

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SUSAN M. VICKERS,

Plaintiff,

v.

JP MORGAN CHASE N.A. and FEDERAL
HOME LOAN MORTGAGE
CORPORATION,

Defendants.

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Civil Action No. SA-12-CV-31-XR

ORDER

On this day the Court considered Plaintiff's Motion to Abate or in the Alternative to Dismiss (Doc. No. 58). In her Motion, Plaintiff concedes that she cannot prevail on her lawsuit to set aside the foreclosure sale of property located at 101 Bethany Way, Boerne, Texas.

This case is at a late stage of pretrial proceedings¹ and Defendants' meritorious motion for summary judgment is currently pending. The Court therefore finds that an unconditional dismissal of this case without prejudice would cause Defendants to suffer plain legal prejudice. As result, Plaintiff's Rule 41 motion to dismiss cannot be granted unconditionally. *See In re FEMA Trailer Formaldehyde Products Liability Litigation*, 628 F.3d 157, 162-63 (5th Cir. 2010); *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317-18 (5th Cir. 2002).

If a district court concludes that an unconditional dismissal without prejudice would cause a defendant to suffer plain legal prejudice, the district court has two options: it can deny

¹ This case has been pending in this Court for over sixteen months, a hearing has taken place, Defendants have taken Plaintiff's deposition, and numerous pleadings and motions have been filed, including three amended complaints, three motions to dismiss, a motion to compel, a motion to continue, a motion to exclude expert testimony, a motion for sanctions, a motion to strike, motions for time extensions, a motion to consolidate, and a motion for summary judgment.

the motion to dismiss outright or it can craft conditions to cure the prejudice. *Elbaor*, 279 F.3d at 317-18. One condition available to the district court is dismissal with prejudice. *Id.* at 319.

Plaintiff has requested that “the Court dismiss the matter with prejudice rather than granting summary judgment.” (Pl.’s Reply ¶ 6, Doc. No. 60.) Accordingly, the Court finds that it is appropriate to grant Plaintiff’s motion to dismiss on the condition that the dismissal be with prejudice.

Plaintiff’s motion to dismiss this case pursuant to Rule 41(a)(2) (Doc. No. 58) is therefore GRANTED. This case is hereby DISMISSED WITH PREJUDICE.

The Clerk is directed to close this case and enter judgment that Plaintiff recover nothing.

All other pending motions are dismissed as moot.

It is so ORDERED.

SIGNED this 16th day of May, 2013.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE