APPENDICES

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 20-10850

IN THE MATTER OF WILLIAM PAUL BURCH

Debtor,

WILLIAM PAUL BURCH,

Appellant,

versus

BANK OF AMERICA, N.A.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-793

ON PETITION FOR REHEARING

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

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

APPENDIX B

APPENDIX B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
May 5, 2022
Lyle W. Cayce
Clerk

No. 20-10850
Summary Calendar

IN THE MATTER OF WILLIAM PAUL BURCH

Debtor,

WILLIAM PAUL BURCH,

Appellant,

versus

BANK OF AMERICA, N.A.,

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-793

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

PER CURIAM:*

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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 from the district court's denial of his motion for "reconsideration" of his in forma pauperis (IFP) status, which followed the district court's dismissal, for failure to pay the filing fee, of his appeal of a judgment of the bankruptcy court for the Northern District of Texas. Burch has filed a motion to remand the matter to the district court, stating that he is now able to pay the filing fee because his financial situation has improved. Because the record does not establish that the district court issued a statement or indicative ruling in accordance with Federal Rule of Civil Procedure 62.1 and Federal Rule of Appellate Procedure 12.1, upon which Burch relies, his motion for remand is denied. *See* FED. R. APP. P. 12.1; FED. R. CIV. P. 62.1; *cf. Moore v. Tangipahoa Par. Sch. Bd.*, 836 F.3d 503, 504 (5th Cir. 2016). Burch's motion to withdraw the motion to remand is also denied.

Additionally, Burch moves to proceed 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, this court will dismiss it. *See* 28 U.S.C. § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

Even before Burch's concessions regarding his improved financial situation, we held that Burch was not financially eligible to proceed IFP on appeal. *See Burch v. Freedom Mortg. Corp. (Matter of Burch)*, 835 F. App'x 741, 749 (5th Cir.), *cert. denied*, 142 S. Ct. 253 (2021), *rehearing denied*, No. 21-5069, 2021 WL 5763451 (U.S. Dec. 6, 2021). Burch's conclusional assertions, without cogent legal argument, fail to establish the required existence of a nonfrivolous issue for appeal. *See Carson*, 689 F.2d at 586. Accordingly, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous. *See* § 1915(e)(2)(B)(i); 5TH CIR. R. 42.2.

In prior instances, we have issued sanctions warnings and directed Burch to review his pending appeals and withdraw any that were frivolous. *See, e.g.*, *Burch v. Freedom Mortg. Corp.*, 850 F. App'x 292, 294 (5th Cir. 2021); *Matter of Burch*, 835 F. App'x at 749. Because Burch failed to heed our warnings, 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 above-mentioned monetary sanctions, 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 the jurisdiction of this court 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; SANCTION 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,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:20-cv-00793-P**
	§	
BANK OF AMERICA, N.A.,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Plaintiff William Paul Burch's Notice of Appeal (ECF No. 1), filed July 23, 2020. It has come to the attention of the Court, that Mr. Burch has failed to pay a filing fee. *See* ECF Case Notes. By the Court's Count, since 2018, Mr. Burch has filed 29 separate Bankruptcy Court appeals. Mr. Burch has filed motions to proceed in *forma pauperis* in each of these appeals up until his July 2020 filings. Thus, Mr. Burch is clearly well versed in the Court's filing fee procedures and requirements, and his lack of payment is not attributable to a lack of knowledge.

"The right of access to the courts is neither absolute nor unconditional. *In re Owens*, 458 F. App'x 836, 838 (11th Cir. 2012). Conditions on access are necessary to preserve judicial resources for all persons. *Id.* at 1096. "As the Supreme Court has noted, filing fees in theory discourage frivolous lawsuits and thus help allocate judicial resources to more meritorious cases." *Id.* Accordingly, District Courts are empowered "to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986).

Based on the foregoing, due to failing to pay the required filing fee, the Court finds that Mr. Burch's appeal should be and hereby is **DISMISSED WITHOUT PREJUDICE.**

SO ORDERED on this **31st day** of **July, 2020**.

APPENDIX D

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

Signed July 17, 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,	§	Case No. 12-46959-mxm-7
	§	
Debtor.	§	Chapter 7
	§	

	§	
William Paul Burch,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 20-4043-mxm
	§	(Formerly District Court Civil Action No.
Bank of America, N.A.,	§	4:20-cv-00387-O)
	§	
Defendant.	§	
	§	
	§	
	§	

ORDER GRANTING MOTION TO DISMISS

[Relates to Adv. ECF No. 3-8]

Before the Court is the motion to dismiss (the "***Motion to Dismiss***") under Federal Civil Rules 12(b)(6) and 9(b), filed by defendant Bank of America, N.A. ("***BANA***").[1] BANA asks the Court to dismiss for failure to state a claim *Plaintiff's Original Petition* (the "***Complaint***"),[2] filed by plaintiff William Paul Burch (the "***Plaintiff***" or the "***Debtor***"). For the reasons described below, the Court agrees that the Complaint fails to state a claim upon which relief can be granted, so the Motion to Dismiss is granted.

I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

II. PROCEDURAL BACKGROUND[3]

A. The Debtor's bankruptcy filings and confirmed plans

On December 1, 2008, the Debtor and Juanita Burch filed for Chapter 11 bankruptcy (the "***2008 Bankruptcy Case***") to prevent foreclosure on multiple properties, including property located at 1053 Briarwood Lane, DeSoto, Texas (the "***Briarwood Property***").[4]

---

[1] *Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint with Incorporated Memorandum of Law*, Adv. ECF No. 3-8 (Civil Action Doc. No. 7); *see also Appendix in Support of Defendant Bank of America, N.A.'s Motion to Dismiss Plaintiff's Complaint*, Adv. ECF No. 3-9 (Civil Action Doc. No. 8).

[2] Adv. ECF No. 3, at 11/30 (Civil Action Doc. No. 1-1).

[3] The documents cited in this section are either referred to in, or attached to, the Complaint, or are matters of which this Court can take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2008) (directing courts to "consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice"); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) ("[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.").

[4] *See* Case No. 08-45761-RFN-11.

On February 4, 2009, BAC Home Loans Servicing, L.P. FKA Countrywide Home Loans Servicing, L.P., its assigns and/or successors in interest filed proof of claim number 55-1 in the 2008 Bankruptcy Case, asserting a claim for $ 105,884.14 secured by a mortgage on the Briarwood Property.[5] Various loan documents were attached to the proof of claim, including a note and deed of trust (together, the "***Briarwood Loan Documents***").

On December 9, 2009, the Court entered an *Order Confirming Debtor's Third Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Confirmation Order***"),[6] which confirmed the Debtors' *Fourth Amended Plan of Reorganization* (the "***2008 Bankruptcy Case Chapter 11 Plan***")[7] that is attached as Exhibit A to the 2008 Bankruptcy Case Confirmation Order. Section 5.9 of the 2008 Bankruptcy Case Chapter 11 Plan provided for treatment of the claims of "Countrywide Home Loans," which the plan listed as the "mortgage holder" on several properties.[8] The specific treatment as to the Briarwood Property was as follows:

> Based upon the Debtors' current value of the Briarwood property, the Debtors will enter into a New Briarwood Note in the original principal amount of $82,000 ("New Briarwood Note"). The New Briarwood Note shall bear interest at the rate of 5% per annum. The Debtors shall pay the New Briarwood Note in 360 equal monthly payments of $413.35 commencing on the Effective Date.[9]

No party appealed the 2008 Bankruptcy Case Confirmation Order. The 2008 Bankruptcy Case was closed on September 11, 2012.

---

[5] Claim 29-1, Case No. 08-45761-RFN-11.

[6] ECF No. 246, Case No. 08-45761-RFN-11.

[7] *Fourth Amended Plan of Reorganization of William & Juanita Burch Pursuant to Section 1125 of the Bankruptcy Code Dated October 16, 2009*, ECF No. 244, Case No. 08-45761-RFN-11.

[8] 2008 Bankruptcy Case Chapter 11 Plan § 5.9.

[9] *Id.*

On December 28, 2012, Burch filed for Chapter 13 bankruptcy (the "***2012 Bankruptcy Case***").[10] The 2012 Bankruptcy Case was converted to Chapter 11 on December 23, 2013.[11]

On January 5, 2016, the Plaintiff filed an amended Chapter 11 plan of reorganization (the "***2012 Bankruptcy Case Chapter 11 Plan***"),[12] and on February 1, 2016, the Court entered an order confirming that plan (the "***2012 Bankruptcy Case Confirmation Order***").[13] Although BANA did not file a proof of claim in the 2012 Bankruptcy Case, the 2012 Bankruptcy Case Chapter 11 Plan provided the following treatment of the secured claim of BANA:

Class	Claim No.	Collateral	Amount of claim
3	No claim filed	1053 Briarwood	No claim filed

. . . .

> Within six months from the effective date of the plan Debtor shall sell the property located at 1053 Briarwood, DeSoto, Texas subject to the lien and pay Bank of America the sum of $74,060.00. Any proceeds from the sale that exceed the amount paid to the mortgage company, less the closing costs and property taxes shall be paid to Debtor to compensate Debtor for repairs, stating costs, marketing of the property and other miscellaneous expenses.
>
> If the property is not sold within six months of the effective date of the plan the mortgage company shall be allowed to take all actions necessary to foreclose its lien on the property and to take possession of the property. The foreclosure shall be considered payment in full satisfaction of its lien.
>
> If the property is not sold and the mortgage company has failed to exercise its right to foreclose its lien on the property as set out above for a period of one year after the expiration of the six month sale period, Debtor shall have the option to

[10] *Voluntary Petition*, ECF No. 1, Case No. 12-46959.

[11] *Order Converting Case from Chapter 13 to Chapter 11*, ECF No. 100, Case No. 12-46959.

[12] *William Paul Burch's Amended Plan of Reorganization*, ECF No. 186, Case No. 12-46959.

[13] *Order Confirming Debtor's Plan of Reorganization*, ECF No. 188, Case No. 12-46959.

> retain the property by paying the sum of $74,060.00 with four percent (4%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month, eighteen (18) months after the effective date of the Plan. The mortgage company would retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.
>
> If the mortgage company refuses to accept the payments for a period of six months from the date the first payment becomes due then the mortgage company shall forfeit its lien on the subject property and its debt shall be satisfied in full and the mortgage company shall have no further claims against the Debtor or the subject property.[14]

Nothing in the 2012 Bankruptcy Case Chapter 11 Plan or Confirmation Order provided, or even suggested, that the Debtor was retaining any causes of action related to the Briarwood Property, including any claims related to language in the 2008 Bankruptcy Case Chapter 11 Plan or related to events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

The 2012 Bankruptcy Case was converted to Chapter 7 on January 30, 2018 based in part on the Plaintiff's material defaults under the 2012 Bankruptcy Case Chapter 11 Plan.[15]

---

[14] 2012 Bankruptcy Case Chapter 11 Plan, at 12-13.

[15] *Order Granting Specialized Loan Servicing LLC's Motion to Dismiss with Prejudice or to Convert to Chapter 7*, ECF No. 354, Case No. 12-46959; *see also* ECF No. 390, Transcript of 1/25/18 hearing on conversion, at 46-51.

B. The sale and transfer of the Briarwood Property

On August 19, 2016, the Debtor filed a motion to sell the Briarwood Property free and clear of liens.[16] On October 25, 2016, the Court entered an amended order approving the sale, which in part provided for a payoff of the loan in the amount of $76,060.00 ("***Amended Sale Order***").[17]

On June 5, 2018, the Debtor, by and through the Chapter 7 bankruptcy trustee Areya Holder Aurzada, transferred the Briarwood Property to Okie Rye, LLC by virtue of a special warranty deed (the "***SWD to Rye***")[18] who then subsequently transferred the Briarwood Property to AGS Wynn, LLC on June 6, 2018 by virtue of a special warranty deed (the "***SWD to AGS Wynn***").[19] Finally, on November 12, 2019, AGS Wynn transferred the Briarwood Property to Huey P. Stevenson, Jr. and Faye M. Stevenson (the "***Stevensons***") via a warranty deed (the "***Warranty Deed***").[20]

The public records indicate that the Stevensons are the current owners of the Briarwood Property, and neither the Debtor nor BANA has any interest in Briarwood Property.

---

[16] Case No. 12-46959, ECF No. 201.

[17] Case No. 12-46959, ECF No. 220; Def.'s App. at 133.

[18] Def.'s App. at 137. The Court may take judicial notice of the SWD to Rye because it was recorded on June 13, 2018 in the Official Public Records of Dallas County, Texas under Instrument No. 201800155452. *See Funk v. Stryker*, 631 F.3d 777, 783 (5th Cir. 2011).

[19] Def.'s App. at 145. The Court may take judicial notice of the SWD to AGS Wynn because it was recorded on June 12, 2018 in the Official Public Records of Dallas County, Texas under Instrument No. 201800154168. *See Funk*, 631 F.3d at 783.

[20] Def.'s App. at 148. The Court may take judicial notice of the Warranty Deed because it was recorded on November 18, 2019 in the Official Public Records of Dallas County, Texas under Instrument No. 201900310698. *See Funk*, 631 F.3d at 783.

C. The Plaintiff's claims against BANA related to the Briarwood Property and BANA's related motion to dismiss

On March 25, 2020, the Debtor filed his Complaint[21] in the 236th Judicial District Court of Tarrant County, Texas under Cause No. 236-316109-20 (the "***State Court Lawsuit***"). In the Complaint, the Plaintiff asserted claims against BANA (i) under Texas Civil Practice and Remedies Code section 12.003 for an allegedly fraudulent lien; (ii) under Texas Business and Commerce Code section 27.01 for statutory fraud; (iii) for breach of contract; (iv) for trespass to try title; (v) under Texas Civil Practice and Remedies Code section 41.008 for gross negligence and punitive damages; and (vi) although not a separate count, for violations of the 2008 Bankruptcy Case Chapter 11 Plan and 2008 Bankruptcy Case Confirmation Order. All of the Plaintiff's claims stem from the servicing of the mortgage encumbering the Briarwood Property. The Plaintiff also sought actual and punitive damages, pre- and post-judgment interest, and attorney's fees.

On April 27, 2020, BANA removed the lawsuit to the United States District Court for the Northern District of Texas, Fort Worth Division, based on diversity jurisdiction under 28 U.S.C. § 1332,[22] thereby initiating District Court Civil Action No. 4:20-cv-00387 (the "***Civil Action***").

On May 4, 2020, BANA filed its Motion to Dismiss, asking the District Court to dismiss the Complaint pursuant to Federal Civil Rules 12(b)(6) and 9(b).

---

[21] Found at Adv. ECF No. 3, at 11/30.

[22] *Notice of Removal*, Found at Adv. ECF No. 3, at 1/30.

On May 24, 2020, the Plaintiff filed his response[23] to the Motion to Dismiss, and on June 1, 2020, BANA filed its reply.[24]

On May 21, 2020, United States Magistrate Judge Hal R. Ray, Jr. recommended to the District Court that the Civil Action be referred to this Court based on the Plaintiff's Chapter 7 bankruptcy.[25] On June 2, 2020, based on that recommendation, the District Court referred the Civil Action to this Court.[26]

The Court has reviewed the parties' filings,.and the matter is now ripe for decision.

III. ANALYSIS

Under the applicable standard for Federal Civil Rule 12(b)(6) motions, the Court must review the Complaint by "accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff."[27] Viewing the facts in the light most favorable to the Plaintiff, the Court must dismiss the Complaint if it fails "to state a claim to relief that is plausible on its face."[28] Applying this standard, the Court will review each count in the Complaint to determine whether any count states a plausible claim for relief.

---

[23] *Plaintiff's Response to Defendant[']s 12(b)(6) Motion*, found at Adv. ECF No. 4-8 (Civil Action No. 17).

[24] *Defendant Bank of America, N.A.'s Reply Brief in Support of its Motion to Dismiss Plaintiff's Complaint* (the "***Reply***"), found at Adv. ECF No. 4-9 (Civil Action Doc. No. 19).

[25] *Findings, Conclusions, and Recommendation of the United States Magistrate Judge*, Adv. ECF No. 4-6 (Civil Action Doc. No. 15).

[26] *Order Accepting Findings, Conclusions, and Recommendation of the United States Magistrate Judge*, Adv. ECF No. 1 (Civil Action Doc. No. 20).

[27] *Stokes v. Gann*, 498 F. 3d 483, 484 (5th Cir. 2007).

[28] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

A. Preliminary observations and conclusions: Plaintiff's erroneous bankruptcy-related arguments

Before reaching the specific counts, the Court first will address allegations in the Complaint that infect the entire document with the Plaintiff's erroneous notions of an invalid or void note and deed of trust on the Briarwood Property. Throughout the Complaint, the Plaintiff alleges that new mortgage notes were to be delivered to the Plaintiff. Paragraph 21 of the Complaint then cites section 13.4 of the 2008 Bankruptcy Case Chapter 11 Plan for the proposition that "if the mortgage companies failed to produce a new mortgage note, defying the Court Order, they would lose their lien as compensation to Bill."[29]

The Plaintiff's interpretation of the 2008 Bankruptcy Case Chapter 11 Plan is mistaken, and equally important, his arguments are foreclosed by the 2012 Bankruptcy Case Chapter 11 Plan and Confirmation Order.

Plaintiff's erroneous interpretation of 2008 Bankruptcy Case Chapter 11 Plan. First, the plan provisions do not support the Plaintiff's allegation that there will be no claim or lien on the Briarwood Property if new loan documents are not signed within six months. It is true that section 5.9 of the plan states that "the Debtors will enter into a New Briarwood Note," but the plan does not require that separate loan documents be drawn up. Instead, the 2008 Bankruptcy Case Chapter 11 Plan provides that "all Claims and Debts will receive the treatment afforded in Articles of this Plan,"[30] and with respect to the "Allowed Secured Claims of Countrywide Home Loans," the plan specifies the interest rate on the debt, the number of monthly payments (360), and the monthly

[29] Complaint ¶ 21 & n.3 (attaching as Exhibit C page 18 of the 2008 Bankruptcy Case Plan; section 13.4 of that plan is the only provision that mentions six months).

[30] 2008 Bankruptcy Case Chapter 11 Plan § 2.1.

payment amount ($413.35).[31] The plan also contains notice and cure provisions dealing with payment defaults by the Plaintiff under the plan.[32] Moreover, the letter the Plaintiff alleges he and Juanita Burch sent on January 15, 2010 (attached to the Complaint as Exhibit F) suggests that the Plaintiff likewise believed the payment terms were addressed in the 2008 Bankruptcy Case Chapter 11 Plan.

Notwithstanding the plan provisions that dealt with payment terms and defaults, the Plaintiff cites section 13.4 of the 2008 Bankruptcy Case Chapter 11 Plan as evidence that the claim and lien on the Briarwood Property are somehow voided if new loan documents are not drafted within six months. The Plaintiff completely misconstrues this plan provision, which provides for the forfeiture of distributions that are unclaimed for six months.[33] This is a common provision in Chapter 11 plans and deals with the situation where a debtor mails a distribution check to a creditor on account of an allowed claim, and the creditor does not negotiate the check for six months. In that scenario, the distribution is forfeited back to the debtor. Section 13.4 has nothing at all to do with voiding a creditor's entire secured claim and lien.

In short, there is nothing in the 2008 Bankruptcy Case Chapter 11 Plan that provides for the voiding or disallowance of the claim and lien related to the Briarwood Property.

The Plaintiff's arguments are foreclosed by the 2012 Bankruptcy Case Chapter 11 Plan and Confirmation Order. In the Complaint, the Plaintiff alleges various claims based on actions or inactions that occurred after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan. Even

---

[31] *Id.* § 5.9.

[32] *See id.* §§ 9.2, 9.3.

[33] 2008 Bankruptcy Case Chapter 11 Plan § 13.4 ("Any distribution pursuant to this Plan which remains unclaimed for a period of six (6) months from the due date of such distribution is forfeited.").

if such claims had merit (and as explained above, they do not), no such claims were preserved in the 2012 Bankruptcy Case Chapter 11 Plan, so the Plaintiff cannot raise them now.[34] Moreover, the 2012 Bankruptcy Case Chapter 11 Plan and Confirmation Order allowed and provided for treatment of the *very same secured claim* the Plaintiff alleges was voided six months after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

With these observations and conclusions in mind, the Court now turns to the specific counts in the Complaint.

B. Count 1: Texas Civil Practice and Remedies Code section 12.003 - Fraudulent Lien

This Count alleges that BANA violated section 12.003 of the Texas Civil Practice and Remedies Code based on alleged actions concerning the allegedly invalid note and mortgage on the Briarwood Property. To properly allege a fraudulent lien claim pursuant to Texas Civil Practice & Remedies Code § 12.002(a), a plaintiff must allege sufficient facts to demonstrate that (1) the defendant made, presented, or used a document with knowledge that it was a fraudulent court record or a fraudulent lien or claim against real or personal property; (2) the defendant intended that the document be given legal effect; and (3) the defendant intended to cause plaintiff physical injury, financial injury, or mental anguish.[35]

As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Briarwood Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of allegations that would show BANA violated sections 12.002 or 12.003 of the Texas Civil Practice and Remedies Code.

---

[34] 11 U.S.C. § 1123(b)(3)(B) (providing for the "retention and enforcement" of claims in a plan); *see also In re United Operating, LLC*, 540 F.3d 351, 355-56 (5th Cir. 2008) (debtor lacks standing to pursue claims that are not specifically and unequivocally preserved in confirmed Chapter 11 plan).

[35] TEX. CIV. PRAC. & REM. CODE § 12.002(a).

Count 1 of the Complaint fails to state a plausible claim for relief against BANA.

C. Count 2: Texas Business and Commerce Code section 27.01(a) - Statutory Fraud

The Plaintiff's "Statutory Fraud" count alleges statutory violations of section 27.01 of the Texas Business and Commerce Code based on alleged actions concerning the allegedly invalid note and mortgage on the Briarwood Property.

First, as explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Briarwood Property, so the Plaintiff's arguments about violations of the section 27.01 of the Texas Business and Commerce Code stemming from the allegedly invalid note and mortgage have no merit.

Second, to state a claim under section 27.01(a), a plaintiff must plead facts showing a false representation or false promise.[36] The Complaint is devoid of any meaningfully specific allegations that would show BANA made any such false representation or false promise.

Finally, although there is not a separate count for common-law fraud, paragraph 38 of the Complaint (found within the Count 2—Statutory fraud section) contains a reference to common-law fraud. To the extent the Plaintiff is asserting such a claim, it also fails. The elements of common-law fraud are (1) the defendant made a material representation to the plaintiff; (2) the representation was false; (3) the defendant knew the representation was false or made the misrepresentation recklessly, without knowledge of the truth; (4) the defendant intended for the plaintiff to act on the misrepresentation; (5) the plaintiff acted on the misrepresentation; and (6) the plaintiff incurred damages.[37] Any argument about fraud stemming from the allegedly invalid

[36] TEX. BUS. & COMM. CODE § 27.01(a).

[37] *In re First Merit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001).

note and mortgage have no merit, as explained above. Moreover, the Complaint is devoid of allegations that would show BANA took any action, or failed to take any action, that would constitute common-law fraud.

Count 2 of the Complaint fails to state a plausible claim for relief against BANA.

D. Count 3: Breach of Contract

This Count alleges that BANA breached a contract through its actions in connection with the allegedly invalid note and mortgage on the Briarwood Property. As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Briarwood Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of any other meaningfully specific allegations that would show BANA breached any contract.

Count 3 of the Complaint fails to state a plausible claim for relief against BANA.

E. Count 4: Trespass to Try Title

This count alleges that the Plaintiff is the fee simple owner of the Briarwood Property due to the allegedly invalid note and mortgage on the Briarwood Property. To prevail on a trespass to try title claim, a plaintiff must prove title to the property by: (1) regular chain of conveyances from the sovereign; (2) superior title out of a common source; (3) limitations; or (4) prior possession coupled with proof that possession was not abandoned.[38] A plaintiff must prevail on the superiority of his title, not on the weakness of a defendant's title.[39]

---

[38] *See Richardson v. Wells Fargo Bank, N.A.*, 873 F. Supp. 2d 800, 816 (N.D. Tex. June 29, 2012) (citing *Caress v. Lira*, 330 S.W. 3d 363, 364 (Tex. App.-San Antonio 2010, pet. denied)).

[39] *Warren v. Bank of America, N.A.*, 566 F. App'x 379, 382 (5th Cir. 2014).

As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Briarwood Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. In addition, the public record reflects that neither party to this litigation has an interest in the Briarwood Property, so there is no controversy between the parties. The Complaint is devoid of allegations that would show the Plaintiff is entitled to prevail on his trespass-to-try-title claim.

Count 4 of the Complaint fails to state a plausible claim for relief against BANA.

F. Count 5: Texas Civil Practice and Remedies Code section 41.008(a) – Gross Negligence and Punitive Damages

This Count alleges that the Plaintiff is entitled to punitive and exemplary damages against BANA due to BANA's allegedly fraudulent and malicious conduct in connection with the Briarwood Property. As explained above, nothing in the Plaintiff's bankruptcy cases invalided the debt or lien associated with the Briarwood Property, so the Plaintiff's arguments about the allegedly invalid note and mortgage have no merit. The Complaint is devoid of allegations that would show the Plaintiff is entitled to any exemplary or punitive damages.

Count 5 of the Complaint fails to state a plausible claim for relief against BANA.

G. The balance of the Complaint fails to state a claim for relief

The balance of the Complaint (including its request for pre- and post-judgment interest) is devoid of allegations that would show the Plaintiff is entitled to any relief whatsoever under any legal theory.

IV. CONCLUSION

For the reasons described above, and for the additional well-taken arguments made in the Motion to Dismiss and in the Reply, which the Court adopts, the Complaint fails to state a claim

upon which relief can be granted. Therefore, the Court **ORDERS** as follows:

1. The Motion to Dismiss [Adv. ECF No. 3-8] is **GRANTED**.

2. The Court will enter a separate final judgment consistent with this Order.

End of Order # #

APPENDIX E

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

WILLIAM PAUL BURCH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:20-cv-00387-O**
	§	
BANK OF AMERICA, NA,	§	
	§	
Defendant.	§	

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court are the Findings, Conclusions, and Recommendation of the United States Magistrate Judge (ECF No. 15), filed May 21, 2020, and Plaintiff's Reply ("Objections") (ECF No. 16), filed May 24, 2020. After reviewing all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the United States Magistrate Judge and Plaintiff's Objections, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge believes that the Findings and Conclusions of the Magistrate Judge are correct, and they are **ACCEPTED** as the Findings and Conclusions of the Court.

Plaintiff has filed objections to the Magistrate Judge's Findings, Conclusions, and Recommendation, which the Court has liberally construed in light of Plaintiff's pro se status. Following a de novo review, the Court **OVERRULES** the Objections, as none of the Objections alter the Magistrate Judge's findings and conclusion that this case is a core proceeding arising under Title 11 or arising in a case under Title 11, or, alternatively, "relates to" a bankruptcy proceeding, and, therefore, should be referred to United States Bankruptcy Judge Mark X. Mullin pursuant to the Court's Miscellaneous Order No. 33. *See* 28 U.S.C. § 157(a), (c).

Having conducted a de novo review of all relevant matters of record in this case and applicable law, the Court determines that the Findings and Conclusions of the Magistrate Judge

are correct, and they are **ACCEPTED** as the Findings and Conclusions of the Court. Accordingly, this matter is **WITHDRAWN** from the United States Magistrate Judge Hal R. Ray, Jr. and **REFERRED** to United States Bankruptcy Judge Mark X. Mullin pursuant to this Court's Miscellaneous Order No. 33.

SO ORDERED on this **2nd day** of **June, 2020**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

APPENDIX F

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

WILLIAM PAUL BURCH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Civil Action No. 4:20-cv-00387-O-BP**
	§	
BANK OF AMERICA, N.A.,	§	
	§	
Defendant.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Before the Court is the Plaintiff's Original Petition, ECF No. 1-1 at 6, filed by Plaintiff William Paul Burch ("Burch") on March 25, 2020 in the 236th Judicial District Court of Tarrant County, Texas. Defendant Bank of America, N.A. ("BOA") removed the case to this Court on April 27, 2020. ECF No. 1. On that same day, the case was automatically referred to the undersigned for pretrial management pursuant to Special Order 3. ECF No. 4.

The Court is aware that Burch has previously filed for bankruptcy protection. On July 2, 2019, the undersigned entered Findings, Conclusions, and Recommendation in another foreclosure-related case, *Burch v. Freedom Mortgage Corp.*, No. 4:18-cv-01015-O-BP, recommending that United States District Judge Reed O'Connor withdraw the case from the undersigned and refer it to United States Bankruptcy Judge Mark X. Mullin, the presiding judge in Burch's bankruptcy case. By Order dated July 10, 2019, Judge O'Connor accepted the Findings, Conclusions, and Recommendation, withdrew the *Freedom Mortgage* case from the undersigned, and referred it to Judge Mullin.

Since that time, the undersigned entered Findings, Conclusions, and Recommendation recommending similar withdrawals of reference in four other foreclosure-related cases pending before United States District Judge Mark T. Pittman. In two of those cases Burch was the plaintiff

and Chase Bank of Texas, N.A., was the defendant. Those cases bore cause numbers 4:19-cv-00521-P-BP and 4:19-cv-00523-P-BP. In the two other cases Burch was the plaintiff and BOA was the defendant. Those cases bore cause numbers 4:19-cv-00351-P-BP and 4:19-cv-01030-P-BP. In each of these cases, Judge Pittman accepted the Findings, Conclusions, and Recommendation, withdrew the cases from the undersigned, and referred them to Judge Mullin.

By Order dated April 28, 2020, the undersigned ordered the parties in this case to show cause why Judge O'Connor should not similarly withdraw the reference here and refer the case to Judge Mullin. ECF No. 6. BOA filed its response on May 5, 2020, arguing that the district judge should withdraw the reference of the case to the undersigned and refer it to Judge Mullin. ECF No. 10. Burch responded in opposition on May 19, 2020. ECF No. 14.

Because this case constitutes a core proceeding arising under title 11 or arising in a case under title 11, it should be referred to the bankruptcy judge. Accordingly, the undersigned **RECOMMENDS** that Judge O'Connor withdraw the case from the undersigned and refer it to Judge Mullin pursuant to this Court's Miscellaneous Order No. 33.

I. BACKGROUND

In 2006, Burch obtained a loan from BOA's predecessor in interest, Freedom Mortgage Corporation, on property located at 1053 Briarwood Lane, DeSoto, Texas ("the Briarwood Property"). ECF No. 1-1, at 16. Burch alleges that at some point the mortgage note was acquired by Countrywide Mortgage. *Id.* at 17. In December 2008, Burch filed for Chapter 11 bankruptcy. *See* Cause No. 08-45761-rfn11. The bankruptcy court approved a plan of reorganization that allegedly voided the terms of the original loan. ECF No. 1-1 at 17. The plan also set out new terms for the loan. *Id.* at 17-18. In dispute is whether BOA had a valid lien on the Briarwood Property. *Id.* at 18-22.

The following facts are taken from the Court's previous Findings, Conclusions, and Recommendation in the *Freedom Mortgage* case. *See* No. 4:18-cv-01015-O-BP, ECF No. 45 at 2. Burch's 2008 bankruptcy case was closed on September 11, 2012. *Id.* On December 28, 2012, Burch filed for Chapter 13 bankruptcy, and the case converted to Chapter 11 in 2013. *Id.* On February 1, 2016, the bankruptcy court entered an order confirming Burch's plan of reorganization ("the Plan"). *Id.* The order provided "that the [bankruptcy court] shall retain jurisdiction to the maximum extent possible to enforce the Plan, interpret the Plan, and provide for all proceedings and matters for which jurisdiction is preserved by the Plan, and otherwise . . . ." *Id.* The case then converted to Chapter 7 on January 30, 2018. *Id.* Burch's bankruptcy case, originally filed in 2012, is still open. *Id.*

II. LEGAL STANDARD

Under 28 U.S.C. § 157(a), "each district court may provide that proceedings arising under title 11 as core proceedings or arising in or related to a case under title 11, shall be referred to the bankruptcy judges for the district." The Fifth Circuit has held that a proceeding is "core" if "it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case." *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987). The district court may also refer a case to the bankruptcy judge if the case is related to a bankruptcy case. *Id.* at 93. A case is "related" to a bankruptcy proceeding if "the outcome of [the non-bankruptcy] proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Id.* (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

The Court should refer a case to the bankruptcy court if two conditions are met: (1) the Court would normally refer the case to the bankruptcy court under Miscellaneous Order No. 33 for the Northern District of Texas; and (2) the Court would be unlikely to withdraw the reference under 28 U.S.C. § 157(d). *Texas United Hous. Program, Inc. v. Wolverine Mortg. Partner Ret.*,

No. 3:17-CV-977-L, 2017 WL 3822754, at *3 (N.D. Tex. July 18, 2017). A district court may permissively withdraw the reference from the bankruptcy court for cause shown. 28. U.S.C. § 157(d). Withdrawal to the district court is mandatory, however, if on a timely motion by a party the court determines "resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." *Id.*

III. ANALYSIS

A. Burch's Case Normally would be Referred to the Bankruptcy Court.

Miscellaneous Order No. 33 provides that "any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 . . . are referred to the Bankruptcy Judges of this district for consideration and resolution consistent with law." Miscellaneous Order No. 33, Order of Reference of Bankruptcy Cases and Proceedings *Nunc Pro Tunc* (N.D. Tex. Aug. 3, 1984). Because Miscellaneous Order No. 33 and 28 U.S.C. § 1334(b) are texturally similar, "it is necessary only to determine whether a matter is at least 'related to' the bankruptcy" proceeding to determine if it should be normally referred. *In re U.S. Brass Corp.*, 301 F.3d 296, 303–04 (5th Cir. 2002) (quoting *In re Wood*, 825 F.2d at 93).

Here, Burch challenges the validity of BOA's lien on the Briarwood Property and claims that it is fraudulent under § 12.003 of the Texas Civil Practice and Remedies Code and § 27.01 of the Texas Business and Commerce Code, and the basis for an alleged breach of contract, trespass to try title suit, and negligence claim. ECF No. 1-1 at 6-74. He claims that BOA's lien was void, asserts his rights in trespass to try title, and seeks to recover substantial actual and punitive damages. *Id.*

BOA argues that because Burch's petition asserts claims based on his first plan of reorganization and challenges the validity of its lien on the Briarwood Property, this case constitutes a "core proceeding...arising in or related to a case under Title 11." ECF No. 10 at 2

(citing 28 U.S.C. § 157(b)(2)(K)). BOA further urges referral of the case to Judge Mullin because under Miscellaneous Order No. 33 the case is "at least 'related to' the bankruptcy proceeding" pending in his court. ECF No. 10 at 3.

Because Burch is a *pro se* litigant, the Court must liberally construe his pleadings. *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993). The undersigned finds that Burch's petition challenge his plan of reorganization in bankruptcy and the validity of BOA's lien on the Briarwood Property. Such challenge constitutes a "core proceeding" "arising in or related to a case under Title 11" because it requires a "determination[] of the validity, extent, or priority of liens." 28 U.S.C. § 157(b)(2)(K). The case complies with Miscellaneous Order No. 33 because it is "at least 'related to' the bankruptcy proceeding" pending before Judge Mullin. Therefore, the case should be "referred to [Judge Mullin] of this district for consideration and resolution consistent with law." Misc. Order No. 33.

B. The District Court is Unlikely to Withdraw the Reference.

1. Mandatory Withdrawal is Inapplicable.

A "district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." 28 U.S.C. § 157(d). Assuming either party timely files a motion to withdraw the reference, the question then turns on whether Burch's claims concern "both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." *Id.* Consistent with the majority view in the Fifth Circuit, "consideration" as used in 28 U.S.C. § 157(d) means "substantial and material consideration." *Texas United*, 2017 WL 3822754 at *7 (citing *Rodriguez v. Countrywide Home Loans, Inc.*, 421 B.R. 341, 347 (S.D. Tex. 2009) (collecting cases)). To

determine whether consideration is "substantial and material," a "court must undertake analysis of significant open and unresolved issues regarding the non-title 11 law." *Id.* at 348.

Burch asserts additional claims in his petition for statutory fraud, breach of contract, the creation of an invalid or fraudulent lien, trespass to try title, and gross negligence. ECF No. 1-1 at 6-74. After reviewing Burch's petition, the undersigned has not identified any unsettled questions of law presented by his claims. Indeed, BOA's Motion to Dismiss, ECF No. 7, indicates that the application of well-settled law should resolve Burch's claims. Accordingly, mandatory withdrawal is inapplicable.

