismissal of other claims without prejudice, denial without prejudice of injunctive relief, and leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded facts as true and views them in the light most favorable to the plaintiff, but requires factual allegations sufficient to state a facially plausible claim. Legal conclusions, labels, threadbare recitals, and conclusory assertions are not accepted as true.
PRECEDENTIAL VALUE	Nonprecedential magistrate judge findings and recommendation; subject to district-court adoption and objections under Rule 72(b).

PARTIES

James Nicholson v. PHH Mortgage Corporation

TOPICS

motions to dismiss

wrongful foreclosure

mortgages

injunctions

civil procedure

PRACTICE AREAS

civil procedure

real estate

mortgages

wrongful foreclosure

negligence

injunctions

homestead

QUESTIONS PRESENTED

1. Whether Nicholson plausibly alleged that he was a debtor entitled to notice of default and an opportunity to cure under Texas Property Code section 51.002(d).
2. Whether Nicholson stated a negligence claim against PHH based on the alleged failure to provide foreclosure notices.
3. Whether Nicholson stated a wrongful-foreclosure claim under Texas law when his pleading did not allege that a foreclosure sale occurred, a grossly inadequate sale price, or a causal connection between a foreclosure defect and the sale price.
4. Whether Nicholson's request for injunctive relief could proceed without a viable underlying cause of action.
5. Whether Nicholson adequately alleged that the property qualified for homestead protection under article XVI, section 50(a) of the Texas Constitution.
6. Whether claims against Codilis should be dismissed when the amended petition contained no allegations against it and service was uncertain.

HOLDINGS

1. Alleging ownership and possession of property, or inheritance of an interest in it, does not by itself establish that a plaintiff is a debtor in default under the deed of trust and therefore entitled to statutory notice of default and an opportunity to cure.
2. Nicholson failed to state a negligence claim because he did not plausibly allege that PHH owed him a duty or that he suffered legally sufficient damages; the claim was also barred by the economic loss rule.
3. Nicholson failed to state a wrongful-foreclosure claim because he did not adequately plead a foreclosure sale, a defect in the sale proceedings, a grossly inadequate selling price, or a causal connection between any defect and the price.
4. The request for injunctive relief could not proceed because injunctive relief is a remedy dependent on an underlying viable cause of action, and Nicholson had not adequately pleaded one.
5. Claims against Codilis were subject to dismissal without prejudice because the amended petition contained no factual or legal allegations against it.

KEY QUOTATIONS

“The undersigned now enters these findings of fact, conclusions of law, and recommendation that the Court should grant PHH’s motion to dismiss” (2)

“That Nicholson owns and possesses the Property does not automatically make him a “debtor in default under [the] deed of trust.”” (5)

“To state a wrongful foreclosure claim under Texas law, a plaintiff must plead (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; (3) a causal connection between the defect and the grossly inadequate selling price.” (10)

“A request for injunctive relief absent an underlying cause of action is fatally defective.” (13)

FACTUAL BACKGROUND

Nicholson alleged that he owned and possessed residential property in Garland, Texas that had been subject to debt acceleration and a planned foreclosure sale. He alleged that PHH sent a March 10, 2025 notice setting a May 6, 2025 foreclosure sale, but did not send a separate demand for payment, notice of default, or notice of a cure period. Nicholson claimed he inherited an interest in the property from his father and asserted negligence, wrongful foreclosure, and related claims. His amended pleading also named Codilis & Moody, P.C., but contained no factual or legal allegations against that defendant.

PROCEDURAL HISTORY

Nicholson filed suit in Dallas County, Texas state court against PHH Mortgage Corporation and the Secretary of Veterans Affairs concerning an anticipated foreclosure. The VA removed the action under 28 U.S.C. §§ 1442(a) (1) and 1444, and Nicholson voluntarily dismissed his claims against the VA; the court determined that jurisdiction remained. After PHH moved to dismiss, Nicholson filed a First Amended Petition adding Codilis & Moody, P.C.; the court treated PHH's pending motion as directed to the amended pleading. The magistrate judge recommended granting the motion, dismissing the negligence claim with prejudice, dismissing the wrongful-foreclosure claim and claims against Codilis without prejudice, and allowing amendment.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court was recommended to dismiss the negligence claim against PHH with prejudice; dismiss the wrongful-foreclosure claim against PHH and all claims against Codilis without prejudice; deny the request for injunctive relief without prejudice; and allow Nicholson to amend the wrongful-foreclosure and Codilis-related claims by a reasonable deadline set by the district court.

