

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 04-12595  
 )  
THE CAPITAL CREATION CO., INC., ) Chapter 11  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **MEMORANDUM OF DECISION**<sup>1</sup>

The debtor and JG Acquisitions LLC move for reconsideration of the July 19, 2005 order denying confirmation of their joint plan. (Docket 299). The motion requests relief under bankruptcy rule 9023 and asks the court to reconsider its ruling regarding the propriety of the plan release and discharge provisions. The motion also seeks to clarify the factual record and requests a new trial for the purpose of submitting a business plan. The United States trustee opposes the motion. (Docket 302).

**THE MOTION**

The movants request a new trial under federal civil rule 59(a) and reconsideration and amendment of the previous ruling under federal civil rule 59(e). *See* FED. R. BANKR. P. 9023 (incorporating FED. R. CIV. P. 59).

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<sup>1</sup> Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

### **RULE 59(a)**

Rule 59(a) provides for granting a new trial on plan confirmation as follows:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues . . . (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

The decision to grant a new trial rests within the discretion of the trial court. *Walker v. Bain*, 257 F.3d 660, 670 (6th Cir. 2001). “[A] trial court should not grant a new trial merely because the losing party can probably present a better case on another trial.” *Ball v. Interoceanica Corp.*, 71 F.3d 73, 76 (2d Cir. 1995) (quoting 6A JAMES W. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 59.08[2], at 59-97 (2d ed. 1989)). The movants want a new trial to permit them to submit a written business plan into evidence to provide “more conclusive evidence with regards to the operations of the Reorganized Debtor after consummation of the Joint Plan.” As such, this is merely a request for an opportunity to present a better case for confirmation and does not merit relief under rule 59(a).

### **RULE 59(e)**

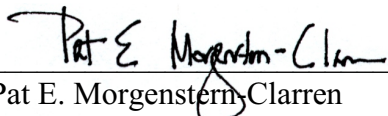
Relief from judgment under rule 59(e) may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. *Gencorp, Inc. v. Am. Int’l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). The movants request that the order be modified to provide that the release and discharge provisions of the joint plan are appropriate. They also request certain factual clarifications. These issue were,

however, argued extensively before entry of the court's decision, and the request for relief on these issues is merely an attempt to re-argue the case which does not merit relief under rule 59(e). *See Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) (noting that "[a] motion under [r]ule 59(e) is not an opportunity to re-argue a case." ).

### **CONCLUSION**

For the reasons stated, the motion of the debtor and JG Acquisitions LLC for reconsideration is denied. The court will enter a separate order reflecting this decision.

Date: 5 August 2005

  
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Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center

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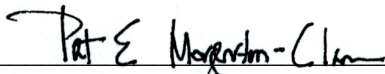


In re: ) Case No. 04-12595  
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THE CAPITAL CREATION CO., INC., ) Chapter 11  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **ORDER**

For the reasons stated in the memorandum of opinion issued this same date, the motion of the debtor and JG Acquisitions LLC for reconsideration is denied. (Docket 299).

IT IS SO ORDERED.

Date: 5 August 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

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