

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOANNA BURKE and JOHN BURKE,

Plaintiffs,

V.

**PHH MORTGAGE CORPORATION,
SUCCESSOR BY MERGER TO
OCWEN LOAN SERVICING, LLC,
MARK DANIEL HOPKINS, SHELLEY
HOPKINS, and HOPKINS LAW, PLLC,**

Defendants.

[illegible]

Civil Action No. 4:21-cv-2591

ATTORNEY DEFENDANTS' REPLY TO PLAINTIFFS'
RESPONSE TO MOTION FOR JUDGMENT ON THE PLEADINGS

Motion to Declare Plaintiffs as Vexatious were filed with the sole purpose of harassment,² however it is the Burkes' lawsuit itself which was filed for the sole purpose of harassment of Attorney Defendants. The Burkes admittedly have no claims against Attorney Defendants.

2. In lieu of providing legal support for their Amended Complaint, the Burkes seek to redirect the Court to the alleged persecution of the Burkes by Attorney Defendants. The short summary of the Burkes' Response is that it is nothing more than a conspiracy filled work of fiction blaming the Clerks of the U.S. Court of Appeals for the Fifth Circuit and/or Attorney Defendants' actions (taken while representing their clients) for the Burkes' failed lawsuits. The Burkes even plainly admit that their lawsuit is not directed at any defendant, but instead is aimed at overturning a valid judgment due to actions of the "judicial machinery." *See* Burkes' Response at Page 24 [Doc. 32].

3. The Burkes' Response lays bare the Burkes' complete misunderstanding of the law related to viable claims against parties, impermissible collateral attacks on valid judgments, res judicata and attorney immunity. Attorney Defendants' Motion for Judgment on the Pleadings sets out clearly that the Burkes' lawsuit fails, as a matter of law, as it is an impermissible collateral attack on valid judgments, and to the extent the suit seeks other relief, such relief is barred by res judicata. The Burkes' suit is ripe for dismissal with prejudice under Fed. R. Civ. P. 12(c).

² The Burkes cite to a federal district court's denial (in an unrelated lawsuit brought by unrelated pro se litigants, Probir and Madhuri Bondyopadhyay) of a motion to declare the Bondyopadhyays as vexatious after years of litigation. The relevancy of the Bondyopadhyay litigation to the present matter is lost on Attorney Defendants (with the Attorney Defendants not even being involved in the prior federal litigation). *See* Burkes' Response at fn. 33. Perhaps the Burkes are unaware of more recent events and should distance themselves from the Bondyopadhyays given that the Bondyopadhyays were recently declared vexatious litigants by the 157th Judicial District Court of Harris County in Cause No. 2021-43287 after the Bondyopadhyays filed yet another lawsuit despite the federal court's admonishment to refrain from such vexatious conduct.

II. ARGUMENT AND AUTHORITIES

A. **Burkes Admit They Have No Claims as to Attorney Defendants.**

4. In their Response, the Burkes admit repeatedly that their complaint is with the judiciary and the alleged actions or inactions of the Clerks of the Fifth Circuit – none of whom are parties in this lawsuit. *See* Burkes' Response [Doc. 32] at Page 24. As stated by the Burkes, "In this case, the Plaintiffs are not complaining directly against Hopkins nor PHH/Ocwen, but rather the 'judicial machinery' itself." *Id.* Attorney Defendants cannot be held liable for the alleged actions of the "judicial machinery" and the Burkes' suit must be dismissed.

B. **Impermissible Collateral Attack**

5. As detailed in Defendants' Motion, the Burkes' lawsuit is, on its face, improper. The Burkes admit throughout their Response that the sole purpose in filing and maintaining this lawsuit is to overturn the prior judgments. *See generally* Burkes' Response. Yet, the Burkes offer no cognizable reason why the judgments, affirmed on appeal, are void (other than the Burkes' far-fetched scenario in which the Fifth Circuit Clerks conspired to deceive the Burkes). The Burkes even admit that they were unable to locate any case law supporting their allegations. *See* Burkes' Response at Page 5. The Burkes surmise, incorrectly, that since there is no case law to support this scenario then the judgments must be void. *Id.*

6. The prior judgments dismissing Plaintiffs' lawsuits are not void and are simply not subject to collateral attack. The Court had jurisdiction over the parties and the subject matter of the Second Lawsuit (*Burke v. Ocwen*)³ and the Third Lawsuit (*Burke v. Hopkins*)⁴ and both cases

³ Cause No. 4:18-cv-4544 in the U.S. District Court for the Southern District of Houston.

⁴ Cause No. 4:18-cv-4543 in the U.S. District Court for the Southern District of Houston.

were properly affirmed on appeal.⁵ See *Litton v. Waters*, Tex. Civ. App., 161 S.W.2d 1095 (1942); *Bass v. Hoagland*, 172 F.2d 205, 208 (5th Cir. 1949).

C. Res Judicata Applies to Bar Claims as to Attorney Defendants

7. This is the Burkes' second lawsuit against the Attorney Defendants and all elements of res judicata are present for this suit to be barred. To the extent that any claims may be asserted in the Amended Complaint not now disclaimed by the Burkes' Response,⁶ they are barred by res judicata.

8. Elements required for res judicata include: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions. *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005). In reviewing the elements of res judicata herein, the Court may consider documents attached or incorporated in the complaint and matters of which judicial notice can be taken. *United States ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 379 (5th Cir.2003).

9. When all of the elements of res judicata are present and apparent on the face of the pleadings, dismissal is appropriate. Such is the case with the Burkes' lawsuit and therefore dismissal is required. The Burkes' previous suit against Attorney Defendants was dismissed, with prejudice, and affirmed on appeal. *Burke v. Ocwen Loan Servicing, LLC*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021). All elements of res judicata are met as detailed in Attorney Defendants' Motion and all claims asserted by the Burkes therefore are barred.⁷

⁵ *Burke v. Ocwen*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021).

⁶ See Burkes' Response [Doc. 32] at Pages 4-5, 7, 10, 12, and 24

⁷ See generally *Marsh v. U.S. Bank, N.A. as Trustee to LaSalle Bank National Association*, 2021 WL 3115978 (W.D. Tex. July 20, 2021)(dismissing Plaintiffs' third suit contesting foreclosure as barred by res judicata); *U.S. Bank, N.A. v. Lamell*, 2021 WL 954848 (S.D. Tex. Jan. 18, 2021)(finding res judicata barred borrowers claims in second lawsuit to prevent foreclosure); *Sissom v. Countrywide Home Loans, Inc.*, 833 Fed. Appx. 405 (5th Cir. 2021)(affirming dismissal of borrower suit based upon res judicata).

D. Attorney Immunity Bars the Burkes' Suit

10. To the extent that any complaint as to Attorney Defendants is not barred by res judicata, Attorney Defendants are shielded for their actions, on behalf of their clients, by attorney immunity. The Burkes' Response offers no rebuttal, no fact scenario, and/or no actions taken outside of Attorney Defendants' representation of Ocwen/ PHH or Deutsche Bank that would negate attorney immunity shielding Attorney Defendants from the Burkes' second suit. The facts pled by the Burkes simply do not support any cause of action brought against the Attorney Defendants.

11. Attorney Defendants are immune from suit because attorneys are immune from suit by their client's adversaries for conduct undertaken in their capacity as attorneys. *Troice v. Proskauer Rose, L.L.P.*, 816 F.3d 341, 348 (5th Cir. 2016). Despite the foregoing, the Burkes go to great lengths in their Response detailing actions they perceive as evil and harassing, including falsely accusing Attorney Defendants of lying to the Court, lying to other Courts and committing fraud. The Burkes are grasping at straws in trying to paint a picture of the Attorney Defendants as scoundrels acting outside the bounds of their capacity as counsel. The Burkes' false and malicious allegations are irrelevant to this suit, are inappropriate and are likely the subject of future litigation brought by Attorney Defendants against the Burkes for the Burkes' libelous ways.

12. No matter what lies and accusations the Burkes conjure up, the Attorney Defendants have only *engaged* the Burkes in Attorney Defendants' capacity as legal counsel for parties adverse to the Burkes. The plain reality is that Hopkins Law, PLLC, Mark D. Hopkins and Shelley L. Hopkins are the law firm and attorneys retained by Deutsche Bank and Ocwen and/or its successor PHH to act as counsel for those entities in the litigation, appeals and all subsequent litigation involving the foreclosure of real property owned by the Burkes. Attorney immunity

shields all actions taken by Attorney Defendants in the foregoing capacity from the Burkes' harassing suit.

**III.
PRAYER**

Pursuant to the reasons set out herein and in their prior filed motion, Attorney Defendants pray that the Court grant Attorney Defendants' Motion for Judgment on the Pleadings, dismiss Plaintiffs' Amended Complaint against them with prejudice, and for any further relief, at law or in equity, to which they show themselves justly entitled.

Respectfully Submitted,

HOPKINS LAW, PLLC

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system, and will send a true and correct copy to the following:

VIA CM/RRR # 7021 1970 0000 4526 6613

AND VIA REGULAR MAIL:

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/s/ Mark D. Hopkins

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