ORDERED.

Dated: May 02, 2023

Grace E. Robson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
Huckleberry Partners LLC,	)	Case No. 6:22-bk-02159-GER
	)	Chapter 11
Debtor.	)	
	)	

ORDER DENYING MOTION FOR RECONSIDERATION

This matter came before the Court upon the Motion for Reconsideration[1] (Doc. No. 263) filed by H. James Herborn ("Mr. Herborn"), wherein Mr. Herborn seeks reconsideration of the Court's *Order Denying Affirmative Defense of H. James Herborn, III* (the "Order") (Doc. No. 241).

Reconsideration of an order under Federal Rule of Civil Procedure 59(e)[2] "is an extraordinary remedy to be employed sparingly" due to interests in finality and conservation of judicial resources.[3] "A trial court's determination as to whether grounds exist for the granting of a

[1] *Motion for Reconsideration of Order Denying Affirmative Defense of James Herborn, III* (the "Motion for Reconsideration").
[2] Rule 59 is made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9023.
[3] *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)).

Rule 59(e) motion is held to an 'abuse of discretion' standard."[4] Where courts have granted relief under Rule 59(e), they generally 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.[5] "Far too often, litigants operate under the 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."[6]

The Motion for Reconsideration fails to state sufficient grounds for reconsideration. First, Mr. Herborn raises the same argument, albeit with a deeper analysis, that he raised in his *Response in Opposition to Liquidating Agent Mark C. Healy's Objection to Claim of H. James Herborn, III* (Doc. No. 222). Specifically, Mr. Herborn argues that *Liquidating Agent Mark C. Healy's Objection to Claim of H. James Herborn, III* (the "Objection to Claim") (Doc. No. 174) was untimely because it was not brought within the time period set forth in the Clarifying Order[7] (Doc. No. 137).[8] The Clarifying Order provided, in relevant part, that "[t]he Debtor or the Liquidating Agent shall file any objections to claims within ninety (90) days of the date of this Amended Order." Mr. Herborn argues that "the date of this Amended Order" means the date that the

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[4] *Id.* (first citing *Am. Home Assurance Co. v. Glenn Estess & Assocs.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985); then citing *McCarthy v. Manson*, 714 F.2d 234, 237 (2d Cir. 1983); and then citing *Weems v. McCloud*, 619 F.2d 1081, 1098 (5th Cir. 1980)).

[5] *Id.* (first citing *Sussman*, 153 F.R.D. at 694; then citing *Morris v. United States*, No. 96-1035-CIV-T-24(F), 1998 U.S. Dist. LEXIS 14046 (M.D. Fla. Aug. 6, 1998); and then citing *Firestone v. Firestone*, 76 F.3d 1205 (D.C. Cir. 1996)).

[6] *Woide v. Fed. Nat'l Mortg. Ass'n (In re Woide)*, No. 6:16-cv-1484-Orl-37, 2017 WL 549160, at *2 (M.D. Fla. Feb. 9, 2017) (first citing *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005); and then citing *Plummer v. PJCF, LLC*, No. 2:15-CV-37-FTM-38CM, 2015 WL 2359996, at *1 (M.D. Fla. May 18, 2015)).

[7] *Agreed Order Granting Motion for Clarification and to Alter or Amend Confirmation Order [Doc. No. 128] and Amending Order Approving Disclosure Statement and Confirming Plan of Reorganization, as Modified, Submitted by Huckleberry Partners, LLC [Doc. No. 124]* (the "Clarifying Order").

[8] The Clarifying Order clarified and amended the *Order (1) Approving Disclosure Statement, (2) Confirming Plan of Reorganization, as Modified, (3) Approving Certain Relief on Final Basis, and (4) Setting Deadlines and Post-Confirmation Status Conference* (the "Confirmation Order") (Doc. No. 124).

Clarifying Order was signed and not the date the order was entered on the docket. This argument was considered and rejected by the Court in the Order at issue for reconsideration.

Mr. Herborn cites *Freeman v. Rice*, 399 F. App'x 540 (11th Cir. 2010), for the proposition that "the date an order is signed differs from the date it is entered on the docket";[9] however, in *Freeman*, the Eleventh Circuit Court of Appeals quotes a Seventh Circuit Court of Appeals case and states that "where the date an order is signed differs from the date it is entered on the docket, 'it is the date of docketing that starts the time for purposes of motions practice and appeals.'"[10] The Clarifying Order's deadline to object to claims is analogous to deadlines for motions practice and appeals. Therefore, the Court interprets the phrase "date of this Amended Order" to mean "date of entry of this Amended Order."[11] While the Court acknowledges that there are courts that would interpret the language in the Clarifying Order to refer to the date the order was signed,[12] the Court finds there is more persuasive support for its interpretation that the deadline should be calculated from the date of entry on the docket[13] and believes it to be the correct one. Furthermore,

[9] *Freeman*, 399 F. App'x at 543 n.3 (quoting *SEC v. Van Waeyenberghe*, 284 F.3d 812, 815 (7th Cir. 2002)).
[10] *Id.* (quoting *Van Waeyenberghe*, 284 F.3d at 815).
[11] *Cf. Nat'l Sav. Bank of Albany v. Jefferson Bank*, 127 F.R.D. 218, 222-23 & n.9 (S.D. Fla. 1989) (recognizing that "[t]he term 'dated' refers to the date the order is *signed* by the judge; the term 'filed' indicates the date the order is *file stamped* by the Clerk; the term 'entered' represents the date the order was actually *recorded* on the docket sheet by the Clerk" and also recognizing that an entry is not effective until it is placed on the docket sheet).
[12] *See, e.g.*, *Hialeah Hosp., Inc. v. Aguiar*, No. 97-0038-CIV., 1997 WL 579168, at *2 (S.D. Fla. July 7, 1997).
[13] *See, e.g.*, *Mager L. Grp., P.A. v. Biondich*, No. 07-60277-CIV, 2007 WL 9711078, at *1 n.1 (S.D. Fla. Oct. 9, 2007) (citing *Nat'l Sav. Bank of Albany*, 127 F.R.D. at 222-23) ("The date of entry, not the date of execution, should be the date from which the time to comply is measured."); *Heenan v. Network Publ'ns, Inc.*, 181 F.R.D. 540, 543 (N.D. Ga. 1998) ("The entry date of an order is commonly used for calculations of time limits. The entry date lends itself to this function because, in every instance, the Clerk is required to record the entry date of an order on the docket."); *see also Guevara v. NCL (Bahamas) Ltd.*, No. 15-24294-CIV, 2017 WL 6597980, at *1 (S.D. Fla. May 26, 2017) (recognizing that the deadline for filing a motion for reconsideration ran from the date the order was entered).

the Court can interpret its own order,[14] and here, the Court intended that the deadline in the Clarifying Order be calculated from date of entry on the docket.[15]

For the foregoing reasons,[16] it is

ORDERED:

1. The Motion for Reconsideration (Doc. No. 263) is **DENIED**.

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Attorney Jeffrey S. Ainsworth is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within three days of its entry.

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[14] *See Ranch House of Orange-Brevard, Inc. v. Gluckstern (In re Ranch House of Orange-Brevard, Inc.)*, 773 F.2d 1166, 1168 (11th Cir. 1985) ("[W]e are reluctant to disturb a bankruptcy court's judgment interpreting its own earlier order. The bankruptcy judge who has presided over a case from its inception is in the best position to clarify any apparent inconsistencies in the court's rulings."); *Finova Cap. Corp. v. Larson Pharmacy, Inc. (In re Optical Techs., Inc.)*, 425 F.3d 1294, 1302-03 (11th Cir. 2005) ("[A] bankruptcy court's interpretation of its own prior order is entitled to substantial deference.").

[15] Which interpretation is also consistent with Local Rule 3020-1 which requires that objections to claims be filed no later than 60 days after the entry of the order of confirmation unless otherwise ordered by the Court.

[16] The Court, having ruled that the Objection to Claim was timely, finds that it is unnecessary to rule on Mr. Herborn's other argument that the deadline was jurisdictional and that the Court lacks subject matter jurisdiction because the Objection to Claim was not timely. However, the Court notes that the argument is without merit. The deadline to file objections to claims is a claim-processing rule and does not confer subject matter jurisdiction. *See Kontrick v. Ryan*, 540 U.S. 443, 452-56 (2004). The allowance or disallowance of claims is a "core" proceeding that bankruptcy judges may hear, for which there is no time constraint established by Congress. 28 U.S.C. § 157(b)(2)(B). Further, neither the Bankruptcy Code nor the Bankruptcy Rules contain a deadline to object to claims. However, Local Rule 3020-1 provides, "*Unless otherwise ordered by the Court*, . . . any objection to claim shall be filed no later than 60 days after the entry of the order of confirmation." Local Rule 3020-1(d) (emphasis added). The Clarifying Order set a deadline of 90 days from the entry thereof, and the deadline was met. Mr. Herborn raised timeliness as an affirmative defense to the Objection to Claim, which demonstrates his acquiescence that the Court has subject matter jurisdiction. Therefore, the Court has subject matter jurisdiction.