IN THE UNITED STATES COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Appeal No. 2:20-cv-02149-AB

MARY CUMMINS-COBB,

Debtor and Appellant,

v.

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

ANSWERING BRIEF OF APPELLEE

On Appeal from the U.S. Bankruptcy Court for the Central District of California, Case No. 18-01066-RK (Kwan, J.)

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INTRODUCTION

This is a virtually frivolous *pro se* appeal of the Bankruptcy Court's grant of summary judgment holding that pursuant to 11 U.S.C § 523(a)(6), a prior Texas defamation judgment against Cummins – affirmed in a scathing Texas Court of Appeals decision, *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015) and the domesticated California judgment based thereon, are nondischargeable. Not only are the Findings of Fact and Conclusions of Law dispositive on their face, but *In re Sicroff*, 401 F.3d 1101, 1106 (9th Cir. 2005), holds that defamation judgments are nondischargeable debts under 11 U.S.C. § 523(a)(6). Thus, this appeal is literally frivolous.

Rather than present any argument regarding the bankruptcy court's Findings of Fact and Conclusions of Law, Cummins devotes the entirety of her Statement of the Case to attempting to re-argue and collaterally attack the final judgment rendered against her in Texas. However, as the bankruptcy court correctly held, collateral estoppel establishes that the judgment is non-dischargeable and obviously, Cummins cannot collaterally attack a 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).

Moreover, because Cummins has failed to provide any Excerpts of Record or Reporter's Transcripts in support of her appeal and Opening Brief in compliance with Fed.R.Bankr.P. 8009(a)(4) (identifying mandatory contents of Record) and Rule 8018 (requiring service of Appendix) and (2) as shown by Cummins' Opening Brief and the appealed-from Orders of the Bankruptcy Court, this Court should summarily affirm the Bankruptcy Court's judgment because Cummins has failed to provide any record on appeal. *See* March 5, 2020 Notice Regarding Appeal from the Bankruptcy Court, ECF 2 ("The District Court, in the appeal, will review and consider only those documents in the case file that the parties have designated and thereafter reproduced.")

Additionally, although she was provided an additional 33 days from when she filed her plainly defective original Opening Brief, she has not only failed to provide any record or citations for the many false and outrageous statements in her Opening Brief, which Cummins has simply made up, but also has failed to even prepare an Opening Brief that remotely complies with Fed.R.Bankr. P. 8014(a), that presents actual argument. It is settled law that "An appellate court reviews only issues which are argued specifically and distinctly in a party's opening brief." *Cruz v. Int'l Collection Corp.*, 673 F.3d 991 (9th Cir. 2012). Accordingly, all such "arguments" have been waived by Cummins.

JURISDICTIONAL STATEMENT

The Bankruptcy Court had jurisdiction over the adversary proceeding giving rise to this appeal pursuant to 28 U.S.C. § 1334(b). If the particular action involves a "core proceeding" as defined in 28 U.S.C. § 157(b)(2), the Bankruptcy Court may enter "appropriate orders and judgments subject to [appellate] review under section 158 of [title 11]." *In re Deitz*, 469 B.R. 11, 17 (B.A.P. 9th Cir. 2012)

Here, Khionidi's adversary complaint sought a determination that a defamation judgment against debtor Mary Cummins-Cobb ("Cummins") was excepted from her discharge in bankruptcy under § 523(a)(6). "[D]eterminations as to the dischargeability of particular debts . . ." are expressly included in the statutory list of core proceedings. 28 U.S.C. § 157(b)(2)(I). As a result, Congress has provided that the bankruptcy court may enter a final judgment on exception to discharge claims, subject only to appellate review. 28 U.S.C. § 157(b)(2)(I). *In re Sasson*, 424 F.3d 864, 869-70 (9th Cir. 2005).

Final judgment was entered on March 20, 2020 pursuant to Fed.R.Civ.P. 54(b) and Cummins timely (prematurely) appealed the final judgment on . Accordingly, this court has jurisdiction.

ISSUES ON APPEAL

1. Whether Cummins' appeal should be dismissed for failing to provide any record on appeal, citation to the record, or argument.

2. Whether the Bankruptcy Court properly granted summary adjudication of facts on Appellee's Motion for Partial Summary Judgment?

3. Whether the Bankruptcy Court properly granted summary judgment against Cummins on her Motion for Summary Judgment?

STANDARD OF REVIEW

This is an appeal of a judgment entered after granting summary judgment in favor of plaintiff and appellee, holding that a defamation judgment was nondischargeable. Where the party moving for summary judgment would bear the burden of proof at trial, that party "has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). If the moving party satisfies its initial burden of production, the nonmoving party must produce admissible evidence to show that a genuine issue of material fact exists. *Id.* at 1102-03. If the nonmoving party fails to make this showing, the moving party is entitled to summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Since Khionidi clearly

satisfied his initial burden of production, to defeat summary judgment, Cummins had to produce admissible evidence showing that a material issue of fact existed. Since she failed to do so, summary judgment was appropriate.

A "malicious" injury pursuant to 11 U.S.C. § 523(a)(6) is "one involving (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *In re Bammer*, 131 F.3d 788, 791 (9th Cir. 1997) (*en banc)* quoting *In re Cecchini*, 780 F.2d 1440, 1443 (9th Cir. 1986). "This four-part definition does not require a showing of biblical malice, i.e., personal hatred, spite, or ill-will." *Id.* Nor does it require a showing of an intent to injure, but rather it requires only an intentional act which causes injury. *Id.* The first three elements of *Cecchini*'s definition of "malicious" are all questions of fact which we review for clear error. "The 'just cause and excuse' element of 'malicious injury' presents a mixed question of law and fact, which we review de novo." *In re Sicroff,* 401 F.3d 1101, 1106 (9th Cir. 2005), *cert. denied,* 125 S. Ct. 2964.

The Bankruptcy Court's denial of Cummins' Motion for Summary Judgment based on "unclean hands" is reviewed for abuse of discretion. *Seller Agency Council, Inc. v. Kennedy Ctr. for Real Estate Educ., Inc.*, 621 F.3d 981, 986 (9th Cir. 2010). " Under the abuse of discretion standard, unless a district court

makes an error of law or rests its decision on a clearly erroneous finding of a material fact, *United States v. Henderson*, 241 F.3d 638, 646 (9th Cir. 2000), or rules in an irrational manner . . . [W]e must accord the district court wide latitude in its decision and may not substitute our judgment for that of the district court." *Id.*

STATEMENT OF THE CASE

A. The Underlying Texas Case.

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"). Appendix ("App.") 102-103.[1] The Second Amended Petition in the Texas Case had counts for breach of contract, defamation and exemplary damages. App. 103.

1. The Texas Trial Court Held That Cummins' Defamation of Lollar was "Egregious, Malicious As Well As Intentional."

After the bench trial, in making its oral ruling from the bench at the

[1] Since the bankruptcy court's factual findings are reviewed for clear error, and it is Cummins' burden of demonstrating clear error, which she has not done, appellee will simply cite to the Bankruptcy Court's Order Granting Summary Adjudication of Facts, App. 101-108, and its Order Denying Cummins' Motion for Summary Judgment and Entering Summary Judgment in favor of Plaintiff, App. 158-193.

conclusion of the trial and before the written form of judgment had been prepared, the trial court ruled that "the plaintiff has clearly proven that a defamation in this case was *egregious* as well as *malicious* as well as *intentional*." App. 103. In addition, the trial court included a list of all of the defamatory statements that, as part of the Final Judgment, Cummins was ordered to take down. *Id.* No. 4.

2. The Texas Court Of Appeal Found The Evidence "Left No Doubt" That Cummins Had A Specific Intent To Cause Substantial Injury.

After reviewing the trial record, the Texas Court of Appeals held that "The comments she made about Lollar leave no doubt that she had a specific intent to cause substantial injury or harm to Lollar." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p.73 (Tex. App. Apr. 9, 2015); App. 104. In reviewing the issue of whether sufficient evidence supported that finding, the Texas Court of Appeals stated "Clear and convincing evidence also supports a finding that Cummins published statements on the internet with actual malice." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 73 (Tex. App. Apr. 9, 2015); App. 104. The Texas Court of Appeals further stated:

> Cummins posted a flood of statements about Lollar accusing her of all manner of serious wrongdoings, including crimes, and she published her statements to as wide of an audience as she could, including to numerous law enforcement agencies. The statements were designed to ruin Lollar's professional and personal reputation

> locally and nationally. . . . Lollar showed by clear and convincing evidence that Cummins acted with malice as that term is used in chapter 41 and with the actual malice required under the First Amendment. The evidence supports a conclusion that Cummins engaged in a ***persistent, calculated*** attack on Lollar with ***the intention to ruin both Lollar's life's work and her credibility and standing in the animal rehabilitation community***. Cummins posted innumerable derogatory statements about Lollar impugning her honesty and her competency, and she repeatedly and relentlessly reported Lollar to multiple government agencies. The comments she made about Lollar leave no doubt that she had a specific intent to cause substantial injury or harm to Lollar.

Cummins v. Bat World Sanctuary, 2015 Tex. App. LEXIS 3472 (Tex. App. Apr. 9, 2015), p. 71 (emphasis added). A "persistent, calculated attack on Lollar with the intention to ruin both Lollar's life's work and her credibility and standing in the animal rehabilitation community" made with actual malice can *only* be consistent with "the actual intent to cause injury" sufficient to establish the "willfulness" prong of § 523(a)(6).

3. Exemplary Damages In A Defamation Case Establishes "Actual Malice."

The trial court awarded $3 million in "exemplary damages." App. 105. As the Court of Appeals held, "We hold that the record supports a finding of malice—both of the malice required for an award of exemplary damages under Texas law and of actual malice as required for an award of exemplary damages in defamation actions." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS

3472, at p. 75 (Tex. App. Apr. 9, 2015); App. 105. "Malice" in this context means "a specific ***intent*** by the defendant to cause substantial injury or harm to the claimant." *Id.* at p. 70, citing Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7) (defining malice).

Since the Final Judgment – affirmed on appeal – determined that Cummins made the defamatory statements with "actual malice," Plaintiff has established that Cummins' defamation was intentional and establishes the "willfulness" prong of a § 523(a)(6) nondischargeability action. App. 181-183.

4. **Cummins Made Knowingly False Statements About Lollar.**

The Court of Appeals' Opinion exhaustively recounts the intentional smear campaign by Cummins against Lollar, grouping Cummins' defamatory *per se* statements into several categories. "Most of statements fall into one of three categories: allegations that Lollar committed animal cruelty, allegations that Lollar committed fraud, and allegations that Lollar violated a law, rule, standard, or regulation." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 33-34 (Tex. App. Apr. 9, 2015); App. 105. As to each of the statements, the Court determined that the evidence established that the statements Cummins made and published on the internet were false. *Id.* at pp. 34-69. App. 105.

As set forth above, after reviewing the evidence with specificity, the Court

of Appeals concluded that "The evidence supports a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with the intention to ruin both Lollar's life's work and her credibility and standing in the animal rehabilitation community." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 71-73 (Tex. App. Apr. 9, 2015); App. 104.

The trial court also found that Cummins repeatedly lied at trial. App. 105. "For example, with regard to Cummins's statements about Lollar's dogs, the evidence supported a finding that Cummins was not telling the truth." *Id.* at 73-74; regarding a video she posted, Cummins "had no basis for asserting as fact what was at best speculation and at worst total fabrication. But she posted her version as fact, not speculation, and then she spread her version as far and wide as she possibly could," *Id.* at p. 74; regarding Lollar's allegedly illegal use of an anaesthetic, "the trial court's determination that Cummins was not credible was a reasonable one . . . Based on these credibility determinations, clear and convincing evidence supports the trial court's finding that Cummins made statements on these matters with actual malice." *See* App. 105-106. Cummins' petition for review to the Texas Supreme Court was denied on August 28, 2015, Case No. 15-0459

"Not telling the truth," "asserting as fact what is at best speculation and at worst a total fabrication," and Cummins telling "as many people as she could that

Lollar was illegally obtaining and administering Isoflurane and rabies vaccines and that she made these representations as facts," when the trial court found her not credible, all demonstrates beyond any burden of proof that Cummins acted "willfully."

B. The California Sister-State Judgment.

Lollar then commenced an action in the Superior Court of California for the County of Los Angeles pursuant to the California Sister-State Judgment Act, CA Code Civ. P. § 1710.25, *Lollar v. Cummins*, Case No BS140207 (Superior Court of California, County of Los Angeles), to domesticate the Texas Judgment, which judgment was entered as a California Judgment on November 9, 2012 in the amount of $6,121,039.42. App. 107.

On April 10, 2017, Lollar assigned the judgment to the current plaintiff, Konstantin Khionidi, as Trustee of the Cobbs Trust, pursuant to CA Code Civ. P. § 673. App. 107.

C. The Adversary Proceeding.

Defendant Cummins filed her voluntary petition under Chapter 7 of the Bankruptcy Code, 11 U.S.C., in this bankruptcy case on December 7, 2017. On March 10, 2018, Plaintiff commenced this adversary proceeding by filing his Complaint to Determine Dischargeability of Debt under 11 U.S.C. § 523(a)(6)

against Defendant Cummins. Adv. Docket No. 1, Adv. Complaint.

29. App. 1-9. Defendant filed and served an Answer to the Complaint on April 11, 2018. Adv. Docket No. 9; App. 99-100. With interest accruing at $1,676.99 per day, as of March 9, 2018 (the date before the filing of the adversary proceeding), the amount of the Sister State Judgment is $9,385,842.81. App 107.

D. The Summary Judgment Motions.

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); App. 101. Plaintiff's motion for partial summary judgment requested summary judgment on the fourth cause of action to determine the judgment rendered in Texas state court against Cummins for defamation on August 27, 2012, and the California Sister-State judgment entered on the Texas judgment by the Superior Court of California for the County of Los Angeles nondischargeable pursuant to 11 U.S.C. § 523(a)(6). App. 102. The matter came on for hearing before the United States Bankruptcy Judge on March 27, 2019. App. 102.[2] The Court denied the Motion for Partial Summary Judgment, but made

[2] Cummins failed to order a transcript of this hearing, and therefore has failed to provide an adequate record for review of the Order Granting Summary Adjudication. *Hall v. Whitley*, 935 F.2d 164, 165 (9th Cir. 1991) ("Because we

extensive Summary Adjudication of Facts. App. 101-108. The Court found that because there was purportedly outstanding discovery that Defendant needed in order to respond to the motion for partial summary judgment or summary adjudication of facts pursuant to Federal Rule of Bankruptcy Procedure and Federal Rule of Civil Procedure 56(d), there were issues of fact regarding the validity of the Cobbs Trust and therefore, Khionidi's standing. App. 108.

On October 8, 2019, Cummins filed and served her motion for summary judgment. ECF 91; App. 159. Cummins' motion requested summary judgment (1) on Plaintiff's Fourth Cause of Action in his adversary complaint to determine the nondischargeability of a judgment rendered in Texas state court against Defendant for Defamation on August 27, 2012, and the California Sister-State judgment entered on the Texas judgment by the Superior Court of California for the County of Los Angeles, (2) that Plaintiff lacks standing and (3) that the case should be dismissed for "unclean hands." App. 159. Khionidi, the nonmoving party, asked that the bankruptcy court grant partial summary judgment on his Fourth Cause of

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review the district court's decision de novo, we must read the transcript of the trial court proceedings."); *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991)("we have held that failure to provide relevant portions of a transcript may require dismissal of the appeal."). "When an appellant fails to supply a transcript of a district court proceeding, we may dismiss the appellant's appeal or refuse to consider the appellant's argument." *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*, 877 F.2d 787, 789 (9th Cir. 1989).

Action as there is no longer any issue of fact regarding either the validity of the Cobbs Trust or the validity of the Assignment of Judgment to the Trust. App. 159. The hearing on Cummins' Motion for Summary Judgment was held on December 17, 2019. App. 159.[3] On February 10, 2020, the bankruptcy court denied Cummins' Motion for Summary Judgment, and held that there was no issue of fact regarding the validity of the Cobbs Trust or the Assignment of the Judgment to Khionidi 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 non-dischargeable 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." App. 166. This appeal by Cummins followed.

SUMMARY OF ARGUMENT

Cummins has literally provided no record on appeal to enable this Court's review, provided no citations to the record, did not order transcripts of the two hearings on the motions for summary judgment and other than her argumentative and completely unsupported statement of facts, her Opening Brief presents no type

[3] Cummins failed to order or provide the transcript of this hearing as well.

of argument or analysis. For those reasons alone, the bankruptcy court's judgment should be summarily affirmed.

However, it is obvious from the findings of fact in both Summary Judgment orders, and the extensive conclusions of law in the February 10, 2020 Findings of Fact and Conclusions of Law that the defamation judgment against Cummins is plainly a "willful and malicious injury" that is nondischargeable pursuant to 11 U.S.C. § 523(a)(6) and *In re Sicroff,* 401 F.3d 1101, 1106 (9th Cir. 2005), *cert. denied,* 125 S. Ct. 2964 (holding that a defamation judgment is nondischargeable as a willful and malicious injury).

It is equally obvious that the Texas Judgment is entitled to collateral estoppel on this issue of "willful and malicious injury" as the bankruptcy court found. Accordingly, even ignoring Cummins' abject failure to support her appeal, it is clear that under any set of circumstances, the Bankruptcy Court's judgment was correct.

In the bankruptcy court, Cummins contended that Khionidi lacked standing to sue because the assignment of the Texas Judgment to him was invalid and the Cobbs Trust was invalid. Cummins presented nothing to support her claim that the Trust was invalid – correctly rejected by the bankruptcy court – or that the assignment itself was somehow invalid. Accordingly, despite not being argued on

appeal or supported by anything in the record, the bankruptcy court was manifestly correct in rejecting Cummins' contentions.

ARGUMENT

I.

CUMMINS' APPEAL SHOULD BE DISMISSED OR THE BANKRUPTCY COURT'S JUDGMENT SUMMARILY AFFIRMED

As the appellant, Cummins has the burden of presenting an adequate record on appeal to allow review of a judgment. *In re Hamel*, 2009 Bankr. LEXIS 4521, at *17 (B.A.P. 9th Cir. Apr. 16, 2009).

Rule 8018 (b) of the Federal Rules of Bankruptcy Procedure states that an appellant "must serve and file with its principal brief excerpts of the record as an appendix." Fed.R.Bankr.P. 8018 (b). Federal Rule of Bankruptcy Procedure 8009(b)(5) requires that in any appeal there be an appendix of excerpts of the record that includes the "opinion, findings of fact, or conclusions of law filed or delivered orally" by the court. Fed. R. Bankr. P. 8009(b)(5). "This is also mandatory, not optional." *In re McCarthy*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). "The appellant's appendix omits the findings and is, as a matter of law, incomplete." *See In re Kritt*, 190 B.R. 382, 386 (9th Cir. BAP 1995); *In re Burkhart*, 84 B.R. 658, 661 (9th Cir. BAP 1988). The burden is clearly on the

appellant.

The purpose of requiring an appendix in every appeal is obvious; appellant needs to provide the court with "those parts of the record material to the questions presented and which it is essential for the judges of the court to read in order to decide these questions." *Columbus Wood Preserving Co. v. United States*, 209 F.2d 153, 154 (6th Cir. 1953). "Failure to supply necessary documents goes to the heart of [the] court's decision-making process." *Hill v. Porter Mem'l Hosp.*, 90 F.3d 220, 226 (7th Cir. 1996). Consequently, "appellants bear the responsibility to file an adequate record, and the burden of showing that the bankruptcy court's findings of fact are clearly erroneous." *In re Kritt*, 190 B.R. 382, 387 (B.A.P. 9th Cir. 1995). "The appellant's failure to provide the one document that would directly identify the manner in which the bankruptcy court exercised its discretion entitles us to dismiss this appeal." *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991).[4]

Hence, appellant's failure "to provide a sufficient record to support an informed review of the trial court's determinations may result in either dismissal of

[4] As an example, Cummins states in her Opening Brief, p. 12 that "The above acts of judicial misconduct or the error in excluding evidence would constitute an error" but she fails to identify any evidence that was improperly excluded.

the appeal or summary affirmance of the trial court's judgment based upon the appellant's inability to demonstrate error." *In re Hamel*, 2009 Bankr. LEXIS 4521, at *10 (B.A.P. 9th Cir. Apr. 16, 2009); *In re O'Brien*, 312 F.3d 1135, 1136-37 (9th Cir. 2002); *In re Perez*, 30 F.3d 1209, 1217-18 (9th Cir.1994).

In this case, Cummins failed to include even the most fundamental parts of the record on appeal, such as the Bankruptcy Court's Summary Judgment orders or the evidence presented in support of and opposition to those motions. The failure to submit an adequate record on appeal is grounds enough for dismissal of the appeal with prejudice.

However, Cummins also failed to order either of the transcripts of the oral arguments on the Motions for Summary Judgment, which is also a violation of Rule 8018 and grounds for dismissal. *Hall v. Whitley*, 935 F.2d 164, 165 (9th Cir. 1991) ("Because we review the district court's decision de novo, we must read the transcript of the trial court proceedings."); *Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991)("we have held that failure to provide relevant portions of a transcript may require dismissal of the appeal."). "When an appellant fails to supply a transcript of a district court proceeding, we may dismiss the appellant's appeal or refuse to consider the appellant's argument." *Portland Feminist Women's Health Ctr. v. Advocates for Life, Inc.*, 877 F.2d 787, 789 (9th

Cir. 1989), citing *Thomas v. Computax Corp.*, 631 F.2d 139, 143 (9th Cir. 1980) (dismissing appellant's *pro se* appeal when she failed to include in the record a transcript to support her claim that the trial court's finding and judgment was unsupported by the evidence).

Finally, even ignoring Cummins' failure to provide this Court with *any* record on appeal, Cummins' Opening Brief does not cite to any evidence in the record at all or explain how any of the Findings of Fact or Conclusions of Law are erroneous. Fed.R.Bankr.P. 8014(a)(6); *In re Morrissey*, 349 F.3d 1187 (9th Cir. 2003). Moreover, as to her appeal of the Bankruptcy Court's denial of her motion for summary judgement based on "unclean hands," the Bankruptcy Court's finding is reviewed for abuse of discretion. *Seller Agency Council, Inc. v. Kennedy Ctr. for Real Estate Educ., Inc.*, 621 F.3d 981, 986 (9th Cir. 2010) and Cummins has not cited to a single piece of evidence contained in the record to show that the Bankruptcy Court abused its discretion. "[J]udges are not like pigs, hunting for truffles buried in briefs." *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1066 (9th Cir. 2009).

Cummins' "Argument" section of the brief – filed on September 11, 2020 after this Court granted her a 30 day extension, has no "argument" whatsoever – merely an incoherent rambling unsupported by either argument, case law or

citation to the record. Cummins attempts to make up for her deficiencies in her Opening Brief by stating that she will file a more complete Reply Brief. However, Cummins misses the entire point. Matters not fully briefed in the Opening Brief are waived. Moreover, it had been almost a month and Cummins failed to even make any effort to provide this Court with any sort of record from which to determine her appeal. Accordingly, in accordance with this Court's July 13, 2020 admonition to Cummins, the Bankruptcy Court's judgment should be summarily affirmed.

II.

THE BANKRUPTCY COURT'S JUDGMENT IS OBVIOUSLY CORRECT UNDER ANY STANDARD OF REVIEW

As the bankruptcy court found, the evidence indicates the debt from the judgment from the Texas courts in favor of Plaintiff's assignor, Lollar, including the trial court's judgment of August 27, 2012, meets the federal standard of willful and malicious injury under 11 U.S.C. § 523(a)(6) based on the uncontroverted facts set forth in the court's order granting in part and denying in part Plaintiff's motion for partial summary judgment on the fourth cause of action, filed and entered on May 24, 2019. See ECF 82. Summarily Adjudicated Uncontroverted Facts 1-30 are findings of fact reviewed for clear error and as 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. Cummins has not shown any error.

A. The Texas Judgment Is Entitled To Full Faith And Credit.

This court must give full faith and credit to the Texas Judgment. Under the federal full faith and credit statute, 28 U.S.C. § 1738, federal courts must give state court judgments the same preclusive effect that those judgments would receive from another court of the same state. *Far Out Productions, Inc. v. Oskar*, 247 F.3d 986, 993 (9th Cir. 2001). The state where the judgment was rendered determines any preclusive effect of the default judgment entered in this case. *In re Nourbakhsh*, 67 F.3d 798, 800 (9th Cir. 1995). The bankruptcy court has an obligation to afford "full faith and credit" to state judicial proceedings. 28 U.S.C. § 1738.

The Full Faith and Credit Act requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgments emerged. 28 U.S.C. § 1738. State law governs the preclusive effect given to state court judgments in federal court. *See Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 232-233 (1998)(citations omitted); *Diruzza v. Cnty. of Tehama*, 323 F.3d 1147, 1152 (9th

Cir. 2003), citing *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 84 L. Ed. 2d 274, 105 S. Ct. 1327 (1985). In determining the preclusive effect of a state-court judgment, this court must "refer to the preclusion law of the State in which judgment was rendered." *Id.* Here, the applicable state law is Texas law since that would have been the law applied by the federal district court in the Texas Case on Lollar's Defamation claim against Cummins in that case. Principles of collateral estoppel apply to proceedings seeking exceptions from discharge brought under 11 U.S.C. § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n.11, 112 L. Ed. 2d 755, 111 S. Ct. 654 (1991); *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001).

"[C]ollateral estoppel precludes relitigation of issues argued and decided in prior proceedings." *In re Harmon*, 250 F.3d at 1245. The Texas Judgment is entitled to collateral estoppel on the issue of "willful and malicious injury" as does the California judgment based thereon.

Under Texas law, there are three elements to collateral estoppel:(1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *Welch v. Hrabar*, 110 S.W.3d 601, 606 (Tex. App. 2003), *pet. denied.* "Strict mutuality of parties is no longer

required." *Zea v. Valley Feed & Supply, Inc.*, 354 S.W.3d 873, 877 (Tex. App. 2011). "The doctrine is designed to promote judicial efficiency and to prevent inconsistent judgments by preventing any relitigation of an ultimate issue of fact. *Id.* It is only necessary that the party against whom collateral estoppel is being asserted had a full and fair opportunity to litigate the issue." *Id.* Under a plea of collateral estoppel, essential issues of fact previously determined and adjudged by a court of competent jurisdiction are binding in a subsequent action between the same parties. *See Bonniwell v. Beech Aircraft Corp.*, 663 S.W.2d 816, 822 (Tex. 1984). All three elements of collateral estoppel are present here.

B. The Ultimate Facts Sought To Be Litigated In This Action Were Fully And Fairly Litigated In *Bat World Sanctuary v. Cummins*.

The first element of collateral estoppel under Texas law is easily established, as Cummins fully and fairly litigated whether she had defamed Lollar and whether she was liable to Lollar for exemplary damages in the course of a four day bench trial, which established that Cummins' actions were both willful and malicious, the two elements forming the basis of a §523(a)(6) determination of nondischargeability.

1. **The Elements Of Defamation Under Texas Law.**

The elements of a defamation action include (1) the publication of a false

statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages. *Van Der Linden v. Khan*, 535 S.W.3d 179, 198 (Tex. App. 2017). By entering final judgment against Cummins on Lollar's Second Amended Petition for defamation and exemplary damages in the Texas action, the trial court therefore necessarily found that the statements listed in the Final Judgment were false statements of fact, (2) were defamatory to Lollar, (3) by awarding exemplary damages, found that Cummins had acted intentionally and with actual malice[5] and (4) held that Lollar had established entitlement to damages of $3,000,000 and $3,000,000 in exemplary damages.

2. **The Ultimate Facts Relevant To This Nondischargeability Action Have All Been Established.**

As discussed above, there are only two elements to a §523(a)(6)

[5] Under Texas law, the *minimum* requisite degree of fault in a defamation case involving a private individual is negligence. *Foster v. Laredo Newspapers, Inc.*, 541 S.W.2d 809, 819 (Tex. 1976), *cert. denied*, 429 U.S. 1123, 51 L. Ed. 2d 573, 97 S. Ct. 1160 (1977). Although it is clear that the trial court found that Cummins acted intentionally and with the specific intent to injure Lollar, *not* negligently, it is irrelevant, given that within the context of a defamation cause of action, "actual malice" is the standard for awarding exemplary damages. *Leyendecker & Associates, Inc. v. Wechter*, 683 S.W.2d 369, 375 (Tex. 1984). In other words, even if the defamation is characterized in terms of a negligent breach of duty, an award of exemplary damages would still require a showing of actual malice. *Mitre v. Brooks Fashion Stores, Inc.*, 840 S.W.2d 612, 623-24 (Tex. App. 1992).

nondischargeability claim: (1) that it was done willfully, and (2) with actual malice. Since the Texas Judgment establishes that Cummins defamed Lollar and that in defaming her, Cummins acted with "actual malice," the ultimate facts establishing that the Texas Judgment is nondischargeable pursuant to § 523(a)(6) have been finally and conclusively litigated. As held by the Texas Court of Appeals, "malice" sufficient to establish exemplary damages in a defamation action means "a specific ***intent*** by the defendant to cause substantial injury or harm to the claimant." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 69-70 (Tex. App. Apr. 9, 2015) citing Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7).

C. The Facts Were Essential To The Texas Judgment.

Obviously, the trial court's holding that Cummins had made defamatory statements about Lollar is an essential finding to the trial court's award of damages for defamation against Cummins. Without a finding that Cummins published defamatory statements to third parties, there could obviously be no liability for defamation. In addition, the trial court's mandatory injunction requiring that Cummins remove the list of defamatory statements from her various blogs and websites is based on the fact that the identified statements were false

and defamatory.[6]

Similarly, the finding that Cummins acted with "actual malice" is essential to the trial court's award of exemplary damages as a showing of "actual malice" is required in order to award exemplary damages in Texas for defamation. *Hancock v. Variyam*, 400 S.W.3d 59, 66 (Tex. 2013) ("recovery of exemplary damages are appropriately within the guarantees of the First Amendment if the plaintiff proves by clear and convincing evidence that the defendant published the defamatory statement with actual malice").

D. Cummins Was Obviously The Judgment Debtor in *Bat World Sanctuary v. Cummins*.

The final element establishing collateral estoppel is easily met, since Cummins was the party against whom the judgment was entered, and the party who defended the case. Thus, the Texas Court's determination of the issues cannot be re-litigated in this Court and summary judgment is proper.

E. The Sister State Judgment Is Also Non-Dischargeable.

As discussed above, the Texas Judgment was domesticated as a California

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[6] The Texas Court of Appeals held that to the extent that the injunction prohibited Cummins from making statements in the future, that was "prior restraint." Cummins in fact did repost the defamatory statements and was sued again.

judgment. Thus, to the extent that collateral estoppel bars relitigation of the issues determined in the Texas Judgment, the California Judgment is also non-dischargeable. However, applying the same rationale above under California law results in the same conclusion. There are five threshold requirements for application of collateral estoppel in California:

> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

In re Harmon, 250 F.3d at1245 (applying California law). All of the elements of collateral estoppel are obviously met here. The issues are identical, in that the court found that the Debtor acted willfully and with actual malice and with a specific intent to injure Ms. Lollar. Those issues were actually litigated and necessarily decided by the Texas Judgment as required elements of the defamation claim. The Texas Judgment is obviously final and on the merits, and was entered as a Sister State Judgment in California. Finally, Cummins was the defendant in the Texas Judgment. Thus, collateral estoppel establishes the nondischargeability of the Texas Judgment and the Sister State Judgment as a matter of law. Thus, collateral estoppel provides all of the necessary facts to support summary

judgment.

F. The Texas Judgment Establishes Non-dischargeability.

A discharge under 11 U.S.C. § 727 does not discharge an individual debtor from "any 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).

1. **Cummins' Defamation Was "Willful".**

An injury is "willful" if acts are done with the actual intent to cause injury. *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S. Ct. 974, 977 (1998); *In re Youngchul Park*, 2017 Bankr. LEXIS 1939, at 35 (Bankr. C.D. Cal. July 13, 2017)("an injury is 'willful' 'when it is shown either that the debtor had a subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to occur as a result of his conduct.'") That Cummins' defamation was "willful" is established in four places.

First, the Texas trial court held that Cummins' defamation of Lollar was "egregious, malicious as well as intentional." App. 103. Second, after reviewing the trial record, the Texas Court of Appeals held that "The comments she made about Lollar leave no doubt that she had a specific intent to cause substantial injury or harm to Lollar." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p.73 (Tex. App. Apr. 9, 2015). In reviewing the issue of whether

sufficient evidence supported that finding, the Texas Court of Appeals stated "Clear and convincing evidence also supports a finding that Cummins published statements on the internet with actual malice." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 73 (Tex. App. Apr. 9, 2015); App. 104.

Third, the trial court awarded $3 million in "exemplary damages." App. 105. As the Court of Appeals held, "We hold that the record supports a finding of malice—both of the malice required for an award of exemplary damages under Texas law and of actual malice as required for an award of exemplary damages in defamation actions." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at p. 75 (Tex. App. Apr. 9, 2015). "Malice" in this context means "a specific ***intent*** by the defendant to cause substantial injury or harm to the claimant." *Id.* at p. 70, citing Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7)(defining malice).

Under Texas law, "Texas courts have long recognized that exemplary damages are recoverable when the injury is tainted with fraud, malice, or willful wrong. [citation omitted] The rule allowing exemplary damages when it is shown that a defendant committed a willful, malicious or fraudulent wrong is one of general application." *InterFirst Bank Dall., N.A. v. Risser*, 739 S.W.2d 882, 907 (Tex. App. 1987). "Additionally, in a defamation action, the Texas Supreme Court has stated that 'recovery of exemplary damages are appropriately within the

guarantees of the First Amendment if the plaintiff proves by clear and convincing evidence that the defendant published the defamatory statement with actual malice.'" *Id.* Since the Final Judgment – affirmed on appeal – determined that Cummins made the defamatory statements with "actual malice," Khionidi has established that Cummins' defamation was intentional and establishes the "willfulness" prong of a § 523(a)(6) nondischargeability action.

Fourth, Cummins made knowingly false statements about Lollar. App. 105. The Court of Appeals' Opinion exhaustively recounts the intentional smear campaign by Cummins against Lollar, grouping Cummins' defamatory *per se* statements into several categories. "Most of statements fall into one of three categories: allegations that Lollar committed animal cruelty, allegations that Lollar committed fraud, and allegations that Lollar violated a law, rule, standard, or regulation." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 33-34 (Tex. App. Apr. 9, 2015). As to each of the statements, the Court determined that the evidence established that the statements Cummins made and published on the internet were false. *Id.* at pp. 34-69. App. 105.

After reviewing the evidence with specificity, the Court of Appeals concluded that "The evidence supports a conclusion that Cummins engaged in a persistent, calculated attack on Lollar with the intention to ruin both Lollar's life's

work and her credibility and standing in the animal rehabilitation community." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 71-73 (Tex. App. Apr. 9, 2015). The court also found that Cummins repeatedly lied at trial. *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at *73–74 (Tex. App. Apr. 9, 2015); App. 105-106. "Based on these credibility determinations, clear and convincing evidence supports the trial court's finding that Cummins made statements on these matters with actual malice." *Id.*

"Not telling the truth," "asserting as fact what is at best speculation and at worst a total fabrication," and Cummins telling "as many people as she could that Lollar was illegally obtaining and administering Isoflurane and rabies vaccines and that she made these representations as facts," when the trial court found her not credible, all demonstrates beyond any burden of proof that Cummins acted "willfully."

2. **The Injury Was "Malicious."**

An injury is "malicious," as that term is used in § 523(a)(6), when it is: "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." [citation omitted]. Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself. *In re Sicroff*, 401 F.3d 1101, 1106 (9th Cir. 2005). In *Sicroff*,

the Ninth Circuit held that libelous statements meet at least the first three elements of a nondischargeable debt under 11 U.S.C. § 523(a)(6):

> Because we are persuaded that at least some of Sicroff's statements were libelous, we also conclude that the first two criteria of "malicious injury" are met. A libelous act, by its nature, is self-evidently wrongful and is committed by an intentional act of publication--in this case, by Sicroff's dissemination of his letter. The third criterion--that the action necessarily cause injury--is also met because Sicroff's statements were directed at Jett's professional reputation and, therefore, will necessarily harm him in his occupation.

Id. at 1106.

The trial court and the Court of Appeals in affirming the defamation and exemplary damages portions of the judgment, held that (1) the Debtor defamed Amanda 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-Cobb "had a specific intent to cause substantial injury or harm to Lollar." *Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472, at pp. 69-70 (Tex. App. Apr. 9, 2015).

The fourth element, that the libelous statements were made without "just cause" is addressed by the specific finding by the trial court that Cummins acted with actual malice and an intent to injure Ms. Lollar's professional reputation. *Id*.

Moreover, the statements could not be made with "just cause" when the trial court awarded exemplary damages against Cummins and found that she published the defamatory statements with actual malice. *InterFirst Bank Dall.*, 739 S.W.2d at 907. As in *Sicroff*, "libelous statements were not made with just cause and excuse." *Id.* at 1107. Accordingly, the bankruptcy court's judgment on the Fourth Cause of Action is undisputedly correct.

III.

THE COURT'S UNCLEAN HANDS DECISION WAS NOT CLEARLY ERRONEOUS

As to Cummins' assertion that Khionidi's claims against her are barred based on the doctrine of unclean hands, Cummins has the burden of proof on this affirmative defense. However, not only does nothing that she identifies constitute "unclean hands" as a matter of law, but none of her contentions are supported by any evidence at all. App. 185. The evidence in support of these assertions consists of her declaration stating "Everything in my DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was written by me and is the truth to the best of my knowledge." That is obviously insufficient for any purpose, not to mention demonstrating that no genuine issue of material fact remains on an unpled

affirmative defense. Fed.R.Civ.P. 8(c)(1), Answer, App. 99-100 (not pleading any affirmative defenses). Notwithstanding that she failed to plead any affirmative defenses in her Answer, the bankruptcy court charitably still analyzed her meritless and unsupported ramblings. As the bankruptcy court found, "the assertions of Defendant that Plaintiff or his assignor, Lollar, engaged in misconduct are unsubstantiated by competent and admissible evidence." App. 188.

Thus, it is literally impossible for Cummins to show that the bankruptcy court abused its discretion in denying Cummins' "unclean hands" defense.

IV.

NO ISSUES OF FACT REMAIN REGARDING THE VALIDITY OF THE ASSIGNMENT TO THE COBBS TRUST

Cummins' last gasp is that the assignment of the judgment to the Cobbs Trust was somehow "invalid." But she points to nothing that would indicate any question regarding the validity of the Cobbs Trust or the assignment. As the bankruptcy court held, the Cobbs Trust meets every requirement for the establishment of a trust under California law. ER 188-189, citing *Newman v. Commissioner*, 222 F.2d 131, 135 (9th Cir. 1955)(citations omitted); *see also*, California Probate Code §§ 15200-15207; *Lefrooth v. Prentice*, 202 Cal. 215, 226

(1927).

The assignment is also clearly valid. California Code of Civil Procedure § 681.020 prescribes the requirements for an assignee to enforce a judgment under this statutory scheme: "An assignee of a judgment is not entitled to enforce the judgment under this title unless an acknowledgment of assignment of judgment to that assignee has been filed under Section 673 or the assignee has otherwise become an assignee of record."

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

The Acknowledgment of Assignment of Judgment to Konstantin Khionidi

as Trustee of the Cobbs Trust complies in every respect with California Code of Civil Procedure § 673 and is therefore a valid assignment to the Cobbs Trust of the Texas Judgment and the California Sister-State Judgment.

Cummins also lacks standing to challenge the Assignment. The court in *California Coastal Commission v. Allen* specifically rejected a judgment debtor's attempt to challenge the validity of an assignment of judgment that complied with Code Civ. P. § 673 as Defendant seeks to do here:

> These statutes, read together, specify requirements for an assignee to obtain standing as a judgment creditor to enforce a judgment under the Enforcement of Judgments Law. No provision is made for a debtor to attack the judgment creditor's authority to make the assignment; the scope of the provision is limited to the process for an assignee to obtain standing to proceed as a creditor.

167 Cal.App.4th at 327. In that case, a judgment was assigned to a third party for collection by the *California Coastal Commission*, who filed an Order for Sale of the judgment debtor's real property, and attached the filed Assignment of Judgment pursuant to Code Civ. P. § 673. As the court held in *Allen*, "The signatures were notarized, and the acknowledgment was filed in the superior court on December 15, 2005. This is all that is required for purposes of the Enforcement of Judgments Law." 167 Cal.App.4th at 328. Thus, as a matter of law, Cummins lacks standing to challenge the assignment to the Cobbs Trust.

Cummins' sole argument (in the bankruptcy court) regarding the validity of the actual assignment is that the Acknowledgment of Assignment of Judgment filed with the Superior Court of California for the County of Los Angeles was mailed to "645 W. 9th St.," instead of "645 W. 9th St., #110-140." Ignoring that Cummins has not presented any admissible evidence on this point, her argument was specifically rejected in *In re Millican*, 2014 Bankr. LEXIS 3383, at *9 (Bankr. N.D. Ohio, Aug. 8, 2014) (construing California law regarding the validity of an assignment of a judgment in connection with an adversary proceeding objecting to dischargeability of a judgment).

The court in *Millican* rejected the defendant's argument in his response to plaintiff's motion for summary judgment that he did not receive proper notice of the assignment. *Id.* at *4. "[W]ithout citation to any material in the record supporting that fact, [it] is insufficient to defeat Plaintiff's Motion. Fed. R. Civ. P. 56(c)(1); Fed. R. Bankr. P. 7056." *Id.*

The court in *Millican* next rejected the defendant's argument that notice was even required for an assignment of a judgment to be effective:

> And finally, although Defendant cites California Code of Civil Procedure §§ 673 and 1014, apparently for the proposition that such notice is required for an assignment to be effective, those statutes do not include such a requirement. Section 1014 provides only that a defendant or his attorney "is entitled to notice of all subsequent

> proceedings of which notice is required to be given." Cal. C.C.P. § 1014 (emphasis added). Section 673 provides that "[a]n assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment." Cal. C.C.P. § 673. It includes no requirement that notice be given to any party. Defendant has cited, and the court has found, no authority requiring notice of an assignment of judgment in order for the assignment to be valid.

Id.

Even assuming that she had standing and even assuming that service of the Notice was required, there is no evidence that Cummins did not receive it. The bankruptcy court was correct as a matter of law, as Cummins' naked assertion of non-receipt is manifestly insufficient to overturn the proof of service and create a genuine issue of fact. *In re Estate of Wiechers*, 199 Cal. 523, 530 (1926)("it cannot be said that petitioner's mere statement that 'no papers were ever served upon' her . . . is such 'clear and convincing proof' as to require a finding . . .that no legal service of notice of the motion was made upon her"). The mere fact that the person to be served with the document claims not to have received it through the mail does not establish that affidavit of mailing is false. *McKeon v. Sambrano*, 200 Cal. 739, 741 (1927); *Miller v. Cortese*, 136 Cal.App.2d 47, 49 (1955). Instead, a mailing is presumed to have been received by the addressee. California Evidence Code § 641. Accordingly, there was no issue of fact remaining for trial on the validity of the assignment and the bankruptcy court properly granted summary

judgment in favor of the nonmoving party, Khionidi, pursuant to Federal Rule of Civil Procedure 56(f)(1) on the issue of whether the Assignment is a valid assignment of the Texas and California judgments to the Cobbs Trust.

CONCLUSION

For the foregoing reasons, Appellee Konstantin Khionidi, as Trustee of the Cobbs Trust, respectfully requests that this Court affirm the Bankruptcy Court's Judgment.

Respectfully Submitted,

STILLMAN & ASSOCIATES

/s/ *Philip H. Stillman*

Dated this 12th day of October 2020.

By:_____
Philip H. Stillman
Attorneys for appellee Konstantin Khionidi, as Trustee of the Cobbs Trust

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. Bankr.P. 8015(a)(7)(B)(i), I certify that the Appellee's Answering Brief is proportionally spaced in serif font, has a typeface of 14 points, and contains 8,707 words, excluding the parts of the brief exempted by Fed. R. Bankr. P. 8015(g). This Brief was prepared using Corel WordPerfect and the word court was determined using the WordPerfect word count application.

Dated: October 13, 2020

/s/ *Philip H. Stillman*
Philip H. Stillman, Esq.

PROOF OF SERVICE

I, the undersigned, certify under penalty of perjury that on October 13, 2020 or as soon as possible thereafter, copies of the foregoing Answering Brief and Appellee's Excerpt of the Record was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

By: /s/ *Philip H. Stillman*
Attorneys for Appellee Kostantin Khionidi as Trustee of the Cobbs Trust.