

IN THE DISTRICT COURT, HARRIS COUNTY

189th Judicial District

Idea 247, Inc.)	VERIFIED RESPONSE TO
)	PLAINTIFF IDEA 247
Plaintiff)	INC.'s MOTION TO
)	STRIKE INTERVENTION
)	No. 2023-66239
vs.)	
)	
Raymond Epps)	
)	
)	
Defendant)	
)	
)	
)	
)	

VERIFIED RESPONSE TO PLAINTIFF IDEA 247 INC's MOTION TO STRIKE INTERVENTION

Letteff v. Roberts, 555 S.W.3d 133, 138 (Tex. App. 2018)

*"The law awards an obligor usury damages as "a boon or a windfall which he is allowed to receive as a punishment to the usurious lender.... A successful claim of usury may allow the borrower to avoid a debt he might otherwise owe." **The usury law therefore punishes Roberts for contracting for usurious loans, even if the result is a windfall** for Letteff."*

Intervenor Mark Stephen Burke, individually, files this response to Idea 247 Inc.'s Motion to Strike and hearing by submission.

Parties

Intervenor, **Mark Stephen Burke** ("Mark"), is an individual residing at 46 Kingwood Greens Drive, Kingwood, Texas, 77339.

Plaintiff and Third-party Defendant, **Idea 247, Inc.** ("Idea") is a Florida Corporation.

Defendant, **Raymond Epps**, ("Ray"), is an individual residing in Houston, Harris County, Texas. (Notably, no business entity has been named in this debt collection lawsuit).

Third-party Defendant, **Burford Perry LLP** ("Burford") is a Texas Limited Liability Partnership and operates as a law firm.

Third-party Defendant, **Clyde J. "Jay" Jackson III** ("Jay") is a Texas lawyer.

Third-party Defendant, Warren Kenneth Paxton, Jr., ("Ken") is

currently the **Texas Attorney General**.

Objection to Motion by Submission

Idea has set this for submission. Mark formally objected as recorded per the court's docket on Dec. 4, 2023 and requested the motion be set for an oral hearing. He followed up by emailing the court for a date on Dec. 5, 2023. At the time of this filing, no response or date has been provided by the court.

Preamble

Mark filed his petition on Nov. 16 and the next day, Nov. 17, Plaintiff's Motion to Strike Intervention was docketed with the court. On Dec. 6, Plaintiffs' filed "Plaintiff's Motion to Dismiss pursuant to Rule 91a". Mark emailed Jay on Dec. 7, and asked if he would be withdrawing his Motion to Strike. Jay responded, stating he was not withdrawing the motion.

Standing Against Unjust Practices

In the face of a looming default judgment, Ray's decision not to contest the lawsuit against him by Idea is a critical but uninformed move.

Unbeknownst to Ray, the usury contract in question could entitle him to significant statutory and punitive damages. However, Idea's responses in both this motion and the subsequent motion to dismiss deliberately sidestep addressing the usury violations. Mark interprets this evasion as an implicit admission of guilt through waiver.

Championing Consumer Rights

Mark, the owner of legal investigative portals with a focus on consumer protection and debt collection practices, recognizes the gravity of Ray's situation and aims to intervene for a noble cause. As a matter of public concern, Mark, through his media platform at lawsintexas.com ("LIT"), has consistently shed light on violations of consumer and debt collection laws. Despite his efforts to bring these issues to the attention of government bodies, there has been a lack of constructive responses. In the midst of economic challenges reminiscent of the Great Recession, Mark is taking a stand for citizens and small business owners, advocating for their civil, legal, and constitutional rights.

The intervention in this lawsuit not only serves Mark's personal defense against a defamation suit brought by debt-collecting lawyer Robert J. Kruckemeyer ("Bob") but also aims to uncover evidence of Idea's violation of Texas laws. Mark's goal is to raise awareness and provide a defense for individuals like Ray, who may find themselves overwhelmed in times of financial hardship, leading to default judgments and prolonged financial ruin. Beyond individual cases, Mark aspires to draw attention from the Texas Attorney General. He hopes that the state, influenced by LIT's endeavors, will reinforce consumer protection in its future opinions or legislative amendments. Mark's litigation efforts stand as a testament to his commitment to championing consumer rights and reshaping the landscape of legal and financial practices.

Idea's Motion to Strike Intervention

In challenging Mark's intervention, Idea presents multiple claims, including Mark being a "complete stranger" to the case, having no "justiciable interest," and the intervention multiplying complexity.

