


ORDERED.

Dated: September 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)	
)	
MARK ANDREW MACQUARRIE,)	Case No. 6:14-bk-13112-KSJ
)	Chapter 7
Debtor.)	
_____)	

**ORDER DENYING DEBTOR’S MOTIONS
AND DIRECTING CLERK TO CLOSE CASE**

Debtor, Mark MacQuarrie, seeks relief on two motions—the Debtor’s Motion to Vacate for Cause Under Fed. R. Civ. P. Rule 60 (Doc. No. 73) (“Motion to Vacate”) and the Debtor’s Motion to Avoid Judicial Lien of HSBC Bank USA N.A. as Trustee for GSMPS Mortgage Loan Trust 2005 – RP1¹ on Exempt Property (Doc. No. 77) (“Motion to Avoid”).² Debtor’s motions are denied, and the Clerk is directed to close this case.

¹ The Court will refer to HSBC Bank USA N.A. as Trustee for GSMPS Mortgage Loan Trust 2005 – RP1 as “HSBC Bank.”

² On the same date of this order, HSBC Bank filed a Response to the Motion to Avoid and Request for Sanctions (Doc. No. 78). To the extent that the response requests sanctions against the Debtor, HSBC has not alleged facts to demonstrate that the requirements of Fed. R. Bankr. P. 9011 have been met. Accordingly, the request for sanctions is denied.

HSBC Bank claims a mortgage lien on the Debtor's home. Years ago, the Debtor filed a Motion to Avoid Judicial Lien of HSBC Bank.³ The Court erroneously granted this early motion and avoided HSBC Bank's mortgage lien.⁴ HSBC, upon learning of the mistake, moved to reopen this case to fix the error by vacating the erroneous order.⁵ Both requests were granted, and the Debtor's initial Motion to Avoid Judicial Lien was denied.⁶ Debtor sought reconsideration, which also was denied.⁷ Debtor did not appeal the order.

Debtor then requested sanctions against HSBC Bank for violations of the discharge injunction, which also was denied.⁸ HSBC was just trying to foreclose upon its valid mortgage lien. In its efforts, HSBC Bank requested and received an order confirming that the automatic stay terminated as to the Debtor's home.⁹ HSBC then returned to state court to pursue its foreclosure rights; this case was ready to close.

Now, over 18 months after the Court entered its last order allowing HSBC to return to state court to pursue its foreclosure action, Debtor seeks to vacate, under Rule 60, the order granting the motion to reopen this case and "all subsequent orders" for the "intentional and willful acts of fraud misrepresentation, uttering of forged documents and perjury upon the Court."¹⁰

Federal Rule of Civil Procedure 60(b) provides grounds for relief from a final judgment, order, or proceeding.¹¹ Motions requesting relief under Rule 60(b)(1)-(3) should be filed no more

³ Doc. No. 17 is the Motion to Avoid Judicial Lien.

⁴ Doc. No. 29 is the Order Granting Motion to Avoid Judicial Lien.

⁵ Doc. No. 37 is HSBC Bank's Motion to Reopen. Doc. No. 38 is HSBC Bank's Motion to Vacate the Order Granting the Motion to Avoid Judicial Lien.

⁶ Doc. No. 46 is the Court's Order Granting Motion to Vacate and Denying Motion to Avoid Judicial Lien.

⁷ Doc. No. 48 is the Debtor's Motion for Reconsideration on Order Granting Motion to Vacate. Doc. No. 52 is the Court's Order Denying the Debtor's Motion for Reconsideration.

⁸ Doc. No. 49 is the Debtor's Motion for Contempt and Sanctions. Doc. No. 64 is the Court's Order Denying the Motion for Contempt and Sanctions.

⁹ Doc. No. 67 is HSBC Bank's Motion to Confirm that Automatic Stay Has Been Terminated. Doc. No. 71 is the Court's Order Granting HSBC Bank's Motion to Confirm that Automatic Stay Has Been Terminated.

¹⁰ Doc. No. 73, par. 21.

¹¹ Fed. R. Civ. P. 60(b).

than one year after entry of the objectionable order.¹² Motions requesting relief under Rule 60(b)(4)-(6) must be made only within a “reasonable time.”¹³ When evaluating whether the motion was filed within a reasonable time, factors to be considered include “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.”¹⁴

Here, the Court easily finds the Motion to Vacate untimely for any relief requested under Rule 60(b). Debtor filed the Motion to Vacate eighteen months after the Court entered its last order. Debtor has not explained the reason for the delay, nor can the Court imagine a reasonable explanation for the extreme delay. Debtor merely raises anew allegations made in prior hearings or papers before the Court that the Court considered when entering the prior series of orders.¹⁵ Having considered the interest in finality and prejudice to HSBC Bank, relief from the order granting the motion to reopen and “all subsequent orders” is not appropriate. And to the extent the Debtor requests relief from the orders under 11 U.S.C. §105, the Court declines to do so.

On the Motion to Avoid HSBC’s Lien, the Debtor seeks identical relief that previously was denied. Debtor did not appeal the order initially denying the relief, and the Motion to Avoid alleges no new facts or law to consider. The Court’s prior denial is the law of this case,¹⁶ and the Motion

¹² Fed. R. Civ. P. 60(c)(1).

¹³ Fed. R. Civ. P. 60(c)(1).

¹⁴ *In re Lykes Bros. Steamship Co. Inc.*, 399 B.R. 555, 560 (Bankr. M.D. Fla. 2009)(quoting *Sprint Spectrum, L.P. v. Genesis PCS Corp.*, 236 F.R.D. 530,532 (D. Kan. 2006)).

¹⁵ For example, Debtor’s Motion for Reconsideration of Order Granting HSBC Bank’s Motion to Vacate, Doc. No. 48, par. 21 states “In summary, the Courts Order never addressed...possible fraud upon court, void foreclosure judgment, newly discovered evidence of assignment of mortgage... are legal errors that can be corrected.”)

¹⁶ Under the law of the case doctrine, “an issue decided at one stage of the litigation, and not challenged on appeal, is binding at later stages of the same case” *United States v. Mathis*, 375 Fed. App’x. 903, 904 n. 1 (11th Cir. 2010) (citing *United States v. Escobar-Urrego*, 110 F.3d 1556, 1560 (11th Cir. 1997)).

to Avoid should be denied. And, under a binding Supreme Court decision, the Debtor cannot void the mortgage lien held by HSBC Bank in this Chapter 7 case.¹⁷ Accordingly, it is

ORDERED:

1. The Motion to Vacate for Cause Under Fed. R. Civ. P. Rule 60 (Doc. No. 73) is denied.
2. The Motion to Avoid Judicial Lien of HSBC Bank USA N.A. as Trustee for GSMPS Mortgage Loan Trust 2005 – RP1 on Exempt Property (Doc. No. 77) is denied.
3. The Clerk is directed expeditiously to close this case.

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

¹⁷ See *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995, 2001, 192 L. Ed. 2d 52 (2015) (“[D]ebtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral.”); See also 11 U.S.C. §522(f)(2)(C).