

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

MARK GLEN AVERY and
PEGGY ANN AVERY,

Case No. 6:09-bk-05346-ABB
Chapter 7

Debtors.

ORDER

This matter came before the Court on the Emergency Motion to Appeal Order Granting Relief from Stay (Doc. No. 50) (“Motion”) filed *pro se* by the Debtors Mark Glen Avery and Peggy Ann Avery requesting a “HOME RESIDENSE” located in Dover Shores Eighth Addition, a 2001 GMC Denali, and a 2000 Dodge Ram Van “remain under bankruptcy protection.” The Motion appears to be a motion for reconsideration of and/or a notice of appeal of the conversion of this case to Chapter 7 and various orders granting relief from the automatic stay.

The Debtors, through counsel, filed a Chapter 13 petition on April 22, 2009 (Doc. No. 1). They filed a Notice of Voluntary Conversion Order (Doc. No. 26) and an Order was entered on June 15, 2009 (Doc. No. 29) converting this case from Chapter 13 to Chapter 7. Three Orders were entered on July 29, 2009 granting Martin Federal Credit Union relief from the automatic stay regarding various property: (i) real property located at Lot 8, Block “E”, Dover Shores Eighth Addition in Orange County, Florida (Doc. No. 44); (ii) a 2001 GMC Denali (Doc. No. 45); and (iii) a 2000 Dodge Ram (Doc. No. 46).

The Motion, to the extent it is a motion for reconsideration of the June 15, 2009 Order and/or the July 29, 2009 Orders, is due to be denied. Federal Rule of Civil Procedure 59(e), made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 9023, sets forth a motion for reconsideration “must be filed no later than 10 days after the entry of the judgment.” The Motion was filed on August 19, 2009. It is untimely and the Debtors have established no grounds for reconsideration of those Orders.

The Motion, to the extent it is a notice of appeal of the June 15, 2009 Order and/or the July 29, 2009 Orders, is untimely and due to be dismissed. A notice of appeal must be filed “within 10 days of the date of entry of the judgment, order, or decree appealed from.” Fed. R. Bankr. P. 8002(a). The ten-day filing deadline is mandatory and jurisdictional. Advanced Estimating Sys., Inc. v. Riney, 77 F.3d 1322, 1323 (11th Cir. 1996) (*quoting* Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 61 (1982)).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that, to the extent the Debtors request reconsideration of the previously entered Orders in Docket Numbers 29, 44, 45, and/or 46, the Motion (Doc. No. 50) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that, to the extent the Motion constitutes a notice of appeal of Docket Numbers 29, 44, 45, and/or 46, the appeal is hereby **DISMISSED** as untimely.

Dated this 31st day of August, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge