

NO. 01-23-00575-CV

**IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS**

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
12/6/2023 6:27:02 PM

DEBORAH M. YOUNG
Clerk of The Court

LANA M. STRANGE AND ROBERT F. STRANGE
Appellants,

v.

**DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN
TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE
LOAN TRUST 2004-4, ASSET-BACKED CERTIFICATES, SERIES 2004-4**
Appellee.

**ON APPEAL FROM HARRIS COUNTY COURT AT LAW NO. 1
TRIAL COURT CAUSE NO. 1201046**

**APPELLANTS' SUR-REPLY TO MOTION TO DISMISS AS WELL AS
APPELLANTS' BRIEF**

December 06, 2023

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APPELLANTS' SUR-REPLY TO MOTION TO DISMISS

AS WELL AS APPELLANTS' BRIEF

Appellants Lana M. Strange and Robert F. Strange hereby file their Sur-Reply to Motion to Dismiss which shall likewise serve as their Appellants' Brief respectfully show the Court as follows:

1. Appellants focus this Court on the reality that, irrespective of the fact that Appellant Robert F. Strange filed for bankruptcy protection on July 11, 2023 in Case No. 23-32598 (Chapter 13), Appellee's legal counsel contacted the Harris County Court Clerk on July 12, 2023, paid a \$130.00 fee, and requested that a writ of possession be issued against Appellants – this material fact is undisputed.

2. Appellee argues that the bankruptcy stay does not apply to them since they had acquired a judgment for possession before Appellant Robert F. Strange filed for bankruptcy protection. Appellee relies on 11 U.S.C. 263(b)(22) for their legal position and, although they were clever enough on September 07, 2023 (nearly two months *after* Appellee violated the automatic stay) to convince Judge Christopher M. Lopez to allow them to proceed with the eviction as a result of their prior judgment, this Court is not going to likewise be fooled because Appellants hereby emphasize the crucial parts of the relevant bankruptcy code (which may have not been shared with Judge Lopez prior to his ruling) as follows:

11 U.S.C. 362(22) “The filing of a petition ... does not operate as a stay of the continuation of any eviction, unlawful detainer action, or similar proceeding by a **lessor** against a debtor involving residential property in which the debtor resides as a **tenant under a lease or rental agreement** and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor.”

3. It is undisputed that Appellee is not a lessor to Appellants and it is undisputed that no lease or rental agreement exists between Appellants and Appellee. Accordingly, the 11 U.S.C. 362(22) is not applicable to this situation.

4. As such, Appellee violated the automatic stay provision of the Bankruptcy Code, violated Appellants’ due process rights, wrongfully evicted Appellants from their home by throwing prominent citizens of the Tanglewood subdivision and their belongings into the streets ~ this Court should ensure that Appellee fully suffers the consequences of their actions.

PRAYER

Appellants respectfully request that the Court DENY Appellee’s Motion to Dismiss, grant Appellants’ appeal, remand this matter to state court with the instruction that: the judgment rendered on July 06, 2023 be deemed void ab initio, (2) Appellants’ be awarded the property which is the subject of this lawsuit, and (3) the court set a hearing to determine what further damages Appellants are

entitled to as well as for such other and further relief, both at law and in equity, to which Appellants are entitled.

Respectfully submitted,
VILT LAW, P.C.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon Appellee through its counsel of record on December 06, 2023.

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/s/ Robert C. Vilt
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Robert Vilt on behalf of Robert Vilt

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