UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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| In re | ) | |
| | ) | |
| ROBERT J. VEGA, | ) | Case No. 6:10-bk-06873-KSJ |
| | ) | Chapter 7 |
| Debtor. | ) | |
| | ) | |
| SCOTT A. BROWN, | ) | |
| | ) | |
| Plaintiff, | ) | |
| vs. | ) | Adversary No. 6:10-ap-00299-KSJ |
| | ) | |
| ROBERT J. VEGA, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

Plaintiff, Scott Brown, asks the Court to reconsider its prior order granting partial summary judgment on Count III of his complaint in favor of the Defendant, Robert Vega.[1] Count III asserted a claim under § 523(a)(6) of the Bankruptcy Code for willful and malicious conversion of monies he invested into a failed real estate project, Winter Park Partners Development, LLC ("WPPD").[2] I held that WPPD—not Brown—was the proper party to bring a claim for conversion of LLC funds and that Brown lacked standing to bring such a claim individually.[3]

[1] Doc. No. 167. Defendant filed a response to Plaintiff's motion for reconsideration at Doc. No. 169.
[2] Doc. No. 1.
[3] Doc. No. 164.

Plaintiff requests reconsideration pursuant to Federal Rule of Civil Procedure 59, made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 9023.[4] The Eleventh Circuit has held that the bases for granting a Rule 59(e) motion are "newly discovered evidence or manifest errors of law or fact."[5] Where a movant has had an opportunity to introduce the arguments and evidence presented in its Rule 59(e) motion prior to the issuance of the order at issue, denial of the reconsideration motion is proper.[6] "Rule 59(e) may not be used to 'relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.'"[7]

Brown's motion for reconsideration seeks to relitigate matters already argued and rejected by the Court. The Court considered the case law cited by Brown in his motion for reconsideration. The Court need not cite and distinguish each and every case cited by a party in a motion for summary judgment.[8] One of the elements for conversion is "wrongful dominion over

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[4] Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 59.

[5] *Sherrod v. Palm Beach County School Dist.*, 237 Fed. App'x. 423, 424 (11th Cir. 2007) (quoting *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999)); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*).

[6] *In re Kellogg*, 197 F.3d at 1119.

[7] *Sherrod*, 237 Fed. Appx. at 425 (quoting *Michael Linet, Inc. v. Village of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005)); *see also Hardy v. Wood*, 342 Fed. Appx. 441, 446 (11th Cir. 2009) (ruling that a plaintiff's Rule 59(e) motion was properly denied because it "merely reasserted arguments raised in opposition to [the defendant's] summary judgment motion or made new arguments that could have been, but were not, made before summary judgment was entered"); *Innovative Home Health Care, Inc. v. P.T-O.T. Assocs.*, 141 F.3d 1284, 1286 (8th Cir. 1998) (stating "[Rule 59(e)] motions cannot be used to . . . tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment").

[8] Two of the cases Brown cites heavily in his motion for reconsideration are unpersuasive. In *Grosman v. Bar-Am (In re Grosman)*, 6:05-bk-10450-KSJ, 2007 WL 1526701 (Bankr. M.D. Fla. June 12, 2014), this Court explicitly noted that any debt for conversion due to the individual plaintiffs was indirect. *Id*. at *17 ("Any debt due by Grosman to Bargo, directly, and to Nourit and Bar–Am, **indirectly**, as to be determined later by the Florida state court, is not dischargeable . . . ." (emphasis added)). Moreover, the Court decided that the dominion was wrongfully exercised over the LLC's assets to the detriment of the individual plaintiffs but "in a manner inconsistent with the **plaintiff's** ownership interest in the substantial assets." *Id.* Note the use of the singular possessive "plaintiff's" instead of "plaintiffs'".

In *Zinn v. Zinn*, 549 So. 2d 1141 (Fla. 3rd DCA 1989), the "controlling authority" Brown claims the court overlooked, the standing issue was raised or addressed on appeal. The decision does not consider the distinct issue before this court and does not contain enough detail to be persuasive, much less binding.

plaintiff's property."[9] Brown's funds invested into WPPD belonged to WPPD after his investment, when the alleged wrongful dominion took place, not the Plaintiff. The cause of action simply does not fit. The Court considered and dismissed Brown's other arguments as to conversion of his ownership interest.

Brown can appeal the Court's decision if he so desires, but reconsideration is not the appropriate avenue to address Brown's perceived flaws in the Court's analysis. The Court did not commit a "manifest error of law or fact."[10] The Court stands by its decision granting partial summary judgment in favor of the Defendant's conversion claim under § 523(a)(6) for conversion. The Motion for Reconsideration[11] is denied.

DONE AND ORDERED in Orlando, Florida, on October 8, 2014.

KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

Ray Rotella, attorney for the Defendant, is directed to serve a copy of this Order on interested parties and file a proof of service within 3 days of entry of the Order.

[9] *In re Grosman*, 2007 WL 1526701, at *16 (Bankr. M.D. Fla. 2007) (quoting *Fogade v. ENB Revocable Trust*, 263 F.3d 1274, 1291 (11th Cir. 2001)) (other citations omitted).
[10] *See Sherrod v. Palm Beach County School Dist.*, 237 Fed. App'x. 423, 424 (11th Cir. 2007) (quoting *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999)); *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*).
[11] Doc. No. 167.