

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION  
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In re: Case No. 9:08-bk-16204-FMD  
Chapter 7

Lawrence N. Petricca, Sr.,

Debtor.

**ORDER DENYING  
MOTION FOR RECONSIDERATION**

THIS CASE came on, without a hearing, on Debtor's *Motion to Vacate* (the "Motion").<sup>1</sup> The Motion seeks reconsideration of the following Court orders: *Order Overruling Objections to Trustee's Amended Application for Compensation*;<sup>2</sup> *Order Overruling Objections to Amended Application for Compensation to Attorney for Trustee*;<sup>3</sup> *Order Overruling Objections to Trustee's Final Report*;<sup>4</sup> and *Order Denying Motion for Reconsideration*.<sup>5</sup>

Based upon the relief requested in the Motion, this Court will treat the Motion as a motion for relief from judgment or order under Federal Rule of Civil Procedure 60(b), which is incorporated by Federal Rule of Bankruptcy Procedure 9024. For the reasons set forth below, the Court finds that the relief requested is not warranted.

In the Motion, Debtor asks the Court to vacate orders overruling his objections to the fee applications of Diane Jensen, as Chapter 7 Trustee, and of Diane Jensen, as attorney to the Trustee, and the Trustee's Final Report (the "Objections") and the Court's prior order denying motion for reconsideration of its order denying Debtor's motion for recusal<sup>6</sup> on the grounds that he was unable to adequately present his arguments

at a hearing on the Objections conducted on July 28, 2016.

At that hearing, the Court inquired whether Debtor and Creditor Frederick Hutchings ("Hutchings") had objections to the Final Report and Fee Applications on the issues of the amounts of the fees requested or to the moneys actually received by the Trustee, the assets actually sold by the Trustee that had generated those monies, and the proposed distributions by the Trustee. Debtor and Hutchings both stated that their Objections related to the issues regarding the Trustee's auction and sale of certain assets.

The Court advised Debtor and Hutchings that the issues relating to the sale and auction were addressed in the Court's order (the "Sale Order").<sup>7</sup> The Sale Order was subsequently affirmed on appeal by the District Court,<sup>8</sup> and Hutchings' appeal of the District Court's ruling to the Eleventh Circuit Court of Appeals has been dismissed.<sup>9</sup> Because Debtor and Hutchings had no other objections to the pending matters, there were no issues remaining for the Court's consideration in ruling upon the Objections. Accordingly, the Court overruled the Objections.

In order to prevail on the Motion, Debtor must demonstrate that the Court committed clear legal error in its rulings that would result in a manifest injustice, that there has been an intervening change in controlling law, or that new evidence is available that could not have been presented prior to the entry of judgment.<sup>10</sup> A motion for reconsideration should not be used to reiterate arguments previously made but is appropriate when the court has patently misunderstood a party or made an error not of reasoning but of apprehension.<sup>11</sup> "Such problems rarely arise and the motion to reconsider should be equally rare."<sup>12</sup> Motions for reconsideration are viewed with

<sup>1</sup> Doc. No. 572.

<sup>2</sup> Doc. No. 565.

<sup>3</sup> Doc. No. 566.

<sup>4</sup> Doc. No. 567.

<sup>5</sup> Doc. No. 569.

<sup>6</sup> Doc. Nos. 558, 569.

<sup>7</sup> Doc. No. 469.

<sup>8</sup> Doc. No. 521.

<sup>9</sup> District Court Case No. 2:14-cv-615-SPC, Doc. No. 32.

<sup>10</sup> *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (internal citation omitted).

disfavor. Courts have discretion in whether to grant a motion for reconsideration, and the court's denial of a motion for reconsideration is reviewed for an abuse of discretion.<sup>13</sup> The Motion is Debtor's attempt to reiterate, once again, arguments that he and Hutchings have already made; reconsideration is not appropriate.

Finally, to the extent that Debtor requests that the Court reconsider its *Order Denying Motion for Reconsideration*, this Court previously found that Debtor's original motion for reconsideration<sup>14</sup> failed to raise any grounds for which reconsideration could be granted, and therefore that request should be denied as well.

Accordingly, it is

**ORDERED** that the Motion is **DENIED**.

**DATED:** August 11, 2016.

/s/ Caryl E. Delano

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Caryl E. Delano  
United States Bankruptcy Judge

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<sup>13</sup> *Alexander v. HarperCollins Publishers, Inc.*, 132 F. App'x 250, 251 (11th Cir. 2005).

<sup>14</sup> Doc. No. 568.