2. Permissive Withdrawal is Inapplicable.

The Court in *United States v. Miller* held that Miscellaneous Order No. 33 "does not preclude a district court from exercising its jurisdiction." No. CIV. A. 5:02-CV-0168-C, 2003 WL 23109906, at *4 (N.D. Tex. Dec. 22, 2003). As 28 U.S.C. § 157(d) provides, "[t]he district court may withdraw, in whole or in part, any case or proceeding referred . . . for cause shown." The Fifth Circuit has determined that the district court should not withdraw reference to the bankruptcy court of a core proceeding unless its withdrawal was based on a "sound, articulated foundation." *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998 (5th Cir. 1985). In *Miller*, Judge Cummings summarized the factors mentioned by the Fifth Circuit in *Holland America* in determining whether the withdrawal is based on an adequate foundation as follows:

> (1) whether or not the proceedings were 'core' proceedings; (2) the effect of the withdrawal on judicial efficiency; (3) uniformity in bankruptcy administration; (4) reduction in forum shopping; (5) fostering the economical use of the debtors' and creditors' resources; (6) expediting of the bankruptcy process; and (7) whether or not there is a jury demand.

2003 WL 23109906 at *4.

Like the situation in *Miller*, an order confirming the bankruptcy plan in Burch's 2012 bankruptcy case was entered. Although Burch demanded a jury in his petition in this case, the

remaining factors described in *Holland America* weigh in favor of referring this matter to the bankruptcy court. First, Burch's claims appear to constitute core proceedings. Core proceedings include, among others, "determinations of the validity, extent, or priority of liens." 28 U.S.C. § 157(b)(2)K). Burch's challenges to the validity of BOA's lien and additional claims call for "determinations of the validity, extent, or priority of liens." *Id.*

Second, none of the other *Holland America* factors weigh toward withdrawing the reference. Judicial efficiency is promoted because the bankruptcy court is in a better position to efficiently decide the case as Judge Mullin already confirmed a bankruptcy plan, and Burch's assets are currently pending in his bankruptcy case. Further, consolidating Burch's claims with his 2012 bankruptcy case will streamline administration of both cases "by bringing all matters related to the debtor and his assets into a single forum." *See Eggers v. TVZ Records, LLC, et al.*, No. A-08-CA-668-SS, 2010 WL 11506652, at *2 (W.D. Tex. Jan. 22, 2010). That is particularly so here since Burch has filed several suits challenging the validity of liens outside of his bankruptcy case. Accordingly, neither party is likely to establish cause for permissive withdrawal.

Therefore, the case should be referred to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, as a case related to *In re Burch*, No. 12-46959-mxm7 (Bankr. N.D. Tex.).

RECOMMENDATION

Although the Court has jurisdiction over bankruptcy cases, Burch's claims in the case should be heard in the bankruptcy court. The undersigned therefore **RECOMMENDS** that United States District Judge Reed O'Connor withdraw the reference of the case to the undersigned and refer it to the Honorable Mark X. Mullin, presiding judge in Cause No. 12-46959-mxm7, pending in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b)(1). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

Signed May 21, 2020.

Hal R. Ray, Jr.
Hal R. Ray, Jr.
UNITED STATES MAGISTRATE JUDGE

APPENDIX G

11 U.S. Code § 1141

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section

522(q)(1)(B);and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

APPENDIX H

28 U.S. Code § 1446 - Procedure for removal of civil actions

(a) Generally. —
A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.
(b) Requirements; Generally. —
(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.
(2)
(A)
When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.
(B)
Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.
(C)
If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.
(3)
Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.
(c) Requirements; Removal Based on Diversity of Citizenship. —
(1)
A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.
(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—
(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—
(i)
nonmonetary relief; or
(ii)
a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and
(B)

removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

(3)

(A)

If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an "other paper" under subsection (b)(3).

(B)

If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).

(d) Notice to Adverse Parties and State Court. —

Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) Counterclaim in 337 Proceeding. —

With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930, the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act.

(g)

[1] Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsection (b) of this section and paragraph (1) of section 1455(b) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.

APPENDIX I

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 J

TRCP Rule 145

(a) General Rule. A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court as provided by this rule. After the Statement is filed, the clerk must docket the case, issue citation, and provide any other service that is ordinarily provided to a party. The Statement must either be sworn to before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

(b) Supreme Court Form; Clerk to Provide. The declarant must use the form Statement approved by the Supreme Court, or the Statement must include the information required by the Court-approved form. The clerk must make the form available to all persons without charge or request.

(c) Costs Defined. "Costs" mean any fee charged by the court or an officer of the court that could be taxed in a bill of costs, including, but not limited to, filing fees, fees for issuance and service of process, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

(d) Defects. The clerk may refuse to file a Statement that is not sworn to before a notary or made under penalty of perjury. No other defect is a ground for refusing to file a Statement or requiring the party to pay costs. If a defect or omission in a Statement is material, the court - on its own motion or on motion of the clerk or any party - may direct the declarant to correct or clarify the Statement.

(e) Evidence of Inability to Afford Costs Required. The Statement must say that the declarant cannot afford to pay costs. The declarant must provide in the Statement, and, if available, in attachments to the Statement, evidence of the declarant's inability to afford costs, such as evidence that the declarant:

(1) receives benefits from a government entitlement program, eligibility for which is dependent on the recipient's means;

(2) is being represented in the case by an attorney who is providing free legal services to the declarant, without contingency, through:

(A) a provider funded by the Texas Access to Justice Foundation,

(B) a provider funded by the Legal Services Corporation; or

(C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services;

(3) has applied for free legal services for the case through a provider listed in (e)(2) and was determined to be financially eligible but was declined representation; or

(4) does not have funds to afford payment of costs.

(f) Requirement to Pay Costs Notwithstanding Statement. The court may order the declarant to pay costs only as follows:

(1) On Motion by the Clerk or a Party. The clerk or any party may move to require the declarant to pay costs only if the motion contains sworn evidence, not merely on information or belief:

(A) that the Statement was materially false when it was made; or

(B) that because of changed circumstances, the Statement is no longer true in material respects.

(2) On Motion by the Attorney Ad Litem for a Parent in Certain Cases. An attorney ad litem appointed to represent a parent under Section 107.013, Family Code, may move to require the parent to pay costs only if the motion complies with (f)(1).

