ENTERED ON DOCKET
6-22-07

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	**CASE NUMBER**
	:	
ROBERT O. DAVIS	:	07-10035-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Reconsideration filed by Robert O. Davis (hereinafter the "Debtor"). The Debtor seeks reconsideration of an order entered by this Court on May 29, 2007 granting the Motion for Relief from the Automatic Stay, filed by Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"), and denying the Debtor's Motion to Invalidate Foreclosure Sale. The Debtor also seeks imposition of a stay to protect the Debtor's state law rights pending the resolution of his Motion for Reconsideration. Because the Court has determined that the Motion for Reconsideration must be denied, the motion for imposition of a stay shall also be denied as moot. These matters constitute a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(G); § 1334.

Movant was the holder of a first mortgage deed to secure debt on real property known as 296 East Mount Zion Church Road, Lagrange, Georgia (hereinafter the "Property"). Pursuant to the power of sale contained within the deed to secure debt, Movant conducted a foreclosure sale of the Property on January 2, 2007. As the highest bidder,

Movant purchased the Property. In its May 29th Order, the Court found that Wells Fargo executed a Deed Under Power on January 3, 2007, which was recorded in Troup County on January 16, 2007. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on January 4, 2007.

On January 22, 2007, Wells Fargo filed a motion for relief from the automatic stay, seeking to proceed with a dispossessory action in the state court of Troup County. On March 1, 2007, the Debtor filed a motion to invalidate the foreclosure and to affirm the existence of the automatic stay with regard to the Property. In its May 29th Order, the Court concluded that the automatic stay should be lifted to permit Wells Fargo to proceed with its dispossessory because the Debtor's bankruptcy estate had no interest in the Property. The Court reached this conclusion after finding that Wells Fargo had finalized its foreclosure of the Property on January 3, 2007 by executing a foreclosure deed, prior to the commencement of the Debtor's bankruptcy case on January 4, 2007. On June 13, 2007, the Debtor filed the instant motion for reconsideration of the May 29th Order.

In his motion, the Debtor seeks reconsideration of the Court's ruling for three apparent reasons. First, the Debtor asserts that his bankruptcy petition should have been deemed to have been filed prior to the January 3rd foreclosure because the Clerk's office either refused to accept his petition on an earlier date or returned his petition, which he claims to have mailed to the Clerk's office prior to January 3, 2007, because he failed to include an acceptable form of payment for the filing fee. Second, the Debtor essentially

asks the Court to reconsider its factual finding that Wells Fargo executed the foreclosure deed on January 3, 2007. Finally, the Debtor seeks reconsideration of the Court's legal conclusion that execution of the foreclosure deed is a sufficient step to render a foreclosure final.

Rule 59(e) of the Federal Rules of Civil Procedure grants bankruptcy courts license to alter or amend an order or a judgment after its entry. *See* FED. R. CIV. P. 59(e) (made applicable to bankruptcy proceedings by Rule 9023 of the Federal Rules of Bankruptcy Procedure); *see also* FED. R. BANKR. P. 9002 (references, like that of Rule 59(e) of the Federal Rules of Civil Procedure, to the alteration or amendment of a "judgment" shall be read to include reconsideration of any order appealable to an appellate court); *see also NationsBank of D.C., N.A. v. Blier (In re Creative Goldsmiths of Washington, DC)*, 178 B.R. 87, 90-91 (Bankr. D. Md. 1995) (applying Rule 59(e) in bankruptcy proceeding). Rule 59(e), however, provides that a motion to alter or amend an order must be filed no later than ten days after the entry of the order. FED. R. CIV. P. 59(e). Pursuant to Bankruptcy Rule 9006(b)(2), the Court is not permitted to enlarge the time for taking action under Bankruptcy Rule 9023. FED. R. BANKR. P. 9006(b)(2). In this case, the Court's order was entered on May 29, 2007. The Debtor did not file his motion for reconsideration until June 13, 2007. Accordingly, the motion is untimely, and the Court cannot apply Rule 59 to reconsider the

May 29th Order.[1]

Rule 60(b) of the Federal Rules of Civil Procedure, made applicable to bankruptcy proceedings by Rule 9024, provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

FED. R. CIV. P. 60(b).

No allegations or arguments made by the Debtor support a finding that the Court's May 29th Order was obtained by fraud, is void, or has been satisfied, released, or discharged. The Debtor's contentions do not support a finding that the Court's May 29th Order was entered as a result of mistake, inadvertence, surprise, or excusable neglect. It also appears that the Debtor has no newly discovered evidence to present to this Court that

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[1] Rule 52 of the Federal Rules of Civil Procedure, made applicable to bankruptcy contested matters by Rules 7052 and 9014(c), also permits the Court to "amend its findings–or make additional findings–and [to] amend the judgment accordingly." FED. R. CIV. P. 52. Rule 52, however, also requires the filing of a motion within ten days of the entry of the judgment.

he could not have discovered in time to present at the original hearing. In short, the Debtor is simply seeking a second "bite of the apple" -- another opportunity to persuade the Court that its legal and factual conclusions are erroneous. *Pierce v. United Mine Workers of America Welfare and Retirement Fund*, 770 F.2d 449 (6th Cir. 1985) ("The interests of finality of judgments and judicial economy outweigh the value of giving a party a second bite of the apple by allowing a 60(b) motion, after the appeal period has run, on the same legal theory that would have been asserted on appeal."). The Debtor has presented no valid basis upon which this Court may reconsider its Order.

The Debtor's Motion for Reconsideration is hereby **DENIED**. The Debtor's Motion to Reimpose Stay as to Wells Fargo Bank is **DENIED**.

IT IS SO ORDERED.

At Newnan, Georgia, this 22 day of June, 2007.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE