



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
August 25, 2017

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 17-13663-MKN
)	Chapter 13
KATHLEEN LYNNE RAY,)	
)	Date: August 23, 2017
Debtor.)	Time: 1:30 p.m.
_____)	

**ORDER DENYING FRAP RULE 59 MOTION TO VACATE,
RECONSIDER, ALTER OR AMEND ORDER (#27)¹**

On August 23, 2017, the court heard the FRAP Rule 59 Motion to Vacate, Reconsider, Alter or Amend Order (#27) ("Motion to Reconsider") brought by Kathleen Lynne Ray ("Debtor"). Debtor appeared in pro se, and Matthew Schriever, Esq. appeared on behalf of Deutsche Bank National Trust Company, as Trustee for FFMLT Trust 2005-FF8, Mortgage Pass-Through Certificate Series, its Assignees and Successors ("Deutsche"). After arguments were presented, the matter was taken under submission.

BACKGROUND

On July 6, 2017, Debtor commenced the current bankruptcy proceeding by filing a

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the above-captioned bankruptcy case. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure. All references to "FRCP" are to the Federal Rules of Civil Procedure.

1 voluntary petition under Chapter 13. (ECF No. 1).²

2 On July 7, 2017, Deutsche filed a Motion for Relief from Automatic Stay and In Rem
3 Relief (“Stay Relief Motion”). (ECF No. 11). Deutsche sought relief under Sections 362(d)(1),
4 363(d)(2), and 362(d)(4) to pursue its state law rights and remedies regarding certain real
5 property located at 4631 Ondoro Avenue, Las Vegas, NV 89141 (“Ondoro Property”).

6 On July 11, 2017, an order was entered shortening time so that the Stay Relief Motion
7 could be heard on July 19, 2017. (ECF No. 23).

8 On the morning of the hearing, Debtor filed a written opposition. (ECF No. 26). After
9 arguments were presented, the Stay Relief Motion was taken under submission.

10 On July 21, 2017, the court entered its “Order Granting in Part and Denying in Part
11 Motion for Relief from Automatic Stay and In Rem Relief” (“Stay Relief Order”). (ECF No.
12 27). In that order, the court granted stay relief to Deutsche under Section 362(d)(1) to pursue its
13 state law rights and remedies regarding the Ondoro Property. The Stay Relief Order also denied
14 relief under Section 362(d)(2) and also denied in rem relief under Section 362(d)(4).

15 On July 21, 2017, the Debtor filed the instant Motion to Reconsider. (ECF No. 36).³

16 On August 1, 2017, Deutsche filed an opposition to the Motion to Reconsider. (ECF No.
17 39).

18 **APPLICABLE LEGAL STANDARD**

19 “When, as here, the reconsideration motion is filed within fourteen days of the entry of
20 the underlying order, [the court] treat[s] the reconsideration motion the same as [the court] would
21 a motion for new trial or to alter or amend the judgment” under FRCP 59, made applicable to
22 this adversary proceeding pursuant to FRBP 9023. See Warner Angle Hallam Jackson &

23
24 ² Debtor had commenced a previous Chapter 13 proceeding denominated Case No. 14-
16060, but that case was dismissed by an order entered on July 25, 2017.

25 ³ The title of the Debtor’s one-page motion refers to “FRAP” which is a common
26 acronym for the Federal Rules of Appellate Procedure. There is no Rule 59 of those rules.

1 Formanek, P.L.C. v. Lock (In re LMM Sports Mgmt., LLC), 2016 WL 3213829, at *6 (B.A.P.
 2 9th Cir. June 1, 2016). “Typically, such motions are denied in the absence of newly discovered
 3 evidence, clear error by the bankruptcy court, or an intervening change in the law.” Id., citing,
 4 Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009).

5 **DISCUSSION**

6 The Debtor’s sole argument is that the court committed clear error by failing “to address
 7 Ray’s request for evidentiary hearing to establish the authentication and record of the documents
 8 and evidence submitted to the court, the lack of existence of the FFMLT 2005 Trust party in
 9 interest [sic], and thus Ray’s equitable interest in the property; but instead abused discretion [sic]
 10 in basing the adverse decision on the failure to authenticate those same documents.” (Motion to
 11 Reconsider at p. 1). In support of her argument, the Debtor appears to cite a decision by a
 12 bankruptcy court in Alabama in a proceeding entitled In re Farris, Case No. 05-13253, Adv. No.
 13 06-00103 (Bankr. N.D. Ala. Dec. 21, 2006). That decision as well as the case on which it relies,
 14 however, is distinguishable as it involved the requirement for a court to conduct an evidentiary
 15 hearing under FRCP 55 prior to entering a money judgment. Here, in contrast, the Stay Relief
 16 Order only determined that “cause” existed under Section 362(d)(1) to lift the stay so Deutsche
 17 could exercise its state law rights and remedies relating to the Ondoro Property. The court did
 18 not enter a money judgment against the Debtor, and the court did not make any determination
 19 regarding the Debtor’s purported “equitable interest” in the Ondoro Property.

20 The Debtor nevertheless argues that the court should have held an evidentiary hearing to
 21 allow her to authenticate documents purporting to reflect that the FFMLT 2005 Trust does not
 22 exist, thereby presumably denying Deutsche with standing to seek stay relief. A bankruptcy
 23 court is not required to hold an evidentiary hearing when it has all the facts necessary before it to
 24 make a summary determination. See Romley v. Sun Nat’l Bank (In re Two “S” Corp.), 875 F.2d
 25 240, 243 (9th Cir. 1989). The record before the court contained a copy of a “Trustee’s Deed
 26 Upon Sale” recorded by Deutsche on July 21, 2010, with the Clark County Recorder at

Instrument No. 201007210001904 (“Deutsche Trust Deed”). The Deutsche Trust Deed reflects that Deutsche purchased the Ondoro Property at a pre-petition foreclosure sale. As the Ninth Circuit Bankruptcy Appellate Panel concluded in one of the Debtor’s prior bankruptcy cases on these same facts, the Deutsche Trust Deed provides Deutsche with a colorable claim to the Ondoro Property sufficient to establish Deutsche’s standing to seek stay relief. See Ray v. Deutsche Bank Nat’l Trust Co. (In re Ray), 2016 WL 6699315, at *5-6 (B.A.P. 9th Cir. Nov. 14, 2016).

The court is not required to conduct an evidentiary hearing because the Deutsche Trust Deed still establishes Deutsche’s standing regardless of whether the FFMLT 2005 Trust does or does not exist.⁴ As the court has informed the Debtor on numerous prior occasions in her multiple prior bankruptcy cases and adversary proceedings regarding this same issue, the Debtor may not collaterally attack in this court the validity of the pre-petition foreclosure sale which ultimately led to the entry of the Deutsche Trust Deed. The bankruptcy court is required to respect the validity of the Deutsche Trust Deed. See Butner v. United States, 440 U.S. 48, 55 (1979) (“Property interests are created and defined by state law.”). If the Debtor believes she has a valid claim for wrongful foreclosure, then she needs to make that claim in Nevada state court, and not in this court.⁵

⁴ At the hearing on the instant Motion to Reconsider, Debtor requested that the court take judicial notice of documents attached to her previous opposition to the Stay Relief Motion. Those documents allegedly addressed the lack of good standing in Delaware in 2006 of an entity identified as FFMLT 2005-FF-N. As the court previously observed, those materials are not determinative of the standing already established by Deutsche. See Lift Stay Order at 4 n.6. No evidentiary hearing is required to establish Deutsche’s standing.

⁵ At the hearing on the instant Motion to Reconsider, Deutsche argued that the automatic stay in the Debtor’s latest Chapter 13 proceeding has terminated in any event under Section 362(c)(3). Deutsche argued that the Debtor’s prior Chapter 13 case was dismissed within the prior year and the automatic stay in the current case terminated after 30 days under Section 362(c)(3)(A) because the Debtor never filed a motion to continue the automatic stay under Section 362(c)(3)(B). The consequences of such a termination is severe because the stay is terminated with respect to both the bankruptcy debtor and property of the bankruptcy estate. See