CASES CITED

- In re Katrina Canal Breaches Litig., 495 F.3d 191, 205-06 (5th Cir. 2007)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bryant v. Ditech Fin., L.L.C., No. 23-10416, 2024 WL 890122, at *3 (5th Cir. Mar. 1, 2024)
- Parker v. Landry, 935 F.3d 9, 17 (1st Cir. 2019)
- Armstrong v. Ashley, 60 F.4th 262, 269 (5th Cir. 2023)
- Harmon v. City of Arlington, Tex., 16 F.4th 1159, 1162-63 (5th Cir. 2021)
- Johnson v. City of Shelby, Miss., 574 U.S. 10, 12 (2014) (per curiam)
- Norris v. Hearst Trust, 500 F.3d 454, 461 n.9 (5th Cir. 2007)
- Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2008)
- Trien v. Fed. Home Loan Mortg. Corp., 400 F. Supp. 3d 596, 605 (W.D. Tex. 2019)
- Montenegro v. Ocwen Loan Servicing, 419 S.W.3d 561, 570 (Tex. App. - Amarillo 2013, pet. denied)
- Perkins v. Cain's Coffee Co., 466 S.W.2d 801, 803 (Tex. Civ. App. - Corpus Christi 1971, no writ)
- Micciche v. New Horizon Mortg. Inc., No. SA-23-cv-495-XR, 2023 WL 4357229, at *3 (W.D. Tex. July 5, 2023)
- Boudreaux v. Swift Transp. Co., Inc., 402 F.3d 536, 540-41 (5th Cir. 2005)
- IHS Cedars Treatment Ctr. of Desoto, Tex., Inc. v. Mason, 143 S.W.3d 794, 798 (Tex. 2004)
- Thigpen v. Locke, 363 S.W.2d 247, 253 (Tex. 1962)
- UMLIC VP LLC v. T & M Sales & Envtl. Sys., Inc., 176 S.W.3d 595, 613-15 (Tex. App. - Corpus Christi 2005, pet. denied)
- Fraley v. BAC Home Loans Servicing, LP, No. 3:11-cv-1060-N-BK, 2012 WL 779130, at *8 (N.D. Tex. Jan. 10, 2012), recommendation adopted, 2012 WL 779654 (N.D. Tex. Mar. 9, 2012)
- Lamar Homes, Inc. v. Mid-Continent Cas. Co., 242 S.W.3d 1, 12 (Tex. 2007)
- Sw. Bell Tel. Co. v. DeLanney, 809 S.W.2d 493, 494 (Tex. 1991)
- Martins v. BAC Home Loans Servicing, L.P., 722 F.3d 249, 256 (5th Cir. 2013)
- Villarreal v. Wells Fargo Bank, N.A., 814 F.3d 763, 767-68 (5th Cir. 2016)
- James v. Wells Fargo Bank, N.A., 533 F. App'x 444, 447 (5th Cir. 2013) (per curiam)
- Motten v. Chase Home Fin., 831 F. Supp. 2d 988, 1007-08 (S.D. Tex. 2011)
- Miller v. BAC Home Loans Servicing, L.P., 726 F.3d 717, 727 (5th Cir. 2013)
- Grace v. Everhome Mortg. Co., No. 3:13-cv-4563-B, 2015 WL 5146678, at *6 (N.D. Tex. Sept. 2, 2015)
- Wildy v. Wells Fargo Bank, NA, No. 3:12-cv-1831-BF, 2013 WL 246860, at *6 (N.D. Tex. Jan. 21, 2013)
- Cook v. Wells Fargo Bank, N.A., No. 3:10-cv-592-D, 2010 WL 2772445, at *4 (N.D. Tex. July 12, 2010)
- Thomas v. EMC Mortg. Corp., 499 F. App'x 337, 343 n.15 (5th Cir. 2012)
- In re Brei, 599 B.R. 880, 891-92 (Bankr. N.D. Tex. 2019)
- Starrett v. U.S. Dep't of Defense, No. 3:18-cv-2851-M-BH, 2018 WL 6069969, at *1-2 (N.D. Tex. Oct. 30, 2018), recommendation adopted, 2018 WL 6068991 (N.D. Tex. Nov. 20, 2018), aff'd, 763 F. App'x 383 (5th Cir. 2019) (per curiam)
- Carroll v. Fort James Corp., 470 F.3d 1171, 1177 (5th Cir. 2006)
- Shawnee Int'l, N.V. v. Hondo Drilling Co., 742 F.2d 234, 236 (5th Cir. 1984)
- Gaffney v. State Farm Fire & Cas. Co., 294 F. App'x 975, 977 (5th Cir. 2008) (per curiam)

- *Lozano v. Ocwen Fed. Bank, FSB*, 489 F.3d 636, 643 (5th Cir. 2007)
- *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998)
- *Allen v. Navy Fed. Credit Union*, No. 3:24-cv-949-L-BN, 2025 WL 484818, at *13 (N.D. Tex. Feb. 13, 2025)

OPINION

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION JAMES NICHOLSON, § § Plaintiff, § § V. § No. 3:25-cv-1596-X-BN § PHH MORTGAGE CORPORATION, § § Defendant. § FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE This case has been referred to the undersigned United States magistrate judge for pretrial management pursuant to 28 U.S.C. § 636(b) and a standing order of reference from United States District Judge Brantley Starr.

See Dkt. No. 4. Plaintiff James Nicholson filed this action in Dallas County, Texas state court against PHH Mortgage Corporation (“PHH”) and the Secretary of Veteran Affairs (the “VA”). See Dkt. No. 1 at 1. In Nicholson’s Original Petition, he alleges that he is the rightful owner of a property located at 1118 McCallum Drive, Garland, Texas 75042 (the “Property”), which was subject to a debt acceleration and forthcoming foreclosure sale in May 2025.

See Dkt. No. 1-5. The VA removed the action to this Court under 28 U.S.C. § 1442(a)(1) and 28 U.S.C. § 1444. See Dkt. No. 1. After the VA filed its Notice of Removal, Nicholson voluntarily dismissed his claims against the VA. See Dkt. No. 5. But the Court determined that it retained jurisdiction over this action. See Dkt. Nos. 17 & 24.

On July 15, 2025, PHH filed a motion to dismiss Nicholson’s Original Petition. See Dkt. No. 10. Nicholson then filed a First Amended Petition, which added Codilis & Moody, P.C. (“Codilis”) as a named defendant. See Dkt. No. 14. Codilis has yet to appear in this action, and the undersigned cannot ascertain from the record whether it has been properly served to date.

The Court ordered PHH to advise the Court if it should treat the pending motion to dismiss [Dkt. No. 10] as directed to Nicholson’s First Amended Petition [Dkt. No. 14] or if the motion should be terminated as moot. See Dkt. No. 18.

After reviewing PHH’s response, see Dkt. No. 23, the Court noted that it would apply PHH’s motion to dismiss to the First Amended Petition, see Dkt. No. 27. The undersigned now enters these findings of fact, conclusions of law, and recommendation that the Court should grant PHH’s motion to dismiss [Dkt. No. 10]; dismiss with prejudice Nicholson’s negligence claim PHH; dismiss without prejudice Nicholson’s wrongful foreclosure claim against PHH and all claims against Codilis; and grant Nicholson leave to amend his complaint by a reasonable deadline to be set by the Court.

Legal Standards Considering a motion under Rule 12(b)(6), the Court “accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205-06 (5th Cir. 2007). -2- Even so, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face,” *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007), and must plead those facts with enough specificity “to raise a right to relief above the speculative level,” *id.* at 555. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *cf.* *Bryant v. Ditech Fin., L.L.C.*, No. 23-10416, 2024 WL 890122, at *3 (5th Cir.

Mar. 1, 2024) (“[J]ust as plaintiffs cannot state a claim using speculation, defendants cannot defeat plausible inferences using speculation.”). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. So, “[w]here a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* (cleaned up; quoting *Twombly*, 550 U.S. at 557); *see, e.g., Parker v. Landry*, 935 F.3d 9, 17 (1st Cir.

2019) (Where “a complaint reveals random puffs of smoke but nothing resembling real signs of fire, the plausibility standard is not satisfied.”). And, while Federal Rule of Civil Procedure 8(a)(2) does not mandate detailed factual allegations, it does require that a plaintiff allege more than labels and -3- conclusions, and, so, while a court must accept a plaintiff’s factual allegations as true, it is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Consequently, a threadbare or formulaic recitation of the elements of a cause of action, supported by mere conclusory statements, will not suffice. *See id.*; *Armstrong v. Ashley*, 60 F.4th 262, 269 (5th Cir. 2023) (“[T]he court does not ‘presume true a number of categories of statements, including legal conclusions; mere labels; threadbare recitals of the elements of a cause of action; conclusory statements; and naked assertions devoid of further factual enhancement.’” (quoting *Harmon v. City of Arlington, Tex.*, 16 F.4th 1159, 1162-63 (5th Cir.

2021))). And, so, “to survive a motion to dismiss” under *Twombly* and *Iqbal*, plaintiffs must “plead facts sufficient to show” that the claims asserted have “substantive plausibility” by stating “simply, concisely, and directly events” that they contend entitle them to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (*per curiam*) (citing *Fed. R. Civ.*

P. 8(a)(2)-(3), (d)(1), (e)). And “it is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007); *see FED. R. CIV. P.* 201; accord *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322

(2008) (directing courts to “consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and -4- matters of which a court may take judicial notice”).

Analysis I. Nicholson has not properly alleged he was entitled to notice of default. Nicholson’s First Amended Petition alleges that PHH sent him a Notice of Acceleration and Notice of Posting and Foreclosure on March 10, 2025, which set a foreclosure sale date of May 6, 2025. Dkt. No. 14 at 3. Nicholson alleges that “[t]he Notice of Acceleration and Foreclosure was the only notice that [he] received from [PHH], [and] no other notices were given.” Id. And, so, Nicholson claims that, because he “never received a demand for payment or any notice of a default, [he] was not given the required notice of the cure period.” Id. All of Nicholson’s claims against PHH are based on its failure to send him a notice of default before moving forward with foreclosure.

See generally id. And, so, as an initial matter, the undersigned must determine if Nicholson was entitled to notice of default from PHH. PHH contends that Nicholson “is an heir of the deceased obligor. [Nicholson] is not a party to the Note or Deed of Trust. He is not legally responsible for paying the amount due on the Note.

Therefore, he is not legally entitled to any notice under the Deed of Trust and the Texas Property Code.” Dkt. No. 10 at 4. Nicholson alleges that he acquired possession of the Property on July 17, 2014 and that he “is the rightful owner of the Property and was and continues to be in possession of the property and is entitled to possession of the Property.” Dkt.

No. 14 at 4. And, so, Nicholson argues, he is entitled to a notice of default under Section -5- 51.002(d) of the Texas Property Code. See Dkt. No. 28 at 10. But this allegation alone does not show that Nicholson is entitled to notice. Section 51.002 requires a mortgage servicer to provide a notice of default and an opportunity to cure the default to “a debtor in default under a deed of trust or other contract lien on real property used as the debtor’s residence.” TEX. PROP.

CODE § 51.002(d). That Nicholson owns and possesses the Property does not automatically make him a “debtor in default under [the] deed of trust.” Id.; accord *Trien v. Fed. Home Loan Mortg. Corp.*, 400 F. Supp. 3d 596, 605 (W.D. Tex. 2019) (holding that notice of default “need only be sent to debtors who are ‘parties to the deed of trust,’ unless the instrument itself provides otherwise”) (quoting *Montenegro v. Ocwen Loan Servicing*, 419 S.W.3d 561, 570 (Tex.

App. – Amarillo 2013, pet. denied)). And Nicholson has not alleged that he is a debtor under the terms of the Deed of Trust. The undersigned notes that surviving spouses and heirs of an estate inherit real property subject to the decedent’s debts, which constitute liens against the property. See TEX. PROP. CODE § 13.001(b) (heirs inherit real property subject to recorded deeds of trust); TEX. EST.

CODE § 101.051 (formerly codified at TEX. PROB. CODE § 37.001); see also *Perkins v. Cain's Coffee Co.*, 466 S.W.2d 801, 803 (Tex. Civ. App. – Corpus Christi 1971, no writ) (under Texas Probate Code Section 37, property of the decedent received by the heirs is subject to payment of the debts of the -6- decedent, and such debts constitute a lien on the estate).

And Nicholson's First Amended Petition refers to an "Affidavit of Heirship Regarding John Robert Nicholson, recorded on July 17, 2014 in Dallas County Real Property Records instrument number 201400178365." *Id.* at 3.

The Court may take judicial notice of the affidavit, attached to Nicholson's response, as a public record. See Dkt. 28 at 23-28. The affidavit states that John Robert Nicholson – Nicholson's father – "owned an interest" in the Property. *Id.* at 23-24. And it states that, as the sole beneficiary of his father's estate, Nicholson inherited the estate upon his father's death.

See *id.* at 24. But the First Amended Petition contains no allegations as to the Deed of Trust's provisions. And, although the Court may take judicial notice of public records, neither party has provided a copy of the Deed of Trust. And, so, the undersigned cannot ascertain what obligations John Robert Nicholson had under the Deed of Trust or whether, by the terms of the contract, Nicholson inherited any such obligations from his father.

Accord *Micciche v. New Horizon Mortg. Inc.*, No. SA-23-cv-495-XR, 2023 WL 4357229, at *3 (W.D. Tex. July 5, 2023) (holding that, although plaintiffs were heirs of the original obligor, they were not "legally responsible for paying the indebtedness").

The Court should find that Nicholson has not properly pleaded that he was owed notice of default under the Deed of Trust or Section 51.002. -7- II. Nicholson's negligence claim should be dismissed with prejudice. The elements of a negligence cause of action in Texas are (1) the existence of a legal duty; (2) a breach of that duty; and (3) damages proximately caused by that breach.

See *Boudreaux v. Swift Transp. Co., Inc.*, 402 F.3d 536, 540-41 (5th Cir. 2005) (citing *IHS Cedars Treatment Ctr. of Desoto, Tex., Inc. v. Mason*, 143 S.W.3d 794, 798 (Tex. 2004)). In the mortgage context, there is no special relationship between a mortgagee and a mortgagee, or between a servicer and a borrower, that would impose an independent common law duty on PHH.

See *Thigpen v. Locke*, 363 S.W.2d 247, 253 (Tex. 1962) (finding no fiduciary relationship between a banker who made personal loans and took interest in the business and the borrower); *UMLIC VP LLC v. T & M Sales & Envtl. Sys., Inc.*, 176 S.W.3d 595, 613-15 (Tex. App. – Corpus Christi 2005, pet. denied) (holding mortgagor did not owe mortgagee a duty in negligence for conduct relating to the foreclosure sale because the deed of trust governs the duties of the parties); *Fraley v. BAC Home Loans Servicing, LP*, No. 3:11-cv-1060-N-BK, 2012 WL 779130, at *8 (N.D.

Tex. Jan. 10, 2012) (dismissing gross negligence claim because, “as mortgagor, Defendants did not owe a legal duty to Plaintiff”) (citation omitted), rec. adopted, 2012 WL 779654 (N.D. Tex. Mar. 9, 2012). Nicholson alleges that PHH owed him a duty under Section 51.002 “to provide the notices required by the Texas Property Code”; that PHH “breached their duty to [him] by failing to provide required notices”; and that, “[a]s a result of [PHH], [he] has been damaged in an amount that does not exceed the jurisdictional limits of this -8- Court.” Dkt.

No. 14 at 13. Nicholson’s negligence claim fails because, as explained above, he has not alleged that he was owed notice of default under the Deed of Trust and, so, Section 51.002. Accord *M Speed Motor Sports LLC v. Capital Fund I, LLC*, No. 3:24-cv-2288- N, 2025 WL 1160007, at *2 (N.D. Tex. Apr. 21, 2025) (“This negligence claim fails because M Speed’s allegations are not sufficient to infer that any legal duty was breached.

M Speed alleges that Capital Fund failed ‘to comply with the notice provisions contained in the deed of trust before accelerating the note and foreclosing on the property.’ However, M Speed expressly waived any right to receive notice or a cure opportunity under the deed of trust.”). Nor is Nicholson’s conclusory allegation that he “has been damaged” sufficient to plead a negligence claim.

See Dkt. No. 14 at 13. And, even if Nicholson had alleged that PHH breached a duty and caused Nicholson damages, the undersigned finds that this claim would be barred by the economic loss doctrine. Under Texas law, the economic loss rule “generally precludes recovery in tort for economic losses resulting from the failure of a party to perform under a contract.” *Lamar Homes, Inc. v. Mid-Continent Cas.*

Co., 242 S.W.3d 1, 12 (Tex. 2007). And, so, tort damages are generally not recoverable if the defendant’s conduct “would give rise to liability only because it breaches the parties’ agreement.” *Sw. Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991) (“When the only loss or damage is to the -9- subject matter of the contract, the plaintiff’s action is ordinarily on the contract.”).

But tort damages are recoverable if the defendant’s conduct “would give rise to liability independent of the fact that a contract exists between the parties.” *Id.* Courts in this circuit consistently apply the economic loss rule to claims against mortgage servicers arising out of loan obligations and defaults. See, e.g., *Miller v. CitiMortgage, Inc.*, 970 F. Supp. 2d 568, 583-84 (N.D.

Tex. 2013); *Kiper v. BAC Home Loans Servicing, LP*, 884 F. Supp. 2d 561, 577 (S.D. Tex. 2012); *Mitchell v. Carrington Mortg. Servs., LLC*, No. 3:19-cv-1173-E, 2020 WL 825817, at *4-*5 (N.D. Tex. Jan. 30, 2020); *Hammond v. Ocwen Loan Servicing, LLC*, No. 3:25-cv-2599-BN, 2014 WL 5326722, at *4-*5 (N.D. Tx. Oct. 20, 2014).

Here, Nicholson’s claims against PHH arise out of the Loan that PHH services and PHH’s alleged failure to provide notice of a default on the Loan. And, so, Nicholson’s negligence claim is barred

by the economic loss rule and fails as a matter of law. Accord *Zamora v. Wells Fargo Bank, N.A.*, No. H-19-3966, 2020 WL 4708153, at *3 (S.D. Tex. Aug. 13, 2020) (barring, under the economic loss rule, a negligence per se claim based on defendant's violation of Section 51.002).

The Court should dismiss Nicholson's negligence claim with prejudice. See *Allen v. Navy Fed. Credit Union*, No. 3:24-cv-949-L-BN, 2025 WL 484818, at *13 (N.D. Tex. Feb. 13, 2025) ("[A] district court need not grant a motion to amend if doing so would be an exercise in futility." (citations omitted)). III. Nicholson's wrongful foreclosure claim should be dismissed without prejudice. -10- To state a wrongful foreclosure claim under Texas law, a plaintiff must plead (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling price.

See *Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 256 (5th Cir. 2013). "The plaintiff must allege a grossly inadequate selling price in all but a specific category of cases where the plaintiff alleges that the defendant deliberately chilled the bidding at the foreclosure sale." *Villarreal v. Wells Fargo Bank, N.A.*, 814 F.3d 763, 767-68 (5th Cir. 2016) (cleaned up).

