22-5787 ORIGINAL

No.

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH

PETITIONER

v.

FREEDOM MORTGAGE CORPORATION; FEDERAL NATIONAL BANK ASSOCIATION. SERETUS, INCORPORATED; RUSHMORE LOAN MANAGEMENT SERVICES, L.L.C.; LOAN CARE SERVICING CENTER; JP MORGAN CHASE BANK, N.A.,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

20-10651

PETITION FOR WRIT OF CERTIORARI

William Paul Burch
Pro se
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October 1, 2022

I. QUESTION(S) PRESENTED

William Paul Burch ("Burch") filed his appeal to the circuit court on June 19, 2020, as an appeal of the district court ruling on in forma pauperis. On May 03, 2021, Burch began receiving compensation for an injury during the Vietnam War. Burch reasoned as a pro-se that the honest thing to do was to notify the court of the meager income increase and ask that the court remand the case to the district court where he could now pay the filing fee so that the case could either be remanded to state court where the case could be heard on the merits or be heard on the merits at the federal district court. Instead, the circuit court dismissed the IFP and the Motion to pay fees as frivolous. He was further warned that this type of action was not allowed, and he must remove all his pending real estate cases.

The questions presented are:

1. If a mortgage holder and/or a mortgage service company were to have their lien extinguished in bankruptcy and then refuse to accept payments should the void lien be removed, and the property returned to the debtor lien free?
2. Should a bankruptcy court be allowed to accept a case removed late and to give orders without permission from all parties as required in **BRCP 9027** and all orders from the bankruptcy and appeals courts be reversed and the case remanded to the state court?
3. Should an appeals court base their decision on an unconstitutional order?

II PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Plaintiff William Paul Burch; and Defendant Select Portfolio Servicing, Inc. Pursuant to this Court's Rule 29.6, undersigned pro-se states that Seterus, Inc is an wholly owned subsidiary of. NationStar Mortgage Acquisitions, LLC headquartered in Addison, Texas. Rushmore Loan Management Services LLC with a nerve center in Irving, Texas. From the Rushmore website, **"We were originally set to move from our Farmers Branch building last year, but COVID-19 foiled those plans. So now, we get to enjoy a double celebration – getting our team back together in person and the grand opening of our new official headquarters in Irving on April 11. We'll have a ribbon-cutting ceremony, tours of the new facility for our employees, and more. Stay tuned ."for more details and invitations"** This appears to mean that this case does not qualify for removal based on diversity.

Appellees:	**Counsel for Appellees:**
Freedom Mortgage Corporation 4:20-cv-364	S. DAVID SMITH sdsmith@bradley.com Houston, Texas 77002 DAVID C. MILLER dmiller@bradley.com Dallas, TX 75270
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William Paul Burch	William Paul Burch (Pro-se) 5947 Waterford Drive Grand Prairie, TX 75052 (817) 919-4853 billburch@worldcrestauctions.com

III STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the Court of Appeals for the Fifth Circuit.

19-11197 Burch v Freedom Mortgage Corp., Dismissed June 16, 2021

20-10498 Burch v Freedom Mortgage Corp et al, Dismissed February 2, 2021

20-10651 Burch v Freedom Mortgage Corp, Dismissed July 14, 2022

20-10709/20-10828 Burch v Areya Holder Aurzada, Dismissed July 14, 2022, $500 Sanction

20-10850 Burch v Bank of America, (SCOTUS 22-5425) $500 Sanction

20-11035 Burch v Areya Holder Aurzada, pending

20-11040 Burch v Areya Holder Aurzada, dismissed May 17, 2022, $500 Sanction

20-11057 Burch v Homeward Residential, (SCOTUS 22-5526) $500 Sanction

20-11058 Burch v Ocwen Loan Servicing Company, dismissed April 29, 2022 $500 Sanction

20-11074 Burch v America's Servicing Company, dismissed November 12, 2021, $100 Sanction

20-11106 Burch v Mark X. Mullin, (SCOTUS 22-5254) $500 Sanction

20-11117 Burch v America's Servicing Company, dismissed for lack of jurisdiction

20-11132 Burch v Mark X. Mullin, Dismissed July 14, 2022, $500 Sanction

20-11239 Burch v dismissed Homeward Residential, (SCOTUS 22-5428) $500 Sanction

20-11240 (SCOTUS 22-5228) Burch v America's Servicing Company, Motion to reopen denied on April 27, 2021, $500 Sanction

21-10054 Burch v Chase Bank of Texas, N.A., pending

20-10872 (SCOTUS 22-5157) Burch v Bank of America, N.A., Dismissed April 19, 2022, $500 Sanction

20-11171 (SCOTUS 21-7805) Burch v Select Portfolio Servicing, Dismissed April 17, 2022, $500 Sanction

The sanctions are because Burch refuses to withdrawal his cases because he is correct on the merits and he put forth a Motion to pay the filing fee so the case could be heard on the merits but it was refused.

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VII. PETITION FOR WRIT OF CERTIORARI

William Burch, a resident of Grand Prairie, Texas as a pro-se litigant respectfully petitions this court for a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals. This petition is filed under SCOTUS Rule

VIII. OPINIONS

The opinion of the United States Court of Appeals/highest state court to review the case appears at **App. B** in the appendix to this petition and is unpublished].

The opinion of the United States Bankruptcy Court for the Northern District of Texas appears at **App. D** and is unpublished.

The findings of fact and conclusions of the United States Magistrate Court for the Northern District of Texas appears at **App. G** and is unpublished.

IX. JURISDICTION.

A timely petition for rehearing was denied by the United States Court of Appeals on July 14 ,2022, and a copy of the order denying rehearing appears at **Appendix A.** The jurisdiction of this Court is invoked under **28 U. S. C. § 1254(1).**

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Tex. Const. Article 1 Sec 13 provides:

> EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law. (Feb. 15, 1876.)

Tex. Const. Article 1 Sec 19 provides:

> DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. (Feb. 15, 1876.)

U.S. Const. amend. 1 provides:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. 5 provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. 7 provides:

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

U.S. Const. amend. 14 Appendix W

FRAP 12.1 provides:

Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal

(a) Notice to the Court of Appeals. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

FRBP 8009 Appendix U

FRBP 9027 Appendix R

FRCP Rule 12(b)(6). provides:

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (6) failure to state a claim upon which relief can be granted; A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by

joining it with one or more other defenses or objections in a responsive pleading or in a motion.

FRCP 38 provides:

(a) RIGHT PRESERVED. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

(b) DEMAND. On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served; and

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

(c) SPECIFYING ISSUES. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may—within 14 days after being served with the demand or within a shorter time ordered by the court—serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) WAIVER; WITHDRAWAL. A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) ADMIRALTY AND MARITIME CLAIMS. These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

FRCP 59

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) Time to Serve Affidavits. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

FRCP 60

(a) Corrections Based on Clerical Mistakes, Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

FRCP 62.1 provides:

Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) Notice to the Court of Appeals. The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) Remand. The district court may decide the motion if the court of appeals remands for that purpose

Local Miscellaneous Order 33 Appendix Q

TBCC 3.501 Appendix J

TBCC 26 Appendix L

TRCP 103 Provides:

Process including citation and other notices, writs, orders, and other papers issued by the court may be served anywhere by

(1) any sheriff or constable or other person authorized by law,

(2) any person authorized by law or by written order of the court who is not less than eighteen years of age, or

(3) any person certified under order of the Supreme Court. Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending.

But no person who is a party to or interested in the outcome of a suit may serve any process in that suit, and, unless otherwise authorized by a written court order, only a sheriff or constable may serve a citation in an action of forcible entry and detainer, a writ that requires the actual taking of possession of a person, property or thing, or process requiring that an enforcement action be physically enforced by the person delivery the process. The order authorizing a person to serve process may be made without written motion and no fee may be imposed for issuance of such order.

TRCP 106 Provides

METHOD OF SERVICE (a) Unless the citation or court order otherwise directs, the citation must be served by: (1) delivering to the defendant, in person, a copy of the citation, showing the delivery date, and of the petition; or (2) mailing to the defendant by registered or certified mail, return receipt requested, a copy of the citation and of the petition. (b) Upon motion supported by a statement–sworn to before a notary or made under penalty of perjury–listing any location where the

defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) at the Page 57 location named in the statement but has not been successful, the court may authorize service: (1) by leaving a copy of the citation and of the petition with anyone older than sixteen at the location specified in the statement; or (2) in any other manner, including electronically by social media, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.

11 U.S.C. § 1141 Appendix K

11a U.S.C § 9015 provides:

(a) Applicability of Certain Federal Rules of Civil Procedure

Rules 38, 39, and 47–51 F.R.C. P., and Rule 81(c) F.R.C.P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made pursuant to Rule 38(b) F.R.C.P. shall be filed in accordance with Rule 5005.

(b) Consent To Have Trial Conducted by Bankruptcy Judge

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

28 U.S.C. § 157 Appendix S

28 U.S.C. § 1254 provides:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1)By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2)By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.SC. § 1332 Appendix V

28 U.S.C. § 1446 Appendix P

28 U.S.C. § 1447 provides:

> (a)In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.
>
> (b)It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.
>
> (c)A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.
>
> (d)An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.
>
> (e)If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.

28 U.S.C. § 1915 Appendix X

XI. STATEMENT OF THE CASE

This case is a perfect example of what is wrong with our bankruptcy system in the United States today. It is not necessarily a problem with the laws but with the way the laws are being implemented and interpreted. In fact, rulings are supposed to be based on the plain meaning of the law and not an interpretation of the law.

. The property for this case is located at 203 Hemlock: Arlington, Texas. The property was purchased with a cash payment to HUD on November 20, 2006. The Petitioner, William Paul Burch (Burch), and his spouse got a business loan on December 4, 2006, using the real estate as collateral. The loan was through Freedom Mortgage Corporation (Freedom) with JPMorgan Chase Bank NA (Chase) servicing.

During the 2008 "Great Recession", Burch owned twenty-two properties. Burch was notified by one lender (AH Mortgage Acquisitions) that his loan was "under water" and Burch needed to pay the difference or file for bankruptcy. Because the amount needed to correct the twenty-two properties exceeded $600,000 Burch filed for chapter 11 bankruptcy. Burch was not behind on any payments. (**Appendix H**)

The Promissory notes were voided and terms for the new notes were agreed to. Because Burch was in the business of flipping houses, he needed the new note fast so he could continue his business model. Each sale of a house brought Burch $40,000 to $80,000 plus rental income for a year. The mortgage companies wanted to wait a year to issue the new notes so they could collect on the Private Mortgage Insurance (PMI). The cost of waiting to Burch on twenty-two properties would have been over $880,000 per year. It was finally agreed for six months to get Burch the new loans. Burch made his payments, but Chase returned the payments, not recognizing the bankruptcy plan Chase negotiated even though Burch included the information with his payment.

In the **first bankruptcy plan on page 13, paragraph 5.8 (Appendix H)** it is written, "Based upon the Debtors' current value of the Hemlock property, the Debtors will **enter into a New Hemlock Note** in the original principal amount of

$84,950 ("**New Hemlock Note**"). The New Hemlock Note shall bear interest at the rate of 5.25% per annum. The Debtors shall pay the New Hemlock Note in 360 equal monthly payments of $469.65 commencing on the Effective Date."

What this clearly means is that Burch was to enter into a new Promissory Note. If confused, the court should go to the preceding paragraph **(5.7)** (**Appendix H**) where the plan reads regarding the Burch homestead, "Aurora is also the lienholder on the Debtors present home at 5947 Waterford, Grand Prairie, Texas (the "Waterford Property"). The Debtors shall retain the Waterford Property as their homestead and continue to make monthly payments in accordance with the terms of the existing loan documents. The Debtor's shall pay any pre-petition arrearage on the property prior to the Effective Date. The payments to Aurora shall be principal and interest only on the Waterford property. The Debtors shall be responsible for maintaining and directly paying for adequate continuous insurance coverage on the Waterford property and directly paying all property taxes."

This meant a new loan was needed for the Hemlock property. As defined by the Fifth Circuit in ***Elixir Indus., Inc. v. City Bank & Trust Co.* (In re *Ahern Enterprises, Inc.*), 507 F.3d 817 (5th Cir. 2007),** the Fifth Circuit held that four conditions must be met for a lien to be voided under **11 U.S. Code § 1141(c): (i)** (**Appendix K**) the plan must be confirmed (done); (ii) the collateral must be dealt with by the plan (done); (iii) the lien holder must participate in the reorganization (done); and (iv) the lien must not be preserved under the plan (done);. Other courts have similarly required secured creditor participation in the case as a condition to

lien extinguishment under **section 1141(c). (Appendix K)** See, e.g., , , , , , , , , ; This case met all the criteria for the lien to be extinguished.

With the lien extinguished the Texas Business and Commerce Code 26 "Statute of Frauds" (**TBCC 26.02) (Appendix L**) comes into play, requiring:

"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.

Burch has agreed to give the lenders dix months to give him a new note. Freedom did send a new note to Burch (**Appendix I**) but never completed the transaction. It appears that Freedom collected on the PMI from Federal National Bank Association and left it to them to send a new note. Burch sent a presentment letter to Chase as required in **TBCC 3.501** (**Appendix J)** notice that the note was not valid, and the lien must be removed. Seterus, a subsidiary of a Texas Company, Nationstar Mortgage Inc. servicing the loan took over servicing the loan. Rushmore, LLC, with a Texas nerve center, took over the servicing of the loan from Seterus.

Because another mortgage company (NationStar Mortgage Acquisitions) refused to follow the plan regarding Burch's homestead after merging with Aurora Bank, Burch, under advice of his attorney, filed for bankruptcy again. **(Appendix U)** There was no mortgage on the property at the time of the second bankruptcy. The

reason the property was included in the second bankruptcy was that the lien had not been removed even though the lien was void. In the second bankruptcy there is nowhere that a continuation of the note was to take place. Actually, in Texas law what is void is forever void and cannot be resurrected even with the agreement of both parties.

After the bankruptcy was discharged, Burch filed a lawsuit in the Tarrant County, Texas courthouse on November 16, 2018. The lawsuit was accompanied by the **Statement of Inability to Afford Payment of Court Costs or an Appeals Bond**. **(Appendix M).** Defendants were served on November 26, 2018, under **Texas Rules of Civil Procedure (TRCP) 106(a)(2)**). None of the defendants filed an objection to the Texas equivalent to the federal in forma pauperis motion. In ***Campbell v. Wilder*, 487 SW 3d 146.152 - Tex: Supreme Court 2016,** the Texas Supreme Court ruled, "It is an abuse of discretion for any judge to order costs in spite of an uncontested affidavit of indigence."

They removed the case to Federal Bankruptcy Court thirty-two days later, **(Appendix O)** Friday, December 28, 2018. **28 U.S.C. § 1446(a). (Appendix P)** Defendant Freedom Mortgage claimed in their Motion to remove that they were served on December 4, 2018, but the court documents show this is a false statement. Additionally, by having at least one Texas company the removal does not meet the criteria for removal under the diversity rules for removal (**28 U.S. Code § 1446**). **(Appendix P)**. (In the **Erie Doctrine Appendix N**) Texas substantive law is used on a diversity removal)

Burch filed a motion for remand and Rushmore filed a motion to dismiss under **FRCP 12(b)(6).** The petition was clearly filed with Texas statutes on the face of the petition. This case involves Texas Laws to which Burch needs to only win on one:

1. **CAUSE 1 Fraudulent lien**
2. **CAUSE 2 Breach of contract**
3. **CAUSE 3 Deceptive trade practices**

The Federal Question Must be Disclosed Upon the Face of the Complaint; Plaintiff is the Master of the Complaint and nay eschew federal claims. Where, as here, federal jurisdiction arises because of a "federal question," the question "must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." [1]***Gully v. First Nat'l Bank in Meridian***, (noting that the federal question cannot be "merely a possible or conjectural one"). Thus, the rule enables the plaintiff, as "master of the complaint," to "choose to have the cause heard in state court" by eschewing claims based on federal law.[2] The well-pleaded complaint rule requires that federal question jurisdiction not exist unless a federal question appears on the face of a plaintiff's properly pleaded complaint."[3] The Complaint in this matter asserts no federal claims. In ***Rains v. Criterion Systems, Inc.,*** [4]the Ninth Circuit wrote: "Rains chose to bring a state claim rather than a

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[1] Gully v. First Nat'l Bank in Meridian, 299 U.S. 109, 112-13, 81 L. Ed. 70, 57 S. Ct. 96 (1936)
[2] Calif. ex rel. Lockyer v. Dynegy, Inc., 375 F.3d 831, 839 (9th Cir. 2004).
[3] Columbia Gas Transmission Corp. v. Drain, 237 F.3d 366, 369-70 (4th Cir. 2001), citing Merrell Dow Pharm. Inc. v. Thompson, 478 U.S. 804, 808, 92 L. Ed. 2d 650, 106 S. Ct. 3229 (1986).
[4] Rains v. Criterion Systems, Inc., 80 F.3d 339, 344 (9th Cir. 1996),

Title VII claim and was entitled to do so[5]. "See ***Pan American Petro. Corp. v. Superior Court***, (stating that "the party who brings a suit is master to decide what law he will rely upon"). A plaintiff "may avoid federal jurisdiction by exclusive reliance on state law."[6], see also ***Ethridge v. Harbor House Restaurant***,[7] ("If the plaintiff may sue on either state or federal grounds, the plaintiff may avoid removal simply by relying exclusively on the state law claim").

The Ninth Circuit held in ***Harris v. Provident Life & Acc. Ins. Co***[8]: Ordinarily, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint."[9]

The District Court clearly exceeded its jurisdiction in accepting an affirmative defense on a case that was removed late. In accordance with ***Rivet v. Regions Bank of La.*, 522 US 470.474-475 - Supreme Court 1998,** [t]he presence or absence of federal-question jurisdiction is governed by the `well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." [10],[11] A defense is not part of a plaintiff's properly pleaded statement of his or her

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[5] Pan American Petro. Corp. v. Superior Court, 366 U.S. 656, 662-63, 81 S.Ct. 1303, 1307-08, 6 L.Ed.2d 584 (1961) (quoting Fair v. Kohler Die & Specialty Co., 228 U.S. 22, 25, 33 subjects of this Motion. S.Ct. 410, 411-12, 57 L.Ed. 716 (1913)).
[6] Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987)
[7] Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1395 (9th Cir.1988)
[8] Harris v. Provident Life & Acc. Ins. Co., 26 F.3d 930, 933-34 (9th Cir. 1994):
[9] Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d 318 (1987); accord Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1393 (9th Cir.1988).
[10] Caterpillar Inc. v. Williams, 482 U. S. 386, 392 (1987)
[11] Louisville & Nashville R. Co. v. Mottley, 211 U. S. 149, 152 (1908)

claim.[12],[13] ("To bring a case within the [federal-question removal] statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action."). Thus, "a case may not be removed to federal court on the basis of a federal defense, . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case."[14]

With two Texas defendants the removal did not meet the criteria for removal under the diversity rules for removal **(28 U.S. Code § 1446). (Appendix P)** By accepting the case, the **Erie Doctrine** **(Appendix N)** went into effect and any ruling must be made based on Texas substantive law and rulings and federal procedural laws. That would include in forma pauperis which none of the courts took into consideration and used as a basis for dismissal. The case was removed to the bankruptcy court by recommendation of the Magistrate Judge **(Appendix G)** citing local **Miscellaneous Local Order 33**. **(Appendix Q)** The findings were accepted by the district court on July 10, 2019. **(Appendix F).** The district court dismissed the Burch motion for rehearing on August 29, 2019 **(Appendix E)**. The case was removed to the bankruptcy court but under **FRBP 9027 (Appendix R),** both parties must give permission for the bankruptcy court to give orders. Without this permission the bankruptcy court was only authorized to give findings of fact and conclusions of law. A bankruptcy court must have subject matter jurisdiction to

[12]Metropolitan Life Ins. Co. v. Taylor, 481 U. S. 58, 63 (1987)
[13] Gully v. First Nat. Bank in Meridian, 299 U. S. 109, 112 (1936)
[14] Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U. S. 1, 14 (1983)

hear an advisory case. Otherwise, all orders from the bankruptcy court are void. In fact, unless it is a core proceeding, the Bankruptcy court needs permission from the district court and the parties to issue orders or a final judgement. Its function is similar to how a magistrate judge works. **28 U.S. Code § 157(c)(2). (Appendix S)** That permission was never obtained in this case.

Jurisdiction is the authority to rule over an issue. But if a court acts without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers. Any one of these is enough to remand a case back to state court. For a ruling to be valid, it must be made in a court with jurisdiction. It is well established law that without jurisdiction, all the court's decisions are void.[15] The Court Must Satisfy Itself that Federal Subject Matter Jurisdiction is proper before making rulings on the merits.

The court must be certain that federal subject matter jurisdiction is proper before entertaining a motion by the defendant under **Federal Rule 12(b)(6)** to dismiss the plaintiff's complaint for failure to state a claim upon which relief may be granted. See, e.g., ***Akhlaghi v. Berry***,[16] (remanding, concluding it better practice to rule on motion to remand before motion to dismiss for failure to state a

[15] Elliott v. Lessee of Piersol, 26 U.S. 328 (1828)
[16] Akhlaghi v. Berry, 294 F.Supp.2d 1238 (D. Kan. 2003)

claim);[17] must establish removal jurisdiction before granting summary judgment).[18] (Must determine subject matter jurisdiction before personal jurisdiction or venue);[19]

If the court at any time determines that it lacks jurisdiction over the removed action, it must remedy the improvident grant of removal by remanding the action to state court.[20] Because the existence of federal subject matter jurisdiction is a constitutional requirement, there is substantial case law to the effect that the district court may remand a removed case where the lack of subject matter jurisdiction is discovered at any time prior to the entry of judgment[21]. (remand may be raised on appeal).

If a court that rendered judgement lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process.[22](**Fifth Amendment)**

Burch repeatedly pushed for his due process rights in the bankruptcy court by his Motion to Remand and his **RULE 59 (e)** MOTION TO AMEND A JUDGEMENT AND **RULE 60 (b)** MOTION TO REVERSE ALL ORDERS AND JUDGEMENTS IN CASE. The bankruptcy court was lacking the knowledge needed to properly rule on this case. It did not understand how the wording of the bankruptcy plan (**Appendix T)** is important and meaningful. On February 28,

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[17] Thompson v. Fritsch, , 966 F.Supp. 543 (D. Mich.1997)
[18] Ren-Dan Farms, Inc. v. Monsanto Co., 952 F.Supp. 370 (D. La.1997)
[19] National Union Fire Ins. Co. v. Liberty Mut. Ins. Co., 878 F.Supp.199 (D. Ala.1995).
[20] 28 U.S.C. § 1447; see, e.g. ARCO Envtl. Remediation, LLC v. Dep't of Health and Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).
[21] 28 U.S.C. § 1447
[22] Reynolds v. Volunteer State Life Inx. Co. Tex. Cov. App. 80 S. W. 2d 1087, 1092

2020, The bankruptcy court dismissed the case (**Appendix D)** based on **FRCP 12(b)(6)** without any opportunity for revisions given to Burch.

Burch appealed the Bankruptcy Courts Order denying Burch's Motion but was confronted with another action by Judge Mullin to stop Burch's **Fifth Amendment** Due Process rights by certifying, without explanation, Burch as a frivolous litigator. This effectively stopped Burch's appeal in the District Court. (**Appendix C)** Burch then appealed to the Fifth Circuit Court of Appeals and discovered that the Bankruptcy Judge, in violation of **Federal Rules of Bankruptcy Procedure 8009**, (**FRBP 8009**) **(Appendix U)** was preventing the transfer of the records despite Burch filing a timely **Designation of Record**.

In ***Rivet et al. v. Regions Bank OF Louisiana et al***. [23] no subject matter jurisdiction in bankruptcy court if debtor filed against creditor in a state court.

JURY TRIALS

This case is a paid jury trial case. A trial court, whether federal or state, can hold a jury trial with certain exceptions and restrictions. The reason we have the separations at the trial level is to divide the burden. For example, a Federal District Court may hear a bankruptcy case and conduct a jury trial. However, **28 §157 USC (e)** (**Appendix U**) reads, "If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the

[23] Rivet v. Regions Bank of La., 522 U.S. 470 (1998)

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

This was a jury trial cases. The **seventh amendment to the United States Constitution** commands that in suits at common law, the right to a trial by jury must be preserved.[24] However, the authority of a bankruptcy court to conduct a jury trial is not derived from the seventh amendment; rather, it is statutory in nature.

Because these are jury trial cases a bankruptcy hearing is not allowed unless agreed to by all parties. None of the parties agreed to the Bankruptcy Court hearing this case. In **11a USC § 9015 (b). "**If the right to a jury trial applies, a timely demand has been filed pursuant to **FRCP Rule 38(b)** and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under **28 U.S.C. § 157(e) (Appendix S)** by jointly or separately filing a statement of consent within any applicable time limits specified by local rule. However, the District Court also did not agree to a jury trial being heard by the bankruptcy court.

U.S. CONST. Amend. VII. The seventh amendment provides: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law. Id. The Supreme Court has construed "Suits at common law" to mean

[24] Rivet v. Regions Bank of La., 522 US 470, 475 (1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463 U. S. 1, 14 (1983)).

that the **seventh amendment** preserves an individual's right to a trial by jury in legal causes of action, as distinguished from equitable or admiralty jurisdiction.[25] The Court has recognized an inherent difficulty in adequately distinguishing between legal and equitable actions. [26]"Characterization of an issue as legal or equitable is often a difficult federal law issue."[27] Such characterization may often be achieved by analyzing the character of the issue to be adjudicated, rather than the unique form of the complaint or the pleadings.

TIME FOR REMOVAL

There are some very specific rules that must be followed in regard to the amount of time allowed for filing a removal and filing an answer to an original petition. Based on my personal experience, when the rule says thirty days, unless you get an extension, it means thirty days, not thirty-one or sixty, In Tarrant County, Texas the procedure is to e-file the courts copy and then bring a copy to the courthouse and give it to the clerk for mailing. The clock starts ticking once the petition and a true copy of the citation is handed to the U S Postal Service to be sent, certified mail, return receipt requested.[28] This is commonly known as the "mailbox rule". Thus, under Texas Rule of Civil Procedure 106(a) (**TRCP 106(a)** the date the service is made is the date any person authorized by **TRCP Rule 103**

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[25] Ross v. Bernhard, 396 U.S. 531, 533 (1970) (quoting Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830), overruled by NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937)).
[26] Ross, 396 U.S. at 533 (citing Whitehead v. Shattuck, 138 U.S. 146, 151 (1891)).
[27] 2 R. Rotunda, J. Nowak & J. Young Treatise on Constitutional Law: Substance and Procedure § 17.8, at 257 n.12 (3d ed. 1986)
[28] TRCP 106(a)

deposits the citation and complaint in the US Postal system by registered or certified mail.[29]**(Appendix O)**

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

The service and removal dates for this case for Defendants were served on November 26, 2018, under Texas Rules of Civil Procedure **(TRCP) 106(a)(2).** They removed the case to Federal Bankruptcy Court thirty-two days later, Friday, December 28, 2018. **28 U.S.C. § 1446(a) (Appendix P).** Defendant Freedom Mortgage claimed in their Motion to remove that they were served on December 4, 2018, which is a false statement.

DIVERSITY

Jurisdiction under Rule **28 USC § 1446 (b)(2)(B). (Appendix P). 28 USC § 1332 (a) (Appendix V).** plainly states "The district courts shall have original jurisdiction of all civil actions where all the parties are from different states. Rushmore Loan Management Services LLC has citizenship in Dallas, Texas at 1755 Wittington Pl; Dallas, TX 75234. Additionally Seterus was acquired by NationStar

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[29] Wright v Ford Motor Company, 508 F 3d 263, 269 (5th Cir. 2007)
[30] 28 U.S.C. § 1446 (b)(1)

Mortgage LLC and is located in Lewisville at 800 State Highway 121 Bypass, Lake Vista 4 Lewisville, TX 75067 See ***Am. Motorists Ins. Co. v. Am. Emp. Ins. Co***[31] ("[T]he plaintiff's complaint must specifically allege each party's citizenship."); ***Harvey v. Grey Wolf Drilling Co.,***[32] ("[T]he citizenship of a LLC is determined by the citizenship of all of its members."); see also ***Howery,***[33]

Freedom filed for removal of the cases from Tarrant County Court to Federal District Court without properly establishing diversity jurisdiction by correctly alleging the citizenship of every member of the LLC (or LLP)[34]. ("[T]he plaintiff's complaint must specifically allege each party's citizenship.")[35]; ("[T]he citizenship of a LLC is determined by the citizenship of all of its members.");[36] ("[T]he party asserting federal jurisdiction must distinctly and affirmatively allege the citizenship of the parties.") (citations, quotations, and alterations omitted). In short, federal diversity jurisdiction was not established by the allegations of the notice of removal. **Issues include Rushmore Loan Management Services LLC, Loan Care Servicing Center, LLC, Seterus, Inc., and Federal National Mortgage Association (14221 Dallas Pkwy, Dallas, Texas 75254).**

As such, diversity fails and this court lacks subject matter jurisdiction, and this case must be remanded to the Texas District Court for reassignment. If the district court discovers that it lacks subject matter jurisdiction at any time before

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[31] Am. Motorists Ins. Co. v. Am. Emp. Ins. Co., 600 F.2d 15, 16 (5th Cir. 1979)
[32] Harvey v. Grey Wolf Drilling Co., 542 F.3d 1077, 1080 (5th Cir. 2008)
[33] Howery, 243 F.3d at 919
[34] Am. Motorists Ins. Co. v. Am. Emp. Ins. Co., 600 F.2d 15, 16 (5th Cir. 1979)
[35] Harvey v. Grey Wolf Drilling Co., 542 F.3d 1077, 1080 (5th Cir. 2008)
[36] Howery, 243 F.3d at 919

final judgment, **28 USC §1447** requires remand (or transfer) even without a petition from the plaintiff.[37] ("Defendant's right to remove and plaintiff's right to choose his forum are not on equal footing; for example, unlike the rules applied when plaintiff has filed suit in federal court with a claim that, on its face, satisfies the jurisdictional amount, removal statutes are construed narrowly. .. ").

When the district court lacks jurisdiction, we have jurisdiction on appeal, not on the merits but for the purpose of addressing the lower court's jurisdiction to entertain the suit.[38]

On June 19, 2020, Burch appealed the IFP decision by the district court to the United States Court of Appeals for the Fifth Circuit and filed a Motion to Proceed In Forma Pauperis on July 17, 2020. On May 3, 2021, Burch was designated o be a disabled veteran by the Veterans Administration due to an injury during his military service. The amount awarded was small, but Burch made a motion on September 28, 2021, to remand the case and pay the filing fee under **FRAP 12.1**. Nine days later, on October 9, 2021, Burch filed a motion under **FRCP 62.1** requesting that the case be remanded and the filing fee to be paid by Burch. On January 24, 2022, the Court dismissed the case as frivolous and sanctioned Burch. The Fifth Circuit panel stated that Burch should have been able to pay the filing fee based upon his Motion to pay the Filing Fee due to his increase in income even though the increase in income came after filing the motion. Also, Burch filed the **FRAP 12.1** several days before he filed the **FRCP 62.1** even though it was four months later that the Fifth Circuit issued its

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[37] Bums v. Windsor Ins. Co., 31 F.3d 1092, 1095 (1 st Cir. 1994)
[38] ***United States v. Corrick***, 298 US 435, 440, 56 S.Ct. 829, 80 L.Ed. 1263 (1936))

ruling. The District Court ruled in the **FRAP 62.1** Motion **(Appendix B-2)** that the case was closed. It appears that the district court did not understand the wording of the **FRAP 62.1** motion anymore that Pro-se Burch.

The court relied on **28 U.S.C. § 1915(e)(2)(B)(i).** This rule says, "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious." But the basis for the courts frivolous determination is "because Burch effectively has not identified any error in the dismissal without prejudice of his bankruptcy appeal for failing to pay the filing fee in the district court, he has not shown a nonfrivolous issue on appeal. Accordingly, the motion to proceed IFP is denied, and the appeal is dismissed as frivolous". Yet Burch clearly wrote, "Based on the Courts own statute cited, ***Auffant v. Paine, Webber, Jackson & Curtis, Inc.*, 538 F.Supp. 120, 1202 (D.P.R. 1982),** "court should consider overall financial situation of applicant as well as assets and liabilities of spouse.

Burch also wrote, "Because Burch receives five dollars a week more than allowed for IFP, the District Court Judge dismissed Burch's appeal thus robbing Burch of due process under the **Fifth Amendment and Fourteenth Amendment (Appendix Y)** of the United States Constitution and **Sections thirteen and nineteen of the Texas Constitution**." And Burch wrote, "In the SCOTUS ruling in ***Coppedge V. United States*, 369 U.S. 438 .444-445 (1962),** the requirement that an appeal in forma pauperis be taken "in good faith" is satisfied when the defendant seeks appellate review of any issue that is not frivolous. **Id.446** If it appears from the

face of the papers filed in the Court of Appeals that the applicant will present issues for review which are not clearly frivolous, the Court of Appeals should grant leave to proceed in forma pauperis." The Erie Doctrine requires that the case be covered under Texas substantive laws. ***Campbell v. Wilder*, 487 SW 3d 146.152 - Tex: Supreme Court 2016** requires that a case be heard regardless of financial status if there is no objection from the defense. There was no objection in this case therefore both the district court and Fifth Circuit court rulings should be vacated.

In ***Neitzke v. Williams*, 490 US 319.325 - Supreme Court 1989** (as stated in ***Anders v. California*, 386 U. S. 738 (1967).** this court defines frivolous as an appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." **Id., at 744.**

The only issue in the Burch motion to remand and pay the filing fee was Burch's request to have the case remanded to the district court with instructions for the court to accept his filing fee and move forward with the case to either rule on the merits of the case or remand the case to the State District Court. There is no precedence for a ruling on changing an appeal from accepting the case as in forma pauperis to paying the filing fee due to a change in income. However, this court did rule in ***Denton v. Hernandez*, 504 US 25.31 - Supreme Court 1992,** "In enacting the federal in forma pauperis statute, Congress "intended to guarantee that no citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court of the United States, solely because . . . poverty makes it impossible . . . to pay or secure the costs" of litigation. ***Adkins v. E. I. DuPont de***

***Nemours & Co.*, 335 U. S. 331, 342 (1948)** (internal quotation marks omitted). At the same time that it sought to lower judicial access barriers to the indigent, however, Congress recognized that "a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." ***Neitzke*, supra, at 324**. In response to this concern, Congress included subsection (d) as part of the statute, which allows the courts to dismiss an in forma pauperis complaint "if satisfied that the action is frivolous or malicious." It must be understood that Burch, on his own and with obvious honesty, requested that he be allowed to pay the filing fee, but the court turned him down. This act of honesty appears to have been the catalyst for the denial of due process.

The Fifth Circuit denied the IFP on June 13, 2022, (**Appendix B**) seemingly due to an increase in income that happened after the fact. The Fifth Circuit again denied Burch the opportunity to pay the fee either on remand or upon dismissing the IFP. This is an obvious denial of Burch's Due Process rights under The **5th Amendment to the U. S. Constitution, Article 1, Sections 13 and 19 of the Texas Constitution**, and Burch's right to Free Speech as guaranteed under the **First Amendment of the U. S. Constitution.** A rehearing Motion was denied on July 14, 2022. (**Appendix A**)

XII. REASONS FOR GRANTING THE PETITION

This case illustrates the degree of the lack of knowledge of the laws and precedence, pertaining to real estate and how they apply to bankruptcy. This lack of

knowledge is especially dangerous when you consider that it includes not only the attorneys, but the judges as well. The absence of knowledge has resulted in judge's ruling by their feelings rather than the law. This has created an unprecedented level of fear in the bankruptcy court lawyers of anything beyond a simple ledger sheet bankruptcy.

The district courts and the circuit courts seem to also be uncomfortable with bankruptcy cases. In the fear in the courts is due to a major misunderstanding of the bankruptcy laws. For example, in the Northern District of Texas there is a local rule, **Local Miscellaneous Order 33**, **(Appendix Q)** that is unconstitutional and does not correspond to a need. This local rule essentially allows the district courts to avoid bankruptcy issues even when they shouldn't. Bankruptcy courts are restricted in the cases heard to those that are directly related to the claims process. If a result of the case brought to the bankruptcy court cannot alter the outcome of the bankruptcy case, then it cannot be heard in the bankruptcy court.

Burch believes that the initial gate keeper should be the state court judge simply because of the lighter case load, knowledge of the state law pertaining to the petition, and for purposes of judicial efficiency.

If a case must go to the federal court, then it should only be removed to the federal district court. The federal courts are awash with help in the form of law clerks, Magistrate Judges, and Bankruptcy Court Judges. While still not as efficient as having the state court be the gatekeeper it is still better than removing directly to a

bankruptcy court. This is because a bankruptcy court is limited in jurisdiction and, more importantly, knowledge.

By removing to the district court, the district court can get findings of fact and conclusions from the bankruptcy court on bankruptcy issues and from the magistrate on all other issues. He can then decide if it is part of the bankruptcy such as a creditor suing to increase what he should be paid or if it is simply a case related in some way to the bankruptcy case that does not affect the outcome of the bankruptcy.

QUESTION 1:

> "If a mortgage holder and/or a mortgage service company were to have their lien extinguished in bankruptcy and then refuse to accept payments should the void lien be removed, and the property returned to the debtor lien free?"

Texas statute provides that all loans over $50,000 must be in writing **(TBCC 26 (Appendix L)**. If a loan is not in writing then a presentment letter **(TBCC 3.501 Appendix J)** must be sent to the lender giving them the opportunity to cure the problem. If the issue is not cured in the time frame allotted, then the lien is void. What the Texas Constitution forbids cannot be evaded even by agreement of the parties, [39]and what is "never valid is always void,"[40]

By lacking the knowledge of Texas law and not having the staff to properly review the issue, the bankruptcy court was open to error that may not have occurred had the case stayed with the district court where the district court could rely on input from his law clerks, the bankruptcy court, and the magistrate court.

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[39] Tex. Land & Loan Co., 13 S.W. at 13

[40] Inge v Cain, 65 Tex. 80 (1885)

The Magistrate made a grave error in this case by recommending that the case be sent to the bankruptcy court saying that it was a core procedure, which it obviously was not, and citing **Local Miscellaneous Order 33 (Appendix Q) The Local Miscellaneous Order 33** should be eliminated. Just because a case involved the bankruptcy court at one point does not mean that the case is a federal case.

QUESTION 2:

> "Should a bankruptcy court be allowed to accept a case removed late and to give orders without permission from all parties as required in **FRBP 9027 (Appendix R)** and all orders from the bankruptcy and appeals courts be reversed, and the case remanded to the state court"

It goes without saying that late removal is an automatic return to the state court. The District Court clearly exceeded its jurisdiction in accepting an affirmative defense on a case that was removed late. There are many rules and precedence established that prevents this action such as **28 U.S. C. § 1446(b)(1) (Appendix P)** or **FRBP 9027(a)(3) (Appendix R).** This is but another example of how the current procedures are broken. In the twelve-month period ending June 30, 2022, there were 40,403 original appeals in the United States. Of those only 570 were bankruptcy cases. The second highest category was "other U, S. Civil" with 2,330 cases. The bankruptcy cases amounted to just a little over one percent of the total appeals filed. Yet in the only year available for bankruptcy filings there were 413,616 cases file which was a drop of twenty-four percent. This means that only a little over one-tenth of one percent of cases were appealed. The system has

fomented an extreme prevention of due process robbing hundreds of thousands of citizens of the United States of their **Fifth Amendment** protections.

FRBP 9027 (Appendix R) provides that a bankruptcy court must be given the right to issue orders or final judgments. In this and all the other cases filed by Burch this has never happened. Yet the bankruptcy court has taken it upon itself to issue orders and final judgments without jurisdiction to do so. Again, if the district court had kept the case as it should have and merely had the bankruptcy court issue findings of fact and conclusions of law there would not have been a problem. The courts must change their procedures for the good of the citizens of the United States. Other than a criminal case where someone was wrongly prosecuted, taking away a person's life by wrongly removing all that they own is perhaps the next worse.

QUESTION 3:

"Should an appeals court base their decision on an unconstitutional order?"

The court has set an incomplete basis for determining if a petitioner should be granted in forma pauperis on appeal. As it currently stands the following holds true:

1. If from the face of the papers he has filed, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal in forma pauperis".

***Coppedge v. United States*, 369 US 438.446 - Supreme Court 1962,** "

2. **28 U. S. C. § 1915 (Appendix X),** is designed to ensure that indigent litigants have meaningful access to the federal courts. ***Adkins v. E. I. DuPont de Nemours & Co.*, 335 U. S. 331, 342-343 (1948).**

3. An appeal on a matter of law is frivolous where "[none] of the legal points [are] arguable on their merits." ***Anders v. California*, 386 U. S. 738 U. S.744 (1967)**

These are some of the undecided aspects of the question of frivolous and IFP.

1. In a case that is removed from state court under diversity the Erie Doctrine requires state substantive rules apply. Does this mean that if a state court does not deny a pauper status, then the IFP is automatically approved?

2. Is it frivolous for an appellant to motion for a remand and pay filing fee if the financial position of the appellant should change? This question will also apply the other way around if the appellant loses income and can no longer pay the filing fee.

The definition of frivolous must be expanded to consider these issues. Until then due process rights (**Fifth Amendment**) cannot be served, and freedom of speech (**First Amendment**) will be denied.

Because of the definition remaining unanswered it has led to Burch, currently a pauper, losing millions of dollars in property to the defendants who cannot show a valid lien and have refused to show any ownership are interest in a loan or deed of trust on these 22 properties. The courts have been used by the defendants to take assets away summarily and unjustifiably from Burch and have used procedure and disregard for the law in the taking of these properties.

The order given by the panel had the following, "Burch is again warned 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—particularly those in which he requests leave to proceed IFP from an order dismissing his bankruptcy appeal in the district court for failure to pay the filing fee and moves in this court to remand based on new financial resources—and to withdraw any appeals that are frivolous."

By Burch wanting to save the court, the defendant, and himself time and money the case Burch had his Due Process rights taken away from him and he was thus forced to shut up based on the courts statement that could not be heard on the merits. This denied Burch his constitutional right to free speech under the **First Amendment** and his right to due process as guaranteed under the **Fifth Amendment.**

Because both the district court and Burch were confused as to the order of filing the **FRAP 12.1** and **FRCP 62.1** the court needs to clarify that the district court should be allowed to reopen the case temporarily to rule on the **FRCP 62.1**

motion or that the district court has the authority to rule on a **FRCP 62.1** motion even though the case in the district court is closed.

STATEMENT OF JURISPRUDENTIAL IMPORTANCE

Therapeutic jurisprudence (TJ) studies law as a social force (or agent) which inevitably gives rise to unintended consequences, which may be either beneficial (therapeutic) or harmful (anti-therapeutic). It envisions lawyers practicing with an ethic of care and heightened interpersonal skills, who value the psychological wellbeing of their clients as well as their legal rights and interests, and to actively seek to prevent legal problems through creative drafting and problem-solving approaches. In this case anti-therapeutic jurisprudence due to the actions of the Respondents cost Burch millions of dollars and all his income. The Respondents refused to follow the first bankruptcy plan and tried to foreclose on the property even though the lien was void. The actions of the Respondents are the definition of anti-therapeutic jurisdiction and the basis of all subsequent legal actions by Burch.

XIII. CONCLUSION

For the foregoing reasons, Burch respectfully requests that this Court issue a writ of certiorari to review the Order of the Court of Appeals for the Fifth Circuit.

DATED this 30th day of September 2022

Respectfully submitted,

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