

No. **21-5069**

**ORIGINAL**

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IN THE  
SUPREME COURT OF THE UNITED STATES

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WILLIAM PAUL BURCH,  
PETITIONER

v.

FREEDOM MORTGAGE CORPORATION, et al  
RESPONDENT

Supreme Court, U.S.  
FILED

**JUL - 2 2021**

OFFICE OF THE CLERK

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ON PETITION FOR A WRIT OF CERTIORARI TO  
FIFTH CIRCUIT COURT OF APPEALS

20-10498

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**PETITION FOR WRIT OF CERTIOTATI**

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July 2, 2021

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## QUESTION(S) PRESENTED

Is a Circuit court allowed to establish new precedence by disregarding and/or overruling twenty-four statutes written by the Congress of the United States and signed by the President of the United States as well as three articles of the United States Constitution and two Sections of the Texas Constitution that disagrees with their position?

Can a bankruptcy court establish new precedence supported by the Circuit Court allowing the bankruptcy court to disregard all jurisdiction rules, statutes, and procedures in an effort to accept cases that are not a part of a discharged bankruptcy case.

May a Circuit Court enter a judgement partly based on issues that were not part of the appeal and occurred after the appeal was filed and was not part of the cases involved?

Can a pro-se Plaintiff filing in state court be declared a vexatious litigant by a bankruptcy court judge without the Plaintiff having filed any case in the bankruptcy court pro-se and the bankruptcy court demanding that a state court judge or another federal trial court judge must receive permission from the bankruptcy court judge before a motion is allowed to be filed in the state or federal court case that is not and never has been in the bankruptcy court?

### **LIST OF PARTIES**

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner is William Paul Burch (Burch). He was Appellant-Plaintiff in the Fifth Circuit Court of Appeals

Respondent is Freedom Mortgage Corporation It was one of the Appellee-Defendant in the Fifth Circuit Court of Appeals

Respondent is JP Morgan Chase Bank National Association It was one of the Appellee-Defendant in the Fifth Circuit Court of Appeals

Respondent is Hughes Waters Askanase; Michael Weems; Specialized Loan Servicing, L.L.C.; Padfield & Stout, L.L.P.; Mark W. Stout. These are Texas based except for Specialized Loan Servicing. They were one of the Appellee-Defendant in the Fifth Circuit Court of Appeals

Respondent is Homeward Residential, Incorporated, a Texas Corporation. It was one of the Appellee-Defendant on two of the combined cases in the Fifth Circuit Court of Appeals

Respondent is Ocwen Loan Servicing Company  
Freedom Mortgage Corporation It was one of the  
Appellee-Defendant in the Fifth Circuit Court of  
Appeals

#### RELATED CASES

#### IN THE FIFTH CIRCUIT COURT OF APPEALS

1. Burch v Freedom Mortgage Corp 20-10651  
pending
2. *Burch v America's Servicing Co* 20-11117  
pending
3. *Burch v Bank of America* 20-10850 pending
- 4.. *Burch v Bank of America* 20-10872 pending
5. *Burch v Homeward Residential* 20-11057 pending

6. *Burch v Ocwen Loan Servicing Company* 20-11058 pending
7. *Burch v Select Portfolio Servicing* 20-11117 pending
8. *Burch v America's Servicing Co* 20-11240 pending

## TABLE OF CONTENTS

Contents	Page(s)
LIST OF PARTIES.....	iii
OPINIONS BELOW .....	1
JURISDICTION.....	1
CONSTITUTIONAL & STATUTORY PROVISIONS ..	2
<u>STATEMENT OF THE CASE.....</u>	<u>12</u>
REASONS FOR GRANTING THE WRIT .....	37
<u>CONCLUSION.....</u>	<u>39</u>

## INDEX TO APPENDICES

APPENDIX A	Decision of Fifth Circuit Court of Appeals on rehearing
APPENDIX B	Decision of District Court
APPENDIX C	Decision of Bankruptcy Court
APPENDIX D	United States Court of Appeals on petition for re-hearing en banc

## TABLE OF AUTHORITIES

### Cases

accord Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1393 (9th Cir.1988).....	23
Am. Motorists Ins. Co. v. Am. Emp. Ins. Co., 600 F.2d 15, 16 (5th Cir. 1979).....	16, 32
Baum v. Blue Moon Ventures, LLC, 513 F. 3d 181 - Court of Appeals, 5th Circuit 2008. ....	39
Bums v. Windsor Ins. Co., 31 F.3d 1092, 1095 (1 st Cir. 1994).....	31
Calif. ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 839 (9th Cir. 2004).....	21
Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987) .....	22

Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987); .....	23
Chick Kam Choo v. Exxon Corp., 486 US 140 - Supreme Court 1988 .....	38
City Pub. Serv. Bd. v. Gen. Elec. Co. , 935 F.2d 78, 82 (5th Cir. 1991).....	38
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546 (1949),.....	38
Columbia Gas Transmission Corp. v. Drain, 237 F.3d 366, 369-70 (4th Cir. 2001), citing Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808, 92 L. Ed. 2d 650, 106 S. Ct. 3229 (1986).....	21
DEUTSCHE BANK NAT. TRUST CO. v. Burke, 902 F. 3d 548 - Court of Appeals, 5th Circuit 2018.....	38
Digital Equipment Corp. v. Desktop Direct, Inc., 511 US 863, 867 (1994), .....	38
Dodson v. Spiliada Maritime Corp., 951 F.2d 40, 42 (5th Cir. 1992).....	39
Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1395 (9th Cir.1988 .....	22
Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 subjects of this Motion. S.Ct. 410, 411-12, 57 L.Ed. 716 (1913)). .....	22
Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U. S. 1, 14 (1983)). .....	24
Gully v. First Nat'l Bank in Meridian, 299 U.S. 109, 112-13, 81 L. Ed. 70, 57 S. Ct. 96 (1936) .....	21
Harris v. Provident Life & Acc. Ins. Co., 26 F.3d 930, 933-34 (9th Cir. 1994): .....	22



Harvey v. Grey Wolf Drilling Co., 542 F.3d 1077, 1080 (5th Cir. 2008).....	32
Howery, 243 F.3d at 919.....	32
Nataha Shpak V. Malcolm Curtis, No. 16-56323 (9th Cir. 2018) .....	34
NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937)) .....	26
Pan American Petro. Corp. v. Superior Court, 366 U.S. 656, 662-63, 81 S.Ct. 1303, 1307-08, 6 L.Ed.2d 584 (1961) .....	22
Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830)...	26
Powell v. Alabama, 287 US 45 - Supreme Court 1932	38
Rains v. Criterion Systems, Inc., 80 F.3d 339, 344 (9th Cir. 1996), .....	22
Reeves v Sanderson Plumbing, 530 US 133 - Supreme Court 2000 .....	39
Rivet v. Regions Bank of La., 522 U.S. 470 (1998).....	23
Rivet v. Regions Bank of La., 522 US 470 - Supreme Court 1998, .....	38
Rivet v. Regions Bank of La., 522 US 470, 475 (1998)	24
Ross v. Bernhard, 396 U.S. 531, 533 (1970) .....	26
Ross, 396 U.S. at 533 (citing Whitehead v. Shattuck, 138 U.S. 146, 151 (1891)). .....	26
Rotunda, J. Nowak & J. Young Treatise on Constitutional Law: Substance and Procedure § 17.8, at 257 n.12 (3d ed. 1986) .....	26
Tolan v Cotton, 134 S. Ct. 1861 - Supreme Court 2014 .....	39
<i>United States v. Corrick</i> , 298 US 435, 440, 56 S.Ct. 829, 80 L.Ed. 1263 (1936)) .....	32

Wright v Ford Motor Company, 508 F 3d 263, 269 (5 <sup>th</sup> Cir. 2007.....	28
---	----

## Statutes

11 USC § 9015 (b).....	7
<u>11a USC § 9015 (b)</u> .....	25
28 U.S. Code § 1332 (a).....	33
28 U.S.C. § 1446 (b)(1). ....	10, 39
<u>28 U.S.C. § 157(e)</u> .....	25
28 U.S.C. §1452.....	35, 36
28 U.S.C. §1452(a).....	34
28 U.S.C. §157(e) .....	7
28 USC §1447.....	11, 31
section 1442 or 1443 .....	12
28 USC § 1441 (b) (1). .....	10, 31
28 §157 USC (e) .....	24
28 U. S. C. § 1254(1). ....	2, 8
28 USC § 1332.....	8
28 USC § 1332 (a).....	31
28 U.S. Code § 1334(c)(2) .....	9, 39
28 U.S.C. § 1446 (b)(1) .....	28
28 U.S.C. §1452(a),.....	10

## Rules

F. R. A. P. 35(b)(1). ....	5
F.R.C. P., Rule 38(b) .....	3
<u>Federal rule of Appellate Procedure 35(b)(1)</u> .....	38

<b>Federal Rule of Civil Procedure Rule 8(c)</b> .....	2, 23
<b>Rule 38(b) F.R.Civ.P</b> .....	7
<b><u>Rule 38(b) F.R.Civ.P.</u></b> .....	25
<b>Rule 81(c)(2)</b> .....	4, 29
<b>Texas Rule of Civil Procedure 106(a)</b> .....	6, 27
<b>Title 11 of the Bankruptcy Code</b> .....	34
<b>TRCP Rule 103</b> .....	5, 27

### **Constitutional Provisions**

<b>U.S. CONST. amend. VII</b> .....	2
<b><i>U.S. CONST. amend. VII</i></b> .....	25

**IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR A WRIT OF CERTIORARI**

Petitioner below respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

The Order of the United States Fifth Court of Appeals appears at Appendix A to the petition and is unpublished

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished

The Vexatious Litigant Order from the bankruptcy court appears at Appendix C and is unpublished.

**JURISDICTION.**

A timely petition for rehearing was denied by the United States Court of Appeals on petition for re-

hearing en banc on the following date: February 02, 2021, and a copy of the order denying rehearing appears at Appendix D and is unpublished.

The jurisdiction of this Court is invoked under **28 U. S. C. § 1254(1)**.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

U.S. CONST. amend. VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

#### **Federal Rule of Civil Procedure Rule 8(c)**

Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

• accord and satisfaction; • arbitration and award; • assumption of risk; • contributory negligence; • duress; • estoppel; • failure of consideration; • fraud; • illegality; • injury by fellow servant; • laches; • license; • payment; • release; • res judicata; • statute of frauds; • statute of limitations; and • waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

**F.R.C. P., Rule 38(b)** Demand. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—

no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

**Rule 81(c)(2) *Further Pleading.*** After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or

(C) 7 days after the notice of removal is filed

**F. R. A. P. 35(b)(1).** Petition for Hearing or Rehearing En Banc. A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

**TRCP Rule 103** Process including citation and other notices, writs, orders, and other papers issued by the

Court may be served anywhere by (1) any sheriff or constable or other person authorized by law, (2) any



person authorized by law or by written order of the court who is not less than eighteen years of age, or (3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivery the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

**Texas Rule of Civil Procedure 106(a)** Unless the citation or an order of the court otherwise directs, the citation shall be served by any person authorized by Rule 103 by

(1) delivering to the defendant, in person, a true copy of the citation with the date of delivery endorsed thereon with a copy of the petition attached thereto, or

(2) mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto.

**11 USC § 9015 (b) Consent To Have Trial Conducted**

by Bankruptcy Judge. If the right to a jury trial applies, a timely demand has been filed pursuant to **Rule 38(b) F.R.Civ.P.**, and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under **28 U.S.C. §157(e)** by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

**Rule 28 §157 USC (e)** If the right to a jury trial applies in a proceeding that may be heard under this

section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

**28 U. S. C. § 1254(1).** Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

**28 USC § 1332 (a)**The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1)citizens of different States; (2)citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State

and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3)citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4)a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

**28 U.S. Code § 1334(c)(2)** Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

**Rule 28 USC § 1441 (b) (1).** In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

**28 U.S.C. §1452(a),** A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

**28 U.S.C. § 1446 (b)(1).** The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service

of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

#### **28 USC §1447 Procedure after removal generally**

(a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses,

including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d)An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to **section 1442 or 1443** of this title shall be reviewable by appeal or otherwise.

(e)If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

## **STATEMENT OF THE CASE**

Six separate cases were filed in Texas District Courts. All six cases only involved various Texas statutes. All six cases were removed from the various Texas District

Courts and were moved to the Federal Bankruptcy Court of Mark X. Mullin. Of the Six only one was a creditor of the discharged bankruptcy, case number 4-12-bk-46959-mxm, and that was Adversary case number 20-0364 regarding Freedom Mortgage Corp.

After removal, jurisdiction was challenged on each case and a Motion to Remand was filed. The basis for the Motions to remand varied with some procedural and others for subject matter jurisdiction and others involved both. After the bankruptcy court denied the Motions to Remand, the cases were appealed. On appeal the bankruptcy court combined the cases sua sponte, claiming they were all the same issue. The only thing that was the same was the bankruptcy courts lack of jurisdiction but the basis for the lack of jurisdiction varied from case to case.

District Court of Senior Judge John H. McBryde immediately denied the appeal based on the bankruptcy courts declaration that Burch had been



certified by the bankruptcy court judge as a frivolous litigant. The issue on appeal to the Fifth Circuit was the Motion to proceed in forma pauperis in the District Court of Senior Judge John H. McBryde. By combining the six cases the bankruptcy court judge was able to create an insurmountable wall that Burch, with his extremely limited income could not possibly climb.

One of the combined cases was against the lawyers (HWA) ( 4:20-cv-365) who lied in their motion and in the hearing that removed over two million dollars in assets and all of Burch's income just a few months before completing his Chapter 11 plan and converted it to a Chapter 7 plan. In the Burch lawsuit against HWA for lying to the court where the evidence was overwhelming against them, HWA was granted immunity by the Bankruptcy Court Judge. The act of lying to the court to get their desired outcome was why Burch no longer had the money to pay the fees.

Because the entire appeal is based on the bankruptcy court judge certifying Burch as a frivolous litigant due to his remand motions the Justices should view this case with blinders on. The defense councils are very good at establishing smoke screens to hide the real issues.

On **October 1, 2018**, Burch filed suit in the 096<sup>th</sup> Texas District Court against Hughes Watters Askanase, LLP (a Texas Company) et al. The untruths they admitted to telling and filing and the judge admitting to knowing about it then giving them immunity is what led to the bankruptcy court judges actions and apparent bias against Burch.

1. CAUSE 1 Refusal to honor an acceptance of their oath
2. CAUSE 2 Statutory fraud
3. CAUSE 3 Deceptive trade practices
4. CAUSE 4 Fraud against the court
5. CAUSE 5 Rule 9011

On **December 17, 2018**, Burch filed suit in the Tarrant County Court at law number 2 against Ocwen

2. CAUSE 2 Texas Penal Code Sec 32.49  
Refusal to Execute Release of Fraudulent  
Lien
3. CAUSE 3 Texas Penal Code Sec 32.45  
Misapplication of Financial Institution  
Property
4. CAUSE 4 under Texas Civil Practice and  
Remedies Code Title 2, Subtitle A,  
Chapter 12 Section 12.003. Fraudulent  
Lien
5. CAUSE 5 Tex. Bus. & Com. Code Ann.  
§ 27.01 Statutory Fraud
6. CAUSE 6 Tex. Civ. Prac. & Rem. Code  
§41.008(a). Gross Negligence Punitive  
Damages

On **April 26, 2019** Burch filed suit in the 017<sup>th</sup> Texas District Court against, JP Morgan Chase Bank (Bankruptcy court withheld the record on this case).

The statute of limitations was due to expire soon. On **May 24, 2019**, Chase removed the case to Federal District Court **after a trial date had already been set** by the Texas District Court Judge. On **February 7, 2020**, Burch filed his motion to remand based on lack of subject matter jurisdiction, which was denied.

1. CAUSE 1 Texas Property Code Prop § 53.160  
Invalid Lien
2. CAUSE 2 Texas Penal Code Sec 32.49 Refusal to  
Execute Release of Fraudulent Lien
3. CAUSE 3 Texas Penal Code Sec 32.45  
Misapplication of Financial Institution Property
4. CAUSE 4 under Texas Civil Practice and  
Remedies Code Title 2, Subtitle A, Chapter 12  
Section 12.003. Fraudulent Lien
5. CAUSE 5 Tex. Bus. & Com. Code Ann. § 27.01  
Statutory Fraud
6. CAUSE 6 Quite Title
7. CAUSE 7 Tex. Civ. Prac. & Rem. Code  
§41.008(a). Gross Negligence Punitive Damages
8. CAUSE 8 Breach of Contract

On **June 4, 2019** Burch filed suit in the 096<sup>th</sup> Texas District Court against Homeward Residential, Inc. (**A Texas Company**) (Bankruptcy court refused to forward all the record on this case). The statute of limitations was due to expire. On July 17, 2019

Homeward removed the case to the bankruptcy court. On August 13, 2019 Burch filed his motion to remand based on absence of jurisdiction which was denied.

