

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:

Case No. 6:07-bk-00996-ABB
Chapter 7

RALPH F. PORTO,

Debtor.

RICHARD DELAURO,

Plaintiff,

v.

Adv. Pro. No. 6:07-ap-00075-ABB

RALPH F. PORTO,

Defendant.

ORDER

This matter came before the Court on the Motion for Rehearing (Doc. No. 74) ("Motion") filed by the Plaintiff Richard DeLauro seeking reconsideration of the Memorandum Opinion and Judgment entered on September 23, 2008 (Doc. Nos. 69, 70) and to amend his Complaint to conform it to the evidence.

The Plaintiff cites Federal Rule of Bankruptcy Procedure 8015 in support of the reconsideration request. Rule 8015, by its plain language, relates to a motion for reconsideration filed with a district court hearing a bankruptcy appeal or a bankruptcy appellate panel and is inapplicable to this matter. FED. R. BANKR. P. 8015; Mike v. Fed. Savings & Loan Assoc. (In re Mike), 796 F.2d 382, 384 (11th Cir. 1986).

The Plaintiff's reconsideration request is governed by Federal Rule of Civil Procedure 59(e), which is made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. FED. R. CIV. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."); FED. R. BANKR. P. 9023. The only grounds for granting a motion for reconsideration "are newly-discovered evidence or manifest errors of law or fact." Kellogg v.

Schreiber (In re Kellogg), 197 F.3d 1116, 1119 (11th Cir. 1999).

The Plaintiff had the burden in this adversary proceeding to establish the Debtor was not entitled to a discharge pursuant to 11 U.S.C. Section 727(a)(5). The Plaintiff failed to meet its burden and judgment was entered in favor of the Debtor. The Memorandum Opinion and Judgment hold the Debtor is entitled to an award of attorney's fees and costs. The Plaintiff has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the Memorandum Opinion and Judgment. No basis for reconsideration or amendment of the Memorandum Opinion and Judgment has been established pursuant to Federal Rule of Civil Procedure 59(e).

The Plaintiff seeks to amend his Complaint to conform it to the evidence. The Plaintiff's request is untimely and without the required consent. This adversary proceeding was instituted by the Plaintiff on June 18, 2007. He had ample opportunity to seek leave to amend his Complaint pursuant to Federal Rule of Civil Procedure 15 and Federal Rule of Bankruptcy 7015, but failed to do so.

Consent by the opposing party is a condition precedent to amendment pursuant to Federal Rule of Civil Procedure 15(b). Fed. R. Civ. Pro. 15(b); Steger v. Gen. Electric Co., 381 F.3d 1066, 1077, n.11 (11th Cir. 2003). The Debtor did not expressly or impliedly consent to amendment of the Complaint (*see* Doc. No. 68). The Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Plaintiff's Motion (Doc. No. 74) is hereby **DENIED**.

Dated this 7th day of October, 2008.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge