

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Mel Marin v. John Bahr, et al.

Marin · No. 23-cv-336-RSH-BLM · Decided October 15, 2025

OPINION

Marin

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MEL MARIN, Case No.: 23-cv-336-RSH-BLM 12 Plaintiff,

ORDER DENYING PLAINTIFF’S

13 v. RULE 59 AND RULE 60 MOTIONS

14 JOHN BAHR, et al., [ECF Nos. 94, 95] 15 Defendants. 16 17 18 Before the Court are motions
filed by plaintiff Mel Marin pursuant to Rules 59 and 19 60 of the Federal Rules of Civil
Procedure. ECF Nos. 94, 95. As set forth below, the 20 Court denies the motions.

21 I. BACKGROUND

22 A. Plaintiff’s Allegations 23 The instant action arises from unlawful detainer proceedings
brought against 24 Plaintiff in California Superior Court. Plaintiff’s First Amended Complaint
 (“FAC”) 25 alleges as follows.

26 In 2007, Plaintiff’s sister obtained a home equity loan secured by a condominium
27 located at 2410 Albatross Street, San Diego, California (the “Albatross Property”). ECF
28 No. 78 ¶ 15. According to Plaintiff, the loan was never funded, but the lender, World
1 Savings (later acquired by Wells Fargo), nonetheless sought to foreclose and resell the 2
Albatross Property to new owners. Id. ¶¶ 15, 19, 26. In other words, Plaintiff claims the 3 bank
never lent any money but was somehow able to successfully foreclose on the 4 Albatross Property.
On October 2, 2022, the new owners of the property filed an 5 unlawful detainer action against
Plaintiff and his sister in San Diego Superior Court. Id. ¶ 6 27. The owners were represented by
defendant Marshall in this unlawful detainer action. 7 Id. 8 B. Procedural Background 9 On
February 21, 2023, Plaintiff filed his pro se Complaint in the instant action 10 naming seven
defendants: Wells Fargo, Clear Recon, the Vanguard Group, John Bahr, 11 John Saxe, John
Kallas, and Daniel Marshall. ECF No. 1. Plaintiff’s Complaint asserted 12 claims for: reformation
of contract (Claim 1); deceit (Claim 2); violations of California 13 foreclosure processing statutes
(Claim 3 and 4); violations of California’s Unfair 14 Competition Law (“UCL”) (Claim 5);
violation of the California Business Practices Act 15 (Claim 6); setting aside the March 4, 2019

and September 7, 2022 sales, and for quiet 16 title (Claim 7); conversion (Claim 8); and interference with prospective economic 17 advantage (Claim 9). Id. ¶¶ 77–295. 18 On June 24, 2024, the Court granted Wells Fargo’s motion for judgment on the 19 pleadings. ECF No. 77. The Court dismissed Clear Recon, Saxe, Kallas, and Vanguard 20 from this action for lack of proper service; and dismissed Wells Fargo and Bahr from this 21 action under the doctrine of res judicata. Id. at 4–10, 12, 14. The Court granted Plaintiff 22 leave to file an amended complaint as to Claims 2, 5, 6, 7 and 9 against defendant 23 Marshall only. Id. at 14. 24 On July 15, 2024, Plaintiff filed his FAC, the operative pleading in this case. ECF

25 No. 78. The FAC asserted claims against Marshall for deceit (Claim 1) and conversion 26 (Claim 2). FAC ¶¶ 79–138. 27 On February 28, 2025, Marshall filed a motion for summary judgment. ECF No. 28 87. On the same day, Plaintiff filed a motion for reconsideration of the Court’s June 24, 1 2024 order. ECF No. 88. 2 On April 10, 2025, the Court granted Marshall’s motion for summary judgment, 3 and denied Plaintiff’s motion for reconsideration. ECF No. 91. Final judgment was 4 entered the following day. ECF No. 93. 5 On May 8, 2025, Plaintiff filed his Rule 59 motion. ECF No. 94. The next day, he 6 filed his Rule 60 motion. ECF No. 95. Marshall opposes. ECF No. 98.

7 II. PLAINTIFF’S RULE 59 MOTION

8 A. Legal Standard 9 The Court construes Plaintiff’s Rule 59 motion as a motion to alter or amend the 10 judgment pursuant to Rule 59(e). “Although Rule 59(e) permits a district court to 11 reconsider and amend a previous order, the rule offers an extraordinary remedy, to be 12 used sparingly in the interests of finality and conservation of judicial resources.” *Kona 13 Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation 14 marks omitted). “A motion for reconsideration under Rule 59(e) ‘should not be granted, 15 absent highly unusual circumstances, unless the district court is presented with newly 16 discovered evidence, committed clear error, or if there is an intervening change in the 17 controlling law.’” *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (quoting 18 389 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). “A Rule 59(e) 19 motion may not be used to raise arguments or present evidence for the first time when 20 they could reasonably have been raised earlier in the litigation.” *Carroll v. Nakatani*, 342 21 F.3d 934, 945 (9th Cir. 2003).¹ 22 B. Discussion 23 Plaintiff’s Rule 59 motion is, in effect, a second motion for reconsideration of the 24 Court’s order of June 24, 2024 granting Wells Fargo’s motion for judgment on the 25 26 1 Plaintiff previously argued, quoting this same case, that “[f]or reconsideration that 27 movant must argue new law that was not available the first time around.” ECF No. 57 at 3. 28 1 pleadings. ECF No. 77. The Court previously denied Plaintiff’s first motion for 2 reconsideration both as untimely—Plaintiff filed his motion over nine months after the 3 order for which he sought reconsideration—as well as on the merits. ECF No. 91 at 10– 4 16. 5 Plaintiff now argues that the Court erred in denying the first motion to reconsider 6 as untimely, arguing that he brought his motion “within 30 days of [a] change in the law,” 7 referring to the Ninth Circuit’s decision in *Rose Ct., LLC v. Select Portfolio*

Servicing, 8 Inc., 119 F.4th 679 (9th Cir. 2024), issued on October 17, 2024. ECF No. 94-1 at 5. 9 However, Plaintiff did not bring his motion to reconsider with 30 days of the issuance of 10 that opinion, but rather over four months later. Additionally, Plaintiff's motion did not 11 cite that case; and in any event, the case did not effect a change in the applicable law 12 cited in the Court's order granting judgment on the pleadings. 13 Plaintiff's Rule 59 motion also raises a host of new arguments for why the Court 14 erred in granting judgment on the pleadings on the grounds of res judicata. ECF No. 84-1 15 at 6–10. However, Plaintiff fails to show that he could not have raised these arguments in 16 opposing judgment on the pleadings in the first place. Wells Fargo's motion for judgment 17 on the pleadings argued res judicata extensively, see ECF No. 46 at 1, 7–10, 13–14, 16– 18 19, 21–24, yet Plaintiff's opposition addressed the doctrine only briefly, see ECF No. 57 19 at 14–15. Plaintiff was also at liberty to make many of these arguments in his first motion 20 for reconsideration, which the Court denied as untimely but also on the merits. In the 21 absence of newly discovered evidence or an intervening change in the law, the Court 22 declines to yet again address the merits of Plaintiff's arguments for reconsideration, 23 either new or old.

24 III. PLAINTIFF'S RULE 60 MOTION

25 A. Legal Standard 26 Plaintiff's second motion is based on Rule 60(b)(4), which provides that a Court 27 may grant relief from a final judgment where "the judgment is void." Fed. R. Civ. P. 28 60(b)(4). "Rule 60(b)(4) applies only in the rare instance where a judgment is premised 1 ||either on a certain type of jurisdictional error or on a violation of due process that 2 || deprives a party of notice or the opportunity to be heard." United Student Aid Funds, Inc. 3 ||v. Espinosa, 559 U.S. 260, 271 (2010). "Federal courts considering Rule 60(b)(4) 4 ||motions that assert a judgment is void because of a jurisdictional defect generally have 5 ||reserved relief only for the exceptional case in which the court that rendered judgment 6 || lacked even an arguable basis for jurisdiction." /d. (internal quotation marks omitted). 7 B. _ Discussion 8 Plaintiff argues that because he filed for bankruptcy during the pendency of this 9 || lawsuit, this Court lacked subject matter jurisdiction to dismiss his claims in this lawsuit 10 ||/or to enter judgment for Defendants. This is incorrect. A bankruptcy notice results in an 11 ||automatic stay, but the stay does not extend to lawsuits initiated by the debtor. See In re 12 || Palmdale Hills Prop., LLC, 423 B.R. 655, 663 (B.A.P. 9th Cir. 2009) ("[T]he automatic 13 has been found inapplicable to lawsuits initiated by the debtor."). Plaintiff's filing of 14 bankruptcy petition on December 9, 2024, see In re Marin, No. 24-bk-4690-JBM 15 ||(Bankr. S.D. Cal.), did not deprive this Court of subject matter jurisdiction over his 16 || pending civil lawsuit. The judgment in this case was not void.

17 || TV. CONCLUSION

18 For the above reasons, the Court DENIES Plaintiff's motions made under Rule 59 19 || [ECF No. 94] and Rule 60 [ECF No. 95]. 20 IT IS SO ORDERED. 21 || Dated: October 15, 2025 C /) ' 22 33 Hon. Robert S. Huie United States District Judge 24 25 26 27 28

