



HOPKINS & WILLIAMS

P.L.L.C.

EMILY YURAS

emily@hopkinswilliams.com

April 4, 2014

**Via CM/RRR: # 7012 1640 0001 7021 2640
And Regular U.S. Mail**

Alvie Campbell
Julie Campbell
c/o 250 PR 947
Taylor, TX 76574

RE: **Cause No. 14-0050-C368; Alvie Campbell and Julie Campbell v. Mortgage Electronic
Registration Systems, Inc., et al;** In the 368th Judicial District Court of Williamson
County, Texas.
Client/Matter No. H610-1114

Dear Sir and Madam:

Enclosed please find the *Attorney Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham's Original Answer and Affirmative Defense* reference to the above-mentioned cause.

Thank you for your attention to this matter.

Sincerely,

Emily Yuras, Legal Assistant to
HOPKINS & WILLIAMS PPLC

Cc

Facsimile: (512) 943-1222

Williamson District Court Clerk

Via Facsimile: (512) 479-1101

Elizabeth G. Bloch
Brown and McCarroll, LLP
111 Congress Ave., Ste. 1400
Austin, TX 78701
ATTORNEYS FOR MERS AND
WELLS FARGO BANK, N.A.

CAUSE NO. 14-0050-C368

ALVIE CAMPBELL AND JULIE
CAMPBELL,

Plaintiffs,

V.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. et. al

Defendants.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

WILLIAMSON COUNTY, TEXAS

368TH JUDICIAL DISTRICT

ATTORNEY DEFENDANTS STEPHEN C. PORTER, DAVID SEYBOLD,
RYAN BOURGEOIS AND MATHEW CUNNINGHAM 'S
MOTION TO DISMISS BILL OF REVIEW

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, STEPHEN C. PORTER, DAVID SEYBOLD, RYAN BOURGEOIS and MATTHEW CUNNINGHAM, (“Attorney Defendants”), Defendants in the above-styled and numbered cause, and file this their Motion to Dismiss Bill of Review and in support of the foregoing, Attorney Defendants would respectfully show the Court the following:

**I.
BASIS FOR DISMISSAL**

Plaintiffs’ Bill of Review must be dismissed because:

- (1) Plaintiffs have already unsuccessfully appealed the judgment they want reviewed and a bill of review is not available to a litigant who has filed an appeal;
- (2) Plaintiffs’ claims have already been adjudicated so res judicata bars re-litigation of Plaintiffs’ claims;
- (3) a bill of review requires a showing of extrinsic fraud and Plaintiffs provide no evidence of extrinsic fraud.

II. RELEVANT FACTS

Since 2009, Plaintiffs have repeatedly filed frivolous lawsuits and appeals against Attorney Defendants and others. Plaintiffs have been given multiple opportunities to make their case in Justice Court, County Court at Law, District Court, the Court of Appeals and Texas Supreme Court. At each level, Plaintiffs claims have been rejected. Undeterred, Plaintiffs think they can start over again in this Court and re-litigate the exact same claims and somehow get a different result.¹

Plaintiffs' first suit² was filed in June 2009 against, among others, Attorney Defendant Ryan Bourgeois and Attorney Defendants' law firm, Barrett, Daffin, Frappier, Turner & Engel, LLP. That suit arose out of the foreclosure of certain property in Taylor, Texas. Attorney Defendants obtained a dismissal of the claims against them on based on their affirmative defense of attorney immunity because the only actions taken by Attorney Defendants were related to representation of Wells Fargo in the foreclosure process.³ The claims against Attorney Defendants was severed from the underlying suit and never appealed.⁴

Plaintiffs' second suit⁵ was filed in September 2010 against, among others, Attorney Defendants Stephen C. Porter, David Seybold, Ryan Bourgeois and Matthew Cunningham. Plaintiffs asserted, once again, claims related to the foreclosure of the same property that was the subject of their first suit. Again, the Court granted Attorney Defendants' Motion to Dismiss

¹ One definition of "insanity" is doing the same thing over and over and expecting a different result.

² Cause No. 09-636-277, *Alvie Campbell and Julia Campbell v. Wells Fargo Home Mortgage, Barrett Daffin Frappier Turner & Engel, LLP, Ryan Bourgeois, Esq. and John Doe 1 through 100*, in the 27th Judicial District Court of Williamson County, Texas.

³ See Order on Defendants' Motion to Dismiss, attached as Exhibit 1 and incorporated herein by reference. Attorney Defendants request that the Court take judicial notice of this document.

⁴ See Order On Defendants' Motion for Severance of Actions, attached as Exhibit 2 and incorporated herein by reference. Attorney Defendants request that the Court take judicial notice of this document.

