UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:06-bk-00620-KSJ
Chapter 13

SUSAN WACZEWSKI,

Debtor.
_____/

MEMORANDUM OPINION DENYING
DEBTOR'S MOTION FOR RECONSIDERATION
AND EMERGENCY MOTION FOR STAY

This case came on for consideration upon the Debtor's Motion for Rehearing of This Court's Order and Memorandum Opinion Denying Susan Waczewski's Motion to Set Aside Compromise;[1] and Alternative Motion for Certification of Right to Appeal Directly to the Eleventh Circuit Court of Appeals (the "Motion for Reconsideration") (Doc. No. 205). In the Motion for Reconsideration, Mrs. Waczewski asks that this Court recuse itself, and also argues that: (i) the Court has misinterpreted certain of the Federal Rules of Civil Procedure; (ii) the Court can and should set aside the Compromise Order (Doc. No. 49) under Rule 60 of the Federal Rules of Civil Procedure and Bankruptcy Rule 105(a); and (iii) the Court overlooked Mrs. Waczewski's argument that it lacked subject matter jurisdiction to enter the Compromise Order in the first instance. If this Court denies the Motion for Reconsideration, Mrs. Waczewski asks the Court to certify this case for direct appeal of that decision to the United States Court of Appeals for the Eleventh Circuit and, in a separate Emergency Motion for Stay (Doc. No. 206), stay the proceedings pending the completion of the appellate review. Upon reviewing the pleadings and the law, the Motion for Reconsideration is denied. The Emergency Motion for Stay is also denied but without prejudice so that Mrs. Waczewski can raise the issue on appeal to the District Court.

Recusal is Not Appropriate. Mrs. Waczewski has requested that this Court recuse itself from her case, believing that the Court lacks understanding, patience, and compassion in dealing with her and her husband as *pro se* parties and also that the Court is incapable of being impartial. Mrs. Waczewski's recusal request came in the way of a footnote in the Motion for Reconsideration that provides in relevant part as follows:

> On numerous occasions, the debtors have considered filing a motion for this Court to recuse herself from this case because they feel that this Court lacked understanding, patience, and compassion, in dealing with them as pro se parties, and that this Court often made an effort to include gratuitous and offensive comments in virtually every meaningful order. They feel that this Court may be tired of this case, but that this Court is at fault for the case never reaching a resolution. Mrs. Waczewski also feels that this Court has pre-judged whether she can propose a chapter 13 plan in good faith before examining the plan and the claims against her. Mrs. Waczewski requests the undersigned to ask that this Court recuse herself from this case. She is convinced that this Court is not capable of being impartial. Mrs. Waczewski only wants the Court to be fair, and this does not mean a Court that rules in her favor, but one who cares about ruling correctly (examining all of the evidence) and who will exercise her discretion and power in order to reach an equitable result, not a result that makes no sense whatsoever.

(Doc. No. 205, pp. 1-2, n. 1). Also in this footnote, Mrs. Waczewski describes the manner in which this Court handled a claim filed by Javier Morales (Claim No. 12) to illustrate what she perceives to be an example of the Court's overall lack of fairness in her regard. Specifically, Mrs. Waczewski states:

> As an example of the unfairness that Mrs. Waczewski has faced. . . Mr. Morales never objected to the objection of Mrs. Waczewski regarding this claim. The trustee somehow convinced Mr. Morales to write a letter detailing the claim. Using this letter, the trustee objected to the claim. Then, at the hearing on August 12, 2003, where the trustee was supposed to argue that the claim was valid, Mr. Morales fails to appear. Does this court dismiss claim #12 as it should have? No, instead the court gives the trustee more time. What does the trustee do next? He subpoenas Mr. Morales, without giving notice to debtors, to appear at a hearing on September 17, 2003, where Mr. Morales repeatedly lied under oath, and this Court did not allow debtors to introduce key evidence that would prove such a claim. The entire manner in which this Court handled that hearing was biased. Furthermore, this court made the ruling on the above matter after admitting that it was confused on the issue. If claim #12 had been disallowed, Mrs.

[1] The relevant Opinion and Order are, respectively, docket numbers 194 and 196.

> Waczewski would have recovered her civil case, instead, we have spent several more years in litigation.

(Doc. No. 205, pp. 1-2, n. 1).

Recusal of a federal bankruptcy judge is addressed in Bankruptcy Rule 5004,[2] which provides that disqualification decisions are governed by Section 455[3] of Title 28 of the United States Code.[4] The party seeking to recuse a judge bears the burden of proving that disqualification is warranted by clear and convincing evidence. In re Johns-Manville Corp., 43 B.R. 765 (D.C.N.Y. 1984) (citing United States v. IBM Corp., 618 F.2d 923, 931 (2d Cir. 1980)).

In the Eleventh Circuit, "[t]he test for determining whether a judge should disqualify himself [or herself] under section 455(a) is whether a reasonable person knowing all the facts would conclude that the judge's impartiality might reasonably be questioned." Byrne v. Nezhat, 261 F.3d 1075, 1101 (11th Cir. 2001). "Stated another way, the question is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." Id. (internal quotation and citation omitted). However, "[i]mpartiality is not gullibility. Disinterestedness does not mean child-like innocence. If [a] judge did not form judgments of the actors in those court-house dramas called trials, he [or she] could never render decisions." Liteky v. U.S., 510 U.S. 540, 551, 114 S.Ct. 1147, 1155, 127 L.Ed.2d 474 (1994) (citing In re J.P. Linahan, Inc., 138 F.2d 650, 654 (CA2 1943)).

"Any alleged bias that arises from facts that are a matter of record, which a judge learned from his [or her] involvement in a case is not sufficient to warrant a recusal." In re Clark, 289 B.R. 193, 196-197 (Bankr.M.D.Fla.2002). Rather, such bias must be one of a personal nature, "not one arising from a judge's view of the law…A judge's views on legal issues may not serve as a basis for motion to disqualify." Id. (citing Hale v. Firestone Tire & Rubber Co., 756 F.2d 1322 (8th Cir.1985); In re M. Ibrahim Khan, P.S.C., 751 F.2d 162 (6th Cir.1984); Hasbrouck v. Texaco, Inc., 842 F.2d 1034 (9th Cir.1988), *aff'd*, 496 U.S. 543, 110 S.Ct. 2535, 110 L.Ed.2d 492 (1990); Vangarelli v. Witco Corp., 808 F.Supp. 387 (D.N.J.1992). As explained by the Supreme Court of the United States in Liteky:

> [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. . . . Almost invariably, they are proper grounds for appeal, not for recusal. [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.
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> *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger,

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[2] Bankruptcy Rule 5004 provides in relevant part as follows:

> (a) Disqualification of judge
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> A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.

[3] Section 455 of Title 28 provides in relevant part as follows:

> (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

[4] Where personal bias or prejudice is alleged, Section 144 of Title 28 may provide an additional statutory basis for disqualification if the alleging party completes and files an affidavit stating that the judge has a personal bias or prejudice either against him/her or in favor of any adverse party. However, since Bankruptcy Rule 5004 does not specifically reference Section 144, some courts have held that Section 144 does not apply in bankruptcy cases, In re Teltronics Services, Inc., 39 B.R. 446, 451 (Bankr. E.D. N.Y. 1984); Matter of Pritchard & Baird, Inc., 16 B.R. 16, 18 (Bankr. D. N.J. 1981), while other courts have considered affidavits made pursuant to Section 144 when contemplating the disqualification of a bankruptcy judge. See In re Clark, 289 B.R. 193, 196-197 (Bankr.M.D.Fla.2002) (citing United States v. Carignan, 600 F.2d 762 (9th Cir.1979); In re Betts, 165 B.R. 233 (Bankr.N.D.Ill.1994)); In re Gulph Woods Corp., 84 B.R. 961 (Bankr. E.D. Pa. 1988); In re Chandler's Cove Inn, Ltd., 74 B.R. 772 (Bankr. E.D.N.Y. 1987); In re. B & W Management, Inc., 71 B.R. 987 (Bankr. D. D.C. 1987); In re Johnson-Allen, 68 B.R. 812 (Bankr. E.D. Pa. 1987). Regardless, the standards applied under Section 144 and Section 455 are the same, 2 BANKRUPTCY LITIGATION § 8:10, Howard J. Steinberg, July 2005 (citing Matter of Pritchard & Baird, Inc., 16 B.R. 16 (Bankr. N.J. 1981) (citing Johnson v. Trueblood, 629 F.2d 287, 290 (3rd Cir. 1980) *cert. den*. 450 U.S. 999, 101 S.Ct. 1704, 68 L.Ed.2d 200 (1981)), so it is of no consequence to this Court's decision that Mrs. Waczewski did not submit any affidavit.

> that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration-even a stern and short-tempered judge's ordinary efforts at courtroom administration-remain immune.

Liteky, 510 U.S. at 555-556, 114 S.Ct. at 1157 (emphasis in original) (internal quotation omitted).

Here, it does not appear that Mrs. Waczewski is alleging that this Court holds any bias of a personal nature, nor does this Court believe that any reasonable person would conclude any such bias exists. Rather, Mrs. Waczewski has alleged that the Court has been impatient, partial, and unfair in how it has handled aspects of her bankruptcy case. Although the Court hopes no objective viewer would agree, and even if Mrs. Waczewski's opinion were correct, under the applicable rules and the test for recusal set forth by the Eleventh Circuit, articulated above, recusal is not merited.

Mrs. Waczewski's unfairness/bias allegation was supported only by her comments in a footnote recounting how this Court handled issues arising in connection with a particular creditor's claim. For example, Mrs. Waczewski criticizes the trustee in subpoenaing the creditor, Mr. Morales, to attend the hearing on his claim and the Court for granting a continuance to allow him a chance to attend the hearing. Mrs. Waczewski next criticizes the veracity of Mr. Morales' testimony but the real basis for Mrs. Waczewski's dissatisfaction is that the Court did not agree with Mrs. Waczewski's position. Mrs. Waczewski does not agree with that particular ruling of the Court or many other rulings—particularly those relating to the trustee's compromise with her former employer. However, as stated in Liteky, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." 510 U.S. 555-556, 114 S.Ct. 1147, 1157.

Rather, Mrs. Waczewski argues that the Court is simply tired of this case and lacks compassion. While the Court acknowledges that this case has lasted longer than most,[5] under Liteky, a Court's "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish partiality or bias. Liteky, 510 U.S. 555-556, 114 S.Ct. 1147, 1157. Certainly, in the course of the six and one half years this case has been pending, the Court has formed thoughts and made judgments in connection with Mrs. Waczewski's repeated attempts to regain control of the litigation settled by the Compromise Order (Doc. No. 49) entered in 2002. However, all judgments entered and conclusions reached by this Court were entirely formed on the basis of evidentiary facts, legal arguments, and memoranda filed by the parties. The Court's views on legal issues, which undisputedly differ from those held by Mrs. Waczewski, cannot serve as a basis for disqualification where they would not lead a fully informed, objective, and disinterested third party to hold any significant doubt about the Court's impartiality. The record does not support any indication of favoritism or antagonism to the parties, but rather Mrs. Waczewski's dissatisfaction with the Court's rulings. This is not a basis for recusal. Accordingly, the request for recusal is denied.

Reconsideration is Not Warranted. In the Motion for Reconsideration, pages 2-6, Mrs. Waczewski argues that this Court "totally misinterpreted Rule 52 of the Federal Rules of Civil Procedure," that the Court misconstrued the Eleventh Circuit's opinion (Doc. No. 173) directing it to consider whether she made her request to convert her Chapter 7 case to a case under Chapter 13 in bad faith, and that the Court should set aside the Compromise Order under Rule 60 of the Federal Rules of Civil Procedure.[6]

In addressing requests to reconsider orders, made pursuant to Federal Rule of Civil Procedure 60, courts construe such requests as motions to alter or amend a judgment pursuant to Rule 59(e)[7] if the motions are filed within ten days of the trial court's entry of judgment, and construe such motions as seeking relief from judgment pursuant to Rule 60(b)[8] if

[5] A typical Chapter 7 case lasts approximately 6 to 8 months. By contrast, this case, originally filed on October 12, 1999, has been active for well over six years.

