

United States District Court  
Southern District of Texas

**ENTERED**

October 13, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

THE BANK OF NEW YORK MELLON FKA	§	
THE BANK OF NEW YORK, AS	§	
SUCCESSOR TRUSTEE FOR JPMORGAN	§	
CHASE BANK, N.A., AS TRUSTEE FOR	§	
NOVASTAR MORTGAGE FUNDING	§	
TRUST, SERIES 2002-3 NOVASTAR HOME	§	
EQUITY LOAN ASSET-BACKED	§	
CERTIFICATES, SERIES 2002-3,	§	CIVIL ACTION NO. 4:16-CV-00376
	§	
Plaintiff,	§	
VS.	§	
	§	
JOHN WAYNE JOHNSON	§	
	§	
Defendant.	§	

**OPINION AND ORDER**

Pending before the Court are Defendant John Wayne Johnson’s Motion for New Trial, Doc. 23, and Plaintiff the Bank of New York Mellon fka the Bank of New York, as Successor Trustee for JPMorgan Chase Bank, N.A., as Trustee for Novastar Mortgage Funding Trust, Series 2002-3 Novastar Home Equity Loan Asset-Backed Certificates, Series 2002-3’s (“BNYM”) Motion for Leave to File Response to Defendant’s Motion for New Trial Out of Time, Doc. 24. Having considered Plaintiff’s motion and determining it bears merit, the Court hereby ORDERS that Plaintiff BNYM’s Motion for Leave to File Response to Defendant’s Motion for New Trial, Doc. 24, is GRANTED.

Furthermore, upon review and consideration of Defendant’s motion, the response thereto attached as Exhibit A to Plaintiff’s Motion for Leave to File Response, Doc. 24, and the relevant legal authority, the Court hereby ORDERS that Defendant Johnson’s Motion for New Trial, Doc. 23, is DENIED.

## **I. Legal Standard**

“A motion to alter or amend judgment must clearly establish either a manifest error of law or fact or must present newly discovered evidence.” *Ross v. Marshall*, 426 F.3d 745, 763 (5th Cir. 2005).

## **II. Discussion**

Johnson argues he did not have a fair and impartial decision because suit was brought against both him and a co-defendant, GAI IRA Property Tax Advantage, LLC, together. Doc. 23 at 1. However, Johnson does not state a basis for setting aside BNYM’s judgment against him.

## **III. Conclusion**

For the foregoing reasons, it is hereby

ORDERED that Plaintiff BNYM’s Motion for Leave to File Response to Defendant’s Motion for New Trial, Doc. 24, is GRANTED. It is further

ORDERED that Defendant Johnson’s Motion for New Trial, Doc. 23, is DENIED.

SIGNED at Houston, Texas, this 11th day of October, 2017.



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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE