UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Andrea K. Shader, **Chapter 7 Case**
Debtor. **# 10-10480**

ORDER

DENYING MOTION TO RECONSIDER ORDER RULING THAT THE AUTOMATIC STAY WILL NOT BE REIMPOSED UPON REOPENING OF THIS CASE AND ALLOWING STATE COURT FORECLOSURE ACTION TO PROCEED AGAINST DEBTOR'S PROPERTY

On March 26, 2014, the Court conditionally granted the Debtor's motion to reopen her Chapter 7 case for the purpose of commencing an action in this Court against Brattleboro Savings & Loan ("BSL") and River Valley Credit Union ("RVCU"), seeking damages for alleged violations of both the automatic stay and discharge injunction based upon their actions relating to debts secured by the Debtor's residence (doc. # 97) (the "Order"). The Order provided that the automatic stay would not be reimposed upon the reopening of the case "as to BSL's foreclosure action in state court against property of the estate, and that foreclosure litigation may proceed to the extent that BSL seeks relief solely against the property."

On April 3, 2014, the Debtor filed a motion asking this Court to reconsider its ruling allowing the foreclosure action to proceed (doc. # 100) (the "Motion"). In her Motion, the Debtor first argues that BSL and RVCU failed to meet their burden of proving that they were entitled to relief from stay, as they only addressed it in one paragraph of their objections to the motion to reopen, and did not make the requisite showing under 11 U.S.C. § 362. She further alleges that she recalls the Court asserting at the February 7 hearing that the automatic stay is automatically reimposed upon reopening of a bankruptcy case, that the Court's statement was dispositive of the issue, and that, given her *pro se* status, she did not understand that she was under any obligation to object. Moreover, she asserts, when the issue was raised at the March 21 hearing, the Court did not respond. Therefore, she assumed that the Court's earlier "ruling" controlled. Additionally, the Debtor raises arguments as to the validity of BSL and RVCU's mortgages and her liability under the notes.

BSL filed an objection to the Motion (doc. # 101), asserting that the Debtor had misconstrued the Court's ruling as one granting relief from stay, when in fact the Court merely held that the stay was not reimposed as to BSL. BSL also points out that its request for relief and the Court's Order clearly articulated this distinction.

Although the issue was briefly addressed at the February 7th hearing, BSL counsel merely noted that (1) the state court judge who was presiding over the pending foreclosure action did not believe the filing of the motion to reopen the bankruptcy case instituted the stay, and (2) he mentioned this fact as it tangentially related to his request that the stay not be reimposed as to the foreclosure action if the case was reopened. Counsel then reiterated his request that the Court's order on the Motion to reopen clarify the extent of the stay. He also asserted that he did not believe the Court needed to take any action at that time, as the hearing was merely being continued to a later date to afford the parties an opportunity to supplement their pleadings. In response, the Court simply noted that the state court judge's conclusion - that the mere filing of the motion to reopen did not have the effect of reimposing any stay - was correct.

In its response to the Debtor's supplement to her motion to reopen, BSL again requested that the stay not extend to its foreclosure action if the Court reopened the case (doc. # 92). At the March 21st hearing, counsel for BSL again reiterated this request with particular clarity. The Debtor did not respond to this point and the Court made no statement on the issue. Rather, immediately following this request by BSL's counsel with respect to the scope of the reimposed stay, the Debtor presented arguments focused on the issue of whether the creditors' conduct had violated the Bankruptcy Code. In fact, the Debtor never asked that the stay be reimposed to halt the foreclosure action in either the motion to reopen or any of her supplemental pleadings, and never responded to the issue at all, at either of the hearings.

BSL correctly points out in its opposition to reconsideration that the issue before the Court has never been whether BSL was entitled to relief from stay, but rather whether the automatic stay should be reimposed as to its foreclosure action if the Court granted the Debtor's motion to reopen this case. This case was reopened solely for the Debtor to pursue her claim for damages. That is what the Debtor requested and what the Court granted.

The Debtor has not introduced any new evidence or pointed out any error of law warranting reconsideration of the Court's decision as is required by Federal Rule of Civil Procedure 60, applicable here pursuant to Bankruptcy Rule 9024. Having considered the averments in the motion to reconsider, the Court remains convinced that it is not appropriate that the automatic stay be reimposed as to BSL's foreclosure action, to the extent that it seeks relief solely against the property.

Lastly, the Court turns to the Debtor's *pro se* status and what might be construed as her argument that the decision should be vacated, under Rule 60, because she did not understand and made a mistake. As the Debtor acknowledges in the Motion, the Court has already afforded this *pro se* Debtor "latitude and courtesies." As noted in its March 26th order, the Debtor "is not the typical *pro se* party. Rather, she appears to be well-versed in the applicable law and has made several complex legal arguments on her behalf." There was nothing particularly complex in the Court's comment about reimposition of the stay as to the state court foreclosure action at the February 7th hearing and the Debtor did not respond to it.

The Court is persuaded the Debtor comprehended what the issues were and what type of relief BSL was seeking prior to this Court rendering its decision. The Court finds the Debtor's assertions attributing her failure to object, alleged reliance upon the Court's statements, and resulting mistake with respect to reimposition of the stay to be both disingenuous and unpersuasive. Consequently, her appeal to the Court based upon her alleged misunderstanding, due to a lack of legal expertise or representation, or mistake, to be unavailing.

Based upon the foregoing, THE COURT FINDS that

(1) the Debtor's motion to reopen asked solely to have the case reopened so the Debtor could pursue stay violation damages against two banks, and did not ask for a stay of the related foreclosure action,

(2) the Debtor never objected to BSL's request that if the case was reopened the stay not be reimposed as to its state court foreclosure action,

(3) the Debtor has not presented any new facts or demonstrated any error of law in the decision she seeks to have reconsidered, and

(4) the Debtor has failed to show that she made a mistake, or was precluded from raising an argument in opposition to BSL's request, based upon her *pro se* status.

The Court therefore concludes that the Debtor's arguments are insufficient to warrant reconsideration of its prior ruling. See Horsehead Resource Dev. Co., Inc. v. B.U.S. Envtl. Serv., Inc., 928 F.Supp. 287, 289 (S.D.N.Y. 1996) (stating that a motion for reconsideration cannot be used to "plug gaps in an original argument"); Davey v. Dolan, 496 F.Supp.2d 387, 389 (S.D.N.Y. 2007) ("A motion to reconsider is not a motion to reargue those issues already considered when a party does not like the way the original motion was resolved.").

Accordingly, IT IS HEREBY ORDERED that the Debtor's Motion is DENIED.

IT IS FURTHER ORDERED that the Debtor's objections to BSL obtaining relief from stay, under § 362(d), are OVERRULED as inapposite and moot at this time. The stay lifted when the Debtor received her Chapter 7 discharge, and pursuant to the Court's order that is the subject of the Motion, the stay was not reimposed against BSL upon the reopening of the case.

SO ORDERED.

April 9, 2014
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge