


ORDERED.

Dated: May 30, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
AUXILIADORA GUTIERREZ,)	Case No. 6:18-bk-6464-KSJ
)	Chapter 13
Debtor.)	
_____)	

ORDER OVERRULING DEBTOR’S HOA CLAIM 1-1

This case came before the Court on April 9, 2019, to consider the Debtor’s Objection to the Claim of Quail Ridge Osceola County Homeowners’ Association.¹ Quail Ridge filed a response in opposition.² The Court requested and the parties filed a Joint Statement of Stipulated Facts.³ No further evidence is needed. The Objection is overruled, and Claim 1-1 is allowed as a secured claim for \$39,008.004.

Stipulated Facts

In the parties’ own words, here are the agreed facts:

1. Quail Ridge commenced an action against Auxiliadora Gutierrez (hereinafter, “Gutierrez”) on December 21, 2011, in the County Court of the Ninth Judicial Circuit in and for

¹ Doc. No. 21.

² Doc. No. 26.

³ Doc. No. 32.

Osceola County, Florida, Case No. 2011-CC-2931 (the “Injunction Litigation”) seeking injunctive relief related to Gutierrez’s conduct which Quail Ridge asserted constituted a nuisance to the neighborhood under Article VII, Section 6 of the Association’s Declaration of Covenants, Conditions, and Restrictions recorded at OR BOOK 1138, PAGE 1804, of the public records of Osceola County, Florida (the “Declarations”).

2. On or about July 23, 2014, Gutierrez filed her Chapter 7 Petition in the United States Bankruptcy Court, Middle District of Florida, Orlando Division, Case No. 6:14-bk-08398 (the “2014 Bankruptcy Case”).

3. Gutierrez did not schedule Quail Ridge as a creditor in her 2014 Bankruptcy Case and did not notify the circuit court or the parties in the Injunction Litigation of the commencement of her 2014 Bankruptcy Case.

4. Gutierrez was represented by counsel Flavio Alvarez in the 2014 Bankruptcy Case.

5. As of July 23, 2014, the petition date of Gutierrez’s 2014 Bankruptcy Case, Quail Ridge did have not a monetary claim against Gutierrez and only sought injunctive relief in the Injunction Litigation. However, pursuant to the Declarations and Chapter 720, Florida Statutes, any subsequent award in favor of Quail Ridge is secured by a lien against the Debtor’s unit in the community located at 2621 Spring Hill Drive, Kissimmee, Florida 34743 and legally described as Lot 57, Quail Ridge, Phase 2, according to the plat thereof, as recorded in Plat Book 8, Pages 48-49 of the Public Records of Osceola County, Florida (the “Real Property”).

6. Subsequent to the commencement of her 2014 Bankruptcy Case, Gutierrez continued to participate and pursued her defenses in the Injunction Litigation with no notification

to the circuit court or the parties in the Injunction Litigation of the commencement of her 2014 Bankruptcy Case.⁴

7. A final hearing in the Injunction Litigation was held on May 14, 2015 and was continued and concluded on August 6, 2015. Gutierrez appeared and argued her defenses at these final hearings conducted in the Injunction Litigation without notification to the circuit court or Quail Ridge of the filing of her 2014 Bankruptcy Case.

8. On or about September 15, 2015, a Final Judgment was entered in favor of Quail Ridge and against Gutierrez in the Injunction Litigation. The circuit court reserved ruling on the issue of fee entitlement and amount of award should Quail Ridge be entitled to its attorney's fees in the Injunction Litigation.⁵

9. Subsequently, Gutierrez was held in contempt by the circuit court in the Injunction Litigation for her willful violation of the September 15, 2015 Final Judgment.⁶

10. Pursuant to the Contempt Order, the circuit court in the Injunction Litigation reserved ruling on the imposition of sanctions but ordered Gutierrez to complete a fact information sheet and to send a copy to Quail Ridge's counsel.

11. On or about October 18, 2016, on account of Gutierrez's contempt and entry of the Contempt Order on July 28, 2016, the circuit court in the Injunction Litigation entered a Final Judgment in favor of Quail Ridge and against Gutierrez in the amount of \$39,008.04 representing Quail Ridge's attorney's fee and costs incurred in the Injunction Litigation from the inception of the Injunction Litigation in December 2011. The \$39,008.04 amount sought by Quail Ridge for

⁴ Doc. No. 32, Exh. 1.

