

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Gallusz v. LPP Mortgage, Inc.

No. 25-CV-885 JLS (BLM) (S.D. Cal. May 21, 2025) · No. 25-CV-885 JLS (BLM) · Decided May 21, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiff Klara Gianna Gallusz’s motion for reconsideration of the order denying her application for a temporary restraining order concerning a threatened nonjudicial foreclosure. The court held that Plaintiff had not shown newly discovered evidence, clear error, or an intervening change in controlling law. The court also denied Plaintiff’s request for an order to show cause regarding Rule 11 sanctions because the request did not comply with Rule 11(c)(2) and Defendant’s opposition was not frivolous or otherwise sanctionable.

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 SOUTHERN DISTRICT OF
CALIFORNIA 9 10 KLARA GIANNA GALLUSZ, Case No.: 25-CV-885 JLS (BLM) 11
Plaintiff, ORDER DENYING PLAINTIFF’S 12 v. MOTION FOR RECONSIDERATION AND
13 LPP MORTGAGE, INC. f/k/a LPP REQUEST FOR SANCTIONS MORTGAGE LTD, 14
Defendant. (ECF No. 13) 15 16 17 Presently before the Court is Plaintiff Klara Gianna Gallusz’s
 (“Plaintiff”) ex parte 18 Motion for Reconsideration of Order Denying Temporary Restraining
 Order (“Mot.,” ECF 19 No. 13).

Plaintiff moves for reconsideration of the Court’s April 22, 2025 Order denying 20 her
 Application for Temporary Restraining Order (“Order,” ECF No. 12). In such Motion, 21 Plaintiff
 also includes a request that the Court issue an “Order to Show Cause why Rule 11 22 sanctions
 should not be imposed.” Mot. at 12. Defendant LPP Mortgage, Inc. f/k/a LPP 23 Mortgage LTD
 (“Defendant”) filed an opposition on May 2, 2025.

ECF No. 14 (“Opp’n”). 24 Plaintiff then filed a Reply. ECF No. 17 (“Reply”). Having considered
 the Parties’ 25 arguments and the law, the Court DENIES Plaintiff’s Motion. 26 BACKGROUND
 27 On April 10, 2025, Plaintiff Klara Gianna Gallusz, appearing pro se, filed a 28 Complaint titled
 “Verified Petition for Declaratory and Injunctive Relief: Bill in Equity Ex 1 Parte Hearing for
 Declaratory Judgment and Injunctive Relief Due to Lack of Article III 2 Standing” in the Superior
 Court of California for the County of San Diego.

Exhibit A to 3 Defendant’s Notice of Removal, ECF No. 1-3 (“Compl.”). In her Complaint,
 Plaintiff 4 indicates the real property located at 3050 Rue D Orleans, Unit #410, San Diego,

California 5 92110 (the “Property”), is “the subject of a threatened non-judicial foreclosure sale 6 scheduled for April 16, 2025, at 10:30 AM, to take place at the entrance of East County 7 Regional Center, 250 E. Main Street, El Cajon, CA 92020.” Compl. at 2.

Plaintiff’s 8 Complaint seeks declaratory and injunctive relief, including “a determination of legal 9 rights, and to prevent irreparable harm from unlawful foreclosure.” Id. 10 On April 14, 2025, Defendant removed this case to this Court pursuant to 28 U.S.C. 11 § 1441 on the basis of diversity jurisdiction. See ECF No. 1. Plaintiff then filed an Ex 12 Parte Application for Temporary Restraining Order (“Appl.,” ECF No. 3), along with an 13 attached Memorandum of Points and Authorities (“Mem.,” ECF No. 3-1) and Declaration 14 of Plaintiff in support of her Application (“Gallusz Decl.,” ECF No. 3-2).

Plaintiff’s TRO 15 Application sought immediate relief in the form of a temporary restraining order (“TRO”) 16 enjoining Defendant from conducting a non-judicial foreclosure sale of her home, which 17 was—when she filed her TRO Application—scheduled for the next day, April 16, 2025. 18 Appl. at 1. 19 On April 15, 2025, the Court issued an administrative stay of the April 16, 2025 20 Trustee Sale and directed Defendant to respond to Plaintiff’s TRO Application by 21 5:00 p.m. on April 17, 2025.

See ECF No. 6. The Court also ordered Defendant to serve 22 a copy of its Order on Plaintiff, as well as any opposition it filed, and permitted Plaintiff to 23 file a reply to Defendant’s opposition by 5:00 p.m. on April 18, 2025. Id. 24 Defendant subsequently filed its Opposition (“Opp’n,” ECF No. 8), and Declaration 25 of Melissa Sassine in support of its Opposition (“Sassine Decl.,” ECF No. 8-2).

Plaintiff 26 then filed her Reply (“Reply,” ECF No. 10), followed by a Supplemental Declaration in 27 support of her Application (“Suppl. Gallusz Decl.,” ECF No. 11). 28 After due consideration the Court found Plaintiff failed to demonstrate a likelihood 1 of success on the merits and the equities and public interest were balanced against her, thus 2 the Court held she failed to satisfy either of the tests necessary for the issuance of a TRO 3 in the Ninth Circuit and denied her application.

See generally Order. 4 Plaintiff then filed her instant Motion for Reconsideration, which includes a request 5 that the Court issue an “Order to Show Cause why Rule 11 sanctions should not be 6 imposed.” Mot. at 12. 7 MOTION FOR RECONSIDERATION 8 I. Legal Standard 9 In the Southern District of California, a party may apply for reconsideration 10 “[w]hensoever any motion or any application or petition for any order or other relief has been 11 made to any judge and has been refused in whole or in part.” S.D.

Cal. CivLR 7.1(i)(1). 12 The moving party must provide an affidavit setting forth, inter alia, “what new or different 13 facts and circumstances are claimed to exist which did not exist, or were not

shown, upon 14 such prior application.” *Id.* “In resolving motions for reconsideration, courts often look to 15 the standard for relief from final judgment set forth in Federal Rules of Civil Procedure 16 59(e) and 60(b), which apply to motions for reconsideration of final appealable orders and 17 relief from judgment.” *Evanston Ins.*

Co. v. Venture Point, LLC, 18 No. 220CV01783KJDEJY, 2021 WL 5500486, at *1 (D. Nev. Nov. 23, 2021). 19 “A district court may grant a Rule 59(e) motion if it ‘is presented with newly 20 discovered evidence, committed clear error, or if there is an intervening change in the 21 controlling law.’” *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014) (emphasis in 22 original) (internal quotation marks omitted) (quoting *McDowell v. Calderon*, 197 F.3d 23 1253, 1255 (9th Cir.

1999) (en banc)). “Clear error or manifest injustice occurs when the 24 ‘reviewing court on the entire record is left with the definite and firm conviction that a 25 mistake has been committed.’” *Young v. Wolfe*, No. CV 07-03190 RSWL-AJWx, 26 2017 WL 2798497, at *5 (C.D. Cal. June 27, 2017) (quoting *Smith v. Clark Cnty. Sch.* 27 Dist., 727 F.3d 950, 955 (9th Cir.

2013)). “As the Ninth Circuit has explained the clear 28 error standard, ‘[t]o be clearly erroneous, a decision must strike us as more than just maybe 1 or probably wrong; it must, as one member of this court recently stated during oral 2 argument, strike us as wrong with the force of a five-week old, unrefrigerated dead fish.’” 3 *Stanislaus Food Prod. Co. v. USS-POSCO Indus.*, No. 1:09-CV-00560-LJO, 4 2012 WL 6160468, at *3 n.2 (E.D.

Cal. Dec. 11, 2012) (quoting *Fisher v. Roe*, 5 263 F.3d 906, 912 (9th Cir. 2001), overruled on other grounds by *Payton v. Woodford*, 6 346 F.3d 1204 (9th Cir. 2002)). 7 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests of 8 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Est. of Bishop*, 9 229 F.3d 877, 890 (9th Cir.

2000). Ultimately, whether to grant or deny a motion for 10 reconsideration is in the “sound discretion” of the district court. *Navajo Nation v. 11 Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 12 2003) (citing *Kona Enters.*, 229 F.3d at 883). A party may not raise new arguments or 13 present new evidence if it could have reasonably raised them earlier.

Kona Enters., 229 14 F.3d at 890 (citing 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999)). 15 II. Analysis 16 Plaintiff asks the Court to reconsider its April 24, 2025 Order denying her TRO 17 Application. See generally Mot. Plaintiff contends reconsideration is warranted because 18 the Court “[d]id not consider Plaintiff’s timely reply and objections;” “[r]elied on a 19 declaration not signed under penalty of perjury, in violation of 28 U.S.C. § 1746;” “[c]ited 20 unauthenticated documents in violation of Rule 901 and 803(6);” “[m]isstated

controlling 21 federal jurisdictional doctrine;” and “[a]llowed foreclosure without requiring proof of 22 enforcement authority.” Id. at 3.

23 To the extent Plaintiff argues the Court did not consider her reply and objections, 24 the Court respectfully disagrees, as it expressly acknowledged and cited such filings in its 25 Order. See Order at 4; see also Order at 8. And to the extent Plaintiff disputes Melissa 26 Sassine’s Declaration was sworn, Plaintiff provides no basis for her assertion, and the 27 record reflects otherwise.

See Sassine Decl. at 9. Moreover, it is not clear what 28 “unauthenticated documents” Plaintiff contends the Court relied on, as the Court expressly 1 denied Defendant’s Request for Judicial Notice as moot because it “did not rely on these 2 documents in reaching its conclusion[.]” Order at 4 n.1 (emphasis added). 3 Plaintiff’s remaining challenges largely reiterate the “same arguments, facts[,] and 4 case law” that this Court already considered; accordingly, Plaintiff raises insufficient 5 grounds to grant reconsideration.

See Wagnier v. Nat’l City Mortg. Inc., No. 09cv2721- 6 GPC-BGS, 2013 WL 3810592, at *2 (S.D. Cal. July 22, 2013) (denying motion for 7 reconsideration where the motion reflected the same arguments, facts, and case law that 8 were previously considered and ruled upon by the court). “A motion for reconsideration 9 is not an opportunity to renew arguments considered and rejected by the court, nor is it an 10 opportunity for a party to re-argue a motion because it is dissatisfied with the original 11 outcome.” See FTC v. Neovi, Inc., No. 06-CV-1952-JLS JMA, 2009 WL 56130, at *2 12 (S.D.

Cal. Jan. 7, 2009) (quoting Devinsky v. Kingsford, No. 05 Civ.2064(PAC), 2008 WL 13 2704338, at *2 (S.D.N.Y. 2008)), aff’d, 604 F.3d 1150 (9th Cir. 2010). To the extent 14 Plaintiff makes new arguments, she does not identify newly discovered evidence or an 15 intervening change in controlling case law. Consequently, Plaintiff has failed to establish 16 that she is entitled to reconsideration of the Court’s Order on the identified issues.

Arellano 17 v. Santos, No. 3:18-cv-02391-BTM-WVG, 2019 WL 1040134, at *3 (S.D. Cal. Mar. 4, 18 2019) (holding motions for reconsideration do not give parties “a second bite at the apple,” 19 and may not “be used to ask the Court to rethink what it has already thought” (citations and 20 internal quotation marks omitted)). 21 Furthermore, the Court does not find its decision to deny Plaintiff’s TRO 22 Application gives rise to “the definite and firm conviction that a mistake has been 23 committed.” Young, 2017 WL 2798497, at *5 (citation and internal quotation marks 24 omitted).

Accordingly, the Court DENIES Plaintiff’s Motion for Reconsideration.¹ 25 26 1 Defendant requests the Court take judicial notice of “a Voluntary Petition for Individuals Filing for Bankruptcy filed April 29, 2025 in In re: Klara Gianna Gallusz, United States Bankruptcy Court –

27 Southern District of California, Case No. 25-01678-JBM13.” See Defendant’s Request for Judicial Notice, ECF No. 14-1.

Plaintiff does not appear to oppose this request in her Reply, and she acknowledges 1 REQUEST FOR SANCTIONS 2 Next, Plaintiff requests the Court “issue an Order to Show Cause requiring 3 Defendant and its counsel to explain why sanctions should not be imposed for their conduct 4 in this matter, including the use of defective declarations, misleading legal claims, and 5 unauthenticated exhibits in a federal proceeding affecting property rights.” Mot. at 12.

6 I. Legal Standard 7 Under Federal Rule of Civil Procedure 11, when a “pleading, written motion, or 8 other paper,” Fed. R. Civ. P. 11(b), “is frivolous, legally unreasonable, or without factual 9 foundation, or is brought for an improper purpose,” the court may impose sanctions, 10 Warren v. Guelker, 29 F.3d 1386, 1388 (9th Cir. 1994) (citing Conn v. Borjorquez, 967 F.2d 1418, 1420 (9th Cir.

1992); Operating Eng’rs Pension Tr. v. A-C Co., 859 F.2d 1336, 12 1344 (9th Cir. 1988)). A request for sanctions must be made by separate motion, and the 13 moving party must provide the other party twenty-one days in which to correct or withdraw 14 the writing at issue prior to filing the sanctions motion. Fed. R. Civ. P. 11(c)(2). 15 The standard governing whether a pleading or motion is “frivolous” or brought for 16 an “improper purpose” is one of reasonableness and objectivity.

Townsend v. Holman 17 Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc) (citing Zaldivar v. City 18 of L.A., 780 F.2d 823, 832 (9th Cir. 1986), overruled on other grounds by Cooter & Gell 19 v. Hartmarx Corp., 496 U.S. 384 (1990)). Where reasonable inquiry would reveal errors, 20 a party may not avoid sanctions by claiming an innocent, good-faith mistake or 21 carelessness.

Lloyd v. Schlag, 884 F.2d 409, 412 (9th Cir. 1989). However, “sanctions 22 should be reserved for the ‘rare and exceptional case where the action is clearly frivolous, 23 legally unreasonable or without legal foundation, or brought for an improper purpose.’” 24 Primus Auto. Fin. Serv., Inc. v. Batarse, 115 F.3d 644, 649 (9th Cir. 1997) (quoting 25 Operating Eng’rs Pension Tr., 859 F.2d at 1344).

Even if a court finds that a violation has 26 27 taking of property without due process.” Reply at 6. However, as the Court does not rely on this document 28 in reaching its conclusion, the Court DENIES AS MOOT Defendant’s Request for Judicial Notice (ECF 1 || occurred, the imposition of sanctions is discretionary. See Warren, 29 F.3d at 1390. Analysis 3 As an initial matter, Plaintiff’s request for sanctions does not comply with the 4 ||procedural requirements of Rule 11(c)(2).

In any event, the Court does not find 5 ||Defendant’s Opposition to Plaintiffs TRO Application to be “frivolous, legally 6 ||unreasonable, or without factual foundation, or... brought for an

improper purpose.” 7 || Warren, 29 F.3d at 1388 (citation omitted). Indeed, the Court ultimately denied Plaintiffs 8 TRO Application, on several bases identified by Defendant.

Accordingly, this is certainly 9 the “rare and exceptional case where the action is clearly frivolous, legally 10 || unreasonable or without legal foundation, or brought for an improper purpose.” Primus 11 ||Auto. Fin. Serv., Inc, 115 F.3d at 649.

Thus, Plaintiff's request is DENIED. 12 CONCLUSION 13 In light of the foregoing, the Court DENIES Plaintiff's Motion for Reconsideration 14 || ECF No. 13). The Court further DENIES Plaintiffs request that this Court issue an Order 15 Show Cause why sanctions should not be imposed against Defendant. 16 IT IS SO ORDERED. Dated: May 21, 2025 jae Lb monaitenus- 18 on.

Janis L. Sammartino 19 United States District Judge 20 21 22 23 24 25 26 27 28