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FILED
MAY 10 2017
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 In re:) Case No. 16-23787-B-7
4 THOMAS OLIVER BROWN,) Adversary No. 16-2132
5)
6 Debtor(s).)

7 RICHARD A. BIAMA,)
8)
9 Plaintiff(s),)
10 v.)
11 THOMAS OLIVER BROWN,)
12)
13 Defendant(s).)

14
15 **SUPPLEMENTAL ORDER DENYING MOTION FOR RECONSIDERATION**
16 **WITHOUT PREJUDICE**

17 On March 30, 2017, plaintiff Richard A. Biama moved for
18 reconsideration of an order denying his earlier motion in limine
19 entered on March 22, 2017. The motion in limine sought to impose
20 collateral estoppel for purposes of a non-dischargeability claim
21 under 11 U.S.C. § 523(a)(2)(A) and preclude defendant Thomas O.
22 Brown from introducing evidence to contradict a pre-petition
23 arbitration award that states plaintiff proved fraud under state
24 law. The court denied plaintiff's motion in limine because
25 plaintiff failed to establish that the arbitrator applied a
26 justifiable reliance standard to the state law fraud claim which
27 is also required for the § 523(a)(2)(A) claim. Absent that
28 showing, the court could not conclude that all elements of the §
523(a)(2)(A) claim were actually litigated and necessarily

1 decided for purposes of giving the arbitration award collateral
2 estoppel effect in this adversary proceeding.

3 A hearing on the motion for reconsideration was held on May
4 2, 2017. Appearances were noted on the record. The court stated
5 findings of fact and conclusions of law on the record pursuant to
6 Federal Rule of Civil Procedure ("Civil Rule") 52(a) applicable
7 by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7052.
8 This order supplements the court's oral findings of fact and
9 conclusions of law.

10 Because it was filed within fourteen days of the entry of
11 the order denying the motion in limine, the motion for
12 reconsideration is decided under Civil Rule 59(e) applicable by
13 Bankruptcy Rule 9023 and not Local District Court Rule 230 as
14 cited by plaintiff. See LBR 1001-1(c); Dicker v. Dye (In re
15 Edelman), 237 B.R. 146, 151 (9th Cir. BAP 1999). Relief under
16 Civil Rule 59(e) may be granted if, as stated by the plaintiff,
17 necessary to correct manifest errors of law or fact or to prevent
18 manifest injustice. Allstate Ins. Co. v. Herron, 634 F.3d 1101,
19 1111 (9th Cir. 2011). Here, relief is not warranted on either
20 (or any other) ground.

21 Plaintiff maintains that justifiable reliance is an element
22 of a state law fraud claim and so when the arbitrator stated in
23 the award that plaintiff proved fraud the arbitrator necessarily
24 found that plaintiff proved justifiable reliance. There are
25 several problems with that argument: (1) California courts (and
26 federal courts applying California law) also apply a reasonable
27 reliance standard to state law fraud claims; (2) the state court
28 complaint before the arbitrator did not allege either justifiable

1 or reasonable reliance; and (3) the state court complaint before
2 the arbitrator alleged detrimental reliance. Thus, while it may
3 be that the arbitrator applied some standard of reliance to
4 conclude that plaintiff proved state law fraud, there apparently
5 were three standards to choose from. The standard actually
6 applied is not at all clear.¹

7 Plaintiff alternatively maintains that under Husky Int'l
8 Electronics, Inc. v. Ritz, 136 S. Ct. 1581 (2016), he need not
9 establish justifiable reliance as an element of his §
10 523(a)(2)(A) claim. Husky does not alter the requirement that a
11 plaintiff prove justifiable reliance as an element of a §
12 523(a)(2)(A) claim when the § 523(a)(2)(A) claim is based on a
13 misrepresentation theory. In re Jahedi, 2017 WL 1034681, *4 n.4
14 (Bankr. C.D. Cal. 2017); In re Katchtourian, 2016 WL 4267937, *4
15 n.3 (Bankr. C.D. Cal. 2016); see also In re Matthews, 2016 WL
16 5746251, *16 (Bankr. C.D. Cal. 2016). Here, the § 523(a)(2)(A)
17 claim alleged in the adversary complaint that relies on the
18 arbitration award for collateral estoppel purposes is based on a
19 misrepresentation theory.² Therefore, justifiable reliance
20 remains an element of the § 523(a)(2)(A) claim.

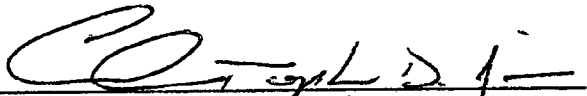
21
22 ¹Plaintiff suggested that reasonable reliance is a higher
23 standard than justifiable reliance so even if the arbitrator
24 applied the former he necessarily found the latter. Plaintiff's
25 argument ignores the possibility that the arbitrator could have
used neither and instead applied some form of detrimental
reliance.

26 ²The complaint appears to allege an independent §
27 523(a)(2)(A) actual fraud claim that does not rely on the
28 collateral estoppel effect of the arbitration award inasmuch as
it alleges defendant transferred his only real property of value
by deed in lieu of foreclosure after the arbitration proceeding.

1 In short, without any showing of the standard of reliance
2 associated with the statement in the arbitration award that
3 plaintiff proved fraud, the court cannot conclude that all of the
4 § 523(a)(2)(A) elements were actually litigated and necessarily
5 decided in pre-petition arbitration. Therefore, finding no clear
6 error in its earlier decision denying plaintiff's motion in
7 limine and finding that relief from that order is not necessary
8 to prevent manifest injustice:

9 IT IS ORDERED that plaintiff's motion for reconsideration of
10 the order denying plaintiff's motion in limine is DENIED WITHOUT
11 PREJUDICE.

12 **Dated:** May 10, 2017

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14 
15 Christopher D. Jaime, Judge
16 United States Bankruptcy Court
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Joseph M. ElGuindy
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Karen Pine
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