UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
DAVID GUNTER	)	CASE NO. 06-73835-MHM
	)	
Debtor	)	

ORDER DENYING DEBTOR'S MOTION FOR REHEARING

On November 16, 2006, hearing was held on the motion of Julian Lecraw & Company, LLC d/b/a The Pointe at Perimeter Apartments (the "Landlord") for relief from the automatic stay; and on Debtor's *pro se* motion for injunctive relief. At the conclusion of that hearing, the Landlord's motion was granted and Debtor's motion denied. The order memorializing that ruling was entered December 1, 2006. Debtor filed a motion for rehearing December 5, 2006.[1] Pursuant to 11 U.S.C. §102, no further hearing is necessary.

At the hearing held November 16, 2006, the following facts were adduced: Prior to the filing of the petition, an apartment had been leased by Landlord to Debtor's brother, Royal Gunter. Apparently, Debtor has lived in the apartment with his brother, but Debtor was not a signatory on or party to the lease either as a resident or as a lessee. On or about September 30, 2006, when the lease expired, Debtor's brother vacated the apartment and

[1] All of Debtor's pleadings are signed by Debtor, who is proceeding *pro se*, and also by Kathy Noble, Debtor's mother, followed by the appellation "Power of Attorney." Debtor and his mother should be aware that Debtor's conveyance upon Ms. Noble of a power of attorney empowers her to take certain limited actions on his behalf but does not empower her to act as his attorney or in any other way represent Debtor before the bankruptcy court. *See In Re Harrison,* 158 B.R. 246 (Bankr.M.D.Fla. 1993).

turned over the keys to the Landlord. Debtor's brother informed the Landlord that his brother refused to leave the apartment, apparently because of a claim Debtor was asserting against the Landlord for damage to some of Debtor's personal property while he was staying in his brother's apartment.

After the brother's departure, the Landlord undertook to evict Debtor from the apartment. A dispossessory warrant was served and a writ of possession issued. Debtor then filed pleadings in state court in an attempt to stop the eviction. A hearing scheduled for October 30, 2006 was continued to allow Debtor to obtain a court reporter. Debtor filed this bankruptcy case November 2, 2006.

Pursuant to 11 U.S.C. §362(b)(22), the automatic stay does not apply to stay

> the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of filing of the bankruptcy petition, a judgment for possession of such property against the debtor[.]

Although Debtor is not a "tenant under a lease or rental agreement," it seems unlikely that Congress intended to grant to a person with no legal right of possession of the premises greater rights than accorded to a tenant.[2] Therefore, to the extent that the automatic stay

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[2] Debtor has objected to the court's application to Debtor of the term "squatter" at the hearing held November 16, 2006. BLACK'S LAW DICTIONARY, FIFTH EDITION, defines "squatter" as:

> One who settles on another's land, without legal title or authority. A person entering upon lands, not claiming in good faith the right to do so by virtue of any title of his own or by virtue of some agreement with another who he believes to hold title. Under former laws, one settled on public land in order to acquire title to the land.

had any application to stay the Landlord from action to obtain possession of the apartment, it was appropriate to modify the stay to permit Landlord to exercise its rights under state law to evict Debtor.

No provision in the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") nor the Bankruptcy Local Rules specifically provides for reconsideration of orders entered by the court. Motions seeking reconsideration may, however, be filed pursuant to Bankruptcy Rule 9023, which incorporates FRCP 59(e) [motion to alter or amend judgment], Bankruptcy Rule 9024, which incorporates FRCP 60(b) [motion for relief from judgment or order], and Bankruptcy Rule 7052, which incorporates FRCP 52(b) [motion to amend findings].

Motions for rehearing or reconsideration should not be used to relitigate issues already decided or as a substitute for appeal. *In re Oak Brook Apartments of Henrico County, Ltd.*, 126 B.R. 535 (Bankr. S.D. Ohio 1991). Such a motion is frivolous if it raises no new evidence or new legal arguments to explain why the court should change the original order. *Magnus Electric v. Masco Corp.*. 871 F. 2d 626 (7th Cir. 1989). *Unioil v. E.F. Hutton & Co.*, 809 F. 2d 548 (9th Cir. 1986). A motion for rehearing or reconsideration is also not intended to be used as a vehicle to tender new legal theories

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Based upon that definition, the court's application of the term "squatter" to debtor's legal status in respect to the apartment and the Landlord appears to be correct. Although Debtor's brother had a legal interest in the property arising from the lease, upon expiration of the lease and vacation of the property by Debtor's brother, any right Debtor had to occupy the property evaporated.

or introduce new evidence that could have been presented in conjunction with the original action. *In re Freeman,* Civil Action No. 1:88-CV-1320-JTC (N.D.Ga. June 21, 1989). "Motions for reconsideration serve the limited purpose of correcting manifest errors of law or fact or, in certain instances calling newly discovered evidence to the Court's attention." *Id.* at page 2. *See also O'Neal v. Kennamer,* 958 F. 2d 1044 (11th Cir. 1992); *Questrom v. Federated Dep't Stores, Inc.*, 192 F.R.D. 128, 130-31 (S.D.N.Y. 2000) ("[A] party seeking reconsideration 'is not supposed to treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's rulings.' "), *aff'd*, No. 00-7292, 2001 WL 40768 (2d Cir. Jan. 16, 2001) (unpublished).

The motion for rehearing filed by Debtor *pro se* is disjointed and lacking a clear statement of the relief he seeks and the facts supporting such relief. Debtor apparently seeks to assert some claim against Landlord for damage to his personal property that occurred while he was occupying his brother's apartment (prior to expiration of the lease). Those claims should be pursued in state court. Debtor has failed to show any grounds to deny the Landlord's motion for relief from stay and has failed to show any need or ability to reorganize.

In Debtor's motion for rehearing, he makes reference to a jury demand. A bankruptcy case is an equitable proceeding and the bankruptcy court is a court of equity. Therefore, especially as Debtor initiated the court's jurisdiction, Debtor is not entitled to a

jury trial on any issues that have been brought before the bankruptcy court. Additionally, Debtor has failed to comply with BLR 9015-1.

Debtor also asserts that a constitutional issue is implicated by the dispute between Debtor and the Landlord. Specifically, Debtor asserts that Article I, Section 10 of the U.S. Constitution requires this court to declare void any state legislative act authorizing payment of debts other than by gold and silver coin. The U.S. Constitution, Article I, Section 10, Clause 1 provides:

> **Section 10, Clause 1. Treaties, Letters of Marque and Reprisal; Coinage of Money; Bills of Credit; Gold and Silver as Legal Tender; Bills of Attainder; Ex Post Facto Laws; Impairment of Contracts; Title of Nobility**
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> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

As is so often the case when a lay person attempts to interpret a legal document written in 1789, Debtor has misconstrued the meaning and intent of this section of the U.S. Constitution. Article I, Section 10, Clause 1 of the U.S. Constitution is intended to remove from the states the inherent sovereign power to declare and make currency; only Congress may determine what constitutes legal tender. *Nixon v. Phillipoff,* 615 F. Supp. 890 (N.D. Ind. 1985), *affirmed* 787 F. 2d 596 (7th Cir. 1986); *The Legal Tender Cases, Julliard v. Greenman*, 110 U.S. 421 (1884).

Debtor has provided no grounds for reconsideration of the order providing Landlord with relief from the stay to proceed under state law to obtain possession of the premises which Debtor occupies. Any claim which Debtor believes he may have against the Landlord may be pursued in another forum. Accordingly, it is hereby

ORDERED that Debtor's motion for rehearing is ***denied.***

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the Chapter 13 Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the 16th day of January, 2007.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE