


ORDERED.

Dated: December 21, 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	)	
	)	
JODELL M. ALTIER,	)	Case No. 6:15-bk-01838-KSJ
	)	Chapter 7
Debtor.	)	
_____	)	

**ORDER DENYING DEBTOR’S MOTION FOR RECONSIDERATION OF SALE AND DENYING CREDITOR’S MOTION FOR CONTEMPT**

This case came before the Court on September 18, 2017, for consideration of the Debtor’s Motion for Reconsideration of Sale of Roat Drive Property<sup>1</sup> and Goshen Mortgage, LLC’s Second Motion for Contempt.<sup>2</sup> The Court took these matters under advisement. Both Motions are denied.

Debtor filed this Chapter 7 bankruptcy petition in 2015.<sup>3</sup> Debtor sought to claim 2507 Roat Drive, Orlando, Florida as her homestead property (the “Property”).<sup>4</sup> The Court held a trial on two objections to the Debtor’s claimed homestead exemption.<sup>5</sup> The Court sustained the objections to the Debtor’s claimed homestead because the Debtor no longer owned the home,

<sup>1</sup> Doc. Nos. 271, 279, 282, 296.

<sup>2</sup> Doc. No. 280, 295. The Court will refer to Goshen Mortgage, LLC as Goshen.

<sup>3</sup> Doc. No. 1.

<sup>4</sup> Doc. No. 83, Schedule C on p. 12.

<sup>5</sup> Doc. No. 145 is the hearing proceeding memorandum.

having previously transferred the property to Grande Legacy Group, a Texas joint stock company.<sup>6</sup> The home was no longer owned by a natural person and not entitled to homestead protection.<sup>7</sup>

Shortly after the objections were sustained, the Chapter 7 Trustee moved to sell the no longer exempt Property free and clear of liens to Goshen (the “Sale Motion”).<sup>8</sup> The Chapter 7 Trustee, in her Sale Motion, provided procedures to follow if any party wished to bid on the Property.<sup>9</sup> No objections or responses were filed to the Sale Motion.

The Court held a hearing on October 20, 2016, and granted the Sale Motion.<sup>10</sup> The Court then entered its order on the sale of the Property that incorporated the bidding procedures.<sup>11</sup> The Chapter 7 Trustee then filed her Notice of Successful Bidder, which provided Goshen was the successful bidder at the auction.<sup>12</sup> The Notice provided a five day objection period.<sup>13</sup> No party objected.<sup>14</sup> The Property then was sold to Goshen after a bankruptcy court approved auction and expiration of the objection period. Goshen has since sold the Property to a third party.<sup>15</sup>

While the Court was resolving the objections to the Debtor’s claimed exemption and the Sale Motion, the Debtor continued to challenge Goshen’s interest in the Property in pending state court actions. Goshen filed a Motion to Compel Compliance with Court Orders and for Civil Contempt against Jodell Altier and Joseph Altier (the “First Contempt Motion”).<sup>16</sup> After the Court approved the sale of the Property, the First Contempt Motion was granted on a preliminary

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<sup>6</sup> Doc. No. 147, entered August 18, 2016.

<sup>7</sup> *Id.*

<sup>8</sup> Doc. No. 153, filed September 9, 2016. This was a Joint Motion with Goshen and Grande Legacy Group.

<sup>9</sup> *Id.*

<sup>10</sup> Doc. No. 160 is the hearing proceeding memorandum.

<sup>11</sup> Doc. No. 167.

<sup>12</sup> Doc. No. 182, filed November 14, 2016.

<sup>13</sup> *Id.*

<sup>14</sup> Doc. No. 186, filed November 21, 2016.

<sup>15</sup> Doc. No. 279, p. 3 (“On June 14, 2017, the [Property] was sold to a bona fide third-party purchaser.”).

<sup>16</sup> Doc. No. 157, filed October 5, 2016.

basis.<sup>17</sup> The Court deemed the Debtor to have surrendered the Property, and outlined how the Debtor and her husband may purge the civil contempt finding of the Court.<sup>18</sup> Goshen then filed a Motion for Sanctions arguing the Debtor and her husband failed to comply with the Court's order, insofar as they continued to challenge Goshen's interest in the Property.<sup>19</sup> The Court held a hearing on the sanction and contempt issues on February 8, 2017.<sup>20</sup> The Court rendered an oral ruling in open court and entered an order that provided specifically the Debtor, her husband Joseph Altier, and Georgiann Jereczek (Mrs. Altier's mother propounding the challenging in state court) were prohibited from asserting any dispute as to the ownership of the Property.<sup>21</sup> The Court reserved ruling on further sanctions related to these issues.

Several months went by before the Debtor filed the Motion for Reconsideration of Sale of the Property.<sup>22</sup> The Court issued an order directing the creditors at issue to respond to the Motion.<sup>23</sup> Both creditors responded.<sup>24</sup> Goshen then filed its Second Motion for Contempt against the Debtor and her husband.<sup>25</sup> Although the Court has told Debtor's counsel several times to file his papers correctly through the Court's electronic filing system, Debtor's counsel still has not filed a response correctly to the Second Motion for Contempt.<sup>26</sup> The Court considered the response despite Debtor's counsel's failure.

Debtor's primary arguments for reconsideration of the sale of the Property turn on Rule 60 of the Federal Rules of Civil Procedure.<sup>27</sup> No exact deadline exists for filing a motion seeking reconsideration under Rule 60. "A motion under Rule 60(b) must be made within a reasonable

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<sup>17</sup> Doc. No. 199, entered December 6, 2016.

<sup>18</sup> Doc. No. 199.

<sup>19</sup> Doc. No. 206, filed December 20, 2016. The Motion was supplemented on January 11, 2017. Doc. No. 223.

<sup>20</sup> Doc. No. 230.

<sup>21</sup> Doc. No. 234, ¶ 2.

<sup>22</sup> Doc. No. 271, filed July 6, 2017.

<sup>23</sup> Doc. No. 273.

<sup>24</sup> Doc. Nos. 279, 282. Christiana Trust opposes this Court's personal jurisdiction over it.

<sup>25</sup> Doc. No. 280.

<sup>26</sup> Doc. No. 295 was not processed.

time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.”<sup>28</sup>

Debtor argues that the sale of the Property should be reversed “based on fraud.”<sup>29</sup> Fraud is considered grounds for relief from an order or judgment under Rule 60(b)(3). Debtor also argues that a “fraud report” obtained in December 2016 is “new” evidence that supports reversal of the sale order.

“Rule 60(b)(2) allows a court to grant relief from a final judgment due to newly discovered evidence which, by due diligence, could not have been discovered in time to move for a new trial ... The moving party must meet the following five-part test: (1) the evidence must be newly discovered since the trial; (2) the movant used due diligence to discover the new evidence; (3) the evidence is not merely cumulative or impeaching; (4) the evidence is material; and (5) the evidence is such that a new trial would probably produce a new result.”<sup>30</sup>

To obtain relief under Rule 60(b)(3), “[t]he movant must establish by clear and convincing evidence that the opposing party obtained the order or judgment through fraud. Mere conclusory statements of the existence of fraud will not suffice.”<sup>31</sup> “Litigants cannot use a motion for reconsideration to ask [the Court] to ‘relitigate old matters, raise arguments, or present evidence that could have been raised prior to the entry of judgment.’”<sup>32</sup>

Debtor attaches a “fraud report” that was obtained in December 2016 to support her arguments.<sup>33</sup> The “fraud report” makes several “findings” related to the Debtor’s mortgage

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<sup>27</sup> Incorporated into the Bankruptcy Code by Federal Rule of Bankruptcy Procedure 9024.

<sup>28</sup> Fed. R. Civ. P. 60(c).

<sup>29</sup> Doc. No. 271, ¶ 19.

<sup>30</sup> *Sec. & Exch. Comm'n v. N. Am. Clearing, Inc.*, 656 F. App'x 969, 972 (11th Cir. 2016) (per curiam).

<sup>31</sup> *Sec. & Exch. Comm'n v. N. Am. Clearing, Inc.*, 656 F. App'x 947, 949 (11th Cir. 2016) (per curiam) (internal citations omitted).

<sup>32</sup> *Attea v. Univ. of Miami*, 678 F. App'x 971, 974 (11th Cir. 2017) (per curiam) (internal citations and quotations omitted).

<sup>33</sup> Doc. No. 271-1.

documents (i.e. no genuine or original “wet ink” signatures and no original documents).<sup>34</sup> Debtor is once again attacking the final judgment of foreclosure and Goshen’s interest in the Property. As this Court previously stated, the Debtor *may not* challenge Goshen’s interest in the Property.<sup>35</sup> These new “findings” could have been brought up prior to the sale hearing. Although the report was obtained after the sale hearing, there is no reason the Debtor could not have looked into and obtained this or a similar report prior to the sale hearing to object to the sale. This is not newly discovered evidence. As Goshen points out, Debtor made similar arguments in the state court prior to the sale hearing.<sup>36</sup> There were no objections to the sale, and the sale went through. Goshen now has sold the Property to a third party. The sale cannot and will not be reversed.

Debtor has not established by clear and convincing evidence that the opposing party (here, the Court considers the Chapter 7 Trustee and Goshen the opposing parties) obtained the sale order by fraud. Indeed, the parties followed specific guidelines and steps before the Property was sold. Debtor’s Motion for Reconsideration is denied.

As to Goshen’s renewed Second Motion for Contempt, the Court will exercise its discretion and find that Goshen is not entitled to additional monetary sanctions against the Debtor or her family members at this time. Goshen’s Second Motion for Contempt is denied.

However, the Court cautions the Debtor and her family members that further violations of this Court’s orders could result in monetary sanctions or possible incarceration for civil contempt. The Court specifically reminds the Debtor and her family members that these state court challenges must stop. The sale is final.<sup>37</sup> The Altier family and any one associated with the

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<sup>34</sup> *Id.*

<sup>35</sup> Doc. No. 234.

<sup>36</sup> Doc. No. 279, Exh. C (questioning the “authenticity and validity of the signatures of all parties” and questioning whether the creditor provided the original note in the foreclosure case).

<sup>37</sup> Additionally, the Altiers lack standing to contest the sale of the Property because they no longer owned the Property when it was sold.

Altier family no longer have any claim or interest to the Property. And, if any more impermissible challenges are raised, the Court will severely sanction the contemptuous party.

Accordingly, it is

**ORDERED:**

1. The Motion for Reconsideration (Doc. No. 271) is **DENIED**.
2. The Second Motion for Contempt (Doc. No. 280) is **DENIED**.
3. Debtor's request for an evidentiary hearing is **DENIED**.
4. Debtor's Objection to Order Returning Note (Doc. No. 294) is **DENIED AS MOOT**, as the Court considered the Debtor's Motion for Reconsideration.

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