



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 21, 2024

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 18-10895-MKN
) Chapter 7
KHALIQUEZ ZAMAN and FARAH)
AHMAD,)
) Date: October 25, 2023
Debtors.) Time: 2:30 p.m.
)

**ORDER ON MOTION FOR RELIEF FROM JUDGMENT OR ORDER OF
COMPROMISE, SETTLEMENT AND ABANDONING JUDGMENT CLAIM TO
DEBTOR BASED UPON FEDERAL RULES OF BANKRUPTCY PROCEDURE 9024
INCORPORATING [SIC] F.R.Civ.P.Rule 60(b)(3) and 60(d)(3) EXTRINSIC FRAUD
AND FRAUD UPON COURT; AND/OR IN THE ALTERNATIVE, MOTION TO
CONFIRM GLOBAL SETTLEMENT AGREEMENT REACHED BETWEEN ESTATE
SPECIAL COUNSEL DAVID WINTERTON, ESQ. AND GABRIEL DUMITRU FOR
PAYMENT OF \$17,500 AS FULL AND FINAL PAYMENT AND COMPROMISE OF
ESTATE ASSET (DEBTOR'S [SIC] UNCOLLECTED JUDGMENT BALANCE)¹**

On October 25, 2023, the court heard the Motion for Relief From Judgment or Order of
Compromise, Settlement and Abandoning Judgment Claim to Debtor Based Upon Federal Rules
of Bankruptcy Procedure 9024 Incorporating [sic] FRCP 60(b)(3) and 60(d)(3) Extrinsic
Fraud and Fraud Upon Court; and/or in the Alternative, Motion to Confirm Global Settlement
Agreement Reached Between Estate Special Counsel David Winterton, Esq. and Gabriel

¹ In this Order, all references to "ECF No." are to the number assigned to the documents
filed in the above-captioned bankruptcy case as they appear on the docket maintained by the
clerk of court. All references to "Section" or "§§ 101-1532" are to the provisions of the
Bankruptcy Code. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.
All references to "FRCP" are to the Federal Rules of Civil Procedure. All references to "FRE"
are to the Federal Rules of Evidence.

Dumitru for Payment of \$17,500 as Full and Final Payment and Compromise of Estate Asset (Debtor's [sic] Uncollected Judgment Balance) ("Motion"), brought by creditor, Gabriel R. Dumitru ("Dumitru"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On February 22, 2018, a joint Chapter 7 petition was voluntarily filed by Khaliquez Zaman ("Zaman") and Farah Ahmad (collectively, "Debtors"). (ECF No. 1). Attached to the petition were the Debtors' schedules of assets and liabilities ("Schedules") and statement of financial affairs ("SOFA"). The case was assigned for administration to Chapter 7 panel trustee Shelley D. Krohn ("Trustee Krohn"). A Notice of Chapter 7 Bankruptcy Case was filed scheduling a meeting of creditors for March 21, 2018, and setting a deadline of May 21, 2018, for parties in interest to object to the Debtors' discharge. (ECF No. 6).

On March 21, 2018, Trustee Krohn filed a Chapter 7 Trustee's Report of No Distribution. (ECF No. 14).

On June 1, 2018, the Debtors received their Chapter 7 discharge. (ECF No. 18).²

On June 4, 2018, a final decree was entered closing the Chapter 7 case. (ECF No. 20).

On December 22, 2021, Dumitru filed in pro se a motion to reopen the Debtors' Chapter 7 bankruptcy case (ECF No. 21) due to Zaman's failure to disclose an ongoing court case entitled Khaliquez Zaman v. Gabriel Dumitru, Case No. A-18-769267-C, commenced in the Eighth Judicial District Court, Clark County, Nevada ("Collection Action"). The Collection Action had been commenced thirteen days prior to the Debtors' filing their voluntary Chapter 7

² A Chapter 7 trustee, a creditor, or the United States trustee may request a revocation of a discharge within one year after a discharge is granted if the grounds for revocation is that the discharge was obtained through the debtor's fraud. See 11 U.S.C. §§727(e)(1) and 727(d)(1). Revocation of a discharge must be sought through timely commencement of an adversary proceeding. See FED.R.BANKR.P. 7001(4).

petition.³ Based on the failure to disclose the Collection Action, Dumitru asserted that the Debtors' bankruptcy discharge should be revoked.⁴

On February 14, 2022, an order was entered reopening the Chapter 7 case and Trustee Krohn was reappointed as the Chapter 7 trustee. (ECF No. 25 and 26).

On February 28, 2022, the Trustee filed a Notice of Assets and Notice to File Claims with a deadline of May 31, 2022, for creditors to file a proof of claim, if any. (ECF No. 27).

On March 22, 2022, Debtors filed an amended Schedule "A/B" listing the Collection Action at Item 33 "Legal claims and judgment against Gabriel Dumitru . . . in the total of amount \$56,212.00, inclusive of \$20,000.00 for the underlying breach of contract claim and \$36,212.00 for attorney fees and costs; attorney is David Winterton." Debtors also included an amended SOFA listing at Item 9 case number A-18-769267-C ("Collection Action") as concluded in the District Court, Clark County, Nevada ("State Court"). (ECF No. 31).⁵

³ By reopening the Chapter 7 case, apparently without first obtaining legal advice, Dumitru brought a Chapter 7 bankruptcy trustee into the picture. That strategy permitted Trustee Krohn to pursue the Collection Action and the resulting Collection Judgment.

⁴ At the time Dumitru filed the motion to reopen, the deadline to commence an adversary proceeding to revoke the Debtors' discharge based on fraud had long since expired. See note 2, supra.

⁵ Pursuant to FRE 201(b), the court takes judicial notice of documents maintained by the State Court in the Collection Action. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff asserted similar claims); In re Blas, 614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019) ("This court may take judicial notice of the dockets of other courts."). Those documents include a Judgment filed January 11, 2019, in favor of Khaliquez Zaman against Gabriel Dumitru ("Collection Judgment"), a Notice of Entry of Judgment filed January 14, 2019, and a Clerk's Certificate for the Supreme Court of Nevada ("Clerk's Certificate") filed April 19, 2022. The Collection Judgment entered by the State Court is the focal point of the instant Motion. Attached to the Clerk's Certificate are copies of two orders entered by the Court of Appeals of the State of Nevada: an Order of Affirmance filed January 24, 2022, and an Order Granting Motion to Supplement and Denying Petition for Rehearing filed on March 23, 2022 ("Order Denying Rehearing"). Also attached to the Clerk's Certificate are copies of an Order Denying Petition for Review filed by the Nevada Supreme Court on April 18, 2022, as well the Remittitur of the case to the State Court of the same date.

On March 24, 2022, Trustee Krohn filed an application to employ and retain attorney David J. Winterton (“Winterton”) and his law firm David J. Winterton & Associates Ltd as special counsel under Section 327(e) to continue prosecution of the Collection Action for the benefit of the Chapter 7 estate (“Winterton Employment Application”). (ECF No. 35). The application disclosed that attorney Winterton represented the Debtors in the Collection Action and had not been informed by the Debtors of their bankruptcy filing.⁶ See Winterton Employment Application at ¶¶ 4, 5, and 6. Attorney Winterton submitted a declaration attesting to the representations made in the employment application. (ECF No. 36).

On March 30, 2022, an order was entered approving the employment of attorney Winterton as special counsel, with the payment of any compensation subject to noticed application and court approval. (ECF No. 37).

On May 2, 2022, Dumitru filed proof of claim number 9-1 (“POC 9-1”) in the amount of \$56,212. 123 pages are attached to POC 9-1. Those attachments include an “Answer to Question No: 8- Proof of Claim, Basis of Claim,” which in turn refers to a lengthy set of attached exhibits consisting of: (1) a copy of the Order to Reopen Chapter 7 Bankruptcy Case entered on February 14, 2022, which includes a proof of service by mail of the order; (2) a copy of the docket for the Debtors’ case maintained by the clerk of the court; (3) a copy of “Motion for Substitution of Parties Pursuant to Nevada Rules of Appellant Procedure 43” along with an affidavit of David J. Winterton, Esq. in support thereof filed on April 19, 2022, in the Supreme Court, State of Nevada; (4) two copies of a “Take Over Agreement” made as of February 4, 2016, and signed by all parties, between “Faiyazul Hague&Khaliqueez Zaman(brothers as seller) and Gabriel Dumitru (buyer) of the Indian Bowl Cuisine; (5) a copy of a print out from the Nevada Secretary of State for an entity identified as Indian Bowl Cuisine, LLC, showing a formation date of October 2, 2014, and listing “Faiyazul Haque” as manager; (6) a copy of the State Court Complaint filed on February 9, 2018 that commenced the Collection Action; (7) a copy of “Default Against Defendant [Dumitru]” dated August 6, 2018 along with the “Notice of

⁶ Debtors’ voluntary Chapter 7 petition reflects that the bankruptcy proceeding was commenced on February 22, 2018, by the law firm identified as Ballstaedt Law rather than by Attorney Winterton.

Entry of Default Against [Dumitru]” filed on August 7, 2018; (8) a copy of the Judgment entered against Dumitru January 11, 2019; (9) a copy of an Affidavit of Due Diligence indicating attempts to serve Dumitru at two different addresses; (10) an additional Affidavit of Due Diligence indicating another attempt to serve Dumitru, but at a different address; (11) a copy of an ex parte motion to enlarge time to serve Dumitru along with permission to allow service by publication along with a copy of the order granting time enlargement to serve Dumitru; and (12) a copy of an affidavit of Zaman in support of “Opposition to the Motion to Set Aside Default Judgment.”

In addition to those described materials, POC 9-1 also attaches an affidavit of Dumitru in support of POC 9-1. Attached to that affidavit are several additional exhibits consisting of (1) an order entered May 7, 2018, granting Zaman permission to serve the Collection Complaint on Mr. Dumitru by publication; (1) an Affidavit of Due Diligence of process server Brittany Rizarri to which there appears to be attached a separate “Affidavit of No Service Attempts” signed by a Leslie Castro and pictures of residences at which service attempts were made; (3) another affidavit of Gabriel Dumitru; (4) a copy of page 4 of 14 of Debtors’ SOFA showing the listed Collection Action; (5) a copy of an order entered in the Collection Action granting Winterton’s attorneys fees and costs; (6) a copy of a variety of documents including a photocopy of a Nevada driver’s license, a copy of a “Change of Responsibility & Release Agreement” for Indian Bowl Cuisine, LLC from Centurylink; a copy of Running Rebel Plaza Lease Agreement between “THE GVT GRANDKIDS TRUST” [Landlord] and Faiyazul Haque [Tenant] dated November 10, 2014; a copy of an Assignment of Lease entered on February 4, 2016, between Faiyazul Haque, The GVT Grandkids Trust, and Dumitru; (7) a copy of page 8 of 14 of the Debtors’ SOFA listing annual income of Debtors; and (8) a copy of an article from the Las Vegas Review Journal entitled “Bankruptcy court judge shows little mercy on attorneys.”

On May 4, 2022, Dumitru filed amended proof of claim number 9-2 (“POC 9-2”) consisting of 35 pages. In Part 1 of POC 9-2, he attests that it amends POC 9-1 “to add extra evidence.” Dumitru attached to POC 9-2 an affidavit in which he references a variety of information and documentation. In Part 8 of POC 9-2, Dumitru states, “JUDGEMENT

OBTAINED BY FRAUD/SEE ATTACHED DOCUMENTS.” In addition to his affidavit, the attachments to POC 9-2 include the following: (1) a “Transcript of Prove Up Hearing” held on January 2, 2019, in the Collection Action; (2) an “Excerpt From Doc. 31 [amended Schedule “A/B”] – Zaman Bankruptcy Case showing the Collection Action; (3) another copy of the order entered on 4/2/2019, in the Collection Action granting Winterton’s attorneys fees and costs; (4) a copy of an Attorney-Client Fee Contract between Zaman and David J. Winterton, Esq., entered in this proceeding as Docket No. 35; (5) a copy of a Declaration of David J. Winterton, Esq. in support of ex parte application to employ Winterton as special counsel filed as Docket Number 36; and (6) another copy of an article from the Las Vegas Review Journal entitled “Bankruptcy court judge shows little mercy on attorneys”; and 8) a copy of a “Default Judgment Checklist” under the California Rules of Court.

On May 6, 2022, Dumitru filed amended proof of claim number 9-3 (“POC 9-3”), consisting of 56 pages. In Part 1 of POC 9-3, he attests that it amends his prior claims for “extra evidence.” Dumitru attached to POC 9-3 an affidavit in which he references additional information and documents. In addition to his latest affidavit, the attachments to POC 9-3 included the following: (1) a copy of page of Zaman’s summary of assets and liabilities; (2) a copy of the default prove-up motion filed in the Collection Action; (3) a copy of page 2 of Zama’s exemption Schedule “C,” (4) a copy of page 4 of Zaman’s SOFA, (5) a copy of a print out from the Nevada Secretary of State for an entity identified as Indian Bowl Cuisine, LLC, showing a formation date of October 3, 2014, and listing “Faiyazul Haque” as manager, (6) a copy of an Office Depot receipt dated 7/19/2016; (7) an undated listing for Zaman in the Whitepages that includes multiple addresses in Nevada and California; (8) a copy of page 4 of Zaman’s property Schedule “A/B;” (9) a copy of an order approving Winterton’s attorneys fees and costs in the Collection Action; (10) another copy of an article from the Las Vegas Review Journal entitled “Bankruptcy court judge shows little mercy on attorneys”; (11) a copy of page 2 of Zaman’s SOFA; (12) a copy of page 4 of Zaman’s SOFA; (13) a copy of page 7 of Zaman’s SOFA; (14) a copy of a print out from the Nevada Secretary of State for an entity identified as Khaliquez Zaman with a formation date of August 29, 2019, as a sole proprietor; (15) a copy of a

1 print out from the Nevada Secretary of State for an entity identified as Khaliquez Zaman & Farah
2 Ahmad with a formation date of August 11, 2016, as a sole proprietor; (16) an undated print out
3 of a Google listing for David J. Winterton & Associates Ltd.; and (17) a copy of the Winterton
4 Employment Application.

5 On May 23, 2022, Dumitru filed a Motion to Lift Stay, Motion to Dismiss
6 Bankruptcy[sic], Motion to Void Judgement Rule 60(d)(3)/RULE 9024, and Motion to Dismiss
7 Attorney David Winterton (“Stay Motion”). (ECF Nos. 38).

8 On June 9, 2022, Dumitru filed supplemental points and authorities along with a
9 Declaration of Gabriel Dumitru in support of the Stay Motion. (ECF Nos. 39 and 40).

10 On June 16, 2022, opposition was filed to the Stay Motion on behalf of Trustee Krohn
11 along with an affidavit of David Winterton. (ECF Nos. 46 and 47).

12 On July 13, 2022, a hearing was held regarding the Stay Motion.

13 On July 18, 2022, an order was entered denying Dumitru’s Stay Motion (“Stay Denial
14 Order”). (ECF No. 53). Among other things, the court denied Dumitru relief from the January
15 2019 Collection Judgment previously entered against him by the State Court in the Collection
16 Action. See Stay Denial Order at 6:7 to 7:3. Dumitru previously had sought and failed to obtain
17 relief from that Collection Judgment from Nevada appellate courts. Id. at 2 n.2.