(3) On Motion by the Court Reporter. When the declarant requests the preparation of a reporter's record but cannot make arrangements to pay for it, the court reporter may move to require the declarant to prove the inability to afford costs.

(4) On the Court's Own Motion. Whenever evidence comes before the court that the declarant may be able to afford costs, or when an officer or professional must be appointed in the case, the court may require the declarant to prove the inability to afford costs.

(5) Notice and Hearing. The declarant may not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(6) Findings Required. An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(7) Partial and Delayed Payment. The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(g) Review of Trial Court Order.

(1) Only Declarant May Challenge; Motion. Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) Time for Filing; Extension. The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) Record. After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) Court of Appeals to Rule Promptly. The court of appeals must rule on the motion at the earliest practicable time.

(h) Judgment. The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order under (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

Amended by order of Aug. 31, 2016, eff. Sept. 1, 2016.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system - filing fees, fees for issuance of process and notices, and fees for service and return - are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs - which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001 - is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

APPENDIX K

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form)

Plaintiff: William Paul Burch
(Print first and last name of the person filing the lawsuit.)

And

Defendant: Bank of America N.A.
(Print first and last name of the person being sued.)

In the _____ *Court Number*
(check one):
☑ District Court
☐ County Court / County Court at Law
☐ Justice Court

Tarrant *County* Texas

Statement of Inability to Afford Payment of Court Costs or an Appeal Bond

1. Your Information

My full legal name is: William *First* Paul *Middle* Burch *Last* My date of birth is: 10 /05 /1951 *Month/Day/Year*

My address is: *(Home)* 5947 Waterford Dr; Grand Prairie, Texas 75052

(Mailing) 5947 Waterford Dr; Grand Prairie, Texas 75052

My phone number: 817 919- 4853 My email: billburch@worldcrestauctions.com

About my **dependents:** "The people who depend on me financially are listed below.

	Name	*Age*	*Relationship to Me*
1	Jane Burch	65	Wife
2	William Paul Burch II	39	Son
3			
4			
5			
6			

2. Are you represented by Legal Aid?

☐ I am being represented in this case for free by an attorney who works for a legal aid provider or who received my case through a legal aid provider. I have attached the certificate the legal aid provider gave me as 'Exhibit: Legal Aid Certificate.

-or-

☐ I asked a legal-aid provider to represent me, and the provider determined that I am financially eligible for representation, but the provider could not take my case. I have attached documentation from legal aid stating this.

or-

☑ I am not represented by legal aid. I did not apply for representation by legal aid.

3. Do you receive public benefits?

☑ I do not receive needs-based public benefits. **- or -**

☐ I receive these **public benefits/government entitlements** that are based on indigency:
(Check ALL boxes that apply and attach proof to this form, such as a copy of an eligibility form or check.)

☐ Food stamps/SNAP ☐ TANF ☐ Medicaid ☐ CHIP ☐ SSI ☐ WIC ☐ AABD
☐ Public Housing or Section 8 Housing ☐ Low-Income Energy Assistance ☐ Emergency Assistance
☐ Telephone Lifeline ☐ Community Care via DADS ☐ LIS in Medicare ("Extra Help")
☐ Needs-based VA Pension ☐ Child Care Assistance under Child Care and Development Block Grant
☐ County Assistance, County Health Care, or General Assistance (GA)
☐ Other: _____

4. What is your monthly income and income sources?

"I get this monthly income:

$_____ in monthly wages. I work as a _____ (*Your job title*) for _____ (*Your employer*).

$_____ in monthly unemployment. I have been unemployed since *(date)* _____.

$_____ in public benefits per month.

$_____ from other people in my household each month: *(List only if other members contribute to your household income.)*

$ 1319 from ☐ Retirement/Pension ☐ Tips, bonuses ☐ Disability ☐ Worker's Comp
☑ Social Security ☐ Military Housing ☐ Dividends, interest, royalties
☐ Child/spousal support
☐ My spouse's income or income from another member of my household *(if available)*

$ 830 from other jobs/sources of income. *(Describe)* Wife's Social Security

$ 2148 is my *total* **monthly** income.

5. What is the value of your property?

"My **property** includes:	**Value***
Cash	$ 1
Bank accounts, other financial assets	
Bank Account	$ 14
	$
	$
Vehicles (cars, boats) *(make and year)*	
Kia 2016	$ 10000
	$
	$
Other property (like jewelry, stocks, land, another house, etc.)	
	$
	$
	$
***Total* value of property**	→ $ 10015

*The value is the amount the item would sell for less the amount you still owe on it, if anything.

6. What are your monthly expenses?

"My **monthly expenses** are:	**Amount**
Rent/house payments/maintenance	$ 50
Food and household supplies	$ 700
Utilities and telephone	$ 835
Clothing and laundry	$
Medical and dental expenses	$100
Insurance (life, health, auto, etc.)	$ 120
School and child care	$
Transportation, auto repair, gas	$ 100
Child / spousal support	$
Wages withheld by court order	$
Debt payments paid to: *(List)*	$
Capital One Credit Card	$ 150
Valero	$ 50
***Total* Monthly Expenses** →	$ 2100

7. Are there debts or other facts explaining your financial situation?

"My **debts** include: *(List debt and amount owed)* Chapter 7 Bankruptcy recently discharged. Went into Chapter 7 because of the lies of some lawyers who claimed immunity. I am sueing them.

"

(If you want the court to consider other facts, such as unusual medical expenses, family emergencies, etc., attach another page to this form labeled "Exhibit: Additional Supporting Facts.") Check here if you attach another page. ☐

8. Declaration

I declare under penalty of perjury that the foregoing is true and correct. I further swear:

☐ I cannot afford to pay court costs.

☐ I cannot furnish an appeal bond or pay a cash deposit to appeal a justice court decision.

My name is William Paul Burch. My date of birth is : 10 / 05 /1951.

My address is 5947 Waterford Dr; (*Street*) Grand Prairie, (*City*) Texas (*State*) 75052 (*Zip Code*) United States (*Country*)

(*Signature*) signed on 03/25/2020 (*Month/Day/Year*) in Tarrant (*county name*) County, Texas (*State*)

APPENDIX L

28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs

(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.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d)

(1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)

(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under 16(f)(3) [1] of the Securities Act of 1933 (15 U.S.C. 78p(f)(3) [2]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11)

(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B)

(i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C)

(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.