

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: MICHAEL JACQUES JACOBS,

No. 19-12591-j11

Debtor.

**ORDER DENYING MOTION FOR EXTENSION OF TIME
TO ALLOW FOR STATE COURT HEARING**

THIS MATTER is before the Court on the Motion for Extension of Time to Allow for State Court Hearing (“Motion”—[Doc. 270](#)) filed by Debtor, Michael Jacques Jacobs, pro se, on June 16, 2022. By the Motion, Debtor requests a 45-day extension of the following deadlines fixed in the Court’s Scheduling Order¹ entered in connection with the Motion to Convert Chapter 11 Case to Chapter 7 or, in the Alternative, to Dismiss (“Motion to Convert or Dismiss”—[Doc. 233](#)) filed by the United States Trustee:

1. June 20, 2022 deadline to file an amended plan and amended disclosure statement;²
2. July 6, 2022 deadline to file a brief regarding confirmation issues;
3. July 11, 2022 deadline to file witness and exhibit lists and to exchange exhibits in connection with the final hearing on the Motion to Convert or Dismiss filed by the United States Trustee; and
4. July 18, 2022 deadline to object to authenticity of opposing party’s exhibits.

¹ See Order Resulting from Preliminary Hearing on Motion to Convert or Dismiss Chapter 11 Case (“Scheduling Order”—[Doc. 260](#)).

² The Court entered an order extending the June 20, 2022 deadline through Friday, June 24, 2022, and a second order further extending the June 20, 2022 until three business days after the date of entry of an order resolving the Motion. See Order Extending Deadline to File Amended Plan and Amended Disclosure Statement ([Doc. 272](#)); Second Order Extending Deadline to File Amended Plan and Amended Disclosure Statement ([Doc. 275](#)).

Debtor also requests the Court to vacate the final hearing on the Motion to Convert or Dismiss set for July 21, 2022 and continue the final hearing to September 7, 2022. The United States Trustee opposes the Motion. For the reasons below, the Court will deny the Motion.

DISCUSSION

The Court fixed the deadlines and the final hearing at a preliminary hearing on the Motion to Convert or Dismiss held May 19, 2022. Debtor waited for nearly a month before filing the Motion. Debtor requests the extension based on “new developments” described in a Notice of Filing ([Doc. 268](#)) and in the Notice of Request for State Court Hearing ([Doc. 269](#)).

The Notice of Filing identifies a Limited Power of Attorney from U.S. Bank, National Association, N.A., not individually, but solely as trustee for the holder of Maiden Lane Asset Backed Securities I Trust 2008-1 to Selene Finance LP (“Limited Power of Attorney”) that Debtor reports receiving from DLJ Mortgage Capital, Inc. (“DLJ”) for the first time as part of DLJ’s Notice of Exhibits and Transcripts of Trial ([Doc. 241](#)) filed March 23, 2022. Debtor reports that he has filed a Motion to Void Final Judgment on the Merits Under Rule 1-060(B) and Request for Indicative Ruling (“State Court Rule 1-60(b) Motion” or “Rule 1-60(b) Motion”) in the state court foreclosure action styled, *DLJ Mortgage Capital, Inc. and Selene Finance, L.P. v. Ruby Handler Jacobs, a/k/a Ruby Jacobs, et al.*, Case No. D-202-CV-2012-09237 (the “State Court Action”).³ The State Court Rule 1-60(b) Motion requests the state court to set aside a judgment entered in favor of DLJ in the State Court Action on June 5, 2018 (the “Foreclosure Judgment”) on grounds that the Foreclosure Judgment is void (NMRA, Rule 1-060(B)(4)) and based on extraordinary circumstances (NMRA, Rule 1-060(B)(6)).⁴ The Notice of Request for State Court Hearing filed with this Court attaches a copy of the Request for

³ See Notice of Filing ([Doc. 268](#)), Exhibit A.

⁴ *Id.*

Hearing on the State Court Rule 1-60(b) Motion filed in the State Court Action on June 13, 2022.⁵

Debtor states that the outcome of the State Court Rule 1-60(b) Motion, his pending appeal of the Foreclosure Judgment in the State Court Action,⁶ and the pending appeals⁷ of this Court's prior orders denying Rule 60(b) relief from the Memorandum Opinion ([Doc. 159](#)), Order Granting In Rem Stay Relief Under [11 U.S.C. § 362\(d\)\(4\)](#) ("Stay Relief Order" - [Doc. 160](#)), and Order Overruling Objection to [DLJ's] Claim #6 ([Doc. 161](#)) will cause Debtor to amend his proposed chapter 11 plan of reorganization.

The Court agrees that if the state court set aside the Foreclosure Judgment or declared it to be void, this Court should reexamine its allowance of DLJ's claim in the bankruptcy case. This Court allowed DLJ's claim based on the preclusive effect of the Foreclosure Judgment, which would be negated if the Foreclosure Judgment were no longer in effect.

The State Court Rule 1-60(b) Motion is based on primarily on (i) the Assignment of Mortgage and Allonge to the Note upon which DLJ based its standing to assert a claim against

⁵ See Notice of Request for Hearing ([Doc. 269](#)), Exhibit A.

⁶ See State Court Action, Docket entry of Notice of Appeal on June 6, 2018. The Court takes Judicial Notice of the Docket in the State Court Action, and of Debtor's other bankruptcy cases filed in this district. See *In re Roman Catholic Church of Archdiocese of Santa Fe*, [627 B.R. 916, 918](#) n.1 (Bankr. D.N.M. 2021) (taking judicial notice of its own docket and the docket in the underlying state court action) (citing *Temple, Inc. v. Fed. Deposit Ins. Corp.*, [605 F.2d 1169, 1171](#) (10th Cir. 1979)). Debtor's filing of this bankruptcy case stayed the appeal of the Foreclosure Judgment to the New Mexico Court of Appeals. See *TW Telecom Holdings, Inc. v. Carolina Internet Ltd.*, [661 F.3d 495, 497](#) (10th Cir. 2011) (holding that the automatic stay prevents a debtor from pursuing an appeal from a judgment entered against the debtor). However, because the Debtor previously filed a chapter 13 case that was pending within the preceding one-year period, which was dismissed (See Case No. 19-10684-t13), the automatic stay terminated with respect to the Debtor on the 30th day after the filing of this later chapter 11 case since Debtor did not obtain a continuation of the automatic stay in this case prior to the expiration of the 30-day period. See [11 U.S.C. § 362\(c\)\(3\)](#). The automatic stay terminated with respect to the property located at 800 Calle Divina NE, Albuquerque, New Mexico (the "Property") upon entry of the Stay Relief Order which granted DLJ in rem stay relief against the Property. The Property is the subject of the State Court Action.

⁷ See [Doc. 240](#) and [Doc. 258](#).

the Debtor having been executed outside the operative period of a Limited Power of Attorney giving the signatory authority to execute those documents, and (ii) the failure to record the Limited Power of Attorney in the records of Bernalillo County, New Mexico prior to execution of the Assignment of Mortgage.

Whether the Foreclosure Judgment is void on the theory that DLJ lacked standing in the State Court Action because the purported transfer of the Note and Mortgage to it was ineffective is an issue for the state court, not this Court. The Foreclosure Judgment is a final judgment that is on appeal before the New Mexico Court of Appeals. This Court may not examine the validity of the Foreclosure Judgment regardless of whether DLJ had standing to prosecute the State Court Action. *See In re Jester*, [656 F. App'x 425, 428](#) (10th Cir. 2016) (regardless of any claim that the judgment creditor lacked standing to foreclose, the bankruptcy court lacks jurisdiction to review the state court foreclosure judgment); *see also In re Modikhan*, No. 1-19-46591-JMM, 2021 WL 5312396, at *14 (Bankr. E.D.N.Y. Nov. 15, 2021) (*Rooker-Feldman* bars a federal court from reconsidering a state court judgment even if the party seeking relief alleges the state court judgment was obtained by a party that lacked standing); *In re Lester*, [603 B.R. 187, 189](#) (Bankr. M.D. Fla. 2019 (same)); *Miller v. Fed. Nat'l Mortg. Ass'n (Fannie Mae) v. Miller (In re Miller)*, No. 17-33747 (JKS), 2018 WL 6132033, at *2 (Bankr. D.N.J. Nov. 5, 2018) (same); *Young v. Rogers (In re Young)*, No. 18-12669-JDL, 2018 WL 4616228, at *2 (Bankr. W.D. Okla. Sept. 24, 2018) (same).

Debtor's chapter 11 bankruptcy case has been pending since November of 2019. By Debtor's own assertion, the basis for the "new developments" was known to Debtor by March 23, 2022 when DLJ filed its Notice of Exhibits and Trial Transcript.⁸ Debtor filed the State Court

⁸ *See* [Doc. 241](#).

Rule 1-60(b) Motion, the Request for State Court Hearing, and the Motion seeking an extension of time before this Court nearly three months after DLJ filed its Notice of Exhibits and Transcript. There is no telling how long it will take the Debtor to obtain a ruling by the state court on his Rule 1-60(b) Motion. As of June 29, 2022, the state court has not even set a hearing on the Rule 1-60(b) Motion. Continuing the deadlines to file an amended plan and amended disclosure statement and to file a brief regarding confirmation issues, and continuing the final hearing on the Motion to Convert or Dismiss for 45 days will not likely be sufficient time for Debtor to obtain an indicative ruling on his State Court Rule 1-60(b) Motion or a decision in his pending appeals before the extended deadlines expire. Granting the requested extensions of the final hearing on the Motion to Convert or Dismiss and other deadlines in all likelihood will just cause further delay and would likely be followed by another motion for extension of time.

The Court also notes that the Debtor has had four years since entry of the Foreclosure Judgment on June 5, 2018 within which to ask the state court to set aside the Foreclosure Judgment or declare it void based on his arguments about the Assignment of Mortgage and Allonge having been executed outside the operative period of the Limited Power of Attorney and the failure to record Limited Power of Attorney in Bernalillo County, New Mexico. Although Debtor explains that he did not actually see the Limited Power of Attorney until it was filed of record in this bankruptcy case on March 23, 2022, the Limited Power of Attorney was admitted in evidence at the trial in the State Court Action conducted on August 31, 2016 as Trial Exhibit 18 over Debtor's counsel's hearsay objection.⁹ The Limited Power of Attorney was not sealed by

⁹ See DLJ's Notice of Exhibits and Transcript of Trial, Exhibit 7 (Limited Power of Attorney—[Doc. 241-1, pp. 166-168](#)) and Exhibit 10.1 (Transcript of Trial—[Doc. 241-3 pp. 48-49](#)). See also Order Denying Rule 60(b) Motion for Relief from a Judgment or Order Overruling Objection to Claim #6 Due to New Evidence ([Doc. 277](#)), explaining that the Limited Power of Attorney is not “newly discovered” evidence.

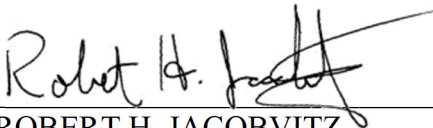
the state court.¹⁰ The Debtor could have obtained a copy of Trial Exhibit 18 admitted in evidence at the trial in the State Court Action from his state court counsel or from the state court. Further, he could have ascertained that the Limited Power of Attorney was not recorded in Bernalillo County, New Mexico at any time by searching the county records.¹¹

Under these circumstances, the Court has determined that the requested extensions of time should not be granted.

WHEREFORE IT IS HEREBY ORDERED that the Motion is DENIED, except that the following deadlines are extended as follows:

1. The deadline for Debtor to file an amended plan an amended disclosure statement is extended through **July 11, 2022**.
2. The deadline for the parties to file simultaneous briefs regarding confirmation issues is extended through **July 11, 2022**.
3. The deadline for the parties to file witness and exhibit lists and to exchange exhibits is extended through **July 13, 2022**.

The deadline of **July 18, 2022** for a party to object to authenticity of another party's exhibits shall remain the same. The final hearing on the Motion to Convert or Dismiss will be held on **July 21, 2022** beginning at **9:00 a.m.** as originally scheduled. All other provisions in the Scheduling Order ([Doc. 260](#)) remain in effect.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: July 1, 2022

¹⁰See DLJ's Notice of Exhibits and Transcript of Trial, Exhibit 3 (Order Sealing Exhibits—[Doc. 241-1, pp. 16-17](#)), sealing Exhibits 11 and 14 admitted in evidence at the trial in the State Court Action, but not Exhibit 18, the Limited Power of Attorney.

¹¹ Debtor complains that the Limited Power of Attorney is in a small font and is hard to read. This Court had no difficulty reading Trial Exhibit 18 attached as Exhibit 7 to DLJ's Notice of Exhibits and Transcripts of Trial. ([Doc. 241-1, pp. 166-168](#)).

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