

No. 23-3593

IN THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

JOANNA BURKE

Plaintiff-Appellant,

v.

PHH MORTGAGE CORPORATION, ET AL

Defendants-Appellees.

On Appeal from the United States District Court
For the District of Minnesota;
USDC No. 0:23-cv-01119-WMW

**APPELLANT JOANNA BURKE's SECOND
MOTION FOR EXTENSION OF TIME**

Joanna Burke
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Telephone: (832) 466-9015
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Pro Se Appellant

Appellant and non-prisoner, Joanna Burke, pro se, moves this court for an extension of 120 days to file for rehearing in this appeal.

This is not for the purposes of delay, but rather so Appellant can address the ongoing elder abuse and illegal acts by Appellees in this case, which includes officers of the court.

As this court is aware, as a result of this court granting the first motion for time due to the imminent foreclosure auction of her homestead which was unlawfully scheduled, Joanna Burke took the necessary legal steps required to protect her homestead of 22 years.

This did not stop the assault on Appellant. EXHIBIT: PHHMN_BDFHOPKINS_ELDERABUSE.pdf, submitted with this motion explains how Mark and Shelley Hopkins of Hopkins Law, PLLC, as authorized by PHH Mortgage Corporation, have fraudulently removed Appellant's case to federal court last week, and now the Appellant has to expend more time and expense addressing their latest scandal and abuse of Appellant.

Relatedly, Joanna Burke directly emailed counsel for Appellees asking if they would waive process of service, a key dispute in this appeal.

Once more, they responded negatively via Texas attorney and Appellee here, Shelley Hopkins of Hopkins Law, PLLC as detailed in EXHIBIT: PHHMN_BDFHOPKINS_ELDERABUSE2.pdf. This response despite the fact

Hopkins appeared and removed the case for PHH Mortgage Corporation, shortly after Appellant filed her partial Motion for Summary Judgment pertaining to Quiet Title, having served PHH in the Texas state court proceeding.

The acts in Texas state, federal and bankruptcy courts by Appellees materially impacts the Appellant's anticipated pleading in this Appeal, and she respectfully suggests her liberty interest and constitutional rights require an extension of time sufficient to directly address the illegal acts in Texas; make sure her case is expedited back to state court, and; she remains in her home.

Unfortunately, upon checking timelines for such ORDERS returning cases to state court can take a few months. See; *Mosely v. Newrez Mortg.*, Civil Action 4:21-CV-396 (S.D. Tex. May 4, 2022); a total of 118 days.

In Mosely's state foreclosure case, removal was initiated by Newrez (Shellpoint Mortgage Servicing) on Feb. 2, 2022 and it would be remanded on May 31, 2022. Critically, at no time was injunctive relief present or requested during the months it was on the new federal case docket.

Upon remand, and despite an amended petition seeking injunctive relief as filed on August 8, 2022, no hearing has ever been held and no injunction issued. Furthermore, there is no joint agreement between counsel or their clients on the docket at the state court level in these proceedings. Indeed, no TRO or injunction has ever been issued since inception of this state court case, which was filed on

Jan. 20, 2021. See; 202103881 - MOSELY, CHARLES vs. NEWREZ MORTGAGE LLC (D/B/A SHELLPOINT MORTGAGE SERVICING) (Court 215, Judge Elaine H. Palmer presiding).

In short, in the absence of a Temporary Injunction no foreclosure has occurred as at the date of this filing, and the last docket entry affirms a trial date of May 6, 2024 or thereabouts.

This is not all. The prior stop foreclosure proceedings commenced by pro se Charles Ray Mosely in Harris County District Court on December 28, 2016 mimics' his current case; there was never a TRO or injunction in this proceeding either. See; 201688212 - MOSELY, CHARLES vs. SHELLPOINT MORTGAGE SERVICING (Court 125, Judge Kyle Carter presiding). That case ended after Mosely non-suited (without prejudice) on Jan. 24, 2018, notably just after the trial docket was set in those proceedings.

These facts completely contradict Appellees arguments in Texas that they can perform a non-judicial foreclosure in the absence of a temporary restraining order or injunction, as they attempted during this Minnesota case and appeal.

Hence, the request for sufficient time here to make sure no further illegal attempts at foreclosure are made by Appellees in the interim period. Indeed, the statute of limitations bars any such attempts by Appellees, as detailed in Appellant's most recent state court pleadings.

