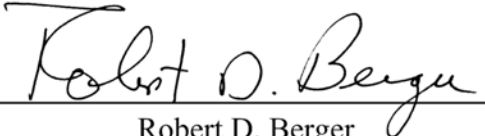




The relief described hereinbelow is SO ORDERED.

SIGNED this 9th day of October, 2019.


Robert D. Berger
United States Bankruptcy Judge

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

In re:

**Bobby Joe Spencer
Diane Wiggins Spencer,**

Case No. 12-20854-13

Debtors.

**Order Denying Debtors' Motion to Reconsider,
Denying Debtors' Motion to Show Cause for Attorneys' Fees, and
Requiring Debtors to File Case Closing Documents**

Self-represented Debtors Bobby and Diane Spencer¹ seek reconsideration of two July 24, 2019, decisions of this Court: (1) the Order denying Debtors' motion for judicial notice and (2) the decision in that Order finding moot Debtors' motion to transfer escrow funds to the Chapter

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

13 trustee.² Debtors have also filed a motion to show cause wherein they seek attorneys fees from CitiMortgage, Inc. for “willful interference” by CitiMortgage into Debtors’ bankruptcy.³ As detailed below, the Court denies both motions and requires Debtors to file their Certificate of Compliance/Motion for Entry of Discharge, or else this case will be closed without entry of discharge.

I. Debtors’ Motion for Reconsideration

Debtors’ motion to reconsider is properly considered either as a 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).⁴ Rule 59(e), however, requires that any motion to alter or amend be filed no later than fourteen days after entry of judgment. Debtors did not file the motion to reconsider within fourteen days of this Court’s July 24, 2019 Order, and the motion (filed sixteen days after the Order, on August 9, 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 reasons that justifies relief.

Relief under Rule 60(b) is “extraordinary and may only be granted in exceptional

² See Doc. 360 (July 24, 2019) (Order Denying Debtors’ Motion for Judicial Notice, Sustaining Debtors’ Objection to the CitiMortgage Proof of Claim, and Resolving Remaining Matters). Debtors’ motion for reconsideration, Doc. 364, and Memorandum in Support, Doc. 365, were filed on August 9, 2019.

³ Doc. 367.

⁴ 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.

circumstances.”⁵ 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.”⁶ “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.”⁷

In Debtors’ motion for reconsideration addressing their prior motion for judicial notice, Debtors continue to pursue the same allegations of malfeasance against creditor CitiMortgage, Inc. that they have 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.⁸ In addition, 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.⁹ The allegations Debtors are making against CitiMortgage are just that—allegations—and are not appropriate for judicial notice. Debtors offer 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 Debtors’ motion for judicial notice and determined it should be denied. Debtors have offered no valid basis for reconsideration of that decision.

In Debtors’ motion for reconsideration addressing the Court’s mootness determination on their motion to transfer escrow funds, Debtors argue that the Court should require CitiMortgage

⁵ *Dronsejko v. Thornton*, 632 F.3d 658, 664 (10th Cir. 2011) (internal quotation marks omitted).

⁶ *Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n.5 (10th Cir. 2000) (internal quotations omitted).

⁷ *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)).

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

⁹ Doc. 360 p.6.

to provide an explanation of its accounting on Debtors' escrow account. But again, the Kansas Court of Appeals has already conclusively established the amount owed by Debtors, including the principal, escrow, and associated fees. Debtors had their opportunity to dispute those amounts in the state court litigation, and did so. Debtors have articulated no cognizable reason that their 2014 motion for determination of escrow issues in this Court should be revived at this point.¹⁰

II. Debtors' Motion to Show Cause for Attorneys' Fees

Debtors' motion to show cause for attorneys' fees alleges several bases for its requested relief. The motion argues that attorneys' fees should be paid by CitiMortgage for willful interference into Debtors' bankruptcy, violating "provisions of 11 U.S.C. [§] 362." The motion also states that Debtors move for their attorneys' fees under "provisions of KSA 60-3323 and Rule 54.2" and that Debtors' qualify as a "prevailing party." Debtors claim CitiMortgage's actions in this bankruptcy case were frivolous and designed to harass Debtors in their reorganization, and that CitiMortgage "interfered" in Debtors' bankruptcy. Debtors seek reimbursement of \$58,869 in attorneys' fees.

Debtors have not stated support for their motion, as their alleged bases for relief simply do not support the request. For example, § 362 governs the bankruptcy automatic stay—it has no relation whatsoever to an award of attorneys' fees. Likewise, § 60-3323 of the Kansas Statutes is entirely inapplicable—it governs attorneys' fees to prevailing parties in actions under the

¹⁰ No Order was entered on the 2014 motion until recently because Debtors did not properly serve the motion with a notice of opportunity to object. *See* Doc. 145 (Order to Correct Defective Pleading). In an effort to clean up the docket in this case, the Court denied the motion as moot due to the intervening 2017 decision of the Kansas Court of Appeals establishing the escrow amount owed. The Court could have, however, also denied the motion simply because the deficiency was never corrected.

Uniform Trade Secrets Act. Rule 54(d)(2) of the Federal Rules of Civil Procedure does govern the *procedure* for requesting attorneys' fees after entry of a judgment, but even it specifies that there must be a "statute, rule, or other grounds entitling the movant to the award." Finally, even if Debtors were a "prevailing party," there must still be some statute or contract entitling them to fees. Debtors seem to acknowledge this in their motion, and state that the note and mortgage at issue in their dispute with CitiMortgage "contain no direct provisions for attorneys' fee in the event[] of a prevailing judgment for the Debtors." There is simply no reason in this case to disturb the well-settled rule that litigants are *not* entitled to collect attorneys' fees from other parties, absent a statutory or contractual basis for doing so.¹¹

III. Conclusion

Debtors' motion for reconsideration¹² is denied in its entirety. Debtors have stated no basis under Rule 60(b) for reconsidering the Court's Order entered on July 24, 2019. Likewise, Debtor's motion to show cause for attorneys' fees¹³ is denied. Debtors have stated no legal support for the Court's award of attorneys' fees.

The Chapter 13 Trustee has filed his Notice of Completion of Plan Payments, indicating that Debtors have completed all payments under their plan.¹⁴ Debtors were also notified therein that they must file a Motion for Discharge within thirty days of that notice, or by November 4, 2019, or else their case may be closed without discharge. The Court reiterates that Debtors should file their end of case documents¹⁵ by that deadline, or the Court will close this case

¹¹ *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975).

¹² Doc. 364.

¹³ Doc. 367.

¹⁴ Doc. 377.

¹⁵ The Chapter 13 Trustee in Wichita, Kansas has a sample form available for the Motion for Entry of Discharge and Certifications required. *See* www.wichita13trustee.com/forms/.

without discharge. The Court also reiterates its prior order from the September 24, 2019 hearing in this case, that the Trustee shall release all wage withholding and distribute funds on hand to Debtors.¹⁶

It is so Ordered.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE

¹⁶ Doc. 374.