

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS (FORT WORTH)

Dianne Dorman) CIVIL ACTION No. 4:24-cv-00024
)
Plaintiff.)
)
vs.)
)
Deutsche Bank National Trust Company,)
et al.,)
)
)
Defendants.)

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

Motion to Intervene

Proposed Intervenor, Mark Stephen Burke (“Mark”), contends that intervention is justified in this matter, aligning his interests with the ongoing litigation. This motion is accompanied by the memorandum in support herein, and in compliance with Fed. R. Civ. P. 24(c).

Memorandum of Law in Support of Intervention

The removed Federal Court proceedings involve a dispute between Ms. Dianne Dorman (“Dorman”), represented by Texas lawyer Ryan Daniel, and Deutsche Bank National Trust Company (“DBNTCO”), PHH Mortgage Corporation (“PHH”), represented by Texas lawyers Mark Cronenwett of Mackie Wolf Zientz & Mann P.C. until recently replaced by Locke Lord lawyers shortly after the snap removal. The original state court legal proceedings allegedly aimed to safeguard Dorman's residence from foreclosure, which proved successful, despite the reasons

provided herein as to why it should have failed, and the auction sale executed. Before reaching that discussion, it is prudent to discuss Mark Burke's interests in the foreclosure case before this court.

Mark, as the proprietor of Blogger Inc. and the legal blog LawsInTexas.com, is dedicated to investigative journalism, particularly focusing on legal matters of public concern. This case is part of an ongoing series on LIT, which is investigating related foreclosure cases involving the Defendants, including their defense counsel and/or agents. 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.

The First Illegal Foreclosure Notice: Astonishingly, the Defendants first scheduled Mark's home office for auction on January 2, 2024, disregarding the ongoing legal proceedings. Those proceedings would eventually be halted by Joanna Burke applying "the Dorman Phenomenon", which results in an automatic stay.

The Dunn Intervention: Prior to the stay, and in order to preserve his own separate and independent legal rights to prevent Defendants' illegal act(s) and threatened eviction, Mark intervened in a case proceeding in Houston Division: *Dunn v PHH Mortgage Corporation*, and

which is featured on LawsInTexas.com (<https://lawsintexas.com/pr/2v2>). This article and related series systematically reveal a conspiracy, a troubling pattern of collusion and corruption, and which alarmingly includes title deed fraud that disproportionately impacts vulnerable homeowners, as illustrated in the Dunn case, and Mark's related motion to intervene.

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, and as witnessed in these proceedings, 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 maneuvers. In the Dunn case, Judge Lake would first deny electronic filing permissions to Mark. Then, Mark's postal mail would be intercepted by the government and held by USPS in excess of a month, until Mark challenged them on social media. Furthermore, it was a premeditated and calculated conspiracy during the Christmas and New Year holidays, and where courts were on reduced hour and taking into considering his personal interests and focus would be diverted to keeping his own residence from being snatched by an illegal foreclosure. That stated, by the time these filings were delivered to the court, the date of the foreclosure sale had long passed, nullifying key requested declaratory and injunctive relief.

During this intervening period, the case would be dismissed without prejudice, a concerted move by the court and conspirators to avoid contending with Mark's motion to intervene, including the shocking but irrefutable criminality of the allegations contained therein.

The Second Illegal Foreclosure Notice: Fast forward to this month, Defendants have apparently listed the Burke's residence for sale again for March 5, 2024, triggering this emergency motion to intervene in this Dorman case, seeking declaratory and injunctive relief.

The Dorman Intervention: Mark has investigated and featured this and Dorman's past litigation history on LIT (<https://lawsintexas.com/pr/30z>) arguing when Dorman exited her latest bankruptcy in 2023, there was no requirement for Defendants' to file another suit in September to obtain foreclosure judgment, as several had been obtained over the past, including this court on May 31, 2021, and another state court order of foreclosure after that, dated Nov. 15, 2023. Furthermore, even supposing another lawsuit was necessary, the scheduled auction could have continued as Plaintiff's counsel's pleadings were deficient in order to stop the sale. Instead, the sale was stopped, and Mark Cronenwett on behalf of Defendants removed the case to federal court – no doubt to the chagrin of Judge Pittman, who previously objected to the practice in Dorman's prior visit to this court in 2021. Incredulously, the current docket indicates that mediation has been mandated, rather than show cause orders issued as to why this case has returned to Judge Pittman's court. Instead, the court has appointed Bryan D Bruner as mediator, with a deadline of November 1, 2024. As historical records confirm (Case 4:19-cv-00592-P, Doc. 87, Filed 03/03/21) and as documented on LIT, Magistrate Judge Hal Ray (<https://lawsintexas.com/pr/31j>) previously conducted a failed attempt at mediation. Furthermore, there is no active injunctive relief or any applications for injunctive relief in this court by Dorman preventing a sale; nor memorialized

agreement by the parties duly signed and filed as a formal pleading preventing any future sale; nor in their Rule 26(f) agreement and which seeks to waive the initial conference is there any specific discussion of any future sale; nor is there any order from the court specifically addressing any future auction or sale. Alternatively, the latest precedent emanating from the Court of Appeals for the Fifth Circuit entirely discounts the need for any reliance on the aforementioned to facilitate an expedited foreclosure in favor of the Defendants. The Fifth Circuit now relies upon “prudential standing”. See; *Sechler v. U.S. Bank*, No. 23-60103, at *3-4 (5th Cir. Nov. 17, 2023) as detailed in the Second Amended Petition by Joanna Burke, filed in her Harris County District Court Case, p.67-69, viewable online at <https://lawsintexas.com/pr/31n>. Judge Pittman advocates his binding commitment on such orders in his own court rules, and even though the case is unpublished, he is duty bound to adhere and apply case law relevant to each case before him. Here, his own opinion from March 2021 opens with the following three sentences: “(1) Plaintiff Dianne Dorman brought this action to stop foreclosure. (2) Dorman failed to make her April 2010 mortgage payment, and over the last decade, has still not made it. (3) Instead, Dorman filed for bankruptcy three times and, after all were dismissed, sued her mortgagee and mortgage servicers, Defendants, to further delay. Thus, relying on (2), the Sechlers precedent applies to Dorman. If Judge Pittman was not aware before, he is now on early notice of this appellate court opinion. It should be disclosed, however, that Mark and his mother both assert that this latest Fifth Circuit opinion is a manufactured opinion, and as such: judicial activism.

In light of all these facts, including the fact that the Defendants are not zealously advocating their case to show Dorman’s lawsuit as baseless, frivolous and in the words of Judge Pittman, brought “to further delay”; and which should be subject to sanctions and dismissal due to prior

orders of foreclosure; and/or res judicata/estoppel arguments in the form of formal summary judgment or motion to dismiss pleadings; and/or a request for a pre-motion conference to allow for this discussion to take place; along with the disconcerting fact the court appointing a mediator when it would be more prudent to issue a show cause order; leads Mark to one definitive and final conclusion: the Defendants and conspirators, including the “judicial machinery itself” are maliciously targeting and persecuting the self-represented Burkes’ as part of a unified effort to violate the Burke’s constitutional rights in order to unlawfully and illegally steal the Burke’s residence by continuing with a March 2024 auction and sale.

The [Un]Civil Conspiracy

As well as the foregoing statements, there are many reasons why this ongoing abuse and brazen assault by the Defendants is described by Mark as a conspiracy. First, and applicable to these proceedings, it meets the definition of civil conspiracy in law. *Douglas v. Dorchester Props.*, 3:22-CV-100-K-BK, at *8 (N.D. Tex. Sep. 2, 2022). Second, the Defendants are openly aided and abetted by State and Federal government agencies and branches, including the “judicial machinery itself”. In support, these allegations have been well documented and explained in detail per Joanna Burke’s Second Amended Petition visible online at <https://lawsintexas.com/pr/31n>, and published on LIT at <https://lawsintexas.com/pr/31k>. Mark asks that the court and the parties take judicial notice, as these form part of this motion and supplement, outlining the complaint in the words of the homeowner and ratified by the intervenor.

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 fraud and predatory lending practices affecting vulnerable and distressed homeowners, including the conspiracy claims asserted. In the case before the court, the Defendants stopped a valid foreclosure from proceeding, but as detailed in this motion and supporting evidence, continue to proceed with an illegal proceeding in Texas against the Burke household. The imminent threat to his home office (residence) as a result of the latest conspiracy 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 was removed on January 8 and has been set for mediation and a 2025 trial. Mark's intervention is clearly timely.

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 clearly lacking due to the reasoning and facts provided, 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)). The Defendants are willingly extending litigation, most likely as appointed counsel continues to over-bill their clients for unnecessary lawsuits and repetitive orders of foreclosure, as documented in these proceedings and reaffirmed in other foreclosure cases, as published on LIT. Furthermore, it is implausible that the involved parties would offer assistance or safeguard Mark, given their active conspiracy against his mother, Mark personally, 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 this shared objective is apparent among the parties, the courts, and government agencies which 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, Mark will separately file for 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. See; *Vanderstok v. BlackHawk Mfg. Grp.*, Civil Action 4:22-cv-00691-O, at *10 (N.D. Tex. Mar. 2, 2023) (“For these reasons, the Court holds that the balance of equities weighs in favor of granting Defense Distributed's motion for a preliminary injunction and that the public interest is not disserved by affording such relief.”); citing *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (“**the Court has recognized that the public's interest “in having governmental agencies abide by the federal laws that govern their existence and operations” weighs in favor of an injunction.**”).

Conclusion

Based on the facts presented, Mark acknowledges the inherent challenges in seeking favorable consideration from this court, or any court in Texas due to his activism and investigative journalism. Nevertheless, 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, 26th of February, 2024

/s/ Mark Burke

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CERTIFICATE OF COMPLIANCE

This motion and memorandum complies with FRCP and the Motion Practice for Judge Mark Pittman:

General Motions Practices

Any motion, response, or reply must be formatted as follows: Times New Roman, 12-point font, double-spaced text, single-spaced and bolded headings, one-inch margins on all sides, justified, centered page numbers, and single-spaced footnotes. Citations should be in text (not in footnotes), include italicized case names (not underlined) and statutes in small caps, and otherwise comply with the most recent edition of *The Bluebook: A Uniform System of Citation*.

See; <https://www.txnd.uscourts.gov/judge/judge-mark-pittman>

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1 (<https://www.txnd.uscourts.gov/civil-rules>), I attest to the preparation of this motion on a Sunday and filing prior to court hours on Monday, a deviation necessitated by the urgent nature of this intervention. The proposed intervenor's liberty and constitutional rights hang precariously in the balance, compelling swift action.

It is pertinent to note that the same Defendants in the *Dunn* case were duly notified in advance, an opportunity they regrettably chose to disregard. Given this precedent, it is reasonable to anticipate the motion is opposed.

/s/ Mark Burke

Mark Stephen Burke
Harris County, State of Texas

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February 2024, I filed the foregoing electronically and emailed a copy, including the proposed order in word document format to Judge Pittman's clerk, in compliance with the court's rules and Fed. R. Civ. P. 5.

/s/ Mark Burke

Mark Stephen Burke
Harris County, State of Texas