

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

United States Courts
Southern District of Texas
FILED

MAR 29 2024

Nathan Ochsner, Clerk of Court

Date: Mar 27, 2024

Re: In re Joanna Burke (24-30885)
Bankruptcy Court, S.D. Texas

Dear Sir,

JOANNA BURKE'S FILINGS IN THIS CASE

Please find enclosed the following documents:-

1. FIRST MOTION TO ABATE PROCEEDINGS
2. PROPOSED ORDER
3. ADVERSARY PROCEEDING
4. SUMMONS x 6 COPIES; COURT, DBNTCO, PHH, AVT, PLAINTIFF,
AND RETURN

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

Thank you.

Sincerely,



Joanna Burke
46 Kingwood Greens Dr.,
Kingwood, TX, 77339
Email: joanna@2dobermans.com

Tel: (281) 812-9591

Fax: +1 (866) 705-0576

Encls.

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

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

FIRST VERIFIED MOTION TO ABATE PROCEEDINGS

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

DISCLOSURE OF RELATED PROCEEDINGS

Burke v. PHH Mortgage Corporation (0:23-cv-01119-WMW-DTS), District Court, D. Minnesota, currently under appeal to the 8th Circuit, Case No. 23-3593.

Samuels v. PHH Mortgage Corporation (4:23-cv-04687) District Court, S.D. Texas, Judge Alfred Homer Bennett, Dec. 15, 2023 (“Intervenor Samuels”);

Joanna Burke (23-35083), United States Bankruptcy Court, S.D. Texas, Judge Jeffrey Norman, Dec. 28, 2023 (“Burke BKI”);

Burke v. PHH Mortgage Corporation (4:24-cv-00897), District Court, S.D. Texas, Judge Ewing Werlein, Jr - Snap Removed State Case in Violation of Automatic Stay by Hopkins for PHH (“Removed State Case”);

Joanna Burke (24-30885), United States Bankruptcy Court, S.D. Texas, Judge Jeffrey Norman, March 1, 2024 (“Burke BKII”).

DISABILITY ACCOMMODATION (HEARINGS)

Plaintiff is hard of hearing and respectfully requests an ADA-

compliant remote hearing, which can be achieved with a vendor who offers live captioning. See; Judge Norman's courtroom procedures at no. 9 (GoTo does not offer live captioning).

FACTS, QUESTION(S) OF LAW, RELIEF REQUESTED AND CONCLUSION

Joanna Burke hereby submits her first motion to abate proceedings in light of the simultaneously filed adversary proceedings which raise serious questions as to the legitimacy of the attempts to foreclose on Plaintiff's homestead of 22 years.

Plaintiff respectfully asks the court to review this docket, the related cases listed above along with the adversary proceedings filed as a result of her March 1, 2024 voluntary petition ("*Burke BKII*") which clearly contends; (i) the current appeal at the 8th Circuit automatically stays any attempts at foreclosure, and/or (ii) the statute of limitations prevents any foreclosure, and (iii) Joanna Burke is entitled to peaceful and continued residence in her homestead of 22 years, without further harassment and

abuse by Defendants.

Further complicating matters is the dual bankruptcy proceedings, and wherein Plaintiff contends both here and in her related proceedings that “the automatic bankruptcy stay is still in effect” from the December bankruptcy filing (“*Burke BKI*”).

Additionally, the automatic closure and final decree entered on March 26, 2024 defies due process and is void, as due process requires that interested parties have meaningful notice with adequate opportunity to object and this was denied Plaintiff as detailed in this motion. See; *In re Wilkinson*, 457 B.R. 530, 544 (Bankr. W.D. Tex. 2011);

“According to the Bankruptcy Rules and applicable Federal Rules of Civil Procedure, an order of a bankruptcy court is void if it is issued in a manner inconsistent with the due process clause of the 5th Amendment.

In order to warrant relief from such an order, the moving party must both identify the technical inadequacies and establish a denial of its right to due process.

Due process requires that interested parties have meaningful notice with adequate opportunity to object.”

THE BANKRUPTCY PROCEEDING DICHOTOMY

Plaintiff is deemed a Non-Prisoner, Pro Se Litigant

Plaintiff filed her Bankruptcy proceedings *pro se*. As a result of this status, litigants face unnecessary burdens to file and litigate cases in both this bankruptcy court, and district court. One has to attend the court in person to file, presenting formal identification and paying cash for the filing fee associated with the petition directly to the clerk's intake office. Thereafter, Plaintiff has to proceed with filing pleadings either in-person or via mail or carrier, thus increasing costs and expenses and reducing time available to timely respond to deadlines. Due to unforeseen circumstances, this requirement would create a major delay in delivery of timely filed pleadings by Plaintiff into her ongoing cases in this federal building.

On January 5, 2024, Plaintiff prepared and posted a motion for an extension of time to this court in *Burke BKI* via USPS Priority Mail. Unbeknownst to Plaintiff, USPS were experiencing substantial mailing issues. As a result, this filing would not arrive until February 9, 2024, over a

month later.

The Dismissal of Burke BK I (Jan. 17, 2024)

In the interim, this court “dismissed” the case erroneously due to a perceived lack of response - a response that was actually timely posted and would have prevented the premature dismissal docketed in *Burke BK I* on January 17, 2024. As such, this dismissal violates due process and Plaintiff’s Fifth Amendment rights.

The Delayed Delivery of Plaintiff’s Motions

On January 26, 2024, Plaintiff prepared and posted a follow-up motion to reinstate the case, posted by USPS Priority Mail, and which would also be delayed, arriving simultaneously on February 9, 2024.

Clerkgate (2024)

However, this does not end the bizarre events which followed delivery of the motion and related filings. To this very day, they have never been filed into this Bankruptcy case. As such, this dismissal violates due process and Plaintiff’s Fifth Amendment rights and the requirements of *In re Wilkinson*,

457 B.R. 530, 544 (Bankr. W.D. Tex. 2011) are met by Plaintiff;

Despite Plaintiff accidentally mis-labeling the case number citation in both motions, each motion clearly starts with “TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE JEFFREY P. NORMAN AND ALL INTERESTED PARTIES” and ends with a Certificate of Service, which confirms she included two copies of the pleadings, one for the Clerk of the Court, to be filed in the related *Intervenor Samuels* case in Judge Bennett’s court) and the other for the attention of the Case Manager to Bankruptcy Judge Jeffrey P. Norman. The mis-labeling of the pleadings cited the *Intervenor Samuels* case number (4:23-cv-04687). The failure to file these pleadings onto the docket is not only obtuse but also absurd, as clerks are duty-bound to carefully review and accurately file pleadings.

Furthermore, upon noting no docketing of the mailed and now delivered pleadings on the docket, Joanna Burke would email the bankruptcy clerk, Mario Rios (mario_rios@txs.uscourts.gov) first by email from joanna@2dobermans.com on Feb. 22 with reminders on Feb. 22 and

26, 2024. After recognizing that her domain name email is blocked by the court, Plaintiff would resend via her alternate email account, kajongwe@gmail.com, which was successfully delivered on Feb. 26, 2024.¹

Legal Authorities re Clerkgate (2024)

See; *Keita v. Nerdrez (and PHH Mortgage Corporation)*, 23-CV-2103 (LTS) (S.D.N.Y. Apr. 5, 2023) - Chief Judge correcting her own mis-labeling of the case number;

Bizelia v. Clinton Towers Mgmt., 20-CV-8065 (JPC) (OTW), at *5 n.14 (S.D.N.Y. Mar. 18, 2024) (“Due to a typographical error, the order cited the incorrect ECF number for the Clerk's Certificate of Default.”);

Robinson v. Experian Info. Sols., No. 23-10104 (E.D. Mich. Apr. 10, 2023) – provides a good example of a court template called “Notice of Correction”, where clerks’ perform audits to ensure filings are correctly docketed and

¹ See Judge Norman’s Courtroom Procedures (p.4), in relevant part; “Notice that an emergency motion or a request for an expedited hearing has been filed may be sent via email to mario_rios@txs.uscourts.gov as they may not be seen by chambers staff until the next business day.” – Clearly he checks his email frequently.

where it visually confirms this must be a regular occurrence (checkbox list with various errors identified for selection as to reason for correction). Questionably, no clerks' audit and correction ever occurred in this court, or where any filings were incorrectly docketed in the *Intervenor Samuels* case before Judge Bennett's district court.

All of this could have been avoided if this court moved out of the dark ages and allowed electronic filing to non-prisoner, *pro se* litigants, especially since all federal appellate courts allow the same in Plaintiff's experience, and state courts mandate electronic filing.

In Plaintiff's state court complaint, docketed as an exhibit in the *Removed State Case, Doc. 1*, she avers the automatic stay is still in effect as regards *Burke BKI*.² This is true, even in light of footnote 1.

See; *Herbert v. Dickhaut*, 724 F. Supp. 2d 132, 8 (D. Mass. 2010) (“A

² It should be recorded that around 10.01 am on Tuesday, March 26, 2024, movement on the *Burke BKI* docket confirmed this court filed: “Automatic Closing and Final Decree”, Doc. 18, Signed by Judge Norman, dated March 26, 2024. This purported case closure and final decree does not address nor dispose of Plaintiff's pending motions as discussed in this motion.

motion filed but not ruled upon, dismissed, or withdrawn generally is still pending."");

U.S. v. American Color and Chemical Corporation, 885 F. Supp. 111, 113 n.6 (M.D. Pa. 1995) ("Other pending motions will be disposed of by separate order and memorandum.");

In re Amendments to the Fla. Rules of Appellate Procedure, No. SC2023-0261, at *9 (Fla. Oct. 12, 2023) ("(C) if a notice of appeal is filed before the rendition of an order disposing of all such motions, the appeal ~~shall~~ must be held in abeyance until the motions are either withdrawn or resolved by the rendition of an order disposing of the last such motion.");

Swartz v. Democratic Party, 23-cv-06068-JSW, at *1 (N.D. Cal. Feb. 8, 2024) ("JEFFREY S. WHITE United States District Judge ORDER OF DISMISSAL; DENYING PENDING MOTIONS").

See also; *In re HP Bennett, LLC*, No. 21-00249-ELG, at *7 (Bankr. D.D.C. Dec. 22, 2023);

"The filing of the Motion to Reopen was both an action requiring

an overt judicial act and was filed by a third party. Clearly, the filing and prosecution of the Motion to Reopen does not fall within the scope of the ministerial acts exception. As such, the filing and prosecution of the Motion to Reopen violated the automatic stay.

The circuits are split on whether actions taken in violation of the automatic stay are voidable or void. See *Soares*, 107 F.3d at 976 (collecting cases).

This Court agrees with the majority that acts taken in violation of the automatic stay are void.

See *Stancil v. Bradley Invs., LLC (In re Stancil)*, 487 B.R. 331, 338 (Bankr. D.D.C. 2013); see also *In re Sklar*, 626 B.R. 750, 762-63 (Bankr. S.D.N.Y. 2021)."

Relying upon above, Plaintiff asserts PHH's counsel (who have represented both DBNTCO and PHH (Ocwen) since at least 2015 in cases involving Plaintiff, knowingly and maliciously violated the automatic stay in *Burke BKII* by snap removing the state case (*Removed State Case*).

Additional Facts in Support of Motion

Plaintiff noted the appearance of Codilis & Moody, PC, as attorneys for Deutsche Bank National Trust Company ("DBNTCO") a mere 8 days after

filing of *Burke BKII* (Doc. 13). This was notable because in *Burke BKI*, no appearance was ever made by DBNTCO. Whilst preparing this motion, the answer to this question was answered in *In re: DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE - C/O CODILIS & MOODY, P.C.*, Proceedings to Enforce Fed. R. Bankr. P. 9036, Misc. Proceeding No. 24-00444, Doc. 1, Mar. 13, 2024. This case suggests the violation is so severe as to warrant sanctions, and a remote hearing set before Judge Marvin Isgur on Apr. 11, 2024.

Additionally, DBNTO's assigned attorney, Ms. Dahlin of Kingwood, Texas, has been a litigant before this court during contested hearings in both adversary proceedings, and as a petitioner before Judge Isgur, wherein it was alleged that she received approximately \$200k to pay off a Wells Fargo note from friends (the Dales), but schemed to delay delivery of the executed legal paperwork, including the promissory note and deed of trust for recordation in Harris County Records. The purpose of the scheme was ultimately executed, wherein she would first file for bankruptcy protection prior to any

secured lien, note or deed being legally recorded. As such, Dahlin successfully challenged the 'loan' was unsecured - not secured - because the date of filing of the bankruptcy petition was a day before the promissory note and deed was recorded in real property records in Harris County. See; *Sommers v. Dale (In re Dahlin)*, 590 B.R. 759 (Bankr. S.D. Tex. 2018).

Relatedly, Hon. Stephen Wm Smith, former Magistrate Judge who presided over *Deutsche Bank Nat'l Tr. Co. v. Burke* for 7 long years and where Plaintiff defeated DBNTCO twice in his courtroom. In that case, he ruled;

“Accordingly, the court concludes that neither Deutsche Bank nor any mortgage servicer acting on its behalf has the right to foreclose on the Burkes' Kingwood residence. The court further concludes that at no time has Deutsche Bank possessed any right, title, or interest in the Burkes' note and security interest executed on May 21, 2007.” (by summarizing: “On this record, there was no existing "successor" to IndyMac Bank at the time of the 2011 assignment. There is no evidence that, prior to being placed in receivership, IndyMac Bank or its successor IndyMac Federal Bank assigned the Burke note to anyone. The purported assignment of January 20, 2011 is void and absolutely invalid.”).

See also (from same opinion); *Deutsche Bank Nat'l Tr. Co. v. Burke*, CIVIL

ACTION NO: H-11-1658, at *5 (S.D. Tex. Dec. 21, 2017) ;

“ On **January 20, 2011**, Mortgage Electronic Registration Systems, Inc., acting as nominee for the lender IndyMac Bank, F.S.B., its successors and assigns, executed a document entitled "Assignment of Deed of Trust," purporting to assign all rights under the Burkes' loan agreement to Deutsche Bank. (P. Ex. 2) 24. The effective date of the purported assignment was **backdated to April 9, 2010**, one day prior to the default cure deadline set by the notice of default letter described above.”.

The Fifth Circuit would erroneously reverse Hon. Stephen Wm Smith's legally correct opinion not once, but twice, defying the rule of law, and in contradiction to Judge Isgur's ruling in *Dahlin*. Indeed, stripping away all the legalese, Plaintiff has always maintained that Indymac Bank's failure resulted in the Bank's secured loan inventory becoming unsecured loans during receivership, but they even failed to identify the purported loans they held at the time. Reading Judge Isgur's opening sentence in his analysis in *Sommers v. Dale (In re Dahlin)*, he also appears to support Plaintiff's position.

In short, setting aside DBNTCO's assigned attorney, Kathryn Dahlin's ethical and moral obligations, the *Dahlin* case opinion from this court

supports both Plaintiff and Hon. Stephen Wm. Smith's rulings, and this case should have ended after the bench trial some nine years ago.

Plaintiff also avers that both the Constitution and the courts rely upon fairness and consistency in equal application of the law, and that one party may not be excused, yet another party denied due process as a direct result of the actions or inactions by the court and/or actions or inactions of the parties themselves. Plaintiff contends she has been selectively targeted and denied due process in violation of her rights to a fair and impartial tribunal as discussed in this motion and supported by related cases and pleadings.

Objection to this Court's Constitutional Authority to Enter a Final Order or Judgment

Before reaching the limited questions of law in these proceedings, as detailed below, the Plaintiff wishes to return to footnote 1, and this court's final order or judgment in *Burke BKI*. Plaintiff formally objects to this court's constitutional authority to enter this final order or judgment, as docketed on March 26, 2024 at around 10.01 am.

See; *Stern v. Marshall*, 564 U.S. 462, 503 (2011);

“We cannot compromise the integrity of the system of separated powers and the role of the Judiciary in that system, even with respect to challenges that may seem innocuous at first blush. Article III of the Constitution provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article. The Bankruptcy Court below lacked the constitutional authority to enter a final judgment.”

THE LIMITED QUESTIONS OF LAW IN THESE PROCEEDINGS

The question of law before this court is limited to which Chapter 13 bankruptcy case and automatic stay controls. See; *IN RE: KATHRYN NICHOLE DAHLIN*, Adversary No. 17-03425, Doc. 24, Opinion by Judge Marvin Isgur, May 15, 2018;

“Under 11 U.S.C. § 349(b), dismissal of a case without granting a discharge “returns the parties to the positions they were in before the case was initiated.” *In re Operaji*, 698 F.3d 231, 238 (5th Cir. 2012) (quoting *In re Sanitate*, 415 B.R. 98, 104 (Bankr. E.D. Pa. 2009)). The Congressional intent of this provision in the Bankruptcy Code is to place the parties in the positions they held before the bankruptcy case commenced.”

A Bankruptcy Judge is not an Article III Judge, hence Plaintiff contends

Judge Norman cannot consider or decide Plaintiff's assertions that the 8th Circuit appeal acts as an automatic stay on any attempts to foreclose, or, in the alternative, the statute of limitations prevents foreclosure as the district court order issued by United States District Judge David Hittner, and relied upon by PHH/AVT to commence their illegal foreclosure, was beyond the allowed time to foreclose, in violation of the statute of limitations.

These arguments would have been raised by Plaintiff in *Burke BKI*, had her motions been docketed and addressed by this court.

Whilst it is admitted the court has Constitutional Authority over the Bankruptcy proceedings and voluntary petition filed by Joanna Burke, she was, however, denied due process to argue that she was forced into filing this petition based on the illegal and unlawful acts of the Defendants, raising questions of law which only an Article III judge can decide.

PRAYER & RELIEF

In closing, I, Joanna Burke, as Plaintiff with due authority and competency, resident of Kingwood in the livable forest of Harris County,

Texas, born on November 25, 1938 (85 years old), in Kirkintilloch, Scotland, United Kingdom, and currently holding U.S. Citizenship, a valid State of Texas Driver License (last 3 digits are 738), and a Social Security Card (last 3 digits are 874), 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).

With the recognized judicial limitation in place, and based on recent movements and past actions, Plaintiff avers *Burke BKI* is *void ab initio* and these proceedings (*Burke BKII*) should be treated as the first official filing of Plaintiff's voluntary Chapter 13 bankruptcy petition.

In the first alternative, if this court continues to treat this case as a second case, then the automatic relief would expire after 30 days, but that

only applies to the Debtor, Joanna Burke. See; *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 230 (5th Cir. 2019) ("§ 362(c)(3)(A) terminates the stay only with respect to the debtor; it does not terminate the stay with respect to the property of the bankruptcy estate.").

Here, Plaintiff's petition is focused on the property of the bankruptcy estate, and per the words of the Chief Judge of the Fifth Circuit (and spouse of the sitting Chief Justice of the Texas Supreme Court), and joined by former Justice Don Willett, the automatic stay continues, relative to her homestead. In short, no notice to creditors, a hearing or motion requesting an extension beyond the initial 30 days is required in these circumstances.

In the second alternative, the court has been made aware of the Article III questions which could affirm Plaintiff's alternative arguments. As this case involves a fundamental liberty interest, her homestead of 22 years, due process demands an immediate stay of proceedings along with a temporary injunction to prevent any further violations of the law, which Defendants are eagerly keen to repeat, as recorded in this and related proceedings.

See; *Matter of McDaniel*, 70 F.3d 841, 843 (5th Cir. 1995)

“In Texas, homestead rights are sacrosanct:

”[W]e must give a liberal construction to the constitutional and statutory provisions that protect homestead exemptions.” ”.

CONCLUSION

The request to immediately abate this proceeding (*Burke BKII*), including any deadlines to file mandated schedules or other bankruptcy related documentation is meritorious, and based on the facts presented in this case. As such, this motion and all relief requested should be granted, including the request per this motion to continue or impose the automatic stay, as deemed applicable or necessary by the court, and in light of the Plaintiff's *pro se* status.

In light of these material facts, Plaintiff requests the court abate the proceedings, extending and/or imposing the injunction to prevent foreclosure during these and related proceedings, as necessary or required and whilst the adversary proceeding, and questions of law remain undecided.

This notice is provided in accordance with applicable bankruptcy court rules and regulations.

VERIFICATION AND DECLARATION

In closing, I, Joanna Burke, as Plaintiff with due authority and competency, resident of Kingwood in the livable forest of Harris County, Texas, born on November 25, 1938 (85 years old), in Kirkintilloch, Scotland, United Kingdom, and currently holding U.S. Citizenship, a valid State of Texas Driver License (last 3 digits are 738), and a Social Security Card (last 3 digits are 874), 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).

RESPECTFULLY submitted this 27th day of March, 2024.

Joanna Burke, Harris County
State of Texas / Pro Se
46 Kingwood Greens Dr
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 March 27, 2024 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

Tiffany D Castro
Office of Chapter 13 Trustee

9821 Katy Freeway
Ste 590
Houston, TX 77024
713-722-1200

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002
713-718-4650

VIA EMAIL

Deutsche Bank National Trust Company
c/o Codilis & Moody, P.C.
Kathryn N. Dahlin SBOT#24053165
Kerrie S. Mattson-Neal ARDC#6270224
Nicole Bartee SBOT#24001674
Marla A. Skeltis SBOT#24136182
TX.bkpleadingsSOUTH@tx.cslegal.com
20405 State Highway 249, Suite 170
Houston, TX 77070
Telephone: (281) 925-5200

Joanna Burke, Harris County
State of Texas / Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: joanna@2dobermans.com

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

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

ORDER

Plaintiff Joanna Burke’s Motion to Abate 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 ABATED. IT IS SO ORDERED,

Dated this ____ day of _____, 2024

United States Bankruptcy Judge

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

Joanna Burke,	)	BANKRUPTCY CASE No.
	)	24-30855
Plaintiff)	
	)	ADVERSARIAL CASE
v.	)	No. _____
)	
Deutsche Bank National Trust)	
Company, PHH Mortgage	)	PLAINTIFF'S
Corporation, AVT Title Services,	)	COMPLAINT FOR
LLC, DOES 1-10	)	DAMAGES FOR
	)	VIOLATION OF
Defendants	)	AUTOMATIC STAY
)	

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

JURY DEMAND

Joanna Burke, Plaintiff, hereby demands a trial by jury of her peers
and presents the following complaint against Defendants:

PARTIES

Plaintiff, **Joanna Burke** ("Joanna"), is an individual resident of
Kingwood, Harris County, Texas.

Defendant, **DEUTSCHE BANK NATIONAL TRUST COMPANY, (“DBNTCO”)** is a non-resident company headquartered in California and doing business in the State of Texas. DBNTCO may be served c/o Texas Secretary of State, PO Box 12079, Austin, Texas, 78711-2079, to be served on DBNTCO’s known place of business, pursuant to Sec. 17.091, Tex. Civ. Prac. And Rem. Code.

DBNTCO have appeared in this underlying bankruptcy case and service should not be necessary. A waiver will be requested upon issuance of the summons, which Plaintiff attaches and hereby requests it be duly issued by the court.

Defendant, **PHH MORTGAGE CORPORATION, (“PHH”)** is a non-resident company headquartered in New Jersey and doing business in the State of Texas. PHH was served on Monday, February 12, 2024. PHH appeared and removed the case in question here to S.D. Texas Federal Court in violation of the automatic stay. PHH have appeared and service should not be necessary.

A waiver will be requested upon issuance of the summons, which Plaintiff attaches and hereby requests it be duly issued by the court.

Defendant, **AVT Title Services, LLC, (“AVT”)** is a limited liability company doing business in the State of Texas. AVT may be served through its registered agent at 14160 N. Dallas Parkway, Suite 900, Dallas, Texas, 75254. A waiver will be requested upon issuance of the summons, which Plaintiff attaches and hereby requests it be duly issued by the court.

AVT claim they are not responsible as a uniquely named Defendant, however, case law and property law defies these claims¹. AVT have openly communicated about their violation with Plaintiff via counsel. Formal service should not be necessary, but waiver may be obtained for the purposes

¹ The Substitute Trustee, Defendant AVT is not a Nominal Party:

As far back as 1885, Texas courts have opined “The trustee was not a merely nominal party. The object of the suit was to prevent him from selling the property under the power given by the deed of trust.” In *Thayer v. Life Association*, 112 U.S. 717, 719 (1885).

As discussed above and in *Harwath v. Hudson*, Texas case law provides many strict compliance authorities, such as the “court further noted that [strict] compliance with the notice condition contained in the deed of trust and as prescribed by law is a prerequisite to the right of the trustee to make the sale”.

of legal housekeeping.

In addition to the named defendants, Plaintiff also names defendants **John Doe and/or Jane Doe**, whose true names and capacities are unknown to Plaintiff at this time. John Doe and/or Jane Doe are individuals or entities whose actions or omissions are alleged to have contributed to the claims asserted herein. Plaintiff will seek leave to amend this pleading to allege the true names and capacities of John Doe and/or Jane Doe when such information becomes known.

DISCLOSURE OF RELATED PROCEEDINGS

Burke v. PHH Mortgage Corporation (0:23-cv-01119-WMW-DTS), District Court, D. Minnesota, currently under appeal to the 8th Circuit, Case No. 23-3593.

Samuels v. PHH Mortgage Corporation (4:23-cv-04687) District Court, S.D. Texas, Judge Alfred Homer Bennett, Dec. 15, 2023 (“Intervenor Samuels”);

Joanna Burke (23-35083), United States Bankruptcy Court, S.D. Texas, Judge Jeffrey Norman, Dec. 28, 2023 (“Burke BKI”);

Burke v. PHH Mortgage Corporation (4:24-cv-00897), District Court, S.D. Texas, Judge Ewing Werlein, Jr - Snap Removed State Case in Violation of Automatic Stay by Hopkins for PHH (“Removed State Case”);

Joanna Burke (24-30885), United States Bankruptcy Court, S.D. Texas,

Judge Jeffrey Norman, March 1, 2024 ("*Burke BKII*").

DISABILITY ACCOMMODATION (HEARINGS)

Plaintiff is hard of hearing and respectfully requests an ADA-compliant remote hearing, which can be achieved with a vendor who offers live captioning. See; Judge Norman's courtroom procedures at no. 9 (GoTo does not offer live captioning).

JURISDICTION

The Court has subject matter jurisdiction over this adversary proceeding under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is proper in this District consistent with 28 U.S.C. §§ 1408 and 1409.

FACTS

The facts are well known and admitted to this court and for brevity the facts are incorporated herein by judicial notice to the related dockets and court cases. Below, Plaintiff incorporates the Third Amended Verified Petition preamble and summary of the detailed violations which are

incorporated in this adversary complaint.

**“Preamble: Initial Summary of the Facts and
Amendments**

The Plaintiff, Joanna Burke filed this original lawsuit after being informed her homestead was illegally slated for auction on **January 2, 2024**. After reaching out directly to the foreclosing counsel and law firm at Mackie Wolf Zientz Mann (“Mackie Wolf”) asking them to cancel the illegal foreclosure - they refused - resulting in the following timeline:

(i) **First Act**: Plaintiff came before Harris County District Judge Lauren Reeder’s 234th Court to intervene in a wrongful foreclosure civil action, which named the same Defendants as here, in order to stop the illegal auction and sale. This would be unlawfully snap-removed to federal court by Defendants in a motion filled with untruthful facts and statements. Despite post removal objections, Judge Lauren Reeder blanked the Plaintiff’s pleadings as recorded on the associated docket.

(ii) **Second Act**: Due to the unlawful removal in (i), Plaintiff filed this independent lawsuit. In the intervening period between the original petition in these proceedings and this [first] amended petition and [second] application for injunctive relief, Joanna Burke would arrange, attend, and be denied a TRO by ancillary Judge Tami Craft aka Tamika Craft-Demming on December 27, 2023.

(iii) **Third Act:** Plaintiff filed for Chapter 13 bankruptcy at the end of December, which mandated an automatic stay of the illegal foreclosure. Unbeknownst to her at the time, USPS were having significant sorting office delays, which resulted in the erroneous dismissal of her Bankruptcy proceedings on January 17, 2024. The delayed but tracked USPS mail was delivered to the federal court on Friday, 9 February, 2024 – one day after LIT highlighted the delay [on social media](#) and directly questioned the relevant institutions as to their justification for the extended delay in delivering the mail. At the time of this filing, the federal court has yet to docket Plaintiff's two motions included in this batch of delivered mail.

As a result, it is Plaintiff's understanding that Defendants may have relisted the homestead for auction on **March 5, 2024**.

(v) **Fourth Act:** In response, Plaintiff ensured Defendant PHH Mortgage Corporation has been served the original complaint with exhibits, executed on February 12, 2024, as recorded on the docket.

(vi) **Fifth Act:** Amongst other relief and claims, the second amended petition sought a temporary restraining order to enjoin any March 5, 2024 foreclosure of Plaintiff's homestead.

(v) **Sixth Act:** This third amended petition outlines why a remote hearing could not be obtained and the civil rights and liberties which have been denied Plaintiff. This resulted

in Plaintiff filing for Ch. 13 bankruptcy.

(vii) **Seventh Act:** The third amended petition provides evidence and legal authority as to why Defendants recent actions are time-barred, void and without legal effect. As such, Plaintiff is entitled to a judgment granting quiet title, free from encumbrance and debt to Plaintiff in order that she may remain peacefully and permanently in her residence of over 22 years.

The core of the amended petition provides the detailed facts surrounding this litigation, provides the causes of action and legal authorities as well as exhibits in support.””

What Happened Post Third Amended Verified Petition?

The Third Amended Verified Petition was filed into the Harris County District Court Case on March 4, 2024, followed shortly thereafter by filing a “Motion for partial summary judgment as to quiet title by Joanna Burke” as filed on Saturday, March 9, 2024 but recorded on Monday, March 11, 2024 per the docket. Joanna Burke arranged and noticed a hearing on her motion, scheduled for April 15, 2024. On Saturday, PHH would be both noticed and aware of the filing. Despite being fully aware of both the bankruptcy stay, and that the Defendants were time-barred from foreclosing, nevertheless, on Tuesday, March 12,

2024, PHH violated the Bankruptcy Code and Stay by removing the case to federal court.

On March 18, Plaintiff electronically filed for an extension of time in her Eighth Circuit appeal, duly granted on March 19, 2024, extending the stay until June 14, 2024. Both the motion and order were filed into Plaintiff's Harris County docket as notices on March 20, 2024. Plaintiff maintains this proceeding automatically stays any and all attempts to foreclose, and by Defendants doing so repeatedly, violates the law.

No Credit Bid or Auction Sale Amount in January 2024

No sale was conducted after Plaintiff filed for bankruptcy at the end of December, 2023. Plaintiff sent emails and faxes to Mackie Wolf advising them of her Bankruptcy Petition, and requested a reply confirming the sale would not proceed. No response was received. Importantly, no credit bid or auction sale amount was present on AVT/Mackie Wolf's website – before or after the sale in January - and where Joanna Burkes homestead was listed for auction.

March 2024 Credit Bid Auction Sale of Joanna Burkes Home

Tuesday, March 5, 2024, marked the day of the auction. Plaintiff was taken aback to discover on March 6, that AVT/Mackie Wolf's website indicated her homestead at 46 Kingwood Greens Dr., Kingwood, Texas had been sold at auction for \$865,700. This mandated disclosure came as a shock to the Plaintiff, as the sale violated the automatic stay.

As with the January sale, Plaintiff sent emails and faxes to Mackie Wolf advising them of her March 1 Bankruptcy Petition, and requested a reply confirming the sale would not proceed. No response was received.

Promptly on March 6, 2024, Joanna Burke lodged a formal complaint with AVT/Mackie Wolf via email and fax regarding the sale. Attorney Mark Cronenwett, representing AVT/Mackie Wolf, responded the same day via email, stating that "no sale occurred", contradicting their own sales disclosures.

Following this exchange, the Plaintiff noticed that AVT/MW hastily removed the foreclosure sales list from their website, and it has not been

made available since. Instead, April's scheduled foreclosures are published, seemingly a crude cover-up for their previous willful actions and scheming.

Plaintiff is aware the sale of her homestead was executed through a "credit bid" by Deutsche Bank National Trust Company, purported owner of Joanna Burke's note. This confirmation was made through the examination of both current and prior sales lists with bids attached, indicating that those with bid amounts equated to the actual foreclosed homes. This is evidenced by deeds issued to new buyers, which can be found in Harris County real property records.

FIRST CAUSE OF ACTION

Willful Violation of the Automatic Stay Imposed by 11 USC § 362 by Fraudulent Foreclosure and Sale on the Subject Property

This complaint integrates the pleadings, exhibits and orders as docketed in *Removed State Case*. The facts of the first cause of action are detailed in the facts section. The damages are discussed in the damages section.

Legal Authority

There are many cases in support of Plaintiff's first cause of action that Defendants willfully violated the automatic stay by fraudulently foreclosing Plaintiff's home as published online for the sum of \$865,700. The response from lawyer Mark Cronenwett does not excuse a willful violation, as Plaintiff listed in her emailed letter complaining to Mackie Wolf after she discovered her home had been auctioned off. This letter includes pertinent case law, integrated herein, *e.g.* "[A] willful violation of the stay can be found from an act of omission and does not require an act of commission." Banks, 253 B.R. at 31. Plaintiff also discusses other pertinent cases in this complaint.

SECOND CAUSE OF ACTION

Willful Violation of the Automatic Stay Imposed by 11 USC § 362 by Fraudulent Removal of State Court Case to Federal Court During Automatic Stay

This complaint integrates the pleadings, exhibits and orders as docketed in *Removed State Case*. The facts of the second cause of action are

detailed in the facts section. The damages are discussed in the damages section.

Legal Authority

There are many cases in support of Plaintiff's second cause of action that Defendants willfully violated the automatic stay.

See; *Giles-Flores v. Braeburn Plaza, Inc. (In re Giles-Flores)*, 646 B.R. 787 (Bankr. S.D. Tex. 2022) (Extending the law to cover property that was not property of the bankruptcy estate at the time of foreclosure "Because the home was "arguably" estate property, Braeburn should have obtained relief from the stay before foreclosure" and stating that Braeburn as HOA should have petitioned the court before foreclosure and failing to do so was willful.);

Plaintiff also discusses other pertinent cases in this complaint.

DAMAGES

Actual Damages

"Upon finding willful violations of the automatic stay, the Court may award actual damages, which include monetary damages "to compensate for actual emotional distress caused by a creditor's violation of the

automatic stay." *In re Thorpe*, Case No. 11-00862-8-SWH, 2011 WL 5909403 at *2 (Bankr. E.D.N.C. May 17, 2011) (citing *In re Kirkbride*, Case No. 08-00120-8-JRL, 2010 WL 4809334 (Bankr. E.D.N.C. Nov. 19, 2010) (allowing \$10,000.00 damages for humiliation and embarrassment caused by a creditor's actions)). - *In re Coppersmith*, No. 11-04263-8-RDD, at *7-8 (Bankr. E.D.N.C. Apr. 10, 2012).

As a result of the two causes of action listed above, Plaintiff has suffered frustration, anxiety and mental anguish or distress that is more than fleeting and inconsequential. First, the listing of the sale amount of her home for \$865,700 on Mackie Wolf's website, combined with their failure to communicate prior to the auction, led Plaintiff to believe that her home has been auctioned off and she would have 3 days to vacate her homestead of 22 years. On top of that, Deutsche Bank's counsel, Hopkins, would also sabotage her motion for summary judgment and scheduled April 15, 2024 hearing for quiet title to her homestead by maliciously and willfully removing her state court case against the Defendants' in violation

of the automatic stay. This was a premeditated act.

Plaintiff has faced the wrongful threat of foreclosure since 2011, despite defeating the Defendant's foreclosure lawsuit in district court twice - in 2015 and again in late 2017. The mental and physical toll has been unbearable, both emotionally and physically. She suffers from major medical trauma and related illnesses, depression, as well as headaches; loss of sleep; anxiety; shock of conscience; impaired enjoyment of life; a sense of dread; a sense of failure; a lack or diminution of self-worth; a significant amount of stress; the feeling of harassment or fright; marked irritability; distraction; low self-esteem; fear of loss of her homestead; and/or sense of embarrassment and discomfort that is greater than the general level of embarrassment and discomfort felt in filing bankruptcy or for the inability to pay a debt or bill.

Punitive Damages

"The stay violations being undeniable, the key questions of law are whether, and for how long, "actual damages" under § 362(k)(1) continue to

accrue after the automatic stay expires? The answer has two facets.

First, damages continue to accrue until full restitution is made. Second, applicable tort concepts teach that damages encompass all consequences proximately caused by the stay-offending conduct for so long as those consequences continue, regardless of whether the stay has expired.

This nightmare also presents § 362(k)(1) "appropriate circumstances" for awarding punitive damages and the concomitant problem of how to vindicate the societal norm implicit in punitive damages without creating an excessive windfall."

Sundquist v. Bank of Am., N.A., 566 B.R. 563, 571 (Bankr. E.D. Cal. 2017); see also; "A Court may award punitive damages for a willful violation of the automatic stay. 11 U.S.C. § 362(k)(1). *Burrell v. Auto-Pak-USA Inc. (In re Burrell)*, CASE NO: 10-36989, at *7 (Bankr. S.D. Tex. Dec. 16, 2011); The Court may also award punitive damages for a willful violation of the automatic stay for the purpose of causing "'a change in the creditor's

behavior" *In re Sands*, Case No. 10-12205C-13G, 2011 WL 3962491 at *3 (Bankr. M.D.N.C. April 1, 2011) (quoting *In re Shade*, 261 B.R. 213, 216 (Bankr. C.D. Ill. 2001))." - *In re Coppersmith*, No. 11-04263-8-RDD, at *7-8 (Bankr. E.D.N.C. Apr. 10, 2012).

Costs

The plaintiff, as pro se, seeks compensation for court costs, including state and federal filing fees, services costs, and related expenses as well as costs incurred to visit the courts in-person, mileage, car depreciation, insurance along with printing costs, stationery, and associated expenses.

PRAYER FOR RELIEF

Plaintiff prays for judgment in favor of Plaintiff and against Defendants; for actual damages and punitive damages severe enough to punish Defendants misconduct and deter anticipated future violations, as well as costs, compensatory and statutory damages; injunctive relief as necessary. On all causes of action - for cost of suit herein; pre and post-judgment interest, for such other and further relief as this court may deem

just and proper so that Plaintiff shall recover restitution or compensatory damages. Finally, Plaintiff reiterates, and demands a jury trial.

VERIFICATION AND DECLARATION

In closing, I, Joanna Burke, as Plaintiff with due authority and competency, resident of Kingwood in the livable forest of Harris County, Texas, born on November 25, 1938 (85 years old), in Kirkintilloch, Scotland, United Kingdom, and currently holding U.S. Citizenship, a valid State of Texas Driver License (last 3 digits are 738), and a Social Security Card (last 3 digits are 874), 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).

RESPECTFULLY submitted this 27th day of March, 2024.

Joanna Burke, Harris County
State of Texas / Pro Se
46 Kingwood Greens Dr
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 March 27, 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

Tiffany D Castro
Office of Chapter 13 Trustee
9821 Katy Freeway
Ste 590
Houston, TX 77024

713-722-1200

US Trustee
Office of the US Trustee
515 Rusk Ave
Ste 3516
Houston, TX 77002
713-718-4650

VIA EMAIL

Deutsche Bank National Trust Company
c/o Codilis & Moody, P.C.
Kathryn N. Dahlin SBOT#24053165
Kerrie S. Mattson-Neal ARDC#6270224
Nicole Bartee SBOT#24001674
Marla A. Skeltis SBOT#24136182
TX.bkpleadingsSOUTH@tx.cslegal.com
20405 State Highway 249, Suite 170
Houston, TX 77070
Telephone: (281) 925-5200

Joanna Burke, Harris County
State of Texas / Pro Se
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591

Fax: (866) 705-0576

Email: joanna@2dobermans.com

United States Bankruptcy Court

Southern District Of Texas (Houston Div'n)

In re <u>Joanna Burke</u>,	)	Case No. <u>24-30885</u>
Debtor)	
	)	Chapter <u>13</u>
)	
<u>Joanna Burke</u>)	
Plaintiff v.)	
	)	Adv. Proc. No. _____
Deutsche Bank National Trust Company, PHH)	
Mortgage Corporation, AVT Title Services, LLC)	
<u>and DOES 1-10,</u>)	
Defendant)	

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

Nathan Ochsner
Address of the clerk: United States Bankruptcy Court
P. O. Box 61010
Houston, TX 77208

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney: Joanna Burke, Pro Se
46 Kingwood Greens Dr.,
Kingwood, TX 77339

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

_____ (Clerk of the Bankruptcy Court)

Date: _____

By: _____ (Deputy Clerk)

CERTIFICATE OF SERVICE

I, _____(name), certify that service of this summons and a copy of the complaint was made _____(date) by:

- Mail service: Regular, first class United States mail, postage fully pre-paid, addressed to:

- Personal Service: By leaving the process with the defendant or with an officer or agent of defendant at:

- Residence Service: By leaving the process with the following adult at:

- Certified Mail Service on an Insured Depository Institution: By sending the process by certified mail addressed to the following officer of the defendant at:

- Publication: The defendant was served as follows: [Describe briefly]

- State Law: The defendant was served pursuant to the laws of the State of _____, as follows: [Describe briefly]

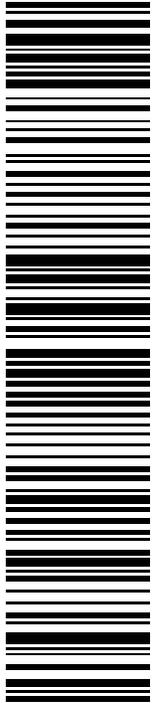
If service was made by personal service, by residence service, or pursuant to state law, I further certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made.

Under penalty of perjury, I declare that the foregoing is true and correct.

Date _____ Signature _____

Print Name: _____

Business Address: _____



USPS TRACKING #

9471 2301 0935 5002 4436 37



CLERK OF COURT
NATHAN OCHSNER
PO BOX 61010
HOUSTON TX 77208-1010

USPS TRACKING #

9471 2301 0935 5002 4436 37

03/27/2024

RDC 07

B050

SIGNATURE REQUIRED

JOANNA BURKE
46 KINGWOOD GREENS DR
KINGWOOD TX 77339-5339

PRIORITY MAIL EXPRESS®

03/27/2024

Mailed from 77339 316748819665112

E

usps.com
\$26.65
US POSTAGE

U.S. POSTAGE PAID
CLICK-N-SHIP®

9471 2301 0935 5002 4436 37 0266 5003 0007 7208

03/27/2024

UNITED STATES POSTAL SERVICE®

Click-N-Ship®



Cut on dotted line.

Instructions

1. Please use a laser or laser-quality printer.
2. Adhere shipping label to package with tape or glue - DO NOT TAPE OVER BARCODE. Be sure all edges are secure. Self-adhesive label is recommended.
3. Place label so that it does not wrap around the edge of the package.
4. Each shipping label number is unique and can be used only once - DO NOT PHOTOCOPY.
5. Please use this shipping label on the "ship date" selected when you requested the label.
6. If a mailing receipt is required, present the article and Online e-Label Record at a Post Office for postmark.

9471 2301 0935 5002 4436 37

Print Date: 2024-03-27	PRIORITY MAIL EXP®	\$26.65
Ship Date: 2024-03-27	Extra Services:	\$0.00
	Fees:	<u>\$0.00</u>
	Total:	\$26.65

From: JOANNA BURKE
46 KINGWOOD GREENS DR
KINGWOOD TX 77339-5339

To: CLERK OF COURT
NATHAN OCHSNER
PO BOX 61010
HOUSTON TX 77208-1010

* Commercial Pricing PRIORITY MAIL EXP® rates apply. There is no fee for USPS Tracking® service on PRIORITY MAIL EXP® service with use of this electronic rate shipping label. Refunds for unused postage paid labels can be requested online 30 days from the print date.



Thank you for shipping with the United States Postal Service!
Check the status of your shipment on the USPS Tracking® page at usps.com