



IT IS ORDERED as set forth below:

Date: August 27, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re: : CASE NUMBER:
: :
CYNTHIA PERDUM, : **15-50395-MGD**
: :
Debtor. : CHAPTER 13
: :

**ORDER DENYING DEBTOR'S MOTION TO
VACATE ORDER AND DISMISSAL OF CASE**

Before the Court is Debtor's Motion to Vacate Order and Dismissal of Case, filed on August 8, 2015 (Doc. 52) (the "Motion"). Debtor's Motion, made under Federal Rule of Bankruptcy Procedure 9024 and Federal Rules of Civil Procedure 59 and 60, "seeks relief vacating order denying motion for reconsideration of claim, denying motion to Strip lien, dismissing chapter 13 case and granting [sic] Debtor Motion for request for production of documents." (Doc. 52). The Court on July 30, 2015 entered an order "(1) Denying Debtor's Motion to Strip Lien, (2) Denying Debtor's Motion for Reconsideration of Claim, (3) Denying Confirmation of Plan, and (4) Dismissing Chapter 13 Case" (Doc. 50) (the "Dismissal Order").

I. Motion for Reconsideration¹

The Court first considers Debtor's Motion under Bankruptcy Rule 9023 and then under Bankruptcy Rule 9024. A motion filed pursuant to Bankruptcy Rule 9023 and Local Rule 9023-1 must be filed "no later than 14 days after entry of judgment." Fed. R. Bankr.P. 9023; Local Rule 9023-1, BLR N.D. Ga. Debtor's Motion was filed within 14 days of the Court's Dismissal Order, and so is properly considered under that rule. Bankruptcy Rule 9023 incorporates Civil Rule 59.

"Although [Civil Rule] 59(e) provides no specific grounds for relief, the Eleventh Circuit Court of Appeals has held the only grounds for granting a motion for reconsideration 'are newly-discovered evidence or manifest errors of law or fact.' *In re Miller*, No. 13-76000-MHM, 2015 WL 1743277, at *2 (Bankr. N.D. Ga. Apr. 13, 2015) (quoting *Kellogg v. Schrieber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999)). "Parties therefore may not employ a motion for reconsideration as a vehicle to present new arguments or evidence that should have been raised earlier, introduce novel legal theories, or repackage familiar arguments to test whether the Court will change its mind." *Brogdon ex rel. Cline v. Nat'l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1338 (N.D. Ga. 2000) (citing *Paper Recycling v. Amoco Oil Co.*, 856 F.Supp. 671, 678 (N.D.Ga.1993) and *McCoy v. Macon Water Auth.*, 966 F. Supp. 1209, 1223 (S.D.Ga.1997)).

The basis for Debtor's Motion is the same as that of Debtor's Response to Wells Fargo Bank, N.A.'s Objection to Confirmation (Doc. 20), Debtor's Objection to Proof of Claim No. 4 of Creditor Wells Fargo Bank, N.A. (Doc. 33), Debtor's Motion to Determine Secured Status of Washington Mutual Bank FA, Wells Fargo Bank, N.A. and to Strip Lien Effective Upon Discharge (Doc. 37), and Debtor's Motion for Reconsideration for Proof of Claim 4-1 and 4-2

¹ In this Order, "Bankruptcy Rule" refers to the Federal Rules of Bankruptcy Procedure, "Civil Rule" refers to the Federal Rules of Civil Procedure, and "Local Rule" refers to the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia.

(Doc. 49). Debtor again asserts that Wells Fargo lacks an enforceable secured claim against her. The particulars of this argument include that Wells Fargo failed to properly satisfy a HUD Partial Claim, rendering its interest in her residence subordinate to that of HUD's, and that Wells Fargo's assignment and loan modification was fraudulently procured. The Court has already considered and rejected these exact arguments. (Order Overruling Obj. to Cl. 4, Doc. 38 ("Debtor . . . failed to overcome Respondent's prima facie evidence of the validity and amount of its claim. . . . Having held out Respondent's secured claim was valid in order to induce it to modify the loan, and having received the benefit of the modification, she is now estopped to deny that Respondent did not receive an assignment of the Security Deed and Note in 2006."); Dismissal Order, Doc. 50 ("Even if the Court were to consider these unauthenticated documents, Debtor has not shown that these documents were unavailable to her at the time she made her Objection. Further, Debtor's allegations of lack of disclosure and unreasonable charges in her Motion for Reconsideration fail to overcome the prima facie validity of Wells Fargo's sworn Proof of Claim.")).

Debtor is cautioned that Local Rule 9023-1 provides that parties "shall not file motions to reconsider the Bankruptcy Court's denial of a prior motion for reconsideration." Instead, Debtor is free to appeal the Court's decision.

II. Motion for Relief from Order or Judgment

Under Bankruptcy Rule 9024, with limited restrictions, a party may file a motion for relief from a judgment or order of the Bankruptcy Court for any reason listed under Civil Rule 60. Fed. R. Bankr. P. 9024. The grounds provided in Civil Rule 60(b) are:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;

- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or;
- (6) any other reason that justifies relief.

Civil Rule 60(b)(1)–(6).

Debtor did not specify the provision of Civil Rule 60 on which she relies. It appears that she seeks relief from the Court’s Dismissal Order for the same reasons she seeks reconsideration of the Court’s Dismissal Order. However, the Eleventh Circuit has “been clear that Rule 60 is not an appropriate vehicle to relitigate claims already raised and rejected.” *In re Molette*, 591 F. App’x 934, 935 (11th Cir. 2015) (citing *American Bankers Ins. Co. of Florida v. Northwestern Nat. Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999)). Accordingly, Debtor’s request under Rule 9024 is subject to denial for the same reasons for her request under Rule 9023.

Debtor has also filed a Response to Movant Response to Determine Secured Status of Washington Mutual and Wells Fargo Bank and to strip lien effective of discharge (Doc. 53). The Response is untimely. When a motion is to be heard by the Court, “any written response shall be served not later than one day before the hearing, unless the court permits otherwise.” Fed. R. Bankr. P 9006(d). Accordingly, the Court need not consider it. Even so, the “Response to Response” does not present any argument or evidence that was not available to Debtor prior to the hearing on the Court’s Dismissal Order.

III. Conclusion

For the above reasons, it is

ORDERED that Debtor’s Motion to Vacate Order and Dismissal of Case (Doc. 52) is **DENIED**.

The Clerk's Office is directed to serve a copy of this Order upon Debtor, the Chapter 13 Trustee, and the party listed below.

END OF DOCUMENT

Distribution list

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