18 On August 1, 2022, Dumitru filed a Notice of Appeal regarding the Stay Motion (“Stay
19 Motion Appeal”). (ECF No. 57). On August 12, 2022, Dumitru filed an Amended Notice of
20 Appeal regarding the Stay Motion Appeal (ECF No. 75). The appeal was assigned to the
21 Bankruptcy Appellate Panel (“BAP”) for the Ninth Circuit Court of Appeals, designated as BAP
22 No. 22-1154.

23 On August 29, 2022, Trustee Krohn filed a Motion to Approve Compromise Pursuant to
24 Bankruptcy Rule 9019 and to Approve Compromise and Settlement (“Compromise Motion”)
25 requesting authority to approve a compromise between the bankruptcy estate and Dumitru to
26 resolve: (1) several pending litigation matters in both state court and the appellate court; (2) two
27 judgments; and (3) a proof of claim filed in the present bankruptcy case. (ECF No. 98).⁷ A

28 ⁷ In the Compromise Motion, Trustee Krohn represented in pertinent part as follows:

1 supplement to the Compromise Motion was filed, to which is attached a Settlement Agreement
2 By and Between Chapter 7 Trustee, Shelley D. Krohn and Gabriel R. Dumitru (“Settlement
3 Agreement”) that bears the notarized signature of Dumitru dated September 1, 2022. (ECF No.
4 105). Sections 4 and 5 of the Settlement Agreement provides that it “constitutes the entire
5 understanding between the Parties” and that the “Parties each warrant and acknowledge that the
6 fully understand the terms and consequences of this Agreement and that they are relying fully
7

8
9 11. The purpose of this motion is to resolve issues between the Estate and
10 Dumitru. As noted above, Dumitru has filed an appeal with BAP regarding
11 an Order issued by this Court, as well as two subsequent motions attacking
12 the judgments that were awarded to the Estate against Dumitru. The issues
13 that are the subject of Dumitru’s appeal and pending motions are not
14 extremely complicated. However, the Trustee’s concern is that, given
15 Dumitru’s litigious demeanor, litigation in this case will continue to escalate,
16 and any value the Estate assets may have will be severely depleted or
17 completely negated due to the expenditure of administrative expenses in
18 defending against any such litigation.

19 12. As noted above, the Estate currently holds judgments against Dumitru in
20 the aggregate sum of approximately \$102,000.00, less the bond payment of
21 \$56,212.00, which the Trustee will receive shortly. The balance of the
22 judgment amount increases each day by virtue of the fact that there is
23 accruing interest. But for Dumitru’s appeal and ever-continuing motions filed
24 with this Court, the \$56,212.00 represents a number that will satisfy most, if
25 not all, of the Estate’s obligations.

26 13. In an attempt to facilitate a resolution with Dumitru, counsel for the
27 Trustee engaged in settlement negotiations to obtain a global resolution of all
28 issues between Dumitru and the Estate. The settlement offered by the Trustee
was as follows: The Trustee would (1) retain the \$56,211.00 on hand to be
administered by the Estate; (2) not pursue collection of the judgment
balances; and (3) abandon said judgments against Dumitru back to the
Debtors in exchange for Dumitru (4) dismissing his appeal to the BAP; (5)
withdrawing all current motions on file with this Court; and (6) withdrawing
his proof of claim and amended proofs of claim (claim numbers 9-1, 9-2, and
9-3). Counsel for Trustee also advised Dumitru that he should consult with
an attorney to make sure he had a full understanding of the consequences of
accepting or declining the settlement offer.

28 See Compromise Motion at 4:1-26. Attached to the Compromise Motion is a Declaration of
Shelley D. Krohn attesting to the representations set forth in the motion.

1 upon their own informed judgment and/or advice of legal counsel.” Pursuant to an order
 2 shortening time, the Compromise Motion was noticed to be heard on September 14, 2022. (ECF
 3 No. 109).

4 On September 15, 2022, after the scheduled hearing on the Compromise Motion was
 5 conducted on September 14, 2022, an order was entered granting the Compromise Motion
 6 (“Compromise Order”). (ECF No. 112).

7 On September 16, 2022, Dumitru withdrew his appeal regarding the Stay Motion as well
 8 as POC 9-1, in addition to all amended claims. (ECF Nos. 113 and 114).

9 On October 14, 2022, Dumitru’s Stay Motion Appeal was dismissed by the BAP. (ECF
 10 No. 124).

11 On October 28, 2022, the Stay Motion Appeal, BAP No. 22-1154, was closed. (ECF No.
 12 125).

13 On January 31, 2023, Trustee Krohn filed her notice of intent to abandon Debtor’s legal
 14 claim(s) and judgment against Dumitru under the Collection Action, inclusive of the underlying
 15 breach of contract claim, attorney fees and costs, and interest, less the \$56,212.00 received by the
 16 estate, per the settlement agreement in the Compromise Motion (“Abandonment Notice”).⁸

18
 19 ⁸ The notice of abandonment specifically describes the subject property as follows:

20 The Debtor’s legal claims and judgment against Gabriel Dumitru
 21 (“Dumitru”) under case number A-18-769267-C, inclusive of the underlying
 22 breach of contract claim, attorney fees and costs, and interest, less the
 23 \$56,212.00 received by the estate. Per the settlement agreement outlined in
 24 the Trustee’s Motion Pursuant to Bankruptcy Rule 9019 to Approve
 25 Compromise and Settlement (ECF 98) and approved by this court per court
 26 Order (ECF 112),: The Trustee shall (1) retain the \$56,211.00 on hand to be
 27 administered by the Estate; (2) not pursue collection of the judgment
 28 balances; and (3) abandon said judgments against Dumitru back to the
 Debtors in exchange for Dumitru (4) dismissing his appeal to the BAP; (5)
 withdrawing all current motions on file with this Court; and (6) withdrawing
 his proof of claim and amended proofs of claim (claim numbers 9-1, 9-2, and
 9-3). As such, the Trustee hereby seeks to abandon this claim back to the
 Debtors.

See Abandonment Notice at 2:1-19.

(ECF No. 130). The notice was served on all parties in interest, including Dumitru, and provided for any objections to be filed within 21 days. (ECF No.131).

On February 22, 2023, Trustee Krohn filed a declaration attesting that no timely objection had been received to the Abandonment Notice. (ECF No. 134).

On February 27, 2023, an order (“Abandonment Order”) was entered granting Trustee Krohn’s intent to abandon the property (i.e., the legal claim and judgment against Dumitru). (ECF No. 135). Notice of entry of the Abandonment Order was filed and served on all parties, including Dumitru. (ECF Nos. 136 and 137). No appeal was filed by any party.

On September 21, 2023, Dumitru filed the instant Motion in pro se. (ECF No. 142). The Motion consists of 187 pages and is accompanied by a separation declaration from the moving party (“Dumitru Declaration”). (ECF No. 143). Attached to the Motion are copies of numerous documents marked as nine separate exhibits. Exhibits 1 and 3 appear to be copies of email exchanges between Jeffrey G. Sloan, Esq., to Dumitru regarding “Settlement Correspondence,” dated August 19, 2022. Exhibit 2 appears to be a copy of a “Timeline” of events in this bankruptcy proceeding. Exhibit 4 appears to be an email from Winterton to Dumitru, dated August 25, 2022. Exhibit 5 appears to be a copy of a “JUDGMENT SATISFACTION AGREEMENT” dated September 1, 2022, between the Debtors and Dumitru. Exhibit 6 appears to be a copy of Trustee Krohn’s Compromise Motion filed on August 29, 2022, which includes a copy of Trustee Krohn’s declaration in support thereof.⁹ Exhibit 7A appears to be a copy of an email exchange from Dumitru to Winterton dated September 10, 2023. Exhibit 7B appears to be a copy of correspondence from Winterton to Dumitru dated September 11, 2023, regarding “NOTICE OF DEFAULT.” Exhibit 8 appears to be email exchanges from September 11, 2023, to September 12, 2023, between Winterton and Dumitru regarding a “Demand Letter,” as well as a copy of an email from Autumn Wheeler, an employee of Winterton, to Dumitru dated September 12, 2023, regarding a “Default Letter” of the same date. Exhibit 9 appears to be a

⁹ Exhibits 1, 2, 3, 4, 5, and 6 encompass events allegedly occurring before the Compromise Motion was heard on September 14, 2022. Exhibits 7A, 7B, 8, and 9 encompass events allegedly occurring after the Compromise Order was entered on September 15, 2022.

1 copy of the Order Granting Trustee [Krohn's] Intent to Abandon Property, entered on February
2 27, 2023.

3 On October 4, 2023, an opposition ("Opposition") to the Motion was filed by Attorney
4 Winterton as special counsel to Trustee Krohn, along with an affidavit of David J. Winterton,
5 Esq. (ECF Nos. 156 and 157).

6 On October 10, 2023, Dumitru filed his reply to Trustee Krohn's Opposition. (ECF No.
7 158).

8 On October 11, 2023, Attorney Winterton filed an amended opposition as special counsel
9 to Trustee Krohn. (ECF No. 159). On the same date, Attorney Winterton filed a separate
10 amended opposition as counsel for Zaman. (ECF No. 160).

11 On October 12, 2023, Trustee Krohn filed a separate response to the Motion. (ECF No.
12 161).

13 DISCUSSION

14 By his current Motion, Dumitru apparently seeks relief from the Abandonment Order or
15 relief from the Compromise Order. In the alternative, he apparently seeks to confirm a
16 settlement between himself and Attorney Winterton for payment in the amount of \$17,500.00 as
17 full and final payment of the uncollected balance of the Collection Judgment. Dumitru argues,
18 among other things, that he made it clear to Trustee Krohn in various emails and phone calls that
19 he did not accept the settlement proposal, that the Compromise Motion fraudulently failed to
20 disclose material facts, that his attempts to pay Trustee Krohn's counsel in September 2023 were
21 ignored, and that he seeks alternative relief from the Compromise Order pursuant to FRCP
22 60(d)(3) applicable by FRBP 9024 due to fraud upon the court allegedly committed by failure to
23 include significant facts in connection with the Compromise Motion. See generally Motion.
24 Dumitru also cites to FRCP 59(e) made applicable herein pursuant to FRBP 9023 as authority for
25 the court to reconsider the subject orders. See Motion at 16:6-15 (internal citations omitted).
26 FRBP 9023 states the following:

27 the bankruptcy court may reconsider a previous order or judgment, but only
28 if: (1) it is presented with newly discovered evidence that was not available
at the time of the original hearing; (2) it committed clear error or made an

1 initial decision that was manifestly unjust; or (3) there is an intervening
2 change in controlling law.

3 See FED. R. BANKR. P. 9023; see also Motion at 16:6-15 (internal citations omitted). Seeking
4 relief from the Abandonment Order and the Compromise Order, Dumitru maintains that he has
5 been victimized into being liable for the entire Collection Judgment in excess of \$46,000.00,
6 instead of \$17,500.00, which he has always been ready to pay. See Motion at 17:11-15.

7 The court has considered the Motion, including the Dumitru Declaration and all materials
8 submitted therewith. The court also has considered the written and oral arguments of counsel
9 and the parties, and the record in this proceeding. Based on those considerations, the court
10 concludes that the entire Motion must be denied, including Dumitru's alternative request to
11 enforce a different settlement amount.

12 **I. Abandonment of an Asset Pursuant to Section 554.**

13 “Abandonment” is considered a term of art with special meaning in the bankruptcy
14 context. See Nasser v. Tadayon (In re Tadayon), 2019 WL 1923044, at *5 (B.A.P. 9th Cir. Apr.
15 29, 2019) (external citation omitted). In this context, abandonment is the formal relinquishment
16 of the subject property from the bankruptcy estate. Id. Upon abandonment, the debtor’s interest
17 in the property is restored *nunc pro tunc* to its prepetition status as if no bankruptcy had been
18 filed. See Catalano v. C.I.R., 279 F.3d 682, 685 (9th Cir. 2002). “Abandonment should only be
19 compelled in order to help the creditors by assuring some benefit in the administration of each
20 asset.... Absent an attempt by the trustee to churn property worthless to the estate just to increase
21 fees, abandonment should rarely be ordered.” In re Garcia, 521 B.R. 680, 684 (Bankr. D. Idaho
22 2014) (internal quotations omitted) (external citations omitted).

23 Section 554(a) provides that “After notice and a hearing, the trustee may abandon any
24 property of the estate that is burdensome to the estate or that is of inconsequential value and
25 benefit to the estate.” 11 U.S.C. §554(a). In other words, to obtain abandonment of property
26 from a bankruptcy estate under Section 554(a) the following is required: notice, a hearing, and an
27 order of the court authorizing the abandonment. See Pace v. Battley (In re Pace), 146 B.R. 562,
28 564 (B.A.P. 9th Cir. 1992) (internal citation omitted). “A number of cases recognize a general

rule that abandonment is irrevocable, even if it is subsequently discovered that the abandoned property had greater value than previously believed.” Devore v. Marshack (In re DeVore), 223 B.R. 193, 197–98 (B.A.P. 9th Cir. 1998) (internal citations omitted).

In the instant proceeding, the estate’s interest in the Collection Judgment was abandoned after Trustee Krohn filed the Compromise Motion requesting the asset to be abandoned (sans any interests in judgment proceeds above and beyond the \$56,212.00 bond payment Dumitru filed with the State Court that would be retained by Trustee Krohn for the bankruptcy estate) in exchange for Dumitru dismissing his appeal to the BAP, withdrawing all current motions on file with this bankruptcy court, and withdrawing POC 9-1 and amended proofs of claim (POC 9-2 and POC 9-3). See Compromise Motion at 4:16-26. In exchange, Trustee Krohn agreed not to pursue the unpaid balance of the Collection Judgment, essentially allowing the right to pursue collection to return to Zaman as the right would no longer be property of the Chapter 7 estate. Id.

After the Compromise Order was entered, Trustee Krohn fulfilled her obligations under the signed Settlement Agreement and filed the Abandonment Notice. Because no timely objection was filed, the Abandonment Order was entered. Dumitru did not file an objection to the Abandonment Notice, and in fact, prior to the Compromise Order being entered, Dumitru withdrew his appeal with the BAP and abandoned his proofs of claim as outlined in the Compromise Motion. See ECF Nos. 113, 114, 130, and 135. Thus, pursuant to Section 554(a), Trustee Krohn fulfilled her obligation under the Settlement Agreement to abandon the estate’s remaining interest in the Collection Judgment.

II. Relief from Judgment or Order Pursuant to FRBP 9024.

Under FRBP 9024, Dumitru argues relief is available due to fraud upon the court occurring in connection with the Compromise Motion, the subsequent abandonment of the asset, and separate conversations suggesting an alleged “deal” between Dumitru and special counsel Winterton. See Motion at 13-14. FRBP 9024 states, in pertinent part:

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest

is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by §727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by §1144, §1230, or §1330. In some circumstances, Rule 8008 governs postjudgment motion practice after an appeal has been docketed and is pending.

See FED. R. BANKR. P. 9024. Under this rule, Dumitru seeks relief from the Abandonment Order or alternative relief from the Compromise Order. See Motion at 13:24-26, 14:16-22.

Dumitru argues that fraud upon the court occurred because material facts were omitted prior to the rulings on the Compromise Motion and the Abandonment Motion. Id. at 14. He further alleges that Attorney Winterton made assurances and persuaded him not to attend the hearing on the Compromise Motion. See Motion at 16:20-25. Dumitru asserts the terms were supposed to be, among other things, that he pay \$17,500.00, and Trustee Krohn was to administer the bond Dumitru paid to the estate. Id. at 16.¹⁰

It appears Dumitru is referring to any further pursuit of the Collection Judgment against him by Zaman. See Motion at 6:1-14 (“[. . .] Dumitru believes this agreement will end all matters pending.”). Abandonment of a legal claim by a bankruptcy court, however, does not effectively “end all pending matters.” As previously discussed, upon abandonment by the bankruptcy estate, the debtor’s interest in the property is restored *nunc pro tunc* to its prepetition status as if no bankruptcy had been filed. See Catalano v. C.I.R., 279 F.3d 682, 685 (9th Cir. 2002). This means that the debtor is free to pursue any rights in the legal claim he had before bankruptcy, and the bankruptcy court is no longer involved as the asset is no longer a part of the estate. See In re Gonzalez, 302 B.R. 687, 691 (Bankr. C.D. Cal. 2003) (“[O]nce an asset has

¹⁰ As previously mentioned, Dumitru attached as Exhibit 5 to his Motion a document entitled “JUDGMENT SATISFACTION AGREEMENT” dated September 1, 2022. That agreement is between the Debtors and Dumitru, rather than between Trustee Krohn and Dumitru. Whether that agreement is enforceable between the Debtors and Dumitru is immaterial to whether Dumitru’s settlement with Trustee Krohn is in the best interests of the bankruptcy estate. More important, that agreement, if any, would be entirely consistent with the terms of the Compromise Motion, the Settlement Agreement, and the Abandonment Motion. In other words, if the Debtors seek to enforce the balance of the Collection Judgment against Dumitru, it is up to Dumitru to raise the satisfaction agreement before the State Court.

1 been abandoned, it is no longer part of the estate and is effectively beyond the reach and control
 2 of the trustee. Courts have also noted the policy of preserving finality.”) (internal citation
 3 omitted). The Abandonment Order specifically states that Trustee Krohn shall not: “[. . .]
 4 pursue collection of the judgment balances; and (3) abandon said judgments against Dumitru
 5 back to the Debtors [. . .].” Abandonment Order at 2:8-10. The same language was used in the
 6 Compromise Motion. See Compromise Motion at 4:18-21. There were no hidden terms, and
 7 Dumitru had opportunity to seek counsel if he did not understand the terms of the Compromise
 8 Motion or any of the subsequent orders following the motion.

9 A party’s alleged misunderstanding of the terms of an agreement does not qualify as
 10 fraud upon the court.¹¹ “Fraud on the court embraces only that species of fraud which does or
 11 attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the
 12 judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that
 13 are presented for adjudication.” See In re Roussos, 541 B.R. 721, 729 (Bankr. C.D. Cal. 2015)
 14 (internal quotations omitted) (external citation omitted). The court must consider whether the
 15 alleged fraud harmed the integrity of the judicial process. Id.

16 In this instance, the record presented reflects that Dumitru is subject to the Collection
 17 Judgment entered by the State Court, exhausted his appeals available through the State Court,
 18 was denied relief from the Collection Judgment from the bankruptcy court, reached a
 19 compromise with Trustee Krohn after being advised to seek legal advice, agreed to the
 20 Collection Judgment being pursued by Zaman in lieu of pursuit by Trustee Krohn, executed a
 21 written Settlement Agreement consistent with the compromise, did not object to abandonment of
 22 the Collection Judgment to Zaman, dismissed his appeals and withdrew his claims consistent
 23 with the compromise, and now seeks to avoid the result of the compromise. On this record, the
 24 court cannot find that the integrity of the judicial process has been harmed. Whether Dumitru
 25 actually misunderstood the Settlement Agreement he signed or is having second thoughts need
 26

27 ¹¹ As previously mentioned, Sections 4 and 5 of the Settlement Agreement express that it
 28 is the entire understanding of the parties and that they fully understand the terms and
 consequences. There is no apparent dispute that Dumitru was advised by Trustee Krohn that he
 should consult with his own attorney.

1 not be decided. Construing the record in a light most favorable to Dumitru, the court concludes
2 that he has made no prima facie showing that a fraud upon the bankruptcy court occurred in
3 connection with the Compromise Motion nor the Abandonment Motion.

4 **III. Summary.**

5 First, the requirements under FRCP 59(e) for relief from the Compromise Order or the
6 Abandonment Order have not been satisfied. Dumitru has not presented newly discovered
7 evidence that was not available at the time of the hearing on the Compromise Motion. Exhibits 1
8 through 6 attached to the subject Motion pertain to matters allegedly occurring before the
9 September 14, 2022, hearing on the Compromise Motion as well as before the deadline to
10 respond to the Abandonment Notice. Exhibits 7A through 9 pertain to matters allegedly
11 occurring but which never existed before entry of the Compromise Order nor the Abandonment
12 Order. As a result, none of those matters are newly discovered.

13 Nor has Dumitru demonstrated that entry of either the Compromise Order or the
14 Abandonment Order was manifestly unjust or done in clear error. The compromise allowed the
15 Chapter 7 trustee to administer the Collection Action for the benefit of the estate at a net amount
16 less than what might have been achieved through continued litigation with Dumitru.
17 Compromises are not “manifestly unjust” simply because neither side obtains a result entirely in
18 their favor. The abandonment sought by Trustee Krohn as required by the Compromise Order
19 likewise was not manifestly unjust. Therefore, no clear error has been demonstrated with respect
20 to either order.

21 Because Dumitru also does not identify any intervening change in controlling law that
22 requires or even suggests a different outcome, he has not met his burden under FRCP 59(e) for
23 obtaining any relief from the Compromise Order nor the Abandonment Order.

24 Second, the requirements for relief under FRCP 60(d)(3) also have not been satisfied. In
25 this instance, Dumitru successfully obtained an order reopening the Chapter 7 case. He asserted
26 that the Debtors had committed a fraud on the court by failing to disclose the Collection Action,
27 but Dumitru did not file his motion to reopen until long after expiration of the deadline for
28 revoking the Debtors’ discharge. Once the case was reopened and existence of the Collection

1 Action was disclosed, Trustee Krohn exercised her statutory authority to pursue the Collection
2 Judgment for the benefit of the Chapter 7 estate. Thereafter, Dumitru unsuccessfully attempted
3 to obtain from the bankruptcy court relief from the Collection Judgment that had been entered by
4 the State Court. Consistent with her duties under Section 704, Trustee Krohn exercised her
5 discretion to discuss settlement with Dumitru to avoid protracted litigation.

6 Once a settlement between Trustee Krohn and Dumitru was reached, it was memorialized
7 in a writing signed by Dumitru. Approval of the settlement was obtained from the bankruptcy
8 court, as well as the agreed abandonment of the Collection Judgment. Neither the Compromise
9 Order nor the Abandonment Order were ever appealed.¹² Thereafter, both Trustee Krohn and
10 Dumitru took steps consistent with the approved terms. As a result of the settlement, the
11 bankruptcy estate no longer has an interest in the Collection Judgment, and Trustee Krohn can no
12 longer pursue collection of any amounts excluded by the settlement. As a further result of the
13 settlement, Dumitru is no longer subject to efforts by Trustee Krohn to enforce the Collection
14 Judgment and is free to negotiate with the Debtors or continue with additional litigation in State
15 Court.

16 Based on the record, the court concludes that Dumitru has failed to meet his burden under
17 FRCP 60(d)(3) for obtaining any relief from the Compromise Order nor the Abandonment
18 Order.¹³

19 Finally, although Dumitru has failed to demonstrate that he is entitled to relief from the
20 Abandonment Order and the Compromise Order, the court has considered his alternative motion

22 ¹² As part of the compromise, Dumitru agreed to dismiss the Stay Motion Appeal. Thus,
23 among other things, Dumitru no longer disputes that the bankruptcy court cannot provide relief
24 from the Collection Judgment entered by the State Court. Moreover, neither the Compromise
25 Order or the Abandonment was appealed, nor has either been stayed. Absent a stay pending
26 appeal of either order, or, a stay of either order, the parties are bound to their terms.

27 ¹³ FRCP 60(b) also allows for relief from an order based on “fraud..., misrepresentation,
28 or misconduct by an opposing party”... FED.R.CIV.P. 60(b)(3). In this instance, Dumitru
originally alleged that there was fraud on the court as a basis for reopening the Chapter 7 case
and again asserts fraud on the court in connection with approval of the Compromise Motion and
the Abandonment Motion. Dumitru had not met his burden of demonstrating fraud under either
rule, nor has he demonstrated that the outcome of either motion would have been effected.

1 to enforce or confirm a settlement that Dumitru allegedly reached with Attorney Winterton to
 2 accept \$17,500 in full satisfaction of the balance of the Collection Judgment abandoned by the
 3 bankruptcy estate. Because the Abandonment Order remains in place, however, the balance of
 4 the Collection Judgment is not property of the estate. Additionally, the Debtors' discharge in
 5 Chapter 7 cannot be revoked, and the court has no authority over their interest in the Collection
 6 Judgment. In other words, the bankruptcy court has no authority to enforce or confirm a
 7 settlement between non-debtor parties over non-estate property.¹⁴ The alternative motion for
 8 relief cannot be granted.

9 **IT IS THEREFORE ORDERED** that the Motion for Relief From Judgment or Order of
 10 Compromise, Settlement and Abandoning Judgment Claim to Debtor Based Upon Federal Rules
 11 of Bankruptcy Procedure 9024 Incorporating [sic] FRCP 60(b)(3) and 60(d)(3) Extrinsic
 12 Fraud and Fraud Upon Court; and/or in the Alternative, Motion to Confirm Global Settlement
 13 Agreement Reached Between Estate Special Counsel David Winterton, Esq. and Gabriel
 14 Dumitru for Payment of \$17,500 as Full and Final Payment and Compromise of Estate Asset
 15 (Debtor's [sic] Uncollected Judgment Balance), brought by creditor Gabriel R. Dumitru, Docket
 16 No. 142, be, and the same hereby is, **DENIED**.

17
 18 Copies sent via CM/ECF ELECTRONIC FILING

19 Copies sent via BNC to:

20 KHALIQUEZ ZAMAN
 21 FARAH AHMAD
 22 7117 TOWN FOREST AVE
 LAS VEGAS, NV 89179

23 GABRIEL R. DUMITRU
 24 3605 PYRAMID DRIVE
 LAS VEGAS, NV 89107

25
 26 ###
 27
 28

¹⁴ See discussion at note 10, supra.