



ORDERED in the Southern District of Florida on January 6, 2017.

A handwritten signature in black ink, appearing to read "Erik P. Kimball". The signature is written in a cursive style and is positioned above a horizontal line.

Erik P. Kimball, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

In re:

Case No. 15-21654-EPK

FREDERICK J. KEITEL, III,

Chapter 7

Debtor.

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**ORDER DENYING
DEBTOR'S AMENDED MOTION TO RECONSIDER ORDER
DENYING MOTION TO RECONSIDER ORDER CONVERTING CASE**

This matter came before the Court on the *Debtor's Amended Motion to Reconsider Order Denying Motion to Reconsider Order Converting Case [ECF No. 480] [ECF No. 509]* (the "Motion to Reconsider") filed by the debtor in this case, Frederick J. Keitel, III.¹ In the present Motion to Reconsider, Mr. Keitel seeks (a) various relief relating to the Court's findings and rulings in connection with an audio recording Mr. Keitel provided to the Court as evidence at an evidentiary hearing, (b) reversal of the Court's prior rulings that Mr. Keitel

¹ Although previously represented by separate counsel, Mr. Keitel currently acts *pro se* in this case. However, Mr. Keitel is a member of the Florida Bar, and is a member of the bar of the United States District Court for the Southern District of Florida and the bar of this Court. Mr. Keitel is held to the same standard as any counsel appearing before this Court.

violated orders of this Court prohibiting publication of the same recording, (c) reversal of the Court's ruling that the contents of the recording could only be used to investigate potential violation of a Florida criminal statute, (d) reversal of the Court's conversion of Mr. Keitel's chapter 11 case to chapter 7, (e) a stay of "all orders pending an appeal," and (f) a stay of "all orders pending resolution of Debtor's Motion to Disqualify the Court."

On November 16, 2016, the Court entered an order converting Mr. Keitel's chapter 11 case to chapter 7. ECF No. 410. Mr. Keitel had made an audio recording of a conversation between himself and his former counsel, Robert Furr, on January 13, 2016. Mr. Furr had argued that the recording was made in violation of a Florida criminal statute, Florida Statutes § 934.03. The Court twice ordered Mr. Keitel not to publish that recording in any manner. ECF Nos. 190 and 297. In spite of those explicit orders, Mr. Keitel included quotes from the recording in his fourth and fifth amended disclosure statements filed with the Court and served on various parties in interest. ECF Nos. 391 and 407. Finding that Mr. Keitel had violated two orders of the Court, which constitutes cause for conversion under 11 U.S.C. § 1112(b), the Court converted Mr. Keitel's case to chapter 7.

Mr. Keitel filed a motion to reconsider the conversion of his case. ECF No. 431. Mr. Keitel also filed a renewed motion asking the Court to permit him to release the January 13, 2016 audio recording to law enforcement authorities.² ECF No. 455. The Court set the motion to reconsider conversion of Mr. Keitel's case, several other requests to convert Mr. Keitel's case to chapter 7 that the Court had not previously ruled on, and Mr. Keitel's renewed motion for authority to release the audio recording, for evidentiary hearing on December 15, 2016. ECF Nos. 436 and 458.

² Mr. Keitel's prior motion seeking permission to release that recording was withdrawn. ECF Nos. 235 and 297 (order noting withdrawal of ECF No. 235 on the record).

Mr. Keitel attended the evidentiary hearing on December 15, 2016. A number of other parties appeared at the evidentiary hearing, including Mr. Furr, the chapter 7 trustee Richard Webber, counsel for the United States Trustee, and counsel for several creditors. Mr. Keitel testified at the hearing. Among other things, Mr. Keitel offered into evidence the sole copy of the January 13, 2016 audio recording and his own handwritten notes taken during and soon after the conversation captured by that recording.

Because the audio recording was potentially made in violation of a Florida criminal statute, and in order to prevent further publication of the recording possibly in violation of that statute, the Court took a recess from the evidentiary hearing and listened to the recording in chambers. In the present Motion to Reconsider, Mr. Keitel suggests that he somehow did not have an adequate opportunity to use the recording in connection with the evidentiary hearing. Yet Mr. Keitel had been in possession of the audio recording for approximately eleven months and nothing prohibited Mr. Keitel from listening to the recording in preparation for the evidentiary hearing. Mr. Keitel did not ask to listen to the recording during the evidentiary hearing. No other party requested an opportunity to listen to the recording during the evidentiary hearing. The recording itself is admitted in evidence and is available for inclusion in any record on appeal.

At the close of the evidentiary hearing on December 15, 2016, the Court made extensive findings of fact and conclusions of law on the record. On December 16, 2016, the Court entered written orders incorporating the same. The Court denied Mr. Keitel's motion to reconsider conversion of his case. ECF No. 480. The Court granted in part Mr. Keitel's motion seeking authority to release the recording by ruling, among other things, that the recording could be released to law enforcement authorities for the purpose of investigating

whether there was a violation of Florida Statutes § 934.03. ECF No. 482.³ A detective from the Police Department for the Town of Palm Beach has retrieved a copy of the recording. ECF No. 502.

In the present Motion to Reconsider, Mr. Keitel does not cite any legal basis for the relief requested. Even if the Court were to construe the motion as one under Fed. R. Bankr. P. 9023 (incorporating Fed. R. Civ. P. 59), Fed. R. Bankr. P. 9024 (incorporating Fed. R. Civ. P. 60), or Fed. R. Bankr. P. 7052 (made applicable by Fed. R. Bankr. P. 9014, incorporating Fed. R. Civ. P. 52), no relief is warranted. Instead, Mr. Keitel challenges the Court's findings of fact and conclusions of law, raising arguments that could have been or were in fact raised at the evidentiary hearing. These are arguments more appropriately addressed in an appeal. The Court made an extensive ruling on the record at the close of the evidentiary hearing on December 15, 2016 and no additional findings or rulings are necessary or appropriate.

On December 17, 2016, the day after the Court denied Mr. Keitel's motion to reconsider conversion of his case, Mr. Keitel filed a motion to disqualify the presiding Judge in this case. ECF No. 485. The Court set the motion to disqualify for evidentiary hearing on January 26, 2017. ECF No. 495.⁴

The pendency of a motion to disqualify the presiding Judge in this case is not cause to "stay all orders" pending a ruling on that motion. Nor is there cause to "stay all orders pending an appeal." No party has filed a notice of appeal from the order converting this case

³ In the present Motion to Reconsider, Mr. Keitel argues that he specifically asked the Court not to determine the legality of the recording. There is no such request in Mr. Keitel's most recent motion for authority to release the recording, which the Court heard on December 15, 2016. ECF No. 455. In any case, because no recording made in violation of Florida Statutes § 934.03 may be used for any purpose other than for investigation under that same provision (except in extremely limited circumstances not applicable here), it was necessary for the Court to determine whether the recording was made in violation of the statute in order to permit the Court to determine whether the recording could be released to anyone. Fla. Stat. § 934.06.

⁴ Judge Erik P. Kimball is presiding over this case. Judge Kimball was originally assigned to this case, but the case was transferred to Chief Judge Paul G. Hyman, Jr., apparently because Judge Hyman had been assigned several related cases. ECF No. 32. After Mr. Keitel alleged at a hearing on July 13, 2016 that Judge Hyman might be involved in "case fixing" in this case, Judge Hyman transferred this case to Judge Kimball. ECF Nos. 247 and 261 (transcript, pp 54-56).

and it appears that any such notice of appeal would now be untimely.⁵ Even if a notice of appeal had been filed, Mr. Keitel does not present any argument for a stay pending appeal consistent with the requirements of Fed. R. Bankr. P. 8007 and applicable case law. *Barna v. Haas (In re Haas)*, 292 B.R. 167, 180-81 (Bankr. S.D. Ohio 2003).

For the foregoing reasons, the *Debtor's Amended Motion to Reconsider Order Denying Motion to Reconsider Order Converting Case [ECF No. 480] [ECF No. 509]* is DENIED.

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The Clerk is directed to serve a conformed copy of this Order on all parties in interest.

⁵ To the extent the present Motion to Reconsider seeks reconsideration, a second time, of the order converting Mr. Keitel's case to chapter 7, ECF No. 410, it is procedurally inappropriate and likely does not serve to toll the period permitted for a timely appeal from that order. See Fed. R. Bankr. P. 8002(b); *Valentine v. BAC Home Loans Servicing, L.P.*, 635 F. App'x 753, 755–56 (11th Cir. 2015); *Stangel v. United States (In re Stangel)*, 68 F.3d 857, 859 (5th Cir. 1995).