Dated: June 09, 2026
The following is ORDERED:

Jennie D Latta

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE

In re INDEPENDENCE REALTY & INVESTMENTS, LLC, Debtor-In-Possession.	Case No. 24-24362-L Chapter 11, Subchapter V

Independence Realty & Investments, LLC, and Derrick Brown and Carla Brown, Plaintiffs/Counter-Defendants, v. Nexcel Properties, LLC, Defendant/Counter-Plaintiff.	Adv. Proc. No. 24-00121

ORDER ON PLAINTIFFS' MOTION TO RECONSIDER CORRECTED ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING SUMMARY JUDGMENT FOR DEFENDANT

BEFORE THE COURT is the *Motion to Reconsider Order (and Subsequent Corrected Order) Denying Plaintiffs' Motion for Summary Judgment and Granting Summary Judgment for Defendant (Derrick and Carla Brown, Individually* (the "Motion to Reconsider") [ECF No. 90].

The Browns seek reconsideration of this Court's C*orrected*[1] *Order Denying Plaintiffs' Motion for Summary Judgment and Granting Summary Judgment for Defendant* entered April 10, 2026 (the "April 10 Order") [ECF No. 85]. The Defendant/Counter Plaintiff[2] objected to the Motion for Reconsideration [ECF No. 93] and the Court heard arguments on June 4, 2026. The Motion to Reconsider was filed by the Browns, pro se, but attorney Brittan Webb Robinson appeared as counsel for the Browns at the hearing. After carefully considering the arguments of the Browns, the Motion will be denied.

BACKGROUND FACTS

The facts which gave rise to the April 10 Order are fully set out there. The Browns argue that reconsideration is warranted for the following reasons:

1. There is evidence of fraudulent transfer of the Debtors' real properties;
2. The April 10 Order resolved disputed issues of material fact;
3. The Court improperly weighed competing evidence and credibility;
4. The Court applied estoppel by deed and parole evidence doctrines too broadly; and
5. The Court granted summary judgment sua sponte without giving notice and opportunity for the Plaintiff to respond [ECF No. 90, pp. 2-3].

Although numerous issues were raised by the Plaintiffs in their underlying motion for summary judgment, the only cause of action before the Court was one to quiet title to two properties known as 4112 Summer Avenue and 883 Hale Road (the "Relevant Properties"). Other causes of action raised by the Plaintiffs in their complaint were remanded to the Chancery Court of Shelby County, Tennessee. *See Order on Defendant's Motion for Abstention and to Remand to*

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[1] The original Order entered April 7, 2026, [ECF No. 83] was corrected on page 5 to add a close parenthesis for the quote in line 4 and on page 11 to correct the recited maturity date of the 2022 Note from April 10, 2023, to April 1, 2023, in Line 8.

[2] By prior order, the Court dismissed Laksh Nandrajog as a defendant [ECF No. 73].

State Court and to Modify the Automatic Stay, August 4, 2025 [ECF No. 44]. The Browns were represented by a series of attorneys, culminating in representation by Curtis D. Johnson, Jr., who filed the motion for summary judgment, but was permitted to withdraw the day before oral argument was scheduled. The Plaintiffs/Counter-Defendants were given thirty days to obtain new counsel. In advance of the rescheduled hearing, Plaintiff/Counter-Defendant Derrick Brown filed a declaration and exhibits on behalf of himself and Mrs. Brown. He appeared at the scheduled argument without counsel. Because it was the Defendant/Counter-Plaintiff Nexcel Properties, LLC, that had requested oral argument and because Mr. Brown appeared and made arguments on behalf of himself and Mrs. Brown, the Court considered the matter submitted for decision at the conclusion of arguments.

DISCUSSION

The Motion to Reconsider seeks relief under both Rules 59 and 60 of the *Federal Rules of Civil Procedure* made applicable in Bankruptcy by Rules 9023 and 9024, *Federal Rules of Bankruptcy Procedure*. In bankruptcy, a motion to alter or amend a judgment must be filed within 14 days after the judgment is entered. Fed. R. Bankr. P. 9023(b). It is generally treated as a motion made pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. *Lundeen v. Wells Fargo Bank, N.A*. (*In re Lundeen)*, Case No. 24-8005, 2024 WL 3965900, at *13 (B.A.P. 6th Cir. 2024), citing, *Hamerly v. Fifth Third Mortg. Co. (In re J & M Salupo Dev. Co.)*, 388 B.R. 795, 805 (B.A.P. 6th Cir. 2008).

A Rule 59(e) motion may be granted: "(1) to correct a clear error of law; (2) to account for newly discovered evidence or an intervening change in the controlling law; or (3) to prevent manifest injustice." *In re Community Memorial Hospital*, 599 B.R. 923, 927 (Bankr. E.D. Mich., 2019), citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999); and

Henderson v. Walled Lake Consol. Sch., 469 F.3d 479, 496 (6th Cir. 2006). It is intended "to allow the . . . court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings." *Lundeen*, p. *13. The granting of a motion to alter or amend is "an extraordinary remedy that should be used sparingly because of the interests in finality and conservation of scarce judicial resources." *Id*. "To constitute 'newly discovered evidence,' the evidence must have been previously unavailable," *GenCorp., Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). "Manifest injustice, as contemplated by Rule 59(e), is an amorphous concept with no hard line definition." *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 734 (B.A.P. 6th Cir. 2010). As such, courts consider the matter "on a case-by-case basis." *Int'l Union United v. Bunting Bearings Corp. (In re Bunting Bearings Corp.)*, 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004). According to the Court of Appeals for the Sixth Circuit, the plain meaning of the words "manifest injustice" is instructive. *Volunteer Energy Servs., Inc. v. Option Energy, LLC*, 579 Fed. Appx. 319, 330–31 (6th Cir. 2014). "Manifest injustice is defined as '[a]n error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds.' *Black's Law Dictionary* 982 (8th ed. 2004)." *Bradley J. Delp Revocable Trust v. MSJMR 2008 Irrevocable Trust*, 665 Fed. Appx. 514, 530 (6th Cir. 2016); *Looper v. U.S. Dept. of Educ., et al,* Case No. 05-38187, AP No. 06-3042, 2007 WL 1725251(Bankr. E.D. Tenn. 2007).

Similarly, a motion for relief from a judgment under Rule 60(b) made applicable to bankruptcy cases by Bankruptcy Rule 9024 may be granted if a movant establishes one or more of the following grounds for relief:

> 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;
> (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. Bankr. P. 9024; Fed. R. Civ. P. 60(b).

The party seeking reconsideration of a decision bears the burden of proving the existence of "a manifest error of fact or law." *Salupo* at 805. Such a motion is not, however, an opportunity to re-argue a case, nor is it an alternative to an appeal. *Id*.

As noted, the only cause of action subject to the motion for summary judgment was one to quiet title. The Court retained this cause of action in order to determine whether the Relevant Properties were owned by the Debtor, Independence Realty & Investments, LLC. ("Independence Realty") when it filed its bankruptcy petition and thus became property of the bankruptcy estate.

As admitted by Mr. Johnson before his withdrawal, an action to quiet title depends upon proof of title in the plaintiff. Moreover, under the doctrine of estoppel by deed, a person may not voluntarily execute a deed and later deny the validity of the same deed. These were the bases of the Court's decision. *See April 10 Order*, p. 10. The Court went further than necessary in noting that Mr. Brown admitted in his deposition that the notes were not paid at maturity, and thus were in default, when the deeds were recorded. The finding that Independence Realty did not hold title when its bankruptcy petition was filed nor at the time the adversary proceeding was commenced was sufficient to support the Court's determination that summary judgment should be denied the Plaintiffs/Counter-Defendants and granted to the Defendant/Counter-Plaintiff. As admitted by Mr.

Johnson on behalf of the Plaintiffs/Counter-Defendants, in order to maintain an action to quiet title, the plaintiff must demonstrate that it holds title.

The Court will briefly address each of the Browns' arguments in support of the Motion for Reconsideration.

The Browns argue that there is evidence of a fraudulent transfer. The term "fraudulent transfer" has a specific meaning under the Bankruptcy Code and applicable state law. *See* 11 U.S.C. § 548(a) and Tenn. Code Ann. § 66-3-301*et seq*. The term does not include the recording of a deed given by a borrower as security for a note. More importantly, this theory of the Browns was not included in the claim to quiet title that was considered by this Court.

The Browns argue that the Court resolved disputed issues of material fact. They point to the question of the Plaintiffs' default at the time of the recording of the deeds by Nexcel, the effect of the loan modification agreements, and the parties' intent concerning enforcement of the quitclaim deeds. None of these matters, even if disputed, were material to the Court's determination that the Plaintiffs had failed to establish the essential fact necessary to the quiet title action – that Independence Realty held record title to the Relevant Properties when its complaint was filed.

The Browns argue that the Court improperly weighed credibility but point only to Mr. Brown's own conflicting statements. In other words, the Court was not weighing the credibility of one witness against another, but only evaluating the record provided in support of and in opposition to the motion for summary judgment. None of the conflicts in Mr. Brown's testimony obviate the fact that title to the Relevant Properties was not held by Independence Realty at the time its complaint was filed, the one essential fact necessary to maintain the quiet title action. The Browns may ultimately succeed in the Chancery Court in having title restored to Independence Realty on one of their other causes of action. Those causes of action, however, are not before this Court.

The Browns argue that the Court misapplied the parole evidence rule. The Browns, however, point to no instance of ambiguity in the written documents that would have permitted the Court to resort to consideration of parole evidence.

The Browns argue that the Court applied estoppel by deed too broadly. They argue that the quitclaim deeds delivered to Nexcel were conditional. Mr. Brown is correct in noting that the quitclaim deeds state that they will only be recorded in the event of default. This is an argument that the Browns will no doubt raise in the Chancery Court, but it is not relevant to this Court's determination that title did not lie with Independence Realty when its complaint was filed.

The Browns argue that manifest injustice will result if they are not given relief from the Court's April 10 Order. This simply is not true. All of their arguments concerning their desire to set aside the conveyances to Nexcel are preserved in the action pending before the Chancery Court. The Court retained a single cause of action—the action to quiet title—in order to determine whether the Relevant Properties became property of the bankruptcy estate when the bankruptcy petition was filed by Independent Realty. The Court determined that they did not. That does not preclude the properties becoming property of the bankruptcy estate if the Chancery Court rules in favor of the Plaintiffs.

CONCLUSION

The Court has carefully considered each of the arguments asserted by the Browns in favor of reform of its prior decision denying summary judgment to the Plaintiffs/Counter-Defendants and granting summary judgment in favor of the Defendant/Counter-Plaintiff. First, the Court is satisfied that there was no clear error of law. The decision was based on the established fact that title to the Relevant Properties was held by Nexcel rather than Independence Realty when the bankruptcy petition and the original complaint were filed. Second, the Browns have put forth no argument that newly discovered evidence warrants reform of the Court's order. Finally, the Court is satisfied that no injustice will result from the Court's order because the remaining counts of the Plaintiffs' complaint have been remanded to the Chancery Court for consideration. The Court has formed no opinion about whether the Plaintiffs will succeed on the merits of their claims.

Accordingly, the Motion to Reconsider is DENIED.

cc: Debtor-In-Possession
Attorney for Debtor-In-Possession
Plaintiffs
Attorney for Plaintiffs
Defendants
Attorney for Defendants
Chapter 11, Subchapter V Trustee
United States Trustee