

Khionidi,
Plaintiff
Cummins-Cobb,
Defendant

Adv. Proc. No. 18-01066-RK

CERTIFICATE OF NOTICE

District/off: 0973-2

User: admin
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Page 1 of 1
Total Noticed: 1

Date Rcvd: May 24, 2019

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 26, 2019.

NO NOTICES MAILED.

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
dft +E-mail/PDF: mary@marycummins.com May 25 2019 03:10:03 Mary Katherine Cummins-Cobb,
645 W 9th St #110-140, Los Angeles, CA 90015-1640

TOTAL: 1

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****
intp Courtesy NEF
pla Konstantin Khionidi

TOTALS: 2, * 0, ## 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
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I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 26, 2019

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 24, 2019 at the address(es) listed below:

Peter J Mastan (TR) peter.mastan@dinsmore.com,
pmastan@iq7technology.com;travis.terry@dinsmore.com
Philip H Stillman on behalf of Plaintiff Konstantin Khionidi pstillman@stillmanassociates.com
Ronald N Richards on behalf of Interested Party Courtesy NEF ron@ronaldrichards.com,
morani@ronaldrichards.com,justin@ronaldrichards.com
United States Trustee (LA) ustpreion16.la.ecf@usdoj.gov

TOTAL: 4

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FILED & ENTERED
MAY 24 2019
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY *halkhell* DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
MARY CUMMINS-COBB,

Debtor.

KONSTANTIN KHIONIDI, AS TRUSTEE
OF THE COBBS TRUST,

Plaintiff,

vs.

MARY CUMMINS-COBB,

Defendant.

Case No. 2:17-bk-24993-RK
Chapter 7
Adv. No. 2:18-ap-01066-RK

**ORDER GRANTING IN PART AND
DENYING IN PART THE MOTION OF
PLAINTIFF KONSTANTIN KHIONIDI FOR
PARTIAL SUMMARY JUDGMENT ON THE
FOURTH CAUSE OF ACTION, DENYING
PARTIAL SUMMARY JUDGMENT AND
GRANTING SUMMARY ADJUDICATION OF
CERTAIN FACTS**

Vacated Hearing
Date: May 29, 2019
Time: 1:30 p.m.
Courtroom: 1675

The motion of Plaintiff Konstantin Khionidi ("Plaintiff"), as Trustee of the Cobbs Trust, for partial summary judgment on the fourth cause of action under 11 U.S.C. § 523(a)(6) in the adversary complaint ("Motion"), filed on November 26, 2018 (Docket No. 35), came on for hearing before the undersigned United States Bankruptcy Judge on March 27, 2019. Attorney Philip H. Stillman, of Stillman & Associates, appeared for Plaintiff. Defendant Mary Cummins-

1 Cobb ("Cummins" or "Defendant") appeared for herself at the hearing. Plaintiff's motion for
2 partial summary judgment requested summary judgment on the fourth cause of action to
3 determine the judgment rendered in Texas state court against Cummins for defamation on
4 August 27, 2012, and the California Sister-State judgment entered on the Texas judgment by
5 the Superior Court of California for the County of Los Angeles nondischargeable pursuant to
6 11 U.S.C. § 523(a)(6).

7 Defendant filed a Reply to Plaintiff's Second Motion for Partial Summary Judgment on
8 the Fourth Cause of Action ("Opposition") (Docket No. 39), on December 19, 2018. On
9 December 26, 2018, Plaintiff filed a Reply in Support of his Motion for Partial Summary
10 Judgment on the Fourth Cause of Action ("Reply") (Docket No. 39). On February 11, 2019,
11 Defendant filed a Reply to Plaintiff's Statement of Uncontroverted Facts and Conclusions of
12 Law in Support of Plaintiff's Motion for Summary Judgment (Docket No. 50). Plaintiff filed a
13 Further Reply in Support of his Motion for Partial Summary Judgment on the Fourth Cause of
14 Action (Docket No. 55), on February 26, 2019.

15 The Motion is currently set for hearing before this court on May 29, 2019 at 1:30 p.m.

16 Having considered the Motion, Opposition, Reply and related pleadings listed above,
17 and the arguments of the parties, the court modifies and adopts Plaintiff's Statement of
18 Uncontroverted Facts as follows based on its independent review of the evidence in support of
19 Proposed Statement of Uncontroverted Facts and Conclusions of Law on Plaintiff's Motion for
20 Partial Summary Judgment on the Fourth Cause of Action filed by Plaintiff on November 26,
21 2018 and in opposition thereto by Defendant. The court hereby grants Plaintiff's motion as to
22 summary adjudication of certain facts, but denies the motion requesting partial summary
23 judgment as to the fourth cause of action and summary adjudication of other facts.

24 **UNCONTROVERTED FACTS**

25 The court determines that the following material facts are not genuinely in dispute and
26 that such facts are uncontroverted and are deemed established in this case.

27 1. On October 4, 2011, Plaintiffs Bat World Sanctuary and Amanda Lollar filed a
28 Second Amended Petition against Defendant Mary Cummins in the Texas District Court for

1 Tarrant County, *Bat World Sanctuary et al. v. Cummins*, Case No. Case No. 352-248169-10
2 (the “Texas Case”). Motion, Declaration of Philip H. Stillman (“Stillman Decl.”) ¶ 2, and Exhibit
3 1 attached thereto.

4 2. The Second Amended Petition in the Texas Case had counts for breach of
5 contract, defamation and exemplary damages. Motion, Exhibit 1 to Stillman Decl., Second
6 Amended Petition, ¶¶ 14, 16, and 17. These claims were common law claims under state law.
7 Cummins appeared at trial, testified, and presented her own evidence. Motion, Exhibit 4 to
8 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr.
9 9, 2015).

10 3. After a bench trial, the Texas Trial Court gave its oral ruling that “the plaintiff has
11 clearly proven that a defamation in this case was *egregious* as well as *malicious* as well as
12 *intentional*.” Motion, Exhibit 2 to Stillman Decl., June 14, 2012 Trial Transcript, 4:8–11
13 (emphasis added).

14 4. Based thereon, the Texas Trial Court entered a judgment (“Texas Judgment”) on
15 August 27, 2012 and awarded \$3 million in actual damages for defamation and \$3 million in
16 exemplary damages in favor of Plaintiff Amanda Lollar. Motion, Exhibit 3 to Stillman Decl.,
17 Texas Judgment, *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 at *1 (Tex.
18 App. Apr. 9, 2015).

19 5. In addition, the Texas Trial Court included a list of all of the defamatory
20 statements that, as part of the Texas Judgment, Cummins was ordered to take down. Motion,
21 Exhibit 3 to Stillman Decl., Texas Judgment, pp. 1–5.

22 6. Cummins appealed that judgment and the judgment was affirmed as to the
23 defamation cause of action and as to the award of exemplary damages relating to Lollar.
24 Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS
25 3472 (Tex. App. Apr. 9, 2015). Her petition for review to the Texas Supreme Court was denied.
26 *Id.* and Stillman Decl. ¶ 5. The Texas Judgment is therefore final. Stillman Decl. ¶ 5.

27 7. The Texas Court of Appeals stated in its opinion: “In a defamation case in which
28 actual malice is required and is found, the First Amendment requires appellate courts to

1 conduct an independent review of the evidence supporting the finding.” Motion, Exhibit 4 to
2 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. Lexis 3472, at *8 (Tex. App.
3 2015) (citing *Bentley v. Bunton*, 94 S.W.3d 561, 597 (Tex. 2002)). Subsequently, the Texas
4 Court of Appeals affirmed the Texas Judgment, making extensive findings in support of its
5 appellate judgment. *Id.*

6 8. After reviewing the trial record, the Texas Court of Appeals held that “The
7 comments she [Cummins] made about Lollar leave no doubt that she had a specific intent to
8 cause substantial injury or harm to Lollar.” Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat*
9 *World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex. App. Apr. 9, 2015).

10 9. In reviewing the issue of whether sufficient evidence supported that finding, the
11 Texas Court of Appeals stated: “Clear and convincing evidence also supports a finding that
12 Cummins published statements on the internet with actual malice.” Motion, Exhibit 4 to
13 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex.
14 App. Apr. 9, 2015).

15 10. In reviewing de novo whether evidence presented at trial established actual
16 malice by clear and convincing evidence as required under Texas law, the Texas Court of
17 Appeals found that the evidence presented at trial established that Cummins posted a flood of
18 statements about Lollar accusing her of serious wrongdoings, including crimes, and she
19 published her statements to as wide of an audience as she could, including to numerous law
20 enforcement agencies. Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*,
21 2015 Tex. App. LEXIS 3472, at *71–73 (Tex. App. Apr. 9, 2015).

22 11. The Texas Court of Appeals found that “Lollar showed by clear and convincing
23 evidence that Cummins acted with malice as that term is used in chapter 41 and with the
24 actual malice required under the First Amendment.” Motion, Exhibit 4 to Stillman Decl..
25 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *72 (Tex. App. Apr. 9,
26 2015).

27 12. The Texas Court of Appeals further stated in its opinion: “The evidence supports
28 a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with the

1 intention to ruin both Lollar’s life’s work and her credibility and standing in the animal
2 rehabilitation community.” Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World*
3 *Sanctuary*, 2015 Tex. App. LEXIS 3472, at *72–73 (Tex. App. Apr. 9, 2015).

4 13. Cummins posted innumerable derogatory statements about Lollar impugning her
5 honesty and her competency, and she repeatedly and relentlessly reported Lollar to multiple
6 government agencies. “The comments she made about Lollar leave no doubt that she
7 [Cummins] had a specific intent to cause substantial injury or harm to Lollar.” Motion, Exhibit 4
8 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73 (Tex.
9 App. Apr. 9, 2015).

10 14. The Texas Trial Court awarded \$3 million in “exemplary damages” in favor of
11 Lollar and against Cummins. Motion, Exhibit 3 to Stillman Decl., Texas Judgment.

12 15. The record in the Texas case “supports a finding of malice—both of the malice
13 required for an award of exemplary damages under Texas law and of actual malice as required
14 for an award of exemplary damages in defamation actions.” Motion, Exhibit 4 to Stillman
15 Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *75 (Tex. App. Apr. 9,
16 2015).

17 16. Cummins’s intentional smear campaign against Lollar can be grouped into
18 several categories. “Most of statements fall into one of three categories: allegations that Lollar
19 committed animal cruelty, allegations that Lollar committed fraud, and allegations that Lollar
20 violated a law, rule, standard, or regulation.” Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
21 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *33–34 (Tex. App. Apr. 9, 2015).

22 17. As to each of the statements, the evidence in the Texas case established that the
23 statements Cummins made and published on the internet were false. Motion, Exhibit 4 to
24 Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *34-69 (Tex.
25 App. Apr. 9, 2015)

26 18. The Texas Court of Appeals also held that Cummins repeatedly lied at trial. “For
27 example, with regard to Cummins’s statements about Lollar’s dogs, the evidence supported a
28

1 finding that Cummins was not telling the truth.” Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
2 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73–74 (Tex. App. Apr. 9, 2015).

3 19. Regarding a video Cummins posted, the Texas Court of Appeals held that
4 Cummins “had no basis for asserting as fact what was at best speculation and at worst total
5 fabrication. But she posted her version as fact, not speculation, and then she spread her
6 version as far and wide as she possibly could.” Motion, Exhibit 4 to Stillman Decl., *Cummins v.*
7 *Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *74 (Tex. App. Apr. 9, 2015).

8 20. The Texas Court of Appeals held: “The trial court's determination that Cummins
9 was not credible was a reasonable one . . . Cummins published fabricated statements about
10 Lollar’s care of her dogs, and, thus the statements were made with actual malice.” Motion,
11 Exhibit 4 to Stillman Decl., *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at
12 *74 (Tex. App. Apr. 9, 2015).

13 21. Based on these credibility determinations, the Texas Court of Appeals held that
14 clear and convincing evidence supports the trial court's finding that Cummins published
15 statements on these matters with actual malice. Motion, Exhibit 4 to Stillman Decl., *Cummins*
16 *v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73–74 (Tex. App. Apr. 9, 2015).

17 22. The Texas Trial Court, and the Texas Court of Appeals in affirming the
18 defamation and exemplary damages portions of the judgment, found that (1) the Debtor
19 defamed Amanda Lollar, (2) clear and convincing evidence established that the libelous
20 statements were made by the Debtor with actual malice, (3) the statements were designed to
21 ruin Lollar’s professional and personal reputation locally and nationally and (4) Cummins had a
22 specific intent to cause substantial injury or harm to Lollar. Motion, Exhibit 4 to Stillman Decl.,
23 *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, (Tex. App. Apr. 9, 2015).

24 23. These findings were consistent with the trial judge’s oral ruling from the bench at
25 the conclusion of the bench trial, and before the written form of judgment had been prepared,
26 that “the plaintiff has clearly proven that a defamation in this case was *egregious* as well as
27 *malicious* as well as *intentional*.” Motion, Exhibit 2 to Stillman Decl., June 14, 2012 Trial
28 Transcript, 4:8–11 (emphasis added).

1 24. Based on its de novo review, the Texas Court of Appeals held that clear and
2 convincing evidence supported the trial court's finding that Cummins made statements on
3 these matters with actual malice. Motion, Exhibit 4 to Stillman Decl., *Cummins v. Bat World*
4 *Sanctuary*, 2015 Tex. App. LEXIS 3472, *73 (Tex. App. Apr. 9, 2015).

5 25. Lollar then commenced an action in the Superior Court of California for the
6 County of Los Angeles pursuant to the California Sister-State Judgment Act, CA Code Civ. P.
7 § 1710.25, *Lollar v. Cummins*, Case No BS140207 (Superior Court of California, County of Los
8 Angeles), to domesticate the Texas Judgment, which judgment was entered as a California
9 Judgment on November 9, 2012 in the amount of \$6,121,039.42. Motion, Exhibit 5 to Stillman
10 Decl., Judgment Based on Sister-State Judgment.

11 26. On April 10, 2017, Lollar assigned the judgment to the current plaintiff,
12 Konstantin Khionidi, as Trustee of the Cobbs Trust, pursuant to CA Code Civ. P. § 673.
13 Motion, Stillman Decl. ¶7 and Exhibit 6 attached thereto, Acknowledgement of Assignment of
14 Judgment.

15 27. Defendant Cummins filed her voluntary petition under Chapter 7 of the
16 Bankruptcy Code, 11 U.S.C., in this bankruptcy case on December 7, 2017. On March 10,
17 2018, Plaintiff commenced this adversary proceeding by filing his Complaint to Determine
18 Dischargeability of Debt under 11 U.S.C. § 523(a)(6) against Defendant Cummins. Adv.
19 Docket No. 1, Adv. Complaint.

20 29. Defendant filed and served an Answer to the Complaint on April 11, 2018. Adv.
21 Docket No. 9, Defendant's Reply to Plaintiff's Complaint to Deny Debtor's Discharge,
22 Determine Non-Dischargeability of Debts.

23 30. With interest accruing at \$1,676.99 per day, as of March 9, 2018 (the date before
24 the filing of the adversary proceeding), the amount of the Sister State Judgment is
25 \$9,385,842.81. Adv. Complaint, ¶ 36; Defendant's Reply to Plaintiff's Complaint to Deny
26 Debtor's Discharge, ¶ 2 (admitting ¶ 36 of Complaint).

27 These facts numbered 1 through 30 are uncontroverted and deemed established in this
28 case.

