IN THE

Supreme Court of the United States

DAVID ALAN SCHUM,

Petitioner

v.

FORTRESS VALUE RECOVERY FUND I, L.L.C.;
SCHULTE ROTH & ZABEL, L.L.P.; LAWRENCE S. GOLDBERG;
DANIEL BERNARD ZWIRN; PERRY GRUSS;
HIGHBRIDGE/ZWIRN SPECIAL OPPORTUNITIES FUND, L.P.;
BERNARD NATIONAL LOAN INVESTORS, LIMITED,

Respondents

APPENDIX FOR

PETITION FOR WRIT OF CERTIORARI

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20-10016

In the Matter of: RENAISSANCE RADIO, INCORPORATED,

Debtor

DAVID ALAN SCHUM,

Appellant

v.

FORTRESS VALUE RECOVERY FUND I, L.L.C.; SCHULTE ROTH & ZABEL, L.L.P.; LAWRENCE S. GOLDBERG; DANIEL BERNARD ZWIRN; PERRY GRUSS; HIGHBRIDGE/ZWIRN SPECIAL OPPORTUNITIES FUND, L.P.; BERNARD NATIONAL LOAN INVESTORS, LIMITED,

Appellees

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

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 05/18/20 , 5 Cir., _____, _____ F.3d _____)

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor

judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service and not disqualified not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Stephen A. Higginson

UNITED STATES CIRCUIT 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

June 19, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 20-10016 David Schum v. Fortress Value Recovery Fund I, et al
USDC No. 3:19-CV-978

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Lisa E. Ferrara

By: _____
Lisa E. Ferrara, Deputy Clerk
504-310-7675

Mr. Michael L. Cook
Ms. Katherine Drell Grissel
Mr. Adam C. Harris
Ms. Devin Lea Kerns
Mr. Matthew Walter Moran
Mr. David Alan Schum

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
May 18, 2020

Lyle W. Cayce
Clerk

No. 20-10016
Summary Calendar

In the Matter of: RENAISSANCE RADIO, INCORPORATED,

Debtor

DAVID ALAN SCHUM,

Appellant

v.

FORTRESS VALUE RECOVERY FUND I, L.L.C.; SCHULTE ROTH & ZABEL, L.L.P.; LAWRENCE S. GOLDBERG; DANIEL BERNARD ZWIRN; PERRY GRUSS; HIGHBRIDGE/ZWIRN SPECIAL OPPORTUNITIES FUND, L.P.; BERNARD NATIONAL LOAN INVESTORS, LIMITED,

Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CV-978

Before DAVIS, SMITH, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Pro se appellant David Schum appeals the district court's order affirming

* 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.

the judgment of the bankruptcy court and enjoining him from future filings as a vexatious litigant. We affirm.

This case arises from a series of bankruptcies. Appellant was a stockholder of Renaissance Radio, Inc. (RRI), a company that held several radio stations and related licenses. RRI entered bankruptcy proceedings, which resulted in its assets' being transferred to The Watch, Ltd. and DFW Radio License, LLC (Watch). Watch then filed for bankruptcy, and its assets were purchased by Highbridge/Zwirn Special Opportunities Fund, L.P. (Zwirn). Zwirn was renamed Fortress Value Recovery Fund I LLC (Fortress), which is the appellee in this action.

On December 28, 2018, Schum filed a motion in bankruptcy court to reopen the RRI bankruptcy proceedings due to alleged fraud, bad faith, and fraud on the court. The bankruptcy court denied the motion as untimely and found no basis for reopening the proceedings. Schum appealed to the district court, which found no error in the bankruptcy court's decision and enjoined further filings in this matter. Schum now argues that the lower courts incorrectly characterized his claim as time-barred, incorrectly held that a lender's domicile was immaterial to the bankruptcy proceedings, and violated his rights by enjoining him from further filings as a vexatious litigant. He also argues that the bankruptcy court suffered from a conflict of interest because the bankruptcy judge's clerk was formerly employed by appellee's counsel's firm.

We review the district court's denial of relief, as well as its grant of the injunction, for abuse of discretion. *In re Pettle*, 410 F.3d 189, 191 (5th Cir. 2005); *Matter of Case*, 937 F.2d 1014, 1018 (5th Cir. 1991); *Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002). The court's ruling that there was no conflict of interest is also reviewed for an abuse of discretion. *See Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003).

The district court properly affirmed the bankruptcy court's ruling that Schum's motion was time-barred under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60. Although styled as a motion to reopen, the relief that Schum seeks requires a revocation of the RRI confirmation order. Rule 9024 also provides that "a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144." This provision requires a party to move for revocation of a reorganization plan within 180 days. 11 U.S.C. § 1144. Schum also requests relief under Rule 60(b) and (d). Rule 60(c) requires that a motion to reconsider be made "within a reasonable time." Fed. R. Civ. P. 60(c). Schum waited far beyond these deadlines to file the instant action, and he provides no justification for his delay. Schum alleges that he discovered the information giving rise to his claims in 2012, at least six years before he filed his motion in bankruptcy court. This precludes relief under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60(b) and (d).

Schum's other claims are similarly meritless. He has not shown cause to reopen the bankruptcy proceeding over a decade after its conclusion under 11 U.S.C. §§ 350(b) or 502(j). And Schum argues that the bankruptcy court suffered from a conflict of interest, but the clerk who was formerly employed by the firm representing the appellee was recused from his case and played no part in the court's decision. Finally, we find no error in the district court's decision to enjoin Schum from further filings relating to the Watch or RRI bankruptcies. This ruling is supported by Schum's long history of repetitive and frivolous filings pertaining to this matter in this and other federal courts. *See, e.g.*, *Schum v. F.C.C.*, 617 F. App'x 5 (D.C. Cir. 2015), *cert. denied*, 136 S. Ct. 1672; *In re Watch Ltd.*, 295 F. App'x 647 (5th Cir. 2008); *In re Watch Ltd.*, 257 F. App'x 748 (5th Cir. 2007).

For these reasons, we AFFIRM the judgment of the district court.

IN TH UNITE STATES DIST ICT COU T
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVID A. SCHUM, Appellant, v. FORTRESS VALUE RECOVERY FUND I LLC, et al., Appellees.	§ § § § § § § § § §	Civil Action No. 3:19 cv-00978-M

ORDER

Before the Court is pro se Appellant's "Petition for Panel Rehearing." [ECF No. 16]. The Court previously declared Appellant a vexatious litigant and enjoined him from making any future filings related to the bankruptcies of Renaissance Radio, Inc., the Watch, Ltd., or DFW Radio License, LLC without first obtaining permission to do so from the United States Bankruptcy Court for the Northern District of Texas. [ECF No. 15 at 12]. Appellant has not obtained such permission before filing the current Petition. Even if he had done so, there is no "panel rehearing" available to Appellant. If directed to this Court, such a Motion would have been **DENIED**.

SO ORDERED.

December 23, 2019.

BARBARA M. G. LYNN
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAVID A. SCHUM, Appellant, v. FORTRESS VALUE RECOVERY FUND I LLC and SCHULTE ROTH & ZABEL LLP, Appellees.	§ § § § § § § § § §	Civil Action No. 3:19-cv-00978-M

ORDER

Before the Court is Appellant David A. Schum's appeal of the bankruptcy court's Order Denying Motion to Reopen Bankruptcy Case, Reconsider an Order, and Reconsider and Deny Certain Claims, and his Motion for a Ruling on Potential Conflict of Interest. [ECF Nos. 1, 12]. Also before the Court is Appellees' request in their Response that Appellant be declared a vexatious litigant and enjoined from future filings without Court approval. [ECF No. 9 at 30]. For the following reasons, the bankruptcy court's Order is **AFFIRMED**. Furthermore, Appellees' request to declare Appellant a vexatious litigant and enjoin him from future filings without leave is **GRANTED**.

I. Factual and Procedural Background

Appellant was a stockholder of Renaissance Radio, Inc. ("RRI"), which owned several radio stations and related licenses, when it was forced into involuntary bankruptcy. That proceeding culminated in 2004 with a confirmed chapter 11 plan that transferred all of RRI's assets and operations to The Watch, Ltd. and its affiliate, DFW Radio License, LLC (collectively, the "Watch"). Bernard National Loan Investors, Ltd. ("BNLI") was the lender for the Watch and Highbridge/Zwirn Special Opportunities Fund, L.P. ("Zwirn") was agent for the

lender. Appellee Schulte Roth & Zabel LLP ("Schulte") served as counsel for Zwirn in the RRI bankruptcy proceeding, and it made successful claims for attorneys' fees in that bankruptcy proceeding. Within two years of the completion of the RRI bankruptcy, the Watch filed for chapter 11 bankruptcy, and Zwirn purchased all of the assets of the Watch. Zwirn was later renamed Fortress Value Recovery Fund I LLC ("Fortress"), which is an Appellee in this action. Vinson & Elkins LLP ("V&E") represented Zwirn as counsel in the Watch bankruptcy proceeding and represents Fortress in the appealed matter.

Appellant filed the appealed Motion seeking to reopen the RRI bankruptcy case because of alleged fraud and newly discovered information related to the domicile of BNLI. Appellees objected to the Motion. Chief Bankruptcy Judge Douglas Dodd, of the United States Bankruptcy Court for the Middle District of Louisiana, considered the Motion.[1] Judge Dodd denied Appellant's Motion, finding that Appellant had "established no basis for reopening the RRI Bankruptcy or reconsider[ing] the Objectors' claims." *In re Renaissance Radio, Inc.*, No. 03-33479-BJH, 2019 WL 1503787, at *10 (Bankr. N.D. Tex. Apr. 4, 2019). Appellant now appeals the bankruptcy court's Order.

II. Legal Standard

A district court reviewing a bankruptcy court's decisions applies the same standards of review that the Fifth Circuit applies to its review of district court decisions. *In re SI Restructuring, Inc.*, 542 F.3d 131, 134 (5th Cir. 2008). "[A] bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo." *Id.* Matters within the bankruptcy court's discretion are reviewed for abuse of that discretion. *Matter of*

[1] Judge Dodd was temporarily assigned to the United States Bankruptcy Court for the Northern District of Texas to preside over certain cases of Bankruptcy Judge Barbara J. Houser to facilitate Judge Houser's participation as head of the mediation team in the Puerto Rico insolvency cases. Clerk's Notice 18-01, United States Bankruptcy Court for the Northern District of Texas.

Sadkin, 36 F.3d 473, 475 (5th Cir. 1994). As the Fifth Circuit has held, "[a] Bankruptcy Court does not abuse its discretion unless 'its ruling is based on an erroneous review of the law or on a clearly erroneous assessment of the evidence.'" *In re Yorkshire, LLC*, 540 F.3d 328, 331 (5th Cir. 2008).

III. Reopening the RRI Bankruptcy Proceeding Under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60

Appellant appeals the bankruptcy court's denial of his Motion to reopen the RRI bankruptcy proceeding under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60. Bankruptcy Rule 9024 makes Federal Rule 60 applicable in bankruptcy proceedings. Federal Rule 60(b) permits a court to reconsider a final judgment or order based on newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Federal Rule 59(b), or based on fraud, misrepresentation, or misconduct by an opposing party. Federal Rule 60(d) similarly allows a court to set aside a judgment for fraud on the court. The bankruptcy court denied Appellant's Motion, finding his allegations regarding the domicile of BNLI were time-barred and insufficient under Federal Rules 60(b) and 60(d).

A bankruptcy court's decisions under Federal Rule 60 are reviewed for abuse of discretion. *In re Pettle*, 410 F.3d 189, 191 (5th Cir. 2005). Here, the bankruptcy court did not abuse its discretion because it did not rely on an erroneous understanding of the law or on clearly erroneous facts. Accordingly, its Order denying Appellant's Motion to reopen the RRI bankruptcy proceeding under Bankruptcy Rule 9024 and Federal Rule 60 is **AFFIRMED**.

IV. Reopening the RRI Bankruptcy Proceeding Under 11 U.S.C. §§ 350(b) and 502(j)

Appellant also appeals the bankruptcy court's Order denying his Motion to reopen the RRI bankruptcy proceeding and reconsider the RRI bankruptcy proceeding's claims, under 11

U.S.C. §§ 350(b), 502(j). Under § 350(b), a bankruptcy court may reopen a bankruptcy proceeding for cause, and under § 502(j), may reconsider for cause a claim in a bankruptcy proceeding that has previously been allowed or disallowed. The bankruptcy court denied reopening under both provisions, finding that cause was not established under either section and noting that too much time had elapsed to reopen. *In re Renaissance Radio, Inc.*, 2019 WL 1503787, at *7–8.

Both rulings are reviewed for an abuse of discretion. *Matter of Case*, 937 F.2d 1014, 1018 (5th Cir. 1991); *Matter of Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987). In these determinations, the bankruptcy court did not rely on an erroneous understanding of the law or on clearly erroneous facts. Accordingly, it did not abuse its discretion, and its Order denying Appellant's Motion to reopen the RRI bankruptcy proceeding and reconsider claims under 11 U.S.C. §§ 350(b) and 502(j) is **AFFIRMED**.

V. Ethical Violations of the Texas Rules of Professional Conduct

Appellant appeals the bankruptcy court's ruling that BNLI's domicile was immaterial. Texas Disciplinary Rules of Professional Conduct 3.03 and 8.04 prohibit dishonest conduct by a lawyer. In finding that there was no violation of these rules, the bankruptcy court held that BNLI's "domicile was immaterial to the financing transaction and did not necessitate disclosure contemplated by the rules." *In re Renaissance Radio, Inc.*, 2019 WL 1503787, at *7.

Materiality is a legal question that is reviewed de novo. *United States v. Abroms*, 947 F.2d 1241, 1246 (5th Cir. 1991), *as amended on denial of reh'g*. Based on a de novo review, the Court determines that the bankruptcy court correctly found that the domicile of BNLI was immaterial under Texas Disciplinary Rules of Professional Conduct 3.03 and 8.04, and its decision in that regard is **AFFIRMED**.

VI. Equitable Mootness

Appellant further appeals the bankruptcy court's determination that his Motion was equitably moot. Equitable mootness is a prudential consideration that allows a bankruptcy court to decline review of a chapter 11 reorganization plan. *In re Blast Energy Servs., Inc.*, 593 F.3d 418, 424 (5th Cir. 2010). The bankruptcy court found that Appellant's Motion was equitably moot under the Fifth Circuit's three-factor test. *In re Renaissance Radio, Inc.*, 2019 WL 1503787, at *8 (citing *In re Blast Energy Servs., Inc.*, 593 F.3d 418, 424 (5th Cir. 2010)). "Equitable mootness is a question of law" that is reviewed de novo. *In re GWI PCS 1 Inc.*, 230 F.3d 788, 799 (5th Cir. 2000). Upon a de novo review, the Court concludes that the bankruptcy court correctly applied the Fifth Circuit's three-factor test and correctly concluded that Appellant's Motion was equitably moot, and its Order doing so is therefore **AFFIRMED**.

VII. Additional Findings of Fact

Appellant challenges various factual statements in the bankruptcy court's Order. The Court concludes that none of such alleged errors are material to the challenged decisions of the bankruptcy court, and these alleged errors, which are in any event not clearly erroneous, will thus not be reviewed here in further detail.

VIII. Motion to Address Conflict of Interest

Following the initiation of this appeal, Appellant filed a Motion for a Ruling on Possible Conflict of Interest, as it "may affect this Court's ruling on the motion on appeal." [ECF No. 12 at 6]. The Court's jurisdiction in this matter extends only to appeals of the judgments, orders, and decrees of the bankruptcy court. 28 U.S.C. § 158(a). Accordingly, the Court will construe the current Motion as a separate ground of appeal of the bankruptcy court's Order denying the appealed Motion.

Appellant alleges three conflicts of interest or ethical violations: 1) Judge Houser's career law clerk (the "law clerk") at the time that Judge Dodd decided the appealed Motion was formerly employed by V&E and served as counsel for Appellee Fortress (at the time known as Zwirn) in the Watch bankruptcy proceeding; 2) Judge Dodd's conduct, in combination with the presence of the law clerk, created an appearance of partiality that required Judge Dodd to recuse himself; and 3) Appellee Schulte and V&E knew of issues 1 and 2 but did not bring them to the bankruptcy court's attention.

a) The Law Clerk

Appellant alleges that the law clerk's prior employment at V&E, where she previously represented Appellee Fortress in the Watch bankruptcy proceeding, created a conflict of interest. Canon 3(F)(2) of § 302 of the Code of Conduct for Judicial Employees prohibits a law clerk from performing her official duties in a matter in which she previously represented a party or as to which she otherwise has personal knowledge. The evidence before the court, however, is that the law clerk recused herself and did not perform any duties on the matter before the Court. [Motion on Conflicts at Ex. G]. In response to that evidence, Appellant points only to the fact that the law clerk received notification of public filings in the matter through the Case Management/Electronic Case Files System. Such notice establishes no basis for a conclusion that the law clerk did any work on this matter. Clearly, Appellant has the burden to prove otherwise, and he has not done so.

Appellant further contends that any recusal should have occurred in writing on the record. When a court seeks a party's waiver of a possible conflict of interest or other potentially disqualifying issue that creates an appearance of partiality, it must be fully disclosed on the record. *See Sierra Club v. Simkins Indus., Inc.*, 847 F.2d 1109, 1118 (4th Cir. 1988), *abrogated*

on other grounds (analyzing disclosure on the record of a judge's potential conflict of interest). However, when, as here, the evidence is wholly insufficient to create an appearance of impropriety, no waiver is required and it need not be disclosed on the record. *Id.*

b) Judge Dodd

Appellant argues that Judge Dodd's actions, in conjunction with the presence of the law clerk, created an appearance of partiality that required Judge Dodd to recuse himself. He highlights the replacement of Judge Houser with Judge Dodd without explanation, the quick scheduling of the hearing, and an alleged imbalance in the number of times Judge Dodd interrupted Appellant as compared to Appellees during the hearing on the appealed Motion. [Motion on Conflicts at 15–16].

Under 28 U.S.C. § 455, a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." A moving party must: "(1) demonstrate that the alleged comment, action, or circumstance was of 'extrajudicial' origin, (2) place the offending event into the context of the entire trial, and (3) do so by an 'objective' observer's standard." *Andrade v. Chojnacki*, 338 F.3d 448, 455 (5th Cir. 2003). "A 'remote, contingent, or speculative' interest is not one 'which reasonably brings into question a judge's partiality.'" *Matter of Billedeaux*, 972 F.2d 104, 106 (5th Cir. 1992). Although § 455 "speaks in mandatory language," the Fifth Circuit has "recognized that the decision to recuse is committed to the sound discretion" of the judge. *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997).

The assignment of the case to Judge Dodd, the scheduling of the hearing, and Judge Dodd's questioning during the hearing are not of an extrajudicial origin. "[E]vents occurring or opinions expressed in the course of judicial proceedings . . . . rarely require recusal." *Andrade*, 338 F.3d at 455 (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Only when events or

opinions derive from or relate to an extrajudicial source or otherwise demonstrate "a deep-seated favoritism or antagonism that would make fair judgment impossible" can they warrant recusal. *Id.* Appellant presents no evidence of any of that as to Judge Dodd.

c) Appellee Schulte and V&E

Appellant alleges that Appellee Schulte and V&E violated their ethical and professional obligations as lawyers by failing to disclose the above potential conflicts to the bankruptcy court. As described above, however, Appellant's allegations of potential conflicts and appearances of partiality as to the law clerk and Judge Dodd are without merit, leaving nothing Appellee Schulte and V&E were obligated to disclose.

Appellant also argues that Appellee Schulte and V&E violated their ethical obligations under Texas Disciplinary Rule of Professional Conduct 1.11. That rule, however, prohibits a former law clerk or any lawyer in the same firm as that former law clerk from representing a party in a matter in which the law clerk previously participated in his or her official capacity as a law clerk. Thus, the rule governs the law clerk and her current employer. It does not govern Appellee Schulte, who was never the law clerk's employer, nor V&E, her former employer prior to her work as a law clerk. Accordingly, the bankruptcy court's Order is **AFFIRMED**.

IX. Appellees' Request to Enjoin Appellant as a Vexatious Litigant

Appellees request that the Court determine that Appellant is a vexatious litigant and enjoin him from any future filings related to the RRI or Watch bankruptcy proceedings without prior court approval. The All Writs Act authorizes a court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). It is not an independent grant of jurisdiction. *Texas v. Real Parties In Interest*, 259 F.3d 387, 392 (5th Cir. 2001). Instead, the Court's jurisdiction in this matter is

limited to its appellate review of the bankruptcy court. Nevertheless, a court may issue injunctive relief under the All Writs Act in aid of its appellate jurisdiction over the bankruptcy court. *Matter of Macon Uplands Venture*, 624 F.2d 26, 28 (5th Cir. 1980). Furthermore, that relief may relate to a court's "existing jurisdiction or in aid of its future appellate jurisdiction." *In re Syncora Guarantee Inc.*, 757 F.3d 511, 515 (6th Cir. 2014) (analyzing a court of appeals' ability to issue writs under the All Writs Act); *see also F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) (explaining that appellate courts have authority to issue writs with respect "to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected"). Appellees seek injunctive relief prohibiting Appellant from making future filings related to the RRI or Watch bankruptcies. Those filings, when decided and if appealed, will affect the Court's future appellate jurisdiction over those bankruptcy proceedings. Accordingly, the Court has the jurisdiction to order the requested injunctive relief.

"[F]ederal courts possess power under the All Writs Act to issue narrowly tailored orders enjoining repeatedly vexatious litigants." *Newby v. Enron*, 302 F.3d 295, 301 (5th Cir. 2002). This includes the authority to impose a prefiling injunction prohibiting future filings without first obtaining leave from a court. *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 187 (5th Cir. 2008). "Notice and a hearing are required if the district court sua sponte imposes a pre-filing injunction." *Id.* at 189. However, a hearing is unnecessary in this instance given that the Court is not acting sua sponte and is responding to Appellees' request. Instead, the Court can issue injunctive relief if: 1) the litigant has engaged in a lengthy and abusive history of litigation; 2) the litigant receives notice and an opportunity to oppose the court's order before it is imposed; and 3) the court provides guidelines regarding how to obtain permission to make future filings.

Flores v. United States Attorney Gen., No. 1:14-CV-198, 2015 WL 1088782, at *4 (E.D. Tex. Mar. 4, 2015) (citing *Andrews v. Heaton*, 483 F.3d 1070, 1077 (10th Cir. 2007)).

a) Appellant's Vexatious Litigation History

In determining whether a litigant is vexatious, a court must weigh the following: "(1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions." *Baum*, 513 F.3d at 189. First, Appellant has engaged in an extensive and unsuccessful history of vexatious and duplicative litigations over the last 16 years to challenge the RRI and Watch bankruptcy proceedings. Appellant first appealed the transactions in the Watch bankruptcy to both this court and the Fifth Circuit Court of Appeals. *In re Renaissance Radio, Inc.*, 2019 WL 1503787, at *2. After those attempts were unsuccessful, Appellant refused to sign the paperwork necessary to complete those transactions. When the bankruptcy court eventually ordered a substitute party to sign those papers, Appellant again unsuccessfully appealed that order to this court and the Fifth Circuit Court of Appeals. *Id.* Appellant also separately challenged the transactions in the Watch bankruptcy plan to the FCC, since the license sales required FCC approval. *Id.* at *3. When those multiple challenges failed, Appellant unsuccessfully appealed the FCC's decisions to the D.C. Circuit Court of Appeals and sought a writ of certiorari. *Id.* Appellant also made similar efforts in state court, where he was sued by Zwirn and brought an unsuccessful counterclaim attempting to rescind the guaranty he provided in the RRI bankruptcy plan. *Id.*

Second, there is no apparent good faith basis upon which Appellant has repeatedly challenged the proceedings concluded over a decade ago. Notably, Appellees have identified

multiple instances of courts and the FCC finding Appellant's various arguments repetitive and meritless. [Response, ECF No. 9 at 4–5]. Third, Appellant's repeated efforts have extensively burdened multiple tribunals by both straining the courts' dockets and directly communicating with court staff. [Motion on Conflicts at Exs. D, G]. Finally, Appellant's prior course of conduct has demonstrated that alternative lesser measures will not deter his efforts. As Appellant himself noted, he has already been "sanctioned or threatened with sanctions by Judge Houser (ROA.919-920), this District Court (ROA.1125) and the FCC." [Appellant Brief, ECF No. 8 at 41]. Exemplifying Appellant's willingness to ignore court orders, the bankruptcy court had to sign six orders to compel during the Watch bankruptcy proceeding to require Appellant to sign transaction documents. *In re Renaissance Radio, Inc.*, 2019 WL 1503787, at *2. In light of Appellant's consistent course of conduct, measures short of this injunction would be insufficient to deter his future actions. Based on the above considerations, Appellant has engaged in a vexatious and abusive pattern of litigation that warrants injunctive relief.

b) Appellant's Notice and Opportunity to be Heard

As explained above, Appellant requires notice and a hearing before a court may sua sponte issue a prefiling injunction. However, when acting at the request of a party, a court does not need a hearing and can instead provide a separate opportunity to be heard. *See also Commerce Park at DFW Freeport v. Mardian Const. Co.*, 729 F.2d 334, 341 (5th Cir. 1984) (a hearing is unnecessary in the related context of issuing a preliminary injunction under Federal Rule of Civil Procedure 65(a) when there is no factual dispute and the parties have been provided the opportunity to present their legal arguments). Appellant has been given notice of this potential injunction through receipt of Appellees' Response. Appellant had the opportunity to

respond with his Reply, through which he contests Appellees' request. [ECF No. 11]. Accordingly, Appellant has been provided notice and a sufficient opportunity to be heard.

c) Guidelines for Seeking Permission for Future Filings

A court issuing a prefiling injunction must provide guidelines as to what the enjoined litigant must do to obtain permission to make future filings. Accordingly, Appellant may not make any future filings in a United States bankruptcy court that relate to the Watch or RRI bankruptcy proceedings without first obtaining the permission of the United States Bankruptcy Court for the Northern District of Texas. When seeking such permission, Appellant shall specify in detail the nature and justification for the requested filing, the reasons Appellant has not previously made the requested filing, and the explanation as to how the filing is not duplicative of any of Appellant's previous filings. Appellant may only proceed with the requested filing upon the granted permission of the bankruptcy court and with any limitations the bankruptcy court may deem appropriate. Accordingly, Appellees' request that Appellant be enjoined as a vexatious litigant is **GRANTED**. It is **ORDERED**, that Appellant is enjoined from making future filings related to the RRI and Watch bankruptcy proceedings, as outlined above, except with the prior approval of the United States Bankruptcy Court for the Northern District of Texas.

X. Conclusion

The bankruptcy court's Order is **AFFIRMED**, and Appellees' request to enjoin Appellant as a vexatious litigant is **GRANTED**. Appellant is enjoined from making any future filings related to the RRI or Watch bankruptcies in a United States bankruptcy court without first obtaining leave from the United States Bankruptcy Court for the Northern District of Texas.

