ORDERED in the Southern District of Florida on June 25, 2025.

Peter D. Russin

Peter D. Russin, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In Re:

Case No.: 25-14028-PDR

Eliot Ivan Bernstein

Chapter 13

Debtor.
_____/

ORDER DENYING DEBTOR'S EMERGENCY MOTIONS TO VACATE ORDERS AND DISQUALIFY JUDGE PURSUANT TO 28 U.S.C. § 455 AND BANKRUPTCY RULES 9023, 9024, AND 8002

This matter is before the Court on the pro se Debtor's *Emergency Motion to Vacate All Judgments and Orders of Hon. Judge Russin Upon Mandatory Disqualification and Reinstate the Automatic Stay Pending New Trial and Hearing and Other Relief Under Federal Rules of Bankruptcy Procedure 9023 and 9024 and Timely Filed to Extend the Time for Filing an Appeal Under Rule 8002(b)* (Doc. No.

41), and the Debtor's *Supplemental Submittal Motion and "Newly Discovered Evidence" to Vacate All Judgments and Orders of Hon. Judge Russin* (Doc. No. 42) (together, the "Motions"). The Court, having reviewed the Motions, the case record, and applicable law, and being otherwise fully advised in the premises, denies the requested relief for the reasons set forth below.

I. Background

The Debtor commenced this Chapter 13 case on April 14, 2025, the same day a foreclosure sale was scheduled for the property located at 2753 NW 34th Street, Boca Raton, Florida (the "Property"). The Property is not owned by the Debtor, but by a non-debtor entity, Bernstein Family Realty, LLC.

This case represents the third filing by or involving parties related to the Debtor with the purpose of halting foreclosure proceedings. Prior filings include:

- **2022**: An involuntary Chapter 11 case initiated by the Debtor's children against the LLC, dismissed with prejudice and accompanied by sanctions;[1]
- **2023**: A voluntary Chapter 13 petition filed by the Debtor, dismissed after this Court entered an in rem stay relief order pursuant to 11 U.S.C. § 362(d)(4), finding that the case was filed in bad faith;[2]
- **2025**: The current Chapter 13 case, filed precisely two years after the prior in rem order.

[1] See *Order Dismissing Case with Prejudice*, Case No. 22-13009-EPK, Doc. No. 79, p.2.

[2] See *Order Granting In Rem Relief from the Automatic Stay* and *Order Dismissing Case*, Case No. 23-12630-PDR, Doc. Nos. 22 and 37.

Following a hearing on June 2, 2025, the Court granted stay relief to the secured creditor,[3] denied the Debtor's motion for a continuance,[4] and subsequently dismissed the case at the request of the Chapter 13 Trustee due to Debtor's failure to make pre-confirmation plan payments.[5]

In his motion and supplemental filing, Berstein alleges that the undersigned should be disqualified based on purported bias and prejudice stemming from prior rulings in this case and allegedly improper conduct in unrelated matters and seeks to vacate three of this Court's orders.[6] He broadly asserts that the Court has exhibited hostility toward him, favored opposing counsel, and issued rulings that suggest a lack of impartiality. As an example, Berstein references the June 2, 2025 hearing, claiming that the Court "refused to hear" his argument and "cut [him] off," which he characterizes as evidence of bias. However, he does not cite the hearing transcript, provide any quotations, or identify any specific statements or rulings made by the Court during that proceeding. Nor does he cite any particular order or act demonstrating favoritism or prejudice. Berstein also devotes considerable space to allegations that opposing parties, their counsel, and other third parties have committed fraud, perjury, or other forms of misconduct. These allegations, even if taken at face value, are not grounds for judicial disqualification and are not relevant to the question of the Court's impartiality. In any event, Berstein provides no

[3] Doc. No. 35

[4] Doc. No. 37

[5] Doc. No. 38

[6] Doc. Nos. 35, 37, and 38.

competent or admissible evidence to support those claims. He further references unspecified transcripts and filings from other proceedings as "newly discovered evidence," but attaches none of them and fails to explain their relevance. The filings are entirely conclusory and unsupported by any factual or evidentiary foundation.

II. Legal Analysis

A. Motion for Disqualification under 28 U.S.C. § 455

Disqualification of a judge under 28 U.S.C. § 455(a) is warranted where a reasonable person, fully informed of the facts, would question the judge's impartiality.[7] Under § 455(b)(1), disqualification is mandatory where the judge harbors a personal bias or prejudice.

The Debtor's assertions of bias are based entirely on the Court's rulings and conduct during the June 2, 2025, hearing. It is well settled that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion."[8] The Debtor points to no extrajudicial source of bias nor any objective facts that would lead a reasonable observer to question the Court's impartiality. Accordingly, the request for disqualification is denied.

[7] *United States v. Amedeo*, 487 F.3d 823, 828 (11th Cir. 2007).

[8] *Liteky v. United States*, 510 U.S. 540, 555 (1994).

B. Attempted Collateral Attack on 2023 Order

To the extent the Motions seek to challenge the Court's April 14, 2023, in rem stay relief order entered in Case No. 23-12630-PDR, such challenge is impermissible. That order was not appealed and is now final.[9]

Furthermore, relief under Fed. R. Civ. P. 60, made applicable through Bankruptcy Rule 9024, must be sought in the case in which the order was entered. The Debtor filed no such motion in the 2023 case. Therefore, this Court lacks authority to revisit the 2023 order in the present proceeding.

C. Relief Under Rules 9023 and 9024

The Debtor seeks reconsideration and vacatur of several prior orders, namely the Court's *Order Granting Amended Motion for Stay Relief,*[10] *Order Denying Debtors Motion for Temporary Stay or Continuance of Hearing,*[11] and *Order Granting Trustee's Request for Order Dismissing Case Upon Denial of Confirmation of Plan.*[12] Reconsideration is sought pursuant to Bankruptcy Rule 9023 (incorporating Fed. R. Civ. P. 59) and Rule 9024 (incorporating Fed. R. Civ. P. 60). These rules allow for post-judgment relief under narrowly defined circumstances.

[9] See *In re Optical Techs., Inc.*, 425 F.3d 1294, 1300 (11th Cir. 2005) (final orders may not be collaterally attacked in subsequent proceedings).

[10] Doc. No. 35

[11] Doc. No. 37

[12] Doc. No. 38

1. Rule 9023

Rule 9023 permits a party to seek to alter or amend a judgment within 14 days of its entry. Relief under this rule is appropriate only where the movant demonstrates:

- a manifest error of law or fact,
- newly discovered evidence that could not have been presented earlier with due diligence, or
- an intervening change in controlling law.[13]

The Debtor has not identified any legal or factual error in the Court's rulings that would justify reconsideration. Nor has the Debtor submitted any newly discovered evidence and certainly none that could not have been previously raised. To the extent the Supplemental Motion cites additional information concerning parallel state court proceedings or alleged actions by third parties, none of this information is shown to have been both material and previously unavailable through due diligence, as required for relief under Rule 59. Instead, the Debtor's arguments largely restate prior contentions already considered and rejected by the Court, which does not support relief under Rule 9023.[14]

The Motions do not present newly discovered evidence material to the decisions at issue. The Debtor's allegations of fraud are largely directed to third parties and

[13] See *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (citing *In re Kellogg,* 197 F.3d 1116, 1119 (11th Cir.1999)).

[14] See *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) ("Reconsidering the merits of a judgment, absent a manifest error of law or fact, is not the purpose of Rule 59.").

are speculative and unsupported by competent evidence. Moreover, the Supplemental Motion simply reiterates prior arguments without demonstrating any mistake, fraud, or exceptional circumstance warranting relief.

2. Rule 9024

Rule 9024, incorporating Fed. R. Civ. P. 60, provides that the Court may relieve a party from a final order or judgment for certain limited reasons, including:

- mistake, inadvertence, surprise, or excusable neglect (60(b)(1));
- newly discovered evidence (60(b)(2));
- fraud, misrepresentation, or misconduct by an opposing party (60(b)(3));
- any other reason that justifies relief (60(b)(6)).[15]

Here, the Debtor asserts that certain third parties engaged in fraud or unethical conduct and that newly discovered evidence warrants vacatur. The fraud allegations are directed to third parties and are generalized and unsupported by sworn, admissible evidence. No specific act of misrepresentation that directly affected the outcome of the prior rulings is clearly identified. There is no evidence submitted and therefore the Motions fail to meet the required thresholds and do not demonstrate that the Debtor was prevented from fairly presenting his case.

Rule 60(b)(6) is not a catch-all for discontent with the Court's rulings. It applies only in extraordinary circumstances not covered by other subsections, and only where

[15] See *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) ("Relief under Rule 60(b)(6) is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances.").

relief is consistent with the balance of finality and fairness.[16] The Debtor has not demonstrated such extraordinary circumstances here.

D. Rule 8002(b) Tolling

The Debtor filed his initial motion on June 18, 2025, within the 14-day period prescribed by Bankruptcy Rule 8002(b),[17] and the Court finds that the motion qualifies as one of the types listed in Rule 8002(b)(1). While the motion ultimately fails to meet the substantive standards for relief under Bankruptcy Rules 9023 or 9024, it was timely filed and sufficiently invoked post-judgment relief under those rules. As such, it tolled the deadline for filing a notice of appeal pursuant to Rule 8002(b) until entry of this order resolving the motion.

III. Conclusion

The Debtor has failed to establish any legal or factual basis to grant the relief sought in either of the Motions. The record before the Court instead reflects a repeated misuse of the bankruptcy system to obstruct lawful foreclosure actions, and the orders in question were entered after due consideration and in accordance with applicable law. Accordingly, it is hereby ORDERED that:

1. The Debtor's Emergency Motion (Doc. No. 41) and Supplemental Motion (Doc. No. 42) are DENIED.
2. The Court will not vacate its prior orders at Doc. Nos. 35, 37, and 38.
3. The case remains dismissed.

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[16] See *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000).

[17] Doc. Nos. 35, 37, and 38 were dated June 4, 2025, June 6, 2025, and June 9, 2025, respectively.

4. The Court will take no action to transfer or reassign this case.

5. The Debtor's time to appeal Doc. Nos. 35, 37, and 38 runs from the date of entry of this Order.

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Copies to:
All parties in interest.