

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:05-bk-09328-ABB
Chapter 7

JOHN D. DAMUTH,

Debtor.

WELLS FARGO FINANCIAL
NATIONAL BANK,

Adv. Pro. No. 6:05-ap-00317-ABB

Plaintiff,

vs.

JOHN D. DAMUTH,

Defendant.

ORDER

This matter came before the Court on the Motion for Relief or Rehearing from the Court's Memorandum Opinion Entered April 4, 2006 ("Rehearing Motion") (Doc. No. 18) filed by Wells Fargo Financial National Bank, the Plaintiff herein ("Plaintiff"), against John D. Damuth, the Defendant and Debtor herein ("Debtor"). The Plaintiff seeks to have a debt in the amount of \$5,293.49 deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(6) and requested judgment by default through its Motion for Entry of Judgment After Default ("Default Motion") (Doc. No. 5). The Court entered a Memorandum Opinion on April 4, 2006 (Doc. No. 14) denying the Default Motion. The Plaintiff seeks reconsideration of the Memorandum Opinion through its Rehearing Motion and various supporting documents it filed on May 3 and May 5, 2006: (i) transcript of the Debtor's § 341 meeting of creditors; (ii) transcript of the Rule 2004 examination of the Debtor on November 15, 2005; and (iii) a copy of Florida Statute § 818.01 (collectively, the "Supporting Documents").

Federal Rule of Civil Procedure 60, made applicable to bankruptcy proceedings through Federal Rule of Bankruptcy Procedure 9024, allows for relief from a judgment or order pursuant to certain circumstances including clerical mistakes, inadvertence, surprise, excusable neglect, newly discovered evidence, and fraud. The Supporting Documents were in existence when the Plaintiff filed its Default Motion and should have been presented to the Court at that time. The Plaintiff had a second opportunity to present the Supporting Documents to the Court at the evidentiary hearing on the Default Motion on March 13, 2006, but did not present the documents. The Plaintiff has failed to establish any grounds for relief from the Memorandum Opinion pursuant to Federal Rule of Civil Procedure 60.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Plaintiff's Rehearing Motion is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that a status conference shall be held on June 12, 2006 at 2:30 p.m.

Dated this 18th day of May, 2006.

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