⁵ Doc. No. 32, Exh. 2.

⁶ Doc. No. 32, Exh. 3.

attorney's fees and costs in the Injunction Litigation was supported by Affidavit of Rolando Santiago, Esquire filed in the Injunction Litigation.⁷

12. The \$39,008.04 awarded to Quail Ridge in the Injunction Litigation on October 18, 2016 consists of attorney's fees in the amount of \$36,201.25 and costs in the aggregate amount of \$2,806.79.

13. Quail Ridge's entitlement to and award of attorney's fees in the amount of \$39,008.04 in the Injunction Litigation arose more than two (2) years after Gutierrez commenced her 2014 Bankruptcy Case and more than two (2) years after her 2014 Bankruptcy Case was closed.

14. The \$39,008.04 awarded to Quail Ridge in the Injunction Litigation is secured by a lien on Gutierrez's Real Property located within the community pursuant to the provisions of the Declarations and Chapter 720, Florida Statutes.

15. Gutierrez failed to pay the \$39,008.04 awarded to Quail Ridge which resulted in Quail Ridge filing its Complaint Homeowner Association Claim of Lien Foreclosure (the "Foreclosure Complaint") against Gutierrez in the Ninth Judicial Circuit Court in and for Osceola County, Florida on or about June 6, 2017. The foreclosure case was assigned Case No. 2017-CA-1742 by the Osceola Clerk of Court (the "Foreclosure Case").

16. Prior to filing its Foreclosure Complaint, Quail Ridge filed its Claim of Lien for Unpaid Homeowner Association Dues/Assessments in the amount of \$39,008.04 in the public records of Osceola County, Florida on May 5, 2017 at OR BOOK 5144, PAGE 1958.

17. Gutierrez was duly served, appeared and presented defenses in the Foreclosure Case.

⁷ Doc. No. 32, Exh. 4.

18. Gutierrez filed numerous pleadings in opposition to the relief sought by Quail Ridge in the Foreclosure Case.⁸

19. At no time in the Foreclosure Case did Gutierrez advise the circuit court or Quail Ridge that she had previously filed a Chapter 7 Bankruptcy Petition in 2014.

20. On or about January 5, 2018, Quail Ridge filed its Second Motion for Summary Judgment in the Foreclosure Case.⁹

21. On or about June 14, 2018, a Uniform Final Judgment of Foreclosure in the amount of \$39,008.04 was entered in favor of Quail Ridge and against Gutierrez.¹⁰

22. The Uniform Final Judgment of Foreclosure authorizing Quail Ridge to foreclose its claim for unpaid charges and assessments in the amount of \$39,008.04 is a final non-appealable judgment.

23. The Uniform Final Judgment of Foreclosure set a foreclosure sale by the clerk of court for October 23, 2018.

24. On or about October 9, 2018, Gutierrez filed her Motion to Reopen her 2014 Bankruptcy Case with this Court.

25. Quail Ridge did not have any prior knowledge of and first learned of Gutierrez's 2014 Bankruptcy Case, upon its receipt of a Notice of Bankruptcy Case, Meeting of Creditors and Deadlines served via mail on *October 23, 2018* in connection with Gutierrez's Motion to Reopen her 2014 Bankruptcy Case filed with this Court.

26. In connection with her reopened 2014 Bankruptcy Case, Gutierrez filed Amendments to Schedules E and F.¹¹

⁸ Doc. No. 32, Exh. 5.

⁹ Doc. No. 32, Exh. 6.

¹⁰ Doc. No. 32, Exh. 7.

¹¹ Doc. No. 32, Exh. 8.

27. On or about October 19, 2019, Gutierrez filed her voluntary petition under Chapter 13 with this Court assigned Case No. 6-18-bk-06464-KJS (the "Chapter 13 Case").

28. Gutierrez litigated with Quail Ridge from 2011 through October 2018 in two separate cases, the Injunction Litigation and the Foreclosure Case, in the Ninth Judicial Circuit in and for Osceola County, Florida without providing notice to the circuit court or Quail Ridge of her filing the 2014 Bankruptcy Case.

29. Quail Ridge timely filed its proof of claim in the amount of \$39,008.04 as awarded pursuant to final orders entered in the Injunction Litigation and the Foreclosure Case in this Chapter 13 Case.

30. In this Chapter 13 Case, Gutierrez objects to the amount of Quail Ridge's \$39,008.04 proof of claim and contends that a portion of Quail Ridge's \$39,008.04 claim is for attorney's fees and costs incurred by Quail Ridge in the Injunction Litigation prior to July 23, 2014, the petition date of the 2014 Bankruptcy Case.

31. Gutierrez does not object to the Quail Ridge's claim being secured by a lien upon her Real Property pursuant to the Declarations, and the final judgments in the Injunction Litigation and the Foreclosure Case.

32. Gutierrez contends that only that portion of Quail Ridge's \$39,008.04 claim incurred after the petition date of her 2014 Bankruptcy Case is secured by a lien on her Real Property.

33. The portion of attorney's fees awarded to Quail Ridge on October 18, 2016 in the Injunction Litigation for attorney's fees billed prior to July 23, 2014 total \$24,647.25.

34. The portion of attorney's fees awarded to Quail Ridge on October 18, 2016 in the Injunction Litigation for fees billed after to July 23, 2014 total \$11,554.00.

35. The portion of costs awarded to Quail Ridge on October 18, 2016 in the Injunction Litigation for costs billed prior to July 23, 2014 total \$1,313.57.

36. The portion of costs awarded to Quail Ridge on October 18, 2016 in the Injunction Litigation for costs billed after July 23, 2014 total \$1,493.22.

37. Quail Ridge did not seek an award of attorney's fees or costs in connection with the Foreclosure Case.

Quail Ridge Claim is Non-Dischargeable

Quail Ridge's claim against Gutierrez arose more than two years after the commencement of the 2014 Bankruptcy Case. When the Debtor filed for Chapter 7 bankruptcy on July 23, 2014, Quail Ridge had no monetary claim against Gutierrez and the only pending lawsuit sought injunctive relief.¹² Non-monetary obligations, such as these seeking injunctive relief, are not dischargeable in bankruptcy.¹³ The Bankruptcy Code defines "claim" in § 101(5)¹⁴:

(5) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Quail Ridge had no claim, as defined in § 101(5), on the day Gutierrez filed her Chapter 7 case in 2014. Gutierrez now argues that a portion of the attorney's fees incurred prior to July 23, 2014, should be discharged. Although these fees relate to work conducted prior to the petition date, they were only requested and assessed after the state court awarded injunctive relief and found

¹² Doc. No. 32, p. 4.

¹³ *In re Gacharna*, 480 B.R. 909, 911 (Bankr. N.D. Ill. 2012).

¹⁴ All references to the Bankruptcy Code refer to 11 U.S.C. §§ 101 *et. seq.*

Gutierrez in contempt of court.¹⁵ The Discharge in the 2014 Case was entered on January 13, 2015.¹⁶ A Final Judgment for Quail Ridge and against Gutierrez in the Injunction Litigation was entered only on September 15, 2015.¹⁷ Gutierrez then was held in contempt by the state court and fees were awarded under the contempt order on October 18, 2016.¹⁸

With certain exceptions not pertinent here, a Chapter 7 discharge “discharges the debtor from all debts that arose before the date of the order for relief under this chapter.”¹⁹ Filing the debtor's bankruptcy petition in a voluntary Chapter 7 case “constitutes an order for relief.”²⁰ Any debt arising post-petition is not subject to discharge under § 727(b). Here, the entitlement to attorney's fees did not exist on the petition date and arose only in connection to the contempt order entered more than two years later in October 2016.

The Final Judgment entered for Quail Ridge and against Gutierrez for \$39,008.04 was not discharged in the 2014 case. The findings were entered by the state court post-petition and post-discharge with no timely objection by Gutierrez and with no notice ever given to the state court or Quail Ridge of the 2014 case.

Accordingly, it is

ORDERED:

1. Gutierrez' Objection to Claim(s). Claim No. 1 of Quail Ridge in Osceola County Homeowners Association (Doc. No. 21) is **OVERRULED**.
2. Claim 1-1 filed by Quail Ridge is allowed in full as a secured claim of \$39,008.04.

¹⁵ Doc. No. 32, p. 5.

¹⁶ Doc. No. 12 in 6:14-bk-08398-KSJ.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ § 727(b).

²⁰ § 301(a).

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The Clerk is directed to serve a copy of this order on all interested parties.