

## **APPENDICES**

# APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 20-11106

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IN THE MATTER OF WILLIAM PAUL BURCH

*Debtor,*

WILLIAM PAUL BURCH,

*Appellant,*

*versus*

MARK X. MULLIN,

*Appellee,*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CV-1006

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ON PETITION FOR REHEARING

Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

May 27, 2022

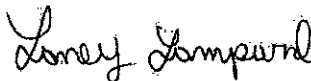
MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-11106 Burch v. Mullin  
USDC No. 4:20-CV-1006

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Laney L. Lampard, Deputy Clerk  
504-310-7652

Mr. William Paul Burch  
Ms. Karen S. Mitchell

## **APPENDIX B**

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

May 2, 2022

Lyle W. Cayce  
Clerk

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No. 20-11106  
Summary Calendar

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IN THE MATTER OF WILLIAM PAUL BURCH

*Debtor,*

WILLIAM PAUL BURCH,

*Appellant,*

*versus*

MARK X. MULLIN,

*Appellee.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:20-CV-1006

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Before SMITH, HIGGINSON, and WILLETT, *Circuit Judges.*

PER CURIAM:\*

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

William Paul Burch appeals the district court's dismissal of his appeal arising from a proceeding in the bankruptcy court for the Northern District of Texas. The bankruptcy appeal was dismissed without prejudice under Federal Rule of Civil Procedure 41(b) after Burch failed to comply with the district court's order to pay the required filing fee.

Burch has moved to remand the case to the district court. He asserts that he is now able to pay the filing fee because his financial situation has improved. Also, he moves to proceed in forma pauperis (IFP) on appeal. To proceed IFP, a litigant must be economically eligible, and his appeal must not be frivolous. *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). If the appeal is frivolous, we will dismiss it. *See Baugh v. Taylor*, 117 F.3d 197, 202 n.24 (5th Cir. 1997); 5TH CIR. R. 42.2.

Even before Burch's concessions regarding his improved financial situation, we concluded that he was not financially eligible to proceed IFP on appeal. *See Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 293 (5th Cir. 2021). Also, his conclusional assertions effectively fail to identify any error in the dismissal of his bankruptcy appeal for failing to pay the filing fee, and he has not shown a nonfrivolous issue on appeal. *See Carson*, 689 F.2d at 586. Thus, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. His motion to remand is denied. His motion to supplement the record also is denied.

Because Burch failed to heed our prior sanctions warnings and our direction to withdraw any pending appeals that were frivolous, we previously imposed monetary sanctions. *Burch v. Select Portfolio Servicing, Inc. (Matter of Burch)*, No. 20-11171, 2022 WL 212836, \*1 (5th Cir. Jan. 24, 2022) (unpublished) (\$250 sanction); *Burch v. America's Servicing Company (Matter of Burch)*, No. 20-11074, 2021 WL 5286563, \*1 (5th Cir. Nov. 12, 2021) (unpublished) (\$100 sanction). Burch, who has paid the monetary sanctions,

No. 20-11106

has repeatedly ignored our admonitions, and we conclude that an additional monetary sanction is warranted. Burch is hereby ordered to pay \$500.00 to the clerk of this court. The clerk of this court and the clerks of all courts subject to our jurisdiction are directed to return to Burch unfiled any submissions he should make until the sanction imposed in this matter is paid in full.

We again warn Burch that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals and to withdraw any that are frivolous.

MOTIONS DENIED; APPEAL DISMISSED AS FRIVOLOUS; SANCTIONS IMPOSED; ADDITIONAL SANCTION WARNING ISSUED.



## APPENDIX C

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

WILLIAM PAUL BURCH,

Debtor/Appellant,

v.

AMERICA'S SERVICING COMPANY  
et al.,

Appellees.

§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No. 4:20-cv-01006-O

**ORDER**

On October 15, 2020, the Court issued an order requiring that Appellant pay the filing fee (ECF No. 8). The deadline for Appellant's filing fee payment was October 23, 2020. As of the date of this order, however, Appellant has not done so, nor has he sought an extension of time.

Rule 41(b) of the Federal Rules of Civil Procedure allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Appellant has been given ample opportunity to pay the filing fee or respond to the Court's order. He has declined to do so. Therefore, this action is **DISMISSED without prejudice** for failure to comply with a court order and for lack of prosecution. *See* Fed. R. Civ. P. 41(b) (an involuntary dismissal "operates as an adjudication on the merits," unless otherwise specified).

**SO ORDERED** on this **27th** day of **October, 2020**.

## **APPENDIX D**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 3, 2020

*Mark X. Mullin*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:

WILLIAM PAUL BURCH,

DEBTOR.

