



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
July 20, 2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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|---------------------|---|------------------------|
| In re: |) | Case No.: 22-11067-MKN |
| |) | Chapter 13 |
| JORGE ERNESTO ALAS, |) | |
| |) | Date: July 13, 2022 |
| Debtor. |) | Time: 2:30 p.m. |
| |) | |

**ORDER ON OBJECTION TO PROOF OF CLAIM 2-1 OF
WEST COAST SERVICING INC.¹**

On July 13, 2022, the court heard the Objection to Claim of West Coast Servicing Inc. (“Claim Objection”) brought by the above-captioned Debtor. The appearances of all parties and counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND²

On March 27, 2022, a voluntary Chapter 13 petition was filed by Jorge Ernesto Alas (“Debtor”). (ECF No. 1). Debtor’s address is shown as 9891 King Bird Court, Las Vegas,

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 “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

² 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.”).

1 Nevada 89147 (“Residence”). A Notice of Chapter 13 Bankruptcy Case (“Bankruptcy Notice”)
2 was mailed to all creditors. (ECF No. 5). The Bankruptcy Notice also scheduled a meeting of
3 creditors for May 3, 2022, and set a deadline of June 6, 2022, for creditors to file proofs of claim.

4 On April 25, 2022, creditor West Coast Servicing, Inc. (“WCS”) filed proof of claim 2-1
5 (“POC 2-1”) in the amount of \$244,556.79, secured by a deed of trust (“DOT”) against the
6 Debtor’s residence. Attached to POC 2-1 is a copy of that DOT. POC 2-1 is signed under
7 penalty of perjury by Glenn Ohno on behalf of WCS.

8 On May 6, 2022, Debtor filed his schedules of assets and liabilities (“Schedules”). (ECF
9 No. 16). On his Schedule “D,” Debtor attests that the Residence is worth \$535,000 and is the
10 collateral for two loans: apparently a first deed of trust securing a debt of \$224,929.97 in favor of
11 creditor Mr. Cooper, and apparently a second deed of trust securing a debt of \$217,000 in favor
12 of WCS.

13 On May 9, 2022, Debtor filed his statement of financial affairs (“SOFA”). (ECF No. 19).
14 Item 9 of the SOFA does not disclose the Declaratory Relief Action.

15 On May 23, 2022, WCS filed a motion for relief from stay to pursue its remedies against
16 the Residence (“RAS Motion”) and scheduled it to be heard on June 29, 2022. (ECF Nos. 25
17 and 26).

18 On June 7, 2022, Debtor filed the instant Claim Objection and noticed it to be heard on
19 July 11, 2022. (ECF Nos. 31 and 32).

20 On June 7, 2022, Debtor also filed his opposition to the RAS Motion. (ECF No. 33).

21 On June 20, 2022, WCS filed a reply in support of the RAS Motion. (ECF No. 36).

22 On June 26, 2022, Debtor filed an ex parte motion to participate in the Mortgage
23 Modification Mediation Program. (ECF No. 37).

24 On June 27, 2022, WCS filed its opposition to the Claim Objection that was accompanied
25 by the Declaration of Glenn Ohno (“Ohno Declaration”). (ECF No. 40). Attached to the Ohno
26 Declaration as Exhibits 1-4 and 1-5, is a copy of a complaint for declaratory relief (“Complaint”)
27 styled as Jorge Alas and Kim Alas v. West Coast Servicing Inc., denominated Case No. A-21-
28

1 837828-C (“Declaratory Relief Action”)³ as well as a copy of the “Findings of Fact, Conclusions
2 of Law and Order Denying Plaintiff’s Motion for Preliminary Injunction and Granting
3 Defendant’s Countermotion for Summary Judgment” entered by the State Court on March 28,
4 2022 (“Summary Judgment Order”).

5 On June 29, 2022, the hearing on the RAS Motion was continued to July 13, 2022.

6 On June 30, 2022, WCS filed its opposition to the MMM motion. (ECF No. 43).

7 On July 13, 2022, the Claim Objection was heard and the hearing on the RAS Motion
8 was continued to August 31, 2022.

9 DISCUSSION

10 Because a proof of claim is signed under penalty of perjury, the representations included
11 in the claim have evidentiary support. As a result, a properly filed proof of claim constitutes
12 prima facie evidence of the validity and amount of the claim. See FED.R.BANKR.P. 3001(f). The
13 claim is deemed allowed unless a party in interest objects. See 11 U.S.C. §502(a). To overcome
14 the prima facie evidence, the objecting party must provide evidence sufficient to overcome the
15 factual attestations included in the proof of claim. See Burke v. Reno-Sparks Indian Colony (In
16 re Affordable Patios & Sunrooms), 2022 WL 1115413, at *3 (B.A.P. 9th Cir. Apr. 13, 2022).

17 In this instance, the Claim Objection is not supported by any evidence whatsoever to
18 overcome the prima facie validity of the proof of claim signed under penalty of perjury by
19 WCS’s representative. On that basis, the Claim Objection must be overruled.⁴

20 Under FRBP 3008, reconsideration may be requested of an order allowing or disallowing
21 a claim. In the event the Debtor attempts to renew his Claim Objection, however, the Debtor
22 will have to overcome the effect of the Summary Judgment Order entered by the State Court.
23 There is no dispute that the Debtor commenced the Declaratory Relief Action to obtain a

24 ³ Although the Complaint is incorrectly captioned as being filed in the United States
25 District Court for the District of Nevada, it actually was filed in the Eighth Judicial District Court
26 for Clark County, Nevada (“State Court”).

27 ⁴ At the hearing, reference was made to a declaration in support of the Claim Objection,
28 but no such declaration was filed. The court offered to continue the hearing to allow a
declaration to be filed, or to allow the Claim Objection to be withdrawn, but WCS objected.
Instead, WCS requested that the Claim Objection be resolved on the current record.

1 preliminary injunction against WCS to prevent its enforcement of the DOT. Not only did the
2 State Court deny the Debtor's preliminary injunction request, it also granted summary judgment
3 on the merits in favor of WCS. It appears that all of the claims or arguments raised by the Claim
4 Objection could have been asserted by the Debtor in his Complaint seeking declaratory relief.
5 The claim preclusion and issue preclusion rules under Nevada law apply in this proceeding, see
6 Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1245 (9th Cir. 2001), and likely will bar the
7 Debtor from raising the same claims and issues.

8 Debtor having failed to obtain injunctive relief from the State Court to protect his
9 Residence, filed a voluntary Chapter 13 petition providing similar relief through the automatic
10 stay. Perhaps the Debtor's biggest hurdle, however, is the anti-modification language applicable
11 to a debtor's principal residence in Chapter 13. See 11 U.S.C. §1322(b)(2). That statute
12 prevents a Chapter 13 plan from including a provision to modify the rights of creditors with
13 claims secured by the individual debtor's principal residence. According to Debtor's Schedule
14 "D," the Residence is worth \$535,000 and the total secured debt, including the obligation to
15 WCS, is approximately \$442,000. Under these circumstances, WCS would not have a "wholly
16 unsecured" secured claim to which the anti-modification language does not apply. See Zimmer
17 v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1227 (9th Cir. 2002). Because the Debtor
18 concedes that he has not made any payments for approximately 13 years, it is unclear how he
19 will be able to formulate a Chapter 13 plan to cure the accrued arrearages and maintain his
20 current payments to both secured creditors. More important, even if the Debtor confirms a
21 Chapter 13 plan, he will not receive a discharge of his personal liabilities unless he completes his
22 plan payments. See 11 U.S.C. § 1328(a).

23 Based on the foregoing, the court concludes that the Debtor has failed to overcome the
24 prima facie validity of debts asserted in POC 2-1.

25 **IT IS THEREFORE ORDER** that the Objection to Claim of West Coast Servicing Inc.,
26 brought by Jorge Ernesto Alas, Docket No. 31, be, and the same hereby is, **OVERRULED**.

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28 Copies sent via CM/ECF ELECTRONIC FILING

1 Copies sent via BNC to:
2 JORGE ERNESTO ALAS
3 9891 KING BIRD CT.
4 LAS VEGAS, NV 89147

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