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

Date: November 20, 2024
Via USPS Express Mail

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

Dear Sir or Madam,

JOANNA BURKE'S FILINGS IN THIS CASE

Please find enclosed the following documents:-

1. PLAINTIFF'S REPLY TO RESPONSE BY DEFENDANTS TO PLAINTIFF'S VERIFIED MOTION TO DISMISS FOR LACK OF JURISDICTION.
2. MOTION FOR LEAVE TO FILE FIRST AMENDED VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT.
3. FIRST AMENDED VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT.
4. PROPOSED ORDER.

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

Thank you.

Sincerely,

Joanna Burke
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Email: joanna@2dobermans.com
Fax: +1 (866) 705-0576

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**

PLAINTIFF'S REPLY TO RESPONSE BY DEFENDANTS TO PLAINTIFF'S VERIFIED MOTION TO DISMISS FOR LACK OF JURISDICTION

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

In legal terms, this acrimonious dispute centers around a "very important piece of real property"—the Plaintiff's homestead. Setting aside the personal nature of the home, the Texas Constitution, state law, and the federal bankruptcy code, along with their associated procedures and rules, are all designed to protect this "very important piece of real property" from being wrongfully taken by unscrupulous, predatory lenders and loan sharks like the Defendants.

Defendants' financial penalty data obtained from Violation Tracker website at:
https://violationtracker.goodjobsfirst.org/?company=ocwen
(Last visited: Nov. 16, 2024)

Total Breakdown of Penalties:

Category	Penalty Amount
Ocwen Financial Corporation	$2,402,905,705
PHH Corporation	$438,553,802
Litton Loan Servicing	$15,506,125
Saxon Mortgage Services	$86,171
Other Subsidiaries (incl. Homeward, Option One, etc.)	$1,640,758,669
Grand Total	$4,480,394,502

Grand Total = $4,480,394,502 (approximately **$4.48 billion**)

When a home equity loan (HELOC) is involved, this property receives additional protections under these laws. The Texas Constitution ensures the homeowner is safeguarded by requiring strict compliance with numerous statutory requirements, as Texas is considered a "debtor-friendly" state. Texas common law and property laws treat any HELOC as a loan secured by the property itself, and any disputes over such a loan are governed by a strict four-year foreclosure timeline. Importantly, there is no personal liability for the homeowner as long as the property remains exempt as their homestead (i.e., personal residence).

In legal terms, this is known as an *in rem* action, as confirmed in the deed of trust, which outlines the legal agreement between the parties for the HELOC loan. This protection can be extended for an additional four-year period, either ex-parte or by mutual agreement, but only if the extension of time is properly recorded in the county's real property records. See; *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 567 (Tex. 2001) ("This four-year limitations period can be suspended by filing a written agreement in the county clerk's office where the real property is located. Tex. Civ. Prac. Rem. Code § 16.036.").

Similarly, federal bankruptcy laws treat this "very important piece of real property" as part of the bankruptcy estate, managed by the trustee upon the homeowner's filing of the bankruptcy petition. Once the bankruptcy is filed, this property legally detaches from the homeowner, who is then considered the "renting debtor" during the proceedings. The Debtor's "very important piece of real property" owner status returns after the bankruptcy case matures.

Returning to the specific facts of this case and recognizing that the court and parties are fully aware of the history of this prolonged and contentious legal dispute, a brief summary is provided here, relevant to this motion. On March 12, 2024, the Defendants snap-removed the Plaintiff's lawsuit from the Harris County District Court (state court) to this District Court, knowingly violating the automatic bankruptcy stay. Additionally, they engaged in forum shopping, often referred to as "judge shopping," by removing the case to this District Court instead of the Bankruptcy Court, where Joanna Burke had already filed for voluntary Chapter 13 bankruptcy protection on March 1, 2024—well before the unlawful snap-removal.

At the time, the automatic stay was in full effect, and under federal bankruptcy law, all debt collection litigation should cease during this period. As a result of these actions, the court was now faced two related cases: one in the District Court and the other in Bankruptcy Court. The District Court case was assigned to Senior Judge Ewing Werlein, Jr., while the bankruptcy case was assigned to Judge Jeffrey Norman. Under General Order 2012-06 for the Southern District federal courts, all bankruptcy-related cases should be automatically transferred to the bankruptcy court as an Adversary Case. However, this transfer did not occur.

After partial briefing and consideration of the Plaintiff's Emergency Motion to Remand and related pleadings, three months later, on June 17, 2024, this Court issued five orders. Most notably, the Emergency Motion to Remand was denied (Doc. 18), based on the limited briefing

regarding the violation of the automatic stay. In Judge Werlein's opinion, the District Court, not the Bankruptcy Court had "related to" jurisdiction at the time of the unlawful snap-removal. This is a central issue in the current dispute and response by Defendants to the Plaintiff's motion.

