

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

In Re:	)	
	)	
Timothy Michael Rueth,	)	Case No. 19-22496
	)	Chapter 7
Debtor	)	

**ORDER DENYING MOTION TO SET ASIDE ORDER OF  
RELIEF & ABANDONMENT (Dkt. No. 189)**

A. Background

This matter is before the Court on a Motion to Set Aside Order of Relief & Abandonment (the “Motion”) filed by the debtor, Timothy Michael Rueth (“Debtor”), on September 6, 2021. (Dkt. No. 189). On October 31, 2019, creditor Centier Bank (“Centier”), filed a Motion for Automatic Stay Relief and Abandonment (the “Stay Motion”) requesting relief from the automatic stay and abandonment with respect to Debtor’s interest in Nondorf Farms, LLC (“Nondorf”) for the purpose of partially satisfying a prepetition deficiency judgment entered in the state court. (Dkt. No. 45). Notice of the Stay Motion was sent to all counsel of record and the Chapter 7 Trustee. (Dkt. No. 46). On November 19, 2020, the Chapter 7 Trustee filed an objection to the Stay Motion, citing a need to complete the first meeting of creditors and the need to investigate further Debtor’s interest in Nondorf. (Dkt. No. 51).

On April 2, 2020, the Chapter 7 Trustee withdrew his objection to the Stay Motion. (Dkt. No. 99). On April 2, 2020, the Court entered an order on Centier's Motion (the "Stay Relief Order"), wherein it abandoned Debtor's Nondorf Membership from the estate and lifted the automatic stay with respect to Debtor's Nondorf Membership. (Dkt. No. 100). On April 9, 2020, the Chapter 7 Trustee filed a Report of No Distribution in this case.

In the Motion, Debtor requests that the foregoing Stay Relief Order be set aside pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Debtor additionally argues that the Motion was timely pursuant to the provisions of Rule 60(c) of the Federal Rules of Civil Procedure. For the reasons stated herein, the Motion is denied.

#### B. Analysis

Generally, Rule 60 of the Federal Rules of Civil Procedure is applicable to cases under the Bankruptcy Code pursuant to Federal Rule of Bankruptcy Procedure 9024.<sup>1</sup> Federal Rule of Civil Procedure 60(b) provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

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<sup>1</sup> Federal Rule of Civil Procedure 60(b) applies in cases under the Code except that: (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330.

- (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). The relief pursuant to Rule 60(b) also is conditioned upon the timing constraints set forth in Federal Rule of Civil Procedure 60(c), which provides that a “motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1). In this case, the Motion having been filed more than one year after the Order was issued, Rule 60(b)(1), (2), and (3) are not applicable. *See Ackermann v. United States*, 340 U.S. 193, 197 (1950) (holding that the one-year time limit is jurisdictional and may not be extended in any event). Rule 60(b) provides for extraordinary relief and may be invoked only upon a showing of exceptional circumstances. *DiVito v. Fidelity and Deposit Co. of Maryland*, 361 F.2d 936, 938 (7th Cir. 1966).

In this case, Debtor argues that he is entitled to relief under Rule 60(b)(6) which provides relief for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6). As a substantive matter, relief under Rule 60(b)(6) requires the movant to establish extraordinary circumstances that would justify upsetting a final

decision. *Choice Hotels Intern., Inc. v. Grover*, 792 F.3d 753, 754 (7th Cir. 2015) (internal citations omitted). Even given the limited applicability of Rule 60(b) to extraordinary circumstances, proper resort to the “catch all” provision of Rule 60(b)(6) is even more highly circumscribed. *Provident Sav. Bank v. Popovich*, 71 F.3d 696, 700 (7th Cir. 2015) (internal citations omitted).

In the Motion, Debtor asserts that his Nondorf membership interest remains in dispute and that there are disparate values of his interest based upon the differing ownership interests. Debtor contends that this provides “good cause” to set aside the Order, but does not provide how he calculated these estimated values or how the differing values present an extraordinary circumstance in light of the fact that the Chapter 7 Trustee has filed a no distribution report in this case. Simply put, Debtor has failed to demonstrate extraordinary circumstances justifying relief under Rule 60(b)(6).

Debtor also has failed to set out how the Motion, being filed over 18 months after the entry of the Stay Relief Order, was made within a reasonable time pursuant to Rule 60(c). What constitutes a “reasonable time” for a filing under Rule 60(b) depends on the facts of each case. *Ingram v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 371 F.3d 950, 952, (7th Cir. 2004). Debtor argues that the Motion “is being made within a reasonable period of time”, however, he has failed to provide any reason why it took over 18 months to request relief under Rule 60(b)(6) or why such a delay was reasonable. In sum, Debtor has failed to carry

his burden and his Motion to Set Aside Order of Relief & Abandonment is DENIED.

**All of the foregoing is ordered, adjudged, and decreed this 25th day of March, 2022 in Hammond, Indiana.**

**/s/James R. Ahler**  
**James R. Ahler, Judge**  
**United States Bankruptcy Court**