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Consumer Bankruptcy Case Developments

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RECENT DEVELOPMENTS IN CONSUMER BANKRUPTCY 2022

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MISCELLANEOUS.....

Griffith v. Lone Star FLCA et al (In re Griffith), 2022 WL 1289559 (N.D. Tex. Ft. Worth Div. April 28, 2022). *Bankruptcy Court did not clearly err when it determined that the Debtor's P.O. Box constituted his "last known address" and that Debtor waived the Deed of Trust's contractual provision requiring that any change of address be designated in writing.* Here, Debtor "verbally and expressly" directed Lone Star to change his notice address to the P.O. Box and such was found to be a valid change of address constituting Debtor's last known address. Lone Star therefore complied with "applicable law" by mailing the foreclosure notice to the P.O. Box. Based on the bankruptcy court's review of the record and applicable law, this finding was entirely plausible. Likewise, there was sufficient evidence in the record to reflect that Debtor expressly and impliedly waived his contractual rights in the Deed of Trust which evidence consisted of: 1) he twice made an express change of address request to Lone Star verbally over the phone; 2) verbally and expressly asked Lone Star to send notices to his P.O. Box rather than to an alternate address; 3) received the June 2019 and the November 2019 Foreclosure Sale Notice at the P.O. Box and never raised any concerns to Lone Star that such notices should be sent to an alternative address; and 4) never raised any concerns to Lone Star that his monthly bank statements should be sent to the alternative address instead of his P.O. Box.

Assadi v. Osherow, Chapter 7 Trustee, and Batoei, 2022 WL 1410723 (W.D. Tex., Austin Div. May 4, 2022). *The district court affirmed the bankruptcy court regarding three orders appealed by Debtor: 1) Order Granting Trustee's Motion to Compromise and Settle Claims with Batoei Creditors Pursuant to Rule 9019; 2) Order Denying Motion to Reconsider Motion to Disqualify; and 3) Order Sustaining in Part and Denying in Part Objection to Claims.* The district court determined that all factors in approving the compromise were properly considered by the bankruptcy court: 1) finding the probability of success in the litigation was low due to the state court's consideration of the issue and large award in favor of Batoei Creditors; 2) properly crediting the trustee's evaluation of the pending appeal and its low likelihood of reducing or overturning the judgment; 3) court's agreement that pursuing the litigation would be costly and time consuming; 4) finding that the proposed settlement would benefit the creditors and was negotiated at arm's length; and 5) concluding that the compromise would result in payment to all creditors and a chance for Debtor to move forward with a fresh start and surplus funds from the estate. The district court also determined that the Debtor failed to establish a lack of bankruptcy court impartiality or the appearance of impartiality by clear and convincing evidence and therefore the bankruptcy court acted within its discretion in denying the motion to reconsider. With respect to the claims objection order, because the state court judgment was final and unsuperceded, the bankruptcy court properly overruled Debtors' first objection (that the state-court judgment was not final because of a pending appeal). And because Debtor presented no evidence rebutting Batoei Creditors' proof of claim, Debtor's second objection was also properly overruled.

In re Lopez, 2022 WL 2080187 (Bankr. E.D. Tex., Beaumont Div. June 9, 2022). *The bankruptcy court was faced with the task of considering enforcement of one of its own orders, an Agreed Order entered into between the U.S. Trustee and the Debtors' former*

bankruptcy attorney requiring the attorney to pay the sum of \$8,500 to the Debtors based on his inability to provide competent representation to those Debtors in their prior Chapter 13. The attorney failed to pay the debtors the required sum. Here, the Court relied on its civil contempt power under Section 105 of the Bankruptcy Code and determined by clear and convincing evidence that: 1) the Agreed Order was in effect; 2) the Agreed Order required certain conduct by the attorney; and 3) the attorney failed to comply with the Agreed Order. The attorney failed to carry his burden on the possible substantial compliance defense. Thus, the bankruptcy court entered a sanctions order (the “Order”) affording the attorney a final opportunity to comply with the Agreed Order within seven (7) days from date of entry of the Order and if the attorney failed to comply within seven (7) days, he would be further sanctioned and ordered to pay the Chapter 13 trustee \$125 for each day thereafter to be applied to and distributed in accordance with the Debtors’ current Chapter 13 plan (another attorney handled) continuing until completion of payment of the \$8,500 or the expiration of sixty-seven (67) calendar days from the date of entry of the Order. The Order also required the attorney to file certain signed and verified certifications of completion of payment with the Court. And, if the attorney failed to comply with the Order in the time frame set out, then the Court would proceed to enter a second show cause order as to why attorney should not be further sanctioned by the bankruptcy court’s civil contempt powers.

Curtis v. Cengiz Ozcelebi, et al (In re Ozcelebi), 2022 WL 1529359 (Bankr. S.D. Tex., McAllen Div., May 13, 2022). *Chapter 7 trustee sought entry of a temporary restraining order and preliminary injunction against Cengiz Ozcelebi in his capacity as trustee of certain trusts and Kahn Ozcelebi, in his capacity as trustee of another trust. The bankruptcy court denied the application for temporary restraining order and preliminary injunction. First, for failure to comply with the Local Rules and the bankruptcy court’s procedures as well as for failing to sufficiently specify that which it sought to enjoin any party from doing. Additionally, based on the four factors required for entering injunctive relief, the bankruptcy court found that the trustee had met only one of the four elements. The trustee failed to demonstrate a likelihood of success on her declaratory judgment claim as well as her fraudulent transfer claim and thus failed to satisfy the first factor. The trustee also did not meet the second factor because she failed to demonstrate irreparable harm in the absence of preliminary relief. Further, the trustee failed to satisfy the third by being unable to show that the threatened injury outweighed the threatened harm to nonmovants. The trustee only satisfied the fourth factor as preventing dissipation of assets and promoting Debtor’s ability to pay creditors was in the public interest.*

Neria v. Wells Fargo Bank, N.A. d/b/a America’s Servicing Company, and Wilmington Trust, National Association, (In re Neria), 2022 WL 1022051 (Bankr. N.D. Tex., Dallas Div. April 5, 2022). *Debtor sued Wells Fargo, the servicer of her home equity loan, alleging numerous incidents of servicer misconduct. Wilmington was originally a defendant, but the Debtor settled those claims. The bankruptcy court awarded the Debtor for: 1) Wells Fargo’s violation of the FDCPA, 15 U.S.C. Section 1692(a), \$1,000 of statutory damages, plus reasonable attorneys’ fees that may have been incurred in addressing Wells Fargo’s letter to the Debtor dated May 4, 2016 (Wells Fargo sent a letter to Debtor at a time it knew she was being represented by counsel—a violation of Section*

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