

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.: CV 20-02149-AB Date: January 7, 2021
Case in other Court: Bankruptcy No. 2:17-bk-24993-RK

Adversary No. 2:18-ap-01066-RK

Title: *In re: Cummins-Cobb*
Mary Katherine Cummins-Cobb v. Konstantin Khionidi

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian
Deputy Clerk

N/A
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Appearing

Attorney(s) Present for Defendant(s):
None Appearing

Proceedings: [In Chambers] ORDER AFFIRMING BANKRUPTCY COURT JUDGMENT

Appellant pro se Mary Katherine Cummins-Cobb (“Cummins” or “Appellant”)¹ appeals the Bankruptcy Court’s grant of summary judgment in favor of Appellee Konstantin Khionidi, as Trustee of the Cobbs Trust (“Appellee”), that pursuant to 11 U.S.C § 523(a)(6), a Texas defamation judgment against Cummins and the domesticated California judgment based thereon, are nondischargeable. Appellant’s request for oral argument is denied, as argument will not assist in the disposition of this appeal. The Bankruptcy Court’s Order is **AFFIRMED**.

BACKGROUND

The following background is based primarily on the Findings of Fact set

¹ The record states Appellant’s surname inconsistently as Cobb-Cummins, Cummins-Cobb, and Cummins.

forth by the Bankruptcy Court. *See* Appellant’s Appendix of Excerpts of Record (“Appx.,” Dkt. No. 38-1), 101-108.

On October 4, 2011, Bat World Sanctuary and Amanda Lollar filed a Second Amended Petition against Defendant Mary Cummins in the Texas District Court for Tarrant County, *Bat World Sanctuary et al. v. Cummins*, Case No. Case No. 352-248169-10 (the “Texas Case”). Appx. 102-103 (Fact 1). That Petition had counts for breach of contract, defamation, and exemplary damages. Appx. 103 (Fact 2). After a bench trial, the Texas Trial Court orally ruled that “the plaintiff has clearly proven that a defamation in this case was egregious as well as malicious as well as intentional.” Appx. 103 (Fact 3). Based thereon, the Texas Trial Court entered a judgment (“Texas Judgment,” Appx. 0011-0016) on August 27, 2012 and awarded \$3 million in actual damages for defamation and \$3 million in exemplary damages in favor of Plaintiff Amanda Lollar. Appx. 103 (Fact 4). In addition, the Texas Trial Court included a list of all of the defamatory statements that, as part of the Texas Judgment, Cummins was ordered to take down. *Id.* Cummins appealed that judgment and the judgment was affirmed as to the defamation cause of action and as to the award of exemplary damages relating to Lollar. *See Cummins v. Bat World Sanctuary*, No. 02-12-00285-CV, 2015 WL 1641144 (Tex. App. Apr. 9, 2015); *see also* Appx. 0019-0094. Appellant’s petition for review to the Texas Supreme Court was denied, so the Texas Judgment is therefore final. Appx. 103 (Fact 6).

The Texas Court of Appeals stated in its opinion: “In a defamation case in which actual malice is required and is found, the First Amendment requires appellate courts to conduct an independent review of the evidence supporting the finding.” Subsequently, the Texas Court of Appeals made extensive findings in support of its appellate judgment affirming the Texas Judgment. Appx. 103-104 (Fact 7); *see also* Appx. 104-106 (Facts 8-24) (summarizing the Texas Court of Appeals’ findings). After all of these findings, the Texas Court of Appeals concluded that clear and convincing evidence supported the trial court’s finding that Cummins published statements against Lollar with actual malice. Appx. 106 (Fact 21). The Texas Court of Appeals, in affirming the defamation and exemplary damages portions of the judgment, found that (1) the Debtor defamed Lollar, (2) clear and convincing evidence established that the libelous statements were made by the Debtor with actual malice, (3) the statements were designed to ruin Lollar’s professional and personal reputation locally and nationally, and (4) Cummins had a specific intent to cause substantial injury or harm to Lollar. Appx. 106 (Facts 22).