A SUMMARY OF PHH's LEGAL & JURISDICTIONAL ARGUMENTS

PHH's position is like a passenger in a car, eagerly urging the driver, Judge Werlein, to stay on a reckless route—a one-way street, but only in reverse. They insist that the law allows them to travel against the traffic of established legal precedent, convinced that the "related to" jurisdiction can be manipulated like a GPS recalculating a wrong turn. They argue that it's not only permissible, but the law itself.

Yet as Judge Werlein grips the wheel, steering the vehicle full speed down this dangerous road, the Plaintiff has already mapped the entire highway of federal case law. She has found nothing—a barren stretch of road with no signs, no cases, no guiding principles that could justify this illegal u-turn. She's searched the federal docket for the past decade, only to find the highway is clear of any precedent that would give this maneuver any legal legitimacy.

And still, PHH shouts from the passenger seat, frantically waving a map that's blank on every page, desperately claiming that the driver's instincts are correct, that they can still make it. Their response, a cacophony of baseless arguments, insists that Judge Werlein's course is right, but not a single case is offered to back them up. They're screaming into the void, offering no legal foundation, no reasoning—just empty assurances as the vehicle barrels ahead.

The Defendants are not silent bystanders; they're active participants in this reckless drive, cheering on the misguided driver while ignoring the cliff that looms just ahead. No legal authority. No support. Only hollow claims of confidence, pushing full speed into the unknown, while the road to disaster is clearly marked.

Their argument is suicidal, and this court should not become part of the wreckage. Instead, it should dismiss the case and remand it to state court, where the law can take a safer, more well-driven course.

The Numbered Summarized Responses with Bulleted Replies by Plaintiff

1. **Burke's "Motion to Dismiss for Lack of Jurisdiction" is her second attempt to challenge the jurisdiction of this court and amounts to nothing more than a motion to reconsider her Motion to Remand.**

RESPONSE: The Defendants continue to ignore the Plaintiff's legal arguments and authorities, including the motion's section labeled: "CHECKING JURISDICTION: LEGAL AUTHORITIES" which explains that subject-matter jurisdiction [and void judments] can be contested at any time, and the court is obligated to check its jurisdiction sua sponte.

2. **Though a valid judgment for foreclosure exists, Burke continues to file repeated frivolous lawsuits to stop the foreclosure sale from taking place.**

RESPONSE: See; related pleadings, including surreplies wherein Plaintiff provides full legal argument as to why the judgment of foreclosure is deficient, void and time-barred. Additionally, Defendants continually present a frivolous argument, namely that res judicata applies, yet the very reasoning they rely upon is rejected by their own legal authority, namely *Maluski v. Rushmore Loan Mgmt. Servs., LLC*, No. 14-17-00233-CV (Tex. App. Oct. 4, 2018).

3. **Burke's second attempt to contest jurisdiction of this Court presents no new compelling legal argument for the Court to reconsider its jurisdiction.**

RESPONSE: False, refer to Plaintiff's motion and exhibits in conjunction with this reply.

4. **Gen. Order 2012-06. Burke confuses internal procedures of the Court with the jurisdiction of the Court.**

RESPONSE: False, refer to 6., and Plaintiff's motion and exhibits in conjunction with this reply.

5. **Bankruptcy courts are simply a 'unit' of the district court where they are located.**

RESPONSE: True, but both Judge Werlein and PHH misinterpret the clear facts. The bankruptcy court, as a unit of the district court, has been authorized to take full charge of its own cases, as well as those "related to" its jurisdiction. The "related to" jurisdiction is specifically

assigned to the bankruptcy court, and any attempt to contravene General Order 2012-06 or the governing bankruptcy laws is a clear violation of established legal rules, procedures, and authority.

6. **Burke's argument (properly framed) is not one about jurisdiction, it is about Burke's perception that the Court elected to maintain the case on its docket instead of referring the matter to its adjunct.**

RESPONSE: False. "Although **jurisdiction** under §§ 1334 and 1452 lies with the district court, 28 U.S.C. § 157(a) provides that "[e]ach district court may provide that any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district. 28 U.S.C. § 157(a). **The Southern District of Texas has so provided. See General Order 2012-6 (May 24, 2012)."** *Cantu v. Stone*, CIVIL ACTION No. 7:13-CV-292, at *5 n.4 (S.D. Tex. July 1, 2014).

7. ***In re Hester*, 899 F.2d 361, 3698 (5th Cir. 1990). The Fifth Circuit made it abundantly clear that a bankruptcy court's jurisdiction rests on a district court's jurisdiction.**

RESPONSE: The next sentence in PHH's partial citation of Hester states "It is to the district court that bankruptcy court litigants must turn in the first instance ***for careful review*** of the bankruptcy court's actions.", which is discussing why the 5th Circuit does not have jurisdiction to review the appeal, if it wasn't mandamus – and which only confirms the Plaintiff's argument that it is the Bankruptcy Court which controls proceedings, with any 'appeals' to the District Court and not the Fifth Circuit, which would not have jurisdiction to review.

8. **Thirteen years later affirmed in Bissonnet Invs. Llc. v. Quinlan, 320 F.3d 520, 525 (5th Cir. 2003)**

   RESPONSE: *Bissonnet* is outdated legal authority, but for the purposes of addressing the Defendants absurd argument, *Bissonnet* sub-cites in the quoted extract provided by PHH to *Celotex*, via the *Matter of Walker*, 51 F.3d 562, 568-69 (5th Cir. 1995), which stated: ""Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate."" – and discusses this in granular detail. Again, PHH attempts to steer the vehicle in contempt of the clear road signage which directs all traffic to Bankruptcy Courts - and that includes transferring related matters like Plaintiff's case.

9. Burke had an active bankruptcy case pending at the time of removal of this case, and the Court determined it has "related to jurisdiction" over this case as district courts have original and exclusive jurisdiction of all cases under Title 11. See 28 U.S.C. §1334. [Doc.18].

RESPONSE: The opinion by Senior District Judge Ewing Werlein, Jr., is erroneous. Refer to Plaintiff's motion and exhibits in conjunction with this reply.

Burke's grounds lack merit and are moot.

RESPONSE: False, refer to Plaintiff's motion and exhibits in conjunction with this reply re 'grounds' and see Plaintiff's own case citations in their response, which clearly state, "The existence of subject matter jurisdiction is determined at the time of removal." – *Bissonnet*, 320 F.3d 520, 525.

10. Burke's argument in the alternative, that the Court should have transferred the matter to bankruptcy court and is now without jurisdiction, is wrong.

RESPONSE: False, refer to Plaintiff's motion and exhibits in conjunction with this reply.

11. Burke's lawsuit asserts "non-core" claims.

RESPONSE: See; *Neely v. Trippon (In re Neely)*, BANKRUPTCY No. 04-44898-H5-7, at *14-15 (S.D. Tex. June 19, 2013) (Fifth Circuit: Analysis of core versus non-core is the not necessary to assert "related to" jurisdiction. The Bankruptcy Court can analyze those facts).

12. Nothing would be gained by having a bankruptcy court preside over this lawsuit as all of Burke's prior litigation has been conducted in the federal district court.

RESPONSE: Irrelevant conclusory assumption which is not a legal argument founded in law.

13. As Burke demanded a jury trial, this would have required returning to the district court. Given Burke's history of litigation, judicial resources strongly favored keeping the matter in the district court.

RESPONSE: This argument has been rejected in Supreme Court decisions like *Langenkamp v. Culp*, 498 U.S. 42, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990) (per curiam). Furthermore, in *Katchen v. Landy*, 382 U.S. 323, 336–37, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966): "[E]stablish[ed] uniform laws on the subject of bankruptcy, [which] convert [ ] the creditor's legal claim into an equitable claim to a pro rata share of the res.... As bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property over which they have actual or constructive possession, and as the proceedings of bankruptcy courts are inherently proceedings in equity, there is no Seventh Amendment right to a jury trial for determination of objections to claims[.]". Whilst there was no claim filed in Plaintiff's bankruptcy, DBNTCO had made an appearance and

court in *Katchen* determined that the Bankruptcy Court is the correct "unit" for determination of property matters to which they have constructive possession.

14. No factor that the Court may consider weighed in favor of transfer of this case to bankruptcy court for partial consideration of the issues. Now, transfer of the case is moot, given that Burke's bankruptcy was dismissed.

RESPONSE: This is a conclusory statement that lacks legal substance and fails to present any substantive argument. The reference to "mootness" is irrelevant to the core issues raised in this motion, as discussed in 9. above.

15. As to Burke's continued argument regarding the automatic stay, this has been previously briefed and the Court found no violation of the automatic stay. [Doc. 18]. The bankruptcy stay only works to stop suits "against bankrupt debtors, not suits filed by bankrupt debtors." As the Court found, the automatic stay was simply not applicable to a lawsuit initiated by Burke and did not bar its removal to this court.

RESPONSE: False, refer to Plaintiff's motion and exhibits in conjunction with this reply.

DECLARATION

Pursuant to Texas Civil Practice and Remedies Code Section 132.001 and "In lieu of a sworn affidavit, a litigant may submit an unsworn declaration as evidence against summary judgment. See 28 U.S.C. § 1746.", I hereby provide my unsworn declaration. My name is Joanna Burke, my date of birth is Nov. 25, 1938, my address is 46 Kingwood Greens Dr, Kingwood, Texas, 77339, and I declare under penalty of perjury that all information herein is true and correct.

CONCLUSION

In *Cheejati v. Blinken* (106 F.4th 388, 397), the Fifth Circuit clearly stated:

"When a court lacks jurisdiction, it must dismiss the case and not proceed to the merits."

This principle directly applies here. If the District Court lacks jurisdiction over this case due to the improper removal and violation of the automatic stay, it cannot hear the case and must dismiss it or transfer it to the proper forum. Both Judge Werlein and PHH's attempt to retain

jurisdiction in the District Court under the "related to" theory runs afoul of the Fifth Circuit's guidance in *Cheejati* and fails to overcome the clear procedural rules governing bankruptcy matters.

Further, as noted by Magistrate Judge Andrew Edison in *Vita Equipose Equity Partners, LLC v. Tig Romspen U.S. Master Mortg*., Civil Action No. 3:21-cv-00358 (S.D. Tex. Aug. 12, 2024), under 28 U.S.C. § 1447(c), once it becomes clear that the District Court lacks subject matter jurisdiction, the case must be remanded to the proper forum. Judge Edison explained:

"Under 28 U.S.C. § 1447(c), once it becomes clear that the District Court lacks subject matter jurisdiction, the case must be remanded to the proper forum.".

Finally, conflating bankruptcy terminology does not support Judge Werlein's invented jurisdiction. In light of the above, the Plaintiff's verified motion should be GRANTED. A proposed order has previously been provided.

RESPECTFULLY submitted this 20th day of November, 2024.

_____

Joanna Burke, Harris County
State of Texas / Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on November 20, 2024 as stated below on the following:

VIA U.S. Mail:

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

VIA e-Mail:

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PHH MORTGAGE CORPORATION

_____

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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**

MOTION FOR LEAVE TO FILE FIRST AMENDED VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

Plaintiff, appearing pro se, respectfully submits this motion for leave to file her first amended verified surreply to Defendant PHH Mortgage Corporation's Motion for Summary Judgment. Although Plaintiff is uncertain whether a formal motion is necessary, Defendant's motion presents a significant procedural deficiency that Plaintiff wishes to address. Specifically, Defendant's motion exceeds the local rule's 5,000-word limit by 147%, totaling 7,330 words, in violation of federal and local court rules. As of this date, the Court has not stricken the motion despite this violation.

See Court Procedures, Hon. Charles R. Eskridge III, at 18c; Cole v. *Sandel Med. Ind., L.L.C.*, 413 F. App'x 683, 688 (5th Cir. 2011) ("On March 31, the district court struck Sandel's motion for summary judgment for failure to comply with the local rule limiting such filings to ten pages."); *Whatley v. CreditWatch Servs., Ltd*., No. 4:11CV493, at *1 (E.D. Tex. July 13, 2012) ("Plaintiff has also filed a motion seeking leave to file a summary judgment response in excess of the page limits."). In this case, Defendant has filed no such motion seeking leave to exceed the page limit.

Erring on the side of caution and in full compliance with local rules and court procedures, Plaintiff seeks leave from this Court to file the attached first amended verified surreply. To the extent the surreply exceeds ten pages, Plaintiff requests permission for the filing of the excess pages. The surreply is necessary to address arguments raised for the first time in Defendant's latest filing, which have not been previously discussed and are critical to the resolution of this matter.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant leave to file the attached verified surreply and, if necessary, allow for the excess pages. Additionally, to the extent the Court maintains jurisdiction in these proceedings, Plaintiff further requests that the Court DENY Defendant's Motion for Summary Judgment. A proposed order is enclosed.

RESPECTFULLY submitted this 20th day of November, 2024.

_____

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1, I attest to conferring by emailing counsel for all the parties in these proceedings on Wednesday, Nov. 20, 2024 a copy of this filing, and asked if they were opposed. At the time of preparing for print and posting, no response has been received. It is assumed that Defendants are opposed.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on November 20, 2024 as stated below on the following:

VIA U.S. Mail:

Nathan Ochsner
Clerk of Court
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PHH MORTGAGE CORPORATION

_____

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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**

FIRST AMENDED VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

INTRODUCTION & NECESSITY OF SURREPLY

The Texas Supreme Court has long held that foreclosure sales conducted after the expiration of the statute of limitations—whether judicial or nonjudicial—are void and may be enjoined. In *Jolly v. Fidelity Union Trust Co*., 118 Tex. 58, 67-68 (Tex. 1927), the Court explicitly ruled that such sales, conducted after the limitations period has expired, are legally invalid. Defendants reply brief asserts the expiration of the foreclosure judgment does not bar foreclosure, and they rely upon the federal court's deficient and void 2018 judgment to extend the limitations period indefinitely.

