

CASE NO. 19-13015-D

---

IN THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH  
CIRCUIT

---

CONSUMER FINANCIAL PROTECTION BUREAU,  
*Plaintiff - Appellee*

v.

OCWEN FINANCIAL CORPORATION,  
a Florida Corporation,

OCWEN MORTGAGE SERVICING,  
INC., a U. S. Virgin Islands corporation,

and

OCWEN LOAN SERVICING, LLC, a  
Delaware limited liability company.

*Defendants - Appellees*

v.

JOANNA BURKE, JOHN BURKE,  
*Intervenor Plaintiffs – Appellants.*

---

On Appeal from the United States District Court  
For the Southern District of Florida, Houston  
Division;

District Court Docket No. 9:17-cv-80495-KAM

---

**APPELLANTS BURKES' MOTION  
FOR RECONSIDERATION TO STAY  
PROCEEDINGS**

---

John Burke, Pro Se  
Joanna Burke, Pro Se  
46 Kingwood Greens  
Dr, Kingwood, TX,  
77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
alsation123@gmail.com

**APPELLANTS BURKES' MOTION FOR  
RECONSIDERATION TO STAY PROCEEDINGS**

Appellants, Joanna Burke and John Burke (“Burkes”), now file a Motion for reconsideration [FED. R. APP. P. 27.2] of single Circuit Judge Beverly B. Martin’s Order dated Friday 25<sup>th</sup> October, 2019. In support thereof:

1. The **Second Circuit** has stayed *CFPB v RD Legal Funding* pending a decision in the *Selia Law* case #19-7 at the US Supreme Court.
2. The **Ninth Circuit** has stayed *CFPB v CashCall* pending a decision in the *Selia Law* case #19-7 at the US Supreme Court.
3. The **District Court for the Eastern District of New York** has also agreed to stay in the case of Bureau of *Consumer Financial Protection v. Forster & Garbus* pending a decision in the *Selia Law* case #19-7 at the US Supreme Court.

Questionably, this Court, the **Eleventh Circuit** and sister, the **Fifth Circuit**, both denied the Burkes recent request to stay the case(s) pending the *Selia Law* decision *e.g.* “The Fifth Circuit has urged district courts to take “imaginative and innovative” steps in dealing with § 1983 [constitutional] cases.” - *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981). Furthermore, and which is discussed below, to date, this Court has not addressed the Burkes motion to stay the lower court proceedings.

**The Second Circuit Stay:** In *CFPB and People of the State of New York v. RD Legal, the CFPB and NYAG* appealed to the Second Circuit from the district court’s decision holding; (i) the *CFPB’s* structure is unconstitutional and (ii) striking

all of Title 10 of Dodd-Frank. On Nov. 5<sup>th</sup>, 2019, the Second Circuit entered an order adjourning the oral argument which was set for November 21, 2019. The order states that oral argument will be rescheduled at a later date. The *CFPB*, which announced after it filed the appeal that it will no longer defend its constitutionality in the appellate courts or the Supreme Court, asked the Second Circuit to adjourn the oral argument until the Supreme Court decides *Seila Law*. *RD Legal* opposed the motion, arguing that unless the Supreme Court finds that the Dodd-Frank for-cause removal provision is unconstitutional and cannot be severed, the Supreme Court’s decision will not resolve the issues in *RD Legal*, specifically whether *RD Legal* is a “covered person” under the Consumer Financial Protection Act.<sup>1</sup>

**The Ninth Circuit Stay:** In *CFPB v. CashCall*, *CashCall* appealed to the Ninth Circuit from the district court’s decision ordering *CashCall* to pay a \$10M statutory fine based on its finding that it was the “true lender” of loans issued to borrowers in 16 states. *CashCall*’s grounds for appeal include the district court’s rejection of its constitutional challenge to the *CFPB*. The Ninth Circuit recently heard oral argument. The Ninth Circuit issued an order withdrawing submission of the appeal and staying all further proceedings pending the Supreme Court’s decision in *Seila Law*.<sup>2</sup>

---

<sup>1</sup> See [JDSupra.com Article](#) and [Link to Stay Order](#) (2<sup>nd</sup> Cir.)

<sup>2</sup> See [JDSupra.com Article](#) and [Link to Stay Order](#) (9<sup>th</sup> Cir.)

**District Court for the Eastern District of New York Stay:** Judge Sandra

Jeanne Feuerstein has also agreed to stay in the case of Bureau of *Consumer Financial Protection v. Forster & Garbus*<sup>3</sup> and again, is related to the Supreme Court's decision to hear arguments in the case of *Seila Law v. CFPB* over the constitutionality of the agency's leadership structure. The defendants had requested the stay, pending the Supreme Court's decision to hear arguments in the case.