Lollar then domesticated the Texas Judgment in California, which judgment

was entered as a California Judgment on November 9, 2012 in the amount of \$6,121,039.42. Appx 107 (Fact 25). Lollar assigned the judgment to Konstantin Khionidi, as Trustee of the Cobbs Trust, pursuant to Cal. Code Civ. P. § 673. Appx. 107 (Fact 26).

On December 7, 2017, Cummins filed the underlying voluntary petition under Chapter 7 of the Bankruptcy Code. Appx. 107 (Fact 27). On March 10, 2018, Khionidi commenced an adversary proceeding by filing a Complaint to Determine Dischargeability of Debt under 11 U.S.C. § 523(a)(6) against Cummins. Khionidi sought a ruling that the Texas and California Judgments were nondischargeable in Cummins's bankruptcy proceeding. Section 523(a)(6) provides that a bankruptcy discharge does not discharge debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6).

On Khionidi's motion for summary judgment, the Bankruptcy Court found the above facts, but found triable issues concerning the validity of the Cobbs Trust and therefore Khionidi's standing. Thereafter, Cummins moved for summary judgment on several grounds including the outstanding issue of Khionidi's standing.

Ultimately, on February 10, 2020, in an extensive order that incorporated the prior findings of fact, the Bankruptcy Court denied Cummins's Motion for Summary Judgment and granted partial summary judgment for Khionidi. *See* Order (Appx. 158-193). The Bankruptcy Judge held that there was no issue of fact regarding the validity of the Cobbs Trust or the Assignment of the Judgment to Khionidi as trustee, and entered partial final judgment pursuant to Fed. R. Civ. P. 54(b) for Khionidi on his claim to determine the Texas and California judgments nondischargeable pursuant to 11 U.S.C. § 523(a)(6). The bankruptcy court held that "Summarily Adjudicated Uncontroverted Facts 1-30, determined by the court in its order of May 24, 2019, establish that the debt owed by Defendant from Plaintiff's assigned judgment of the Texas courts arose from willful and malicious injury." Appx. 166. Accordingly, pursuant to § 523(a)(6) Appellant's debt was not discharged in bankruptcy.

This appeal by Cummins followed. Cummins argues the Bankruptcy Court's judgment in favor of Appellee was wrong in four respects: (1) the Texas Judgment is dischargeable; (2) the Texas Judgment was void; (3) Appellee does not exist and therefore has no standing; and (4) Appellee has unclean hands.

DISCUSSION

The Court has reviewed the parties' briefs and summarily **AFFIRMS** the Bankruptcy Court's Judgment based on Appellant's failure to file a compliant opening brief or the necessary excerpts of record, as explained below.

Federal Rule of Bankruptcy Procedure ("FRBP" or "Rule") states that "[t]he appellant's brief must contain the following under appropriate headings and in the order indicated," and goes on to list 10 specific components of a brief. For example, Appellant's brief must include "(5) a statement of the issues presented and, for each one, a concise statement of the applicable standard of appellate review; (6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record; (7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings; (8) the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies . . ." Fed. R. Bankr. P. 8014(a). Appellant's opening brief is missing these fundamental elements. Although Appellant's brief has a "statement of the case" that sets forth certain issues/rulings she is appealing, *see* Opening Br. (Dkt. No. 37) p. 1-2, she does not include a concise statement of the applicable standard of appellate review for each issue. More problematic, although the remainder of the brief sets forth material that could partly satisfy some of items (5) through (8), it is completely missing citations to the record, thus thwarting this Court's ability to review that record.

FRBP 8018(b)(4) states that "the appellant must serve and file with its principal brief excerpts of the record as an appendix. It must contain the following: (A) the relevant entries in the bankruptcy docket; (B) the complaint and answer, or other equivalent filings; (C) the judgment, order, or decree from which the appeal is taken; (D) any other orders, pleadings, jury instructions, findings, conclusions, or opinions relevant to the appeal; (E) the notice of appeal; and (F) any relevant transcript or portion of it." Appellant Cummins designated "Docs. 1-166, All docs in adversary proceeding case," in her designation of record. *See* Designation (Dkt. No. 20-1), ECF p. #123. Appellant designated every document despite the advisement on the form designation that she used "that [the designation] should be limited to the documents and transcripts relevant to the arguments you are making on appeal. This almost always means that you should *not* include on this list every document filed in the Bankruptcy Court." *Id.* Notwithstanding Appellant's

overbroad designation, Appellant failed to file sufficient excerpts of record in violation of FRBP 8018(b)(4). Appellant filed only three record items: (1) the Texas Judgment, (2) the Bankruptcy Court's order denying without prejudice Appellee's motion for judgment on the pleadings (which is not relevant), and (3) the Bankruptcy Court's short (half-page) order granting summary judgment for Appellee on his claim for non-dischargeability. *See* Appendix to Opening Br. Appellant's briefs are replete with references to the Texas proceedings and accusations that Appellee has unclean hands based on those proceedings, the domestication of the judgment in California, and Appellee's conduct before the Bankruptcy Court, but Appellant has not filed any briefs or transcripts, for example, that would be necessary to review the proceedings below. "[A] failure to provide a sufficient record to support an informed review of the trial court's determinations may result in either dismissal of the appeal or summary affirmance of the trial court's judgment based upon the appellant's inability to demonstrate error." *In re Hamel*, No. ADV.07-00517, 2009 WL 7751431, at *10 (B.A.P. 9th Cir. Apr. 16, 2009). Here, without a sufficient record to review or citations to it, Appellant cannot demonstrate error and the Court cannot reasonably review the record in light of Appellant's arguments. The Court therefore summarily affirms the Bankruptcy Court's Judgment. *See In re O'Brien*, 312 F.3d 1135, 1137 (9th Cir. 2002) ("As with briefing inadequacies, the failure to present a sufficient record can itself serve as a basis for summary affirmance").

Despite Appellant's failure to file a compliant opening brief and sufficient excerpts of record, the Court did review the excerpts that Appellee filed. *See* (Dkt. No. 38-1). Appellee's Appendix of Excerpts includes six documents: (1) the Complaint objecting to discharge (which attached the Texas Judgment and the Texas Appellate Court Opinion affirming it); (2) Appellant's response to the Complaint; (3) and (5) the Bankruptcy Court's two lengthy orders resolving the summary judgment motions; (4) a declaration of Appellee's counsel in opposition to Appellant's summary judgment motion; and (6) the Bankruptcy Court's Final Judgment. The Court has reviewed these materials, and they reflect no facially obvious errors underlying the Judgment, let alone any that would require vacating the Judgment in Appellee's favor. The Court notes that much of Appellant's brief amounts to a collateral attack on the Texas proceedings. But Appellant cannot collaterally attack the final Texas judgment in this Court on an appeal from the Bankruptcy Court's judgment. *In re Jung Sup Lee*, 335 B.R. 130, 138-39 (B.A.P. 9th Cir. 2005) (no collateral attack in the bankruptcy court of a final sister-state judgment). Apart from this collateral attack, Appellant's opening brief summarily argues her bases for appeal, *see* Opening Br. 11-17, but as presented—without a sufficient record or citations to it, coherent legal argument, or citations to

authority—none of them overcomes the thorough reasoning set forth by the Bankruptcy Judge. At bottom, Appellant’s brief shows that she disagrees with the Bankruptcy Court’s orders, but does not show how those orders were wrong based on the record and under the law. By making these observations, the Court is not exercising discretion to review the proceedings below despite the Appellant’s deficient briefing and failure to file the excerpts of record. Rather, the Court is simply further elaborating why the deficiencies in Appellant’s filings are fatal to her appeal.

In sum, although Appellant is representing herself pro se, and although courts can give pro se litigants leeway in some respects, pro se litigants are nevertheless bound by the same rules of procedure as attorneys are. *See, e.g.*, Local Rule 1-3. Thus, pro se litigants must file compliant briefs and required excerpts of record. Here, the insufficient opening brief and the absence of the necessary excerpts of record mean that Appellant cannot meet her burden on appeal, so the Orders and Judgment of the Bankruptcy Court are affirmed.

CONCLUSIONS

For the foregoing reasons, the Bankruptcy Court’s Orders and Judgment are **AFFIRMED**.

IT IS SO ORDERED.

CC: BK Court