

1                                   **IN THE UNITED STATES BANKRUPTCY COURT FOR**  
2                                   **THE DISTRICT OF PUERTO RICO**

3  
4           IN RE:

**CASE NO. 12-08567-MCF**

5           **COUSINS INTERNATIONAL**  
6           **FOOD CORP.,**

**CHAPTER 11**

7  
8                                   Debtor

9  
10           **ENCANTO RESTAURANTS, INC.;**  
11           **COUSINS INTERNARIONAL FOOD**  
12           **CORP.; CIF BARCELONETA CORP.,**

13                                   Plaintiffs,

**ADV. NO. 14-00030**

14                                   **v.**

15           **LUIS S. AQUINO VIDAL; OLGA M. VIDAL;**  
16           **HÉCTOR A. CORTÉS BABILONIA; and**  
17           **GUILLERMO D. RODRÍGUEZ SERRANO,**

18                                   Defendants  
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21                                   **OPINION AND ORDER**

22           The purchaser of two restaurants sold in a chapter 11 bankruptcy proceeding seeks  
23           declaratory relief to enforce the provisions of the sale order and to enjoin judgment creditors from  
24           executing judgment on it in a local court proceeding. The court addresses whether the debtor and the  
25           purchaser provided adequate notice to these judgment creditors of the debtor's bankruptcy filing and  
26           of the sale motion to bar them from prosecuting their claims against the purchaser in local court. We  
27           hold that since no notice was given of debtor's bankruptcy filing or of the sale motion to the  
28           judgment creditors, the declaratory relief requested is not within the purchaser's reach.  
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3 **I. Background**

4 Cousins International Food Corp. (“Debtor”), an IHOP-franchise restaurant operator, filed  
5 for bankruptcy under chapter 11 on October 26, 2012.<sup>1</sup> Debtor subsequently filed a motion for the  
6 substantial sale of the IHOP franchises to Encanto Restaurants, Inc.’s (“Encanto”), which was  
7 approved by the court on February 26, 2013.<sup>2</sup> As the purchasing party, Encanto explicitly disclaimed  
8 all liability arising from Debtor’s previous employees.

9 Prior to Debtor’s bankruptcy, Luis S. Aquino Vidal, an ex-employee, and his mother, Olga  
10 M. Vidal, through their legal counsel, Héctor A. Cortés Babilonia & Guillermo D. Rodríguez  
11 Serrano (collectively, the “Aquinos”), filed a damages action for labor claims against Debtor in the  
12 Commonwealth of Puerto Rico, Court of First Instance in Arecibo (the “Local Proceeding”) on  
13 September 20, 2011. Debtor appeared through legal counsel in the Local Proceedings. Debtor’s  
14 counsel later requested leave to resign from Debtor’s representation stating in her motion the  
15 following:

16 Last week I became aware that my client, the Cousins  
17 International Food company [sic], filed for bankruptcy, such  
18 decision taking us by surprise. I obtained this information  
19 through the press. To date, I have not received any call or formal  
20 communication from my client informing its notification to file  
21 for bankruptcy.<sup>3</sup>

22 The local court ordered Debtor to present proof of its bankruptcy filing and of the Aquinos’  
23 inclusion in Debtor’s bankruptcy proceeding. Debtor did not answer the court order nor file any  
24 proof to that effect. The Local Proceeding continued against Debtor and the court issued a final  
25 judgment on May 9, 2013, holding Debtor liable on various grounds of the complaint.

26 <sup>1</sup> The court substantively consolidated CIF Barceloneta Corp., an associated bankruptcy debtor, with Cousins  
27 International Food Corp.

28 <sup>2</sup> “Joint Motion For Sale of Property under Sections 363(b) and 365 of the Bankruptcy Code, Free and Clear of all  
29 Liens, Claims, Interests and Encumbrances,” “Order approving Asset Purchase Agreement,” and “Order  
30 Authorizing the Sale of Debtor’s Assets Free and Clear of Liens,” Dockets No. 29, 91, and 92, Case No. 12-08567,  
31 respectively.

32 <sup>3</sup> Docket No. 40-2, Exhibit B, ¶¶ 2-4, at 1 (Removed paragraph numbers).

1 On October 31, 2013, months after Debtor's sale of assets to Encanto, the Aquinos who had  
2 obtained a favorable judgment against the Debtor, moved to enforce that judgment against Encanto  
3 on the theory of successor liability. On December 17, 2013, Debtor and Encanto requested this court  
4 to compel the Aquinos to answer why they should not be found in contempt for violating the  
5 provisions of the automatic stay under section 362(a) of the Bankruptcy Code and the order  
6 approving the sale motion.<sup>4</sup> The court denied the contempt motion for failure to bring an adversary  
7 proceeding against the Aquinos.<sup>5</sup>

8 Subsequently, Encanto commenced the present adversary proceeding requesting declaratory  
9 and injunctive relief against the Aquinos from executing the local court judgment against it.<sup>6</sup> Debtor  
10 later joined as a co-plaintiff to the adversary action. Both Debtor and Encanto moved for partial  
11 summary judgment on all counts of the adversary complaint,<sup>7</sup> except with regard to the imposition of  
12 requested sanctions and attorney's fees. The Aquinos opposed. The court scheduled a hearing on the  
13 motion for summary judgment.

14 Based on the written motions and the arguments presented in open court on September 23,  
15 2015, the court declined to find the Aquinos in violation of the automatic stay because adequate  
16 notice of Debtor's bankruptcy filing and of the sale motion was not given to them by Encanto or the  
17 Debtor.<sup>8</sup> As known creditors, the Aquinos were entitled to notice of Debtor's bankruptcy filing and  
18 the sale of substantially all of Debtor's assets in order to assert their interest in the bankruptcy  
19 proceedings. This court also declined to exercise its jurisdiction to enjoin the Local Proceeding or  
20 declare the judgment unenforceable because the Aquinos' lack of notice prevented them from  
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23 <sup>4</sup> "Urgent Joint Motion For An Order To Show Cause," Docket No. 195, Case No. 12-08567, at 7.

24 <sup>5</sup> Docket No. 196, Case No. 12-08567.

25 <sup>6</sup> "Amended Complaint," Docket No. 30, Case No. 14-00030.

26 <sup>7</sup> Debtor and Encanto requested the court to "[ (1) ] Declar[e] null, void and unenforceable the Judgment and  
27 Amended Nunc Pro Tunc Judgment issued in the State Court Action in violation of 11 U.S.C. § 362(a); [ (2) ] Find[]  
28 that the Aquinos willfully violated the automatic stay provided by 11U.S.C. § 362(a) [sic]. . . [ (3) ] Issu[e] a  
29 declaratory judgment under 28 U.S.C. § 2201(a), 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 7001(9) determining that  
30 the Judgment and Amended *Nunc Pro Tunc* Judgment are unenforceable against Debtor and/or Encanto pursuant to  
31 the Court's Orders at Dockets No. 71, 91 and 92 of Case No. 12-08567 (MCF)." Docket No. 37, Case No. 14-00030,  
32 at 16-17.

33 <sup>8</sup> Encanto declined to conduct discovery and preferred that the matter be resolved on the motion for partial summary  
judgment. Minutes of the Hearing, Docket No. 68, Case No. 14-00030.

1 participating in the sale proceedings and deprived them of an opportunity to object to the sale  
2 motion.

3 Plaintiffs argued in their summary judgment motion that Debtor had provided the Aquinos  
4 with actual or constructive notice of the bankruptcy filing through the informative motion filed by its  
5 local counsel.<sup>9</sup> The court disagreed. The court held that, as known creditors, the Aquinos were  
6 entitled to adequate notice of the bankruptcy proceedings in order to participate in and be privy to  
7 any matters affecting their interests as claimants, such as the bankruptcy sale. Since the Debtor's  
8 informative motion was insufficient notice, the Aquinos did not receive proper notice of the Debtor's  
9 bankruptcy filing and the sale motion.

10 Encanto filed a motion for reconsideration solely with regard to the request for declaratory  
11 relief.<sup>10</sup> Both parties filed cross motions for summary judgment. On June 8, 2016, the parties argued  
12 the pending motions and the court took the matters under advisement.

## 13 14 **II. Encanto's request for reconsideration**

15 A request for reconsideration under Rule 59(e) can only be sought in order to "correct  
16 manifest errors of law or fact, present newly discovered evidence, or when there is an intervening  
17 change in the law." Jorge Rivera Surillo & Co. v. Falconer Glass Indus., Inc., 37 F.3d 25, 29 (1st  
18 Cir. 1994). Hence, this vehicle may not be used by the losing party to repeat old arguments  
19 previously considered and rejected, or to raise new legal theories that should have been raised  
20 earlier. Id. Rule 59(e) motions should be granted sparingly because parties should not be free to  
21 relitigate issues a court has already decided. A party moving for Rule 59(e) relief may not repeat  
22 arguments previously made during summary judgment, Prescott v. Higgins, 538 F.3d 32, 45 (1st Cir.  
23 2008), nor may it present new arguments on a Rule 59(e) motion if such arguments could, and  
24 should, have been made before judgment issued. ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46,  
25 55 (1st Cir. 2008).

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28 <sup>9</sup> Encanto's Statement of Uncontested Facts, Docket No. 37-1, at 3, ¶ 9.

29 <sup>10</sup> Debtor did not request the court's reconsideration of its September 2015 oral ruling.

1 In its Rule 59(e) motion, Encanto argues that the court failed to address its count on  
2 declaratory relief, pursuant to 11 U.S.C. § 105(a) and 28 U.S.C. § 2201(a).<sup>11</sup> Encanto claims that the  
3 court only resolved the issues regarding a violation of the automatic stay but did not address its  
4 request for declaratory relief.<sup>12</sup> Encanto asserts that it is entitled to a judgment declaring that the  
5 prosecution against it in the Local Proceeding is unenforceable based on the court order approving  
6 the sale and the asset purchase agreement.<sup>13</sup> The court will address Encanto's contentions below.

7 Encanto's reliance on the approved sale order and asset purchase agreement is not  
8 convincing for the court to reconsider—let alone grant—the declaratory-relief requested, pursuant to  
9 11 U.S.C. § 105(a) and 28 U.S.C. § 2201(a). The court's authority to grant declaratory relief  
10 requested under 11 U.S.C. § 105(a) or 28 U.S.C. § 2201(a) is discretionary. Allstate Ins. Co. v.  
11 Charneski, 286 F.2d 238 (7<sup>th</sup> Cir. 1960). See also Sears, Roebuck & Co. v. American Mut. Liability  
12 Ins. Co., 372 F.2d 435 (7<sup>th</sup> Cir. 1967); Washington v. Gamire, 317 F.Supp. 1384 (D.C.Fla.  
13 1970); Nichols v. Vance, 293 F.Supp. 680 (D.C.Tex. 1968). The law in the First Circuit is clear in  
14 regard to a bankruptcy court's lack of authority to declare the bounds of another court's judgment. In  
15 re Savage Indus., Inc., 43 F.3d 714 (1st Cir. 1994).

16 Encanto contends that successor liability is a type of interest that may be eliminated in a  
17 bankruptcy sale, pursuant to 11 U.S.C. §§ 363(b)(1) and 363(f).<sup>14</sup> However, the court was not called  
18 upon to make a determination of which interests may or may not be cut off in a bankruptcy sale. The  
19 court is not prompted to resolve the state law issue of successor liability because its threshold  
20 inquiry in the matter is with regard to the Aquinos' due-process rights to receive notice of the sale in  
21 the first place. Encanto misses the point in addressing why the court should declare the rights of  
22 parties that did not participate in the bankruptcy proceedings and whose due process rights were  
23 overlooked throughout the bankruptcy sale in Debtor's case. Failure to provide proper notice caused  
24 the Aquinos' claims to "ride through" the bankruptcy.

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26  
27 <sup>11</sup> "Motion to Alter or Amend Order Pursuant to Fed. R. Civ. P. 59(e)," Docket No. 70, Case No. 14-00030.

28 <sup>12</sup> Id. at 3.

29 <sup>13</sup> "Order approving Asset Purchase Agreement;" and "Order Authorizing the Sale of Debtor's Assets Free and Clear  
of Liens," Dockets No. 91 and 92, Case No. 12-08567, respectively.

30 <sup>14</sup> "Motion to Alter or Amend Order Pursuant To Fed. R. Civ. P. 59(e)," Docket No. 70, Case No. 14-00030, at 6-21.

1 Next, Encanto argues that “The [Aquinos] are [] violating the [] terms of [the Asset Purchase  
2 Agreement approved by this Court] and collaterally attacking the validity of the Court’s Sale order  
3 before a different tribunal.”<sup>15</sup> It is uncontested in Encanto’s reconsideration motion that the Aquinos  
4 did not receive proper notice of Debtor’s bankruptcy filing nor of the bankruptcy sale. Encanto did  
5 not elaborate on the issue of what would have constituted sufficient notice nor argue why the  
6 Aquinos have a duty to seek redress from this court after the sale order’s approval, even when the  
7 Aquinos were deprived of their rights to proper notice as known creditors of the estate. Encanto  
8 litigates once more its assertion that the Aquinos had a duty to come before the court even when the  
9 Aquinos had no adequate notice of Debtor’s bankruptcy filing.<sup>16</sup> The issue was adjudicated by this  
10 court in its oral ruling. The court held that the Aquinos were known creditors entitled to receive  
11 notice of Debtor’s bankruptcy filing and plaintiffs’ asset-sale agreement prior to the court’s approval  
12 of it.

13 “The right to be heard has little reality or worth unless a party is informed that the matter is  
14 pending and can choose for itself whether to appear or default, acquiesce or contest.” Mullane v.  
15 Central Hanover Bank and Trust Co., 339 U.S. 306, 314 (1950). “[T]he fact that the creditor may . . .  
16 be generally aware of the pending reorganization, does not of itself impose upon him an affirmative  
17 burden to intervene in that matter and present his claim. . . [T]he creditor has a right to assume that  
18 proper and adequate notice will be provided before his claims are forever barred.” In re Arch  
19 Wireless, Inc., 534 F.3d 76, 83 (1st Cir. 2008). The Bankruptcy Rules specify that known creditors  
20 must receive: (1) notice of deadlines for filing proofs of claims (bar date), Fed. R. Bankr. P.  
21 2002(a)(7); (2) a copy of the reorganization plan, Fed. R. Bankr. P. 3017(d); (3) notice of the

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23 <sup>15</sup> Id.

24 <sup>16</sup> Encanto cited Cummings Properties, LLC. v. Heidelberg Print Fin. Americas, Inc., WL 1839252, at \*3 (D. Mass.  
25 2002) in support of this argument. The facts in this case are distinguishable from the one at hand. In the case at hand,  
26 the Aquinos had no knowledge of the case’s filing. This fact is chiefly distinguishable from the cited case. The  
27 creditor in Cummings received inadequate notice of a bankruptcy sale and later opposed it. Despite this the creditor  
28 had received notice of debtor’s bankruptcy filing and could have intervened in the proceedings. The Aquinos in the  
29 case at hand received no notice of Debtor’s bankruptcy filing or the asset sale. The cited case may not be relied upon  
30 for support; it is neither an officially reported case nor binding upon this District. The First Circuit Court in Arch  
31 Wireless set the standard for adequate notice to known creditors. In re Arch Wireless, Inc., 534 F.3d 76, 83 (1st Cir.  
32 2008). Encanto disingenuously argues that such notice standards for known creditors may only apply in  
33 dischargeability actions.

confirmation hearing, Fed. R. Bankr. P. 3017(d); and (4) the confirmation order, Fed. R. Bankr. P. 2002(f); Arch Wireless, 534 F.3d at 76.

In Arch Wireless, a corporation that received discharge pursuant to a chapter 11 plan of reorganization sought to enforce its discharge against a state court claimant. The claimant alleged that as a creditor its due process right to receive notice of the bankruptcy proceedings was affected and consequently its claim was not barred from debtor's discharge. The debtor argued that the creditor's general awareness of the debtor's bankruptcy filing through news media reports known to the creditor's president was sufficient to provide the creditor with adequate notice. On appeal, the First Circuit court held that the Bankruptcy Code required the debtor to provide the known creditor with a wider breadth of notice, which includes knowledge of the claims bar date and of the confirmation hearing. Known creditors are those actually known to the debtor or whose identities are reasonably ascertainable to the debtor. The identity of a known creditor is reasonably ascertainable if the debtor can uncover the identity of that creditor through reasonably diligent efforts. Reasonable diligence does not require impractical and extended searches or a vast, open-ended investigation. Arch Wireless, 534 F.3d at 81.

It is also settled law in the First Circuit that sale proponents must ensure that parties in interest receive adequate notice and an opportunity to be heard before their interests may be adversely affected by a debtor's asset sale. In re Savage Indus., Inc., 43 F.3d 714 (1st Cir. 1994). In Savage, a claimant in a state court action did not receive notice of debtor's bankruptcy filing, debtor's substantial sale of asset, nor of debtor's plan for confirmation. Upon review, the First Circuit court affirmed the district court's holding and ruled that the claimant's state court action against the debtor and purchaser survived the bankruptcy proceedings. The bankruptcy court could not enjoin the prosecution of state law product liability claim against an all-asset transferee absent notice of the material terms of the asset transfer to the state court plaintiff. Id. at 721. A proposed sale free and clear of interest under § 363(f) must comply with the requirements of § 363(b) which mandate that "[t]he Trustee, **after notice and a hearing**, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b) (Emphasis added); 3 COLLIER ON BANKRUPTCY § 363.06[1] (Alan N. Resnick & Henry J. Sommer eds., 16<sup>th</sup> ed.). Accordingly, a debtor must provide parties in interest with adequate notice and an opportunity to be

1 heard before their interests may be adversely affected. Fed. R. Bankr. P. 6004(a) (mandating manner  
2 of notice for a proposed sale); Fed. R. Bankr. P. 2002(a)(2) (21 days' notice by mail to parties in  
3 interest); Savage, 43 F.3d at 720.

4 As in Arch Wireless, both Debtor and Encanto are “bound by the rule that a known creditor’s  
5 general awareness of a pending Chapter 11 reorganization proceeding is insufficient to satisfy the  
6 requirements of due process.” 534 F.3d at 87. Debtor’s counsel in the Local Proceedings may have  
7 provided a general awareness of a bankruptcy case that she obtained from some news media but  
8 failed to provide any specifics on the bankruptcy filing, such as the case number, the court location  
9 and the bar date to file claims. When the state court pressed for proof of notice, Debtor’s counsel  
10 disregarded the court order. Absent a showing that the Aquinos were afforded appropriate notice of  
11 the bankruptcy sale or the sale agreement, the Aquinos’ claims in the local court may not be  
12 enjoined nor declared void.

13 Lastly, Encanto argues that the equities in the case favor its request for declaratory relief. It  
14 points to certain provisions of the court-approved asset purchase agreement reflecting warranties and  
15 disclaimers with regard to successor liability. Because there was no notice to the Aquinos, Encanto’s  
16 negotiated provisions did not have the desired effect of putting the Aquinos on notice of how their  
17 interests could be affected by the sale. Encanto’s characterization of the court’s ruling as a  
18 punishment misconstrues the court’s duty to adjudicate parties’ rights. Encanto assumed the risks as  
19 the purchasing party to the asset purchase agreement in the event that a known creditor was not  
20 properly notified of the sale. For the aforementioned reasons, Encanto’s reconsideration is denied.

### 21 22 **III. The cross motions for summary judgment**

23 We now turn to the cross motions for summary judgment. The Aquinos ask that the court  
24 find (1) the Aquinos to be “known creditors,” entitled to actual notice of the sale and the bankruptcy  
25 filings; (2) that the Aquinos did not violate the automatic stay; and (3) that the Aquinos’ claims are  
26 precluded from discharge.

27 Encanto opposed the motion and cross-moved for summary judgment. In essence, Encanto  
28 requested the court’s grant of declaratory relief to enforce the sale order and defended its standing to  
29



1 pursue a stay-violation claim. The stay-violation issue, however, was not raised for the court's  
2 reconsideration. Debtor did not file any opposition or cross motion.

3 "In bankruptcy, summary judgment is governed in the first instance by Bankruptcy Rule  
4 7056." Desmond v. Varrasso (In re Varrasso), 37 F.3d 760, 762 (1st Cir. 1994). See also Soto-Rios  
5 v. Banco Popular de P.R., 662 F.3d 112, 115 (1st Cir. 2011). Bankruptcy Rule 7056 incorporates  
6 Rule 56 of the Federal Rules of Civil Procedure as the mechanism for adjudicating summary  
7 judgment motions. Summary judgment should be granted only when no genuine issue of material  
8 fact exists and the movant has successfully demonstrated his entitlement to judgment as a matter of  
9 law. The moving party must show that "there is no genuine dispute as to any material fact and he is  
10 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue is "genuine" "if the record  
11 permits a rational factfinder to resolve that issue in favor of either party. Jarvis v. Vill. Gun Shop,  
12 Inc., 805 F.3d 1, 7 (1st Cir. 2015). A fact is "material" "if its existence or nonexistence has the  
13 potential to change the outcome of the suit. Id. Establishing a genuine issue of material fact requires  
14 evidence that is "significantly probative." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249–50,  
15 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). "[C]onclusory allegations, improbable inferences or  
16 unsupported speculation" are not sufficient to prove a fact. Razzaboni v. Schifano (In re Schifano),  
17 378 F.3d 60, 66 (1st Cir. 2004). The "mere existence of some alleged factual dispute between the  
18 parties will not defeat an otherwise properly supported motion for summary judgment; the  
19 requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477  
20 U.S. 242, 247–48 (1986).

21 When both parties move for summary judgment, each party must carry its own burden of  
22 proof as the moving party in its cross motion and as the nonmoving party in response to the other  
23 party's motion. Wells Real Estate Inv. Trust II, Inc., 615 F.3d 45, 51 (1st Cir. 2010). If there are no  
24 disputed material facts, only one party is entitled to judgment as a matter of law.

1           **A.       Uncontested Material Facts**

2           Encanto has admitted the facts germane to the Aquinos' request for summary judgment.<sup>17</sup>  
3           Therefore, the following facts are uncontested:

4  
5           1.       Encanto is a domestic corporation organized and incorporated in the Commonwealth of  
6           Puerto Rico.<sup>18</sup>

7           2.       Debtor is a domestic corporation organized and incorporated in the Commonwealth of Puerto  
8           Rico.<sup>19</sup>

9  
10          3.       Mr. Luis S. Aquino Vidal ("Aquino") and his mother Olga M. Vidal ("Vidal") are or were  
11          citizens of the Commonwealth of Puerto Rico during the period between March 2011 to date.<sup>20</sup>

12          4.       Mr. Héctor A. Cortés Babilonia ("Cortés") and Guillermo D. Rodriguez Serrano  
13          ("Rodriguez") are and were citizens of the Commonwealth of Puerto Rico during the period between  
14          September 20, 2011 to this date.<sup>21</sup>

15          5.       The Aquinos initiated the Local Proceeding on September 20, 2011.<sup>22</sup>

16          6.       Cortés and/or Rodriguez are to this date the legal counsel representing Aquino and Vidal in  
17          the Local Proceeding.<sup>23</sup>

18          7.       Debtor was summoned and obtained legal representation in the Local Proceeding.<sup>24</sup>

19          8.       Debtor, through its legal representation, appeared in the Local Proceeding, answered the  
20          complaint, and was present at various hearings.<sup>25</sup>

21  
22          <sup>17</sup> The Aquinos state as an uncontested fact that they were not notified of the filing and approval by this court of  
23          Debtor's disclosure statement and plan. The Aquinos' Motion for Summary Judgment, Statement of Uncontested  
24          Facts, Docket No. 71 ¶12. This statement was qualified by Encanto in its opposing statement thereto. Docket No. 78  
25          at 9, ¶ 12. However, this fact is not material. The dispute at hand concerns the Aquinos' lack of notice of Debtor's  
26          bankruptcy filing and of Debtor and Encanto's asset sale agreement. Encanto also incorporated in its cross-motion  
27          the uncontested facts alleged in its former summary judgment motion.

28          <sup>18</sup> Encanto's Docket No. 78 at ¶ 1, The Aquinos' Docket No. 61 at ¶ 1.

29          <sup>19</sup> Encanto's Docket No. 78 at ¶ 2, The Aquinos' Docket No. 61 at ¶ 1.

30          <sup>20</sup> Encanto's Docket No. 78 at ¶ 3, The Aquinos' Docket No. 61 at ¶ 1.

31          <sup>21</sup> Docket No. 78 at ¶ 4, The Aquinos' Docket No. 61 at ¶ 1.

32          <sup>22</sup> Docket No. 78 at ¶ 5, No. 37, Exhibit A. The Aquinos' Docket No. 61 at ¶ 1.

33          <sup>23</sup> Docket No. 78 at ¶ 6, The Aquinos' Docket No. 61 at ¶ 1.

<sup>24</sup> The Aquinos' Docket No. 71 at ¶ 2, Encanto's Docket No. 78, at 5 ¶ 2.

<sup>25</sup> The Aquinos' Docket No. 71 at ¶ 3, Encanto's Docket No. 78, at 5 ¶ 3.

1 9. Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code on  
2 October 26, 2012 and, as of that date has managed its affairs as debtor-in-possession, pursuant to 11  
3 U.S.C. §§ 1107 and 1108. The final decree has not been entered in Debtor's bankruptcy case and as  
4 such the bankruptcy case has not been closed.<sup>26</sup>

5 10. As part of the bankruptcy proceedings, Debtor filed its schedules and statement of financial  
6 affairs under penalty of perjury. Debtor did not disclose the Aquinos' Local Proceeding in its  
7 Statement of Financial Affairs. All documents were signed by Debtor under penalty of perjury.<sup>27</sup>

8 11. At the time the bankruptcy petition was filed, the Aquinos were not included as creditors.<sup>28</sup>

9 12. Since the filing of the bankruptcy case until today, Debtor has not included the Aquinos as  
10 creditors in its petition.<sup>29</sup>

11 13. On November 15, 2012, Debtor's attorney in the Local Proceeding filed an informative  
12 motion requesting leave to resign as Debtor's legal representation and stating that she had learnt of  
13 Debtor's bankruptcy filing upon information obtained by her from the press.<sup>30</sup>

14 14. The local court judge issued an order directing Debtor to provide proof of Debtor's  
15 bankruptcy filing and proof that the Aquinos were included as creditors. Upon Debtor's  
16 noncompliance with the November 15, 2012 order, the local court scheduled a pre-trial hearing.<sup>31</sup>

17 15. The local court entered judgment against Debtor. In it, the local court noted Debtor's  
18 noncompliance with the court's previous orders requiring notice of the bankruptcy filing.<sup>32</sup>

19 16. Plaintiffs, through counsel, accepted at the hearing held on September 23, 2015 and on June  
20 8, 2016, that neither Debtor nor Encanto gave notice of the asset purchase agreement to the Aquinos  
21 and that they were not included on the notices made of such sale.<sup>33</sup>

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22  
23 26 Docket No. 78 at ¶ 7, The Aquinos' Docket No. 61 at ¶ 2, & Docket No. 71 at 6 ¶ 4.

24 27 The Aquinos' Docket No. 71 at ¶ 5, Encanto's Docket No. 78, at 6 ¶ 5.

25 28 The Aquinos' Docket No. 71 at ¶ 6, Encanto's Docket No. 78, at 6 ¶ 6.

26 29 The Aquinos' Docket No. 71 at ¶ 7, Encanto's Docket No. 78, at 7 ¶ 7.

27 30 Encanto's Docket No. 78, at 10 ¶ 8, certified translation, Docket No. 37-3, Exhibit B at 1-2 ¶¶ 1-4, 9-10.

28 31 The Aquinos' Dockets No. 71 at ¶ 10, No. 37-3, certified translation of Exhibit B, at 3-6, No. 37-4, certified  
29 translation of Exhibit C, at 1-4. Encanto's Docket No. 78, at 8 ¶ 10.

30 32 The Aquinos' Docket No. 71 at ¶ 11. Encanto's Dockets No. 78, at 10 ¶ 11, No. 40-5, Exhibit D at 4, (certified  
31 translation of judgment included as Exhibit E of Encanto's Docket No. 37-6). Docket No. 83, Audio of June 8,  
32 2016, hearing.

33 33 The Aquinos' Docket No. 71 at ¶ 9, Encanto's Docket No. 78, at 8 ¶ 9. See also Dockets No. 35 and 39 in the  
bankruptcy case (12-08567).

1  
2 **B. Discussion**

3 Based on the uncontested facts, parties' respective motions and the oral arguments held on  
4 June 8, 2016, we reiterate our holding that the Aquinos were known creditors because Aquino was  
5 Debtor's former employee who brought a legal action for labor claims against the Debtor. Debtor  
6 was aware of this litigation because it appeared through an attorney to defend itself. Debtor did not  
7 report the Local Proceeding as a pending action in its Statement of Financial Affairs as required by  
8 item 4 or list the Aquinos in the creditors' matrix list. For this reason, the Aquinos are known  
9 creditors of Debtor.

10 The court concludes that as known creditors the Aquinos did not receive notice of the  
11 Debtor's bankruptcy filing or of the sale motion. As such, they could not have violated the automatic  
12 stay. Encanto argues again that adequate notice was provided to the Aquinos through Debtor-  
13 counsel's informative motion filed in the Local Proceeding, stating how she learnt through the news  
14 media that her client filed for bankruptcy. The local court refused to consider this statement as  
15 sufficient and required Debtor to transmit proof of its bankruptcy filing in order to provide adequate  
16 notice to the court and the parties. Debtor ignored the local court's order.

17 Not only did Debtor fail to provide adequate notice in the Local Proceeding, Debtor also  
18 failed to provide notice to the Aquinos in the bankruptcy proceeding. They were entitled to notice as  
19 known creditors of the estate of their right to participate throughout the different processes in the  
20 case's administration. Since the Debtor did not add the names and addresses of the Aquinos to the  
21 creditor's list, they were not notified of the bankruptcy filing or of the sale order. As a result of their  
22 exclusion from the creditor's list and in the certificate of service of the sale motion, the Aquinos  
23 could not be heard as to their position on the sale of the business nor could they know to cease  
24 prosecuting their action against the Debtor. Likewise, we see no reason why this court should  
25 validate the lack of adequate notice afforded by Debtor and Encanto to the Aquinos in light of the  
26 underlying notice principles that govern the bankruptcy process. Therefore, in view of the attendant  
27 circumstances surrounding the Aquinos' lack of notice, the Aquinos did not violate the automatic  
28 stay or the sale order by continuing to prosecute their prepetition damages action against the Debtor.

1 Because as known creditors the Aquinos were not provided with adequate notice of the  
2 bankruptcy filing, the claims bar date, the plan for confirmation, nor the bankruptcy sale, we further  
3 rule that the Aquinos' claims are not discharged in this bankruptcy proceeding. The Aquinos' lack  
4 of adequate notice is a "defect which precludes discharge of a claim." Arch Wireless, 534 F.3d at 83  
5 (citing Chemetron Corp. v. Jones, 72 F.3d 341, 345–46 (3d Cir. 1995)).

6 As a matter of law, the Aquinos are entitled to judgment in their favor. Consequently, the  
7 Aquinos' motion for summary judgment is granted and Encanto's cross motion is denied.

8  
9 **IT IS SO ORDERED.**

10 San Juan, Puerto Rico, this 14 day of June, 2016.

11  
12 BY THE COURT:

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14 MILDRED CABAN FLORES  
15 U.S. Bankruptcy Judge  
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