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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
98 JUL 16 AM 9:43
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 98-13588
)
JOHN W. SCHULTZ,) Chapter 11
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**
)

This Court issued a Memorandum of Opinion and Order on July 9, 1998 which denied Debtor's Motion to Assume Lease and Franchise Agreement and granted the related Motion of Dunkin' Donuts Incorporated and Third Dunkin' Donuts Realty, Inc. ("Dunkin' Donuts") for relief from stay. (Docket 23, 24). Debtor has filed a Motion for reconsideration of that Order and for emergency reinstatement of the stay until the request for reconsideration has been decided. (Docket 25).¹ Reconsideration is requested to: (1) allow Debtor to respond to Dunkin' Donuts' post-hearing memorandum; and (2) move that the Order be vacated.

I.

This Motion is linked to the hearing held on Debtor's Motion to Assume Lease and Franchise Agreement and Dunkin' Donuts' Motion for Relief from Stay. There, Debtor's counsel cited for the first time to the case of *Crossings Dev. Ltd. Partnership v. H.O.T., Inc.*, 96 Ohio App. 3d 475, 645 N.E.2d 159 (1994). The docket indicates that after the hearing, Dunkin'

¹ The Motion incorrectly states a hearing date. Motions for Reconsideration are decided on the briefs, absent a court order setting a hearing.

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Donuts filed and served a brief limited to addressing that case. Debtor's counsel apparently did not receive his service copy. He, therefore, moves to reconsider, stating that "he cannot help but wonder that if Debtor had been given the opportunity to file a Post Hearing Memoranda or at least respond to Creditors' Memoranda that the result may have been different." (Brief in Support of Motion). The Court notes that Debtor did not request the opportunity to file anything further at the conclusion of the hearing, nor did Debtor independently file a post-hearing brief.

II.

The Court denied Debtor's Motion to Assume Lease and Franchise Agreement on the ground that Debtor no longer had an interest in his lease and franchise agreement with Dunkin' Donuts at the time this Chapter 11 case was filed; and alternatively, Debtor failed to show that he could assume those agreements under the terms of 11 U.S.C. § 365(b)(1). Dunkin' Donuts' Motion for relief from stay was granted based on a finding of cause. In support of the Motion to Reconsider, Debtor argues that (1) he has an interest in the premises which is protected by the 11 U.S.C. § 362 stay; and (2) the state court had the power to relieve him from the terms of its Stipulated Judgment Entry under Ohio Rule of Civil Procedure 60(B). He again requests that he be granted authority to assume the lease and franchise agreement.

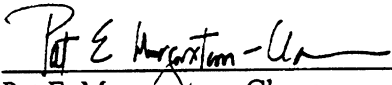
Federal Rule of Civil Procedure 59 applies in bankruptcy cases under Federal Rule of Bankruptcy Procedure 9023. "A motion under Rule 59(e) is not an opportunity to re-argue a case . . . 'Motions under Rule 59(e) must either clearly establish a manifest error of law or must present newly discovered evidence'." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, ___ F.3d ___, 1998 WL 288685 at *5 (6th Cir. June 5, 1998) quoting *FDIC v. World Univ. Inc.*, 978 F.2d 10, 16 (1st Cir. 1992). Debtor does neither in his Motion. He does not present any new

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evidence and his brief merely restates arguments that were previously made to the Court in support of the Motion to assume and in opposition to Dunkin' Donuts' request for relief from stay. To the extent that a new or different argument is being made, that should have been done before the judgment was issued. *Id.* Therefore, while the Court has considered the arguments set forth in the Motion, they do not provide an appropriate basis for reconsideration of the Order. As reconsideration is not appropriate, Debtor's request for emergency reinstatement of the stay is moot.

IT IS, THEREFORE, ORDERED that Debtor's Motion for reconsideration is denied.

Date: 16 July 1998



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Daniel Wilt, Esq.
C. Douglas Lovett, Esq.
Nancy Sponseller, Esq.
Andrew Vara, Esq.

By: Joyce L. Gordon, Secretary
Date: 7/16/98