

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
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In re: Case No. 8:14-bk-09692-CED
Chapter 13

Althea Smith England,

Debtor.

**ORDER DENYING MOTION FOR
RECONSIDERATION OF DISMISSAL**

THIS CASE came on for consideration, without a hearing, of *Debtor's Motion for Reconsideration of Dismissal and Reinstatement of Chapter 13 Bankruptcy Petition* and *Debtor's Affidavit in Support of Motion for Reconsideration and Reinstatement* (Doc. Nos. 88, 89) (the "Motion" and "Affidavit"). Upon careful consideration of the Motion, the Affidavit, and the record, the Court finds the Motion should be denied for the following reasons.

History of the Case and Procedural Background

The record reflects that since 2006, Debtor has filed six Chapter 13 cases.¹ Debtor's disputes with the Hillsborough County Tax Collector (the "Tax Collector") appear to date back to at least 2008; the docket in her 2008 bankruptcy case indicates that third parties had obtained prepetition, secured *ad valorem* tax liens on Debtor's real property "by virtue of payment for tax certificates issued by the Tax Collector pursuant to Chapter 197, Florida Statutes."² In the 2008 case, Debtor stated that she had filed for bankruptcy in an effort to save her remaining property, property that had "been the grassroots community outreach facility of a 501(c)3

nonprofit charitable organization since 1999."³ Debtor stated that an oversight had caused the property "to be shown in the tax records as liable for delinquent taxes despite its use as a tax-exempt organization."⁴

On August 20, 2014, Debtor filed her most recent Chapter 13 case.⁵ In her bankruptcy schedules, Debtor listed her ownership interest as "co-owner" of real property (the "Property") located in "Greenville Subdivision, Plat 3 PG 50, Lots 1 and 2, Block 14."⁶ Debtor claimed the property exempt as "Homestead exemption non-profit exemption."⁷ Debtor's Schedule I indicates that her income, consisting of primarily Social Security benefits, is \$751.00 per month.⁸

Debtor listed a single creditor, the Tax Collector, for tax years 2003 to present in the amount of \$26,000.00.⁹ The Tax Collector filed a *Notice to Debtor of Additional Creditors*, providing the name of the entity that holds the tax certificate (the "Tax Certificate Holder") for unpaid, delinquent real estate taxes for the tax years 2005 through 2011 in the amount of \$26,136.38.¹⁰ The Tax Collector has also filed proofs of claim for unpaid property taxes for 2012, 2013, and 2014.¹¹

At court hearings¹² and in her court filings, Debtor explained that she disputed both the Tax Collector's claim and the legitimacy of the Tax Certificate Holder, having filed a complaint in state court raising these issues.¹³ Importantly, Debtor acknowledged that she has neither filed an objection to the tax claims¹⁴ nor an adversary

¹ Case No. 8:06-bk-01932-MGW, filed April 26, 2006, dismissed May 15, 2006; Case No. 8:06-bk-03280-MGW, filed June 30, 2006, dismissed October 6, 2006; Case No. 8:07-bk-00939-MGW, filed February 7, 2007, dismissed May 23, 2007; Case No. 8:08-bk-04377-MGW, filed March 31, 2008, dismissed April 28, 2008; and Case No. 8:13-bk-05850-CED, filed May 1, 2013, dismissed September 27, 2013.

² Case No. 8:08-bk-04377-MGW, Doc. Nos. 27 and 28.

³ Case No. 8:08-bk-04377-MGW, Doc. No. 29.

⁴ *Id.*

⁵ Doc. No. 1.

⁶ Doc. No. 1, Schedule B, p. 8. The property is apparently located at 2812 N. 27th Street, Tampa, Florida.

⁷ Doc. No. 1, Schedule C, p. 12.

⁸ Doc. No. 1, Schedule I, p. 22.

⁹ Doc. No. 1, Schedule D, p. 13.

¹⁰ Doc. No. 14.

¹¹ Claim Nos. 1-1, 2-1, and 3-1.

¹² The record reflects that Debtor has appeared before this Court in this case on March 16, 2015; August 24, 2015; and October 5, 2015. (Doc. Nos. 61, 75, and 82.)

¹³ *See, e.g.*, Doc. Nos. 55 and 81.

¹⁴ Although the Tax Certificate Holder has not filed a proof of claim, Debtor could have filed a claim on its behalf under Federal Rule of Bankruptcy Procedure

proceeding in this Court to address her objections.¹⁵ Debtor contends that her dispute with the Tax Collector (and, by extension, the Tax Certificate Holder) is one that can only be decided by a state court or an Article III court.¹⁶ Debtor states that, absent consent of the parties, the bankruptcy court does not have the jurisdictional authority to make a final ruling and that she does not so consent.¹⁷ Nevertheless, Debtor sought to remain in bankruptcy to prevent the Tax Collector from conducting a tax deed sale of the Property.¹⁸

On June 19, 2015, Debtor filed an amended Chapter 13 Plan (the “Plan”)¹⁹ that provided for plan payments over sixty months. The payments are structured as follows:

\$100 for September through November, 2014;

\$50 for December, 2014 through August, 2015;

\$433 for September, 2015 through December, 2017; and

\$816 for January, 2018 through September, 2018.

If Debtor makes the plan payments as scheduled, the total amount to be paid through the Plan is \$20,218.00. From that amount, the Chapter 13 Trustee is entitled to deduct a commission of 10%, leaving \$18,196.20 available for creditors. Although the Plan did not state how the payments under the Plan were to be distributed, assuming that the payments were intended for Debtor’s only scheduled creditor (the Tax Collector, for 2012-2014 taxes) and the Tax Certificate Holder for the balance due (as stated by the Tax Collector) of \$26,136.38, the Plan does not provide for payment

in full to creditors. For this reason, the Tax Collector filed an objection to the Plan.²⁰

On August 24, 2015, the Court conducted a continued confirmation hearing in Debtor’s case. At that hearing, the Court told Debtor that if she wished to continue in her Chapter 13 case, she needed to file a proof of claim on behalf of the Tax Certificate Holder (and that she could do so without such a filing being deemed an admission or acknowledgement of the debt’s validity) and to file an amended plan to address the claims of the Tax Collector and the Tax Certificate Holder. The Court also explained that the payments under such a plan would be without prejudice to her pending state court action and her right to dispute the taxes in that forum. On September 2, 2015, the Court entered this ruling and continuing the confirmation hearing to October 5, 2015.²¹

On October 2, 2015, Debtor filed a motion to continue the October 5, 2015 hearing, stating that she was experiencing problems with her Social Security benefits.²² Nevertheless, Debtor appeared before the Court on October 5, 2015, for the continued confirmation hearing. At that hearing, the Court explained to Debtor that despite the fact that her case had been pending since August 2014, she had not resolved the issues with the Tax Collector and the Tax Certificate Holder. Additionally, Debtor had not filed an amended plan as required by the Court’s September 2, 2015 order and it did not appear to the Court that a further continuance of the confirmation hearing would advance the case. In fact, Debtor’s comments that she was “standing firmly” by her position that the Tax Collector was erroneously assessing interest on the delinquent taxes at the rate of 18% per year indicated to the Court that Debtor did not intend to file an amended plan as

3004, without prejudice to her right to object to the claim.

¹⁵ Doc. No. 55.

¹⁶ Doc. No. 55, p. 2.

¹⁷ Doc. No. 55, p. 3. The Court has not been requested to consider whether it has jurisdiction over Debtor’s dispute and has not done so.

¹⁸ Counsel for the Tax Collector represented at hearings to the Court that Debtor filed this bankruptcy case on the eve of the scheduled tax deed sale.

¹⁹ Doc. Nos. 68 and 74.

²⁰ Doc. No. 72.

²¹ Doc. No. 78.

²² Doc. No. 80.

the Court had previously ordered.²³ For those reasons, the Court denied confirmation and dismissed Debtor's case. The Court explained to Debtor that the dismissal was without prejudice to her refile another case if necessary. And as it had done on numerous occasions, the Court again encouraged Debtor to retain the assistance of counsel. On October 9, 2015, the Court entered its Order Denying Confirmation and Dismissing Case.²⁴

The Motion for Reconsideration

Debtor timely filed her Motion for Reconsideration under Federal Rule of Civil Procedure 59(e) (incorporated by Federal Rule of Bankruptcy Procedure 9023). The Motion was supplemented by Debtor's Affidavit, which set forth seven bases for reconsideration: (1) irregularity in the proceedings of the court which prevented consistent fairness in adjudication; (2) prior misconduct by the attorney for the Tax Collector and at least one of the attorneys for the Trustee; (3) accident or surprise which ordinary prudence could not have guarded against—referring to the problem with the reduction in her Social Security benefits; (4) the imminent threat of irreparable injury; (5) error in the stated amount of tax liability; (6) error in application of the law; and (7) the fact that substantial justice has not been done.²⁵

A party seeking reconsideration must present newly discovered evidence or demonstrate that the court committed a manifest error of law or fact.²⁶ Courts have discretion in whether to grant a

motion for reconsideration.²⁷ Unfortunately, the Court is unable to meaningfully address the myriad concerns raised by Debtor with respect to her communications with the Chapter 13 Trustee's attorneys, the Tax Collector, and the Social Security Administration; events that transpired in Debtor's earlier bankruptcy case; the foreclosure of Debtor's former residence; alleged irregularities in Debtor's eviction from that residence; the loss of Debtor's personal property; and Debtor's dreams about a wheelchair, the unusual use of the word "wheelchair" by others, and appearances of persons in wheelchairs on a bus and at a supermarket. However, the Court finds that the facts alleged by Debtor—even if proven—are not grounds for reconsideration, as they do not involve newly discovered evidence on relevant issues; nor do they relate to an alleged commission of error of law or fact.

Debtor's dispute with the Tax Collector has been ongoing for years; her choice to continue litigating in another forum has precluded this Court from making any factual or legal determinations regarding the validity or amount of the tax debt. The Court has afforded Debtor ample opportunity to cure filing deficiencies and to prosecute her Chapter 13 case,²⁸ but she has simply not made any progress in the 14 months since she filed her petition. Dismissal is warranted.

²⁷ *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994).

²⁸ See, e.g., *Order Granting Motion for Reconsideration of Order Dismissing Case, Reinstating Case and Rescheduling 341 Meeting* dated September 29, 2014 (Doc. No. 25) (vacating dismissal of case due to filing deficiencies); *Order of Impending Dismissal* dated November 19, 2014 (Doc. No. 34) (notice that case would be dismissed because Debtor failed to pay balance of filing fee when due); *Order Continuing and Rescheduling Confirmation Hearing* entered December 10, 2014 (Doc. No. 38) (continuing confirmation hearing from December 1, 2014 to January 26, 2015, and requiring Debtor's attendance at continued hearing because she failed to appear at December hearing); Trustee's acknowledgement that a motion to dismiss for Debtor's failure to make plan payments had been improvidently filed (Doc. No. 51); *Debtor's Motion for Continuance* of June 15, 2015 confirmation hearing (Doc. No. 64) and *Order Continuing and Rescheduling Confirmation* (Doc. No. 70); and *Order Continuing and Rescheduling Confirmation Hearing* from August 24, 2015 to October 5, 2015 (Doc. No. 78).

²³ Florida Statutes § 197.172(1) states that real property taxes shall bear interest at 18% per year from the date of delinquency (April 1 of the year following assessment under Fla. Stat. § 197.333) until a certificate is sold. Once a tax certificate is sold in accordance with Fla. Stat. § 197.432, the interest rate is determined by a competitive bidding process. The winning bidder is the party who demands the lowest rate of interest, not in excess of the maximum rate of interest allowed under Chapter. See Fla. Stat. § 197.432(6). If only one party bids on the tax certificate, that party's winning bid could allow for interest to continue to accrue at 18% per year, since that is the maximum rate of interest allowed under § 197.172(2).

²⁴ Doc. No. 83.

²⁵ Doc. No. 88, p. 2.

²⁶ *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007).

The dismissal of this case was without prejudice. If Debtor wishes to again seek the protections offered by the Bankruptcy Code, she may file a new case and move to extend the automatic stay under 11 U.S.C. § 362(c)(3). There has been no prejudice to Debtor.

Accordingly, it is

ORDERED that the Motion for Reconsideration is **DENIED**.

DATED: November 4, 2015.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

The Clerk's office is directed to serve a copy of this Order upon interested parties via CM/ECF and upon Debtor by U.S. Mail.