



Eileen W. Hollowell

Eileen W. Hollowell, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:)	Chapter 11
)	
MINAXI G. PATEL,)	Case No. 4:10-bk-20822-EWH
)	
)	MEMORANDUM DECISION
)	
Debtor.)	
_____)	

Minaxi G. Patel ("Debtor") filed a Chapter 11 voluntary petition on July 2, 2010. Debtor listed an interest in a Duplex located at 7002 West Oceanfront, Newport Beach, CA 92663 ("the Property") on her Schedule A. The Property was listed as having a value of \$2,500,000. On August 12, 2010, U.S. Bank National Association ("U.S. Bank") filed a proof of claim for \$2,646,601.76 secured by a lien on the Property.

On November 16, 2010, Debtor filed a Chapter 11 Plan ("the Plan"). It valued the Property at \$1,650,000 and proposed to bifurcate U.S. Bank's claim, limiting the secured claim to the stated value of the Property and treating the balance as a general unsecured claim. The proposed treatment also provided, "[i]n the event the debtor is able to reach a stipulation with] US BANK [as to its treatment, the terms and conditions therein will supercede the treatment set forth herein.]" During this same month, U.S.

1 Bank ordered and received a Broker's Price Opinion from Kevin Hearne ("the Hearne
2 BPO") that valued the Property at \$810,000 and an exterior-only appraisal report from
3 Michelle Swann ("the Swann Appraisal") that valued the Property at \$2,900,000.

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5 On December 14, 2010, Debtor filed a Motion to Determine Valuation of the
6 Property. The Court never made a ruling on that Motion because on February 9, 2011,
7 the parties entered a stipulation ("the Stipulation") to modify the Plan's treatment of U.S.
8 Bank's claim. Under terms of the Stipulation, the Property was valued at \$1,650,000
9 and the secured claim was to be paid at 5.25% annually amortized over thirty years.
10 The remainder of U.S. Bank's claim was treated as a deficiency claim and classified
11 separately from other unsecured creditors. The Court signed an order approving the
12 Stipulation on February 10, 2011.¹ Debtor later made several plan amendments that
13 incorporated the Stipulation, and the Court entered an Order Confirming Debtor's
14 Second Amended and Modified Plan on April 20, 2012.

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16 On April 5, 2012, U.S. Bank filed a Motion to set aside the Stipulation. U.S. Bank
17 claims that it only reviewed the Hearne BPO and neglected to consider the Swann
18 Appraisal before entering into the Stipulation. As a result, U.S. Bank claims it mistakenly
19 underestimated the Property's value. Upon discovering this mistake in October 2011,
20 U.S. Bank sought a third appraisal, and in December 2011, Otto Krebs valued the
21 Property at \$3,500,000 ("the Krebs Appraisal"). U.S. Bank seeks relief pursuant to Rule
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25 ¹Although the Court signed the Stipulation on February 10, it was not entered on the
26 docket until April 6, 2011. Accordingly, any challenge to the Stipulation could be filed within a
27 year running through April 6, 2012, pursuant to Fed. R. Civ. P. 60(c). By filing its Rule 60 Motion
28 on April 5, 2012, U.S. Bank timely complied with the rule.

1 9024² so that it may challenge the stipulated value and receive more favorable
2 treatment of its claim.

3 Rule 9024 adopts Fed. R. Civ. P. 60 ("Civil Rule 60") for bankruptcy proceedings.
4 Civil Rule 60(b)(1)³ provides that a court may grant relief from a final judgment to a party
5 on account of its "mistake, inadvertence, surprise, or excusable neglect."
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7 Reconsideration is an "extraordinary remedy...to be used sparingly..." Kona
8 Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877 (9th Cir. 2000), and "it is not
9 intended to remedy the effects of a litigation decision that a party later comes to regret
10 through subsequently-gained (*sic*) knowledge..." Latshaw v. Trainer Wortham & Co.,
11 452 F.3d 1097, 1101 (9th Cir. 2006). Normal negligence by a party or the party's
12 attorney does not provide grounds for Civil Rule 60(b)(1) relief. See Engleson v.
13 Burlington N. R.R. Co., 972 F.2d 1038, 1043 (9th Cir. 1992). The moving party bears
14 the burden of proof. Martinelli v. Valley Bank (In re Martinelli), 96 B.R. 1011, 1013 (9th
15 Cir. BAP 1988).
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17 U.S. Bank has not satisfied this burden. It learned about Debtor's proposed
18 treatment of its claim in the middle of November 2010. Later that month, it
19 commissioned and received two appraisals of the property. U.S. Bank entered into the
20 Stipulation in February 2011 after only considering the lower of the two appraisals.
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24 ²Unless otherwise indicated, all chapter and section references are to the Bankruptcy
25 Code, 11 U.S.C. §§ 101-1532. The Federal Rules of Bankruptcy Procedure, Rules 1001-9037,
are referred to as "Rules." The Federal Rules of Civil Procedure are referred to as "Civil Rules."

26 ³Civil Rule 60(b)(1) provides: "On motion and just terms, the court may relieve a party
27 or its legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect...."

1 When it realized its error, U.S. Bank commissioned a third appraisal, and that yielded a
2 value estimate nearly \$2 million greater than the stipulated value of the Property. Only
3 after that result did U.S. Bank seek relief, which suggests that the Motion for
4 Reconsideration is motivated by regret. As stated in Latshaw and quoted by U.S. Bank
5 in its own Motion, that is not sufficient grounds for relief under Civil Rule 60.
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7 U.S. Bank also has failed to persuasively argue that relief is merited due to
8 excusable neglect. To qualify, a movant must satisfy four equitable factors: (1) danger
9 of prejudice to the opposing party; (2) length of delay and its impact on the proceedings;
10 (3) reason for the delay; and (4) whether the movant acted in good faith. Bateman v.
11 U.S. Postal Serv., 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citation omitted). U.S. Bank
12 cannot clear the hurdles that the first two factors constitute. In this case, a plan
13 incorporating the Stipulation has already been confirmed. Vacating the Stipulation would
14 negatively impact the confirmed plan and require an evidentiary hearing to determine
15 the value of the Property. In turn, this would likely impact all creditors--revising the value
16 of the Property upward (which is what U.S. Bank seeks) could result in U.S. Bank
17 receiving more payments from the estate at the expense of other creditors. This could
18 all unfairly prejudice Debtor, ultimately. Similarly, resolving a valuation dispute may take
19 several months, a process which constitutes an undue delay in performance of the
20 confirmed plan.
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23 U.S. Bank supplements its Civil Rule 60 argument by contending that relief from
24 the Stipulation accomplishes justice and that the Stipulation is voidable due to unilateral
25 mistake induced by a misrepresentation. Neither argument is persuasive.
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1 To support the assertion that relief is in the interest of justice, U.S. Bank cites
2 United States v. Sparks, 685 F.2d 1128, 1130 (9th Cir. 1982). However, Sparks was a
3 criminal case with facts divergent from those before this Court. And while Sparks
4 discusses Civil Rule 60(b) in general terms, U.S. Bank points to language that is
5 immediately followed by the Ninth Circuit's reminder, "In order to obtain such relief from
6 a judgment...extraordinary circumstances must exist." Id. (quotation omitted). U.S. Bank
7 has not made such a showing.

9 Nor has it adduced evidence that demonstrates Debtor misled U.S. Bank and
10 induced a unilateral mistake during negotiations. As a result, the Arizona case U.S.
11 Bank cites for that sort of circumstance, Parrish v. United Bank of Ariz., 164 Ariz. 18, 20,
12 790 P.2d 304, 306 (Ct. App. 1990), is not applicable.

14 For these reasons, U.S. Bank has not shown that it is entitled to relief under Civil
15 Rule 60, and by operation of a separate order, the motion will be denied.

16 Dated and signed above.

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19 Notice to be sent through the
20 Bankruptcy Noticing Center "BNC"
to the following:

21 Minaxi Patel
22 2040 English Turn Dr.
Presto, PA 15142

23 Eric Sparks
24 Eric Slocum Sparks, PC
25 110 S. Church Ave. #2270
Tucson, AZ 85701

26 Leonard McDonald
27 Mark Bosco

1 Paul Cardon
2 Tiffany & Bosco
3 2525 E. Camelback Rd., 3rd Fl.
4 Phoenix, AZ 85016

5 U.S. Trustee
6 230 N. First Ave.
7 Phoenix, AZ 85003

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