

FEB 02 2012

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-11-1162-MkCaPa
)		
EDGART F. GONZALEZ,)	Bk. No.	08-16921-ER
)		
Debtor.)	Adv. No.	08-01756-ER
)		
EDGART F. GONZALEZ,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
AURORA LOAN SERVICES LLC,)		
)		
Appellee.)		
)		

Submitted without Oral Argument on
January 19, 2012, at Pasadena, California**

Filed - February 2, 2012

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Ernest M. Robles, Bankruptcy Judge, Presiding

*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

**This appeal was originally set for oral argument on January 19, 2012. On the eve of oral argument, Appellant advised the Panel in writing that he intended to submit his position on his brief. He then did not appear at oral argument. At the time scheduled for oral argument, Brian A. Paino of Pite Duncan, LLP appeared on behalf of Appellee Aurora Loan Services LLC, but did not argue.

1 Before: MARKELL, CASE,^{***} and PAPPAS, Bankruptcy Judges.

2 **INTRODUCTION**

3 Chapter 7¹ debtor Edgart F. Gonzalez ("Gonzalez") appeals
4 the bankruptcy court's order expunging a lis pendens recorded² in
5 connection with an adversary proceeding in his bankruptcy case.
6 He also appeals the bankruptcy court's order denying his motion
7 for reconsideration. We AFFIRM.

8 **FACTS³**

9 **The Wave Property**

10 On March 21, 2006, Gonzalez obtained a loan from Homecomings

11
12 ^{***}The Honorable Charles G. Case, II, United States
13 Bankruptcy Judge for the District of Arizona, sitting by
14 designation.

14 ¹Unless specified otherwise, all "Chapter" and "Section"
15 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
16 "Rule" references are to the Federal Rules of Bankruptcy
17 Procedure, Rules 1001-9037, all "Civil Rule" references are to
18 the Federal Rules of Civil Procedure, Rules 1-86, and all
19 "Evidence Rule" references are to the Federal Rules of Evidence,
20 Rules 101-1103.

21 ²Neither party included a copy of the recorded lis pendens
22 in its excerpts of record. The parties also devoted significant
23 portions of their briefs and their excerpts of record to issues
24 we have previously disposed of. Accordingly, we have exercised
25 our discretion to independently review the bankruptcy court's
26 electronic docket, and the imaged documents attached thereto.
27 See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.),
28 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase Manhattan
Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP
2003).

25 ³In one of Gonzalez's previous appeals, we issued a
26 memorandum decision that contains a more extensive discussion of
27 the facts relating to Gonzalez's bankruptcy case and the
28 adversary proceeding from which this appeal arises. Gonzalez v.
HSBC USA Nat'l Ass'n, No. CC-10-1054 (9th Cir. BAP Oct. 20,
2010). We include here only those facts which directly pertain
to the issues properly before this Panel.

1 Financial ("Homecomings"), secured by a first deed of trust
2 against real property located in Laguna Beach, CA (the "Wave
3 Property"). Homecomings Financial Network, Inc. ("Homecomings")
4 was the lender and Mortgage Electronic Registration Systems, Inc.
5 ("MERS") was named as the beneficiary under the deed of trust.

6 **The Bankruptcy Case**

7 Acting pro se,⁴ Gonzalez filed a Chapter 7 bankruptcy
8 petition on May 19, 2008. He listed an ownership interest in the
9 Wave Property on his schedule A. On July 22, 2008, Aurora Loan
10 Services LLC ("Aurora"), as servicing agent for MERS, moved for
11 relief from stay as to the Wave Property. After a hearing, the
12 bankruptcy court granted the motion. Gonzalez attempted to
13 appeal that relief from stay order to this Panel. The Panel
14 dismissed that untimely appeal for lack of jurisdiction. Order
15 Dismissing Appeal for Lack of Jurisdiction, Gonzalez v. Aurora
16 Loan Services, No. CC-10-1079 (9th Cir. BAP May 13, 2010).
17 Gonzalez's attempted appeal of that order to the Ninth Circuit
18 was also untimely and dismissed for lack of jurisdiction. Order,
19 Gonzalez v. Aurora Loan Services, No. 11-60034 (9th Cir. June 29,
20 2011).

21 **The Adversary Proceeding**

22 Still acting pro se⁵, Gonzalez filed a verified complaint
23 (the "Verified Complaint") on September 16, 2008. In the
24 Verified Complaint Gonzalez objected to secured claims against
25 _____

26 ⁴Jerome Edelman ("Edelman") substituted in as counsel in the
bankruptcy case on July 24, 2008.

27 ⁵Edelman did not substitute in as counsel in the adversary
28 proceeding until April 2, 2009.

1 various lenders, including Aurora; Gonzalez also asserted a
2 variety of claims, including (1) misrepresentation, (2) breach of
3 contract, (3) violation of California law, (4-5) failure to
4 timely provide the Truth in Lending Act ("TILA"), 15 U.S.C.
5 § 1635, disclosure statements and notices of right to rescind,
6 (6) failure to disclose broker fees as finance charges,
7 (7) failure to disclose appraisal fees as finance charges,
8 (8) unreasonable and non-bona fide document preparation charges,
9 (9-10) unreasonable and non-bona fide recording and title
10 charges, (11-12) lenders inaccurate material disclosures,
11 (13) failure to honor debtor's rescission notice, (14-17) fraud
12 for standing and/or subject-matter jurisdiction on: relief from
13 the automatic stay, the foreclosure, the trustee sale, and the
14 eviction proceedings, and (18) preclusion of trustee sale.

15 Among the relief sought in the Verified Complaint was:

16 -a declaration "that the plaintiff has validly rescinded the
17 transactions, that the defendant's security interests are
18 therefore void and the defendant's secured claims are
19 disallowed";

20 -a declaration "that the defendant's failure to honor the
21 plaintiff's valid rescission notice in accordance with the
22 dictates of 15 U.S.C. § 1635 and California Law vests in the
23 plaintiff the right to retain the net loan proceeds and that the
24 defendants have no allowable unsecured claims";

25 -"an order discharging the defendant's second deeds of
26 trust";

27 -"an order requiring the defendants to refund to the
28 plaintiff all money paid to the defendants in connection with the

1 transactions”;

2 -damages and reasonable attorney’s fees and costs; and

3 -cancellation of judgments against the properties and any

4 action for any relief, foreclosure, sale, or eviction. Verified

5 Compl. ¶ 125.

6 On January 21, 2009, Gonzalez filed a first amended verified
7 complaint (the “Amended Complaint”). In the Amended Complaint,
8 Gonzalez objected to secured claims, reasserted his previous
9 causes of action, and prayed for relief similar to that requested
10 in the first complaint.⁶

11 Aurora moved to dismiss the adversary proceeding,⁷
12 challenging Gonzalez’s standing, the bankruptcy court’s subject-
13 matter jurisdiction, the sufficiency of Gonzalez’s claims under
14 Civil Rule 12(b)(6), and the adequacy of service of process.
15 After a hearing, the bankruptcy court granted Aurora’s motion,
16 concluding that dismissal was warranted for insufficient service
17 of process, and that even if Gonzalez had properly served the
18 defendants, dismissal was appropriate for failure to state a
19 claim upon which relief could be granted.

20 Gonzalez timely appealed the bankruptcy court’s orders of
21 dismissal as to all defendants. We affirmed. Gonzalez v. HSBC
22 USA Nat’l Ass’n, No. CC-10-1054 (9th Cir. BAP Oct. 20, 2010).

24 ⁶In particular, the relief sought in Amended Complaint
25 included a request that the bankruptcy court “refer th[e] matter
26 for changes in the rules of civil procedure.” Amended Compl.
26 ¶ 125.

27 ⁷Other defendants also moved to dismiss Gonzalez’s
28 complaint, and the bankruptcy court eventually dismissed the
adversary proceeding as against all defendants.

1 This Panel also denied Gonzalez's motion for rehearing. Order
2 Denying Motion for Reconsideration and Request for Judicial
3 Notice, Gonzalez v. HSBC USA Nat'l Ass'n, No. CC-10-1054 (9th
4 Cir. BAP Nov. 9, 2010). Gonzalez has since appealed the Panel's
5 decision to affirm the bankruptcy court's order of dismissal to
6 the Ninth Circuit. Gonzalez v. HSBC USA Nat'l Ass'n, No. 11-
7 60027. That appeal is still pending.

8 **The Lis Pendens**

9 On June 23, 2009, Gonzalez filed a "Request for Hearing,
10 Notice of Motion and Motion to Sign Court Approval [sic] for Lis
11 Pendens Filing on Real Estate Properties" (the "Lis Pendens
12 Motion"). The bankruptcy court granted the Lis Pendens Motion in
13 part, and denied it, in part. In the order, the bankruptcy court
14 instructed Gonzalez to re-lodge notices of pendency of action,
15 naming only those defendants as to which the bankruptcy court had
16 not already dismissed Gonzalez's complaint.⁸

17 On September 18, 2009, Gonzalez re-filed a notice of
18 pendency of action, naming EMC Mortgage, Home Capital Funding,
19 First American Loan, Quality Loan, and MERS as defendants in the
20 pending adversary proceeding. The bankruptcy court approved the

21
22 ⁸As of the date of the Lis Pendens Motion, the bankruptcy
23 court had dismissed the adversary proceeding as against U.S.
24 Bancorp, HSBC Bank USA National Association, Wells Fargo Home
25 Mortgage, Aurora, National City Bank, Residential Services
26 Validation Publications, Homecomings Financial, Mandalay Mortgage
27 LLC, and ETS LLC. The only remaining defendants were EMC
28 Mortgage Corporation ("EMC Mortgage"), Home Capital Funding
("Home Capital"), First American Title Insurance Company - First
American Loanstar Trustee Services ("First American"), National
City, Quality Loan Service Corporation ("Quality Loan"), and
MERS. The adversary proceeding was subsequently dismissed as to
these remaining defendants.

1 notice for recordation on September 29, 2009. The notice was
2 recorded against the Wave Property on October 6, 2009 (the "Lis
3 Pendens").

4 On January 14, 2011, Aurora moved to expunge the Lis
5 Pendens. Gonzalez opposed the motion, seeking mostly to
6 resurrect the claims he asserted in the Amended Complaint. The
7 bankruptcy court heard Aurora's motion on March 1, 2011.

8 As he had in his opposition, Gonzalez made numerous
9 arguments at the hearing, arguments which the bankruptcy court
10 and this Panel have previously rejected. He argued that
11 established law required a party seeking foreclosure to be the
12 holder of the corresponding promissory note. He contended the
13 chain of title upon which the defendants based their claims
14 against, or interests in, the subject properties was defective.
15 He also raised the same issues of standing, subject matter
16 jurisdiction, fraud, and TILA violations that he had already
17 presented in his complaints.

18 At the conclusion of the hearing, the bankruptcy court
19 rejected Gonzalez's arguments and adopted its tentative ruling:

20 In the instant case, there is a pending appeal before the
21 Ninth Circuit. Notwithstanding, not only has Debtor lost
22 before this Court, the BAP has affirmed this Court's
23 decisions. Moreover, this Court has not been presented
24 with any arguments not already presented by Debtor which
would lead it to conclude that the Ninth Circuit will
reverse the BAP and this Court. Consequently, based on
Mix, the Court grants the Motion and expunges the lis
pendens recorded against the Property.

25 Bk. Dkt. No. 278. The bankruptcy court entered the order
26 expunging the Lis Pendens on March 16, 2011.

27 Gonzalez moved for reconsideration (the "Motion for
28 Reconsideration") of order expunging the Lis Pendens under Civil

1 Rule 60(b). In the motion, Gonzalez again presented the same
2 arguments as before, challenging the bankruptcy court's subject
3 matter jurisdiction, raising issues of standing, reasserting his
4 various TILA claims, reiterating the supposed California law that
5 requires the party seeking foreclosure against a property to be
6 the holder of the corresponding promissory note, and praying that
7 the bankruptcy court "overrule the dismissal of the amended
8 complaint against all defendants." Pl.'s Mot. for
9 Reconsideration at 25. In short, Gonzalez's Motion for
10 Reconsideration did not introduce anything he had not already
11 attempted to litigate.

12 Treating Gonzalez's Motion for Reconsideration as one to
13 alter or amend judgment under Civil Rule 59(e), made applicable
14 to adversary proceedings by Rule 9023, the bankruptcy court
15 denied the motion. The bankruptcy court determined that
16 reconsideration would be inappropriate, as Gonzalez had merely
17 restated the same arguments the bankruptcy court had previously
18 rejected, failed to establish any manifest error of fact or law,
19 and did not offer newly discovered evidence.

20 Gonzalez timely appealed the bankruptcy court's order
21 expunging the Lis Pendens and the bankruptcy court's order
22 denying reconsideration.⁹

23 JURISDICTION

24 The bankruptcy court had jurisdiction under 28 U.S.C.
25

26 ⁹The bankruptcy court entered its order expunging the Lis
27 Pendens on March 16, 2011 and its order denying Gonzalez's motion
28 for reconsideration on March 18, 2011. Gonzalez filed a timely
notice of appeal on April 1, 2011. See Rule 8002(b).

1 §§ 1334 and 157(b)(1). We address our jurisdiction under 28
2 U.S.C. § 158 below.

3 ISSUES

4 1. Does the Panel have jurisdiction over this appeal?

5 2. Did the bankruptcy court err when it granted Aurora's
6 motion to expunge the Lis Pendens?

7 3. Did the bankruptcy court abuse its discretion when it
8 denied Gonzalez's Motion for Reconsideration?

9 STANDARDS OF REVIEW

10 When there is a question as to our jurisdiction, we are
11 entitled to raise that issue sua sponte and address it de novo.
12 Giesbrecht v. Fitzgerald (In re Giesbrecht), 429 B.R. 682, 687
13 (9th Cir. BAP 2010) (citing Menk v. Lapaqlia (In re Menk),
14 241 B.R. 896, 903 (9th Cir. BAP 1999)).

15 We review a bankruptcy court's order to expunge a lis
16 pendens for abuse of discretion. Weston v. Rodriguez, 110 B.R.
17 452, 460 (E.D. Cal. 1989) (citations omitted), aff'd, 967 F.2d
18 596 (9th Cir. 1992) (unpublished table decision).

19 We apply the same standard of review to a bankruptcy court's
20 ruling on a motion to alter or amend judgment. Arrow Elecs.,
21 Inc. v. Justus (In re Kaypro), 218 F.3d 1070, 1077 (9th Cir.
22 2000).

23 The abuse of discretion standard has two prongs: "first,
24 whether the court applied the correct legal standard; and second,
25 whether the factual findings supporting the legal analysis were
26 clearly erroneous." Veal v. Am. Home Mortg. Servicing (In re
27 Veal), 450 B.R. 897, 915 (9th Cir. BAP 2011) (citing United
28 States v. Hinkson, 585 F.3d 1247, 1261-63 (9th Cir. 2009) (en

1 banc)). Where a bankruptcy court has failed to apply the correct
2 legal standard, "it has 'necessarily abuse[d] its discretion.'" Id.
3 (citing Hinkson, 585 F.3d at 1261-63) (modifications in
4 original). We review this prong of the analysis de novo. Id.
5 Where a bankruptcy court has applied the correct legal standard,
6 "the inquiry then moves to whether the factual findings made were
7 clearly erroneous." Id. (citing Hinkson, 585 F.3d at 1262). A
8 bankruptcy court's findings of fact are clearly erroneous if they
9 are "'illogical, implausible, or without support in inferences
10 that may be drawn from the record.'" Id. (citing Hinkson,
11 585 F.3d at 1263). See also Rule 8013.

12 DISCUSSION

13 A. The order expunging the Lis Pendens.

14 1. Jurisdictional issues.

15 Appellate courts have jurisdiction over appeals from final
16 orders. 28 U.S.C. § 158. "A disposition is final if it contains
17 a complete adjudication, that is, a full adjudication of the
18 issues at bar, and clearly evidences the judge's intention that
19 it be the court's final act in the matter." Slimick v. Silva
20 (In re Slimick), 928 F.2d 304, 307 (9th Cir. 1990) (internal
21 citations and quotations omitted). This standard varies slightly
22 in bankruptcy proceedings, where a complete act of adjudication
23 need not end the entire case, but only "end any of the interim
24 disputes from which the appeal would lie." Id. at 307 n.1
25 (citations omitted). In bankruptcy cases, then, an order may be
26 considered final if it (a) resolves and seriously affects
27 substantive rights and (b) finally determines the discrete issue
28 as to which the order relates. Bonham v. Compton (In re Bonham),

1 229 F.3d 750, 761 (9th Cir. 2000) (citations omitted).

2 On appeal, Aurora offers several arguments as to this
3 Panel's jurisdiction over this appeal. First, Aurora contends
4 that we lack jurisdiction because the order expunging the Lis
5 Pendens is an interlocutory order and thus unappealable, being
6 neither a final order nor a collateral order. Second, Aurora
7 asserts that we lack jurisdiction because Gonzalez did not file
8 for leave to appeal an interlocutory order. Last, Aurora asserts
9 that Gonzalez did not comply with California's requirements for
10 seeking review of an expungement order.

11 We agree with Aurora in that an order expunging a lis
12 pendens is typically interlocutory and therefore unappealable, as
13 it requires us to assess the merits of the underlying claim.
14 See Orange County v. Hongkong & Shanghai Banking Corp. Ltd.,
15 52 F.3d 821, 823 (9th Cir. 1995); Pac. Horizons, Inc. v. Erickson
16 (In re Pac. Horizons, Inc.), 37 B.R. 653, 655 (9th Cir. BAP
17 1984). Here, however, the bankruptcy court's order fully
18 determined Gonzalez's right to maintain the recorded Lis Pendens
19 as the underlying adversary proceeding had been dismissed.

20 For this reason, we have jurisdiction under 28 U.S.C. § 158
21 to address the merits.¹⁰

22 **2. The merits.**

23 Under California law, "a court shall order that the notice
24 [of pendency of action] be expunged if the court finds that the
25 claimant has not established by a preponderance of the evidence
26

27 ¹⁰Accordingly, we need not address Aurora's remaining
28 arguments on this issue.

1 the probable validity of the real property claim." Cal. Civ.
2 Proc. Code § 405.32. See also Cal. Civ. Proc. Code § 405.30
3 (claimant bears the burden of proof under section 405.32). The
4 statute "requires the court to evaluate the merits of the
5 underlying claim." Orange County, 52 F.3d at 824. Where a
6 "claimant loses at trial, the lis pendens must be expunged unless
7 the trial court is willing to find that the probabilities are
8 that its own decision will be reversed on appeal." Mix v.
9 Superior Ct., 124 Cal. App. 4th 987, 996 (2004).

10 Correctly applying California law, the bankruptcy court
11 found that the probabilities did not weigh in favor of a reversal
12 of its decision on appeal. Observing the law of the case, the
13 bankruptcy court properly based its finding on its order
14 dismissing the adversary proceeding and this Panel's decision to
15 affirm that order.

16 On appeal, Gonzalez nonetheless argues that he established
17 the probable validity of a real property claim as required by
18 California law. We disagree.

19 As was the bankruptcy court, we are bound by the law of the
20 case. See Minidoka Irrigation Dist. v. Dep't of Interior,
21 406 F.3d 567, 573 (9th Cir. 2005) ("Under the law of the case
22 doctrine, a court is ordinarily precluded from reexamining an
23 issue previously decided by the same court, or a higher court, in
24 the same case.") (internal citations and quotations omitted).¹¹

25
26 ¹¹There are three exceptions to the law of the case
27 doctrine: "(1) the decision is clearly erroneous and its
28 enforcement would work a manifest injustice, (2) intervening
controlling authority makes reconsideration appropriate, or
(continued...)

1 Given that we have affirmed the bankruptcy court's dismissal of
2 the adversary proceeding in which Gonzalez asserted claims
3 relating to the Wave Property, we are neither in a position to
4 revisit our previous decision nor to disturb the bankruptcy
5 court's findings here. Thus, we may not reassess the viability
6 of Gonzalez's claims, an issue as to which he must have
7 established a probable validity in order to prevail on Aurora's
8 motion to expunge the Lis Pendens, because the bankruptcy court
9 and this Panel have already determined that he has no claims.

10 We also note that the bankruptcy court's dismissal of the
11 adversary proceeding alone would have rendered the Lis Pendens
12 ineffective. See 3 Witkin, Cal. Proc. 5th, Actions, § 388[7]
13 (2010) ("The lis pendens is incidental to the action in which it
14 is filed"). The Lis Pendens referenced the adversary
15 proceeding which named EMC Mortgage, Home Capital Funding, First
16 American Loan, Quality Loan, and MERS as defendants. The
17 bankruptcy court dismissed the adversary proceeding not only as
18 to those defendants, but as to all defendants. Upon dismissal of
19 the adversary proceeding, then, there was no underlying action as
20 to which the Lis Pendens could relate.

21 _____
22 ¹¹(...continued)
23 (3) substantially different evidence was adduced at a subsequent
24 trial." Minidoka Irrigation Dist., 406 F.3d at 573 (internal
25 citations and quotations omitted). Gonzalez has waived the
26 argument that any of these exceptions apply, as the record does
27 not show that he properly raised any such argument before the
28 bankruptcy court. See Ellsworth v. Lifescape Med. Assocs., P.C.
(In re Ellsworth), 455 B.R. 904, 919 (9th Cir. BAP 2011) (citing
Golden v. Chicago Title Ins. Co. (In re Choo), 273 B.R. 608, 613
(9th Cir. BAP 2002); Branam v. Crowder (In re Branam), 226 B.R.
45, 55 (9th Cir. BAP 1998), aff'd, 205 F.3d 1350 (unpublished
table decision) (9th Cir. 1999)).

1 For these reasons, we conclude that the bankruptcy court
2 properly granted Aurora's motion to expunge the Lis Pendens. The
3 bankruptcy court applied the correct legal standard and its
4 findings of fact were not illogical, implausible, or without
5 support from the record.

6 **B. The order denying the motion for reconsideration.**

7 **1. The bankruptcy court applied the correct legal**
8 **standard.**

9 The Civil Rules do not "recognize a motion for
10 reconsideration." Captain Blythers, Inc. v. Thompson (In re
11 Captain Blythers, Inc.), 311 B.R. 530, 539 (9th Cir. BAP 2004),
12 aff'd, 182 Fed. App'x 708 (9th Cir. 2006); In re Walker, 332 B.R.
13 820, 826 (Bankr. D. Nev. 2005). The Civil Rules, however, offer
14 two options to a party seeking post-judgment relief: a motion to
15 alter or amend judgment under Civil Rule 59(e), applicable to
16 bankruptcy proceedings by Rule 9023; and a motion for relief from
17 judgment under Civil Rule 60, applicable to bankruptcy
18 proceedings by Rule 9024. Walker, 332 B.R. at 826.

19 Where a party files a "motion for reconsideration" within
20 fourteen^[12] days of the entry of judgment, the motion "is
21 treated as a motion to alter or amend judgment under [Civil Rule]
22

23 ¹²Civil Rule 59(e) applies to bankruptcy proceedings
24 pursuant to Rule 9023. Rule 9023 was amended in 2009, extending
25 the time period for a motion to alter or amend judgment from ten
26 days to fourteen days. See Rule 9023 advisory committee's note.
27 See also 10 Collier on Bankruptcy ¶ 9023.RH[2] (Henry J. Sommer &
28 Alan N. Resnick, eds., 16th ed. 2011) ("Rule 9023 was amended to
provide for a 14-day deadline for motions for a new trial,
motions to alter or amend a judgment, and for sua sponte action
by a bankruptcy court.").

1 59(e).” Am. Ironworks & Erectors, Inc. N. Am. Constr. Corp.,
2 248 F.3d 892, 898-99 (9th Cir. 2001) (citing United States v.
3 Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)). See also
4 Walker, 332 B.R. at 826. A party may not use a motion for
5 reconsideration as a vehicle “to present a new legal theory for
6 the first time”; “to raise legal arguments which could have been
7 raised in connection with the original motion”; or “to rehash the
8 same arguments presented the first time or simply express the
9 opinion that the court was wrong.” Wall St. Plaza, LLC v. JSJF
10 Corp. (In re JSJF Corp.), 344 B.R. 94, 103 (9th Cir. BAP 2006),
11 aff’d and remanded, 277 Fed. App’x 718 (9th Cir. 2008). “The
12 standard for granting a motion to reconsider is strict in order
13 to preclude repetitive arguments that have already been fully
14 considered by the court.” Id.

15 A court may grant a motion to alter or amend judgment under
16 Civil Rule 59(e) where the moving party has established
17 “(1) manifest error of fact, (2) manifest error of law, or
18 (3) newly discovered evidence.” Hale v. U.S. Trustee (In re
19 Basham), 208 B.R. 926, 934 (9th Cir. BAP 1997), aff’d, 152 F.3d
20 924 (9th Cir. 1998).

21 Here, Gonzalez filed the Motion for Reconsideration within
22 fourteen days of the bankruptcy court’s order expunging the Lis
23 Pendens. Accordingly, we conclude that the bankruptcy court
24 properly treated Gonzalez’s motion as one to alter or amend
25 judgment under Civil Rule 59(e), to be granted only upon a
26 showing of any of the grounds discussed above.

27 //

28 //

1 **2. The bankruptcy court's findings of fact were not**
2 **illogical, implausible, or without support from the**
3 **record.**

4 The bankruptcy court found that Gonzalez failed to establish
5 any of the grounds warranting relief under Civil Rule 59(e). We
6 agree.

7 While Gonzalez wishes to resurrect the claims he asserted in
8 his complaints however possible, a motion for reconsideration is
9 not the proper means to that end. The record is replete with
10 examples of Gonzalez's efforts to relitigate issues already
11 disposed of by the bankruptcy court and this Panel. But it is
12 devoid of any showing justifying relief under Civil Rule 59(e).

13 In his Motion for Reconsideration, Gonzalez merely rehashed
14 the same arguments he reiterated in the proceedings leading up to
15 this appeal. He challenged the bankruptcy court's subject matter
16 jurisdiction, raised issues of standing, reasserted his various
17 TILA claims, argued that California law required the
18 corresponding promissory note in order for a party to proceed
19 with foreclosure against a property, and prayed that the
20 bankruptcy court "overrule the dismissal of the amended complaint
21 against all defendants." Pl.'s Mot. for Reconsideration at 25.

22 This, however, does not justify relief under Civil
23 Rule 59(e), nor does it qualify Gonzalez's filing as a proper
24 motion for reconsideration. See JSJF Corp., 344 B.R. at 103.
25 For this reason, we conclude that the bankruptcy court did not
26 abuse its discretion when it denied Gonzalez's Motion for
27 Reconsideration.

CONCLUSION

For the reasons set forth above, we AFFIRM the bankruptcy court's order expunging the Lis Pendens and the bankruptcy court's order denying Gonzalez's Motion for Reconsideration.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28