UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 12-12680
	)	
JEFFREY S. BILFIELD and JANET M. BILFIELD,	)	Chapter 7
	)	
Debtors.	)	Chief Judge Pat E. Morgenstern-Clarren
_____	)	
	)	
BANKERS HEALTHCARE GROUP, INC.,	)	Adversary Proceeding No. 12-1208
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
JEFFREY S. BILFIELD, *et al.*,	)	
	)	
Defendants.	)	

The plaintiff filed a complaint seeking to deny the debtors a discharge and to find that the debt owed to the plaintiff is not discharged in the bankruptcy. The court entered summary judgment in favor of the defendant-debtors and dismissed the complaint for lack of standing. (Docket 40). The plaintiff moves to reconsider that judgment, which request is opposed by the debtors. (Docket 45, 51). For the reasons stated below, the motion to reconsider is denied.[1]

The plaintiff relies on Federal Civil Rules 59(e) and 60(b)(1). *See* FED. R. CIV. P. 59(e) (made applicable by FED. R. BANKR. P. 9023) and FED. R. CIV. P. 60(b)(1) (made applicable by FED. R. BANKR. P. 9024). The plaintiff argues that the judgment should be altered or amended

[1] The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(I), (J), and (O), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

under Rule 59(e) because the court made a clear error of law and, alternatively, that relief should be granted under Rule 60(b)(1) because the plaintiff's failure to provide fully-executed copies of the Individual Reserve Agreement and Resale Agreement in response to the summary judgment motion amounted to excusable neglect.

Federal Rule of Civil Procedure 59(e)

Under Rule 59(e), a court may alter or amend a judgment[2] "based on (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Leisure Caviar, LLC v. United States Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir. 2010) (internal quotation marks and citation omitted). A motion to alter or amend is not properly used to reargue a case. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998).

The plaintiff alleges as its "clear error of law" that the court engaged in improper fact-finding in reaching its decision. On review, and as explained in the opinion, what actually happened is this: The debtors presented evidence showing that the plaintiff was not a creditor and did not have the requisite interest in the debtor Jeffrey Bilfield's note when it filed the complaint. In response to this initial showing, the applicable law required the plaintiff to come forward with specific facts to show that there was a genuine issue of fact as to that issue. The plaintiff pointed to Kristian Vartabedian's affidavit and the exhibits he referenced in it. The court reviewed that evidence in the light most favorable to the plaintiff and determined that the plaintiff had failed to show that there was a genuine issue of fact. Rather than weighing the

[2] A motion invoking Rule 9023 must be filed with 14 days after judgment is entered and that time may not be extended. FED. R. BANKR. P. 9006(b)(2). Although the plaintiff filed its motion outside of this time limit, the debtors did not raise that issue in their response and have forfeited that affirmative defense. *Nat'l Ecological Found. v. Alexander*, 496 F.3d 466, 475-76 (6th Cir. 2007).

evidence, the court determined the *sufficiency* of the plaintiff's evidence and found it lacking. And because the "record taken as a whole could not lead a rational trier of fact to find for the [plaintiff]" on the issue of standing, the court granted summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The plaintiff's Rule 59(e) motion is, therefore, denied.

Federal Rule of Civil Procedure 60(b)(1)

Under Civil Rule 60(b)(1), the court may grant a party relief from a final judgment for "mistake, inadvertence, surprise, or excusable neglect[.]" FED. R. CIV. P. 60(b)(1). The plaintiff identifies "excusable neglect" as its ground, arguing that it was unable to present fully-executed copies of the Individual Reserve Agreement and the Resale Agreement, which inability amounted to excusable neglect.

The first requirement for the plaintiff is to show that the questioned order is a final order. Here, it is not. The order left pending the debtors' counterclaim and did not expressly state that it was final with no reason to delay. *See* FED. R. CIV. P. 54(b) (made applicable by FED. R. BANKR. P. 7054(a)) (providing that when an action presents more than one claim, such as a claim and a counterclaim, the court may direct entry of a final judgment as to fewer than all the claims only if it expressly determines that there is no just reason for delay).

Although relief under Rule 60(b) is not available, the court may reconsider an interlocutory judgment either under its inherent authority and Rule 54(b), or Rule 59(e). *See FedEx Corp. v. N. Trust Co.*, No. 08-2827, 2010 WL 2836345 at *2 (W.D. Tenn. July 16, 2010) (discussing Sixth Circuit decisions addressing this issue). In either case, the relevant considerations are whether "there is (1) an intervening change of controlling law; (2) new evidence available; or (3) a need to correct a clear error or prevent manifest injustice." *Id.* The

plaintiff's contention that its failure to present fully executed copies of the agreements as evidence on summary judgment amounted to excusable neglect could potentially come within either the newly discovered evidence or manifest injustice prongs. As such, the court will consider both of those grounds.

In this context, newly discovered evidence is evidence which was unavailable to the party before the court entered judgment. *Leisure Caviar, LLC,* 616 F.3d at 614 (citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir.1999)). The plaintiff argues that it was "unable" to locate and submit the fully executed agreements as evidence in opposition to summary judgment. This argument, however, clearly misses the point. The court's ruling focused on the lack of evidence as to if and when the plaintiff acquired an interest in the debtor's note that would give it standing to file the complaint–and not on the fact that the agreements presented were not executed. To the extent the plaintiff intended to rely on the Individual Reserve Agreement to support its standing in this proceeding, the evidence that was missing was not a fully-executed copy of the agreement, but the following facts: (1) the date the agreement was executed; and (2) the date Interbank notified the plaintiff of the debtor's default giving the plaintiff the right to proceed with collection efforts in its own name under the agreement.

Moreover, it is clear that the plaintiff chose to go forward at two junctures without the fully-executed document or the relevant facts. One must bear in mind that it is the plaintiff who filed this adversary proceeding. First, the noted facts were available to the plaintiff before it filed the complaint; for whatever reason, it chose not to include them in the complaint. Second, the plaintiff might have been able to make a better case in opposition to the motion for summary judgment than it did in the complaint, but it did not. The evidence underlying the plaintiff's claim to have standing might be new to the plaintiff's current decision-maker's, but it cannot be

characterized as new evidence to the plaintiff.[3] The Resale Agreement, on the other hand, is irrelevant because the plaintiff acknowledged executing it months after filing the complaint. Standing, as discussed in the opinion, is determined at the time the complaint is filed.

Finally, the plaintiff is not entitled to relief from the judgment under the manifest injustice part of the analysis. Manifest injustice as used here "is an amorphous concept with no hard line definition." *In re Henning*, 420 B.R. 773, 785 (Bankr. W.D. Tenn. 2009); *see also* 12 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 59.30[2][a][v] (3d ed. 2013) (noting that this ground is "something of a catch-all basis for relief"). However, "[w]hat is clear from case law, and from a natural reading of the term itself, is that a showing of manifest injustice requires that there exist a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy." *Int'l Union United v. Bunting Bearings Corp. (In re Bunting Bearings Corp.)*, 321 B.R. 420, 423 (Bankr. N.D. Ohio 2004). No such circumstances exist here.

The plaintiff's motion is, therefore, denied.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

[3] The court notes that the plaintiff is still trying to add evidence to support its case at this late date. Even after the plaintiff filed its motion to reconsider, and after the court entered an order directing the defendants to file their opposition by April 29, 2013, and after the court expressly stated that no further briefs were to be filed and the court would take the matter under submission after that date, the plaintiff tried to file yet another document on the issue. (Docket 46, 53, 54). In the exercise of its discretion to manage its docket and to require parties to comply with court orders, the court will not consider that filing. 11 U.S.C. § 105(a).