⁵ Cause No. 10-1093-C368, *Alvie Campbell and Julia Campbell v. Mortgage Electronic Registration Systems, Inc., Wells Fargo Bank, N.A., Stephen C. Porter, David Seybold, Ryan Bourgeois, Matthew Cunningham and John Doe 1 through 100*, in the 368th Judicial District Court of Williamson County, Texas.

based on their affirmative defense of attorney immunity.⁶ Plaintiffs appealed the dismissal and lost.⁷ Plaintiffs then filed a Petition for Review with the Texas Supreme Court, which was denied, and then a Motion for Rehearing, which was also denied.⁸ The Third Court of Appeals' mandate issued on January 18, 2013.⁹

Plaintiffs' third suit is this Bill of Review proceeding, in which Plaintiffs seek to re-litigate their second lawsuit, Cause No. 10-1093-C368, after it has been appealed to the Third Court of Appeals and Texas Supreme Court.

III.
BILL OF REVIEW IS NOT AVAILABLE TO
A PARTY WHO HAS APPEALED AND LOST

“[A] bill of review may not be used as an additional remedy by a litigant who has made a timely but unsuccessful appeal.” *McIntyre v. Wilson*, 50 S.W.3d 674, 679 (Tex. App.—Dallas 2001, pet. denied) (citing *Rizk v. Mayad*, 603 S.W.2d 773, 776 (Tex.1980)). Furthermore, when an appellate court has already decided an appeal, a bill of review brought in a district court seeking to re-litigate the appeal must be dismissed. *Strickland v. Ward*, 185 S.W.2d 736, 737-38 (Tex. Civ. App.—Dallas 1945, no writ).

Plaintiffs here appealed the judgment rendered against them in Cause No. 10-1093-C368. The Austin Court of Appeals considered the arguments of Plaintiffs and affirmed the judgment. 2012 WL 1839357. Plaintiffs sought review in the Texas Supreme Court and the Supreme Court denied review. Exhibit 4. The Austin Court of Appeals issued its mandate “that the judgment of the trial court is in all things affirmed.” Exhibit 5. Plaintiffs now file a bill of review challenging

⁶ See Order Granting Motion to Dismiss, attached as Exhibit 3 and incorporated herein by reference. Attorney defendants request that the Court take judicial notice of this document.

⁷ See *Campbell v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL 1839357 (Tex. App.—Austin 2012, pet. denied).

⁸ See Orders denying petition for review and denying motion for rehearing of petition of review, attached as Exhibit 4 and incorporated herein by reference. Attorney Defendants request that the Court take judicial notice of this document.

⁹ See Mandate, attached as Exhibit 5 and incorporated herein by reference. Attorney Defendants request that the Court take judicial notice of this document.

the judgment rendered in Cause No. 10-1093-C368. *See* Plaintiff's [sic] Original Petition for Bill of Review and Request for Disclosure at 15 (Plaintiffs' prayer asking this Court to "vacate Attorney defendants Motion to Dismiss" and "reopen cause number 10-1093-C368 and grant a new trial."). Under these facts, a bill of review is not available as an additional remedy to Plaintiffs who timely, but unsuccessfully, appealed the judgment. *Rizk*, 603 S.W.2d at 776. Since Plaintiffs' bill of review seeks to re-litigate the appeal, this Court must dismiss the bill of review. *Strickland*, 185 S.W.2d at 737-38.

IV.
RES JUDICATA BARS RE-LITIGATION OF THE SAME CLAIMS THAT WERE
ASSERTED IN PREVIOUS LAWSUITS

"Res judicata prevents parties and their privies from re-litigating a cause of action that has been finally adjudicated by a competent tribunal." *Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203, 206 (Tex. 1999). "The rule of res judicata rests upon the policy of protecting a party from being twice vexed for the same cause, together with that of achieving judicial economy in precluding a party who has had a fair trial from re-litigating the same issue." *Benson v. Wanda Petroleum Co.*, 468 S.W.2d 361, 363 (Tex. 1971).

Res judicata requires (1) a prior final judgment on the merits by a court of competent jurisdiction (2) identity of parties or those in privity with them; and (3) a second action based on the same claims that were raised or could have been raised in the first action. *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996). All three elements apply to Plaintiff's lawsuit.

First, the Court's dismissal of Attorney Defendants based on their affirmative defense of attorney immunity is a final judgment. Furthermore, this Court, a District Court, clearly is a court of competent jurisdiction. Second, the identity of the parties in Cause No. 10-1093-C368 are exactly the same. Third, and finally, this bill of review is based on the same claims that were

raised or could have been raised in Cause No. 10-1093-C368 and the appeal. Because all three prongs of res judicata are satisfied, Plaintiffs are barred from bringing this bill of review proceeding and it must be dismissed.

V.
**PLAINTIFFS HAVE PRODUCED NO EVIDENCE OF EXTRINSIC FRAUD THAT
WOULD ENTITLE THEM TO A BILL OF REVIEW**

Even if Plaintiffs could bring a bill of review proceeding, they would succeed only if they brought forth some extrinsic fraud *See Vickery v. Vickery*, 999 S.W.2d 342, 367 (Tex.1999). Extrinsic fraud denies a losing litigant the opportunity to fully litigate his rights upon trial. *Id.* It requires proof of some deception practiced by the adverse party, collateral to the underlying action. *Id.* Intrinsic fraud is inherent in the matter considered and determined in the trial, where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. *Id.* Intrinsic fraud includes false testimony, fraudulent instruments, and any matter actually presented to and considered by the court in rendering the judgment assailed. *Id.*

Plaintiffs' claimed basis for a bill of review is that Attorney Defendants have deceived not Plaintiffs, but the District Court, Court of Appeals, and apparently the Texas Supreme Court. Plaintiff's Original Petition for Bill of Review at 5 (noting that despite Plaintiffs' "past efforts to raise this issue" Plaintiffs keep losing because of the Court's "lack of comprehension and understanding of the laws that apply, seemingly caused by defendants acts deceiving the court..."), 8 ("Through defendants acts of deception, defendants misapplied Texas laws to repossess real property..."), 9 ("Defendants use of unethical and unprofessional tactics deprived Plaintiffs a trial for equal justice in a court of law caused by all defendants and their respective counsels whom entered into the courts and misled the courts..."), 12 ("Defendants abused and

misused Texas Rules of Civil Procedure 166a[,] 166a(i) [and] 91a...”) and 13 (“There is no attempt to re-litigation, this addresses constitutional violations seemingly caused by deception and misrepresentation by defendants and ill-fated judgments based on such misrepresentation of the laws that apply...”). Although Plaintiffs’ allegations are hard to categorize because they are “novel,” the gist is that Attorney Defendants misled the Court by misrepresenting the evidence and the law.

The problem with Plaintiffs’ position is that, even if their absurd allegations were true, which they are not, they are not evidence of extrinsic fraud because they have already been presented to and considered by the courts in rendering their judgments. *Vickery*, 999 S.W.2d at 367. Moreover, Plaintiffs do not allege that they were misled; they claim that they have known the truth all along and have filled reams of paper in multiple courts explaining the truth. The problem, according to Plaintiffs, is “Ignorance of the law, by individuals acting as agents for the principal [Texas Court system] have unsuspectingly deprived the Campbell’s their rights...” Plaintiffs’ Original Petition for Bill of Review at 14.¹⁰ Therefore, even if Plaintiffs were not barred from filing a bill of review, and even if Plaintiffs were not barred by res judicata, their bill of review must fail because they bring forth no evidence of extrinsic fraud that would support review of the judgments by this Court, the Austin Court of Appeals, or the Texas Supreme Court.

¹⁰ Plaintiffs go too far in implying that the Court (who the Plaintiffs describe as an agent of the “Texas Court System”) committed criminal acts. *Id.* at 14 (“Why was the agent refusing Texas law to take its rightful course? Was it intentional to deprive a citizen of its given rights? Was it motivated by other mercenary measures? Was it by deception? Why, is best left to law enforcement, not plaintiff’s [sic].”).


VI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Attorney Defendants pray that Plaintiffs' Petition be dismissed and that Plaintiffs take nothing by way of their claims and for all further and other relief, whether at law or in equity, to which Attorney Defendants may be justly entitled.

Respectfully Submitted,

HOPKINS & WILLIAMS, PLLC

By: _____


Mark D. Hopkins
State Bar No. 00793975
Glenn A. Brown
State Bar No. 00796255
12117 Bee Caves Rd., Suite 260
Austin, Texas 78738
(512) 600-4320
(512) 600-4326 Fax
mark@hopkinswilliams.com
glenn@hopkinswilliams.com

ATTORNEY FOR DEFENDANTS BARRETT
STEPHEN C. PORTER, DAVID SEYBOLD,
RYAN BOURGEOIS & MATTHEW
CUNNINGHAM

CERTIFICATE OF SERVICE

Pursuant to Texas Rules of Civil Procedure, a true and correct copy of the foregoing has been sent on this the 4 day of April 2014 to all parties of record via the method indicated as follows:

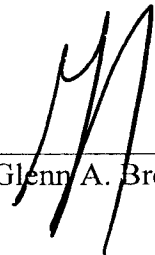
Via CM/RRR# 701211640000170213005

And Regular U.S. Mail

Alvie Campbell
Julie Campbell
c/o 250 PR 947
Taylor, TX 76574

Via Facsimile: (214) 999-6100

Richard A. Illmer
Husch Blackwell, L.L.P.
2001 Ross Avenue, Suite 2000
Dallas, TX 75201



Glenn A. Brown