CONCLUSION

Respectfully, and for the above reasons, Appellant prays the court will GRANT the extension of 120 days in order that she may file her rehearing in this appeal. Furthermore, should the court require a status update on a monthly or bi-monthly basis, Appellant will comply with any requirement this court deems necessary, and so that justice may be served.

DATED: March 18, 2024

JOANNA BURKE

By s/ Joanna Burke
JOANNA BURKE

46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Telephone: (832) 466-9015
Facsimile: (866) 705-0576

Pro Se for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I, Joanna Burke, undersigned, certify that:

1. This document complies with the type-volume limitation of Fed. R. App.P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R App. P. 32(f), this document contains 725 words, as determined by Microsoft Word for Microsoft 355 word processing software.

2. This document complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman (14-point).

DATED: March 18, 2024

s/ Joanna Burke
JOANNA BURKE

CERTIFICATE OF SERVICE

I hereby certify that a certificate of service is not required in this appeal.

s/ Joanna Burke
JOANNA BURKE

CA8: 23-3593

EXHIBIT:
PHHMN_BDFHOPKINS_ELDERABUSE.pdf

IN THE UNITED STATES DISTRICT BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

IN RE: Joanna Burke) **No. 24-30855**
)
)

NOTICE

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE
JEFFREY P. NORMAN AND ALL INTERESTED PARTIES:

Joanna Burke hereby tenders a copy of the Emergency Motion to
Remand submitted in the related federal court case styled *Burke v. PHH*
Mortgage Corporation (4:24-cv-00897), District Court, S.D. Texas.

RESPECTFULLY submitted this 13th day of January, 2024.



Joanna Burke, Harris County
State of Texas / Pro Se
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Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576

Email: joanna@2dobermans.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on January 13, 2023 as stated below on the following:

VIA U.S. Mail:

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

Case Manager to Judge Jeffrey P. Norman
Bob Casey United States Courthouse
515 Rusk, Room 403
Houston, Texas 77002



Joanna Burke, Harris County
State of Texas / Pro Se
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Phone Number: (281) 812-9591
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Email: joanna@2dobermans.com

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Joanna Burke) **CIVIL ACTION No.**
) **4:24-cv-00897**
Plaintiff)
)
)
 vs.)
)
Deutsche Bank National Trust)
Company, PHH Mortgage)
Corporation, AVT Title Services, LLC,)
Mackie Wolf Zientz & Mann, PC,)
Judge Tami Craft aka Judge Tamika)
Craft-Demming, Judge Elaine)
Palmer, Sashagaye Prince, Mark D)
Hopkins, Shelley L Hopkins,)
Hopkins Law, PLLC, John Doe)
and/or Jane Doe)
)
Defendants)
)

**EMERGENCY MOTION TO REMAND INTEGRATING
MEMORANDUM AND BRIEF IN SUPPORT**

TO THE UNASSIGNED HONORABLE UNITED STATES DISTRICT
COURT JUDGE AND ALL INTERESTED PARTIES:

Joanna Burke hereby submits her emergency motion to remand
without waiver of her constitutional and legal rights to supplement her

argument, authorities, request for punitive damages and/or for any other relief sought. This emergency motion to remand is provided in accordance with applicable state, federal and bankruptcy court rules and regulations.

EMERGENCY MOTION: THE FACTS

On March 13, 2024, Mark Daniel Hopkins and Shelley Hopkins of Hopkins Law, PLLC, purportedly acting solely on behalf of PHH Mortgage Corporation did violate federal laws by fraudulently, maliciously and willfully removing the state court action as detailed on the docket and in pleadings and exhibits attached and incorporated.

In response, Joanna Burke seeks emergency relief: an order granting immediate remand to the state court and case style identified, without delay. In support of this request, Plaintiff presents the following argument and legal authority.

MEMORANDUM AND BRIEF IN SUPPORT

Argument and Legal Authority in Support of Emergency Remand

Despite 16 pages of rambling, baseless and frivolous discussion as to

why they can continue to harass the Plaintiff and violate Texas and Federal laws, PHH and their fellow Defendants, Hopkins admit in their notice of removal at 9 and 9 a., (p.4 of 16, doc. 1), and continue at A. and 10. (p.5 of 16, doc. 1) that Joanna Burke filed for Bankruptcy on March 1, 2024.

