IT IS SO ORDERED.

Dated: November 22, 2011
01:38:51 PM

Kay Woods
Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	**CASE NUMBER 11-41578**
CHRISTINE LYNN CART,	*	**CHAPTER 13**
Debtor.	*	**HONORABLE KAY WOODS**

****

ORDER CONCERNING DEBTOR'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW AND MOTION FOR RECONSIDERATION

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This cause is before the Court on Motion for Findings of Fact and Conclusions of Law and Motion for Reconsideration ("Motion for Reconsideration") (Doc. # 38) filed by Debtor Christine Lynn Cart ("Debtor") on November 3, 2011. The Court held a hearing on the Motion for Reconsideration on November 17, 2011 ("Hearing"). Despite (i) the failure of the Debtor to appear at the Hearing, and (ii) the deficiencies in the Motion for Reconsideration, the Court addressed the Motion for Reconsideration in detail at the Hearing. Having granted the Debtor a hearing on the Motion for

Reconsideration, the Court finds that such motion is without merit. The Orders of the Court entered on October 4, 2011 (Doc. # 34) and October 27, 2011 (Doc. # 36) remain in full force and effect.

I. THE DEBTOR FAILED TO MEET THE STANDARD FOR RECONSIDERATION OF THE COURT'S PRIOR ORDERS

The Debtor styles her motion as one for findings of fact and conclusions of law and for reconsideration. The Debtor purports to base her motion on Rule 52 of the Federal Rules of Civil Procedure (Mot. for Recons. at 1). Rule 52 is applicable to bankruptcy proceedings pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, but only in adversary proceedings.

> Rule 52 F.R. Civ. P. applies in adversary proceedings, *except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment*.

FED. R. BANKR. P. 7052 (West 2011). The Orders the Debtor references were entered in the main bankruptcy case and were not entered in an adversary proceeding. As a consequence, Rule 52 is inapplicable to the instant case and the Court will treat the Debtor's Motion as a motion for reconsideration.

As set forth in this Court's Memorandum dated December 11, 2009 regarding Bankruptcy Court Policies and Procedures (available on the Court's website), a motion for reconsideration must be filed pursuant to either Rule 59 or 60 of the Federal Rules for Civil Procedure (made applicable to bankruptcy proceedings by Federal Rules of Bankruptcy Procedure 9023 and 9024). Rule 9023 provides that a motion "to alter or amend a judgment shall be filed . . . no

later than 14 days after entry of judgment." FED. R. BANKR. P. 9023 (West 2011). The Order for Relief from Stay and Co-Debtor Stay of Fannie Mae aka Federal National Mortgage Association (Property Located at: 7234 State Route 45, Orwell, OH 44076) ("Order for Relief") (Doc. # 34) was entered on October 4, 2011. Because the Debtor failed to file the Motion for Reconsideration until November 3, 2011, to the extent the Motion for Reconsideration purports to request reconsideration of the Order for Relief, it is untimely. Although the Debtor's motion was filed within fourteen days after the October 27, 2011 entry of the Order Granting Amended Motion for Relief from Co-Debtor Stay of Fannie Mae aka Federal National Mortgage Association (Property Located at: 7234 State Route 45, Orwell, OH 44076) ("Order for Co-Debtor Relief") (Doc. # 36), nothing in the Order for Co-Debtor Relief impacted the Debtor since relief from the stay as to the Debtor had been previously entered on October 4, 2011. A consequence, the Debtor does not appear to have standing to ask this Court to reconsider the Order for Co-Debtor Relief.

If the Debtor's Motion for Reconsideration is taken as a motion pursuant to Rule 9024, the Debtor is required to meet one of the requirements in Rule 60, as follows:

> (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> > (1)mistake, inadvertence, surprise, or excusable neglect;

> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct of the opposing party;
>
> (4) the judgment is void;
>
> (5) the judgement has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or apply it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60 (West 2011).

The Debtor does not even purport to state a ground for relief under Rule 60.

II. THE DEBTOR'S REQUEST FOR CLARIFICATION IS ACTUALLY AN ATTEMPT TO RELITIGATE THE STAY RELIEF ISSUES

Although the Debtor states that she seeks clarification, her Motion for Reconsideration is actually an attempt to relitigate the issues addressed by the Court in granting relief from stay and relief from the co-debtor stay. As set forth above, the Debtor has failed to establish any basis for this Court to "reconsider" either the Order for Relief or the Order for Co-Debtor Relief. Nevertheless, this Court will attempt to provide the Debtor with the clarification she requests.

First, as explained on the record at the Hearing, it is not necessary for Fannie Mae to be a creditor of the Debtor in order for Fannie Mae to be entitled to relief from stay. It is undisputed that, prior to the Petition Date, the following actions occurred:

(i) the Debtor defaulted in a state foreclosure action and Judgment and Decree in Foreclosure and Reformation of Mortgage was entered on August 29, 2008 (*Aurora Loan Services LLC v. Christine Cart*, 2008 CV 0664, Ashtabula County Court of Common Pleas); (ii) the Debtor appealed various rulings by the Ashtabula Court of Common Pleas, which rulings were affirmed by the 11th District Court of Appeals; (iii) the Ashtabula County Court of Common Pleas entered Journal Entry Confirming Sale, Ordering Deed and Distributing Sale Proceeds on January 9, 2009; (iv) the Sheriff's Deed dated January 22, 2009, transferred the Debtor's residence to Fannie Mae aka Federal National Mortgage Association; (v) the Debtor filed suit against Fannie Mae (*Christine Cart v. Federal National Mortgage Association*, Case No. 2011 CV 00330, Ashtabula County Court of Common Pleas), which was dismissed upon the motion of Fannie Mae for judgment on the pleadings. As set forth above, Fannie Mae is the title owner of the Debtor's residence. As a consequence, Fannie Mae – as the title owner of the property – is entitled to relief from stay (to the extent relief from stay may be necessary) to take possession of the real estate. There is no merit to the suggestion of the Debtor that Fannie Mae must be a creditor in order to obtain relief from stay.

At the hearing on the motion for relief, the Court explained that the *Rooker-Feldman* doctrine controlled the Court's decision. When the Court attempted to explain the *Rooker-Feldman* doctrine, the Debtor emphatically stated that she understood the doctrine. In

case the Debtor did not understand this doctrine as well as she indicated, the following explanation may provide the clarification she requests.

The *Rooker-Feldman* doctrine is based on two decisions of the United States Supreme Court, *i.e.*, (i) *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983) and (ii) *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). "The clearest case for dismissal based on the *Rooker-Feldman* doctrine occurs when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." *Henrichs v. Valley View Dev.* 474 F.3d 609, 613 (9th Cir. 2007) (internal quotation marks omitted). "However, *Rooker-Feldman* may also apply where the parties do not directly contest the merits of a state court decision, as the doctrine 'prohibits a federal district court from exercising subject matter jurisdiction over a suit that is a *de facto* appeal from a state court judgment.'" *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008).

In the present case, by arguing that Fannie Mae does not have the legal right to obtain relief from stay, the Debtor was seeking a *de facto* appeal of the decisions of the Ashtabula County Court of Common Pleas that granted foreclosure and confirmed the sale by which the Sheriff's deed transferred the real estate to Fannie Mae. This Court is bound by the final decision of the Ashtabula County Court of Common Pleas that Fannie Mae is the record title owner of the real estate that the Debtor uses as her residence. As a

consequence, the *Rooker-Feldman* doctrine mandates that this Court not permit the Debtor to relitigate this issue, but to recognize the validity of the state court judgments.

The Debtor implies that she was somehow prejudiced by not being able to object to the amended motion for relief from the co-debtor stay as to co-debtor Joan Hoyt only. In response to the original motion for relief from stay, the Debtor argued that Ms. Hoyt was not properly served at the Debtor's residence. The motion was amended to obtain service on Ms. Hoyt. The Debtor is not an attorney and has no basis to speak for or on behalf of Ms. Hoyt. As a consequence, the only arguments that the Debtor could have made in response to the amended motion would have been the same arguments she made in opposition to the motion for relief – *i.e.*, that Fannie Mae did not have the legal right to enforce the note and mortgage. As set forth above, this argument is without merit. The Debtor was not and could not have been prejudiced in not objecting to the motion for relief from the co-debtor stay. No negative inference can be raised by the wording of the Order for Co-Debtor Relief. In addition, the Debtor asserts that there is a conflict between the Court's oral ruling from the bench regarding the motion for relief from stay and the Order for Co-Debtor Relief. There is no conflict.

Last, the Debtor attempts to argue that the insertion of standard language in the Order for Relief that permits the movant to file a deficiency claim, if any, no later than 90 days after entry of the order is an error because this provision was not

"brought to light nor . . . litigated at the September 15, 2011 hearing." (Mot. for Recons. at 4.) Local Rule 4001-1 provides for the mandatory use of local forms by parties seeking relief from stay (LBR 4001-1, 2011). Rule 4001-1 references that the forms are available from the Clerk of Court. The standardized form order available on the website clearly provides for this provision, which acts as a bar date for deficiency claim, to be included in any order for relief from stay. The Court was not required to state that it would enter the standardized order. Because this information was available in the Local Rule and the Court's website, the Debtor was on constructive notice that this language would be included in the Order for Relief from Stay. Moreover, the inclusion of this language in no way harms or prejudices the Debtor, but instead is for her benefit to the extent it provides a firm date by which any deficiency claim must be filed. If a deficiency claim is filed, the Debtor will be free to object to such claim.

III. CONCLUSION

The Debtor's Motion for Reconsideration provides no basis for reconsideration under Rules 52, 59 or 60. Nonetheless, the Court provided the Debtor with a Hearing in order to provide her with the requested clarification. The Debtor failed to appear at the Hearing. The arguments raised by the Debtor in the Motion for Reconsideration are entirely without merit. Having granted a Hearing on the Motion for Reconsideration, the Court denies the Motion for the reasons set forth above. The Order for Relief dated

October 4, 2011 (Doc. # 34) and the Order for Co-Debtor Relief dated October 27, 2011 (Doc. # 36) remain in full force and effect.

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