UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:)	CASE No. 19-21619 (JJT)
)	
John Alan Sakon,)	CHAPTER 11
Debtor.)	
)	RE: ECF Nos. 129, 150, 151, 158, 177, 205, 225, 233

RULING ON DEBTOR'S OMNIBUS MOTIONS FOR RECONSIDERATION AND TO ASSUME EXECUTORY CONTRACT FOR AMENDED GROUND LEASE BY AND BETWEEN DEBTOR AND A&F MAIN STREET ASSOCIATES, LLC

Before the Court are two interrelated motions filed by John Alan Sakon (the "Debtor") that concern the status of entitlements as to a ground lease located in the Town of Glastonbury.[1] Specifically, the motions under consideration are the Debtor's combined motions for reconsideration ("Motions to Reconsider," filed March 10 and 26, 2020, ECF Nos. 155 and 177, respectively), and a Motion to Assume Executory Contract for Amended Ground Lease by and Between Debtor and A&F Main Street Associates, LLC ("Second Motion to Assume," filed April 4, 2020, ECF No. 205). In the Debtor's Motions to Reconsider, he requests that the Court reconsider its prior rulings: (1) denying Debtor's Motion for Extension of Time to Assume or Reject Lease (ECF No. 129); (2) granting A&F Main Street Associates, LLC's Motion for Relief from Stay (ECF No. 150); (3) denying Debtor's Motion to Assume Lease of A&F Main Street Associates, LLC (ECF No. 151); and (4) denying Debtor's Motion for Relief as to Scheduling Matters and Time to File Response Pleadings (ECF No. 158). In sum, the Debtor ultimately argues that, among other things,

[1] As previously noted in other rulings issued by this Court, the Debtor is an experienced and sophisticated real estate developer. The Debtor, however, is not formally represented by counsel in the instant proceedings, but has conferred with legal counsel at various junctures when he deemed additional assistance appropriate.

"the court's order of March 2, 2020[2] and March 13, 2020[3] contains errors of law" (ECF No. 225, p. 3, [footnotes added]) pertaining to the threshold issue of whether the Debtor's ground lease with A&F Main Street Associates, LLC ("A&F") on the subject property had been terminated pre-petition, and that, as a result, the Debtor has suffered prejudice.[4]

At the outset, the Court notes that a prior motion filed by the Debtor, which is not currently before the Court (*see* Motion for Relief as to Scheduling Matters and Time to File Responsive Pleadings, ECF No. 145), also requested reconsideration of the Court's Ruling denying the Debtor's Motion for Extension of Time to Assume or Reject Lease (ECF No. 129). In this Court's Ruling on that motion (ECF No. 158), the Court addressed the Debtor's request for reconsideration and found it to be without merit. The Debtor again seeks reconsideration of the Court's Ruling on that motion as well. In the interest of finality, fundamental fairness and judicial economy, the Court will not, for a second time, reconsider its Ruling denying Debtor's Motion for Extension of Time to Assume or Reject Lease (ECF No. 129) nor will it entertain a request for *reconsideration of its reconsideration* (*see* ECF No. 158). Accordingly, the balance of issues under consideration here, is this Court's Rulings granting stay relief to A&F (ECF No. 150) and its Ruling denying the Debtor's Motion to Assume (ECF No. 151).

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[2] *See* Order Denying Debtor's Motion for Extension of Time to Assume or Reject Lease, ECF No. 129.
[3] *See* Order Granting Amended Motion for Relief from Stay for A&F Main Street Associates, LLC regarding 2980 Main Street Glastonbury CT, ECF No. 150, and Order Denying Debtor's Motion to Assume Lease of A&F Main Street Associates, LLC, ECF No. 151.
[4] Therein, the Debtor makes the following additional arguments: "[T]he debtor has been prejudiced by the failure of this court to hold evidentiary hearings on issues of fact . . . [thus] den[ying] the debtor due process of law[,]" (ECF No. 225, p. 3), and "that this court has improperly shifted the burden of proof from the movant to the debtor. . . ." *Id*. Despite these contentions, there was no disagreement at the hearings on the operative documents, on whether the Court could take judicial notice of the state court docket, on whether the Debtor failed to timely make the $97,500 payment and on whether there was a signed amended lease. Remarkably, no *relevant* facts are in dispute. Providing a stage for the Debtor's historic frustrations or *irrelevant* facts in more proceedings before this Court is not due process.

In terms of the Debtor's Second Motion to Assume, he argues an allegedly novel theory of relief, which contends that the stipulated judgment between himself and A&F constitutes an executory contract, one that can be assumed because it is a separate contract from the ground lease that terminated pre-petition. In furtherance of this argument, the Debtor fundamentally relies on the same underlying facts, emphasizing the stipulated judgment and the proposed amended ground lease referenced therein, as he did in his original Motion to Assume Lease of A&F Main Street Associates, LLC (the "First Motion to Assume," ECF No. 116).

On February 5, March 10, April 9, and April 28, 2020, this Court heard oral argument with respect to these various motions. Despite the numerous filings, all of which contained large quantities of repetitive supplemental exhibits and resulted in multiple hearings on the aforementioned issues, the Debtor's arguments are reducible to two principal claims: (1) this Court erred, as a matter of law, that the Debtor's ground lease terminated when he was served the notice to quit (*see* the Court's prior Rulings at ECF Nos. 129 and 158); and (2) even if the original ground lease was terminated pre-petition, the stipulated judgment entered into by the Debtor and A&F, which contemplated the revival of leasehold rights upon the signing of an amended ground lease (preceded by a payment of $97,500), should be construed as a separate executory contract and thus also assumable pursuant to 11 U.S.C. § 365 of the Bankruptcy Code (*see* ECF No. 225).[5]

With respect to the Motions to Reconsider, the Court summarizes its earlier Rulings here, as follows:

1. In the Court's Rulings granting stay relief to A&F (ECF No. 150), the Court found that the Debtor's ground lease, and his rights thereunder, terminated

[5] *See* also Stipulation, *A&F Main Street Associates, LLC v. Sakon*, HFH-CV19-6011720-S (Conn. Super. Ct.) (No. 119.00) (the "Stipulated Judgment").

pursuant to Connecticut law upon the service of the notice to quit from A&F, and, thereafter, was not revived by the existence of the Stipulated Judgment.

2. The Court also found that the Debtor lacked credible financial support for his reorganization, which precluded him from providing any necessary cure, compensation, or adequate assurances to A&F under 11 U.S.C. § 365(b)(1).
3. Because the ground lease was extinguished pre-petition, there was no lease to assume under 11 U.S.C. § 365(a) and because, pursuant to the express provisions of 11 U.S.C. § 362(b)(10), the ground lease was not subject to the automatic stay, A&F was entitled to stay relief to proceed with its summary process action in state court.
4. In this Court's Ruling denying the Debtor's Motion to Assume (ECF No. 151), in addition to incorporating the above findings by reference, the Court held, pursuant to 11 U.S.C. § 365(b)(1), that even if the Debtor's ground lease had not been extinguished upon the notice to quit, the Debtor could not demonstrate that he had the financial capability to make the payments necessary to cure the current arrearages or to provide adequate assurances of future performance.

As stated in this Court's Ruling on the Debtor's Motion for Relief as to Scheduling Matters and Time to File Response Pleadings (ECF No. 158), Federal Rule of Civil Procedure 60(b), given effect through Federal Rule of Bankruptcy Procedure 9024(b), controls and provides that relief from a final judgment or order of the court may be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the

judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).

In deference to the Debtor's urging, the Court, again, has painstakingly reviewed the record, pertinent authorities and its prior Rulings. The Court can unflinchingly confirm that no grounds for a substantive reconsideration and reversal of its Rulings exist here. "The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to . . . matters . . . that might reasonably be expected to alter the conclusion reached by the court. . . . [A] motion to reconsider should not be granted where the moving party seeks solely to relitigate an issue already decided." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995). "Although pro se litigants should be afforded latitude, they generally are required to inform themselves regarding procedural rules and to comply with them." *In re Blonder*, 47 Fed. Appx. 605, 606 (2d Cir. 2002) (internal quotation marks and citations omitted) (*quoting LoSacco v. City of Middletown*, 71 F.3d 88, 92 (2d Cir.1995)). Motions to reconsider a court's prior order "will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *In re SageCrest II LLC,* No. 08-50754 AHWS, 2012 WL 525734, at *1 (Bankr. D. Conn. Feb. 16, 2012) (*citing Mendell ex rel. Viacom, Inc. v. Gollust,* 909 F.2d 724, 731 (2d Cir. 1990)). Critically, a motion for relief brought pursuant to Rule 60(b) is "addressed to the sound discretion of the . . . court . . . ." *Id.*

In bringing these Motions to Reconsider, the Debtor relies principally on *In re Masterworks, Inc.*, 94 B.R. 262 (Bankr. D. Conn. 1988), which he argues stands for the proposition that a judgment of possession, and not a notice to quit, is required to terminate

a lease under Connecticut state law. However, despite the Debtor's zealous advocacy to this end, the Debtor misreads *Masterworks*. In clear and unequivocal terms, and as stated in this Court's prior Rulings (ECF Nos. 129 and 151), *Masterworks* stands for the proposition that a properly served notice to quit terminates a lease. *See In re Masterworks, Inc.*, 94 B.R. 262, 266–67 (Bankr. D. Conn. 1988) ("While a tenant's nonpayment of rent does not automatically terminate a lease, it gives a landlord the option to terminate by some unequivocal act such as the service of notice to quit possession. . . . Upon service of such notice, the tenant's rights under the lease are extinguished . . . . It is therefore well settled under Connecticut law that a notice to quit terminates a lease . . . ." [citations omitted]). In support of the present Motions to Reconsider, the Debtor has failed to present any source of controlling law that indicates the legal basis relied on by the Court in the prior Rulings have been either overruled or are in any way disfavored. What's more, the Debtor has failed to argue the existence of any additional relevant and material facts pertaining to the present Motions to Reconsider that are not already before the Court.[6]

While it is the Debtor's prerogative to choose what materials he provides as support for his Motions to Reconsider—in this case, prolific details pertaining to alleged past business vendettas—these facts are ultimately not material to the threshold question of whether the Debtor's ground lease terminated pre-petition upon the uncontested receipt of a validly served notice to quit. *See* ECF Nos. 129 and 151. And while Chapter 11

[6] Despite presently relying on the Stipulated Judgment to advance his Motions to Reconsider, the Debtor seemingly ignores his express undertakings that are enumerated therein. This Court has not overlooked that he conceded in the Stipulated Judgment that he was "to pay the plaintiff $97,500 on or before November 30,2019 in settlement of all claims made by plaintiff through 12/31/2019 . . . [including] payment of all rents and use and occupancy payments due," Stipulated Judgement, ¶1, and that "[if] payment is made, the ground lease shall be *reinstated* as of the date of payment in full . . . [but that] [t]he amended ground lease shall not be operative or effective . . . [until] payment of the $97,500 is tendered . . . [and] shall be null and void," *id.*, ¶3 (emphasis added), in the event of nonpayment. The Court has also not overlooked the fact that the Debtor agreed "to waive all the specific counterclaims and special defenses made" *id.*, ¶4, pertaining to that action.

bankruptcy protection can be an extraordinary remedy for the honest but unfortunate debtor, there are limits to the power of the Court, one of which is its inability to resurrect an otherwise terminated lease that was extinguished pre-petition. This Court does not serve as a roving court of equity, one empowered to undo the legal consequences of this lease termination under state law. *See In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 92 (2d Cir. 2003) (quoting *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir.1986)); *see also* 11 U.S.C. § 105. On the other hand, the Court does have the authority, and the affirmative obligation, to prevent the proliferation of dilatory filings, undue delay and the unnecessary re-argument of issues previously determined on the merits, especially when there have been multiple opportunities for the parties to support their respective positions before the Court.

With respect to the Debtor's additional claims that he has been prejudiced by the Court's failure to hold evidentiary hearings, thereby denying him due process of law and improperly shifting the burden of proof to him, the Court finds that they are also without merit. After considering the entirety of the Debtor's submissions to the Court, it determined that the present contested matters, after proper notice and hearings pursuant to Federal Bankruptcy Rule 9014, contained no genuine or disputed issues of material fact that would necessitate an evidentiary hearing (nor has the Debtor even argued any such facts). Title 11 U.S.C. § 102(1)(A) provides that the "notice and a hearing" requirement referenced in Rule 9014 means that a court shall provide such that "is appropriate in the particular circumstances." 11 U.S.C. § 102(1)(A). If a Debtor fails to raise any disputed material facts and has a sufficient opportunity to argue a matter before the Court but fails to set forth any credible arguments, an evidentiary hearing is not necessary and shall be left to the discretion of the court. S*ee Powers v. American Honda Fin. Corp*., 216 B.R. 95, 97 (N.D.N.Y. 1997); *see also Cabral v. Shamban* (*In Re Cabral*), 285 B.R. 563, 577 (B.A.P. 1st Cir. 2002)

(where the Debtor failed to raise any disputed facts and the parties had an opportunity to present relevant facts and arguments to the Bankruptcy Court, an evidentiary hearing was not necessary). Accordingly, the Debtor's Motions to Reconsider (ECF Nos. 155 and 177) are hereby DENIED.

With respect to the Debtor's second contention (as advanced in his Second Motion to Assume wherein he seeks the permission of the Court "to assume the *Executory Contract* to enter into the Amended Lease of A&F . . . pursuant to the *Executory Contract* entered into by the parties on August 14, 2019," [ECF No. 205, p. 1, emphasis added]), the claim that the Stipulated Judgment entered in the summary process action, in one fashion or another, either proves the ground lease never terminated or provides a viable alternative avenue for the Debtor to assume an amended version of said ground lease, is an issue that the Debtor essentially raised months ago in his Motion to Assume Lease of A&F Main Street Associates, LLC ("First Motion to Assume," ECF No. 116).[7] In the First Motion to Assume, which was filed on February 25, 2020, argued on March 10, 2020 and decided by the Court on March 13, 2020, the Debtor requested the same relief and relied on the same underlying facts pertaining to the Stipulated Judgment and the proposed amended lease that he now relies on in the present motion.

And while the Debtor frames this new iteration of his past arguments as a distinct and novel issue, it is nonetheless materially interconnected to the alleged fact issues addressed in the Debtor's First Motion to Assume. It is simply a thinly disguised attempt by the Debtor to relitigate the issue of his ground lease entitlements. In light of the Court's prior Rulings on the issue of the ground lease and the effect of the state court Stipulated Judgment on said lease, the Debtor is appropriately estopped from raising various forms of

[7] The Court notes that this issue was also considered in light of A&F's Amended Motion for Relief from Stay (ECF No. 59) because it was raised as a defense in the Debtor's Objection (ECF No. 115).

this argument again. *See generally Ashmore v. CGI Group, Inc.*, 923 F.3d 260, 271 (2d Cir. 2019) ("The doctrine of judicial estoppel prevents a party from asserting a factual position in one legal proceeding that is contrary to a position that it successfully advanced in another proceeding." [citation omitted]). These lease agreements are fundamentally interconnected (as the Debtor argued in the First Motion to Assume), and this Court will not permit the Debtor to now argue, as he does in his Second Motion to Assume, that they are a distinct and separate basis for a lease assumption.

Even for the sake of argument, if the Debtor was not estopped from advancing this characterization, the argument fails because (1) the rights under the Stipulated Judgment to a proposed amended lease (which was neither finalized nor signed) fatally expired on November 30, 2019, and (2) the Second Motion to Assume is untimely under 11 U.S.C. § 365(d)(4), s*ee In re Damach, Inc.*, 235 B.R. 727, 731 (Bankr. D. Conn. 1999) (the 120 day period after the date of the order of relief proscribed to assume or reject a lease under § 365(d)(4) is substantive, not procedural, and therefore may not be modified by the Federal Rules of Bankruptcy Procedure or the Federal Rules of Civil Procedure).[8] At the April 28 hearing, the Debtor acknowledged that he had failed to cure the aforementioned lease deficiency by November 30, 2019, and that he presently did not have the immediate funds to do so. The Debtor also acknowledged at the April 28 hearing that A&F had performed under the terms of the Stipulated Judgment by delivering a draft revised lease that was neither signed nor definitively accepted by the parties. Further, it is not in dispute that the Second Motion to Assume was filed well beyond the 120-day period proscribed by 11 U.S.C. § 365(d)(4). The Court need not disentangle the doubtful legal arguments about whether

[8] The order for relief entered on September 19, 2019, while the Debtor's Second Motion to Assume was filed on April 6, 2020. This places the Debtor's Second Motion to Assume well beyond of the 120-day period proscribed by 11 U.S.C. § 365(d)(4).

the Stipulated Judgment constitutes a separate executory contract here. Because the Motion is untimely, the cure insufficient and the absence of a definite amended lease defeats the Debtor's hope that this Motion will revive a critical ground lease, even if the Stipulated Judgment could be construed as an executory contract, the Motion still must fail.

Finally, to the extent that the Debtor contends that his failure to sufficiently advance his arguments in his prior briefings was due to excusable neglect on account of his maladies, the Court notes that the Debtor was provided with an extension of time to file supplemental papers on February 5, 2020 (ECF No. 94) and was provided additional opportunities to advance his arguments during the hearings before the Court on March 10 and April 28, 2020.[9] Moreover, at the April 28 hearing, the Debtor indicated that he no longer suffered from the aforementioned afflictions and that he was ready to proceed with his argument on the matter. In each and every instance, his arguments, his referenced authorities and his emphasis on the amended lease and Stipulated Judgment were considered and weighed by this Court. When ultimately asked whether he could present any contrary controlling legal authorities that would support his positions or any new material facts to that same end or perform under 11 U.S.C. § 365(b)(1)(A) and (B), he answered in the negative.

After a thorough review of the record, the Debtor's extensive filings and this Court's prior Rulings, what is most evident is that this is the Debtor's latest attempt at re-litigating an adverse determination by this Court that belatedly reframes arguments previously advanced in one form or another in support of his First Motion to Assume so as to take

[9] The Court also notes that at the February 5 hearing the Debtor explicitly stated that he did not seek an extension of the Court's prior Order that temporarily stayed certain proceedings due to the Debtor's concerns regarding his health. *See* ECF No. 93, audio recording at 11:12:00.

another bite at the proverbial apple. The Debtor has been provided multiple and extended opportunities to advance the issues presently under consideration, both on the papers and during oral argument before this Court and has persistently failed to present any contrary law or to proffer material facts that would call for this Court to reverse its prior Rulings. Accordingly, the Debtor's Second Motion to Assume (ECF No. 205) is hereby DENIED.

IT IS SO ORDERED at Hartford, Connecticut this 28th day of May 2020.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut