


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

JAN 25 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

JAMES MARTZALL)
)
 Plaintiff)
)
 v.)
)
 SELECT PORTFOLIO SERVICING, INC.)
)
 Defendant)

CIVIL NO. SA-23-CV-10-OLG

ORDER

On this date, the Court considered the report and recommendation of United States Magistrate Judge Henry J. Bemporad, filed in the above-styled and numbered cause on December 12, 2023. Docket no. 12. Plaintiff Martzall’s generalized, conclusory objections to the summary judgment recommendation (docket no. 17) have been reviewed for clear error. *See Battle v. U.S. Parole Com’n*, 834 F.2d 419, 421 (5th Cir. 1987) (the Court need not conduct a de novo review if the objections are frivolous, general, or conclusory; instead, the Court reviews the report and recommendation for clear error). Defendant partially objects to the Magistrate Judge’s recommendation on non-monetary sanctions (docket no. 18), which the Court has also reviewed for clear error. *See* 28 U.S.C. § 636(b)(1)(A). After such review, the Court finds no error in the Magistrate Judge’s findings and recommendation.

It is therefore ORDERED that the Magistrate Judge’s recommendation (docket no. 12) is ACCEPTED in its entirety. For the reasons stated in the recommendation, the motion for summary judgment (docket no. 7) is GRANTED, and all claims asserted against Defendant Select Portfolio Servicing, Inc., the loan servicer, are DISMISSED with prejudice to refileing same.

This is not the first time the Court has dismissed Mr. Martzell's claims with prejudice to refile. *See James Martzell v. Deutsche Bank Nat'l Trust Co., as Indenture Trustee, on behalf of the holders of the Accredited Mortgage Loan Trust 2006-1 Asset Backed Notes*, No. 5:22-CV-18-XR, docket no. 39.¹ Plaintiff seems to be ignoring the Court's rulings on the merits and continues to file duplicative lawsuits against both the mortgagee and loan servicer to delay foreclosure sale of the property after failing to make mortgage payments for over seven years.² Thus, for the reasons stated in the recommendation, it is further ORDERED that Defendant's motion for sanctions in the form of a pre-filing injunction (docket no. 8) is GRANTED as follows:

Before filing any case in this Court involving the property located at 16543 Inwood Cove, San Antonio, Texas, or the mortgage thereon, or within 30 days of the removal of any such case brought by James Martzell from state court to federal court, Martzell must obtain leave of Court before the action may continue.³ To obtain such leave, Martzell must verify in a "Motion for Leave to Continue Action" that his claims have never been raised or disposed of on the merits by any court. Martzell must attach to the motion a copy of this Dismissal Order, the Magistrate Judge's report and recommendation (docket no. 12), and the Dismissal Order (docket no. 39) entered in cause no. 5:22-CV-18-XR. The Clerk of the Court is

¹Cause no. 5:22-CV-608-XR, styled *James Martzell v. Select Portfolio Servicing, Inc.* was consolidated with Cause No. 5:22-CV-18-XR, styled *James Martzell v. Deutsche Bank Nat'l Trust Co., as Indenture Trustee, on behalf of the holders of the Accredited Mortgage Loan Trust 2006-1 Asset Backed Notes*, wherein all claims were dismissed with prejudice.

²Plaintiff recently filed another lawsuit, cause no. 5:24-CV-42-OLG, styled *James Martzell v. Deutsche Bank Nat'l Trust Co., as Indenture Trustee, on behalf of the holders of the Accredited Mortgage Loan Trust 2006-2 Asset Backed Notes*, after Magistrate Judge Bemporad's recommendation was issued. The Court has issued a show cause order (docket no. 4) in that case.

³If another lawsuit is filed in state court and removed to federal court, the removing party should conspicuously note in the removal papers that the lawsuit is related to previously filed lawsuits and list them by cause number.

directed not to docket any of Martzall's other filings until leave to proceed has been granted. Until such leave is granted, any other motions or documents that Martzall serves on the defendant(s) shall be nullities. Martzall's failure to strictly comply with these requirements will result in prompt dismissal of his case.

It is further ORDERED that final judgment be entered accordingly, with taxable costs assessed against Plaintiff, James Martzall. All other motions are DENIED as moot. This case is closed, but **the pre-filing injunction against Mr. Martzall will remain in full force and effect until further order of the Court.**

SIGNED on the 25 day of January, 2024.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE