

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:06-bk-03499-ABB  
Chapter 7

RANDY ROSS

Debtor.

BLUE DREAM POOLS, INC.,

Plaintiff,

vs.

Adv. Pro. No. 6:07-ap-00010-ABB

RANDY ROSS,

Defendant,

**ORDER**

This matter came before the Court on the Motion for Rehearing (Doc. No. 25) ("Motion") filed by Blue Dream Pools, Inc., the Plaintiff herein (the "Plaintiff"), seeking reconsideration of the Order entered on July 19, 2007 (Doc. No. 23) ("Order"). The Plaintiff filed a two-count Complaint seeking denial of the Debtor's discharge pursuant to 11 U.S.C. Section 727 in Count I and avoidance of certain alleged transfers in Count II. The Order dismissed the Plaintiff's request for a final judgment by default on Count I, and set a status conference on Count I for August 20, 2007.

The Plaintiff filed the motion within ten days of the entry of the Order and cites Federal Rule of Civil Procedure 12 in support of its motion. Rule 12 is inapplicable. A motion for reconsideration filed within ten days after the entry of an order is treated as a motion to alter or amend the order pursuant to Federal Rule of Civil Procedure 59(e), which is made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9023. In re Waczewski, Case No. 6:06-bk-00620-KSJ, 2006 WL 1594141 (Bankr. M.D. Fla. May 5, 2006); In re Mathis, 312 B.R. 912, 914 (Bankr. S.D. Fla. 2004).

The Motion is governed by Federal Rule of Civil Procedure 59(e).<sup>1</sup>

Rule 59(e) does not specify grounds for relief, but the Eleventh Circuit Court of Appeals has articulated the only grounds for granting a motion for reconsideration "are newly-discovered evidence or manifest errors of law or fact." In re Kellogg, 197 F.3d 1116, 1119 (11th Cir. 1999). Reconsideration of an order pursuant to Federal Rule of Civil Procedure 59(e) "is an extraordinary remedy to be employed sparingly." In re Mathis, 312 B.R. at 914 (citing Sussman v. Salem, Saxon & Nielson, P.A., 153 F.R.D. 689, 694 (M.D. Fla. 1994)).

The Plaintiff has presented no newly-discovered evidence or manifest error of law or fact warranting the reconsideration or amendment of the Order. The entry of a default judgment is ". . . committed to the discretion of the district court." Hamm v. De Kalb County, 774 F.2d 1567, 1576 (11th Cir. 1985). No basis for reconsideration or amendment of the Order has been established pursuant to Federal Rule of Civil Procedure 59(e).

The Plaintiff contends it has not been allowed an opportunity to present evidence on Count I. The Plaintiff shall have an opportunity to present evidence in support of Count I at trial, in the event the Plaintiff desires a trial be set. The last sentence of the Order sets a status conference on Count I of the Complaint for August 20, 2007 at which the parties shall advise the Court as to the status of this matter and a trial date shall be set, if appropriate.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Plaintiff's Motion is hereby **DENIED**.

Dated this 7<sup>th</sup> day of August, 2007.

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

<sup>1</sup> Federal Rule of Civil Procedure 59(e) entitled "Motion to Alter or Amend Judgment" provides: "Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment."