

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
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U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND, OHIO

IN RE:

In Proceedings Under Chapter 11

Global Enterprises Realty Co., et al.,

Case No.: 09-21481

Jointly Administered

Debtors.

JUDGE RANDOLPH BAXTER

**MEMORANDUM OF OPINION AND ORDER**

The Debtor, Global Enterprises Realty Company (Debtor), seeks reconsideration of this Court's March 8, 2010 Memorandum of Opinion and Order appointing a trustee to administer the Debtor's bankruptcy estate. The motion to appoint a trustee was filed by PNC Bank, National Association (PNC), the principal secured lender of the Debtor. PNC opposes the Motion for Reconsideration. Upon consideration of the parties respective briefs and arguments, the following factual findings and conclusions of law are hereby rendered:

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The Debtor, an Ohio corporation, sought voluntary relief under Chapter 11 proceedings by filing its petition on December 4, 2009 in this district. The Court acquires core jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(2)(J), with jurisdiction further conferred under 28 U.S.C. § 1334 and General Order No. 84 of this district. On December 7, 2009, the Debtor's affiliated companies filed their respective petitions for voluntary relief under Chapter 11 of the Bankruptcy Code. The Debtor and its affiliated companies have been approved by this Court for joint administration.

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Upon due consideration of the evidence adduced, the Court determined that the appointment of a trustee was mandated pursuant to §1104(a)(1) of the Bankruptcy Code.

Herein, the Debtor argues that Court's decision was not based upon the evidence presented at the evidentiary hearing. Specifically, the Debtor contends that the Debtor's Principals, Robert and Shirley Lyons, used personal funds to pay both personal and corporate expenses and did not, as PNC suggests, use corporate funds to pay for personal expenses. The Debtor asserts that the Lyons' deposited more money into the joint account (account held both personal and corporate funds) than they took out and separated their personal funds from corporate funds when advised that these funds should not be commingled. Consequently, the Debtor avers that these mistakes do not amount to gross mismanagement.

The Debtor also argues that reconsideration is necessary because of the Court's reliance on certain mistakes of fact to support its conclusion. Specifically, the Debtor asserts that the Court mistakenly cited that the tenant occupancy decreased from 90% to 62% post-petition. The Debtor contends that this decrease in tenancy rate occurred pre-petition and that since the filing of the bankruptcy case, the Debtor's income has increased and the tenancy rate has increased by 10%. Consequently, the Debtor believes it can currently meet its monthly obligations. The Debtor asserts that it has taken measures to segregate tenant rental deposits and has made deposits to utility providers post-petition. Furthermore, the Debtor argues that a trustee would be more costly to the estate than keeping Mr. Lyons as Principal.

PNC objects to the relief sought by the Debtor. PNC argues that the evidence presented supports the Court's conclusion that the Lyons grossly mismanaged the Debtor's businesses.

Furthermore, PNC asserts that there was no evidence presented showing that the Lyons deposited any of their personal funds or gambling winnings into the joint account, as alleged. PNC asserts that the Debtor, in filing the motion for reconsideration, is attempting to relitigate matters previously decided at the evidentiary hearing. For these reasons, PNC contends that the Debtor's motion should be denied.

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The dispositive issue for this Court's consideration is whether the Debtor has presented sufficient evidence to support reconsideration of this Court's prior judgment, pursuant to Rule 59, Fed.R.Bankr.P.

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Motions for reconsideration are typically prosecuted under Bankruptcy Rule 9023. Bankruptcy Rule 9023 provides for the application of Rule 59 of the Federal Rules of Civil Procedure to bankruptcy proceedings. Although a motion for reconsideration is not mentioned in the Federal Rules of Civil Procedure, it is often treated as a motion made under Rule 59(e). McDowell v. Dynamics Corp. of America, 931 F.2d 380 (6th Cir. 1991). Rule 59(e) provides is that a motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment. Fed.R.Civ.P. 59(e). The purpose of a motion to alter or amend judgment under Rule 59(e) is to have the court reconsider matters "properly encompassed in a decision on the merits." Generally, "[m]otions to alter or amend judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in the controlling law, or to prevent manifest injustice." GenCorp, Inc. v. American Intern. Underwriters, 178 F.3d 804, 834 (6th Cir. 1999)(citations omitted). A motion for reconsideration is not designed to give a

dissatisfied litigant an opportunity to relitigate matters already decided, nor is it a substitute for appeal. Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 367, 374 (6th Cir. 1998)(explaining that “[a] motion under Rule 59(e) is not an opportunity to re-argue a case”).

Herein, the Court adopts PNC’s proposed findings in its brief in opposition. The Debtor’s motion for reconsideration raises the same arguments and seeks determination of the same matters previously decided, or those which could have been argued during the duly noticed evidentiary hearing.

No new and persuasive evidence was presented to support a motion for reconsideration. Nor has the Debtor presented any persuasive evidence to show that manifest injustice resulted from this Court’s prior order. Further, motions for reconsideration are not the appropriate mediums to obtain review of matters of final determination. *Supra*.

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Accordingly, the Debtor’s Motion for Reconsideration is hereby denied. This Court’s ruling, issued on March 8, 2010, stands as ordered. PNC Bank’s Opposition to said Motion is hereby granted. Each party shall bear its respective costs.

**IT IS SO ORDERED.**

Dated, this 22<sup>ND</sup> day of  
April, 2010

  
JUDGE RANDOLPH BAXTER  
UNITED STATES BANKRUPTCY COURT