These arguments are fundamentally flawed under Texas law.

The Plaintiff respectfully submits this surreply in response to the Defendants' newly raised arguments which were not addressed in the original briefing, seeking leave of the court. See *Drew v. McGriff Ins. Servs*., Civil Action 4:22-cv-3340, Doc. 45 at *1 (S.D. Tex. Mar. 13, 2024).

As shown below, Defendants' reliance on the deficient 2018 judgment as a valid basis for

proceed. On November 28, 2018, the Fifth Circuit modified the judgment to reflect a remand to the Undersigned for the limited purpose of entering an order of foreclosure to effectuate the Fifth Circuit's judgment and permitting no other action on remand. Accordingly, the Court hereby

ORDERS that foreclosure shall occur to effectuate the Fifth Circuit's judgment.

SIGNED at Houston, Texas, on this 29 day of November, 2018.

DAVID HITTNER
United States District Judge

foreclosure after the limitations period has expired is without merit. This surreply will demonstrate that the 2018 judgment is void (DMSJ, Doc. 27, Aug. 5, 2024; Exhibit B; EXHIBIT DB2-MSJ) and that the foreclosure attempt is barred by the statute of limitations.

Defendants also continue to invoke res judicata to bar Plaintiff's claims, despite the clear fact that the issues in this case—namely, the validity of a post-judgment foreclosure sale and the statute of limitations on such a sale—are not precluded by prior litigation. In fact, Defendants' reliance on res judicata is contradicted by their own cited case law, specifically *Maluski v.*

Rushmore Loan Mgmt. Servs., LLC, No. 14-17-00233-CV (Tex. App. Oct. 4, 2018), which explicitly rejected the application of res judicata to claims regarding the statute of limitations on foreclosure when such claims were not litigated in prior actions.

Moreover, the judgment upon which Defendants base their res judicata argument is void, further invalidating their claim that Plaintiff's current suit is barred. Defendants' insistence on applying res judicata here constitutes a frivolous and legally indefensible argument, designed to mislead the Court and prevent Plaintiff from asserting valid claims based on new facts and legal issues arising after the prior judgments.

DETAILED LEGAL ANALYSIS & ARGUMENT

1. Texas Law Governs Foreclosure Limitations Periods

The Defendants' core argument—that a foreclosure sale can proceed after the expiration of the statute of limitations—misinterprets Texas law. As outlined in *Jolly*, the Texas Supreme Court has established that foreclosure actions, including sales under the power of sale, are governed by the statute of limitations, which is strictly enforced. Once the limitations period expires, the right to foreclose is extinguished, and any foreclosure sale conducted thereafter is void. This rule is particularly relevant here, as the debt was accelerated in 2011, yet no foreclosure occurred within the 4-year period prescribed by Texas Civil Practice & Remedies Code § 16.035. As the Plaintiff will explain, any foreclosure attempt outside of this timeframe is legally invalid.

2. The Defendants' Misinterpretation of the 2018 Judgment

The Defendants assert that the 2018 federal court judgment extends the foreclosure timeline, citing a ten-year renewable enforcement period for federal judgments. However, the 2018 judgment does not cure the defect of an expired limitations period, as foreclosure actions related to real property are governed by Texas law, which provides a strict 4-year period. As set forth in

Jolly and subsequent cases, the expiration of the limitations period invalidates the foreclosure right, regardless of any subsequent judgment or federal ruling.

Summary of Texas Judgment Types and Statutes of Limitation:

Judgment Type	Statute of Limitations	Legal Reference
Deed of Trust Foreclosure Judgment	4 years (from debt acceleration)	Tex. Civ. Prac. & Rem. Code § 16.035
Excess Funds Judgment (after foreclosure sale)	2 years (from foreclosure sale)	Tex. Prop. Code § 51.007
Money Judgment (Personal Debt, Garnishment)	10 years (renewable for another 10 years)	Tex. Civ. Prac. & Rem. Code § 31.006
Replevin Judgment (Secured Loan Repossession)	4 years (for repossession); 2 years (for deficiency judgment)	Tex. Civ. Prac. & Rem. Code § 16.004
Tax Lien Foreclosure Judgment	4 years (from tax delinquency)	Tex. Civ. Prac. & Rem. Code § 16.035

Furthermore, the Defendants' argument to "reduce[d] the foreclosure to judgment" is flawed because the loan in question is constitutionally protected. The Texas Constitution treats a home equity loan as in rem, not in personam, meaning there is no personal liability against the property owner. As noted in the Plaintiff's Deed of Trust, the "Borrower understands that Section 50(a)(6)(C), Article XVI of the Texas Constitution provides the Note is given without personal liability against each owner of the property" (Deed of Trust, p. 15 of 18, at 24 (2011 (Case 4:11-cv-01658, Document 1, Exhibit B, filed 04/29/11)), reinforcing the in rem nature of the loan and foreclosure. As discussed herein and generally, the 2018 judgment is itself defective, as it fails to meet the procedural requirements under Texas law for foreclosure actions involving homestead property. The federal court failed to properly apply Texas' constitutional protections, which render the judgment void.

3. The 4-Year Foreclosure Limitations Period Under Texas Law

Defendants' argument that a foreclosure judgment can be enforced for up to ten years under

Texas law (pursuant to Section 34.001) is erroneous. While personal judgments for monetary relief can be renewed or extended, foreclosure of real property is governed by a stricter 4-year limitations period, as set forth in Section 16.035. This distinction is critical: while a writ of execution may be issued to enforce a personal judgment (which is a claim for monetary relief), the power of sale in a deed of trust—the mechanism for foreclosure—relates specifically to real property and is subject to the 4-year period under Section 16.035. Therefore, any attempt to foreclose after the 4-year period is void, regardless of whether a writ of execution is issued for personal debt (Tex. Civ. Prac. & Rem. Code § 16.035).

Additionally, Defendants' reliance on Section 34.001(a) is further misplaced because the statute does not apply to homesteads. As the court in *Porterfield* clarified, judgment liens do not attach to a homestead. The court held that "a properly recorded and indexed abstract of judgment will only attach to a judgment debtor's non-exempt property" and that "a judgment lien... cannot attach to a homestead" while the property remains the debtor's homestead (*Porterfield v. Deutsche Bank Nat'l Tr. Co.,* No. 04-20-00151-CV, at *13, Tex. App. Oct. 27, 2021, citing *Wilcox v. Marriott*, 103 S.W.3d 469, 473 (Tex. App.-San Antonio 2003, pet. denied)).

4. The Invalidity of the 2018 Judgment and the Impact on Foreclosure

The Plaintiff asserts that the 2018 judgment is void due to its failure to comply with Texas law. Specifically, the judgment fails to meet the necessary procedural and substantive requirements for a valid foreclosure order under Texas constitutional and procedural law. Since the judgment was issued in a federal court proceeding that did not follow the proper Texas procedures, any foreclosure attempt based on this judgment lacks a legal foundation.

As relevant to these proceedings, DBNTCO's original complaint in 2011 (Case 4:11-cv-01658, Document 1, filed 04/29/11) sought, at paragraph 10, "Pursuant to Rule 735(2), Deutsche

hereby files this suit seeking a final judgment which includes a declaration allowing Deutsche, directly or through its mortgage servicer, to conduct a non-judicial foreclosure sale". See also final judgment, including order of foreclosure, in *Deutsche Bank National Trust Company, as Trustee for Fremont Home Loan Trust 2002-2, Asset-Backed Certificates, Series 2002-2 v. Freeman,* Case 4:22-cv-03146, Doc. 13 (5/5/2023). Further, paragraph 12 of the same filing states, "Pleading further, and in the alternative, Deutsche sues for judicial foreclosure of the Deed of Trust and sale of the Property at a judicial foreclosure sale, pursuant to Rule 735(1) of the Texas Rules of Civil Procedure." In alignment with Rule 309 of the Texas Rules of Civil Procedure, DBNTCO sought a judicial judgment for foreclosure, once more relying upon the terms of the Deed of Trust.

This is further substantiated by comparing Judge Hittner's orders in *Burke* with *Maldonado v. CitiMortgage, Inc.,* 4:15-cv-00120 (S.D. Tex.), and where his final judgment was affirmed on appeal to the Fifth Circuit (*Maldonado v. CitiMortgage, Inc.,* No. 16-20541, at *4 (5th Cir. Jan. 23, 2017)); *Holcomb v. Specialized Loan Servicing, LLC*, No. 3:21-cv-00210, 2024 Dist. LEXIS 161326 (S.D. Tex. Sept. 9, 2024) (same), and; *Cloward v. U.S. Bank Tr*., No. 05-18-01397-CV, at *6-8 (Tex. App. Aug. 3, 2020), which provides an in-depth analysis of the applicable law and proper procedures for foreclosure.

5. Strict Constitutional Protections for Plaintiff's Homestead Property

Texas law offers stringent protections for homestead property under Article XVI, Section 50 of the Texas Constitution. These protections severely restrict the ability to foreclose on a debtor's homestead, and any foreclosure attempt that does not comply with these constitutional protections is void. The 2018 judgment does not properly address these constitutional safeguards and, as such, cannot serve as the basis for a valid foreclosure action.

As detailed in Plaintiff's complaint and subsequent pleadings, including the comparison of

Judge Hittner's orders, the 2018 judgment fails to meet the specific procedural requirements outlined in Texas law, which are essential for a valid foreclosure judgment. Notably, when foreclosure involves home equity loans, as in this case, it must comply with Article XVI, Section 50, which mandates that foreclosure cannot proceed without a court order.

Wherefore, when foreclosure is expedited under Rule 736 or any related federal court request for a foreclosure order (such as the 2018 judgment), it must mirror the procedural requirements established by the Texas Supreme Court. These safeguards are designed to protect the homeowner's rights throughout the process. In the recent and erroneous opinion cited by Defendants in *Holcomb,* Magistrate Judge Andrew Edison references the Fifth Circuit's opinion in *Maldonado* at 4, which underscores the importance of adhering to these procedural requirements in judicial foreclosure cases. While *Maldonado* specifically addresses judicial foreclosure under Rule 309, the procedural safeguards outlined in that opinion apply equally to both non-judicial and judicial foreclosures, as demonstrated in *Holcomb's* final judgment (Doc. 44, Sept. 16, 2024), where the judgment included provisions for both non-judicial and judicial foreclosure.

6. Bankruptcy Judge Lopez vs. U.S. District Judge Eskridge's Statutory interpretation of Section 16.035

In the *Strange* proceedings referenced by Defendants, U.S. District Judge Charles Eskridge misinterpreted Texas Civil Practice and Remedies Code Section 16.035 by suggesting that a party could either file a lawsuit or conduct a foreclosure sale within the 4-year statute of limitations. This "either/or" interpretation is fundamentally at odds with the plain text of the statute, which explicitly requires that the foreclosure sale itself must occur within the 4-year period, not merely the filing of a lawsuit.

In contrast, Bankruptcy Judge Christopher Lopez, in a related bankruptcy case *In re Robert*

F. Strange Jr., Case No. 23-32598-13 (Transcript of hearing, Sept. 7, 2023, p. 30), correctly emphasized that courts must adhere to the statute's plain language, without adding presumptions or making unwarranted inferences. As Judge Lopez stated, "I don't read words into statutes... I read what they say and I follow it." This interpretation aligns with the unambiguous language of Section 16.035, which clearly mandates that the foreclosure sale itself must occur *within* the 4-year period. The filing of a lawsuit, as required in this case, does not extend the time for conducting a foreclosure sale.

Judge Eskridge's "either/or" interpretation is inconsistent with both the plain text of Sections 16.035, 16.036 and established Texas law, which has long held that nonjudicial foreclosures can be extended by recorded affidavits, either ex-parte or with the agreement of the parties. See; *Holy Cross Church of God in Christ v. Wolf,* 44 S.W.3d 562, 567 (Tex. 2001) ("This four-year limitations period can be suspended by filing a written agreement in the county clerk's office where the real property is located. Tex. Civ. Prac. Rem. Code § 16.036.").

Moreover, the reasoning by state appellate Justice Molberg in *Cloward*, at 11 further clarifies that judicial and nonjudicial remedies can be pursued simultaneously within the 4-year limitations period to avoid being time-barred. Thus, federal Judge Eskridge's reliance on the flawed "either/or" argument—especially in the context of foreclosure—is both legally incorrect and inconsistent with Texas statutory law. The correct statutory interpretation, as bankruptcy Judge Lopez aptly observed, aligns with well-established Fifth Circuit principles governing statutory construction.

The Fifth Circuit has repeatedly emphasized that courts must strictly adhere to the plain text of statutes, avoiding the imposition of extraneous terms or interpretations. Judge Lopez's approach, which avoids presumptions and enforces the statute's plain meaning, exemplifies a correct application of both Texas law and the fundamental principles of federal statutory

interpretation, which are critical when interpreting statutes like Section 16.035.

7. Defendants' Missed Deadline and Outrageous Attempt to Circumvent Texas Law: A Rebuttal to PNC v. Howard

The Defendants' reliance on a strict "either/or" approach to the 4-year foreclosure limitations period ignores a critical provision in Section 16.035 of the Texas Civil Practice and Remedies Code. The legislature specifically provided a mechanism for extending the non-judicial foreclosure period beyond the 4-year mark by allowing the renewal of foreclosure actions through the filing of an affidavit, either ex-parte or with the consent of the parties. See *Wolf*; Tex. Civ. Prac. Rem. Code § 16.036. This legislative provision clearly accommodates extensions to the foreclosure process, making Defendants' argument that the 10-year period applies to foreclosure actions, and that the affidavit requirement can be ignored, legally unsound. However, Defendants failed to meet this statutory requirement—they missed the deadline and failed to file the necessary affidavit to renew the foreclosure proceedings.

The Defendants omission is not an innocent mistake. They knowingly bypassed acknowledging this statutory process, which was designed to ensure fairness and compliance with the law. Instead, they attempt to circumvent the law by asserting a position that was clearly rejected in the case of *PNC Mortgage v. Howard*, 668 S.W.3d 644 (Tex. 2023), where the Texas Supreme Court and Texas Court of Appeals both rejected similar claims as outrageous. In that case, Defendants' counsel Mark Hopkins (who also represents Defendants in this matter) argued a position that was swiftly rebuffed by the courts, with Justice Blacklock questioning the rationale: "...that rationale means people shouldn't ever get out from their debt…why should the court give the lender rights it didn't bargain for to get paid?"

This rhetorical question highlights the absurdity of the Defendants' position in the present

case: their failure to timely renew the foreclosure by affidavit should not entitle them to an unfair advantage that the law does not provide. In fact, PNC's counsel Lembke even admitted to the Texas Supreme Court that such a position would be absurd, acknowledging that lenders are not entitled to more rights than they bargained for under Texas law. The PNC case was also centered on the statute of limitations under Section 16.035, which governs the timing of foreclosure actions, and both the Texas Court of Appeals and the Texas Supreme Court rejected the type of claim that Defendants now advance. Defendants' insistence on pursuing a foreclosure after missing the statutory deadline and failing to file the required affidavit is nothing short of outrageous. See *Wolf*; Tex. Civ. Prac. Rem. Code § 16.036. This argument, based on an incorrect interpretation of the law, should be rejected in its entirety. The legislature has already provided a mechanism for renewing non-judicial foreclosures through the filing of an affidavit, which Defendants failed to utilize in this case. They cannot now claim entitlement to a foreclosure sale when they have blatantly ignored the statutory process set forth by the legislature.

In light of the *PNC v. Howard* case and the Defendants' clear knowledge of the statutory requirements, their arguments are nothing less than an attempt to exploit procedural gaps in a way that is not only legally indefensible but also morally suspect. The Court should reject Defendants' claims and hold them accountable for their failure to follow the clear and unambiguous statutory framework that governs foreclosure actions in Texas.

RESPONSE TO DEFENDANT'S RES JUDICATA ARGUMENT

Defendants' res judicata argument is legally flawed and contrary to both Texas case law and the well-established rule that res judicata does not apply to void judgments. The *Maluski* case cited by Defendants actually undermines their position, as it explicitly rejected the application of res judicata to claims involving the statute of limitations on foreclosure when the issue was not

litigated in prior actions. Furthermore, res judicata does not apply to void judgments, as established in *Tyler Bank & Trust Co. v. Shaw*, 293 S.W.2d 797 (Tex. Civ. App. 1956). Since the judgment at issue here is void, Defendants' reliance on res judicata is legally indefensible.

DECLARATION

Pursuant to Texas Civil Practice and Remedies Code Section 132.001 and "In lieu of a sworn affidavit, a litigant may submit an unsworn declaration as evidence against summary judgment. See 28 U.S.C. §1746.", I hereby provide my unsworn declaration. My name is Joanna Burke, my date of birth is Nov. 25, 1938, my address is 46 Kingwood Greens Dr, Kingwood, Texas, 77339, and I declare under penalty of perjury that all information herein is true and correct.

CONCLUSION

For the reasons outlined above, the Plaintiff requests that the Court reject the Defendants' new arguments in their reply brief and affirm that any foreclosure attempts beyond the 4-year limitations period are void. The 2018 judgment is not a valid basis for foreclosure, and the Plaintiff's claims are supported by both Texas statute and case law.

Defendants' reliance on res judicata is deliberately flawed, and their continued pursuit of this argument constitutes a frivolous and knowingly malicious response. Their citation of *Maluski*—a case which explicitly rejects the application of res judicata to similar circumstances—demonstrates their willful disregard of controlling legal principles. Moreover, the judgment in question is void, further invalidating Defendants' res judicata argument.

The Plaintiff respectfully requests that the Court reject Defendants' argument in its entirety as legally baseless. The order of foreclosure (DMSJ, Doc. 27, Aug. 5, 2024; Exhibit B; EXHIBIT DB2-MSJ) and power of sale has expired, and the lien is void. To the extent this court maintains the opinion it has jurisdiction in these proceedings, the Motion for Summary Judgment should be

DENIED.

RESPECTFULLY submitted this 20th day of November, 2024.

_____

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State of Texas / Pro Se

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on November 20, 2024 as stated below on the following:

VIA U.S. Mail:

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

VIA e-Mail:

Shelley L. Hopkins
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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** **ORDER**

ORDER

Plaintiff Joanna Burke's FIRST AMENDED MOTION FOR LEAVE TO FILE VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT and VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT 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 PLAINTIFF'S Motion should be GRANTED and the FIRST AMENDED VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT be filed on the court docket.

IT IS SO ORDERED

Dated this____ day of_____, 2024

_____

United States District/Magistrate Judge