

APPENDIX

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50535
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2019

Lyle W. Cayce
Clerk

In the Matter of:

ABIE WOLF, Also Known as Abraham C. Wolf;
Formerly Doing Business as Mac H. Auto General Mechanic and Repair,

Debtor.

ABIE WOLF, Also Known as Abraham C. Wolf;
Formerly Doing Business as Mac H. Auto General Mechanic and Repair,

Appellant,

versus

RANDOLPH OSHEROW; GARRY STARR; BONNIE STARR,

Appellees.

Appeal from the United States District Court
for the Western District of Texas
No. 3:17-CV-265

No. 18-50535

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Abie Wolf appeals, *pro se*, the district court's judgment affirming the judgment of the bankruptcy court denying a discharge from his debts. The district court explained its affirmance in an impressive and thorough twelve-page opinion, the "Amended Order" issued on June 21, 2018. The court properly observed that Wolf's case centers on his allegation that the proof of claim was forged and not actually signed by Garry Starr. The court correctly held that that assertion had been foreclosed by final orders of the bankruptcy court that had not been appealed. The district court also opined that, in addition to being foreclosed, the forgery claim lacked merit.

There is no error. The judgment of the district court, affirming the bankruptcy court, is AFFIRMED, essentially for the reasons convincingly set forth by the district court.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 09, 2019

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 18-50535 Abie Wolf v. Randolph Osherow, et al
USDC No. 3:17-CV-265

Enclosed is a copy of the court's decision. The court has entered judgment under FED. R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. **5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following FED. R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED. R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED. R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that appellant pay to appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in black ink, appearing to read "Lyle W. Cayce", written in a cursive style.

By: _____
Nancy F. Dolly, Deputy Clerk

Enclosure(s)

Mr. James Wesley Brewer
Mr. Abie Wolf

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50535
Summary Calendar

D.C. Docket No. 3:17-CV-265

United States Court of Appeals
Fifth Circuit

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January 9, 2019

Lyle W. Cayce
Clerk

In the Matter of: ABIE WOLF, also known as Abraham C. Wolf; formerly
doing business as Mac H. Auto General Mechanic and Repair

Debtor

ABIE WOLF, also known as Abraham C. Wolf, formerly doing business as
Mac. H Auto General Mechanic and Repair,

Appellant

v.

RANDOLPH OSHEROW; GARRY STARR; BONNIE STARR,

Appellees

Appeal from the United States District Court for the
Western District of Texas

Before SMITH, WIENER, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is
affirmed.

IT IS FURTHER ORDERED that appellant pay to appellees the costs on appeal to be taxed by the Clerk of this Court.

refused to return the motor home to the Starrs, alleging that they owed him various storage and repair fees. *Id.* The Starrs filed suit against Appellant in the 243rd District Court of El Paso County, Texas, seeking damages in addition to the return of their motor home. *Id.* at 4. The state court rendered final judgment in favor of the Starrs. *Id.*

In 2013, Appellant filed a bankruptcy petition under Chapter 13 of the Bankruptcy Code. *Id.* On August 16, 2013, the Bankruptcy Court issued an order refusing to extend the bankruptcy stay as to the Starrs' claim against Appellant for the state court judgment, finding that Appellant did not file his bankruptcy petition in good faith with respect to the Starrs. *Id.* at Ex. G.² Appellant again filed a bankruptcy petition, this time under Chapter 7, on September 25, 2015. Appellee's R. on Appeal ("Appellee's ROA") 4, ECF No. 4-2.³

The Starrs ultimately filed a Proof of Claim based on the state court judgment in the amount of \$404,024.99. *See id.* at 64, 149. On September 15, 2016 the Bankruptcy Court entered a judgment denying Appellant's discharge. *Id.* at 62. Since then, Appellant, acting pro se, has filed multiple documents with the Bankruptcy Court seeking to disallow the Starrs' claim.

First, on November 7, 2016 Appellant filed an Objection to Claim ("First Objection"). *Id.* at 64. The Starrs through counsel filed a response in opposition. *Id.* at 77. Appellant then filed additional pleadings styled as an objection and amended objection to the Starrs' response. *Id.* at 89, 122. The Bankruptcy Court held a contested hearing on the Objection to Claim on December 13, 2016. Appellant's Br. 3. On December 27, 2016 the Bankruptcy Court entered its Order

² While Appellant cites this document to support his assertion that the Bankruptcy Court found that "the Debtor has presented evidence in support of a finding of good faith in the filing of the present case," Appellant's Br. 5, this quotation misleadingly omits the clause that directly follows: "except with respect to the Starrs [and] the 1999 Country Coach Motor Home," Appellant's Br. Ex. G.

³ The entry for Appellee's Record on Appeal on the Court's electronic docketing system is split into four separate attachments. *See* ECF No. 4. The only material from Appellee's ROA cited in this Order is contained in the attachment labeled "Appellee's Designation." *See* ECF No. 4-2. Therefore, the Court refers to that attachment when citing to Appellee's ROA in this Order.

Denying Objection to Claim of Garry and Bonnie Starr (the “First Order”). Appellee’s ROA 169. In its First Order, the Bankruptcy Court found that Appellant’s Objection to Claim and additional pleadings should be denied. *Id.* The First Order is a final order that was not appealed.

On December 15, 2016, Appellant filed his “Second, [sic] Amendment With New Evidence for Objection to Claim of Garry and Bonnie Starr” (the “Second Objection”). *Id.* at 146. On December 29, 2016 the Bankruptcy Court entered its Order Denying Second Objections to Claim of Garry and Bonnie Starr (the “Second Order”), therein denying all relief requested in the Second Objection. *Id.* at 173. The Second Order is a final order that was not appealed.

The order on appeal arises out of Appellant’s third attempt to disallow the Starrs’ Proof of Claim. On June 20, 2017, the Chapter 7 Trustee filed his own Claim Objection to Reclassify Claim 1-1 Filed by Bonnie Starr and Garry Starr as an Unsecured Claim in the Amount of \$404,024.99. *Id.* at 189. This Objection sought only to reclassify the Starrs’ Proof of Claim from “secured” to “unsecured,” and did not seek disallowance of the proof of claim. *Id.* Appellant filed a Response to the Trustee’s Objection, again seeking disallowance of the Starrs’ claim (the “Third Objection”). Appellant’s R. on Appeal (“Appellant’s ROA”) 29, ECF No. 3-1.⁴ Appellant’s son Elvis Wolf also filed a Response objecting to the Starrs’ claim (the “Elvis Response”). *Id.* at 45.

On August 1, 2017 the Bankruptcy Court entered its Order Dismissing Trustee’s Objection to Reclassify Claim 1-1 Filed by the Starrs as an Unsecured Claim, and Denying Related Response and Objection by Abie and Elvis Wolf (the “Third Order”). *Id.* at 49. Appellant has appealed the Third Order.

⁴ The entry for Appellant’s Record on Appeal on the Court’s electronic docketing system is split into four separate attachments. *See* ECF No. 3. The only material from Appellant’s ROA cited in this Order is contained in the attachment labeled “Appellant’s Designation.” *See* ECF No. 3-1. Therefore, the Court refers to that attachment when citing to Appellant’s ROA in this Order.

II. JURISDICTION

District courts have jurisdiction to hear “appeals from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and proceedings” under the Bankruptcy Code. 28 U.S.C. § 158(a). Unlike elsewhere, a final order for the purposes of § 158 appellate jurisdiction need not dispose of the entire case. *In re Moody*, 817 F.2d 365, 367–68 (5th Cir. 1987). The Fifth Circuit has explained that “a bankruptcy proceeding is over when an order has been entered that ends a discrete judicial unit in the larger case.” *Id.* at 368.

Here, the Bankruptcy Court issued an order dismissing the Trustee’s Objection and denied the related Responses by Appellant and Elvis Wolf objecting to the Starrs’ Proof of Claim. *See* Appellant’s ROA 49. That order forms the basis of this appeal. Appellant’s Br. 5. Accordingly, because a bankruptcy court’s order denying an objection to claim is a final, appealable order, this Court has jurisdiction to hear the appeal. *In re SCC Kyle Partners, Ltd.*, 518 B.R. 393, 400 (W.D. Tex. 2014) (citing *Moody v. Empire Life Ins. Co.*, 849 F.2d 902, 904 (5th Cir. 1988)); *see* 28 U.S.C. § 157(b)(1).

III. STANDARD OF REVIEW

“When reviewing a bankruptcy court’s decision in a ‘core proceeding,’ a district court functions as a[n] appellate court and applies the standard of review generally applied in federal court appeals.” *In re Webb*, 954 F.2d 1102, 1103–04 (5th Cir. 1992) (citation omitted). The “allowance or disallowance of claims against the estate” is classified as a core proceeding. 28 U.S.C. § 157(b)(2)(B). Therefore, issues of statutory interpretation and mixed questions of law and fact are reviewed de novo. *In re Bodenheimer, Jones, Szwak, & Winchell L.L.P.*, 592 F.3d 664, 668 (5th Cir. 2009). In contrast, findings of fact are reviewed for clear error. *Id.* Because Appellant appears pro se, the Court construes his arguments liberally. *See Haines v. Kerner*, 404

U.S. 519, 520 (1972) (pro se complaints are held to “less stringent standards than formal pleadings drafted by lawyers”); *Mendoza v. Strickland*, 414 F. App’x 616, 618 (5th Cir. 2011) (citing *Haines*).

IV. DISCUSSION

Appellant raises five issues in his original Brief, *see* Appellant’s Br. 5–8, and eight issues in his Reply Brief, *see* Reply Br. 1–3, ECF No. 8. However, what Appellant represents as a number of discrete issues are in fact merely various restatements of a single assertion: The Starrs’ Proof of Claim should be disallowed because it was not signed by Garry Starr.

Only two issues, both raised for the first time in Appellant’s Reply Brief, do not rely on this assertion. These two issues are “Issue 3” and “Issue 8” from Appellant’s Reply Brief. Issue 3 sets out in full “Whether there is a fact issue that the Judgment is still at the Eighth Court of Appeals undecided and Bonnie Starr went to the Court of Appeals and asked the Court of Appeals to include her case to Abie Wolf’s Bankruptcy case.” Appellant’s Reply Br. 2. Issue 8 sets out in full “Whether there is a fact issue that Garry and Bonnie Starr they never responded to the Objection filed by Abie Wolf, and Abie Wolf sent a certified letter under Rules 3007 and they never filed an answer for the Objection. Also they never filed an Appellees Brief.” *Id.* at 3.

The Court does not consider these issues for three reasons. First, this Court will not, and need not, consider arguments on appeal presented for the first time in a reply brief. *See United States v. Jackson*, 426 F.3d 301, 304 (5th Cir. 2005) (“Arguments raised for the first time in a reply brief, even by pro se litigants . . . , are waived.”). Appellant makes no argument in Appellant’s Brief regarding the status of the case at the state appellate court, aside from a passing reference in his “Statement of the Case.” Appellant’s Br. 4. Because Appellant failed to raise the argument regarding the status of his state court case until the Reply Brief, the Court declines

to consider it. *See Jackson*, 426 F.3d at 304.

Second, Appellant's argument concerning the Starrs' lack of response is entirely irrelevant to the outcome of this appeal. Appellant's Third Objection was filed as a response to the Trustee's Objection in the Bankruptcy Court, and the Trustee filed a brief before this Court. The Starrs were under no obligation to file additional responses to either the Third Objection or this appeal. Furthermore, courts are not obligated to agree with an argument simply because it is uncontested.

Finally, neither Issue 3 nor Issue 8 was adequately briefed. "A court may decline to address an argument that is not adequately briefed." *Matter of HECI Expl. Co., Inc.*, 862 F.2d 513, 525 (5th Cir. 1988) (finding no abuse of discretion where a district court declined to entertain an argument to which the proponent made only "sporadic and passing" references). Appellant makes only sporadic and vague references to the two issues addressed here, and fails to explain their significance to his current appeal. *See* Reply Br. 4, 5. Accordingly, the Court declines to consider these arguments.

As for Appellant's only remaining arguments, they simply reiterate his assertion that the Starrs' Proof of Claim is improper because Garry Starr's signature is a forgery. Specifically, in his Brief, Appellant argues in Issues 1 and 2 that the Bankruptcy Court erred in accepting a Proof of Claim that was not properly signed; in Issue 3, he objects to the Bankruptcy Court's finding that Appellant's son had no standing to file the Elvis Response, which repeated Appellant's argument that the Proof of Claim was not signed by Garry Starr; and for Issues 4 and 5, Appellant accuses the Trustee of attempting to persuade the Bankruptcy Court to authorize the allegedly improper Proof of Claim despite its alleged lack of signature. Appellant's Br. 5-8. Then, in the Reply Brief, Appellant asserts in Issues 1 and 2 that various rules require a signature

by the person whose name is on the Claim; in Issue 4, he complains that the Trustee acted based on a Proof of Claim that was allegedly improper because it was not signed by Garry Starr; and in Issues 5, 6, and 7 Appellant raises various challenges to the authority of the unidentified agent who allegedly signed the Proof of Claim on behalf of Garry Starr. Reply Br. 1–2.

All of these challenges present variations on the assertion that the alleged forgery of Garry Starr’s signature on the Proof of Claim rendered the Starrs’ claim in Appellant’s bankruptcy case improper. While the numerous “Issues” raised in Appellant’s Brief and the Reply Brief emphasize different aspects of this argument—invoking various procedural rules regarding signatures on proofs of claim and asserting various acts of misconduct to cover up the alleged forgery—every one of them relies on the fundamental assumption that Garry Starr’s signature on the Proof of Claim was forged. The Court declines to entertain this transparent attempt to fracture one issue into many. Appellant presents one issue on appeal: Whether the Bankruptcy Court erred in denying Appellant’s Third Objection and the Elvis Response, both of which argued that the Starrs’ Proof of Claim is improper because Garry Starr’s signature on the document is forged.

Indeed, in its Third Order, the Bankruptcy Court explained that it “has repeatedly addressed and already denied, by final orders, the . . . issues raised by [Appellant] in [Appellant’s Third Objection].” Appellant’s ROA 51. As for the similar arguments raised in the Elvis Response, the Bankruptcy Court noted again that “the issue regarding the signature on the Starr Claim has been raised multiple times by [Appellant] and has already been addressed by the Court.” *Id.* at 52. Because of this, as well as additional independent reasons discussed in its opinion, the Bankruptcy Court found that “any relief requested in [Appellant’s Third Objection] should be denied,” and that “any relief requested in the Elvis Response should be denied.” *Id.* at

51–52. Notably, Appellant does not address this finding by the Bankruptcy Court in either the Appellant’s Brief or Reply Brief. Instead, he merely reiterates his argument regarding the alleged forging of Garry Starr’s signature on the Proof of Claim.

Construing these arguments liberally, the Court reads Appellant’s Brief and Reply Brief as arguing that the Bankruptcy Court erred in declining to consider his assertion that the Starrs’ Proof of Claim is improper because it is not signed by Garry Starr. In reviewing this issue, the Court first examines whether the assertion raised in Appellant’s Third Objection and the Elvis Response regarding the Proof of Claim signature was previously addressed by a final order of the Bankruptcy Court. The Court then evaluates whether the Bankruptcy Court erred in denying Appellant’s Third Objection and the Elvis Response on that basis.

A. Appellant’s assertion that the Starrs’ Proof of Claim is improper because it was not signed by Garry Starr was addressed by a prior final order of the Bankruptcy Court

In the order on appeal, the Bankruptcy Court found that the arguments repeated in Appellant’s Brief and the Elvis Response were previously addressed by a final order of the Bankruptcy Court. A review of the record confirms this. *See* Appellant’s ROA 51–52.

In its First Order, the Bankruptcy Court considered and denied Appellant’s First Objection to the Starr Claim and found that “the Claim of the Starrs should be allowed as an unsecured (not secured) Claim against [Appellant’s] estate.” Appellee’s ROA 181. In its Second Order, the Bankruptcy Court considered Appellant’s Second Objection, which asserted that “‘new evidence’ supports denial of the Starr Claim because of the allegedly the [sic] false signature of Mr. Garry Starr on the Starr Claim.” *Id.* at 175. The Bankruptcy Court denied the Second Objection on three grounds. First, it found that Appellant failed to show that “the alleged ‘new evidence’ could not have been discovered and provided [at an earlier stage of the

bankruptcy case] by [Appellant] with proper diligence.” *Id.* (citing *Diaz v. Methodist Hosp.*, 46 F.3d 492, 495–96 (5th Cir. 1995)). Second, the Bankruptcy Court concluded that Appellant’s request to retain a handwriting expert to establish that Garry Starr’s signature was forged was “a transparent attempt by [Appellant] to try and capitalize on Mr. Starr’s recent death.” *Id.* at 176. And third, the Bankruptcy Court noted that the Starr Claim, which is based on a final judgment rendered in favor of both Bonnie and Garry Starr, is signed by Bonnie Starr. Because the authenticity of Bonnie Starr’s signature on the Proof of Claim was not disputed, the Court found, “the Starr Claim would be valid even if Mr. Starr had not signed the Starr Claim.” *Id.* The Bankruptcy Court concluded its Order by warning Appellant that his “pattern of filing frivolous and unsupported pleadings with the Court . . . [and making] repeated false oaths . . . must stop.” *Id.*

The record clearly establishes that the Bankruptcy Court thoroughly addressed Appellant’s assertion regarding the authenticity of Garry Starr’s signature on the Starrs’ Proof of Claim. The Bankruptcy Court found this assertion to be not only “frivolous and unsupported,” but also legally deficient for both procedural and substantive reasons. *Id.* at 175–76. The Second Order was a final order of the Bankruptcy Court. Accordingly, the Bankruptcy Court committed no error in its Third Order in finding that Appellant’s argument regarding the authenticity of the Proof of Claim signature was addressed by a prior final order of that court.

B. The Bankruptcy Court did not err in dismissing Appellant’s Third Objection and the Elvis Response on the grounds that their arguments were addressed by a prior order

Having found that “the issue regarding the signature on the Starr Claim has . . . already been addressed by the Court,” the Bankruptcy Court concluded that any relief requested in Appellant’s Third Objection and the Elvis Response should be denied. Appellant’s ROA 41–52.

The Bankruptcy Court's finding on this issue was not error.

"[W]hen a proof of claim has in fact been litigated between parties to a bankruptcy proceeding, the litigants must seek reconsideration of the bankruptcy court's determination pursuant to the usual Rule 60 standards if they elect not to pursue a timely appeal of the original order allowing or disallowing the claim." *In the Matter of Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987). Because the deadline to timely appeal the Second Order had already passed when the Third Objection was filed,⁵ the objection must therefore be viewed as a motion for reconsideration. The Fifth Circuit has held that a bankruptcy court has broad, virtually plenary discretion to determine, in response to such a motion, whether to reconsider "for cause" either the allowance or disallowance of proofs of claim. *Id.*; *see also* 11 U.S.C. § 502 ("A claim that has been allowed or disallowed may be reconsidered for cause."). To demonstrate cause, the movant must allege one of the following bases for reconsideration under Rule 60 of the Federal Rules of Civil Procedure:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . . , misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

Fed. R. Civ. P. 60(b); *see Matter of Colley*, 814 F.2d at 1010.

Appellant has not alleged fraud, newly discovered evidence, mistake, neglect, or any other matter capable of justifying reconsideration under Rule 60, either before the Bankruptcy

⁵ Under Rule 8002(a) of the Federal Rules of Bankruptcy Procedure, a notice of appeal to a district court from a bankruptcy court's judgment must be filed within ten days. *In re Bayhi*, 528 F.3d 393, 401 (5th Cir. 2008). This requirement is jurisdictional and cannot be waived. *Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1154 (5th Cir. 1988). The Second Order was entered on December 29, 2016, and Appellant filed his Third Objection on July 17, 2017, far exceeding the ten-day time limit.

Court or this Court. Appellant's Third Objection and the Elvis Response do not address the reasoning in the Bankruptcy Court's Second Order; instead, they merely repeat the assertion that Garry Starr's signature on the Proof of Claim is a forgery. As discussed above, this assertion has been thoroughly addressed by previous decisions of the Bankruptcy Court and was found to have no merit. Appellee's ROA 176. The Fifth Circuit has consistently affirmed the denial of motions for reconsideration that are essentially "a rehash of [the appellant's] original objections" to a proof of claim. *See Snyder v. IRS*, 68 F.3d 468, 1995 WL 581655, at *4 (5th Cir. 1995); *Matter of Colley*, 814 F.2d at 1010; *see also In re Ruth*, 473 B.R. 152, 162 (Bankr. S.D. Tex. 2012) (noting that the Fifth Circuit "has urged bankruptcy courts not to allow parties to use [motions for reconsideration] as a means to rehash already litigated issues").

In short, Appellant has not adequately raised any basis for reconsideration under Rule 60(b), as is required to prevail on a motion for reconsideration. *Matter of Colley*, 814 F.2d at 1010. This Court therefore finds that the Bankruptcy Court was well within its broad discretion to deny reconsideration of its Second Order denying Appellant's objection to the Starrs' Proof of Claim.

C. The Bankruptcy Court did not err in concluding that Appellant's assertion regarding the alleged forgery Garry Starr's signature lacks merit

In its Second Order, as set out above, the Bankruptcy Court found that Appellant's argument disputing the validity of Garry Starr's signature lacked merit on both procedural and substantive grounds. Procedurally, it found that the dispute over the Starrs' Proof of Claim had already been litigated and that Appellant provided no justification for offering new evidence or argument following the First Order. *See Appellee's ROA 175* (citing *Diaz v. Methodist Hosp.*, 46 F.3d 492, 495–96 (5th Cir. 1995)). Substantively, it found that, because the authenticity of Bonnie Starr's signature on the Proof of Claim was not disputed, the Starr Claim would be valid

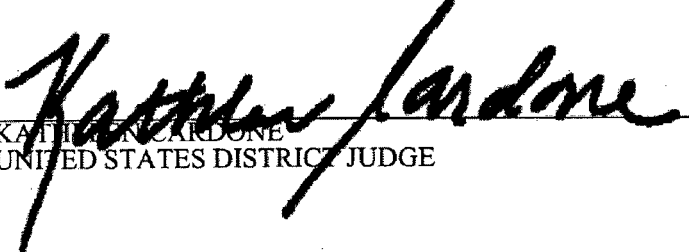
even without Garry Starr's signature. *Id.* at 176. Having reviewed the arguments of Appellant and Appellee, the decision below, and the applicable law, this Court concludes that the Bankruptcy Court did not err in finding that Appellant's arguments concerning the alleged forgery of Garry Starr's signature lacked merit. Accordingly, even if the Court were to consider the underlying substantive issue of the authenticity of Garry Starr's signature on the Proof of Claim, it would reach the same conclusion as the court below.

V. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** that the Bankruptcy Court's order of August 1, 2017, dismissing the Trustee's objection to reclassify Claim 1-1 filed by the Starrs as an unsecured claim, and denying the related Response and Objection by Abie and Elvis Wolf, is **AFFIRMED**.

SO ORDERED.

SIGNED this 20th day of June, 2018.


KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

January 29, 2019


MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 18-50535 Abie Wolf v. Randolph Osherow, et al
USDC No. 3:17-CV-265

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

Mr. James Wesley Brewer
Mr. Abie Wolf

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-50535

In the Matter of: ABIE WOLF, also known as Abraham C. Wolf;
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ABIE WOLF, also known as Abraham C. Wolf,
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Appellant,
versus

RANDOLPH OSHEROW; GARRY STARR; BONNIE STARR,
Appellees.

Appeal from the United States District Court
for the Western District of Texas

O R D E R :

IT IS ORDERED that appellant's motion to file a petition for rehearing-
/petition for rehearing en banc out of time is DENIED. IT IS FURTHER
ORDERED that appellant's motion for an extension of time to file his petition
for rehearing/petition for rehearing en banc is DENIED.

/s/ Jerry E. Smith
JERRY E. SMITH
United States Circuit Judge