IT IS SO ORDERED.

Dated: 05:33 PM October 27 2008

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	)	CASE NO. 07-51027
	)	
MARLYNN RENEE O'NEAL,	)	CHAPTER 13
	)	
DEBTOR(S)	)	
	)	
DANIEL M. MCDERMOTT, United States Trustee Region 9,	)	ADVERSARY NO. 08-5031
	)	
	)	JUDGE MARILYN SHEA-STONUM
PLAINTIFF(S),	)	
	)	
vs.	)	**ORDER DENYING COUNTRYWIDE HOME LOANS, INC.'S MOTION TO RECONSIDER [DOCKET #47] AND SCHEDULING TELEPHONIC STATUS CONFERENCE**
	)	
COUNTRYWIDE HOME LOANS, INC.	)	
	)	
DEFENDANT(S).	)	

This matter comes before the Court on defendant, Countrywide Home Loans, Inc.'s ("Countrywide") "Motion to Reconsider the Court's Order Denying Countywide's Motion to Dismiss" [docket #47], Countywide's supplemental authority in support of that motion [docket #50] (collectively, the "Motion to Reconsider") and an objection [docket #52] filed by plaintiff, Daniel

McDermott,[1] United States Trustee, Region 9 (the "UST"). For the reasons stated in this Court's "Opinion and Order Denying Countrywide Home Loan Inc.'s Motion to Dismiss" [docket #45] (the "Order Denying Motion to Dismiss") (which is incorporated by this reference as if fully rewritten herein) as well as those stated below, the Court finds that the Motion to Reconsider is not well taken.

I. BACKGROUND

On February 28, 2008 the UST filed a complaint against Countywide alleging that Countrywide filed an inaccurate proof of claim and an unsubstantiated objection to confirmation in the above-referenced chapter 13 proceeding. The UST further alleged that such filings were not an isolated incident but that Countrywide has engaged in a similar pattern of conduct in bankruptcy proceedings throughout the country. In his prayer for relief, the UST is requesting that this Court enter an order pursuant to 11 U.S.C. §105(a), the Court's inherent equitable powers and Local Bankrutpcy Rule 2090-2(c) which (1) imposes monetary sanctions against Countrywide and (2) enjoins and restrains Countrywide from engaging in bad faith and abusive practices in connection with its preparation, verification, filing and prosecution of pleadings and proofs of claim in bankruptcy cases.

On May 27, 2008, Countrywide filed a motion seeking dismissal of the complaint, with prejudice [docket #31] (the "Motion to Dismiss"), pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(1) due to this Court's lack of subject matter jurisdiction and pursuant to FRCP 12(b)(6) due to the UST's failure to state a claim upon which relief could be granted. On May 28,

[1] When this adversary was filed Habbo Fokkena was the acting United States Trustee, Region 9. However, effective July 11, 2008 Daniel McDermott was appointed to that position. Pursuant to a Notice of Substitution of Party filed in this Court [docket #43] and the U.S. District Court for the Northern District of Ohio, Mr. McDermott was substituted as the plaintiff in this matter and the respondent in the associated district court proceeding.

2008, Countrywide filed a motion requesting that the District Court withdraw the reference of the adversary proceeding to this Court [docket #33] (the "Motion to Withdraw the Reference") setting forth many of the same arguments set forth in the Motion to Dismiss.

On August 21, 2008, the District Court entered an opinion and order denying Countrywide's Motion to Withdraw the Reference. In that opinion the District Court stated the following:

> While there may be constitutional problems with a bankruptcy court's imposition of criminal contempt, that issue is not raised in the case before this Court. Here, the Trustee moved for sanctions against Countrywide for allegedly merit-less filings. . . .
>
> Regardless of any constitutional jurisdictional problems presented when bankruptcy courts deal with a criminal contempt proceeding, '[t]here can be little doubt that bankruptcy courts have the inherent power to sanction vexatious conduct presented before the court.'. . . Bolstering the conclusion that bankruptcy courts have sanction authority, Federal Rules of Bankruptcy Procedure Rule 9011 specifically authorizes such sanctions. . . . This Court finds the authorities on whether bankruptcy courts can impose criminal contempt sanctions inapposite to the Trustee's motion for monetary sanctions. The Trustee's motion for sanctions in the underlying bankruptcy proceeding falls within the jurisdiction of the Bankruptcy Court.

Opinion and Order Denying Motion to Withdraw Reference at pp. 3-4 (citations omitted) [docket #38]. On August 29, 2008, Countrywide filed a motion requesting that the District Court reconsider its order denying the Motion to Withdraw the Reference.

This Court entered its Order Denying Motion to Dismiss on September 22, 2008. On October 2, 2008, Countrywide filed the Motion to Reconsider and the UST filed his objection on October 21, 2008. On October 13, 2008, the District Court entered an opinion and order denying Countrywide's motion requesting reconsideration of its order denying the Motion to Withdraw the Reference.[2]

[2] This order was not docketed in this adversary proceeding but can be found as docket #15 in District Court case number 5:08-mc-00043-JG.

II. ANALYSIS

As noted, Countrywide's Motion to Dismiss included arguments based upon *both* FRCP 12(b)(1) (lack of jurisdiction over the subject matter) and 12(b)(6) (failure to state a claim upon which relief can be granted). In its Motion to Reconsider, Countrywide does not address this Court's denial of its Motion to Dismiss pursuant to FRCP 12(b)(6). Instead it focuses only on FRCP 12(b)(1) and sets forth two grounds for why the Motion to Reconsider should be granted: (1) that this Court "erred in finding that the UST has standing to pursue the Complaint" and (2) that this Court "erred in finding that it has subject matter jurisdiction to consider the Complaint." Mem. in Support of Motion to Reconsider at pg. 2 [docket #57].

Courts analyze a motion to reconsider as a motion to alter or amend judgment under FRCP 59(e). *McDowell v. Dynamics Corp. of America*, 931 F.2d 380, 382 (6th Cir. 1991). Such motions are "extraordinary in nature" and, because they run contrary to notions of finality and repose, are "very sparingly" granted. *Plaskon Elec. Materials, Inc. v. Allied-Signal, Inc.*, 904 F.Supp. 644, 669 (N.D. Ohio 1995) (citations omitted). A motion to amend or alter a judgment may be granted if the movant demonstrates a clear error of law, newly discovered evidence, an intervening change in controlling law or that a failure to reconsider would result in manifest injustice. *Gencorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999) (citations omitted).

> To be sure, 'a court can always take a second look' at a prior decision; but, 'it need not and should not do so in the vast majority of instances,' especially where such motions 'merely restyle or re-hash the initial issues.' It is not the function of a motion to reconsider either to renew arguments already considered and rejected by a court or 'to proffer a new legal theory or new evidence to support a prior argument when the legal theory or argument could, with due diligence, have been discovered and offered during the initial consideration of the issue.' Where . . . 'the defendant views the law in a light contrary to that of this Court,' its 'proper recourse' is not by way of motion for reconsideration' but [instead to file an] appeal . . . .

McConocha v. Blue Cross & Blue Shield Mut. of Ohio, 930 F.Supp 1182, 1184 (N.D. Ohio 1996) (citations omitted). *See also Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 (7th Cir. 2000) ("A 'manifest error" is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent."). Given the interlocutory nature of this Court's Order Denying Motion to Dismiss, granting Countrywide's Motion to Reconsider would, at this early stage of the case, constitute more than extraordinary relief.[3]

Countrywide claims that its Motion to Reconsider is proper "to correct a clear error of law or prevent manifest injustice." Motion to Reconsider at pg. 2 [docket #47]. In the Motion to Dismiss Countrywide argued that dismissal of the complaint was appropriate pursuant to FRCP 12(b)(1) because (1) the UST failed to allege a live case or controversy; (2) the UST lacks statutory authority to commence adversary proceedings aimed at policing alleged past Bankruptcy Code violations; (3) this Court lacks any statutory jurisdiction over the adversary proceeding; and (4) this Court lacks jurisdiction to enter the type of relief sought by the UST. Each of those arguments was fully addressed by this Court in its Order Denying Motion to Dismiss and will not be re-discussed at any length herein. Instead, the Court will briefly discuss Countrywide's failure to demonstrate that the

[3] Interlocutory orders, including a denial of a motions to dismiss, remain continually open to trial court consideration and do not constitute the law of the case. *See, e.g., Perez-Ruiz v. Crespo-Guillen*, 25 F.3d 40, 42 (1st Cir. 1994); *Amen v. City of Dearborn*, 718 F.2d 789, 793-94 (6th Cir. 1983).

challenged decision constituted a wholesale disregard for, misapplication of or failure to recognize controlling precedent.

In the Order Denying Motion to Dismiss this Court found that the complaint invoked "core proceedings." Such conclusion was based upon the fact that the alleged misconduct by Countrywide (the filing of an inaccurate proof of claim and an unsubstantiated objection to confirmation of debtor's chapter 13 plan) deals with procedures that are unique to a bankruptcy proceeding and unable to exist outside of the bankruptcy context. *See* Order Denying Motion to Dismiss at pp. 7-8 [docket #45]. This Court also found that the UST has standing to pursue the complaint based upon (1) a party's right to call upon this Court to exercise its inherent power to sanction another party for improper conduct and (2) the broad remedial powers granted to the UST Program by Congress. Through arguments similar to those raised in its Motion to Dismiss, Countrywide argues in the Motion to Reconsider that this Court's findings relative to the "core" basis of the matter and the UST's standing to pursue the complaint are wrong.

For instance, Countrywide again calls attention to the fact that the UST has not personally suffered any actual or threatened injury. Because of such lack of injury, Countrywide reiterates its conclusion that the UST's allegations do not satisfy the case and controversy requirements of Article III of the Constitution and that the complaint should be dismissed. Countrywide then contends that this Court "[did] not address this constitutional infirmity in its Opinion" but instead "crafted an entirely new basis for standing based on 'a party's right to call upon this Court to exercise its inherent power to sanction another party for improper conduct.'" Mem. in Support of Motion to Reconsider at pg. 3 [docket #47].

In finding that the UST has standing to pursue the complaint, this Court noted Countrywide's failure to take into account a party's right to call upon the Court to exercise its inherent power to sanction another party for improper conduct. In so doing, this Court made reference to, among many others, two cases: *Mapother & Mapother, P.S.C. v. Cooper (In re Downs),* 103 F.3d 472, 477 (6th Cir. 1996) and *United Artists Theatre Co. v. Walton*, 315 F.3d 217, 225 (3rd Cir. 2003). Countrywide now claims that those two cases are "inapposite." Mem. in Support of Motion to Reconsider at pg. 3 [docket #47]. Those cases were not, however, cited as direct authority for this Court's findings. Instead, they were cited as inferentially supporting this Court's ultimate conclusions as clearly denoted by use of the introductory signals "*see*" and "*see also*." THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000) at pp. 22-23.

Notwithstanding its conclusion that cases referenced by this Court are simply not pertinent, Countrywide does not cite to and discuss *any* additional legal authority to support its argument that the Order Denying Motion to Dismiss should now be overturned. Instead, it separately filed a copy of a decision entered in the U.S. Bankruptcy Court for the Southern District of Florida granting Countrywide's motion to dismiss a complaint filed against it by another UST (the "*Walton* Opinion").[4] In its notice of filing of supplemental authority Countrywide notes that "[t]he [*Walton*] Opinion addresses many of the same issues that are the subject of Countrywide's Motion to Dismiss and may assist this Court in its decision with respect to the currently pending Motion to Reconsider." Notice at pg. 2 [docket #50]. This Court does find that opinion quite useful in considering the Motion to Reconsider given that the background facts and procedural posture of that case are quite similar

[4] That decision was entered on October 2, 2008 in a chapter 13 case case styled *Walton v. Countrywide Home Loans, Inc. (In re Sanchez),* Adv. Case No. 08-1776BKC-AJC-A. There is no indication in that decision whether or not its author, Bankruptcy Judge A. Jay Cristol, intends to submit it for publication.

to the proceeding at issue and, more importantly, given that the *Walton* Court held (1) that the bankruptcy court had subject matter jurisdiction over the adversary proceeding and (2) that the UST had standing to bring such action.

