UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Marcella Antonio Mateo, Debtor(s)	Case No.: 2:24-bk-19052-NB Chapter: 13 **MEMORANDUM DECISION RE: EMERGENCY MOTION TO VACATE ORDER GRANTING RELIEF FROM STAY** [No hearing held]

This memorandum decision sets forth this Court's findings of fact and conclusions of law pursuant to Rule 52(a) (Fed. R. Civ. P.), to the extent incorporated by Rules 7052 and 9014(c), as well as Rule 9024 (Fed. R. Bankr. P.)[1] in support of this Court's March 3, 2025 Order (dkt. 59) denying Debtor's "Emergency Motion to Vacate February 11, 2025 Order Granting Relief From Stay Due to Attorney Error Pursuant to [FRCP] 60(b) [and FRBP 9024] and to Prevent Foreclosure on Debtor's Residence on March 5, 2025" (dkt. 58, "Reconsideration Motion").

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[1] Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

1. Background

a. The motion to continue the automatic stay and relief from stay motions

Debtor filed this case on November 1, 2024. Shortly thereafter Debtor filed a motion (dkt. 10, "Stay Motion") under 11 U.S.C. 362(c)(3) to continue the automatic stay (which would otherwise expire after 30 days, based on the dismissal of a prior bankruptcy case of Debtor's within the 1-year period preceding the filing of this current bankruptcy case). *See* Case No. 2:19-bk-22963-NB (Chapter 13 case filed November 1, 2019 and dismissed March 18, 2024).

Secured creditor Wilmington Trust, National Association, not in its individual capacity but solely as Trustee for MFRA Trust 2014-2 ("Secured Creditor") opposed the motion (dkt. 18, "Stay Opposition") on the grounds that Debtor and her non-debtor spouse had filed seven bankruptcy cases since obtaining their loan from Secured Creditor's predecessor in interest in 2008, which is secured by a lien on their residence (*id.,* pp. 3:16-4:15), and that Debtor had failed to establish any change in Debtor's financial circumstances since the dismissal of her most recent bankruptcy case. *Id.* p. 3:4-15. After considering oral arguments, this Court was persuaded to grant the Stay Motion subject to, among other things, Debtor (x) staying current on monthly mortgage payments and abiding by a forthcoming adequate protection order and (y) Debtor obtaining confirmation of a chapter 13 plan by no later than February 6, 2025 (the "Confirmation Deadline"). Dkt. 23, p. 2, para. 6(1) & (2) ("Stay Order").

This Court also entered on order (dkt. 35, "APO") approving Debtor and Secured Creditors' stipulation for adequate protection (dkt. 33) which resolved Secured Creditor's motion for relief from the automatic stay (dkt. 19, "R/S Motion"). That order also provided that "[i]n the event the Debtor fails to confirm a Chapter 13 Plan by February 6, 2025, [Secured Creditor] may file a Declaration and an Order Terminating the Automatic Stay …." Dkt. 35, p. 5, para. 11.

b. The vehicle valuation motion

On December 3, 2024 Debtor filed a "Motion for Order Determining Value of Collateral" (dkt. 28, "Vehicle Valuation Motion") with a self-calendared hearing on January 9, 2025. Although no opposition was filed, this Court's tentative ruling for that hearing highlighted Debtor's failure to attach proper evidence in support of the motion (*see* dkt. 48, Ex. A). Accordingly, this Court continued the matter to February 6, 2025 with a deadline of January 23, 2025 for Debtor either to file and serve a supplemental declaration addressing the valuation issue or to voluntarily dismiss or withdraw the motion. Debtor did not appear at the hearing on January 9, 2025, individually or through counsel, so the tentative ruling became the actual ruling, and the matter was continued to February 6, 2025.

Despite that continuance, no supplemental papers were filed. Therefore, prior to the continued hearing, this Court posted a tentative ruling (*see* dkt. 48, Ex. A) to deny the Vehicle Valuation Motion for lack of prosecution. Debtor again did not appear at the hearing on February 6, 2025, individually or through counsel, so the tentative ruling became the actual ruling. This Court entered an order denying the Vehicle Valuation Motion without prejudice on February 6, 2025. Dkt. 48.

As of the entry of this Memorandum Decision on the docket, Debtor has not filed a new motion to value the subject vehicle.

c. Debtor's default under the APO

On February 11, 2025 Secured Creditor filed (i) a "Declaration re: Default Under Adequate Protection Order" (dkt. 52, "Default Declaration") highlighting Debtor's failure to confirm a plan by the February 6, 2025 Confirmation Deadline (*id.,* p. 2, para. 4) and (ii) a Notice of lodgment that attached a copy of a concurrently lodged proposed order terminating the automatic stay (dkt. 53, the "NOL"). On February 12, 2025, this Court issued an order granting the R/S Motion as requested, based on Debtor's default under the APO and terminating the automatic stay with respect to Secured Creditor. Dkt. 54 ("Order Terminating Stay").

d. The reconsideration motion

On March 3, 2025, Debtor filed the Reconsideration Motion seeking an order vacating the Order Terminating Stay pursuant to Rule 60(b)(1) (Fed. R. Civ. P., incorporated by Rule 9024, Fed. R. Bankr. P.) based on Debtor's counsel's assertion of her "excusable neglect" or mistake in failing to remember the deadline of February 6, 2025 that was previously imposed for Debtor to confirm a plan, and in failing to anticipate procedural hurdles related to the Vehicle Valuation Motion. Dkt. 58 pp. 2:8-11, 5:14-17 & 5:27-6:4.

2. Legal standards

Under Rule 60(b)(1) (Fed. R. Civ. P.), incorporated by Rule 9024, the Court may provide relief from an order for "mistake, inadvertence, surprise, or excusable neglect [the ground on which Debtor focuses]." (Emphasis added). However, reconsideration "is an extraordinary remedy which should be used sparingly." *Casey v. Albertson's Inc.,* 362 F.3d 1254 (9th Cir. 2004) (applying Rule 60(b)).

In determining whether a party's neglect in not previously presenting evidence or legal arguments is excusable, courts must consider "all relevant circumstances" including (1) the length of delay and its potential impact on judicial proceedings; (2) the reason for the delay; (3) the danger of prejudice to the nonmovant, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) (citation and footnote omitted). In assessing these factors, this Court bears in mind that normally "clients must be held accountable for the acts and omissions of their attorneys." *Id.* at 396 (citation omitted).

3. Debtor has not established sufficient grounds for relief from the Order Terminating Stay

This order denies the Reconsideration Motion for the following reasons.

a. Debtor failed to comply with applicable procedures

Under the "Procedures of Judge Bason" (available at www.cacb.uscourts.gov), Debtor was required to seek Secured Creditor's consent (even if she thought that request would be denied) before filing the Reconsideration Motion. She was also required to summarize any grounds given by Secured Creditor for its refusal, or any inability to communicate with Secured Creditor. There is no evidence of compliance with such Procedures.[2]

b. Debtor has not carried her burden to establish sufficient grounds for reconsideration

As a preliminary matter, this Court generally lacks the authority to reinstate the automatic stay once the stay has been terminated. *See In re Canter*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002) ("Because the stay under § 362 is 'automatic' and 'self-executing' only upon the filing of a bankruptcy petition, no authority exists for 'reinstating' an automatic stay that has been lifted"). Debtor has not cited any contrary authority.

That said, this Court is aware of some lower court authority in this circuit that it has the power to grant relief under Rule 60(b). *See In re Wishon*, 410 B.R. 295, 308 (Bankr. D. Or. 2009) ("Although there are no Ninth Circuit decisions directly on point, courts elsewhere have held that Rule 60(b) (Fed. R. Civ. P) provides authority to reconsider and vacate an order granting relief from stay and reinstate the automatic stay") (citations omitted).

Based on these authorities, this Court concludes that it has power to vacate the Order Terminating Stay, but only if there truly are sufficient grounds under Rule 60(b). As set forth below, Debtor has not met that burden.

Another preliminary matter is that the Reconsideration Motion uses the terms "excusable neglect" and "mistake" interchangeably. This Court believes that the issue is

[2] This Court notes that, although there is no proof of service of the Reconsideration Motion, this Court's records do indicate that Secured Creditor received an electronic "NEF" notice. Nevertheless, in future Debtor's counsel is directed always to include proofs of service of any filed papers.

more properly characterized as "neglect" than a "mistake" because Debtor's counsel asserts (A) that she ***forgot*** a deadline, not that she had a ***mistaken*** understanding of the deadline, and (B) that she ***overlooked*** deficiencies in a motion, not that she had grounds for ***mistakenly*** misconstruing the facts or the law in connection with that motion.

In any event, this Court would reach the same result if the issue were characterized as a "mistake" rather than "excusable neglect." For the sake of simplicity, the following discussion is organized based on the elements set forth in *Pioneer.*

i. Length of delay and potential impact on these proceedings

Taking Debtor's counsel at her word about forgetting the Confirmation Deadline (February 6, 2025), she must have known of the problem no later than when the Default Declaration was filed and electronically served on her (at two different email addresses), on February 11, 2025. Dkt. 52. Yet she waited until March 3, 2025 – 20 days later, and two days before the scheduled foreclosure sale – to file the Reconsideration Motion.

In addition, Debtor's counsel was also electronically served with a copy of this Court's Order Terminating Stay on February 12, 2025. Dkt. 54. Yet she waited 19 days after that additional notice to file the Reconsideration Motion.

Nor is it just Debtor's counsel who delayed an undue amount of time. Debtor herself was served via U.S. Mail with multiple documents that should have alerted her to the need to meet the Plan Confirmation Deadline or else file any Reconsideration Motion quickly. Specifically, Debtor was served with the Stay Order (dkt. 23 & 24) (setting the Plan Confirmation Deadline); the APO (dkt. 35 & 36) (same), the Order denying the Vehicle Valuation Motion (dkt. 48 & 50), the Default Declaration (dkt. 52), and the Order Terminating Stay. Dkt. 54 & 57. Yet there is no explanation why Debtor did not contact her counsel and why, working together, they did not file the Reconsideration Motion until the eve of foreclosure.

As for the potential impact on proceedings, the delay put Secured Creditor and this Court under a very tight deadline: a hearing would have to be noticed and concluded in less than 48 hours – probably within 24 hours. In sum, the delays of

Debtor and her counsel are self-created emergencies that divert the time and resources of Secured Creditor and of this Court's staff from important issues in other cases.

ii. Reason for delay

Debtor's counsel has attempted to explain the reasons why ***she*** did not focus on the Plan Confirmation Deadline. But there is no explanation why ***Debtor herself*** did not take steps to keep her case on track for confirmation by that deadline.

In addition, Debtor's counsel focuses on the period ***before*** Plan Confirmation Deadline expired. But there is no explanation for the delay of Debtor's counsel and Debtor in seeking reconsideration ***after*** being reminded that the Plan Confirmation Deadline had expired.

In other words, there is no explanation why both Debtor and her counsel waited 20 days after the Default Declaration was served on them, *i.e.,* until March 3, 2025, to file the Reconsideration Motion seeking emergency relief to stop the March 5, 2025 foreclosure sale. This was a self-created emergency.

iii. Danger of prejudice to non-movant (Secured Creditor), including whether it was within the reasonable control of movant (Debtor)

Debtor argues that there would be no material prejudice to creditors if the Reconsideration Motion is granted because her plan is structured to ensure that creditors will be paid under its terms. Reconsideration Motion (dkt. 58), p. 5:3-7. But Debtor's assurances of timely payment ring hollow in the face of all the prior bankruptcy cases by her and her husband.

In addition, Debtor does not address the likely prejudice to Secured Creditor and the foreclosure trustee in terms of the time and expense of having to delay the foreclosure sale – yet again, and at the last minute. Nor does Debtor address the intangible costs borne by a lender based on the seven bankruptcy cases since the loan was made in 2008. This Court takes judicial notice that lenders holding non-performing loans typically suffer a host of adverse consequences, including higher costs of capital and more stringent regulatory requirements. *See* Rule 201(b)(1) & (2) (Fed. R. Evid.).

As for whether the matter was within the reasonable control of Debtor, her counsel blames her own failure to remember the Plan Confirmation Deadline coupled with her mistakes in connection with the Vehicle Valuation Motion (failure to provide proper evidence, or to prosecute that motion when granted a continuance, or to proceed without valuing the vehicle by amending the proposed chapter 13 Plan). But, first, as noted above, "clients must be held accountable for the acts and omissions of their attorneys." *Pioneer*, 507 B.R. at 396; *see also Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010).

Second, although Debtor's counsel attempts to blame the Vehicle Valuation Motion, she fails to address how Debtor could meet the Plan Confirmation Deadline in the face of the numerous ***other*** issues raised by the Chapter 13 Trustee in her written objection to confirmation. In fact, based on this Court's review of the docket and relevant pleadings, it appears the ***primary*** reason Debtor did not meet the Confirmation Deadline was the result of Debtor's own acts and omissions such as failing to disclose income for herself and her spouse and failure to provide all information sought by the Chapter 13 Trustee. *See* Trustee's Objections to Plan Confirmation (dkt. 42, Ex. A).

Of course, it is conceivable that the Chapter 13 Trustee's objections had all been resolved prior to the Confirmation Deadline and any agreement to continue the confirmation hearing from February 6, 2025 to April 8, 2025 was solely to allow time for Debtor to address the Vehicle Valuation Motion. But Debtor has not presented any evidence of that in support of the Reconsideration Motion.

Therefore, while it is commendable that Debtor's counsel is prepared to "fall on her sword" by representing that Debtor's failure to meet the Confirmation Deadline was the result of her own negligence (possibly setting herself up for a malpractice claim!), this Court finds based on the record before it that counsel's negligence in failing to prosecute the Vehicle Valuation Motion was a secondary reason for Debtor failing to meet the Confirmation Deadline. Debtor's own conduct was the primary reason she could not meet the Plan Confirmation Deadline and therefore defaulted under the APO.

Alternatively, even if Debtor's counsel's negligence were to be proven to be the primary cause of Debtor's default (which has not been shown), Debtor normally is charged with the acts and omissions of her counsel. Debtor has not argued that counsel's conduct rose to the level of "gross negligence" sufficient to excuse Debtor from this rule. *See Lal v. California*, 610 F.3d at 524 (in absence of gross negligence, "[a]n attorney's actions are typically chargeable to his or her client").

iv. Whether Debtor acted in good faith

Three facts persuade this Court that Debtor did not act in good faith. First, she and her non-debtor spouse have a long history of seven bankruptcy filings affecting Secured Creditor's non-bankruptcy collection efforts, and was served with this Court's Stay Order and APO both setting the Plan Confirmation Deadline. *See* dkt. 18, pp. 3:16-4:15; dkt. 23; dkt. 35. Second, Debtor failed to address why the Reconsideration Motion was not filed immediately after the stay was terminated. Third, Debtor waited until the eve of foreclosure to file that motion, which this Court finds, based on the record presented, to be a tactical move in the hope that this Court might act out of urgency and reinstate the stay with little or no realistic opportunity for Secured Creditor to respond.

This Court is mindful of how tragic it can be to lose a home to foreclosure. But Debtor has not acted in good faith and diligently prosecuted this (seventh) bankruptcy case, so Debtor must now bear the consequences of those actions.

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4. Conclusion

For all of the foregoing reasons, Debtor has not demonstrated excusable neglect, mistake, or other sufficient grounds for relief under Rule 60(b). Therefore, the Reconsideration Motion has been denied by separate order (dkt. 59).

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Date: March 4, 2025

Neil W. Bason
United States Bankruptcy Judge