



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 28, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 12-14143-MKN
) Chapter 13
IRIS RECINOS,)
) Debtor.) Date: September 5, 2018
) Time: 2:30 p.m.
)

**ORDER REGARDING MOTION TO CLOSE CASE, DISALLOW RULE 2004 EXAM
AND FOR ATTORNEYS FEES AND SANCTIONS FOR VIOLATION OF DISCHARGE
INJUNCTION¹**

On September 5, 2018, the court heard the Motion to Close Case, Disallow Rule 2004 Exam and for Attorneys Fees and Sanctions for Violation of Discharge Injunction (“Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On April 9, 2012, Iris Recinos (“Debtor”) filed a voluntary Chapter 13 bankruptcy petition along with her schedules of assets and liabilities (“Schedules”), Statement of Financial Affairs, and other required information. (ECF Nos. 1 and 4). On her bankruptcy petition, Debtor listed her street address as 1200 Clairemont Street, Las Vegas, NV 89110. On her Schedule “A,” Debtor listed two parcels of real property: 2800 E. Owens Avenue, North Las

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “NRS” are to provisions of the Nevada Revised Statutes. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 Vegas, Nevada (“Owens Avenue Property”) and 1200 Clairemont Street, Las Vegas, Nevada
2 (“Clairemont Street Property”). On her Schedule “C,” Debtor claimed the Clairemont Street
3 property as her homestead under NRS 21.090(1)(l) and NRS 115.050. On her Schedule “D,” the
4 Debtor listed MetLife Home (“MetLife”) as having a first mortgage against the Owens Avenue
5 Property securing a claim in the amount of \$204,351. Debtor also listed Midland Mortgage Co.
6 as having a first mortgage against the Clairemont Street Property securing a claim of \$191,920
7 and Ocwen as having a second mortgage against the same property securing a claim of \$47,392.

8 On the date the Chapter 13 petition was filed, the Clerk of the Court issued a notice to all
9 creditors (“Bankruptcy Notice”) that the case was assigned to Rick Yarnall, as Chapter 13
10 bankruptcy trustee (“Trustee”). (ECF No. 12). The Bankruptcy Notice also informed creditors
11 of the date of a meeting of creditors, the deadline to object to discharge or to determine
12 dischargeability of debt, the deadline to file proofs of claim, and the deadline to object to the
13 Debtor’s exemptions.

14 On April 20, 2012, Debtor filed her proposed Chapter 13 Plan #1 (“Plan #1”). (ECF Nos.
15 18 and 21). A hearing on confirmation of Plan #1 was noticed to be held on July 5, 2012. (ECF
16 No. 25).

17 On May 8, 2012, a proof of claim was filed by MetLife, asserting a secured claim in the
18 amount of \$241,077.10, which included prepetition arrearages in the amount of \$43,885.54.²

19 On May 29, 2012, MetLife filed an objection to Plan #1. (ECF No. 29). On May 31,
20 2012, an objection to Plan #1 was filed by the Trustee. (ECF No. 31). The confirmation hearing
21 was further continued to August 2, 2012.

22 On June 7, 2012, Debtor filed a motion to value the Owens Avenue Property and to
23 modify the rights of MetLife (“Valuation Motion”). (ECF No. 33). A hearing on the Valuation
24 Motion was noticed to be held on July 19, 2012. (ECF No. 34).³ A certificate of service was

25 ² On July 17, 2012, MetLife filed an amended proof of claim in the same amount. It
26 appears that POC 1-2 was amended to only provide a different address where to send notices and
27 payments. No changes were made to the secured amount listed, arrearages or other charges.

28 ³ The court record indicates that counsel for MetLife received a copy of the Valuation
Motion and notice of hearing through the electronic case filing system.

1 filed attesting that the Valuation Motion and notice of hearing were served on MetLife at the
2 address for notice appearing on its proof of claim. (ECF No. 35).

3 On July 31, 2012, an order was entered granting the Valuation Motion and determining
4 that MetLife had a secured claim in the amount of \$38,000. (ECF No. 40).

5 On August 3, 2012, Debtor filed a proposed, amended Chapter 13 plan #2 ("Plan #2").
6 (ECF No. 42). A hearing on confirmation of Plan #2 was noticed to be held on August 20, 2012.
7 (ECF No. 44). A certificate of service was filed attesting that MetLife was served with Plan #2
8 and the notice of hearing by service on its counsel of record and to the address for notices
9 indicated on MetLife's amended proof of claim. (ECF No. 45).

10 On August 8, 2012, MetLife filed an objection to confirmation of Plan #2 that
11 specifically alleged that the Owens Avenue Property is the Debtor's primary residence, rather
12 than an investment property, thereby precluding modification under the Debtor's proposed Plan
13 #2. (ECF No. 51).

14 On December 28, 2012, Debtor filed a proposed, amended Chapter 13 plan #3 ("Plan
15 #3"). (ECF No. 65). Section 2.13.1 of Plan #3 provided that MetLife would be paid \$42,500 on
16 its allowed secured claim plus interest of \$6,175.33, for a total amount of \$48,675.33. A hearing
17 on confirmation of Plan #3 was noticed to be held on February 14, 2013. (ECF No. 66). A
18 certificate of service was filed attesting that MetLife was served with Plan #3 and the notice of
19 hearing by service on its counsel of record and to the address for notices indicated on MetLife's
20 amended proof of claim. (ECF No. 67).

21 On May 20, 2013, Plan #3 was confirmed at a continued hearing on plan confirmation.
22 On June 3, 2013, an order was entered confirming Plan #3 ("Plan Confirmation Order"). (ECF
23 No. 76). The Plan Confirmation Order was not appealed.

24 On July 2, 2013, the Trustee issued a notice to all creditors, including MetLife, of the
25 amount and classification of their claims to be paid under confirmed Plan #3 ("Trustee's
26 Notice"). (ECF No. 78). The Trustee's Notice was served on MetLife to its counsel of record as
27 well as the addresses set forth on its amended proof of claim. (ECF No. 79).

28 On August 20, 2013, a "Transfer of Claim Other Than for Security" was filed by Select

1 Portfolio Servicing, Inc. (“SPS”), transferring the MetLife claim to JP Morgan Mortgage Whole
2 Loans (“JP Morgan Loans”) serviced by SPS. (ECF No. 81).

3 On September 4, 2013, JP Morgan Chase Bank N.A. (“JP Morgan Chase”) filed an
4 “Unconditional Transfer of Claim After Proof of Claim Filed 7/17/12 With Proof of Service,”
5 through which JP Morgan Loans assigned and transferred the same claim to JP Morgan Chase,
6 its assignees and/or successors, by and through its servicing agent SPS. (ECF No. 86).

7 On December 27, 2016, Carrington Mortgage Services, LLC (“Carrington Mortgage”),
8 filed a notice that the same claim was transferred from JP Morgan Chase to Carrington
9 Mortgage. (ECF No. 111).

10 On December 1, 2017, the Trustee filed a Chapter 13 Final Account and Report (“FAR”).
11 (ECF No. 116). The FAR was served on all creditors, including MetLife, SPS, JP Mortgage
12 Loans, JP Morgan Chase, Carrington Mortgage, and counsel of record for MetLife, JP Morgan
13 Chase, and Carrington Mortgage. (ECF No. 117). The FAR states that Carrington Mortgage
14 was paid \$42,500 on its allowed secured claim plus \$6,224.47 in interest. It further states that
15 Carrington Mortgage was paid \$4,932.66 on its allowed unsecured claim. The FAR sets forth a
16 deadline of January 4, 2018, for creditors to object. It expressly provides that “In the absence of
17 a timely filed Objection, the Bankruptcy Court will issue the debtor(s) a Discharge.”

18 On January 5, 2018, the Trustee filed a Chapter 13 Standing Trustee’s Final Report and
19 Account (“Trustee’s Final Report”), inasmuch as no party in interest objected to the FAR. (ECF
20 No. 118). The Trustee’s Final Report confirms that Carrington Mortgage was paid \$42,500 on
21 its allowed secured claim plus \$6,224.47 in interest. It further confirms Carrington Mortgage
22 was paid \$4,932.66 on its allowed unsecured claim. The Trustee’s Final Report was served on
23 counsel of record for MetLife, JP Morgan Chase, Carrington Mortgage, and to Debtor. (ECF
24 No. 119).

25 On January 17, 2018, Debtor filed a Certificate of Compliance with Conditions Related
26 to Entry of Chapter 13 Discharge Together with Notice Thereon (“Compliance Certificate”).
27 (ECF No. 121). The Compliance Certificate attests, *inter alia*, that “the Debtor has made all
28 payments and completed all obligations required by the plan.” The Compliance Certificate also

1 notifies all creditors and parties in interest that they have 21 days to file an objection, and that
2 “In the absence of a timely filed Objection, the Bankruptcy Court will issue the Debtor a
3 Discharge.” The Compliance Certificate was served on all creditors, including MetLife, JP
4 Morgan Chase, Carrington Mortgage, and counsel of record for MetLife, JP Morgan Chase, and
5 Carrington Mortgage. (ECF No. 122).

6 On February 20, 2018, Debtor received her Chapter 13 discharge after completion of all
7 payments required under confirmed Plan #3, inasmuch as no party in interest, including MetLife,
8 filed an objection to the Compliance Certificate. (ECF No. 124).

9 On February 27, 2018, a Final Decree was entered and the case was closed. (ECF No.
10 126).

11 On May 22, 2018, JP Morgan Chase filed an ex parte motion for a 2004 examination of
12 Debtor. (ECF No. 127). The motion sought to have the Clerk of the Court sign the order
13 inasmuch as the proposed examination of the Debtor was scheduled to be conducted on June 8,
14 2018, i.e., more than 15 days after the motion is filed.

15 On May 30, 2018, JP Morgan Chase filed an ex parte motion to reopen the Debtor’s
16 Chapter 13 case (“Reopening Motion”). (ECF No. 128). The Reopening Motion was brought
17 under Section 350(b) on a representation that MetLife is a party in interest who may seek to
18 reopen a case pursuant to FRBP 5010. MetLife alleged that it is an interested party that could
19 reopen the case “in order to set a Rule 2004 examination of the Debtor in her conduct and
20 performance of duties under the Chapter 13 plan and obtain other financial
21 documentation/information as it related to the Plan and/or the claim/treatment of MetLife.”

22 On June 1, 2018, an order was entered granting JP Morgan Chase’s ex parte motion to
23 reopen Debtor’s Chapter 13 case. (ECF No. 130).

24 On June 26, 2018, JP Morgan Chase filed an amended ex parte motion for a 2004
25 examination of the Debtor (“Amended 2004 Exam Motion”). (ECF No. 132). JP Morgan Chase
26 alleged on information and belief that “Debtor reside (sic) in the residential property commonly
27 known as 2800 East Owens Avenue, North Las Vegas, NV 89030, which is alleged to be
28 investment property, but which is in fact the Debtor’s principal residence.” *Id.* at 2:10-12. The

1 Amended 2004 Exam Motion again sought to have the Clerk of the Court sign the order
2 inasmuch as the proposed examination of the Debtor was scheduled to be conducted on July 13,
3 2018, i.e., more than 15 days after the amended motion was filed.

4 On June 27, 2018, an order was entered granting JP Morgan Chase's amended motion for
5 a 2004 examination of the Debtor ("2004 Exam Order"). (ECF No. 133). The 2004 Exam Order
6 was signed by the Clerk of the Court pursuant to Local Rule 5075(a)(2)(L). The order scheduled
7 the 2004 examination to take place on July 13, 2018, at the law offices of JP Morgan Chase's
8 counsel. A subpoena to produce documents at the examination also was served on the Debtor.
9 (ECF No. 134).

10 On July 16, 2018, the instant Motion was filed by Debtor, and noticed to be heard on
11 August 22, 2018. (ECF Nos. 137 and 138). The instant Motion seeks an order reclosing the
12 Chapter 13 case, disallowing the 2004 examination,⁴ and imposing discharge violation sanctions
13 upon MetLife for failing to reconvey its interest in the Owens Avenue Property as required by
14 confirmed Plan #3.

15 On July 25, 2018, MetLife filed a notice that the same claim was transferred from
16 Carrington Mortgage to MetLife Home Loans, LLC as successor by merger to MetLife Home
17 Loans, a division of MetLife Bank, NA. (ECF No. 140).

18 On August 3, 2018, an opposition to the Motion was filed by MetLife, which included a
19 counter-motion to compel compliance with the 2004 Exam Order ("Opposition"). (ECF No.
20 143).

21 On August 14, 2018, an order was entered approving a stipulation between the Debtor
22 and MetLife to continue the hearing to September 5, 2018. (ECF No. 145).

23 DISCUSSION

24 The court having considered the written and oral arguments of counsel, along with the
25 record in this proceeding, concludes that the Motion should be granted in part and denied in part

26
27 ⁴ The 2004 Exam Order scheduled the examination to take place on July 13, 2018, but the
28 instant Motion was not filed until July 16, 2018. The parties postponed the examination until
July 20, 2018, in anticipation that the Motion would be filed. See Opposition at 2:10-13. As of
the hearing on the matter, the examination and document production has not taken place.

1 for the reasons set forth below. For the same reasons, the counter-motion brought by MetLife
2 will be denied.

3 First, whatever claim that MetLife has to revoke the Debtor's discharge pursuant to
4 Section 1328(e) is barred by the doctrine of res judicata. The Plan Confirmation Order is a final
5 judgment and is not subject to collateral attack. See United Student Aid Funds, Inc. v. Espinosa,
6 559 U.S. 260, 269 (2010); see also In re Okosisi, 451 B.R. 90, 100 (Bankr. D. Nev. 2011). It is
7 clear from the record that prior to confirmation of Plan #3, MetLife specifically asserted that the
8 Owens Avenue Property was the Debtor's principal residence, rather than an investment
9 property, thereby being subject to the antimodification prohibition under Section 1322(b)(2).
10 MetLife actually raised the objection to confirmation of the Debtor's Chapter 13 plan, and the res
11 judicata effect of the Plan Confirmation Order precludes MetLife from attempting to re-litigate
12 the same objection now.⁵

13 Second, it is clear that the Debtor fully performed her confirmed Chapter 13 plan and
14 notice of the FAR, Trustee's Final Report, and Compliance Certificate was given to MetLife, JP
15 Morgan Chase, Carrington Mortgage, and counsel of record for MetLife, JP Morgan Chase, and
16 Carrington. Neither MetLife nor JP Morgan Chase, nor any of their predecessors in interest,
17 objected to the FAR, Trustee's Final Report, or the Compliance Certificate.

18 Third, MetLife did not appeal the Plan Confirmation Order and it is binding. Moreover,
19 relief from the Plan Confirmation Order itself cannot be sought against the Debtor because more
20 than a year has elapsed since the order was entered. See FED.R. CIV.P. 60(b)(3).

21 Fourth, the Reopening Motion did not disclose that MetLife was seeking to reopen the
22 case to obtain information from the Debtor concerning an objection that MetLife had raised prior
23 to confirmation of the Debtor's Chapter 13 plan.

24 ⁵ MetLife maintains that under Section 1328(e), a party in interest can seek revocation of
25 a Chapter 13 discharge if: (a) the discharge was obtained by the debtor through fraud, and (b) the
26 requesting party did not know of such fraud until after the discharge was granted. 11 U.S.C. §
27 1328(e). In this case, the very "fraud" alleged by MetLife now is the same alleged fraud asserted
28 by MetLife prior to plan confirmation and prior to entry of the Chapter 13 discharge. Even if
MetLife could demonstrate fraud in connection with the Debtor's characterization of the Owens
Avenue Property, MetLife clearly knew of alleged fraud before the subject plan was ever
confirmed, much less completed.

1 Fifth, MetLife is not a party in interest authorized to take a 2004 examination of the
 2 Debtor. MetLife admittedly reconveyed its deed of trust against the Owens Avenue Property,
 3 see Opposition at 3:11-13 and Exhibit "B" thereto, and the Debtor's personal liability arising
 4 from MetLife's claim has been discharged. Inasmuch as MetLife has no statutory basis on which
 5 to revoke the discharge, it no longer has a lien and no longer has a debt by which it would be a
 6 party in interest within the meaning of FRBP 2004.

7 Finally, because the deed of trust securing MetLife's prior claim was reconveyed on or
 8 about March 22, 2018, there is no factual basis for seeking contempt sanctions against MetLife
 9 for violation of the Plan Confirmation Order nor the discharge injunction under Section
 10 524(a)(2). At the hearing, Debtor properly withdrew the sanctions request.

11 For these reasons, the court will deny the sanctions requested in the Motion, but grant the
 12 remainder of the relief requested. As a consequence, the counter-motion will be denied.

13 **IT IS THEREFORE ORDERED** that the Motion to Close Case, Disallow Rule 2004
 14 Exam, and for Attorney's Fees and Sanctions for Violation of Discharge Injunction, brought by
 15 Debtor, Docket No. 137, be, and the same hereby is, **GRANTED IN PART AND DENIED IN**
 16 **PART** as follows:

- 17 1. The Order Granting 2004 Exam of Iris Recinos, Docket No. 133, is **VACATED** and
 18 of no force and effect.
- 19 2. The Order on Exparte Motion to Reopen Bankruptcy Case, Docket No. 130, is
 20 **VACATED** and the Clerk of the Court is directed to reclose the Chapter 13
 21 proceeding.
- 22 3. The Debtor's request for sanctions is **WITHDRAWN**.

23 **IT IS FURTHER ORDERED** that the Counter-Motion to Compel Compliance with
 24 2004 Examination, brought by MetLife Home Loans LLC, etc., Docket No. 143, be, and the
 25 same hereby is, **DENIED**.

26
 27 Copies sent via CM/ECF ELECTRONIC FILING

28 Copies sent via BNC to:

1 SELECT PORTFOLIO SERVICING, INC

2 3815 SOUTH WEST TEMPLE

3 SALT LAKE CITY, UT 84115

4 CARRINGTON MORTGAGE SERVICES, LLC

5 1600 SOUTH DOUGLASS ROAD

6 ANAHEIM, CA 92806

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