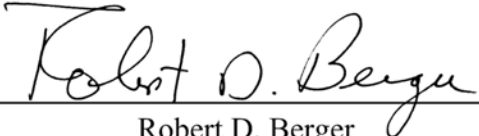


The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 10th day of August, 2020.



  
Robert D. Berger  
United States Bankruptcy Judge

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

In re:

**SCOTT GREGORY HATTRUP,**

Debtor.

Case No. 19-21065

Chapter 13

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**ORDER DENYING MOTION FOR RECONSIDERATION**

Creditor Julia Deng bought debtor Scott Gregory Hatstrup's home (the "Residence") at an IRS auction in 2016. In 2017, Deng obtained an eviction judgment against Hatstrup in a Johnson County, Kansas, district court. Hatstrup appealed the eviction, but the Kansas Court of Appeals affirmed the district court's judgment and the Kansas Supreme Court denied review. On May 14, 2019, the

district court issued a writ of restitution. Ten days later, before the Johnson County sheriff could execute the writ, Hatstrup filed for bankruptcy under Chapter 13.

On April 22, 2020, this Court entered an order<sup>1</sup> granting summary judgment in part on Deng's motion<sup>2</sup> for stay relief and allowing Deng to proceed against Hatstrup as to the Residence in the Kansas state courts. This matter comes before the Court on debtor Scott Gregory Hatstrup's motion for reconsideration of that order.<sup>3</sup> Hatstrup argues that his pending Tenth Circuit appeal in related federal litigation against Deng<sup>4</sup> justifies reconsideration here: according to Hatstrup, to lift the bankruptcy stay during the pendency of his federal appeal "sets up the potential for contradictory rulings [on who has the current right to possession of the Residence] if the Tenth Circuit sends the case back to the District of Kansas for any reason."

A party seeking reconsideration of a dispositive order<sup>5</sup> or judgment must file a motion pursuant to [Fed. R. Civ. P. 59\(e\)](#) or 60. *See* [D. Kan. Rule 7.3\(a\)](#). If the

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<sup>1</sup> [ECF 77](#).

<sup>2</sup> [ECF 18](#) (motion for stay relief); [ECF 36](#) (motion for summary judgment).

<sup>3</sup> [ECF 80](#).

<sup>4</sup> In the federal case, Hatstrup claims that he was denied due process because the IRS did not notify him that the Residence had been sold during the 180-day redemption period provided by [26 U.S.C. § 6337\(b\)\(1\)](#). He seeks injunctive relief under [Kan. Stat. Ann. §§ 60-901](#) and [60-906](#) for the quit-claim deed issued to Deng by the IRS, quiet title relief against Deng under [Kan. Stat. Ann. § 60-1002](#), and a right to redeem the Residence under [Kan. Stat. Ann. § 60-2414\(a\)](#). *See* [ECF 60-2 at 8-9](#).

<sup>5</sup> An order granting relief from the automatic stay is a final order. *See* [Rajala v. Gardner](#), [709 F.3d 1031, 1034-35](#) (10th Cir. 2013); *cf.* [Ritzen Group, Inc. v. Jackson](#)

motion does not cite either rule,<sup>6</sup> as is the case here, the court should look to “the reasons expressed by the movant” in order to characterize the motion. *See Jennings v. Rivers*, [394 F.3d 850, 855](#) (10th Cir. 2005) (clarifying that reasons for, not timing of, motion is determinative). Rule 59(e) applies where a party seeks to alter or amend a judgment; Rule 60 applies where a party seeks relief from the judgment for mistake or other reason.

In this case, reconsideration is not merited under either rule. The existence of Hatstrup’s pending Tenth Circuit appeal does not present “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, [or] (3) the need to correct clear error to prevent manifest injustice,” *Monge v. RG Petro-Machinery (Group) Co. Ltd.*, [701 F.3d 598, 611](#) (10th Cir. 2012) (citations omitted), as would justify relief under Rule 59(e).<sup>7</sup> Nor does the existence of that appeal constitute “exceptional circumstances” as would justify “extraordinary” relief under Rule 60. *See Servants of Paraclete v. Does*, [204 F.3d 1005, 1009](#) (10th Cir. 2000). If

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*Masonry, LLC*, [140 S. Ct. 582](#) (2020) (holding that order denying relief from the automatic stay is a final order).

<sup>6</sup> *Cf. Sanders v. Clemco Indus.*, [852 F.2d 161, 168](#) (8th Cir. 1988) (“This case illustrates the dangers of filing a self-styled ‘motion for reconsideration’ that is not described by any particular rule of federal civil procedure.”); *A.D. Weiss Lithograph Co. v. Ill. Adhesive Prods. Co.*, [705 F.2d 249, 249](#) (7th Cir. 1983) (per curiam) (observing that characterization of motions for reconsideration as either Rule 59(e) or Rule 60 motions is a “recurring question”).

<sup>7</sup> The standard applicable to Rule 59(e) motions also applies to motions for reconsideration of “non-dispositive” orders under the meaning of the local rule. *See D. Kan. Rule 7.3(b)* (providing that a motion to reconsider a non-dispositive order “must be based on: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or manifest injustice”).

execution of the writ of restitution against Hattrup presents any potential for a conflicting ruling by the Tenth Circuit as to possession, this bankruptcy court is not the appropriate forum for that argument. Maintaining the automatic stay as to the Residence on that basis would serve no legitimate bankruptcy purpose.<sup>8</sup> *Cf. In re Premier Auto. Servs., Inc.*, [492 F.3d 274, 281](#) (4th Cir. 2007) (observing that “[h]olding an asset hostage is not a permissible use of the bankruptcy process” and that bankruptcy “is not a procedural vehicle which may be commandeered solely for the purpose of invoking [its] automatic stay”) (second alteration in original) (citation omitted); *In re Horton*, No. 20-00033, [2020 WL 1328796](#), at \*2 (D.D.C. Mar. 19, 2020) (observing that bankruptcy filed to stay eviction pending appeal because debtor could not afford supersedeas bond “served no legitimate bankruptcy purpose”).

Under [11 U.S.C. § 362\(d\)\(1\)](#), a court shall grant stay relief “for cause, including the lack of adequate protection of an interest in property.” Because § 362(d) does not define “cause,” “discretionary relief from the stay must be determined on a case by case basis.” *Pursifull v. Eakin*, [814 F.2d 1501, 1506](#) (10th Cir. 1987) (citation omitted). “The moving party has the burden to show that ‘cause’ exists to lift the stay, after which the burden shifts to a debtor to demonstrate why

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<sup>8</sup> Put differently, Deng’s eviction action against Hattrup arises out of a quitclaim deed, not a monetary debt. Unlike a dispute in which a landlord seeks to evict a tenant for failure to pay rent, the dispute between Hattrup and Deng is not one that can be “cured” with money.

the stay should remain in place.” *In re Busch*, [294 B.R. 137, 140-41](#) (B.A.P. 10th Cir. 2003) (citing [11 U.S.C. § 362\(d\)\(1\), \(g\)](#)).

Here, even assuming that the automatic stay applies in the first instance,<sup>9</sup> there is no genuine dispute as to any material fact<sup>10</sup> regarding the existence of cause for stay relief under § 362(d). Deng’s quitclaim deed from the IRS grants her “all the right, title and interest of [Hattrup]” in the Residence,<sup>11</sup> and Hattrup has exhausted his state appeals of the eviction judgment. He presents no evidence to contradict Deng’s assertion that her interest in the Residence is not adequately protected. He proposes Chapter 13 plan payments of only \$500 per month, which— if he were to prevail in his federal litigation and gain a second opportunity to

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<sup>9</sup> Whether Hattrup had a cognizable property interest in the Residence when he filed for bankruptcy (and thus whether § 362(a)(3) applies to an action to evict him from the Residence) is a matter of state law. See *Butner v. United States*, [440 U.S. 48, 54-55](#) (1979). Compare *48th Street Steakhouse, Inc. v. Rockefeller Group, Inc. (In re 48th Street Steakhouse, Inc.)*, [835 F.2d 427, 430](#) (2d Cir. 1987) (holding that mere possessory interest was protected by the automatic stay), with *In re Perl*, [811 F.3d 1120, 1127-28](#) (9th Cir. 2016) (holding that mere possessory interest was not protected by the automatic stay). However, §§ 362(a)(1) and (a)(2) may also apply to an eviction action against a debtor. Compare Alan M. Ahart, *The Inefficacy of the New Eviction Exceptions to the Automatic Stay*, 80 Am. Bankr. L. J. 125, 146 (2006) (concluding that subsections (a)(1) and (a)(2) apply), with *In re Williams*, [371 B.R. 102, 110](#) (Bankr. E.D. Pa. 2007) (holding that subsections (a)(1) and (a)(2) do not apply). For purposes of Deng’s motions, the Court assumes that the automatic stay applies.

<sup>10</sup> See [Fed. R. Civ. P. 56\(a\)](#), applicable here via [Fed. R. Bankr. P. 7056](#) and [Fed. R. Bankr. P. 9014\(c\)](#).

<sup>11</sup> See [ECF 36-6](#). Hattrup’s reference to *Schwalm v. Deanhardt*, [906 P.2d 167](#) (Kan. Ct. App. 1995), is inapposite. The issue in *Schwalm* was whether a property buyer would be charged with constructive notice of a mortgage based on a recorded quitclaim deed. See *Schwalm*, [906 P.2d at 170-71](#). The case does not suggest that Hattrup had any cognizable property interest in the Residence under Kansas law (especially vis-à-vis Deng) at the time he filed for bankruptcy.

redeem the Residence—would be insufficient to compensate Deng<sup>12</sup> even in the absence of the priority claim filed by the IRS in this case. And he does not appear likely to prevail in the federal litigation; indeed, the federal district court granted summary judgment in Deng’s favor.<sup>13</sup> Cause for stay relief clearly exists under these circumstances. *See, e.g., In re Eclair Bakery Ltd.*, [255 B.R. 121, 136-37](#) (Bankr. S.D.N.Y. 2000); *see also In re Williams*, [144 F.3d 544](#) (7th Cir. 1998) (holding that bankruptcy court did not abuse its discretion in modifying automatic stay to allow forcible-entry action against debtor to proceed).

For these reasons, Hattrup’s motion for reconsideration of this Court’s April 22, 2020, order is denied.<sup>14</sup>

IT IS SO ORDERED.

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<sup>12</sup> Deng paid \$40,000 for the Residence at the IRS auction and \$21,722.75 in real property taxes following the sale. *See* Uncontroverted Statements of Fact ¶¶ 14, 25, [ECF 36](#).

<sup>13</sup> [ECF 60-2](#).

<sup>14</sup> Hattrup’s motion for reconsideration asks for “clarification . . . as to whether any additional hearings are to be allowed in the state case.” [ECF 80 at 3](#). In short: yes. The Court’s April 22, 2020, order granted stay relief as to the Residence—that includes any hearings necessary for Deng to obtain possession of the Residence.