> Donald F. Walton, the United States Trustee for Region 21 ("UST"), filed this adversary proceeding against Countrywide Home Loans, Inc. ("Countrywide") on March 1, 2008. The UST alleges that Countrywide engaged in bad faith conduct which abused the judicial process in connection with the Chapter 13 bankruptcy case of Jose and Fanny Sanchez. The conduct of which the UST complains arises from two allegedly inaccurate motions for relief from stay filed by Countrywide in the Sanchezes' bankruptcy case . . . . The UST also alleges that Countrywide initiated a foreclosure action on June 15, 2007, in violation of the Sanchezes' Chapter 13 plan and the Bankruptcy Court's December 13, 2006 discharge order. The Sanchezes' Chapter 13 case was closed . . . and reopened . . . to address the June 15, 2007 foreclosure action. Countrywide voluntarily dismissed its foreclosure complaint . . . [and] the Sanchezes withdrew without prejudice a contempt motion they had filed with respect to the foreclosure action. The Sanchezes are not parties to this adversary proceeding.
>
> Predicated on the motions for relief from stay and the foreclosure action, the UST requests 'appropriate monetary sanctions' against Countrywide and an injunction 'enjoining and restraining Countrywide from engaging in bad faith and abusive practices in connection with: (i) its preparation, verification, filing and prosecution and proofs of claim in bankruptcy cases; and (ii) its preparation, verification, filing and prosecution of state court foreclosure actions to the extent such actions involve debtors, claims or liens that have previously been subject to bankruptcy court orders.'
>
> On May 28, 2008, Countrywide filed a Motion to Dismiss the UST's Complaint alleging as grounds that this Court lacks subject matter jurisdiction, that the case is moot, that the UST lacks standing, and that the UST failed to state a claim upon which relief may be granted.
>
> The Court finds that is has jurisdiction over this controversy pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. To the extent Countrywide's Motion to Dismiss is predicated on the grounds that the controversy is moot and that the Court lacks subject matter jurisdiction it is denied. Moreover, the Court believes that the UST has standing, and Countrywide's Motion to Dismiss on that ground is denied as well. The Court now turns to Countrywide's argument that the UST has failed to state a claim upon which relief may be granted [pursuant to Federal Rule of Civil Procedure 12(b)(6)].

Notice at Ex. A pp. 3-4 [docket #50] (footnote omitted). Although the *Walton* Court ultimately did dismiss the UST's complaint, such dismissal was predicated *only* upon FRCP 12(b)(6). As previously noted, this Court fully addressed Countrywide's FRCP 12(b)(6) arguments in its Order Denying Motion to Dismiss and Countrywide did not take exception to such findings in its Motion to Reconsider.[5]

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[5] Countrywide also filed a copy of the *Walton* Opinion with the District Court in support of its motion to reconsider that Court's order denying the Motion to Withdraw the Reference. The District Court also determined that the *Walton* Opinion supported its conclusion that Countrywide's motion to reconsider should be denied.

> Countrywide has also supplemented its motion to reconsider with the [*Walton*] Opinion . . . . According to Countrywide, *Walton* 'was a parallel case . . . alleging identical causes of action.' The *Walton* case, decided by a bankruptcy judge and not a district court judge, specifically states, '[t]o the extent Countrywide's Motion to Dismiss is predicated on the grounds that . . . the Court lacks subject matter jurisdiction if it denied. Moreover, the Court believes that the UST has standing, and Countrywide's Motion to Dismiss on that ground is denied as well.'
>
> That opinion, while ultimately reaching a conclusion on the merits that is favorable to Countywide's position, *is consistent with this Court's conclusion that a bankruptcy court has jurisdiction over monetary sanctions sought in this case.*

See Op. and Order Denying Mot. to Reconsider [docket #15], U.S. District Court case number 5:08-mc-00043-JG (Oct. 13, 2008) at pg. 4 (emphasis added).

III. CONCLUSION

Based upon the foregoing the Court finds that the Motion to Reconsider is not well-taken and is hereby DENIED. The Court will hold a telephonic status conference in this matter on **Thursday, November 6, 2008 at 10:30 am** to consider, among other things, a proposed agreed order that was recently submitted to the Court by the parties requesting a further extension of the discovery and stipulations filing deadlines in this case. The status conference will be conducted via the Court's conference bridge which can counsel can access by dialing **330/252-6109** and then, when prompted, by entering access code **610911.**

# # #

cc (via electronic mail): LEONARD DEPASQUALE, Counsel for Plaintiff
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