The Controlling Question

The only question this court need consider in order to expeditiously grant remand is: Whether or not the 30-day automatic stay was in effect at the date and time of removal. The answer is irrefutably: Yes, the stay was in effect. Terminally, no relief from stay was obtained prior to removal. As such, relying upon Fifth Circuit precedential case law, remand is mandatory.

See; *In re Phillips*, 124 B.R. 712, 716 n.7 (Bankr. W.D. Tex. 1991)

(“the FDIC violated the automatic stay established by the bankruptcy filing when it removed the state collection and foreclosure action to federal court post-petition without relief from stay. See 11 U.S.C. § 362(a)(1); R.Bankr.P. 9027(a)(2). The Fifth Circuit has held that such violation is

voidable, i.e., that the notice should be dissolved and the case remanded to state court. *Sikes v. Global Marine, Inc.*, 881 F.2d 176, 178 (5th Cir. 1989). ”).


Phillips and *Sikes* are supported by *Chapman v. Bituminous Insurance*, 345 F.3d 338 (5th Cir. 2003), where the appellate court reached another important question, and which should be included here to avoid any further frivolous argument from PHH and Hopkins. Namely, any “argument that only the bankruptcy court can make this voidness determination is unpersuasive”, at 345 n.24; (We have previously noted that “other [federal] district courts retain jurisdiction to determine the applicability of the stay to litigation before them, and to enter orders not inconsistent with the terms of the stay.” *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990); see also *Siskin v. Complete Aircraft Servs. (In re Siskin)*, 258 B.R. 554, 561-64 (Bankr.E.D.N.Y. 2001) (noting that the majority of jurisdictions have held that state courts have concurrent jurisdiction to decide whether the bankruptcy stay applies to pre-petition state court actions)).

All other reasons provided by PHH and Hopkins are mooted by the above question and legal authority in support of remand.

CONCLUSION

The Plaintiff's Emergency Motion to Remand is mandatory, should be granted immediately by order of the court, and without further delay. Plaintiff respectfully requests any and all other relief the court deems appropriate and just in light of the egregious acts of retaliation perpetrated by PHH and Hopkins against the Plaintiff, by attempting to delay and/or sabotage her state lawsuit, including Joanna Burke's state constitutionally protected rights as pertaining to a fundamental liberty interest: her homestead; "Those established homestead rights are subject to rigid protections. *Pierce v. Washington Mut. Bank*, 226 S.W.3d 711, 717 (Tex. App. — Tyler 2007, pet. denied) ["Homestead protection is a treasured liberty in Texas, which has been encrusted in its constitution since 1839"]. " *In re McKeithan*, No. 10-60825, at *6 (Bankr. E.D. Tex. Apr. 7, 2011).

RESPECTFULLY submitted this 13th day of March, 2024.



Joanna Burke, Harris County
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Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: joanna@2dobermans.com

CERTIFICATE OF CONFERENCE

I did not confer with PHH Mortgage Corporation and their counsel, Mark Hopkins, Shelley Hopkins of Hopkins Law, PLLC due to my allegations in ongoing litigation pertaining to this court.

This decision was not taken lightly and relies upon the following opinion, Melvin v. Rimkus Consulting, Case 4:08-cv-02707, Document 10, Filed in TXSD on 10/07/08, and visible online at;
https://www.govinfo.gov/content/pkg/USCOURTS-txsd-4_08-cv-02707/pdf/USCOURTS-txsd-4_08-cv-02707-0.pdf
(last visited March 13, 2024).

The opinion by United States District Court Judge Gray Miller, Houston division, states in relevant part;

“Rimkus also urges the court to consider that Melvin’s counsel **failed to confer with opposing counsel as required by this court’s procedures prior to filing the motion to remand and failed to attach a certificate of conference as required by the local rules.**

Additionally, Rimkus stresses its belief that Melvin’s complaint is without merit.

Neither of these arguments go to the objective reasonableness of the removal. Therefore, the court will not address them.

Last, Rimkus argues that federal question jurisdiction will be implicated in this case eventually. The court declines to theorize on the prospect of future jurisdiction, because it does not impact the present lack of jurisdiction.

Accordingly, the motion to remand is GRANTED. Under 28 U.S.C. § 1447(d), this case is REMANDED to the 333rd District Court of Harris County, Texas.”

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on March 13, 2024 as stated below on the following:

VIA U.S. Mail:

Nathan Ochsner
Clerk of Court

P. O. Box 61010
Houston, TX 77208

A handwritten signature in blue ink that reads "Joanna Burke". The signature is written in a cursive style with a long, sweeping underline.

Joanna Burke, Harris County
State of Texas / Pro Se
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Phone Number: (281) 812-9591
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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Joanna Burke) **CIVIL ACTION No.**
) **4:24-cv-00897**
Plaintiff) **ORDER**
)
 vs.)
)
Deutsche Bank National Trust)
Company, PHH Mortgage)
Corporation, AVT Title Services, LLC,)
Mackie Wolf Zientz & Mann, PC,)
Judge Tami Craft aka Judge Tamika)
Craft-Demming, Judge Elaine)
Palmer, Sashagaye Prince, Mark D)
Hopkins, Shelley L Hopkins,)
Hopkins Law, PLLC, John Doe)
and/or Jane Doe)
)
Defendants)
)

ORDER

Plaintiff Joanna Burke’s Motion to Remand came on for hearing
before this Court on _____.

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 the motion is GRANTED, and this case is immediately REMANDED to the 11th District Court of Harris County, Texas.

IT IS SO ORDERED

Dated this ____ day of _____, 2024

United States District Judge

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

Date: Mar 13, 2024

Re: Burke v. PHH Mortgage Corporation (4:24-cv-00897)
District Court, S.D. Texas

Dear Sir,

JOANNA BURKE'S FILINGS IN THIS CASE

Please find enclosed the following documents:-

1. EMERGENCY MOTION TO REMAND INTEGRATING
MEMORANDUM AND BRIEF IN SUPPORT
2. PROPOSED ORDER

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

Thank you.

Sincerely,

Joanna Burke
46 Kingwood Greens Dr.,
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Tel: (281) 812-9591
Fax: +1 (866) 705-0576

Encls.

Distribution list (Certificate of Service)

There is currently NO ASSIGNED FEDERAL JUDGE

Mark Daniel Hopkins

Tel: (512) 600-4320

mark@hopkinslawtexas.com

Hopkins Law, PLLC

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2802 Flintrock Trace

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Austin, TX 78738

ATTORNEY FOR PHH MORTGAGE CORPORATION

CA8: 23-3593

EXHIBIT:
PHHMN_BDFHOPKINS_ELDERABUSE2.pdf

From: [Shelley Hopkins](#)
To: joanna@2dobermans.com; [Mark Hopkins](#); [Piper Armstrong](#)
Subject: Re: 202386973 - BURKE, JOANNA vs. DEUTSCHE BANK NATIONAL TRUST COMPANY (Court 011)
Date: Monday, March 4, 2024 2:28:25 PM

We will not agree to waive service, for any party.

Shelley L. Hopkins



2802 Flintrock Trace, Suite B103 | Austin, Texas 78738
512.600.4320 *main* | 512.600.4323 *direct* | www.hopkinslawtexas.com

From: joanna@2dobermans.com <joanna@2dobermans.com>
Date: Monday, March 4, 2024 at 2:25 PM
To: Mark Hopkins <mark@hopkinslawtexas.com>, Shelley Hopkins <Shelley@hopkinslawtexas.com>, Piper Armstrong <piper@hopkinslawtexas.com>
Subject: 202386973 - BURKE, JOANNA vs. DEUTSCHE BANK NATIONAL TRUST COMPANY (Court 011)

THIRD AMENDED PETITION

Attached is a copy of the petition combined with exhibits/order as filed today.

WAIVER OF SERVICE

Please advise if you waive service for Deutsche Bank National Trust Company, Mark D Hopkins, Shelley L Hopkins and Hopkins Law, PLLC.

Sincerely

Joanna Burke

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Tel: (832) 466-9015

Fax: (866) 705-0576

“Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. A lawyer is received into that ancient fellowship for something

more than private gain. A lawyer becomes an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.”

- *Wescott Agri-Prods., Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1095 (8th Cir. 2012)

From: [Shelley Hopkins](#)
To: joanna@2dobermans.com; [Mark Hopkins](#)
Subject: Burke v. PHH
Date: Thursday, March 14, 2024 1:20:20 PM
Attachments: [show temp\(16\).pdf](#)

Please find attached notice of appearance filed with the Court today.

Shelley L. Hopkins



2802 Flintrock Trace, Suite B103 | Austin, Texas 78738
512.600.4320 *main* | 512.600.4323 *direct* | www.hopkinslawtexas.com