NORTH DAKOTA BANKERS ASSOCIATION

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§ 1981 CLAIMS

Racist Remarks at the Teller Window: Why They Weren't Enough for § 1981 Liability [5TH CIR]

African American depositors attempted to open a personal checking account at a branch location of the bank. During the encounter, a bank employee reportedly asked if the depositors were in the "wrong place" and stated that the bank did not do business with their racial group. After the employee obtained the depositors' identifying information to run a banking history report, the bank allegedly accused them of fraud, and a security guard escorted them from the building. The depositors filed suit alleging intentional racial discrimination under 42 U.S.C. § 1981 and various state torts. Section 1981 is a federal statute that guarantees all persons within the jurisdiction of the United States the same right to "make and enforce contracts" without regard to race. This includes the making, performance, modification, and termination of contracts, as well as the enjoyment of all benefits and conditions of the contractual relationship. The bank moved for summary judgment, asserting that the initial denial was based on a negative banking history report showing "account abuse" rather than the depositors' race. The district court granted the motion, and the depositors appealed the dismissal of their § 1981 claims.

In Brown v. Am. First Nat'l Bank, No. 25-20062, 2026 WL 908936, 2026 U.S. App. Lexis 9608 (5th Cir. Apr. 2, 2026) (opinion not yet released for publication), the court affirmed the summary judgment in favor of the bank. To succeed on a § 1981 claim, a plaintiff must show: (1) they belong to a protected class, (2) the defendant intended to discriminate, and (3) the discrimination concerned a protected activity, such as contracting. Because the depositors relied on circumstantial evidence, the court utilized the burden-shifting framework from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Once a defendant produces a legitimate, non-discriminatory reason for its actions, the plaintiff must provide substantial evidence that the reason is a mere pretext for discrimination. Applying this framework, the court held that the bank articulated a legitimate, nondiscriminatory reason for the initial denial: the depositors' poor banking history. The court reasoned that the ultimate test under § 1981 is whether the outcome would have been different "but for" the depositors' race. Abdallah v. Mesa Air Grp., Inc., 83 F.4th 1006 (5th Cir. 2023). Although the court acknowledged the offensive race-related remarks made by branch personnel, it found that the plaintiffs failed to create a genuine dispute of material fact regarding pretext. Specifically, the plaintiffs provided no evidence showing that a customer of a different race with the same history of delinquent accounts and "account abuse" would have been permitted to open an account on the same date. Accordingly, the court affirmed summary judgment in favor of the bank.

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ARTIFICIAL INTELLIGENCE

Citing Ghost Cases: Artificial Intelligence and Professional Responsibility [BKR ED AR]

On July 21, 2025, a limited liability company (the debtor) represented by two attorneys (the debtor's counsel) filed a Chapter 11 bankruptcy case. The debtor's counsel filed an amended Motion for Authority to Pay Critical Vendors, citing "In re Berry Good, LLC," a case that does not exist, as precedent. Critical vendor motions are not commonly filed or granted in the Eastern District of Arkansas, a fact which drew the court's attention. The court found that the case and its supporting authority were fabricated, and the debtor's counsel admitted to using artificial intelligence (AI) to draft the motion. The bankruptcy court issued an Order to Appear and Show Cause Why Sanctions Should Not Issue (OSC), and the debtor's counsel responded with four key points: (1) acceptance of responsibility for the citation, along with a plea of negligence and denial of any intent to mislead the court or gain an adversarial advantage; (2) implementation of internal safeguards to prevent similar incidents, including stopping the use of AI for legal drafting, attending additional CLE training, self-reporting the issue, and implementing verification procedures; (3) an offer to not bill the debtor for any time related to the Amended Motion, OSC, or their Response, and (4) self-reporting the issue to the Arkansas Office of Professional Conduct. In light of that response to the OSC, the court first examined whether the counsel's use of the fabricated case citation in the amended motion violated Rule 9011 of the Federal Rules of Bankruptcy Procedure, Local Rule 2090-2 of the United States Bankruptcy Court for the Eastern District of Arkansas, and the Arkansas Rules of Professional Conduct. Second, the court decided the issue of whether sanctions were appropriate.

In In re Whitehall Pharmacy LLC, 672 B.R. 768 (Bankr. E.D. Ark. 2025), the Arkansas Eastern Bankruptcy Court withdrew and dismissed the OSC, concluding that no sanctions were justified. The court applied Rule 9011, which requires attorneys to ensure that claims and legal contentions are warranted by existing law or a nonfrivolous argument for extending, modifying, or reversing that law. The court also considered Local Rule 2090-2 which prohibits making false statements of fact or law to a tribunal and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The court determined that including a fabricated case citation in the amended motion violated both rules, concluding that "the use of a phantom case clearly violates the traditional and expressed norms of advocacy." The court decided that Rule 9011, the court's local rules and inherent powers, and the state's Rules of Professional Conduct provided ample grounds for imposing sanctions. Though it held that the debtor's counsel possessed responsibility for their negligent reliance on AI, it found no indication that the debtor's counsel deliberately misled the court. Due to the distinction the court drew between an "intentional misrepresentation" and "misplaced reliance," the court acknowledged "a limited window" for a defense arising from use of new technology. Ultimately, the court ruled the internal safeguards implemented by counsel appropriate and sufficient to address the violation. After withdrawing the OSC, the court then forwarded its order to the Arkansas Office of Professional Conduct as a supplement to counsel's self-reporting, not as an independent referral.

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BANK LOANS

No Tender, No Collector, No Claim [WD TX]

The purchaser bought a used vehicle and financed it with the dealership. The dealership then assigned the loan to the assignee. At some point later, the purchaser defaulted. The purchaser attempted to submit a payment to the assignee with a "bill of exchange." The assignee declined to receive the bill of exchange and the purchaser filed suit prose under five causes of action: breach of contract, violation of the Fair Debt Collection Practices Act (FDCPA), violation of the Texas Deceptive Trade Practices Act (TDTPA), wrong repossession, and conversion. The purchaser argued that the assignee must accept the bill of exchange as valid tender for payment on the loan. The assignee then moved to dismiss, arguing that the facts cannot support the purchaser's claim that the bill of exchange is valid tender nor can it support that the assignee is a debt collector under the FDCPA. The court considered the motion as to all claims, and the subsequent motions filed by the purchaser. The purchaser's subsequent motions depend on the effect of allowing the amendment, consistent with Fifth Circuit precedent. See Hitt v. City of Pasadena, 56l F.2d 606, 608-09 (5th Cir. 1977).

In Collins v. Westlake Fin. Servs., No. SA-25-CV-00021-JKP, 2025 WL 756205, 2025 U.S. Dist. LEXIS 42250, (W.D. Tex. Mar. 10, 2025) (unpublished opinion) the court held that the purchaser did not sufficiently allege a claim upon which relief may be granted for any claim and that the purchaser's Emergency Motion for Contempt and Sanctions, Motion to Amend Complaint, and the Request for Fair Compensation for Vehicle, would therefore fail. Simply, the court granted the assignee's motion to dismiss under Fed. R. Civ. P. 12(b)(6) and denied the subsequent motions as a result, dismissing with prejudice. For a claim to be sufficiently pled under Fed. R. Civ. P. 12(b)(6), it must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombley, 550 U.S. 544, 555 (2007). A claim is plausible when the factual content allows the court to reasonably infer the defendant (here the assignee) is liable for the alleged misconduct. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Accordingly, dismissal is proper when there is either no cognizable legal theory upon which relief may be granted, or when there are insufficient facts to support the plaintiff's claims. Jones v. Greninger, 188 F.3d 322, 324 (5th Cir. 1999). In the case of pro se litigants, pleadings are construed even more in their favor than typical motions to dismiss. Taylor v. Brooks A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2016). However, none of the claims meet this standard. The breach of contract failed because under both statutory and case law, a bill of exchange is not legal tender. See 31 U.S.C. § 5103; Chavis v. T-Mobile US, Inc., No. 23-CV-1513, 2024 U.S. Dist. LEXIS 6565, 2024 WL 150734, at *4 and n.2 (W.D. Tex. Jan. 11, 2024). Therefore, the plaintiff cannot establish that a contract was breached, because the invalid tender does not constitute performance by one party. Second, the court reasoned that the assignee was not a debt collector under the FDCPA because the loan was never in default. Therefore, the plaintiff cannot establish any breach under the FDCPA. Third the purchaser failed to indicate any specific violation of the TDTPA, and because the alleged violation-not accepting the bill of exchange as tender-is not a violation as a matter of law. Fourth, the wrongful possession was improperly pled because the default occurred with an invalid payment. Finally, the conversion claim failed, because the conversion of personal effects within the vehicle required the vehicle to be wrongfully repossessed in the first place, which it was not. The court also found that the motion to amend was futile on all counts because the first, third and fourth claim required the tender to be valid, which was not as a matter of law. The second claim failed and could not be amended because it required the assigned to be a debt collector under the statute-which it could never be. Finally, because the fifth claim relied on the fourth claim and the fourth claim could not be amended, the fifth claim could not be amended. Therefore, the court granted the assignee's motion to dismiss on all claims with prejudice, because all amendments would be futile.

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When Debt Evolves: Liability After Repossession [ND IN]

The borrower co-signed an auto loan with her boyfriend's son because the son could not qualify for the loan on his own. After the loan went into default, leaving a deficiency balance, the vehicle was repossessed and later sold at auction. The bank then entered into a Deficiency Balance Program (DBP) with the borrower's boyfriend's son and assigned a new account number (account no. 2001) to the remaining balance. The DBP, put in place when a borrower still owes money after repossession but cannot pay in full, offered reduced monthly payments. The boyfriend's son failed to make any payments towards account no. 2001, and the account fell delinquent. The borrower was unaware of the DBP arrangement and later discovered that the bank reported her as liable on the account to credit reporting agencies. She subsequently disputed her liability for the account no. 2001 at least eight times, alleging identity theft and unauthorized participation in the DBP. The bank investigated these disputes and concluded that the borrower remained liable for the deficiency balance under the original loan agreement. The borrower sued the bank, alleging violations of the Fair Credit Reporting Act (FCRA): (1) an inaccurate report of ownership under 15 U.S.C. 1681s-2(a); (2) failure to mark account no. 2001 as disputed under § 1681s-2(a)(3); (3) failure to investigate the disputed information under § 1681s-2(b); and (4) unlawfully accessing her credit report. The parties filed cross-motions for summary judgment, with the bank requesting judgment on all claims and the borrower seeking partial summary judgment on liability.

In Jordan. v. M & T Bank Corp., 772 F. Supp. 3d 921 (N.D. Ind. 2025), the court determined that account no. 2001 was not a new loan, but rather a continuation of the original auto loan, reflecting the deficiency balance after repossession. The borrower remained liable for the deficiency under the original loan agreement, which permitted the bank to modify the terms without her consent. The bank argued that it could assign a different account number without a borrower's approval. In re Henriquez, 536 B.R. 341, 349 (Bankr. N.D. Ga. 2015). The court also held that the bank's reporting of the account accurately depicted the borrower's liability for the deficiency balance. Furthermore, the court concluded that the bank was not required to mark the account as "disputed" because the borrower's disputes were meritless because account no. 2001 was the "deficiency balance" of the original auto loan that the borrower was still liable for. The bank's multiple investigations consistently confirmed the borrower's liability. The court found that the bank conducted reasonable investigations into the borrower's disputes by verifying her personal identifiers, reviewing the loan documents, and ensuring the absence of fraud or identity theft. The court further held that just because the bank continued to find the borrower liable, the borrower could not automatically assume that the investigations were unreasonable. Chiang v. Verizon New England Inc., 595 F.3d 26, 41 (1st Cir. 2010). Lastly, the court held that the bank's access to the borrower's credit report was a permissible purpose under the FCRA, as it related to reviewing and collecting the deficiency balance. Accordingly, the bank's motion for summary judgment was granted, and the borrower's cross-motion for partial summary judgment was denied.

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BANKRUPTCY

Debt Nondischargeable When Arising from False Pretenses or Actual Fraud [BKR ED TX]

The debtor worked for the company as an employee, then as a director, and eventually as president, secretary, and treasurer after his father stepped down. The company owed money on two loans at a bank, which the debtor sought to refinance with a new bank (the bank). The bank refinanced the loans, and the new loans were guaranteed by the debtor, the father (the guarantor), the debtor's trust, and the family's limited partnership. Later, the company renewed those two loans, obtained a third one, and renewed the third loan as well. While running the company, the debtor increasingly deposited company funds into his "account receivable," or his company account, from which he made withdrawals to buy and renovate his home, purchase three horses, and pay personal expenses. The debtor wrote checks to the company, though the checks did not reflect the amounts spent each month. After the bank sued the company, the debtor agreed to the appointment of a receiver who shut down the company and the debtor's account receivable. The bank also sued the guarantor and the trustees of the debtor's trust, who then brought claims against the debtor. The guarantor did not sign the loan documents for the bank but discovered his signature on them upon receiving notice of the bank's lawsuit. The debtor and his wife filed for Chapter 7 bankruptcy. The guarantor filed this action against the debtor and his wife, raising claims "under 11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), 523(a)(6), 727(a)(4)(A)." After the court ruled on the debtor's motion to dismiss and denied both parties' motions for summary judgment, all claims remained against the debtor except for the § 523(a)(4); however, only the §727(a)(4)(A) claim remained against the debtor's wife. Therefore, the court considered whether it should deny the debtor's discharge based on false pretenses, actual fraud, materially false written representation regarding his financial condition, willful and malicious injury by the debtor, and making a false oath.

In Standley v. Standley (In re Standley), No. 22-40689, Chapter 7, Adv. No. 22-04048, 2025 WL 2804193, 2025 Bankr. LEXIS 2484 (Bankr. E.D. Tex. Sept. 30, 2025) (opinion not yet released for publication), the court rendered judgment for the guarantor in part and for the debtor in part. The court concluded that the guarantor proved by a preponderance of the evidence that the debtor obtained the guarantor's guaranty under false pretenses and by actual fraud, so it ruled the debt nondischargeable on both grounds. The court denied rendering the debt nondischargeable on the basis of willful and malicious injury and for making a false oath. Additionally, the court denied the debtor's affirmative defenses and other claims, finding each one not. barred or without evidence to support it. For 11 U.S.C. § 523(a)(2)(A), the court distinguished the statute's causes of action for actual fraud from false pretenses and false representations, though the guarantor alleged all three. The court first found that a debt existed, consisting of all liability of the guarantor to the bank under each guaranty signed in his name. A false representation requires an express statement, whereas false pretenses do not, so long as they rest on misleading conduct. The court found that the debtor lacked credibility when he claimed he possessed verbal permission from the guarantor to sign the loan documents and when he concluded that the debtor held the required intent to deceive for both claims from signing for the guarantor dishonestly. In concluding that the debtor knew he needed the guarantor's signature to obtain the loans and that the bank relied on the signature in granting the loans, the court held that the debtor met the elements of false representation: "(1) knowing and fraudulent falsehoods, (2) describing past or current facts, (3) that were relied upon by the other party." Further, the court identified the elements for false pretenses as: "(1) the debtor engaged in conduct 'wronging one in his property rights by dishonest methods or schemes [such as] deprivation of something of value by trick, deceit, chicane[ry] or overreaching;' (2) there was scienter or intent; (3) causation; and (4) damages." The court found that the debtor wronged the guarantor by causing him to assume personal liability to the bank and by using his "account receivable" to an extent that the company defaulted on the loans, and the bank filed suit against the guarantor. Thus, the court held that the debt arose by false pretenses and ruled the liability nondischargeable against the debtor under § 523(a)(2)(A). The court then applied the elements of actual fraud: "(1) the debtor made representations; (2) at the time they were made the debtor knew they were false; (3) the debtor made the representations with the intention and purpose to deceive the creditor; (4) the creditor justifiably relied on such representation; and (5) the creditor sustained losses as a proximate result of the representations." By fraudulently signing while knowing he lacked authorization to do so, the court held that the debtor possessed the intent to deceive. Additionally, the court found that the debtor caused the bank to rely on the authenticity of the signatures and the guarantor to "justifiably and actually" rely on the debtor's representations about the state of the loans. From those findings, the court ruled that the debt stemmed from actual fraud. Under 11 U.S. § 523(a)(2)(B), the court listed the following elements to order a debt nondischargeable: "(1) that the debtor made a written representation regarding his financial condition; (2) that the written representation regarding his financial condition was materially false; (3) that the creditor reasonably relied upon the materially false written representation; and (4) that the materially false written representation was published by the debtor with the intent of deceiving the creditor." The court held that the guarantor did not establish these elements because the debtor did not make, nor did he reasonably rely on, a written materially false representation concerning the debtor's or insider's financial condition. Under a § 523(a)(6) claim, the court interpreted "willful and malicious injury by the debtor to another entity or to the property of another entity" to mean deliberate or intentional injury, not merely a deliberate act that caused injury. To qualify as willful, the act must either meet: "(1) an objective substantial certainty of harm arising from a deliberate action or (2) there is a subjective motive to cause harm by the party taking a deliberate or intentional action." The court ruled that the guarantor did not show that the debtor inflicted "a deliberate or intentional injury," "created an objective substantial certainty of harm," or "created a subjective substantial certainty of harm." Therefore, the § 523(a)(6) claim failed. To grant a § 727(a)(4)(A) claim for a debtor making a false oath, the moving party must prove "(l) the debtor made a statement under oath; (2) such statement was false; (3) the debtor knew the statement was false; (4) the debtor made the statement with fraudulent intent; and (5) the statement was materially related to the bankruptcy case." The guarantor cited the debtor's knowledge of the undervaluation of his assets in his bankruptcy schedules and his failure to disclose transfers from the company as false oaths. However, the court ruled those statements and omissions insufficient to warrant denial of a discharge under the statute.

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The Tavern That Got Away: Generic Collateral Descriptions Beat§ 523 Claims [BKR CO]

The creditor sold a tavern business to the debtor's LLC, with the purchase price to be paid with a promissory note. However, the parties failed to sign a promissory note, a separate security agreement, or file a financing statement to perfect any security interest on the business assets. After the business struggled financially during the pandemic, the debtor stopped making payments and allegedly made false representations regarding his ability to pay to induce forbearance. During subsequent state court litigation, the debtor falsified bank records, claiming he had repaid the debt in full. Following the debtor's bankruptcy filing, the creditor initiated an adversary proceeding seeking to declare the debt nondischargeable under 11 U.S.C. § 523. Section 523 of the Bankruptcy Code provides specific exceptions to the general discharge of debts, including those obtained by fraud, embezzlement, or willful injury. The court considered whether the parties created an enforceable security interest in the debtor's assets and whether the debtor's post-default misrepresentations rendered the debt nondischargeable under § 523.

In Laake v. Goll (In re Goll), No. 23-13341 MER, 2026 WL 235947, 2026 Bankr. LEXIS 184 (Bankr. D. Colo. Jan. 27, 2026) (opinion not yet released for publication), the court denied the creditor's claims for nondischargeability. Regarding the claims under §§ 523(a)(4) and (a)(6), the court first analyzed whether the creditor established an enforceable security interest in the debtor's assets or bank accounts under Article 9 of the UCC. Under Colo. Rev. Stat. § 4-9-108, a security agreement must "reasonably identify" the collateral, and a description such as "all the debtor's assets" is explicitly prohibited as insufficient. The court held the purchase agreement's reference to "the business and all assets" was too generic to create an enforceable security interest in all of the debtor's assets, although the court noted the agreement may have created a security interest in inventory and packaging. Because the creditor failed to prove an enforceable security interest in the misappropriated funds or equipment, the court concluded there could be no theft or embezzlement of collateral. The court further explained that a debtor could not embezzle property he merely owns because it is subject to another's security interest. Addressing the § 523(a)(2)(A) fraud claim, the court applied the elements of fraudulent misrepresentation set forth in Johnson v. Riebesell (In re Riebesell), 586 F.3d 782 (10th Cir. 2009): "(l) debtor made a false representation; (2) debtor made the representation with the intent to deceive the creditor, (3) the creditor relied on the representation, (4) the creditor's reliance was justifiable; and (5) the debtor's representation caused the creditor to sustain a loss." The court concluded that the debtor made the alleged misrepresentations regarding his profitability and future ability to repay months after he incurred the debt. Although the court ruled that fraud that induced a creditor to forbear from collection may constitute an "extension of credit," it also determined that the creditor must demonstrate that it possessed valuable collection remedies at the time of the misrepresentation and that those remedies diminished in value during the period of forbearance. Ojeda v. Goldberg, 599 F.3d 712 (7th Cir. 2010). Because the creditor lacked an enforceable security interest and failed to establish that it relinquished any specific, valuable collection remedies in reliance on the debtor's text messages, the court held that the debt was not "obtained by" fraud within the meaning of § 523(a)(2)(A). The court further determined that the debtor's subsequent misconduct in the state court litigation, including falsified checks and statements, did not render the original loan debt nondischargeable because the debt was not traceable to that later fraud. Accordingly, the court dismissed the creditor's complaint.

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FORECLOSURE

Unsupported Counterclaims and Defenses Cannot Prevent Foreclosure [ND TX]

The mortgagor executed an equity note in the sum of $320,000 and granted the bank a security mortgage on his home. Later, the mortgagor defaulted on the loan payments and the bank sought judicial foreclosure on the property. The mortgagor filed an answer containing nonspecific denials and several affirmative defenses. Additionally, the mortgagor asserted a counterclaim alleging that the bank damaged the property. The bank moved to strike the denials, strike the affirmative defenses, dismiss the counterclaim, and obtain summary judgment authorizing foreclosure.

In U.S. Bank N.A. v. Malloy, No. 3:24-CV-0382-B-BW, 2026 WL 261739, 2026 U.S. Dist. LEXIS 21458 (N.D. Tex. Jan. 13, 2026) (opinion not yet released for publication), the magistrate court recommended granting the bank's summary judgment for judicial foreclosure. It also recommended granting in part and denying in part the bank's amended motion to strike and dismiss, striking the mortgagor's affirmative defenses and dismissing his counterclaim. First, the court recommended granting summary judgment, finding there was no dispute of any material fact. The court stated that in order to foreclose, a lender must demonstrate: "(1) a debt exists; (2) the debt is secured by a lien created under Art. 16, § 50(a)(6) of the Texas Constitution; (3) the debtor is in default under the note and security instrument; and (4) the debtor received notice of default and acceleration." Pennymac Loan Servs., LLC v. Beall, No. 3:23-CV-1909-B-BK, 2024 U.S. Dist. LEXIS 235294, 2024 WL 5256503, at *3 (N.D. Tex. Dec. 17, 2024) (citations omitted). The court concluded that the bank presented undisputed evidence of each element of foreclosure, because the bank produced the note in question, while it was in default, and was therefore entitled to summary judgment. Next, the court considered the mortgagor's answers, affirmative defenses, and counterclaim. The court found that under Fed. R. Civ. P. 12, the mortgagor's affirmative defenses should be allowed, consistent with the Fifth Circuit standard of rarely striking pleadings. However, under Fed. R. Civ. P. 8, the court found that the mortgagor's counterclaim failed because it contained conclusory statements and lacked any factual allegations that gave rise to a plausible claim, making the pleading insufficient as a matter of law. Accordingly, the magistrate court recommended granting the bank's summary judgment motion and recommended granting in part and denying in part the bank's amended motion to strike and dismiss.

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Default on Third Loan Modification Agreement Is the Charm for Foreclosure [D NM]

In July 2007, the mortgagor executed a promissory note (the note) and a corresponding mortgage on his property to obtain a loan. In 2018, the mortgagor executed the first Loan Modification Agreement and in 2022 entered into the second Loan Modification Agreement. Both loan modifications occurred because the mortgagor defaulted. The mortgage assignee, who then possessed the note indorsed in blank, filed suit. During the litigation, a third Loan Modification Agreement was executed. The mortgagor defaulted on this loan as well. The assignee then moved for summary judgment on both the note and the mortgage. Summary judgment would entitle the assignee to foreclose on the property to recover the debt based on a clause in the mortgage that provided foreclosure as a potential remedy in the event of a default. The assignee argued that the note, the mortgage, and the default history entitled it to summary judgment to foreclose on the property. The mortgagor did not respond to the motion.

In Wilmington Sav. Fund Soc'y v. Jaramillo, No. 1:24-CV-00104-MLG-KK, 2026 WL 1091789, 2026 U.S. Dist. LEXIS 89137 (D.N.M. Apr. 26, 2026) (opinion not yet released for publication), the district court granted the trustee's motion for summary judgment to foreclose on the property. A court can grant summary judgment under Federal Rule of Civil Procedure 56(a) "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The movant can be awarded summary judgment by specifically referring to admissible evidence which demonstrates an absence of material facts. See Mayer Botz Enters. LLC v. Cent. Mut. Ins. Co., 720 F. Supp. 3d 1081, 1082 (D.N.M. 2024). Then, the nonmovant must contest the motion's factual assertions, or it waives that right. See Reed v. Bennett, 312 F.3d 1190, 1195 (10th Cir. 2002). However, the court must still consider the claims with respect to the entirety of Fed. R. Civ. P. 56(a), namely, if the facts entitle the moving party to judgment. Id. The mortgagor filed no response to the motion, so the court assumed all material facts were undisputed and would consider whether the assignee is entitled to relief. First, the court considered whether the assignee had the right to foreclose. To establish the right to foreclose, the plaintiff must establish the following: "(i) the holder of the instrument[;] (ii) a non-holder in possession of the instrument who has the rights of a holder[;] or (iii) a person not in possession of the instrument who is entitled to enforce the instrument[.]" NMSA 1978, § 55-3-301. Because the assignee attached a true and correct copy of the note indorsed in blank, it established that it was the holder of the instrument and thus possessed standing to foreclose on the property. The assignee could then either sue to foreclose the property or on the note. Wilmington Sav. Fund Soc'y FSB v. Hutchins, 2019 U.S. Dist. LEXIS 219059, 2019 WL 6975042, at *4 (D.N.M. Dec. 20, 2019) (quoting Romero v. Onewest Bank, FSB, No. 32, 551, ¶ 7, 2013 N.M. App. Unpub. LEXIS 239, 2013 WL 5309570, at *2 (N.M. Ct. App. 2013) (unpublished)). Second, the court considered whether the undisputed facts warranted foreclosure. The mortgagor's failure to make payments on the loan breached the third Loan Modification Agreement and entitled the assignee to judgment as a matter of law. Finally, the court determined the damages were proper from the evidence of the amount owed under the loan and awarded attorney's fees recoverable under the terms of the mortgage and loan agreement. The court then ordered the foreclosure of the in rem action and appointed a special master to hold the foreclosure auction.

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INTEREST ON ESCROWS

Bring Me My Money! Appellate Court Holds National Bank Act Did Not Preempt State Law Requirement for Interest Payments on Escrow Funds [1ST CIR]

The mortgagor took out a residential mortgage loan from a bank chartered under the National Bank Act (the Act). The mortgage agreement required the mortgagor to periodically deposit funds into an escrow account maintained by the bank. Under the terms of the contract, the bank did not pay interest to the mortgagor on the funds held in the escrow account. A decade later, the mortgagor filed a class action suit against the bank, alleging that the failure to pay interest payments on funds held in escrow constituted a breach of contract and qualified as unjust enrichment. The mortgagor argued that Rhode Island law requires mortgagees holding funds in escrow to pay interest on those funds. See R.I. Gen. Laws § 19-9-2(a). The bank moved to dismiss under Fed. R. Civ. P. 12(b)(6), arguing that the Act granted national banks discretionary authority over the management of mortgage-related escrow accounts, and that the state law was therefore preempted. The bank further contended that by requiring the payment of interest on escrow funds, the Rhode Island statute improperly dictated the terms of the banking product and significantly interfered with the bank's ability to exercise its federally authorized powers. The district court dismissed the case in favor of the bank's 12(b)(6) motion. The mortgagor timely filed an appeal; however, after the district court's ruling and before an appeal, the United States Supreme Court addressed a similar issue in Cantero v. Bank of Am., NA., 602 U.S. 205 (2024).

