## 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

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| 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| PRECEDENTIAL VALUE | Nonprecedential magistrate judge findings and recommendation; subject to district-court adoption and objections under Rule 72(b).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 |
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## 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)

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