No. 20-20209

IN THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

JOANNA BURKE; JOHN BURKE

Plaintiffs-Appellants,

v.

MARK DANIEL HOPKINS; SHELLEY HOPKINS;
HOPKINS LAW, P.L.L.C.

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Texas, Houston
Division; USDC No. 4:18-CV-4543

APPELLANTS REPLY BRIEF

Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

John Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Telephone: (281) 812-9591
Fax: (866) 805-0576

Pro Se Appellants

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Local Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Plaintiffs-Appellants

Joanna Burke; John Burke

Pro Se Appellants

John Burke
Joanna Burke

Defendants-Appellees

Mark Daniel Hopkins; Shelley Hopkins; Hopkins Law, P.LL.C.

Counsel for Defendant-Appellee

Mark D. Hopkins
Shelley L. Hopkins
HOPKINS LAW,
PLLC

/s/ Joanna Burke
Joanna Burke
Pro Se Plaintiff

/s/ John Burke
John Burke
Pro Se Plaintiff

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS 2

TABLE OF CONTENTS.. 3

TABLE OF AUTHORITIES 5

I. INTRODUCTION 8

A. BDF and Hopkins Are One and The Same 8

B. Shelley Luan Hopkins nee Douglass 9

(i) 2011 DBNTCO v. Burke:..10

C. Mark D. Hopkins..10

D. Hopkins Law, PLLC, et al..10

(i) 2015 DBNTCO (Appeal I): 10

(ii) 2018 DBNTCO (Appeal II):..11

(iii) The Surety Bond: 11

(iv) Pleading Standards re Motion to Dismiss: 11

(v) Hopkins Fraudulent Appeals & System:..12

(vi) Attorney Immunity re Shelley Hopkins:..13

(vii) Work Product, Attorney-Client Privilege & Engagement Letters: 13

(viii) Fraud, the System, Conspiracy & Unjust Enrichment: 13

II. MAGISTRATE JUDGE PETER BRAY 14

III. U.S. DISTRICT JUDGE DAVID HITTNER..15

IV. JUDICIAL NOTICE..15

(i) CFPB v. Ocwen, Fl: 16
(ii) State Bar & Judicial Complaint(s): 16
(iii) Judge Kenneth Marra: 17

V. SUMMARY OF THE ARGUMENT 17

VI. ARGUMENT 19

A. Standard of Review 19

B. 9 Years Litigating the Invisible Doe(s) 20

C. Process of Service re Hopkins Law, PLLC 22

(i) Avoiding Service in Bad Faith: 22
(ii) Termination of the Motion to Supplement Service: 22
(iii) The Law of the Unserved: 23

D. The Burkes Satisfied the Pleading Standards 23

(i) 'Twombly and Iqbal' Pleading Standard: 23

E. The Apprentice Magistrate Judge's Wayward Ways 24

F. Attorney Immunity in Texas is Not Absolute 25

G. Mark Daniel Hopkins Conduct is Not Only Unbecoming, It's Criminal 27

H. Hopkins Lies Have Continued in This Appellate Court 29

I. The Burkes Statutory Claims are Valid 30

VIII. CONCLUSION 34

CERTIFICATE OF SERVICE 37

CERTIFICATE OF COMPLIANCE 38

TABLE OF AUTHORITIES

Cases

Artis v. District of Columbia, 138 S. Ct. 594,603 n.8 (2018)...............................32

Breton Energy LLC v. Mariner Energy Resources Inc., 764 F.3d 394,396 (5th Cir. 2014) 24

Burke v. Ocwen Fin. Corp., No. 19-13015 (11th Cir. Nov. 2, 2020). 19

Coleman v. Gillespie, 424 F. App'x 267,270 (5th Cir. 2011)................................23

Covington v. City of Madisonville, No. 18-20723 (5th Cir. May 15, 2020) 20

Deutsche Bank Nat'l Trust Co. v. Burke, CIVIL ACTION 4:11-CV-01658 (S.D. Tex., 2016), ...11

Deutsche Bank v. Burke, 2020 N.Y. Slip Op. 51255 (N.Y. Sup. Ct. 2020)...........20

Durbin v. Dal-Briar Corp., 871 S.W.2d 263, 268 (Tex. App.-El Paso 1994, writ denied)..18

ESI/Employee Sols., L.P. v. City of Dall., CIVIL ACTION No. 4:19-CV-570-SDJ (E.D. Tex. Mar. 30, 2020)..26

Haines v. Kerner, 404 U.S. 519,520-21 (1972) 21

In re Thomas, 223 F. App'x 310 (5th Cir. 2007)...28

Jaffer v. Kelly M. Davis & Assocs., Civil Action No.: 4:19-cv-00860-RWS-KPJ (E.D. Tex. July 27, 2020)..33

Joanna Burke v. Deutsche Bank National Trust Company, 18-1370 (den.) (May, 2019) 8

Likover v. Sunflower Terrace, 696 S.W.2d 468, 472 (Tex. App. 1985)................29

McKesson v. Doe, No.19-1108 (Nov. 2, 2020)..26

Millan v. USAA General Indemnity Co., 546 F.3d 321,325 (5th Cir. 2008)...........22

Priester v. JP Morgan Chase Bank, N.A., 708 F.3d 667, 671, 674 (5th Cir. 2013)26

Rimade Ltd. v. Hubbard Enterprises, Inc., 388 F.3d 138,143 (5th Cir. 2004)......... 9

Robles v. Nichols, No. 08-19-00225-CV (Tex. App. Aug. 19, 2020).....................26

Schmitgen v. Servis One, Inc., 2:18-CV-00074, (S.D.Tex. Jan, 16, 2020)............22

Tolbert v. Taylor, No. 14-18-00001-CV, (Tex. App. Apr. 7, 2020).......................26

Troice v. Proskauer Rose, L. L.P., 816 F.3d 341,347-48 (5th Cir. 2016)...............25

Wease v. Ocwen Loan Servicing, L.L.C., 915 F.3d 987, 995 (5th Cir. 2019).........32

Statutes

15 U.S.C. § 1692e(2)(A)..30

Fair Debt Collection Practices Act ("FDCPA").. 8

FDCPA § 1692e..30, 33

FDCPA 12 U.S.C. § 2605(e)..31

Tex. Fin. Code Ann. § 392.304(19)...30, 33

Texas Debt Collection Act (“TDCA”) 8

Other Authorities

A Guide to the Federal Magistrate Judge System 24

Bray; Houston Chronicle Article 14

Burke Follow-up Letter re Judge Marra Judicial Complaint (Aug. 6, 2020) 16

Burke Response to Fl. Bar re Catalina Azuero Complaint 16

Catalina Azuero Reply to Fl. Bar Ethics Complaint 16

Convergence of Federal Rules 8(a) and 9(b); The Fifth Circuits Application of Twombly and Iqbal, David Coale 22

Courtlistener.com Search Query Results re Magistrate Judge Bray M&R Reports 24

Houston Chronicle Article; The journey from being 'civil' to criminal for inmate who threatened to kill federal judge 27

Judge Marra Judicial Complaint (June 9, 2020) 16

Judicial Complaint Letter, 11th Cir. (Sept. 8, 2020) 16

Lee H. Rosenthal, James C. Francis, and Daniel J. Capra, Managing Electronic Discovery: Views from the Judges, 76 Fordham L. Rev.1 (2007) 17

Nomination; PN1919 — Aileen Mercedes Cannon — The Judiciary, Congress 17

Ocwen's Private Offering of $350 Million Aggregate Principal Amount of Senior Notes Due 2019 21

Shelley Hopkins, LinkedIn Resume 9

I. INTRODUCTION

This civil action is directly attributed to the barefaced fraud on the people and the Burkes after the collapse of the Banks in the Financial Crisis of 2008.[1] The core of the appellants appeal before this court involves a tale of deception, lies, and fraud combined with willful and malicious discounting, misapplication and misinterpretation of the law by two lawyers, (Mark Hopkins ("MH") and Shelley Hopkins ("SH")) two law firms (BDF Law Group ("BDF') and Hopkins Law, PLLC ("Hopkins")) and two lower court federal judges (Senior [unconstitutional] Judge David Hittner ("JH") and [apprentice] Magistrate Judge Peter Bray ("MJ")). The Burkes are claiming fraud, civil conspiracy, and unjust enrichment, including violations of both the Texas Debt Collection Act ("TDCA") and the Fair Debt Collection Practices Act ("FDCPA"). In Hopkins response, they claim to have (I) correctly removed the case to federal court; (II) for the majority of the Burkes claims, they are protected by attorney immunity and (III) the Burkes failed to plead sufficient facts related to plausibly allege that Hopkins are debt collectors and/or have violated the TDCA and FDCPA. The Burkes respond.

A. BDF and Hopkins Are One and The Same

In this case, Hopkins invited two directors of BDF as expert witnesses and

[1] *Joanna Burke v. Deutsche Bank National Trust Company,* 18-1370 (den.) (May, 2019) generally, which provides a full and detailed background of the underlying ("DBNTCO") case; https://2dobermans.com/woof/p

MH included himself.[2] BDF Hopkins are effectively one and the same. The Burkes have pierced the corporate veil[3] and alter egos' of these legal debt collectors and this court is fully aware of the facts.[4] In nine years, BDF Hopkins have 'acted' for the bank(s) in the Burkes' cases and yet not one single witness nor affidavit has been presented from any bank or nonbank executive or member of staff.

B. Shelley Luan Hopkins nee Douglass

Relying upon her LinkedIn[5] resume as at 1st Nov., 2020, Shelley Hopkins career has 3 positions **(1) Toxic tort and insurance** defense lawyer at Godwin Gruber from Oct. 2001–Sept. 2004 **(2) SH describes her position as Managing Attorney/Senior Counsel,** Litigation; Defense litigation for BDF in state and federal courts of Texas, primarily focused on representation of lenders and mortgage services across the United States from Sep 2004–Nov 2013 and **(3) Attorney at Hopkins Law, PLLC**, **Nov. 2013** – Present. <u>**Note**</u>**:** Hopkins Law, PLLC did not exist in Nov. 2013. The corporation was formed 16 June, 2015. [ROA.75].

SH and MH of Hopkins & Williams, PLLC were in a relationship while she was at BDF [ROA.82]. MH worked on foreclosure litigation, mainly appeals for

[2]Appellees' Brief, Doc.00515533682, Pages: 40, Section N.
[3]*Rimade Ltd. v. Hubbard Enterprises, Inc*., 388 F.3d 138,143 (5th Cir. 2004).
[4]For example, as detailed in prior motions and sealing of documents and appellants' brief(s) in this appeal.
[5]Shelley Hopkins, LinkedIn Resume https://www.linkedin.com/in/shelleylhopkins/ and screenshot from 1/11/2020; https://2dobermans.com/woof/o

BDF at that time. They were married 5 May 2013 [ROA.84].

<u>(i) 2011 DBNTCO v. Burke:</u> Shelley Luan Hopkins nee Douglass headed the foreclosure litigation department at BDF. She was directly responsible for the Burkes lawsuit, initiated by BDF in 2011. [*e.g.* ROA.55, footnote 60].

C. Mark D. Hopkins

MH is a lawyer and a seasoned debt collector working in the creditor rights and foreclosure vertical. MH is sole director and founder of Hopkins Law, PLLC, formed in June 2015. Prior to this date, he co-owned Hopkins & Williams, PLLC. The shenanigans by MH related to this company in the lower court and the Burkes objections is amply documented.

D. Hopkins Law, PLLC, et al

Hopkins is a law firm practicing real estate law who, through the ordinary course of its business, regularly attempts to collect defaulted residential obligations from consumers.[6] This [unserved[7]] entity is a professional law corporation organized under the laws of the state of Texas.

<u>(i) 2015 DBNTCO (Appeal I):</u> The audit trail is irrefutable, which rejects

---

[6]Definition of a debt collector.

[7]Reversal should allow the Burkes to serve the corporation due to the misdeeds by unethical attorney-defendants.

the M&R as factually flawed and unreliable [ROA.1189]. It confirms Mark Hopkins was the sole attorney of record in Appeal I.

(ii) 2018 DBNTCO (Appeal II): After remand and the first conference with Magistrate Smith ("MJS"), only then did Shelley Hopkins hurriedly apply to be counsel of record [ROA.1125(vi)] and finally, after 15+ months, move to remove Coury Jacocks[8], on June 21, 2016, the debt collector who lost the bench trial in 2015 and left BDF shortly thereafter.

(iii) The Surety Bond: Hopkins are debt collectors. They do not hold the required State of Texas surety bond [ROA.1131] whereas BDF does hold an active surety bond. Hopkins deny they are third-party debt collectors as they do not employ *non-attorneys* nor do any services which qualify under the legal description as recorded in the statute(s). The Burkes maintain this is false as SH and MH may perform *non-attorney* work(s), which is left unanswered without discovery. Discovery would also confirm that Hopkins et al, as a *non-licensed debt collection law firm*, owned and operated by MH, which could not and should never have appealed the DBNTCO cases as they did in 2015 and 2018.

(iv) Pleading Standards re Motion to Dismiss: In order to defeat a motion

---

[8] *Deutsche Bank Nat'l Trust Co. v. Burke*, CIVIL ACTION 4:11-CV-01658 (S.D. Tex., 2016), Doc. 111, 7/11/2016; https://2dobermans.com/woof/y

to dismiss, the Burkes only need to plead per Rule 8(a) and this standard was met. Only the fraud claim needed to meet the 'higher' standard, the Rule 9(b), *e.g.* the who, what, where, why and when and the Burkes answered that requirement in depth. The novice MJ erred in the rules, misapplied the laws and then wrongfully recommended dismissal with prejudice, when the complaint was sufficiently pleaded to defeat the premature motion to dismiss. Or, in the alternative, discovery should have continued in a search for any answers the court may have had prior to deciding on the motion.

(v) Hopkins Fraudulent Appeals & System: As the *Ray*[9] panel held, these fraudulent and unlawful appeals by these rogue, unlicensed debt collectors in the State of Texas, added 5 years of additional and unnecessary litigation when the Burkes had defeated DBNTCO at the bench trial in 2015 [ROA.1128].

Furthermore, the fraudulent *system* and acts in the PNC case [ROA.1129-1130, ROA.1199-1200] should have been sufficient for the lower court to question the truth of Hopkins arguments and filings. To decide the case based on the no-evidence motion, without any discovery and based on the hearsay facts and statements *e.g.* no bank or nonbank witnesses called by Hopkins as witnesses, no engagement letters, no mortgage loan file [ROA.1129] and no answers to the Burkes

[9]Appellees' Brief, Doc.00515533682, Pages: 33-36/43-44.

first RFA, *smells of home cooking* as Judge Gregg Costa would say. More so, after the disgraceful events of 10 September, 2019 in the MJ's courtroom.

(vi) Attorney Immunity re Shelley Hopkins: What's important here is SH has a five-year period where attorney immunity does not apply. She does not benefit from immunity from 2011-Nov. 2013 while working for BDF; she definitely does not benefit from immunity while claiming to work for a corporation that did not exist between Nov. 2013–June 2015 and subsequently after the formation of Hopkins Law, PLLC ("Hopkins") she does not benefit from attorney immunity from June 2015 until she became counsel of record in June 21, 2016.

Furthermore, if SH claims to be working for Hopkins during part of this period, it is unknown if SH worked solely in the capacity of attorney or performed duties that are defined as *non-attorney* works, as outlined in the Burkes ignored filing(s). This could have been confirmed via discovery.

(vii) Work Product, Attorney-Client Privilege & Engagement Letters: The mortgage loan file [ROA.623] and engagement letter(s) [ROA.624] do not benefit from attorney immunity nor do they obtain protection via the work-product or attorney-client privilege doctrines.

(viii) Fraud, the System, Conspiracy & Unjust Enrichment: The Burkes

further contend that Hopkins, MH and SH do not benefit from Attorney Immunity based on the case law which supports the Burkes arguments as detailed herein and initial brief.

II. MAGISTRATE JUDGE PETER BRAY

The replacement for *Hon. Stephen Wm. Smith*, this apprentice Magistrate is a former assistant public defender who is on the record as being cash-strapped.[10] Elevation to the role of judge should have alleviated that financial distress. **The first time** the Burkes met this Magistrate, it was evident when he was in a packed courtroom for the Burke's 3-minute scheduling conference on February 6, 2019, he nonchalantly belittled MH as he questioned his '*dislike of Magistrates*'. **The second time** the Burkes were in front of the Magistrate, on Sept. 10, 2019, he had become a chameleon. Clearly, he had been censured for his prior statement towards MH and didn't care for the prospect of returning to the role of underpaid assistant public defender. Magistrate Judge Peter Bray ("MJ") was now *pro* MH, affirmed by the incredulous and repugnant acts in his courtroom that day. The MH's subsequent M&R is evidence of his pervasive bias and the Burkes have pending on their to-do list, a formal judicial complaint against this MJ.

[10]"Bray…has stopped contributing to his retirement fund." Houston Chronicle Article; https://2dobermans.com/woof/11

III. U.S. DISTRICT JUDGE DAVID HITTNER

The Burkes questions include but are not exhaustive; **(a)** the Blind Draw system[11], **(b)** The senior judge's constitutionality in the two Burke appeals before this court **(c)** the violative actions and orders of the Judge in the lower court, **(d)** the disclosed Judicial Complaint and request for impeachment of the Judge, which is still percolating on Chief Judge Priscilla Owen's desk **(e)** The dismissal was premature considering the *Ocwen* case, pending before this court as detailed **(f)** How it is possible that a United States District Judge has failed in nine years to introduce himself to the Burkes and **(g)** JH's lack of management in respect of his assigned and novice Magistrate, who not only lost control in his courtroom, his inexperience in such complicated case(s) is evident from the face of the M&R and commanded material corrections in order to comply with the rule of law and for justice to be served.

IV. JUDICIAL NOTICE

Both Hopkins and the Burkes have asked the court(s) to take judicial notice of the Burkes nationwide proceedings as well as the pending *Burke v. Ocwen* appeal in this court. It goes without saying, all these cases are related and relevant to this appeal. Here's an update.

[11]Appellees' Brief, Doc.00515533682, Page: 55.

(i) CFPB v. Ocwen, Fl: The Burkes attempted to intervene in the Florida civil action but were denied by Senior Judge Kenneth A. Marra. The Burkes timely appealed. It was during research for the scheduled 11th Circuit appeal (19-13015), they uncovered the shocking coverup by the District Judge and counsel for both sides. Together, they conspired to unlawfully prevent the Burkes from obtaining access to documents under seal and evidence for their civil cases. What was more alarming is that the case the Burkes uncovered is from the S.D. Tex. court. A case where Houston homeowners obtained information directly from *Ocwen's* lawyers in Florida, the same lawyers who argued the Burkes had no legal rights and a judge who affirmed that falsehood in writing. These essential documents, which were unlawfully concealed from the Burkes would have been submitted to bolster their appeal argument(s) in this case and the *Ocwen* case in this court.

(ii) State Bar & Judicial Complaint(s): Incredulously, if that was not enough theater, now the Burkes are involved in more lawyer ethics and judicial complaints which has added further stress and anxiety. Astoundingly, the perversion of justice has now escalated to include State Bars, who are violating their own rules to unlawfully protect these members where the Burkes have filed ethic complaints against four Goodwin lawyers. It is best summarized in the Catalina Azuero

complaint: See her answer[12] and the Burkes response[13].

(iii) Judge Kenneth Marra: The Burkes submitted their judicial complaint several times to the Eleventh Circuit before it was finally acknowledged[14]. This complaint[15] against the Senior Judge is also percolating, despite a follow-up letter[16] to recently appointed Chief Judge William "Bill" Pryor and while Judge Marra's replacement, Aileen Mercedes Cannon[17] is being confirmed (which will allow the Burkes judicial complaint to be dismissed).

V. SUMMARY OF THE ARGUMENT

"I no longer think of the world as divided into plaintiffs or defendants; it is data requesters versus data producers." Chief Judge Lee Rosenthal, S.D. Tex.[18]

First, this appeal questions whether the lower court and the two judges followed the expected protocols, standards, laws and procedures. The Burkes argue that the court and the two judges failed miserably.

Second, this appeal questions whether the reprehensible conduct of *pro se* lawyer [ROA.1051] Mark Hopkins warranted further action by the judges, who

[12]Azuero Reply to Fl. Bar; https://2dobermans.com/woof/q
[13]Burke Response to Fl. Bar; https://2dobermans.com/woof/r
[14]Judicial Complaint Letter; https://2dobermans.com/woof/s
[15]Judge Marra Complaint; https://2dobermans.com/woof/t
[16]Burke Follow-up Letter; https://2dobermans.com/woof/v
[17]Cannon Nomination; https://2dobermans.com/woof/u
[18]Lee H. Rosenthal, James C. Francis, and Daniel J. Capra, Managing Electronic Discovery: Views from the Judges, 76 Fordham L. Rev.1 (2007) –p.4.

remained silent and took no action. The Burkes look at historical data for a clear answer as to whether MH's conduct warranted discipline, reporting and criminal referral. [*e.g.* ROA.1200-1206] The answer is a resounding 'yes'.

> *"In reverse, if the Burkes or any homeowner/applicant had applied that [false] income to the loan, it is a felony of the first degree if the value of the property or the amount of the credit is $300,000 or more, Texas Penal Code, Section 32.32 (c)7." [ROA.627]*

Third, the Burkes address attorney immunity, including the Burkes complaint for fraud, the known system of fraud Hopkins applies in foreclosure appeals *e.g.* see PNC case, conspiracy and unjust enrichment.[19] Contrary to Hopkins assertions, the Burkes have proven any immunity Hopkins may claim has been waived, pierced or dissolved by their own lawlessness. In fact, in many of Hopkins claims, attorney immunity simply does not apply.

Fourth, the TDCA and FDCPA arguments by Hopkins are unavailing and the apprentice MJ's first memorandum and recommendation report addressing the Burkes detailed complaint was not based on law, rather it was based on errors, omissions [ROA.1194] and *erie guesses*. The court claimed it *ferreted out* the Burkes claims, but that was untrue, the court snubbed 67% of the Burkes first amended complaint [ROA.1211-1212] and 83% of the Burkes response to the

---

[19] As cited in this case and Appellants Brief in *Burke v Ocwen*, 19-*20267 e.g.* In part*;* "prior acts or transactions with other persons are admissible to show a party's intent where material, if they are so connected with the transaction at issue that they may all be parts of a *system*, scheme or plan." *Durbin v. Dal-Briar Corp.*, 871 S.W.2d 263, 268 (Tex. App.-El Paso 1994, writ denied).

second motion to dismiss [ROA.1213-1214] including indispensable arguments. On the contrary, if the apprentice MJ had included the Burkes arguments rather than discounting them entirely, their answers would have decisively repelled the court's erroneous conclusions in law. The Burkes suggest, based on similar and recent court experience(s)[20], that is why the MJ ignored the Burkes arguments in fact and law.

In summary, the Burkes are not addressing *all* of the issues raised in their third amended brief, rather they are responding to the appellees brief and expanding on the necessary parts of the case, as deemed necessary, to aid this panel. Appellants filings show, beyond doubt, the dismissal with prejudice is an *abuse of discretion*.

VI. ARGUMENT

A. Standard of Review

Appellants acknowledge and agree with Appellees correction per page 13, footnote 9 of their brief. However, they disagree with Appellees in their summary. The Burkes do not contest the federal question removal on appeal, rather they contest (a) the deliberate *evasion* of service (b) the fact that the court decided on its own to wrongfully terminate the substitute motion re Hopkins Law, PLLC and (c) misapplied the law in 'dismissing with prejudice' this unserved party. A Motion to

[20] *Burke v. Ocwen Fin. Corp.*, No. 19-13015 (11th Cir. Nov. 2, 2020).

Dismiss 'for failure to state a claim' with prejudice [ROA.1009] is reviewed *de novo*. See; *Covington v. City of Madisonville*, No. 18-20723 (5th Cir. May 15, 2020), reversing lower court.

B. 9 Years Litigating the Invisible Doe(s)

"Common sense will tell us, that the power which hath endeavored to subdue us, is of all others, the most improper to defend us." - Thomas Paine

It is quite telling when there is never an opposing party. Where across the table sits a debt collector [ROA.1128] with the official designation of lawyer - never a client (and lawyer). These ghost entities, straw men [ROA.1125(v)] or "invisible does" have presided in name only and managed to remain hidden for 9 long years.

Federal judges and magistrates have governed court proceedings which allowed the lawyers for these *invisible does* (in this case DBNTCO and *Ocwen*) to remain exactly that, invisible. Any attempts at discovery or gaining evidence for the lawsuit is met with an impenetrable judicial shield. The Burkes have tried valiantly and been repelled, without legal merit, in 3 separate cases where BDF Hopkins are the debt collecting lawyers. When the DBNTCO civil action was before the court, the bench trial, the debt collector came to court empty-handed, literally. No witnesses, no evidence, no defense[21]. That day the debt collecting lawyer lost, but

[21]Compare with *Deutsche Bank v. Burke*, 2020 N.Y. Slip Op. 51255 (N.Y. Sup. Ct. 2020).

not after two unlawful appeals by Hopkins. The above quote by Thomas Paine is squarely on point.

That said, here the Burkes return, chapping at the door of the Fifth Circuit, asking the judiciary to either stop the lawyers (and prejudiced lower court judges) from shielding their clients, to allow discovery and so the case may proceed to a jury trial – or probe the lawyers to admit they are debt buyers who own the debt and have come to court disguised in the name of the *invisible does* to collect a judgment for their own financial benefit. Common sense tells you, if there are no *visible does* - but the same, persistent debt collector still stands before you after 9 years – then the debt collecting lawyer must be the owner of the unsecured and charged-off debt.[22] Common sense tells you if you send a QWR to the named *invisible doe* and the debt collector responds, in violation of the statute, the debt collector is attempting to collect a debt they own.[23] And if the Judge(s) won't even permit discovery to obtain proof of authority, and/or an engagement letter and then feverishly halt a request for

[22] The law states, quite clearly, that the plaintiff's short and concise complaint does not need to be believable (in the eyes of the court). That is not the test. As long as the allegations are, as in this case, factually stated, the case should continue. *Haines v. Kerner*, 404 U.S. 519,520-21 (1972). See also ROA.1195-1196.

[23] In the alternative, the Burkes have argued that *Ocwen* is the owner of the DBNTCO debt as they are known buyers of debt written-off by banks and also resellers. *E.g. Ocwen's Private Offering* https://2dobermans.com/woof/1f

admissions [ROA.949] for the debt collector, the red flags tell you the debt collector is correctly labeled as a *bounty hunter*. That's common sense.

C. Process of Service re Hopkins Law, PLLC

(i) Avoiding Service in Bad Faith: Hopkins brief raised eyebrows when it included - without citation to any case law - in footnote 9, p.14 of their brief, *'Nothing prohibits a party from waiving formal service and appearing in a lawsuit.'* This statement is untrue. Hopkins did not waive service; Hopkins *avoided* service. Apart from the state court summons, the Burkes attempted to contact Hopkins about service for the corporation before the 120 days. Silence and unethical behavior does not qualify as waiver, rather Hopkins acted in bad faith.[24]

(ii) Termination of the Motion to Supplement Service: The Burkes filed a motion to supplement service and for an extension of time re Hopkins. The court terminated the motions without proper notice and for no good reason as the case proceeded for a further year. The Burkes were wrongfully denied an opportunity to serve Hopkins when it was proven Hopkins was deliberately evading service. [25]

---

[24]BDF's long-term attorney sanctioned for similar conduct: "Gibson violated Rule 11 with the removal of the case and did not live up to her obligations as an officer of the Court. See Fed.R.Civ.P.11(b)(1)." *Schmitgen v. Servis One, Inc.*, 2:18-CV-00074, (S.D.Tex. Jan, 16, 2020), Doc.46.

[25]*Millan v. USAA General Indemnity Co.*, 546 F.3d 321,325 (5th Cir. 2008) "A discretionary extension may be warranted, "for example, …**if the defendant is evading service**").

(iii) The Law of the Unserved: Hopkins Law, PLLC, wasn't served. In law, this commands dismissal *without* prejudice. But instead should have warranted disciplining the two attorneys for intentionally evading service for the corporation. The judge(s) erred.[26]

D. The Burkes Satisfied the Pleading Standards

(i) 'Twombly and Iqbal' Pleading Standard: [ROA.621] Much has been written about the the Burkes alleged failure to achieve the necessary pleading standard [ROA.740] to defeat Hopkins Motion to Dismiss.[27] David Coale[28] wrote a very comprehensive article on the subject matter and the Burkes are convinced there's no pleading deficiencies in their lower court filings which merited dismissal with prejudice, even with Coale suggesting;

"**The Fifth Circuit** has addressed pleading standards several times since Twombly and Iqbal. **When the Court affirms a dismissal** on the pleadings, its language about Rule 8(a) often resembles language from its cases about the heightened pleading requirements of Rule 9(b). **Conversely, when the Court reverses** a pleading-based dismissal, it tends to focus on the allegations of the

[26] *Coleman v. Gillespie*, 424 F. App'x 267,270 (5th Cir. 2011).
[27] E.g. ROA. 1119-1120 Statutory Sections Standard.
[28] Convergence of Federal Rules 8(a) and 9(b); The Fifth Circuits Application of Twombly and Iqbal https://2dobermans.com/woof/14

specific pleading rather than the particular requirements of Rule 8(a).".

