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COBBS TRUST, judgment creditor

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR LOS ANGELES COUNTY**

AMANDA LOLLAR,

Plaintiff

v.

MARY CUMMINS,

Defendant

Case No. BS140207

**OPPOSITION TO MOTION FOR
RECONSIDERATION**

Date: January 31, 2023
Time: 8:30 a.m.
Room: Dept 24

Hon. Kristin S. Escalante
Reservation ID: 425701048689

INTRODUCTION

This is judgment debtor Mary Cummins' fifth attempt to relitigate the validity of the underlying judgment. On November 28, 2022, this Court rejected Cummins' objection to the renewal of the judgment based on her claims that (1) she did not defame Amanda Lollar and (2) the judgment cannot be renewed because the assignee of the domesticated sister state judgment "does not exist" that have been repeatedly rejected by the Texas Court of Appeals, the U.S. Bankruptcy Court for the Central District of California (twice), the U.S. District Court sitting as an appellate court over the judgment of the Bankruptcy Court (twice and in a third ruling, finding her contentions to be frivolous) and recently, by the Ninth Circuit Court of Appeals in *Cummins v. Khionidi*, Case No. 22-55372 (9th Cir. Nov. 17, 2022) which also found that her appeal was frivolous.

As the District Court held,

Substantively, Appellant's central argument—that the Bankruptcy Court erred in granting summary judgment to Appellee Mr. Khionidi because he "does not exist" and thus lacks standing—is barred by both res judicata and law of the case. Appellant raised this exact issue in the summary judgment proceedings. The Bankruptcy Court found that Mr. Khionidi did have standing, and this Court affirmed that decision on appeal. These orders are final, so the issue is clearly barred by both res judicata and law of the case. See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (elements of res judicata), and *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (discussing when law of the case applies).

Cummins-Cobb v. Khionidi (In re Cummins-Cobb), No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS 247738, at *2 (C.D. Cal. Dec. 28, 2021).

STATEMENT OF FACTS

After this Court entered its November 28, 2022 Order denying Cummins' objections to the renewal of the judgment, Cummins predictably filed a motion for reconsideration on December 13, 2022, arguing that (1) the judgment creditor "does not exist," and (2) the Trust of which Mr. Khionidi is trustee is not valid. This Court, the bankruptcy court, the US District Court and now, the Ninth Circuit Court of Appeals have all consistently rejected these arguments.

After Cummins filed her Motion for Reconsideration, counsel for Mr. Khionidi wrote to Cummins on December 13, 2022 that:

I am in receipt of your motion for reconsideration. It is frivolous and does not identify any new facts that were not presented in your original motion. Please be advised that

1 a violation of Code Civ. P. 1008 is punishable by contempt and sanctions pursuant to
2 Code Civ. P. 128.7. Code Civ. P. 1008(d). If you do not withdraw the motion, I will
3 ask for sanctions with my Opposition to your frivolous motion. If sanctions are
awarded, and you do not pay them, the Court of Appeals can refuse to hear any
appeal.

4 December 13, 2022 email from Philip Stillman to Mary Cummins, attached hereto as Exhibit 1.

5 **ARGUMENT**

6 **I.**

7 **CUMMINS' MOTION FOR RECONSIDERATION IS BARRED BY CODE CIV. P. § 1008**

8 Cummins was on notice as early as December 13, 2022 that Code Civ. P. § 1008 governs
9 her motion for reconsideration. See Exhibit 1. Her Motion for Reconsideration does not comply with
10 any of the provisions of Code Civ. P. § 1008. Section 1008(e) makes compliance with § 1008
11 mandatory and jurisdictional. *Even Zohar Constr. & Remodeling, Inc. v. Bellaire Townhouses,*
12 *LLC*, 61 Cal. 4th 830, 840, [189 Cal. Rptr. 3d 824, 831, 352 P.3d 391, 397] (2015) (“To state that
13 purpose strongly, the Legislature made section 1008 expressly jurisdictional”).

14 Section 1008 limits motions for reconsideration to those based “upon new or different facts,
15 circumstances, or law, in which case it shall be shown by affidavit what application was made
16 before, when and to what judge, what order or decisions were made, and what new or different
17 facts, circumstances, or law are claimed to be shown.” *Id.* at 839.

18 A. Cummins Has Failed To Submit An Affidavit Complying With § 1008.

19 Cummins’ declaration submitted in support of her Motion for Reconsideration states in
20 relevant part that “Every statement attributed to Defendant was made by me, Defendant, and is the
21 truth to the best of my knowledge.” The critical requirement of § 1008 is that Cummins *must* identify
22 by affidavit upon what new or different facts, circumstances, or law on which she is relying that she
23 did not have *before* she filed her original motion.

24 Cummins’ Motion for Reconsideration is a repeat of her Motion to Vacate Renewal of
25 Judgment, and discloses nothing that occurred between October 12, 2022 when the Motion was
26 filed and November 28, 2022, when this Court decided the Motion. There is only argument about
27 the same issues that she raised in her Motion to Vacate Renewal of Judgment, *i.e.*, Mr. Khionidi
28 “doesn’t exist,” that the Trust is a forgery etc. As this Court held, “The issue of the creditor’s

1 standing has already been conclusively and finally resolved in the creditor's favor in an adversary
2 bankruptcy proceeding. That ruling has collateral estoppel effect here and is binding on Ms.
3 Cummins." November 28, 2022 Order.

4 Her Motion for reconsideration only attaches various irrelevant court documents from years
5 ago, and an email from a "Janice Brickman" that Cummins received on July 25, 2017. None of
6 those documents attached to her Motion are either "new" facts or relevant to this Court's finding that
7 collateral estoppel bars her claims regarding Mr. Khionidi's standing, nor does Cummins explain her
8 theory of why this years-old documents have any relevance to *this* Court's November 28, 2022
9 Order. As the District Court held on Cummins' appeal of the Bankruptcy Court's orders finding that
10 Mr. Khionidi has standing:

11 As the District Court held,

12 Substantively, Appellant's central argument—that the Bankruptcy Court erred in
13 granting summary judgment to Appellee Mr. Khionidi because he "does not exist" and
14 thus lacks standing—is barred by both res judicata and law of the case. Appellant
15 raised this exact issue in the summary judgment proceedings. The Bankruptcy Court
16 found that Mr. Khionidi did have standing, and this Court affirmed that decision on
17 appeal. These orders are final, so the issue is clearly barred by both res judicata and
18 law of the case. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning*
19 *Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (elements of res judicata), and *Milgard*
20 *Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 715 (9th Cir. 1990) (discussing
21 when law of the case applies).

22 *Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. 2:21-cv-04671-AB, 2021 U.S. Dist. LEXIS
23 247738, at *2 (C.D. Cal. Dec. 28, 2021).

24 As to the validity of the Trust:

25 This court's judgment affirmed on appeal determined that the Cobbs Trust was valid
26 and plaintiff as its representative had standing to bring the adversary proceeding.
27 Thus, the court's determinations already addressed the issue raised by defendant in
28 her motion to dismiss regarding whether plaintiff is the real party in interest under
Federal Rule of Civil Procedure 17(a). In determining that the trust is valid and that
plaintiff as its representative had standing to bring the adversary proceeding, the court
determines that plaintiff was the real party in interest under Federal Rules of Civil
Procedure 17(a). Defendant's remedy to contest the judgment based on the court's
determinations is an appeal, not a post-judgment motion to dismiss, which the court
determines to lack merit.

29 *In re Cummins*, Case 2:18-ap-01066-RK (Bank. C.D. Cal. Mar. 18, 2021). Accordingly, in the
30 absence of a showing of *new* material facts or law, this Court lacks jurisdiction to even consider the
31 Motion.

1 II.

2 **SANCTIONS SHOULD BE AWARDED AGAINST CUMMINS**

3 As an added deterrent to the filing of meritless and noncompliant motions for reconsideration,
4 the Legislature specifically provided that “A violation of this section may be punished as a contempt
5 and with sanctions as allowed by Section 128.7.” Code Civ. P. § 1008(d). Mr. Khionidi is entitled to
6 fees and costs incurred in connection with opposing this motion for reconsideration. Cummins’
7 status as a *pro per* movant is no defense, as Mr. Stillman explained to Cummins on December 13,
8 2022 – the very day that she filed the Motion – that it was governed by Code Civ. P. § 1008, did not
9 comply and was frivolous. See Stillman Decl, Exhibit 1. Cummins never withdrew the Motion nor
10 seek to amend it to even facially comply with Code Civ. P. § 1008.

11 As set forth in the Stillman Declaration, Mr. Stillman requests that this Court award \$1,785 as
12 reasonable fees for 2.5 hours of work incurred in reviewing the Motion for Reconsideration and the
13 exhibits thereto, brief legal research and the drafting of this Opposition and supporting declaration
14 and an additional .5 hours for oral argument.

15 **CONCLUSION**

16 For the foregoing reasons, Plaintiff Konstantin Khionidi, as Trustee of the Cobbs Trust
17 hereby requests that this Court deny Cummins’ Motion for Reconsideration and award \$1,785 in
18 attorney’s fees to be paid forthwith.

19 Respectfully Submitted,

20 STILLMAN & ASSOCIATES

21 

22 Dated: January 16, 2023

23 By: _____

24 Philip H. Stillman, Esq.
25 Attorneys for KONSTANTIN KHIONIDI, as Trustee of
26 the COBBS TRUST
27
28

1 **PROOF OF SERVICE**

2 Case Name: *Amanda Lollar et al. v. Mary Cummins,*
3 Case Number: BS140207
4 Court: Los Angeles County Superior Court

5 I, the undersigned, declare that I am over the age of 18 years and not a party to the within action or
6 proceeding. I have an office in Los Angeles, California where the mailing occurred.

7 On January 16, 2023, I caused to be served the following document(s):

8 **OPPOSITION TO MOTION FOR RECONSIDERATION; DECLARATION OF PHILIP**
9 **STILLMAN**

10 on the interested parties in this action by email through OneLegal Attorney Service to:

11 Mary Cummins a/k/a Mary Cummins-Cobb
12 PO Box 18738
13 Los Angeles, CA 90018
14 mmmarycummins@gmail.com

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
16 and correct. Executed on January 16, 2023 at Miami Beach, Florida.

17 

18 By: _____
19 Philip H. Stillman, Esq.