

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:	:	
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LUIS G. VAZQUEZ LABOY,	:	Case No. 00-00852 (GAC)
CARMEN D. GARCIA CALDERON,	:	
	:	
Debtors	:	Chapter 7
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	:	
LUIS G. VAZQUEZ LABOY,	:	
CARMEN D. GARCIA CALDERON,	:	
	:	
v.	:	Adv. No. 01-0077
	:	
DORAL MORTGAGE CORP., EDGARDO	:	
CANALES IDRACH, D/B/A CANALES	:	
LAW OFFICES, ANGEL ROLAN PRADO,	:	
JOHN DOE and the conjugal	:	
partnership formed with EDGARDO	:	
CANALES IDRACH,	:	
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**DECISION AND ORDER**

The debtors filed this adversary proceeding on August 22, 2001, seeking a determination that Doral Mortgage Corporation ("Doral") violated the automatic stay by registering and perfecting a mortgage deed post-petition. The debtors requested that Doral be ordered to withdraw the deed and to surrender it for cancellation. Doral sought dismissal of the complaint.

The Court entered a Decision and Order on August 29, 2003, dismissing this adversary proceeding (dkt. #87). The pertinent background facts, outlined by the Court in the initial Decision and Order, are that the debtors purchased property on December 17, 1996 and presented a conveyance deed to the Registry of Property on

December 30, 1996. Subsequently on February 15, 1997, less than sixty days after the presentation of the conveyance deed, the debtors borrowed \$25,000.00 from Doral and subscribed a first mortgage in its favor, which was presented to the Registry of Property. The debtors were notified of deficiencies in the conveyance deed and on May 5, 1997, the conveyance deed was withdrawn by them.

The Court concluded that the mortgage deed could not be registered because the conveyance deed was withdrawn. The Court found that Doral was not aware that its mortgage was unrecorded until after the filing of the debtors' bankruptcy petition, on January 31, 2000, and thus that it was unable to perfect its security interest prepetition. Doral presented the mortgage deed again on December 1, 2000, and its security interest ultimately became perfected as of that date. The Court concluded that Doral's perfection would have become effective against previously acquired rights in the property, but for the debtors wrongful act in withdrawing the conveyance deed without notifying Doral or Canales Law Offices, the firm that notarized the mortgage deed. Likewise, the Court concluded that the postpetition acts of Doral and Canales Law Offices were excepted from the automatic stay by 11 U.S.C. § 362(b)(3).

On September 8, 2003, within ten days of the issuance of the Decision and Order, the debtors filed a motion for reconsideration

to amend or alter the judgment (dkt. #88), a motion submitting certified translations (dkt. #89) and a motion to amend and make additional findings of fact (dkt. #90). The debtors submitted additional translations on September 12, 2003 (dkt. #92). Doral opposed the debtors' motions (dkt. #94). The matter was scheduled for an evidentiary hearing on April 1, 2004.

Prior to the hearing, in the legal case, the undersigned recused himself (legal dkt. #80) and the case and adversary proceeding were reassigned to Judge Deasy, sitting in Puerto Rico by designation. On March 10, 2005, Judge Deasy disqualified himself (legal dkt. #124) and the case was reassigned to Judge de Jesus (legal dkt. #127). On November 15, 2005, the case was assigned back to this Court, since the reasons for the original disqualification no longer existed (legal dkt. #129).

During the period of the reassignments, with leave of court, the parties filed various motions related to this matter. Doral filed a second opposition to plaintiff's motion for reconsideration (dkt. #107). The debtors replied (dkt. #112). Doral filed a sur-reply (dkt. #117) and Canales Law Offices filed a sur-reply (dkt. #120).

The debtors contend that the Court erred in finding that the debtors' conduct in withdrawing the conveyance deed from the Registry of Property was wrongful. The debtors argue that they were only able to withdraw the conveyance deed because the

conveyance deed and the mortgage deed presentations had expired. Likewise, the debtors allege that the deficiencies that prevented the original registration of the deeds were corrected post-petition without the debtors' assistance. Moreover, the debtors contend that the Court erred in determining that Doral was unaware that its mortgage deed was not registered until after the bankruptcy was filed. The debtors argue that Doral was aware that its mortgage was unrecorded at least since the summer of 1999. The debtors filed their bankruptcy petition on January 31, 2000 and Doral's mortgage was not presented for the second time until December 1, 2000, or ten months after the filing of the petition. Finally, the debtors argue that the Court erred in its legal conclusion that the presentation of the mortgage deed and the perfection of Doral's lien post petition were excepted from the automatic stay.

Doral opposes the debtors' motion to amend and make additional findings of fact, contending that the debtors are attempting to present new evidence that could have been presented prior to the entry of the Decision and Order. Doral also argues that the Court's ruling was based on an unopposed motion for summary judgment filed by Canales Law Offices. Finally, Doral contends that the Court's decision was not clearly erroneous.

