No. 19-20267

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOANNA BURKE; JOHN BURKE,

Plaintiffs-Appellants,

v.

OCWEN LOAN SERVICING, L.L.C.,

Defendant-Appellee.

On Appeal from the United States District Court
For the Southern District of Texas, Houston Division;
USDC No. 4:18-CV-4544

APPELLANTS MOTION FOR LEAVE TO SUPPLEMENT THE RECORD AND SUPPLEMENT PLEADING

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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file a Motion for Leave to Supplement the Record and Pleading in this appeal[1]. In support thereof would respectfully show the court as follows:

> "Though their present complaint is insufficient, the plaintiffs argue on appeal that their position is that the new administration will continue the practices of the old, or that there is at least a reasonable expectation that the alleged wrongs will be repeated.
>
> **The flexible Federal Rules of Civil Procedure do not require litigants to be thrown out of court when their pleadings are technically deficient**.
>
> Rule 15(d) is particularly apt for cases where an intervening change in administration renders ambiguous a complaint seeking prospective relief against public officers. That Rule permits a party, "upon such terms as are just", to "serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of pleading sought to be supplemented".
>
> **The interests of justice require that the plaintiffs be permitted to file such a supplemental pleading.**
>
> If they do not do so within a reasonable time, their claims for prospective relief must be dismissed as moot."
>
> -*American Civil Liberties U. of Miss. v. Finch*, 638 F.2d 1336, 1347 (5th Cir. 1981) (Holding that the Eleventh Amendment does not bar

[1] Attorneys requesting that federal courts of appeals consider materials not in the district court record can rely on three possible avenues to supplement the record on appeal: (1) Rule 10(e)(2)(C) of the Federal Rules of Appellate Procedure, (2) Rule 201 of the Federal Rules of Evidence, and (3) the inherent equitable authority of the federal courts of appeals. - George C. Harris and Xiang Li, *Supplementing the Record in the Federal Courts of Appeals: What If the Evidence You Need Is Not in the Record?*, 14 J. App. Prac. & Process 317 (2013). Available at: HTTP://LAWREPOSITORY.UALR.EDU/APPELLATEPRACTICEPROCESS/VOL14/ISS2/7

claims for damages against state officials[2] for violations of individuals' First Amendment rights).

Amongst other relief, the Burkes wish to Supplement the Record in this Appeal in reply to the; RESPONSE IN OPPOSITION TO APPELLANTS' CONSTITUTIONAL CHALLENGE AND APPELLANTS' MOTION TO STAY by OCWEN, filed Friday, 25th October, 2019 and include a Supplement to the Record from the *Burke v. Hopkins* case [USDC No. 4:18-CV-4543] as it forms part of the Supplemental Pleading AND finally to ensure this court is properly on notice regarding the greatly discussed "Constitutional Challenge[s]" by the Burkes were raised in a timely manner and brought correctly before this court.

CONCLUSION

In submission of this motion, the Burkes rely upon **"the inherent equitable authority of the federal courts of appeals"** (See footnote 1). As such, the Burkes Motion for Leave to Supplement the Record and Pleading should be granted.

[2] In the *Selia Law* case, there's 'familiar faces' as former Solicitor General of Texas Scott Keller, now of Baker Botts, LLP is listed along with his replacement at the Texas Office of the Attorney General, Kyle Douglas Hawkins, who refused to answer the Burkes' complaints and is part of the Constitutional challenges raised in this *Ocwen* case. Note; the Constitutional challenge[s]: The AG's letters were issued on 19th September 2019 by this court and to-date, no answer has been filed by either AG.

Respectfully submitted,

DATED: Oct. 27th, 2019

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

By *s/ John Burke*
JOHN BURKE

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Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on October 27th, 2019, we did not confer with Appellants Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC, as this was prepared and filed on Sunday (out of office hours). We assume the joint MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on October 27th, 2019, a true and correct copy of the foregoing Motion for Leave to Supplement the Record and Pleading was served via the Court's EM/ECF system on the following counsel of record for Appellees:

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s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

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 **537** words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

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APPELLANTS SUPPLEMENTAL PLEADING & SUPPLEMENT[S] TO THE RECORD

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Pro Se Appellants

Appellants, Joanna Burke and John Burke ("Burkes"), now file this Supplemental Pleading and Supplement[s] to the Record.

Eleventh Circuit Grants Burkes Motion to Stay: On Friday, 25th October, 2019 Judge Beverly B. Martin for the 11th Circuit, reviewed and granted the **APPELLANTS BURKES' MOTION TO STAY PROCEEDINGS** in their Intervenor appeal, *Joanna Burke, et al, v. Ocwen Financial Corp., et al,* 19-13015-D, Eleventh Circuit (re: FLSD).

Hopkins Law, PLLC Response is Outlandish: On Friday, 25th October, 2019 Hopkins [for *Ocwen*] submitted their RESPONSE IN OPPOSITION TO APPELLANTS' CONSTITUTIONAL CHALLENGE AND APPELLANTS' MOTION TO STAY.

The tortuous and unplumbed response by *Ocwens'* [alleged] counsel seems to make several implausible arguments.

The Burkes responses and/or citations are below each heading;

(i) The Burkes are Vexatious Litigants and The Burkes' "Attacks on Counsel" are not Reason for an Abatement.

Hopkins believe they are entitled to the 'claimed' immunity of the President of the United States - *"Even if President Donald Trump shot someone in the middle of Fifth Avenue, New York authorities could not*

punish him while he is in office, the president's lawyers argued."[1] (A legal statement clearly based on 'puffery'[2]).

However, they would be mistaken. The Burkes attach lower court document [Exhibit #Judges-Shot] explaining bad faith, maliciousness and fraud do not receive attorney immunity[3] – well, at least in Ohio where they follow the rule of law and don't raise impenetrable shields for all lawyers before them.[4]

"Attacks on Counsel" since 2011

Hopkins stated; "As with all of the Burkes filings, the Burkes' latest motions weave into their arguments continued caustic commentary that *Ocwen's* attorneys herein are "rogue debt collectors"[5] and scoundrels.

---

[1] See Politico ARTICLE.

[2] *Carvelli v. Ocwen Fin. Corp.,* No. 18-12250 (11th Cir. Aug. 15, 2019); Judge Newsom's definition for the 3-panel for the word "puffery".

[3] However, Hopkins claimed 'attorney immunity' is meritless, as it is invalidated, as they are proceeding *"pro se"* in the *Burke v. Hopkins* case. See Exhibit #Judges-Shot, in part, p. 8;

"The Parties are both 'Pro Se': The Burkes are *pro se* and Hopkins is *pro se* in this civil action. Neither can be awarded attorney fees. Neither can claim [attorney] immunity nor privilege at any status hearings, conferences, evidentiary or motion hearings or while presenting at a jury trial. Neither party is above the law."

[4] "There is no immunity, however, where attorneys act maliciously." *Vector Research, Inc. v. Howard & Howard Attorneys P.C.,* 76 F.3d 692, 700 (6th Cir. 1996) (citing *Scholler v. Scholler*, 10 Ohio St.3d 98, 462 N.E. 2d 158, 163 (1984)

[5] See Motion to Remand [generally] and also, drill down to footnote 6 for a quick synopsis, ROA.198 re Hopkins failure to register with SOS and maintain a Surety Bond, and; ROA.197 discussing Hopkins is a debt collector per the 'Act[s]' *e.g.* FDCPA/TDCA and Hopkins admits his 'main client is *Deutsche* and OCWEN is just an "agent", ROA.204. This is a "shift" of position from Hopkins, who now claims to represent both equally, which is contractually unfeasible based on the separate attorney insurance and errors and omissions requirements for trustees and servicers as per the PSA(s).

The Burkes' pattern of personal attacks[6] against counsel is nothing new and dates back to the initial litigation which begin in 2011."

Vexatious Litigants

This mischievous and calculated choice of legalese vocabulary by Hopkins has been addressed in both the Burkes lower court cases, *Burke v. Ocwen* and *Burke v. Hopkins*. It was also addressed in this appeal, and by expanding on the initial brief's references to the record on appeal [lower court docket]. It quite clearly confirms the bad faith reasons why Hopkins repetitively uses words like 'vexatious litigants, 'baseless' and 'with prejudice'; it is a premeditated act.[7]

The Burkes case against *Ocwen* is the *first time* they have been *pursuing* relief in Texas court[s] against *Ocwen*. The Burkes are legally allowed to litigate as Texas residents and US Citizens.

Nonetheless, this is a right which Hopkins believes should be revoked immediately and is, besides, sufficient reason to find in their favor (for their 'client') in this appeal - because Hopkins object to the Burkes spoken and/or written words about opposing counsel.

It's totally absurd.

Rogue Attorneys [Citation is sufficient]

[6] On the contrary, see ROA.212+ where Hopkins states that the "Burkes are hiding income and assets" – another premeditated lie, a malicious and intentional act of bad faith that pierces his attorney immunity which he waived – see footnote 19 citing 5th cir., ROA.217.

[7] See the Burkes reply brief heading at "3. REMOVAL TO FEDERAL COURT BY OCWEN (SDTX)" [p.18] and "5. THE SANCTIONABLE MOTIONS RESUME IN 2019" [p.22]

Unbonded debt collecting law firm[s] in Texas (with no surety bond as required by the State of Texas) *e.g.* Hopkins Law, PLLC, would fall squarely into this citation:

"In *In re Lenahan, Gardin v. Lenahan, et al.* 05-70108 MJK another "edge" was addressed. **Rogue attorneys violated the FDCPA in attempting to collect their client's debts.** This Court ruled that damages arising from the wilful and malicious conduct of the attorney/debtors were non-dischargeable in their bankruptcy case." *In re Greason*, Case No. 07-00357K, AP No. 07-1077 K, at *15 (Bankr. W.D.N.Y. Mar. 10, 2009).

Scoundrels [Citation[s] are sufficient]

"and even Abraham Lincoln's[8] scorn for **scoundrels** in courthouse basements" *Arizona v. California*, 460 U.S. 605, 645 (1983), and;

"The most he said was that "a number of **scoundrels** might be at risk."" *U.S. v. O'Dwyer*, No. 10-30701, at *3 (5th Cir. 2011).

2011

Once again Hopkins is dishonest. They were not subject to the Burkes 'caustic commentary'[9] (which is described as 'zealous advocacy' by these attorneys and also by many Texas lawyers representing clients in courts. The Burkes assume the same description applies to *pro se's* [*e.g.*

[8] "We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution." - Abraham Lincoln

[9] "However, mere "sharp criticism," "linguistic slings and arrows," "unfair" statements, and **"caustic commentary" are not actionable as defamation.** *Id.* at 276; *see also Johnson v. Delta-Democrat Publ'g Co.*, 531 SO. 2D 811, 814 (Miss. 1988) ("name calling and verbal abuse" are not actionable as defamation)." - *Hayne v. Innocence Project*, CIVIL ACTION NO. 3:09-CV-218-KS-LRA, at *14 (S.D. Miss. Jan. 20, 2011).

the Burkes].) since 2011. Mark Hopkins only arrived on the case in 2015, not 2011.[10]

(ii) Attorneys are Entitled to Immunity to ensure '*loyal, faithful, and aggressive representation by attorneys employed as advocates.*'[11]

Pro Se['*s]* Mark D. Hopkins, and Shelley L. Hopkins of Hopkins Law, PLLC [in *Burke v. Hopkins* proceedings, USDC No. 4:18-CV-4543] are not immune for acts of bad faith, maliciousness[12] and fraud. See (i) above.

(iii) The Constitutional Challenge is "Untimely".

a. This would beg the question, why did the Fifth Circuit issue the letter(s)[13] to the respective AG's if it was untimely; and

b. Hopkins makes intentionally dishonest statements in the hopes they are accepted as true by this court and without referencing the record.

"…the Burkes still waived the issue on appeal because they failed to raise the issue ***in their initial brief*** *filed with the Court."*

[10] Hopkins was *not* counsel of record until after the bench trial and where the ruling of the lower court was in favor of the Burkes. See Doc. 79, 31st March, 2015. Mark D. Hopkins Notice of Appearance for *Deutsche Bank.* See Doc. 108, June 21, 2016. Shelley L. Hopkins Notice of Attorney Substitution, replacing BDF lawyer C. Jacocks [the bench trial attorney who lost the case] and who was 'unofficially' off the case. Jacocks was sent for a hotdog by his BDF manager and never returned. It took a tardy 15 months for former BDF manager Shelley Hopkins to register with the lower court. Barefacedly defying court rules and protocols, Hopkins only registered after the Burkes [again] called out this disobedience at a conference hearing in front of former Judge Smith.

[11] See ROA.232-233 "Hopkins Law and the Texas Lawyers Creed".

[12] See ROA.484 'The Hopkins case will determine if the evidence was maliciously withheld…"

[13] See 19-20267, Document: 00515124011, Date Filed: 09/18/2019.

Below is one example, which confirm the Burkes Constitutional challenge[s] are not untimely, nor raised on the first time in this appeal;

"Despite several months seeking answers from the Office of the Attorney General (citing footnote 20[14]) pertaining to clarification of the legislation surrounding the surety bond, to this date they have refused to even directly **acknowledge nor answer the citizens of the State's questions**, in breach of their RESPONSIBILITIES and **Constitution**." – See ***initial brief***; Case: 19-20267 Document: 00515032985 Page: 37 Date Filed: 07/14/2019.

Furthermore, in the Burkes reply brief, they merely expanded on the content and ROA of the Initial Brief, because Hopkins avoided addressing the Burkes arguments in the Initial Brief. As such, it cannot be claimed nor be treated as legally stated "*for the first time*", when the Burkes are merely citing and elaborating on the initial brief's content, *e.g.* "Expanding the Docket" and "Cataloging the Burkes omnibus response" [headings applied in the initial brief].

As such, it is legally correct for the Burkes refer to *"(4) No Surety Bond for Hopkins Law, PLLC (Constitutional Challenge)"* [p.21] of their reply brief.

c. The Burkes have attached EXHIBIT #Hopkins-TFC-Texas-Gov. It includes the following;

    i. A letter dated May 8, 2019, which clearly is detailed and asks for direct answers to the constitutional questions now before the 2 AG's in this case [and also asking if they could issue a

[14] Judicially noticed case; *Burke v. Hopkins* (4:18-cv-04543) District Court, S.D. Texas, Doc. 27, p. 90

'cease and desist' against a law firm operating without a surety bond in Texas and/or other relief available. The Burkes also intimated they wished to "Make a Claim against an Uninsured and Unlicensed Debt Collector". It was sent to;

> Attn: Senior Counsel to the Attorney General & Senior Legislative Advisor to the Attorney General Office of the Attorney General, PO Box 12548, Austin, TX 78711-2548
>
> *and with 'Courtesy copies' to;*
>
> - Kyle Douglas Hawkins, Office of the Attorney General, Office of the Solicitor General (TX)
> - Christopher J. Deal, Senior Counsel (Litigation), Consumer Financial Protection Bureau ("CFPB")
> - Colin Michael Watterson, Appleseed Foundation, Incorporated, Susman Godfrey, L.L.P.
> - Ilya Shapiro, Esq., Cato Institute, Washington, D.C.
> - Allison M. Zieve *for*; Center for Responsible Lending, Consumer Federation of America, National Assoc. of Consumer Advocates, National Consumer Law Center, TZEDEK DC & US Public Interest Research, Group Education Fund, Public Citizen Litigation Group, Washington, D.C.
> - Oliver J. Dunford, Pacific Legal Foundation, Sacramento, CA

ii. A copy of the earlier letter to the Finance Commission of Texas, dated 6 March, 2019 - Attn: Executive Director and a copy to; Office of the Attorney General Attn: Senior Counsel

to the Attorney General & Senior Legislative Advisor to the Attorney General, and;

iii. A copy of the request from TX SML to the TX OAG, dated 11 March, 2019. ["…a Public Information (Open Records) opinion from the Office of Attorney General (OAG) regarding the public information request we received from Joanna and John Burke (Requestors), on March 4, 2019."].

d. See related responses herein and Conclusion below.

(iv) At no time prior to September 18, 2019 did the Burkes contest the constitutionality of either the TDCA or the FDCPA.

See (iii) above.
Secondly, see ROA.442 and ROA.453, Question 21., explaining the Burkes were seeking information from TX SML specifically pertaining to the FDCPA and Texas Finance Code ("TFC" or "TDCA") §392. Attorneys for TX SML responded after many months of communications and reminders from the Burkes. Ultimately, they deferred the 'surety bond' and relevant legislative questions to the TX OAG. The Burkes wrote directly to the OAG for answers, but who still refuse to this day to answer the questions raised.

The fact that Judge Hittner sideswiped the Burkes[15] with a Roman Candle order [ROA.489] shortly after the 3-minute Scheduling Conference [ROA.1121] and remained silent on the Burkes request to certify an interlocutory appeal to this court [ROA.542] is also not within control of the Burkes. All this confirms the Burkes due diligence

[15] See Joanna Burkes Affidavit, ROA.579 and John Burkes Affidavit, ROA.572 along with EXHIBIT #BINDEROCWEN, ROA.586.

at raising the Constitutional questions during the lower court proceedings.

(v) The Burkes Arguments have "Shifted" and Grant of Certiorari in an 'Unrelated Case' is Irrelevant.

And Hopkins avers, this court should not 'entertain' them, "especially these new constitutional claims raised for the first time on appeal."

Firstly, see (iii) and (iv) above.

Secondly, if one was to 'entertain' that extraordinary notion, then this statement would have to apply to their 'clients' [Ocwen's] own arguments in the S.D. Florida lawsuit, where they cite the 'unrelated and irrelevant case' and seek to dismiss the civil action by the CFPB, with prejudice. And after an Order of Judge Marra, which included a ruling on the constitutional claims. Judge Marra [erroneously] ruled the CFPB *is* constitutional.[16] As the Burkes have argued throughout this appeal, the Constitution is the 'superior law'. As such, Hopkins claims are without merit.

Third, the Burkes arguments have not shifted. It was this very court, in the much-publicized case of *Collins v. Mnuchin*[17], which effectively created this intense and *new* outbreak of activity at the US Supreme Court and in Circuits nationwide.

(vi) The Burkes "musings over the perceived loss of federal question jurisdiction is beyond baseless".

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[16] *Consumer Financial Protection Bureau v. Ocwen Financial Corporation* et al., No. 9:17-cv-80496 (S.D. Fla.)

[17] *Collins v. Mnuchin*, No. 17-20364 (5th Cir. Sep. 6, 2019).

> "The Court today holds that this Court and the federal courts below must refrain from exercising their jurisdiction to decide this lawsuit properly brought. **It remands the case to the Court of Appeals and implies that a state court should be the one to determine two questions of state law to avoid a federal constitutional question which is also presented.**" - *Clay v. Sun Insurance Office*, 363 U.S. 207, 213 (1960).

The Burkes argued in their briefs [and not for the first time] that the State Court is the correct and only domain that should hear the lower court case.

> "**It would be a temerarious man who described the constitutional question decided below as frivolous.**" - *Clay v. Sun Insurance Office*, 363 U.S. 207, 213 (1960).

This is cemented by the above US Supreme Court case. It also makes Hopkins arguments moot.

(vii) The Burkes "argument that federal question jurisdiction can be stripped away "retroactively" (if a statute is struck down) is misplaced.

The Burkes rely upon their preceding answers and the conclusion below, nonetheless they wish to respond with two legal citations from this very court to the above statement;

First;

"(A) the applicant shows that the claim relies on a new rule of constitutional law, made RETROACTIVE to cases on collateral review by the SUPREME COURT, that was previously unavailable." *Preyor v. Davis*, No. 17-70017, at *12 (5th Cir. Jul. 27, 2017); and

Secondly, a case 'very close to home' and although the Burkes vehemently disagree with this published precedent and statement, it shows the Fifths' holding and reliance on a ***retroactive*** effective date;

> "The fourth reason—that the assignment was backdated, listed as (D) above—is not supported by Texas law. At least two Texas Courts of Appeals have considered this very question, and both have held that an assignment may have a RETROACTIVE "effective date." *See Transcon. Realty Inv'rs, Inc. v. Wicks*, 442 S.W.3d 676, 680 (Tex. App.—Dallas 2014, pet. denied) ("Although assignments are usually effective on the date on which they are signed, there is no language in the lease which would require that the assignment only be effective upon execution."); *see also Crowell v. Bexar Cty.*, 351 S.W.3D 114, 118-19 (Tex. App.—San Antonio 2011, no pet.). - *Deutsche Bank Nat'l Tr. Co. v. Burke*, No. 15-20201, at *6 (5th Cir. 2016).

A Lawyer's Deception and Repetitive Dishonest Testimony ("the System") Should be Rejected by this Court:

This latest filing by Hopkins [apparently on behalf of OCWEN] is extremely bizarre, but certainly proves the Burkes case. In the *Deutsche* case, Hopkins arrived at the Fifth Circuit by unlawfully withholding evidence[18] (the mortgage/closing file

[18] "BDF Hopkins also committed fraud and forgery in order to appeal the Deutsche Bank case, by withholding evidence, which was judicially noted in a response motion by the Burkes' after Hopkins tried to modify the Fifth Circuit Judgment (footnote 21) and subsequently is documented in the *Ocwen* case and argued in the *Burke v Hopkins*, 4-18-cv-0543, SDTX.

proving income fraud and forgery - and which Hopkins 'client' must have been on notice about), as Hopkins was appointed *for the sole purpose* of appealing the bench trial ruling, which was in favor of the Burkes. Hopkins fraud on the court[19] started after the bench trial in 2015 and continues to this latest filing. There is no ethical limit[s] or boundaries applied in Hopkins system of fraud and malice. Hopkins dishonesty is driven by pure greed.

This *system* of fraud was repeated in *Howard v. PNC*: The Burkes sought leave from the lower court for this *new* evidence to be admitted, *e.g.* Supplement the Record. It was approved [in the case of *Burke v Hopkins*].[20]

Once again, and seemingly with no end in sight, this *system* of fraud on the court has been implemented in this very response by Hopkins and is a very serious matter for this courts consideration:-

> *See Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246-47, 64 S.CT. 997, 1001-02, 88 L.ED. 1250 (1944) (**attorney tampering with administration of justice** requires vacation of judgment, whether or not behavior actually influenced outcome of

[19] This is also often referred to as *falsification [of evidence]* in courts. "It is well-established that falsification of [company] documents is a legitimate reason for termination [of Hopkins unlawful appeal in *Deutsche v. Burke* #15-20201]. See, *Kiel v. Select Artificials, Inc.*, 169 F.3D 1131, 1135 (8th Cir. 1999); *Ward v. Procter Gamble Paper Prods. Co.*, 111 F.3D 558, 560 (8th Cir. 1997); *Price v. S-B Power Tool*, 75 F.3D 362, 364 (8th Cir. 1996)." - *Sornsen v. Wackenhut Corporation*, 01-CV-1967(JMR/FLN), at *1 (D. Minn. Feb. 27, 2003).

[20] See initial brief, *Howard v. PNC*, Case: 19-20267 Document: 00515032985 Page: 41 Date Filed: 07/14/2019.

> trial); *id.* at 251, 64 S.Ct. 1003 (Roberts, J., dissenting) ("**No fraud is more odious than an attempt to subvert the administration of justice.**"); *Great Coastal Express, Inc. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen Helpers of America*, 675 F.2D 1349, 1357 (4th Cir. 1982) ("**Involvement of an attorney**, as an officer of the court, ***in a scheme*** to suborn perjury would certainly be considered **fraud on the court**."), *cert. denied*, 459 U.S. 1128, 103 S.Ct. 764, 74 L.Ed.2d 978 (1983); *H.K. Porter Co. v. Goodyear Tire Rubber Co.*, 536 F.2D 1115, 1119 (6th Cir. 1976) ("Since **attorneys** are officers of the court, their conduct, if **dishonest**, would constitute **fraud on the court.**"); 7 MOORE'S FEDERAL PRACTICE § 60.33, at 359 (2d ed. 1985) (**Attorney's loyalty to client "obviously does not demand that he act dishonestly or fraudulently**; on the contrary his loyalty to the court, as an officer thereof, **demands integrity and honest dealing with the court.** And when he departs from that standard in the conduct of a case he perpetrates a **fraud upon the court.**") -*Synanon Foundation, Inc. v. Bernstein*, 503 A.2d 1254, 1263 (D.C. 1986)

It is now well documented, Hopkins nefarious appeal tactics: In the *Deutsche* appeal it was to "attack" the integrity of Magistrate Judge Stephen Wm. Smith and with the goal to have him removed from any further involvement in those proceedings and provide a deceptive vehicle for overturning the Burkes judgment in their favor. Hopkins tactics worked.[21]

[21] See Motion to Dismiss, ROA.162-163, a quote which Hopkins quotes in both this lower court case and the *Burke v. Hopkins* case repeatedly. Hopkins takes great satisfaction from gloating on this courts' documented support of Hopkins, as evidenced with the abhorrent remarks by the 3-panel showing bias and disdain for the Burkes, who are law abiding elderly citizens and homeowners; "In reversing the trial court's judgment, and thereafter rendering judgment in favor of Deutsche Bank on its judicial foreclosure claim, **the Fifth Circuit held, "Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed."** *Deutsche Bank Nat. Trust Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018)."

<u>Now Hopkins wishes to mirror this *system* again</u>: this time against the *pro se* Burkes by rambling on and on about the Burkes being such terrible people for having a voice and an opinion, which is allowed under the First Amendment.[22]

Hopkins, however, declines to introduce the facts of the recent hearing with Judge Magistrate Bray [and the Burkes], in *Burke v. Hopkins*, wherein Mark Hopkins stated, without evidence, and where he half-recanted later by stating he "misspoke" (translation; 'perpetrated a[nother] fraud upon the court');

> MR. HOPKINS: "My concern is with the Burkes' social media postings where they are defaming my firm and my wife **and suggesting that some members of the judicial should be shot**…and not done with his perjury he came in for a second attack…. "**and I would also think the Court would be interested to know that the Burkes are posting that certain judges should be shot.**" – See Exhibit #Judges-Shot.

[22] However, in Judge Bray's courtroom, [See Exhibit #Judges-Shot] Mark Hopkins did the unthinkable and had Judge Bray's demeanor instantly change. Bray became extremely hostile, an animated and yelling Judge, attacking the Burkes from his bench, and siding with *pro se* perpetrator Hopkins abhorrent allegations as true, and without ANY evidence before him. Joanna Burke immediately denied these atrocious allegations and demanded that Hopkins "show the evidence" as she knew Hopkins statements were *evil* – **and Hopkins could <u>NOT</u> subsequently back up his horrendous lies, designed to have the Burkes charged with a criminal act [and as implied by Judge Bray]**;

"The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. **Nevertheless, the First Amendment does not protect "true threat[s]."** *Virginia v. Black*, 538 U.S. 343, 359 (2003) ("[T]he First Amendment . . . permits [the government] to ban a 'true threat.'")." - *U.S. v. O'Dwyer*, No. 10-30701, at *3 (5th Cir. 2011)

Hopkins once again affirms their own libelous, malicious, *evil* and slanderous statements - brought in bad faith against the Burkes - and wherein they seek to impugn the Burkes unblemished character before the court[s], which is an act of *fraud on the court* [as cited above].

Liars like Hopkins, proceeding as *pro se* [attorneys] were derided in the *Warrilow*[23] Court. Hopkins dishonest conduct is repetitive and premeditated. As such, this court should dismiss Hopkins testimony in its entirety and grant all necessary relief, including a favorable judgment to the Burkes in this appeal.

Additionally, a question this court should consider: Is Hopkins supposed to be counsel for *Ocwen* and arguing facts in law and/or presenting their case for *Ocwen* based on evidence from the lower court proceedings *or* is Hopkins complaint erroneously and egotistically all about themselves?

The Burkes have[24] and still argue Hopkins does not have authority to act for *Ocwen*[25] and this affirms that conviction. Hopkins filing is more about themselves

[23] "The *Warrilow* Case Confirms BDF Hopkins are not just Unethical, they are Corrupt" – See initial brief; Case: 19-20267 Document: 00515032985 Page: 46 Date Filed: 07/14/2019.

[24] For example, see ROA.535 (EXHIBIT #RULE12) and Initial Brief; p. 68, 19-20267 Document: 00515032985 – "Hence in this case, where the Appellants cited TRCP Rule 12 (Show Authority), the federal court can either allow and rule on that motion, or rather than dismiss or deny, refuse jurisdiction and remand to the State Court."

[25] Meanwhile in July 2019, Ocwen was issued ANOTHER cease and desist consent order [showing lack of honesty and continuing to defy all consent agreements, it has to be said, the sheer dismissive

and alarmingly [if you're the client] conflicts with *Ocwens'* [and *All American** - who went directly to the US Supreme Court - and snubbed this Court] own stance in the Florida litigation with CFPB that "an Act[26]" [Dodd-Frank[27]] which is unconstitutional is "not a law" and their case should be dismissed, with prejudice.

> *"As this [US Supreme] Court has held, "[a]n unconstitutional act is not a law"; rather, "it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby Cty*., 118 U.S. 425, 442 (1886). Where the entity does not "legally exist[ ]," then "no validity

---

posture and petulance by William Erbey and *Owen* [Altisource] is extremely noticeable] this time from the STATE OF MAINE; ORDER, in part;

"**The Bureau finds that OLS had no authority to execute documents as an Attorney in Fact" for legal entities which have had no corporate existence** *[similar to the case of Deutsche Bank v. Burke case before the 5th Circuit [#15-20201 and 18-20026 but with a completely different result]* since March 13, 2012 at the latest and that OLS's uses of those documents constitute violations of 32 M.R.S. § 11013(2). In servicing Maine mortgages, *Ocwen* Financial shall immediately cease and desist from recording documents as **"Attorney in Fact"** for any Aegis entity. ***Ocwen* Financial shall not represent that it possesses a power of attorney from any Aegis entity authorizing it to act on that entity's behalf, when servicing Maine mortgages;** when hiring Maine counsel; or when prosecuting or responding to foreclosure, quiet title, or declaratory judgment actions. **In servicing Maine mortgages, *Ocwen* Financial shall immediately cease and desist from recording documents identifying MERS as the "mortgagee of record"** with respect to Aegis-originated loans, unless the filing includes a valid assignment from the mortgage originator or subsequent mortgagee."

[26] "AN ACT To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ″too big to fail″, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."

[27] For example, see ROA.42-424; "RESPONSE: Defendants removed the case from the Harris County District Courts on federal question jurisdiction based upon Plaintiffs allegations of 15 U.S.C. §1692, the Fair Debt Collection Practices Act ("FDCPA"), 1 **the Dodd-Frank Financial Reform Act 12 U.S.C. §1463 ("Dodd-Frank")**, 2 and RESPA, 12 U.S.C. §2605. See Complaint[Doc.1-3]. **Plaintiffs filed a motion to remand to state court.**"

> can be attached" to its acts. Thus, a lawful entity "[can]not ratify the acts of an unauthorized body."" – p. 22 *All American Check Cashing Inc., et al v CFPB*, ("All American") Petition pending with the US Supreme Court, 30 Sept., 2019 – discussing "Meaningful Relief".

In any event, this is not the right venue, case, or the right vehicle for Hopkins to cry about personal issues and suggest somehow their personal 'grievance[s]' alone can obtain a dismissal of this case. It is farcical and absurd.

CONCLUSION

In submission of this Supplemental Pleading and the two named Exhibits as Supplements to the Record, the Burkes rely upon "the inherent equitable authority of the federal courts of appeals" to either (1) stay the case pending the US Supreme Court opinion in *Selia Law* ***OR*** (2) Remand with instructions that the lower court remand the Burkes case to the State Court ***AND*** for any and all other relief to which they may be entitled.

Respectfully submitted,

DATED: Oct. 27th, 2019

JOANNA BURKE

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.)

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

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.)

By *s/ John Burke*
JOHN BURKE

46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Telephone: (281) 812-9591
Facsimile: (866) 705-0576

Pro Se for Plaintiffs-Appellants

CERTIFICATE OF CONFERENCE

We hereby certify that on October 27th, 2019, we did not confer with Appellants Mark D. Hopkins and Shelley L. Hopkins of Hopkins Law, PLLC, as this was prepared and filed on Sunday (out of office hours). We assume the joint MOTION is OPPOSED.

CERTIFICATE OF SERVICE

We hereby certify that, on October 27th, 2019, a true and correct copy of the foregoing Supplemental Pleading and Supplement to the Record was served via the Court's EM/ECF system on the following counsel of record for Appellees:

Mark D. Hopkins
Shelley L. Hopkins
HOPKINS LAW, PLLC
3809 Juniper Trace, Suite 101
Austin, Texas 78738
Telephone: (512) 600-4320
Facsimile: (512) 600-4326

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

CERTIFICATE OF COMPLIANCE

The undersigned counsel certify that this Supplement complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this Supplement contains **4,545** words according to Microsoft Word's word count, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

s/ Joanna Burke
JOANNA BURKE

s/ John Burke
JOHN BURKE

EXHIBIT #Judges-Shot

Joanna Burke and John Burke
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September 30, 2019

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor,
Houston TX 77002

USPS Priority Mail Tracking No.
9405 5036 9930 0124 7082 32

Attn: Magistrate Judge P. Bray
(for Judge Hittner)

Dear Sirs

Burke v Hopkins Law PLLC, Case # 4:18-cv-4543

Filing Cover Sheet

Please find enclosed;

Plaintiffs 15-page reply to Judge Bray's Order, herein named;

PLAINTIFFS SECOND RESPONSE TO SECOND MOTION TO DISMISS BY DEFENDANTS AS INSTRUCTED BY MAGISTRATE JUDGE BRAY

This filing has been posted today 30 Sept. 2019 via USPS Priority Mail to the Court, USPS Mail to Hopkins, with courtesy copies faxed and emailed to the Court and Hopkins in compliance with Judge Hittners' Rules and the Local Rules for parties

denied ECF/Pacer filing, like the Burkes. (It is noted only federal courts deny pro se electronic filing rights, unlike the 5th Circuit and State courts – seriously, it's 2019).

Facts Concerning this Filing

Joanna & John Burke ("Plaintiffs") attended a court mandated 'status conference'[1] which both parties thought was a pre-trial Scheduling Conference[2] and to argue about the Burkes RFAs[3] from Mark Hopkins. However, it was actually a 'dispositive[4] motion hearing' which the *pro se* Burkes were not prepared to argue. The background to this conference is detailed in the Burkes' motion to clarify[5] and also their filings of both State and Federal Constitutional Challenge(s)[6].

At the time of this filing, the court has taken a familiar stance and remained silent on these entries. It's duplicative behavior by this court, as memorialized in the docket of the related case, *Burke v Ocwen*[7], in front of the same judge(s)[8] and which is now on appeal at the 5th Circuit.[9] In the *Ocwen* appeal, the Burkes filed their reply brief[10] and the arguments therein are relevant in both content and context to the case at hand.[11] Plaintiffs have documented and referenced their objections to the status conference and also referenced the Constitutional challenges, but now uncomfortably comply with

[1]Sept 10, 2019, Doc. 49 – Minute Entry and Doc. 50 Order (Judge Bray)
[2]Doc 52, p. 29; CASE MANAGER: Probably no…I think we just set it for a Status Conference.
[3]Doc 46.
[4]Without notice being afforded to the parties.
[5]Sept 19, 2019, Doc. 54.
[6]Sept 19, 2019, Doc 55-58. The notice letters have not been issued by this court at the time of this filing, yet the 5th Circuit issued the Burkes challenges immediately upon receipt.
[7]*Burke v Ocwen*, 4:18-cv-04544, S.D. Tex. (2018).
[8] Senior Judge David Hittner and Magistrate Judge Peter Bray.
[9]*Burke v. Ocwen*, No. 19-20267 (5th Cir., 2019)
[10]See p. 18, Doc. 52 and Doc. 54 wherein Hopkins lied to Judge Bray stating the *Ocwen* appeal was 'fully briefed'.
[11]In other words, as these cases have been previously judicially noticed, the court should include these referenced *Ocwen* related filings into consideration in conjunction with this response.

the courts' mandate, in order to prevent ***another***[12] erroneous rule 41(b) dismissal.

The Court Written Transcript and CD Audio of Hearing

The Burkes Ordered the Written Transcript (AO 435) of the court hearing the next day, on 11th Sept. 2019, requesting a ONE day turnaround. This deadline passed. The Burkes complained. They received it late in the evening, 13th Sept. 2019. After review of the transcript, it was clear it was not acceptable. It is materially incomplete in content and the transcription reports' transcription is a shambles. It is wholly unreliable evidence. The Burkes decided to order the Audio CD (AO 436) and the audio was eventually received on Sept. 25th (after Imelda and subsequent postal delays). The CD contained files which require a custom player to enable playback of the audio on a computer. The CD cover directed the Burkes to a download the player from a website page which was blank. They emailed to the company "fortherecord.com" on Sept. 25th at 5.40pm CST;

Hello, I received my court transcript CD thinking it would be easy to play. Your instruction is to go to a BLANK page and there is nothing on the site to indicate a PLAYER DOWNLOAD. I am a civil litigant, not a court. How do I play the CD Audio in simple steps. THIS REQUEST IS TIME SENSITIVE. Sincerely, Joanna Burke, 4:18CV4543, 9/10/19 Link to download page/player which is blank; https://www.fortherecord.com/services/courtroom-design-and-tech/download/

There has been no response to this email. The Burkes herein request an audio CD that they can play on a universal player or in the alternative a download link to the custom player by emailing kajongwe@gmail.com as soon as possible and to prevent further

[12] See Doc. 29, signed by Judge Hittner, *Burke v Ocwen*, 4:18-cv-04544, S.D. Tex. (2018).

delay.

Due Process Disclaimer:

It should be noted the Burkes response included herein has to rely upon the written transcript, which is unreliable, but it is currently the only record the court will accept in law.
The Burkes wish to formally object to the transcript(s).

Court requirements:

On Sept. 10, 2019, Judge Bray ordered[13] the Burkes to (i) file a response[14], (ii) no longer than 15-pages, (iii) void of new arguments nor exhibits, (iv) answering only *the facts* (referencing Doc. 27), and (v) addressing the "*legal flaw[s]*" as documented in the 'Second Motion to Dismiss'[15] by Hopkins. This request, despite the Burkes having already responded[16] to that motion as summarized herein. Finally, Hopkins' replied to the Burkes response with a defamatory, slanderous and error-laden reply, [but in error] claiming in law '*attorney immunity*'[17] as a total defense to the Burkes civil action. The Burkes now attach their 15-page reply herein for filing and consideration by this court.

Notice

If you have any questions or comments about the enclosed filings, please do not hesitate to reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns. We prefer written communication for the purposes of tracking the case(s).Thank you very much in advance for your time and

[13] See Order, Doc. 50.
[14] Doc 52; p. 23.
[15] Doc. 28, April 5, 2018
[16] Doc. 32, April 12, 2019
[17] Doc. 34, April 17, 2019.

consideration.

RESPECTFULLY submitted this 30th day of September, 2019.

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

Joanna Burke.

Joanna Burke / State of Texas
Pro Se

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

John Burke / State of Texas
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"The practice of attorneys furnishing from their own lips and on their own oaths the controlling testimony for their client is one not to be condoned by judicial silence; nothing short of actual corruption can more surely discredit the profession."
~ Warrilow v. Norrell, 791 S.W.2d 515 (Tex. App. 1990)

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John Burke and Joanna Burke
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:18-cv-04543

Joanna Burke and John Burke Plaintiffs, vs. Hopkins Law, PLLC, Mark Daniel Hopkins and Shelley Luan Hopkins, Defendants.	PLAINTIFFS SECOND RESPONSE TO SECOND MOTION TO DISMISS

PLAINTIFFS SECOND RESPONSE TO SECOND MOTION TO DISMISS BY DEFENDANTS AS INSTRUCTED BY MAGISTRATE JUDGE BRAY

"No man is above the law and no man is below it: nor do we ask any man's permission when we ask him to obey it." ~ Theodore Roosevelt.

The Preamble: The Burkes filed a new civil action against rogue lawyers, namely [BDF] Hopkins because; the Burkes mortgage was originated by Indymac Bank who committed fraud and forgery by adding an imaginary and false $125k employment income to the Burkes loan application to ensure the loan would be issued, packaged and resold to investors. Indymacs' fraud makes the Burkes loan

void not voidable. Hopkins withheld this evidence from the Burkes. This is the crux of the Burkes original complaint against [BDF] Hopkins and is not disbarred from suit by res judicata nor attorney immunity, as proven herein. Hopkins trial tactics relies heavily upon bad faith, malice and a *'system of fraud'*, which would be replicated in *Howard v PNC*.[1] In 2011, BDF filed for foreclosure, as the mortgage servicer for Indymac and raised an action in the name of *Deutsche Bank*, a straw man 'trustee'. Four years later at a no-evidence, no-witness, bench trial, the Burkes obtained judgment from this court in their favor, rejecting BDF's arguments at trial. BDF appointed attorney Mark Hopkins of BDF [Hopkins], masked via his shell-sham related entities (Hopkins & Williams, P.L.L.C and Hopkins Law, PLLC) to appeal the case to the 5th Circuit - but not before exhausting all remedies at the lower court. Hopkins waived *attorney immunity* by his own shocking admissions in open court which, in short, stated; "I" (not *Deutsche*) [intentionally] withheld the mortgage/closing file from the Burkes [and the court]. This <u>newly disclosed evidence</u>, which would prove the fraud and forgery committed by Indymac, was discovered and admitted for the first time <u>AFTER the bench trial</u>. By Hopkins own words, he admitted to this gross financial deed of moral turpitude against the Burkes, who are elderly, retired citizens of the State of Texas. This bad faith admission pierces Hopkins claims for *'attorney immunity'*. After further investigative work the

[1] See Doc. 45, Court approved Supplemental Authorities and cited cases, *e.g. Warrilow.*

Burkes discovered that Hopkins was also a rogue and unlicensed "Bounty Hunter".[2] The Burkes uncovered the Texas registered company 'Hopkins Law, PLLC', (unlike Hopkins related entities and partners BDF), did not hold a surety bond, a requirement in Texas law. This is central to the Burkes recent Constitutional Challenges. Hopkins vehemently denies being a debt-collector which, if successfully argued, would negate the need for a surety bond. But Hopkins arguments fail in law[3].

The Attorney Wife; Shelley Luan Hopkins: So far, the preamble has addressed the surface level investigation *which this court has yet to recognize as actionable.* The Burkes performed further "Level II" investigative work, which uncovered Shelley *Hopkins* prior surname was *Douglass*. This revealed attorney Shelley Luan Douglass was a key member of BDF executive staff. Indeed, she is seen on a full page cover in a known industry magazine, alongside the founding partners of BDF[4]. In order to prove "Level III" investigative findings, the Burkes submitted their research findings along with persuasive arguments[5] why they have met their burden in this civil action and why it should continue (*Twombly pleading*

[2] Certainly, this Court could not, for example, dismiss the Burkes case until the Constitutional questions are answered as the key question is about Hopkins role as a debt collector and the interpretation of written word in the legislation, which is currently disputed for opposing reasons, by the parties. To do so would be unconstitutional.
[3] This would also have the effect of mooting any possible claims of 'attorney immunity'.
[4] The Burkes investigations have been discussed in detail in all their court case(s) and filings about the relationship between BDF, Shelley Hopkins and Mark Hopkins and his registered BDF Hopkins entities, which provides an alter-ego to intentionally create smoke and mirrors in legal proceedings like this one.
[5] Doc 32 with Exhibits.

standards). Now, the Burkes need to rely on the next phase of this case – discovery – to obtain the necessary proof of claim(s) as Hopkins is not willing to disclose ***any*** information to the Burkes voluntarily, including the *authority to act* [not a self-filed notice of appearance form which Judge Bray implied was sufficient at the hearing[6]] from both *Deutsche Bank* and *Ocwen Loan Servicing, LLC*. Hopkins claims he holds dual authority. The Burkes know this is legally an impossibility based on a detailed analysis of the Pooling and Servicing Agreement(s) and related documents/agreements. It should not be an overburdensome ask to obtain genuine and current letters of authority for the first time [and since 2011] from *Deutsche* and *Ocwen*, when securitized mortgages transfer frequently and it concerns a case involving seniors, aged 80+ who are being threatened with the loss of their homestead by these rogue lawyer(s) and sanctioned law firm(s). To refuse would certainly not be 'fair' as Judge Bray opined is his duty and goal in these proceedings.

The State of Texas: The problem is the State is known to be *silent defenders* of banks, non-banks, foreclosure mills and their entourage of debt collecting attorneys in Texas. Take, for example, the high-profiled and public *Stern* foreclosure mill case in Florida. BDF Hopkins is Texas's equivalent to Stern. However, in the last decade, Texas has stopped any investigation into foreclosure mills like BDF

[6] See Doc 52, p.8-15 re John Burkes submission of Hopkins letter to the Mediator and discussion re Hopkins assumed Authority.

Hopkins. They are supported by Texas courts, who are terminating homeowners civil actions before damaging information is obtained via discovery and judgments rendered before a jury trial. This is achieved, in the majority, by attorneys like BDF Hopkins refusing to volunteer even basic documentary evidence in foreclosure cases, which provides sufficient time to delay until the court passes the 140 day limit for the scheduling conference. If the homeowners show up, the courts will, shortly thereafter, rule in favor of the foreclosure mills' and their attorneys' motions to dismiss or similar.[7] This claim is supported by statistical data.

The Financial Crisis Settlement(s): A review of the sum of the "financial settlements ", when compared to the one-sided, judicial results in Texas, raises substantial questions regarding the overall integrity of the government and the State. Billions of dollars in 'settlements' were announced after years of investigation, post financial crisis. It is well documented, the Great Recession was driven by financial greed, caused by the massive fraud and forgery perpetrated by the mortgage and banking industry. A substantial amount of this 'settlement' cash made it to both the States "general fund" and the "courts judicial fund", (not the homeowners, who were evicted illegally) - yet you would never know it by perusing the court records for the

[7] Former Judge Smith stated as much when he claimed it is highly unusual for a pro se to reach trial, Doc. 126, *Deutsche* case. This is also confirmed by historical Texas court public data. (the Burkes are not allowed to enclose any exhibits or new evidence in this reply by order of the court).

circuit in Texas. For example, the Burkes cannot locate a similar case, a single recorded foreclosure victory for the homeowners at the Fifth Circuit, wherein the banks were repelled completely and in finality - since 2008. These statistics should raise serious [audit] alarm bells. As an analogy, if Texas was rebranded as a corporation in 2019, it would be called *Enron II* and the judiciary would be called *Arthur Anderson II*. In other words, "Common sense realism" proves the undeniable; there has been no justice in Texas courts for homeowners post Great Recession. They have been sacrificed and sold out by the State to the highest bidder, the banks.

The Constitution and Texas Courts: Nonetheless, these elders will continue in their quest to restore justice and the Constitution to Texas courts based on factual arguments and scienter. This law was memorialized by the framers who recognized 'We the People'. Texas has ceased to recognize We the People', at least since 2008.

The Burkes refuse to be 'tarred with the same brush' as every other mortgage foreclosure case in Texas. Their case was very different. They repelled *Deutsche* twice in this court due to an ***honest*** judge who interpreted the law correctly and his opinion was not based on an *erie guess*. The 5th circuit relies on these guesses or interprets MERS in contradiction of 175 years+ property laws. These guesses have been recently overturned by the Supreme Court of Texas in [for example] *Priester*.[8] And the Attorney who argued Priester was Pfeiffer, who also agreed with Judge

[8] *Priester v. JP Morgan Chase Bank*, No. 18-40127 (5th Cir. Jun. 26, 2019).

Smith that the 5th Circuits opinion was wrong in law. The facts confirm, the *Deutsche* case was another example of an *erie guess* that was clearly wrong. The time for the Burkes restitution is well overdue and to end the known '*system of fraud*' by BDF Hopkins. In order to do so, it required a new civil action against Hopkins which is based on new evidence, procured after the bench trial from Hopkins own tongue. The Burkes have proven this case warrants proceeding to a jury trial and as such, [BDF] Hopkins motion to dismiss should be DENIED.

Background: The Burkes were granted leave to file their first amended complaint[9] in March 2019. The Burkes complied .[10] At the same time, this court denied the Burkes motion to remand. The Burkes argue[d] State law controls property law, per the Constitution.[11] In Hopkins response[12] to the Burkes' First Amended Complaint[13], they summarized it into a list of responses and the Burkes responded, including exhibits[14]; Noticeably, in Hopkins reply (Doc.34) to the Burkes (Doc. 32), they were reduced to only one defense, namely *'attorney immunity'*[15]. It is evident, Hopkins hopes this will shield them from their most enormous evils

[9] See Order, Doc. 23.
[10] Despite being under duress and as detailed in Doc. 27.
[11] This is discussed and argued on appeal in the duplicative remand denial by this court in *Burke v Ocwen*, 4:18-cv-04544, S.D. Tex. (2018), by the Burkes.
[12] Doc. 28.
[13] Doc. 27.
[14] Doc. 32.
[15] See Doc. 32, Exhibit #Attorney-Immunity.

including a *system of fraud*, chicanery, and profligacy. This fails because nobody is above the law and protection (immunity) is never absolute.[16]

The Parties are both 'Pro Se': The Burkes are *pro se* and Hopkins is *pro se* in this civil action. Neither can be awarded *attorney fees*[17]. Neither can claim *[attorney] immunity nor privilege* at any status hearings, conferences, evidentiary or motion hearings or while presenting at a jury trial. Neither party is *above the law*.

At the status hearing on 10th Sept., 2019, Hopkins stated [Doc 52, p.30-31];

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[16] Second, Kilpatrick claims that because it was Omnicell's attorney, the **attorney immunity doctrine** shields it from liability. "Under Ohio law, attorneys enjoy immunity from liability to third persons arising from acts performed in **good faith** on behalf of, and with knowledge of, their clients. **There is no immunity, however, where attorneys act maliciously.**" *Vector Research, Inc. v. Howard & Howard Attorneys P.C.*, 76 F.3d 692, 700 (6th Cir. 1996) (citing *Scholler v. Scholler*, 10 Ohio St.3d 98, 462 N.E. 2d 158, 163 (1984). Under, Fed. R. Civ. P. 9 (b), "malice may be averred generally," because malice is "difficult to demonstrate at the pleading stage of litigation." *Vector Research, Inc.*, 76 F.3d at 700 (citations omitted). In *Vector*, the Sixth Circuit held that the plaintiffs' allegations that the "attorney defendants acted maliciously," "shared the malicious motives of their client," and "improperly handled personal and confidential information" were sufficient to defeat an attorney immunity challenge on a preliminary motion to dismiss. *Id*. Similarly, in *LeRoy*, the Supreme Court of Ohio affirmed reversal of the granting of the defendant attorneys' motion to dismiss on immunity grounds, concluding that the plaintiffs' "allegations of collusion and conflict of interest fall within the ambit of malice based on the sum total of the underlying facts alleged" and could be pleaded generally. *LeRoy v. Allen, Yurasek & Merklin*, 872 N.E. 2d 254, 260 (Ohio 2007) . Here, the Complaint is replete with allegations that Omnicell and Kilpatrick "**embarked on a scheme**" to "mislead and deceive" MV Circuit. Thus, because the Defendants have sufficiently alleged malice, **the Court finds that, at this stage of the litigation, it is inappropriate to apply the attorney immunity doctrine to shield Kilpatrick from liability from MV Circuit's fraud claim.** *MV Circuit Design, Inc. v. Omnicell, Inc.*, CASE NO. 1:14 CV 2028, at *14-15 (N.D. Ohio Mar. 24, 2015).

[17] Were we to hold that a *pro se* attorney is eligible for fees, we would be the only court of appeals to do so after *Kay* . "We are always chary to create a circuit split," *United States v. Graves* , 908 F.3d 137, 142 (5th Cir. 2018) (quotation omitted), including when applying the rule of orderliness. *See Stokes* , 887 F.3d at 201, 205. We refuse to create one here. *Gahagan v. U.S. Citizenship & Immigration Servs.*, 911 F.3d 298, 304 (5th Cir. 2018).

MR. HOPKINS: My concern is with *the Burkes'* social media postings where *they are defaming my firm and my wife* and suggesting **that some members of the judicial should be shot**, and I would like to see that come to an end sooner than later *and I have sat on such a counterclaim*, for hopes that the case would be resolved sooner. But in the event it's not, those types of posts, which *Twitter tells me* have been viewed over 5,000 times, are certainly *damaging to my firm's reputation and myself*, **and I would also think the Court would be interested to know that the Burkes are posting that certain judges should be shot.** THE COURT: Are you doing that? [Accepting as true Hopkins conclusory allegation]. MS. BURKE: What did he say? THE COURT: **That you're posting on social media that certain judges should be shot?** [Repeats question to obtain the Burkes response - without any evidence that it is based on fact.] MS. BURKE: **That's nonsense.** [Denial.]MR. BURKE: Yes. MR. HOPKINS: We can produce – [Hopkins admits he has not produced evidence to substantiate his conclusory allegation(s)]. MS. BURKE: **I'd like him to show me that.** [Demands proof, knowing it is a lie.] THE COURT: Wait. So that's – MR. BURKE: Yeah -- THE COURT: Stop. MR. BURKE: Yeah. THE COURT: I don't know if that's true or not, -- [Finally recognizes the error in accepting as true the conclusory allegation(s) and by confronting the Burkes with a statement which is relied upon (without evidence before the court[18]).] MS. BURKE: **No, it isn't.** THE COURT: **-- and I'm not your lawyer, but if you're doing that, that's why** ["way"] **more serious than any kind of counterclaim.** [Inferring it is a **criminal** statement which is punishable with far more serious charges, an obvious warning. This, despite the lack of evidence

[18]Unlike the Burkes, who presented and submitted evidence to the court of Hopkins letter to the mediator at the 5th Circuit, wherein he castigates the Magistrate Judge and demands a reversal of the lower courts opinion.

regarding the assertion made before the court by Hopkins, a '*pro se*' attorney[19]] MS. BURKE: **That's evil.**[20] THE COURT: **Okay. Fine, don't break the law.** MS. BURKE: The things the judge -- THE COURT: I think I'm -- MR. BURKE: **We're not breaking the law.** MS. BURKE: **That's evil.**[21] THE COURT: **Okay. Fine. I hear the words you're saying.** [referencing Joanna Burkes 'evil'[22] word, which is defined as malicious conspiracy in law, yet Judge Bray is insisting has an alternative (depraved) meaning in this instance] I think I've not sat here and been in this kind of position before, but you're not under my supervision and you're free people, but -- MS. BURKE: **But don't you see that? That's evil.**[23] THE COURT: Okay. Okay. Okay, ma'am. **I have no idea what the facts are**, …

[19] "The practice of attorneys furnishing from their own lips and on their own oaths the controlling testimony for their client is one not to be condoned by judicial silence; nothing short of actual corruption can more surely discredit the profession."
~ Warrilow v. Norrell, 791 S.W.2d 515 (Tex. App. 1990).

[20] What is COLLUSION? A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other ***for some evil purpose***, as to defraud a third party of his right. – Black's Law Dictionary and "The fraudulent and wrongful taking away of the property of another." - "Therefore, it has been established that the Debtor and his co-conspirators took away the property of the Plaintiffs. However, this element requires not only the taking of another's property, but that the taking is accompanied by an ***evil purpose***, involving bad faith and unfairness." *Countrywide Home Loans, Inc. v. Cowin (In re Cowin)*, 492 B.R. 858, 907 (Bankr. S.D. Tex. 2013).

[21] What is MALICIOUS? Evincing malice; done with malice ***and an evil design*** ; willful – Black's Law Dictionary and "*Armendariz*, 553 S.W.2d at 407 (actual malice is "ill-will, spite, evil motive, or purposing the injury of another")" *In re Performance Nutrition, Inc.*, 239 B.R. 93, 116 (Bankr. N.D. Tex. 1999).

[22] See Doc. 27, p. 79 – "…financial greed and evil motives…" (civil conspiracy claim).

[23] Reminding the court the case against Hopkins is about a known *system* of fraud, malicious conspiracy etc. and this is another example in full view of the presiding judge and court.

Let's pause and analyze these outrageous and premeditated statements by Hopkins, who invokes a known *'system of fraud*'[24] at every opportunity he has to speak. This is the most personal, egregious and *evil* of all Hopkins statements to date. This patently falls into item **Two** of Judge Brays' two question summary;

> THE COURT: All right? Those are the two questions as I see them. **One**, is he right that the things he did as a lawyer are not actionable by you; **and two**, did he do something to you that -- you know, outside of his role as a lawyer.

Hopkins made the above statement(s) in court as a *pro se* lawyer and as such (a) is not protected speech [attorney immunity is not applicable in law] and as such **is** actionable by the Burkes and (b) outside his [alleged] role as a lawyer [for *Deutsche/Ocwen*]. Hopkins is claiming defamation against *his firm, wife and himself* as recorded in the transcript and demands court relief [crossclaim], which include [monetary] damages directly from the Burkes. As such, it is irrefutable that this is separate from any past case or trial. Returning to item **One**, which the Burkes and the law classify as the known *'system of fraud'*, the Burkes have addressed this question in the *Ocwen* case and now again here. It is without doubt, relying on the Constitution and the Law, that the actions committed by Hopkins **are** actionable by

[24]Recognizing *evil* and a *system of fraud* before the introduction of the Constitution (1770's) citing Story on the Constitution, § 1371; "They entailed the most enormous ***evils*** on the country and introduced a ***system of fraud***, chicanery, and profligacy, which destroyed all private confidence and all industry and enterprise." *Knox v. Lee*, 79 U.S. 457, 667 (1870).

the Burkes in this civil action. John Burke presented further evidence at this hearing, proving to Judge Bray how Hopkins, an unbonded, unlicensed, rogue debt collecting lawyer who operates a shell-sham law firm in the State of Texas, is a scheming fraudster, who repetitively engages the court(s) in conspiracy theories against any person, judge or authority who dares to reject the lies, fabricated documents and theories presented by Hopkins. In the *Deutsche* case, the Burkes obtained a judgment in their favor from this very court. All of a sudden, Hopkins arrived and without proper notice, immediately appealed. In order to do so, Hopkins would turn to his *system of fraud*, which included withholding evidence (the mortgage closing file) which would emphatically prove the Burkes case for fraud[25] against Indymac Bank (adding a forged and fraudulent income to the Burkes loan despite the Burkes full disclosure their income did not reach anywhere near the amount added to the application).[26] This irrefutable evidence would prevent Hopkins from submitting an appeal (assuming he adhered by even a snippet to the law, which is very doubtful).

[25]Judge Carolyn Dineen King [Mrs. Reavley] in 1988 Provided the Fifth Circuit a Precedent for Mortgage Application Fraud. In 2015, the 5th Circuit Ignored it, and Again in 2018 in *Deutsche Bank v Burke* See *United States of America v. Robert Lueben*, 838 F.2d 751 (5th Cir. 1988).

[26] *U.S. v. Chaney*, 964 F.2d 437 (5th Cir. 1992) - Ruling that an individual's conviction for conspiring to and making a false entry on a questionnaire for bank officers was part of a larger scheme to cause the bank to issue bad loans and holding the defendant responsible for all the loans. In the case of Indymac, they added a false income and forged the loan application and Hopkins could clearly see that from the closing file which he knowingly withheld.

The fact Hopkins was allowed to continue was in error. This civil action relies upon those unlawful errors.

It is evident that this court is having a hard time reconciling with the truth and allowing justice and discovery to take place when the Burkes have proven their case to the necessary legal standards to repel this 'second motion to dismiss' by Hopkins. What is more disturbing, is this courts stance and deference at the hearing to Hopkins, wherein his hearsay statements were taken as true and the Burkes evidence is treated with contempt. The Burkes can only conclude, based on the live events and past actions in this civil action, that this court is supportive of *fraud on the court* and civil litigants, which in this instance has been perpetrated against elderly homeowners - as being part of the legal system and the 'immunity' provided to lawyers therein. This courts' position cannot be condoned and is unconstitutional.

In short, the Burkes expect due process, the Constitutional Challenges activated by the court (which are currently dormant) and access to the mortgage file and other evidence as requested during discovery, to help prove their legal and monetary damages to the jury and to vindicate them from the damaging *evil* lies Hopkins has said about them repeatedly. The mediator letter presented by John Burke confirms Hopkins wrote to the Fifth Circuit to disparage and criticize former Magistrate Judge Smith. This was a premeditated and calculated act, in order to deflect the courts focus away from Hopkins fraudulent acts to focus instead on the

5th Circuits 'rule of law, orderliness and precedent'. It's a known scheming *system* by Hopkins and history proves this *system of fraud* works. Indeed, looking at it from the outside, it either(a) makes the court(s) look vain and gullible for accepting this *system* so readily or (b) a knowing party. Hopkins firmly believes he is invincible by relying on *attorney immunity* and then invites the courts to defend all lawyers, to raise an impenetrable shield against any and all possible breaches by people who are aggrieved (who are not lawyers). Hopkins demands these homeowners and mere mortals should be instantly repelled in favor of a lawyer. In simple language, Hopkins treats homeowners with disdain and as evidenced, the courts are eager to affirm his view. Judges and 3-Panels rush in defense of his false and fraudulent claims and it is normal practice that an atrocious written attack(s) on the homeowner(s) be included in their summary, as these judges finish their orders and judgments.[27]

New Evidence: Interpreting Judge Bray's stance at the hearing; It was evident that any and all references to the *Deutsche* case would fall into the category of *'res judicata'*. This is error for the reasons explained on appeal in *Ocwen* and also based on case law from other circuit(s) who patently disagree with this courts narrow and strict requirements; For example, in the following case, the courts holding was;

[27] See 5th Cir. Opinion in *Deutsche,* 18-20026, (2018) last sentence; "Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed." Hopkins repeats this quote in nearly all, if not all of his filings in Burke related cases.

"In the interests of fundamental fairness[28]*, the doctrine of res judicata can be relaxed if the defendant presents substantial new evidence".* "For new evidence to be sufficient to grant a defendant a new trial, the evidence (1) must be of such a conclusive character that it will probably change the result on retrial; (2) must be material but not merely cumulative; and (3) **must have been discovered *since trial* and be of such character that the defendant in the exercise of due diligence could not have discovered it earlier.** *People v. Molstad*, 101 Ill.2d 128, 134 (1984)…" The Burkes meet the 3-pronged criteria for new evidence but this court is refusing to interpret the law(s) regarding *res judicata*[29] fairly; in particular the timing of Hopkins statements as new counsel for BDF *after the bench trial* in *Deutsche*, and which is plainly "substantial new evidence which could not have been discovered earlier as it was intentionally withheld, and this evidence would have prevented the appeal and the subsequent adverse judgment(s) by the 5th Circuit".

In conclusion, Hopkins Second Motion to Dismiss should be DENIED.

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[28] Status Hearing Transcript Doc. 52, p. 33 - THE COURT: So to the extent that you're articulating some sort of dissatisfaction with the procedures that the Court is putting in place, I think you should think twice about that. **I'm being more than fair to you...**

[29] It is black-letter law that a claim is not barred by *res judicata* if it could not have been brought. If the court rendering judgment lacked subject-matter jurisdiction over a claim *or* if the procedural rules of the court made it impossible to raise a claim, then it is not precluded. RESTATEMENT (SECOND) OF JUDGMENTS § 26(1)(c). *See also Nilsen*,701 F.2d at 562-63 and *D-1 Enterprises, Inc. v. Commercial State Bank*,864 F.2d 36, 38-39 (5th Cir. 1989). *Browning v. Navarro*, 887 F.2d 553, 559 (5th Cir. 1989)

RESPECTFULLY submitted this 30th day of September, 2019.

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

Joanna Burke

Joanna Burke / State of Texas
Pro Se

I declare under penalty of perjury that the foregoing and following is true and correct. (28 U.S.C. § 1746 - U.S. Code.)

John Burke / State of Texas
Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: kajongwe@gmail.com

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on September 30, 2019, we posted the attached document via USPS Priority Mail to the US District Court;

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor
Houston TX 77002

And also served copies to the following parties, by USPS Mail:

Mr. Mark Hopkins,
Mrs. Shelley Hopkins
& Hopkins Law PLLC
Hopkins Law PLLC
3809 Juniper Trce, Suite 101
Austin, TX 78738

EXHIBIT #Hopkins-TFC-Texas-Gov

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May 8, 2019

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Senior Legislative Advisor to the Attorney General
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Dear Sirs

TEXAS FINANCE CODE CHAPTER 392 & REQUEST FOR INFORMATION PER DEPT OF SAVINGS AND MORTGAGE LENDING ("SML")

As your Office is aware, we are in litigation which is now pending before the United States Supreme Court (18-1370). We have sent you our emails, faxes and letters seeking legislative answers to the Texas Finance Code on the following dates, nonetheless, to-date there has been no answer nor acknowledgement by the OAG;

(i) March 6th, 2019, 12.15 pm Fax Confirmation

(ii) Reminder on March 14th, 2019, 8.29 am, Fax Confirmation Time

(iii) USPS Priority Mail Letter follow-up on March 19th, delivered, March 22nd at 11.27am.

We have also been keeping in contact with Mr Wills, Associate General Counsel, and Ms Peck of the Department of Savings & Mortgage Lending regarding the letter they sent to your Office in response to our request for information. They have not received a response to their letter from your Office, which we note is now past the extended 10-day additional deadline as well, breaching the allowance in accordance with the rules[1], of 55 days.

We are disappointed with the lack of contact or response to either our letters, emails and faxes and that of the agency that defers to your authority.

Furthermore, in our letter we asked specific questions pertaining to Hopkins Law, PLLC, and attorneys Mark D. Hopkins and Shelley L. Hopkins;

(iv) Will this letter act as ample evidence to issue an immediate "Cease and Desist" Order against Hopkins Law, PLLC from illegally operating in Texas (Deceptive Trade Practice)?

(v) Do we report the law firm to any other Agency, e.g. State Bar of Texas or is that automatic with your own investigation and Order(s)?

As we failed to receive any communication from your Office, we have filed our own Grievance with the Office of the Chief Disciplinary Counsel, State Bar of Texas, against the two named lawyers.

We now attach a copy of all recent correspondence as a reminder.

We respectfully request acknowledgment and a timeline to receive your response. Thank you very much in advance for your time and consideration.

Notice

If you have any questions or comments about the enclosed, please do not hesitate to

[1] Email from Mr Wills, stating; "However; please note, pursuant to section 552.306 of the Act, the attorney general must render an open records decision "not later than the 45th business day after the date the attorney general received the request for a decision." If the attorney general cannot render a decision by the 45th day deadline, the attorney general may extend the deadline by ten business days by informing the governmental body and the requestor of the reason for the delay. The attorney general must provide a copy of the decision to the requestor.

reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns. We prefer written communication for the purposes of tracking the case(s) and questions we have.

Respectfully

/s/ *Joanna Burke*

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"*An enlightened citizenry is indispensable for the proper functioning of a republic. Self-government is not possible unless the citizens are educated sufficiently to enable them to exercise oversight. It is therefore imperative that the nation see to it that a suitable education be provided for all its citizens.****"***
~Thomas Jefferson, 1817.

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Email; kajongwe@gmail.com

6 March, 2019

Finance Commission of Texas
Attn: Executive Director
State Finance Commission Bldg.
2601 North Lamar
Austin, Texas 78705

Sent by Email: consumer.complaints@dob.texas.gov

Office of the Attorney General
Attn: Senior Counsel to the Attorney General &
Senior Legislative Advisor to the Attorney General
PO Box 12548
Austin, TX 78711-2548

Sent by Fax: (512) 475-2294

Dear Sir or Madam

Please find below a request for assistance.

Texas Finance Code 392 (Attorney as a Debt Collector)

There is normally a government agency or watchdog associated with Texas Finance Code sections. This appears to exempt Section 392. We have experienced great difficulty in finding out who can answer our complaint, which is the purpose of this letter.

Secretary of State ("SOS") Website

Debt Collector Licensed with Surety Bond Search

Firstly, we utilized the above SOS to confirm if an attorney-debt-collector was bonded

or not bonded. The result confirmed the firm in question (Hopkins Law, PLLC, Austin, Tx) was not listed. We obtained a certified letter confirming this fact from SOS.

Secondly, we also checked to see if a "related" attorney-debt-collector was bonded or not bonded and found that *they <u>were</u> bonded*.

<u>Frequently asked questions (FAQs)</u>

We have also reviewed the FAQ page[1] in conjunction with the Register[2] and Texas Administrative Code, also located at the SOS website. Relative to Attorneys, it references Section 392.001(6) and (7).[3]

Hopkins Law, PLLC is a Debt Collector per Texas Finance Code 392

Hopkins Law, PLLC *<u>is</u>* a debt collector per the Code. This is briefed in the following legal cases which you may take "judicial notice", as attorneys / general counsels for the respected agencies and where and to whom this letter has been submitted.

<u>Current Proceedings</u>

Joanna Burke, et al v. Hopkins Law, PLLC, et al, Case No. 4:18-CV-4543 in the United States District Court for the Southern District of Texas, Houston Division ("Hopkins Litigation").

Joanna Burke, et al v. Ocwen Loan Servicing, LLC, Case No. 4:18-CV-4544 in the United States District Court for the Southern District of Texas, Houston Division ("Ocwen Litigation").

<u>Intervenor Applications</u>

CFPB v. Ocwen, et al., Case No. 9:17-cv-80495 in the U.S. District Court for the Southern District of Florida, West Palm Beach Division [Doc. 220] filed January, 2019 (Pending).

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[1] See Website Link: https://www.sos.texas.gov/statdoc/faqs2900.shtml

[2] See Website Link: https://www.sos.texas.gov/texreg/index.shtml

[3] Tex. Fin. Code § 392.001

(6) "Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.

(7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

(A) are regularly engaged to solicit debts for collection; or

(B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

Parra v. Ocwen Loan Servicing, LLC; Case No. 1:18-cv-05936 in the U.S. District Court for the Northern District of Illinois, Eastern Division [Doc. 29 and Doc. 30] filed January 16, 2019 (Denied).

In Re Syngenta AG MIR 162 Corn Litigation, Case No. 2:14-md-02591 in the U.S. District Court for the District of Kansas [Doc. 4065 and Doc. 4066] filed on January 17, 2019 (Denied as Moot).

Related (Original) Proceedings

Deutsche Bank v. Joanna Burke, et al; Civil Action No. 4:11-CV-01658; in the Southern District of Texas, Houston Division; Case No. 15-2021 in the U.S. Court of Appeals for Fifth Circuit (Opinion in favor of Burkes' but reversed and remanded by Fifth Circuit)("First Appeal"); Case No. 18-20026 in the U.S. Court of Appeals for Fifth Circuit (Second Opinion in favor of Burkes' but reversed based on law-of-case-doctrine and rendered) ("Second Appeal").

Making a Claim against an Uninsured and Unlicensed Debt Collector

A claim, for example, against the "related attorney-debtors" who are in possession of the necessary legal license and bond would be 'straight forward' as they hold the required license and surety bond in the State of Texas. A claim against the company and bond could be filed.

However, in our situation, that is not possible. In order to pursue and provide "proof" of our claim in the ongoing Court proceedings, we need written verification from the State of Texas or relevant Government Agency that Hopkins Law, PLLC falls squarely into the category of "debt collector" per Texas Finance Code, Section 392.001 (6), (7).

The SOS Website states they do not offer this service.[4] The SOS FAQs page references three possible Agencies to assist;

(i) FTC; The online "complaint" portal website[5] which, after following the inquiry and complaint form steps in the portal, they referred us to the CFPB website;

(ii) CFPB; Submit a Complaint page[6]; however, the CFPB raises issues discussed below and;

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[4] See "The secretary of state cannot resolve disputes about services or investigate business practices of a third-party debt collector or credit bureau".

[5] See https://www.ftccomplaintassistant.gov/

[6] See https://www.consumerfinance.gov/complaint/

(iii) Texas Attorney General ("AG") website help page[7]. The AG office has, in recent experience, responded in a timely and personal manner, with a letter and/or follow up call. That is appreciated, considering the troubles we've had with other State Agencies even to acknowledge our correspondence. However, the information is of no true value. It generally redirects the complaint to various "online resources" without addressing any of the specifics. We hope it will be a "specific response" this time.

The State of Texas "Finance Government Agencies"

We have approached the Texas Department of Savings and Mortgage Lending ("SML'), and after many delays and non-responses, we have started to obtain some answers to the questions we asked. In short summary, the response received [to date] states that SML regulates Texas Finance Code Sections 156, 167 and "to some extent" 180 (per D. Wills, Associate General Counsel). They do not cover Section 392, this despite the "MU1 and MU2 applications" on their website and downloadable forms referencing "Section 392" [of the Texas Finance Code] and the requirement of a surety bond.

Other Agencies not directly approached; the Texas Office of Consumer Credit Commission ("OCCC") and the Texas Department of Banking. ("DOB"). The Texas Finance Commission (oversees "SML, "OCCC" and DOB)[8].

We would have expected to learn at least one of these branches is responsible for Section 392 and/or to be able to answer questions related to Section 392:001 (6) and (7). This would include providing us with written verification as "proof of claim" against the attorneys in question. In summary, the answer received should assist us with the Hopkins Litigation along with any other relief and assistance we are due as citizens of the State seeking information *e.g* how to register a complaint when the party is not licensed and does not hold the required Surety Bond in the State of Texas, which is a punishable and illegal act.

[7] See https://www.texasattorneygeneral.gov/contact-us

[8] The Commission is responsible for overseeing and coordinating the activities of the Texas Department of Banking (TXDOB), the Department of Savings and Mortgage Lending (SML), and the Office of Consumer Credit Commissioner (OCCC). **The Commission aims to ensure Texas' financial service providers operate in a safe and sound manner**, industries function as a coordinated system considering the broad scope of the financial services arena under its jurisdiction, **and consumers that seek services from licensed financial service providers are protected from unfair or damaging practices.** The Commission was established in 1943 and derives its authority from Chapter 11 of the Texas Finance Code. The Commission consists of eleven members who are private citizens appointed by the Governor of Texas, subject to Senate confirmation.

The Consumer Finance Protection Bureau (CFPB)

We have two dilemmas with this potentially unconstitutional agency (opinion pending argument; Court of Appeals for the Fifth Circuit).

First, as judicially noticed, we have communicated with CFPB in the past for assistance. In response to our Intervenor Application, as affected homeowners, they aligned with Ocwen, in *opposing* our Application. The CFPB retorted in the Federal Court case in Florida that we have failed to even prove "permissive intervention" (24(b), to which we responded in Doc. 237, Exhibit D;

> "The Applicants and the homeowners claims are the core of the Bureaus action. To deny the Applicants "relevance" to this action does the Bureau no favor. Without the Applicants and homeowners, the Bureau would have no case. The Bureau's argument is farcical and absurd."

The second dilemma is that this is not a Federal question[9] when discussing State licensing of Debt Collectors. It's State Law. We understand that SML is "reporting" to CFPB and is in effect subordinate to them, but this matter is about State licensing. Combined with the fact that the CFBP is treating us as adversaries, any likelihood of assistance is completely dulled.

Attorney General for the State of Texas

Due to the fact that (i) the SOS FAQs page states any inquiries be directed to the AG and (ii) the fact that the FTC redirected us to the "Consumer Bureau" [CFPB] , a "consumer watchdog" Agency which is neither approachable nor "consumer friendly" is the sole reason this letter is being brought to the attention of the Attorney General for the State of Texas [as well as the Finance Commission].

Question Summary

(i) Who is responsible for Texas Finance Code 392 and specifically 392.101 (6) and (7)?

(ii) Will the responsible Agency provide "proof of claim" in a timely manner?

(iii) Will the Agency provide us further information about whether civil action is the only remedy for relief and damages when a debt collector does not hold a license and surety bond?

[9] While there may be a federal question of law "crossover", the purposes of this letter pertains to Texas Finance Code 392; and in particular 392.001(6) and (7); and / or other legal relief as may be advised in your response(s) to this inquiry.

(iv) Will this letter act as ample evidence to issue an immediate "Cease and Desist" Order against Hopkins Law, PLLC from illegally operating in Texas (Deceptive Trade Practice)?[10]

(v) Do we report the law firm to any other Agency, e.g. State Bar of Texas or is that automatic with your own investigation and Order(s)?

Notice

If you have any questions or comments about the enclosed filings, please do not hesitate to reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns. We prefer written communication for the purposes of tracking the case(s).

We respectfully request acknowledgment and a timeline to receive your response. Thank you very much in advance for your time and consideration.

Respectfully

/s/ Joanna Burke

Joanna Burke and John Burke
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~Thomas Jefferson, 1817

[10] Example: Sec. 392.404. REMEDIES UNDER OTHER LAW. (a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter. CIVIL SUITS BY THE STATE. (a) Suit to Collect Civil Fine. The attorney general may file suit in district court ... on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a), (b), or (c) of Section 15.05 of this Act.

DEPARTMENT of SAVINGS & MORTGAGE LENDING

Caroline C. Jones, Commissioner

March 11, 2019

Office of the Attorney General
Open Records Division
300 W. 15th Street
Austin, Texas 78701

VIA INTERAGENCY MAIL

Re: Request for Open Records Opinion

Dear Sir or Madam:

The Department of Savings and Mortgage Lending Department (the "Department") seeks a Public Information (Open Records) opinion from the Office of Attorney General (OAG) regarding the public information request we received from Joanna and John Burke (Requestors), on March 4, 2019.

The requestor seeks documents related to a registered mortgage loan servicer Ocwen Loan Servicing, LLC and Ocwen Mortgage Servicing, LLC. Ms. Burke is requesting "the detailed complaint, investigative report findings, the Order to Cease and Desist, and the Consent Order issued by the "Department" in relation to the consumer complaint file no. 170612. Additionally, Ms. Burke has requested the MU1/MU2 NMLS licensing applications for both, Ocwen Loan Servicing and Ocwen Mortgage Servicing, LLC. With regard to the requested documents, the Department will provide the requestor with the Order to Cease and Desist, the Consent Order, and the companies licensing applications (MU1) NMLS filing(s), however; the Department seeks the OAG's opinion regarding the detailed complaint, and investigative report findings.

Summary

The initial complaint was filed with this Department by London and Sylvia Martin by and through their Attorney of Record Jason Gallini. After an initial review of the complaint and through the investigation it was determined that the Department had no jurisdiction over issues while the mortgage loan is in bankruptcy. Because at this time, Ocwen Loan Servicing, LLC had other open investigation complaints with this Department which were related to mortgage origination issues, the complaint file was referred to the legal division for further disciplinary action. The Order to Cease & Desist/Consent Order was the result of the disciplinary action related to complaint file no. 170612.

Complaints: Under the provisions of Tex Fin Code Section §156.301(b)(f) on the signed written complaint of a person, the Commissioner shall investigate the actions and records of a person licensed under this chapter or a residential mortgage loan originator who is licensed under Chapter 157 and sponsored by and conducting business for a licensed or registered residential mortgage loan company. Tex Fin Code §156.301(f) states that "information obtained by the Commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law."

Based on prior rulings from the Office of Attorney General, the Department believes that any consumer complaint and its accompanying documentation is subject to disclosure and will be disclosed, but all information obtained as a result of the Department's investigation and the investigation report itself are confidential and not subject to disclosure under the express language of the Tex Fin Code §156.301(f).

The Department seeks a ruling that all materials obtained as a result of an investigation by the Department be deemed confidential under the Tex Fin Code §156.301(f) and not subject to disclosure under Texas Government Code Chapter 552.

If you have any questions or need additional information, please contact Cora Peck, Public Information Officer, at (512) 475-2534 or by email at cpeck@sml.texas.gov.

Sincerely,

Cora Peck
Public Information Officer
Legal Assistant

Enclosures:

(1) Copy of Open Records Request made by Ms. Joanna Burke

(2) Copy of the Departmental complaint files report and supporting investigation documents

(3) Copy of the Department's letter to Mr. John & Joanna Burke in relation to the requested complaint file no. 170612.

cc: Joanna & John Burke
46 Kingwood Greens Dr.
Kingwood, Texas 77339

via electronic mail: kajonwe@gmail.com

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