

SO ORDERED.

SIGNED this 22nd day of August, 2023.



Mitchell L. Herren

Mitchell L. Herren
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:

TINA M. CARSON,

Debtor.

Case No. 23-10664

Chapter 13

**ORDER DENYING DEBTOR'S MOTION
FOR REHEARING OF AJAX MORTGAGE'S
MOTION FOR RELIEF FROM STAY (Doc. 57)**

Pro se Debtor filed this Chapter 13 case as a "quick-file" on June 30, 2023, filing a voluntary petition, statement about her social security number, a creditor matrix, and a certificate of credit counseling. Debtor omitted all of the other required schedules, completed forms, and statement of financial affairs required by the Bankruptcy Code. An Order to Correct was issued giving her an additional fourteen days to file the missing documents (Doc. 15). On the fourteenth day, Debtor filed a motion for an extension of time to complete the required filings which

the Court granted in part, extending her deadline to July 28, 2023, but warned Debtor that no further extensions of time would be granted (Doc. 30). On July 28, Debtor made a second request for additional indeterminate time to file “responsive pleading” to unspecified Judges [sic] Orders, unspecified Mr. Behelers [sic] filings [the attorney for creditor Ajax Mortgage] and “any other [unspecified] necessary filings.” (Doc. 37).¹ That motion was denied (Doc. 39).

On August 14, 2023, the Court conducted an in person hearing on creditor Ajax Mortgage’s Motion for Relief from Stay and Relief from Co-Debtor Stay (Doc. 32). Ajax filed its motion on July 20, 2023 and duly noticed the motion directly to hearing on August 14, 2023, at 1:00 p.m., providing for an objection deadline of August 10, 2023 (Doc. 33). Debtor did not file an objection to Ajax’s motion. After the close of business on Friday, August 11, at approximately 8:15 p.m. Debtor filed two substantially similar motions for a continuance of the August 14 hearing (Docs. 52, 53). On Monday morning, the Court denied the requested continuance due to insufficient detail, specificity, and substantiation (Doc. 54). Debtor did not appear at the hearing.

The August 14 hearing was held, and the Court orally granted the Ajax motion, making findings of fact and conclusions of law on the record that the Court would incorporate into Ajax’s proposed order on the motion. On August 18, 2023, the Court entered the written order granting Ajax’s motion (Doc. 59).

¹ At the time of that motion, debtor’s deadline to object to Ajax’s motion for stay relief was still nearly two weeks away.

Debtor filed the current motion on August 17, 2023 (“Motion,” Doc. 57). The first page is titled:

NOTICE AND MOTION FOR A REHEARING OF THE
NOTICE OF AND MOTION FOR A REHEARING OF THE MONDAY
AUGUST 14TH HEARING AT 1:00 PM and To EXPAND THE TIME TO
FILE OBJECTIONS, PLAN SCHEDULES [sic], AND ANY
AMENDMENTS AND REHEARING OF MEETING OF CREDITORS,
WITH A MOTION TO STRIKE THAT HEARING.

The Court construes Debtor’s Motion primarily as a motion for rehearing of creditor Ajax Mortgage’s motion for relief from the automatic stay and for relief from the co-debtor stay. For the reasons set forth below, the Motion is denied.

Before addressing the rehearing request, however, the Motion’s additional, blanket request “to expand the time” is denied for the following reasons: (1) the Motion impermissibly seeks unrelated relief from the request for a rehearing in violation of D. Kan. LBR 9004.1(d); (2) the Motion seeks an indeterminate extension of time; (3) the Motion does not specify the “objections, plan schedules, and any amendments” for which Debtor needs additional time; and (4) the Motion seeks additional time for which the deadline(s) has/have already passed. With respect to the meeting of creditors on August 10 for which Debtor failed to appear due to, according to her motion, vehicle problems, the § 341 meeting was scheduled to be by telephone, and not in person. The Court also notes that the Chapter 13 trustee has continued and rescheduled the meeting of creditors via conference call to August 24, 2023, at 11:00 a.m. (Doc. 49).

Turning to the request for rehearing, the Court observes that page 1 of the Motion (Doc. 57), contains virtually identical content as Debtor’s motion for a

continuance of the August 14 hearing. (*Cf.* Doc. 53). In fact, paragraph 2 of the Motion refers to an unspecified and unsubstantiated “emergent health issue” as a basis “to continue this matter.” It appears that Debtor simply changed the title of the document from a “Notice of and Motion for Continuance” to a “Notice of and Motion for a Rehearing.” Those reasons for a continuance have thus been previously considered and rejected by the Court on the day of the hearing when it denied Debtor’s request for a continuance. The Court will not revisit those arguments.

The Court will focus its analysis on the Debtor’s other reasons for a requested rehearing as set forth on pages 4-5 of her Motion. Those can generally be summarized as (1) her need for legal counsel; (2) bias of Judge Herren and request for recusal; (3) a prior wrongful foreclosure; and (4) an alleged agreement between Debtor and co-debtor Daniel Brunson Carson for co-debtor to make the mortgage payments.

Under the procedural posture of this case, the Federal Rules of Bankruptcy Procedure provide no authority for a motion for “rehearing.” Debtor does not identify under what procedural rule she proceeds or address the legal standards for granting relief. The Court will treat Debtor’s motion for rehearing as a motion to alter or amend judgment pursuant to Fed. R. Bankr. P. 9023 and Fed. R. Civ. P. 59(e) incorporated therein.² A motion to alter or amend judgment may be granted only if the movant can establish: (1) an intervening change in the controlling law; (2) the availability of new evidence that could not have been obtained previously

² *In re Rios*, No. 12-40449, 2012 WL 1643428 (Bankr. D. Kan. May 10, 2012) (Karlin, J.) (deeming a motion for rehearing to be a motion to alter or amend judgment).

through the exercise of due diligence; or (3) to correct clear legal error or prevent manifest injustice.³ It does not permit a losing party to rehash arguments previously made or to present new legal theories or facts that could have been raised prior to entry of judgment.⁴

The only grounds possibly applicable here are “clear legal error” or “to prevent manifest injustice.” Because Debtor did not file an objection to the Ajax motion, nor appear at the August 14 hearing, her defense to the motion was never articulated. The alleged, “prior wrongful foreclosure” or the alleged agreement with co-debtor is not newly discovered evidence; Debtor could have made these arguments previously.⁵ None of the matters summarized above fall into the category of clear legal error by this Court’s determination that cause exists to grant Ajax’s motion for relief from stay and terminate the automatic stay.

That leaves Debtor’s “manifest injustice” argument. Ajax’s motion and this bankruptcy are not an isolated occurrence, as described in detail in the Court’s Stay Relief Order entered August 18.⁶ Debtor filed a chapter 13 bankruptcy in June of 2018. Ajax obtained stay relief in the fall of 2021, when Debtor failed and refused to comply with her confirmed plan to sell real property to cure an \$84,000 mortgage

³ *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000); *Brumark Corp. v. Samson Resources Corp.*, 57 F. 3d 941, 948 (10th Cir. 1005).

⁴ *In re Torline*, No.05-12251, 2007 WL 1083568 (Bankr. D. Kan. Apr. 7, 2007) (Somers, J.);

⁵ It is unclear if Debtor is alleging a wrongful foreclosure process occurring after her case no. 18-11150 was dismissed by this Court, or if she is re-alleging the same arguments about a wrongful foreclosure that she made in her 2018 case and 2023 W.D. Missouri cases. If the arguments are the same ones she made in prior cases, they have been rejected repeatedly. To the extent they may be new arguments, Debtor had opportunity to set them forth in an objection before the August 14 hearing. *See* Doc. 51 in W.D. Missouri case no. 23-40637.

⁶ Doc. 59.

arrearage on her homestead. She stopped making plan payments at the same time and her case was ultimately dismissed in March of 2022. Debtor filed numerous post-trial motions related to the stay relief order and twice appealed the Court's grant of stay relief to Ajax, but those appeals were dismissed.

Likewise, in the 2018 case, Debtor filed a motion to recuse Judge Herren for bias. That motion was filed the day before the scheduled hearing on Ajax's motion for relief from the stay and subsequently denied in a 21-page order.⁷ Like the previous motion, Debtor has not alleged any bias stemming from an extrajudicial source for disqualification under 28 U.S.C. § 455(b)(1); adverse rulings are insufficient to establish bias.

Ajax or its predecessors in interest commenced its third state court mortgage foreclosure case in late January of 2022. In the spring of 2023, the state court was about to rule on Ajax's motion for summary judgment. Debtor, proceeding without counsel, filed a new chapter 13 bankruptcy in the Western District of Missouri in May of 2023 to invoke the automatic stay and stop the foreclosure action. That case was dismissed about one month later. Debtor promptly filed the current chapter 13 case in this District, again without counsel. Ajax again filed a motion for stay relief that is the subject of Debtor's Motion.

Debtor has had ample opportunity and time over the past two years to obtain a bankruptcy attorney and defend against Ajax's efforts to obtain stay relief. Debtor has been without counsel since August 2021, after she fired her fourth

⁷ *In re Carson*, No. 18-11150, Doc. 213 (Bankr. D. Kan. Sept. 24, 2021).

bankruptcy attorney during the 2018 case. Since the 2018 case, Debtor has twice filed voluntary Chapter 13 bankruptcy petitions without retaining the services of a bankruptcy attorney. Those petitions invoked the jurisdiction of the bankruptcy court and the automatic stay. Debtor presumably knew that upon filing each bankruptcy Ajax would seek relief from the automatic stay and resume its efforts to foreclose the mortgage on her homestead.

Finally, the assertion of a wrongful state court foreclosure and Debtor's agreement with co-debtor for payment of the mortgage is not relevant to, nor a defense to Ajax's stay relief motion. Ajax has established cause to lift the automatic stay. As noted in the August 18 Stay Relief Order, Debtor's assertions about any alleged "wrongful foreclosure" may be raised in the state court foreclosure action and determined by the state court judge.

Nothing presented in Debtor's motion for rehearing establishes that this Court committed clear legal error in granting stay relief or that her motion should be granted to prevent manifest injustice. Debtor's motion for rehearing is DENIED, her requests for extension of time are also again DENIED, and her request for recusal of Judge Herren is DENIED.

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