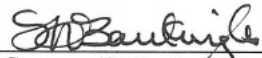




SO ORDERED.

SIGNED this 16th day of December, 2020

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


Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

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

In re

MARGARET ELIZABETH KINNEY

Debtor

F. SCOTT MILLIGAN, TRUSTEE

Plaintiff

v.

SARAH E. VALDES

Defendant

Case No. 3:20-bk-30540-SHB
Chapter 7

Adv. Proc. No. 3:20-ap-3032-SHB

**MEMORANDUM AND ORDER ON MOTION TO RECONSIDER AND
RESCIND ORDER**

Before the Court is Defendant Sarah E. Valdes's Motion to Reconsider and Rescind Order ("Motion") filed on December 15, 2020 [Doc. 50]. Defendant asks the Court to set aside the Order entered December 10, 2020 ("December 10 Order") [Doc. 42], which granted Plaintiffs' Motion to Amend Adversary Complaint ("Motion to Amend") [Doc. 36].

Defendant argues in the Motion¹ that she intended her Motion to Set Aside Order for Partial Summary Judgment, and to Dismiss Trustee's Adversary Complaint ("Defendant's December 9 Motion") [Doc. 41],² which she mailed on December 7, 2020, to respond to Plaintiff's Motion to Amend. [Doc. 50 at p. 1.] Thus, Defendant disputes the Court's finding in the December 10 Order that she failed to respond by the December 8, 2020 deadline that was contained in an Order entered on November 18, 2020 (the "November 18 Order")³ [Doc. 39].

First, Defendant's December 9 Motion includes not a single word about the Motion to Amend. Second, Defendant incorrectly relies on Federal Rule of Civil Procedure 6(b) to argue that she had an additional three days from December 8 because she received notice of the deadline by United States mail. Rule 6(b) does not apply to this adversary proceeding; however, Federal Rule of Bankruptcy Procedure 9006(f) provides for three additional days to be added to a deadline "to act or undertake some proceedings within a prescribed period *after being served*" when service is by mail (emphasis added). Rule 9006(f), however, does not apply to the November 18 Order because the deadline was stated as a date certain, not a date connected to service of any document. [Doc. 39 ("Defendant's deadline for response to the motion is December 8, 2020").] *If* Defendant's December 9 Motion had mentioned that it was filed in response to the Motion to Amend, the Court would have treated it as such and likely would have

¹ Defendant again failed to comply with this Court's Local Rules, which require a motion in an adversary proceeding to be accompanied by a brief setting for the facts and the law supporting the motion and require that all motions be accompanied by a proposed order granting the relief sought. E.D. Tenn. LBRs 7007-1(a), (b). The Court again warns Defendant that future failure to comply with the Court's Local Rules may result in *sua sponte* denial of any relief requested without notice, hearing, or consideration of the merits of Defendant's filing. [See Order, *In re Kinney*, E.D. Tenn. No. 3:20-bk-30540-SHB, ECF No. 89 at ¶ 5.]

² The Court denied Defendant's motion on December 14, 2020. [Doc. 49.]

³ The November 18 Order denied Plaintiff's request to shorten time on his Motion to Amend and set a deadline of December 8, 2020 (which was twenty-one days after entry of the November 18 Order), for Defendant to respond to the Motion to Amend. [Doc. 39.]

excused the late filing by one day, but Defendant's *ex post facto* rationalization is insufficient for the Court to reconsider its December 10 Order. Although the Court is somewhat sympathetic to Defendant's misunderstanding of court rules and procedures, she has chosen to represent herself, and her mother chose to file a bankruptcy petition in this Court that created Defendant's difficulties concerning her home.

Even if the Court were to reconsider the December 10 Order in light of Defendant's December 9 Motion, the Court would still grant the Motion to Amend because Federal Rule of Civil Procedure 15(a)(2), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7015, provides that the "[C]ourt should freely give leave [to amend] when justice so requires." Neither the instant Motion nor the December 9 Motion meet the standard to oppose the Motion to Amend.

For these reasons, the Court rejects Defendant's assertion that her due process rights were violated by the Court's December 10 Order and directs:

1. Defendant Sarah E. Valdes's Motion to Reconsider and Rescind Order filed on December 15, 2020 [Doc. 50] is DENIED.
2. To omit any doubt concerning the due date for Defendant's response to the Amended Complaint, Defendant is advised that, pursuant to the December 10 Order, her response to the Amended Complaint filed and served by Plaintiff on December 11, 2020 [Docs. 44, 45] is due *to be received for filing in the clerk's office* within fourteen days of service (i.e., on or before December 31, 2021, which includes three additional days after the first business day following the December 25 holiday, pursuant to Fed. R. Bankr. P. 9006(a)(1)(C), (f)).

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