



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
July 18, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 18-10895-MKN
)	Chapter 7
KHALIQUEZ ZAMAN and)	
FARAH AHMAD,)	
)	Date: July 13, 2022
Debtors.)	Time: 2:30 p.m.
)	

**ORDER ON MOTION TO LIFT STAY; MOTION TO DISMISS BANKRUPTSY[sic];
MOTION TO VOID JUDGEMENT RULE 60(d)(3)/RULE 9024; MOTION TO DISMISS
ATTORNEY DAVID WINTERTON¹**

On July 13, 2022, the court heard the Motion to Lift Stay, Motion to Dismiss Bankruptsy[sic], Motion to Void Judgement Rule 60(d)(3)/RULE 9024, and Motion to Dismiss Attorney David Winterton. (“Motion”), brought by Gabriel R. Dumitru (“Movant”) *in pro se*. The appearances of all parties and 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 and Farah Ahmad (“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

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 “FRE” are to the Federal Rules of Evidence.

1 Krohn”). A Notice of Chapter 7 Bankruptcy Case was filed scheduling a meeting of creditors for
2 March 21, 2018, and setting a deadline of May 21, 2018, for parties in interest to object to the
3 Debtors’ discharge. (ECF No. 6).

4 On March 21, 2018, a report of no distribution was docketed by Trustee Krohn. (ECF
5 No. 14).

6 On June 1, 2018, an order of discharge was entered. (ECF No. 18).

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

8 On December 22, 2021, Movant filed a separate motion to reopen the Chapter 7 case.
9 (ECF No. 21).

10 On February 14, 2022, an order was entered reopening the Chapter 7 case. (ECF No.
11 25).

12 On February 16, 2022, Trustee Krohn was reappointed as the trustee in the reopened
13 Chapter 7 case. (ECF No. 26).

14 On March 22, 2022, Debtors filed an amended Schedule “A/B” listing at Item 33 “Legal
15 claims and judgment against Gabriel Dumitru under case number A-18-769267-C in the total of
16 amount \$56,212.00, inclusive of \$20,000.00 for the underlying breach of contract claim and
17 \$36,212.00 for attorney fees and costs; attorney is David Winterton.” Debtors also included an
18 amended SOFA listing at Item 9 case number A-18-769267-C (“Collection Action”) as
19 concluded in the District Court, Clark County, Nevada (“State Court”). (ECF No. 31).²

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21 ² Pursuant to FRE 201(b), the court takes judicial notice of documents maintained by the
22 State Court in the Collection Action. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See
23 also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank, 136 F.3d 1360, 1364 (9th
24 Cir. 1998) (taking judicial notice of court filings in a state court case where the same plaintiff
25 asserted similar claims); In re Blas, 614 B.R. 334, 339 n.27 (Bankr.D.Alaska 2019) (“This court
26 may take judicial notice of the dockets of other courts.”). Those documents include a Judgment
27 filed January 11, 2019, in favor of Khaliquez Zaman against Gabriel Dumitru (“Collection
28 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 (“Order of Affirmance”), 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

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

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

11 On May 23, 2022, the instant Motion was filed by Movant in pro se. (ECF No. 38).
12 Attached to the Motion are copies of numerous documents marked as 15 separate exhibits.
13 Exhibits 1, 3, 4, and 7, appear to be copies of documents filed in the Chapter 7 proceeding.
14 Exhibits 2, 8, 9, 10, 12, 13, and 14 appeared to be copies of documents filed in the Collection
15 Action. Exhibits 5, 6, and 15 appear to be copies of documents publicly available on line.
16 Exhibit 11 appears to be a copy of an email exchange with the U.S. Postal Service that took place
17 in January 2018.

18 On June 9, 2022, Movant filed supplemental points and authorities (“Brief”) in support of
19 the Motion, as well as a separate supporting declaration. (ECF Nos. 39 and 40). Attached to the
20 Brief is a copy of a proposed order granting the Motion (“Proposed Order”), as well as copies of
21 numerous documents marked as 16 separate exhibits. Exhibits 1, 2, and 3 appear to be copies of
22 materials in connection with an agreement between the Debtors and the Movant. Exhibit 4
23 appears to be a copy of an email exchange with the U.S. Postal Service that took place in January
24 2018. Exhibits 5, 6, 7, 8, 9, 10, and 15 appear to be copies of documents filed in the Collection
25 Action. Exhibits 11, 12 13, and 16 appear to be copies of documents filed in the Chapter 7
26 proceeding. Exhibit 14 appears to be a copy of a document publicly available on line. The

27 _____
28 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.

1 Motion was noticed to be heard on July 13, 2022. (ECF No. 41).

2 On June 16, 2022, an opposition to the Motion was filed by attorney Winterton
3 (“Winterton Opposition”) along with his supporting declaration. (ECF Nos. 46 and 47).

4 On June 23, 2022, Movant filed a reply to the Winterton Opposition (“Reply”). (ECF
5 No. 48).

6 On June 23, 2022, Trustee Krohn filed a joinder in the Winterton Opposition. (ECF No.
7 49).

8 On June 28, 2022, Movant filed a reply to the joinder (“Joinder Reply”). (ECF No. 51).

9 On July 11, 2022, Movant filed a “Notice of Related Filings” of two pleadings filed in
10 connection with the Collection Action. (ECF No. 52). Exhibit 1 is a copy of a reply filed by
11 attorney Winterton on July 8, 2022 in the Collection Action, as special counsel for Trustee
12 Krohn. Exhibit 2 is a copy of Movant’s reply to that document filed on July 11, 2022 in the
13 Collection Action. Attached to that document are copies of 15 separately marked exhibits.
14 Exhibits 1 and 2 are copies of decisions or rulings entered in a bankruptcy case entitled In re
15 Blue Pine Group.³ Exhibits 3, 4, and 5, 9, 10, appear to be copies of documents filed in the
16 Chapter 7 proceeding. Exhibit 6 appears to be a copy of a lease agreement. Exhibits 7 appears
17 to be a copy of a document publicly available on line. Exhibits 8 appears to be a copy of a
18 document regarding the transfer of a telephone number. Exhibit 11 and 12 appear to be copies of
19 materials in connection with an agreement between the Debtors and the Movant. Exhibit 13
20 appears to be a copy of a document filed in the Collection Action. Exhibit 14 appears to be a
21 copy of the Order of Affirmance by the Nevada Court of Appeals affirming the denial of
22 Movant’s motion to set aside a default judgment entered in the Collection Action. Exhibit 15
23 appears to be a copy of an order filed April 18, 2022, from the Nevada Supreme Court denying
24 Movant’s petition for review of the lower court ruling.

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26 ³ The two exhibits consist of copies of the bankruptcy court decision imposing sanctions
27 against attorney Winterton and the Bankruptcy Appellate Panel decision affirming the decision.
28 On further appeal, however, the Ninth Circuit Court of Appeals concluded that the sanction
award based on culpable conduct of attorney Winterton was excessive and reduced it from
\$109,528 to \$11,000. See Winterton v. Blue Pine Group, Inc. (In re Blue Pine Group, Inc.), 526
Fed.Appx. 768 (9th Cir. 2013).

DISCUSSION

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2 The instant Motion apparently seeks five forms of relief: (1) relief from the automatic
3 stay to allow the Collection Action to proceed in State Court; (2) dismissal of the Chapter 7 case;
4 (3) relief from the Collection Judgment; (4) disqualification of Attorney Winterton; and (5) a bar
5 against enforcement of the Collection Judgment based on judicial estoppel. See Motion at 2:3 to
6 4:8; Brief at 11:9 to 21:11; Proposed Order at 1:26 to 2:6. The court has reviewed and
7 considered the record presented. The court concludes that none of the relief can be granted.
8 Several reasons require this conclusion.

9 First, the Collection Judgment constitutes property of the Chapter 7 estate. There is no
10 dispute that the Collection Action was pending before the State Court at the time the Chapter 7
11 petition was filed on February 22, 2018. The Collection Action, therefore, constituted a legal
12 interest in property and property of the bankruptcy estate under Section 541(a)(1). See Albert v.
13 Golden (In re Albert), 998 F.3d 1088, 1091 (9th Cir. 2021). When the Chapter 7 case was closed
14 on June 4, 2018, the undisclosed Collection Action was never administered and was not
15 abandoned under Section 554(c); it therefore remained property of the Chapter 7 estate. See 11
16 U.S.C. § 554(d). As a result, the interest in the Collection Judgment may now be administered
17 by the Chapter 7 Trustee.

18 Second, the automatic stay arises upon the filing of a bankruptcy petition. See 11 U.S.C.
19 § 362(a). In this case, the automatic stay did not apply to continuation of the Collection Action
20 because it was not an action or proceeding against the Debtors to recover a claim against the
21 Debtors that arose before the Chapter 7 petition was filed. See 11 U.S.C. § 362(a)(1). Continued
22 prosecution of the Collection Action did not violate the automatic stay and the Collection
23 Judgment is not void. Compare Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571-
24 72 (9th Cir. 1992)(actions taken in violation of the automatic stay are void rather than merely
25 voidable). The automatic stay terminated as to the Debtors when they received their discharge
26 on June 1, 2018. See 11 U.S.C. § 362(c)(2)(C). Because the automatic stay arose only with the
27 filing of the Debtors' bankruptcy petition, reopening the Chapter 7 case on February 14, 2022,
28 did not reinstate or reimpose the automatic stay. See Canter v. Canter (In re Canter), 299 F.3d

1 1150, 1155 n.1 (9th Cir. 2002); In re Lattin, 461 B.R. 832, 834 (Bankr.D.Nev. 2011). Thus, there
2 is no automatic stay in effect as to the Collection Action and relief from stay cannot be granted.

3 Third, dismissal of the Chapter 7 proceeding is unavailable because none of the grounds
4 for dismissal under Section 707(a) exist. Revocation of the Chapter 7 discharge issued on June
5 1, 2018, also is unavailable under Section 727(d) because the one-year deadline to seek
6 revocation expired no later than June 1, 2019 or June 8, 2019. See 11 U.S.C. §727(e).

7 Fourth, the court is barred by the Rooker-Feldman doctrine⁴ from granting relief from the
8 Collection Judgment. The Rooker-Feldman doctrine bars relief that “would require the [federal
9 court] to determine that the state court’s decision was wrong and thus void.” Henrichs v. Valley
10 View Dev., 474 F.3d 609, 616 (9th Cir. 2007).⁵ Application of the doctrine bars both direct
11 appeals of state court judgments to a lower federal court as well as “de facto” appeals where the
12 losing party “asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks
13 relief from a state court judgment based on that decision.” Noel v. Gall, 341 F.3d 1148, 1164
14 (9th Cir. 2003); Levandowski v. DiPasquale (In re Levandowski), 2021 WL 948710, at * 3 (D.
15 Ariz. Mar. 12, 2021). In this instance, Movant seeks relief from the Collection Judgment based
16 on his argument that the State Court was legally incorrect in entering a default judgment. The
17 records provided by the Movant plainly demonstrate that he sought relief from the judgment
18 from the State Court, was denied relief from that judgment by the Nevada Court of Appeals,⁶ and

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20 ⁴ The doctrine is based on two decisions of the U.S. Supreme Court: Rooker v. Fidelity
Trust Co., 263 U.S. 413 (1923) and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).

21 ⁵ The Rooker-Feldman doctrine is applicable in bankruptcy cases to bar bankruptcy
22 courts from reviewing state court decisions. See, e.g., In re Thomason, 2022 WL 318181, at *8
23 (Bankr. D. Idaho Feb. 2, 2022)(claim objection proceeding); In re Wollner, 2020 WL 2764693,
24 at *4 (Bankr. D. Ariz. May 26, 2020)(adversary to determine validity of prior state court
foreclosure judgment); In re Fikrou, 2019 WL 5783260, at *4 (Bankr. D. Nev. July 31,
2019)(debtor’s motion to vacate state court order denying declaratory relief).

25 ⁶ The Order of Affirmance indicates that the Movant retained legal counsel to seek relief
26 from the Collection Judgment. Counsel unsuccessfully sought relief from the judgment from the
27 trial court and again was unsuccessful in seeking reconsideration. Movant sought relief under
28 NRCP 60(d)(3) based on allegations of fraud on the court. Because the trial court had permitted
the Movant to be served by publication, the alleged fraud on the court was immaterial. The
Nevada Court of Appeals observed: “The district court, however, dismissed Dumitru’s fraud on

1 was then denied review by the Nevada Supreme Court. Whether Movant intends to seek further
2 review of that decision by the United States Supreme Court is unknown. There is simply no
3 basis, however, for the Movant to obtain relief from the Collection Judgment from this court.

