

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

IN RE:

KELVIN R. CREWS and
LOUANN D. CREWS,

Debtors.

Case No.: 3:09-bk-8641-JAF
Chapter 11

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MERCANTILE BANK, a Division of
Carolina First Bank,

Plaintiff/Counter-Defendant,

v.

Adversary No.: 3:10-ap-0031-JAF

KELVIN R. CREWS and
LOUANN D. CREWS,

Defendants/Counter-Plaintiffs,

**ORDER DENYING DEFENDANTS' MOTION FOR REHEARING AND/OR
CLARIFICATION**

This proceeding is before the Court on Defendants' Motion for Rehearing and/or Clarification of certain aspects of the Court's Findings of Facts and Conclusions of Law and the Judgment entered by the Court on September 12, 2011 (Doc. 74, Motion; *see also* Docs. 70 , 71). On October 4, 2011, Plaintiff filed a response in opposition to the Motion (Doc. 75, Response). For the reasons that follow, the Motion will be denied.

Defendants move, pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure, for rehearing and/or clarification of certain aspects of the Court's Findings of Facts and Conclusions of Law (Doc. 70) and the Judgment (Doc. 71). Defendants, however, have failed to set forth any basis under Rule 9024 for rehearing and/or clarification. Specifically, Rule 9024 provides for relief from

a final judgment, order, or proceeding under certain limited circumstances that the Court finds not applicable here.¹

More particularly, with respect to Defendants' argument(s) in support of the Motion, the Court would note that in Paragraph 3 of the Judgment (Doc. 71) expressly states: "Entry of this Judgment is without prejudice to Plaintiff seeking relief from the automatic stay provisions of 11 U.S.C. § 362 for reissuance of check number 80214, issued by Engle Martin & Associates, Inc., on October 6, 2009, in the amount of \$300,000.00." The Court has thus invited the parties to seek a determination of any further issues relating to Plaintiff's enforcement of the equitable lien in the underlying Chapter 11 Bankruptcy (Case No. 3:09-bk-8641-JAF). The Court finds the underlying bankruptcy case is the more appropriate forum for determining such issues.

The Court's Findings of Facts and Conclusions of Law (Doc. 70) and the Judgment (Doc. 71), entered by the Court on September 12, 2011, resolve the claims asserted by the parties in the Adversary Proceeding. Consequently, a rehearing and/or clarification is not warranted under the circumstances.

In its Response, Plaintiff stated it was contemporaneously filing a motion for relief from the automatic stay with the Response (Doc. 75 at 3). The Court would note, however, that to date no such motion has been filed. Nevertheless, any uncertainties Defendants may have with respect to the ultimate disposition of the subject insurance proceeds check will be addressed in the underlying bankruptcy case.

¹ Rule 60 of the Federal Rules of Civil Procedure (made applicable by Rule 9024 of the Federal Rules of Bankruptcy Procedure) provides for relief from a judgment on the basis of, *inter alia*: (1) clerical mistake(s), oversight(s) or omission(s); (2) newly discovered evidence; (3) misrepresentation or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason that justifies relief.

Upon due consideration, it is **ORDERED**:

1. Defendants' Motion for Rehearing and/or Clarification of certain aspects of the Court's Findings of Facts and Conclusions of Law and the Judgment entered by the Court on September 12, 2011 (Doc. 74) is denied.

2. If Plaintiff intends to file a motion for relief from the automatic stay provisions of 11 U.S.C. § 362, Plaintiff is encouraged to do so as soon as practicable.

DONE AND ORDERED this 17th day of October, 2011 in Jacksonville, Florida.

/s/ Jerry A. Funk
Jerry A. Funk
United States Bankruptcy Judge

Copies to:

Guy W. Norris, Attorney for Plaintiff
Albert H. Mickler, Attorney for Defendants