1. CAUSE 1 Texas Property Code Prop § 53.160  
Invalid Lien
2. CAUSE 2 Texas Penal Code Sec 32.49 Refusal to  
Execute Release of Fraudulent Lien
3. CAUSE 3 Texas Penal Code Sec 32.45  
Misapplication of Financial Institution Property
4. CAUSE 4 under Texas Civil Practice and  
Remedies Code Title 2, Subtitle A, Chapter 12  
Section 12.003. Fraudulent Lien
5. CAUSE 5 Tex. Bus. & Com. Code Ann. § 27.01  
Statutory Fraud
6. CAUSE 6 Breach of Contract
7. CAUSE 7 Quite Title
8. CAUSE 8 Tex. Civ. Prac. & Rem. Code  
§41.008(a). Gross Negligence Punitive Damages

On **June 17, 2019** Burch filed suit in the 348<sup>th</sup> Texas District Court against Homeward Residential, Inc. (**A Texas Company**)

1. CAUSE 1 Texas Property Code Prop § 53.160  
Invalid Lien

2. CAUSE 2 Texas Penal Code Sec 32.49 Refusal to Execute Release of Fraudulent Lien
3. CAUSE 3 Texas Penal Code Sec 32.45 Misapplication of Financial Institution Property
4. CAUSE 4 Tex. Bus. & Com. Code Ann. § 27.01 Statutory Fraud
5. CAUSE 5 Breach of Contract
6. CAUSE 6 Quite Title
7. CAUSE 7 Tex. Civ. Prac. & Rem. Code §41.008(a). Gross Negligence Punitive Damages

On **December 23, 2019** Burch filed suit in the 348<sup>th</sup> Texas District Court against, Freedom Mortgage.

**A. Freedom (4:20-cv-0364)**

1. CAUSE 1 Texas Property Code – Prop § 53.160 Invalid Lien
2. CAUSE 2 under Texas Civil Practice and Remedies Code Title 2, Subtitle A, Chapter 12 Section 12.003. Fraudulent lien

3. CAUSE 3 Texas Finance Code Chapter 391. Furnishing False Credit Information
4. CAUSE 4 Breach of contract
5. CAUSE 5 Sec. 22.001. Trespass to try title

Where, as here, federal jurisdiction arises because of a "federal question," the question "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." <sup>2</sup>Gully v. First Nat'l Bank in Meridian, (noting that the federal question cannot be "merely a possible or conjectural one"). Thus, the rule enables the plaintiff, as "master of the complaint," to "choose to have the cause heard in state court" by eschewing claims based on federal law.<sup>3</sup> The well-pleaded complaint rule requires that federal question jurisdiction does not exist unless a federal question appears on the face of a plaintiff's properly pleaded complaint."<sup>4</sup> The Complaint in this matter

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<sup>2</sup> Gully v. First Nat'l Bank in Meridian, 299 U.S. 109, 112-13, 81 L. Ed. 70, 57 S. Ct. 96 (1936)

<sup>3</sup> Calif. ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 839 (9th Cir. 2004).

<sup>4</sup> Columbia Gas Transmission Corp. v. Drain, 237 F.3d 366, 369-70 (4th Cir. 2001), citing Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808, 92 L. Ed. 2d 650, 106 S. Ct. 3229 (1986).

asserts no federal claims. In *Rains v. Criterion Systems, Inc.*,<sup>5</sup> the Ninth Circuit wrote: Rains chose to bring a state claim rather than a Title VII claim and was entitled to do so<sup>6</sup>. See *Pan American Petro. Corp. v. Superior Court*, (stating that "the party who brings a suit is master to decide what law he will rely upon"). A plaintiff "may avoid federal jurisdiction by exclusive reliance on state law."<sup>7</sup>, see also *Ethridge v. Harbor House Restaurant*,<sup>8</sup> ("If the plaintiff may sue on either state or federal grounds, the plaintiff may avoid removal simply by relying exclusively on the state law claim").

The Ninth Circuit held in *Harris v. Provident Life & Acc. Ins. Co.*<sup>9</sup>: Ordinarily, "federal jurisdiction exists only when a federal question is presented on the face of

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<sup>5</sup> *Rains v. Criterion Systems, Inc.*, 80 F.3d 339, 344 (9th Cir. 1996),

<sup>6</sup> *Pan American Petro. Corp. v. Superior Court*, 366 U.S. 656, 662-63, 81 S.Ct. 1303, 1307-08, 6 L.Ed.2d 584 (1961) (quoting *Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25, 33 subjects of this Motion. S.Ct. 410, 411-12, 57 L.Ed. 716 (1913)).

<sup>7</sup> *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987)

<sup>8</sup> *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1395 (9th Cir. 1988)

<sup>9</sup> *Harris v. Provident Life & Acc. Ins. Co.*, 26 F.3d 930, 933-34 (9th Cir. 1994):



the plaintiff's properly pleaded complaint."<sup>10</sup> Claim preclusion, as *Federal Rule of Civil Procedure Rule 8(c)* makes clear, is an affirmative defense. A case blocked by the preclusive effect of a prior federal judgment differs from a case preempted by a federal statute: The prior federal judgment does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether. Under the well-pleaded complaint rule, preclusion thus remains a defensive plea involving no recasting of the plaintiff's complaint and is therefore not a proper basis for removal. In *Rivet et al. v. Regions Bank OF Louisiana et al.*<sup>11</sup> no subject matter jurisdiction in bankruptcy court if debtor filed against creditor in a state court.

**JURY TRIALS** (Applies to all but the Freedom lawsuit)

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<sup>10</sup> *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987); accord *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th Cir.1988).

<sup>11</sup> *Rivet v. Regions Bank of La.*, 522 U.S. 470 (1998)

Because these are jury trial cases a bankruptcy hearing is not allowed unless agreed to by all parties. None of the parties agreed to the Bankruptcy Court hearing this case. In 11a USC § 9015 (b) If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule. However, the District Court also did not agree to a jury trial being heard by the bankruptcy court. Because you cannot remove from Bankruptcy Court to the District Court except on appeal or petition, the bankruptcy court cannot ever go to the District Court directly for permission to hear the jury trial case on those cases removed to the bankruptcy court without going through the District Court.

*U.S. CONST. amend. VII.* The seventh amendment provides: In Suits at common law, where the value in

controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. *Id.* The Supreme Court has construed "Suits at common law" to mean that the **seventh amendment** preserves an individual's right to a trial by jury in legal causes of action, as distinguished from equitable or admiralty jurisdiction.<sup>13</sup> The Court has recognized an inherent difficulty in adequately distinguishing between legal and equitable actions.<sup>14</sup> "Characterization of an issue as legal or equitable is often a difficult federal law issue."<sup>15</sup> Such characterization may often be achieved by analyzing the character of the issue to be adjudicated, rather than the unique form of the complaint or the pleadings.

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<sup>13</sup> *Ross v. Bernhard*, 396 U.S. 531, 533 (1970) (quoting *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 447 (1830), overruled by *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)).

<sup>14</sup> *Ross*, 396 U.S. at 533 (citing *Whitehead v. Shattuck*, 138 U.S. 146, 151 (1891)).

<sup>15</sup> 2 R. Rotunda, J. Nowak & J. Young *Treatise on Constitutional Law: Substance and Procedure* § 17.8, at 257 n.12 (3d ed. 1986)

**V. TIME FOR REMOVAL** (All except for Chase and Homeward)

There are some very specific rules that must be followed in regard to the amount of time allowed for filing a removal and filing an answer to an original petition. Based on my personal experience, when the rule says thirty days, unless you get an extension, it means thirty days, not thirty-one or sixty, In Tarrant County, Texas the procedure is to efile the courts copy and then bring a copy to the courthouse and give it to the clerk for mailing. The clock starts ticking once the petition and a true copy of the citation is handed to the U S Postal Service to be sent, certified mail, return receipt requested.<sup>16</sup> This is commonly known as the “mailbox rule”. Thus, under Texas Rule of Civil Procedure 106(a) the date the service is made is the date any person authorized by *TRCP Rule 103* deposits

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<sup>16</sup> TRCP 106(a)

the citation and complaint in the US Postal system by registered or certified mail.<sup>17</sup>

As for receiving the citation <sup>18</sup>the notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

The service and removal dates for these cases are as follows:

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<sup>17</sup> Wright v Ford Motor Company, 508 F 3d 263, 269 (5<sup>th</sup> Cir. 2007)

<sup>18</sup> 28 U.S.C. § 1446 (b)(1)

RESPONDENT	CASE #	DATE SERVED	DATE REMOVED	DAYS
FREEDOM	20-364	12/27/19	1/28/20	32
HOMEWARD	20-367	6/4/19	7/17/19	43
OCWEN	20-369	12/18/18	04/08/19	113
HWA	20-365	10/18/18	11/20/18	33

The other time sensitive issue is *Rule 81(c)(2)* which says:

- (1) Applicability. These rules apply to a civil action after it is removed from a state court.

- (2) Further Pleading. After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods
  - (A) 21 days after receiving—through service or otherwise—a copy of the initial pleading stating the claim for relief;
  - (B) 21 days after being served with the summons for an initial pleading on file at the time of service; or
  - (C) 7 days after the notice of removal is filed.

**VI. DIVERSITY** (Chase is not affected by this issue)

**This part affects Ocwen, Homewards lawsuits and the HWA lawsuit.**

Jurisdiction under Rule 28 USC § 1441 (b) (1). 28 USC § 1332 (a) plainly states “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

As such, diversity fails and this court lacks subject matter jurisdiction, and this case must be remanded to the Texas District Court for reassignment. If the district court discovers that it lacks subject matter jurisdiction at any time before final judgment, 28 USC §1447 requires remand (or transfer) even without a petition from the plaintiff.<sup>19</sup> ("Defendant's right to remove and plaintiff's right to choose his forum are not on equal footing; for example, unlike the rules applied when plaintiff has filed suit in federal court with a claim that, on its face, satisfies the jurisdictional amount, removal statutes are construed narrowly. .. ").

When the district court lacks jurisdiction, we have jurisdiction on appeal, not on the merits but for the

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<sup>19</sup> Bums v. Windsor Ins. Co., 31 F.3d 1092, 1095 (1 st Cir. 1994)



purpose of addressing the lower court's jurisdiction to entertain the suit.<sup>20</sup>

**This part directly affects Ocwen and HWA**

HWA and Ocwen filed for removal of the cases from Tarrant County Court to Federal District Court without properly establishing diversity jurisdiction by correctly alleging the citizenship of every member of the LLC (or LLP)<sup>21</sup>. (“[T]he plaintiff’s complaint must specifically allege each party’s citizenship.”)<sup>22</sup>; (“[T]he citizenship of a LLC is determined by the citizenship of all of its members.”);<sup>23</sup> (“[T]he party asserting federal jurisdiction must distinctly and affirmatively allege the citizenship of the parties.”) (citations, quotations, and alterations omitted). In short, federal diversity jurisdiction was not established by the allegations of the notice of removal.

**This part directly affects Freedom and Ocwen.**

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<sup>20</sup> Id. (quoting *United States v. Corrick*, 298 US 435, 440, 56 S.Ct. 829, 80 L.Ed. 1263 (1936))

<sup>21</sup> *Am. Motorists Ins. Co. v. Am. Emp. Ins. Co.*, 600 F.2d 15, 16 (5th Cir. 1979)

<sup>22</sup> *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008)

<sup>23</sup> *Howerly*, 243 F.3d at 919

*28 U.S. Code § 1332 (a)* The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. It is hard to believe that a company is so afraid of the weakness of their defense that they are willing to risk a much greater loss in federal court than in a state or county court. It is about as odd as Burch wanting to get less money by moving these two cases back to the state.

### **TRANSFERS FROM FEDERAL COURT TO FEDERAL COURTS**

The Ninth U.S. Circuit Court of Appeals' bankruptcy Appellate Panel has held that the defendants in a federal District Court action who

declared bankruptcy after being sued cannot remove the lawsuit to the Bankruptcy Court.<sup>24</sup>

The panel affirmed Bankruptcy Judge Scott Ho Yun's order striking a notice of the removal of an action from the U.S. District Court for the Eastern District of New York.

Panel Judge William J. Lafferty III said that debtors Malcolm Curtis and Judith Curtis are correct insofar as they assert that a provision of the removal statute, *28 U.S.C. §1452(a)*, "is designed to further Congress's purpose of centralizing bankruptcy litigation in a federal forum."

The provision says that in cases where a defendant has sought protection under Title 11 of the Bankruptcy Code, "[a] party may remove

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<sup>24</sup> *Nataha Shpak V. Malcolm Curtis*, No. 16-56323 (9th Cir. 2018)

any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending...."

A district court then refers the matter to the bankruptcy court.

**Justice Lafferty continued:** "Debtors contend that the statute authorizes removal of an action pending in a federal district court to the federal district court or the bankruptcy court in the district where the bankruptcy case is pending. We agree with the bankruptcy court's conclusion that it does not."

**As Judge Yun put it:** "You can't remove a district court lawsuit to another district court or to a bankruptcy court. The way 28 U.S.C. §1452 works, you remove a civil action to the district court where the civil action is pending."

“So, if you technically want to comply with 1452, you have to remove that lawsuit from the United States District Court in the Eastern District of New York to the United States District Court in Eastern District of New York, because that’s where the civil action is pending. That’s the district. That’s a nullity.... You can’t remove a district court lawsuit to the district court where the civil action is pending, because you can’t remove a lawsuit from [and] to...the same Court. So, this doesn’t work.”

**As Justice Lafferty phrased it:** “*28 U.S.C. §1452* does not authorize removal to a bankruptcy court. The statute authorizes removal ‘to the district court for the district where such civil action is pending’ if the district court has jurisdiction under [Title 11]. As the bankruptcy court recognized, it is illogical to interpret the bankruptcy removal statute to authorize removal from a district court to the district court in the same district....

This is interpreted by Burch to simply mean that you cannot transfer from one district court to another district court nor can you transfer a case from a federal district court to a bankruptcy court or vice-versa. This affects all the cases in that if a case is removed to a bankruptcy court then it cannot be removed to a district court thus cutting a way out if a defendant mistakenly removes a case to a bankruptcy court that does not have jurisdiction. It also means that a federal district court cannot remove a case to another district court or to a bankruptcy court.

### **REASONS FOR GRANTING THE PETITION**

The precedence established in this case is in direct conflict with almost all rules and statutes regarding the rule of law in the United States.

The questions presented by this petition satisfy the criteria of **Federal rule of Appellate Procedure**

Circuit rulings of *Dodson v. Spiliada Maritime Corp.*<sup>32</sup>, *Baum v. Blue Moon Ventures, LLC*<sup>33</sup>.

Additionally, the Panel decision conflicts with appellate standards of legal sufficiency as presented in *Reeves v Sanderson Plumbing*<sup>34</sup>, and *Tolan v Cotton*<sup>35</sup>. Of the 33 cases used in support of Burch, not one single case was addressed. In fact, of the 66 cases presented by the nine attorneys representing the defendants, only six cases were addressed by the Panel. This was only twenty percent of the 26 cases addressed by the Panel. Additionally, of the 29 statutes presented by Burch, only four were addressed by the Panel. Some of those that were skipped that were of great importance were 28 U.S. Code § 1334(c)(2) and 28 U.S.C. § 1446 (b)(1).

## CONCLUSION

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<sup>32</sup> *Dodson v. Spiliada Maritime Corp.*, 951 F.2d 40, 42 (5th Cir. 1992).

<sup>33</sup> *Baum v. Blue Moon Ventures, LLC*, 513 F. 3d 181 - Court of Appeals, 5th Circuit 2008.

<sup>34</sup> *Reeves v Sanderson Plumbing*, 530 US 133 - Supreme Court 2000

<sup>35</sup> *Tolan v Cotton*, 134 S. Ct. 1861 - Supreme Court 2014.

The Fifth Circuit Panels decision is detrimental to the people of the United States because it relies on many errors on the part of the Panel. The Panels decisions are in direct conflict with other Fifth Circuit rulings, Texas Supreme Court rulings, and United States Supreme Court Rulings. The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin Luther King Jr.", is written over a horizontal line.

Date July 2, 2021