ORDERED.

Dated: March 17, 2020

Karen S. Jennemann
United States Bankruptcy Judge

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

In re	)	
	)	
MELBOURNE BEACH, LLC,	)	Case No. 6:17-bk-07975-KSJ
	)	Chapter 11
Debtor.	)	
	)	

ORDER DENYING LIMITED MOTION TO AMEND COURT ORDER

Pirogee Investments, LLC and Yellow Funding Corp. (the "Disputed Owners") seek a limited reconsideration of the Court's Order Denying Motion by Brian West for Temporary Injunctive Relief (the "Motion").[1] Brian West ("West") opposes any reconsideration.[2] The Motion is denied.

For years, West and the Disputed Owners have engaged in aggressive and expensive litigation relating to their ownership interests and management of the Debtor. West filed this Chapter 11 case trying to stop this litigation.[3] Over a year ago, the Debtor, West and the Disputed Owners (collectively the "Parties") agreed to the appointment of a chief restructuring officer

[1] Doc. No. 486. The underlying order is Doc. No. 472.
[2] West's Response to the Motion is Doc. No. 509. After a hearing held on November 21, 2019, the Court allowed the Disputed Owners time to file a Reply. Doc. No. 523.
[3] This case was filed on December 26, 2017.

("CRO") for the Debtor.[4] After appointment, the CRO managed the Debtor, a large shopping center in Melbourne Beach, supervised the Debtor's finances, and reviewed existing leases. The CRO, as requested by the Parties, filed motions seeking to sell the Debtor's real property for approximately $15 million and to approve procedures and closing/loan documents associated with the sale. The Parties, however, objected to the sale and to the closing within this bankruptcy case. The sale, which would have generated millions of dollars to split between the Debtor's owners, therefore, was denied.

The Disputed Owners then sought dismissal of this case,[5] which the Court denied in the Order Denying Disputed Owners' Motion to Dismiss and Directing Appointment of a Chapter 11 Trustee.[6] When directing the appointment of a Chapter 11 Trustee, the Court found:

> Appointment of a Chapter 11 Trustee also is in the Debtor's best interest because the Trustee will have the authority to complete the sale of the Debtor's property, which is the purpose for which it was formed in the most expeditious manner and at the lowest possible administrative costs.[7]

The United States Trustee appointed a Chapter 11 Trustee for the Debtor, Jules S. Cohen (the "Chapter 11 Trustee"),which this Court approved.[8] As expected, the Chapter 11 Trustee now has moved to authorize the sale of Debtor's real property for over $15 million.[9] A hearing to consider the sale is set for April 15, 2020.[10] Also pending before the Court is the Second Amended Omnibus Objection filed by West to the Disputed Owners' Proof of Claim/Interest, which disputes the

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[4] A detailed history of this case is found in the Order Denying Disputed Owners' Motion to Dismiss and Directing Appointment of a Chapter 11 Trustee (Doc. No. 383). To the extent necessary, the Court's factual findings made in the Order Denying Disputed Owners' Motion to Dismiss (Doc. No. 383) and Order Denying Motion by Brian West for Temporary Injunctive Relief (Doc. No. 472) are incorporated into this order.
[5] Doc. No. 267. Responses and related pleadings include: Doc Nos. 297, 306, 311, 318, 319, 333, 334. A trial was held on April 11, 2019.
[6] Doc. No. 383.
[7] Doc. No. 383, pg. 13.
[8] Doc. No. 406.
[9] Doc. No. 537.
[10] Doc. Nos. 572 and 609.

Disputed Owners' claim of ownership interest in the Debtor and requests the Court disallow the claims in their entirety ("Omnibus Objection").[11]

With this background in mind, the Court now addresses the Disputed Owner's Motion. Before this case was filed, West, the Disputed Owners, and the Debtor were engaged in extensive, aggressive litigation among the parties.[12] After the case was filed, the Disputed Owners filed a *new* lawsuit, this time against West individually.[13] West moved for temporary injunctive relief in this bankruptcy case requesting the Court enjoin the Disputed Owners from proceeding with both actions against him arguing under Section 105 of the Bankruptcy Code[14] for an extension of the automatic stay.[15] The Disputed Owners opposed any extension of the automatic stay to protect West from litigation between them.[16] West's request for temporary injunctive relief was denied (the "Order").[17]

In this Order, I included this language:

> …The Court, however, reminds the Disputed Owners and West to proceed cautiously in the state court actions. Unless modified or terminated, the automatic stay remains in full force and effect as to the Debtor. To the extent any claim requires a ruling by the State Circuit Court of the Debtor's equity members or interests, such action remains stayed under §362. Any order would be void *ab initio*. (legal citation omitted)

[11] Doc. No. 503. A preliminary hearing is set on this Omnibus Objection for April 15, 2020.
[12] *Melbourne Beach, LLC v. Ilya Palinsky et.al.,* Case No. 14-CA-00146, Circuit Court for Martin County, Florida. Debtor, West and the Disputed Members are the parties to this action, which involves claims relating to their ownership interests and management for the Debtor.
[13] *Pirogee Investments, LLC et.al v. West*, Case No. 2019-CA-000674, Circuit Court for Martin County, Florida. Only West and the Disputed Owners are parties to this action, which involve claims against West for injurious falsehood and tortious interference.
[14] All references to the Bankruptcy Code refer to 11 U.S.C. §101, *et. seq*.
[15] Doc. No. 376.
[16] Doc. No. 436.
[17] Doc. No. 472.

Although satisfied with denial for temporary injunctive relief, the Disputed Owners filed its Motion requesting that the Court amend the Order under Rule 59(e) to delete these few sentences, which I will call the "Disputed Language."[18]

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.[19] "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."[20] "A motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through – rightly or wrongly.'"[21]

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.[22] In the Eleventh Circuit, the *only* grounds for granting this motion "are newly-discovered evidence or manifest errors of law or fact."[23]

The Disputed Owners argue the Disputed Language creates a clear error of law by "inserting unsupported, un-argued and un-briefed dicta stating that a dispute between non-debtor parties, which implicates who owns memberships interests in a debtor held by non-debtor parties,

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[18] Doc. No. 486, ¶ 27.

[19] *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.

[20] *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.")).

[21] *D'Angelo v. Parker (In re Parker)*, 378 B.R. 365, 371 (Bankr. M.D. Fla. 2007) (quoting *In re The Loewen Grp. Inc. Sec. Litig.*, No. Civ. A. 98-6740, 2006 WL 27286, *1 (E.D. Pa. Jan. 5, 2006) (citing *Glendon Energy Co. v. Borough of Glendon*, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993))).

[22] *In re Mathis*, 312 B.R. at 914 (citations omitted).

[23] *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999) (citing *In re Inv'rs Fla. Aggressive Growth Fund Ltd.*, 168 B.R. 760, 768 (Bankr. N.D. Fla. 1994)).

is barred by the automatic stay."[24] The argument goes like this: Because the Debtor's membership interests are not property of the estate, any allocation of membership interests between the Disputed Owners and West by the Florida State Court does not attempt to control property of the estate violative of the automatic stay. Therefore, the Disputed Owners contend the Court committed an error of law by including the Disputed Language in the Order that restricts the Florida State Court from determining the Debtor's membership interest.

I disagree. The Disputed Language is merely a clarification of the law to assist the Florida State Court and parties when proceeding on the claims between West and the Disputed Owners in the recently filed case. The briefing on this point indeed confirms that the Disputed Language correctly states the law. The Florida State Court cannot determine the Debtor's membership interest in the pending litigation without asserting authority over the administration of the property of the Debtor's estate and any act to do this would violate the automatic stay.

The purpose of the automatic stay is to "facilitate the orderly administration of the debtor's estate."[25] An interested party cannot use a non-bankruptcy judicial processes to interfere with the administration of a bankruptcy case.[26] As explained by the United States Fifth Circuit Court of Appeals:

> Sweeping all of the debtor's property into the bankruptcy estate created at filing is the means by which the Code achieves effective and equitable bankruptcy administration. Only through a comprehensive administration of the debtor's property, wherever located and by whomever controlled, can the court shield the property from creditors' unauthorized grasp; prevent harassment of debtors; and ultimately ensure equal distribution among creditors.[27]

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[24] Doc. No. 486, ¶11. To the extent the Court committed an error by including the Disputed Language in the Order without allowing the parties first to argue or brief the matter, any such error is now remedied with the parties fully briefing and arguing the legal nuances in this motion seeking reconsideration.

[25] *Brock v. Rusco Industries, Inc*., 842 F.2d 270, 273 (11th Cir. 1988)(quoting *Donovan v. TMC Industries, Ltd*., 20 B.R. 997, 1001 (N.D. Ga. 1982)).

[26] *In General Growth Properties, Inc.*, 426 B.R. 71, 74 (Bankr. S.D. N.Y. 2010).

[27] *Bonneville Power Admin. V. Mirant Corp. (In re Mirant Corp.)*, 440 F.3d 238, 251 (5th Cir. 2006) (citation omitted); *General Growth*, 426 B.R. at 74.

Section 362(a)(3) of the Bankruptcy Code, in particular, prohibits any act to exercise control over property of the estate.[28] Any action that affects the debtor's property is subject to §362(a)(3), even if the Debtor is not named in the action.[29]

Here, the shopping center is property of the estate. A sale of this property eventually will occur. The Bankruptcy Court will have substantial funds to split among creditors, but primarily to the Debtor's legitimate owners/ members. Any ruling by the Florida State Court of the Debtor's equity members or interests could dictate distribution of the sale proceeds to the Debtor's owners and is an act to control the distribution of estate property—the distribution of the sale proceeds. The unique circumstances of this case guaranteeing the almost certain distribution to the Debtor's rightful owners renders any Florida State Court ruling on the Debtor's equity members or interests a stay violation because intentional or not it asserts control over the distribution of estate property.

Disputed Owners, to support their argument, rely on legal authority which provides equity interests of the Debtor are not property of the estate and are similar to claims that may be freely sold, transferred, or assigned during a bankruptcy case.[30] I agree. The Disputed Owners and West are free to sell, transfer, or assign their alleged equity interests (*whatever they may be*) at any time. This Court, however, retains the **exclusive** jurisdiction to determine the extent and nature of the legitimate claimants—here the rightful equity interest owners—for purposes of distributing property of the estate.[31] Any entity receiving West's or the Disputed Owners' equity interest ultimately will be bound by this Court's determination of the validity and extent of what they bought and their membership interest in the Debtor.

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[28] 11 U.S.C. § 362(a)(3).
[29] *In re Jefferson County, Ala.*, 484 B.R. 427, 446-47, (Bankr. N.D. Ala. 2012).
[30] Doc. No. 486, ¶¶ 17- 24.
[31] Disputed Owners cite *In re Celotex Corp.*, 224 B.R. 853 (Bankr. M.D. Fla. 1998), which actually supports this Court's ruling. In *Celotex*, two unrelated entities purchased identical claims from the original trade creditors, and the confirmed debtor needed to resolve which creditor it should pay. The bankruptcy court resolved the matter by determining which entity owned the claim.

The identity of the Debtor's equity members and the extent of their interests is a critical issue for another reason. To resolve the pending Omnibus Objection,[32] this Court must resolve the identity of the Debtor's equity members and interests in a relatively short time frame. Any ruling by the State Court, even if allowed under the automatic stay, could contravene this Court's ruling. The automatic stay is intended "to allow the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas."[33] Unless the automatic stay is modified, the Florida State Court simply cannot make this ownership determination central to this bankruptcy case without violating the automatic stay.

The Disputed Language is a correct statement of the law. No basis for reconsideration exists. Accordingly, it is ORDERED that the Motion to Amend Court Order (Doc. No. 486) is **DENIED**.

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Attorney Scott A. Underwood is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within 3 days of entry of the order.

[32] Doc. No. 503.
[33] *In General Growth Properties, Inc.*, 426 B.R. 71, 74 (Bankr. S.D. N.Y. 2010)(quoting *SEC v. Brennan*, 230 F.3d 65, 70 (2d Cir. 2000)(alterations in original)).