

**APPELLANT REQUESTS
ORAL ARGUMENT**

2:20-cv-02149-AB

IN APPEAL IN THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY CUMMINS,
Defendant and Appellant,

v.

KONSTANTIN KHIONIDI, as Trustee of the COBBS TRUST
Plaintiff and Appellee

Appeal from Order of US Bankruptcy Court Adverse Proceeding
Central District of California
Case Nos. 2:18-ap-01066-RK, 2:17-bk-24993-RK Honorable Robert Kwan

APPELLANT'S OPENING BRIEF

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**United States District Court Central District
State of California**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: 2:18-ap-01066-RK

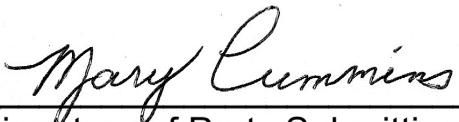
Case Name: Konstantin Khionidi v Mary Cummins

Please check the applicable box:

- There are NO interested entities or parties to list in this certificate pursuant to California Rules of Court rule 8.208(d).

Interested entities or parties are listed below:

None

 Dated: August 9, 2020
Signature of Party Submitting Form

Printed Name: Mary Cummins

Party Represented: Defendant

IDENTITY OF PARTIES AND COUNSEL

APPELLANT:

Mary Cummins

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TABLE OF CONTENTS	Page
Certificate of Interested Entities or Persons	i
Identity of Parties and Counsel	ii
Index of Authorities	iv
Statement of the Case	1
Statement Regarding Oral Argument	1
Factual and Procedural Background	2
Argument	10
I. Judgement is Dischargeable	10
II. Plaintiff has Unclean Hands	11
Conclusion	11
Certificate of Compliance	13
Certificate of Service	14
Appendix	15

Case Law	INDEX OF AUTHORITIES	Pg
	Constitutional Provisions	20
	Statutes and Rules	19

EX PARTE MOTION REQUESTING EXTENSION TO FILE OB HAS NOT BEEN HEARD

August 7, 2020 Appellant filed an ex parte motion requesting a 30 day extension to file the Opening Brief. The Court has not ruled on this motion. Appellant is filing this Opening Brief to the best of Appellant's ability as it is due August 10, 2020. It is missing the main arguments, citations to the Court record, case law ... because Appellant's computer crashed and the original almost completed brief and the court records were lost. The record is not provided for free. Appellant cannot afford to buy the records via Pacer as Appellant is legally homeless and indigent. Appellant still requests the 30 day extension so this OB can be rewritten and completed. If the extension is not granted, Appellant will be deprived of a fair trial. Appellant will at the very least try to correct the OB at a later date or in the Reply Brief. This brief is incomplete.

STATEMENT OF THE CASE

Defendant, Appellant Mary Cummins ("Cummins") appeals from a February 10, 2020 order denying Defendant's motion for summary judgment and granting partial summary judgment in favor of non-moving plaintiff on his fourth claim for relief under 11 U.S.C. § 523 (a)(6). Appellant argues that the court abused its discretion in denying Appellant's Motion for

Summary Judgment to dismiss the Adversary Proceeding as judgment is dischargeable and Plaintiff has unclean hands both for many reasons.

STATEMENT REGARDING ORAL ARGUMENT

Defendant Appellant believes that oral argument will significantly aid in clarifying the issues involved in this appeal. This case presents important issues regarding validity of judgments, dischargeability and unclean hands. Appellant requests to appear by phone or brief if Justices have questions.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant is a well respected Los Angeles real estate appraiser, real estate legal expert¹ and head of non-profit Animal Advocates which has worked positively with Los Angeles City and County for years² (all footnotes are in the court record and specifically noted as such in request of the record). Appellant was appointed and approved to be on the Los Angeles City Prop F Committee by Mayor Eric Garcetti, was named to be a Commissioner for LA Animal Services under Mayor Antonio Villaraigosa, worked with Mayor Jim Hahn for the 2004 city wildlife policy³, went through the Police Academy and Humane Academy to become a Humane Officer and has received numerous awards from the City, Los Angeles Business

¹ Mary Cummins Curriculum Vitae real estate <http://www.marycummins.com/marycumminscurriculumvitae.pdf>

² Mary Cummins Curriculum Vitae Animal Advocates <http://animaladvocates.us/Mary%20Cummins%20Animal%20Advocates%20resume%20curriculum%20vitae.pdf>

³ Mary Cummins new LA Wildlife Policy <https://www.businesswire.com/news/home/20040824005654/en/City-Los-Angeles-Approves-Wildlife-Policy>

Journal, Great Non-Profits and other agencies and organizations over 35+ years.