§  
§  
§  
§  
§

CASE No. 12-46959-MXM

CHAPTER 7

**ORDER DENYING DEBTOR'S MOTION FOR  
REHEARING ON VEXATIOUS LITIGANT ORDER**

*(Relates to ECF No. 854)*

Before the Court is a request<sup>1</sup> filed by William Paul Burch (the "**Debtor**") seeking authority to file a *Motion for Re-Hearing (sic) on Vexatious Litigant Order* (the "**Motion**").<sup>2</sup>

<sup>1</sup> On July 10, 2020, the Court entered its Order (A) Designating William Paul Burch as a Vexatious Litigant, and (B) Granting Related Relief (ECF No. 824) (the "**Vexatious Litigant Order**"). Pursuant to the Vexatious Litigant Order, the Court designated the Debtor as a vexatious litigant and prohibited the Debtor, without prior Court permission, from filing affirmative claims for relief in federal, state, or local trial courts with respect to the restricted subject matter. The Court's Vexatious Litigant Order does not apply, however, to motions to reconsider filed under Bankruptcy Rules 9023 and 9024 or to appeals or pleadings filed in any appeal pending in a United States District Court or the United States Court of Appeals while sitting in the capacity of an appellate court. The Court, therefore, has considered the Motion as a timely filed Motion under Bankruptcy Rule 9023.

<sup>2</sup> ECF No. 854.

Having considered the Motion, the Court finds and concludes that the Motion has no merit and should be denied. It is, therefore

**ORDERED** that the Motion is **DENIED**.

**### End of Order ###**

# **APPENDIX E**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 10, 2020

*Mark X. Mullin*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:

WILLIAM PAUL BURCH,

DEBTOR.

§  
§  
§  
§  
§

CASE No. 12-46959-MXM

CHAPTER 7

**ORDER (A) DESIGNATING WILLIAM PAUL BURCH AS A  
VEXATIOUS LITIGANT, AND (B) GRANTING RELATED RELIEF**

On July 7, 2020, the Court held a hearing on its *Order to Show Cause Regarding (A) Potential Designation of William Paul Burch as a Vexatious Litigant, and (B) Granting Related Relief* (the “*Show-Cause Order*”).<sup>1</sup> At the hearing, the Court noted that this Order would contain an exhibit with a summary of the various motions, pleadings, and appeals filed by William Paul Burch (the “*Debtor*”) since the conversion of his Chapter 11 case to Chapter 7 that have been

<sup>1</sup> ECF No. 800.

denied or dismissed. **Exhibit A** to this Order contains that summary. In addition, the Court notes that it warned the Debtor over a year ago that he needed to stop his abusive practice of filing more lawsuits premised in whole or in part on baseless allegations, including that various lenders' liens were somehow invalidated in the Debtor's 2008 Bankruptcy Case<sup>2</sup> or 2012 Bankruptcy Case:<sup>3</sup>

THE COURT: We've relitigated – we've litigated these issues multiple times. You're going back to 2008. You're going back to 2009. You're going back to 2010.

You filed two bankruptcies, and you filed two Chapter 11s. Both of those have been confirmed, one in this court, that you filed in 2015. Those issues were all dealt with in your plan of reorganization.

The problem that you have is that you failed to comply with your plan of reorganization. All the liens and claims were deemed final and valid when that plan was confirmed. That was your plan.

And now to go back and try to say that there weren't any liens, that's just contrary to the positions you took in front of this court, that you took with several different attorneys in this court.

And it's becoming a little bit offensive that you keep going back. This is - I don't know how many times we've gone through this drill. And I'm trying to be patient with you. I know now you're not represented by a lawyer, so I'm trying to give you the due opportunity to voice your positions, which I have, not only in these adversary proceedings, in other adversary proceedings, and in your main bankruptcy case.

All of these issues have been litigated, time and time again, and you've lost in your underlying bankruptcy case, in now three different adversary proceedings,<sup>[4]</sup> and when you lose, you continue to go back and file new lawsuits in state court, which frankly, is a bit offensive.

But I'm giving you your opportunity to make your case. But if you're going to sit here and take up more time going through these same issues that we've been through time and time again, going back to 2008, 2009, 2010, all of that is irrelevant.

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<sup>2</sup> See Case No. 08-45761-RFN-11 (the "2008 Bankruptcy Case").

<sup>3</sup> See Case No. 12-456959 (the "2012 Bankruptcy Case").

<sup>4</sup> The Debtor is now up to 19 lawsuits.



Your plan -- your plan, the one that you filed, the one you signed, the one you said you were going to comply with, you didn't comply with that. That's why the Court converted your case to Chapter 7 ultimately, after giving you months of opportunity -- many, many opportunities. That's why the lenders filed motions to lift the stay, because it was the liens that were provided in the plan that you filed that they were seeking to foreclose.

You lost that issue. You had a right to appeal those issues. You've appealed many of those issues, and you've lost on those appeals.

Now you're bringing new lawsuits, making allegations that Mr. Weems, Mr. Stout, have committed fraud on this court. And there's not one shred of evidence -- I understand why Mr. Stout's upset. I understand why Mr. Weems is upset. Those are very, very, very serious allegations that you've made, and they're baseless.

I've given you your opportunity. You've appealed me. That's fine. You have an absolute right to do that. I'm -- I make mistakes too, and that's what appeal courts are for. And you've had the opportunity to appeal the conversion of your case, which you did, and which you've lost. You've had your opportunity to appeal the lift of the stay. You've had your opportunity to have me removed from this case. You've had those opportunities. And I'm not giving you any impediments whatsoever.

I've also allowed you to reduce your filing fees on appeal, which I didn't have to approve. But I did, to give you your day in court, because you are a pro se litigant. And I feel badly for you as an individual. I know this is difficult. I know that you've lost your vehicle. I know that you're losing potentially your house, if you haven't already. I know you've lost a lot of your business.

I thoroughly understand it and I empathize and I feel badly for you, as I do many, many other people that appear before me. But to continue making these allegations that are completely baseless, at some point enough is enough, because these gentlemen and their clients have to continue to pay them to come and relitigate these exact same issues over and over and over again. And it's got to stop.

I'll let you continue to make your record, but if you're going to go back to facts that were prior to your plan of reorganization, again, that you filed, that this Court confirmed in 2015 or 2016, and one that you failed to comply with, even though the Court gave you additional time, as did many of the lenders gave you additional time, at some point enough is enough, and that's why the case was converted. That's why the stay was lifted.

It wasn't because of misrepresentations by Mr. Stout. It wasn't because of misrepresentations by Mr. Weems. It was because you didn't comply with the plan of reorganization that you filed. That's the bottom line.

And you have your right to continue to pursue your rights through appeals, which you have been, and that's fine. But now you're going back, after you've lost, now you're filing new lawsuits in state court which get removed here, which under the Bankruptcy Rules, they can do, which they have done. But at some point enough is enough.

And I don't know how much more you're going to continue to try to recycle this, but eventually, even on pro se litigants, the courts have to take action to prevent abuse, because it's getting to be very abusive on your part.

So I'll let you finish, but you've gone on for about fifteen minutes about these exact same issues, which frankly, you're barred by res judicata, you don't own the claims anymore, because they're property of your bankruptcy estate controlled by the Chapter 7 trustee. That's -- those are my rulings that you've appealed in the past, which you have a right to do.

But then you go back and sue these parties again, at some point, I understand why the lawyers and the law firms are not happy having their names listed in lawsuits that are frankly frivolous on their face. At least that's been my rulings in the past, which you've appealed and which you've lost.

All right. You may continue, but I would hope -- I want you to not go back and try to reargue those facts again.<sup>5</sup>

For the reasons stated on the record at the hearing (which are incorporated herein by reference), as supplemented above, and pursuant to 28 U.S.C. § 1651(a), § 105(a) of the Bankruptcy Code, and the Court's inherent power, the Court designates the Debtor as a vexatious litigant and sanctions the Debtor by restricting his ability to file future lawsuits, motions, pleadings, or other requests for affirmative relief in any federal trial court, or Texas state or local trial court, against any party involving personal or real property that was included in the Debtor's 2008 Bankruptcy Case or 2012 Bankruptcy Case (the "***Restricted Subject Matter***") without first securing this Court's prior written authorization to do so. This Order clarifies the procedures the

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<sup>5</sup> Adv. No. 18-4172, ECF No. 144, 5/21/19 Tr. at 34-39.

Debtor must follow if he chooses to file future lawsuits, motions, pleadings, or other requests for affirmative relief relating to the Restricted Subject Matter.

If the Debtor wants to file any lawsuit (whether called a petition, complaint, or other title), motion, pleading, or other request for affirmative relief (a “*Proposed Filing*”) in a state or local trial court or federal trial court<sup>6</sup> seeking affirmative relief against any party with respect to the Restricted Subject Matter, the Debtor must first seek written permission from this Court to do so. To seek written permission from the Court, the Debtor shall file in this bankruptcy case a “Request for Proposed Filing” using the following caption and heading:

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:	§	
	§	CASE NO. 12-46959-MXM
WILLIAM PAUL BURCH,	§	
	§	CHAPTER 7
DEBTOR.	§	

**REQUEST FOR PROPOSED FILING**  
**[INSERT NAME OF PROPOSED FILING]**

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<sup>6</sup> Federal trial court includes any bankruptcy court or federal district court.

Each Request for Proposed Filing shall contain a plain and concise explanation of the Proposed Filing, the applicable court where the Debtor intends to file the Proposed Filing, and the Debtor's justification for the Proposed Filing. Each Request for Proposed Filing must contain, as an exhibit, a copy of the Proposed Filing as such document would be filed by the Debtor. Each Request for Proposed Filing shall also contain a certificate of service that reflects service of the Request for Proposed Filing (including all exhibits) on any person who would be affected by the Proposed Filing.

Any interested party may—but is not required to—file a response to a Request for Proposed Filing within twenty-one days after the Debtor files the Request for Proposed Filing with the Court. The Court will rule on each Request for Proposed Filing after the expiration of the twenty-one-day response period.

This Order does not restrict the Debtor's ability to file responsive documents to motions or affirmative requests for relief filed by other persons. For example, if a party in a pending Adversary Proceeding files a motion to dismiss a Debtor's complaint under Federal Civil Rule 12(b)(6), the Debtor does not need Court permission to file a response to such motion.

If the Debtor fails to comply with this Order, the Court will consider awarding monetary and nonmonetary sanctions against the Debtor.

It is **SO ORDERED**.

**### End of Order ###**

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# EXHIBIT A

**12-46959: William Paul Burch**

[361] *Debtor's Motion for Reconsideration Under Bankruptcy Rule 9023 And For New Hearing Or To Alter/Amend Order Converting Case To Chapter 7 And For Relief Under Bankruptcy Rule 9024* (Motion to Reconsider Order Converting Case from 11 to 7).

- [370] **Order denying as without merit**

[379] *Notice of Appeal* (Appeal of Order Converting Case from 11 to 7); [387] *Amended Notice of Appeal*

- [445] **DC order dismissing appeal ([422] consolidated); [446] Final Order**

[380] *Appellant's Motion for Stay Pending Appeal* (Motion to stay enforcement of order converting 11 to 7 pending appeal)

- [436] **Order Denying as without merit**

[392] *Amended Notice of Appeal (for Docket #370)* (Appeal of order denying Motion to Reconsider Order Converting from 7 to 11)

- [445] **DC order dismissing appeal ([422] consolidated); [446] Final Order**

[393] *Notice Of Appeal (For Docket #371)* (Appeal of Order Denying Motion to Stay Order Converting case to Chapter 7)

- [445] **DC order dismissing appeal ([422] consolidated); [446] Final Order**

[510] *Motion for Recusal of Chapter 7 Trustee Areya Holder*

- [593] **Order denying as without merit**

[511] *Motion for Recusal of Judge Mullins (sic)*

- [528] **Order denying as without merit**

[519] *Motion for Stay Until Recusal of Judge Mullins (sic) is Determined*

- [531] **Order denying as without merit**

[520] *Request for Judge Substitution in Hearing of Motion for Recusal of Judge Mullins (sic)*

- [530] **Order denying as without merit**

[542] *Notice of Appeal* (Appeal of Order Denying Motion for Recusal)

- [684] **Order from DC affirming denial of motion to recuse; [685] Final Judgment**

[543] *Request for Waiver of Appeal fees*

- [550] **Order denying as without merit**

[544] *Request for Release of Money Owed to Worldcrest Auctions, Inc.*

- [594] **Order denying as without merit**

[598] *Notice of Appeal* (appeal of *Order Denying Motion for Recusal of Trustee*); amended [610]

- [616] **DC order dismissing appeal for want of filing fees and frivolousness**; [617]

[611] *Motion to Waive Filing Fees for Appeal of Trustee Recusal*

- [677] **Order denying as without merit**

[680] *Motion to Reconsider Order and Certification Denying Request for Waiver of Appeal*  
(*Motion to reconsider Order Denying Motion to Waive Filing fees*)

- [681] **Order denying as without merit**

[704] *Plaintiff's Motion for Leave to Close Bankruptcy Case*

- **Denied on record as without merit**

[738] *Plaintiff's Motion for Rehearing on Claims*

- [762] **Order denying motion as without merit**

[769] *Debtor's Motion for Reconsideration of Order Granting Trustee's Motion to Pay Post-Petition Administrative Tax Expenses of the Estate (DK 765)*

- [770] **Order denying motion as without merit**

[789] *Motion to Proceed In Forma Pauperis Issues of Appeal* (Appeal noticed at [776])

- [790] **Order denying as without merit**

[801] *Plaintiff's Motion for Continuance of Hearing*

- [804] **Order denying without merit**

**18-04172: Burch v. Specialized Loan Servicing**

[1-3] *Plaintiff's Original Petition, Request for Jury Trial and Request for Disclosure*

- [51] **Order granting Motion to Dismiss [39]**
- [52] **Order granting Motion to Dismiss [50]**
- [53] **Order granting Motion to Dismiss [41]**
- [61] **Order granting Motion to Dismiss [46]**

[5] *Plaintiff's Motion for Remand to State Court Pursuant to 28 USC § 1446*

- [17] **Order denying as without merit**

[21] *Plaintiff's Motion for Reconsideration to Remand*

- [27] **Order denying as without merit**

[44] *Plaintiff's Emergency Motion to Deny Hearing for Defendant Bonial & Associates, P.C. and Michael Burns Motion to Dismiss*

- **Denied on the record as without merit**

[45] *Plaintiff's Emergency Motion to Deny Hearing for Defendant AH Mortgage Acquisitions Motion to Dismiss Pursuant to Rule 12(b)(6)*

- **Denied on the record as without merit**

[59] *Notice of Appeal* (Appeal of order dismissing Bonial and Burns) (amended [65])

- [154] **DC order affirming dismissal; [155] Final Judgment**

[68] *Notice of Appeal* (Appeal of order dismissing WL Ross)

- [166] **DC order dismissing appeal for lack of jurisdiction; [167] Final Judgment**

[74] *Motion to Waive Filing fees for Appeal of Dismissal*

- [109] **Order denying waiver as without merit**

[75] *Motion to Waive Filing fees for Appeal of Dismissal*

- [109] **Order denying waiver as without merit**

[77] *Notice of Appeal* (appeal of order dismissing American Servicing Co. and Deutsche)

- [162] **DC order affirming dismissal; [163] Final Judgment**

[78] *Motion to Waive Filing fees for Appeal of Dismissal*

- [109] **Order denying waiver as without merit**

[80] *Notice of Appeal* (appeal of order dismissing Homeward Residential and AH Mortgage Acquisitions)

- [108] **DC Order dismissing appeal**

[81] *Motion to Waive Filing fees for Appeal of Dismissal*

- [109] **Order denying waiver as without merit**

[145] *Notice of Appeal* (appeal of order dismissing Specialized, HSBC, Hughes, Weams)

- [161] **DC order dismissing appeal as untimely**

[152] *Motion to Waive Filing fees for Appeal of Dismissal*

- [153] **Order denying waiver as without merit**



[168] *Rule 60(b) Motion to Reverse All Orders in Case*

- [169] **Order denying as without merit**

**18-04176 Burch v. Hughes Watters Askanase**

[1-3] *Plaintiff's Original Petition, Request for Jury Trial and Request for Disclosure*

- [52] **Order granting Motion to Dismiss [28]**

[13] *Motion for Recusal from Adversary No. 18-04176*

- [16] **Order denying as frivolous and without merit**

[18] *Notice of Appeal* (Appeal of order denying motion for recusal)

- [44] **DC Order affirming, finding appeal frivolous; [45] Final Judgment**

[19] *Motion to Waive Filing fees for Appeal of Order Denying Motion for Recusal*

- [26] **Order denying as without merit**

[50] *Motion for Remand*

- [55] **Order denying motion as without merit**

[64] *Notice of Appeal* (appeal of dismissal of Stout, HSBC, Specialized, Hughes, Weams)

- [77] **DC Order Affirming Final Judgment; [78] Final Judgment**

[71] *Motion to Waive Filing Fees for Appeal of Dismissal*

- [72] **Order denying motion as without merit**

[80] *Motion to Reverse All Orders In Case*

- [81] **Order denying motion as frivolous and without merit**

[83] *Plaintiff's Motion for Reconsideration of order Denying Rule 60(b) Motion to Reverse All Orders in Case*

- [84] **Order denying motion as without merit**

[86] *Notice of Appeal* (Appeal of Order Denying Motion to Reconsider [84])

- [100] **DC Order affirming Order Denying Motion to Reconsider; [101] Final Judgment**

[87] *Motion to proceed In Forma Pauperis*

- [92] **Order denying motion as without merit and as appealed in bad faith**

**19-04039 Burch v. Ocwen Loan Servicing**

[12] *Motion for Remand*

- [17] **Order denying motion as without merit**

[18] *Motion for Reconsideration of Remand; amended at [20]*

- [24] **Order denying motion as without merit**

[31] *Motion to Transfer or Remand Case*

- [40] **Order denying motion as without merit**

[39] *Rule 60(b) Motion to Reverse All Orders in Case*

- [41] **Order denying motion as without merit and frivolous**

[48] *Plaintiff's Motion for Reconsideration of order Denying Rule 60(b) Motion to Reverse All Orders in Case*

- [49] **Order denying motion as without merit**

[51] *Notice of Appeal (appeal of order denying motion to reconsider [49])*

- [65] **DC Order dismissing appeal; [66] Final Judgment**

[52] *Motion to Proceed In Forma Pauperis*

- [57] **Order denying motion as without merit**

**19-04068 Burch and Burch v. Freedom Mortgage**

[2] *Plaintiff's Original Petition, Request for Jury Trial and Request for Disclosure*

- [33] **Order granting Motion(s) to Dismiss [4-1][4-5][4-9]**

[31] *Motion to Remand or Transfer Case*

- [43] **Order denying as without merit**

[40] *Rule 59(e) Motion to Amend a Judgment and Rule 60(b) Motion to Reverse All Orders and Judgments in Case*

- [47] **Order denying as without merit and frivolous**

[53] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders In Case*

- [54] **Order denying as without merit**

[63] *Notice of Appeal (appeal of final judgment)*

- [77] DC Order dismissing appeal; [78] Final Judgment

[65] *Appellant's Motion for Direct Appeal to the Fifth Circuit Court of Appeals and Statement of Issues*

- [71] Order denying as without merit

**19-04074 Burch v. Homeward Residential**

[4] *Motion for Remand*

- [16] Order denying as without merit

[8] *Motion to Transfer or Remand Case*

- [16] Order denying as without merit

[15] *Rule 60(b) Motion to Reverse All Orders in Case*

- [17] Order denying as without merit and frivolous

[22] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders in Case*

- [23] Order denying as without merit

[25] *Notice of Appeal* (appeal of order denying motion to reconsider [23])

- [40] DC Order dismissing appeal; [41] Final Judgment

[26] *Motion to Proceed In Forma Pauperis*

- [31] Order denying as without merit

**19-04075 Burch v. Homeward Residential**

[4] *Motion for Remand*

- [16] Order denying as without merit

[8] *Motion to Transfer or Remand Case*

- [16] Order denying as without merit

[15] *Rule 60(b) Motion to Reverse All Orders in Case*

- [17] Order denying as without merit and frivolous

[22] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders in Case*

- [23] Order denying as without merit

[25] *Notice of Appeal* (appeal of order denying motion to reconsider [22])

- [41] **DC Order dismissing appeal**; [42] **Final Judgment**

[26] *Motion to Proceed In Forma Pauperis*

- [31] **Order denying as without merit**

**19-04079 Burch v. JPMorgan Chase**

[4-6] *Plaintiff's Original Quiet Title Petition*

- [16] **Order granting Motion to Dismiss [4-8]**

[10] *Motion to Transfer Case*

- [15] **Order denying as without merit**

[23] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders In Case*

- [24] **Order denying as without merit**

[26] *Notice of Appeal* (appeal of order denying motion to reconsider [24])

- [41] **DC Order dismissing appeal**; [42] **Final Judgment**

[27] *Motion to Proceed In Forma Pauperis*

- [32] **Order denying as without merit**

**19-04084 Burch and Burch v. Freedom Mortgage**

[3-5] *Plaintiff's Amended Petition, Request for Jury Trial and Request for Disclosure*

- [25] **Order granting Motion for Judgment on the Pleadings [12]**

[10] *Motion to Transfer or Remand Case*

- [20] **Order denying as without merit**

[15] *Plaintiff's Motion to Show Authority*

- [23] **Order denying as without merit and frivolous**

[35] *Rule 60(b) Motion to Reverse All Orders In Case*

- [36] **Order denying as without merit and frivolous**

[38] *Notice of Appeal* (appeal of order denying motion to reverse orders); amended at [40]

- [52] **DC order dismissing appeal**; [52-1] **Final Judgment**

[47] *Motion to Proceed In Forma Pauperis*

- [48] **Order denying as without merit**

**19-04105 Burch v. BOA**

[2] *Plaintiff's Original Quiet Title Petition*

- [13] **Order granting Motion to Dismiss [2-5]**

[7] *Motion to Transfer or Remand Case*

- [12] **Order denying as without merit**

[10] *Plaintiff's Motion to Show Authority*

- [17] **Order denying as frivolous and moot**

[11] *Rule 60(b) Motion to Reverse All Orders In Case*

- [16] **Order denying as without merit and frivolous**

[24] *Notice of Appeal* (appeal of order dismissing adversary [13] and Final Judgement [14])

- [54] **DC order dismissing appeal; [55] Final Judgment**

[26] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders In Case*

- [37] **Order denying as without merit**

[27] *Notice of Appeal* (appeal of final judgment)

- [56] **DC order dismissing appeal; [57] Final Judgment**

[41] *Motion to Proceed In Forma Pauperis*

- [48] **Order denying as without merit**

**19-04106 Burch v. Chase Bank of Texas**

[2] *Plaintiff's Original Quiet Title Petition*

- [5] **Order granting Motion to Dismiss [2-5]**

[9] *Rule 60(b) Motion to Reverse All Orders In Case*

- [10] **Order denying as without merit and frivolous**

[21] *Motion to Proceed In Forma Pauperis*

- [23] **Order denying motion as without merit**

[30] *Motion to Stay*

**19-04120 Burch v. Chase Bank of Texas**

[2] *Plaintiff's Original Quiet Title Petition*

- [5] **Order granting Motion to Dismiss [2-6]**

[11] *Rule 60(b) Motion to Reverse All Orders In Case*

- [12] **Order denying as without merit and frivolous**

[14] *Notice of Appeal* (appeal of Order denying motion to reverse all orders); amended at [16]

- [28] **DC Order dismissing appeal and awarding costs and expenses**

[23] *Motion to Proceed In Forma Pauperis*

- [24] **Order denying as without merit**

**20-04007 Burch and Burch v. Freedom Mortgage**

[1-2] *Plaintiff's Original Petition*

- [15] **Order granting Motion for Judgment on the Pleadings [6]**

[4] *Motion for Remand*

- [12] **Order denying as without merit**

[9] *Plaintiff's Motion to Show Authority*

- [13] **Order denying as without merit and frivolous**

[11] *Rule 60(b) Motion to Reverse All Orders in Case*

- [14] **Order denying as without merit and frivolous**

[22] *Plaintiff's Motion for Reconsideration of Order Denying Rule 60(b) Motion to Reverse All Orders in Case*

- [23] **Order denying motion as without merit**

[25] *Notice of Appeal* (appeal of order denying motion to reconsider 60(b))

- [39] **DC order dismissing appeal; [40] Final Judgment**

[26] *Motion to Proceed in Forma Pauperis*

- [31] **Order denying motion as without merit**

**20-04029 Burch v. Wells Fargo**

[7] *Motion for Remand*

- [8] Order denying motion as without merit

**20-04031 Burch v. America's Servicing Company**

[5] *Motion for Remand*

- [6] Order denying motion as without merit

**20-04037 Burch v. BOA**

[3] *Plaintiff's Original Petition*

- [6] Order granting Motion to Dismiss [3-8]

[11] *Motion to Proceed In Forma Pauperis*

- [17] Order denying as without merit

**20-04039 Burch v. America's Servicing Company**

[7] *Motion to Remand*

- [10] Order denying motion as without merit

**20-04040 Burch v. America's Servicing Company**

[7] *Motion to Remand*

- [10] Order denying motion as without merit

## **APPENDIX F**





CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed July 9, 2020

*Mark X. Mullin*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FT. WORTH DIVISION

In re:

William Paul Burch,

Debtor.

§  
§  
§  
§  
§  
§  
§

Case No. 12-46959-mxm-7

Chapter 7

William Paul Burch,

Plaintiff,

v.

JPMorgan Chase Bank, N.A.,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

Adversary No. 19-04106-mxm

**ORDER DENYING DEFENDANT FREEDOM MORTGAGE CORP'S  
MOTION TO DESIGNATE PLAINTIFF A VEXATIOUS LITIGANT  
AND APPLICATION FOR PRE-FILING INJUNCTION**

[Relates to Adv. ECF No. 22]

On July 7, 2020, the Court held a hearing on the *Defendant Freedom Mortgage Corp.'s Motion to Designate Plaintiff a Vexatious Litigant and Application for Pre-Filing Injunction*<sup>1</sup> (the "**Motion**") filed by Freedom Mortgage Corporation ("**FMC**"). The Court has considered the Motion, the Response<sup>2</sup> filed by the Debtor, and the arguments of the parties. For the reasons stated on the record at the hearing (which are incorporated into this Order by reference), the Court **DENIES** the Motion without prejudice to FMC's right to refile such a motion in an appropriate proceeding.

**### End of Order ###**

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<sup>1</sup> Adv. ECF No. 22.

<sup>2</sup> *Plaintiff's Objection to Freedom Mortgage Corp.'s Motion to Designate Plaintiff a Vexatious Litigant and Application of Pre-Filing Injunction* [Adv. ECF No. 29] (the "**Response**").

## **APPENDIX G**

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 16, 2021

Lyle W. Cayce  
Clerk

---

No. 19-11197  
Summary Calendar

---

WILLIAM PAUL BURCH,

*Plaintiff—Appellant,*

*versus*

FREEDOM MORTGAGE CORPORATION,

*Defendant—Appellee.*

---

Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:19-CV-629

---

Before DENNIS, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:\*

William Paul Burch moves for leave to appeal in forma pauperis (IFP) from the district court's dismissal, under Federal Rule of Civil Procedure 12(b)(6), of his removed state court action against Freedom Mortgage Corporation (Freedom). That court held that Burch's action

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-11197

based on an allegedly fraudulent lien under Texas Civil Practice and Remedies Code § 12.003 was untimely under the four-year limitation period of Texas Civil Practice and Remedies Code § 16.004(a) because Burch knew or believed that Freedom had breached a Chapter 11 bankruptcy plan when Freedom foreclosed on Burch's property in January 2011. The court accordingly denied Burch's contemporaneous motion for summary judgment.

To proceed IFP on appeal, a movant must demonstrate both financial eligibility and the existence of a nonfrivolous appellate issue. 28 U.S.C. § 1915(a)(1); *Carson v. Polley*, 689 F.2d 562, 586 (5th Cir. 1982). A movant does not need to be absolutely destitute to obtain IFP status. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). But there is no "bright line" test for determining when a court should grant IFP status, and the court's decision is reviewed for abuse of discretion. *Green v. Estelle*, 649 F.2d 298, 302 (5th Cir. 1981). We may dismiss an appeal sua sponte if it "is frivolous and entirely without merit." 5TH CIR. R. 42.2.

The district court did not abuse its discretion by denying IFP status based on Burch and his wife having sufficient income to pay the filing fees. We also take judicial notice of records indicating that Burch and his wife own at least one home, although Burch listed the value of his home and other real estate as zero on the affidavit accompanying his IFP application.

Burch's contention that the four year limitation period does not apply because Freedom's lien was void from its inception lacks arguable merit. Burch's fundamental contention here and in the district court has been that Freedom's lien became void when Freedom allegedly breached the bankruptcy plan. Burch's various contentions that the limitation period was tolled by an unrelated 2012 bankruptcy are based on his misunderstanding or misapplication of law and are devoid of merit.

No. 19-11197

Because Burch is financially ineligible to proceed IFP and identifies no non-frivolous issue for appeal his IFP motion is denied and the appeal is dismissed as frivolous.

This court has already issued Burch a sanction warning and noted that the bankruptcy court has “deemed Burch a vexatious litigant.” *Burch v. Freedom Mtg. Corp. (Matter of Burch)*, 835 F. App’x 741, 749 (5th Cir. 2021). His arguments reflect little concern for actually understanding of the law and are fairly characterized as careless enough to be vexatious. Moreover, as of this writing Burch has initiated at least 34 appeals in this court since 2019. So far, none have been found to have merit, and several have been terminated without an opinion. Burch also has several more IFP motions pending in other cases.

Burch’s attempt to litigate multiple frivolous actions and appeals while proceeding IFP is troublesome in light of our recent sanction warning and the possibility that he has not been wholly forthcoming about his financial status. He is therefore warned again that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court’s jurisdiction. He is admonished to review any pending appeals and to withdraw any appeals that are frivolous. He is further warned that false statements in IFP applications can invite additional sanctions, including dismissal, monetary penalties under Federal Rule of Civil Procedure 11, payment of his opponents’ costs and attorneys’ fees, and revocation of pauper status even if he might still qualify as a pauper. *See Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 441 & n.7 (5th Cir. 2016); *Lay v. Justices-Middle Dist. Court*, 811 F.2d 285, 286 (5th Cir. 1987).

No. 19-11197

IFP MOTION DENIED; APPEAL DISMISSED AS  
FRIVOLOUS; SANCTION WARNINGS ISSUED.

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

June 16, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 19-11197 Burch v. Freedom Mortgage  
USDC No. 4:19-CV-629

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.



Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "W. M. Jett", with a long horizontal flourish extending to the right.

By: \_\_\_\_\_  
Whitney M. Jett, Deputy Clerk

Enclosure(s)

Mr. Marc James Ayers  
Mr. William Paul Burch  
Mr. Stephen Colmery Parsley  
Mr. Sam David Smith

## **APPENDIX H**

# **Texas Business and Commerce Code Title 3**

## **Insolvency, Fraudulent Transfers, and Fraud,**

### **Chapter 26 Statute of frauds (TBCC)**

#### **Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING.**

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

- (1) in writing; and
- (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

- (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
- (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
- (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
- (4) a contract for the sale of real estate;
- (5) a lease of real estate for a term longer than one year;
- (6) an agreement which is not to be performed within one year from the date of making the agreement;
- (7) a promise or agreement to pay a commission for the sale or purchase of:
  - (A) an oil or gas mining lease;
  - (B) an oil or gas royalty;
  - (C) minerals; or
  - (D) a mineral interest; and
- (8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care

provider as defined in Section 74.001, Civil Practice and Remedies Code.  
This section shall not apply to pharmacists.

TBCC Section 26.02 provides:

Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING.

(a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002, Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds \$50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties.

---

"Debtor or Obligor      Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

# **APPENDIX I**

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

#### SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
- (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.



Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

- (A) finally determined adversely to the plaintiff;
- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
- (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

- (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
- (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the

final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE.

(a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of

security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local

administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9,  
eff. September 1, 2013.



## **APPENDIX J**

## Erie Doctrine

The Erie doctrine is a binding principle where federal courts exercising diversity jurisdiction apply federal procedural law of the Federal Rules of Civil Procedure, but must also apply state substantive law.

### Pre-Erie Doctrine:

The Erie doctrine derives from the landmark 1938 U.S. Supreme Court case, *Erie Railroad Co. v. Tompkins* (1938). The Rules Decision Act of 1789, codified as 28 U.S.C. § 1652, laid the foundation for how federal courts should operate when exercising diversity jurisdiction, and provided that the “laws of the several states” apply in federal court. Prior to *Erie*, federal courts followed *Swift v. Tyson* (1842), which interpreted the “laws of the several states” to include only state statutes and local custom, and not the state common law. This meant that federal courts were free to ignore state substantive law established by common law through that state’s judiciary when exercising diversity jurisdiction and could apply what they saw as the true general common law. In *Swift*, for example, the Court disregarded New York commercial law established by the state judicial precedent, and instead saw its role as “express[ing] our own opinion of the true result of the commercial law upon the question.” The proper law to apply, the Court believed, “may be truly declared in the languages of Cicero, adopted by Lord Mansfield in *Luke v. Lyde* [citation omitted], to be in a great measure not the law of a single country only, but of the commercial world.” This reasoning reflects the view that there was one true and accurate body of laws that can be ascertained regardless of a polity’s laws, i.e. natural law.

### *Erie Railroad Co. v. Tompkins*:

The U.S. Supreme Court in *Erie Railroad Co. v. Tompkins*, is an opinion by Justice Brandeis, departed from *Swift* and held that the language in the Rules Decision Act stating that federal courts when exercising diversity jurisdiction shall apply the “laws of the several states” includes state common law. Specifically, in *Erie*, Tompkins lost his arm while walking on a footpath alongside a railroad track when a train car’s door came loose and injured him. Under Pennsylvania state common law, Tompkins was a trespasser on the railroad’s property and could not recover,

but under the general common law he was not a trespasser and could recover. The Court refused to apply the general common law, stating "there is no federal general common law," and instead applied the law of the state where the injury occurred to deny Tompkins' recovery.

In denying that federal courts can apply federal common law, Justice Brandeis largely focused on the policy impact of allowing federal courts to apply federal common law in diversity cases. For one, it encouraged forum shopping, because, since federal and state courts applied different laws, diverse plaintiffs could select which law was more favorable to their claim. This also led to unequal administration of the law, because diverse citizens could remove state actions to federal court and potentially take advantage of more favorable laws, thus disadvantaging litigants suing in their home state. Furthermore, Justice Brandeis found constitutional issues with federal courts applying federal common law. First, it offended federalism, as the judiciary should not have the power to essentially create substantive law since Congress cannot even create substantive law in the circumstances where the judiciary applied general common law. It also offended principles of separation of power, as Congress is the branch tasked with making law, and the judiciary usurped lawmaking power by applying federal common law as they saw fit. In general, Brandeis's opinion signals a shift from federal courts shifting from applying natural law to adopting a perspective of legal realism.

#### Post-Erie Doctrine:

While the principle that federal courts must apply the substantive law of the state where they are located is relatively straightforward, the delineation of substantive law and procedural law is hardly so simple and presented post-Erie courts with many challenges. An early case, *Sibbach v. Wilson*, ruled that a court ordering a medical examination under the Federal Rules of Civil Procedure was truly procedural, finding that it fell under the "judicial process for enforcing rights and duties recognized by substantive law, and for justly administering remedy and redress for disregard or infraction of them." Later cases focused on whether the law has the potential to determine the outcome of the litigation. For example, in *Guaranty Trust Co. v. York*, the U.S. Supreme Court was concerned with whether ignoring a state statute of limitations would significantly alter the outcome of litigation and held that statutes of limitations are substantive law. Specifically, the Court stated that "[t]he outcome of the litigation in the federal court should be substantially the same. . . as it would be if tried in a State court." Subsequent courts

have narrowed this analysis, focusing on whether applying federal procedural law to an issue would determine the outcome in light of its potential impact on forum shopping and inequitable administration of the laws—i.e. the aims of the Erie Doctrine. In *Hanna v. Plumer*, the U.S. Supreme Court ruled that the federal rules of service trumped the state's requirement of in-hand service for the type of claim because the federal rule in question was arguably procedural and the federal service rule would not have affected the forum choice ex ante.

## **APPENDIX K**

## 28 U.S. Code § 1915 - Proceedings in forma pauperis

(a)

(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.