

2016 WL 277732

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United States Court of Appeals,
Second Circuit.

In re RESIDENTIAL CAPITAL, LLC

Gregory C. Morse, Appellant,

v.

Rescap Borrower Claims Trust, Appellee.

No. 15-595-bk.

|

Jan. 22, 2016.

Appeal from a judgment of the United States District Court for the Southern District of New York ([Gregory H. Woods](#), Judge).

Attorneys and Law Firms

Gregory C. Morse, pro se, Murphy, TX, for Appellant.

[Adam Aiken Lewis](#), Morrison & Foerster LLP, San Francisco, CA, for Appellee.

Present: [REENA RAGGI](#), [DENNY CHIN](#), and [CHRISTOPHER F. DRONEY](#), Circuit Judges.

Opinion

*1 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court entered on January 28, 2015, is AFFIRMED.

Appellant Gregory C. Morse, proceeding *pro se*, appeals from the affirmance of a decision of the United States Bankruptcy Court for the Southern District of New York that disallowed and expunged his claims against Rescap Borrower Claims Trust (the "Trust") on the grounds that his proofs of claim failed to state a basis for liability against the subject debtors. We conduct a plenary review of a decision of a district court functioning as an intermediate appellate court in a bankruptcy case, assessing the bankruptcy court's legal conclusions *de novo* and its factual findings for clear error. See [In re Lehman Bros. Holdings Inc.](#), 761 F.3d 303, 308 (2d Cir.2014). "The bankruptcy court's discretionary rulings with regard to such matters as scheduling and continuances are reviewed for abuse of discretion." [In re Dana Corp.](#), 574 F.3d 129, 145 (2d Cir.2009). In conducting this review, we assume the parties' familiarity with the underlying facts, the procedural history

of the case, and the issues on appeal, which we reference only as necessary to explain our decision to affirm.

For the reasons stated by the bankruptcy court in its thorough and well-reasoned opinion, we conclude that Morse failed to state claims for fraud under Texas common and statutory law, or for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962; the Texas Mortgage Broker License Act, [Tex. Fin.Code § 156.001, et seq.](#); the Texas Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, [Tex. Fin.Code § 157.001, et seq.](#); or the Texas Deceptive Trade Practices Act, [Tex. Bus. & Com.Code §§ 17.41–17.63](#).¹

Morse also charges the bankruptcy court with procedural errors that deprived him of due process. In particular, he complains of the court's refusal to consider certain evidence, refusal to adjourn a hearing on the Trust's objections to his proofs of claim, and *ex parte* communications with the Trust's counsel. These contentions are meritless.

The court did not err in refusing to consider certain evidence because Morse violated [Fed. R. Bankr.P. 9014\(b\)](#) by failing to serve these documents on the Trust in accordance with [Fed.R.Civ.P. 5\(b\)](#). The court also acted within its discretion in denying Morse an adjournment of the hearing on the Trust's objections. See [In re Dana Corp.](#), 574 F.3d at 145. The court afforded Morse an opportunity to appear via telephone, which he failed to do. While Morse argues that the order denying adjournment was issued too late for him to set up a telephonic appearance he nowhere states that he actually attempted to do so. In any event, Morse was not prejudiced by the challenged denial because, as a consequence of his non-appearance at the hearing, the Trust was also prevented from orally arguing its objections.

*2 Finally, Morse's *ex parte* communications complaint is based on an email exchange in which the court instructed Trust counsel to request that Morse provide it with copies of his (subsequently excluded) evidence, in an apparent

effort to ensure that those documents could be properly considered. The emails do not indicate that the court engaged counsel in any substantive discussion of the case. Rather, the exchange was purely administrative in attempting to cure Morse's own service failure. Even if this limited scheduling communication would fall within the prohibition on *ex parte* communications regarding "matters *affecting* a particular case or proceeding," Fed. R. Bankr.P. 9003(a) (emphasis added), Morse has in any case failed to show prejudice from this exchange, see Fed.R.Civ.P. 61 ("At every stage of the

proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

We have considered Morse's remaining arguments and conclude that they are without merit. Accordingly, we AFFIRM the judgment of the district court.

All Citations

--- F.3d ----, 2016 WL 277732 (Mem)

Footnotes

- 1 Morse has adopted Fed.R.Civ.P. 8(a) and 9(b) as the appropriate standards by which his statutory and fraud claims, respectively, should be evaluated, see Appellant Br. 23, 26; accordingly, we assume without deciding that the pleading standards set forth therein properly apply to a contested proof of claim in bankruptcy.

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