

Nathan Ochsner
Clerk of Court
P. O. Box 61010
Houston, TX 77208

Date: Nov. 28, 2023

Re: Dunn v. PHH Mortgage Corporation (4:23-cv-03829)
District Court, S.D. Texas

Dear Sir,

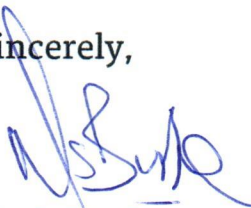
MOTION TO INTERVENE

Please find enclosed the following documents:-

1. MARK STEPHEN BURKE'S MOTION TO INTERVENE AS PLAINTIFF
AND MEMORANDUM OF LAW IN SUPPORT;
2. [PROPOSED] ORDER;
3. APPLICATION FOR PRO SE LITIGANT TO FILE ELECTRONICALLY.

If you have any questions, please contact me at the information below.
Thank you.

Sincerely,



Mark Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Email: blog@bloggerinc.org

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Kristina Dunn)	CIVIL ACTION No. 4:23-cv-03829
)	
Plaintiff.)	
)	
vs.)	
)	
PHH Mortgage Corporation,)	
)	
)	
Defendants.)	

**MARK STEPHEN BURKE'S MOTION TO INTERVENE AS
PLAINTIFF AND MEMORANDUM OF LAW IN SUPPORT**

Introduction

Proposed Intervenor, Mark Stephen Burke, contends that intervention is justified in this matter, aligning his interests with the ongoing litigation. The removed Federal Court proceedings involve a dispute between Ms. Kristina Dunn, allegedly retained and represented by Texas lawyer Jason

Leboeuf of LeBoeuf Law Firm, PLLC, and PHH Mortgage Corporation, represented by Texas lawyers Mark Cronenwett and Nicholas “Nick” Frame of Mackie Wolf Zientz & Mann P.C. These legal proceedings aim to safeguard Dunn's residence from foreclosure, with the additional objective of facilitating a transaction wherein a non-party, Epiphany Properties, LLC, is purportedly set to acquire the property for \$93,000, backed by a nominal earnest sum of \$100. The state court has granted injunctive relief in the form of a Temporary Restraining Order (TRO), effectively halting the scheduled foreclosure sale.

Mark, as the proprietor of Blogger Inc. and the legal blog [LawsinTexas.com](https://lawsintexas.com), is dedicated to investigative journalism, particularly focusing on legal matters of public concern. The ongoing series on related cases, including *Dunn v PHH Mortgage Corporation*, has been featured on [LawsinTexas.com](https://lawsintexas.com) (<https://lawsintexas.com/pr/2v2>). These articles systematically reveal a troubling pattern of title deed fraud that

disproportionately impacts vulnerable homeowners. Allegations of fraud and illicit activities by the Plaintiffs and their counsel are emphatically presented in these publications. Notably, the defendants, along with their legal representatives, are seemingly complicit in downplaying these fraudulent activities. This collaboration extends to both state and federal courts, creating an environment where deceptive legal proceedings, laden with perjury, are utilized to halt foreclosures. It is worth highlighting that the involved parties share legal counsel, forming a tight-knit community within the creditor rights and foreclosure defense vertical. Mark contends that the adverse publicity directed at all named parties and the court has triggered collusion and retaliation, especially within the small and interconnected network of legal professionals representing the involved parties. This retaliatory response has taken a particularly contemptible turn with the latest legal maneuver.

To comprehend the significance, a brief overview is necessary. Behind every business stands an owner, entwined with a personal life. In Mark's case, his digital media businesses facilitate a home office, doubling as his residence, which has been embroiled in prolonged litigation due to a predatory loan. Legally owned by Joanna Burke, Mark's mother, the property has hosted Mark's home office since 2009. Currently, Joanna Burke pursues an active civil suit against PHH Mortgage Corporation in *Burke v. PHH Mortgage Corporation* (0:23-cv-01119-WMW-DTS), District Court, D. Minnesota, currently under appeal to the 8th Circuit. Despite this effectively tolling any foreclosure notice or sale, the same defendants listed here have collectively defied the rule of law. Astonishingly, they have scheduled Mark's home office for auction on January 2, 2024, disregarding the ongoing legal proceedings.

Intervention Under Civil Rule 24(a)(2)

Under the Federal Rules of Civil Procedure, Proposed Intervenor must satisfy four essential requirements for intervention: timeliness, a necessary interest, impairment of that interest without intervention, and the inadequacy of protection absent intervention (Fed. R. Civ. P. 24(a)(2)).

Necessary Interest

Proposed Intervenor asserts a direct interest in the subject matter of the litigation, a necessary condition for intervention (*Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001)). This interest, related to the subject of the action, is legally protectable even if not enforceable, as per *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 566 (5th Cir. 2016). Mark's interests are intricately tied to the exposed title deed fraud and predatory lending practices affecting vulnerable and distressed homeowners. The imminent threat to his home office (residence) as a result of the latest conspiracy by and legal maneuver by the defendants directly

implicates his business, possessions, civil liberty, and constitutional rights. The urgency of Mark's proposed intervention is evident in the intertwined personal, business, and legal battles.

Timeliness of Intervention

Proposed Intervenor contends that the intervention is timely, considering the contextual nature of the timeliness inquiry (*Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)). This case, active for one and a half months, aligns with the commencement of discovery after Thanksgiving. Mark received formal notice of the scheduled foreclosure sale on Nov. 25.

Impairment of Interest Without Intervention

Failure to allow intervention would impair Mark's substantial interests, given PHH's premature actions in seeking foreclosure despite ongoing legal actions. Adequate representation is lacking, requiring intervention to safeguard Mark's interests (*Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 828-29 (5th Cir. 1967)).

Inadequacy of Protection Absent Intervention

Proposed Intervenor maintains that his interest cannot be adequately protected without intervention. Even if the existing parties have not colluded or taken an adverse position, representation remains plainly inadequate where the existing parties fails to diligently pursue the intervenor's interests (*International Mortgage & Inv. Corp. v. Von Clemm*, 301 F.2d 857, 861 (2d Cir. 1962)). It is implausible that the involved parties would offer assistance or safeguard Mark, given their active conspiracy against him and his non-profit media enterprise. Their collaborative efforts aim to dismantle his home office, posing a severe threat to the viability of Mark's business and his blog at LawsinTexas.com. Mark contends that this shared objective is apparent among the parties, the courts, and government agencies that have recently targeted him and his business pursuits.

Non-Party Damages

A home office undeniably holds significant importance, and any

potential disruption, such as eviction, warrants protection—even if Mark is not directly involved in the foreclosure proceedings. Whether Mark has ownership in the property or is a party or obligor on the debt is irrelevant in the context of the standing inquiry. This principle is supported by legal precedents, such as *Monroe* (936 S.W.2d at 660), which established that standing to bring claims under the TDCA (Texas Deceptive Trade Practices Consumer Protection Act) extends beyond the "parties to the consumer transaction," and *Campbell* (616 S.W.2d at 374), stating that "persons other than the debtor may maintain an action for violations of the TDCA." As per the TDCA (Tex. Fin. Code § 392.403(a)(2)), "A person may sue for: actual damages sustained as a result of a violation of this chapter," as cited from *McCaig v. Wells Fargo Bank (Texas), N.A.*, 788 F.3d 463 (5th Cir. 2015). Mark can establish damages, including mental anguish resulting from this latest legal conspiracy and targeted harassment, leading to the unwarranted threat of foreclosure and planned eviction. As highlighted in *McCaig*, mortgage

servicer PHH Mortgage Corporation violates the Texas Finance Code by asserting legal rights it does not possess, concluding that because Wells Fargo (the loan servicer) did not have a right to foreclose, then its threat of initiating foreclosure proceedings was actionable under the TDCA. Mark has met the necessary burden of proof, see; *Williams v. Lakeview Load (sic) Servicing, LLC*, Civil Action 4:20-CV-1900, at *49 (S.D. Tex. Aug. 14, 2023) (“Proof of an actual injury is a liability element of Plaintiffs’ TDCA claims).

Injunctive Relief

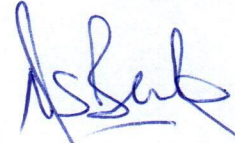
Additionally, and subject to the Proposed Intervenor’s motion being granted, Mark will seek emergency temporary and permanent injunctive relief to refrain PHH Mortgage Corporation from proceeding with the foreclosure sale. See; *Marauder Corp. v. Beall*, 301 S.W.3d 817, 820 (Tex. App. 2010) (“Under the statute, a person may sue for an injunction to “prevent or restrain” a violation of the TDCA. TEX. FIN. CODE ANN. § 392.403(a)

(Vernon 2006).”). This injunction would also cap his injuries and damages, benefiting all parties affected as Mark is likely to succeed on the merits.

Conclusion

Mark acknowledges the inherent challenges in seeking favorable consideration from this court. Nevertheless, with the recent amendments by the assigned Judge to curb premature motions to dismiss, there is a glimmer of optimism that not all Judges are predisposed to act maliciously or corruptly under the guise of judicial immunity. In light of this, Proposed Intervenor, Mark Stephen Burke—a recognized publisher of legal cases and matters of public concern—respectfully requests the court to grant leave for intervention, facilitating full participation as a party with rights and responsibilities. Alternatively, permissive intervention, at the court's discretion, is recognized as a viable option. The inclusion of pertinent case law serves to emphasize the legal foundation for intervention in this case.

RESPECTFULLY submitted this day, 28th of November, 2023



Mark Stephen Burke

Harris County, State of Texas

46 Kingwood Greens Dr

Kingwood, Texas 77339

Phone Number: (346) 763-2074

Fax: (866) 705-0576

Email: blog@bloggerinc.org

CERTIFICATE OF COMPLIANCE

This motion complies with Senior United States District Judge Sim Lake's court procedures and motion practice, specifically 5(H). The motion is page count is 10 pages .

This motion complies with the typeface requirements because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font.

CERTIFICATE OF CONFERENCE

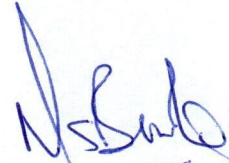
In compliance with Local Rule 7, I hereby certify that on this 28th day of November 2023, I emailed all counsel asking if they were opposed or unopposed at 9.39 a.m. No response was received. I sent a follow-up reminder at 12.11 p.m. No response was received by anyone by the 3 p.m. deadline set, in order that this motion could be posted. I assume they are opposed.



Mark Stephen Burke
Harris County, State of Texas

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November 2023, I filed the foregoing with the Clerk of the Court by posting the pleadings USPS Priority Mail, and in compliance with Fed. R. Civ. P. 5.



Mark Stephen Burke
Harris County, State of Texas

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Kristina Dunn) CIVIL ACTION No. 4:23-cv-03829
)
 Plaintiff.)
)
 vs.)
)
 PHH Mortgage Corporation,)
)
)
 Defendants.)
)
)
)
 _____)

ORDER

Proposed Plaintiff-Intervenor Mark Stephen Burke's Motion to Intervene came on for hearing before this Court on _____.

[Proposed] Order Granting Motion to Intervene

After considering the Motion and all supporting and opposing documents, and having heard oral argument of counsel, and otherwise being duly advised on all matters presented on this cause, IT IS HEREBY ORDERED that leave is GRANTED to allow Mark Stephen Burke to intervene in this Action as a plaintiff.

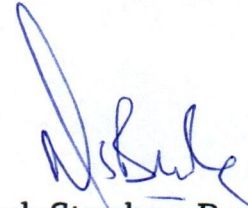
IT IS SO ORDERED

Dated this ____ day of _____, 2023

Sim Lake
Senior United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November 2023, I filed the foregoing with the Clerk of the Court by posting the Proposed Order USPS Priority Mail, and in compliance with Fed. R. Civ. P. 5.



Mark Stephen Burke
Harris County, State of Texas



**UNITED STATES DISTRICT COURT
Southern District of Texas, Houston Division**

APPLICATION FOR PRO SE LITIGANT TO FILE ELECTRONICALLY

Pursuant to Fed. R. Civ. P. 5(d) and Local Rule 5.1, electronic case filing is authorized in the Southern District of Texas and implemented by Court Order. Electronic case filing is governed by the standards and procedures set forth in the most recent version of the "Electronic Case Filing Procedures for the Southern District of Texas," which may be found on the Court's website at <https://www.txs.uscourts.gov/>

The Court's Electronic Case Filing (ECF) system is for use only in cases designated by the U.S. District Court for the Southern District of Texas and may only be used to file electronic documents. In order to file electronic documents through ECF, pro se litigants must submit this application. Only pro se litigants who have a matter pending before the U.S. District Court for the Southern District of Texas and are not prohibited from filing electronically in this Court may apply to file electronically on ECF. The Court reserves the right to add or remove conditions to this application.

Upon review and approval of the application, the applicant will have privileges to electronically file documents with the Court and to receive electronic service of filings in their cases. Please note that electronic filing occurs through PACER and that the applicant must have a PACER account in order to electrically file.

Pro Se Litigant Information and Certification

First/Middle/Last Name: MARK STEPHEN BURKE

Street Address: 46 KINGWOOD GREENS DR.

City/State/Zip Code: KINGWOOD, TX, 77339

Daytime Phone Number: (346) 763-2074

E-mail Address: blog@bloggerinc.org

Pending Case Number(s) in this Court: 4:23-cv-03829

By signing below, I certify that the information provided above is true and correct.

Date: 11/28/2023

Signature: 

Pro Se Litigant Consent

Should my Application for Pro Se Litigant to File Electronically be approved, I,

MARK STEPHEN BURKE, the undersigned pro se litigant agree and consent to the

following:

1. To abide by the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules for the United States District Court for the Southern District of Texas.
2. I understand that the provisions of Local Rule 5.1, "Electronic Case Filing," and the most recent version of the Court's Civil and Criminal ECF Procedures Guides for the Southern District of Texas apply to electronic filing in this District and I agree to abide by all provisions set forth therein.
3. I agree that all my transmissions for electronic filings of pleadings and documents to the ECF system shall be titled in accordance with the approved directory of civil and criminal events in the ECF system.
4. I understand and agree that I must obtain a PACER account in order to file electronically in the Southern District of Texas. I understand that I can obtain a PACER account at: <https://www.pacer.gov/>
5. I agree that the combination of my Username and Password will serve as my signature for purposes of the Federal Rules of Civil and Criminal Procedure. I further agree to protect the security of my password. If I believe it is being used without my permission, I will change my password and will inform the Clerk of Court by telephone of the misuse.
6. I have read and I understand the provisions of Federal Rule of Civil Procedure 11 and I understand that the provisions of Rule 11 apply with full force and effect to all documents filed using ECF.
7. I will receive service of notice of Court Orders and judgments electronically through the Court's ECF system under Federal Rule of Civil Procedure 77(d) and Federal Rule of Criminal Procedure 49(c), and I thereby agree to waive service of such notice by other means under Federal Rules of Civil Procedure 5(b)(2) and 77(d) and Federal Rule of Criminal Procedure 49(c).
8. I will receive electronic service through the Court's ECF system of pleadings and other papers under Federal Rule of Civil Procedure 5, and I thereby agree to waive service by other means under Federal Rule of Civil Procedure 5(b)(2) and Federal Rule of Criminal Procedure 49, unless service by electronic means is not allowed under the Federal Rules of Civil Procedure and Criminal Procedure.

9. I understand that I will receive the initial electronic copy of a document filed at no charge when I am an official recipient of the document (the “free look” provision in ECF). After that, I understand that all remote electronic access to the case file documents occurs through the Judiciary’s PACER system and I understand that I will be charged an access fee at a per-page rate.

10. I understand that I can view electronic documents and docket sheets in person at the Clerk’s Offices in the Southern District of Texas at no charge on the public access terminals.

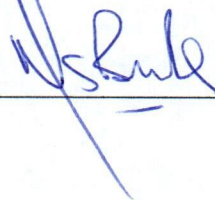
11. I understand that abuse of ECF access privileges will result in revocation of my ECF access.

12. I understand that my ECF access will be deactivated following closure of my pending matter(s) and the expiration of all applicable appeal periods.

13. I agree to update any changes to my contact information, including my e-mail address, I must do so through my PACER account and/or using the Utilities tab in ECF.

Date: November 28, 2023

Signature of Applicant: _____

A handwritten signature in blue ink, appearing to be "N. R. R. R.", is written over a horizontal line. The signature is stylized and somewhat illegible.