DISCUSSION

As a preliminary matter, the Court concludes that it did not specifically rule on the motion for summary judgment filed by Canales Law Offices (dkt. #48). The Court dismissed the adversary proceeding pursuant to Doral's motion to dismiss. Thus, the Court finds it unnecessary to discuss the effect of an unopposed motion for summary judgment and whether the debtors were excused from answering the motion for summary judgment, prior to Doral's compliance with the discovery requests, as discussed at the hearing of June 24, 2003. See minutes, dkt. #85.

The First Circuit Court of Appeals has stated that relief from judgment under Federal Rule of Civil Procedure Rule 60(b) is an extraordinary remedy and that motions seeking to invoke that rule should be granted sparingly. Gonzalez-Pina v. Rodriguez, 407 F.3d 425, 433 (1st Cir. 2005) (citing Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002)). The debtors, however, seek to alter or amend the judgment pursuant to Federal Rule of Bankruptcy Procedure 9023, which makes Federal Rule of Civil Procedure 59 applicable. This Rule states that "[a]ny motion to alter or amend a judgment must be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). In seeking reconsideration under Federal Rule of Civil Procedure 59(e), "the moving party must 'either clearly establish a manifest error of law or must present newly discovered evidence.'" Marie v. Allied Home Mortgage Corp., 402

F.3d 1, 7 n. 2 (1st Cir. 2005) (*quoting Pomerleau v. W. Springfield Pub. Sch.*, 362 F.3d 143, 146 n. 2 (1st Cir. 2004)). In *Marie*, the First Circuit also cited a leading treatise, noting four grounds for granting a motion for reconsideration under Federal Rule of Civil Procedure 59(e). These are "manifest errors of law or fact, newly discovered or previously unavailable evidence, manifest injustice, and an intervening change in controlling law." *Marie v. Allied Home Mortgage Corp.*, 402 F.3d at 7 n. 2 (citing 11 C. Wright et al., *Federal Practice & Procedure* § 2810.1 (2d ed.1995)).

The debtors largely failed to present evidence in opposition to Doral's motion to dismiss until after the Court had entered the Decision and Order. In spite of this, the Court concludes that the Decision and Order contains manifest errors and that it must be vacated. Factually, the Court found that Doral was unaware that its mortgage was unrecorded until after the filing of the bankruptcy petition. Actually, Doral was aware that its mortgage deed was not properly recorded prior to the filing of the petition. Doral admits that it became aware that the deeds were not registered in the summer of 1999, well before the filing of the bankruptcy petition on January 31, 2000 (dkt. #107 at p. 15, n. 5). Moreover, in its answer to interrogatories, Doral more specifically admits that it became aware that its mortgage was unrecorded on or about July 29, 1999, more than six months prior to the filing of the bankruptcy petition. (Appendix to dkt. #88 at p. 35 and dkt.

#89). Clearly, Doral could have taken corrective action prior to the filing of the debtors' petition.<sup>1</sup> Thus, any equitable consideration that the Court gave Doral, based on the understanding that Doral did not know that its mortgage was not properly recorded until after the filing of the petition, was not warranted.

Legally, the Court concludes that withdrawal of the conveyance deed was not wrongful, since it was withdrawn after the presentation had expired. Nothing in the mortgage law required the debtors to notify Doral or the notary of the mortgage deed as to deficiencies in the conveyance deed. Moreover, the letter from the Registry of Property informing the debtors of deficiencies in the conveyance deed, makes no mention of the mortgage deed. See dkt. #89.

As Doral itself argues in the opposition to the debtors' motion for reconsideration, because the presentation of the mortgage deed expired prior to the withdrawal of the conveyance deed, the Property Registrar had no legal obligation to notify Doral of the withdrawal of the conveyance deed (dkt. #107 at p. 13). As indicated previously, the debtors were only allowed to

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<sup>1</sup> The Court notes that Canales Law Offices and their client, Doral, should have been aware of the deficiency preventing the recording of Doral's mortgage prior to the expiration of the presentation in April of 1997. While Canales Law Offices denies that it has any records regarding notification from the Registry of Property regarding the mortgage deed, the mortgage law required the Registrar to notify any flaw or deficiency to the notary of the deed. 30 L.P.R.A. § 2272.

withdraw the conveyance deed because the mortgage deed presentation had expired. See 30 L.P.R.A. § 2254. Moreover, according to the deposition of Attorney Edgardo Canales Ydrach, of Canales Law Offices, correcting the deficiencies did not require any assistance from the debtors. See appendix to dkt. #88, p. 8-9. Thus, the Court erred in concluding that withdrawal of the conveyance deed was wrongful.

