


ORDERED.

Dated: January 11, 2017



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
MARK ANDREW MACQUARRIE,	)	Case No. 6:14-bk-13112-KSJ
	)	Chapter 7
Debtor.	)	
_____	)	

**ORDER DENYING DEBTOR’S MOTION FOR RECONSIDERATION**

HSBC Bank claims a mortgage lien on the Debtor’s home. Earlier in this bankruptcy, the Court made a mistake and erroneously stripped off this mortgage lien.<sup>1</sup> HSBC then asked me to vacate this order, which I granted.<sup>2</sup> Debtor now seeks reconsideration.<sup>3</sup> Debtor raises no valid ground for reconsideration, and his motion is denied.

Prior to filing this bankruptcy case, HSBC Bank started foreclosure proceedings against the Debtor’s home.<sup>4</sup> After a final judgment of foreclosure was entered, the Debtor filed this

<sup>1</sup> Doc. No. 29 is the Order Granting Motion to Avoid Judicial Lien.  
<sup>2</sup> Doc. No. 37 is HSBC Bank’s Motion to Reopen. Doc. No. 38 is HSBC Bank’s Motion to Vacate the Order Granting the Motion to Avoid Judicial Lien. Doc. No. 46 is the Court’s Order Granting Motion to Vacate.  
<sup>3</sup> Doc. No. 48 is the Debtor’s Motion for Reconsideration on Order Granting Motion to Vacate.  
<sup>4</sup> Case No. 2013-CA-005680-O, Circuit Court in and for Orange County, Florida. The Court will refer to the foreclosure proceedings as the “Foreclosure Case.”

bankruptcy case, initially seeking relief under Chapter 13.<sup>5</sup> He also filed his *first* Motion to Avoid Judicial Lien of HSBC Bank.<sup>6</sup> Debtor's case later was dismissed.<sup>7</sup>

Months later, the case was reinstated, this time as a Chapter 7 liquidation case.<sup>8</sup> However, between time of the dismissal and the time of the reinstatement, the Debtor filed a *second* Motion to Avoid Judicial Lien of HSBC Bank by negative notice.<sup>9</sup> No action was taken on this motion because the case was dismissed. But, when the case was reinstated, the Court erroneously granted the second Motion to Avoid Judicial Lien.<sup>10</sup> Debtor received his Chapter 7 discharge, and the case was closed.<sup>11</sup>

When the Debtor brought the erroneous order avoiding HSBC's alleged lien to the state court handling the foreclosure action, HSBC Bank sought relief in Bankruptcy Court to reopen the case and to vacate the mistaken order.<sup>12</sup> The case was reopened, and I gave the parties time to prepare for the hearing on the Motion to Vacate.<sup>13</sup> After oral argument, I granted the Motion to Vacate in an order explaining the ruling,<sup>14</sup> and the Debtor timely filed his Motion for Reconsideration.<sup>15</sup>

The Court reiterates its prior ruling—there is no question the order that avoided the judicial lien was entered in error. All pending motions are denied when a case is dismissed. The *first* Motion to Avoid Judicial Lien was denied when the dismissal order was entered. The

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<sup>5</sup> Doc. No. 1.

<sup>6</sup> Doc. No. 13.

<sup>7</sup> Doc. No. 15. The dismissal order was entered on December 30, 2014.

<sup>8</sup> Debtor sought to reinstate his dismissed case on March 3, 2015. Doc. No. 21. The Court granted the request the next day, March 4, 2015. Doc. Nos. 24, 25.

<sup>9</sup> Doc. No. 17.

<sup>10</sup> Doc. No. 29.

<sup>11</sup> Doc. Nos. 33, 35.

<sup>12</sup> Doc. Nos. 37, 38.

<sup>13</sup> Doc. No. 42.

<sup>14</sup> Doc. No. 46.

<sup>15</sup> Doc. No. 48.

*second* Motion to Avoid Judicial Lien was filed *after* the case was dismissed.<sup>16</sup> The Court does not act on any motion filed after a case is dismissed.

HSBC Bank argued that Federal Rule of Civil Procedure 60(b) allows the Court to vacate erroneously entered orders. Rule 60(b)(6),<sup>17</sup> known as the “catchall provision,”<sup>18</sup> provides a court may grant a party relief from an order for any other reason that justifies the relief sought. The Court, finding HSBC’s motion was filed within a reasonable time, vacated its prior order because it was improperly entered. The Court, as an aside, also noted that the Debtor did not serve the Motion on HSBC Bank. The Court alternatively found it had authority under Section 105 of the Bankruptcy Code to vacate its own orders.

Reconsideration of an order “is an extraordinary remedy to be employed sparingly” due to interests in finality and conservation of judicial resources.<sup>19</sup> “The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory ... [or] to give the moving party another ‘bite at the apple’ by permitting the arguing of issues and procedures that could and should have been raised prior to judgment.”<sup>20</sup> “A trial court’s determination as to whether grounds exist for the granting of a Rule 59(e) motion is held to an ‘abuse of discretion’ standard.”<sup>21</sup> Where Courts have granted relief under Rule 59(e),

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<sup>16</sup> The dismissal order was docketed at 2:24 p.m. on December 30, 2014. The second Motion to Avoid Judicial Lien was filed at 5:56 p.m. on December 30, 2014.

<sup>17</sup> Fed. R. Civ. P. 60(c)(1).

<sup>18</sup> *Sec. & Exch. Comm’n v. N. Am. Clearing, Inc.*, No. 15-12919, 2016 WL 3742786, at \*1 (11th Cir. July 13, 2016) (unpublished decision).

<sup>19</sup> *Mathis v. United States (In re Mathis)*, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004) (quoting *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)) (internal quotation marks omitted). Federal Rule of Civil Procedure 59 is incorporated into the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9023.

<sup>20</sup> *In re Mathis*, 312 B.R. at 914 (quoting *In re Halko*, 203 B.R. 668, 671-72 (Bankr. N.D. Ill. 1996)) (citations omitted).

<sup>21</sup> *In re Mathis*, 312 B.R. at 914 (citing *Am. Home Assurance Co. v. Glenn Estess & Assocs.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985) (“The decision to alter or amend judgment is committed to the sound discretion of the [trial] judge and will not be overturned on appeal absent an abuse of discretion.”)).

they act to: (1) account for an intervening change in controlling law, (2) consider newly available evidence, or (3) correct clear error or prevent manifest injustice.<sup>22</sup>

Debtor mainly raised arguments made at the hearing on the Motion to Vacate or in his prior papers. He mentions no intervening change in controlling law. He also does not elaborate on his alleged “newly” available evidence. There was no demonstrated clear error or manifest injustice.

On the Debtor’s point he should be heard on arguments not raised in HSBC Bank’s Motion—the Court has the authority to consider issues and arguments not raised by the parties. “No provision of [the Bankruptcy Code] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.”<sup>23</sup> The Court has the authority to fix its own errors and enforce the Federal Rules of Bankruptcy Procedure regarding service whether the parties raise these issues.

However, there is one argument the Debtor makes that merits correction. The Court ruled that the Debtor never served the *second* Motion to Avoid Judicial Lien on HSBC Bank. This ruling was incorrect. Debtor *attempted* service on HSBC Bank.<sup>24</sup> Debtor served the Motion by first class mail, but the Motion had to be served by *certified mail* under Federal Rules of Bankruptcy Procedure 9013, 9014, and 7004(h). Rule 9014 provides that service of a Motion that is a contested matter should be made under Rule 7004. Rule 7004(h), in turn, provides for special service on insured depository institutions. “Service on an insured depository institution ... in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer

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<sup>22</sup> *In re Mathis*, 312 B.R. at 914 (citations omitted).

<sup>23</sup> 11 U.S.C. § 105(a) (2012).

<sup>24</sup> Doc. No. 17, p. 3.

of the institution.”<sup>25</sup> Some exceptions to that rule are inapplicable here. HSBC Bank is an insured depository institution, so it was required that the Debtor serve the Motion to Avoid Judicial Lien by *certified mail*. Service was still improper even though it was attempted.

The Court finds no reason to reconsider its Order granting the Motion to Vacate. Accordingly, it is **ORDERED** that the Motion for Reconsideration (Doc. No. 48) is **DENIED**.

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The Clerk is directed to serve a copy of this order on all interested parties.

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<sup>25</sup> Fed. R. Bankr. P. 7004(h).