UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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LAWRENCE S. BONNER,

Plaintiff,

v.

CARLOS LEON, et al.,

Defendants.

Case No. 2:13-cv-1858-APG-VCF

ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATOIN

(Dkt. no. 39)

Defendants American Bankers Insurance Company of Florida ("American Bankers"), American Collectors Insurance, Inc. ("American Collectors"), and Assurant, Inc. ("Assurant")(collectively "Insurance Defendants") have filed a motion to reconsider my Order remanding this case to state court. (Doc. #39). Because this motion has no merit, I do not require a response from Plaintiff. The motion is denied.

I. BACKGROUND

The facts of this case are detailed in my prior Order (Dkt. #38) and will not be repeated herein except to provide context for the present motion. In 2010, plaintiff Lawrence Bonner delivered a 1964 Chevy Nova to defendant C&H Soda Blasting, Inc. ("C&H") for automotive restoration and repair. Defendants Carlos and Carla Leon (collectively "Leon Defendants") owned C&H. In July 2012, the Leon Defendants filed a Chapter 13 bankruptcy petition.[1] The petition required them to list "all other names used by the debtor." They wrote that they had formerly done business as C&H Soda Blasting, Inc.

On August 8, 2013, Plaintiff sued the Leon Defendants, C&H, and the Insurance Defendants in Nevada state court. The Insurance Defendants removed the case to this Court based on diversity jurisdiction, arguing that the claims against the Leon Defendants and C&H

[1] The five-year plan was confirmed on May 12, 2014. *See generally In re Leon*, No: 12-15399-mkn (Bankr. D. Nev.).

were misjoined. They also asserted that federal question jurisdiction existed based on the Leon Defendants' pending bankruptcy case under 28 U.S.C. § 1334(a). In resolving Bonner's subsequent motion to remand, I dismissed the claims against the Leon Defendants, ruling that those claims were void *ab initio* because they were filed in violation of the automatic stay. (Doc. #38, at p. 4.) Therefore, the claims against the Leon Defendants could not be the basis for federal question jurisdiction. (*Id.*) I also ruled that the claims against C&H were not clearly misjoined, and C&H's presence destroyed diversity. (*Id.* at p. 6.) Thus, I remanded the case to state court.

The Insurance Defendants now seek reconsideration, arguing that I should have treated C&H as the "alter ego of the Leon Defendants (or, at least, Carlos Leon)," because C&H was identified by Carlos Leon "as another name used by the debtors" on the Chapter 13 petition. (Doc. #39, at p. 2.) The Insurance Defendants reason that "the automatic stay should, therefore, equally apply to C&H," and "the claims against C&H should be dismissed for the same reasons the claims were dismissed against the Leon Defendants." (*Id.*) Based on that faulty reasoning, the Insurance Defendants conclude that once I dismiss C&H, the Court will have "diversity jurisdiction over the remaining parties." (*Id.*)

II. LEGAL STANDARD

Under Rule 60(b), a court may relieve a party from a final judgment, order or proceeding based on (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief from the judgment. *Stewart v. Dupnik*, 243 F.3d 549, 549 (9th Cir. 2000).

A motion for reconsideration must set forth some valid reason why the court should revisit its prior order, and facts or law of a "strongly convincing nature" in support of reversing the prior decision. *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). It is not appropriate for a party to raise a new argument on a motion for reconsideration. *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). Motions for reconsideration are not "intended to give an unhappy litigant one additional chance to sway the judge." *Durkin v. Taylor*, 444 F.Supp. 879, 889 (E.D. Va. 1977).

III. MOTION FOR RECONSIDERATION

The Insurance Defendants fail to offer any reason, facts, or law of a "strongly convincing nature" that would justify revisiting my prior order. In fact, the Insurance Defendants have failed to include any relevant authority whatsoever to support their request.[2] This failure, by itself, justifies denial of the motion. However, in the interest of judicial efficiency and justice, I have considered the Insurance Defendants' new arguments and again determine that C&H is still properly present in this lawsuit, C&H's presence destroys diversity, and the case must be remanded.

A chapter 13 bankruptcy petition can be filed only by individuals, not corporations. 11 U.S.C. § 109(3)("Only an individual . . . may be a debtor under chapter 13 of this title.") One narrow exception to this rule is for sole proprietorships, in that the law would "permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13." H. R. Rep. No. 595, 95th Cong., 1st Sess. 320 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787, 6277.

On the bankruptcy petition, Carlos Leon identified C&H as an assumed name, or dba, of Carlos Leon. But the company was not registered as such with the State of Nevada. To the contrary, C&H was registered with the State of Nevada as a legal corporation, separate and apart from the Leon Defendants individually. *See* Compl., Doc. #1, Ex. 1, at ¶ 5. This is confirmed by the Nevada Secretary of State's website, which lists C&H Soda Blasting as a "Domestic Corporation" (albeit now permanently revoked) with filed Articles of Incorporation and officers. *See Daniels–Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (taking judicial notice of official information posted on a governmental website, the accuracy of which was undisputed). Moreover, the Insurance Defendants' current contention that C&H is somehow a part of the Leon's voluntary bankruptcy petition is belied by their Motion for Removal, wherein they assert "*Mr. and Mrs. Leon filed* a voluntary petition." *See* Defs.' Mot. For Removal, Doc. #1,

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[2] The only citation to authority relates to the Court retaining jurisdiction to entertain the reconsideration request. *See* Doc. #39, at p. 2 n.2.

at 9 (emphasis added). At most, Carlos Leon mistakenly listed C&H as an alias on the petition. I am not bound to take his mistaken assertion as true, especially in the face of contrary law and fact.

The foundation underlying the Insurance Defendants' argument is incorrect. C&H is a corporate entity separate and distinct from Carlos Leon. Because C&H is not a sole proprietorship, the automatic stay in the Leon bankruptcy cannot apply to C&H. C&H remains a party to this lawsuit, and its presence destroys diversity. Thus, I deny the motion; the remand Order stands.

IV. CONCLUSION

IT IS THEREFORE ORDERED that the Insurance Defendants' Motion for Reconsideration (Dkt. #39) is DENIED.

DATED THIS 28th day of July 2014.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE