

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:15-bk-02105-FMD
Chapter 13

Philip D. Hewett,

Debtor.

**ORDER DENYING
MOTION FOR RECONSIDERATION**

THIS CASE came on, without a hearing, on Debtor's *Motion for Reconsideration of Order and Request for Written Opinion* (Doc. No. 25) (the "Motion for Reconsideration"). Having considered the Motion for Reconsideration, the record, and the applicable law, the Court concludes that the Motion for Reconsideration should be denied.

On March 2, 2015, Debtor filed a voluntary petition for relief under Chapter 13.¹ On March 17, 2015, the case was dismissed because Debtor failed to file a list of creditors and his bankruptcy schedules as required by 11 U.S.C. § 521(a)(1) and a Chapter 13 plan.²

Over one year later, on June 21, 2016, Debtor filed a motion to reopen the case and his *Motion to Annul Automatic Stay Retrospectively* (the "Motion to Annul").³ The case was reopened and the Motion to Annul was set for hearing on July 14, 2016.⁴

In the Motion to Annul, Debtor stated that he filed a notice of appeal of a state court foreclosure judgment on March 9, 2015 – while his bankruptcy case was pending – on the grounds that "Wells Fargo" lacked standing when it filed its foreclosure case against him. Debtor stated that Wells Fargo moved to dismiss his appeal on the

grounds the automatic stay of Debtor's bankruptcy rendered Debtor's notice of appeal invalid and that the Second District Court of Appeals (the "DCA") granted the motion to dismiss for lack of jurisdiction.⁵ As a result, Debtor asked this Court to annul the automatic stay retroactively so that he could proceed with his appeal.

Creditor Wells Fargo Bank, N.A. ("Wells Fargo") filed written opposition to the Motion to Annul, attaching a copy of Wells Fargo's foreclosure judgment.⁶ The foreclosure judgment was entered on December 5, 2014.⁷ The case number of the foreclosure action indicates that the case was filed in 2012. The foreclosure judgment states that interest is due on the mortgage loan from November 1, 2008 through December 5, 2014.⁸

At the July 14, 2016 hearing, having considered the Motion to Annul, Wells Fargo's opposition, and having taken judicial notice of the online docket maintained by the Second District Court of Appeals, the Court, in its discretion, denied the Motion to Annul for the following reasons:

When Debtor filed his notice of appeal of the foreclosure judgment after he filed his bankruptcy petition, he knew or should have known that the act of filing a notice of appeal was a violation of the automatic stay imposed by 11 U.S.C. § 362(a).⁹ If Debtor was not so aware, then he certainly was put on notice on March 23, 2015, when the DCA entered an order that stated:

A copy of the appellant's suggestion of bankruptcy filed in the circuit court has been filed in this court. This court is prevented from any action in this appeal due to the automatic stay provision of 11

¹ Doc. No. 1.

² Doc. No. 12.

³ Doc. Nos. 15, 16.

⁴ Doc. Nos. 17, 18.

⁵ Doc. No. 16, ¶¶ 1-4.

⁶ Doc. No. 21.

⁷ Doc. No. 21-1.

⁸ Doc. No. 21-1.

⁹ Unless otherwise noted, all statutory citations are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

U.S.C., Section 362, Bankruptcy Code, unless a party receives stay relief from the bankruptcy court *which at this time has jurisdiction*. See Crowe Group, Inc. v. Garner, 691 So. 2d 1089 (Fla. 2d DCA 1993).

The parties are directed to inform the Court when the bankruptcy court grants relief from the automatic stay or when the stay lapses. If neither of these events occurs within 120 days of this order, the parties shall provide this court with individual status reports or a joint report.¹⁰

The DCA was advised in late June 2015 that the stay was lifted (presumably due to the dismissal of Debtor's Chapter 13 case on March 17, 2015). Debtor filed his initial brief in the appeal on October 27, 2015.¹¹ On November 10, 2015, Wells Fargo filed its motion to dismiss the appeal, arguing that Debtor's notice of appeal was void as a violation of the automatic stay.¹² Yet Debtor did not seek an order of the Bankruptcy Court annulling the automatic stay. Instead, he waited over seven months, until after the DCA dismissed the appeal on June 1, 2016,¹³ to file his Motion to Annul on June 21, 2016.¹⁴

A bankruptcy court has discretion in determining whether to grant a motion to annul the automatic stay retroactively under § 362.¹⁵ Under the circumstances of this case, the Court found that Debtor's delay in requesting retroactive stay annulment was unreasonable and prejudicial to Wells Fargo. During the 15 months between the dismissal of Debtor's bankruptcy case and the filing of the Motion to Annul, Wells Fargo materially changed its position in defending the appeal by filing its motion to dismiss the

appeal. The Court further found that the *Rooker-Feldman*¹⁶ doctrine precluded annulment of the automatic stay because annulling the stay would act as a collateral attack on the DCA's decision that Debtor's filing his notice of appeal was in violation of the automatic stay.¹⁷ Accordingly, this Court orally denied the Motion to Annul at the July 14, 2016 hearing and on July 26, 2016, entered an *Order Denying Debtor's Motion to Annul Automatic Stay*.¹⁸

Debtor has timely moved for reconsideration. Debtor asks the Court to reconsider its ruling, arguing that the DCA dismissed his appeal for lack of jurisdiction in a "reluctant opinion" and withheld issuing the mandate pending a ruling by this Court that the automatic stay was annulled. Debtor argues that without the annulment he will be left with no remedy to contest the underlying state court foreclosure action.

In order to prevail on a motion for reconsideration under Federal Rule of Civil Procedure 60(b) as incorporated by Federal Rule Bankruptcy Procedure 9024, Debtor must demonstrate that the Court committed clear legal error in its rulings that would result in a manifest injustice, that there has been an intervening change in controlling law, or that new evidence is available that could not have been presented prior to the entry of judgment.¹⁹ A motion for reconsideration should not be used to reiterate arguments previously made but is appropriate when the court has patently misunderstood a party or made an error not of reasoning but of apprehension.²⁰ "Such problems rarely arise and

¹⁰ Doc. No. 21-4 (emphasis supplied).

¹¹ Doc. No. 21, ¶ 12.

¹² Doc. No. 21, ¶ 13.

¹³ *Hewett v. Wells Fargo Bank, N.A.*, 2016 WL 3065014 (Fla. 2d DCA 2016).

¹⁴ Doc. No. 16.

¹⁵ *Cf. In re Williford*, 294 F. App'x 518, 522 (11th Cir. 2008) (holding that the bankruptcy court acted within its discretion in annulling the automatic stay).

¹⁶ *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).

¹⁷ *Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 2001) (finding that the *Rooker-Feldman* doctrine limits the authority of federal courts, other than the United States Supreme Court, to review the final judgments of state courts) (citing to *Siegel v. LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000)).

¹⁸ Doc. No. 23.

¹⁹ *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002).

²⁰ *Id.*

the motion to reconsider should be equally rare.”²¹ Motions for reconsideration are viewed with disfavor. Courts have discretion in whether to grant a motion for reconsideration, and the court’s denial of a motion for reconsideration is reviewed for an abuse of discretion.²²

In his Motion for Reconsideration, Debtor merely reiterates the arguments that were raised in the initial motion. These arguments were addressed on the merits at the July 14, 2016 hearing. Debtor has failed to demonstrate that reconsideration is appropriate and, therefore, this Court will deny the Motion for Reconsideration. The Court, however, notes that the dismissal of Debtor’s Chapter 13 case was without prejudice, and Debtor may file a new bankruptcy case in this Court to address Wells Fargo’s claim through a Chapter 13 plan.

Accordingly, it is

ORDERED:

1. The Motion for Reconsideration is **DENIED**.
2. The Clerk’s office is directed to close the case.

DATED: August 17, 2016.

/s/ Caryl E. Delano

Caryl E. Delano
United States Bankruptcy Judge

²¹ *Id.* (internal citation omitted).

²² *Alexander v. HarperCollins Publishers, Inc.*, 132 F. App’x 250, 251 (11th Cir. 2005).