

No. 23-3593

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IN THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT

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JOANNA BURKE

*Plaintiff-Appellant,*

v.

PHH MORTGAGE CORPORATION, ET AL

*Defendants-Appellees.*

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On Appeal from the United States District Court  
For the District of Minnesota;  
USDC No. 0:23-cv-01119-WMW

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**RECONSIDERATION AND/OR CORRECTION OF APPELLANT  
JOANNA BURKE'S SECOND MOTION FOR EXTENSION OF TIME**

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*Pro Se Appellant*

Appellant and non-prisoner, Joanna Burke, pro se, moves this court for reconsideration and/or correction of this court's order granting of time which included the following;

“Appellant may have until June 14, 2024 to file a petition for rehearing. **No further extensions will be granted.**”

The Appellant respectfully requests the court remove or strike the second sentence from the order “No further extensions will be granted.” – an *ante litem motam* order.

As Joanna Burke discussed in her original motion, the Appellant has no control over the courts, judges and when they will decide her motion to remand in Texas federal court. If her motion to remand is not decided by June 14, 2024, this court's *ante litem motam* order would prevent a further extension of time until that decision is reached. This would violate due process when a fundamental liberty interest is at stake.

### **LEGAL AUTHORITY**

*In re Krueger*, 88 B.R. 238, 241 (B.A.P. 9th Cir. 1988);

“The due process clause of the Fifth Amendment requires that due process be provided before property can be taken.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

*Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306, 314,

70 S.Ct. 652, 657, 94 L.Ed. 865 (1950).

An order is void if it is issued by a court in a manner inconsistent with the due process clause of the Fifth Amendment.

See, e.g., *Blumer*, 66 B.R. at 113; *In re Whitney-Forbes, Inc.*, 770 F.2d 692 (7th Cir. 1985) (citing 11 C. Wright and A. Miller, *Federal Practice and Procedure*, section 2862, page 200, (1973)).

Accordingly, in this case Judge Elliott properly vacated the dismissal order that had been issued in violation of the Debtor's due process rights.”.

### CONCLUSION

This court's order issued *ante litem motam* anticipates a future event or court order in Texas, and makes provisions or rulings based on that future occurrence. However, that date is currently unknown. As such, it could impact Appellant's due process and fundamental liberty interest negatively. Respectfully, and for the above reasons, Appellant prays the court will GRANT the correction to the current court order, by removing the wording which violates the Fifth Amendment, “No further extensions will be granted”, and issue a corrected order.

DATED: March 25, 2024

By JOANNA BURKE

*s/ Joanna Burke*  
JOANNA BURKE

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*Pro Se for Plaintiff-Appellant*

**CERTIFICATE OF COMPLIANCE**

I, Joanna Burke, undersigned, certify that:

1. This document complies with the type-volume limitation of Fed. R. App.P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R App. P. 32(f), this document contains 402 words, as determined by Microsoft Word for Microsoft 355 word processing software.

2. This document complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman (14-point).

DATED: March 25, 2024

*s/ Joanna Burke*  
JOANNA BURKE

**CERTIFICATE OF SERVICE**

I hereby certify that a certificate of service is not required in this appeal.

s/ Joanna Burke  
JOANNA BURKE