APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12855
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-25119-KMW; 16-bkc-16898-RAM

In Re: MIRIAM SOLER,

Debtor.

MIRIAM SOLER,

Plaintiff - Appellant,

versus

CAPITAL ONE AUTO FINANCE,
a Division of Capital One, N.A.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(December 7, 2018)

Before JILL PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Miriam Soler, proceeding *pro se*, challenges the district court's dismissal of her appeal from the bankruptcy court's order closing her Chapter 7 bankruptcy proceedings. Liberally construing Soler's contentions, she asserts that the district court erred in dismissing her appeal because the bankruptcy court violated her due process rights (1) by closing her Chapter 7 bankruptcy case before she could file proofs of claim on behalf of her creditors, (2) by converting her motion for reconsideration into a motion to reopen even though her case had not yet been closed, and (3) by dismissing her claim challenging the validity of a mortgage on her residence. After careful review, we affirm.[1]

First, in a voluntary Chapter 7 case, a proof of claim is timely if it is filed no later than 70 days after the order for relief under that Chapter. Fed. R. Bankr. P. 3002(c). The commencement of a voluntary case under Chapter 7 constitutes the order for relief. 11 U.S.C. § 301. If a creditor does not timely file a proof of claim, the debtor or trustee may file one on the creditor's behalf within 30 days after the expiration of the applicable time for filing claims. Fed. R. Bankr. P. 3004.

[1] In the bankruptcy context, we sit "as a 'second court of review' and thus examine[] independently the factual and legal determinations of the bankruptcy court," employing the same standards of review as the district court. *In re Optical Techs., Inc.*, 425 F.3d 1294, 1299–300 (11th Cir. 2005) (quotation omitted). We review the bankruptcy court's factual findings for clear error and the bankruptcy court's and district court's legal conclusions *de novo*. *Id.* at 1300.

Home State Bank, 501 U.S. 78, 83 (1991); *In re Espino*, 806 F.2d 1001, 1002 (11th Cir. 1986).

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-12855-CC

In Re: MIRIAM SOLER,

Debtor.

MIRIAM SOLER,

Plaintiff - Appellant,

versus

CAPITAL ONE AUTO FINANCE,
a Division of Capital One, N.A.,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: JILL PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Miriam Soler is DENIED.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE

ORD-41

B-5

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

February 01, 2019

Miriam Soler
4741 NW 5TH ST
MIAMI, FL 33126

Appeal Number: 17-12855-CC
Case Style: Miriam Soler v. Capital One Auto Finance, a Di
District Court Docket No: 1:16-cv-25119-KMW
Secondary Case Number: 16-bkc-16898-RAM

RETURNED UNFILED: Motion to stay issuance of the mandate filed by Miriam Soler is returned unfiled because the mandate was issued on January 24, 2019.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC
Phone #: (404) 335-6179

MOT-11 Motion or Document Returned

C/6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-CIV-25119-WILLIAMS

MIRIAM SOLER,

Appellant,

vs.

CAPITAL ONE AUTO FINANCE,

Appellee.
_____/

ORDER

THIS MATTER is before the Court on the Parties' Amended Joint Stipulation of Dismissal (DE 18) and a *sua sponte* review of the record. The joint stipulation states that the Parties have agreed "that the [] action shall be dismissed as to Capital One", with each side to bear its own fees and costs. (DE 18 at 1). No proposed order was filed to the docket.

Though Capital One is the only Appellee that has appeared in this case and the only opposing party with whom Appellant appears to have corresponded (*see, e.g.*, DE 11 at 1-2), the Court notes that Appellant's opening brief (DE 15) also lists JP Morgan Chase Bank ("Chase") as an Appellee (DE 15 at 1, 11). As such, in an abundance of caution, the Court has reviewed Appellant's claims with regard to Chase[1] as well as the bankruptcy record provided.

[1] Appellant's brief states, with regard to Chase, that "SOLER did not signed the mortgage nor the note never even affirm anything as to them, *In re Failla*, 12-15625 (11th Cir. Oct. 4th, 2016), claimed by SOLER with notice to CHASE owing them nothing maybe just 1dollar if anything by filing proof of claim for them and objected to

The record makes clear that **both the $1 claim against Chase and the objections to that claim were filed by Appellant**, and that Chase never appeared or participated in the bankruptcy proceedings. Additionally, that claim was filed after Appellant "had already received her discharge and the Trustee was not administering any assets." (DE 1 at 4). Beyond the general objections to the disposition of her bankruptcy case, Appellant's argument on appeal is that Capital One violated the automatic stay—an argument rejected by the Bankruptcy Court. No such claim has been advanced against Chase, a secured creditor. Indeed, as the bankruptcy judge pointed out on the record, "secured claims are not affected by the bankruptcy" and Appellant "can't, after a discharge and after a case is closed, come in and, by filing proofs of claim and then objections to claim, litigate issues involving . . . foreclosure defenses." (DE 10 at 7: 8-13); *see* note 1, *supra*; *see also Mohorne v. Beal Bank, S.S.B.*, 419 B.R. 488, 492 (S.D. Fla. 2009) (explaining that, when district courts sit as appellate courts over bankruptcy determinations "[t]he bankruptcy court's findings of facts should not be set aside unless they are clearly erroneous. *Nordberg v. Arab Banking Corp. (In re Chase & Sanborn Corp.)*, 904 F.2d 588, 593 (11th Cir.1990)" and noting that "[t]he burden to show that such factual findings are clearly erroneous lies with the appellant. *Acquisition Corp. of Am. v. Fed. Sav. & Loan Ins. Corp.*, 96 B.R. 380, 382 (S.D.Fla.1988).").

Consequently, the Court finds that the Joint Stipulation of Dismissal filed by the parties disposes of all claims properly before the Court. Accordingly, upon review of the

---

them when they CHASE never objected to discharge so the unsecured claim they might have if ever coming to them in the state foreclosure case does not belong to them by SOLER in any event." (DE 15 at 26). No other mention of Chase is made in the brief.