

Case No. B327355

CALIFORNIA COURT OF APPEALS
FOR THE SECOND APPELLATE DISTRICT, DIVISION 8

MARY CUMMINS-COBB,

Appellant,

v.

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

ANSWERING BRIEF OF APPELLEE

Los Angeles Superior Court,
Case No. BS140207
Hon. Kirstin Escalante

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Cal. R. Ct. 8.208(e)(2), Appellee and judgment assignee Konstantin Khionidi reasonably believes that the original judgment creditor and assignor Amanda Lollar, of Tarrant County, Texas, may be considered to have an “other interest in the outcome of the proceeding that the party reasonably believes the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.”

Respectfully Submitted,

STILLMAN & ASSOCIATES



Dated: December 2, 2024

By: _____

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COBBS TRUST*

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INTRODUCTION

This is an appeal of a trial court's order denying appellant Mary Cummins-Cobb's ("Cummins") Motion to Vacate Judgment after appellee Konstantin Khionidi renewed a judgment against Cummins initially entered as a Sister State Judgment from a Texas judgment against Cummins and her Motion for Reconsideration of that Order (with no new facts). In her Opening Brief, Cummins does not challenge the amount of the judgment or the calculation of interest (other than regarding whether the Texas judgment rate or the California judgment rate applies to this California judgment). Instead, for the fifth time, she attempts to collaterally attack the underlying Texas Judgment, the California Sister State Judgment, several orders of the U.S. Bankruptcy Court for the Central District of California, three appeals to the United States District Court for the Central District of California from those bankruptcy court orders and an appeal to the Ninth Circuit Court of Appeals of the District Court's decision while sitting as an appellate court pursuant to 28 U.S.C. § 158(a). In the last of her appeals, each of which raised the same issues as presented in this appeal, *i.e.*, skullduggery by the Texas

courts, Mr. Khionidi “doesn’t exist,” and that the Cobbs Trust is invalid, the Ninth Circuit entered an Order dismissing her appeal as frivolous. As the Ninth Circuit held:

The district court has certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. § 1915(a). On May 12, 2022, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the responses to the court's May 12, 2022 order, we conclude this appeal is frivolous.

Cummins v. Khionidi (In re Cummins), No. 22-55372, 2022 U.S. App. LEXIS 31831, at *1 (9th Cir. Nov. 17, 2022).

In keeping with Cummins’ penchant for attempting to relitigate the same arguments repeatedly rejected in both orders of the bankruptcy court and *three* affirmances on appeal to the District Court, she has now filed this frivolous appeal of the Los Angeles Superior Court’s Order denying her Motion to Vacate the renewal of the California judgment against Cummins and her Motion for Reconsideration of that Order. However, as Cummins is fully aware after losing three appeals in the District Court and the Ninth Circuit

Court of Appeals, all of the issues that she is again attempting to raise before this Court were finally adjudicated by the Bankruptcy Court and then affirmed on appeal, such as her repeated issue that “Plaintiff doesn’t exist.” They are plainly barred by res judicata.

Her argument regarding Mr. Khionidi and the Trust were raised in the summary judgment proceedings in the Bankruptcy Court and the Bankruptcy Court rejected that argument. The argument was raised in her earlier appeal and the Bankruptcy Court’s judgment was affirmed by the District Court and the Ninth Circuit. Therefore her argument regarding either the judgment creditor’s assignee’s legal status or whether he “exists” is barred by res judicata and law of the case.

Stripped of those arguments, Cummins has no other cognizable arguments. There is no legitimate dispute that Mr. Khionidi timely renewed the judgment and finally, that the calculation of the current judgment is correct. Cummins should be sanctioned for her repeated relitigation of the same claims.

STATEMENT OF FACTS¹

A. The Underlying Texas Judgment.

After a repeated campaign of harassment online against Bat World Sanctuary, a bat rescue, rehabilitation and teaching facility in Texas operated by Amanda Lollar, Bat World and Lollar sued debtor and defendant Mary Cummins-Cobb for Defamation and Breach of Contract. *Bat World Sanctuary et al. v. Cummins*, Tarrant County District Court Case No. 352-248169-10. After a bench trial, the court gave its oral ruling that “the plaintiff has clearly proven that a defamation in this case was egregious as well as malicious as well as intentional.” Based thereon, the Texas Court awarded \$3 million in damages on the defamation claim and \$3 million in exemplary damages. [Clerk’s Transcript, Vol. 1, p. 240]

Cummins appealed that judgment and after reviewing the trial

¹

Cummins spends an inordinate amount of time in her Opening Brief opining on how well-respected and successful she is as a real estate appraiser. Despite that alleged respect and success, Cummins states that “I am on Medi-cal which is free health insurance for people who are indigent, I don’t have a job or income and I have no assets.” [Clerk’s Transcript, Vol. 1, p. 94] Not exactly the outstanding resume of a successful real estate appraiser.

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). 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). Her petition for review to the Texas Supreme Court was denied. *Id.* The Texas judgment was therefore final.²

B. Lollar Domesticates The Texas Judgment In California.

On November 9, 2012, Lollar domesticated the Sister State Judgment pursuant to Code Civ. P. § 1714.10 *et seq.* in the amount of \$6,000,000 plus interest in the amount of \$120,821.92 and \$217.50 in costs, for a total of \$6,121,039.42. [Clerk’s Transcript, Vol. 1, p. 213] On April 25, 2013, the judgment was recorded with the County of Los Angeles. [Clerk’s Transcript, Vol. 1, p. 294]

On April 10, 2017, the judgment was duly assigned to Konstantin Khionidi, as Trustee of the Cobbs Trust. [Clerk's

²

Cummins *still* claims in an irrelevant collateral attack on the Texas Judgment that she did not defame anyone and the judgment was the product of a biased judge. Opening Brief, p. 3-4 (“Appellant was falsely, frivolously sued for defamation, breach of contract, copyright” and “Judge made a ruling not based on any evidence or law but as a favor to his long time personal friend Randall Turner.”).

Transcript, Vol. 1, p. 249] *In re Cummins-Cobb*, No.

2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at *40-41 (Bankr. C.D. Cal. Feb. 10, 2020) (“Plaintiff has offered sufficient and uncontroverted evidence of his standing to sue because on the assignment of the judgment of the Texas Courts from Amanda Lollar, the original plaintiff, to him as trustee of the trust. Defendant has not offered competent and admissible evidence to rebut Plaintiff’s evidentiary showing of standing.”).

Regarding Cummins’ claim that the Cobbs Trust was a forgery, the Bankruptcy Court granted summary judgment, holding that “the Cobbs Trust is a valid revocable living trust under California law.” *Id.* at *47-48.

C. The Bankruptcy Court Proceeding.

After domesticating the Texas Judgment and obtaining a California Judgment, Khionidi took or attempted to take a judgment debtor examination of Cummins. To stop collection activities, Cummins then commenced a Chapter 7 bankruptcy, *In re Cummins*, Case No. 2:17-bk-24993-RK (Bank.C.D.Cal. 2017). Mr. Khionidi commenced an adversary proceeding to determine the

nondischargeability of the defamation judgment pursuant to 11 U.S.C. § 523(a)(6) (“willful and malicious injury”), *Khionidi v. Cummins*, Adv. Proc. No. 2:18-ap-01066-RK.

On May 24, 2019, the bankruptcy court granted Summary Adjudication of Issues in favor of Mr. Khionidi, holding that pursuant to clear Ninth Circuit precedent, the defamation judgment was not dischargeable pursuant to 11 U.S.C. § 523(a)(6) (“willful and malicious injury”). *See Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154 (C.D. Cal. Jan. 7, 2021) at *2-4, (stating factual findings of the bankruptcy court).

On February 10, 2020, the Bankruptcy Court denied Cummins’ Motion for Summary Judgment and instead, entered summary judgment in favor of Mr. Khionidi. Germane to this appeal, the Bankruptcy Court held:

As to Defendant’s second assertion, that Plaintiff lacks legal standing to assert the claims in this case, . . . In support of her argument, Defendant made the following assertions: (1) that Plaintiff’s trust agreement is not valid, (2) *that the trust agreement is a forgery*, (3) that there is no evidence that the judgment is part of the trust and (4) *that Plaintiff is a strawman who does not exist*. . .

.Defendant has not offered competent and admissible evidence to rebut Plaintiff's evidentiary showing of standing.

In re Cummins-Cobb, No. 2:18-ap-01066-RK, 2020 Bankr. LEXIS 358, at *39-41 (Bankr. C.D. Cal. Feb. 10, 2020)(emphasis added).

The bankruptcy further rejected Cummins' "unclean hands" defense as unsupported by any evidence. *In re Cummins-Cobb*, No. 2:18-ap-01066-RK) 2020 Bankr. LEXIS 358 (Bankr.C.D.Cal. Feb. 10, 2020) at *41. Final judgment thereafter entered and the adversary proceeding was closed.

D. *Cummins I.*

Cummins appealed the entry of judgment and pursuant to Appellee's Notice of Election, was transferred to the District Court (Birotte, J). *Id.* Cummins raised the following issues on appeal: (1) whether the Texas Judgment is dischargeable; (2) whether the Texas Judgment was void; (3) whether Appellee has no standing because he does not exist; and (4) whether Appellee has unclean hands.

Cummins-Cobb v. Khionidi (In re Cummins-Cobb), No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154, at *5-6 (C.D. Cal. Jan. 7, 2021) ("*Cummins I*").

Ultimately, the court affirmed the bankruptcy court in all respects. *Cummins I*, 2021 U.S. Dist. LEXIS 5154, at *11 (C.D. Cal. Jan. 7, 2021). Although Cummins filed a Petition for Rehearing, that too was denied. *Cummins-Cobb v. Khionidi*, No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 197348 (C.D. Cal. Feb. 24, 2021). *Cummins I* was not appealed and is now both “law of the case” and collateral estoppel/res judicata on her new appeal raising those same issues in this Court.

E. *Cummins II*.

After the *Cummins I* appeal was decided on January 7, 2021, Cummins filed a “motion to dismiss Adversary Proceeding” in the Bankruptcy Court on February 26, 2021, again arguing that Mr. Khionid “doesn’t exist,” even though the adversary proceeding was closed, final judgment entered, and the final judgment had been affirmed on appeal. This motion and a subsequent Motion to “Rehear” were denied by the Bankruptcy Court on April 18, 2021. *Khionidi v. Cummins-Cobb (In re Cummins-Cobb)*, Nos. 2:17-bk-24993-RK, 2:18-ap-01066-RK, 2021 Bankr. LEXIS 3563 (Bankr. C.D. Cal. Mar. 18, 2021). Regarding Cummins’ basis for the

Motion, the Bankruptcy Court held that

This court's judgment affirmed on appeal determined that the Cobbs Trust was valid and plaintiff as its representative had standing to bring the adversary proceeding. Thus, the court's determinations already addressed the issue raised by defendant in 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).

Id. at p. 2. Undeterred, Cummins then filed a "Motion to Rehear" in the Bankruptcy Court, which was also denied on April 27, 2021 for the same reasons. Cummins appealed both orders on May 10, 2021.

In the *Cummins II* appeal, District Court Case No. 2:21-cv-04671-AB, Cummins identified one issue potentially relevant to this appeal: (1) that the bankruptcy court erred in granting summary judgment because, according to Cummins, Mr. Khionidi "does not exist." (Issue Nos. 2-5).

On December 28, 2021, the District Court, sitting in its appellate capacity pursuant to 28 U.S.C. § 158(a), again affirmed the bankruptcy court's orders (1) denying Cummins' Motion to Dismiss

Adversary Proceeding and (2) Motion to Rehear:

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) (“*Cummins II*”).

As for her claim that she did not defame Lollar, the District Court in *Cummins II* affirmed the Bankruptcy Court judgment, holding:

The Court notes that much of Appellant's brief amounts to a collateral attack on the Texas proceedings. But Appellant cannot collaterally attack the 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).

Cummins-Cobb v. Khionidi (In re Cummins-Cobb), No. CV 20-02149-AB, 2021 U.S. Dist. LEXIS 5154, at *10 (C.D. Cal. Jan. 7, 2021).

Unpersuaded, Cummins appealed to the Ninth Circuit Court of Appeals, who dismissed the appeal as frivolous. *Cummins v. Khionidi (In re Cummins)*, No. 22-55372, 2022 U.S. App. LEXIS 31831, at *1 (9th Cir. Nov. 17, 2022).

F. Lollar's Timely Renewal Of The California Judgment.

The Texas Judgment was renewed on March 21, 2021. The Sister State Judgment entered on November 9, 2012 was timely renewed on September 19, 2022, *i.e.*, within 10 years of the judgment, pursuant to Code Civ. P. § 683.130(a). [Clerk's Transcript, Vol. 1, p. 211]

The Notice of Application for Renewal of Judgment was served via mail on Cummins to her correct address on September 19, 2022 pursuant to Code Civ. P. § 683.160 and the Proof of Service filed with the Court [Clerk's Transcript, Vol. 1, p. 214-216], and Cummins acknowledges having received the Notice in her Motion to Vacate

Renewal of Judgment. [Clerk’s Transcript, Vol. 1, p. 232] (claiming that she didn’t receive the second page of the proof of service but not denying receipt of the Notice of Renewal of Judgment. Her Motion was timely filed on October 21, 2022. [Clerk’s Transcript, Vol. 1, p. 217]³ On November 22, 2022, the Superior Court denied her Motion, finding, as every other court has, that Cummins’ claims regarding her collateral attack on the Texas Judgment and Mr. Khionidi were barred by collateral estoppel. [Clerk’s Transcript, Vol. 2, p. 335] The Court further held that the Renewal of Judgment was timely filed within 10 years of the original judgment and that even if the Renewal of Judgment had not been filed within the 10 year period of Code Civ. P. § 683.160, (and it clearly was), the time for filing the application for renewal was tolled while the action was stayed during the bankruptcy, citing *Rubin v. Ross* (2021) 65 Cal. App. 5th 153,167. [Clerk’s Transcript, Vol. 2, p. 335] The court also found that the renewed judgment was properly served. [Clerk’s Transcript, Vol. 2, p. 335].

3

This Court should also note that none of the alleged “facts” in Cummins’ Motion to Vacate Judgment were supported by any admissible evidence.

Therefore, the only one of Cummins' appellate arguments not barred by the judgments of the bankruptcy court, the two decisions of the District Court for the Central District of California (Birrote, J.) and the Ninth Circuit is her claim that the amount of the renewed judgment is incorrect. However, not only is the amount of the renewed judgment correct, but Cummins erroneously claimed that the interest rate used to calculate the amount of interest added to the judgment should be 5% – the Texas judgment rate – rather than the California judgment rate of 10% as set forth in Code Civ. P. § 685.010.

As set forth in the Application for Renewal of Judgment, the renewed judgement correctly gives Cummins credit for amounts paid, before the calculation of interest [Clerk's Transcript, Vol. 1, p. 211, Vol. 2, p. 313]. Other than the interest rate, Cummins points to nothing in her Opening Brief that would support an argument that the amount of the renewed judgment is incorrect.

Not content to stop there, Cummins again filed a Motion for Reconsideration that alleged no new facts. [Clerk's Transcript, Vol. 2, p. 344, (Notice of Ruling), p. 442, p. 445-47 (unlawful transcript of

hearing), 205 (Settled Statement)]. The trial court denied the Motion for Reconsideration on January 31, 2023 as required by Code Civ. P. § 1008. *Id.* This appeal followed. [Clerk’s Transcript, Vol. 2, p. 435] On Cummins’ motion for a Settled Statement, the trial court issued a modified Settled Statement. [Clerk’s Transcript, Vol. 2, p. 483] The trial court also struck the unlawful “transcript” of the hearing. [Clerk’s Transcript, Vol. 2, p. 482]

STATEMENT OF ISSUES ON APPEAL

Cummins identifies the issues that she is appealing as:

1. Whether the Court provided Appellant with a fair trial.
2. Whether the Court erred denying the Motion to Vacate Judgment.
3. Whether the Court erred in granting Judgment amount.

Not one of these “issues” has a shred of merit.

ARGUMENT

I.

CUMMINS’ CLAIM THAT SHE DID NOT RECEIVE A FAIR

“TRIAL” IS FRIVOLOUS

A. Cummins Received All The Process That She Was Due And

More.

It is difficult to understand the basis for Cummins' claim that she did not receive a fair "trial," although the only proceedings were a hearing on her Motion to Vacate Judgment and a Motion for Reconsideration. Procedural due process claims are reviewed *de novo* because "the ultimate determination of procedural fairness amounts to a question of law." *Severson & Werson, P.C. v. Sepehry-Fard* (2019) 37 Cal.App.5th 938, 944 [249 Cal.Rptr.3d 839]. The purpose of due process is to provide affected persons with the right to be heard "'at a meaningful time and in a meaningful manner.'" *Shenefield v. Shenefield* (2022) 75 Cal.App.5th 619, 631 [290 Cal.Rptr.3d 641]. Due process requires "notice, an opportunity to respond, and a hearing." *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 654 [183 Cal. Rptr. 508, 646 P.2d 179]. It is plain that Cummins received all the process that was due. First, she filed a Motion to Vacate The Judgment, replied to Khionidi's Opposition, submitted "evidence" in support of her motion, and was provided a hearing on her Motions, at which Cummins presented oral argument in support of her motions. [Clerk's Transcript, Vol. 2, p. 485] What

Cummins is apparently dissatisfied with is the trial court's denial of her *motion*, not the lack of procedural *due process*.

Cummins' claim of unfairness is focused on the hearing on her "Motion for Reconsideration. Opening Brief, pp. 10-17. However, Cummins presents no evidence tending to show that she was deprived of "due process." Despite the fact that Cummins merely reargued the points already ruled on several times previously, including in support of her Motion to Vacate the Judgment, the Motion for Reconsideration failed to present any new facts that were not or could not have been raised in support of her Motion to Vacate. Instead, it was a classic violation of Code Civ. P. § 1008. In fact, pursuant to Code Civ. P. § 1008, Cummins should have been sanctioned or held in contempt for merely rearguing the same points previously raised. The trial court was actually charitable in her treatment of Cummins.

B. Cummins' Arguments Are Totally Without Merit.

Turning to Cummins' reasons why she believes that she did not receive a fair hearing, each argument is literally without merit and unsupported by admissible evidence in the record. First, it appears that she claims not to have received a fair hearing because Judge

Escalante did not have a court reporter appointed for her for Cummins' frivolous Motion for Reconsideration. However, this issue is irrelevant for at least two reasons. First, Cummins surreptitiously recorded the proceeding with her cell phone without the permission or knowledge of the trial court in violation of Cal. R. Ct. 1.150(d) ("A person proposing to use a recording device must obtain advance permission from the judge. The recordings must not be used for any purpose other than as personal notes.") and LA Superior Court Local Rule 3.6(d) ("No recording may be made of telephonic appearances except in compliance with California Rules of Court, Rule 1.150 and Rule 2.17 of these rules."). She has not only used that unlawful recording as the "official transcript" of the Motion for Reconsideration on January 31, 2023 but as shown from her unlawful transcript, the trial court only cut Cummins off when she continued to repeat the same arguments that the trial court had already rejected in its ruling on Cummins' Motion to Vacate Judgment. The unlawful transcript shows that Judge Escalante actually stated:

I'm going to have to ask you to wrap it up. I've already ruled on this exact motion. You may disagree with my, my ruling, however, my order, dated 11/28/2022, these

are the same arguments you made in your previous motion. I ruled on the motion now I have to look to see whether there's grounds for reconsideration of that motion in the statute and I just don't find that there's any grounds so I, you know, considered these exact arguments the last time around and have ruled on that so this is a repeat of the prior motion so I'm just going to go ahead and stick with my tentative ruling.

Opening Brief, p. 12, reprinting the improper transcript of the January 31, 2023 hearing on the Motion for Reconsideration. [Clerk's Transcript, Vol. 2, p. 476] Thus, to the contrary, Cummins had an opportunity to be heard on her Motion for Reconsideration. "Due process" gives Cummins an opportunity to be heard, not unlimited time to repeat arguments already made and rejected by the trial court. The Legislature in amending Code Civ. P. § 1008 made that abundantly clear by limiting a trial court's ability to even *consider* a motion for reconsideration without complying with the requirements of Code Civ. P. § 1008 – something Cummins plainly did not do. Code Civ. P. § 1008(e) and (h).

Cummins' second claim that she was deprived of due process is premised on Judge Escalante's refusal to allow her to submit some sort of further written briefing during the hearing on Cummins'

Motion for Reconsideration, a document never served on counsel or the trial court *and* plainly untimely, *see* CRC 3.1306 (barring oral testimony) and 3.1300(d) (judge has discretion not to consider late-filed documents). First, CRC 3.1306(a) requires that evidence received at a law and motion hearing must be by declaration or request for judicial notice without testimony or cross-examination, unless the court orders otherwise for good cause shown. Given that Cummins failed to show any new facts that were unavailable to her when she filed her Motion to Vacate Judgment (or at any time), there was no error in excluding some new document from Cummins at the hearing on the Motion for Reconsideration.

Moreover, Cummins confuses the right to be heard at a hearing with the right to present evidence at the hearing, and the court has discretion to deny the latter. *People v. Hooper* (2019) 40 Cal.App.5th 685, 699 [253 Cal.Rptr.3d 369] citing *Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1082 [283 Cal. Rptr. 857]. The trial court was well within its discretion in refusing to accept further briefing on the day of the hearing.

Cummins' third reason for claiming that she did not get a fair

hearing is that Judge Escalante ordered a purported transcript of the hearing on Cummins' Motion for Reconsideration stricken from the record that Cummins illegally and surreptitiously recorded with her cell phone. Opening Brief, p. 14; [Clerk's Transcript, Vol. 2, p. 496] However, Cummins never received permission to surreptitiously record the proceedings on her cell phone, and is attempting to use that recording here as some sort of official transcript of the hearing. *Id.* However, it is plainly improper to surreptitiously record the hearing without *advance* permission of the trial court. Cal. R. Ct. 1.150(d) ("A person proposing to use a recording device must obtain advance permission from the judge."). Although Cummins claims that she stated in her Motion for Reconsideration that she intended to record the proceedings, saying something in a memorandum of points and authorities is a far cry from receiving *advance and express permission* from the trial court. Moreover, the "recordings must not be used for any purpose other than as personal notes." Cal. R. Ct. 1.150(d). Thus, the trial court's order striking the improper transcript from the record (and should have stricken the audio recording had the trial court been aware of it) was an application of the California Rules of Court, not a

deprivation of due process.

C. All of Cummins’ “Fair Trial” Claims Are Meritless Because
The Trial Court’s Ruling On the Motion For Reconsideration
Was Unquestionably Correct.

A trial court’s ruling on a motion for reconsideration is reviewed under the abuse of discretion standard. *Simonyan v. Nationwide Ins. Co. of America* (2022) 78 Cal.App.5th 889, 895 [293 Cal.Rptr.3d 555]. All of Cummins’ alleged “fair trial” claims miss and fail to address one critical point: all of her “due process” claims relate to her Motion Reconsideration, and the trial court’s ruling that her motion merely reargued what Cummins had presented in her Motion to Vacate Judgment was not only *not* an abuse of discretion, but was also unquestionably correct.

As argued by Mr. Khionidi in his Opposition and as held by the trial court, Cummins presented no new facts that were not available to her in her earlier Motion to Vacate Judgment. Therefore, the trial court *had to* deny her motion for reconsideration based on Code Civ. P. § 1008(e). Regardless of whether or not Cummins received all of the “process” to which she claims to have been entitled, the outcome

of her Motion for Reconsideration was a foregone conclusion.

II.

THE TRIAL COURT CORRECTLY DENIED CUMMINS'

MOTION TO VACATE THE JUDGMENT

On appeal, this Court examines the evidence in a light most favorable to the order under review and the trial court's ruling for an abuse of discretion." *Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 199 [106 Cal. Rptr. 2d 854].

Under California law, "[t]he statutory renewal of judgment is an automatic, ministerial act accomplished by the clerk of the court; entry of the renewal of judgment does not constitute a new or separate judgment. '... No court order or new judgment is required. The court clerk simply enters the renewal of judgment in the court records. [Citations.]' [Citation.] ... '[R]enewal does not create a new judgment or modify the present judgment [but] merely extends the enforceability of the judgment.' [Citation.] The renewed judgment 'has no independent existence' from the original judgment.

Rubin v. Ross (2021) 65 Cal.App.5th 153, 165 [279 Cal.Rptr.3d 385].

A. Cummins Again Is Attempting to Collaterally Attack The Judgments Of Both The Bankruptcy Court And The District Court By Claiming That Mr. Khionidi "Doesn't Exist" Or The Trust Is Not Valid.

Cummins is a vexatious litigant who has attempted to use the machinery of litigation to torture those she sees as her “enemies.”⁴ Among other tactics, she continually has attempted to relitigate issues that she plainly lost, as in this appeal. The issue of Mr. Khionidi not existing, which is one basis for her current appeal to this Court, is plainly frivolous because that issue was litigated and decided no less than three times, first by the bankruptcy court in *In re Cummins-Cobb* (Bankr.C.D.Cal. Feb. 10, 2020, No. 2:18-ap-01066-RK) 2020 Bankr. LEXIS 358, at *39-41.

Defendant made the following assertions: (1) that Plaintiff's trust agreement is not valid, (2) that the trust agreement is a forgery, (3) that there is no evidence that the judgment is part of the trust and (4) that Plaintiff is a strawman who does not exist. As discussed herein, Plaintiff has offered sufficient and uncontroverted evidence of his standing to sue because on the assignment of the judgment of the Texas Courts from Amanda Lollar, the original plaintiff, to him as trustee of the trust.

Id., affirmed, *Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*

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A list of Cummin's many procedural maneuvers collected by the original judgment creditor can be found at <https://batworldstalkermarycummins.com/2017/02/21/mary-cummins-vexatious-litigant>.

(C.D.Cal. Jan. 7, 2021, No. CV 20-02149-AB) 2021 U.S.Dist.LEXIS 5154, which was not appealed. *See Cummins-Cobb v. Khionidi (In re Cummins-Cobb)* (C.D.Cal. Dec. 28, 2021, No. 2:21-cv-04671-AB) 2021 U.S.Dist.LEXIS 247738, at *1-2 (“this appeal is frivolous. The Bankruptcy Court previously issued an order in the adversary proceeding denying Appellant's Motion for Summary Judgment and granting partial summary judgment for Appellee. Appellant appealed that Order. On January 7, 2021, this Court affirmed the Bankruptcy Court's Order, and thereafter denied Appellant's motion for reconsideration. *See Cummins-Cobb v. Khionidi (In re Cummins-Cobb)*, No. CV 20-02149-AB (*Cummins I*) Those orders are final.”).

Because the issue of Mr. Khionidi’s standing was decided by the bankruptcy court and affirmed on appeal in *Cummins I* and *Cummins II*, Cummins’ claim in this appeal on the same grounds is also frivolous. As the Ninth Circuit held after Cummins appealed the decision in *Cummins II*,

The district court has certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. §

1915(a). On May 12, 2022, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and the responses to the court's May 12, 2022 order, we conclude this appeal is frivolous.

Cummins v. Khionidi (In re Cummins) (9th Cir. Nov. 17, 2022, No. 22-55372) 2022 U.S. App. LEXIS 31831, at *1.

Pursuant to Code Civ. P. § 683.170(a), renewal of a judgment pursuant to this article may be vacated on grounds that would be a defense to an action on the judgment. None of these collateral attacks are a defense to any actions on the judgment. However, it is a purely theoretical discussion, because regardless, as discussed fully above, the Bankruptcy Court's final judgment on the issues, as well as the District Court's two affirmances disposes of Cummins' arguments that Mr. Khionidi doesn't exist, that the assignment to Mr. Khionidi is invalid, that the original Texas judgment was wrongly decided – all of the substantive claims – have been clearly determined against Cummins. In fact, as quoted above, the District Court specifically held that these “contentions” have been resolved against Cummins and are res judicata. California courts must give full faith and credit

to the judgment of a federal court. Code Civ. Proc. § 1908. Therefore, this Court must give the same effect to the federal judgment as would be accorded to it in a federal court. *Levy v. Cohen* (1977) 19 Cal.3d 165, 173 [137 Cal.Rptr. 162, 561 P.2d 252], *cert. den.* 434 U.S. 833 [54 L.Ed.2d 94, 98 S.Ct. 119]. Since the District Court already held that these issues were barred by res judicata, Cummins is barred from litigating them again here.

B. Cummins' Argument Regarding Service Of The Notice Of Application for Entry Of Judgment Is Frivolous.

Cummins claims that (1) Khionidi's counsel is not counsel of record and (2) proof of service was invalid. Two more frivolous claims. First, Khionidi's prior counsel passed away, as acknowledged by Cummins in her Opening Brief. Mr. Stillman, who represented Mr. Khionidi throughout the bankruptcy proceedings, entered his general appearance in the trial court by filing the Notice of Application for and Renewal of Judgment on September 1, 2022. "[I]f an appearance is for any purpose other than to question the jurisdiction of the court it is general." *Pfeiffer v. Ash* (1949) 92 Cal.App.2d 102, 104.

Second, Cummins' claim regarding the proof of service is irrelevant. As the Court can plainly see from the docket, the Proof of Service is in proper form and filed with the Court on the same day that it was served. However, even assuming that the Proof of Service that she received somehow misidentified the case, that is irrelevant because the validity of the Renewal of Judgment is not dependent upon a Proof of Service, Cummins does not dispute having received the Notice of Renewal of Judgment *and* Cummins timely filed a Motion to Vacate the entry of the renewal of the judgment.

As set forth in Code Civ. P. § 683.160(a), "The judgment creditor shall serve a notice of renewal of the judgment on the judgment debtor. Service shall be made personally or by first-class mail and proof of service shall be filed with the court clerk."

Subsection (b) states that "until proof of service is filed pursuant to subdivision (a), no writ may be issued, nor may any enforcement proceedings be commenced to enforce the judgment, except to the extent that the judgment would be enforceable had it not been renewed." Since no writs or enforcement proceedings to enforce the judgment have been commenced, whether the Proof of Service

mistakenly referred to a different case by accident is irrelevant, as there is no question that Cummins received the Notice of Renewal of Judgment and the Application for Renewal of Judgment – she admits that she did.⁵ [Clerk's Transcript, Vol. 1, p. 232].

C. Cummins' "Unclean Hands" Argument Has Already Been Rejected In the Bankruptcy Court And Appeal.

Cummins' "unclean hands" argument is not only unsupported by any evidence whatsoever, but is barred by res judicata, given that the Bankruptcy Court denied her "unclean hands" argument as

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Her various complaints about counsel for the Judgment Creditor allegedly not causing the documents to be mailed from his Los Angeles office and her personal attacks on Mr. Hoffman, who has worked for Mr. Stillman as a paralegal, Opening Brief, pp. 25-26, are unsupported by any law and are baseless, not only because Cummins actually received the documents, meaning that they were properly addressed, but she timely and within 30 days of service, filed her motion. Accordingly, her arguments regarding the Proof of Service are legally meritless. and have nothing to do with the validity of the Renewal of Judgment, nor do Cummins' repeated *ad hominem* (and unsupported by evidence) attacks against Mr. Stillman are similarly irrelevant and completely without merit. For example, here and in the Bankruptcy Court, accuses counsel of "lying" about the date of his father's death. Cummins apparently does not consider a man who has been counsel's step-father for 45 years to be counsel's "father." It is just that sort of "claim" – stated as fact -- that is typical of Cummins' vexatious conduct in these cases.

unsupported by any evidence and that decision was affirmed on appeal by the District Court in *Cummins I*. Since res judicata bars claims that were raised or could have been raised in the case, *Noble v. Draper* (2008) 160 Cal.App.4th 1, 12 [73 Cal.Rptr.3d 3], Cummins is barred from again asserting it here.

Moreover, the contention is completely without merit. There are no sanctions orders, and certainly none that have not been complied with. Once again, Cummins is simply making up arguments that are unsupported by any evidence other than her own argument. In fact, Cummins did not even make an “unclean hands” argument in her Motion to Vacate Judgment and therefore any such claim – however meritless – was waived by the failure to assert it in her Motion to Vacate. “It is well settled that the failure to raise an issue in the trial court typically forfeits on appeal any claim of error based on that issue.” *Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, 489, 297 Cal. Rptr. 3d 181].

D. The Renewal Was Timely and the Judgment Correctly Computed

Cummins’ last contentions are that the renewal of the

California judgment was untimely and that the amount of the renewed judgment was incorrect. Both arguments lack even a modicum of merit.

First, Code Civ. P. § 683.130(a) provides that “In the case of a lump-sum money judgment . . . the application for renewal of the judgment may be filed at any time before the expiration of the 10-year period of enforceability provided by Section 683.020. If timely challenged, “The judgment debtor bears the burden of proving, by a preponderance of the evidence, that he or she is entitled to relief under [Code of Civil Procedure] section 683.170.” *Rubin v. Ross* (2021) 65 Cal.App.5th 153, 161 [279 Cal.Rptr.3d 385].

Since the California judgment was obtained on November 9, 2012, to be timely, the application for renewal of the judgment had to be filed prior to November 9, 2022. Here, the application was filed on September 1, 2022, although processed by the Clerk on September 19, 2022, still well prior to November 9, 2022. Moreover, as held by the trial court, citing *Rubin v. Ross*, even if the application for Renewal of Judgment had not been filed within 10 years of the issuance of the California judgment – and it obviously was, the time

within which to renew the judgment was tolled by the automatic stay due to Cummins' Chapter 7 bankruptcy.

Second, Cummins' only objection to the computation of the amount of the renewed judgment on appeal is that the interest rate should be 5% (the Texas judgment rate), not 10% (the California judgment rate). As set forth above and as the trial court found, this is a *California* judgment, not a Texas judgment. California judgments bear an interest rate of 10%, not 5%. Code Civ. P. § 685.010. Accordingly, the interest rate used is correct.

CONCLUSION

For the foregoing reasons, appellee Konstantin Khionidi respectfully requests that the trial court's orders (1) denying Cummins' Motion to Vacate Judgment and (2) Motion for Reconsideration be affirmed, Cummins' appeal dismissed as frivolous and sanctions imposed on Cummins for her frivolous appeal.

Respectfully Submitted,

STILLMAN & ASSOCIATES



Dated: December 2, 2024

By: _____
Philip H. Stillman, Esq.
*Attorneys for KONSTANTIN
KHIONIDI, as Trustee of the
COBBS TRUST*

CERTIFICATE OF COMPLIANCE

Pursuant to Cal. R. Ct 8.204, I certify that the Appellee's Answering Brief is proportionally spaced in Times New Roman font, has a typeface of 14 points, and contains 6,583 words, excluding the parts of the brief exempted by Cal. R. Ct. 8.204(c)(1). This Answering Brief was prepared using Corel WordPerfect and the word count was determined using the WordPerfect word count application.

Dated: December 4, 2024

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

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Second Appellate District by using the appellate TruFiling system on December 4, 2024.

I certify that all participants in the case are registered TruFiling users and that service will be accomplished by the appellate TruFiling system except as listed below, which was served by U.S. Mail on December 4, 2024 to:

Hon. Kristin S. Escalante,
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Kostantin Khionidi as Trustee
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