Implicit in this standard is a requirement that a foreclosure sale take place. See *James v. Wells Fargo Bank, N.A.*, 533 F. App'x 444, 447 (5th Cir. 2013) (per curiam) ("[C]ourts in Texas do not recognize an action for attempted wrongful foreclosure." (quoting *Motten v. Chase Home Fin.*, 831 F. Supp. 2d 988, 1007-08 (S.D. Tex. 2011))). PHH's motion to dismiss states that the foreclosure sale of the Property took place on July 1, 2025.

See Dkt. No. 10 at 3. But this fact is not included in Nicholson's allegations. See Dkt. No. 14 In his First Amended Petition, Nicholson seeks to "enjoin and restrain a foreclosure sale." Id. at 3. And, so, he has not adequately pleaded a wrongful foreclosure claim. And, even if the Court could accept as true PHH's admission that the -11- foreclosure occurred, Nicholson's complaint does not allege any facts to support the elements of a wrongful foreclosure claim.

As to the first element, Nicholson claims that he did not receive a notice of default as required by Section 51.002(d) of the Texas Property Code. See Dkt. No. 14 at 3, 9. But, as explained above, Nicholson has not alleged that he was entitled to notice of default.

As to the second and third elements, Nicholson alleges no facts indicating a grossly inadequate selling price or a causal connection between the defect and the selling price. A plaintiff does not need to show a grossly inadequate selling price if the plaintiff alleges "that the defendant-mortgagee (lender) deliberately 'chilled' the bidding at the foreclosure sale," but Nicholson does not allege facts to allow the Court to infer that he can meet this exception.

Miller v. BAC Home Loans Servicing, L.P., 726 F.3d 717, 727 (5th Cir. 2013); *Chowdhury v. Carrington Mortg. Servs., LLC*, No. 3:23-cv-596-K-BN, 2024 WL 628027, at *5 (N.D. Tex. Jan.

18, 2024), rec. adopted, 2024 WL 628213 (N.D. Tex. Feb. 14, 2024). And, so, the undersigned finds Nicholson has not alleged sufficient facts to plead a wrongful foreclosure claim against PHH.

But, because PHH has indicated that a foreclosure sale has occurred, it is likely that Nicholson has not yet alleged his best case for his wrongful foreclosure claim. -12- And, so, the Court should dismiss the wrongful foreclosure claim without prejudice and grant Nicholson further leave to amend the claim. Cf. Allen, 2025 WL 484818, at *13 (“Granting leave to amend ... is not necessary when the plaintiff has pleaded his or her ‘best case’ after being apprised of pleading deficiencies.” (citations omitted)).

IV. Nicholson’s request for injunctive relief should be denied. As discussed above, Nicholson does not allege that PHH foreclosed on the Property or that Nicholson no longer possesses the Property. Instead, Nicholson requested injunctive relief to prevent PHH from foreclosing on the Property. And, so, at the pleading stage, the undersigned cannot rely on PHH’s contention that the Property was sold on July 1, 2025 and find that Nicholson’s request for injunctive relief is moot.

But, under Texas law, a request for injunctive relief “‘is not in and of itself a cause of action, but instead necessarily depends on an underlying cause of action.’” *Grace v. Everhome Mortg. Co.*, No. 3:13-cv-4563-B, 2015 WL 5146678, at *6 (N.D. Tex. Sept. 2, 2015) (citing *Wildy v. Wells Fargo Bank, NA*, No. 3:12-cv-1831-BF, 2013 WL 246860, at *6 (N.D. Tex. Jan.

21, 2013); *Cook v. Wells Fargo Bank, N.A.*, No. 3:10-cv-592-D, 2010 WL 2772445, at *4 (N.D. Tex. July 12, 2010)); *Thomas v. EMC Mortg. Corp.*, 499 F. App’x, 337, 343 n.15 (5th Cir. 2012) (“[A] request for injunctive relief absent an underlying cause of action is fatally defective.”). And, so, because Nicholson has not alleged a cause of action, his request for -13- injunctive relief cannot survive at this time.

