

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	
Garden Oaks Maintenance Organization, Inc., Debtor	§	Case No. 18-60018-H2-11
	§	
	§	
	§	

**OBJECTION TO AMENDED CLAIM #319
FILED BY PETER AND KATHERINE CHANG**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

A HEARING HAS BEEN SET FOR THIS OBJECTION FOR FEBRUARY 22, 2021 AT 9:00AM, COURTROOM 400, 4TH FLOOR, 515 RUSK, HOUSTON, TX 77002.

1. The Debtor filed a voluntary chapter 11 petition on April 11, 2018.
2. The Debtor was unable to confirm a plan, and the case was converted to a chapter 7 on June 6, 2019.
3. Randy Williams was appointed Chapter 7 Trustee.
4. On July 16, 2019, the Trustee issued his *Notice of Assets*, with a claims bar date of October 21, 2019.

5. On August 27, 2018, Peter and Katherine Chang filed claim #319, asserting an unsecured claim in the amount of \$13,250.00.
6. Pursuant to section 502(a) of the Bankruptcy Code, a filed proof of claim is deemed allowed unless a party in interest objects thereto. See 11 U.S.C. § 502(a). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . .” 11 U.S.C. § 502(b)(1).
7. The Changs’ claim requests return of the HOA Maintenance Transfer Fee paid at the purchase of their home - \$3,937.50. The Changs assert that they are entitled to the return based upon Mutual Mistake.
8. The claim is barred by Texas state law pursuant to application of *res judicata*.
9. *Res judicata* precludes relitigation of claims that have been finally adjudicated or that arise out of the same subject matter and could have been litigated in the prior action. *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex.1992).
10. *Res judicata* requires proof of the following elements: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised ***or could have been raised*** in the first action. *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex.1996)(emphasis added).
11. On December 6, 2012, the Debtor sued the Changs in State Court, alleging violation of deed restrictions.
12. The Changs answered and asserted counterclaims directly challenging the authority of the Debtor to operate as an HOA. The Changs asserted many equitable affirmative defenses, including standing, capacity, unclean hands, lack of authority, and requested declarations from the state court directly

challenging the Debtor's authority to operate as a statutory HOA, including their authority to enforce the existing deed restrictions (which includes collection of the transfer fee sought here).

13.If the Changs believed that the transfer fee payment was in fact a "mutual mistake" as alleged in their proof of claim, that claim should have been brought in the underlying state court litigation.

14.Res judicata bars the Changs late assertion of mutual mistake:

- a. There was a final judgment on the merits by a court of competent jurisdiction (see attached memorandum on appeal);
- b. Parties to the prepetition state court litigation are identical;
- c. The claim of mutual mistake could, and should have been raised in the prior litigation, but was not.

15.The Trustee asks the Court to disallow Claim #319, as amended.

WHEREFORE, the Trustee requests the Court to disallow Claim #319, and to grant him such other and further relief, at law or in equity, to which he may be justly entitled.

Dated: February 5, 2021.

Respectfully submitted,

By: /s/ Johnie Patterson

Johnie Patterson

State ID# 15601700

COUNSEL FOR THE CHAPTER 7
TRUSTEE

OF COUNSEL:

WALKER & PATTERSON, P.C.

P.O. Box 61301

Houston, TX 77208

713.956.5577

713.956.5570 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Objection* was served upon Brendon Singh, counsel for the Changs by electronic transmission on February 5, 2021.

By: /s/ Johnie Patterson
Johnie Patterson