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

Isary Lopez v. Freedom Mortgage Corporation

Lopez · No. 4:25-CV-01111 · Decided April 2, 2026

SUMMARY

The United States District Court for the Southern District of Texas conditionally granted Freedom Mortgage Corporation’s motion to dismiss claims arising from mortgage servicing, escrowed property taxes, and threatened foreclosure. The court dismissed the breach of contract, RESPA claim under 12 C.F.R. § 1024.39, and negligence or negligent misrepresentation claims, while allowing amendment of the RESPA claim under 12 C.F.R. § 1024.41 to plead actual damages. Plaintiff was granted until April 24, 2026, to amend that claim.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Houston Division
WRITING FOR THE COURT	Andrew S. Hanen
JURISDICTION	United States District Court for the Southern District of Texas, Houston Division
DECIDED	April 2, 2026
DOCKET	4:25-CV-01111
DISPOSITION	other
PROCEDURAL POSTURE	Defendant removed Plaintiff's Texas state-court action to federal district court and moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss claims for breach of contract, RESPA violations, negligence or negligent misrepresentation, injunctive relief, attorney's fees, and other damages.
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 does not accept legal conclusions or unsupported factual assumptions. The complaint must contain sufficient factual matter to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

PARTIES	Isary Lopez v. Freedom Mortgage Corporation

TOPICS

motions to dismiss · foreclosure · breach of contract · consumer protection · civil procedure

PRACTICE AREAS

civil procedure · mortgage servicing · foreclosure · contracts · consumer protection

QUESTIONS PRESENTED

1. Whether Lopez stated a breach-of-contract claim based on alleged violations of Texas Property Code § 51.002 and foreclosure-notice requirements while she admitted that she was in default on the mortgage.
2. Whether Lopez stated a private claim under 12 C.F.R. § 1024.39.
3. Whether Lopez stated a claim under 12 C.F.R. § 1024.41 by alleging actual damages causally resulting from the alleged RESPA violation.
4. Whether the economic-loss doctrine barred Lopez's negligence or negligent-misrepresentation claim.
5. Whether Lopez's requests for injunctive relief, attorney's fees, and other damages could proceed absent a viable underlying substantive claim.
6. Whether Lopez should receive leave to amend her pleading.

HOLDINGS

1. A mortgagor who admits default on the underlying loan cannot maintain a breach-of-contract claim against the mortgagee or servicer based on an alleged subsequent breach of the deed of trust. Lopez therefore failed to state a breach-of-contract claim.
2. 12 C.F.R. § 1024.39 does not provide a private cause of action; Lopez's claim under that regulation therefore failed as a matter of law.
3. A plaintiff seeking relief under 12 C.F.R. § 1024.41 must plead actual damages resulting from the alleged violation. Lopez failed to plead a plausible causal relationship between the alleged violation and her damages, but the defect was potentially curable through amendment.
4. The economic-loss doctrine barred Lopez's negligence or negligent-misrepresentation claim because the alleged losses arose from the contractual mortgage relationship and were not distinct, separate, and independent from the losses recoverable under her breach-of-contract theory.
5. Requests for injunctive relief, attorney's fees, and other damages could not proceed independently because they depended on viable underlying causes of action, all of which failed at the pleading stage.
6. Leave to amend should be granted for the § 1024.41 RESPA claim because the pleading defect might be cured by alleging actual damages and causation, but amendment was not permitted for the breach-of-contract, § 1024.39, or negligence claims because those defects were incurable as pleaded.

KEY QUOTATIONS

> *“To defeat a motion to dismiss under Rule 12(b)(6), a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.””* (at 3)

> *“a party in default cannot assert a claim for breach against the other party.”* (at 6)

> *“To recover, a claimant must show that actual damages resulted from a RESPA violation.”* (at 8)

> *“All of Plaintiffs claims, other than her RESPA claim under 12 C.F.R. § 1024.41, are hereby dismissed.”* (at 13)

FACTUAL BACKGROUND

Lopez occupied a Katy, Texas property as her primary residence and homestead and alleged that Freedom Mortgage mishandled escrowed property-tax payments, causing an increase in her monthly mortgage payments and contributing to her default. She alleged that the servicer partially corrected the escrow issue, later received her loan-modification application, and proceeded toward foreclosure without providing a written denial or proper foreclosure notices. No foreclosure sale occurred because the state court issued a temporary restraining order.

PROCEDURAL HISTORY

Lopez filed an Original Verified Petition in the 268th Judicial District Court of Fort Bend County, Texas, seeking relief related to threatened foreclosure of her residence. The state court issued a temporary restraining order preventing the scheduled foreclosure sale. Freedom Mortgage removed the action based on diversity and federal-question jurisdiction and moved to dismiss. The district court conditionally granted the motion, dismissed all claims except the RESPA claim under 12 C.F.R. § 1024.41, dismissed several claims with prejudice, and granted leave to amend the surviving RESPA claim by April 24, 2026.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Lopez may amend only her RESPA claim under 12 C.F.R. § 1024.41 by April 24, 2026. If she does not timely amend, the court will dismiss the case; if she does amend, Freedom Mortgage has 21 days to respond.

CASES CITED

- Kansas v. Nebraska, 527 U.S. 1020 (1999)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 663, 678-79 (2009)
- Sonnier v. State Farm Mut. Auto. Ins. Co., 509 F.3d 673, 675 (5th Cir. 2007)
- U.S. ex rel. Willard v. Humana Health Plan of Tex. Inc., 336 F.3d 375, 379 (5th Cir. 2003)
- Williams v. Wells Fargo Bank, N.A., 884 F.3d 239, 244 (5th Cir. 2018)

- Morlock, L.L.C. v. HSBC Bank USA, N.A., 2017 WL 9249490, at *3 (S.D. Tex. Jan. 17, 2017), report and recommendation adopted, 2017 WL 1100940 (S.D. Tex. Mar. 24, 2017)
- Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 566 (Tex. 2001)
- James v. Wells Fargo Bank, N.A., 2014 WL 2123060, at *7 (S.D. Tex. May 21, 2014)
- Water Dynamics, Ltd. v. HSBC Bank USA, Nat'l Ass'n, 509 F. App'x 367, 369 (5th Cir. 2013)
- Thomas v. EMC Mortgage Corp., 499 F. App'x 337, 341 (5th Cir. 2012)
- Vallier v. Nationstar Mortg., LLC, 2018 WL 1319166, at *5 (S.D. Tex. Feb. 1, 2018), report and recommendation adopted, 2018 WL 1322247 (S.D. Tex. Mar. 13, 2018)
- Solis v. U.S. Bank, N.A., 2017 WL 4479957, at *4 (S.D. Tex. June 23, 2017), aff'd, 726 F. App'x 221 (5th Cir. 2018)
- Brown v. Bank of N.Y. Mellon, 2016 WL 2726645, at *2 (E.D. Va. May 9, 2016)
- Gresham v. Wells Fargo Bank, N.A., 642 F. App'x 355, 359 (5th Cir. 2016)
- Whittier v. Ocwen Loan Servicing, L.L.C., 594 F. App'x 833, 836 (5th Cir. 2014)
- Pugh v. General Terrazzo Supplies, Inc., 243 S.W.3d 84, 90 (Tex. App.—Houston [1st Dist.] 2007, pet. denied)
- Sterling Chemicals, Inc. v. Texaco Inc., 259 S.W.3d 793, 796-97 (Tex. App.—Houston [1st Dist.] 2007, pet. denied)
- Cook v. Wells Fargo Bank, N.A., 2010 WL 2772445, at *4 (N.D. Tex. July 12, 2010)
- Everhart v. CitiMortgage, Inc., 2013 WL 264436, at *10 (S.D. Tex. Jan. 22, 2013)
- Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 329 (5th Cir. 2002)