UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:
Maura E. Lynch

Case No. 15-74795-AST
Chapter 7

Debtor.

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R. Kenneth Barnard, as Chapter 7 Trustee of
Maura Lynch

Plaintiff,

Adv. Pro. No. 18-08169-AST

-against-

Patricia M. Frank

Defendant.

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ORDER DENYING DEBTOR'S MOTION TO RECONSIDER

This is an adversary proceeding between R. Kenneth Barnard as Plaintiff (the "Trustee") and Patricia M. Frank as Defendant ("Frank"). Maura E. Lynch (the "Debtor") is not a party in this adversary proceeding.

On April 30, 2021, this Court entered a Decision and Order, granting in part and denying in part the Trustee and Frank's cross-motions for summary judgment (the "Decision") [Dkt. Item 25].

On January 21, 2022, the Trustee filed a Motion to Compromise this adversary proceeding, proposing a settlement by and between the Trustee and Frank (the "Motion to Compromise") [Dkt. Item 31].

On March 17, 2022, this Court entered an Order granting the Trustee's Motion to Compromise this adversary proceeding (the "Settlement Order") [Dkt. Item 40].

On May 2, 2022, Debtor[1] and Bernadette Vindell purportedly acting on behalf of John Lynch, believed to be Debtor's father (the "Movants"), filed a Motion (the "Motion") to have the Court: (i) reconsider its April 30, 2021, Decision; and (ii) stay the Trustee's Motion to Compromise and the Court's Settlement Order [Dkt. Item 42]. Movants purport to seek relief pursuant to Federal Rules of Civil Procedure 60(a), 60(b)(1), and 60(b)(6). There is no appeal pending from the Settlement Order.

Federal Rule of Civil Procedure 59(e)

Movants request the Court reconsider its Decision pursuant to Rule 60. However, Rule 59(e) as incorporated by Bankruptcy Rule 9023, authorizes the filing of a "motion to alter or amend a judgment." A motion for reconsideration is considered timely under Rule 59(e) and Bankruptcy Rule 9023 if it is filed within 14 days of the judgment or order. *In re Banfi*, 2021 WL 2407504, at *2 (Bankr. E.D.N.Y. 2021). Movants' Motion was filed one (1) year since the Court entered its Decision.

In addition, as Movants are not parties in this adversary proceeding, Movants lack prudential standing to challenge a decision on summary judgment. *See Warth v. Seldin*, 422 U.S. 490 (1975); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388 (1980); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000).

Therefore, relief under Rule 59(e) is not available to Movants.

Federal Rule of Civil Procedure 60

While Rule 60 does not govern motions to reconsider, Movants also specifically moved for relief from the Court's Decision pursuant to Rules 60(a), 60(b)(1), and 60(b)(6). As the

[1] Debtor has an extensive history of objecting to motions and seeking reconsideration of and/or appealing numerous Orders of this Court.

Court noted in its Settlement Order, Debtor herself lacks prudential standing to challenge the motions, decisions, and orders entered in this adversary proceeding.

Further, the Court has already held, after holding an evidentiary hearing, that Debtor's bankruptcy case is not a surplus estate [Case No.: 15-74795; Dkt. Item 681]. As such, Debtor lacks a pecuniary interest that is directly or adversely affected by the Court's Settlement Order.

John Lynch, as creditor and holder of claim number 22, had standing to object to the Trustee's Motion to Compromise, and he did. While it is unclear that either Debtor or Ms. Vindell have authority to act on his behalf, the Court will consider the relief requested under Rules 60(a), 60(b)(1), and 60(b)(6) as to the Settlement Order. Rule 60 is made applicable to bankruptcy cases pursuant to Bankruptcy Rule 9024.

Rule 60(a) permits a court to correct certain "mechanical errors" apparent on the face of a decision. *In re Etienne Estates*, 2016 WL 7377055, at *1 (Bankr. E.D.N.Y. 2013) (citing *McNamee v. Clemens*, 2013 WL 3968740, at *2 (Bankr. E.D.N.Y. 2013)). Movants fail to point out any mechanical errors in the Court's Decision or, to the extent applicable, in the Settlement Order. Relief under Rule 60(a) is inappropriate here.

Rule 60(b)(1) provides for relief from a judgment, order, or proceeding, due to mistake, inadvertence, surprise, or excusable neglect. *In re Hukmichand*, 2021 WL 6068030, at *3 (Bankr. E.D.N.Y. 2021) (citing *Niederland v. Chase*, 2011 WL 2023253, at *1 (2d. Cir. 2011)). "The term 'mistake' as used in Rule 60(b)(1) refers to an excusable litigation mistake or a court's substantive mistake in law or fact." *In re Coughlin*, 568 B.R. 461, 477 (Bankr. E.D.N.Y. 2017) (quoting *In re Wassah*, 417 B.R. 175, 183 (Bankr. E.D.N.Y. 2009)).

Movants urge the Court was mistaken in holding the Trustee was not entitled to summary judgment on his claim of unjust enrichment for Patricia Frank's pre-petition occupancy of 43

Harbor Drive, Sag Harbor, NY 11963 ("Harbor Drive"). Movants state "there is an obligation imposed by equity to prevent injustice, and an absence of an actual agreement between the parties." This Court is only addressing this challenge to the extent it impacted the Settlement Order, not the Decision on the merits.

The remedy of unjust enrichment is only available "in the absence of an actual agreement between the parties." *IDT Corp. v. Morgan Stanley Dean Witter & Co.*, 12 N.Y.3D 132, 142 (N.Y. 2012) (quoting *GFRE, Inc. v. U.S. Bank N.A.*, 130 A.D.3d 569, 570 (2d Dept. 2015)). Because a genuine dispute of material fact existed as to whether a lease existed pre-petition, the Court held that unjust enrichment was not available at the summary judgment stage for Frank's pre-petition occupancy of Harbor Drive. The Court thereafter granted the Trustee's Motion to Compromise.

Movants' assertion that "everything points to the estate being entitled to a claim of unjust enrichment" is simply wrong. There was a genuine dispute of material fact as to whether an actual agreement existed pre-petition; therefore, the Court appropriately denied the Trustee's claim for pre-petition unjust enrichment at the summary judgment stage. Movants are not entitled to relief under Rule 60(b)(1).

Rule 60(b)(6) provides for relief from a final judgment, order, or proceeding, for any other reason justifying relief from the operation of the judgment. To obtain relief under Rule 60(b)(6), "the movant must show extraordinary circumstances or an extreme and undue hardship." *In re Teligent, Inc.*, 306 B.R. 752, 758 (Bankr. S.D.N.Y. 2004). Movants have not alleged with any specificity that extraordinary circumstances or extreme and undue hardship are present here. Movants are not entitled to relief under Rule 60(b)(6).

Therefore, with good cause appearing therefor, it is hereby

ORDERED, that Movants' Motion to Reconsider the Court's April 30, 2021, Decision is denied; and it is further

ORDERED, that Movants' Motion for Relief from the Court's April 30, 2021, Decision is denied; and it is further

ORDERED, that Movants' Motion to Stay the Trustee's Motion to Compromise is denied; and it is further

ORDERED, that Movants' Motion to Stay the Court's March 17, 2022, Settlement Order is denied.

Dated: May 19, 2022
Central Islip, New York

Alan S. Trust
Chief United States Bankruptcy Judge