

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 18-cv-60890-BLOOM/Valle
(Bankr. Case No. 15-20095-BKC-JKO)**

MUSIC ROYALTY CONSULTING, INC.,

Appellant,

v.

SCOTT STORCH MUSIC, LLC,

Appellee.

ORDER DISMISSING BANKRUPTCY APPEAL

THIS CAUSE is before the Court upon Appellant Music Royalty Consulting, Inc.’s (“Appellant” or “MRCI”) Notice of Appeal of (1) Order Granting Debtor[’]s Motion to Deem Pre-Petition Contracts [R]ejected And Determine Ownership of “All Eyez” (the “Rejection Order”) and (2) Order Denying MRCI’s Motion for Partial Reconsideration of Order Granting Debtor[’]s Motion to Deem Pre-Petition Contracts Rejected and Determine Ownership of “All Eyez” (the “Reconsideration Order”) (together, the “Orders”), ECF No. [1] (“Notice”). The Court has carefully reviewed the parties’ briefs, the record on appeal and the applicable law, and is otherwise fully advised. For the reasons set forth below, this case is dismissed for lack of jurisdiction.

I. BACKGROUND

This appeal arises in the context of a Chapter 7 bankruptcy proceeding. The parties do not dispute the essential underlying facts. Scott Storch (“Storch”) is a songwriter and music producer. In pertinent part, Storch provided songwriting services through his company, Tuff Jew Productions, LLC (“Tuff Jew”). In 2000, Tuff Jew entered into an Exclusive Songwriter and Co-

Publishing Agreement (the “Publishing Agreement”) with an entity called TVT Music, Inc. (“TVT”). Pursuant to the Publishing Agreement, Tuff Jew was required to write songs, and grant copyrights and a portion of its publisher’s share of future royalties to TVT. TVT collected both the publisher’s and writer’s share of Tuff Jew’s royalties, collected its portion of the publisher’s share, and then remitted the balance of the publisher’s share and the writer’s share to Tuff Jew. Appellee Reservoir Media Management, Inc. (“Reservoir”) later became the successor in interest to TVT.

In 2011, Tuff Jew and a number of other Storch-related entities entered an Asset Purchase Agreement, through which Reservoir became the 100% owner of copyrights and entitled to 100% of the publisher’s share in a defined set of musical compositions. Reservoir collected the resulting royalty payments and administered the proceeds in pertinent part by remitting the writer’s share to Tuff Jew. In 2012, MRCI purchased the writer’s share from Tuff Jew, in a document signed by all the Storch-related entities (Storch, individually, Tuff Jew, Scott Storch Music, LLC a/k/a Scott Storch Music, Scott Storch Music, Scotty Kat Music, and Great Scott Publishing, LLC) (collectively, the “Storch Entities”). Thereafter, pursuant to a letter of direction, Reservoir was to remit the writer’s share of royalties to MRCI, which Reservoir did from June 19, 2012 until September, 2017.

In 2015, Storch filed for bankruptcy under Chapter 7. *See* Case No. 15-20095-BKC-JKO (the “Main Bankruptcy” case).¹ In August, 2016, the appointed bankruptcy trustee, Scott N. Brown (“Trustee”), filed an adversary proceeding in which he sought consolidation of all the Storch Entities with the bankruptcy estate of Storch. *See* Case No. 16-01421-JKO, (the “Sub

¹ References to docket entries in the Main Bankruptcy case are cited as “BK ECF No. [x].”

Con” case).² As the Sub Con case proceeded, the Trustee sought and obtained the Bankruptcy Court’s approval for a settlement agreement in the Main Bankruptcy case, pursuant to which Storch agreed to support and consent to the consolidation sought by the Trustee in the related adversary proceeding, and the Trustee agreed to reject all pre-petition executory contracts if he was successful in obtaining consolidation. *See* BK ECF Nos. [120], [123]. Thereafter, the Trustee obtained a consent judgment consolidating all the Storch Entities with the Storch bankruptcy estate on September 30, 2016. *See* SC ECF No. [6], BK ECF No. [126] (the “Sub Con Judgment”).

On November 10, 2016, the Trustee filed a Motion for Entry of Order Deeming Co-Publishing Agreement between Reservoir Media Management, Inc. and (A) Tuff Jew Productions LLC and (B) Debtor, and All Amendments Thereto, Rejected *Nunc Pro Tunc* to Petition Date, BK ECF No. [132], which was later withdrawn on January 9, 2017, BK ECF No. [137]. On June 1, 2017, the Trustee commenced an adversary proceeding, Case No. 17-01220-JKO, against MRCI for fraudulent transfer with respect to the sale of Storch’s writer’s share to MRCI. *See* BK ECF No. [140]. The Trustee and MRCI ultimately reached a settlement of the adversary claims. *See* BK ECF No. [222].

On November 3, 2017, Storch filed his own motion in the Main Bankruptcy to deem pre-petition contracts rejected, BK ECF No. [146] (“Rejection Motion”). MRCI filed a response on November 24, 2017, BK ECF No. [163], arguing that the relief sought by Storch in the Rejection Motion could only be obtained, if at all, through another adversary proceeding, and not by motion, because several issues remained to be determined—including whether the Publishing Agreement was executory, whether the Sub Con Judgment was binding upon MRCI, and the

² References to docket entries in the Sub Con case are cited as “SC ECF No. [x].”

effect of a rejection on MRCI, which had purchased Tuff Jew's pre-petition writer's share. On December 5, 2017, the Bankruptcy Court granted the Rejection Motion after a hearing held on November 28, 2017. BK ECF Nos. [168] (the Rejection Order), [171].

MRCI then moved for partial reconsideration, arguing that the entry of the Rejection Order worked a manifest injustice to MRCI by granting relief without an adversary proceeding, because MRCI purchased Tuff Jew's rights, and Reservoir expressly stated that it would use the Rejection Order as justification for not paying MRCI the writer's share royalties. BK ECF No. [173]. After full briefing and a hearing held on February 28, 2018, the Court denied the Reconsideration Motion. *See* BK ECF Nos. [184] (the Reconsideration Order), [187].

On appeal, MRCI argues that the Bankruptcy Court erred by entering the Rejection Order (1) without first analyzing whether the Publishing Agreement is executory, or contains severable non-executory obligations; (2) determining that an adversary proceeding was not required; and (3) effectively binding MRCI to the Sub Con Judgment when MRCI was not provided adequate notice of the Sub Con case. MRCI also contends that it was error for the Bankruptcy Court to deny reconsideration.

II. STANDARD OF REVIEW

A bankruptcy court's legal conclusions and application of the law to the facts of a given case are reviewed *de novo*, and its factual findings for clear error. *Carrier Corp. v. Buckley (In re Globe Mfg. Corp.)*, 567 F.3d 1291, 1296 (11th Cir. 2009); *Club Assocs. v. Consol. CapitalRealty Inv'rs (In re Club Assocs.)*, 951 F.2d 1223, 1228 (11th Cir. 1992). "Under *de novo* review, a Court independently examines the law and draws its own conclusions after applying the law to the facts of the case, without regard to decisions made by the Bankruptcy Court." *In re Mut. Ben. Offshore Fund, Ltd.*, 508 B.R. 762, 769 (S.D. Fla. 2014) (citing *Kaiser*

Aerospace & Elecs. Corp. v. Teledyne Indus., Inc. (In re Piper Aircraft Corp.), 244 F.3d 1289, 1295 (11th Cir. 2001)). Reviewing for clear error, “findings of fact are not clearly erroneous unless, in light of all of the evidence, [the reviewing court is] left with the definite and firm conviction that a mistake has been made.” *Westgate Vacation Villas, Ltd. v. Tabas (Int'l Pharmacy & Discount II, Inc.)*, 443 F.3d 767, 770 (11th Cir. 2005). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985).

Additionally, the determination of certain matters is committed to the discretion of the bankruptcy court, and is reviewed for abuse of discretion. *See, e.g., Phillips v. Phillips (In re Phillips)*, 2013 WL 1899611, at *1 (M.D. Fla. May 7, 2013) (“Where a matter is committed to the discretion of the bankruptcy court, the district court must affirm unless it finds that the bankruptcy court abused its discretion.”) (citing *Amlong & Amlong, P.A. v. Denny’s, Inc.*, 500 F.3d 1230, 1238 (11th Cir. 2006)); *Charter Crude Oil Co. v. Petroleos Mexicanos (In re Charter Co.)*, 125 B.R. 650, 654 (M.D. Fla. 1991) (same, regarding admission of evidence) (citing *Miller v. Universal City Studios, Inc.*, 650 F.2d 1365, 1374 (5th Cir. 1981)). “A bankruptcy court abuses its discretion when its ruling is founded on an error of law or on misapplication of the law to the facts.” *Park Nat. Bank v. Univ. Ctr. Hotel, Inc.*, 2007 WL 604936, at *1 (N.D. Fla. Feb. 22, 2007); *see also Amlong & Amlong*, 500 F.3d at 1238 (“A decision that is contrary to the law plainly is an abuse of discretion.”); *West v. Smith (In re Cecil)*, 2012 WL 3231321, at *2 (M.D. Fla. Aug. 3, 2012) (“A court abuses its discretion when its ruling is founded on an error of law or a misapplication of law to the facts. In its application, the abuse of discretion standard is nearly indistinguishable from the clearly erroneous standard.”).

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