

APR 11 2016

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-15-1240-DTaKu
)	BAP No. CC-15-1272-DTaKu
YOUNG SAM LEE,)	(Related Appeals)
)	
Debtor.)	Bk. No. 2:14-bk-26377-SK
)	
_____)	Adv. No. 2:15-ap-01140-SK
YOUNG SAM LEE,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM ¹
)	
THE BANK OF NEW YORK MELLON)	
fka The Bank of New York, as)	
Trustee for CWMBS, INC.,)	
CWMBS, INC.; CHL MORTGAGE)	
PASS-THROUGH TRUST 2007-HY5,)	
MORTGAGE PASS-THROUGH)	
CERTIFICATES, SERIES 2007-)	
HY5,)	
)	
Appellees.)	
_____)	

Submitted Without Oral Argument
on March 17, 2016

Filed - April 11, 2016

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

Honorable Sandra Klein, Bankruptcy Judge, Presiding.

Appearances: Appellant Young Sam Lee, pro se on brief; Nichole
Glowin of Wright Finlay & Zak, LLP on brief for
appellee.

¹ 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 8024-1.

1 Before: DUNN, TAYLOR, and KURTZ, Bankruptcy Judges.

2 After The Bank of New York Mellon fka The Bank of New York,
3 as Trustee for CWMBS, Inc., CHL Mortgage Pass-Through Trust
4 2007-HY5, Mortgage Pass-Through Certificates, Series 2007-HY5
5 ("Bank") recorded a Notice of Default and Election to Sell Under
6 Deed of Trust ("Default Notice") with respect to real property in
7 Fullerton, California ("Fullerton Property"), Young Sam Lee
8 obtained a 10% interest in the Fullerton Property. The Bank
9 thereafter recorded a Notice of Trustee's Sale ("Foreclosure
10 Notice"). Approximately one week before the scheduled Trustee's
11 Sale ("Foreclosure Sale"), Mr. Lee filed a chapter 13 petition
12 ("Petition") and scheduled an interest in the Fullerton Property.

13 On the Bank's motion, the bankruptcy court granted relief
14 from stay as to the Fullerton Property. It then denied Mr. Lee's
15 subsequent motion for reconsideration ("Reconsideration Motion").

16 Mr. Lee filed an adversary proceeding ("Adversary
17 Proceeding") seeking to enjoin the Bank from foreclosing on the
18 Fullerton Property. The bankruptcy court dismissed the Adversary
19 Proceeding with prejudice and denied Mr. Lee's motion for
20 reconsideration ("AP Reconsideration Motion").

21 We AFFIRM.

22 **I. FACTUAL BACKGROUND**

23 On June 12, 2007, Doo M. Ko executed a Fixed/Adjustable Rate
24 Note ("Note"), pursuant to which he borrowed \$855,200 from
25 Countrywide Bank, FSB ("Countrywide"). The Note was secured by a
26 Deed of Trust executed the same date in favor of Countrywide.
27 The Bank obtained the Note and Trust Deed pursuant to a
28 Corporation Assignment of Deed of Trust executed by Mortgage

1 Electronic Registration Systems, Inc. ("MERS") and recorded on
2 January 31, 2011 and the corrective Assignment of Deed of Trust
3 recorded on May 6, 2014 (collectively, "Assignment").

4 The Bank recorded the Default Notice on May 6, 2014, at
5 which time payments on the Note were in default in the amount of
6 \$400,245.02. On June 2, 2014, Mr. Ko recorded a Grant Deed
7 ("Grant Deed"), pursuant to which he transferred a 10% interest
8 in the Fullerton Property to Mr. Lee, to be held with Mr. Ko as a
9 Tenancy in Common.² The Bank recorded the Foreclosure Notice on
10 August 5, 2014, for the Foreclosure Sale to be held September 3,
11 2014, based upon the unpaid balance of the Note in the amount of
12 \$1,297,501.17.

13 Mr. Lee filed his chapter 13 Petition on August 26, 2014,
14 together with his initial Schedule A - Real Property ("Initial
15 Schedule A"), in which he listed his interests in real property.
16 Notably absent from the Initial Schedule A was the Fullerton
17 Property. Over a six-week period, Mr. Lee filed numerous
18 amendments to his Schedule A. The Fullerton Property first was
19 included in Mr. Lee's Schedule A on September 23, 2014
20 ("September Schedule A"),³ but a subsequent amendment to
21 Schedule A on October 15, 2014 ("October Schedule A") omitted the
22 Fullerton Property.

23 On October 24, 2014, at Mr. Lee's request, the bankruptcy
24

25 ² The Grant Deed reflects that prior to the transfer,
26 Mr. Ko held only an 85% interest in the Fullerton Property.
27 There is no explanation in the record regarding who holds or held
28 the remaining 15% interest in the Fullerton Property.

³ Mr. Lee valued the Fullerton Property at \$1 million.

1 court converted Mr. Lee's bankruptcy case to chapter 7.

2 BAP No. 15-1240: Relief from Stay Proceedings

3 On February 25, 2015, the Bank filed a motion ("RFS
4 Motion"), through which the Bank sought relief from the automatic
5 stay under § 362(d)(1), (d)(2) and (d)(4)⁴ as to the Fullerton
6 Property, based in part on the transfer of an interest in the
7 Fullerton Property. The RFS Motion included the supporting
8 declaration of Alicia Wood ("Wood Declaration").

9 Mr. Lee opposed the RFS Motion on two primary grounds.

10 _____
11 ⁴ As relevant to this appeal, § 362(d) provides:

12 On request of a party in interest and after notice and a
13 hearing, the court shall grant relief from the stay provided
14 under subsection (a) of this section, such as by terminating,
annulling, modifying, or conditioning such stay—

15 (1) for cause, including the lack of adequate protection of an
16 interest in property of such party in interest;

17 (2) with respect to a stay of an act against property under
18 subsection (a) of this section, if—

19 (A) the debtor does not have an equity in such property; and

20 (B) such property is not necessary to an effective
reorganization;

21

22 or

23 (4) with respect to a stay of an act against real property under
24 subsection (a), by a creditor whose claim is secured by an
25 interest in such real property, if the court finds that the
filing of the petition was part of a scheme to delay, hinder, or
defraud creditors that involved either—

26 (A) transfer of all or part ownership of, or other interest in,
27 such real property without the consent of the secured creditor or
court approval; or

28 (B) multiple bankruptcy filings affecting such real property.

1 First, he asserted that whether there was equity in the Fullerton
2 Property was in dispute and could not be determined without an
3 evidentiary hearing. Second, Mr. Lee pointed out that he had
4 filed an adversary proceeding ("Adversary Proceeding") for the
5 purpose of adjudicating the Bank's standing in connection with
6 the Fullerton Property, where the record did not contain evidence
7 that the Note and Trust Deed had been assigned from Countrywide
8 to the Bank.⁵ Mr. Lee asserted that the disputes in the
9 Adversary Proceeding had to be adjudicated before the bankruptcy
10 court ruled on the RFS Motion.⁶ Mr. Lee filed a declaration in
11 support of his opposition to the RFS Motion in which he averred
12 he had purchased a share of the Fullerton Property, that his
13 bankruptcy case was not frivolous, and that the Wood Declaration
14 was invalid because Ms. Wood had no personal knowledge regarding
15 the Note and Trust Deed.

16 The bankruptcy court heard the RFS Motion on April 1, 2015,
17 at which time it continued the Hearing to May 6, 2015, to allow
18 the Bank time to file a supplemental declaration in support of
19 the RFS Motion and Mr. Lee time to respond to it.

20 On April 7, 2015, the Bank filed the supplemental
21 declaration of Ms. Wood ("Supplemental Declaration"). In the
22 Supplemental Declaration, Ms. Wood identifies herself as the Vice
23 President of Residential Credit Solutions, Inc. ("RCS"), the
24

25
26 ⁵ Mr. Lee filed the Adversary Proceeding on the same date
he filed his opposition to the RFS Motion.

27 ⁶ Mr. Lee also asserted that service of the RFS Motion on
28 him was untimely.

1 current loan servicer for the Bank with respect to the Note and
2 Trust Deed. As servicer, RCS had access to the books and records
3 of the Bank as well as its own database of records with respect
4 to the Note and Trust Deed. In the Supplemental Declaration,
5 Ms. Wood averred, based upon her review of the loan records, that
6 MERS, as loan servicer for Countrywide, had recorded an
7 assignment of the Note and Trust Deed to the Bank on January 11,
8 2011, and that a corrected assignment was recorded on April 5,
9 2014, to clarify the name of the Bank. Ms. Wood further averred
10 that the loan records reflected the transfer of a 10% interest in
11 the Fullerton Property to Mr. Lee on June 2, 2014, that Mr. Lee
12 thereafter had filed the Petition, that Schedule A filed in the
13 bankruptcy case valued the Fullerton Property at \$1 million, that
14 no payment had been made on the Note since 2008, and that, as of
15 February 17, 2015, the balance due and owing was \$1,318,609.15,
16 leaving no equity in the Fullerton Property for either Mr. Lee,
17 his bankruptcy estate, or the borrower, Mr. Ko.

18 Mr. Lee responded that because the Supplemental Declaration
19 was from RCS, it did not comply with the bankruptcy court's order
20 that the "movant," i.e. the Bank, file a supplemental
21 declaration. Mr. Lee characterized the Supplemental Declaration
22 as "evasive, misleading, and deficient," to the extent it
23 purported to "trace the chain of title" for the Fullerton
24 Property, where Ms. Wood prefaced her statements with the phrase
25 "the loan records reflect." Mr. Lee asserted that the recorded
26 deeds provided as evidence through the Supplemental Declaration
27 establish that the Bank never was granted title to the Fullerton
28 Property by a valid grantor, and therefore the Bank had no

1 authority to prosecute the RFS Motion.

2 Mr. Lee then reasserted the argument he had made in his
3 original response, specifically, that the bankruptcy court should
4 not decide the RFS Motion until the Adversary Proceeding had been
5 adjudicated.

6 Both parties appeared and were given the opportunity to be
7 heard at the continued hearing on the RFS Motion held May 6,
8 2015. Following the hearing, the bankruptcy court, on May 11,
9 2015, entered its order granting the RFS Motion pursuant to
10 §§ 362(d) (1), (d) (2) and (d) (4).

11 Not satisfied with the result, Mr. Lee filed the
12 Reconsideration Motion on May 26, 2015. In the Reconsideration
13 Motion, Mr. Lee raised the same issues he had raised in his
14 response to the Supplemental Declaration: that Ms. Wood was not
15 the proper person to make the Supplemental Declaration, and that
16 the Supplemental Declaration did not establish how the Bank
17 became a successor in interest or beneficiary under the Trust
18 Deed. Mr. Lee asserted that the bankruptcy court was authorized
19 under Civil Rule 59(e), applicable pursuant to Rule 9023, or
20 Civil Rule 60, applicable under Rule 9024, to reconsider its
21 order "when there has been a manifest error of law or fact."
22 Mr. Lee raised as "new facts or arguments" his "discovery or
23 belief that the [bankruptcy court] uses Research Attorneys to
24 assist in making its rulings."

25 In response, the Bank asserted that Mr. Lee failed to state
26 any "cause" for reconsideration under the standards set forth in
27 Civil Rule 59(e) or Civil Rule 60(b) where the Reconsideration
28 Motion was predicated entirely on Mr. Lee's prior arguments

1 already rejected by the bankruptcy court. Mr. Lee's "new"
2 argument that the decision to grant the RFS Motion may have been
3 made by "Research Attorneys" was unfounded where Mr. Lee made his
4 arguments directly to the bankruptcy judge, who then ruled at the
5 conclusion of the hearing. In any event, Mr. Lee provided no
6 explanation as to why this argument was not raised earlier.

7 A hearing on the Reconsideration Motion was held on July 1,
8 2015. Prior to the hearing, the bankruptcy court issued a
9 tentative ruling denying the Reconsideration Motion, concluding
10 that because the Reconsideration Motion was filed more than
11 14 days after the order granting the RFS Motion was entered, only
12 Civil Rule 60(b) was available to afford relief to Mr. Lee. The
13 bankruptcy court then determined that Mr. Lee had not established
14 that he was entitled to relief from the order granting the
15 RFS Motion, because (1) Mr. Lee did not establish that entry of
16 the order granting the RFS Motion was caused by excusable neglect
17 as contemplated by Civil Rule 60(b)(1), (2) Mr. Lee's mere
18 allegation that the bankruptcy court used research attorneys to
19 assist in making judicial rulings did not constitute "newly
20 discovered evidence" as required under Civil Rule 60(b)(2), and
21 (3) Mr. Lee did not identify any manifest injustice or
22 extraordinary circumstances that made it impossible for him to
23 prosecute his opposition to the RFS Motion that might support
24 relief under Civil Rule 60(b)(6).

25 Following the July 1, 2015 hearing, the bankruptcy court
26 entered its order denying the Reconsideration Motion, and appeal
27 BAP No. 15-1240 followed. Mr. Lee did not make transcripts from
28 the hearings held April 1, May 6, or July 1, 2015 available for

1 our review.

2 BAP No. 15-1272: Adversary Proceeding

3 On the same date that he filed his response to the RFS
4 Motion, Mr. Lee initiated the Adversary Proceeding. The
5 complaint ("Complaint") named as defendants Countrywide Bank,
6 Inc., Countrywide Financial Corporation, The Bank of New York,
7 The Bank of New York Mellon, and MERS.

8 In the Complaint, Mr. Lee alleged that he was "at all times
9 mentioned in this complaint" the majority owner of the Fullerton
10 Property, that he was willing and able to tender payment of the
11 Note in an unstated "correct" amount but could not pay the
12 falsified and inflated amount demanded by the defendants, and
13 that he was thereby forced to file the Petition. He alleged the
14 defendants had been provided notice of his pending bankruptcy
15 case. He alleged that unless the defendants were restrained from
16 foreclosing on the Fullerton Property he would suffer immediate,
17 irreparable harm in that the loss of the home would leave him
18 potentially homeless. Finally, Mr. Lee alleged that no valid
19 assignment ever was made by Countrywide to anyone. He specially
20 asserted that the MERS Assignment was invalid because Countrywide
21 Bank had gone out of business many years prior to 2011 and was
22 "in Surrender Status" from 1987 to 2015.

23 The Bank filed a motion to dismiss the Adversary Proceeding
24 ("Dismissal Motion") on April 16, 2015. In the Dismissal Motion
25 the Bank asserted that Mr. Lee lacked standing to file the
26 Adversary Proceeding. First, Mr. Lee had no standing to
27 challenge the Bank's accounting records or the Assignments,
28 because he was not a party to the Loan, had not executed the Loan

1 documents, and was not a party to the Assignment documents.

2 Second, any substantive claim Mr. Lee might have was property of
3 his bankruptcy estate such that the chapter 7 trustee was the
4 real party in interest.

5 As to the substance of the Complaint, the Bank asserted that
6 Mr. Lee failed to allege a valid tender, a necessary precondition
7 to bring any claim arising from a foreclosure sale. Further,
8 Mr. Lee failed to state a claim upon which relief could be
9 granted under Civil Rule 12(b)(6). The only claim for relief
10 asserted in the Complaint was for an injunction. Under
11 California law, however, injunctive relief is a remedy, not a
12 viable claim. In any event, the Complaint did not allege, let
13 alone establish, the elements necessary for the issuance of an
14 injunction: substantial likelihood of success on the merits,
15 irreparable harm to Mr. Lee, that the potential harm to Mr. Lee
16 outweighed the potential harm to the Bank, or that injunctive
17 relief would not violate public policy.

18 The Dismissal Motion noticed the matter for hearing to be
19 held on June 10, 2015. Although served with the Dismissal
20 Motion, Mr. Lee did not file a response. He did, however, on
21 June 9, 2015, file his own motion to dismiss ("Lee Motion") in
22 the Adversary Proceeding.⁷ The Lee Motion was directed only to
23 the Bank as defendant. It does not appear that the bankruptcy
24 court was aware of the Lee Motion at the time it considered the
25 Dismissal Motion.

26
27 ⁷ On the same date, Mr. Lee filed a new adversary
28 proceeding (15-1304-SK) against the Bank again seeking an
injunction.

1 The bankruptcy court issued a tentative ruling on the
2 Dismissal Motion in advance of the hearing. The bankruptcy court
3 ruled that Mr. Lee lacked standing to prosecute the Adversary
4 Proceeding where he was a stranger to the underlying transaction.
5 Further, even if a claim did exist that could be asserted in the
6 Adversary Proceeding, that claim belonged not to Mr. Lee, but to
7 his bankruptcy estate such that the chapter 7 trustee, not
8 Mr. Lee, would have standing to assert it.

9 The bankruptcy court noted that although Mr. Lee alleged he
10 could potentially be left homeless if the Bank was allowed to
11 foreclose on the Fullerton Property, he did not allege he lived
12 at the Fullerton Property. Further, Mr. Lee had signed, under
13 penalty of perjury, his Petition, the September Schedule A and
14 the October Schedule A, each of which indicated that his street
15 address was in Los Angeles, not at the Fullerton Property.

16 The bankruptcy court determined that Mr. Lee's allegation of
17 tender was too little and too speculative, where it indicated
18 neither the amount to cure the default nor that Mr. Lee had the
19 ability to tender that amount to the Bank.

20 Finally, the bankruptcy court agreed that a request for an
21 injunction is not a claim for relief recognized under California
22 law.

23 The tentative ruling concluded that (1) the Complaint failed
24 to state a claim upon which relief could be granted, and (2) no
25 purpose would be served by allowing the filing of an amended
26 complaint.

27 The bankruptcy court held the hearing on the Dismissal
28 Motion on June 10, 2015. The bankruptcy court entered an order

1 ("Dismissal Order") granting the Dismissal Motion on June 11,
2 2015, "as to all parties with prejudice." The bankruptcy court
3 never took any action with respect to the Lee Motion.

4 On June 25, 2015, Mr. Lee filed the AP Reconsideration
5 Motion. The bankruptcy court summarized Mr. Lee's arguments set
6 forth in the AP Reconsideration Motion as follows:⁸

7 1. Lee is informed and believes that the Court uses
8 research attorneys to assist the Court in making
judicial rulings;

9 2. Lee filed bankruptcy regarding "a property owned
10 'in part' by him," the Court appointed trustee has
failed to protect the estate, the Court has stated that
11 Lee lacks the capacity to sue and protect his estate,
and Lee demands that the Court compel the trustee to
12 refile 3/16/15 Complaint or alternatively, to
reconsider the [Dismissal Order];

13 3. The Bank never specifically described how they
14 became successors in interest or beneficiaries;

15 4. Countrywide Bank was the lender but never recorded
an assignment of [the Trust Deed], and the assignment
16 of [the Trust Deed] signed by MERS was invalid because
Countrywide Bank went out of business many years before
17 2011;

18 5. Countrywide Bank was in surrender status from 1987
to 2015 and any transaction on behalf of Countrywide
19 Bank in 2011 was void; and

20 6. Lee would suffer irreparable harm and be prejudiced
unless the automatic stay remains in effect and the RFS
21 Motion is denied.

22 Important for purposes of this appeal, Mr. Lee never raised the
23 issue of the existence of the Lee Motion in the AP
24 Reconsideration Motion.

25 The Bank's response to the AP Reconsideration Motion was

26 _____
27 ⁸ The bankruptcy court observed that the arguments all were
28 effectively the same as those Mr. Lee made, and which were
adjudicated, at least twice in proceedings on the RFS Motion.

1 essentially identical to its response to the Reconsideration
2 Motion. The Bank asserted that (1) Mr. Lee failed to state any
3 "cause" for reconsideration under the standards set forth in
4 Civil Rule 59(e) or Civil Rule 60(b), instead making the same
5 arguments previously rejected in the stay relief proceedings in
6 the main case; and (2) Mr. Lee's "new" argument that the court
7 used "Research Attorneys" in its decision-making process was
8 unfounded and in any event could have been raised earlier.

9 A hearing on the AP Reconsideration Motion was held on
10 July 29, 2015. Prior to the hearing, the bankruptcy court issued
11 a tentative ruling denying the AP Reconsideration Motion in which
12 the bankruptcy court determined that Mr. Lee had not established
13 that he was entitled to relief from the Dismissal Order under
14 either Civil Rule 59(e) or Civil Rule 60(b). With respect to
15 Civil Rule 60(b), (1) Mr. Lee did not establish that entry of the
16 Dismissal Order was caused by excusable neglect as contemplated
17 by Civil Rule 60(b)(1), (2) Mr. Lee's mere allegation that the
18 bankruptcy court used research attorneys to assist in making
19 judicial rulings did not constitute "newly discovered evidence"
20 as required under Civil Rule 60(b)(2), and (3) Mr. Lee did not
21 identify any manifest injustice or extraordinary circumstances
22 that made it impossible for him to oppose the Dismissal Motion
23 that might support relief under Civil Rule 60(b)(6).

24 Following the July 29, 2015 hearing, the bankruptcy court
25 entered its order denying the AP Reconsideration Motion, and
26 appeal CC-15-1272 followed. Mr. Lee did not make transcripts
27 from the hearings held June 10 or July 29, 2015 available for our
28 review.

1 We conduct the same review for an order denying a motion for
2 reconsideration, whether the motion for reconsideration is based
3 on Civil Rule 59(e) or Civil Rule 60(b). School District No. 1J
4 v. AC & S, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).

5 We also review an order granting relief from stay and/or in
6 rem relief under § 362(d)(4) for an abuse of discretion.

7 Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer),
8 405 B.R. 915, 918 (9th Cir. BAP 2009). See also Ellis v. Yu
9 (In re Ellis), 523 B.R. 673, 677 (9th Cir. BAP 2014).

10 The bankruptcy court's dismissal of an adversary complaint
11 for failure to state a claim under Civil Rule 12(b)(6) is
12 reviewed de novo. Barnes v. Belice (In re Belice), 461 B.R. 564,
13 572 (9th Cir. BAP 2011). A dismissal without leave to amend is
14 reviewed for abuse of discretion. Ditto v. McCurdy, 510 F.3d
15 1070, 1079 (9th Cir. 2007). See also Rund v. Bank of America
16 Corp. (In re EPD Inv. Co., LLC), 523 B.R. 680, 684 (9th Cir. BAP
17 2015).

18 Under the abuse of discretion standard, we reverse only
19 where the bankruptcy court applied an incorrect legal rule or
20 where its application of the law to the facts was illogical,
21 implausible or without support in inferences that may be drawn
22 from the record. TrafficSchool.com, Inc. v. Edriver Inc.,
23 653 F.3d 820, 832 (9th Cir. 2011), citing United States v.
24 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

25 De novo means that we consider a matter anew, as if no
26 decision previously had been rendered. Dawson v. Marshall,
27 561 F.3d 930, 933 (9th Cir. 2009).

28

1 **V. DISCUSSION**

2 A. Motions for Reconsideration.

3 The Civil Rules do not recognize motions for
4 "reconsideration." Captain Blythers, Inc. v. Thompson
5 (In re Captain Blythers, Inc.), 311 B.R. 530, 539 (9th Cir. BAP
6 2004). Instead, the Civil Rules provide two avenues through
7 which a party may obtain post-judgment relief: (1) a motion to
8 alter or amend judgment under Civil Rule 59(e), applicable to
9 bankruptcy proceedings under Rule 9023, and (2) a motion for
10 relief from judgment under Civil Rule 60, applicable to
11 bankruptcy proceedings under Rule 9024.

12 When a party files a motion for reconsideration within
13 14 days after the entry of judgment, the motion is treated as a
14 motion to alter or amend judgment under Civil Rule 59(e). Am.
15 Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892,
16 898-99 (9th Cir. 2001) (citation omitted). Rule 59(e) allows for
17 reconsideration if the bankruptcy court "(1) is presented with
18 newly discovered evidence, (2) committed clear error or the
19 initial decision was manifestly unjust, or (3) if there is an
20 intervening change in controlling law. There may also be other,
21 highly unusual circumstances warranting reconsideration."
22 School District No. 1J v. AC & S, Inc., 5 F.3d at 1263 (internal
23 citation omitted).

24 A motion for reconsideration filed more than 14 days
25 following the entry of a judgment is treated as a motion for
26 relief from a judgment or order under Rule 60(b). Id. As
27 relevant to the appeals before us, Civil Rule 60(b) allows for
28 reconsideration "only upon a showing of (1) mistake, surprise, or

1 excusable neglect; (2) newly discovered evidence; . . . or
2 (6) extraordinary circumstances which would justify relief.”

3 Finally, a party may not use a motion for reconsideration
4 “to present a new legal theory for the first time or to raise
5 legal arguments which could have been raised in connection with
6 the original motion . . . [or] to rehash the same arguments
7 presented the first time or simply to express the opinion that
8 the court was wrong.” Wall St. Plaza, LLC v. JSJF Corp.
9 (In re JSJF Corp.), 344 B.R. 94, 104 (9th Cir. BAP 2006), aff'd
10 and remanded, 277 F.3d App'x 718 (9th Cir. 2006) (internal
11 citations omitted).

12 With these parameters in mind, we review the bankruptcy
13 court's denial of the Reconsideration Motion and the AP
14 Reconsideration Motion.

15 1. The bankruptcy court did not abuse its discretion in
16 denying the Reconsideration Motion under Civil
Rule 60(b).

17 Civil Rule 60(b)(1).

18 As correctly recognized by the bankruptcy court, Civil
19 Rule 60(b)(1) authorizes relief from a final order, the entry of
20 which resulted from “excusable neglect.” The bankruptcy court
21 also correctly identified the legal rules to apply in making the
22 determination whether a party's neglect was “excusable.” See
23 Pioneer Inv. Svcs. Co. v. Brunswick Assoc. Ltd. P'ship, 507 U.S.
24 380, 395 (1993); Bateman v. U.S. Postal Serv., 231 F.3d 1220,
25 1223-24 (9th Cir. 2000). However, the Reconsideration Motion did
26 not raise an issue under Civil Rule 60(b)(1) that the bankruptcy
27 court was required to decide. Nowhere in the Reconsideration
28 Motion does Mr. Lee assert that his neglect on any point resulted

1 in the entry of the order granting the RFS Motion. In these
2 circumstances, the bankruptcy court's determination that Mr. Lee
3 had not met the standards for demonstrating excusable neglect,
4 while not necessary, cannot be considered reversible error.

5 Civil Rule 60(b)(2).

6 Mr. Lee was entitled to relief from the order granting the
7 RFS Motion under Civil Rule 60(b)(2) if he could demonstrate that
8 there was "newly discovered evidence that, with reasonable
9 diligence, could not have been discovered in time to move for a
10 new trial under [Civil] Rule 59." Under Ninth Circuit case law,
11 to prevail under Civil Rule 60(b)(2), Mr. Lee was required to
12 show: that the evidence relied on in fact constitutes "newly
13 discovered evidence" within the meaning of Civil Rule 60(b), that
14 he exercised due diligence to discover the evidence, and that the
15 newly discovered evidence must be of "such magnitude that
16 production of it earlier would have been likely to change the
17 disposition of the case." Feature Realty, Inc. v. City of
18 Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003) (citations omitted).

19 The bankruptcy court found that the only allegation in the
20 Reconsideration Motion that could possibly be construed as
21 relating to "new discovered evidence" was Mr. Lee's contention
22 that the bankruptcy court used research attorneys to assist in
23 making its judicial rulings. However, as articulated by the
24 bankruptcy court, this is merely a conclusory statement in
25 Mr. Lee's declaration for which no evidentiary support is
26 provided or even suggested. On appeal, Mr. Lee has provided no
27 record to support his contention that the bankruptcy court
28 improperly delegated to others its decision making role. The

1 bankruptcy court correctly concluded that Mr. Lee did not meet
2 his burden to establish that the alleged "newly discovered
3 evidence" supported his request for relief from the order
4 granting the RFS Motion.

5 Civil Rule 60(b)(6).

6 As noted by the bankruptcy court, relief under Civil
7 Rule 60(b)(6) for "any other reason that justifies relief" is an
8 equitable remedy to prevent manifest injustice which should be
9 used sparingly. Lal v. Cal., 601 F.3d 518, 524 (9th Cir. 2010).

10 In order to demonstrate his entitlement to relief under Civil
11 Rule 60(b)(6), Mr. Lee was required to demonstrate that
12 extraordinary circumstances prevented him from prosecuting his
13 opposition to the RFS Motion. Id. In the Reconsideration
14 Motion, Mr. Lee did not argue he was prevented from prosecuting
15 his opposition. Instead, he merely restated his arguments raised
16 in the original proceedings.

17 Mr. Lee did not meet his burden to support relief under
18 Civil Rule 60(b)(6).

19 2. The bankruptcy court incorrectly determined that
20 Rule 59(e) did not apply to the Reconsideration
Motion.

21 The bankruptcy court determined that Civil Rule 59(e) did
22 not apply, where the Reconsideration Motion was filed on May 26,
23 2015, a date which was 15 days after entry of the order granting
24 the RFS Motion.

25 Rules 9006(a)(1) and (a)(6) articulate the methodology for
26 calculating the deadline for Mr. Lee to file a Civil Rule 59(e)
27 motion. Rule 9006(a)(1) provides:

28 When the period is stated in days . . . :

1 (A) exclude the day of the event that triggers the
2 period;
3 (B) count every day, include intermediate Saturday,
4 Sundays, and legal holidays; and
5 (C) include the last day of the period, but if the last
6 day is a Saturday, Sunday, or legal holiday, the period
7 continues to run until the end of the next day that is
8 not a Saturday, Sunday, or legal holiday.

9 Rule 9006(a) (6) (A) defines Memorial Day as a legal holiday for
10 purposes of computing time.

11 Thus, while the bankruptcy court was correct in identifying
12 the relevant dates, it did not take into account that the
13 fourteenth day following the entry of the order granting the RFS
14 Motion was Memorial Day. However, any resulting error was
15 harmless because the findings made under the bankruptcy court's
16 Civil Rule 60(b) analysis adequately support a denial of the
17 Reconsideration Motion under Civil Rule 59(e).

18 As stated above, to prevail on the Reconsideration Motion
19 under Civil Rule 59(e), Mr. Lee needed to present the bankruptcy
20 court with newly discovered evidence, demonstrate that the
21 bankruptcy court committed clear error in granting the RFS Motion
22 (or that its decision to do so was manifestly unjust), or
23 establish that there was an intervening change in controlling
24 law.

25 The bankruptcy court determined that the only new point
26 raised in the Reconsideration Motion was a mere allegation that
27 the bankruptcy court used research attorneys in making judicial
28 decisions. This allegation no more constitutes "newly discovered
evidence" under Civil Rule 59(e) than it did under Civil
Rule 60(b).

Similarly, the bankruptcy court's findings with respect to

1 Civil Rule 60(b) addressed and rejected the assertions made by
2 Mr. Lee that the entry of the order granting the RFS Motion
3 constituted "manifest injustice," because he might become
4 homeless.

5 Finally, it is clear on the face of the Reconsideration
6 Motion that Mr. Lee alleged no intervening change in controlling
7 law that might support relief from the order granting the
8 RFS Motion.

9 3. The bankruptcy court did not abuse its discretion
10 in denying the AP Reconsideration Motion.

11 Civil Rule 59(e)

12 The bankruptcy court found that, again, the only allegation
13 in the AP Reconsideration Motion that could possibly be construed
14 as relating to "new discovered evidence" for purposes of relief
15 under Civil Rule 59(e) was Mr. Lee's contention that the
16 bankruptcy court used research attorneys to assist in making its
17 judicial rulings. And again, the bankruptcy court determined
18 that this merely conclusory statement lacked evidentiary support.
19 The record on appeal similarly is devoid of evidence that the
20 bankruptcy court improperly delegated to others its decision
21 making role. The bankruptcy court correctly concluded that
22 Mr. Lee did not meet his burden to establish that the alleged
23 "newly discovered evidence" supported his request for relief from
24 the Dismissal Order.

25 The bankruptcy court made no further findings in connection
26 with Civil Rule 59(e). However, in its discussion of Civil
27 Rule 60(b)(6) (as analyzed below), the bankruptcy court
28 implicitly found that no manifest injustice was present to

1 require granting reconsideration as an equitable remedy, and
2 Mr. Lee did not assert any intervening change in the law.

3 We therefore agree with the bankruptcy court that Mr. Lee
4 did not meet his burden to prove that he was entitled to relief
5 from the Dismissal Order under Civil Rule 59(e).

6 Civil Rule 60(b)

7 As with the Reconsideration Motion above, we consider
8 relevant to this appeal those provisions of Civil Rule 60(b) that
9 allow for reconsideration of an order upon a showing of mistake,
10 surprise, or excusable neglect; newly discovered evidence; or
11 extraordinary circumstances.

12 a. Civil Rule 60(b)(1) - excusable neglect

13 While Civil Rule 60(b)(1) authorizes relief from a final
14 order, the entry of which resulted from "excusable neglect," the
15 AP Reconsideration Motion did not raise an issue under Civil
16 Rule 60(b)(1) that the bankruptcy court was required to decide.
17 Nowhere in the AP Reconsideration Motion does Mr. Lee assert that
18 his neglect resulted in the entry of the Dismissal Order. In
19 these circumstances, the bankruptcy court's determination that
20 Mr. Lee had not met the standards for demonstrating excusable
21 neglect, while not necessary, cannot be considered reversible
22 error.

23 b. Civil Rule 60(b)(2) - newly discovered evidence

24 Yet again, the only purported "newly discovered evidence"
25 raised in the AP Reconsideration Motion was the allegation that
26 the bankruptcy court used research attorneys in conjunction with
27 making judicial decisions. This allegation no more constitutes
28 "newly discovered evidence" under Civil Rule 60(b) than it did

1 under Civil Rule 59(e).

2 c. Civil Rule 60(b)(6) - manifest injustice

3 To avail himself of Civil Rule 60(b)(6) as an equitable
4 remedy to prevent "manifest injustice," Mr. Lee was required to
5 demonstrate that extraordinary circumstances prevented him from
6 effectively opposing the Dismissal Motion. This he did not do.

7 Mr. Lee did not meet his burden to support relief under
8 Civil Rule 60(b)(6).

9 B. The Underlying Substantive Motions.

10 Generally, following the determination of a postjudgment
11 tolling motion, a party may seek review of both the order
12 disposing of the tolling motion and of the underlying judgment.
13 The notice of appeal should specify all orders from which review
14 is sought. Lolli v. County of Orange, 351 F.3d 410, 414 (9th
15 Cir. 2003). However, the Ninth Circuit has held that a mistake
16 in designating the judgment or order appealed from should not bar
17 the appeal if the intent to appeal a specific order can be fairly
18 inferred and the Appellee is not prejudiced by the mistake. Id.

19 1. BAP No. 15-1240: The RFS Motion

20 Mr. Lee did not identify the order granting the RFS Motion
21 in his notice of appeal. He identified only the order denying
22 the Reconsideration Motion. While he explicitly states in his
23 opening brief that he is appealing only the order denying the
24 Reconsideration Motion, his stated issues on appeal suggest that
25 what he actually is seeking is relief from the order granting the
26 RFS Motion. Further, the discussion in his opening brief
27 challenges the bankruptcy court's determinations regarding the
28 Bank's standing and his "bad faith" in filing the Petition.

1 These are the determinations upon which the order granting the
2 RFS Motion was granted.

3 Even the Bank must concede that Mr. Lee's intent to appeal
4 the order granting the RFS Motion can be "fairly inferred" by the
5 issues Mr. Lee raised on appeal and in his opening brief. While
6 the Bank stresses in its brief on appeal that the only order
7 appealed from was that denying the Reconsideration Motion, it
8 nevertheless, in an effort to meet Mr. Lee's arguments on appeal,
9 included a substantial discussion as to why the bankruptcy court
10 correctly entered the order granting the RFS Motion. Because the
11 Bank availed itself of the opportunity to address Mr. Lee's
12 issues on appeal in the context of asserting that entry of the
13 order granting the RFS Motion was appropriate, no prejudice will
14 be created by this Panel's review of the underlying substantive
15 order.

16 As we note in the Factual Background above, the bankruptcy
17 court held hearings on the RFS Motion on April 1, 2015, and on
18 May 6, 2015, but Mr. Lee took no action to ensure that
19 transcripts for these hearings would be available for our review.
20 The bankruptcy court made no tentative ruling on the RFS Motion
21 other than to advise the parties that appearances were required.
22 We therefore do not know what took place at the hearings.

23 The order granting the RFS Motion was entered on a generic
24 form. The checked boxes indicate the bankruptcy court granted
25 the RFS Motion under §§ 362(d)(1), (d)(2) and (d)(4), and, in
26 support of the § 362(d)(4) relief, a checked box indicates that
27 the Petition was part of a scheme to hinder, delay, or defraud
28 the Bank that involved the transfer of part ownership of the

1 Fullerton Property without the Bank's consent or court approval.

2 Mr. Lee asserts on appeal that the bankruptcy court erred in
3 granting the RFS Motion by reading § 362 too narrowly. He does
4 not articulate in what particulars the bankruptcy court erred,
5 and we will not speculate.

6 Mr. Lee also appears to challenge the grant of relief under
7 § 362(d)(4), asserting that the bankruptcy court did not consider
8 his contention that the Petition was not filed in bad faith. We
9 are unable to discern what the bankruptcy court did or did not
10 consider without the transcripts that Mr. Lee failed to provide.

11 Finally, Mr. Lee asserts that the bankruptcy court erred
12 when it decided the RFS Motion while the Adversary Proceeding was
13 pending. The order granting the RFS Motion contains no findings.
14 We will not assume that the bankruptcy court did not make oral
15 findings to support the entry of the order. However, we are
16 without the ability to review what oral findings the bankruptcy
17 court may have made in the absence of transcripts. In any event,
18 shortly after the order granting the RFS Motion was entered, the
19 bankruptcy court dismissed the Adversary Proceeding. In light of
20 our resolution in the appeal from that dismissal, this argument
21 is moot.

22 2. BAP No. 15-1272: The Dismissal Order

23 Mr. Lee identified only the order denying the AP
24 Reconsideration Motion in his notice of appeal. While he did not
25 identify the Dismissal Order, he did refer to a "Motion to
26 Dismiss Adversary Complaint." While the Bank again stressed in
27 its brief on appeal that the only order appealed from was that
28 denying the Reconsideration Motion, it nevertheless, in an effort

1 to meet Mr. Lee's arguments on appeal, addressed issues raised by
2 Mr. Lee with respect to the dismissal of the Adversary
3 Proceeding. Because the Bank availed itself of the opportunity
4 to address Mr. Lee's issues on appeal in the context of asserting
5 that entry of the Dismissal Order was appropriate, no prejudice
6 will be created by this Panel reviewing the underlying
7 substantive order.

8 The bankruptcy court held hearings on the Dismissal Motion
9 and on the AP Reconsideration Motion. As noted in the Factual
10 Background above, Mr. Lee took no action to make the transcripts
11 for these hearings available for our review. We therefore have
12 no ability to determine which arguments outside of the written
13 record the parties may have presented to the bankruptcy court.

14 In his brief on appeal, Mr. Lee appears to assert error on
15 the part of the bankruptcy court in dismissing the Adversary
16 Proceeding as to parties other than the Bank, and in dismissing
17 the Adversary Proceeding with prejudice.

18 To the extent Mr. Lee intends this Panel to consider whether
19 the bankruptcy court improperly granted the Dismissal Motion
20 rather than the Lee Motion, which was limited to dismissal of the
21 Bank, we are hampered in our review by the absence of hearing
22 transcripts. Nothing in the record before us reflects that
23 issues related to the Lee Motion were argued either at the
24 hearing on the Dismissal Motion or at the hearing on the
25 Reconsideration Motion. Further, we note that Mr. Lee did not
26 serve his notice of appeal on any party other than the Bank. We
27 therefore decline his invitation to address this issue.

28 As to the second issue, Mr. Lee suggests that the bankruptcy

1 court dismissed the Adversary Proceeding with prejudice as a
2 sanction. Nothing in the record before us reflects that Mr. Lee
3 raised the issue of Rule 9011 or any other sanctions with the
4 bankruptcy court in the first instance. We therefore decline to
5 consider it now.

6 **VI. CONCLUSION**

7 The bankruptcy court did not abuse its discretion when it
8 denied the Reconsideration Motion and the AP Reconsideration
9 Motion. We have an inadequate record from which to review the
10 order granting the RFS Motion and the Dismissal Order.

11 We AFFIRM the bankruptcy court's orders in appeal BAP No.
12 15-1240 and in appeal BAP No. 15-1272.

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