[6] Bankruptcy Rule 9024 makes Federal Rule of Civil Procedure 60 applicable in bankruptcy cases.

[7] Federal Rule of Civil Procedure 59(e) provides as follows:

> **(e) Motion to Alter or Amend Judgment.** Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

[8] Federal Rule of Civil Procedure 60(b) provides as follows:

> **(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made

the motions are filed more than ten days after the trial court's entry of judgment. In re Mathis, 312 B.R. 912, 914 (Bankr.S.D.Fla.2004) (citing Hatfield v. Board of County Commissioners, 52 F.3d 858 (10th Cir.1995); accord Mendenhall v. Goldsmith, 59 F.3d 685 (7th Cir.1995); Goodman v. Lee, 988 F.2d 619 (5th Cir.1993)). Here, Mrs. Waczewski filed her Motion for Reconsideration (Doc. No. 205) on April 9, within ten days[9] of the date, March 30, 2006, that this Court entered its Order Denying Mrs. Waczewski's Motion to Set Aside Second Compromise (Doc. 196). Accordingly, since Mrs. Waczewski's Motion for Reconsideration was filed within ten days of the entry of that order, the Motion for Reconsideration will be construed as a motion to alter or amend judgment pursuant to Rule 59(e).[10]

Reconsideration of an order under Rule 59(e) 'is an extraordinary remedy to be employed sparingly' due to interests in finality and conservation of judicial resources. Mathis, 312 B.R. 912, 914 (citing Sussman v. Salem, Saxon & Nielsen, P.A., 153 F.R.D. 689, 694 (M.D.Fla.1994); accord Taylor Woodrow Construction Corp. v. Sarasota/Manatee Airport Authority, 814 F. Supp. 1072, 1073 (M.D.Fla.1993)). "The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory...[or] to give the moving party another 'bite at the apple' by permitting the arguing of issues and procedures that could and should have been raised prior to judgment." Mathis, 312 B.R. 912, 914 (citing Mincey v. Head, 206 F.3d 1106 (11th Cir.2000) (quoting In re Halko, 203 B.R. 668, 671-672 (Bankr.N.D.Ill.1996)). Rather, the movant must prove 'manifest' errors of law or fact or new evidence. In re Loewen Group Inc. Securities Litigation, 2006 WL 27286, *1 (E.D. Pa. 2006) (citing Egervary v. Rooney, 80 F.Supp.2d 491, 506 (E.D.Pa.2000) (citation omitted). "A motion for reconsideration 'addresses only factual and legal matters that the Court may have overlooked. It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through-rightly or wrongly.'" Loewen, 2006 WL 27286, *1 (citing Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D.Pa.1993)) (quotations omitted). 'Mere dissatisfaction with the court's ruling is not a proper basis for reconsideration.' Loewen, 2006 WL 27286, *1 (citation omitted). "A trial court's determination as to whether grounds exist for the granting of a Rule 59(e) motion is held to an 'abuse of discretion' standard." Mathis, 312 B.R. 912, 914 (citing American Home Assurance Co. v. Glenn Estess & Associates, 763 F.2d 1237, 1238-1239 (11th Cir.1985); accord McCarthy v. Manson, 714 F.2d 234, 237 (2d Cir.1983); Weems v. McCloud, 619 F.2d 1081, 1098 (5th Cir.1980).

Where Courts have granted relief under Rule 59(e), they have generally done so in order to: (1) account for an intervening change in controlling law, (2) consider newly available evidence, or (3) correct clear error or prevent manifest injustice. Mathis, 312 B.R. 912 at 914 (citations omitted). Clearly, Mrs. Waczewski is dissatisfied with this Court's rulings in connection with the Compromise Order. Nevertheless, this is not sufficient to warrant reconsideration. There has been no change in the law on point, no new evidence, and no error of law resulting in a manifest injustice to Mrs. Waczewski. Nor did the Court overlook any factual or legal matters. Rather, Mrs. Waczewski merely raises the same arguments already considered and rejected by this Court.

The Court in its most recent order merely endeavored to explicitly follow the Eleventh Circuit's instructions on remand to consider whether Mrs. Waczewski filed her request to convert her Chapter 7 case to a case under Chapter 13 in good faith or in bad faith. The Court does not believe it misconstrued these clear and simple instructions. Mrs. Waczewski has failed to demonstrate any basis for reconsideration. Accordingly, for the reasons stated above, Mrs. Waczewski's Motion for Reconsideration (Doc. No. 205) is denied.

Direct Appeal to the Eleventh Circuit is Not an Option. Finally, in the event this Court denies Mrs. Waczewski's Motion for Reconsideration, she has requested that this Court certify the matter for direct

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within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation….

[9] Federal Rule of Bankruptcy Procedure 9006(a) governs the computation of time and provides in relevant part as follows:

> In computing any period of time prescribed or allowed by these rules or by the Federal Rules of Civil Procedure made applicable by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

[10] Regardless, the Court finds that there is also nothing contained in Fed. R. Civ. P. 60(b) that provides any alternative reason to set aside the Compromise Order (Doc. No. 49) or the Order Denying Mrs. Waczewski's Motion to Set Aside Second Compromise (Doc. No. 196).

appeal to the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. § 158(d)(2)(A)(iii), which provides, in relevant part as follows:

> (2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—
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> …
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> **(iii)** an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;
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> and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

However, Section 158(d)(2)(A)(iii) of Title 28 was not enacted until April 20, 2005, and did not become effective until 180 days later on October 17, 2005, after Mrs. Waczewski had filed her bankruptcy petition[11] in October, 1999. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 (2005) (effective in cases commenced on or after October 17, 2005). Therefore, the Court does not believe that the language in the Section 158(d)(2)(A)(iii) amendment applies because Mrs. Waczewski's bankruptcy case was commenced long before the amendment's effective date. The Court notes that certain of the amendments do apply[12] in cases commenced prior to October 17, 2005, however, the Court could not find any language in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 indicating that Section 158(d)(2)(A)(iii) was one of those provisions, nor did Mrs. Waczewski direct the Court to any such language. Accordingly, absent any clear statement of congressional intent indicating otherwise, the Court must apply the fundamental legal presumption that legislation is not to be applied retroactively. See, Johnson v. U.S., 529 U.S. 694, 701, 120 S.Ct. 1795, 1801 (2000) (citing e.g., Lynce v. Mathis, 519 U.S. 433, 439, 117 S.Ct. 891, 137 L.Ed.2d 63 (1997); Landgraf v. USI Film Products, 511 U.S. 244, 265, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994); Martin v. Hadix, 527 U.S. 343, 119 S.Ct. 1998, 144 L.Ed.2d 347 (1999)).

Regardless, assuming *arguendo* that the new statute allowing a direct appeal does apply in this case, the test is whether such an appeal would materially advance the progress of the case. The debtor has failed to satisfy this test or to demonstrate any basis why this Court should deviate from the normal appellate procedures in this instance. Indeed, Mrs. Waczewski advanced no particular argument for a direct appeal—other than speed in resolution. Of course, every appeal would be resolved faster if the interim step of stopping at the District Court level for an intermediate review were omitted. However, a party seeking a direct appeal certainly must show something more than that a direct appeal would expedite the resolution of the appellate issues.

For example, a direct appeal may be merited to resolve a matter of first impression, or an issue of law on which courts have issued conflicting decisions. In such instances, a direct appeal may be necessary because only the court of appeals could effectively decide the issues and, as a result, materially advance a pending case raising similar issues. But, mere speed in

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[11] The law in effect on the petition date, rather than the conversion date, generally controls. See In re Weed, 221 B.R. 256, 259 (Bankr. D.Nev. 1998) (finding that the debtor's entitlement to exemptions are determined on the petition date, not a later conversion date, where the state law governing exemptions changed between the date of petition and date of conversion) (citing In re Marcus, 1 F.3d 1050 (10th Cir.1993) ("law in effect on filing Chapter 13 petition, rather than date of conversion, controls where there is change in the substantive law between filing and conversion")).

[12] To wit, the Effective and Applicability Provisions found in 11 U.S.C.A. § 101 states as follows:

> Pub.L. 109-8, Title XV, § 1501, Apr. 20, 2005, 119 Stat. 216, provides that:
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> **(a) Effective date.**--Except as otherwise provided in this Act, this Act and the amendments made by this Act [see Tables for classification] shall take effect 180 days after the date of enactment of this Act [Apr. 20, 2005].
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> **(b) Application of amendments.—**
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> **(1) In general.**--Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act [see Tables for classification] shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.
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> **(2) Certain limitations applicable to debtors.**--The amendments made by sections 308 [amending 11 § 522], 322 [amending 11 U.S.C.A. § 522], and 330 [amending 11 U.S.C.A. §§ 727, 1141, 1228, and 1328] shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act [Apr. 20, 2005].

resolution is not sufficient. Therefore, this Court would find that materially advancing a case requires more than arguing that the appeal will proceed faster if it goes directly to the Eleventh Circuit. Therefore, this Court will not certify the matter for direct appeal to the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C. § 158(d)(2)(A)(iii).

No Stay Is Warranted. In the Emergency Motion for Stay (Doc. No. 206), Mrs. Waczewski requests that her obligations under the orders[13] entered by the Court on March 30 and 31, 2006, be stayed until the issues raised in her Motion for Reconsideration (Doc. No. 205) concerning this Court's Order denying her motion to set aside the second compromise (Doc. No. 196) is finally resolved and the right to appeal has been exhausted or waived. Mrs. Waczewski cited no authority in support of her request that the effects of these orders be stayed. However, the Court presumes Mrs. Waczewski plans to appeal this Court's decision herein denying the Motion for Reconsideration, and will therefore apply Bankruptcy Rule 8005, governing stay pending appeal, even if prematurely made, to Mrs. Waczewski's request to stay this Court's orders entered on March 30 and 31, 2006.

Bankruptcy Rule 8005 provides in relevant part that a "bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest." Fed. R. Bankr. P. 8005. Where a discretionary stay is sought, the movant generally must show: (1) a likelihood of success on the merits; (2) that irreparable injury will result unless the stay is granted; (3) that imposition of the stay will not harm other interested parties; and (4) that a stay is not inconsistent with the public interest. Sandra Cotton, Inc. v. Bank of New York, 64 B.R. 262 (W.D.N.Y. 1986); In re Richmond Metal Finishers, Inc., 36 B.R. 270 (Bankr. E.D.Va. 1984).

Here, Mrs. Waczewski made no effort to demonstrate any of the four factors listed above. In support of her request for a stay, she merely states that "[r]equiring her to go to Chapter 13 without restoring her right to her lawsuit would be futile and would be a waste of time to everyone involved." (Doc. No. 206). Assuming this single contention is true, it nevertheless does not justify staying Mrs. Waczewski's obligations under the duty orders entered in her Chapter 13 case or staying the effects of the Order Denying Motion to Set Aside Second Compromise (Doc. No. 196) and Order Granting Request to Convert to Chapter 13 (Doc. No. 197) while any appeal of this order is taken. Accordingly, the Court will deny the Emergency Motion for Stay, although it will do so without prejudice so that Mrs. Waczewski can raise the issue on any subsequent appeal to the District Court. Separate orders consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED this 5th day of May, 2006.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

Copies provided to:

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Ch 13 Trustee: Laurie K. Weatherford, P.O. Box 3450, Winter Park, FL 32790

United States Trustee, 135 W. Central Blvd., 6th Floor, Orlando, FL 32801

[13] Doc. Nos. 194, 195, 196, 197, and 199.