Further, and more importantly, the Court concludes that the postpetition registration of the deeds by Doral and Canales Law Offices was not excepted from the automatic stay by 11 U.S.C. § 362(b)(3). In the Decision and Order, the Court properly cited the statutory law and jurisprudence regarding the automatic stay and the exception related to perfection of a security interest, stating:

The automatic stay prohibits "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(4). The automatic stay also prohibits "any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case . . ." 11 U.S.C. § 362(a)(5). Notwithstanding, the filing of a bankruptcy petition does not operate as a stay "under subsection [362](a) . . . of any action to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title . . ." 11 U.S.C. § 362(b)(3). The trustee's avoiding powers are limited by "any generally applicable law that - (A) permits perfection of an interest in property to be effective



against an entity that acquires rights in such property before the date of perfection . . .”  
11 U.S.C. § 546(b)(1).

“Thus, simply stated, if a creditor possesses a prepetition interest in property, and state law establishes a time period for perfection of a lien based upon that interest, the ‘lien does not lose its preferred standing by reason of the fact that it [is] not perfected until after the commencement of the bankruptcy so long as it is perfected within the time period established by state law.” In re Parr Meadows Racing Assn., 880 F.2d 1540, 1546 (2nd Cir. 1989), cert. denied, 493 U.S. 1058 (1990) (quoting Poly Industries, Inc. v. Mozley, 362 F.2d 453, 457 (9th Cir.), cert. denied, 385 U.S. 958 (1996)). “The purpose of section 546(b) is to ‘protect, in spite of the surprise intervention of a bankruptcy petition, those who state law protects by allowing them to perfect their liens or interests as of an effective date that is earlier than the date of perfection.’” 229 Main St. Ltd. P’ship v. Mass. Dep’t of Env’tl. Prot. (In re 229 Main St. Ltd. P’ship), 262 F.3d 1, 10 (1st Cir. 2001) (quoting H.R. Rep. No. 95-595, at 371-72 (1978), reprinted in 1978 U.S.C.C.A.N. 6327). To qualify for the exception, a creditor must satisfy three elements: “(1) the creditor must act pursuant to a law of general applicability; (2) that law must allow the creditor to perfect an interest in property; and (3) such perfection must be effective against previously acquired rights in the property.” Id.

Decision and Order (dkt. #87 at pp. 2-4). Thus, the automatic stay does not apply to an action to perfect an interest in property, if local law establishes a grace period for perfection that would allow the perfection to relate back to a date prior to the filing of the bankruptcy petition.

Likewise, in the Decision and Order, the Court cited the laws of Puerto Rico regarding perfection of a security interest. The Court stated:

The Laws of Puerto Rico do not limit the time for presenting a mortgage deed for recording. The Laws of Puerto Rico do provide that a request for registration be made in the

Registry of Property. See 30 L.P.R.A. § 2251. When a request for registration is made, the Registrar makes a notation that the deed was presented for registration. 30 L.P.R.A. § 2253. Deeds must then be recorded within 60 days of their presentation, or after correcting any errors that are pointed out. 30 L.P.R.A. § 2255. The deed would then become effective against third parties from the initial date of presentation. 30 L.P.R.A. § 2256. Generally, the entry of the presentation expires 60 days after notification of a defect, unless the defect is corrected or other allowed action is taken. 30 L.P.R.A. § 2255. If the entry of the presentation expires before the defects are corrected, the deed must be presented again and becomes effective from the date of the new entry. 30 L.P.R.A. § 2275.

Decision and Order (dkt. #87 at p. 4).

Because the presentation of Doral's mortgage deed expired prior to the correction of the defects in the conveyance deed, Doral had to present the deed again and it became effective from the date of the new entry. See 30 L.P.R.A. § 2275. The presentation of the mortgage deed to the Registry of Property on December 1, 2000 was an act to perfect a lien against property of the estate and prohibited by the automatic stay of 11 U.S.C. § 362(a)(4). The perfection was not excepted from the automatic stay pursuant to 11 U.S.C. § 362(b)(3). For the Court to permit a creditor with an unrecorded mortgage to present the deed at any time after the bankruptcy filing and allow the lien to become effective and take precedence over all other unsecured creditors would be contrary to the Bankruptcy Code.

Accordingly, the Court concludes that because of manifest errors, the Decision and Order must be vacated and judgment must enter in favor of the debtors.

ORDER

WHEREFORE IT IS ORDERED that the Court's order of August 29, 2003, is vacated. Doral is hereby ordered to withdraw the mortgage deed and to surrender it to the debtors for cancellation.

SO ORDERED.

San Juan, Puerto Rico, this 21st day of September, 2006.

S/ Gerardo A. Carlo

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GERARDO A. CARLO  
Chief, U.S. Bankruptcy Judge