SO ORDERED.
SIGNED this 12th day of January, 2017

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 3:10-bk-36155-SHB

RAFIA NAFEES KHAN
pka RAFIA N. KHAN IRROVOCABLE TRUST

Debtor

MEMORANDUM AND ORDER ON
FOURTH MOTION TO REOPEN CASE

Through the Fourth Motion of Debtor, Rafia Nafees Khan, to Reopen Case ("Fourth Motion to Reopen") filed by Debtor on December 9, 2016, Debtor again asks the Court to reopen this discharged Chapter 7 case to "allow her to file an adversary proceeding against Regions Bank, to void the Bank's state court judgment against her, pursuant to 11 U.S.C. § 524(a)(1)." [Fourth Motion to Reopen at 1.] The Fourth Motion to Reopen expressly seeks the same relief sought by Debtor's first motion to reopen, denied by the Court on January 26, 2016. Because Debtor did not timely seek to alter or amend that decision under Federal Rule of Bankruptcy Procedure 9023, did not timely seek relief from that order pursuant to Federal Rule of Bankruptcy Procedure 9024, and did not timely appeal that decision under Federal Rule of

Bankruptcy Procedure 8002, the Fourth Motion to Reopen is barred by the law-of-the-case doctrine.

Debtor acknowledges in her Memorandum of Law in Support of Debtor's Fourth Motion to Reopen Case [Doc. 83 at 1] that the Fourth Motion to Reopen "[o]nce again . . . seeks to reopen her case in order to invoke this Court's power, under Section 541(a)(1) [*sic*] of the Bankruptcy Code, to void a state-court judgment that Regions Bank holds against her." In support of the Fourth Motion to Reopen, Debtor argues: "Most respectfully, the Court's ruling in that first Motion was a manifest error of law that should, in the interest of justice and equity, be revisited in this fourth motion." [*Id.*]

The January 26 Order denying Debtor's motion to reopen the case was a final order. *See In re Linder*, 215 B.R. 826, 828 (B.A.P. 6th Cir. 1998) (citing *Madden v. NBD Mortgage Co. (In re Madden)*, 897 F.2d 529 (6th Cir. 1990)). As such, if Debtor wanted to challenge a "manifest error of law" [Doc. 83 at 1],[1] the only avenues for relief were to file a Rule 9023 motion to alter or amend the judgment or to file a notice of appeal under Rule 8003. Debtor failed to take either action, and the deadlines for both expired fourteen days after entry of the January 26 Order. Fed. R. Bankr. P. 8002(a)(1), 9023.

Instead, Debtor chose to file the Fourth Motion to Reopen. Arguably, Debtor still has time to file a motion for relief from the judgment or order under Rule 9024, which incorporates Federal Rule of Civil Procedure 60; however, Debtor has failed to raise any ground for relief that

[1] Rule 9023 incorporates Federal Rule of Civil Procedure 59. A Rule 59(e) motion "serves the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Dymarkowski v. Savage (In re Hadley)*, No. 16-8010, ___ B.R. ___, 2016 WL 7383965, at *8 (B.A.P. 6th Cir. Dec. 21, 2016) (quoting *Pequeño v. Schmidt (In re Pequeño)*, 240 F. App'x 634, 636 (5th Cir. 2007)).

qualifies under Rule 60(b). Debtor argues nothing more than that the Court committed legal error in its January 26 ruling. Such is not cause for relief under Rule 60(b).[2]

Simply, the law-of-the-case doctrine requires denial of Debtor's Fourth Motion to Reopen.

> "The law-of-the-case doctrine bars challenges to a decision made at a previous stage of litigation which could have been challenged in a prior appeal, but were not." *JGR, Inc. v. Thomasville Furniture Indus., Inc.*, 505 F. App'x 430, 435 (6th Cir. 2012) (quotation marks and citation omitted). The Sixth Circuit has unambiguously stated "[a] Rule 60(b) motion is neither a substitute for, nor a supplement to, an appeal." *GenCorp, Inc. v. Olin Corp.*, 477 F.3d 368, 373 (6th Cir. 2007). "For this reason, arguments that were, or should have been, presented on appeal are generally unreviewable on a Rule 60(b)(6) motion." *Id.* (citations omitted). And for related reasons, "an appeal from [the] denial of Rule 60(b) relief does not bring up the underlying judgment for review." *Id.* (quoting *Browder v. Dir., Dep't of Corr. Of Ill.*, 434 U.S. 257, 263 n.7 (1978)).

Schwab v. Oscar (In re SII Liquidation Co.), 517 B.R. 72, 75-76 (B.A.P. 6th Cir. 2014).

Accordingly, for these reasons, Debtor's Fourth Motion to Reopen Case is hereby DENIED.

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[2] Moreover, Debtor is incorrect in her argument that the Court's prior ruling was a manifest error of law. According to the Sixth Circuit Court of Appeals, the exception to the *Rooker-Feldman* doctrine that is authorized by 11 U.S.C. § 524(a) is limited to the bankruptcy court's review of a state-court judgment that incorrectly applied a bankruptcy court's discharge order such that the state court effectively modified the discharge order. *Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367, 375-76 (6th Cir. 2008). A state-court judgment would be reviewable by the bankruptcy court and voidable under § 524(a) if it "constitute[d] a modification of the discharge in bankruptcy." *Id.* at 375. Such modification would occur "only if the debt was actually discharged pursuant to the bankruptcy court's discharge order." *Id.* If, however, "the debt was not discharged pursuant to the bankruptcy court's discharge order, then the state-court judgment was not a modification of the discharge order and the *Rooker-Feldman* doctrine would bar federal-court jurisdiction." *Id.* at 376.

As explained by this Court in its January 26 decision, Debtor seeks to have the Court interpret the confirmed arbitration award to determine that the Rafia N. Kahn Irrevocable Trust (the "Trust") is *not* liable to Regions Bank because, under Debtor's theory, the state court incorrectly *failed to hold* that Tennessee law imposes "legal responsibility . . . solely upon [Debtor], as her own personal liability." [Doc. 61 at p. 11.] Thus, Debtor does not argue that the state court incorrectly applied the discharge order. Nor could she, because the state appellate court made it clear that the decision "concern[ed] only the Trust and not Mrs. Khan personally as she has been discharged in bankruptcy." *Kahn v. Regions Bank*, 461 S.W.2d 505, 509 (Tenn. Ct. App. 2014). Rather, in an effort to save the home in which she lives (which is owned of record by the Trust but in which Debtor claims an equitable interest by operation of Tennessee law [Doc. 78 at 3 & n.1] – an issue not yet raised to any state court as far as this Court can determine), Debtor argues that the state court incorrectly interpreted Tennessee law in ruling that the arbitration award could be entered only against the Trust. Because review of the state-court ruling that *the Trust* is liable is not review of a state-court decision that incorrectly attempted to modify the bankruptcy discharge order, the *Rooker-Feldman* doctrine bars this Court's review of the state-court decision.