

ORDERED.

Dated: August 13, 2021



Caryl E. Delano
Chief United States Bankruptcy Judge

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

In re:

Case No. 2:15-bk-04241-FMD
Chapter 7

Benjamin H. Yormak,

Debtor.

_____ /

**ORDER DENYING STEVEN R. YORMAK'S
MOTION FOR RECONSIDERATION OF ORDER
ON MOTION TO SET ASIDE CLERK'S ORDER TAXING COSTS
[Doc. No. 923]**

THIS CASE came before the Court without a hearing to consider the *Motion for Reconsideration of Court Order (DE 918) Denying in Part Creditor Motion to Set Aside Clerk's Order (DE 882); Alternatively Motion to Renew Creditor Stay of Court Order (DE 918)* filed by Steven R. Yormak ("Claimant") (the "Reconsideration Motion")¹ and the response filed by Debtor Benjamin H. Yormak ("Debtor").²

¹ Doc. No. 923.

² Doc. No. 927.

Claimant filed a claim in Debtor's bankruptcy case, and Debtor filed an objection to the claim. After years of litigation, the parties filed motions for summary judgment, and in February 2021, the Court entered an order disallowing Claimant's claim (the "SJ Order").³

Thereafter, Debtor filed a Bill of Costs, and the Clerk of the Bankruptcy Court taxed costs in favor of Debtor and against Claimant in the amount of \$26,558.48.⁴ Claimant timely filed a motion to set aside the award of costs,⁵ and on July 20, 2021, the Court entered an order granting Claimant's motion in part and reducing the costs taxed against him to \$6,588.98.⁶

Claimant timely filed the Reconsideration Motion. Claimant primarily asserts that Rule 7054 does not apply to the SJ Order because it was entered on Debtor's objection to Claimant's claim, which under the Federal Rules of Bankruptcy Procedure is a "contested matter" and not an "adversary proceeding." Claimant contends that Rule 7054 "only applies in adversarial proceedings" and that the Federal Rules of Bankruptcy Procedure do not authorize the Court to award costs

³ Doc. No. 851.

⁴ Doc. No. 882. (Under Fed. R. Bankr. P. 7054(b)(1), "[c]osts may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.").

⁵ Doc. No. 883.

⁶ Doc. No. 918.

except in adversary proceedings.⁷ Claimant also asserts (1) that the Court lacks authority to tax costs against him because no costs were awarded in the SJ Order, (2) that the costs awarded to Debtor for copying charges and transcripts should be further reduced, (3) that the award of costs to Debtor is inappropriate because Claimant was the prevailing party in two summary judgment orders entered before the Court entered the SJ Order, and (4) that any award of costs should be stayed pending his appeal of the SJ Order.⁸

A motion for reconsideration filed within 14 days after entry of the order or judgment is generally treated as a motion for relief under Federal Rule of Civil Procedure 59(e).⁹ Reconsideration of an order under Rule 59(e) is an extraordinary remedy to be granted sparingly because of the interest in the finality of orders and the conservation of judicial resources. In the Eleventh Circuit, the only grounds for granting a motion for reconsideration under Rule 59(e) are newly discovered evidence or manifest errors of law or fact.¹⁰

⁷ Doc. No. 923, pp. 1-2. For example, Claimant incorrectly cited *In re Borges*, 2013 WL 1856437, at *1 (Bankr. D.N.M. May 2, 2013), as stating that Rule 7054 “only” applies in adversary proceedings, and attached copies of Rule 7001 and Rule 7054 to his Reconsideration Motion.

⁸ Doc. No. 923, pp. 2-7.

⁹ Fed. R. Civ. P. 59, as made applicable to bankruptcy cases by Fed. R. Bankr. P. 9023. *In re John Q Hammons Fall 2006, LLC*, 614 B.R. 371, 376 (Bankr. D. Kan. 2020) (citations omitted); *In re Smith*, 541 B.R. 914, 915, n. 11 (Bankr. M.D. Fla. 2015).

¹⁰ *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (quoting *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999)).

Under Fed. R. Bankr. P. 7054, the bankruptcy court may award costs to the prevailing party except when a federal statute or rule otherwise provides.¹¹

Rule 7001 in Part VII of the Federal Rules of Bankruptcy Procedure lists ten kinds of proceedings that are considered “adversary proceedings.” Other requests for relief in bankruptcy cases, including objections to claims, are considered “contested matters” that are governed by Rule 9014.¹²

Rule 9014(c) lists the Part VII Rules (the rules governing adversary proceedings) that apply in contested matters, including “Rules 7054-7056.” As the bankruptcy court in *In re Chamberlain* stated,

Although the Creditor asserts that Fed. R. Bankr. P. 7054 “does not apply to contested matters,” the black and white text of Fed. R. Bankr. P. 9014(c) states the exact opposite. Fed. R. Bankr. P. 9014(c) confirms that Fed. R. Bankr. P. 7054 presumptively *does apply to contested matters* like the First Claim Objection.¹³

Here, as in *Chamberlain*, Rule 7054 applies to the contested matter initiated by Debtor’s objection to Claimant’s claim and, likewise, to the SJ Order.

The Court has reviewed the other grounds for reconsideration asserted by Claimant and finds that they do not set forth any newly discovered evidence or manifest errors of law or fact.

¹¹ Fed. R. Bankr. P. 7054(b)(1).

¹² *In re Chamberlain*, 555 B.R. 14, 20-21 (Bankr. D. Col. 2016) (“A debtor’s objection to a bankruptcy proof of claim initiates a ‘contested matter’ within the meaning of Fed. R. Bankr. P. 9014.”).

¹³ *In re Chamberlain*, 555 B.R. at 21-22 (emphasis in original).

Accordingly, it is

ORDERED that Claimant Steven R. Yormak's *Motion for Reconsideration of Court Order (DE 918) Denying in Part Creditor Motion to Set Aside Clerk's Order (DE 882); Alternatively Motion to Renew Creditor Stay of Court Order (DE 918) (Doc. No. 923)* is **DENIED**.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.