

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

April 04, 2020

David J. Bradley, Clerk

Rodney Underwood,

Plaintiff,

versus

Ocwen Loan Service,

Defendant.

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Civil Action H-18-4593

Opinion on Dismissal

This mortgage dispute arose in 2010 when the mortgagor defaulted on the loan. Rodney Underwood filed his first lawsuit attempting to prevent foreclosure on August 17, 2012. The lender succeeded in that suit on November 17, 2014, and Underwood’s appeal was dismissed on July 2, 2015. Since then, the borrower has sued twice in federal court about the same mortgage debt. They were consolidated into this case.

As the court rendered at the hearing on October 28, 2019, this case is barred by *res judicata*. Underwood may not continue to interfere with the Texas district court’s 2014 judgment.

Underwood’s attorney – Nickolas Anthony Spencer – must remit Underwood’s fee. Spencer did not appear at the October hearing. On the morning of the hearing, Underwood told the court that his attorney was not answering his calls. The court called Spencer and left a message. Only then did Spencer contact the court’s staff to notify the court that he would be late for the hearing. When the case manager asked by how long, he said he did not know.

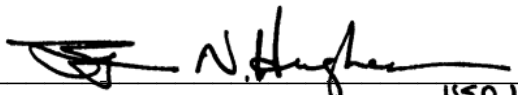
The hearing had been set for over five weeks. Spencer never moved to continue the hearing. When he appeared at 5:20 p.m. for the 4:00 p.m. hearing, it had concluded and the court had moved on to another matter. Rather than

apologizing to the court for wasting its time and Ocwen's time and money, he blamed the court for holding the hearing despite his absence and moved to reset it.

Even if Spencer had appeared with Clarence Darrow and Richard Henry Dana, Jr., they could not have helped Underwood because this dispute was decided against him five years ago. Under the record, nothing useful could be done. Spencer should not have filed this unprincipled suit in the first place. The court will not reset the hearing. If Underwood wants a hearing, it will be on sanctions.

Nickolas Anthony Spencer must refund Rodney Underwood's fee by May 10, 2020. This case will be dismissed with prejudice as *res judicata*.

Signed on April 4, 2020, at Houston, Texas.


Lynn N. Hughes USDJ
United States District Judge