


ORDERED.

Dated: October 01, 2019



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
International Iron, LLC)	Case No. 6:19-bk-00724-KSJ
)	Chapter 11
Debtor.)	
_____)	

**ORDER DENYING
MOTION TO REOPEN EVIDENCE**

Creditor Deutsche Leasing USA, Inc.’s (“Deutsche”) filed its Motion to Reopen the Evidence seeking to submit “new” evidence consisting of emails between the attorneys for Deutsche and the Debtor discussing the repair, marketing, and sale of equipment sold and then repossessed by Deutsche.¹ The Motion to Reopen is denied.

On August 12, 2019, after finally resolving the issues as to the confirmation of the Debtor’s Plan of Reorganization,² the Court conducted a trial of Deutsche’s motion to determine the allowed amount of its unsecured claim.³ The Debtor, International Iron, purchased several pieces of large

¹ Doc. No. 189. Deutsche sought expedited consideration of its Motion to Reopen because the parties’ post-trial briefs are due on September 30, 2019. Doc. No. 190. Debtor opposes the Motion to Reopen. Doc. No. 192. And, Deutsche field a reply. Doc. No. 194.

² Debtor’s Second Amended Chapter 11 Plan of Reorganization Plan, as amended (Doc. Nos. 152 and 161), was confirmed (Doc. Nos. 182 and 184) over the objection of Deutsche Leasing (Doc. No. 154).

³ Doc. Nos. 106 and 170.

construction equipment from Deutsche. When the business failed and this Chapter 11 case was filed, Deutsche repossessed this equipment. The primary issue at trial is whether Deutsche complied with the Uniform Commercial Code and acted in a commercially reasonable manner in disposing of this equipment. After the evidence concluded, the parties were directed to file post-trial briefs by September 30, 2019. Deutsche now seeks to reopen the evidentiary record to submit various emails between the trial attorney for Deutsche, John Mueller, and Debtor' lawyers.

The decision to reopen the evidentiary record is within the sound discretion of the Court.⁴ In determining whether to reopen a hearing for additional evidence the Court should consider: “(1) whether the additional evidence is material to the case; (2) whether the opposing party had an opportunity for cross-examination; (3) whether the opposing party would suffer prejudice; and (4) whether the failure to originally introduce the evidence reflected a lack of diligence by the moving party.”⁵ Deutsche's Motion does not satisfy these considerations.

Deutsche's failure to originally introduce the emails reflects a lack of diligence. Deutsche's counsel had the emails at the trial. The trial attorney was the party involved in the communications with Debtor's counsel. Deutsche's counsel simply chose not to introduce the emails as evidence. Deutsche had ample opportunity to present the emails at the trial and does not offer a good excuse why it failed to introduce the emails.

The emails have no material relevance to the issues. Deutsche's emails were exchanged *after* the disposition of the equipment. Uniform Commercial Code § 9-611 requires a secured party disposing collateral to send the Debtor a notice of disposition *before* the disposition occurs.⁶

⁴ *In re Kanewske*, Case No. 9:15-bk-08728-FMD, 2017 WL 4381282 at *5 (Bankr. M. D. Fla. 2017 September 29, 2017); *In re Moore*, 559 B.R. 243, 264 (Bankr. M. D. Fla. 2016); *In re West Shore Associates, Inc.*, 435 B.R. 723, 724 (Bankr. M. D. Fla. 2010). A motion to reopen evidence is a derivative of Federal Rule of Civil Procedure 59, incorporated by Federal Rule of Bankruptcy Procedure 9023. In a motion to reopen the record, the moving party is seeking to supplement the record, rather than reconsider, alter, or amend a judgement.

⁵ *In re Moore*, 559 B.R. at 264.

⁶ U.C.C. § 9-611.

Deutsche did not send this notice. All the omitted emails are dated after Deutsche entered into a disposition agreement with Liebherr.⁷ The emails merely answer the Debtor's inquiries about Deutsche's intentions for the equipment and occurred post-transfer to Liebherr.

Finally, the Debtor would be prejudiced if Deutsche now were permitted to submit new evidence. If Deutsche originally included these emails as evidence, the Debtor would have had adequate opportunity to adjust its trial strategy and plan for needed cross-examination. If admitted at this late date, the Debtor would need to respond to these emails by submitting additional evidence, potentially raising attorney-client privilege issues.

Deutsche has failed to establish any valid reason to reopen evidence.

Accordingly, it is

ORDERED:

1. Deutsche's Motion to Reopen the Evidence (Doc. No. 189) is **DENIED**.
2. Parties shall have an extension to file post-trial briefs to **October 7, 2019**.

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The Clerk is directed to serve a copy of this order on all interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the Order.

⁷ See Doc. No. 189, Exh. 2.