APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12199-A

In re: ELIEZER TAVERAS
Petitioner

On Petition for Writ of Mandamus from the United States District Court for the Southern District of Florida

Eliezer Taveras
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Pro se Petitioner

The Honorable Robert N. Scola, Junior
United States District Judge, Southern District of Florida.

The Honorable Jonathan Goodman,
United States Magistrate Judge, Southern District of Florida.

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OPINION OF THE COURT

(Filed: August 29, 2022)

Before: JORDAN and BRASHER, Circuit Judges.
BY THE COURT:

Eliezer Taveras, a *pro se* private citizen, petitions this Court for a writ of mandamus arising out of a civil action that he originally filed in state court in Miami-Dade County, Florida, but was removed to the U.S. District Court for the Southern District of Florida, where it was dismissed with prejudice. Taveras asserts that his suit was improperly removed from state court and that sanctions should be assessed against the defendants and their attorneys. He asks this Court to order the district court to remand his case to state court. He also asks this Court to order the district court to grant his motion for sanctions.

Mandamus is available only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion. *United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Jackson*, 130 F.3d at 1004. When an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper.

See Lifestar Ambulance Serv., Inc. v. United States, 365 F.3d 1293, 1298 (11th Cir. 2004).

This Court has jurisdiction to review an appeal from a final judgment. 28 U.S.C. § 1291. An appeal from a final judgment brings up for review all preceding non-final orders. *Corley v. Long-Lewis, Inc.*, 965 F.3d 1222, 1229 (11th Cir. 2020).

Here, Taveras's mandamus petition is due to be denied. Taveras had, and exercised, the adequate alternative remedy of moving the district court to remand his case to state court and to impose sanction against the defendants and their attorneys. *Shalhoub*, 855 F.3d at 1259; *Jackson*, 130 F.3d at 1004. He likewise had, and exercised, the adequate alternative remedy of seeking reconsideration of the district court's order dismissing his case and denying his motions. *Shalhoub*, 855 F.3d at 1259; *Jackson*, 130 F.3d at 1004. That his filings in the district court were unsuccessful does not render them "inadequate" alternative remedies for mandamus purposes. See *Lifestar*, 365 F.3d at 1298.

Finally, to the extent that Taveras seeks to reverse the district court's order dismissing his case, or asserts any other errors by the district court, he had, and exercised, the adequate alternative remedy of filing an appeal to this Court. *Shalhoub*, 855 F.3d at 1259; *Jackson*, 130 F.3d at 1004; *Corley*, 965 F.3d at 1229; 28 U.S.C. § 1291.

Accordingly, Taveras's mandamus petition is hereby **DENIED**.

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 22-12199-A

In re: ELIEZER TAVERAS
Petitioner

On Petition for Writ of Mandamus from the United States District Court for the Southern District of Florida

ORDER DENYING PETITION FOR REHEARING AND REHEARING EN BANC

(Filed: December 1, 2022)

Before JORDAN and BRASHER, Circuit Judges

BY THE COURT:

Eliezer Taveras proceeding *pro se*, has filed a "Petition for Rehearing *En Banc*," which we construe as a motion for reconsideration of our denial of his petition for a writ of mandamus. That mandamus petition arose out of a civil action that Taveras originally filed in state court in Miami Dade County, Florida, which was removed to the U.S. District Court for the Southern District of Florida and dismissed with prejudice. In his mandamus petition, Taveras asserted that his suit was improperly removed from state court and that sanctions should be assessed against the defendants and their attorneys. He asked us to order the district court to remand his case to state court and to grant his motion for a contempt finding and assessment of sanctions.

We denied Taveras's mandamus petition, determining that he had, and exercised the adequate alternative remedies of moving the district count to remand his case to state court and impose sanctions and of seeking reconsideration of the district court's order dismissing his case and denying his motions. We further determined that, to the extent that Taveras sought to reverse the district court's order dismissing his case, or

asserted any other errors by the district court, he had, and exercised, the adequate alternative remedy of filing an appeal.

In his reconsideration motion Taveras reasserts that his case was improperly removed from state court and argues, therefore, that an "[a]ppeal should not be necessary" under these circumstances. He does not dispute that that he had, and exercised, the adequate alternative remedies of moving the district count to remand his case to state court and impose sanctions and of seeking reconsideration of the district court's order dismissing his case and denying his motions. Instead, he argues only that an appeal is an inadequate alternative remedy to address his concerns of reversing the district court's order dismissing his case, remanding his action to state court, and assessing sanctions against the defendants and their attorneys.

A party seeking rehearing or reconsideration must specifically allege any point of law or fact that we overlooked or misapprehended. See Fed. R. App. P 40(a)(2). A reconsideration motion is analogous to a petition for a panel rehearing, which must "state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended." Fed R. App. P 40(a)(2). In the district court context, we have held that "[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. Teelee Toons, Inc*, 555 F. 3d 949, 957 (11th Cir. 2009) (quotation marks omitted).

Mandamus is available only in drastic situations, when no other adequate means are available to remedy

a clear usurpation of power or abuse of discretion. *Cheney v. US. Dist. Court*, 542 U.S. 367, 380-81 (2004); *Jackson v. Motel 6, Multiporpose, Inc.* 130 F.3d 999, 1004 (11th Cir. 1997). Mandamus may not be used as a substitute for appeal or to control decisions of the district court in discretionary matters. *Jackson*, 130 F.3d at 1004. When an alternative remedy exists, even if it is unlikely to provide relief mandamus relief is not proper. See *Life star Ambulance Serve., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

We have considered all the arguments Taveras raises in his construed motion to reconsider, and we conclude that Taveras has not established that we overlooked or misapprehended any point of law or fact when we denied his mandamus petition. See Fed. R. App. P. 40(a)(2). Additionally, to the extent that Taveras seeks to relitigate his original mandamus claims, he may not do so on a motion for reconsideration. See *Wilchombe*, 555 F.3d at 957. Accordingly, Taveras's construed motion for reconsideration is **DENIED.**

United States District Court
for the Southern District of Florida

Eliezer Taveras, Plaintiff, v. U.S. Bank National Association and others, Defendants.	)	Civil Action No. 1:22-cv-21134-Scola

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ORDER DISMISSING CASE

(Filed: May 9, 2022)

This case is before the Court upon an independent review. Plaintiff Eliezer Taveras, proceeding pro se, seeks to invalidate a negotiated settlement of a state-court, residential-foreclosure action filed in the Circuit Court of Miami-Dade County. Based on that settlement, the state court entered a consent final judgment of foreclosure, in 2018, and conducted a judicial sale of the property at issue, a few months later, in January 2019. Taveras has been litigating that judgement and sale, continuously, ever since. This case, properly here upon removal based on federal-question jurisdiction,[1] represents Taveras's third attempt, in this Court alone, to do so: both prior attempts have failed. Because this case involves the same parties and arises from the same nucleus of operative facts as the first two cases, the

[1] The Court has original jurisdiction over this civil action as provided for by 28 U.S.C. § 1331; and it has been properly removed to this Court by the Defendants under 28 U.S.C. § 1441(c). The allegations set forth in the complaint render this action a civil action "arising under the Constitution, laws or treaties of the United States," as Taveras alleges that the Defendants violated 18 U.S.C. § 1962, among other federal statutes. Taveras's motion to remand (ECF No. 12), as well as his motion for contempt (ECF No. 11), based on the removal, are, therefore, both wholly meritless. The Court, thus, **denies** both motions (**ECF Nos. 11, 12.**)

Court dismisses it, with prejudice, for improper claims splitting.

"[I]t is well settled that a plaintiff may not file duplicative complaints in order to expand their legal rights." *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017). This concept, referred to as claim-splitting, "is an offshoot of res judicata that is concerned with the district court's comprehensive management of its docket, whereas res judicata focuses on protecting the finality of judgments." *O'Connor v. Warden, Florida State Prison*, 754 F. App'x 940, 941 (11th Cir. 2019) (cleaned up). The doctrine serves "to promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1236 (11th Cir. 2021). In evaluating whether a case is duplicative of another, a court must find "(1) mutuality of the parties and their privies, and; (2) whether separate cases arise from the same transaction or series of transactions." *O'Connor,* 754 F. App'x at 941 (cleaned up). To determine whether "successive causes of action arise from the same transaction or series of transactions," a court looks at whether "the two actions are based on the same nucleus of operative facts." *Vanover*, 857 F.3d at 842.

Both elements are readily met here. First, this case arises out of the exact same set of facts as Taveras's previous two cases: *Taveras v. Ocwen Loan Servicing, LLC*, Case No. 19-cv-2335-BB, Compl., ECF No. 1 (S.D. Fla. Aug. 12, 2019) (Bloom, J.) (dismissed based on res judicata and failure to state a claim) and Taveras v. Ocwen Loan Services, Inc., Case No. 1:21-cv-20660-RNS, Compl., ECF No. 1 (S.D. Fla. Feb. 17, 2021) (Scola, Jr., J.) (dismissed as barred by the Rooker-Feldman doctrine). In all three cases, Taveras attempts

to avoid the consent final judgment, entered in state court, by claiming that, among other things, the state court lacked jurisdiction, that the assignment of mortgage in favor of U.S. Bank was fraudulent, and that U.S. Bank and Ocwen had, together, deceived him in order to obtain the consent final judgment. Any variation in Taveras's claims in this case cannot defeat the Court's conclusion that, regardless, at bottom, this case is still based on the same nucleus of operative facts. To be sure, Taveras himself explicitly acknowledges that his previous case "related to the same property and same set of facts, [and] was also an attempt to avoid the Foreclosure Judgment." (Pl.'s Mot., ECF No. 11, 5.)

Second, there can be no dispute that there is a mutuality of parties and their privies as to the litigants in this case and Taveras's other two cases: Taveras is a plaintiff and U.S. Bank, or its privies, and Ocwen are defendants in all three.

Accordingly, in exercising its discretion to do so, the Court **dismisses** Taveras's case, with prejudice. Vanover, 857 F.3d at 837, 842–43 (affirming district court's dismissal of case, with prejudice, for claim splitting). The Court directs the Clerk to close this case. All pending motions are **denied as moot**.

Done and ordered, at Miami, Florida, on May 6, 2022.

Robert N. Scola, Jr.
United States District Judge

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United States District Court
for the Southern District of Florida

Eliezer Taveras, Plaintiff, v. U.S. Bank National Association and others, Defendants.	)	Civil Action No. 1:22-cv-21134-Scola

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Order Denying Motion for Reconsideration

(Filed: June 02, 2022)

Previously, the Court reviewed pro se Plaintiff Eliezer Taveras's case upon an independent review. Based on that review, the Court dismissed Taveras's case, with prejudice, for improper claims splitting. (Order, ECF No. 22.) Taveras now asks the Court to reconsider its order, arguing the Court lacks jurisdiction over this action and, therefore, should remand it back to state court. (Pl.'s Mot., ECF No. 23.) After review, the Court **denies** the motion (**ECF No. 23**).

"[I]n the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy that is employed sparingly." *Gipson v. Mattox*, 511 F. Supp. 2d 1182, 1185 (S.D. Ala. 2007). A motion to reconsider is "appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension." *Z.K. Marine Inc. v. M/V Archigetis,* 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (*Hoeveler, J.*) (citation omitted). "Simply put, a party may move for reconsideration only when one of the following has occurred: an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice." *Longcrier v. HL-A Co.*, 595 F. Supp. 2d 1218, 1247 (S.D. Ala. 2008) (quoting *Vidinliev v. Carey Int'l, Inc., No. CIV.A.* 107CV762-TWT, 2008 WL 5459335, at *1 (N.D. Ga. Dec. 15, 2008)). However, "[s]uch problems rarely arise and the motion to

reconsider should be equally rare." *Z.K. Marine Inc.*, 808 F. Supp. at 1563 (citation omitted). Certainly, if any of these situations arise, a court has broad discretion to reconsider a previously issued order. Absent any of these conditions, however, a motion to reconsider is not ordinarily warranted. Here, reconsideration is decidedly not warranted.

Taveras begins his brief with a lengthy recap of the state foreclosure litigation involving his family home and his efforts to avoid the judgment of foreclosure that resulted. He then complains, as he has throughout this litigation, that the Defendants improperly removed his case from state court and that the Court lacks jurisdiction to hear it. Or, he says, at a minimum, the Court should have dismissed only his federal claims and then remanded his state claims. (*E.g.*, Pl.'s Mot. at 15.) To be clear, in dismissing Taveras's case, the Court properly exercised original jurisdiction over Taveras's federal claims and supplemental jurisdiction over his remaining state-law claims as provided for by 28 U.S.C. § 1367. While perhaps the Court could have exercised its discretion not to exercise supplemental jurisdiction over the state-law claims, it chose not to; and Taveras has not presented any reason why it should have. Accordingly, Taveras's suggestion is wholly meritless. Ultimately, except for disagreeing with the Court's analysis, in its order dismissing his case, and rehashing arguments he has already made, Taveras fails to set forth any basis that would justify the Court's revisiting its decision. Consequently, the Court **denies** his motion for reconsideration (**ECF No. 23**).

Done and ordered, at Miami, Florida, on June 1, 2022.

Robert N. Scola, Jr.
United States District Judge