UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:	Guillermo Luis Calixtro, Debtor.	Case No.: 2:16-bk-26296-ER Chapter: 11 **MEMORANDUM OF DECISION DENYING MOTION FOR RECONSIDERATION** **[RELATES TO DOC. NO. 102]** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Guillermo Luis Calixtro (the "Debtor") moves for reconsideration of the Court's *Memorandum of Decision Denying Motion to Reopen* [Doc. No. 98] (the "Memorandum") and accompanying *Order Denying Motion to Reopen* [Doc. No. 99] (the "Order"). *See* Doc. Nos. 102–03 (the "Motion for Reconsideration"). Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),[1] the Court finds this matter suitable for disposition without oral argument. For the reasons set forth below, the Motion for Reconsideration is **DENIED**.

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[1] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

I. Background

The Debtor filed a voluntary Chapter 11 petition on December 13, 2016. *See* Doc. No. 1. On April 20, 2017, upon motion of the United States Trustee (the "UST"), the Court dismissed the case with a 180-day bar against re-filing. *See* Doc. Nos. 72 (order dismissing case) and 67 (ruling setting forth reasons for dismissal). On June 15, 2017, the Court denied the Debtor's motion to vacate the re-filing bar so that the Debtor could seek relief under Chapter 7. *See* Doc. Nos. 90 (order denying motion) and 84 (ruling setting forth reasons for denial).

On June 7, 2017, the Debtor filed a motion to sanction certain creditors for allegedly violating the automatic stay. *See* Doc. No. 87 (the "Sanctions Motion"). On June 14, 2017, the Debtor filed a *Notice of Lis Pendens* (the "Lis Pendens") that advised creditors of the pending Sanctions Motion. *See* Doc. No. 92. The Sanctions Motion alleged that certain creditors had violated the automatic stay by noticing a foreclosure sale of the Debtor's property for June 20, 2017. On June 23, 2017, the Court denied the Sanctions Motion. The Court found that no stay violation had occurred because the automatic stay had been terminated on April 20, 2017, when the case was dismissed, and thus was no longer in effect as of the June 20, 2017 foreclosure sale. *See* Doc. No. 93. On July 13, 2017, the Court closed the case. *See* Doc. No. 95.

On September 11, 2020, the Court entered the Memorandum and the accompanying Order denying the Debtor's motion to reopen the case (the "Motion to Reopen"). The Court rejected the Debtor's argument that reopening was necessary (1) to enable him to amend the Lis Pendens to include two additional entities omitted from the original filing and (2) because of alleged fraud committed by one of the omitted entities, Structured Asset Mortgage Investments II Trust 2007-AR5 ("Structured Trust 2007-AR5"). First, the Court held that no purpose would be served by an amendment to the Lis Pendens given the denial of the Sanctions Motion. Memorandum at 2. Second, construing the Motion to Reopen liberally as a motion for reconsideration of the Sanctions Motion, the Court held that such reconsideration was not warranted because the Sanctions Motion was predicated upon the false premise that the automatic stay remained in effect as of the June 20, 2017 foreclosure sale, when in fact the automatic stay had terminated on April 20, 2017, almost two months prior. Memorandum at 2–3. Finally, the Court held that the Debtor's allegations against Structured Trust 2007-AR5 did not establish cause to reopen the case:

> Construing the Motion to Reopen liberally, it appears that the Debtor's objective is to obtain damages against Structured Trust 2007-AR5. The Debtor alleges that Structured Trust 2007-AR5 committed fraud upon the court by pursuing its rights against the Debtor's property even though it was not the real party in interest. In support of this allegation, the Debtor attaches a document that Structured Trust 2007-AR5 filed with the Securities and Exchange Commission (the "SEC") on January 29, 2008 (the "SEC Filing"). In the SEC Filing, Structured Trust 2007-AR5 attests that it was not required to file reports with the SEC pursuant to Rule 15d-6 of Securities Exchange Act of 1934. The Debtor's theory is that as a result of the SEC Filing, Structured Trust 2007-AR5 ceased to exist as a legal entity, and that subsequent actions taken by Structured Trust 2007-AR5 against the Debtor's property were therefore fraudulent and improper.
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> The premise underlying the Debtor's allegations is not correct. The SEC Filing did not terminate the legal existence of Structured Trust 2007-AR5. Under Rule 15d-6 of the Securities Exchange Act of 1934, the reporting obligations of entities with fewer than 300 shareholders are suspended. Structured Trust 2007-AR5 submitted the SEC Filing to take

> advantage of the reporting exemption provided by Rule 15d-6. Contrary to the Debtor's assumption, the SEC Filing did not terminate the legal existence of Structured Trust 2007-AR5. Consequently, there is no merit to the Debtor's allegation that Structured Trust 2007-AR5 acted improperly or committed fraud in connection with its subsequent exercise of its rights against the Debtor's property. Reopening the case to allow the Debtor to seek damages against Structured Trust 2007-AR5 would, once again, be a "pointless exercise." *Beezley*, 944 F.2d at 1437.

