

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

Jeff Samuels)	CIVIL ACTION No.
)	4:23-cv-4687
Plaintiff)	
)	
vs.)	
)	
AVT Title Services, LLC, Deutsche Bank)	
National Trust Co., PHH Mortgage Corp.,)	
Power Default Services Inc.)	
)	
)	
Defendants)	
)	
)	

**INTERVENOR-PLAINTIFF JOANNA BURKE’S VERIFIED MOTION TO STRIKE
DEFENDANTS REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY
JUDGMENT & STRIKE DEFENDANTS REFILED MOTION FOR SUMMARY
JUDGMENT**

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

Intervenor-Plaintiff Joanna Burke (“IP”) respectfully files this Motion to Strike Defendants Reply in Support of their Motion for Summary Judgment Motion (**Dkt 45**) and refiled Motion for Summary Judgment (**Dkt 42**) on the following grounds: -

I. ARGUMENT

1. Defendants Failure to Timely Answer the Motion to Strike Deemed Unopposed

Intervenor-Plaintiff filed two pleadings. **First**, the Motion to Strike Defendants Motion for Summary Judgment (**Dkt 44**), and **second**, a response to the Motion for Summary Judgment (**Dkt 43**).

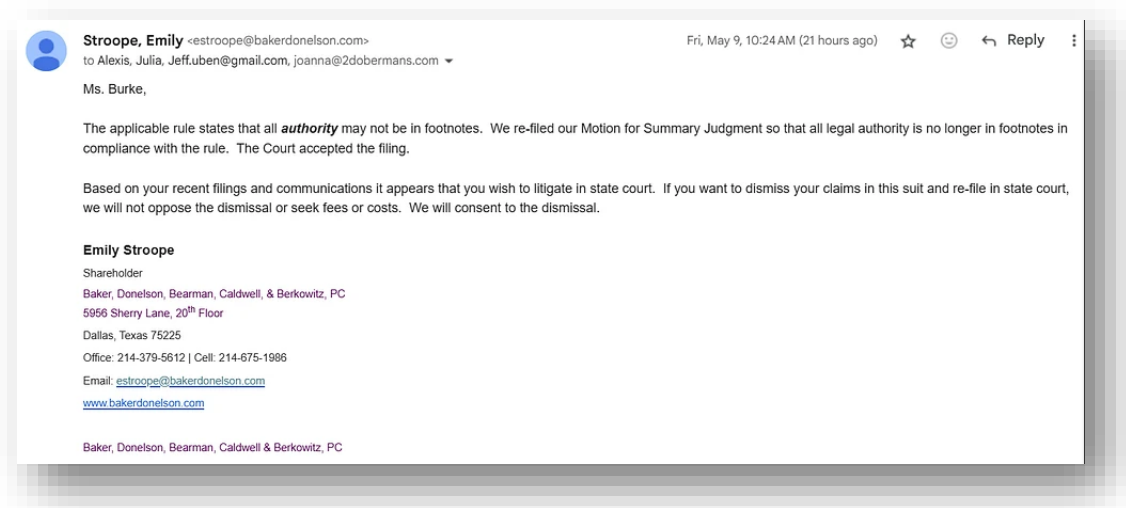
The Motion for Summary Judgment: Despite IP's many emails questioning Defendants "refiled" Motion for Summary Judgment (**Dkt 43**) - which looked identical (footnotes present) to the Motion for Summary Judgment (**Dkt 38**), and which was stricken by order of the court (**Dkt 39**) - the Defendants refused to answer IP's conference emails. Hence, she filed the two pleadings with the court including the Certificate of Conference detailing these facts under the penalty of perjury.

The Motion to Strike: The Defendants have only answered IP's Response and failed to timely reply to IP's Motion to Strike. The fact they have failed to formally answer IP's Motion to Strike is fatal to Defendants as any response would now be untimely. Hence, IP's Motion to Strike should be GRANTED.

2. Defendants Authority Argument Lacks Merit and Not Supported by Other Stricken Motions for Summary Judgment by this Court

Even considering Defendants informal email arguments, the first response IP received from Defendants counsel was after she sent them copies of her court stamped pleadings with exhibits. (Notably, after IP downloaded a court stamped copy of these filings, no exhibits were included). IP's email triggered the following response from Defendants counsel, who emailed Joanna Burke on May 9, 2025, at 10:24 AM stating:

"Ms. Burke, The applicable rule states that **all authority may not be in footnotes**. We re-filed our Motion for Summary Judgment so that all legal authority is no longer in footnotes in compliance with the rule. The Court accepted the filing. Based on your recent filings and communications it appears that you wish to litigate in state court. If you want to dismiss your claims in this suit and re-file in state court, we will not oppose the dismissal or seek fees or costs. We will consent to the dismissal. Emily Stroepe, Shareholder Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC."



First, Judge Bennett’s order has been intentionally misstated. His templated order states, in relevant part “**Specifically, all legal authority must be cited within the body of the document and not footnoted**” (emphasis added). It certainly does not say “**all authority may not be in footnotes**” (emphasis added).

Second, the Intervenor-Plaintiff is aware of at least two foreclosure cases where Judge Bennett has struck similar dispositive motions for failure to comply with Local Rule B.5(a). In those cases, the experienced lawyers for lenders and mortgage servicers have moved both authority and case citations from the footnotes to the body of their amended pleading.

(1) *Rudman v. U.S. Bank Trust National Association, Not in its Individual Capacity But Solely as Owner Trustee for VRMTG Asset Trust improperly named as U.S. Bank Trust, N.A.* (4:23-cv-00040), District Court, S.D. Texas, Judge Bennett’s ORDER Striking Document re: 9 Motion for Summary Judgment, Dkt 10, Jun 7, 2023; Amended MOTION for Summary Judgment, Dkt 11, Jun 9, 2023 (Bank lawyer Michael Hord of Hirsch Westheimer removing all

footnotes/authority/citations and placing them in the body of the document);

(2) *Frank v. Wells Fargo Bank, N.A., as Trustee for the Mastr Asset Backed Securities Trust 2007-NCW Mortgage Pass-Through Certificates Series 2007-NCW* (4:22-cv-00065) District Court, S.D. Texas, ORDER Striking Document re: 10 Motion to Dismiss, Motion for Summary Judgment, filed by Wells Fargo Bank, N.A., Failure to comply with Rule B.5(a), Signed by Judge Alfred H Bennett, Dkt 11, 10/07/2022; MOTION for Leave to File Amended Motion to Dismiss and Motion for Summary Judgment, Dkt 14, 10/13/2022 (Bank lawyer Branch Sheppard of Galloway, now at McGlinchey, removing all footnotes/authority/citations and placing them in the body of the document).

These cases contradict the argument made by Defendants counsel.

Third, the Defendants refiled their Motion for Summary Judgment without indicating that it is an "Amended" Motion for Summary Judgment. As demonstrated by the cited cases above, these properly label the motion as "Amended" as required; otherwise, identifying the operative pleading becomes difficult.

Fourth, the court has not ruled on IP's Motion to Strike (**Dkt 41**). Therefore, even if there have been *ex-parte* conversations with the court, the motion is currently pending as there is no order on the docket affirming or denying such a claim by Defendants counsel.

Conclusion: For these reasons, the Defendants' reply should be stricken, as well as their "Refiled" Motion for Summary Judgment for violating this court's procedures and practices - Rule B.5(a), as indicated in the Order(s) referenced herein, and wherein Judge Bennett strikes the motions.

3. Defendants Refusal to Engage with IP’s Pleadings Deemed Impertinent and Scandalous

Defendants Response in Support of their [Amended] Motion for Summary Judgment (**Dkt 43**) once again improperly addresses the merits of IP’s claims without this Court first resolving its subject-matter jurisdiction. Federal courts must establish jurisdiction as a threshold matter before considering the merits of any claims or defenses. See *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999).

Their latest reply simply rehashes the same absurd arguments presented in their prior reply. IP has informed Defendants that she will be filing a Motion to Dismiss for Lack of Subject Matter Jurisdiction, which can be raised at any time, including on appeal. A particularly well-written state-driven summary of IP’s position and which equally applies in Texas federal courts’ is affirmed in *Texas Right to Life v. Van Stean*, No. 23-0468, Supreme Court of Texas (filed June 21, 2023) (“...at least at this stage, the “case is not about abortion; it is about civil procedure.” More specifically, it is about subject-matter jurisdiction, which is always an antecedent requirement before a court may address the merits.”).

Hence, Defendants' repetitive and frivolous arguments, presented by their seasoned legal counsel—whose firm has employed attorneys sanctioned and even jailed for conspiracy to defraud in other proceedings—do not warrant consideration, as they are both impertinent and scandalous.

4. Defendants Sanctioned Counsel Baker Donelson’s Often Employ “Gamesmanship” and Legal Arguments “Divorced from Reality” in Federal Courts Nationwide

Defendants and their counsel have been subjected to sanctions for similar egregious, impertinent and scandalous legal arguments. For example, in facts mirrored in these proceedings, there’s ongoing litigation involving Baker Donelson which also took a significant turn as the

assigned federal judge criticized Baker Donelson's attempts to remove itself from a case linked to a timber-harvesting Ponzi scheme. The firm's argument was described as "divorced from reality" by Judge Carlton W. Reeves of the U.S. District Court for the Southern District of Mississippi. Judge Reeves also pointed out the procedural missteps in Baker Donelson's bid to exit the lawsuit. Specifically, the firm filed its motion too late for dismissal based on the pleadings, and prematurely for a summary judgment that would require supporting evidence. See; "Baker Donelson, Stuck in Ponzi-Born Case, Draws Judge's Rebuke", published Oct 2, 2024, <https://news.bloomberglaw.com/litigation/baker-donelson-stuck-in-ponzi-born-case-draws-judges-rebuke> (last visited May 18, 2025) ; originally filed as *Mills v. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC* (3:22-cv-00036) District Court, S.D. Mississippi (consolidated). Additionally, the court should note this resulted in the criminal conviction of a Baker Donelson lawyer, see; "Jon Darrell Seawright, a former Baker Donelson partner, was sentenced to a year and a day by a federal court following his plea of guilty to conspiracy to defraud investors in a timber deed investment scheme.", Bloomberg Law article Ex-Baker Donelson Partner Sentenced to Prison for Ponzi Scheme, published Nov. 2, 2023, <https://news.bloomberglaw.com/litigation/ex-baker-donelson-partner-sentenced-to-prison-for-ponzi-scheme> (last visited May 18, 2025).

Defendants counsel has applied the same gamesmanship in these proceedings. The court should rebuke such impertinent and scandalous behavior in these proceedings, which unnecessarily extends litigation and expends the court's limited time by having to repeatedly strike sanctioned Defendants frivolous pleadings.

II. REQUESTED RELIEF

WHEREFORE, PREMISES CONSIDERED, Intervenor-Plaintiff Joanna Burke respectfully requests that this Court:

1. Strike Defendants' Motion for Summary Judgment as premature and procedurally improper;
2. Strike Defendants' Reply in Support of their Motion for Summary Judgment as impertinent and scandalous;
2. Defer any consideration of the merits until the contested subject-matter jurisdiction is fully resolved; and
3. Grant such further relief as the Court deems just and proper.

A proposed order has been filed separately.

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 stated above, this Court should GRANT Intervenor-Plaintiff's requested relief and provide any additional relief to which Plaintiff is entitled.

RESPECTFULLY submitted this 18th day of May, 2025.

Joanna Burke, Harris County
State of Texas / Pro Se

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CERTIFICATE OF WORD COUNT

I, Joanna Burke, hereby certify that INTERVENOR-PLAINTIFF JOANNA BURKE'S VERIFIED MOTION TO STRIKE DEFENDANTS REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT & STRIKE DEFENDANTS REFILED MOTION FOR SUMMARY JUDGMENT, posted on May 18, 2025, complies with the word limit set by the Court. The document contains a total of 1,540 words, as calculated by Microsoft Word.

CERTIFICATE OF CONFERENCE

After a second attempt to obtain an answer, Defendants eventually responded to Intervenor-Plaintiff's request to conference regarding this motion on Friday, May 16, 2025 at 13.26 hrs, indicating they are opposed.

Plaintiff Jeff Samuels did not respond and I assume he is unopposed based on his own motion to remand (denied).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on May 18, 2025 as stated below on the following:

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FF3, Mortgage Pass-Through Certificates, Series 2004-FF3

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