

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:16-bk-1965-PMG

Christine Irene Schulte,

Debtor.

Chapter 13

ORDER DENYING DEBTOR'S MOTION FOR REHEARING

THIS CASE came before the Court without a hearing to consider the Debtor's Motion for Rehearing. (Doc. 158).

On October 12, 2017, the Court entered an Order on Motion for Determination that No Stay is in Effect or in the Alternative, Amended Motion for Relief from Automatic Stay in Support of Final Judgment (the Stay Order). (Doc. 147).

On December 9, 2017, the Debtor filed a Motion for Rehearing of the Stay Order. In the Motion, the Debtor asserts that she is entitled to relief from the Stay Order because the Court should not have determined an issue of state law, and because the Court did not apply the correct state law.

Under Rule 9023 of the Federal Rules of Bankruptcy Procedure, a motion for a new trial or to alter or amend a judgment must be filed no later than 14 days after the entry of the challenged judgment. Under Rule 9024 of the Bankruptcy Rules and Rule 60(c) of the Federal Rules of Civil Procedure, a motion for relief from an order or judgment under Rule 60(b) must be filed within a reasonable time.

In this case, the Debtor's Motion for Rehearing was not filed within 14 days of the Stay Order as required by Rule 9023 of the Bankruptcy Rules, and was not filed within a reasonable time as required by Rule 60(c) of the Federal Rules of Civil Procedure. Accordingly, the Motion was not timely filed and should be denied.

I. The bankruptcy case

The real property at issue in this case is located at 4207 Fairway Drive N., Jupiter, Florida (the Property).

On October 14, 2015, the Bank of New York Mellon fka the Bank of New York as Trustee (the Bank) filed an action to foreclose a mortgage on the Property in the Circuit Court for Palm Beach County, Florida (the State Court). The Debtor was named as a defendant in the foreclosure action.

On January 19, 2016, the State Court entered a Final Judgment in the foreclosure action.

A foreclosure sale of the Property was conducted on April 8, 2016, and the State Court Clerk issued a Certificate of Sale on April 11, 2016.

On May 25, 2016, the Debtor filed a petition under Chapter 13 of the Bankruptcy Code. On her schedule of assets filed in the bankruptcy case, the Debtor claimed an ownership interest in the Property.

On September 9, 2016, the Bank filed a Motion for Determination that No Stay is in Effect or in the Alternative, Amended Motion for Relief from Automatic Stay in Support of Final Judgment. (Doc. 35).

On October 12, 2017, the Court entered an Order on the Bank's Motion (the Stay Order). (Doc. 147). In the Stay Order, the Court determined that the Property was not property of the bankruptcy estate, and was not subject to the automatic stay provided by §362 of the Bankruptcy Code.

On December 9, 2017, the Debtor filed a Motion for Rehearing of the Stay Order. (Doc. 158).

II. Rule 9023

Rule 9023 of the Federal Rules of Bankruptcy Procedure provides:

Rule 9023. New Trials; Amendments of Judgments

Except as provided in this rule and Rule 3008, Rule 59 FR Civ P applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.

F.R.Bankr.P. 9023(Emphasis supplied). A motion under Rule 9023 is a motion that questions the correctness of the judgment or that seeks to re-litigate the original issues. In re Smalis, 2015 WL 9957186, at 3 (Bankr. W.D. Pa.). In the Eleventh Circuit, the only grounds for a motion under Rule 9023 are newly discovered evidence and manifest errors of law or fact. In re Ardis, 2017 WL 3491797, at 2 (Bankr. N.D. Fla.).

A motion under Rule 9023 must be filed “no later than 14 days after entry of the judgment.”

F.R.Bankr.P. 9023.

In this case, the Court determined in the Stay Order that the Property was sold at the State Court foreclosure sale before the Debtor filed her bankruptcy petition, and that the Property was not property of the bankruptcy estate or protected by the automatic stay. In the Motion for Rehearing, the Debtor asserts that the Court should not have determined a question of personal jurisdiction under state law, and that the Court did not apply the correct state law. In the Motion’s prayer for relief, the Debtor asks this Court to conduct an evidentiary hearing. (Doc. 158, p. 7).

The Motion questions the correctness of the Court's determination and seeks to relitigate the issue, but was not filed within fourteen days of the Stay Order as required by Rule 9023 of the Federal Rules of Bankruptcy Code. Accordingly, the Motion is untimely under Rule 9023.

III. Rule 9024 and Rule 60

The Debtor contends that the Motion for Rehearing was filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, as made applicable to this case by Rule 9024 of the Federal Rules of Bankruptcy Procedure. (Doc. 158, p. 1).

Rule 60(b) sets forth six grounds upon which reconsideration is appropriate under the Rule. F.R.Civ.P. 60(b); In re Smalis, 2015 WL 9957186, at 3. The Debtor does not state which ground she relies upon to support her Motion. In re Ardis, 2017 WL 3491797, at 2.

But even if the Debtor did recite a specific ground in Rule 60(b), the Motion was not filed within a reasonable time as required by Rule 60(c).

Rule 60(c) provides that "[a] motion under Rule 60(b) must be made within a reasonable time." F.R.Civ.P. 60(c). Generally, factors to be considered in determining whether a motion was filed within a reasonable time include the length of time before the motion was filed, the circumstances surrounding the filing, the moving party's ability to learn of the grounds for relief, the possibility of prejudice to the opposing party, and the Court's interest in the finality of judgments. In re Lykes Bros. Steamship Co. Inc., 399 B.R. 555, 560 (Bankr. M.D. Fla. 2009). See also In re Shores of Panama, Inc., 2013 WL 12233951, at 2 (Bankr. N.D. Fla.).

In this case, the Debtor's Motion for Rehearing was not filed within a "reasonable time" for at least the following three reasons:

A. The Debtor was aware of the stay issue for more than a year before the entry of the Stay Order.

The Debtor filed her petition under Chapter 13 of the Bankruptcy Code on May 25, 2016, and claimed an interest in the Property on her bankruptcy schedules.

On August 10, 2016, the Bank filed a Motion for Relief from Automatic Stay. (Doc. 23).

On September 9, 2016, the Bank filed a Motion for Determination that No Stay is in Effect. (Doc. 35). In the Motion, the Bank asserted that the Debtor had been divested of her ownership interest in the Property before her bankruptcy petition was filed, and that the Property was not property of the estate or subject to the automatic stay in this case.

After the filing of the Bank's Motion on September 9, 2016, the Debtor, the Bank, and a number of affected third parties engaged in extensive litigation in the Bankruptcy Court on issues that included (1) the Debtor's defense of insufficient process in the foreclosure action, (2) the validity of the State Court foreclosure sale, (3) whether the Property was property of the bankruptcy estate, and (4) the applicability of the stay to the Property. (See, for example, Docs. 39, 55, 61, 62, 72, 81, 82, 83, 84, 85, 92, 100, 102, 113, 121, 122, 123, 124, 126, 127, 128, 134, and 140).

The litigation culminated in the entry of the Stay Order on October 12, 2017, in which the Court determined that the Property was not property of the bankruptcy estate and was not protected by the automatic stay. (Doc. 147).

The Debtor's attorneys were electronically served with a copy of the Stay Order on October 12, 2017, and the Debtor was served with a copy of the Stay Order by mail on October 14, 2017. (Docs. 147, 150).

The Motion for Rehearing was filed on December 9, 2017. (Doc. 158).

In other words, the Debtor was aware of the entry of the Stay Order, and of its content and significance, by mid-October of 2017. In re Lykes Bros. Steamship Co. Inc., 399 B.R. at 561. The Debtor had knowledge of the meaning and importance of the Stay Order as of that time, because it resolved the issue that she had litigated in great depth in the Bankruptcy Court for more than a year. Even though she was aware of the factual and legal issues that were resolved by the Stay Order, however, the Debtor did not file the Motion for Rehearing until two months after the Stay Order's entry.

B. Other parties were likely prejudiced by the Debtor's delay in filing the Motion for Rehearing.

Second, the parties who opposed the Debtor on the stay issue were likely prejudiced by her delay in filing the Motion for Rehearing.

The dispute between the Bank and the Debtor was at least two years old at the time that the Stay Order was entered. The Bank's action to foreclose a mortgage on the Property was filed on October 14, 2015. The State Court entered a Final Judgment in the foreclosure action on January 19, 2016. A foreclosure sale was conducted on April 8, 2016, and the State Court Clerk issued a Certificate of Sale on April 11, 2016.

On May 25, 2016, the Debtor filed a petition under Chapter 13 of the Bankruptcy Code. Since the filing of the petition, the parties have litigated the validity of the foreclosure sale and the applicability of the stay to the Property, and the Court determined on October 12, 2017, that the Property was not property of the estate that was subject to the automatic stay.

Stated differently, the Bank has been hindered in its efforts to conclude the foreclosure of the mortgage throughout the sixteen-month period between the filing of the Debtor's bankruptcy case and

the entry of the Stay Order. Additionally, it is significant that the hindrance occurred after the State Court had entered a Final Judgment of Foreclosure, and after the Property had been sold at a foreclosure sale.

Despite the history of the dispute, however, the Debtor waited an additional period of two months after the entry of the Stay Order to file the Motion for Rehearing. Under these circumstances, the additional delay of two months is prejudicial to the Bank and other affected parties.

C. The reason for the delay was not explained.

Finally, the Debtor did not provide any explanation for the two-month delay in filing the Motion for Rehearing.

In the Motion filed on December 9, 2017, the Debtor addressed the timeliness of her request as follows:

The Court rendered its opinion and entered judgment in this matter on October 12, 2017. [D.E. 50]. The Debtors have timely filed its Motion for Relief from an Order within a reasonable time of that date pursuant to Fed.R.Civ.P. 60(b) as made applicable to this matter pursuant to Fed.R.Bank.P. 9024.

(Doc. 158, p. 1). No other discussion of timeliness appears in the Motion for Rehearing.

In the Motion, the Debtor asserted two grounds as supporting her request for a rehearing: (1) that the Court should not have ruled on whether the Debtor had submitted to the State Court's jurisdiction in the foreclosure action, and (2) that the Court did not apply the correct state law. The Debtor did not contend that she was unaware of these grounds for rehearing at the time that the Stay Order was entered, or that she was incapacitated in any way for any period of time after the entry of the Stay Order.

In sum, the Debtor provided no explanation for her two-month delay in filing the Motion for Rehearing.

D. The Motion was not filed within a reasonable time.

In conclusion, (1) the Debtor was aware of the stay issue for more than a year before the entry of the Stay Order, (2) other parties were likely prejudiced by the Debtor's delay in filing the Motion for Rehearing, and (3) the reason for the delay was not explained. Under these circumstances, the Court finds that the Debtor's Motion for Rehearing was not filed within a reasonable time as required by Rule 60(c) of the Federal Rules of Civil Procedure. In re Ardis, 2017 WL 3491797, at 6; In re Shores of Panama, Inc., 2013 WL 12233951, at 3 (Bankr. N.D. Fla.); In re Lykes Bros. Steamship Co Inc., 399 B.R. at 563.

IV. Conclusion

The Court entered the Stay Order on October 12, 2017.

The Debtor filed a Motion for Rehearing of the Stay Order on December 9, 2017.

Under Rule 9023 of the Federal Rules of Bankruptcy Procedure, a motion for a new trial or to alter or amend a judgment must be filed no later than 14 days after the entry of the challenged judgment. Under Rule 9024 of the Bankruptcy Rules and Rule 60(c) of the Federal Rules of Civil Procedure, a motion for relief from an order or judgment under Rule 60(b) must be filed within a reasonable time.

In this case, the Debtor's Motion for Rehearing was not filed within 14 days of the Stay Order as required by Rule 9023 of the Bankruptcy Rules, and was not filed within a reasonable time as required by Rule 60(c) of the Federal Rules of Civil Procedure. Consequently, the Motion was not timely filed and should be denied.

Accordingly:

IT IS ORDERED that the Debtor's Motion for Rehearing is denied as untimely.

DATED this 28 day of December, 2017.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN

United States Bankruptcy Judge