UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:99-bk-08433-KSJ
Chapter 7

JOSE WACZEWSKI,

Debtor.
_____/

MEMORANDUM OPINION DENYING JOINT MOTION BY SPECIAL COUNSEL AND DEBTOR FOR REHEARING, RECONSIDERATION AND CLARIFICATION OF THIS COURT'S MEMORANDUM OPINION AND ORDER (DOC. NOS. 229 AND 231) AND OF ORDER ALLOWING APPLICATIONS FOR COMPENSATION BY CHAPTER 7 TRUSTEE'S ATTORNEY

The debtor, Jose Waczewski, and his son, Frederic Waczewski, who also acts as special counsel in this case, ask this Court to reconsider[1] its recent ruling allocating the proceeds of a settlement between the two affected estates—the estate of this debtor and that of his wife, Susan Waczewski[2] (Doc. No. 232). In their Motion for Rehearing, the debtor and special counsel make two primary arguments. First, that the debtor never requested the Court to divide the settlement proceeds between the two estates and that to do so was improper. Second, that assessing fees payable to the Chapter 7 Trustee's attorney was improper because the fee application was filed in Susan's case, not in this case. After reviewing the pleadings and considering the position of interested parties, the Court denies the Motion for Rehearing (Doc. No. 232).

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)[3] if the motions are filed within ten days of the trial court's entry of judgment. Here, the Motion for Reconsideration was filed within this 10-day period and shall be treated as a Motion to Alter or Amend Judgment pursuant to Rule 59(e). 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)). "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). Here, the movants fail to meet any of these standards.

[1] The debtor makes his request for reconsideration in his Joint Motion by Special Counsel and the Debtor for Rehearing, Reconsideration and Clarification of this Court's Memorandum Opinion and Order (Doc. Nos. 229 and 231) and of Order Allowing Applications for Compensation by Chapter 7 Trustee's Attorney (Doc. No. 232).

[2] Mrs. Waczewski's case number is 6:06-bk-00620-KSJ.

[3] 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.

Movants first argue that that allocating the settlement proceeds from the Second Compromise between the estates was improper because the debtor never asked for such an allocation and because no allocation is appropriate until the order approving the Second Compromise is set aside. Although the debtor is correct that he did not file a separate motion expressly seeking any allocation of the settlement proceeds between the two estates, he certainly argued, in his underlying motion for sanctions (Doc. No. 212), and more expressly at the hearing on his motion, held on October 16, that the Court should assess sanctions against the Chapter 7 Trustee for failing to independently allocate the settlement proceeds between the estates of he and his wife. Special counsel argued that an acceptable division would provide that Susan would receive 87 percent of the proceeds and Jose the remaining 13 percent. The Court, in its prior ruling, agreed that the settlement proceeds should be so allocated in the percentages suggested by the debtor and, in doing so, exercised its discretion, in an attempt to be fair and reasonable. Cf. Council for Periodical Distributors Associations v. Evans, 827 F.2d 1483, 1488 (11th Cir. 1987) (internal quotation omitted)(Where apportionment of attorney's fees is proper, "district courts should make every effort to achieve the most fair and sensible solution that is possible…and make the best possible assessment consistent with both efficiency and fairness.") Indeed, the debtors do not now challenge the actual allocation percentage, just the fact that the allocation was decided.

Next, the Movants argue that the Court somehow reformed or modified the settlement agreement by dividing the proceeds between the two estates without first setting aside the order approving the Second Compromise. The Court finds it incredible that the debtor has suggested both that the Court should sanction the Chapter 7 Trustee because he breached his fiduciary duties by *failing* to apportion the funds and that this Court has strayed from the Eleventh Circuit's mandate when this Court *did* apportion the settlement proceeds between the two estates. Movants' argument is without merit and raises no genuine reason to reconsider the allocation.

Moreover, the Movants ignore an essential fact—namely, that at the time the Second Compromise was approved, the Waczewskis were joint debtors in a single case. Because the debtors, Susan and Jose, did not have separate estates at the time the Second Compromise was approved and because the sole case was jointly administered pursuant to Local Rule 1015-1, any consideration of allocation was unnecessary.[4] Accordingly, the order approving the Second Compromise appropriately did not allocate funds between the Waczewskis' separate estates because, when the Second Compromise was reached and the Order approving it was entered, the Waczewskis *did not have* separate estates.

Furthermore, motions to approve settlements, filed pursuant to Bankruptcy Rule 9019, only seek the approval of a compromise of controversy. Distributions to specific classes or groups of creditors are not relevant or addressed. Issues relating to distribution are reserved until the point in the case where claims are determined, the entire cache of assets is gathered, and the trustee is ready to pay claims. Motions addressing compromises of controversy simply describe the nature of the controversy, why the proposed compromise is in the best interest of the estate, and the amount of funds coming into the estate by virtue of the compromise. Exactly how the funds received from a compromise are to be disbursed among creditors occurs later in the case. Therefore, it is of no consequence that the order approving the Second Compromise did not earlier allocate the funds between Mr. and Mrs. Waczewski's estates. Indeed, as their estates were jointly administered at the time, allocation was irrelevant.

However, the recent allocation of the proceeds between the now two separate estates now is appropriate and in no way modifies the approved compromise.[5] Susan is now a debtor in a Chapter 13 case. As such, she must make monthly payments to her creditors pursuant to a Chapter 13 plan. In order to determine the amount of these payments, all

[4] By way of a short history on the approval process relating to the Second Compromise, the Motion and Notice thereof (Doc. No. 34) was served on all creditors scheduled by Mr. and Mrs. Waczewski in their then jointly administered Chapter 7 bankruptcy case. No creditor objected to the proposal. When the Waczewskis filed their own objection (Doc. No. 36) to the proposed compromise, the matter was set for hearing and the hearing was noticed to all creditors on September 11, 2002 (Doc. No. 40). On November 5, 2002, a hearing was held. No creditor attended the hearing or objected to the compromise. The Court rendered an oral ruling, pursuant to Bankruptcy Rule 7052, approving the proposed compromise (Doc. No. 43A). Subsequently, an order approving the Second Compromise (Doc. No. 49) was entered on November 20, 2002. Before that Order was docketed, the Waczewskis filed various motions (Doc. Nos. 42, 43, 44, 45, 47), one of which (Doc. No. 43) contained their request for a separate administration of their estates. A hearing was noticed to all creditors and interested parties. On February 10, 2003, the Court entered its order granting separate administration, several months after the compromise was approved. Until the recent flurry of motions, no party, debtor or creditor, requested any allocation of the settlement proceeds after the separate estates were created.

[5] The compromise settled a personal injury claim and was finalized when the settling parties made their payment of $10,800 to Jose's Chapter 7 trustee.

parties need to know the amount of proceeds her estate will receive from the Second Compromise.

The Court properly apportioned the proceeds from the settlement in order to allow Susan to proceed with her Chapter 13 case and in the manner that seemed most reasonable and in the amount suggested by the debtors. Trial courts have significant discretion on when to apportion fees and on how to divide liability for fees. Council for Periodical Distributors Associations v. Evans, 827 F.2d 1483, 1487 (11th Cir. 1987). Here, the Court simply exercised its discretion and endeavored to achieve the most efficient, fair and sensible solution possible. Accordingly, for the reasons stated above, the Movants have failed to demonstrate any basis for rehearing on the Court's allocation of the proceeds obtained from the Second Compromise.

Next, the Movants argue that the Court violated the due process rights of Jose's creditors because the Court awarded fees to the Chapter 7 Trustee's attorney when no fee application was filed in this Chapter 7 case. Bankruptcy Code Section 330 governs compensation of professionals, such as attorneys, and provides that reasonable compensation for actual, necessary services rendered and reimbursement for actual, necessary expenses may be awarded after notice to the parties in interest, the United States Trustee, and after a hearing. 11 U.S.C. § 330(a)(1)(A) and (B). Bankruptcy Rule 2002 governs notices to creditors and other parties in interest in connection with fee applications. Specifically, Bankruptcy Rule 2002(a)(6) provides that "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of "a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000." No fee application was filed in this Chapter 7 case. However, in Mrs. Waczewski's Chapter 13 case, the Chapter 7 Trustee did file fee applications (Case No. 06-620, Doc. Nos. 208, 210, 259). The fee applications were served on Mr. and Mrs. Waczewski, Frederic and James Waczewski, the Chapter 13 Trustee and the United States Trustee. Neither Susan's nor Jose's creditors received notice of the fee awards and apportionment between the estates.

Although the Court would find that Jose lacks standing to raise this due process argument on behalf of his creditors and notes that no creditors have attended any hearing or participated in this case for several years, the Court would find that the creditors in every case certainly are entitled to notice of the fees requested and awarded. Therefore, based on Bankruptcy Code Section 330 and Bankruptcy Rule 2002(6), the Court directs the Clerk's office to serve all creditors and parties in interest in this Chapter 7 case, and those in Mrs. Waczewski's Chapter 13 case (Case No. 06-620) who were not previously served, with: (i) the Chapter 7 Trustee's applications for compensation and attorney compensation, as filed in Mrs. Waczewski's Chapter 13 case (Case No. 06-620, Doc. Nos. 208, 210, and 259); and (ii) this Court's Orders and related Memorandum Opinions (Case No. 06-620, Doc Nos. 265, 267, 274, and 275) allowing and apportioning the award of fees and costs, and this Memorandum Opinion. If any creditor objects to the fees awarded to the Chapter 7 Trustee or to the apportionment of those fees between the two estates of Susan and Jose Waczewski, they may file an objection on or before **December 31, 2006**. If any objection by a creditor is filed, the Court will set a hearing. The point of this process, however, is to insure *creditors* are fully informed, not to redress any grievance asserted by the Movants in their motion.

Movants have demonstrated no basis for this Court to reconsider its prior ruling. They demonstrate no change in controlling law, no newly available evidence, clear error, or other manifest injustice that warrants any rehearing or further clarification by this Court. The Court did not overlook any factual or legal matters in connection with the rulings it rendered in its Memorandum Opinion and Order Denying Debtor's Motion to Set Aside Order Approving the Second Compromise (Doc. Nos. 229 and 231, respectively). Accordingly, the Motion for Rehearing (Doc. No. 232) is denied. A separate order consistent with this Memorandum Opinion shall be entered.

DONE AND ORDERED in Orlando, Florida, this 11th day of December, 2006.

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