In 2010 Cummins went to Bat World Sanctuary run by actual Plaintiff Amanda Lollar in Texas to attend an internship to learn more about bats. Instead Cummins witnessed animal cruelty, neglect, violations of the Animal Welfare Act, Health Dept.... Cummins as a mandatory reporter submitted 100% factual, fair, privileged reports, video, photos to authorities about the original violations of the Animal Welfare Act, Texas Parks & Wildlife Department, Texas Health Department and other government agencies. Appellees were investigated. Violations were found. The main USDA veterinarian stated Appellee Lollar caused “pain, suffering and death,” “violated the Animal Welfare Act” and caused bats to die⁴ (Rec 2:18-ap-01066-RK, MSJ*). Appellees lost their USDA permit and were reprimanded by many government agencies for violations.

In retaliation Appellant Cummins was falsely, frivolously sued for defamation, breach of contract, copyright by Appellees, Texas case 352-248269-10 in 2010 (cite rec*).

Immediately before one hearing and the trial the sitting Judge Bonnie Sudderth specifically requested Judge William Brigham a retired visiting

⁴ Amanda Lollar violations, loses USDA permit
http://www.marycummins.com/amanda_lollar_bat_world_sanctuary_usda_cancelled.pdf

Judge over the mandatory retirement age of 75 in Texas to sit in for Sudderth for a “vacation” only for those two very specific times (cite rec*). 84 year old long retired Judge Brigham was assigned the case for five days from June 10 to June 15, 2012 but never signed and filed an oath of office as mandated by Texas law (cite rec*). Judge Brigham never had legal jurisdiction over the case. Judge Brigham no longer had jurisdiction by time when it was signed August 27, 2012.

Before one hearing Plaintiff’s Texas attorney Randy Turner stated to Cummins in the court room “I’ve known this Judge for many years. He’ll sign anything I put in front of him.”(cite rec*) Plaintiff never denied this. Cummins was never even notified about the change of Judges. Judge William signed every order written by Randall Turner without even reading or editing them. One order forced Cummins to remove articles, comments made by others in other people’s websites which Cummins does not control some of which were in Chinese which Cummins does not speak (cite rec*).

This “visiting judge” routine is a judicial scam used to game the system⁵ “The sitting judge follows the same plan of using visiting judges to make rulings in controversial or politically sensitive cases, so the elected judges won’t have to suffer the fallout from voters or influential sides in the

⁵ Gaming the Texas Judicial system with assigned Judges
<http://marycummins.com/eliminate%20assigned%20judges.pdf>

litigation.” (George Flynn Houston Press 61903 p.19). In this case the visiting Judge made a ruling not based on any evidence or law but as a favor to his long time personal friend Randall Turner. Turner even mailed the final judgment for signature to the judge’s personal residence (cite rec*).

Judge William Brigham has been called to sit in for “vacationing” Judges in criminal cases including appeals in Texas. Judge Brigham has sent African Americans, Latinos and poor people to prison. Judge Brigham never signed or filed an oath of office for those cases either. Those people are still in prison and have contacted Appellant. Texas is the number one state for false criminal convictions due to corruption.

Even though Appellees never showed even one element of defamation, i.e. never stated what they thought was defamatory or who wrote/posted what, no element of breach of contract, they admitted they had no proof of any damages, admitted they had no proof of causation in trial, Appellant lost the trial court in the amount of approximately \$6,176,000. Not only did Plaintiff never even mention damages or show any proof of damages but there was never a separate trial for damages. Any damages would have to relate to Defendant’s net worth or actual damages. Defendant was indigent at the time because of the cost of defending the case spending every

penny of Defendant's savings and assets. Los Angeles attorney David Casselman argued this point in Casselman's Amicus Brief⁶. Number one freedom of speech attorney Paul Alan Levy filed another amicus brief from Public Citizen and the ACLU based on the lack of any valid defamation claim⁷ (also cite rec*).

The six page judgment is a take down order only. It doesn't say "defamation," "defamatory..." It states nothing else is included in the judgment other than what is specifically written. Appellees subsequently filed a sister state judgment in Los Angeles, California case BS140207 in 2012 while Cummins appealed.

The Second Court of Appeals Court in Texas released their opinion April 2015 18 months after the case was submitted on briefs and after Judge Brigham died. The Court reversed the breach of contract claim and associated liquidated damages and attorney fees by Appellee Bat World Sanctuary. The one remaining claim was not reversed⁸.

Immediately after the opinion was released April 2015 Plaintiff Lollar filed an identical copy/paste lawsuit 2015-00259-2/3 (cite rec*). Since the 2010 case was filed the Texas Defamation Mitigation Act and Citizen

⁶ David Casselman amicus brief

http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf

⁷ Paul Alan Levy, Public Citizen, amicus brief http://www.animaladvocates.us/cummins_amicus_brief.pdf

⁸ Mary Cummins v Amanda Lollar, BWS <http://www.search.txcourts.gov/Case.aspx?cn=02-12-00285-CV&coa=coa02>

Participation Acts passed to cut down on the many identical frivolous defamation cases such as this one. Plaintiff now had to specifically state and show defamatory items and prove it is defamation. Because Appellant never defamed Plaintiff, Plaintiff forged their exhibits and submitted a perjured affidavit stating the exhibits were true and correct copies of the originals which are still online today. Appellant never wrote or posted any of the listed items! No one did. Plaintiff forged them⁹.

That case was appealed and the Appeals Court stated the forgery and perjury should have been dealt with in the trial court. The trial court dismissed that case earlier this year. Currently there is a criminal investigation into forgery, perjury by Plaintiff Amanda Lollar in that case.

Plaintiff Amanda Lollar allegedly gave, assigned the judgment to Russian citizen living in Russia “Konstantin Khionidi, Trustee of the Cobbs Trust” March 2017. Khionidi’s attorney did not send, serve the assignment or notice of debtor hearing to Appellant. Instead Appellee Khionidi forged a proof of service for an address where Appellant hadn’t lived in years (cite rec*). Appellee allegedly mailed the same to Appellant minus Appellant’s unit number which means Appellant never received it. Appellant proved the server of process did not even exist. The purpose was so Appellant would

⁹ Lollar v Cummins case dismissed due to forgery, perjury <http://marycumminsamandalollarlawsuit.blogspot.com/>

never be notified of the debtor exam and miss it so a bench warrant would be issued. The purpose was to have Appellant arrested, thrown in jail and violently assaulted in Los Angeles County jail with no means of bail destroying Appellant's reputation and life. Thankfully Appellee finally bragged online to media who posted about the looming arrest (cite rec*). Appellant checked all of the legal cases and found the debtor hearing, replied and the bench warrant was rescinded.

At the first debtor hearing Plaintiff Amanda Lollar from Texas showed up and stated to Appellant paraphrased "Did you see the look on her face? She was so shocked to realize the Russian is just us." (cite rec*) Plaintiff Amanda Lollar is pretending to be, impersonating Konstantin Khionidi who does not exist. Someone who does not exist cannot file a lawsuit. This case and now reply to appeal must be dismissed due to unclean hands. Lollar flew in from Texas and sat right next to Plaintiff's attorney at every hearing telling the attorney exactly what to do. Plaintiff's attorney stated in writing Lollar is working directly on this case (cite rec*).

The underlying trust agreement is a free California probate form downloaded from the internet in English (cite rec*). Plaintiff Lollar is still listed as the owner of the judgment in the agreement (cite rec*). To this date Plaintiff has not filed any evidence to show that Plaintiff Khionidi

actually exists because Plaintiff Khionidi does not exist. Plaintiff's attorney swore for months that a notarized signature would be provided by Khionidi but it never was (cite rec*).

Appellant filed for bankruptcy December 7, 2017 2:17-bk-24993-RK .

The last day an Adverse Proceeding could be filed Plaintiff filed.

In this case Plaintiff Amanda Lollar is again pretending to be Russian strawman and current Plaintiff Konstantin Khionidi who does not exist.

