



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

In re:

MARY CUMMINS-COBB,

Debtor.

Case No. 2:17-bk-24993-RK

Chapter 7

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

**STATEMENT OF DECISION RE:
DEFENDANT’S MOTION TO DISMISS THE
ADVERSARY PROCEEDING AND
PLAINTIFF’S EX PARTE APPLICATION TO
STRIKE MOTION TO DISMISS**

KONSTANTIN KHIONIDI, AS TRUSTEE
OF THE COBBS TRUST,

Plaintiff,

vs.

MARY CUMMINS-COBB,

Defendant.

Vacated Hearing

Date: March 30, 2021

Time: 2:30 p.m.

Courtroom: 1675

Having considered defendant’s motion to dismiss the adversary proceeding, filed on February 26, 2021 (Docket No. 198), and plaintiff’s ex parte application to strike in response thereto, filed on March 9, 2021 (Docket No. 200), the court rules as follows.

1. Pursuant to Local Bankruptcy Rule 9013-1(j)(3), the court determines that

1 oral argument on the motion to dismiss the adversary proceeding is not
2 necessary and dispenses with it, and the court takes the motion to dismiss
3 under submission and vacates the hearing on the motion to dismiss
4 noticed before the court on March 30, 2021 at 2:30 p.m.

5 2. The motion to dismiss fails to set forth a proper legal basis for dismissing
6 the adversary proceeding after the entry of final judgment in favor of
7 plaintiff, which has been affirmed on appeal to the district court. This
8 court's judgment affirmed on appeal determined that the Cobbs Trust was
9 valid and plaintiff as its representative had standing to bring the adversary
10 proceeding. Thus, the court's determinations already addressed the issue
11 raised by defendant in her motion to dismiss regarding whether plaintiff is
12 the real party in interest under Federal Rule of Civil Procedure 17(a). In
13 determining that the trust is valid and that plaintiff as its representative had
14 standing to bring the adversary proceeding, the court determines that
15 plaintiff was the real party in interest under Federal Rules of Civil
16 Procedure 17(a). Defendant's remedy to contest the judgment based on
17 the court's determinations is an appeal, not a post-judgment motion to
18 dismiss, which the court determines to lack merit.

19 3. Accordingly, the motion will be denied.

20 4. Plaintiff's ex parte application to strike the motion to dismiss will be denied
21 as moot.

22 5. No appearances are required on the hearing on the motion on March 30,
23 2021, which hearing is now vacated.

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1 6. A final order denying the motion to dismiss and the application is being
2 filed and entered concurrently herewith.

3 IT IS SO ORDERED.

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24 Date: March 18, 2021



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26 Robert Kwan
27 United States Bankruptcy Judge
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