In Conti v. Citizens Bank, N.A., 157 F.4th 10 (1st Cir. 2025), the court reversed and remanded the district court's ruling. The court applied the preemption standard established in Cantero in which the Supreme Court had interpreted the Act to preempt state consumer financial laws only when the laws significantly interfered with a national bank's exercise of its federally granted powers. Cantero, 602 U.S. at 219-21. Rather than applying a categorical rule, Cantero required the Court to evaluate the challenged statute against prior Supreme Court precedents. In doing so, the Court compared the Rhode Island statute to prior Supreme Court cases using the "nuanced comparative analysis." See, e.g., Barnett Bank, NA. v. Nelson, 517 U.S. 25 (1996); Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982); Franklin Nat'l Bank v. New York, 347 U.S. 373 (1954); McClellan v. Chipman, 164 U.S. 347 (1896); Nat'l Bank v. Commonwealth, 76 U.S. (9 Wall.) 353 (1869). The First Circuit held that, unlike in cases where preemption was found, there was no direct conflict with federal law and there was no adequate showing that the statute deprived the bank of a core banking function or rendered its operations impracticable. Previously, the district court only determined there were some limitations on federal powers, but it did not assess the degree of the limitation. See Cantero, 602 U.S. at 219-20, 144 S. Ct.1290. Furthermore, the bank failed to show that the Rhode Island law conflicted with the "overall scheme of federal-banking law." Therefore, the First Circuit reversed and remanded the district court's ruling.

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WIRE TRANSFERS

Bank Defeated Most Claims But Faced UCC Article 4A Liability [D CO]

The depositor sought the release of her funds from an international wire transfer after the bank withheld her money. The depositor contacted the bank, and the bank told the depositor the funds were frozen due to a litigation related freeze on Russian accounts. The bank attributed the delay in releasing funds to an arbitration order in Russia. Based on the delay in releasing her funds, the depositor sued. the bank alleging: "(1) Violation of the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. § 1693 et seq., and Regulation E (12 C.F.R. Part 1005); (2) Violation of UCC Article 4A (Funds Transfers), including§ 4A-212; (3) Breach of Contract; (4) Negligence; (5) Breach of Fiduciary Duty and Breach of the Implied Covenant of Good Faith and Fair Dealing; (6) Conversion; (7) (in the alternative) Unjust Enrichment; and (8) Intentional Infliction of Emotional Distress ("IIED")." Subsequently, the bank filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

In Degtiarova v. JPMorgan Chase Bank N.A., No. 25-CV-02658-DDD-NRN, 2026 WL 482300, 2026 U.S. Dist. LEXIS 35637 (D. Colo. Feb. 20, 2026) (opinion not yet released for publication), the magistrate judge recommended that the court grant in part and deny in part the bank's motion to dismiss. First, the court recommended dismissal of the depositor's EFTA claim because 12 C.F.R. § 1005.3(c)(3) expressly excludes wire transfers from the protections under the statute. For the depositor's UCC Article 4A violations, the court found that the depositor plausibly alleged violations of both §§ 4A-212 and 4A-404 because of non-conclusory facts regarding the scope of the Russian freeze order that permit an inference of the depositor's claim. Next, the court recommended dismissing the depositor's breach of contract claims because the depositor did not identify any provision of the deposit account agreement that the bank breached. However, the court did allow the claim for breach of the implied covenant of good faith and fair dealing by finding it at least plausible that the bank acted unreasonably in withholding funds. The court recommended dismissing the breach of fiduciary duty claim as duplicative of the breach of implied covenant of good faith and fair dealing cause of action. For the depositor's negligence, conversion, and unjust enrichment claims; the court found them preempted by UCC Article 4A. The court held that the "UCC displaces common law remedies if the UCC and the common law would provide 'a means of recovery for the same loss.'" Ajjarapu v. AE Biofuels, Inc., 728 F. Supp. 2d 1154, 1164 (D. Colo. 2010). Lastly, the court dismissed the depositor's IIED claim because she did not sufficiently allege the intentional, reckless, or severe emotional distress elements.

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