**The Fifth Circuit's Denial[s] of Stay[s]:** Firstly, as recorded in prior motion(s) *All American* snubbed the Fifth Circuit and went directly to the US Supreme Court.<sup>4</sup> That case is currently pending before the Supreme Court but the question they raised about the Dodd Frank Act was added to the *Selia* case. Secondly, the Burkes stay, which was also denied by a single Judge and is simultaneously on notice of a reconsideration motion.<sup>5</sup>

**The Lower Court Case is slowly proceeding:** In this case, the lower court is proceeding and Judge Marra has just granted another extension of time [to *Ocwen* Doc. 512, 5<sup>th</sup> Nov. 2019], despite claiming that the Burkes intervention would

---

<sup>3</sup> See [Article](#) and [Link to Court Order](#) (NY District Court)

<sup>4</sup> See JDSupra.com Article and comment; "It appears likely that the CFPB will also seek to adjourn the December 4 Fifth Circuit oral argument in *All American* pending the outcome in *Seila Law*. I would expect the Fifth Circuit to adjourn the oral argument at least until the Supreme Court rules on *All American's* Petition for a Writ of Certiorari Before Judgment. If the petition is granted, I would expect the Fifth Circuit to continue the adjournment pending a decision from the Supreme Court. If the petition is denied, I would still expect the Fifth Circuit to continue the adjournment but, in that scenario, pending a Supreme Court decision in *Seila Law*."

<sup>5</sup> See *Burke v. Ocwen Loan Servicing, LLC*, #19-20267. (5<sup>th</sup> Cir.)

materially delay the proceedings. Furthermore, the Burkes anticipate, and they have been correct in their forward-thinking in the recent past regarding Judge Marra's erroneous rulings, that the lower court case will not be resolved nor a trial by jury completed prior to the US Supreme Court decision in *Selia Law's* case, or if it was, it would be immediately appealed, (relying in part at least) based upon the *Selia* case.

**Conclusion:** The Burkes respectfully requests this Honorable Court grants a timely Motion to Stay Proceedings until the matter of the *CFPB's* Constitutionality is answered by the US Supreme Court, and to prevent a noticeably biased Circuit split.<sup>6</sup> The Burkes would dutifully remind this court this is an extremely important **civil rights** case<sup>7</sup> with far reaching possibilities in consumer and property law. It is directly related to the **Constitution** and a potentially unlawful and void Act (Dodd-

---

<sup>6</sup> "...a right newly recognized by the Supreme Court is held to be retroactively applicable by an appellate court. In light of the circuit split and the absence of controlling authority in this Circuit, prudent petitioners will treat the earlier date — the date on which the right is newly recognized by the Supreme Court — as the date on which the one-year limitation period begins to run." - *Dodd v. United States*, 365 F.3d 1273, 1279 n.3 (11th Cir. 2004).

<sup>7</sup> Those concerns were apparently well-placed; the *Consumer Financial Protection Board* filed a civil action against *Ocwen* in 2012 for "violating consumer financial laws at every stage of the mortgage servicing process." Other federal and state entities followed suit. *Ocwen* signed a consent order with 49 state attorneys general in 2013 that "required *Ocwen* to provide over \$2 billion in relief to wronged homeowners and subject itself to a monitor . . . and a monitoring committee"; a consent order with the New York Department of Financial Services in 2014 that required *Ocwen* to adopt a "system of robust internal controls and oversight" and pay \$150 million in fines and restitution; and a consent order with the California Department of Business Oversight in 2015 that required *Ocwen* to pay a \$2.5 million fine and stop acquiring new mortgage-servicing rights in California until it could satisfactorily comply with the Department's requests for information. *Carvelli v. Ocwen Fin. Corp.*, No. 18-12250, at \*5 (11th Cir. Aug. 15, 2019).

Frank). Just as importantly, with \$3 BILLION dollars in fines<sup>8</sup> since the great recession, *Ocwen [Altisource]*<sup>9</sup> is the worst offender of citizens **human rights** of any private and “offshore” tax evading business in recent history, by the continued abuses against homeowners for financial greed. The public outrage against *Ocwen* along with the importance of this case and this reconsideration motion should not be undermined.

**This court is inferior to the US Supreme Court<sup>10</sup> and they should not be defied.**<sup>11</sup> In this highly publicized case, the people and the press will no doubt be highly concerned that their citizens are not being afforded access to courts, justice, liberty and due process per the Constitution of the United States - should this Court refuse to grant the Stay upon reconsideration of a single judge’s Order.

---

<sup>8</sup> See [VIOLATION TRACKER](#) (It’s in excess of \$3 billion when you add Altisource).

<sup>9</sup> *Fed. Trade Comm’n v. Lanier Law, LLC*, 194 F. Supp. 3d 1238 (M.D. Fla. 2016) - Finding a common enterprise where the owners shared ownership and control over several entities and discussing the Dodd-Frank Act.

<sup>10</sup> Article III, Section 1, of the Constitution requires that “[t]he judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Judges of Article III courts “shall hold their Offices during good Behaviour” and “receive for their Services ... a Compensation[ ] [that] shall not be diminished.” U.S. Const. Art. III, § 1. The Supreme Court has identified two purposes served by this constitutional provision: first, Article III acts “to safeguard litigants’ right to have claims decided before judges who are free from potential domination by other branches of government,” *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 848, 106 S.Ct. 3245, 3255, 92 L.Ed.2d 675 (1986) (citations and internal quotation marks omitted); and, second, Article III “serves ... to protect the role of the independent judiciary within the constitutional scheme of tripartite government,” *Id.* (citations and internal quotation marks omitted). - *Day v. Persels & Associates, LLC*, 729 F.3d 1309, 1322-23 (11th Cir. 2013).

<sup>11</sup> “A contrary rule would permit judges to “substitute their own pleasure” for the law.” –*Gamble v. United States*, 139 S. Ct. 1960 (2019).

Respectfully submitted,

Dated: 7<sup>th</sup> November, 2019

I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.

(28 U.S.C. § 1746 - U.S. Code.)

/s/ John Burke

---

John Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: alsation123@gmail.com

I declare under penalty of perjury that the foregoing is true and correct and the certificates that follow are also correct.

(28 U.S.C. § 1746 - U.S. Code.)

/s/ Joanna Burke

---

Joanna Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: kajongwe@gmail.com



**CERTIFICATE OF INTERESTED PERSONS (“CIP”)**  
**AND CORPORATE DISCLOSURE STATEMENT**

**US District Judge;**

Marra, Kenneth A.

**US Magistrate Judge;**

Matthewman, William

**Consumer Financial Protection Bureau (“CFPB”);**

Brenowitz, Stephanie C.

Baez, Tianna Elise

Chin, Shirley T.

Cohen, Adam Harris

Demille-Wagman, Lawrence

Desai, Atur Ravi

Healey, Jean Marie

Kelly, Erin Mary

Nodler, Gregory Ryan

Posner, Michael

Roberson, Amanda Christine

Savage, James Joseph

Singelmann, Jan Edwards

Wilson, Jack Douglas

**Office of the Attorney General &  
Office of Financial Regulation;**

Fransen, Scott Ray

Granai, Sasha Funk

Pinder, Jennifer Hayes

Winship, Blaine H.

**Intervenor Plaintiff;**

Burke, Joanna

Burke, John

Fauley, Robynne (*TERMINATED*)

Subramaniam, Denise (*TERMINATED*)

**Ocwen Financial Corporation &  
Ocwen Loan Servicing, LLC &  
Ocwen Mortgage Servicing, Inc.;**

Azuero, Catalina E.

Berry, Bridget Ann

Craven, Laura S.

Hefferon, Thomas M.

Previn, Matthew P.

Protess, Amanda B.

Riffee, Matthew L.

Rose-Smith, Sabrina M.

Sheldon, Matthew S.

Smith, Tierney E.

Stoll, Laura

Tayman, W. Kyle  
Wein, Andrew Stuart

**Law Firms;**

Buckley, LLP (“Buckley”)  
Greenberg Traurig (“GTLaw”)  
Goodwin Proctor, LLP (“Goodwin”)

Dated; 7<sup>th</sup> November, 2019;

/s/ John Burke

---

John Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: alsation123@gmail.com

/s/ Joanna Burke

---

Joanna Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: kajongwe@gmail.com

**CERTIFICATE OF CONFERENCE**

The Burkes' have not conferenced with any of the parties. Any opposition to the MOTION is hereby classified as UNKOWN.

**CERTIFICATE OF SERVICE**

We hereby certify that, on November 7th, 2019, a true and correct copy of the foregoing Motion to Stay Proceedings was served via the Court's EM/ECF system to the attorneys of record per the CIP listing enclosed herein.

/s/ John Burke

---

John Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: alsation123@gmail.com

/s/ Joanna Burke

---

Joanna Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX, 77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: kajongwe@gmail.com

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 1,586 words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

/s/ John Burke

---

John Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX,77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: alsation123@gmail.com

/s/ Joanna Burke

---

Joanna Burke, Pro Se  
46 Kingwood Greens Dr,  
Kingwood, TX,77339  
Telephone: (281) 812-9591  
Facsimile: (866) 705-0576  
Email: kajongwe@gmail.com