

FILED & ENTERED

FEB 08 2021

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

MARY KATHERINE CUMMINS-COBB,

Debtor.

No. 2:17-bk-24993-RK

Chapter 7

Adv. No. 2:18-ap-01066-RK

**ORDER DENYING DEFENDANT'S MOTION
TO DISMISS AND PLAINTIFF'S EX PARTE
MOTION TO STRIKE AND VACATING
HEARING**

Vacated Hearing for Motion to Dismiss

Date: March 2, 2021

Time: 2:30 p.m.

Courtroom: 1675

Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

KONSTANTIN KHIONIDI, as Trustee of
the Cobbs Trust,

Plaintiff,

vs.

MARY KATHERINE CUMMINS-COBB,

Defendant.

Pending before the court is the motion of Defendant to dismiss the adversary proceeding, filed on January 31, 2021, which motion was apparently noticed for hearing before the court on March 2, 2021 at 2:30 p.m. (the court notes that the caption of the motion just stated a hearing date and time of March 2, 2021 at 2:30 p.m. without a proper notice of motion as required by Local Bankruptcy Rule 9013-1(c)(2)). In

1 response, Plaintiff filed an ex parte motion to strike the motion to dismiss as improper
2 on February 6, 2021.

3 Having considered Defendant's motion to dismiss and Plaintiff's motion to strike,
4 the court determines that oral argument on these motions is unnecessary and
5 dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3), takes the
6 motions under submission and rules as follows:

7 1. Defendant's motion to dismiss is denied for of lack of jurisdiction because
8 her appeal before the District Court is still pending. On January 7, 2021, the District
9 Court filed and entered an order affirming this court's judgment in this adversary
10 proceeding. On January 15, 2021, January 27, 2021 and February 1, 2021, Defendant
11 filed in the District Court petitions to rehear or motions for reconsideration, and
12 according to the case docket of the District Court for her appeal, her petitions or motions
13 are set for hearing before the District Court on February 26, 2021 at 10:00 a.m. (the
14 court takes judicial notice of the District Court's case docket and pleadings and orders
15 filed in Defendant's appeal before that court pursuant to Federal Rule of Evidence 201).
16 It appears that Defendant's petition to rehear filed on January 15, 2021 is timely
17 pursuant to Federal Rule of Appellate Procedure 40(a)(1) requiring petitions to rehear to
18 be filed within 14 days of the entry of the appellate judgment, so that the District Court
19 still has jurisdiction over Defendant's appeal of this court's judgment in the adversary
20 proceeding because her petitions to rehear are pending before that court. Because
21 Defendant's appeal of this court's judgment is still pending, this court lacks jurisdiction
22 to decide Defendant's post-judgment motion to dismiss, which relates to that judgment
23 still on appeal. *Williams v. Woodford*, 384 F.3d 567, 586 (9th Cir. 2004). Accordingly,
24 the court denies Defendant's motion to dismiss for lack of jurisdiction.

25 2. Because the court denies Defendant's motion to dismiss, Plaintiff's ex
26 parte motion to strike the motion to dismiss is moot, and the court denies Plaintiff's
27 motion as moot.

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1 3. Because the court has ruled on the motions on the papers, the court
2 vacates the hearing before the court on the motion to dismiss apparently noticed by
3 Defendant for March 2, 2021 at 2:30 p.m. No appearances are required on March 2,
4 2021.

5 IT IS SO ORDERED.

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25 Date: February 8, 2021



Robert Kwan
United States Bankruptcy Judge