UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:	Stephen Winner, Debtor.	Case No.: Chapter:	2:20-bk-11925-ER 7

MEMORANDUM OF DECISION DENYING EMERGENCY MOTION TO VACATE APRIL 20, 2020 ORDER AND TO REINSTATE AUTOMATIC STAY [DOC. NO. 21]

[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Stephen Winner (the "Debtor") filed an emergency motion, requesting an order to vacate an order (the "Stay-Relief Order")[1] granting a motion for relief from the automatic stay with respect to an unlawful detainer proceeding. Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3)[2], the Court finds the Motion for Reconsideration to be suitable for disposition without oral argument. For the reasons set forth below, the Motion for Reconsideration is DENIED.

[1] *See* Order Granting Motion for Relief from Stay under 11 U.S.C. § 362 (Unlawful Detainer) [Doc. No. 17]

[2] 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 7 petition on February 21, 2020. On April 3, 2020, Angelson, LLC (the "Creditor") filed the "*Motion for Relief from the Automatic Stay with Supporting Declarations UNLAWFUL DETAINER RE: 4935 Locust Ave., Long Beach, CA 90805* (the "Stay-Relief Motion") [Doc. No. 11]. The Stay-Relief Motion sought relief from stay under 11 U.S.C. § 362(d)(1) to proceed with an unlawful detainer action against the Debtor in state court. A hearing on the Stay-Relief Motion was set on shortened notice for April 20, 2020, at 10:00 a.m., and notice was served on the Debtor via substitute service and first-class United States Mail on April 3, 2020 [Doc. No. 15]. No opposition to the Stay-Relief Motion was filed. The Court posted its tentative ruling to grant the Stay-Relief Motion on April 16, 2020. On April 20, 2020, at 10:00 a.m., the Court held a hearing on the Stay-Relief Motion. No appearances were made at the hearing on the Stay-Relief Motion. That same day, the Court entered the Stay-Relief Order. The Stay-Relief Order granted relief from stay for cause pursuant to § 362(d)(1), and mandated that the order would be "binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code." *See* Doc. No. 17.

On April 27, 2020, the Debtor filed a motion captioned "*Debtors' Emergency Motion to Vacate April 20, 2020 Order and to Reinstate Automatic Stay*" [Doc. No. 21] (the "Motion for Reconsideration")[3]. The Debtors seek an order vacating the Court's Stay-Relief Order. Apparently suggesting that his request to convert this case to chapter 13 overcomes the Stay-Relief Motion, the Debtor explains that the conversion motion was not processed until April 20, 2020 due to difficulties created by the COVID-19 pandemic. *See* Motion for Reconsideration at 1. The Debtor notes that the delayed filing of the conversion motion was unfortunate, given that the Court had granted the Stay-Relief Motion mere hours before, without having the opportunity to review the conversion motion. *See id.* The Debtor submits that he has the unqualified right to convert his case to chapter 13; for that reason, the Stay-Relief Order was premature and should be vacated. Additionally, the Debtor requests that the Court reinstate the automatic stay and allow this case to proceed under chapter 13. The Motion for Reconsideration does not present any arguments specifically challenging the Creditor's requested stay-relief, nor does it offer any other supporting evidence.

II. Findings and Conclusions

Civil Rule 59(e) governs motions for reconsideration. 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*

[3] The Court construes the Debtor's emergency motion [Doc. No. 21] as a motion for reconsideration under Civil Rule 59(e).

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.'"). Reconsideration may be appropriate if the Court is presented with newly discovered evidence. *Kona Enterprises*, 229 F.3d at 890. However, the "overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not turn the late filed documents into 'newly discovered evidence.'" *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). To support a motion for reconsideration based upon newly discovered evidence, the "movant is '*obliged* to show not only that this evidence was newly discovered or unknown to it until after the hearing, but also that it could not with reasonable diligence have discovered and produced such evidence at the hearing.'" *Frederick S. Wyle Prof'l Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985).

The circumstances do not support reconsideration of the Court's Stay-Relief Order. Motions for reconsideration cannot be used to present arguments previously available to the moving party. *See Kona Enterprises*, 229 F.3d at 890. Here, the Debtor did not oppose the Stay-Relief Motion, either by written opposition or opposition presented orally at the hearing. The Debtor's sole argument in support of vacating the Stay-Relief Order is that the processing of the conversion motion was delayed because of complications attendant with the COVID-19 restrictions. This very argument was known by, and available to, the Debtor before or at the time of the hearing on the Stay-Relief Motion. Furthermore, the Debtor's argument is baffling because even if he had managed to file the conversion motion on April 16, 2020, the Stay-Relief Motion would have remained unopposed. Accordingly, the Debtor did not present any indication that he actually attempted to challenge the Stay-Relief Motion at all. *See* LBR 9013-1(f)(3) ("The failure of the responding party to raise its objection or challenge in a Response will be deemed consent to the bankruptcy court's authority to enter a final order on the underlying motion."). The Debtor has not presented any valid justification for this lack of diligence.

Moreover, the Stay-Relief Order specifically provided the stay-relief granted to the Creditor therein would not be disturbed upon conversion of the case to any other chapter. Because the automatic stay is imposed upon the filing of a bankruptcy petition, and "since conversion does not change the date of filing, conversion of a bankruptcy case from one chapter to another does not create an automatic stay." *In re Campos*, 128 B.R. 790, 792 (Bankr. C.D. Cal. 1991); *see also Hemontolor v. First Fed. Sav. & Loan Ass'n*, 38 B.R. 340, 341 (M.D. Tenn. 1984) (The conversion of one case from chapter 7 to chapter 13 after the grant of stay-relief does not reestablish the automatic stay). Therefore, the Debtor's right to convert this case to chapter 13 does not impact the Stay-Relief Order, nor does it reimpose the automatic stay.[4]

III. Conclusion

For the reasons set forth above, the Debtor's Motion for Reconsideration is DENIED. The Court will enter an order consistent with this Memorandum of Decision.

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[4] To be clear, nothing in this memorandum of decision shall be construed as a determination of the Debtor's *Motion to Convert Case from Chapter 7 to 13* [Doc. No. 18].

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Date: April 28, 2020

Ernest M. Robles
United States Bankruptcy Judge