


ORDERED.

Dated: February 11, 2019



Karen S. Jennemann
United States Bankruptcy Judge

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

In re)	
)	
JULIE BAKER ZALLOUM,)	Case No. 6:17-bk-02329-KSJ
)	Chapter 13
Debtor.)	
)	
)	

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER CONTINUING TRIAL

A trial on issues between the Debtor and Bank of New York (BONY) was scheduled originally for one day.¹ Because additional evidence, testimony, and closing arguments were merited, the Court continued the trial for a second day. Specifically, the Court continued the trial for two months to allow the parties an opportunity to obtain certified copies of state court documents in support of their positions. The Court entered its Order Continuing Trial (the “Order”),² and the Debtor timely moved for reconsideration of the Order.³

¹ Doc. Nos. 88, 105.
² Doc. No. 131.
³ Doc. No. 133.

The Court's Order was very specific in what testimony and evidence would be allowed on the second day of trial:

- The Court found a continued trial was necessary for the limited purpose of allowing parties to acquire and file certain State Court Case documents and for additional testimony from the Debtor.
- The testimony was limited to explaining the status of the State Court Case, substantiating the calculations of arrears due on the loan, and issues relating to a second creditor who has since withdrawn its claims in the case.
- The documents were limited to the "key documents" from the State Court Case. The Court stated the "key documents" must include the original promissory note, the foreclosure docket, any assignments, documents relating to the chain of transfers, and any other desired pleadings from the State Court Case.
- The Court also permitted closing arguments on the second day of trial.

Debtor now seeks reconsideration on these limitations imposed at the continued trial. She contends that allowing the parties to submit certified copies of state court documents effectively "reopened" the evidence and is a "manifest injustice." Debtor also contends she was prejudiced by the Court's making BONY copies of exhibits for the Debtor to use at trial and because the Court disallowed certain Zalloum exhibits to be admitted. BONY opposes reconsideration.⁴

Reconsideration of an order under Rule 59(e) "is an extraordinary remedy to be employed sparingly" due to interests in finality and conservation of judicial resources.⁵ "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."⁶ 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.⁷ "Far too often, litigants operate under the

⁴ Doc. No. 143.

⁵ *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.

⁶ *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.")).

⁷ *In re Mathis*, 312 B.R. at 914 (citations omitted).

assumption ... that any adverse ruling confers on them a license to move for reconsideration, and utilize such motion as a platform to relitigate issues that have already been decided or otherwise seek a ‘do over.’ Such use of Rule 59 is improper. Indeed, a court’s order is not intended as a mere first draft, subject to revision at the litigant’s whim.”⁸

Debtor’s general citation to the “manifest injustice” ground is insufficient to reconsider the Court’s Order continuing the trial. Disagreements with evidentiary rulings are preserved on appeal. The Court made copies of BONY’s exhibits to help the Debtor at trial. While the Court admonished BONY for failing to bring extra copies of the exhibits for the Debtor, BONY is correct that the Local Rules provide exhibits should not be uploaded electronically ahead of time when the opposing party is *pro se*.⁹ However, BONY should have brought the additional copies for use at trial under Local Rule 9070-1(c)(2). The fact the Court’s staff went to extra lengths to give the Debtor copies was to help not prejudice her.

On the argument that the Court pre-judged that Bank of New York has a first-priority lien, the Court likely should have more precisely stated in its Order that the Bank of New York has the “alleged” first-priority lien on the Property (as it did for Deutsche Bank’s alleged second-priority lien). However, this is merely a scrivener’s error and is no basis to reconsider the Court’s Order continuing trial.

Debtor cites no valid legal basis to reconsider the Court’s Order continuing the trial.

Accordingly, it is

ORDERED that the Motion for Reconsideration (Doc. No. 133) is **DENIED**.

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

⁸ *In re Woide*, No. 6:10-BK-22841-KSJ, 2017 WL 549160, at *2 (M.D. Fla. Feb. 9, 2017).

⁹ Local Rule 9070-1(a)(1).