UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re, Auto Money North LLC, Debtor(s).	C/A No. 22-03309-HB Adv. No. 22-80046-HB Chapter 11
Auto Money North LLC, Plaintiff(s), v. Parties Listed on Appendix A to Complaint, and John and Jane Does 1-1000, Defendant(s).	

ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION

THIS MATTER is before the Court on Debtor/Plaintiff Auto Money North, LLC's, Motion seeking reconsideration of this Court's Order entered January 30, 2023. That Order denied Debtor's Motion for an order declaring that 11 U.S.C. § 362(a) prohibits the commencement or continuation of certain litigation (the "North Carolina Litigation") by the parties listed on Appendix A to the Complaint in this Action (the "Named Defendants") and John and Jane Does 1-1000, against an affiliate of Debtor, AutoMoney, Inc. ("AMI"), while Debtor's Chapter 11 case remains pending, and/or entering a preliminary injunction under § 105(a) of the Bankruptcy Code to enjoin the commencement or continuation of any such actions against AMI ("Motion").

This adversary proceeding and the Motion resolved by the Order in question were filed on December 5, 2022, and the underlying bankruptcy case was filed three days prior. Although an Answer to the Complaint was not yet due, per Debtor's request, a hearing was held on the Motion less than a month after the adversary was filed to consider Debtor's expedited requests for preliminary and declaratory relief.

On January 30, 2023, after a lengthy hearing and post-hearing briefing, the Court entered the Order recognizing that pre-prepetition actions prosecuted against the Debtor, as a named defendant, outside this

Court are stayed by the plain language of § 362 without the need for an order. However, based on the record before it, the Court denied the remainder of the relief requested in the Motion. The Court did not expressly consolidate, and no party requested that it consolidate, the hearing on that Motion with a trial on the merits pursuant to Fed. R. Civ. P. 65(a)(2), and at the hearing the parties did not directly address the status of this adversary proceeding should the request for preliminary relief be denied.[1] Since entry of the Order, the Named Defendants have filed an Answer.

Debtor's current Motion asks the Court to reconsider, clarify, or grant rehearing related to the prior Motion and Order ("Motion to Reconsider") on the issue of whether the Named Defendants' actions outside this Court constitute an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The Motion to Reconsider asserts the Court should revisit Debtor's assertion that the automatic stay prohibits pursuit of any individual claim (a) asserting that a title loan purchased by the Debtor from AMI is illegal and voidable or (b) asserting that the Debtor and AMI should bear liability as alter egos of one another, because it is a derivative claim assertable by the Debtor on behalf of the estate. The Motion to Reconsider argues that the Court misunderstood or failed to acknowledge the scope of § 362(a)(3) and the role that it plays in protecting property of Debtor's estate. Debtor "requests that the Court clarify that Section 362(a)(3) stays the actions of all 375 of those Named Defendants who are prosecuting their claims against property of the estate." The Motion to Reconsider references proofs of claim filed in this case in support. Debtor asserts that the claims and other evidence show it is the real party in interest in the North Carolina Litigation and in the disputes between the Named Defendants, Debtor and AMI. Debtor objected to those proofs of claim and asserts that the claim allowance process in this case, together with the prosecution of companion case Adv. Pro. 22-80047-hb, bring the merits of all the North Carolina Litigation before this Court.[2] Debtor asserts that, to prevent a manifest injustice, the Court should reconsider the prior Order, finding that developments that took place after the hearing, and the continued prosecution of the North Carolina Litigation against AMI while the

[1] *See* Transcript p. 31, ln. 4-20; p. 74, ln. 12 – 18; p. 77, ln. 9-15; p.151, ln. 3 – 8.

[2] A separate Notice of Opportunity for Hearing has been served by Debtors in C/A No. 22-3309-hb regarding the objection to claims and if timely responses are filed a hearing will be held. An Answer and Amended Answer, including a Motion to Abstain and Motions to Dismiss, are pending in Adv. Pro. 22-80047-hb, with a briefing schedule.

Debtor's Chapter 11 case remains pending, violate the automatic stay.

Fed. R. Civ. P. 59(e) does not set forth a standard for the Court to grant a motion to alter or amend a judgment. However, the Fourth Circuit recognizes three grounds to amend an earlier judgment: "(1) to accommodate an intervening change in the controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citations omitted), *cert. denied*, 525 U.S. 1104, 119 S. Ct. 869 (Jan. 19, 1999). In considering a Rule 59(e) motion, "the court views the evidence in the light most favorable to the prevailing party." *Gregg v. Ham*, C/A No. 3:08-4040-CMC, 2010 WL 2232208, at *1 (D.S.C. June 3, 2010) (citing *Perrin v. O'Leary*, 36 F. Supp. 2d 265, 266 (D.S.C. 1998)). "In general 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.'" *Pac. Ins. Co.*, 148 F.3d at 403 (quoting 11 Wright et al., *Federal Practice and Procedure*, § 2810.1, at 124 (2d ed. 1995)). A party's mere disagreement with the Court's ruling does not warrant a Rule 59(e) motion. *U.S. ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002). Furthermore, a Rule 59(e) motion does not allow an opportunity to reargue a case. *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5, 128 S. Ct. 2605, 2617 (2008) ("Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.") (quotation marks and citations omitted).

After a careful review of the prior Order, the transcript and exhibits presented at the hearing, the pleadings, case law, and post-hearing portions of the Court's records highlighted by Debtor, the Court denies the Motion for Reconsideration.

The probability that the Named Defendants would file proofs of claim after the hearing as part of the bankruptcy process was not unexpected. The content does not present any unanticipated information that would change the Court's prior analysis. Debtor again requests that the Court should order the stay applicable to any claim pursued outside this Court "asserting that the Debtor and AMI should bear liability as alter egos of one another [because it] is a derivative claim assertable by the Debtor on behalf of the estate, consistent with established Fourth Circuit precedent…." The evidence at the hearing indicated that the

Named Defendants were not pursing such claims in the North Carolina Litigation outside this Court going forward, and the proofs of claim do not alter this evidence. As stated in the Order:

> Debtor expresses concern over the assertion in other courts, or intent to assert, that Debtor and AMI are alter egos of one another and points out that the estate may have similar claims against AMI to assert for the benefit of creditors. This is a stretch of the facts at this stage of this litigation and bankruptcy case. First, this does not appear to be a real threat thus far in the North Carolina Litigation based on the facts before the Court. Second, Debtor has, to the contrary, asserted that it and AMI are two distinct entities and has not given any indication that it intends to pursue any claims on behalf of the estate that the two are alter egos of one another, or anything similar. There is no indication that use of any assets of, or recovery from, AMI is contemplated by Debtor at this stage.

The facts in the record do not support a finding that the automatic stay extends to the Named Defendants' actions against AMI or that the North Carolina Litigation against only AMI is an "act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Considering the fact that proofs of claim were filed in this Court, and after reviewing the content, the Court is not persuaded that it made an error, nor that the Named Defendants are violating the automatic stay based on any evidence in the record. The Order states:

> Debtor argues that North Carolina Litigation against AMI represents impermissible attempts to exercise control over property of the Debtor's estate, and asserts that any actions that seek to decrease the value of the assets of the Debtor are automatically stayed pursuant to § 362(a)(3). This interpretation of the facts before the Court is untenable. As stated above, the Named Defendants agree that a judgment against AMI will not bind the Debtor. Again, *interpretations of law* may result in litigation against AMI or other litigation pending in North Carolina against other similar business models. But that possibility is insufficient to warrant the relief requested under applicable law.

Debtor again argues that "[a]ny individual claim (a) asserting that a title loan purchased by the Debtor from AMI is illegal and voidable," is automatically stayed, and that the "Named Defendants … are prosecuting their claims against property of the estate." In fact, pursuant to the Order and the Bankruptcy Code the Named Defendants may only prosecute any claims they have *against AMI* outside of this bankruptcy case. They are stayed from the prosecution of any claims naming Debtor as a defendant and the North Carolina Litigation is prosecuted against AMI, not against "property of the estate" as characterized by Debtor. As the Order states

> Counsel for the Named Defendants argued that the Motion should be denied because a judgment rendered by a court in North Carolina against AMI is not necessarily a judgment against the Debtor.

> Moreover, counsel for the Named Defendants reasoned in their post-hearing submission that this Court should deny the Motion in part because the doctrines of *res judicata* and collateral estoppel will not apply.

Therefore, while the Named Defendants may be wasting their time and efforts outside this Court pursuing a judgment against AMI only, that is their choice. To collect any alleged prepetition debt asserted in the proofs of claim or otherwise, or to prosecute any claims set forth in the North Carolina Litigation in a manner that will bind the Debtor, the Named Defendants must obtain a judgment or other appropriate relief from this Court and no such relief has been granted to date. Debtors have failed to persuade the Court that reconsideration, clarification, or rehearing is appropriate.

Nothing in the Motion to Reconsider suggests that there has been any intervening change in controlling law in Debtor's favor.[3] The proofs of claim, asserted as new evidence, do not persuade the Court that there is relevant new evidence for the Court to consider. Further, the Court is not persuaded that it made a clear error of law or that there is any manifest injustice to prevent. Rather, the Court disagrees with Debtor's analysis of the facts. It is within the Court's discretion, weighing the credibility of testimony and evidence presented, to determine the findings of fact on which it must base its decision.

Accordingly, **IT IS HEREBY ORDERED** that the Motion to Reconsider is **denied**.

FILED BY THE COURT
03/03/2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Entered: 03/03/2023

Chief US Bankruptcy Judge
District of South Carolina

[3] However, on the same day the Order was entered one authority from the 3rd Circuit cited by Debtor in support was overturned. See *In re LTL Management LLC*, 22-2003 (3d Cir. Jan. 30, 2023).