

Formatted for Electronic Distribution

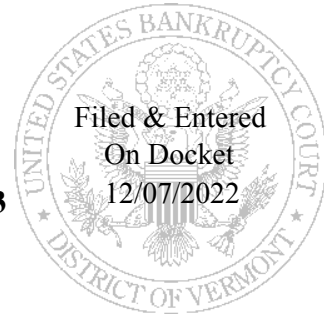
Not for Publication

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Robert Poulin,
Debtor.**

**Case No. 22-10153
Chapter 7**



ORDER

DENYING DEBTOR’S MOTION TO RECONSIDER AND EMERGENCY STAY REQUEST

On December 6, 2022, the Court held a hearing on the Debtor’s Motion for Reconsideration on its November 18, 2022 dismissal of this case and on the Debtor’s Emergency Motion to Impose the Automatic Stay. For the reasons set forth below, the Court denies each of the Debtor’s requests.

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(1).

PROCEDURAL HISTORY

This is the Debtor’s second filing in two months. On September 21, 2022, Robert Poulin (the “Debtor”) filed a Chapter 13 case that was assigned Docket No. 22-10128 (doc. # 1) (the “September Case”). The Debtor’s initial filing lacked various requisite documents. Fed.R.Bankr.P. 1007. Accordingly, the Court issued a Deficiency Notice alerting the Debtor that he needed to file additional documents, including: a Mailing Matrix, an updated Voluntary Petition Form 101, a Chapter 13 Plan, a Certificate of Credit Counseling, the Means Test Calculation Form 122C-2, Pay Stubs/Advices with Cover Sheet, a Schedule C, a Statement of Financial Affairs, Wage Withholding/Automatic Debits from Bank Account Authorization or a request for Waiver of Wage Withholding/Automatic Debits from Bank Account (doc. # 8).

The Deficiency Notice alerted the Debtor that his Mailing Matrix was due by September 28, 2022, and the remaining documents needed to be filed by October 5, 2022 (doc. # 8). While the Debtor filed the Mailing Matrix on September 28, 2022 (doc. # 16), he filed no additional documents. On October 6, 2022, the Court issued a Notice of Hearing for the Debtor to appear and show cause as to why the case should not be dismissed for failure to file the missing documentation (doc. # 21). The hearing was set for October 18, 2022.

At the outset of the September Case, the Debtor applied to pay the filing fee in installments

(doc. # 2), which the Court granted (doc. # 3). The first installment was due on or before October 3, 2022 (doc. # 3). On October 6, 2022, the Court issued a Notice of Hearing for the Debtor to appear and show cause as to why the case should not be dismissed for failure to pay the first installment of the filing fee (doc. # 22). The hearing was also set for October 18, 2022.

On October 12, 2022, the Debtor filed a Notice to Convert his case from Chapter 13 to Chapter 7 (doc. # 25). As of October 12, 2022, the Debtor had not filed any documents to address the deficiency notice sent by the Court on September 21, 2022 (other than his Mailing Matrix) and had not paid either the first installment of the filing fee or the fee for conversion from Chapter 13 to Chapter 7.

The Court held a hearing on October 18, 2022, at which the Debtor did not appear. Based upon the record, the Court dismissed the September Case (doc. # 33).

On November 7, 2022, the Debtor filed the above-referenced case under Chapter 7 (doc. # 1) (the “November Case”). Also on November 7, 2022, the Debtor filed an Application to Have the Filing Fee Waived (doc. # 2) and an Emergency Motion to Impose the Automatic Stay (doc. # 3). On November 8, 2022, the Court issued a Deficiency Notice for the Debtor to file his Mailing Matrix by November 15, 2022, and all Statements and Schedules, a Certificate of Credit Counseling, Pay Stubs/Advices with cover sheet no later than November 21, 2022 (doc. # 5). The Court issued a Notice of Hearing for November 18, 2022, directing the Debtor to appear and show cause as to why the case should not be dismissed for failure to file a Master Mailing Matrix (doc. # 6). The Court held a hearing on November 18, 2022, at which the Debtor did not appear. Based upon the record, the Court dismissed the November Case (doc. # 10).

On November 21, 2022, the Debtor filed a handwritten letter to the Court admitting that he had received the Deficiency Notice and asked the Court not to dismiss his case (doc. # 13). The Court received this letter after the November Case had been dismissed and accordingly, treats it as a Motion to Reconsider. The Court set it for hearing on December 6, 2022.

On November 28, 2022, the Debtor filed an Emergency Motion to Impose the Automatic Stay (the “Emergency Motion”) (doc. # 16). The Debtor noted in his motion that his paperwork was not filed in a timely manner. There is no indication in the record that the Emergency Motion was served upon any of the Debtor’s creditors. The Debtor did not file any additional documents.

The Court held the December 6 hearing, and the Debtor did not appear.

DISCUSSION

The standard for granting a motion to reconsider is strict. *Shrader v. CSX Transp., Inc.*, 70

F.3d 255, 257 (2d Cir. 1995). The Federal Rule of Civil Procedure 60, made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024, provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed.R.Civ.P. 60(b). The rule “strikes a balance between serving the ends of justice and preserving the finality of judgments.” *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). “A motion for relief from judgment is generally not favored and is properly granted only upon a showing of exceptional circumstances.” *United States v. Int’l Bhd. of Teamsters*, 247 F.3d 370, 391 (2d Cir. 2001). “[R]econsideration will generally be denied unless the moving party can point to . . . data that the court overlooked.” *Shrader* 70 F.3d at 257.

“The burden is on the moving party to demonstrate that it is entitled to relief, and courts generally require that the evidence in support of the motion to vacate a final judgment be highly convincing.” *Thai-Lao Lignite (Thailand) Co., Ltd. v. Gov’t of Lao People’s Democratic Republic*, 864 F.3d 172, 182 (2d Cir. 2017). Motions under Rule 60(b) are addressed to the sound discretion of the court. *Stevens v. Miller*, 676 F.3d 62, 67 (2d Cir. 2012).

In his November request, the Debtor asked the Court to not dismiss his case and set forth reasons why he believed his case should not be dismissed (doc. #13). Because the Court had entered a final order dismissing his case, the Court interpreted the Debtor’s request as a Motion for Reconsideration under Fed.R.Civ.P. 60(b). While the Motion to Reconsider did not include attached evidence that specifically related to the Debtor’s failure to file a Master Mailing Matrix, the Court set it for hearing to allow the Debtor an opportunity to be heard. The Debtor did not appear and based upon the record in this case, the Court denies the Motion to Reconsider based

upon the Debtor's failure to demonstrate that he is entitled to relief. *Thai-Lao Lignite (Thailand) Co., Ltd.*, 864 F.3d at 182.


The Debtor filed his Emergency Motion on November 28, 2022, after the Court had already dismissed the case. Thus, the Court denies the Emergency Motion as moot.

CONCLUSION

For the reasons set forth above, the Court denies the Debtor's Motion to Reconsider based upon his failure to demonstrate that he is entitled to relief and the Debtor's Emergency Motion to Impose the Automatic Stay as moot.

SO ORDERED.

December 7, 2022
Burlington, Vermont



Hon. Heather Z. Cooper
United States Bankruptcy Judge