


ORDERED.

Dated: February 16, 2017



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
HECTOR RAMBEL CUPRILL,)	Case No. 6:16-bk-00196-KSJ
)	Chapter 13
Debtors.)	
)	

ORDER DENYING DEBTOR’S MOTION FOR RECONSIDERATION

The Chapter 13 Trustee filed a Motion to Dismiss this case because the Debtor stopped making his required monthly payments.¹ Debtor, who was given 21 days to respond to this motion, instead moved for disqualification seeking my recusal and other types of relief such as a continuance of the hearing set for January 4, 2017.² (Within this motion, Debtor also argues his case should not be dismissed.³) Debtor failed to attend the hearing, and the Court dismissed the case because the Debtor still was delinquent in his required Chapter 13 payments.⁴ Debtor’s requests for recusal and for a continuance also were denied.⁵ Debtor now seeks reconsideration

¹ Doc. No. 51.

² Doc. No. 52.

³ To the extent that the Court treats this motion as a response to the Chapter 13 Trustee’s Motion to Dismiss, the response was untimely insofar as it was filed at 4:58 p.m. on December 8, 2016, one day after the 21 day response period expired.

⁴ Doc. No. 55.

⁵ Doc. No. 53.

in a paper styled as Debtor’s Second Motion to Set Aside Order Granting *Ore Tenus* Motion to Vacate Mediation Order, Order Denying Judge’s Recusal, Dismissal of Bankruptcy, and One Year Injunction Order.⁶ The Motion is denied.

Reconsideration of an order “is an extraordinary remedy to be employed sparingly” due to interests in finality and conservation of judicial resources.⁷ “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.”⁸ “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.”⁹ Where Courts have granted relief under Rule 59(e), 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.¹⁰

The Court reaffirms its prior ruling on the Motion to Disqualify. One statement the Court made, however, warrants correction—Debtor responded to the Chapter 13 Trustee’s Motion to Dismiss within his Motion to Disqualify, which sought numerous types of relief. The response was untimely because it was received by the Court one day beyond the 21 day negative notice

⁶ Doc. No. 58 (the “Motion”). Because the Motion was filed within 14 days of the entry of each order at issue, the Court will interpret it as a motion seeking reconsideration of the Order Denying Disqualification (Doc. No. 53), the Order Dismissing Case (Doc. No 55), and the Order Granting *Ore Tenus* Motion to Vacate Mortgage Modification Mediation Order (Doc. No. 57). *See* Federal Rule of Bankruptcy Procedure 9023 (“[Rule 59] applies in cases under the Code. 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.”).

⁷ *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.

⁸ *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).

⁹ *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.”)).

¹⁰ *In re Mathis*, 312 B.R. at 914 (citations omitted).

period. The untimely response further provided no legal basis to delay dismissal. Mr. Cuprill simply was not making his required Chapter 13 payments.

Because the Debtor did not appear at the hearing held on January 4, 2017, he forfeited his right to now belatedly challenge the dismissal. During a prior hearing on November 8, 2016,¹¹ the Court announced the next hearing was set for January 4, 2017. The Chapter 13 Trustee formally noticed the hearing.¹² And, although the Debtor sought a continuance, none was granted. He failed to attend a scheduled hearing and now complains of the result. Debtor raises no intervening change in controlling law, newly available evidence, clear error, or manifest injustice to reconsider the Court's Order Dismissing Case or any of the other related orders.

Accordingly, it is

ORDERED:

1. The Motion (Doc. No. 58) is **DENIED**.

¹¹ Doc. No. 48.

¹² Doc. No. 49.