For example; The M&R *erie guesses* by the MJ are rebutted under the law; "The Court remains acutely aware of the limits to Fed.R.Civ.P.12(b)(6) when the parties dispute material facts…e.g., *Breton Energy LLC v. Mariner Energy Resources Inc*., 764 F.3d 394,396 (5th Cir. 2014) "Well-pleaded factual allegations may perfectly shield a complaint from dismissal under Rule 12(b)(6), and our inquiry's emphasis on the plausibility of a complaint's allegations does not give district courts license to look behind those allegations and independently assess the likelihood that the plaintiff will be able to prove them at trial." – Judge Higginson.

E. The Apprentice Magistrate Judge's Wayward Ways

(i) The Status Conference that Wasn't: At the Sept. 10 conference, the MJ **(i)** Was not prepared for the status conference contrary to what he said on the record [ROA.1190]; **(ii)** Unilaterally changed it to a motion hearing without notice [ROA.1192]; **(iii)** Joined in attacking the elder Burkes based on MH's abhorrent and admitted lies; **(iv)** Did not answer the motion to clarify seeking the conference be voided and rescheduled; **(v)** Took no disciplinary action against MH; **(vi)** Did not refund the Burkes transcript and court fees [ROA.1192] and **(vii)** Would not extend time to answer when Joanna explained she had eye surgery and other court deadlines [ROA.1193].

(ii) The MJ's Suggested and Adopted M&R is Outside the Law: The Burkes searched the lower court records to see how many cases where the MJ had written a foreclosure or attorney immunity related report before he penned the Burkes.[29] Unsurprisingly, it returned with zero reports. No reliance can be taken from JH's alleged review of the MJ's M&R because **(i)** JH is prejudiced against the Burkes. See the Burkes denied recusal motion [ROA.1159] and the pending Judicial Complaint [ROA.1166] **(ii)** JH did not state he reviewed the M&R *'de novo'*[30] **(iii)** The premature dismissal of the case without a pretrial hearing and **(iv)** The *Ocwen* case at the 5th is still pending and which lists many of the complaints directed at the same judge(s) here.

F. Attorney Immunity in Texas is Not Absolute

(i) Attorney Immunity Does Not Prevent Discovery: The lower court judges prevented discovery[31] as soon as the Burkes filed their request for admissions ("RFA") [ROA.949] for MH. This was error when on the face of the complaint and subsequent filings, the Burkes raised genuine disputed facts.[32] Instead, the MJ took *erie guesses* instead of looking to the Burkes complaint and judging it correctly on

[29] Courtlistener.com https://2dobermans.com/woof/16
[30] ROA.1185-1186 and A Guide to the Federal Magistrate Judge System, p.48, incl. footnote 193 https://2dobermans.com/woof/1d
[31] ROA.1120.
[32] *Troice v. Proskauer Rose, L. L.P.*, 816 F.3d 341,347-48 (5th Cir. 2016).

the Rule 8(a) standards, which the Burkes met as discussed above.

(ii) A Criminal Violation Is Foreign to The Duties of An Attorney: Hopkins claims criminal conduct falls definitively under the scope of attorney immunity. [*See* ROA.808-809, at 10. And 11.]. Contrary to Hopkins assessment, the Texas Supreme Court has never specifically addressed whether a criminal violation is protected by attorney immunity.[33] The Fifth Circuit made an *erie guess* in this regard.[34] This approach has proven to be incorrect in the past[35] and as recently as this week, with the U.S. Supreme court reversing this courts' opinion in *McKesson v Doe*,[36] and sending the case back to allow this court to seek guidance from the Louisiana Supreme Court.

Here, the lower court erred in its application of the law and should have relied upon intermediate state court decisions where the highest state court has not spoken on an issue[37] -which would not protect Hopkins criminal acts. Furthermore the MJ concedes the statutes abrogate attorney immunity and which includes prohibited

---

[33] *Tolbert v. Taylor*, No. 14-18-00001-CV, at *10-11 (Tex. App. Apr. 7, 2020) – "A criminal violation of either statute would be *"foreign to the duties of an attorney""*.

[34] "In other words, the Fifth Circuit did not hold that the attorneys in that case were in fact acting within the scope of their representation when they committed the alleged criminal conduct." *Robles v. Nichols*, No. 08-19-00225-CV, at *3 n.1 (Tex. App. Aug. 19, 2020).

[35] *Priester v. JP Morgan Chase Bank, N.A.*, 708 F.3d 667, 671, 674 (5th Cir. 2013).

[36] *McKesson v. Doe*, No.19-1108 (Nov. 2, 2020).

[37] *ESI/Employee Sols., L.P. v. City of Dall.*, CIVIL ACTION No. 4:19-CV-570-SDJ, at *48 (E.D. Tex. Mar. 30, 2020).

methods used by Hopkins in this case [ROA.1108(4)].

(iii) When Attorney Immunity Does Not Apply: [ROA.745] The lower court erred in discounting the Burkes arguments, namely; **(i)** SH does not benefit from attorney immunity ("AI") for the five years before she finally became a counsel of record [ROA.752] **(ii)** MH was not covered [ROA.756] or waived immunity **(iii)** The mortgage/loan file, billing records and engagement letter(s) are not protected by the work-product doctrine or AI. In other words, it is not privileged. Taking the Burkes allegations as true, and where applicable, the court should have allowed discovery to continue *e.g.* the RFA is a prime example, in order to allow the MJ to decide on facts, not guesses as to the Burkes arguments that AI is not applicable universally in this civil action.

G. Mark Daniel Hopkins Conduct is Not Only Unbecoming, It's Criminal

Magistrate Peter Bray, a former public defender, stood before Judge David Hittner in the lower court and defended a man, Yarbrough, who had threatened to harm the judge.[38] Yarbrough was sentenced to several years in jail. In this case, as a Magistrate Judge, Peter Bray watched and listened to Mark Hopkins admitted lies, wherein he stated in open court the Burkes *"wanted certain judges to be shot"*,

[38]Houston Chronicle: https://2dobermans.com/woof/1e

repeated the same statement again and for a third time said *‘and suggesting some members of the judicial should be shot”*. MH ended his lies with; *“[he] wanted this to end sooner than later”*. That’s 3 separate times Hopkins made outrageous claims and admitted lies in succession. The evil intent by Mark Hopkins was spine-chilling [ROA.1052].

Four direct, vile and abusive assaults on the elder Burkes in the MJ’s wayward courtroom; **(i)** This is without question, conduct “*foreign to the duties of an attorney”* and as such no attorney immunity protection is available; **(ii)** Is sanctionable conduct wherein MH should have been disciplined and reported to the Texas Bar and the District Attorney (prosecutor);[39] **(iii)** It was inciteful, criminal behavior and; **(iv)** Is an in-court example of this rogue debt collector violating the TDCA and FDCPA and confirming is abusive debt collection practices.

Meanwhile, instead of asking MH to prove his outlandish allegations, the judge immediately turned on the Burkes and shouted at the elder and disabled John Burke *“Are you a criminal?”*. John Burke calmly answered; *“Do I look like a criminal, Your Honor”*. MJ Bray also commented *“…that’s way more serious than any kind of counterclaim”* followed by *“are you breaking the law?”.* Just like his findings and recommendations in his maiden M&R, this apprentice judge is patently

---

[39]*In re Thomas,* 223 F. App'x 310 (5th Cir. 2007).

prejudiced. The civilian and law-abiding Burkes were assaulted rather than protected in his courtroom and that is utterly unacceptable behavior.

Whilst Hopkins attempts to invoke the 'no private rights of action' relative to the Burkes criminal charges, the court's own quasi-disciplinary system allows for referral to a criminal prosecutor and the Burkes argue this should have been mandatory in this instance and relying upon MH's felonious conduct not only in the courtroom, but also the white-collar crimes[40] as stated herein (See; fraud/system of fraud).[41]

H. Hopkins Lies Have Continued in This Appellate Court

(i) The Appellees Brief: The Burkes brief outlined Hopkins untruthful statements and writings [*e.g.* ROA.1125(x)]. This court has also witnessed the constant lies in motions and responses into this appeal, yet refused to take any [disciplinary] action. MH and SH are serial liars and they continue in their latest filing, the appellees brief. For example, on p.5, Hopkins states that "the Burkes additionally asked, without citing an explanation or basis, for leave to amend their complaint a second time". A review of cited page ROA.730 clearly contradicts

[40] Also see; ROA.1126-1128.

[41] "An attorney has no general duty to the opposing party, but he is liable for injuries to third parties when his conduct is fraudulent or malicious. " *Likover v. Sunflower Terrace*, 696 S.W.2d 468, 472 (Tex. App. 1985)

Hopkins statement, e.g. *'…to ensure the record is factual and correct'* and *'…which has numerous known errors as discussed'* – referring to Joanna Burke's grave illness and hospitalization [ROA.689] and John Burke's printing issues as confirmed in affidavit(s) [ROA.713, 721, 791]. MH and SH are untrustworthy and so are the many uncorroborated defenses in their brief. The MJ relied on the unsupported defenses without discovery, even limited discovery and as discussed herein, that was error.

I. The Burkes Statutory Claims are Valid

(i) The FDCPA and TDCA: The lower court erred in the application of the law. As stated above, any doubts would have been cleared up if **(i)** discovery had been allowed to progress, **(ii)** the court had not acted prematurely by ruling on the case while the *Ocwen*, Fifth Circuit and Supreme Court cases are still undecided and **(iii)** the MJ had not erroneously relied upon *erie guesses*.

The MJ summarized his findings [ROA.1108(4)]; **(i)** FDCPA: The Burkes 'conclusory statements failed to show Hopkins are debt collectors **(ii)** TCPA: Hopkins 'may be' debt collectors but the Burkes failed to show they are third-party debt collectors **(iii)** The Burkes failed to 'allege sufficient facts' under either statute or that Hopkins engaged in prohibited conduct.

In addition to the Burkes lower court filings [including ROA.1116 and ROA.1178] and initial brief repelling the above, the Burkes would add;

(ii) The Statutes Favor the Burkes and Hopkins is a Debt Collector: See violation; FDCPA § 1692e; "The false representation of – the character, amount, or legal status of any debt." 15 U.S.C. § 1692e(2)(A). Similarly, Hopkins violated the Texas Debt Collection Act ("TDCA"). For example, the TDCA, pursuant to Tex. Fin. Code Ann. § 392.304(19), broadly prohibits a debt collector from using any "false representation or deceptive means to collect a debt . . . ."

(iii) The Fifth Circuit's $615,000 Judgment: The novice MJ took a *guess* about the $615,000 judgment of this court being falsely enlarged to $1.1+ million dollars [ROA.1125(viii)] in violation of the statute(s) as discussed herein and the initial brief. The MJ did not look at the Burkes arguments, which he snubbed in the majority. Rather, he made a conclusory statement, an *erie guess*. The facts are, this court rendered judgement of foreclosure and the sum requested by DBNTCO and their lawyer, Hopkins, was for $615,000. The Burkes have been injured with a demand for nearly twice that sum [ROA.1132].

After the judgment and mandate was issued and executed, the Burkes received statements demanding $1.1+ million dollars. The Burkes sent a QWR to *Ocwen's* address but it was rerouted and answered by SH [ROA.1131] wherein she admitted the judgment of the 5th Circuit but still demanded payment of $1.1+ million, made payable to Hopkins, in violation of both the FDCPA and TDCA. [ROA.775]. The

Burkes have a valid claim as they were injured by the difference between the $1,146,557.32 and the judgment for $615,000.00, which equals damages of $531,557.32.

The FDCPA 12 U.S.C. § 2605(e) states;

> "Duty of *loan servicer* to respond to borrower inquiries."

The statute does not say "duty of loan servicer…*or it's agent(s)*" *e.g.* foreclosure lawyers/debt collectors.

And, further on: 2605(e)(1)(a);

> "If any *servicer* of a federally related mortgage loan receives a qualified written request from the borrower (***or an agent of the borrower***) for information relating to the servicing of such loan, *the servicer shall provide a written response*…"

The statute specifically states 'or an agent *of the borrower*' but there is no such provision for the loan servicer. The clear meaning of the text of the statute is unambiguous.[42] The obligation to respond to the Burkes qualified written response

---

[42] But "[t]he controlling principle in this case is the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written[,]...giving each word its ordinary, contemporary, common meaning." *Artis v. District of Columbia*, 138 S. Ct. 594,603 n.8 (2018).

("QWR") was the duty of the loan servicer. The Burkes sent the QWR letter to the alleged loan servicer *Ocwen's* specific address for such a request - "Ignoring an exclusive QWR address carries harsh consequences." *Wease v. Ocwen Loan Servicing, L.L.C.,* 915 F.3d 987, 995 (5th Cir. 2019). Here, the *servicer* did not respond, rather Hopkins replied. As such, Hopkins reply violates the statute(s) and furthermore, the illegal demands therein, including this debt collectors' next falsehood – namely, the Burke's must only communicate directly to Hopkins regarding the QWR as the 'sole point of contact' is abusive, deceptive and in clear violation of the FDCPA and corresponding TDCA.

Furthermore, Hopkins letter defies the statute(s) when it erroneously states that the response is from both DBNTCO and *Ocwen*. Only the servicer is liable to reply, per the statute as shown above, and also per this courts' opinions.

Once again [ROA.1089], it confirms that Hopkins are purposefully and maliciously abusing the rules, regulations, laws, statutes and ethics for their own financial avarice. Their arguments cannot be trusted nor relied upon. Discovery was warranted *before* the MJ decided on the premature motion to dismiss.[43]

(iv) The Statutes Favor the Burkes and Hopkins is a Debt Collector:

[43] *Jaffer v. Kelly M. Davis & Assocs*., Civil Action No.: 4:19-cv-00860-RWS-KPJ, at *3 (E.D. Tex. July 27, 2020).

It is a violation per the FDCPA § 1692e; "The false representation of – the character, amount, or legal status of any debt." 15 U.S.C. § 1692e(2)(A). Similarly, Hopkins violated the Texas Debt Collection Act ("TDCA"). E.g., the TDCA, pursuant to Tex. Fin. Code Ann. § 392.304(19), broadly prohibits a debt collector from using any "false representation or deceptive means to collect a debt. ."

VIII. CONCLUSION

Whilst judges enjoy liberal control over their cases and dockets and while this court has stated many times that they do not like to interfere in such matters, this is not left unthrottled by this court when judges abuse their position and/or do not apply the law. Federal courts have systems in place to ensure judges have all the administrative guidance and tools to ensure litigants who come before the court are received by a well-trained, well-supported judiciary.

The Burkes provided such an example in their initial brief, the *Benchbook* and it is patently evident the *Benchbook* standard was, like the many authoritative arguments the Burkes submitted, simply set aside and disregarded in this civil action. Furthermore, the MJ is supposed to be managed by the District Judge and especially when it's an apprentice, who was penning his inaugural memorandum and recommendation report covering expansive and complex laws, such as real estate laws, financial consumer laws and statutes relative to rogue debt collectors, attorney

immunity, fraud, conspiracy and more.

The MJ erred in the application of the rules, pleading standards and the law(s) generally. As stated, any doubts would have been cleared up if **(i)** discovery had been allowed to progress, **(ii)** the court had not acted prematurely by ruling on the case while there was pending, the *Ocwen* appeal and related Fifth Circuit and Supreme Court cases which are still undecided and **(iii)** the MJ had not erroneously relied upon *erie guesses*.

The biased JH did not correct the wayward MJ and did not provide the Burkes an opportunity to be heard before termination of the planned dismissal of the case, in contravention of the rule of law and considering the shambolic events in the only live courtroom meeting between the parties which lasted more than 3 minutes. It is undeniable, the order from JH, accepting and adopting the MJ's report, failed to document if the review was *de novo* and then he denied the Burkes the opportunity to be heard at the scheduled pretrial hearing. It is a conscious failure to apply the law by a veteran [unconstitutional] judge.

As sitting judges and lawyers, **this court has inherent powers** and authority to sanction, discipline and/or report to the Texas Bar and/or District Attorney, Mark Hopkins and Shelley Hopkins for their respective unethical, malevolent and abhorrent civil/criminal conduct. The Burkes suggest this courts' inherent powers

should be activated in relation to these attorneys, either immediately, or in the anticipated opinion of this court.

This appeal is a prime case where **the lower court abused its powers**. The panel should reverse and remand without editing or diluting the Burkes valid claims, instruct the civil action be returned to the state court under the law or sanctionable conduct due to evasion of service which negatively affected the case, or, in the alternative, to a new set of judges in the lower court with clear instructions the case proceed in preparation for a jury trial and for justice to be served in this appeal.

Respectfully submitted,

DATED: November 6, 2020

JOANNA BURKE

By *s/ Joanna Burke*
JOANNA BURKE

JOHN BURKE

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 SERVICE

I hereby certify that, on November 6, 2020, a true and correct copy of the foregoing Brief of Appellees 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/ John Burke
JOHN BURKE

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this reply brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font, with the exception of footnotes, which are in proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 12-point font.

This reply brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains **6,499** words, excluding the parts exempted under Fed. R. App. P. 32(f).

s/ John Burke
JOHN BURKE