UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:	John Thymes and Shirley Thymes, Debtors.	Case No.: 2:88-bk-10553-ER Chapter: 7 **MEMORANDUM OF DECISION DENYING MOTIONS TO VACATE DISMISSAL, VACATE STATE COURT JUDGMENT, AND CONSOLIDATE CASES** **[RELATES TO DOC. NOS. 70–73]** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

The Court has reviewed documents filed *in pro se* by John and Shirley Thymes captioned *Motion to Vacate and Set Aside Order, and to Reopen Case* [Doc. No. 70], *Motion to Vacate and Set Aside Void "Judgment By Court" Entered Oct. 2, 1991 (Exhibit "A")—John A. Thymes, Shirley R. Thymes v. Cal-West, Trustee, et al. L.A.S.C. Case No. BC 021493* [Doc. No. 72], and *Notice of Related Cases* [Doc. No. 71] (collectively, the "Motions").[1] Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),[2] the Court finds the Motions to be suitable for disposition without oral argument. For the reasons set forth below, the Motions are **DENIED**.[3]

[1] The Court has also reviewed an untitled document which asserts that the relief requested in the Motion should be granted based on allegations of fraud [Doc. No. 73].

[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

I. Background[4]

John Anthony Thymes and Shirley Rose Thymes (the "Debtors") filed a voluntary Chapter 7 petition on May 17, 1988 (the "Chapter 7 Case"). The Chapter 7 Case was dismissed on July 18, 1989 (the "Dismissal Order"). The official record of the Chapter 7 Case has been destroyed.

On April 3, 2015, the Debtors filed a motion seeking relief from the Dismissal Order (the "Motion for Relief").[5] The Court denied the Motion for Relief.[6] On October 19, 2015, the Debtors filed a motion for reconsideration that essentially restated the same arguments in the Motion for Relief (the "Motion for Reconsideration").[7] The Court denied the Motion for Reconsideration.[8]

The Debtors appealed the denials of the Motion for Relief and Motion for Reconsideration to the Bankruptcy Appellate Panel (the "BAP"). On November 9, 2016, the BAP affirmed the Bankruptcy Court's refusal to vacate the Dismissal Order.[9]

The Debtors appealed the BAP's affirmance of the Bankruptcy Court's orders to the Ninth Circuit Court of Appeals. On January 11, 2017, the Ninth Circuit dismissed the appeal based on the Debtors' failure to pay docketing and filing fees.[10]

By the Motions, the Debtors renew their request for relief from the Dismissal Order. Debtors state that vacatur of the Dismissal Order is necessary to enable them to file a quiet title action against various entities that allegedly wrongfully foreclosed upon real property commonly known as 1331 W. 107th St., Los Angeles, CA 90003 (the "Property"). Debtors further allege that the February 7, 1991 foreclosure sale of the Property is void as a violation of the automatic stay. Debtors also contend that a judgment entered by the Los Angeles Superior Court on October 16, 1991 (the "State Court Judgment") is void as a violation of the automatic stay.

II. Findings and Conclusions

The Motions are improper for several reasons. First, the Motions are an attempt to circumvent the Ninth Circuit's dismissal of the Debtor's appeal of the Bankruptcy Court's denial of the Motion for Relief and the Motion for Reconsideration. The Debtors had the opportunity to argue before the BAP that the Bankruptcy Court's refusal to vacate the Dismissal Order was in error. The BAP rejected the Debtors' arguments and affirmed the Bankruptcy Court's decision. The Debtors had a further opportunity to obtain appellate review before the Ninth Circuit. The Debtors renewed their request for relief from the Dismissal Order only after their appeal before

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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.

[3] The Hon. Richard M. Neiter presided over this case between April 3, 2015 and September 7, 2016. The case was reassigned to the undersigned Judge on September 8, 2016. Doc. No. 62.

[4] A more detailed overview of the proceedings in this case is set forth in the Memorandum [Doc. No. 63] issued by the Bankruptcy Appellate Panel on November 9, 2016. Only those facts relevant to the instant Motion are presented here.

[5] Doc. Nos. 4, 6, and 31.

[6] Doc. No. 34.

[7] Doc. No. 37.

[8] Doc. No. 44.

[9] Doc. No. 63.

[10] Doc. No. 66.

the Ninth Circuit was dismissed for failure to pay filing and docketing fees. The Debtors' attempt to circumvent the failure of their appeal is inappropriate.

Second, the Motions effectively constitute a request for reconsideration of the Court's denial of the Motion for Relief and the Motion for Reconsideration. Motions for reconsideration may be brought under either Civil Rule 59(e) or Civil Rule 60(b). The Motions fail 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.'").

The Debtors have failed to show that any of the extraordinary circumstances warranting reconsideration under Civil Rule 59(e) apply here. All of the arguments set forth in the Motions have either been previously presented to the Court, or could have been presented had the Debtors exercised reasonably diligence.

Under Civil Rule 60(b), the Court may relieve a party from a final judgment or order. A motion seeking relief under Rule 60(b) "must be made within a reasonable time." The Court denied the Motion for Relief on October 5, 2015, and denied the Motion for Reconsideration on February 1, 2016. The instant Motions, filed more than 3.5 years subsequent to these denials, were not brought within a reasonable time.

Even were the Court to disregard these defects, the Debtors have failed to show cause for the relief requested in the Motions. The Debtors argue that the Dismissal Order should be set aside so that they can pursue relief for alleged violations of the automatic stay. However, all of the alleged stay violations identified in the Motions occurred either before the Chapter 7 Case was filed or after the Chapter 7 Case was dismissed. The Chapter 7 Case was pending between May 17, 1988 and July 18, 1989. The State Court Judgment, which the Debtors allege is void as a violation of the automatic stay, was issued on October 16, 1991, long after the automatic stay had terminated as a result of the Dismissal Order. Similarly, the February 7, 1991 foreclosure sale of the Property also occurred well after the automatic stay had terminated.[11]

It appears that the Debtors may be attempting to argue that the State Court Judgment and foreclosure sale violated the automatic stay arising in other bankruptcy cases filed by the Debtors. The Court cannot grant any relief in this case on account of the automatic stay in other bankruptcy cases.

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[11] The Debtors also contend that a Grant Deed recorded by Sergio A. Santos and Milagros F. Santos on September 2, 1992 and a Deed of Trust recorded on April 15, 2003 are void as violations of the automatic stay. Once again, these actions took place long after the automatic stay had terminated.

The Motions seek other relief that the Court lacks jurisdiction to grant. The Motions assert that the State Court Judgment should be vacated as a result of various alleged errors made by the State Court. Under the *Rooker-Feldman* doctrine, the Bankruptcy Court has "no authority to review the final determinations of a state court in judicial proceedings." *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1078 (9th Cir. 2000). The Motion is an impermissible attempt to obtain federal review of the State Court Judgment.

The Debtors filed a *Notice of Related Cases* which alleges that this case is related to Case Nos. 2:92-bk-19331-NB, 2:92-bk-19337-AA, 2:92-bk-19338-AA, and 2:92-bk-19342-AA. The *Notice of Related Cases* seeks to consolidate this case and the allegedly related cases before a single judge. All of the allegedly related cases have been closed. The Debtors' request for consolidation is denied.

III. Conclusion

Based upon the foregoing, the Motions are **DENIED**. The Court will enter an order consistent with this Memorandum of Decision.

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Date: December 13, 2019

Ernest M. Robles
United States Bankruptcy Judge