

IT IS SO ORDERED.

Dated: November 22, 2013
03:32:23 PM


Kay Woods

Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CARL V. MACE and
CINDY A. MACE,

Debtors.

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CASE NUMBER 10-42899
CHAPTER 13
HONORABLE KAY WOODS

MEMORANDUM OPINION REGARDING SECOND OBJECTION TO CLAIM 18-2

Debtors Carl V. Mace and Cindy A. Mace filed a voluntary petition pursuant to chapter 13 of Title 11, United States Code, on July 30, 2010.¹ On November 4, 2010,² Thomas Skelton and Amy Montgomery ("Claimants") filed Claim 18-1 in the unsecured amount of \$350,000.00 for "[f]raud and [m]isrepresentation." (Claim 18-1 at 1.) On March 29, 2011, the Claimants filed

¹On September 27, 2010, the Debtors filed Amended Chapter 13 Plan (Doc. # 26), which has not been confirmed by the Court because certain claims need to be resolved to determine feasibility of the Plan.

²The last date to file a proof of claim was November 30, 2010.

Claim 18-2 in the unsecured amount of \$313,781.36 for "breach of contract, conversion, indemnification, contribution, subrogation, fraud, and misrepresentation" ("Debt"). (Claim 18-2 at 1.)

On April 16, 2013, the Debtors filed Second Objection to Proof of Claim 18-2 ("Second Objection") (Doc. # 177), which seeks disallowance of the Debt on the basis that it is barred by the applicable Pennsylvania statutes of limitations for breach of contract, conversion, indemnification, contribution, subrogation, fraud and misrepresentation. On September 15, 2013, the Claimants filed Request for Hearing and Response to Debtors' Second Objection to Proof of Claim No. 18-2 ("Response") (Doc. # 189).

The Court held a hearing on the Second Objection on September 26, 2013, at which appeared (i) Gary J. Rosati, Esq. on behalf of the Debtors; and (ii) John H. Chaney III, Esq. on behalf of the Claimants.³ Following the hearing and at the direction of the Court, the parties filed briefs in support of their respective positions: the Debtors filed Brief in Support of Second Objection to Proof of Claim 18-2 ("Debtors' Brief") (Doc. # 192) and Sur Reply [sic] Brief in Support of Debtors' Second Objection to Proof of Claim 18-2 ("Reply Brief") (Doc.

³Mr. Rosati has represented the Debtors and Mr. Chaney has represented the Claimants in all matters in this case and associated Adversary Proceeding No. 10-4239.

196), and the Claimants filed Brief in Opposition to Debtors' Second Objection to Proof of Claim No. 18-2 ("Claimants' Brief") (Doc. # 193).

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and the general orders of reference (Gen. Order Nos. 84 and 2012-7) entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

For the reasons set forth below, the Court will overrule the Second Objection.

I. BACKGROUND

As the caption of the Second Objection suggests, this is not the first time the Debtors have objected to the claims asserted by the Claimants. The following is a summary of the pleadings and the hearings that have previously been filed and held regarding the Debt.

A. Objection to Claim 18-1

On December 14, 2010, the Debtors filed Objection to Proof of Claim # 18-1 ("Objection to Claim 18-1") (Doc. # 56), on the basis that the proof of claim was not supported by a statement of facts or other documentation. The Claimants filed a response

(Doc. # 67) on January 14, 2011, in which they argued that the Debtors knew the basis for Claim 18-1 because the same claim was asserted in (i) a third-party complaint against the Debtors in the Mahoning County, Ohio, Common Pleas Court ("Mahoning Complaint"); and (ii) Adversary Proceeding No. 10-4239 filed in this Court on November 1, 2010 ("Adversary Proceeding").

The Court held a hearing on the Objection to Claim 18-1 on February 3, 2011, at which Messrs. Rosati and Chaney appeared.⁴ Although the Court directed the Claimants to brief the basis for Claim 18-1 on or before February 24, 2011, they failed to timely do so.

On March 7, 2011, the Court entered Order Sustaining Objection to Claim 18[-1] (Doc. # 87) on the basis that the claim for fraud was barred by either the four-year Ohio or the two-year Pennsylvania statute of limitations for fraud.

On March 29, 2011, the Claimants requested the Court to reconsider and grant relief from the Order Sustaining Objection to Claim 18[-1] (Doc. # 92). Following a hearing on April 28, 2011, the Court denied the motion for reconsideration because the Claimants failed to establish inadvertence, excusable neglect or any other reason for reconsideration (Doc. # 102).

⁴The hearing established that (i) the Claimants filed the Mahoning Complaint in 2009; (ii) the fraud alleged in the Mahoning Complaint occurred in or about 2002; (iii) the same alleged fraud was the basis for Claim 18-1; and (iv) the cause of action for the alleged fraud was governed by either Ohio or Pennsylvania law.

B. First Objection to Claim 18-2

The Claimants filed Claim # 18-2 on March 29, 2011, and the Debtors filed Amended Objection to Proof of Claim 18-2 ("First Objection") (Doc. # 113) on May 26, 2011. On July 28, 2011, the Claimants filed Motion for Leave to File Amended Claim ("Motion for Leave") (Doc. # 128), in which they requested leave, *nunc pro tunc*, to March 29, 2011 to file Claim 18-2.

The Court held a hearing on the First Objection and the Motion for Leave on July 28, 2011. The Debtors argued that Claim 18-2 was untimely and asserted new causes of action, rather than amending timely filed Claim 18-1. Acknowledging that Claim 18-2 was filed after the November 30, 2010 bar date for filing proofs of claims, Mr. Chaney argued that the Adversary Proceeding provided notice to the Debtors of the claims set forth in Claim 18-2 and, thus, constituted an informal proof of claim asserted prior to the bar date.

The Court found that Claim 18-2 restated the causes of action in the Adversary Proceeding - *i.e.*, breach of contract, conversion, indemnification, contribution, subrogation, fraud and misrepresentation. As a consequence, the Court granted the Claimants leave to file Claim 18-2 on the basis that, prior to the bar date, the Adversary Proceeding provided adequate notice to the Debtors of the claims set forth in Claim 18-2. Moreover, the Court stated that Claim 18-2 should be addressed on its

merits, as opposed to on procedural grounds. Accordingly, the Court overruled the First Objection. To memorialize its rulings, the Court entered Order Overruling [First] Objection to Claim 18-2 (Doc. # 130) and Order Granting Motion for Leave (Doc. # 131).

C. Adversary Proceeding

In the Complaint (Adv. Proceeding, Doc. # 1), the Claimants requested the Court to enter judgment against the Debtors for the Debt and to find that the Debt was nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6). The bases for the Debt were: (i) fraud and misrepresentation (Compl. ¶¶ 13-31); (ii) breach of contract (*id.* ¶¶ 32-35); (iii) conversion (*id.* ¶¶ 36-40); and (iv) indemnification, contribution and subrogation (*id.* ¶¶ 48-49) - *i.e.*, the exact claims stated in Claim 18-2. In the Answer (Adv. Proceeding, Doc. # 6), the Debtors asserted several affirmative defenses, including - generally - that the claims were barred by the statute of limitations.⁵ (Ans. ¶ 29.)

The Court conducted a trial in the Adversary Proceeding on February 29, 2012 ("Trial"). The Court heard the testimony of Messrs. Skelton and Mace and admitted exhibits from each party

⁵Paragraph 29 of the Answer states, "Plaintiffs [sic] claim(s) are barred by Accord and Satisfaction [sic], failed to [sic] mitigate damages, waiver, estoppel, latches [sic], statute [sic] of limitations, or any other affirmative defense available under Rule 8(C) [sic] of the Federal Rules of Civil Procedure." (Ans. ¶ 29.)

into evidence. At the Trial, the Debtors disputed the Claimants' fraud claim and presented evidence that such claim was barred by the two-year statute of limitations for fraud in Pennsylvania. However, the Debtors did not raise or present any evidence of a statute of limitations defense with respect to the remaining claims, including breach of contract. Rather, the Debtors argued only that no contract existed between the parties.

On May 7, 2012, the Court entered Trial Opinion Regarding Complaint to Determine Dischargeability of Debt (Adv. Proceeding, Doc. # 46) and Order Finding That Debt Is Dischargeable (Adv. Proceeding, Doc. # 47) (collectively, "Trial Opinion"). The Court concluded, *inter alia*, that (i) the claim for fraud was barred by the Pennsylvania statute of limitations; and (ii) the Debt was dischargeable.⁶

The Claimants attempted to appeal the Trial Opinion, but their appeal was dismissed for failure to prosecute. (See Adv. Proceeding, Doc. # 57.) The Debtors did not appeal the Trial Opinion. The Adversary Proceeding was closed on July 31, 2012.

⁶At the Trial, the Claimants presented no evidence concerning their causes of action for conversion, indemnification, contribution and subrogation - *i.e.*, the causes of action other than fraud and breach of contract. Thus, the Court made no findings in the Trial Opinion regarding the claims for conversion, indemnification, contribution and subrogation.

D. Second Objection to Claim 18-2

In the Second Objection, the Debtors assert that Claim 18-2 should be disallowed in its entirety because the claims for conversion, fraud and misrepresentation are barred by Pennsylvania's two-year statute of limitations⁷ and the claims for breach of contract, indemnification, contribution and subrogation are barred by the four-year statute of limitations. (See Second Obj. ¶ 12 (citing 42 Pa.C.S.A. §§ 5524(7), 5525).) The Debtors argue that the Claimants knew in late 2003 or 2004 that Mr. Mace had broken his promise to give Mr. Skelton an ownership interest in K&M Feeds, Inc. Because the Claimants first asserted their cause of action for breach of contract in the Mahoning Complaint in 2009, the Debtors argue that such claim is time-barred.

The Debtors further argue that (i) cause exists to reconsider allowance of Claim 18-2 because the Trial Opinion "established beyond doubt that [Claimants'] claim is unenforceable" (Reply Br. at 5); (ii) the Claimants should not be allowed to enforce a claim in the bankruptcy proceeding that is unenforceable in state court; and (iii) *res judicata* has no relevance here because 11 U.S.C. § 502(j) provides for reconsideration of allowed claims.

⁷The portion of the Second Objection regarding the claims for fraud and misrepresentation is moot because the Court's Trial Opinion previously held that the claims for fraud and misrepresentation are time-barred.

The Claimants respond that (i) the doctrine of *res judicata* precludes the Debtors from relitigating the allowance of Claim 18-2; and (ii) the Debtors have failed to establish cause pursuant to § 502(j) and Federal Rule of Civil Procedure 60(b) to reconsider the allowance of Claim 18-2.

II. ARGUMENTS AND ANALYSIS

A. Res Judicata

1. Standard

The doctrine of *res judicata*, also known as claim preclusion, bars the relitigation of a claim if the following elements are present: "(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their 'privies'; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action." *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir. 1997) (citations omitted) (emphasis removed). *Res judicata* "applies not only to bar the parties from relitigating issues that were *actually* litigated but also to bar them from relitigating issues that *could have been raised* in an earlier action." *J.Z.G. Res., Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 214 (6th Cir. 1996) (citations omitted).

2. Analysis

The Debtors make no attempt to dispute that each of the four elements necessary for *res judicata* is present in this case. Instead, the Debtors contend that *res judicata* has no application to the Second Objection because § 502(j) permits reconsideration of allowed claims. As set forth below, (i) the validity of the Debt, including all defenses that were not waived, was fully litigated before this Court in the Adversary Proceeding; and (ii) *res judicata* does, indeed, apply.

In the Complaint, the Claimants (i) asserted the exact causes of action contained in Claim 18-2; and (ii) requested the Court to enter judgment against the Debtors for the Debt. In their Answer, in addition to generally denying the allegations in the Complaint, the Debtors asserted a number of affirmative defenses, including - generally - a statute of limitations defense. Thus, the Debtors knew that the validity of the Debt and any defenses thereto were to be adjudicated at the Trial. Moreover, the Debtors expressly recognize that the Trial in the Adversary Proceeding would decide the merits of Claim 18-2. "Only an evidentiary hearing could unravel the truth. The Court clearly recognized this fact when it overruled the Debtors' First Objection . . . and allowed [the Adversary Proceeding] to proceed." (Reply Br. at 7 (citation omitted).)

Most importantly, at the Trial, the Debtors actually disputed the validity of the Debt by arguing that (i) there was no evidence of fraud and any claim for alleged fraud was barred by the statute of limitations; and (ii) because there was never a meeting of the minds between Messrs. Skelton and Mace, there could be no breach of contract. However, the Debtors failed to argue or present any evidence that the alleged breach of contract claim was time-barred.

Based on the evidence adduced at the Trial, the Court found that the fraud claim was barred by the two-year Pennsylvania statute of limitations. However, the Court made no finding that the breach of contract claim was time-barred because no evidence was presented on this issue. While the Court concluded that the Debt was not excepted from discharge, the Court did not find that the breach of contract claim was invalid. Indeed, if the Debt did not exist, the issue of dischargeability would have been moot.

As acknowledged by the Debtors, the Court found the Debt was based on breach of contract.

At Trial it was established that the [Claimants'] Claim was based on a promise Debtor, Carl Mace, made to [Claimant], Thomas Skelton, which induced Mr. Skelton to execute certain loan documents and pledge certain collateral for the benefit of Debtors and K&M Feeds.

. . . The Court further found that Skelton should have known that Mr. Mace had failed [to keep] his

promise (to give Mr. Skelton an ownership interest in [Mr. Mace's] company, known as K&M Feeds, Inc.) "as of late 2003 or 2004".

(Second Obj. ¶¶ 9-10 (citations omitted).)

If the Debtors believed the alleged breach of contract claim was barred by the statute of limitations, they were required to affirmatively raise and present evidence of that defense at the Trial. If the Debtors believed the Court wrongly concluded that the Claimants possessed a valid claim against the Debtors for breach of contract, the Debtors' recourse was to appeal the Trial Opinion. Instead, the Debtors waited more than 15 months after the Court issued the Trial Opinion to file the Second Objection, in which they argue - for the first time - that the breach of contract claim is time-barred.

The Court finds that each element of *res judicata* is present in this case. First, the Trial Opinion was a final decision on the merits regarding the validity of the Debt. Second, the Second Objection is a subsequent action between the Debtors and the Claimants, who were the parties to the Adversary Proceeding. Third, the Trial litigated the validity - as well as the dischargeability - of the Debt. The only element of *res judicata* that could conceivably be questioned is identity of the causes of action. However, as explained above, the issue presently before the Court - *i.e.*, whether the Claimants have a valid claim against the Debtors for breach of contract - was

actually litigated at the Trial. By failing to raise and present evidence at the Trial concerning a statute of limitations defense to the contract claim, the Debtors waived that defense and may not raise it now. As a consequence, the Court finds that *res judicata* or claim preclusion bars the Debtors from disputing the validity of the Debt based on breach of contract.

B. Section 502(j)

1. Standard

The standard for reconsidering the allowance of a claim is governed by 11 U.S.C. § 502(j), which states, in pertinent part:

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. . . .

11 U.S.C. § 502(j) (West 2013). Federal Rule of Bankruptcy Procedure 3008 states, "A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order." FED. R. BANKR. P. 3008 (West 2013). The Advisory Committee Note to Bankruptcy Rule 3008 states, in part, "Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court." *Id.* Advisory Comm. Note; see also *McMillan v. LTV Steel Co.*, Case No. 1:06CV00850, 2007 U.S. Dist. LEXIS 71621, *35

(Bankr. N.D. Ohio Sept. 26, 2007) (citing *Colley v. Nat'l Bank of Texas (In re Colley)*, 814 F.2d 1008, 1010 (5th Cir. 1987)) (“The bankruptcy court exercises broad discretion in determining whether to reconsider disallowance [or allowance] of a claim pursuant to 11 U.S.C. § 502(j).”).

If a court chooses to reconsider a claim pursuant to § 502(j), it is to apply the standard for relief from judgment set forth in Bankruptcy Rule 9024, which incorporates Rule 60. See FED. R. BANKR. P. 9024 (West 2013);⁸ *In re Freightway Corp.*, 170 B.R. 108, 110 (Bankr. N.D. Ohio 1994) (citations and parentheticals omitted). “[W]hen a proof of claim has in fact been litigated between parties to a bankruptcy proceeding, the litigants must seek reconsideration of the bankruptcy court’s determination pursuant to the usual Rule 60 standards if they elect not to pursue a timely appeal of the original order allowing or disallowing the claim.” *In re Colley*, 814 F.2d at 1010.

Rule 60 states, in pertinent part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

⁸Federal Rule of Bankruptcy Procedure 9024 states, in pertinent part, “Rule 60 F. R. Civ. P. applies in cases under the Code except that (1) a motion . . . for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c)” FED. R. BANKR. P. 9024 (West 2013).

(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 Rule 59(b);

(3) fraud (whether previously called 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.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

* * *

FED. R. CIV. P. 60(b), (c) (West 2013).

2. Analysis

The sole basis offered by the Debtors for reconsideration of the allowance of Claim 18-2 is that, following the Trial, it is apparent that Claim 18-2 is barred by the applicable statutes of limitations. The Debtors address neither § 502(j) nor Rule 60(b) in their Brief, however, in the Reply Brief, they address § 502(j) by stating, "Here, *cause* for reconsideration comes from the Court's finding of facts that established beyond doubt that

[Claimants'] claim is unenforceable." (Reply Br. at 5.) Similarly, the Debtors assert that Rule 60(b)(6) permits relief due to "the knowledge, gleaned from the [A]dversary [P]roceeding . . . that the [Claimants'] claim is unenforceable." (*Id.* at 6.) Regarding the equities of this case, the Debtors again state, "[C]learly equity will not stand if the [Claimants] were [sic] allowed to enforce a claim in this bankruptcy proceeding that is unenforceable in state court." (*Id.*)

In contrast, the Claimants state that "all of the arguments made in the Second Objection . . . were known and available to Debtors when they filed the [First Objection]." (Claimants' Br. at 6.) The Claimants assert that (i) § 502(j) is intended for use in very limited circumstances that are beyond the control of the party seeking reconsideration; and (ii) the Debtors have failed to allege circumstances beyond their control or otherwise establish cause in this case.

Although the parties frame this dispute as reconsideration of the allowance of Claim 18-2, the Court finds that the Second Objection actually seeks reconsideration of the Court's Trial Opinion wherein the Claimants were allowed a valid claim - *i.e.*, the Debt - against the Debtors for breach of contract. The purpose of the Order Overruling [First] Objection to Claim 18-2 and the Order Granting Motion for Leave was to permit Claim 18-2 to be resolved in the Adversary Proceeding. Those Orders did

not themselves address the merits of Claim 18-2. Rather, the merits of Claim 18-2 were addressed in the Adversary Proceeding,⁹ and the Court's findings and conclusions with respect to those merits were memorialized in the Trial Opinion.

Exercising its discretion to address the merits of the Second Objection, the Court concludes that the Debtors have not stated cause for the Court to reconsider the holding in the Trial Opinion that the Claimants have a valid claim based on breach of contract. In the Reply Brief, the Debtors rely solely on subpart (b)(6) of Rule 60,¹⁰ which allows reconsideration for "any other reason that justifies relief." The single reason offered by the Debtors to justify relief is that they now know, based on the Court's Trial Opinion, that they have a statute of limitations defense to the Claimants' breach of contract claim. For the reasons set forth below, this argument must fail.

The Debtors contend that the Court implicitly found in the Trial Opinion that the fraud claim and the breach of contract claim arose simultaneously. Because the Court found that the fraud claim was time-barred, the Debtors argue that the Court

⁹This is consistent with the Court's finding that the Adversary Proceeding constituted a timely informal proof of claim that was memorialized in Claim 18-2.

¹⁰The Trial was a contested matter, as that term is used in Bankruptcy Rule 9024. Thus, the Second Objection is subject to the one-year limitation period in Rule 60(c). See FED. R. BANKR. P. 9024 (West 2013). Because the Second Objection was filed more than 15 months after the Trial Opinion was issued, the Debtors are precluded from seeking relief from judgment pursuant to Rule 60(b)(1), (2) or (3). See *id.*

should reconsider the breach of contract claim and likewise find that it is barred by the Pennsylvania statute of limitations.¹¹ This argument lacks merit, however, because the Debtors failed to assert or present any evidence at the Trial regarding the statute of limitations for breach of contract. The Debtors wholly ignore the fact that the statute of limitations is an affirmative defense that they were required to assert and prove at the Trial. See *Campbell v. Grand Trunk W. R.R. Co.*, 238 F.3d 772, 775 (6th Cir. 2001) ("Because the statute of limitations is an affirmative defense, the burden is on the defendant to show that the statute of limitations has run.").

The Debtors provide absolutely no support for their position that a defendant's failure to assert an affirmative defense at trial can constitute cause for a court to reconsider its judgment against that defendant. The statute of limitations as an affirmative defense would become a nullity if the Court were to deem sufficient the Debtors' explanation of cause. Stated differently, if the Court were to find that the Debtors' failure to raise the contract statute of limitations defense constituted cause to reconsider the Trial Opinion, cause for reconsideration could exist any time a losing party failed to

¹¹The Debtors recognize that the statute of limitations for breach of contract in Pennsylvania is four years, as opposed to two years for fraud. However, the Debtors state that the Claimants' claims arose in 2003 or 2004 and that the Mahoning Complaint was not filed until 2009, rendering the distinction irrelevant in the present case.

raise an affirmative defense. This is not and cannot be the case. As a consequence, the Court finds that the Debtors have failed to state cause pursuant to § 502(j) and Rule 60(b) to reconsider the Trial Opinion.

The Debtors further contend that the equities favor disallowing the breach of contract claim because such claim would be barred by the statute of limitations in state court. The breach of contract claim has already been litigated in this Court, and the Debtors waived the statute of limitations defense by not asserting it at the Trial. Thus, the Court finds that the equities do not favor relitigating the breach of contract claim.

The Debtors argue that the statute of limitations defense to Claim 18-2 only became apparent after conclusion of the Trial. This argument is meritless – the outcome of the Trial did not establish any new basis for the applicability of the statute of limitations defense to the Claimants' breach of contract claim. More than eight months prior to the Trial, the Debtors recognized and asserted a statute of limitations defense with respect to a breach of contract claim asserted by Timothy and Sharon Kelly in Claim 13-1.¹² Moreover, at the Trial, the

¹²On May 26, 2011, the Debtors objected to Claim 13-1, which was based on a promise by Mr. Mace in the same circumstances as Claim 18-2. (See Doc. # 114.) On July 20, 2011, the Debtors filed a memorandum in support of their objection, in which they argued that Claim 13-1 should be disallowed because

Debtors asserted a statute of limitations defense with respect to the Claimants' fraud claim, which was based on the same underlying events as the breach of contract claim. Accordingly, the Debtors were fully aware of all necessary facts to present their statute of limitations defense prior to the Trial.

For the reasons set forth above, the Court finds that the Debtors have failed to establish cause pursuant to § 502(j) and Rule 60(b) for the Court to reconsider its finding in the Trial Opinion that the dischargeable Debt is based on the Debtors' breach of contract.

III. CONCLUSION

At the Trial, the Debtors did not raise or present any evidence in support of the defense of statute of limitations with respect to the breach of contract claim asserted by the Claimants in Claim 18-2 and the Complaint. Instead, the Debtors argued that there could be no breach of contract because a contract was never formed between Messrs. Skelton and Mace. In the Trial Opinion, the Court found that the Debtors owed the dischargeable Debt based on breach of contract. The Trial Opinion is a final judgment on the merits, which the Debtors did not appeal. Fifteen months after the Court issued the Trial Opinion, the Debtors filed the Second Objection, in which they impermissibly seek to challenge the validity of the Debt based

the underlying breach of contract claim was barred by the four-year Pennsylvania statute of limitations. (See Doc. # 126.)

on the Pennsylvania statute of limitations for breach of contract. The doctrine of *res judicata* bars the Debtors from relitigating the validity of the Debt based on breach of contract.

Section 502(j) permits the Court, in its discretion, to reconsider the allowance of a claim for cause. In order to obtain relief from judgment, the Debtors must establish one of the bases in Rule 60(b). The Debtors do not even attempt to assert (i) mistake, inadvertence or excusable neglect; (ii) newly discovered evidence; (iii) fraud; (iv) the Trial Opinion is void; or (v) the breach of contract claim has been satisfied. Instead, the Debtors argue that the Trial Opinion revealed a statute of limitations defense to the breach of contract claim in Claim 18-2 and the Complaint and, thus, cause exists to disallow such claim. However, the statute of limitations for the breach of contract claim is an affirmative defense that the Debtors waived by failing to assert or prove at the Trial. The Debtors' waiver of this affirmative defense does not and cannot constitute cause pursuant to § 502(j) and Rule 60(b) to vacate the Trial Opinion. Accordingly, the Court finds that the Debtors have not established cause to reconsider the

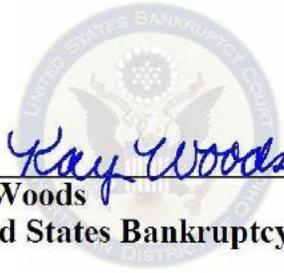
Claimants' breach of contract claim.

As a consequence, the Court will overrule the Second Objection.

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IT IS SO ORDERED.

Dated: November 22, 2013
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Kay Woods

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 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

CARL V. MACE and
CINDY A. MACE,

Debtors.

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CASE NUMBER 10-42899

CHAPTER 13

HONORABLE KAY WOODS

ORDER OVERRULING SECOND OBJECTION TO CLAIM 18-2

On March 29, 2011, the Claimants filed Claim 18-2 in the unsecured amount of \$313,781.36 for "breach of contract, conversion, indemnification, contribution, subrogation, fraud, and misrepresentation." (Claim 18-2 at 1.) On April 16, 2013, the Debtors filed Second Objection to Proof of Claim 18-2 ("Second Objection") (Doc. # 177), which seeks disallowance of Claim 18-2 on the basis that it is barred by the applicable Pennsylvania statutes of limitations for breach of contract, conversion, indemnification, contribution, subrogation, fraud

and misrepresentation. On September 15, 2013, the Claimants filed Request for Hearing and Response to Debtors' Second Objection to Proof of Claim No. 18-2 (Doc. # 189).

The Court held a hearing on the Second Objection on September 26, 2013, at which appeared (i) Gary J. Rosati, Esq. on behalf of the Debtors; and (ii) John H. Chaney III, Esq. on behalf of the Claimants. Following the hearing and at the direction of the Court, the parties filed briefs in support of their respective positions: the Debtors filed Brief in Support of Second Objection to Proof of Claim 18-2 (Doc. # 192) and Sur Reply [sic] Brief in Support of Debtors' Second Objection to Proof of Claim 18-2 (Doc. # 196), and the Claimants filed Brief in Opposition to Debtors' Second Objection to Proof of Claim No. 18-2 (Doc. # 193).

For the reasons set forth in the Court's Memorandum Opinion Regarding Second Objection to Claim 18-2 entered on this date, the Court hereby:

1. Finds that the Court concluded in the Trial Opinion that the Claimants possess a valid claim for breach of contract against the Debtors;
2. Finds that the Debtors are barred by the doctrine of *res judicata* from relitigating the validity of the breach of contract claim set forth in Claim 18-2 and the Complaint;

3. Finds that the Debtors have failed to establish cause pursuant to 11 U.S.C. § 502(j) and Federal Rule of Civil Procedure 60(b) to reconsider the Court's finding in the Trial Opinion that the Claimants possess a valid claim for breach of contract against the Debtors; and
4. Overrules the Second Objection.

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