

When is Reconsideration of a Bankruptcy Court Order or Judgment an Option?

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As most of you can imagine, being involved in a bankruptcy case in some respects is uncertain because the Bankruptcy Code is complex and convoluted, not to mention newly revised, since it underwent a significant transformation with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which became fully effective on October 17, 2005. In addition, you will find many diverse rulings by bankruptcy courts across the U.S. This affords opposing parties creative ways to interpret the Bankruptcy Code in seeking relief from the bankruptcy court. Despite this creativity, the bankruptcy court, for any number of reasons, may enter an order or judgment adverse to the relief being sought by one of the parties. Thus, in keeping with the theme of this month’s *Paraclete*, health and wellness, we wanted to potentially decrease some stress levels by sharing some insight into the Bankruptcy Code, providing possible circumstances where a losing party may get “a second bite at the apple” by filing a motion for reconsideration of a bankruptcy court order or judgment.

First of all, a party must move for reconsideration timely. A party may file a motion for reconsideration of a judgment with the bankruptcy court, no later than 10 days after the entry of the judgment, for the court to amend its findings, or make additional findings, and for the court to amend the judgment accordingly. *See*, Fed. R. Civ. P. 52(b); *see also*, Fed. R. Bank. P. 7052. Moreover, Rule 9023 of the Federal Rules of Bankruptcy Procedure states that “[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.” *See also*, Fed. R. Civ. P. 59(e).

Secondly, a party may file a motion for reconsideration with the bankruptcy court, within a reasonable time after the entry of a judgment or order, for relief from the final judgment or order for any of 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 Fed. R. Civ. P. 59; (3) fraud (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. *See*, Fed. R. Civ. P. 60(b); *see also*, Fed. R. Bank. P. 9024.

Finally, it is important to note that a motion for reconsideration of a bankruptcy court order or judgment is not to be utilized as a method for introducing new legal theories previously omitted by counsel. The Middle District of Florida, in *In re Stewart*, 280 B.R. 268, 287 (Bankr. M.D. Fla. 2001), stated that a motion for reconsideration should “demonstrate why the court should reexamine its prior decision, and ‘set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.’” *In re Envirocon Int’l Corp.*, 218 B.R. 978, 979 (M.D. Fla. 1998) (*citing Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294 (M.D. Fla. 1993)). Furthermore, the Middle District of Florida has stated that a motion for reconsideration should be based on one of three grounds: 1) an intervening change in controlling law; 2) the availability of new evidence; or 3) the need to correct clear and manifest injustice. *See, In re Envirocon Int’l Corp.*, 218 B.R. at 979 (*citing Kern-Tulare Water District v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986)). However, the bankruptcy court will not reconsider an order or

judgment when the motion for reconsideration fails to raise new issues. *See, Gov't Personnel Servs., Inc. v. Gov't Personnel Mutual Life Ins. Co.*, 759 F. Supp. 792 (M.D. Fla. 1991).

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