ORDERED.

Dated: January 09, 2019

Karen S. Jennemann
United States Bankruptcy Judge

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

In re	)	
	)	
CHARLES EDWARD WOIDE and	)	Case No. 6:10-bk-22841-KSJ
SUSANNAH CLARE WOIDE,	)	Chapter 7
	)	
Debtors.	)	
	)	

ORDER DENYING DEBTORS' MOTION TO REOPEN/ FOR RECONSIDERATION

Debtors filed a motion styled as a "Motion to Reopen,"[1] when, in reality and after years of appeals, they again challenge a final order entered over two years ago directing them to surrender their home.[2] Relying on a hearing transcript, dated April 6, 2016, and an ambiguous statement from their then-lawyer, Debtors argued they never intended to surrender their home. This "evidence" is not new and Debtors' argument is just a rehash of issues already finally resolved on appeal. The Motion is denied.

[1] Doc. No. 130.
[2] After a preliminary hearing on September 11, 2018, the Court took this new Motion to Reopen/ for Reconsideration under advisement. Doc. No. 141.

Debtor and his wife filed this bankruptcy case as a Chapter 13 case and said they would surrender their home (the "Property").[3] The case later converted to Chapter 7 case at the Debtors' request,[4] but the Debtors filed no Statement of Intention after conversion regarding the Property. Debtors received their Chapter 7 discharge, and the case was closed.[5]

Debtors then returned to state court and continued *for five years* to fight the foreclosure action brought by Creditor Fannie Mae against the Property.[6] They made no mortgage payments and refused to surrender the Property to Fannie Mae. Eventually the Creditor filed a Motion to Reopen to Compel Surrender of the Property in the Bankruptcy Court.[7] An earlier Bankruptcy Judge assigned to this case[8] granted the Motion directing the Debtors to stop fighting the foreclosure (the "Surrender Order").[9]

Debtors appealed the Surrender Order.[10] The District Court affirmed the Surrender Order;[11] the Debtors sought further appellate review at the Eleventh Circuit Court of Appeals.[12] The Eleventh Circuit affirmed the District Court and Bankruptcy Court finally concluding that the Surrender Order is valid and enforceable, and the Debtors can no longer fight the pending foreclosure (the "Eleventh Circuit Order").[13] The Eleventh Circuit Order was further appealed to

[3] Doc. No. 1, p. 10 (stating Property was to be surrendered). Debtors listed their address as 1251 Pressley Circle, Deland, Florida, but the property listed in Schedule A was spelled slightly differently: 1251 Pressly Drive, Deland, Florida.
[4] The case was converted to Chapter 7 on April 4, 2011. Doc. No. 21.
[5] Debtors received a Discharge on July 12, 2011. Doc. No. 27.
[6] Fannie Mae's foreclosure action was filed on December 7, 2011. Doc. No. 46, p. 2.
[7] The motion was filed on April 11, 2016. Doc. No. 39.
[8] The case was later reassigned to me. Doc. No. 63.
[9] The Surrender Order was entered on June 22, 2016. Doc. No. 46.
[10] Doc. No. 70. The United States District Court case number is 6:16-cv-1484-Orl-37. A separate appeal relating to other bankruptcy court orders was pursued by the Debtors (6:16-cv-1524-Orl-37). Debtors also filed numerous other pleadings and papers collaterally attacking the Surrender Order in other related bankruptcy cases filed by the Debtors. *See, e.g,* Doc. No. 42 in Case No. 6:17-bk-02005-KSJ (Debtors' Objection to Fannie Mae's Motion for Relief from Stay), Doc. No. 52 in Case No. 6:17-bk-02005-KSJ (Debtors' Response to Fannie Mae's Objection to Confirmation), Doc. No. 1 in 6:17-ap-00083-KSJ (Complaint filed by Charles Woide against Fannie Mae, Seterus, Inc., Choice Legal Group, and Burr & Forman, LLP).
[11] Doc. No. 124, entered by the District Court on January 9, 2017.
[12] The Eleventh Circuit Court of Appeals case numbers are 17-10776 and 17-10777.
[13] Doc. No. 128 is a copy of the Eleventh Circuit Order affirming the Surrender Order.

the United States Supreme Court. The United States Supreme Court declined review of the Eleventh Circuit Order.[14] So, the Eleventh Circuit Order unquestionably is a final order.

Debtors now file yet another attack on the Surrender Order in their instant Motion to Reopen.[15] Debtors argue the Court should reconsider the Surrender Order based on "new evidence." The "new evidence" is a transcript of a bankruptcy court hearing where the Debtors' prior counsel supposedly "agreed" that the Debtors did not surrender the Property and stated that the Debtors were actively defending the state court foreclosure action.[16] Debtors argue the Court acknowledged the Debtors did not intend to surrender the Property. Debtors, years after the fact and after losing their appeals, then executed a new Statement of Intention, on June 12, 2018, belatedly attempting to change their position on surrendering the Property.[17] Debtors' arguments are just a further challenge to the Surrender Order.

The Eleventh Circuit Order discussed the merits of the Surrender Order, noting that the Debtors did not reaffirm the debt owed to Fannie Mae or redeem the Property, but they continued to live in the Property for free for years in violation of § 521 of the Bankruptcy Code.[18] It continued: "Because the [Debtors] filed a schedule stating the intent to surrender [the Property] and did not modify it in the amended schedules filed after conversion, the [B]ankruptcy [C]ourt was within its discretion to hold the [Debtors] had a duty to surrender the [P]roperty."[19]

[14] Doc. No. 142, entered November 13, 2018.
[15] Doc. No. 130.
[16] Doc. No. 132 is the Debtors' Notice of Filing including the hearing transcript from April 6, 2016.
[17] Doc. No. 132.
[18] Doc. No. 128.
[19] *Id.* at p. 6. The Court notes that, after this ruling by the Eleventh Circuit, it is too late for the Debtors to "change" their minds about whether they intended to surrender the Property. Parties simply cannot avoid complying with final court orders by changing their course of action *after* the appellate ruling issues.

Debtors object to this ruling and have sought appellate review for years. The "new evidence" that supports this Motion is a transcript from a hearing on April 6, 2016, where this exchange occurred:

> Debtors' Attorney: [Debtors] were concerned that they had surrendered in the—on the conversion in the Chapter 7 but a Statement of Intentions was actually never filed, they're still fighting the foreclosure case, and since they actually [did not] surrender they were worried that would be held against them in state court. So I think the motion to reopen might be moot.
>
> The Court: Okay.
>
> Debtors' Attorney: As well as the motion to withdraw might be moot.
>
> The Court: Okay. Why don't we just deny those.
>
> Debtors' Attorney: Thank you very much, Your Honor.
>
> The Court: Okay. Good luck.[20]

In this exchange, the Court denied the *Debtors'* Motion to Reopen as moot. Both Debtors were present at the hearing.[21] Fannie Mae's Motion to Reopen was filed five days *after* this exchange took place.[22] The Court entered its Surrender Order granting the Motion to Reopen a few months later, on June 22, 2016.[23] Nothing about this transcript is "new." It predates the Surrender Order by months with the statements made in the Debtors' presence.

This new Motion was filed almost two years after the Surrender Order was entered. Federal Rule of Civil Procedure 60(b) that provides grounds for relief from a final judgment, order, or proceeding.[24] Rule 60(b)(2) provides grounds for relief from an order based on "newly discovered evidence that, within reasonable diligence, could not have been discovered in time to move for a

[20] Doc. No. 132, p. 7.
[21] Doc. No. 132, p. 7.
[22] Doc. No. 39.
[23] Doc. No. 46. Debtor repeatedly has sought reconsideration of the Surrender Order. All these earlier attempts were denied. Doc. Nos. 50, 63, 82, 83.
[24] Fed. R. Civ. P. 60(b), incorporated into this proceeding by Fed. R. Bankr. P. 9024.

new trial under Rule 59(b)." Motions requesting relief under Rule 60(b)(1)-(3) should be filed no more than one year after entry of the order in question.[25]

The only stated written reason to reconsider the Surrender Order is the "new evidence" of the transcript. The time to move for relief from the Surrender Order based on new evidence has passed.

Further, Debtors already have relied on this "new" transcript in their appeal to the Eleventh Circuit. Debtors acknowledge they raised this "new evidence" with the Eleventh Circuit when they filed an "Emergency Motion to Recall Mandate."[26] There is no basis for relief from the Surrender Order, which has now been affirmed by multiple courts and is final.

And if the Court construes the instant Motion as a straight Motion to Reopen this case, it is also denied. Once a case is closed,[27] it "may be reopened . . . to administer assets, to accord relief to the debtor, or for other cause."[28] Cause is not defined in the Bankruptcy Code. Bankruptcy courts have discretion whether cause exists to reopen a case, and the Court should focus on the substance and equitable factors of the case.[29] The Court concludes there is no cause to reopen this bankruptcy case because the substance of the Motion merely seeks reconsideration of the Surrender Order. The equities do not weigh in the Debtors' favor.

Accordingly, it is

ORDERED:

1. Debtors' Motion, whether it seeks reconsideration or to reopen this case (Doc. No. 130), is **DENIED.**

[25] Fed. R. Civ. P. 60(c)(1).
[26] Doc. No. 130, ¶ 16.
[27] This case was closed reclosed by the Bankruptcy Court on October 31, 2017.
[28] 11 U.S.C. § 350(b).
[29] *In re Ayala*, 568 B.R. 870, 872 (Bankr. M.D. Fla. 2017) (internal citations omitted).

2. Debtors are cautioned to comply with the Surrender Order or face sanctions for violating a final court order.

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