

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Joanna Burke) CASE No. 0:23-cv-01119-WMW-DJF
)
 Plaintiff.)
)
 vs.)
)
 PHH Mortgage Corporation,)
 et al)
)
 Defendants.)
)
)
 _____)

**PLAINTIFF, JOANNA BURKES' MOTION FOR ADVANCE
APPROVAL OF PROCESS OF SERVICE COSTS AND
EXTENSION OF TIME TO SERVE DEFENDANTS**

Pursuant to Fed. R. Civ. P. 4(d)(2), Joanna Burke ("Plaintiff") files this motion and states as follows:


Waiver of Process Attempts






On paper submission of the Plaintiff's complaint to this court, copies were sent to the Defendants, along with the request to waive service, utilizing the court form AO 398 which provided time to respond.

The Plaintiff did not receive any response to this request. As such, Plaintiff sent emails along with the complaint, copies of the court summons and waiver form AO 398 once more asking for a response.

On June 20, Defendant Shelley Hopkins sent two email responses.

Re: Waiver of Summons


 Shelley Hopkins <Shelley@hopkinslawtexas.com>
To: joanna@2dobermans.com; Mark Hopkins

  Reply  Reply All  Forward 

Tue 6/20/2023 9:37 AM

We will not agree to waive service.

Shelley L. Hopkins

 **HOPKINS**
LAW

3 Lakeway Centre Ct., Suite 110 | Austin, Texas 78734
512.600.4320 main | 512.600.4323 direct | www.hopkinslawtexas.com


From: joanna@2dobermans.com <joanna@2dobermans.com>
Date: Friday, June 16, 2023 at 10:23 AM
To: Mark Hopkins <mark@hopkinslawtexas.com>, Shelley Hopkins <Shelley@hopkinslawtexas.com>
Subject: Waiver of Summons






Please see attached letter with enclosures for your attention for Hopkins parties.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

The first regarding waiver of service for Shelley Hopkins, Mark Hopkins, and Hopkins Law, PLLC, refusing to waive service, and the second, stating they were not authorized to waive service for PHH.

Re: Waiver of Summons


 Shelley Hopkins <Shelley@hopkinslawtexas.com>
To: joanna@2dobermans.com; Mark Hopkins

  Reply  Reply All  Forward 

Tue 6/20/2023 9:37 AM

We are not authorized to accept service on behalf of PHH and thus are not authorized to waive service for PHH.

Shelley L. Hopkins

 **HOPKINS**
LAW

3 Lakeway Centre Ct, Suite 110 | Austin, Texas 78734
512.600.4320 main | 512.600.4323 direct | www.hopkinslawtexas.com

From: joanna@2dobermans.com <joanna@2dobermans.com>
Date: Friday, June 16, 2023 at 10:25 AM
To: Mark Hopkins <mark@hopkinslawtexas.com>, Shelley Hopkins <Shelley@hopkinslawtexas.com>
Subject: Waiver of Summons

Please see attached letter with enclosures for your attention for party PHH.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

Both are disingenuous responses for the reasons presented herein.

As no response had been received from Christina Gardner, Case Manager at the Court of Appeals for the Fifth Circuit, a reminder was sent on June 20, stating;

“I am writing to kindly inquire about the status of a recent USPS delivery and the acknowledgement of my Jun 16 email with letter and waiver enclosed.

As a reminder, I recently sent a USPS delivery to the Fifth Circuit Court of Appeals for the attention of Case Manager Christina Gardner, which reached your court. However, I have not received any confirmation or acknowledgment of its receipt by Ms Gardner, or from the court.

Additionally, as stated, I sent an email following up on the request to waive service, but I have not received any response or acknowledgement thus far.

I understand that you and your team may be dealing with numerous responsibilities and a high volume of correspondence. Therefore, I wanted to reach out to ensure that my USPS delivery and email were indeed received and are being processed accordingly.

I look forward to hearing from by return in order that I may attend to this time sensitive matter.