SO ORDERED.

December 2, 2019.

BARBARA M. G. LYNN
CHIEF JUDGE

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 11, 2019

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 03-33479-BJH**
	§	
RENAISSANCE RADIO, INC.,	§	**(Chapter 11)**
	§	
Debtor.	§	**Related to Docket Nos. 273, 274, 275, 276, 278, 280, 284, and 285**
	§	
	§	

ORDER DENYING MOTION TO REOPEN BANKRUPTCY CASE, RECONSIDER AN ORDER AND RECONSIDER AND DENY CERTAIN CLAIMS

Came on for consideration the *Motion to Reopen Bankruptcy Case, Reconsider an Order and Reconsider and Deny Certain Claims* [Docket Nos. 273 and 274] (the "Motions"),[1] the *Memorandum of Points and Authorities in Support of Motion to Reopen Bankruptcy Case; Reconsider an Order and Reconsider and Deny Certain Claims* [Docket No. 275] (the "Memorandum in Support"), and the *Appendix to Motion to Reopen Bankruptcy Case, Reconsider*

[1] The same document was docketed at both Docket No. 273 and 274.

an Order and Reconsider Certain Claims; Memorandum of Points and Authorities; Declaration of David Schum; Exhibits [Docket No. 276] (the "Appendix"), each filed by David A. Schum ("Schum"). After considering Schum's Motions, Memorandum in Support, and Appendix and *Fortress Value Recovery Fund I LLC's Objection to David A. Schum's Motion to Reopen Bankruptcy Case, Reconsider an Order and Reconsider and Deny Certain Claims and Points and Authorities in Support Thereof* [Docket No. 278], *Schulte Roth & Zabel LLP's Joinder to Fortress Value Recovery Fund I LLC's Objection to David A. Schum's Motion to Reopen Bankruptcy Case, Reconsider an Order and Reconsider and Deny Certain Claims and Point and Authorities in Support Thereof* [Docket No. 280], Schum's *Reply to Fortress Value Recovery Fund I LLC and Joinder Schulte Roth & Zabel LLP's Objection to David A. Schum's Motion to Reopen Bankruptcy Case, Reconsider an Order and Reconsider and Deny Certain Claims and Points and Authorities in Support Thereof* [Docket No. 284], and arguments presented at the hearing thereon, the Court finds that the Motions lack merit and should be denied for the reasons set forth in the Court's *Memorandum Opinion Denying Motions to Reopen Case and to Reconsider Order and Deny Certain Claims* dated April 4, 2019 [Docket No. 285].

IT IS THEREFORE ORDERED that the Motion is **DENIED**.

END OF ORDER # #

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The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 4, 2019

United States Bankruptcy Judge

IN THE UNITED STATE NK UPTCY COU T
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN E:	§	**CASE NO. 03-33479-BJH**
	§	**(Chapter 11)**
RENAIS NCE RADIO, INC.,	§	
	§	**Related to ECF Nos. 273 & 274**
Debtor.	§	

MEMORANDUM OPINION DENYING MOTIONS TO REOPEN CASE AND TO RECONSIDER ORDER AND DENY CERTAIN CLAIM

David A. Schum ("**Schum**"), a former stockholder, moved to reopen this case (the "**R I Bankruptcy**") to reconsider the allowance of several claims on grounds of fraud, bad faith and fraud on the court.[1] Schum relies on 11 U.S.C. §§ 350(b), 502(j)[2] and Federal Rules of Civil Procedure 60(b)(2), (b)(3) and (d)(3).[3] Both Fortress Value Recovery Fund I LLC ("**Fortress**

[1] ECF Nos. 273 (Motion to Reopen) and 274 (Motion to Reconsider Order and Deny Certain Claims) (together, the "**Motion**") were repeat filings of the same motion. Also filed with the Motion are Schum's Brief in Support, ECF No. 275 ("**Schum's Brief**") and Schum's Appendix, ECF No. 276 ("**Schum's App.**").

[2] Made applicable by Fed. R. Bankr. P. 3008.

[3] As applicable by Fed. R. Bankr. P. 9024.

Value")[4] and Schulte Roth Zabel LLP ("**Schulte**")[5] (together with Fortress Value, the "**Objectors**") oppose reopening the case.

Schum seeks to revisit claims addressed in a confirmed chapter 11 plan from a case closed over fourteen years ago, despite his numerous unsuccessful attempts to unwind the plan through appeals and other means. The basis for his challenge now is an argument he could have made – and in at least one forum, did make – challenging post-petition financing this court approved to successfully conclude the RRI Bankruptcy many years ago and remained undisturbed on appeal.

Even if Schum's arguments had merit as a matter of law – and they do not, being essentially frivolous – he urges them far too late for relief.[6]

I. Background

A. The RRI Bankruptcy Case

Renaissance Radio, Inc. ("**RRI**") was formed in February 1997 to acquire Dallas/Ft. Worth area radio stations. Creditors of the failing enterprise filed an involuntary chapter 7 petition against it in 2003, but the case later converted to a chapter 11 reorganization that ended with a confirmed plan.[7] The confirmed plan provided for the transfer of all RRI's assets and operations to The Watch, Ltd., a Texas limited partnership, and its affiliate DFW Radio License, LLC, a Texas limited liability company (together with The Watch, Ltd. ("**The Watch**")). The Watch bought the assets with $6,500,000[8] in court-approved exit financing (the "**Exit Financing Facility**") arranged

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[4] ECF No. 278 ("**Fortress Value Objection**").

[5] ECF No. 280 (Schulte's Joinder to the Fortress Value Objection). Schulte represented Zwirn throughout the RRI Bankruptcy.

[6] This memorandum opinion addresses all objections and affirmative defenses.

[7] ECF No. 141, and with certain amendments, ECF No. 148 (Second Amended Chapter 11 Plan) (the "**RRI Plan**"); *see also* ECF No. 192 (January 8, 2004 Order Confirming Second Amended Plan of Reorganization) (the "**RRI Confirmation Order**").

[8] RRI Plan, Ex. B.

by Bernard National Loan Investors Ltd. ("**BNLI**")[9] as lender and Highbridge/Zwirn Special Opportunities Fund, L.P. ("**Zwirn**"), its agent. A final decree closed the RRI Bankruptcy in August 2004, more than fourteen years before Schum filed the Motion. Schum personally guarantied (the "**Guaranty**")[10] the Exit Financing Facility, as RRI's confirmed plan required.[11]

B. The Watch Bankruptcy

Less than two years after RRI's plan was confirmed, The Watch and DFW Radio License, LLC filed their own chapter 11 cases.[12] The court later authorized Zwirn's purchase of substantially all the two debtors' assets,[13] though Zwirn later assigned its purchase rights to Bernard Dallas, LLC ("**Bernard Dallas**"), an entity it formed to acquire the assets.

Schum repeatedly challenged this transaction through the courts. His actions included:

> 1/9/06: Schum appealed the sale approval order to the Northern District of Texas, District Court.[14] The appeal was dismissed for Schum's lack of standing.
>
> 7/12/06: Schum unsuccessfully moved for reconsideration, arguing that his proofs of claim filed in the bankruptcy cases gave him standing to appeal.[15]

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[9] The financing agreement defined the *Lenders* as "the financial institutions from time to time" but was signed on behalf of Bernard National Loan Investors, Ltd. The closing documents bear the signatures of Schum, as president of DFW Radio, Inc. and general partner on behalf of The Watch; Daniel Zwirn, as managing principal of Zwirn; and Perry Guss, as director of BNLI. Schum's App. at 120-21 (financing agreement signature pages).

[10] Adversary No. 06-02345-BJH [ECF No. 2], Ex. D; *see also* RRI Plan, Ex. 1.31, p. 13.

[11] RRI Plan. Ex. 1.31, § 5.1(A)(i).

[12] Case Nos. 05-35874-BJH-11 (The Watch, Ltd.) and 05-35892-BJH-11 (DFW Radio License LLC) (collectively, "**The Watch Bankruptcy**") were filed May 26, 2005, and later ordered jointly administered. Citations to pleadings filed in these cases will be preceded with "The Watch Bankruptcy." All other citations will refer to pleadings filed in the RRI Bankruptcy unless otherwise noted.

[13] The Watch Bankruptcy, ECF No. 150.

[14] *See* Case No. 3:06-cv-00391-N.

[15] *See* Case No. 3:06-cv-00391-N, [ECF Nos. 21 and 26].

> 12/5/05: Schum appealed the dismissal order to the F fth Circu t Court of Appeals, which dismissed the appeal as moot after Schum failed to obtain a stay pending appeal.[16]

When Schum did not succeed on appeal, he sought to stop the court-approved transactions by repeatedly refusing to sign documents necessary to close Zwirn's purchase. Interested parties filed six (6) motions to compel Schum to sign the documents transferring the FCC licenses and permits from the debtors to the purchaser.[17] The sixth and final order authorized Zwirn's counsel to sign the sale documents (the "**Sixth Compel Order**").[18] Schum appealed that order but this court denied his motion to stay the order pending appeal. The district court later dismissed the appeal as moot under 11 U.S.C. § 363(m) because there was no stay of the sale approval order and the sale at issue had already been consummated to a good-faith purchaser.[19] Schum unsuccessfully moved the district court to reconsider the order dismissing the appeal.[20] The Fifth Circuit eventually dismissed as moot Schum's appeal of the order denying his motion to reconsider.[21]

Nor did Schum confine his relentless efforts to block the transactions to the federal courts. Specifically, he unsuccessfully attacked the Federal Communications Commission's (the "**FCC**") approval of Bernard Dallas's May 2006 sale of the radio assets to a third-party purchaser, Principal Broadcasting,[22] and afterward petitioned the FCC to reconsider its approval of the assignment.

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[16] *See* First Appeal [ECF No. 27] (Notice of Appeal), and *In Matter of The Watch Ltd.*, 257 F. App'x 748 (5th Cir. 2007).

[17] *See* The Watch Bankruptcy, [ECF Nos. 172 & 178; 191 & 193; 204 & 205; 208 & 214; 220 & 221; 232 & 238].

[18] *Id.* at ECF No. 238.

[19] The Watch Bankruptcy [ECF No. 259]; case no. 3:07-CV-0563-N, ECF No. 12 (District Court Order Dismissing Appeal as Moot); *and Schum, et al v. Zwirn Special Fund, et al,* case no. 08-10121 (Judgment entered 10/6/08 Dismissing Appeal as Moot).

[20] Case no. 3:07-CV-0563, [ECF No. 13] (Schum's Motion for Reconsideration); [ECF No. 17] (Order Denying Motion for Reconsideration).

[21] *See Schum, et al v. Zwirn Special Fund, et al,* case no. 08-10121; case no. 3:07-CV-0563, [ECF No. 18] (Notice of Appeal); and *In re Watch Ltd.*, 295 F. App'x 647, 650 (5th Cir. 2008).

[22] FCC Decision DA 06-2607.

Failing there as well, Schum sought review of the FCC letter decisions declining to reconsider the objections to the license assignments from DFW Radio License to Bernard Dallas, and from Bernard Dallas to Principle Broadcasting. Schum contended that the transaction was unlawful because the lenders had foreign ownership – the very same argument he now brings to this court. The FCC again rejected Schum's arguments.[23]

Schum then appealed the FCC's decision to the United States Court of Appeals for the District of Columbia Circuit.[24] When that failed, Schum unsuccessfully applied to the United States Supreme Court for a writ of certiorari,[25] then was denied a rehearing.[26]

At some point Zwirn sued Schum in state court to collect on the Guaranty[27] and another obligation. Schum counterclaimed, seeking to rescind the Guaranty based on "fraud" or "mutual mistake." The counterclaim was removed to this court[28] but was later remanded to state court. This court found that the Guaranty was integral to the RRI Plan and Schum's counterclaim impermissibly collaterally attacked its confirmation order.[29]

Schum has not shown cause to reopen the RRI Bankruptcy. Every challenge he now brings to this court was made years ago in other forums. His claims here are premised on the same facts he has possessed for years and the same theories federal courts and one federal agency already have considered and rejected.

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[23] *See* DFW Radio License, LLC, 29 F.C.C. Rcd. at 810-11.

[24] *See In re: David Schum* 13-1041*; David Schum v. FCC* 14-1026*; David Schum v. FCC* 14-1027; and *David Schum v. FCC* 16-1376.

[25] *Schum v. F.C.C.*, 136 S. Ct. 1672, 194 L. Ed. 2d 781 (2016).

[26] *Schum v. F.C.C.*, 136 S. Ct. 2481, 195 L. Ed. 2d 815 (2016).

[27] The lawsuit was styled *D. B. Zwirn Special Opportunities Fund, L.P. v. David Schum*, Cause No. 05-05619 in the 116th District Court of Dallas County (the "**State Court Action**").

[28] The removed lawsuit was designated adversary no. 06-3277.

[29] Hr'g Tr. 11/2/06, Adversary No. 06-03456-BJH [ECF No. 28] at pp. 10-11 (Houser).

This memorandum opinion gives the reasons for denying Schum's Motion.

II. Jurisdiction and Venue

The court has jurisdiction under 28 U.S.C. § 1334(b). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K), (L), (E) and (O).

III. Legal Analysis

A. No Basis Exists for Reopening the RRI Case Pursuant to Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60

Federal Rule of Bankruptcy Procedure 9024 makes Fed. R. Civ. P. 60 applicable in bankruptcy cases. The rule permits reconsideration of a final judgment or order based on (i) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b), or (ii) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party. Fed. R. Civ. P. 60(b)(2), (3). Rule 60(c) limits the period to seek relief under (b) to "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

1. Schum's Claims Are Time-Barred

Schum argues that reopening the case is appropriate under Rule 60(b)(2) based on "newly discovered evidence" relating to BNLI, an offshore entity whose domicile was not disclosed when it provided the Exit Financing Facility. He contends this was a material misrepresentation that amounts to fraud within the meaning of Rule 60(b)(3), and that BNLI's role in the financing violated 47 U.S.C. § 310, which bars foreign ownership of broadcast licenses.[30] Schum also claims that he was the sole representative of debtor RRI with the authority to approve the exit financing arrangement but that he was "purposely and fraudulently never provided with the requisite

[30] *See generally* Schum's Brief, ECF No. 275.

information to make an informed decision."[31] Schum contends that he never would have agreed to allow Bernard Dallas to provide financing to conclude the RRI Bankruptcy had he known it was a foreign entity.

Schum admits he discovered this evidence in 2012 but claims to have waited to bring it to this based on advice he received from unnamed lawyers at a deposition[32] in the State Court Action.

Schum filed the Motion almost fifteen years after the chapter 11 case was closed and more importantly, nearly seven years after he discovered the allegedly new facts. Even giving credence to his claim of reliance on other lawyers in a separate legal proceeding, Schum cannot justify his inaction. Schum's delay in filing the Motion leaves him without a remedy under Rule 60(b)(2) and (3).

Even assuming, without finding, that Schum had been deceived and the Motion was timely filed, Rule 60(b) would give him no recourse. Contracting parties are generally not fiduciaries under Texas law and each party to a transaction must exercise due diligence and make its own inquiry of counterparties to a contract to protect its own interests.[33] Schum could have inquired into the entities' origin at any time before signing the exit financing loan documents: indeed, he *should* have done so because he personally guarantied the undertaking. Nothing in the record suggests that Schum lacked the time or resources to review the loan documents before allowing RRI to agree to the exit financing transaction. The record rather reflects that he was represented

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[31] *Id.* at ¶ 46.

[32] *See* Schum's Brief, at ¶ 39 (Schum claims that "[t]he attorneys that participated in the bankruptcy proceeding advised Schum to finish with the FCC process prior to bringing this motion before the bankruptcy Court. Schum did just that, a process that took from February 23, 2006 until May 29, 2018..."). *See also* Schum App., Ex. E (excerpt from 12/21/12 deposition).

[33] *See Schlumberger Tech. Corp. v. Swanson*, 959 S.W.2d 171, 177 (Tex. 1997) (requiring more than a contractual agreement—the relationship must exist prior to, and apart from, the agreement made the basis of the suit); *Barfield v. Howard M. Smith Co. of Amarillo*, 426 S.W.2d 834, 840 (Tex. 1968) ("As a party to arm's length business transactions, respondent had a duty to use ordinary care for the protection of its own interests.").

by counsel and did not face pressures unusual or uncommon in a typical chapter 11 case. Nothing Schum has offered supports the conclusion that either Zwirn or Bernard Dallas prevented Schum from learning any relevant information about the entities.

Schum's allegations of coercion to sign the documents on the day of the closing are unwarranted and do not merit relief under Rule 60(b)(2) or (3).

2. Nothing in the Record Supports a Finding that any Party Engaged in Fraud on the Court Warranting Relief Under Rule 60(d)

To avoid the one-year limitation for relief under Rule 60(b), Schum also argues for reconsideration pursuant to Rule 60(d)(3), to "set aside the judgment for fraud on the court." In contrast to a claim for relief under Rule 60(b)(3), Rule 60(d)(3) allows courts to "set aside a judgment for fraud on the court" without a strict time limitation.[34] Because the rule does not bar challenges to orders and judgments based on timeliness of the request, its standard for proving that an order should be set aside for "fraud on the court" is much more demanding:[35] "[O]nly the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute fraud on the court."[36] Claims for relief on this ground must be supported by clear and convincing evidence.[37] Schum's purportedly new evidence does not satisfy Rule 60(d)(3).

Schum argues that the orders allowing and providing for payment of the claims of the Objectors should be set aside pursuant to Rule 60(d)(3). He alleges that BNLI defrauded both him

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[34] *See* Fed. R. Civ. P. 60(c)(1); *see also Jackson v. Thaler*, 348 F. App'x. 29, 34 (5th Cir.2009) (*per curiam*).

[35] *Dailey v. United States*, 2010 WL 4683824, at *2 (E.D. Tex. Nov. 10, 2010).

[36] *Jackson*, 348 F. App'x. at 34 (quoting *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.), *reh'g denied*, 578 F.2d 871 (5th Cir.1978)).

[37] *Wooderts v. Warden, Fed. Corr. Inst. Seagoville*, 516 F. App'x 370, 371 (5th Cir. 2013) (clear and convincing evidence); (*see also Galatolo v. United States*, 394 F. App'x 670, 672 (11th Cir. 2010) ("Conclusory averments of the existence of fraud made on information and belief and unaccompanied by a statement of clear and convincing probative facts which support such belief do not serve to raise the issue of the existence of fraud.").

and the court because it (i) fraudulently concealed that it was an offshore entity that 47 U.S.C. § 310(b) barred from participating in the exit financing transaction and subsequent sale; and (ii) fraudulently induced Schum into signing the loan documents on RRI's behalf. Schum explained at the hearing on his Motion that he never would have agreed to the loan had he known that Bernard was not a domestic entity.[38]

First, the record Schum made does not demonstrate any egregious misconduct, an unconscionable plan or scheme to improperly influence the court, or an attempt to mislead it. This court approved the financing and confirmed the RRI Plan based on the FCC's approval of the transfer of licenses to The Watch. Schum's claim that Zwirn "decided to go the fraud route" and used an "illegal lender" – urged before in several forums and again to the FCC – is conclusory; no facts support it.[39] "Fraud on the court ... is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury."[40] This court specifically found that the "FCC has approved the transfer of the licenses and construction permits, as applicable, by the Debtor to The Watch, Ltd., per the requirements of the Plan."[41] The FCC approved the assignments and transfers of the licenses as the confirmed RRI Plan and Exit Financing Facility contemplated; it found no basis for revisiting its decision.[42] No evidence

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[38] Hr'g Audio Tr. 2/20/19 at 2:54:08. In any event the court does not concede that BNLI was or is an "offshore entity" for any purpose under applicable law.

[39] *Id.* at ¶ 45.

[40] *See Breitling v. LNV Corp.*, 2015 WL 5896131, at *7 (N.D. Tex. Oct. 5, 2015).

[41] Findings of Fact and Conclusions of Law Regarding Confirmation of Second Amended Plan of Reorganization [ECF No. 185] at ¶ 13. *See also* Confirmation Order at p. 2 (("ORDERED that *since the FCC approved the transfer* of the applicable construction permits to The WATCH, Ltd., as provided for in the Plan . . .") (emphasis added).

[42] Hr'g Audio Tr. 2/20/19 at 2:51:15-32 (Schum) (Schum acknowledging that he pursued a complaint challenging the role of the non-American lender (BNLI) through the FCC, but "there was nothing that they [the FCC] would do about it.").

supports a finding that the FCC's approval, which was essential to the two challenged transactions, was erroneous or based on fraud.

Fortress Value correctly points out that the statute addresses only the nationality of the entity that held the FCC licenses (DFW Radio License) and *not* the lender (BNLI). Schum points to no law or jurisprudence suggesting otherwise. Because DFW Radio License was a *Texas* corporation,[43] 47 U.S.C. §310(b) was inapplicable.

This court specifically found that each of the necessary pre-conditions required for the Exit Financing Facility were met, including FCC approval to transfer the licenses and construction permits pursuant to the plan.[44]

In sum, Schum's contentions even if proven do not rise to the level of "fraud on the court" under Rule 60(d)(3).

3. Schum's Other Grounds to Revisit Prior Rulings Have no Basis in Law.

Schum seeks relief this court cannot grant because it cannot review the FCC's decisions relating to transfer of the licenses.[45] "Congress assigned to the Federal Communications Commission ... exclusive authority to grant licenses"[46] under the Federal Communications Act, and required the FCC "to serve as the single Government agency with unified jurisdiction and regulatory power over all forms of electrical communication, whether by telephone, telegraph,

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[43] RRI Plan, at p. 2; *see also* [ECF No. 149] (RRI Disclosure Statement) at p. 2.

[44] *Id.* at Article IV, § 4.01(h) (requiring consents, authorizations and approvals of any governmental authority); Article V, § 5.01(c)(iv) (requiring prior FCC approval for consummation of any assignments or transfers of control of FCC authorizations).

[45] *In re F.C.C.*, 217 F.3d 125, 135 (2d Cir. 2000) (concluding the bankruptcy court lacked authority to review the FCC decision and stating, "whenever an FCC decision implicates its exclusive power to dictate the terms and conditions of licensure, the decision is regulatory. And if the decision is regulatory, it may not be altered or impeded by any court lacking jurisdiction to review it.").

[46] *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 553, 110 S.Ct. 2997, 111 L.Ed.2d 445 (1990), *overruled on other grounds, Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995).

cable, or radio."[47] Schum's challenge to its decision failed both at the agency and on appeal. The FCC had sole authority to approve the transfer of the licenses and Schum offers no basis in law or in fact for reconsidering its approval, even if this court had jurisdiction to do so.

Principals of claim and issue preclusion also bar reopening the case. Whereas "claim preclusion" prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, could have been litigated in the prior action,[48] issue preclusion prevents relitigation of specific issues already resolved in a prior action.[49] The test for issue preclusion requires proof of four elements:

> (1) the issue under consideration in a subsequent action must be identical to the issue litigated in a prior action; (2) the issue must have been fully and vigorously litigated in the prior action; (3) the issue must have been necessary to support the judgment in the prior case; and (4) there must be no special circumstance that would render preclusion inappropriate or unfair.[50]

Fundamentally, Schum is attempting to collaterally attack prior orders and raises issues actually litigated years ago. He repeats arguments he made in past actions and appeals that were fully litigated in this court, the district court, the state court and the FCC. For example, Schum's petition to the FCC sought to deny Zwirn's application for assignment of the licenses premised on identical allegations currently before the court, including arguments that BNLI failed to disclose information about Zwirn's ownership structure allegedly violating 47 U.S.C. § 310 (a-b).[51] The FCC rejected this argument as speculative, approved the assignment of licenses to Zwirn,[52] and

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[47] *United States v. Sw. Cable Co.*, 392 U.S. 157, 168, 88 S. Ct. 1994, 2000, 20 L. Ed. 2d 1001 (1968) (internal quotation marks and footnotes omitted).

[48] *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex. 1992).

[49] *Id.*

[50] *United States v. Shanbaum*,10 F.3d 305, 311 (5th Cir. 1994).

[51] *See* The Watch Bankruptcy, ECF 276 at Ex. C (FCC's December 28, 2006 decision denying Schum's petition and approving the assignment of licenses to Zwirn).

[52] *Id.*

later denied Schum's second petition.[53] Similarly, Schum sought to rescind the Guaranty as the result of "fraud" or "mutual mistake" in the State Court Action. His counterclaims were removed to this court but remanded to state court, which resulted in dismissal of Schum's claims and final judgment in favor of Zwirn.[54] Each of Schum's appeals and challenges repeated the same arguments that were already denied or dismissed on a final basis.

B. There Were No Ethical Violations

Schum asserts Schulte attorneys violated Texas Disciplinary Rules of Professional Conduct Rules 3.03 or 8.04,[55] which prohibit false statements to tribunals and lawyers' dishonest conduct. However, no evidence supports Schum's conclusory allegations of misconduct by opposing counsel. Regardless, BNLI's domicile was immaterial to the financing transaction and did not necessitate disclosure contemplated by the rules.

C. There Is No "Cause" Under § 350(b) or §502(j) to Reopen the RRI Bankruptcy

Schum argues for reopening of this case[56] for several purposes, among them reconsidering and denying Zwirn, BNLI and Shultz's allowed claims and undoing plan payments in connection with the Exit Financing Facility.[57] Schum has not established a basis for reopening this long-closed reorganization.

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[53] *Id.* at Ex. D (Schum's Second Petition to the FCC).

[54] *See* The Watch Bankruptcy [ECF No. 276] Ex. B (findings of fact and conclusions of law entered in the State Court Action, finding, among other things, (1) Schum owed Zwirn $10,754,451.45 under the exit financing agreement and (2) Schum had "no valid defense, offset, claim, or counterclaim that [would] reduce the amounts" owed.).

[55] *See* Schum's Brief, ¶ 53 (arguing counsel violated Rule 3.03(5) [sic], 3.03(b), (c) and Rule 8.04).

[56] *See e.g.*, Motion at 3 of 8.

[57] *Id.*

1. Schum Failed to Establish Cause Pursuant to § 350(b)

Schum contends that 11 U.S.C. § 350(b) gives this court discretion to reopen his case "to accord relief to the debtor, or for other cause"[58] without regard to time elapsed since a case was closed. *See also* Fed. R. Bankr. P. 5010. He contends that once the case is reopened, 11 U.S.C. § 502(j) permits reconsidering a claim that has been allowed or disallowed "for cause" – once again, subject to no time limit. *See also* Fed. R. Bankr. P. 3008.

Bankruptcy Code section 350(b) allows reopening of closed cases to administer assets, to provide relief to the debtor, "or for other cause." 11 U.S.C. § 350(b); Fed. R. Bankr. P. 5010. Schum has the burden of establishing cause to reopen the case.[59]

"In this context, the phrase 'other cause' gives the bankruptcy court 'discretion to reopen a closed estate or proceeding when cause for such reopening has been shown.'" *In re Bell Family Trust*, 575 F. App'x 229, 232 (5th Cir. 2014) (quoting *In re Case*, 937 F.2d 1014, 1018 (5th Cir. 1991)). "This discretion depends upon the circumstances of the individual case and accords with the equitable nature of all bankruptcy court proceedings." *Id.* Courts have developed a non-exclusive list of factors to consider in determining whether cause exists to reopen a case but a principal factor is the length of time between the estate's closing and the motion to reopen.[60] The longer the time between closing of a bankruptcy case and a request to reopen it, the greater the

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[58] Motion at ¶ 33.

[59] *In re Dudley*, 230 B.R. 96, 98 (Bankr. N.D. Tex. 1999).

[60] *Reid v. Richardson*, 304 F.2d 351, 355 (4th Cir. 1962) (the time for reopening an estate should be of "crucial significance" to the bankruptcy court.).

showing to establish cause for reopening.[61] Even then, courts will reopen a closed case only on a demonstration of compelling circumstances.[62]

Assuming, without finding, that Schum was a party in interest, he failed to establish cause to reopen the RRI Bankruptcy as 11 U.S.C. § 350(b) requires and so is not entitled to relief. Schum explains that he delayed filing the Motion on advice of opposing counsel who suggested that he wait until he had concluded litigation challenging the FCC's approval of the license transfers.[63] Even suspending disbelief in the plausibility of that claim and setting aside the wisdom of relying on opposing counsel for legal advice, Schum's delay in moving to reopen the RRI Bankruptcy is inexcusable. Schum with reasonable diligence could have discovered and brought to the court long before 2018 all the facts supporting his spurious claim that BNLI's domicile prevented it from participating in the exit financing transaction. Schum asks for relief now, fourteen years after the RRI Plan was consummated and all parties' claims were paid to the extent the plan provided, and six years after he admits learning the facts on which he premises his request. His allegations are as implausible as the relief he seeks is impractical. Schum has not proven cause to reopen the case.

2. There Is No Cause Pursuant to 11 U.S. C. § 502(j) to Reconsider the Claims

Nor has Schum made out a case for revisiting the allowance and payment of the claims of Zwirn/Fortress Value, BNLI and Schulte for pre-paid fees and legal fees in connection with the Exit Financing Facility.

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[61] *Traub v. Marshall Field & Co.*, 182 F. 622, 624-25 (5th Cir. 1910); *In re Double J Operating Co., Inc.*, 37 F. App'x 91, *1 n.4 (5th Cir. 2002) (citing *Batstone v. Emmerling (In re Emmerling)*, 223 B.R. 860, 864-69 (B.A.P. 2d Cir. 1997)).

[62] *In re Johnson*, 2018 WL 4955235, at *2 (S.D. Tex. Oct. 11, 2018) (citing *Reid v. Richardson*, 304 F.2d 351, 355 (4th Cir. 1962)).

[63] *See* Schum's Brief, ¶ 39; Schum's App., Ex. E.

Bankruptcy Code section 502(j) provides that "[a] claim that has been allowed or disallowed may be reconsidered for cause."[64] Bankruptcy Rule 3008 implements this Code section, providing that a "party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate."[65] If the "Rule 3008 motion is brought after the expiration of the 10 day period in Rules 9023 and 8002(a), Rule 9024 (applying Rule 60 of the Federal Rules of Civil Procedure) will guide the 'for cause' standard."[66] If the court finds there is a basis to reconsider under Rule 60, then section 502(j) and Rule 3008 allow "great discretion in reconsidering the allowance or disallowance of claims"[67] but should not encourage parties to avoid the usual rules for finality of contested matters.[68]

Factors militating against reopening the RRI Bankruptcy pursuant to Rule 60 also support denying reconsideration of the allowance and payment of Schulte's and Zwirn's claims. Schum failed to establish any basis for reconsidering claims allowed and paid through a plan confirmed almost fifteen years ago; or to persuasively explain the delay of more than six years in presenting his claim of alleged fraud on this court. As set forth in § III.A.1, *supra*, in addition to Schum's inability to justify cogently his proposal to disturb the finality of the claims determination process, it is clear that Schum is not entitled to relief under 11 U.S.C. § 502(j).[69]

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[64] 11 U.S.C. § 502(j).

[65] Fed. R. Bankr. P. 3008

[66] *In re Pride Companies, L.P.*, 285 B.R. 366, 369 (Bankr. N.D. Tex. 2002).

[67] *Id.*

[68] *Matter of Colley*, 814 F.2d 1008, 1010 (5th Cir. 1987).

[69] *See also In re Wilkinson*, 457 B.R. 530, 540 (Bankr. W.D. Tex. 2011) ("The court reads section 502(j) and its 'cause' standard to require a movant to first establish some reason for disturbing the finality of the claims determination process...") (internal citations omitted).

D. The Motion s Equitably Moot

In further alternative, the doctrine of equitable mootness supports denial of Schum's Motion.

Courts may decline appellate review of a chapter 11 plan when a reorganization has progressed too far for the requested relief to be granted practicably.[70] Equitable mootness also applies to a bankruptcy court's consideration of a motion to revoke a plan confirmation order.[71] The Fifth Circuit will consider three factors to decide whether a motion is equitably moot: "(i) whether a stay has been obtained, (ii) whether the plan has been 'substantially consummated,' and (iii) whether the relief requested would affect either the rights of parties not before the court or the success of the plan."[72] Of these, the third factor represents the ultimate inquiry.[73] All three of the elements of equitable mootness are satisfied here.

Schum has not obtained a stay of the RRI Plan, which has been *completely* consummated and the case closed. Nothing remains to be done to carry out the terms of the confirmed plan.[74] Finally, an order confirming a chapter 11 plan cannot be partially revoked. The RRI Plan and RRI Confirmation Order set February 12, 2004 as the final date to object to claims[75] and also provided

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[70] *In re Blast Energy Servs., Inc.*, 593 F.3d 418, 424 (5th Cir. 2010).

[71] *In re CTLI, LLC*, 534 B.R. 895, 909 (Bankr. S.D. Tex. 2015) (denying a motion to revoke a plan confirmation order under section 1144 as equitably moot); *In re Delta Air Lines, Inc.*, 386 B.R. 518, 537 (Bankr. S.D.N.Y. 2008) (equitable mootness applies to proceedings under section 1144); *The Nancy Sue Davis Tr. v. Davis Petroleum* Corp., 402 B.R. 203, 208 (S.D. Tex. 2009) (dismissing an appeal as equitably moot that sought to revoke a confirmation order on ground that it had been procured by fraud).

[72] *Id.* (citing *In re Manges*, 29 F.3d 1034, 1039 (5th Cir. 1994)).

[73] *The Nancy Sue Davis Trust v. Davis Petroleum Corp.*, 402 B.R. 203 (S.D. Tex. 2009).

[74] *Blast Energy Servs.*, 593 F.3d at 425 (substantial consummation occurs when the debtor "ha[s] either paid or arranged for payment of all of its creditors.").

[75] RRI Plan, ¶¶ 1.19, 1.28 (defining *Claim Objection Bar Date* as the 20th day after the Effective Date; and defining *Effective Date* as the "next business day after the tenth day following the Confirmation Date." The Confirmation Date was January 12, 2004.

for RRI's payment of attorney fees and other charges in onnection with the Exit Financing Facility.[76] They bar Schum's untimely challenge to the Objectors' claims.

E. The RRI Confirmation Order Cannot Be Revoked Pursuant to § 1144

Schum insists that he is not trying to revoke the RRI Confirmation Order but instead only seeks to reopen the case to challenge the interest, loan, and attorneys' fees paid in connection with the Exit Financing Facility. But stripped of artifice his Motion is plainly an attack on the order confirming the RRI plan, which deemed the contested orders allowed, rather than a challenge to claims allowance orders. Schum's challenge is long since barred by 11 U.S.C. § 1144.

Bankruptcy Code section 1144 establishes a 180-day deadline after the date of entry to move to revoke an order confirming a chapter 11 plan, and then only if the order confirming the plan was procured by fraud.[77] Congress was familiar with the chain of events that take place after a chapter 11 plan is confirmed and so provided that "only fraud would warrant an attempt to 'unscramble the egg,' and even then only within the 180–day time frame imposed by § 1144."[78] Schum's artful attempt in the Motion and at argument to circumvent § 1144's time limit is "a futile effort to put the non-existent scrambled egg back in the shell."[79]

Schum did not object to confirmation in the RRI Bankruptcy nor did he cause RRI to object to Schulte's or Zwirn's claims before the claim objection bar date.[80] As a result, their claims were

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[76] *See* RRI Plan [ECF No. 148] Ex. 1.31, § 11.04; RRI Confirmation Order [ECF No. 192] (collectively providing for RRI's payment of attorneys' fees, costs and legal expenses incurred by Zwirn).

[77] 11 U.S.C. § 1144.

[78] *In re Logan Place Properties, Ltd.*, 327 B.R. 811, 812 (Bankr. S.D. Tex. 2005) (quoting *In re Winom Tool and Die, Inc.*, 173 B.R. 613, 616 (Bankr. E.D. Mich. 1994)).

[79] *In re Canal St. Ltd. P'ship*, 269 B.R. 375, 381 (B.A.P. 8th Cir. 2001) (referring to a substantially consummated chapter 11 plan).

[80] *See* RRI Plan [ECF No. 148]; Confirmation Order [ECF No. 192] (requiring all claim objections to be filed on or before February 12, 2004).

deemed allowed and provided for in the confirmed plan. Schum cannot now pursue his claim objections without unwinding the confirmed plan and nullifying the "binding contract" among the parties to the reorganization.[81]

F. This Court Lacks Authority to Appoint Special Masters.

Finally, Schum suggests the court appoint a special master to determine whether there has been fraud upon the court.[82] Pretermitting the propriety of a court's delegating that issue, Federal Rule of Bankruptcy Procedure 9031 makes inapplicable in bankruptcy cases Federal Rule of Civil Procedure 53, which governs the appointment and duties of special masters.[83] This court has no power to appoint a special master.[84]

IV. Conclusion

RRI's confirmed plan bound all parties whose claims and interests it addressed, including Schum. The RRI Bankruptcy and its successor's bankruptcy were fully consummated and closed years ago. Even if Schum's claims had merit – which they lack – Schum inexcusably tarried in pursuing relief after 2012, when he claims to have first obtained information supporting the theory underlying his latest attack on the RRI reorganization.

Because Schum has established no basis for reopening the RRI Bankruptcy or reconsider the Objectors' claims, his Motion will be denied.

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[81] *Christopher v. Am. Universal Ins. Group* (*In re Christopher*), 148 B.R. 832, 837 (Bankr. N.D. Tex. 1992) ("A strong policy favors enforcement of the plan of reorganization because too many rights of too many interests have relied on the finality of the confirmation order.... Once the plan is confirmed, the property rights of many of these interests are adjusted thereby creating a new status which is important to preserve."), *aff'd*, 28 F.3d 512 (5th Cir.1994); *Oneida Motor Freight, Inc. v. United Jersey Bank* (*In re Oneida Motor Freight, Inc.*), 848 F.2d 414, 417 (3d Cir.1988) ("A strong interest to achieve finality pervades Chapter 11 arrangements.") (citation omitted), *cert. denied*, 488 U.S. 967, 109 S.Ct. 495, 102 L.Ed.2d 532 (1988).

[82] Schum's Brief in Support, ¶ 60.

[83] *See* Fed. R. Bankr. P. 9031 ("Rule 53 F.R.Civ. P. does not apply in cases under the Code.").

[84] The Bankruptcy Code also prohibits appointing receivers in bankruptcy cases. 11 U.S.C. § 105(b).

Counsel for Fortress Value is directed to prepare a form of order and upload it within 14 days of entry of this Memorandum Opinion.

 # # # END OF MEMORANDUM OPINION # # #

United St te nk ptcy Co t
Northern Di trict of Texas

In e:
Renais nce Radio, Inc.
Debtor

Ca e No. 03-334 9-bjh
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0539-3 User: mmathews Page 1 of 2 Date Rcvd: Apr 04, 2019
Form ID: pdf012 Total Noticed: 1

Notice by first class mail was sent to the following persons/entities by the nkr ptcy Noticing Center on Apr 06, 2019.
intp +David A. Schum, 4149 Lovers Lane, Apt. C, Dallas, TX 75225-6952

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****
NONE. TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Apr 06, 2019 Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on April 4, 2019 at the address(es) listed below:

Cameron Gray on behalf of Creditor Gail Lightfoot Williams cgray@bmg-law.com
Cameron Gray on behalf of Creditor Stephen E. Walker cgray@bmg-law.com
Cameron Gray on behalf of Creditor Laura Dean cgray@bmg-law.com
Cameron Gray on behalf of Creditor Kelli S Vrla cgray@bmg-law.com
Cameron Gray on behalf of Creditor Lora L. Cain cgray@bmg-law.com
Davor Rukavina on behalf of Creditor Scott Savage drukavina@munsch.com
Davor Rukavina on behalf of Counter-Claimant Scott Savage drukavina@munsch.com
Davor Rukavina on behalf of Defendant Scott Savage drukavina@munsch.com
Edwin Paul Keiffer on behalf of Plaintiff The Watch Ltd. pkeiffer@romclaw.com, bwallace@romclaw.com
Edwin Paul Keiffer on behalf of Plaintiff Renaissance Radio, Inc. pkeiffer@romclaw.com, bwallace@romclaw.com
Edwin Paul Keiffer on behalf of Counter-Defendant Renaissance Radio, Inc. pkeiffer@romclaw.com, bwallace@romclaw.com
Edwin Paul Keiffer on behalf of Counter-Defendant The Watch Ltd. pkeiffer@romclaw.com, bwallace@romclaw.com
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Edwin Paul Keiffer on behalf of Debtor Renaissance Radio, Inc. pkeiffer@romclaw.com, bwallace@romclaw.com
Josiah M. Daniel, III on behalf of Defendant D.B. Zwirn Special Opportunities Fund, L.P., agent jdaniel@velaw.com
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Kenneth Stohner, Jr. on behalf of Creditor TM Century, Inc. kstohner@jw.com, lcrumble@jw.com;tsalter@jw.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	CASE NO. 03-33479-BJH-11
RENAISSANCE RADIO, INC.,	§	(Chapter 11)
	§	
DEBTOR.	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CONFIRMATION OF SECOND AMENDED PLAN OF REORGANIZATION

CAME ON for confirmation hearing on the 8th day of January, 2004, the Second Amended Plan of Reorganization, filed by Renaissance Radio, Inc. (the "Debtor") on November 18, 2003 (the "Plan"). The following Findings of Fact and Conclusions of Law are entered pursuant to Federal Rules of Bankruptcy Procedure 9052 and 9014. Such findings may be characterized as conclusions or conclusions as findings, where appropriate.

Findings of Fact

1. The Plan has been proposed in good faith under Section 1129(a)(3) by the Debtor and those who are to participate in the funding of the Plan and not by any means forbidden by law and all such parties are entitled to the protections of Section 1125 (e).

2. Payments made or to be made by the Debtor for services or for costs and expenses in or in connection with the Plan or case have been approved by or are subject to the approval of this Court.

3. The Debtor has disclosed the identities of insiders to be retained by the reorganized Debtor.

4. No governmentally regulated rates are involved in these cases.

5. There are no dissenting classes of claims or interests. All classes of claims entitled to vote, voted in favor of the Plan, after due consideration of which creditors who voted, are insiders of the Debtor. Classes 1, 2 and 4 are unimpaired and are deemed to have accepted the Plan. The class of interests voted unanimously to accept the Plan.

6. Claims entitled to priority under 11 U.S.C. § 507(a)(1)-(7) will be paid in accordance with Bankruptcy Code or as per the provisions of the Plan.

7. With respect to the class of interests, such interest holders will receive more under the plan, than in a hypothetical Chapter 7 liquidation.

8. The Debtor's Plan is feasible and the confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization of the Debtor except where liquidation is required by the Plan.

9. All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provided for the payment of such fees on the Plan Closing Date.

10. There are no retiree benefits involved in this case.

11. Notice of the confirmation hearing has been given to all of those creditors and parties in interest listed in the mailing matrix for these cases.

12. The Plan does not have as its principal purpose the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and the Debtor and Highbridge/Zwirn Special Opportunities Fund L.P. have participated in the offering and issuance of securities under the Plan in good faith and in compliance with applicable provisions of the Bankruptcy Code. Highbridge/Zwirn Special Opportunities Fund L.P. as Agent and Lender under the Financing Agreement, provided it closes in accordance with the Plan, is not receiving the rights under the

Warrant Agreement with a view towards distribution of any securities but is receiving same for investment purposes.

13. The FCC has approved the transfer of the licenses and construction permits, as applicable, from the Debtor to The WATCH, Ltd., per the requirements of the Plan.

Conclusions of Law

14. The Court has jurisdiction over this matter as a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A)-(L), and (O).

15. The Plan complies with all of the applicable provisions of Title 11 of the United States Bankruptcy Code.

16. The Debtor has complied with the applicable provisions of the Bankruptcy Code in proposing the Plan.

17. The issuance of equity securities and debt securities under the Plan issued by the Debtor or by any affiliate or successor of the Debtor, to wit: The Watch, Ltd., Café Radio, LLC and DFW Radio, Inc., specifically including the Warrant Agreement between The Watch. Ltd and Highbridge/Zwirn Special Opportunities Fund, L.P. as agent and Lender and the securities issued by virtue of the exercise of said Warrant, satisfies the criteria of 11 U.S.C. 1145 (a)(1) and/or (2) as applicable and any recipient of any securities pursuant thereto is not an "underwriter" as defined in 11 U.S.C. 1145(b) of the Bankruptcy Code.

SIGNED this 8 day of January, 2004.

ORIGINAL SIGNED BY
/S/ BARBARA J. HOUSER
Copy to Party Pending
Entry of Original

BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

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