4 Fifth, no basis exists to disqualify attorney Winterton from acting as special counsel for
5 the Chapter 7 Trustee. Attorney Winterton's prior representation of the Debtors in the Collection
6 Action was disclosed as well as his lack of knowledge of the bankruptcy filing.⁷ Attorney
7 Winterton's familiarity with the Collection Action warranted his employment as special counsel
8 under Section 327(e) with any compensation permitted only after duly noticed application.⁸
9 Moreover, attorney Winterton's interest in continued prosecution of the Collection Action is not
10 adverse to Trustee Krohn's interest in maximizing recovery for the bankruptcy estate. See, e.g.,
11 Lenneer v. Diamond Pet Food Processors of California, LLC, 147 F.Supp.3d 1037, 1050-52
12 (E.D. Cal. 2015) (employment of special counsel for Chapter 7 estate and for Chapter 7 debtor to
13 pursue undisclosed discrimination causes of action is permitted under Section 327(e) where
14 interests were aligned and no adverse interests existed).

15 Finally, no basis exists to bar enforcement of the Collection Judgment based on judicial
16 estoppel. Judicial estoppel may be applied if a bankruptcy debtor seeks to benefit from an
17 undisclosed cause of action. See, e.g., Michael v. State Farm Fire and Casualty, 2019 WL
18 1960268 (D. Nev. May 2, 2019) (debtor's failure to disclose equipment on chapter 7 schedules
19 precluded subsequent pursuit of insurance claim). Judicial estoppel is not applied, however, to
20 prevent a bankruptcy trustee from pursuing an undisclosed claim for relief on behalf of creditors
21 of the bankruptcy estate. See, e.g., Lenneer, 147 F.Supp.3d at 1047-48 (judicial estoppel does

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23 the court argument based on the fact that the photographs allegedly showing fraud were
24 submitted to the court well after the court allowed service by publication, and therefore, were not
relied on by the court in permitting such service." See Order of Affirmance at 4.

25 ⁷ There is no dispute that attorney Winterton is not the attorney who filed the Chapter 7
26 petition for the Debtors, nor the amended Schedules.

27 ⁸ Attorney Winterton's conduct in connection with other bankruptcy cases does not
28 appear to be related to his conduct in the instant proceeding. See also discussion at note 3, supra.
Moreover, it appears that Movant may have attempted to raise the same conduct before the State
Court without success.

1 not preclude Chapter 7 trustee from pursuing undisclosed causes of action even if the Chapter 7
2 debtor was barred); Lupian v. Central Valley Residential Builders, L.P., 2014 WL 465445, at * 8
3 (S.D. Cal. Feb. 5, 2014)(Chapter 7 trustee was not judicially estopped from pursuing overtime
4 pay claim not disclosed in debtor’s schedules). This result is consistent with Section 554(d)
5 where abandonment does not occur upon closure of a Chapter 7 proceeding for property of the
6 estate that was never disclosed. Thus, judicial estoppel does not bar⁹ the Chapter 7 Trustee from
7 enforcing the Collection Judgment.¹⁰

8 Based on the foregoing, the court concludes that the relief requested by the Motion
9 cannot be entered.

10 **IT IS THEREFORE ORDER** that the Motion to Lift Stay, Motion to Dismiss
11 Bankruptcy[sic], Motion to Void Judgement Rule 60(d)(3)/RULE 9024, and Motion to Dismiss
12 Attorney David Winterton, brought by Gabriel R. Dumitru, Docket No. 38, be, and the same
13 hereby is, **DENIED**.

14
15 Copies sent via CM/ECF ELECTRONIC FILING

16 Copies sent via BNC to:

17 GABRIEL R. DUMITRU
18 3605 Pyramid Drive
19 Las Vegas, NV 89107

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

24
25
26
27
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25 ⁹ Movant also asserts that the Collection Judgment is void based on the same judicial
26 estoppel argument. See Brief at 4:8. He raised the same argument to the Nevada Court of
27 Appeals and was rejected. See Order Denying Rehearing at 1 n.1.

28 ¹⁰ The court expresses no view on whether Movant otherwise can obtain relief from the
Collection Judgment in the State Court.