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COBBS TRUST

6
7 **UNITED STATES BANKRUPTCY COURT FOR THE**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 In re:) Case No. 2:17-bk-24993-RK
10 MARY CUMMINS-COBB,) Chapter 7
Debtor) Adv. Proc. No. 2:18-ap-01066-RK
11)
12 KONSTANTIN KHIONIDI, as Trustee of the) OPPOSITION TO DEFENDANT'S MOTION
COBBS TRUST,) FOR SUMMARY JUDGMENT
13)
14 vs.) Plaintiff,) Date: November 26, 2019
15 MARY CUMMINS-COBB,) Time: 2:30 p.m.
Defendant.) Courtroom: 1675
16)
17 Judge: Honorable Robert N. Kwan
Courtroom: 1675
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012
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1 **INTRODUCTION**

2 Defendant Mary Cummins-Cobb’s (“Cummins”) Motion for Summary Judgment can be
3 summed up simply: another waste of time, totally and completely without merit and filed purely to
4 harass Plaintiff. Cummins makes three claims in her Motion for Summary Judgment. First, she
5 re-argues *Plaintiff’s* Motion for Summary Judgment by claiming that the Texas Judgment is
6 dischargeable. However, in this Court’s May 24, 2019 Order on Plaintiff’s Motion for Summary
7 Judgment, (Dkt. 86), this Court already granted summary adjudication of facts numbered 1-30 in
8 the Order, stating that “These facts numbered 1 through 30 are uncontroverted and deemed
9 established in this case.” Thus, Cummins’ argument that the Texas Judgment is dischargeable is
10 frivolous.

11 Second, Cummins claims that plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust,
12 has no standing to sue. However, she presents no evidence at all that Khionidi lacks standing to
13 sue. Although she *argues* that the Trust is invalid, she does not explain why the Trust is invalid
14 nor does she cite to a single case or statute that supports her argument that the Trust is “invalid.”
15 At most, she points to an obvious scrivener’s error, such as listing in the introduction to the Trust
16 that Khionidi’s address is listed as “Anapa, Krasnodarskii Krai, Russian Federation County, State
17 of California,” even though Article II of the Trust correctly states Mr. Khionidi’s address as “an
18 Individual residing at Ul. Shevchenko 241-50, Anapa, Krasnodarskii Krai, Russian Federation
19 353440.” That scrivener’s error has nothing to do with whether the Trust is “invalid.”

20 Third, Cummins claims that someone, presumably Mr Khionidi, has “unclean hands.”
21 However, Cummins does not explain what it is that Mr. Khionidi did *in this case* that could
22 possibly support by clear and convincing evidence a finding of unclean hands so egregious as to
23 warrant dismissal of an Adversary Complaint seeking a finding of nondischargeability of a
24 judgment that this Court has already determined to be nondischargeable in its May 24, 2019
25 Summary Judgment Order. Accordingly, this is just another meritless effort to waste counsel’s
26 time, run up legal fees and delay the inevitable entry of final judgment.

27 Because there are no issues of fact regarding whether Khionidi has standing to sue or
28 whether the Cobbs Trust is valid, Plaintiff requests that this Court enter summary judgment in

1 *plaintiff's* favor pursuant to Fed.R.Civ.P. 56(f).

2 **ARGUMENT**

3 **I.**

4 **THE ISSUE OF NONDISCHARGEABILITY HAS ALREADY BEEN DETERMINED BY THIS**
5 **COURT**

6 In its May 24, 2019 Order on Plaintiff's Motion for Summary Judgment (Dkt. 86)(the "MSJ
7 Order"), this Court ruled that Fact Nos. 1-30 "are uncontroverted and deemed established in this
8 case." Fact Nos. 1-30 conclusively establish that the Texas Judgment and the California Sister
9 State Judgment entered on the Texas Judgment are nondischargeable. Thus, even assuming
10 that Cummins had presented any admissible evidence to support this claim, and she has not,
11 there is literally no basis whatsoever – whether legal or factual – for Cummins to now reargue
12 those conclusively established issues. Accordingly, her first claim upon which she seeks
13 summary judgment is frivolous.

14 **II.**

15 **KHIONIDI HAS STANDING TO SUE**

16 Cummins fails to present any evidence or legal argument that would, should or tend to
17 show either that the Cobbs Trust is "invalid" or that the judgment was not validly assigned to the
18 Trust. Although as discussed below, the Cobbs Trust satisfies all requirements of the California
19 Probate Code, the "validity" of the Trust is irrelevant. As recognized in California: "Unlike a
20 corporation, a trust is not a legal entity. Legal title to property owned by a trust is held by the
21 trustee" "A ... trust ... is simply a collection of assets and liabilities. As such, it has no
22 capacity to sue or be sued, or to defend an action." *Greenspan v. LADT LLC*, 191 Cal. App. 4th
23 486, 522 (2010) (ellipsis in original). Thus, whether valid or invalid, the Trust assets, including
24 the Texas Judgment, are held by Mr. Khionidi. Accordingly, Mr. Khionidi is currently the only
25 person who can properly sue.

26 A. **The Cobbs Trust Is A Valid Trust Purusant To Probate Code § 15200.**

27 In its May 24, 2019 MSJ Order, this Court stated that "genuine issues of material fact for
28 trial as to to whether Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust, created a valid

1 trust.” Although the validity of the Trust was not briefed in connection with *Plaintiff’s* Motion for
2 Summary Judgment, Cummins now challenges the validity of the Trust. Whether a valid trust has
3 been created is a matter of law for the Court. The construction and interpretation of the
4 instruments is a question of law. *Reagh v. Kelley*, 10 Cal. App. 3d 1082, 1088-89 (1970). There is
5 no factual issue regarding the fact that the Cobbs Trust is a valid trust.

6 **1. Requirements For Creation Of A Valid Trust.**

7 The requirements for the creation of a valid trust are “an intention on the part of the settlor
8 to create a trust, the subject matter of the trust, the purpose of the trust, a beneficiary, and
9 acceptance of the trust by the trustee.” *Newman v. Commissioner*, 222 F.2d 131, 135 (9th Cir.
10 1955); Probate Code § 15200; *Lefrooth v. Prentice* 202 Cal. 215, 259 P. 947 (1927)(The
11 requirements of a voluntary trust are, as to the trustor and beneficiary, words of the trustor
12 indicating with a reasonable certainty his intention to create a trust, the subject, purpose, and
13 beneficiary of the trust). “No particular language is necessary to create a trust, and the word
14 “trust” or “trustee” need not be used.” *Title Ins. & Trust Co. v. McGraw* 72 Cal.App.2d 390 (1945).

15 **2. The Cobbs Trust Clearly Complies With Probate Code § 15200.**

16 The Cobbs Trust clearly evidences an intent to create trust by the settlor, Mr. Khionidi.
17 The Trust states “THIS REVOCABLE LIVING TRUST AGREEMENT, (hereinafter “Trust”), is
18 being made as of the 20th day of March 2017, by and between Konstantin Khionidi of Anapa,
19 Krasnodarskii Krai, Russian Federation County, [sic] State of California, [sic] hereinafter referred
20 to as the Trustor and the Trustee designated below.”¹ Those are clearly words of the Trustor
21 indicating his intent to create a trust.

22 Article II of the Cobbs Trust identifies the Settlor and beneficiaries: “The Trustor or Settlor
23

24
25 ¹ Obviously, the introductory clause contains a scrivener’s error, referring to the address of
26 the Trustor as “Anapa, Krasnodarskii Krai, Russian Federation County, State of California.” That is
27 irrelevant to the validity of the Trust, especially since the Trustor and Trustee is correctly identified in
28 Article II as “Ul. Shevchenko 241-50, Anapa, Krasnodarskii Krai, Russian Federation 353440.” “It
is immaterial that the language used is inartificial, ungrammatical, and devoid of technical terms, if
the intention is evident from a reasonable construction of the document as a whole.” *In re Estate of
Ingram*, 104 Cal.App. 1 (1930).

1 of this trust is Konstantin Khionidi, an Individual residing at Ul. Shevchenko 241-50, Anapa,
2 Krasnodarskii Krai, Russian Federation 353440. The Beneficiary of the Trust during the lifetime
3 of the Truster is the Trustor. Except as otherwise provided herein, upon the death of the Trustor,
4 the Beneficiary is Bat World Sanctuary, a Texas Corporation with offices at: 217 N. Oak Avenue,
5 Mineral Wells, TX 76067.”

6 Article IV identifies the property of the Trust: “All rights, title, and interest in and to all real
7 and personal property, tangible or intangible, listed on the attached Exhibit "A"” and provides in
8 Article IV, ¶ 5 that “Additional property may be conveyed to the Trust by the Trustor, or any other
9 third party at any time.” The business of the Trust and the powers of the Trustee are spelled out
10 in Article V. *See also*, Probate Code § 15204 (authorizing general purpose of trust). Moreover,
11 the Trust document is signed by the Trustor and the Trustee.

12 Thus, there is no *bona fide* argument that the Cobbs Trust is not a valid revocable trust
13 under California law.

14 **3. Cummins’ Unsupported Attack On The Trust Is Meritless.**

15 Cummins makes a number of complaints regarding the Trust, but cites to nothing to
16 support those contentions. For example, Cummins points to the scrivener’s error in the
17 introduction to the Trust, correctly pointing out that it refers to the Trustor’s Russian address as in
18 the “State of California.” Although that is obviously an error, the accurate address of the Trustor
19 is not a requirement to form a valid trust, and that scrivener’s error is corrected in Article II,
20 identifying the Trustor and the beneficiary. Cummins also claims that “Defendant believes
21 Plaintiff added ‘California’ in the introduction to make it appear that this court has jurisdiction.”
22 Nonsense. The Trust states it is a California trust created pursuant to the California Probate
23 Code. Trust, ¶¶1,3, 49.

24 After several comments that appear to have nothing to do with the validity of the Trust,
25 Motion, p. 6, lines 6-22, Cummins claims that the Judgment is not an asset of the Trust because
26 the Trust was created on March 20, 2017 and the Texas Judgment was not assigned until April
27 10, 2017. So what? The Cobbs Trust, ¶ 5 specifically provides for the conveyance of additional
28 property to the Trust after its creation. Cummins also claims that “There is no evidence that the

1 judgment is part of the trust.” The Acknowledgment of Assignment of Judgment filed with the Los
2 Angeles Superior Court assigning the Judgment to Khionidi as Trustee of the Cobbs Trust is
3 sufficient evidence that the Judgment was acquired by the Trust after its creation.

4 Finally, Cummins claims that the Trust is invalid because Khionidi’s signature is not
5 notarized. However, there is no requirement that a Trust document be notarized, nor does
6 Cummins cite to any statute requiring that a Declaration of Trust be notarized and in fact, courts
7 have even recognized the creation of *oral* trusts.² Thus, there is no issue of fact remaining for
8 trial regarding the validity of the Trust.³

9 B. Cummins Lacks Standing To Challenge The Validity Of The Assignment.

10 Code Civ. P. § 681.020 prescribes the requirements for an assignee to enforce a
11 judgment under this statutory scheme: “An assignee of a judgment is not entitled to enforce the
12 judgment under this title unless an acknowledgment of assignment of judgment to that assignee
13 has been filed under Section 673 or the assignee has otherwise become an assignee of record.”

14 Section 673 sets out the requirements for becoming an assignee of record. “An assignee
15 of a right represented by a judgment may become an assignee of record by filing with the clerk of
16 the court which entered the judgment an acknowledgment of assignment of judgment.” Code Civ.
17 P. § 673(a); *Cal. Coastal Com. v. Allen*, 167 Cal. App. 4th 322, 327 (2008). Code Civ. P. §
18 673(b) sets out the precise contents of the acknowledgment of judgment. Code Civ. P. § 673(c)
19 prescribes the method for completing the acknowledgment: “The acknowledgment of assignment
20 of judgment shall be: [¶] (1) Made in the manner of an acknowledgment of a conveyance of real
21 property. [¶] (2) Executed and acknowledged by the judgment creditor or by the prior assignee of
22 record if there is one.” *Id.*

23 The court in *Cal. Coastal Com. v. Allen* specifically rejected a judgment debtor’s attempt to
24

25 ² The remainder of Cummins’ arguments regarding Ms. Lollar substituting as successor
26 Trustee or obtaining reassignment of the judgment are irrelevant and have nothing to do with the
27 validity of the Trust, which is the only issue in her Motion.

28 ³ Even if the Trust was invalid, the assets of the trust would then become the property of the
Settlor of the trust, Mr. Khionidi. Thus, Mr. Khionidi would still be the proper party to bring the action.

1 challenge the validity of an assignment of judgment that complied with Code Civ. P. § 673 as
2 Cummins seeks to do here:

3 These statutes, read together, specify requirements for an assignee to obtain
4 standing as a judgment creditor to enforce a judgment under the Enforcement of
5 Judgments Law. No provision is made for a debtor to attack the judgment creditor's
6 authority to make the assignment; the scope of the provision is limited to the
7 process for an assignee to obtain standing to proceed as a creditor. For this reason,
8 we conclude the Legislature did not intend a proceeding under the Enforcement of
9 Judgments Law to become a forum for litigating the validity of the underlying
10 assignment agreement.

11 *Id.* at 327 (emphasis added). In that case, a judgment was assigned to a third party for collection
12 by the California Coastal Commission, who filed an Order for Sale of the judgment debtor's real
13 property, and attached the filed Assignment of Judgment pursuant to Code Civ. P. § 673. As the
14 Court held, "The signatures were notarized, and the acknowledgment was filed in the superior
15 court on December 15, 2005. This is all that is required for purposes of the Enforcement of
16 Judgments Law." *Cal. Coastal Com. v. Allen*, 167 Cal. App. 4th at 328. "For purposes of the
17 Enforcement of Judgments Law, the assignment and the acknowledgment of assignment were
18 sufficient to give the Radoseviches standing to enforce the judgment." *Id.* at 328.

19 Thus, Cummins lacks standing to challenge the assignment to the Cobbs Trust.

20 C. The Texas Judgment Was Validly Assigned To The Cobbs Trust.

21 In its MSJ Order, this Court previously denied the Motion for Summary Judgment, finding
22 that issues of fact potentially existed regarding "whether the Assignment meets all of the
23 requirements for a valid assignment of a judgment because there is outstanding discovery that
24 Defendant needs in order to respond to the motion for partial summary judgment or summary
25 adjudication of facts pursuant to Federal Rule of Bankruptcy Procedure and Federal Rule of Civil
26 Procedure 56(d)." Discovery closed in this case on January 31, 2019, four months before the
27 MSJ Order, and thousands of pages of documents have been produced. However, Cummins
28 has not presented any evidence or argument that would call into question the validity of the
assignment.

Code Civ. P. § 673(a) provides a method for validly assigning a judgment: "An assignee of
a right represented by a judgment may become an assignee of record by filing with the clerk of

1 the court which entered the judgment an acknowledgment of assignment of judgment.” Code
2 Civ. P. § 673(b) sets forth the requirements for the acknowledgment of assignment of a judgment
3 – all of which have been met by the Acknowledgment of Assignment of Judgment filed with the
4 Los Angeles Superior Court and attached to the Stillman Declaration as Exhibit 2:

5 **The title of the court where the judgment is entered and the cause and number of**
6 **the action.** The Acknowledgment has the proper caption, cause and case number, and was filed
7 with the Los Angeles Superior Court.

8 **The date of entry of the judgment and of any renewals of the judgment and where**
9 **entered in the records of the court.** The Acknowledgment contains the date of entry of the
10 judgment and its entry in the records of the Court.

11 **The name and address of the judgment creditor and name and last known address**
12 **of the judgment debtor.** The Acknowledgment contains the name and address of the judgment
13 creditor and the last known address of the judgment debtor (Cummins).

14 **A statement describing the right represented by the judgment that is assigned to the**
15 **assignee.** The Acknowledgment lists the rights assigned to Mr. Khionidi.

16 **The name and address of the assignee.** The acknowledgment lists the address for Mr.
17 Khionidi.

18 Pursuant to Code Civ. P. § 673(c), the acknowledgment of assignment of judgment is
19 executed by Ms. Lollar and notarized. Accordingly, the Acknowledgment exactly complies with
20 California law regarding assignments of judgment and is therefore a valid assignment. *Cal.*
21 *Coastal Com. v. Allen*, 167 Cal. App. 4th at 328.

22 Cummins’ sole argument regarding the validity of the actual assignment is that the
23 Acknowledgment of Assignment of Judgment filed with the Los Angeles Superior Court was
24 mailed to “645 W. 9th St.,” instead of “645 W. 9th St., #110-140.” There are at least two
25 problems with that argument. First, Cummins failed to cite to any case or statute that conditions
26 the validity of the Assignment on service to the judgment debtor. In fact, Cummins argument was
27 specifically rejected in *In re Millican*, 2014 Bankr. LEXIS 3383, at *9 (Bankr. N.D. Ohio Aug. 8,
28 2014) (construing California law regarding the validity of an assignment of a judgment in

1 connection with an adversary proceeding objecting to dischargeability of a judgment).

2 In *In re Millican*, the Court first rejected the defendant's argument in his response to
3 plaintiff's Motion Summary Judgment that he did not receive proper notice of the assignment. *Id.*
4 "[W]ithout citation to any material in the record supporting that fact, [it] is insufficient to defeat
5 Plaintiff's Motion. See Fed. R. Civ. P. 56(c)(1); Fed. R. Bankr. P. 7056." The Court next rejected
6 the defendant's argument that notice was even *required* for an assignment of a judgment to be
7 effective:

8 And finally, although Defendant cites California Code of Civil Procedure §§ 673 and
9 1014, apparently for the proposition that such notice is required for an assignment
10 to be effective, those statutes do not include such a requirement. Section 1014
11 provides only that a defendant or his attorney "is entitled to notice of all subsequent
12 proceedings of which notice is required to be given." Cal. C.C.P. § 1014 (emphasis
13 added). Section 673 provides that "[a]n assignee of a right represented by a
14 judgment may become an assignee of record by filing with the clerk of the court
15 which entered the judgment an acknowledgment of assignment of judgment." Cal.
16 C.C.P. § 673. It includes no requirement that notice be given to any party.
17 Defendant has cited, and the court has found, no authority requiring notice of an
18 assignment of judgment in order for the assignment to be valid.

19 *Id.*⁴

20 Second, even assuming that she had standing and even assuming that service of the
21 Notice was *required*, there is no evidence that Cummins did not receive it. Cummins' naked
22 assertion of non-receipt is manifestly insufficient to overturn the proof of service. *In re Estate of*
23 *Wiechers* 199 Cal. 523, 530 (1926)("it cannot be said that petitioner's mere statement that 'no
24 papers were ever served upon' her . . . is such 'clear and convincing proof' as to require a finding
25 . . . that no legal service of notice of the motion was made upon her"). Obviously, the mere fact
26 that the person to be served with document claims not to have received it through the mail does
27 not establish that affidavit of mailing is false. *Miller v. Cortese*, 136 Cal. App. 2d 47, 49 (1955).
28 Instead, a mailing is presumed to have been received by the addressee. Evid. Code § 641.
Accordingly, there is no issue of fact remaining for trial on the validity of the assignment and this
Court should grant summary judgment to Plaintiff pursuant to Fed.R.Civ.P. 56(f)(1).

⁴ Even in more serious collection matters, such as a Notice of Levy of a debtor's property,
validity of service of the notice on the judgment debtor does not affect the validity of the lien.
Code Civ. P. § 699.550.

1 III.

2 **CUMMINS' UNCLEAN HANDS ARGUMENT LACKS ANY FACTUAL BASIS**

3 Cummins claims that the adversary complaint should be dismissed based on her
4 unasserted affirmative defense of “unclean hands.” As an affirmative defense, Cummins has the
5 burden of proof. “Unclean hands must be based on 'clear, unequivocal and convincing'
6 evidence.” *Greer Hydraulics, Inc. v. Rusco Indus., Inc.*, 1974 U.S. Dist. LEXIS 5792, at *31 (C.D.
7 Cal. Nov. 13, 1974)(construing unclean hands in patent context). However, she fails to support
8 any of her wild accusations with any admissible evidence, instead referring the Court and Plaintiff
9 to her mish-mash of arguments in her Motion to Dismiss for Unclean Hands (Dkt. 56). Since
10 none of those purported “facts” are included in her Separate Statement of Undisputed Facts and
11 Conclusions of Law, those facts are not properly before this Court. Local Bankruptcy Rule 7056-
12 1(b)(3); *see also, In re Blixseth*, 2011 Bankr. LEXIS 4380, at *61 (Bankr. D. Mont. Nov. 14,
13 2011)(“If the moving party will bear the burden of persuasion at trial, that party must support its
14 motion with credible evidence—using any of the materials specified in Rule 56(c)—that would
15 entitle it to a directed verdict if not controverted at trial.”). Because she failed to support her
16 Motion with any admissible evidence on her unclean hands defense, it is meritless for that reason
17 alone.

18 A. Legal Requirements To Establish Unclean Hands.

19 Not surprisingly, the doctrine of “unclean hands” requires clean hands only where some
20 unconscionable act of one coming for relief has *immediate and necessary* relation to the equity
21 that he seeks in respect of the matter in litigation. *Keystone Driller Co. v. Gen. Excavator Co.*,
22 290 U.S. 240, 245, 54 S. Ct. 146, 147-48 (1933). Putting aside the fact that there was no
23 misconduct of any type, courts “do not close their doors because of plaintiff’s misconduct,
24 whatever its character, that has no relation to anything involved in the suit” *Id.* (Party had
25 unclean hands in patent infringement case due to the destruction of documents in case).

26 Moreover, “the doctrine has limits, and not all misconduct by a plaintiff will soil that
27 plaintiff’s hands. Among other things, the doctrine ‘only applies when the claimant’s misconduct is
28 *directly related* to the merits of the controversy between the parties, that is, when the tawdry acts

1 'in some measure affect the equitable relations between the parties in respect of something
2 brought before the court for adjudication.'" *Dr. Jose S. Belaval, Inc. v. Perez-Perdomo*, 488 F.3d
3 11, 15-16 (1st Cir. 2007)(quoting *Keystone*, 290 U.S. at 245). "The mere fact that the 'misconduct'
4 arises from some overlapping facts is not enough. Since 'relatively few plaintiffs are wholly free
5 from any trace of arguable misconduct at least tangentially related to the objective of their suit,
6 the right to injunctive relief . . . would have little value if the defendant could divert the proceeding
7 into the byways of collateral misconduct.'" *Id.*

8 Thus, "A court can deny relief under the doctrine of unclean hands only when there is a
9 close nexus between a party's unethical conduct and the transactions on which that party seeks
10 relief." *In re Uwimana*, 274 F.3d 806, 810-11 (4th Cir. 2001), citing *Keystone Driller Co. v. General*
11 *Excavator Co.*, 290 U.S. 240, 245, 78 L. Ed. 293, 54 S. Ct. 146 (1933); *Wetzler v. Cantor*, 202
12 B.R. 573 (D. Md. 1996) (noting that even truthful allegations of self-dealing did not warrant
13 application of "unclean hands" doctrine if the self-dealing was not "connected with the transaction
14 upon which the claimant sought relief"). "We are not open to arguments about a party's general
15 moral fitness . . ." *Uwimana*, 274 F.3d at 811.

16 In *Uwimana*, the Republic of Rwanda sued its former ambassador for defalcation and
17 embezzlement. The ambassador, Uwimana, filed a Chapter 7 bankruptcy and the Republic of
18 Rwanda filed an adversary proceeding to determine the nondischargeability of the debt. The
19 Uwimanas claimed that the adversary proceeding should be dismissed based on the Republic of
20 Rwanda's "unclean hands," arguing that the Republic of Rwanda "has unclean hands because it
21 seeks to "persecute" Aloys Uwimana for his political beliefs, and they accuse Rwanda of an
22 "unholy quest" to undermine their finances and reputation." *Id.* at 810. However, the Uwimanas
23 produced no evidence that Rwanda was responsible for Aloys Uwimana's decision to spend
24 embassy funds, either by threatening or misleading him. During the bankruptcy hearing, Aloys
25 Uwimana did state that if he returned to Rwanda he and his family might face a terrible "fate." But
26 he has never claimed that he sought asylum to avoid punishment by Rwanda. Indeed, Aloys
27 Uwimana asked the district court to take judicial notice of the 1994 State Department Human
28 Rights Report on Rwanda, which concluded that the government of the country did not sanction

1 extra-judicial killings. “At most we can conclude, as the district court did, that Aloys Uwimana was
2 afraid to return to Rwanda because of the general unrest there. *[citation omitted]* Although we do
3 not minimize this fear, we cannot attribute it to the Republic of Rwanda for purposes of the
4 unclean hands doctrine.” *Id.* The Court thus denied the application of “unclean hands” as an
5 affirmative defense to the nondischargeability adversary proceeding.

6 Here, no *alleged* misconduct in *this* case has any “close nexus” to the merits of the action,
7 which is limited to whether or not the existing final judgment from Texas for defamation is
8 nondischargeable pursuant to 11 U.S.C. § 523(a)(6). Nothing that Cummins claims in her
9 unsubstantiated conglomeration of grudges changes the fact that the Texas Judgment is a final
10 judgment that meets the criteria for nondischargeability, as already determined by this Court in its
11 MSJ Order.

12 B. All Of Cummins’ Complaints Are Completely Meaningless And Unsupported.

13 The claims that Cummins *did* make in her Motion have absolutely nothing to do with
14 whether the Texas Judgment is dischargeable – something that this Court has already
15 determined based on its summary adjudication of facts. For those matters raised by Cummins in
16 her Motion, Plaintiff will address each.

17 *Plaintiff stated to this Court via their attorney Phillip Stillman that Plaintiff Amanda*
18 *Lollar and Bat World Sanctuary currently have nothing to do with the judgment. This*
19 *is false. The trust agreement dated 2017 states that Bat World Sanctuary is a*
20 *trustee of the judgment.*

21 The Cobbs Trust states that Bat World Sanctuary is a successor beneficiary, not Trustee, upon
22 the death of the primary beneficiary, Mr. Khionidi. Cummins does not seem to comprehend that
23 when a judgment is assigned to someone else, it no longer belongs to the assignor.

24 *Plaintiff used strawman Konstanti Khionidi to intentionally make it impossible to do*
25 *any discovery.*

26 “Plaintiff” is Konstantin Khionidi. He received the Assignment well before this bankruptcy was
27 filed, and Cummins obtained documents and interrogatory responses from Mr. Khionidi. Thus,
28 as a matter of law, discovery was neither difficult nor impossible.

29 *Plaintiff’s attorney Stillman stated at the May 29, 2019 hearing page six, line 5*
30 *(Exhibit 1), “she had said she had requested them not to produce” in regard to bank*
31 *statements from one bank.*

32 According to counsel’s notes, Cummins made that statement in a hearing on Cummins’ Motion

1 for a Protective Order, where she stated in open court that she had sent a letter to the banks who
2 received Plaintiff's subpoenas instructing them not to respond. However, it is not worth obtaining
3 the transcript because it is irrelevant to any issue remaining in this case, which is limited to
4 whether the judgment was properly assigned to Khionidi.

5 *This Court ordered Plaintiff to give Defendant a copy of the trust agreement within*
6 *30 days of the May 24, 2019 hearing (Doc 81). Plaintiff did not do this. Defendant*
7 *requested the agreement again and Plaintiff refused until Defendant sent a copy of*
8 *the court order. Plaintiff finally gave a copy of the agreement July 24, 2019 30 days*
9 *late.*

10 True. Plaintiff's counsel did not realize that at the end of this Court's Order, Plaintiff was directed
11 to provide a copy of the Trust to Cummins, and as Cummins acknowledges, counsel provided a
12 copy as soon as she pointed it out that the Order required it. She identifies zero prejudice from
13 the 30 day delay, has had the document now for over three months and again, it has nothing to
14 do with whether the judgment is nondischargeable.

15 *Plaintiff stated in their original adversary complaint that Defendant has transferred*
16 *or concealed assets within a year before the filing of the petition. Plaintiff included*
17 *no evidence. This is a false statement.*

18 *Plaintiff stated in their original adversary complaint that Defendant stated Defendant*
19 *"lives on a farm." Defendant never stated this. Plaintiff showed no evidence*
20 *supporting this false statement.*

21 *Plaintiff stated Defendant has a credit card yet provided no proof. Defendant*
22 *does not have a credit card.*

23 Cummins refers to allegations in the Adversary Complaint. Plaintiff has not sought summary
24 judgment on his §727 claims in light of the Court's ruling on his § 523(a)(6) claim. Although
25 Plaintiff has such evidence to support each of the above, Plaintiff need not attach any evidence
26 to the Complaint, nor present any evidence in support of the § 727 claim until such time as
27 Plaintiff seeks judgment on it.

28 *Plaintiff stated "Defendant concealed or falsified information regarding property."*
Plaintiff supplied no evidence. This is false.

29 Cummins again refers to an allegation in the Adversary Complaint. However, Cummins claimed
30 in her Bankruptcy Petition, Schedule A/B, Question 3.1 that she owned a Toyota Prius, when the
evidence shows that the car is actually owned by Animal Advocates, a non-profit operated by
Cummins, even though she uses that car for her personal use. See Stillman Decl., Exhibits 3-5.
That alone justifies a denial of her discharge pursuant to § 727. Moreover, when Cummins was

1 trying unsuccessfully to quash the deposition subpoena to Jennifer Charnofsky, who purportedly
2 had a security interest in the Toyota Prius, Cummins admitted that Animal Advocates, not
3 Cummins, owned the Prius. Stillman Decl. ¶2; Motion to Quash, p. 5, line 1-5 (Dkt. 24).

4 *Plaintiff filed a motion with a copy of Defendant's passport without redaction*
5 *which is a violation of the redaction rule. It should have been filed under seal.*
6 *Plaintiff later posted Defendant's passport on the Internet. Defendant had to get it*
7 *removed by WordPress. Defendant must get a new passport.*

8 There is no "redaction rule" of which Plaintiff is aware that is applicable to a passport, and
9 Cummins again confuses Mr. Khionidi, who *is* the plaintiff, with Amanda Lollar, who is *not* the
10 Plaintiff. In her Separate Statement, Cummins claims that *Ms. Lollar* posted a copy of her
11 passport online, which is unsupported by any evidence at all. Moreover, Cummins does not
12 explain how this issue relates to the only issue remaining in this case after this Court's MSJ
13 Order – whether the assignment of the Texas Judgment to the Cobbs Trust is valid.

14 **CONCLUSION**

15 For the foregoing reasons, Plaintiff requests that this Court deny Cummins' "Motion for
16 Summary Judgment" and enter Summary Adjudication of Facts in favor of *plaintiff* pursuant to
17 Fed.R.Civ.P. 56(f), that (1) the Cobbs Trust is a valid trust under California law and (2) the
18 Assignment of the Texas Judgment to the Cobbs Trust pursuant to the Acknowledgment of
19 Assignment of Judgment filed with the Los Angeles Superior Court was a valid assignment and
20 accordingly, enter final Judgment on the Fourth Cause of Action seeking a determination of
21 nondischargeability of the Texas Judgment and the California Sister State Judgment forthwith.

22 Respectfully Submitted,

23 STILLMAN & ASSOCIATES



24 Dated: November 5, 2019

25 By: _____

26 Philip H. Stillman, Esq.
27 Attorneys for KONSTANTIN KHIONIDI, as Trustee of
28 the COBBS TRUST

1 Case Name: *Khionidi v. Cummins-Cobb*
2 Adv. Proc. No.: 2:18-ap-01066-RK

3 **PROOF OF SERVICE**

4 I, the undersigned, declare that I am over the age of 18 years and not a party to the within
5 action or proceeding. I have an office in Miami Beach, Florida where the mailing occurred.

6 On November 5, 2019, I caused to be served the following document(s):

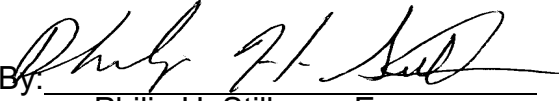
7 **PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT; SEPARATE
8 STATEMENT OF GENUINE ISSUES IN DISPUTE; DECLARATION OF PHILIP H. STILLMAN**

9 on the interested parties in this action by email to:

10 Mary Katherine Cummins-Cobb
11 645 West 9th Street, #110-140
12 Los Angeles, CA 90015

13 at mmarycummins@gmail.com, the email address on file with this Court by agreement of the
14 parties. I did not receive any notice that the documents were not deliverable to the foregoing
15 email address.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on November 5, 2019 at Miami Beach, Florida.

18 
19 By: _____
20 Philip H. Stillman, Esq.