IT IS ORDERED as set forth below:

Date: October 10, 2013

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	**Case No. 09-61108-MGD**
RANDY A. PULLEN,	:	**Chapter 7**
Debtor.	:	**Judge Mary Grace Diehl**
NEIL C. GORDON, Chapter 7 Trustee for the Estate of Randy A. Pullen,	:	
Plaintiff,	:	
v.	:	**Adversary Proceeding No. 11-05620**
LISA LOVE,	:	
Defendant.	:	

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On August 7, 2013, an Order granting the Chapter 7 Trustee's Motion for Partial Summary Judgment and corresponding judgment in the Chapter 7 Trustee's favor were entered (Docket Nos. 50 & 51). On August 26, 2013, pro se Defendant, Lisa Love, filed a motion to reconsider (Docket No. 54). Trustee and Ms. Love filed responsive pleadings. (Docket Nos. 55 - 57). Defendant's Motion for Reconsideration is procedurally untimely and is hereby **DENIED**.

This is a core proceeding under 28 U.S.C. 157(b)(2), and jurisdiction and venue are proper.

According to Bankruptcy Local Rule 9023-1, if "a party believes it is absolutely necessary to file a motion to reconsider an order or judgment, the motion shall be filed with the Bankruptcy Clerk within 14 days after entry of the order or judgment." B.L.R. 9023-1, N.D. GA.; *see also* FED. R. BANKR. P. 9023 ("A motion for a new trial or to alter or amend a judgment shall be filed . . . no later than 14 days after entry of judgment."). In this case, both parties recognize that the 14-day period within which Defendant was required to file any motion for reconsideration under Rule 9023-1 expired on August 21, 2013. *Defendant's Motion*, p. 2; *Trustee's Response*, p. 2. However, Defendant contends that (1) under Rule 9006(f) of the Federal Rules of Bankruptcy Procedure; and (2) because she is a *pro se* litigant, three days should be added after the 14-day period would otherwise expire. *Defendant's Motion*, p. 2. Defendant further contends that because the third day after expiration of the 14-day period was a Saturday, her Motion for Reconsideration was timely filed on the next business day, Monday, August 26, 2013. *Defendant's Motion*, p. 2.

Rule 9006(f) of the Federal Rules of Bankruptcy Procedure is inapplicable in this case, thus making Defendant's Motion procedurally untimely under Bankruptcy Local Rule 9023-1. FED. R. BANKR. P. 9006(f). Under Rule 9006(f), "[w]hen there is a right or requirement to act or

undertake some proceedings within a prescribed period after service and that service is by mail . . ., three days are added after the prescribed period would otherwise expire. . . ." FED. R. BANKR. P. 9006(f). The plain language of this Rule provides an additional three days only for actions requiring a response. *E.g.*, B.L.R. 6008-2, N.D. Ga.[1] Defendant's Motion simply does not qualify under Rule 9006(f).

Rule 9023-1, on the other hand, requires the filing of a motion for reconsideration to be "within 14 days *after entry of the order or judgment*." BANKR. LOCAL R. 9023-1 (emphasis added). Accordingly, the time period within which a motion for reconsideration is required to be filed is not "a prescribed period after service" within the meaning of Rule 9006(f) because it is not triggered by service of a notice or pleading. Instead, it is triggered by the Court entry of order and judgment, which in this case occurred on August 7, 2013. Therefore, the timeframe available to Defendant to file a timely Motion ended on August 21, 2013.

Restricting the application of Rule 9006(f) to time periods that are triggered by service where a response is required is consistent with decisions by the Eleventh Circuit. *See e.g.*, *Richardson v. Peterson*, 422 Fed. App'x 823, 825 (11th Cir. 2011) (rejecting challenge to denial of notice of appeal because the ten day period begins to run "upon the entry of the order, not its service") (quoting *In re Arbuckle*, 988 F.2d 29, 31 (5th Cir. 1993)).

Additionally, *pro se* litigants are not excused from complying with the Federal Rules of Bankruptcy Procedure or the Court's local rules. *See e.g.*, *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002) ("Despite construction leniency afforded *pro se* litigants, we nevertheless have

[1] 6008-2. Redemption and Avoidance of Liens: Filing of Response Required.

The respondent shall file a response to a motion under BLR 6008-1 within 21 days of the date of service and serve a copy of same on movant. If no response is timely filed and served, the motion will be deemed unopposed and the Bankruptcy Court may enter an order granting the relief sought. If the motion is timely controverted, the Bankruptcy Court may schedule a hearing on notice to the movant and respondent or order such other proceedings as may be appropriate.

required them to conform to procedural rules."); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) ("[A] *pro se* litigant . . . is subject to the relevant law and rules of court, including the Federal Rules of Civil Procedure.").

Because Defendant has not filed her Motion for Reconsideration within the 14-day time period specified by Bankruptcy Local Rule 9023-1, Defendant's Motion is procedurally untimely as a matter of law.

