



Dated: April 02, 2019
The following is SO ORDERED:


David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re

**William H. Thomas, Jr.,
aka Bill Thomas,**

Debtor.

SSN: xxx – xx – 8251

Case No. 16-27850-DSK

Chapter 11

**MEMORANDUM AND ORDER RE “DEBTOR’S OBJECTIONS TO PROOF OF
CLAIM NO. 4 FILED BY CLEAR CHANNEL OUTDOOR, INC. AND PROOF OF
CLAIM NO. 7 FILED BY TENNISON BROTHERS, INC.” COMBINED WITH
NOTICE OF THE ENTRY THEREOF**

The above-named Chapter 11 debtor, William H. Thomas, Jr., aka Bill Thomas (“Mr. Thomas”), acting *pro se*,¹ previously filed “Debtor’s Objections to Proof of Claim No. 4 Filed by Clear

¹ Although Mr. Thomas is a licensed attorney, he is not known as a “bankruptcy lawyer.” Since the filing of this case, Mr. Thomas has been removed as a “debtor in possession” and now acts as a “debtor.” See 11 U.S.C. § 1104(a)(1) and (2) and the prior Order of this Court (Dkt. No. 526) dated January 18, 2019.

Channel Outdoor, Inc. and Proof of Claim No. 7 Filed by Tennison Brothers, Inc” on November 8, 2018. (Dkt. No. 451.) On December 11, 2018, Clear Channel Outdoor, Inc. (“Clear Channel”), Lynn Schadt Thomas, the wife of Mr. Thomas (“Mrs. Thomas”), and Tennison Brothers, Inc. (“Tennison Brothers”) each filed a Response to Mr. Thomas’s Objections to Claim Nos. 4 and 7. *See* Dkt. Nos. 490, 492, and 494 respectively. On February 27, 2019, this Court heard combined oral statements and arguments made in open court by Mr. Thomas and the other interested parties’ attorneys for and against the allowance of the claims of Clear Channel and Tennison Brothers. *See* Proofs of Claim Nos. 4 and 7. No witnesses were called by the parties to testify at the hearing nor were any documents sought to be introduced. The Chapter 11 trustee, Michael E. Collins, Esquire (“Mr. Collins”), also was present on February 27, 2019, and orally participated at the hearing. Mr. Collins’s attorney, Robert W. Miller, Esquire, appeared and participated telephonically.

At the conclusion of the February 27, 2019 hearing, Mr. Thomas specifically requested this Court to briefly hold its judicial rulings on any pleadings that may impact his objections to the claims of Clear Channel and Tennison Brothers whereupon the instant matter was continued for disposition without opposition to a future date certain for a status conference. On March 26, 2019, this Court held a status conference on this matter (as well as other pending matters in this case). The parties by consent, and at the specific request of Mr. Thomas, asked that this matter be submitted to the Court for a ruling on the merits whereupon it was taken under submission to allow for the preparation and entry of this written Memorandum and Order. It should be noted, however, that Mrs. Thomas and Mr. Collins both reserved, without opposition and with the approval of this Court, their independent and separate rights “to object to or request to subordinate the claims of Tennison [Brothers] and Clear Channel, being claim nos. 4 and 7.” (Dkt. No. 564); *see also* (Dkt. No. 630.)

Rule 2012(a) of the Federal Rules of Bankruptcy Procedure provides as follows: “[i]f a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.” FED. R. BANKR. P. 2012(a).

By virtue of 28 U.S.C. § 157(b)(2)(I), this is a core proceeding. The following shall constitute the Court’s written findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

This Court integrates, in its entirety, its earlier “Memorandum and Order re ‘Debtor’s Combined Motion for Summary Judgment and Memorandum in Support’ and Notice of the Entry Thereof.” *See* (Dkt. No. 640.) Additionally, and because of the lengthy pre- and postpetition history of this Chapter 11 case, this Court also incorporates, in their entireties and by reference, two of its relevant prior written opinions—both of which are currently pending on appeals filed by Mr. Thomas in the United States District Court for the Western District of Tennessee: (1) the 22-page October 18, 2018 “Memorandum and Order on Plaintiff’s FED. R. BANKR. P. 7056 Motions for Summary Judgment Combined with Notice of the Entry Thereof” (“October 2018 Memorandum and Order”)² and (2) the 9-page January 16, 2019 “Memorandum and Order re ‘Debtor’s Motion for Leave Pursuant to Bankruptcy Rule 8004 for Appeal Under 28 U.S.C. § 158(a)’ Combined with Notice of the Entry Thereof” (“January 2019 Memorandum and Order”) (Dkt. No. 525).

Considering the background history and this case record as a whole, no additional findings of fact and conclusions of law in accordance with FED. R. BANKR. P. 7052 are necessary here for the resolution by this Court of the instant FED. R. BANKR. P. 9014(a) contested matter. Nonetheless, this Court will briefly discuss the instant Objections of Mr. Thomas to these two claims as well as reiterate and further explain its prior related judicial rulings.³

² *See* Dkt. No. 58 in Adv. Proc. No. 16-00260-K and Dkt. No. 52 in Adv. Proc. No. 16-00261-K.

³ It should be noted that Mr. Thomas filed a “Motion of Debtor Pursuant to Fed. R. Bankr. P. 7052 for Findings of Fact and Conclusions of Law by This Court in Any Rulings on Debtor’s Objections (ECF No. 451) to the Claims of Clear Channel Outdoor, Inc. and Tennison Brothers, Inc. Scheduled to be Heard on February 27, 2019” on February 18, 2019. (Dkt. No. 593.) However, it appears to the Court that Mr. Thomas may have failed to take notice of the Bankruptcy Rule 7052 findings of fact and conclusions of law set forth in this Court’s October 2018 Memorandum and Order as well as its January 2019 Memorandum and Order, which both discussed and addressed **in detail** the claims of Clear Channel and Tennison Brothers. In the Motion, Mr. Thomas requests this Court: (1) “set forth detailed finding of facts regarding the conduct of Debtor that were the basis of the State Court judgments in favor of Clear Channel and Tennison Brothers that support the respective claims no. 4 and no. 7”; (2) “set forth the conclusions of

In the combined Objection to Claim Nos. 4 and 7 and ignoring the independent tort claims against him by creditors, Clear Channel and Tennison Brothers, Mr. Thomas argues, in pertinent part and among other things, as follows:

The basis of such claims established that such claims were based upon judgments obtained by Clear Channel and Tennison Brothers which were predicated on Debtor's "illegal" actions under the Tennessee Billboard Regulation and Control Act of 1972, T.C.A. § 54-21-101, et seq. (the "Billboard Act").

Clear Channel and Tennison Brothers admit that the [Tennessee] Billboard Act has been held unconstitutional in its entirety pursuant to a decision in *Thomas v. Schroer*, 248 F. Supp. 3d 868 (W.D. Tenn. 2017). Since the judgments against the Debtor are predicated on an unconstitutional law, the judgments are void and unenforceable.

(Dkt. No. 451 ¶¶ 3, 4.)

In its October 2018 Memorandum and Order, this Court granted summary judgment in favor of the Creditors, Clear Channel and Tennison Brothers, against Mr. Thomas by finding and concluding that Clear Channel's \$4,035,487.60 (Proof of Claim No. 4) and Tennison Brothers' \$1,094,670.94 (Proof of Claim No. 7) prepetition State Court default judgments were valid, nondischargeable debts under 11 U.S.C. § 523(a)(6) for prepetition, independent torts; and, therefore, are now under applicable

law applied by the Court to the detail findings of fact to **support or deny the recognition by this Court** of the State Court judgments on which the proofs of claim no. 4 and No. 7 are based"; and (3)

set forth the Conclusions of federal law applied by the Court to determine whether the Tennessee State Courts that rendered, and then affirmed the State Court judgments against Debtor complied with, or violated the Supremacy Clause Article VI or the Full Faith and Credit Clause Article IV, Section 1 of the U.S. Constitution when such State Courts **failed to consider and refused applications** of the U.S. Supreme Court precedent in *Reed v. Town of Gilbert*, No. 13-502, 2015 WL 2473374 (U.S. June, 2015) and the applications of such Supreme Court precedent by the U.S. District Court in the decision of *Thomas v. Schroer*, 248 F. Supp. 3d 868 (W.D. Tenn. 2017) which held that the Tennessee Billboard Act was unconstitutional in its entirety.

(Dkt. No. 593 ¶ 4-6.) As stated above, this Court has already provided sufficient relevant findings of fact and conclusions of law with regards to the matters involving the objections to claim nos. 4 and 7. Mr. Thomas essentially is asking this Court to read into the minds of the Tennessee State Court judges to explain how his actions against Clear Channel and Tennison Brothers were tortious in any way and the basis for their findings and conclusions. That is not the job of this Court. As noted on many prior occasions in this case, this Court is not a reviewing, relitigating, or appellate court; and the Judiciary Act of 1789 as well as United States Supreme Court precedent make this clear.

law valid claims against Mr. Thomas and the § 541(a) estate. In doing so, this Court, inter alia, considered this case record as a whole and applied the doctrines of collateral estoppel (i.e., issue preclusion), comity, and full faith and credit, and accordingly held that Mr. Thomas was unable to “relitigate” the constitutional and tort issues before this Bankruptcy Court at this time because they had been previously raised, heard, and considered by the Tennessee State courts. Further, it is emphasized that Mr. Thomas did not seek review or relief before the United States Supreme Court under 28 U.S.C. § 1257(a) regarding the State Court tort orders, which also discussed and considered the related constitutional matters raised by Mr. Thomas in the Tennessee Western Federal District Court action that is currently pending in and awaiting a decision by the Sixth Circuit Court of Appeals.

In addition, in its January 2019 Memorandum and Order, this Court reiterated its earlier findings of fact and conclusions of law in its October 2018 Memorandum and Order and stated that such findings and conclusions also triggered the application of the “law of the case” doctrine,⁴ the doctrine of comity, and the full faith and credit clause under 28 U.S.C. § 1738. This Court also emphasized, once again, that Clear Channel and Tennison Brothers have valid, nondischargeable claims under 11 U.S.C. § 523(a)(6) against Mr. Thomas and this § 541(a) estate regardless of their amounts. The allowance of such claims is currently on appeal. Whether some part or all, if any, of the claims of Clear Channel and Tennison Brothers should be subordinated to other creditors and parties in interest will be saved for another day by this Court.

In making both judicial determinations, this Court considered (not ignored as previously suggested by Mr. Thomas) the ruling of the Honorable Jon P. McCalla, United States District Judge for the Western District of Tennessee, which held that the *Tennessee Billboard Regulation and Control Act* (“*Tennessee Billboard Act*”) was unconstitutional. However, it is expressly reiterated again that

⁴ That is, this Court noted in its October 2018 Memorandum and Order that the Creditors, Clear Channel and Tennison Brothers, held valid and nondischargeable claims against Mr. Thomas under 11 U.S.C. § 523(a)(6).

this Court noted that the Tennessee Civil Court of Appeals previously discussed and considered the intervening change of law with regards to the constitutionality of the *Tennessee Billboard Act* but found it essentially to be irrelevant as to the independent tort claims of Clear Channel and Tennison Brothers. Since Mr. Thomas failed to seek further review before the United States Supreme Court, this Court is not inclined to essentially reverse the Tennessee Civil Court of Appeals and act as a de facto United States Supreme Court.⁵

As previously stated on numerous prior occasions in this case, the bankruptcy court is not a reviewing, relitigating, or appellate court (or a “legal playground”). As suggested above, Mr. Thomas might have been better served by seeking further judicial review of *Tennison Bros. v. Thomas*, 556 S.W.3d 697 (Tenn. Ct. App. 2017), by filing a petition for a writ of certiorari with the United States Supreme Court, if he felt that the Tennessee lower State courts were misapplying applicable law—not seeking review of these matters in this bankruptcy court.⁶ These statements and conclusions continue

⁵ It is parenthetically noted that Clear Channel and Tennison Brothers do NOT agree with Mr. Thomas that Judge McCalla declared the *Tennessee Billboard Act* unconstitutional in its entirety. Regardless, it is this Court’s opinion that whether or not the *Tennessee Billboard Act* is constitutional, in part or in its entirety, is not outcome determinative here.

⁶ Under provisions conferring jurisdiction on federal courts, such as 28 U.S.C. § 1334, the bankruptcy court’s jurisdiction is original, not appellate, and no statute provides for review of state court decisions by this Court. *See* 28 U.S.C. § 1257(a). Rather, appeals of state court decisions must be pursued through the state appellate courts and then directly to the United States Supreme Court, if applicable. *Id.*

Section 1257 of title 28 provides as follows:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute if the United States is drawn in question or where the validity of a statute if any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). As such, the United States Supreme Court is the only federal court with general statutory jurisdiction to review state court judgments. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476–82 (1983) (noting that a federal district court lacks authority to review final determinations of state or local courts because such review can only be conducted by the Supreme Court of the United States under 28 U.S.C. § 1257); *see also Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) (seeking to have a state court’s judgment declared null and void, but holding that lower federal courts may not hear claims actually decided by a state court). This includes an

to reflect this Court's view and position regarding these matters. That is, and in summary, Clear Channel and Tennison Brothers under these particular circumstances and applicable law have valid, nondischargeable claims under 11 U.S.C. § 523(a)(6) against Mr. Thomas, which, inter alia, have previously established the "law of this case," subject, of course, to the ultimate outcome of Mr. Thomas's pending appeals.⁷

Accordingly, for the reasons mentioned above, Mr. Thomas's Objections to Claim Nos. 4 and 7 are hereby denied. There is no need or reason for this Court under a totality of the background facts and circumstances to relitigate anew these matters nor does applicable law even provide for such a result.

Based on the foregoing and consideration of the entire Chapter 11 case and the record as a whole, **IT IS ORDERED AND NOTICE IS HEREBY GIVEN** that:

1. Mr. Thomas's Objections to Proof of Claim No. 4 filed by Clear Channel Outdoor, Inc. and Proof of Claim No. 7 filed by Tennison Brothers, Inc. are hereby **DENIED**.
2. The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested entities:

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appeal from a lower state court if the state's highest court declined to hear an appeal or lacks jurisdiction to hear an appeal. Supreme Court Rule 13.3 fixes the deadline to file a petition for certiorari within 90 days after the entry of the judgment. SUP. CT. R. 13.

⁷ It is parenthetically noted that—assuming these claims are valid—even if a portion of the claims of Clear Channel and Tennison Brothers are eventually subordinated to other creditors or parties in interest, nonetheless they arguably may be valid claims against Mr. Thomas (although the court does not make such a determination here).

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