NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN

In the Matter of:

ARDEN STANLEY PIERSON, JR.,

Debtor.
_____/

Case No. GT 07-03500
Chapter 11

MEMORANDUM OPINION GRANTING DEBTOR'S MOTION FOR RECONSIDERATION AND, UPON RECONSIDERATION, RESTATING DISMISSAL OF CASE

I. FACTS AND PROCEDURAL BACKGROUND.

Arden Stanley Pierson, Jr. (the "Debtor") filed the filed the above-captioned chapter 11 case on May 11, 2007. The Debtor has also filed three previous bankruptcy cases before this court. The most recent of these prior cases, a small business chapter 11 case, was filed on December 2, 2005. That case was dismissed on February 7, 2006, for failure to file required documents with the court.

The United States Trustee filed a Motion for Conversion to Chapter 7 or Dismissal of Case (the "Motion to Dismiss") in the current chapter 11 case on May 30, 2007. An evidentiary hearing regarding the Motion to Dismiss was held before this court on June 29, 2007. At the hearing, the court found that the Debtor failed to obtain prepetition credit briefing as required by 11 U.S.C. § 109(h). The Debtor explained that he initially filed his chapter 11 case for the purpose of obtaining the protections of the automatic stay, 11 U.S.C. § 362, and asserted that the "exigent circumstances" surrounding the filing merited

a waiver of the credit briefing requirements under 11 U.S.C. § 109(h)(3)(A)(i). The court rejected this argument on two grounds. First, based on the Debtor's previous filings and by virute of 11 U.S.C. § 362(n)(1)(B), the automatic stay did not apply in the Debtor's case. Also, even if the automatic stay applied, the stay does not "operate to toll the running of the statutory period for redeeming real estate sold at a foreclosure sale." Federal Land Bank of Louisville v. Glenn (In re Glenn), 760 F.2d 1428, 1436 (6th Cir. 1985). To the extent the Debtor's purpose in filing his case was to obtain the protection of the automatic stay, that purpose was not served. Second, and more importantly, the court found that the Debtor failed to submit an adequate certification stating that "exigent circumstances" existed. 11 U.S.C. § 109(h)(3)(A). The court also found, based upon the evidentiary hearing, that "exigent circumstances" did not exist. The lack of "exigent circumstances," standing alone, mandated dismissal of the Debtor's chapter 11 case. In accordance with the court's explicit findings of fact and conclusions of law, an order dismissing the Debtor's case was entered on July 10, 2007.

The Debtor timely filed his motion for reconsideration on July 2, 2007. The Debtor's motion asserts that the automatic stay applied in his case because the exceptions set forth in 11 U.S.C. § 362(n)(2)(B), i.e., "that the filing of the petition resulted from circumstances beyond the control of the debtor" and that "it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time," were met. Accordingly, the Debtor's motion asks the court to reconsider its dismissal order and to reinstate the Debtor's chapter 11 case. The court has carefully reviewed the motion and has concluded that scheduling the motion for oral argument would not materially assist in

its determination regarding the requested relief.

II. DISCUSSION.

The Debtor's motion to reconsider was filed pursuant to Federal Rule of Bankruptcy Procedure 9023, which makes Federal Rule of Civil Procedure 59 applicable to this proceeding. Matter of No-Am Corp., 223 B.R. 512, 513 (Bankr. W.D. Mich. 1998); see Barger v. Hayes County Non-Stock Co-op (In re Barger), 219 B.R. 238, 244 (Bankr. 8th Cir. 1998) (Courts generally view "any motion which seeks a substantive change in a judgment as a Rule 59(e) motion, if it is made within ten days of the entry of the judgment challenged."). Alteration or amendment of a judgment under Rule 59(e) is only justified in instances where there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. See GenCorp, Inc. v. American Int'l Underwriters, 178 F.3d 804, 834 (6th Cir. 1999). Motions for reconsideration are "not an opportunity to re-argue a case" and should not be used by the parties to "raise arguments which could, and should, have been made before judgment issued." Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998); FDIC v. World Univ. Inc., 978 F.2d 10, 16 (1st Cir. 1992).

Having considered the Debtor's motion under these standards, the court finds no grounds for setting aside its order which dismisses the Debtor's current chapter 11 case. The Debtor's motion does not present any newly discovered evidence and does not establish a change in law since the court's decision was entered. It fails to demonstrate that a clear error of law has been committed or that the previous order must be set aside to avoid manifest injustice. Simply stated, even if the Debtor's assertion that the automatic

stay applied in his fourth bankruptcy case is correct, his failure to obtain the prepetition credit counseling required by 11 U.S.C. § 109(h) mandates dismissal of his case. Further, the Debtor failed to prove that any exception to the prepetition credit counseling requirement is applicable.

III. CONCLUSION.

The Debtor has failed to demonstrate that the prior dismissal order should be set aside or that further proceedings are warranted. The Debtor's motion for reconsideration is GRANTED, but upon review of the record, the prior court order dismissing this chapter 11 case is RESTATED. The case remains DISMISSED. A separate order shall enter accordingly.

Dated this 23rd day of July, 2007
at Grand Rapids, Michigan

__/s/_____
Honorable James D. Gregg
United States Bankruptcy Judge