

ORDERED.

Dated: June 23, 2022



Caryl E. Delano
Chief United States Bankruptcy Judge

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

In re:

Case No. 2:19-bk-05580-FMD
Chapter 7

Louis Alan Maier,

Debtor.

_____ /

**ORDER DENYING DEBTOR'S MOTION TO
ALTER OR AMEND THE COURT'S ORDER OF JUNE 1, 2022**

THIS CASE came before the Court without a hearing to consider Debtor's *Motion to Alter or Amend the Court's Order of June 1, 2022* (the "Rehearing Motion").¹

In the Court's June 1, 2022 order (the "Order Denying Extension"),² the Court denied Debtor's motion to extend the deadline to repurchase his home under a court-approved settlement agreement with the Chapter 7 Trustee. In the Rehearing Motion,

¹ Doc. No. 203.

² Doc. No. 198.

Debtor primarily asserts that the Court erred in entering the Order Denying Extension by failing to consider the application of Fed R. Bankr. P. 9006(b)(1). But Debtor's deadline to repurchase the home was created by his agreement with the Chapter 7 Trustee, not by the Federal Rules of Bankruptcy Procedure or "order of court." Therefore, Rule 9006(b)(1) does not authorize the Court to extend the agreed deadline, and the Court will deny the Rehearing Motion.

I. RELEVANT FACTS

On June 12, 2019, Debtor filed a Chapter 7 bankruptcy petition. In his schedules, he listed real property located at 4315 SW 25th Place, Cape Coral, Florida (the "Home") and claimed the Home as exempt homestead.³ The Chapter 7 Trustee (the "Trustee") objected to Debtor's claim of exemption.⁴

On January 21, 2021, the Trustee filed a *Motion for Authority to Compromise Controversy* with Debtor (the "Compromise Motion").⁵ In Paragraph 2, the Compromise Motion states that Debtor and the Trustee agreed that the amount of Debtor's exemption in the Home was \$25,150.00, and that any value in excess of \$25,150.00 is property of the bankruptcy estate. In Paragraph 3, the Compromise Motion states that "Debtor shall be permitted the opportunity to repurchase" the

³ Doc. No. 15.

⁴ Doc. No. 35.

⁵ Doc. No. 142.

Home by paying the Trustee \$335,000.00 *no later than twelve months from the date of an order granting the Compromise Motion.*

On February 17, 2021, the Court entered its *Order Granting Motion for Authority to Compromise Controversy* (the “Order Approving Compromise”).⁶ Under the Order Approving Compromise, (a) Debtor was permitted to repurchase the Home upon the terms outlined in the Compromise Motion; (b) if Debtor paid the repurchase price, the Trustee would sign all documents necessary to release the estate’s interest in the Home; and (c) if Debtor did not pay the repurchase price, the Trustee was entitled to list and sell the Home.

On February 16, 2022, Debtor filed a *Motion to Enlarge Time to Repurchase Home under the Order Approving Compromise* (the “Motion for Extension”)⁷ under 11 U.S.C. § 105(a). Section 105(a) permits bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Debtor asserted that he had been unable to obtain financing for the repurchase until the Court granted his discharge on January 20, 2022, and he requested an extension to repurchase the Home until December 1, 2022. The Court held hearings on the Motion for Extension on February 24, 2022, and May 26, 2022.⁸

⁶ Doc. No. 143.

⁷ Doc. No. 173.

⁸ Doc. Nos. 177, 197.

At both hearings, the Trustee and other interested parties opposed the requested extension on the grounds that the “twelve-month” deadline was established by an agreement between Debtor and the Trustee, not by the Court, and that the Order Approving Compromise was only a ratification of the parties’ agreement.⁹ At the conclusion of the May 26, 2022 hearing, the Court stated that it knew of no authority to extend a negotiated, agreed deadline to repurchase an asset of the bankruptcy estate and denied the Motion for Extension.¹⁰ On June 1, 2022, the Court entered the Order Denying Extension.¹¹

On June 13, 2022, Debtor timely filed the Rehearing Motion, primarily asserting that the Court failed to consider Fed. R. Bankr. P. 9006(b)(1) in denying the Motion for Extension. Specifically, Debtor contends that the Order Approving Compromise provided for Debtor to pay the repurchase price for the Home in twelve months, and that the deadline can be extended under Rule 9006(b)(1) because (a) the

⁹ Doc. No. 200, Transcript of May 26, 2022 Hearing, pp. 7, 11-19. The Court also stated when Debtor agreed to the twelve-month deadline in his compromise with the Trustee, (a) he knew that his discharge had not yet been entered; (b) he knew that a creditor’s objection to his discharge was pending; and (c) he did not know when the Court would rule on the objection to discharge. (Doc. No. 200, pp. 16-17.) In addition, although the Court entered a final judgment in Debtor’s favor on the objection to discharge (Adv. Pro. No. 2:20-ap-318-FMD, Doc. Nos. 44, 45) and promptly thereafter entered Debtor’s discharge (Doc. No. 170), the objecting creditor timely moved for reconsideration of the judgment (Adv. Pro. No. 2:20-ap-318-FMD, Doc. No. 49), which remains pending.

¹⁰ Doc. No. 200, pp. 16, 20.

¹¹ Doc. No. 198.

deadline was required or allowed in a court order, and because (b) Debtor's failure to comply with the deadline was the result of excusable neglect.¹²

II. DISCUSSION

Debtor filed the Rehearing Motion under Fed. R. Bank. P. 9023, which incorporates Fed. R. Civ. P. 59.¹³ Reconsideration of an order under Rule 59(e) is an extraordinary remedy to be granted sparingly because of the interest in the finality of orders and the conservation of judicial resources. In the Eleventh Circuit, the only grounds for granting a motion for reconsideration under Rule 59(e) are newly discovered evidence or manifest errors of law or fact.¹⁴ Here, Debtor did not allege that he discovered any new evidence that was not known or available before the entry of the Order Denying Extension. In addition, Debtor did not demonstrate that the Court made a manifest error by denying his request to extend the agreed deadline to pay the repurchase price for his Home.

Under Rule 9006(b)(1), a court may grant an enlargement for an act that is required or allowed "within a specified period by these rules or by a notice given thereunder or *by order of court.*"¹⁵ In *In re First Union Baptist Church of the Bronx*,¹⁶ the

¹² Doc. No. 203, pp. 4-5.

¹³ Doc. No. 203, p. 1.

¹⁴ *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

¹⁵ Fed. R. Bankr. P. 9006(b)(1)(emphasis added).

¹⁶ 572 B.R. 79 (Bankr. S.D.N.Y. 2017), *rev'd in part on other grounds*, 2018 WL 770401 (S.D.N.Y. Feb. 7, 2018).

bankruptcy court considered whether monthly payment deadlines in a court-approved stipulation were deadlines set by “court order” under Rule 9006(b). There, the debtor and its mortgage lender entered a stipulation providing that the debtor would be in default if its payments were not received by the lender by the last day of each month.¹⁷ The lender filed a motion to approve the stipulation under Rule 9019, and the court granted the motion.¹⁸ After the lender declared a default based on a late payment, the debtor asked the court for relief under Rule 9006(b).¹⁹

The court determined that the stipulation’s payment terms were matters of agreement between the parties, and that when it approved the stipulation under Rule 9019, it had only considered whether the stipulation fell below the lowest point on the range of reasonableness. The court further stated that an agreement may be approved if Rule 9019’s standards are met, but “that approval, by itself, does not mean that the court has mandated any particular behavior.”²⁰ Therefore, the court concluded that its approval of the stipulation in an “order” did not “transform the contractual payment deadlines into deadlines set by ‘court order’ that may be extended pursuant to Rule 9006.”²¹

¹⁷ *In re First Union Baptist Church of the Bronx*, 572 B.R. at 85, 99.

¹⁸ *Id.* at 86.

¹⁹ *Id.* at 88.

²⁰ *Id.* at 100.

²¹ *Id.* at 102.

Here, Debtor and the Trustee entered a settlement agreement that permitted Debtor to repurchase the Home. As in *First Union Baptist Church*, the parties sought approval of the settlement under Rule 9019 and the Court entered the Order Approving Compromise. In the Order Approving Compromise, the Court found that the parties' settlement was in the best interest of the bankruptcy estate, approved the agreed terms that had been negotiated by the parties, and authorized them to perform under their agreement. But by approving the agreement, the Court neither resolved and adjudicated the parties' dispute nor determined the deadline for Debtor to repurchase the Home by the designated time. The Court concludes that Rule 9006(b)(1) does not apply to the parties' agreed twelve-month deadline.

Finally, Debtor contends that the Court should have extended his deadline to pay the repurchase price under the excusable neglect standard of Rule 9006(b)(1) and the United States Supreme Court's decision in *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*.²² But Rule 9006(b)(1)'s excusable neglect provision does not apply to Debtor's requested extension because, first, as a threshold matter, the deadline was not required by the Bankruptcy Rules or a court order, and second, the provision applies to motions made after expiration of the specified period.²³

²² 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). (The *Pioneer* case addressed a late-filed claim in a Chapter 11 bankruptcy case.)

²³ Fed. R. Bankr. P. 9006(b)(1).

III. CONCLUSION

Debtor asks the Court to reconsider its Order Denying Extension and to extend the deadline for him to pay the repurchase price for his Home under Rule 9006(b)(1). But Rule 9006(b)(1) does not authorize the extension requested by Debtor because the deadline was created by a negotiated agreement between Debtor and the Trustee, not by the Bankruptcy Rules or a court order. Debtor did not establish that the Court made a manifest error by entering the Order Denying Extension, and therefore did not establish grounds for reconsideration under Rule 59(e).

Accordingly, it is

ORDERED that *Debtor's Motion to Alter or Amend the Court's Order of June 1, 2022* (Doc. No. 203) is **DENIED**.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.