And the Court should deny the request for injunctive relief without prejudice. V. Nicholson has not properly alleged that the Property is entitled to homestead protection. Nicholson alleges that the Property is protected from foreclosure by Article 16, § 50(a) of the Texas Constitution, which protects homesteads from forced sale for the payment of debts unless the homestead is subject to a lien that satisfies the requirements of the provision.

See TEX. CONST. art. XVI, §50(a). The burden of showing that the property is a homestead lies with the plaintiff. See *In re Brei*, 599 B.R. 880, 891-92 (Bankr. N.D. Tex. 2019). But Nicholson has not alleged any facts in his First Amended Petition to show that the Property is a homestead. And, so, the undersigned cannot find at this time that the Property is entitled to the protection given by Article 16, § 50(a).

VI. Nicholson’s claims against Codilis should be dismissed without prejudice. In his First Amended Petition, Nicholson added Codilis as a defendant. See Dkt. No. 14 at 2. Codilis appears

to be the law firm that represents PHH in this lawsuit. See Dkt. No. 10 at 5-6. Codilis has not appeared as a party in this case, nor does the record show that Codilis was served with process.

And PHH's motion to dismiss does not address the claims against Codilis. -14- But "[i]t is well-established that a district court may dismiss a complaint on its own motion under [Rule] 12(b)(6) for failure to state a claim upon which relief may [be] granted." *Starrett v. U.S. Dep't of Defense*, No. 3:18-cv-2851-M-BH, 2018 WL 6069969, at *1 (N.D. Tex. Oct. 30, 2018) (citing *Carroll v. Fort James Corp.*, 470 F.3d 1171 (5th Cir.

2006) (citing, in turn, *Shawnee Int'l, N.V. v. Hondo Drilling Co.*, 742 F.2d 234, 236 (5th Cir. 1984))), rec. adopted, 2018 WL 6068991 (N.D. Tex. Nov. 20, 2018), *aff'd*, 763 F. App'x 383 (5th Cir. 2019) (per curiam). A district court may exercise its "inherent authority... to dismiss a complaint on its own motion... 'as long as the procedure employed is fair.'" *Gaffney v. State Farm Fire & Cas.*

Co., 294 F. App'x 975, 977 (5th Cir. 2008) (per curiam) (quoting *Carroll*, 470 F.3d at 1177 (quoting, in turn, *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998))); citation omitted). The United States Court of Appeals for Fifth Circuit has "suggested that fairness in this context requires both notice of the court's intention to dismiss sua sponte and an opportunity to respond." *Id.* (quoting *Lozano v. Ocwen Fed.*

Bank, FSB, 489 F.3d 636, 643 (5th Cir. 2007) (quoting, in turn, *Carroll*, 470 F.3d at 1177); internal quotation marks and brackets omitted). These findings, conclusions, and recommendation provide notice, and the period for filing objections to them affords an opportunity to respond. *Accord Starrett*, 2018 WL 6069969, at *2 (citations omitted).

Here, the undersigned notes that the First Amended Petition – though it joins Codilis as a defendant – contains no factual or legal allegations against it. -15- And, so, the Court should dismiss without prejudice Nicholson's claims – if any – against Codilis. Recommendation The Court should grant Defendant PHH Mortgage Corporation's motion to dismiss [Dkt. No. 10].

It should dismiss with prejudice Plaintiff James Nicholson's negligence claim against Defendant PHH Mortgage Corporation. And it should dismiss without prejudice Plaintiff's wrongful foreclosure claim against Defendant PHH and all claims against Defendant Codilis & Moody PC and grant Plaintiff leave to amend his complaint as to those claims by a reasonable deadline to be set by the Court.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or -16- adopted by the district court, except upon grounds of plain error. See *Douglass v. United Servs. Auto. Assn*, 79 F.3d 1415, 1417 (5th Cir. 1996). DATED: February 5, 2026 DAVID L. HORAN UNITED STATES MAGISTRATE JUDGE -17-