However, these assertions lack merit and are repetitive.

Summary of Legal Disputes

The Kruckemeyer Case: Mark faces a defamation lawsuit by debt collector Robert J. Kruckemeyer ("Bob") in this court (189th). Bob sought injunctive relief to restrain Mark's free speech based on a contentious interpretation of the Texas Finance Code ("TFC"). Mark countered, highlighting Bob's lack of legal support, prompting the cancellation of the scheduled hearing.

Idea 247 Inc., the Intervention: Mark, now aware of Idea's proceedings against Ray Epps, moves to intervene. The lawsuit involves similar disputed facts, including TFC violations mirroring issues in Bob's case and usury law breaches. Whilst Idea argues the TFC only applies to consumers and not businesses, this is refuted when considering Idea's usury violations; *Letteff v. Roberts*, 555 S.W.3d 133, 139 (Tex. App. 2018) ("Third, Roberts suggests that Letteff erroneously seeks the application of Finance Code § 305.001(a), which concerns

only transactions that are "for personal, family, or household use." To the contrary, Leteff has argued, in this court and in the trial court, for the application of Finance Code § 305.001(a-1), which specifically addresses commercial transactions.").

Mark contends this is where the ambiguity of the legislative interpretation of "consumer" is even more pronounced in these proceedings, and another reason for his intervention. Texas is a community property state. In community property states, such as Texas, marital property is considered jointly owned by both spouses. Therefore, if the judgment debtor is married, any joint bank account or investment account is community property, and the entire account may be subject to garnishment to satisfy the judgment. It is well known by perusing the court dockets and archives, that Plaintiff's will seek garnishment after judgment, if not before judgment. As such, Mark submits that all debt is consumer debt, especially when you've removed any business protections associated with a corporation, and sued the

debtor personally in his own name, as a “consumer”. Specifically, despite the loan being claimed as loan agreement between Idea and “Quick Tube Systems, Inc.” (“QTS”), Idea has not sued or even named QTS in these proceedings. Alarming, any default judgment awarded against Ray can now be recovered personally from Ray’s spouse Vanessa, under current Texas laws, despite the fact she was never a party or signatory on the business loan. The creditor’s bar would have one believe that’s the cost of doing business, but Mark believes that is why the current TFC is ambiguous, and unconstitutional.

The Fourteenth Amendment to the United States Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the **equal protection of the laws.**” U.S. CONST. amend. XIV, Sec. 1. Similarly, the Texas Constitution states that “[a]ll free men, when they form a social compact, have **equal rights.** . . .” TEX. CONST. art. I, Sec. 3. The current legislative form of the TFC defies equal protections and equal rights.

Due Course of Law: The due process guarantee of the Texas Constitution, provides as follows:

No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. TEX. CONST. art. I, Sec. 19. This section is the "traditional due process guarantee," corresponding to the due process guarantee of the Fourteenth Amendment to the United States Constitution. See *Sax v. Votteler*, 648 S.W.2d at 664.

Both the federal and state due process clauses originated as a guarantee of procedural fairness. TEX. CONST. art. I, Sec. 19 interpretative commentary. American courts, however, have long imparted a substantive meaning to the language as well. When legislation goes beyond the proper sphere of government activity, "any life, liberty or property limited by such a law is taken without due process because the Constitution never granted the government the ability to pass such a law." 2 R. Rotunda, *Treatise on Constitutional Law*

14. Mark, relying upon the constitution as cited, avers due process and procedural fairness has been violated.

Mark seeks intervention to assert defenses, rights, and obtain declaratory judgment and damages for Idea's, their law firms, and Bob's violations. Without intervention, Mark is denied constitutional and legal rights, and facing substantial financial damages, sanctions, and award of attorney fees to Plaintiffs' in the same court.

Briefly Stated: Mark's entitlement to both damages and declaratory relief in both proceedings is grounded in the controlling and persuasive legal arguments presented herein. Mark's defense and intervention is crucial for upholding his rights and rectifying violations of Texas laws.

The Proposed Intervenor Has Standing

Idea contends that Mark lacks standing, a crucial element of subject-matter jurisdiction (*Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex.1993)). This assertion is legally erroneous, as Idea

dismisses Mark's detailed pleadings without proper consideration. Examining Texas law on standing, it requires a personal and concrete injury that is not hypothetical. Mark, facing an individual lawsuit in the same court by a debt-collecting lawyer and his firm, seeks a judgment potentially exceeding \$1 million based on a disputed interpretation of the Texas Finance Code. Mark undeniably meets the criteria for standing, as his past, present, and future injuries are concrete, particularized, actual, and imminent. Idea acknowledges Mark's active lawsuit with Bob in this court, establishing a factual, not hypothetical, injury. Furthermore, standing demands that the controversy adversely affects the party seeking review, and the injury must be likely to be redressed by the requested relief (*Nephrology Leaders & Assocs. v. Am. Renal Assocs. LLC*, 573 S.W.3d 912, 914 (Tex. App. 2019)). Mark satisfies these requirements, as the relief sought has a substantial likelihood of remedying his alleged injury.

Challenging Unconstitutionality: A Clear Declaration

The intervenor explicitly seeks a declaratory judgment – distinct from Idea's mischaracterization as "seeking an advisory opinion" – asserting the present unconstitutionality of the Texas Finance Code. The Code, as observed in this proceeding and related cases, is deemed unconstitutional and void due to ongoing violations by Texas law firms pursuing "business" or "commercial" debts against individuals without the required active surety bond with the Secretary of State's office for legal debt collection.

In support of this stance, legal precedent is clear. Referring to *Ex parte E.H.*, 602 S.W.3d 486, 494 (Tex. 2020), the intervenor emphasizes that an unconstitutional statute is void from its inception and cannot serve as a basis for any right or relief. Citing *Sharber v. Florence* and BLACK'S LAW DICTIONARY (11th ed. 2019), the intervenor reinforces the general rule that a void statute is no law, conferring no rights, bestowing no power, and justifying no acts performed under it. As the intervenor underscores, an "unconstitutional law is void and is no law," as articulated by the United

States Supreme Court.

Intervenor is Not Seeking an Advisory Opinion

“Texas courts are without constitutional or statutory authority to render advisory opinions; therefore, judicial power does not include the power to issue such opinions.” *Dix v. State*, 289 S.W.3d 333, 335 (Tex. App. 2009). This is precisely why Ken is a third-party, and who can provide the necessary answers which the court cannot. This has also been raised in the related suit before this court.

Intervenor has a Justiciable Controversy and Seeks a Declaratory Judgment

The boundary of a court's jurisdictional limits to render **declaratory judgments** is the rule prohibiting a court from rendering an advisory opinion. An advisory opinion is an opinion rendered where there is no justiciable controversy. See *Patterson v. Planned Parenthood of Houston, Inc.*, 971 S.W.2d 439, 444 (Tex. 1998). **A justiciable controversy** is one in which a real and substantial controversy exists involving a genuine conflict of

tangible interests and not merely a theoretical dispute. See; TEX. CIV. PRAC. REM. CODE ANN. § 37.001 (Vernon 1997); *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995). The relief sought in a **declaratory judgment** action must finally and actually solve the dispute between the parties.

In contrast, "[t]he distinctive feature of an advisory opinion is that it decides an abstract question of law without binding the parties." Texas Ass'n of Business, 852 S.W.2d at 444. (Citing; *Garcia-Marroquin v. Nueces Co.*, 1 S.W.3d 366, 378 (Tex. App. 1999).

Interpreting Tex. Civ. Prac. & Rem. Code § 37.004, it states; "...or whose rights, status, or other legal relations are **affected by a statute**... may have determined any question of construction or validity arising under the instrument, **statute**, ordinance, contract, or franchise **and obtain a declaration** of rights, status, or other legal relations thereunder."

The Relief Sought is Final and Solves the Parties Dispute

Mark seeks to intervene and requests declaratory relief and monetary damages in these proceedings based on both the TFC and TDCA [TDCPA].

See, in part; Actual Damages: "A person may sue for actual damages sustained as a result of a violation of this chapter." Tex. Fin. Code § 392.403(a)(2), see; *McCaig v. Wells Fargo Bank (Texas), N.A.*, 788 F.3d 463 (5th Cir. 2015). Damages are determined on the merits of the claims, not at this stage of these proceedings; *Smith v. Moss Law Firm, P.C.*, Civil Action No. 3:18-CV-2449-D, at *14 (N.D. Tex. Feb. 6, 2020). As documented in Mark's pleadings, the Court of Appeals for the Fifth Circuit determined "persons who have sustained actual damages from a [TDCPA] violation have standing to sue." This was affirmed in *Smith v. Moss Law Firm, P.C. (Smith I)*, 2019 WL 201839, at *2-3 (N.D. Tex. Jan. 15, 2019). The same applies to these proceedings.

Mark is No Stranger: The Intervenor's Interest

A party has a justiciable interest in a lawsuit when its interest will be affected by the litigation. See *In re Union Carbide Corp.*, 273 S.W.3d 152, 155 (Tex. 2008). A party may intervene in a suit if it could have brought all or part of the same suit in its own name. See *Nghiem v. Sajib*,

567 S.W.3d 718, 721 n. 16 (Tex. 2019). A party has a justiciable interest in a lawsuit, and thus a right to intervene in the suit, when its interests will be affected by the litigation, see; *Mass. Bay Ins. Co. v. Adkins*, 615 S.W.3d 580, 602 (Tex. App. 2020).

See *Patel v. Tex. Dep't of Licensing*, 469 S.W.3d 69, 92-93 (Tex. 2015) (“The Texas Constitution likewise wastes no time, stating up front in the Bill of Rights its paramount aim to recognize and establish “the general, great and essential principles of liberty and free government.” The point is unsubtle and undeniable: Liberty is not provided by government; liberty preexists government. It is not a gift from the sovereign; it is our natural birthright. Fixed. Innate. Unalienable.”) – then Justice Don Willett’s concurring opinion, now sitting 5th Circuit Judge.

For the reasons provided herein and the related case, which is incorporated here, there is no question Mark has a justiciable interest in this case.

Verification, Prayer & Relief

In closing, I, Mark Stephen Burke, as Intervenor with due authority and competency, and as a presiding resident of Kingwood in the livable forest of Harris County, Texas, born on June 20, 1967 in Harare, Zimbabwe, and currently holding a valid British Passport and U.S. Permanent Residency Card (last 3 digits are 529), a valid State of Texas Driver License (last 3 digits are 949), and a Social Security Card (last 3 digits are 162), do solemnly declare under penalty of perjury that the foregoing statements are true and correct. This verified declaration, made under Chapter 132, Civil Practice and Remedies Code, holds significant weight in legal precedent, as evident in *ACI Design Build Contractors Inc. v. Loadholt*, 605 S.W.3d 515, 518 (Tex. App. 2020), *McMahan v. Izen*, No. 01-20-00233-CV, at *15-17 (Tex. App. Sep. 2, 2021), and *In re Whitfield*, No. 03-21-00170-CR, at *1 n.1 (Tex. App. Nov. 10, 2021).

Undoubtedly, Idea's loan agreement flagrantly violates usury laws, rendering the creditor liable for usury under the Finance Code. This clear

violation alone substantiates the rejection of Idea's unfounded motion to strike Mark's intervention. Without Mark's intervention, Ray faces the imminent risk of a substantial default judgment, coupled with attorney fees and potential future garnishment proceedings. Such an outcome would undoubtedly impose significant financial hardships on both Ray and his spouse, Vanessa, impacting countless citizens and tacitly condoning the breach of Texas laws. Faced with the government's reluctance to intervene voluntarily, it becomes imperative to challenge these unlawful civil debt collection proceedings and summon Ken Paxton to address the issue. Mark has taken the necessary legal steps to intervene, ensuring justice for all citizens in the state.

The remainder of Idea's contentions related to standing and a justiciable controversy have been answered, repelling Idea's assertions. Mark has standing to intervene a justiciable interest in these proceedings.

Finally, Mark has explained in detail why he is not seeking an advisory opinion, rather he is seeking a declaratory judgment which will fully resolve the dispute between the parties.

Accordingly, Mark Stephen Burke respectfully requests Plaintiff's Motion to Strike Intervention is DENIED and that Mark Stephen Burke's Petition in Intervention be GRANTED and the intervenor may recover all relief to which he may be entitled.

RESPECTFULLY submitted this 8th day of December, 2023.

A handwritten signature in black ink, appearing to read "Mark Burke". The signature is written in a cursive style with a large initial "M" and "B".

Mark Burke
State of Texas / Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing response has been forwarded to Plaintiff and Plaintiff's counsel by electronic filing notification and/or electronic mail and/or facsimile and/or certified mail, return receipt requested, this the 8th day of December, 2023.

A handwritten signature in black ink, appearing to read "Mark Burke", is written over a horizontal line.

Mark Burke, Pro se
Harris County, State of Texas