The actual underlying Judgement is a six page take down order listing items Appellant never wrote or posted including items written and posted by Plaintiff Lollar, government officials and others (Exhibit 1, cite rec*). It was found to be unconstitutional as it included prior restraint. It doesn't say "defamation," "defamatory," "with malice..." or anything else that would make the judgment non-dischargeable. It clearly states "All other relief not expressly granted in this judgment is denied." The Court ruled in 2018 that the judgment is dischargeable (2:18-ap-01066-RK, Doc #20). The judgement is also void as Judge Brigham never had jurisdiction over the case.

Plaintiff and their attorney have unclean hands because Plaintiff Khionidi does not exist, Plaintiff forged proof of service, Plaintiff committed forgery and perjury in the identical case which was just dismissed, violation of

protection orders, violation of redaction rule, contempt of court, Plaintiff impersonating Russian Khionidi, perjury in legal filings, forged exhibits and other reasons Appellant has shown the Court and will show the Court.

COURT RECORD ON APPEAL

Appellant is using online court docs in this appeal. Appellant's computer crashed so all copies of those court documents must be retrieved from an external hard drive. Appellant can't afford to buy the documents on Pacer. The docs can't be accessed for free. Retrieving these documents is taking time which is why a request for extension was filed. The original OB was also lost and is being rewritten.

ARGUMENT

Appellant argues that Judge Robert Kwan abused his discretion by not finding that the judgment is dischargeable and Plaintiff has unclean hands. This portion is having to be rewritten as the original was lost in the crash. It's incomplete. Appellant submits same arguments as in the original Motion and adds additional argument.

1. Judgment is dischargeable

- a. Judgement doesn't state "defamation" or "malice"**
- b. Appeals Court can't add new items to trial court judgment**
- c. Judgment is void as Judge never signed, filed oath of office**

- d. Judgement is void as Judge didn't have jurisdiction when signed**
- e. Judgment is void as Judge was over mandatory retirement age**
- f. Judgement was obtained through fraud**
- g. Plaintiff forged exhibits and submitted perjured testimony**
- 2. Plaintiff has unclean hands in judgment, bankruptcy case and appeal**
 - a. Unclean hands bankruptcy case**
 - 1. Plaintiff doesn't exist**
 - 2. Plaintiff lied in court filed documents**
 - b. Unclean hands in Sister State judgment**
 - 1. Faked service to get Appellant arrested**
 - 2. Violated protective orders**
 - c. Unclean hands this appeal**
 - 1. Perjury in filing, violation protective order**

CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss the Adversary Proceeding as the judgment is dischargeable and Plaintiff has unclean hands should have been approved.

The above acts of judicial misconduct or the error in excluding evidence would constitute an error that “materially affect[ed] the substantial rights” of Cummins such that a new trial was necessary (§ 657). “the cumulative effect of the trial judge's conduct requires reversal.” (People v. Sturm, supra, 37 Cal.4th at p. 1243.) “The trial of a case should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand.” (Pratt v. Pratt (1903) 141 Cal. 247, 252.)

The Court is asked to reverse the order, dismiss the Adversary Proceeding and find that the judgment is dischargeable. Appellant also requests an award of fees and costs for this appeal and the other court proceedings in amounts to be determined.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1)

Pursuant to California Rule of Court 8.204(c)(1), I certify that the text of this brief is less than the maximum per mandate. In so certifying, I am relying on the word count of Apple iPages, the computer program used to prepare this brief.

DATED: August 10, 2020

Respectfully submitted,

A handwritten signature in cursive script that reads "Mary Cummins".

By _____

Mary Cummins

Appellant in Pro Per

PROOF OF SERVICE BY MAIL
(FRCivP 5 (b)) or
(CCP 1013a, 2015.5) or
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years. I further declare that on the date hereof I served a copy of:

APPELLANT'S OPENING BRIEF

on the following parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

Philip Stillman
Stillman & Associates

Judge Robert Kwan
US Bankruptcy Court

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, August 10, 2010, at Los Angeles, California.

Respectfully submitted,



Mary Cummins
645 W. 9th St. #110-140
Los Angeles, CA 90015

**APPELLANT'S APPENDIX
TABLE OF CONTENTS**

Relevant Court Orders, Notices (Incomplete)

1. 1st Order Motion Summary Judgment
2. 2nd Order Motion Summary Judgment

Relevant Statutory and Constitutional Authority