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

Joanna Burke 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	)	**CIVIL ACTION No. 4:24-cv-00897**

REPLY TO PHH HOPKINS RESPONSE OBJECTING TO PLAINTIFF'S EMERGENCY MOTION TO REMAND FOR VIOLATIONS OF THE STAY

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

"Forum Shopping aka Judge Shopping" is a disease in Texas courts says Congress, demanding the judiciary complies with the recommendation of the US Judicial Conference. However, the third branch of government in Texas have rejected that demand.[1] As recently as late Friday, April 5, 2024 the Fifth Circuit panel comprising of Judges Willett, Oldham, and Higginson (dissenting) rescinded N.D. Texas Federal District Court Judge Pittman's venue transfer order out of Texas in a consumer-related dispute where CFPB issued an order limiting the amount charged

[1] Apr. 1, 2024 Press Release: "Schumer Statement On The Northern District Of Texas Refusing To Abide By Commonsense Judicial Conference Guidelines On Judge Shopping" (Senate.Gov; last visited online, Apr. 6, 2024).

for credit card late fees, thus preventing fee-gouging of consumers. (*In re Chamber of Commerce*, 24-10266, (pub.), Apr. 5, 2024). Relatedly, the 2008 financial crisis was created by similar greed, where financial institutions issued predatory loans which resulted in millions of foreclosure actions by banks, defunct lenders, MERS, non-banks and their counsel with fabricated and fraudulent loan and legal documentation, claiming they could foreclose. One of those affected homeowners is the Plaintiff in these proceedings. Notably, the decision comes on the heels of Judge Willett's rebuke of the Fifth Circuit's prior *erie guess(es)* in wrongful foreclosure proceedings. *Sheet Pile, L.L.C. v. Plymouth Tube Co., USA*, No. 23-50123, at *9 n.21 (5th Cir. Apr. 3, 2024) (" That panel went too far."). Countless times federal courts have interfered with state law, and done so erroneously, creating more devastation of protections involving a cherished and fundamental liberty, a Citizen's residential homestead. As Plaintiff will prove, these proceedings should not have been removed to federal court during the automatic stay, and to do so was a willful violation. The removal is a prime example of both forum, and judge shopping.

PHH Mortgage Corporation ("PHH"), aided by counsel and defendants at Hopkins Law, PLLC ("Hopkins") erroneously assert removal relies upon; (a) bankruptcy jurisdiction pursuant to 28 U.S.C. §1334, (b) federal question jurisdiction pursuant to 28 U.S.C. §1331, and (c) diversity jurisdiction pursuant to 28 U.S.C. §1332. They have not re-urged 28 U.S.C. §1452 which is visibly absent from their latest response. Both PHH Hopkins (response at 4. and footnote 4.) and Plaintiff agrees, Plaintiff's emergency motion to remand was premised on the violation of the automatic stay. It did not address (b) or (c), which includes substantial additional claims by PHH Hopkins. Both have requested, if necessary, further briefing to address those claims, if not mooted by this court.

With this limitation in place, PHH Hopkins aver they are not in violation of the automatic stay as they removed *debtors case* to this court (response at 5 – 9, conclusion at 10.). The main thrust of their argument concerns the interpretation of 11 U.S.C. §362(a)(1). Before delving into

the specifics, Plaintiff reminds the court Mark Hopkins authored the response - the same lawyer who has relentlessly harassed and pursued homeowners' the Howards since the financial crisis. Chief Justice Nathan Hecht wrote the latest opinion in *PNC Mortg. v. Howard*, 668 S.W.3d 644 (Tex. 2023) by first noting that this was the second time the highest court had heard PNC's time-barred case, in relevant part;

> "On remand, the court of appeals concluded that any equitable-subrogation claim that PNC could have asserted would have accrued when PNC accelerated the Howards' note and that, therefore, this claim is time-barred too. We agree and affirm."

Notably, the Supreme Court is critical about the time the Howard's case spent in Texas courts, and which should have ended in 2014. But, mirroring Plaintiff's litigation, and with Hopkins as counsel, in 2015 the Howards were subjected to new counterclaims and a new lawsuit which would extend the case until 2023 – and it's still ongoing as far as Plaintiff is aware. In Joanna Burke's case, she defeated DBNTCO at bench trial in 2015 and then Hopkins appeared, and she defeated him again in 2017. The rest is well documented. The Howards case was time-barred and here, PHH Hopkins illegal attempts at foreclosure is time-barred. It is time to end the litigation as the law demands, with final judgment in favor of Joanna Burke. Alas, she most likely does not have another decade left on this earth to litigate against DBNTCO, and that appears to be the vindictive and heartless scheme which has been implemented against the 85-year old widow, as PHH Hopkins again refuse to admit they are legally defeated.

With that in mind, Plaintiff addresses the latest challenge revolving around PHH Hopkins *erie guess* which runs afoul against the visible movements between the state district court, the federal bankruptcy court, and this district court. As the Fifth Circuit explained in *Brown v. Chesnut (In re Chesnut), 422 F.3d 298, 301 (5th Cir. 2005):-*

"Without the stay, creditors might scramble to obtain as much property of the

> debtor's limited estate as possible. The automatic stay prevents this scramble by providing *`breathing room'* for the debtor and the bankruptcy court to institute an organized repayment plan." Citing; *In re Stembridge*, 394 F.3d 383, 387 (5th Cir. 2004).".

Taking PHH Hopkins argument as true: that they could remove *debtors case* to federal jurisdiction on the basis 28 U.S.C. § 1334(b) grants the district court jurisdiction over proceedings, including those arising in or related to a bankruptcy case. However, if the district court doesn't have bankruptcy jurisdiction, there's nothing to refer to the bankruptcy judge. And 28 U.S.C. § 1452(a), the removal statute for claims related to bankruptcy cases to which PHH Hopkins originally cited when snap removing, says the party may remove the claim "to the district court," not the bankruptcy court. On the other hand, each district court, including this district, has a Reference Order which automatically refers claims related to a bankruptcy to the bankruptcy judge. *Diogu v. Lakeland W. Capital 41, LLC, Civil Action 4:22-CV-3299, at *3 (S.D. Tex. May 23, 2023)*. Here, the parties agree the Plaintiff's property is the material claim which is in dispute. Additionally, DBNTCO already appeared in the bankruptcy court *prior* to removal of the state case. *McKinstry v. Sergent*, 442 B.R. 567, 570 (E.D. Ky. 2011):-

> "The bankruptcy court itself has no jurisdiction unless this Court has jurisdiction first: Congress has vested bankruptcy jurisdiction in the district courts—saying "the district courts shall have original and exclusive jurisdiction of all cases under title 11" and that "the district courts shall have original ***but not exclusive jurisdiction*** of all civil proceedings arising under title 11, or arising in or related to cases under title 11." (emphasis added).

PHH Hopkins assert otherwise. Returning to 11 U.S.C. § 362(a)(1), they rely upon legal authority in; *Stafford v. Wilmington Trust National Association* (3:18-cv-03274), District Court, N.D. Texas – a case where Hopkins were counsel to interpret the meaning of ***"against the debtor"***, and where [Chief] Judge David C. Godbey reached the conclusion that means Congress intended only to stay suits filed against debtors, not suits filed by debtors. This is the same judge who made

an *erie guess* in the same case claiming: "The statutory language states that "last known address" means "for a debt secured by the debtor's residence, the debtor's residence." § 51.0001(2)(A) The judge interpreted that the debtor's last known address is the debtor's residence, even if that is not the case (Doc. 36, Mar. 30, 2020), which is an absurd *erie guess* related to Texas property law.

The number of erroneous *erie guesses* by federal judges and circuit court judges in Texas courts related to foreclosure litigation involving a family's residential home, and which is supposed to be sacrosanct under Texas law, is both alarming and shocking. By way of example, when discussing Plaintiff's original motion to remand cited to *Sikes v. Global Marine, Inc.*, 881 F.2d 176, 178 (5th Cir. 1989), a decision the Texas Supreme Court in *York v. State*, 373 S.W.3d 32, 40 (Tex. 2012) stated is void, not merely voidable; "The Fifth Circuit is not in the majority, as reflected in its decision in *Sikes v. Global Marine, Inc*., with which we have previously noted our disagreement.". Additionally, in Plaintiff's two district court cases against DBNTCO, she defeated their legal action not once, but twice, only to be erroneously reversed twice on appeal to the Fifth Circuit. The judge in the case, Hon. Stephen Wm. Smith disavowed the Fifth Circuit's *erie guess*.

PHH Hopkins also scoured the archives to cite to a 1993 5th Circuit opinion in *McMillan v. Mbank Fort Worth, N.A*., 4 F.3d 362, 366 (5th Cir. 1993). However, that case involved the receiver FDIC replacing the debtor and is inapposite to the facts here. In summary, Plaintiff maintains that the novel interpretation of ***"against the debtor"*** as applied in this type of case setting is legally flawed and incorrect when it involves a bankruptcy where DBNTCO had already appeared. It *relates to* a state law case to prevent illegal foreclosure of a residential homestead by non-judicial foreclosure, and which is part of the bankruptcy estate at the time of removal. *Satterwhite v. Guerrero (In re Guerrero)*, CASE NO: 12-35341, at *6 (Bankr. S.D. Tex. Dec. 20, 2013).

It should be remembered Hopkins have appeared for both DBNTCO and PHH continuously in all related litigation since at least 2015. See; *Burke v. Hopkins*, Civil Action H-18-4543, at *2 (S.D. Tex. Feb. 24, 2020). As such, Defendants knew about the Bankruptcy and automatic stay. As stated, DBNTCO appeared first in the Bankruptcy case. *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 142 (5th Cir. 1996) (“an appearance is an indication "in some way [of] an intent to pursue a defense. This is "a relatively low threshold."”). However, the district court has to decide jurisdiction before it can reach the merits. As shown, even if the court were to interpret *“against the debtor”* as PHH Hopkins suggests, Plaintiff asserts this court lacks jurisdiction, requiring this case be remanded. This would mirror the reasoning applied in the majority by Judges Willett and Oldham at the Fifth Circuit in *In re Chamber of Commerce*, 24-10266, (pub.), issued Friday, Apr. 5, 2024.

CONCLUSION

Whichever route the court takes to reach a decision on the Plaintiff’s emergency motion to remand, what remains clear and obvious is that PHH Hopkins willfully and purposefully violated the automatic stay with the intent to harass Plaintiff, as they did not provide the “breathing room” the automatic stay is intended to provide. A proposed order has been previously provided. The emergency motion to remand should be GRANTED.

RESPECTFULLY submitted this 7th day of April, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on April 7, 2024 as stated below on the following:

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