Sincerely, Joanna Burke”

A reply to Plaintiff's reminder was received on June 21, 2023;

"This email is not to be used for communicating with the court. Please contact our office with any questions you may have about your case. 504-310-7700.

Very Respectfully,
U.S. Court of Appeals, 5th Circuit"

The email address in question has been utilized by Plaintiff many times in related appeals and at the request of the Fifth Circuit and specifically, Christina Gardner in her capacity as officer of the court, has responded and/or called John Burke (deceased) based on those email communications to said email, while the pro se litigants were briefing the appeal at the 5th Circuit and which is a substantive part of this complaint in this new civil action.

On July 11, 2023 at 5.13 am, Plaintiff sent another email to Christina Garner's direct work email (Christina_Gardner@ca5.txcourts.gov) along

with the complaint, copies of the court summons and waiver form AO 398

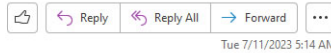
once more asking for a response. An auto-response was received, stating;

“ I am currently out of the office until 07/12/23 at 8:00 a.m. The disclaimer confirms this is a direct email; “PLEASE NOTE: Emails are not automatically forwarded to anyone else in the office.”

Automatic reply: Waiver of Summons



Christina Gardner <Christina_Gardner@ca5.uscourts.gov>
To joanna@2dobermans.com



Tue 7/11/2023 5:14 AM

I am currently out of the office until 07/12/23 at 8:00 a.m.

For routine matters during normal business hours, please contact our team at 504-310-7808.

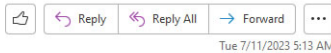
For emergency matters after 4:30, please contact 504-310-7700 and follow the prompts for the emergency deputy clerk.

PLEASE NOTE: Emails are not automatically forwarded to anyone else in the office.

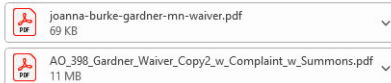
FW: Waiver of Summons



joanna@2dobermans.com
To 'Christina_Gardner@ca5.uscourts.gov'



Tue 7/11/2023 5:13 AM



July 11, 2023

Please see attached letter with enclosures for your attention and timely response as to waiver of service.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

From: joanna@2dobermans.com <joanna@2dobermans.com>
Sent: Friday, June 16, 2023 10:34 AM
To: 'Pro_se@ca5.uscourts.gov' <Pro_se@ca5.uscourts.gov>
Subject: Waiver of Summons

Please see attached letter with enclosures for the attention of Christina Gardner, Case Manager, CA5.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

On July 13, 2023 at 11.05 am, Plaintiff sent an email stating:

“Reminder. Please answer”.

No response has been received prior to filing this motion.

RE: Waiver of Summons



joanna@2dobermans.com
To: 'Christina_Gardner@ca5.uscourts.gov'

Reply Reply All Forward

Thu 7/13/2023 11:05 AM

Reminder. Please answer.

From: joanna@2dobermans.com <joanna@2dobermans.com>
Sent: Tuesday, July 11, 2023 5:13 AM
To: 'Christina_Gardner@ca5.uscourts.gov' <Christina_Gardner@ca5.uscourts.gov>
Subject: FW: Waiver of Summons

July 11, 2023

Please see attached letter with enclosures for your attention and timely response as to waiver of service.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

From: joanna@2dobermans.com <joanna@2dobermans.com>
Sent: Friday, June 16, 2023 10:34 AM
To: 'Pro_se@ca5.uscourts.gov' <Pro_se@ca5.uscourts.gov>
Subject: Waiver of Summons

Please see attached letter with enclosures for the attention of Christina Gardner, Case Manager, CA5.

Joanna Burke
joanna@2dobermans.com
Tel: (832) 466-9015
Fax: (866) 705-0576

The Defendants are, with the exception of PHH, officers of the court and refusing to waive service or communicate with a Plaintiff confirms the arguments presented in Plaintiff's complaint.

The Hopkins Defendants have been counsel for PHH (formerly Ocwen) since 2015 and in each lawsuit they have appeared.

In 2018, they unlawfully snap-removed two simultaneously filed state court claims by Plaintiff by blanking an email from Plaintiff on a Friday in order to 'remove' the case to Federal court by Monday morning and then proceeded to dodge service for Hopkins Law, PLLC.

In 2021, in federal case *Burke v. Ocwen Loan Servicing, LLC* (4:21-cv-02591) District Court, S.D. Texas, the Hopkins Defendants again refused to waive service, see Amended Complaint, Docket entry no. 12, p. 2-15 for details. Service would be eventually executed; See, Docket entry no. 26; RETURN of Service of SUMMONS Executed as to Shelley Hopkins served on 10/29/2021, answer due 11/19/2021, filed. (BrandisIsom, 4) (Entered:

11/15/2021); Docket entry no. 27; RETURN of Service of SUMMONS Executed as to PHH Mortgage Corporation served on 10/28/2021, answer due 11/18/2021, filed. (BrandisIsom, 4) (Entered: 11/15/2021); Docket entry no. 28; RETURN of Service of SUMMONS Executed as to Mark Daniel Hopkins served on 10/29/2021, answer due 11/19/2021, filed. (BrandisIsom, 4) (Entered: 11/15/2021) ; Docket entry no. 29; RETURN of Service of SUMMONS Executed as to Hopkins Law, PLLC served on 10/29/2021, answer due 11/19/2021, filed. (BrandisIsom, 4) (Entered: 11/15/2021).

Assigned Judge Alfred H. Bennett did not address the Plaintiff's motion complaining about service nor order reimbursement to the Plaintiff for these costs under its inherent power and authority. Hence, to avoid the same result here advance approval is respectfully requested.

The Parties are the same, with the exception of Christina Gardner and John Burke (deceased)

1. Joanna Burke – Plaintiff. Joanna Burke is an individual who resides in Harris County, Texas.

2. Christina Gardner – Defendant. Christina Gardner is an individual who works as a Clerk at the Court of Appeals for the Fifth Circuit in New Orleans, Louisiana.

3. PHH Mortgage Corporation – Defendant. Ocwen Loan Servicing, LLC merged with Defendant PHH Mortgage Corporation, a New Jersey corporation, On June 1, 2019, with PHH Mortgage Corporation surviving the merger. 100% of the common stock of PHH Mortgage Corporation is owned by PHH Corporation, a Maryland Corporation. 100% of the common stock of PHH Corporation is owned by Ocwen Financial Corporation, a Florida corporation. Ocwen Financial Corporation is a publicly traded company with no entity owning more than 10% of its stock.

4. Mark Daniel Hopkins – Defendant. Mark D. Hopkins is an individual who resides in Travis County, Texas.

5. Shelley Hopkins – Defendant. Shelley Hopkins is an individual who resides in Travis County, Texas

6. Hopkins Law, PLLC – Defendant. Hopkins Law, PLLC is a Texas Private Limited Liability Company that has its place of business in Travis County, Texas.

Contact/Service/Counsel Information for the Parties

Joanna Burke - 46 Kingwood Greens Dr, Kingwood, Texas 77339, (281) 812 9591 - Self represented pro se for Plaintiff.

Mark D. Hopkins and Shelley L. Hopkins, Hopkins Law, PLLC, 3 Lakeway Centre Ct., Suite 110, Austin, Texas 78734, (512) 600-4320 – Counsel for all Defendants except Christina Gardner.

Christina Gardner - Counsel and personal address is unknown.

ARGUMENTS AND AUTHORITIES

The refusal by Defendants to waive service is without merit. Consider the recent case *Stout v. Wells Fargo Bank, N.A.* (5:22-cv-00441, District Court, W.D. Texas.

There, both Mark Hopkins (ANSWER to 1 Complaint, Attorney Mark D. Hopkins added to party Barrett Daffin Frappier Turner & Engel, LLP (pty: dft) by Barrett Daffin Frappier Turner & Engel, LLP.(Hopkins, Mark) (Entered: 06/22/2022)), and Shelley Hopkins (ANSWER to 8 Amended Complaint, by Barrett Daffin Frappier Turner & Engel, LLP.(Hopkins, Shelley) (Entered: 07/27/2022)) would appear and file answers, thus waiving service by her actions, as counsel for “BDF Hopkins”, a named defendant in said complaint.

Wells Fargo formally returned the waiver of service form, duly executed by counsel for Locke Lord. (WAIVER OF SERVICE Returned Executed by David H Stout, II as to Wells Fargo Bank, N.A.. Waiver sent on

5/6/2022, answer due 7/5/2022. (Clanton, William) (Entered: 06/02/2022)).

It is also noted that these waivers are generally accepted when counsel represents the homeowner and denied when it's a *pro se* litigant (as the case here illustrates). Should the court require further data pertaining to this allegation, it can be provided upon request.

The Defendants are officers of the court and standards are expected; *Wescott Agri-Prods., Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1095 (8th Cir. 2012);

“Membership in the bar is a privilege burdened with conditions. A fair private and professional character is one of them. Compliance with that condition is essential at the moment of admission; but it is equally essential afterwards. *In re Rouss*, 221 N.Y. 81, 116 N.E. 782, 783 (1917) (Cardozo, J.). [A lawyer is] received into that ancient fellowship for something more than private gain. [A lawyer becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. *People ex rel. Karlin v. Culkan*, 248 N.Y. 465, 162 N.E. 487, 489 (1928) (Cardozo, C.J.).”

This court has the authority to intervene where, as here, the standard has been rebuffed, *Wescott Agri-Prods., Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1095-96 (8th Cir. 2012);

“The district court’s inherent power to govern the practice of lawyers appearing before it “encompasses, among other things, the authority to police lawyer conduct and to guard and to promote civility and collegiality among the members of its bar.” *Sahyers v. Prugh, Holliday & Karatinos, P.L.*, 560 F.3d 1241, 1244 (11th Cir.2009) (footnote omitted). In exercising these inherent powers, it is not unjust to hold a client responsible for its attorney’s misconduct. See *Link*, 370 U.S. at 633, 82 S.Ct. 1386. The client “voluntarily chose [its] attorney as [its] representative in the action, and ... cannot now avoid the consequences of the acts or omissions of [its] freely selected agent.” *Id.* at 633-34, 82 S.Ct. 1386.”

Plaintiff has read the requirements for recovery of fees based on the detailed explanation in *Smith v. Bradley Pizza, Inc.*, 314 F. Supp. 3d 1017 (D. Minn. 2018) and particularly regarding the personal and direct attempt of service for defendant PHH. Plaintiff has not reached out directly to PHH, but

indirectly through its known counsel, Hopkins Law, PLLC. As discussed, in every single case involving PHH/Ocwen and Plaintiff, retained counsel on each occasion has been Hopkins Law, PLLC. Hence, Plaintiff alleges that Hopkins response stating they could not accept service for PHH is disingenuous.

However, should this court decide direct communication is required to allow for recovery of the costs associated with service upon PHH, Plaintiff respectfully asks for additional time to first seek waiver of service from PHH, and should they also refuse, the pre-approval for fees to be incurred in serving PHH can be resubmitted for this court's consideration at that time.

REQUEST AND PRAYER FOR RELIEF

Plaintiff Joanna Burke is 84-year old widow, now on a reduced fixed income as a result of the tragic loss of her husband of over 63 years. She respectfully requests an Order be issued which approves recovery of the process of services costs which will be incurred to serve the Defendants in

this civil action along with an Order extending the time to serve process, if necessary by another 90 days beyond the time allowed in law so service can be executed as the Plaintiff's restricted budget allows.

This motion is not brought for the purpose of delay, but so justice may prevail for a widow on a fixed income and who has attempted vigilantly to obtain waiver, which is proper in these circumstances but rejected by officers of the court for no good reason.

RESPECTFULLY submitted this 14th day of July, 2023.

/s/ Joanna Burke

Joanna Burke / State of Texas
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: joanna@2dobermans.com

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system and in compliance with Fed. R. Civ. P. 5.

/s/ Joanna Burke

Joanna Burke / State of Texas