



**The relief described hereinbelow is SO ORDERED.**

**SIGNED this 9th day of October, 2019.**

  
Robert D. Berger  
United States Bankruptcy Judge

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

**In re:**

**Bobby Joe Spencer,**

**Case No. 05-23969-13**

**Debtor.**

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**Order Denying Debtor's Motion to Reconsider**

Self-represented Debtor Bobby Joe Spencer<sup>1</sup> seeks reconsideration of the July 24, 2019, decision of this Court denying his motion to reopen his 2005 Chapter 13 bankruptcy case and his motion for judicial notice.<sup>2</sup> Debtor's motion to reconsider is properly considered either as a

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<sup>1</sup> Although a pro se litigant's pleadings are entitled to liberal construction, a court should not act as advocate for the litigant. *Martinez v. Garden*, 430 F.3d 1302, 1304 (10th Cir. 2005); *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

<sup>2</sup> See Doc. 126 (July 24, 2019) (Order Denying Debtor's Motion to Reopen and Motion for Judicial Notice). Debtor's motion for reconsideration, Doc. 128, and Memorandum in Support, Doc. 130, were filed on August 30 and September 3, 2019, respectively.

motion to alter or amend the Court’s judgment under Federal Rule of Civil Procedure 59(e) or as a motion for relief from judgment under Federal Rule of Civil Procedure 60(b).<sup>3</sup> Rule 59(e), however, requires that any motion to alter or amend be filed no later than fourteen days after entry of judgment. Debtor did not file the motion to reconsider within fourteen days of this Court’s July 24, 2019 Order, and the motion (filed thirty-seven days after the Order, on August 30, 2019) is untimely under Rule 59(e).

Under Rule 60(b) then, a court may grant relief from a judgment or order for multiple reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied or is based on an earlier judgment that has been reversed, or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Relief under Rule 60(b) is “extraordinary and may only be granted in exceptional circumstances.”<sup>4</sup> The bottom line is that the legal standard for granting a motion for reconsideration is narrow. “A motion for reconsideration should be granted only to correct manifest errors of law or to present newly discovered evidence.”<sup>5</sup> “Such motions are not appropriate if the movant only wants the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally.”<sup>6</sup>

Debtor’s motion seeks reconsideration of the denial of his motion to reopen and his motion for judicial notice. Debtor continues to pursue the same allegations of malfeasance

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<sup>3</sup> Both Rules are incorporated into bankruptcy proceedings: Rule 59(e) via Federal Rule of Bankruptcy Procedure 9023 and Rule 60(b) via Federal Rule of Bankruptcy Procedure 9024.

<sup>4</sup> *Dronsejko v. Thornton*, 632 F.3d 658, 664 (10th Cir. 2011) (internal quotation marks omitted).

<sup>5</sup> *Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n.5 (10th Cir. 2000) (internal quotations omitted).

<sup>6</sup> *Zhou v. Pittsburg State Univ.*, 252 F. Supp. 2d 1194, 1199 (D. Kan. 2003) (citing *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991)).

against creditor CitiMortgage, Inc. that he has been chasing for years. As the Court has previously explained, the Kansas Court of Appeals has already conclusively established that CitiMortgage was the holder of the note and mortgage at issue in this case and had the legal authority to enforce those instruments.<sup>7</sup>

Regarding the motion for judicial notice, as the Court addressed in its prior Order, judicial notice of alleged “facts” is available only for adjudicative facts that are not subject to reasonable dispute and verifiable with certainty.<sup>8</sup> The allegations Debtor is making against CitiMortgage are just that—allegations—and are not appropriate for judicial notice. Debtor offers no new evidence, no new arguments, no justification under Rule 60(b), and no reason for this Court to reconsider its prior Order. The Court thoroughly considered Debtor’s motion for judicial notice and determined it should be denied. Debtor has offered no valid basis for reconsideration of that decision.

For the same reasons, the motion to reconsider the motion to reopen is also denied. Debtor seeks an opportunity to present his case,<sup>9</sup> but a case should be reopened only “to administer assets, to accord relief to the debtor, or for other cause.”<sup>10</sup> The Court has thoroughly studied Debtor’s motion and memorandum in support thereof and can deduce no basis for reconsideration of its decision to deny reopening of Debtor’s case. Debtor has stated no basis for relief under 11 U.S.C. § 350(b). Again, Debtor argues and presents nothing new that would cause this Court to change course.

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<sup>7</sup> *CitiMortgage, Inc. v. Spencer*, No. 116,889, 2017 WL 3947343 (Kan. Ct. App. Sept. 8, 2017).

<sup>8</sup> Doc. 126 p.4.

<sup>9</sup> See Doc. 130.

<sup>10</sup> 11 U.S.C. § 350(b).

Debtor's motion for reconsideration<sup>11</sup> is denied in its entirety. Debtor has stated no basis under Rule 60(b) for reconsidering the Court's July 24, 2019 Order.

It is so Ordered.

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ROBERT D. BERGER  
U.S. BANKRUPTCY JUDGE

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<sup>11</sup> Doc. 128.