Memorandum at 3–4.

Debtor now moves for reconsideration of the denial of the Motion to Reopen.

II. Findings and Conclusions

Debtor brings the Motion for Reconsideration under Civil Rule 59(e) and Civil Rule 60(b). The Motion fails under both rules.

Reconsideration under Civil Rule 59(e) is "an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted). "'[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.' A Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation omitted). A motion for reconsideration may not be used "to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Haw. 1990), *aff'd and remanded sub nom. Greco v. Troy Corp.*, 952 F.2d 406 (9th Cir. 1991); *see also In re Mannie*, 299 B.R. 603, 608 (Bankr. N.D. Cal. 2003) (internal citation omitted) ("A motion to reconsider should not be used 'to ask the court "to rethink what the court had already thought through—rightly or wrongly"—or to reiterate arguments previously raised.'").

Civil Rule 60(b) permits the Court to relieve a party from an order for "mistake, inadvertence, surprise, or excusable neglect" or for "any other reason that justifies relief." Civil Rule 60(b)(1), (6). As the Ninth Circuit has explained, Civil Rule 60(b)(6) "should be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. Accordingly, a party who moves for such relief must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with ... the action in a proper fashion." *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007) (internal citations and quotations omitted).

Debtor argues that reconsideration is warranted for two reasons. First, Debtor contends that the Court has a financial interest in the parties against whom the Debtor seeks relief—Wilmington Trust, N.A. ("Wilmington"), Citibank, N.A. ("Citibank"), Select Portfolio Servicing, Inc. ("SPS"), Quality Loan Service Corp. ("Quality Loan"), Clear Recon Corp. ("Clear Recon") and Structured Asset Mortgage Investments II Trust 2007-AR5 ("Structured Trust 2007-AR5")—and is therefore not impartial. As evidence of the Court's alleged financial interest, the Debtor attaches a transcript from a hearing before the Hon. Sandra R. Klein from an unrelated case, in which a party alleged that Judge Klein was subject to disqualification because she had a financial interest in the subject matter at issue in that case. Second, Debtor takes issues with the

Court's finding that reopening the case to allow the Debtor to pursue damages against Structured Trust 2007-AR5 would be a "pointless exercise," *Beezley v. Cal. Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1437 (9th Cir. 1993).

There is no merit to the Debtor's argument that the Court's alleged financial interest in the parties against whom the Debtor seeks relief warrants reconsideration. Debtor could have, but did not, raise this argument in connection with the Motion to Reopen. That alone is sufficient reason to deny the Debtor's request for reconsideration. *See Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (holding that a "Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation").

Even if the Court were to overlook the Debtor's failure to timely raise this issue, the Debtor's claims regarding the Court's alleged financial interest are simply incorrect. Title 28 U.S.C. § 455(b)(4) requires disqualification if the Court "has a financial interest in the subject matter in controversy or in a party to the proceeding …." For purposes of 28 U.S.C. § 455(b)(4), "financial interest" means "ownership of a legal or equitable interest, however small, or a relationship as a director, advisor, or other active participant in the affairs of a party," § 455(d)(4), but excludes "[o]wnership in a mutual or common investment fund that holds securities," § 455(d)(4)(i), and excludes "[o]wnership of government securities" if the outcome of the proceeding will not "substantially affect the value of the securities," § 455(d)(4)(iv). The Court does not have a "financial interest," as defined in 28 U.S.C. § 455(b)(4), in Wilmington, Citibank, SPS, Quality Loan, Clear Recon, or Structured Trust 2007-AR5. The Court is not required to disqualify itself from adjudicating this matter.

The Debtor's request for reconsideration of the Court's finding that reopening the case would be a pointless exercise is likewise without merit. In determining that no purpose would be served by reopening, the Court rejected the Debtor's allegation that Structured Trust 2007-AR5 had committed fraud by enforcing its rights against the Debtor's property after its legal existence had terminated. *See* Memorandum at 3–4. The Debtor attacks this finding, arguing that the Court identified the incorrect entity in the Memorandum. Specifically, the Debtor asserts that the correct entity is Structured Trust Asset Mortgage Asset Investments II Trust 2007-AR5, not Structured Trust 2007-AR5.

The Debtor's argument is predicated upon a misreading of the Memorandum. In the Memorandum, the Court initially identified the entity in question by its full name—Structured Asset Mortgage Investments II Trust 2007-AR5. This initial identification was followed by a parenthetical indicating that throughout the remainder of the Memorandum, the entity would be referred to by the abbreviation "Structured Trust 2007-AR5." (The Court has used the same convention in this decision.) The Memorandum did not mis-state the identity of the entity at issue.

III. Conclusion

Based upon the foregoing, the Motion for Reconsideration is **DENIED**. The Court will enter an order consistent with this Memorandum of Decision.

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Date: December 2, 2020

Ernest M. Robles
United States Bankruptcy Judge