



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
August 08, 2019

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 19-13180-MKN
	)	Chapter 13
GUETATCHEW FIKROU,	)	
aka GUETA FIKROU	)	Date: July 31, 2019
aka GET FIKRU	)	Time: 2:30 p.m.
aka ABET JUSTICE LLC, a none profit [sic]	)	
organization,	)	
	)	
Debtor.	)	

**ORDER ON DEBTOR’S PROPERTY TRANSFER UNDER FRAUDULANT [SIC] MANNER<sup>1</sup>**

On July 31, 2019, the court conducted a hearing on Debtor’s Property Transfer Under Fraudulant [sic] Manner (“Motion”), filed by Guetatchew Fikrou (“Debtor”). The appearances of counsel and the pro se Debtor were noted on the record. After arguments were presented, the matter was taken under submission based on the record before the court.

**BACKGROUND<sup>2</sup>**

<sup>1</sup> 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. All references to “FRCP” are to the Federal Rules of Civil Procedure. All references to “NRCP” are to the Nevada Rules of Civil Procedure.

<sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the docket in the above-captioned Chapter 13 proceeding. 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); Bank of Am., N.A. v. CD-04, Inc. (In re Owner

1 On May 21, 2019, Debtor filed a voluntary Chapter 13 petition. (ECF No. 1). On June  
2 21, 2019, Debtor filed the instant Motion that he noticed to be heard on July 31, 2019. (ECF  
3 Nos. 27 and 28). On July 17, 2019, America First Credit Union (“AFCU”), Holli Perry, and  
4 Darin Hammond (collectively “AFCU Parties”) filed a written objection to the Motion  
5 (collectively “AFCU Objection”). (ECF No. 39). On July 26, 2019, Debtor filed a reply in  
6 support of the Motion (“Reply”). (ECF No. 41).

7 On the same date he filed the instant Motion, Debtor filed a document entitled “Request  
8 for Enforcement [sic] of the Stay” that he also noticed to be heard on July 31, 2019. (ECF Nos.  
9 29 and 30). On July 17, 2019, the Bank of New York Mellon as Trustee for the  
10 certificateholders of CWMBBS, Inc., CHL Mortgage Pass-through Trust 2007-J2 Mortgage Pass-  
11 through Certificates, Series 2007-J2 (“BONY”) filed a written opposition to that motion. (ECF  
12 No. 37). On July 25, 2019, Debtor filed a reply in support of that motion. (ECF No. 40).<sup>3</sup>

13 The documents submitted in connection with the instant Motion<sup>4</sup> indicate as follows:

14 On August 31, 2007, AFCU held the first and second liens on real property located at  
15 4734 Cortina Rancho Street, Las Vegas, NV 89147 (“Cortina Rancho Property”). See Motion at  
16 3:16-25.

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Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may  
20 consider the records in this case, the underlying bankruptcy case and public records.”).

21 <sup>3</sup> That motion is the subject of a separate order entered contemporaneously with the  
instant Order.

22 <sup>4</sup> The allegations in the parties’ respective pleadings are not all substantiated by evidence.  
23 Additionally, the exhibits that were filed with the parties’ respective pleadings do not assist the  
24 court in fully developing the background facts for purposes of this ruling. Considering these  
25 deficiencies, and to fully analyze the pro se Debtor’s arguments, the court’s recitation of  
26 background facts will, as needed, assume the accuracy of allegations made in the Debtor’s  
27 papers. The court additionally assumes the accuracy of all unauthenticated exhibits attached to  
28 the pleadings, as neither party posited objections to any exhibits. Finally, the court also takes  
judicial notice of all pleadings filed on the docket of the Federal Case, as subsequently defined,  
with references to any pleadings on the docket of the Federal Case identified as “Dkt.” See note  
2, supra.

1 On January 7, 2013, AFCU filed a Notice of Breach and Default and Election to Cause  
2 Sale of Real Property under Deed of Trust regarding the Cortina Rancho Property with the Clark  
3 County Recorder at Instrument No. 201301070002472. See Motion at 4:1-4; see also Ex. “C” to  
4 Reply at Ex. “1.” This foreclosure sale appeared to relate to AFCU’s second lien on the Cortina  
5 Rancho Property.

6 On May 13, 2013, Back Canyon Holdings L.L.C. (“BCH”) was the successful bidder at  
7 the foreclosure sale regarding the second lien on the Cortina Rancho Property. See Motion at  
8 4:4-9.

9 On June 14, 2013, BCH quitclaimed its interest in the Cortina Rancho Property to Abet  
10 Justice, L.L.C. (“Abet”), which is an entity owned by the Debtor. See Motion at 4:9-13; see also  
11 Ex. “C” to Reply at Ex. “5” (reflecting that Debtor is the owner and manager of Abet).

12 On June 28, 2013, AFCU instituted another foreclosure proceeding on the Cortina  
13 Rancho Property. See Motion at 4:13-22. This foreclosure sale appeared to relate to AFCU’s  
14 first lien on the Cortina Rancho Property.

15 On or about July 10, 2013, Debtor contacted Holli Perry<sup>5</sup> for the purpose of paying off  
16 the first lien for an anticipated amount of between \$118,500 to \$138,000. However, Holli Perry  
17 allegedly informed Debtor that the payoff amount was approximately \$256,085.96. See Motion  
18 at 4:22-5:3; see also Ex. “C” to Reply at Ex. “3.”

19 On October 25, 2013, a Notice of Trustee’s Sale was posted on Debtor’s garage door  
20 reflecting a foreclosure sale scheduled for November 26, 2013. See Motion at 5:3-6; see also Ex.  
21 “C” to Reply at Ex. “4” (Notice of Trustee’s Sale, filed with the Clark County Recorder on  
22 October 24, 2013, at Instrument No. 201310240002949).

23 On November 4, 2013, Debtor expressed his disagreement with the payoff amount to  
24 Holli Perry, among others, stating that (1) the foreclosure sale was inappropriately directed to  
25 Abet when the borrowers, and not Abet, were in default under the first lien, and (2) the payoff  
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<sup>5</sup> Holli Perry appears to be involved with the Special Collections Department at AFCU.  
See Ex. “3” to Reply.

1 amount was substantially more than the fair market value of the Cortina Rancho Property. See  
2 Motion at 5:6-15; see also Ex. “C” to Reply at Ex. “5.”

3 On November 7, 2013, Debtor received a letter from AFCU’s counsel, Darin Hammond,  
4 stating:

5 Your letter to Holli Perry dated November 4, 2013 styled  
6 “Reply to the Trustee’s Sale” has been referred to me for a  
7 response. America First Credit Union has the right to foreclose the  
8 first lien in the above-matter[sic]. Your purchase of the property at  
9 the foreclosure of the second lien was always subject to the rights  
10 of America First Federal [sic] Credit Union. America First Credit  
11 Union has been following the foreclosure requirements in order to  
12 foreclose on the first lien. Thus, America First Credit Union has  
13 decided to reject your offer of purchasing the property for anything  
14 less than the payoff of the prior obligor which is \$256,085.96 as of  
15 September 15, 2013.

16 Although you may be entitled to notice of the sale as an  
17 occupant of the property, you have no contractual privity with  
18 America First Credit Union. America First Credit Union has  
19 decided to go through with its foreclosure sale scheduled for  
20 November 26, 2013. If you have any questions or concerns you  
21 may contact me.

22 Motion at 5:15-20; Ex. “C” to Reply at Ex. “6.”

23 On November 12, 2013, Debtor and Abet filed a complaint (“Federal Complaint”) against  
24 AFCU, Holli Perry, Darin Hammond, Stewart Title Company, and Margi McCarthy in the  
25 United States District Court for the District of Nevada (“Federal District Court”), denominated  
26 Case No. 2:13-cv-02082-MMD-PAL (“Federal Case”). See Motion at 5:20-23; see also Federal  
27 Case, Dkt. 1.

28 On November 26, 2013, AFCU foreclosed on its first lien pursuant to a credit bid. See  
Motion at 6:1-4; see also Ex. “A” to AFCU Objection; Ex. “C” to Motion at Ex. “7” (Trustee’s  
Deed Upon Sale, filed with the Clark County Recorder on December 11, 2013, at Instrument No.  
201312110001442).

On March 6, 2014, the Federal District Court entered an order in the Federal Case  
dismissing the Federal Complaint. See Ex. “D” to AFCU Objection.

1 On March 10, 2014, AFCU filed an eviction lawsuit against Abet in the Clark County  
2 District Court (“State District Court”), denominated Case No. A-14-697137-C (“State Case”).  
3 See Motion at 6:4-6.

4 On July 7, 2015, the Federal District Court entered an order in the Federal Case denying a  
5 motion to reopen the Federal Case filed by Debtor and Abet. Federal Case, Dkt 61. The order  
6 further stated, in pertinent part, that “[t]he Court will not entertain any further filings, including  
7 another motion for reconsideration.” Id. at 5:13-14.

8 On July 13, 2015, the State District Court entered an order in the State Case, specifying  
9 as follows:

10 Defendants’ motion, to declare the November 26, 2013  
11 Trustee’s sale Null and void, was heard on June 9, 2015 at 9:00  
12 a.m. Defendant Guetatchew Fikrou (“Fikrou”) (pro-per) and  
13 Defendant ABET Justice L.L.C.’s (“ABET”) (or jointly  
14 “Defendants”), through its attorney of record, the Law Offices of  
15 Cooper Coon, LTD were present in the court room. Darin  
16 Hammond counsel for Plaintiff American First Credit Union  
17 (“AFCU”) was also present in the court room.

18 The Court having considered the motion, the pleadings and  
19 papers on file herein and the oral arguments by both sides;

20 IT IS HEREBY ORDERED that the Defendants’ motion,  
21 to declare the November 26, 2013 Trustee’s sale Null and void, is  
22 DENIED without Prejudice.

23 Ex. “E” to Reply.

24 On or around August 30, 2016, a Quit Claim Deed was filed with the Clark County  
25 Recorder reflecting Abet’s transfer to Debtor of whatever interest it held in the Cortina Rancho  
26 Property. See Motion at 7:4-7.

27 On October 3, 2016, the State District Court entered an order dismissing the State Case  
28 without prejudice (“State Dismissal Order”). See Ex. “B” to AFCU Objection.

On December 16, 2016, it appears that the Nevada Supreme Court entered an order  
dismissing Debtor’s appeal of the State Dismissal Order. See Ex. “C” to AFCU Objection.

1 On January 2, 2018, Debtor represents that he filed Case No. A-18-767042-C (“2018  
2 Case”) in the State District Court. See Reply at 7:24-25. There is nothing in the record before  
3 the court identifying the substance of the 2018 Case.

4 On May 21, 2019, Debtor filed the current voluntary Chapter 13 bankruptcy case.

5 On June 5, 2019, Debtor filed his schedules of assets and liabilities (“Schedules”) and  
6 statement of financial affairs (“SOFA”). (ECF No. 16). In Schedule “A/B,” Debtor listed an  
7 interest in the Cortina Rancho Property. In Schedule “D,” Debtor listed AFCU as holding a  
8 disputed secured claim on the Cortina Rancho Property.

9 On June 21, 2019, Debtor filed the instant Motion.

10 On July 17, 2019, the AFCU Parties filed the AFCU Objection.

11 On July 26, 2019, Debtor filed his Reply.

## 12 DISCUSSION

13 In his Motion, Debtor states, in pertinent part:

14 5. Debtor is respectfully asking for this Honorable Court to  
15 review the matter to re-open the case, which shows that his property  
16 was fraudulently transferred in violation of the automatic stay  
because:

17 a) Debtor was out of the USA when the order was entered; b)  
18 Debtor [sic] delay in filing this motion is due to the facts of his  
19 mistake, inadvertence, surprise, or excusable neglect and to his  
recent illness; and most important of all: c) Debtor believes that the  
Defendants have violated his due process rights as well.

20 6. Debtor hopes and pray [sic] that this Bankruptcy Court will  
21 review the matter to reopen this matter in this Bankruptcy Court and  
22 provide adequate protection to the Debtor’s property which was  
transferred to a third party while a Lis pendens was filed against the  
property.

23 Motion at 2:17-3:3. The remainder of Debtor’s Motion and Reply raise additional arguments  
24 that either were raised and addressed, or could have been raised and addressed, in proceedings  
25 before the Federal District Court and State District Court, including, but not limited to, claims for  
26 intentional misrepresentation, due process violations, excusable neglect under FRCP 60(b) and  
27 NRCP 60(b), wrongful foreclosure, negligence, and unjust enrichment. Debtor further argues  
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1 that the Cortina Rancho Property constitutes property of the estate to which the automatic stay  
2 applies. Debtor is incorrect in all respects.

3 Debtor acknowledges that he unsuccessfully attempted to challenge AFCU's foreclosure  
4 in the Federal District Court and in the State District Court and that both matters concluded years  
5 before he filed his bankruptcy case. By his Motion, Debtor is essentially asking this bankruptcy  
6 court to review or modify the orders of those courts. This court simply lacks the authority to do  
7 so. See Henrichs v. Valley View Dev., 474 F.3d 609, 614 (9th Cir. 2007) ("The *Rooker-*  
8 *Feldman* doctrine provides that federal district [and bankruptcy] courts lack jurisdiction to  
9 exercise appellate review over final state court judgments .... Essentially, the doctrine bars state-  
10 court losers complaining of injuries caused by state-court judgments rendered before the district  
11 [or bankruptcy] court proceedings commenced from asking district [or bankruptcy] courts to  
12 review and reject those judgments.") (quotations and citations omitted); Ryan v. Loui (In re  
13 Corey), 892 F.2d 829, 834 (9th Cir. 1989) ("Appellants raise a number of objections to the state  
14 court's decision based on the Constitution and state and federal law. Appellants' claims thus  
15 represent a collateral attack upon the judgment of a state court. This attack is beyond the  
16 jurisdiction of federal courts to consider, even though it purports to raise constitutional issues.").

17 Debtor also admits that AFCU foreclosed on the Cortina Rancho Property on November  
18 26, 2013, i.e., more than five years before he commenced this bankruptcy case. As of the  
19 Chapter 13 petition date, the Cortina Rancho Property was not property of the bankruptcy estate  
20 because Debtor did not have a legal or equitable interest in it. See 11 U.S.C. § 541(a)(1)  
21 (property of the estate includes "all legal or equitable interests of the debtor in property as of the  
22 commencement of the case."). Therefore, because all of the allegedly improper actions occurred  
23 prior to the commencement of this bankruptcy case, the automatic stay under Section 362 did not  
24 apply and did not prohibit any such actions. See 3 COLLIER ON BANKRUPTCY, ¶ 362.02 (Richard  
25 Levin & Henry J. Sommer, eds., 16th ed.) ("The [automatic] stay is effective automatically and  
26 immediately upon the filing of a bankruptcy petition, whether voluntary, joint or involuntary.").

1 Debtor cannot re-litigate in the bankruptcy court the claims and arguments that he lost in  
2 other courts. Moreover, Debtor cannot protect in the bankruptcy court the property interests that  
3 he no longer held on the petition date.

4 **IT IS THEREFORE ORDERED** that Debtor's Property Transfer Under Fraudulent  
5 [sic] Manner, Docket No. 27, be, and the same hereby is, **DENIED**.

6  
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:  
9 GUETATCHEW FIKROU  
10 PO BOX 777064  
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