Defendant also asserts that her Motion should be considered under Rule 9024, applying Federal Rule of Civil Procedure 60. She correctly asserts that Rule 9024 does not impose the same 14-day limitation. Instead, there is simply a requirement that the motion be made within a reasonable time. Defendant does not specify which subsection of Rule 9024 is applicable to her Motion, yet she seems to assert that the Court erred in its determination of Trustee's 363(h) claim and that she has new evidence regarding increased rental income for the Property at issue.

Motions for reconsideration cannot be used to relitigate issues previously decided. *In re Hollowell*, 242 B.R. 541, 542-43 (Bankr. N.D. Ga. 1999) (Murphy, J.). A motion for reconsideration serves the limited function of correcting manifest errors of law or fact, *In re Ionosphere Clubs, Inc.*, 103 B.R. 501, 503 (Bankr. S.D.N.Y. 1989), and should not be used to raise arguments which could have been raised before the subject judgment was issued, *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992). "Reconsideration is only absolutely necessary where there is: (1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." *Bryan v. Murphy*, 246 F.Supp 1256, 1258-59 (N.D. Ga. 2003) (internal quotations omitted) (citing *Jersawitz v. People TV*, 71 F.Supp.2d 1330 (N.D.Ga.1999); *Paper Recycling, Inc. v. Amoco Oil Co.*, 856 F. Supp. 671, 678 (N.D. Ga.1993)).

There is no new law or error of law. Defendant asserts that the Court improperly applied one of the required elements of Trustee's 363(h) claim. Specifically, Defendant asserts that the Court erred when it determined that Trustee had met his burden for the third element of the claim: (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners.

Defendant is correct that Trustee bears the initial burden to make out this element of the case. The Court remains satisfied with the undisputed evidentiary record in support of Trustee's 363(h) claim. Defendant does not dispute the value of the Property at issue, she merely asserts that Trustee failed to provide information regarding the Property's value and the attendant liens. Trustee did assert the value of the mortgage lien on the Property and the Court took judicial notice that no proof of claim was filed with respect to the home equity line of credit upon which Defendant relies. *See* Fed. R. Evi. 201; *see also In re Blum,* 255 B.R. 9, 12 n.5 (Bankr. S.D. Ohio 2000). The Court is permitted to take judicial notice of the filings, including the proof of claims filed (and not filed) in the case, and to consider all undisputed facts in the record. *Id.*; FED R. CIV. P. 56(c) & (e).

The Court was and remains satisfied that a sale of the Property subject to Defendant's half-interest has a benefit to the estate that outweighs the detriment to Defendant. In fact, even under Defendant's best argument, which was supported by inadmissible evidence, Trustee would still prevail on his section 363(h) claim. The equity line of credit that Defendant asserts divided equally between the Trustee and Defendant would still result in significant benefit to the estate because there would be proceeds from the sale that would return to the estate. *In re Kelley*, 304 B.R. 331, 338-39 (Bankr. E.D. Tenn. 2003). Notwithstanding that Defendant has failed to

substantiate the line of credit and any liability on such line of credit attributable to the estate, the benefit to the estate remains.

Defendant also asserts a legal theory that payment of administrative expenses is not relevant when assessing a benefit to the estate. Defendant's position is not supported by law. Courts consider payment on a wide variety of claims beneficial to the estate. *E.g., id.* at 339 (benefit by having the mortgage paid in its entirety). In fact, the District Court in *Bell* rejected Defendant's exact argument: "The Court disagrees with the appellant's contention, that the concept of benefit to the estate as contained in 11 U.S.C. § 363(h)(3), includes only benefit to the unsecured claimholders; he cites no authority in support of such proposition, nor does this Court find any such authority." *In re Bell*, 80 B.R. 104, 106 (M.D. Tenn. 1987). The concept of benefit to the estate includes benefit to administrative claimholders, secured claimholders, priority claimholders, as well as the general unsecureds. *See id.*

Trustee ultimately prevailed because the detriment to Defendant was considered and determined to be outweighed by the benefit to the estate given the rental income generated on the Property compared to the equity in the Property. To defeat Trustee's claim, Defendant had to come forward with evidence showing a detriment in excess of the benefit to the estate. She failed to do so in her motion for summary judgment and the subsequent motions to reconsider do not change the earlier determination. Defendant's new increased monthly rental figures, while not relevant to the Motions for Summary Judgment, raise issues regarding the estate's half-interest in such rent, as pointed out by Trustee. Ultimately, the increased rental income cannot and does not change the Court's earlier analysis and determination.

Defendant presents no basis for the Court to reconsider its earlier ruling under Rule 9024, and Defendant's motion is untimely under Rule 9023. Accordingly, it is

ORDERED that Defendant's Motion for Reconsideration is **DENIED**.

The Clerk's office is directed to mail a copy of this Order on the Trustee, his counsel, and Defendant.

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