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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re
RICHARD ISAAC FINE,

Debtor(s).

BK. No. LA 02-37680 BB
Chapter 7

**MEMORANDUM RE RULING ON
“MOTION FOR RECONSIDERATION
OF CLAIM OF WINSTON FINANCIAL
GROUP, INC. AND PAYMENT OF
FUNDS RECEIVED AND FOR SALE
OF RESIDENCE TO ESTATE,
RICHARD FINE AND MARYELLEN
OLMAN FINE”**

(not set for hearing)

On July 26, 2007, debtor Richard Isaac Fine (the “debtor”) filed a motion entitled, “Motion for Reconsideration of Claim of Winston Financial Group, Inc. And Payment of Funds Received and for Sale of Residence to Estate, Richard Fine and Maryellen Olman Fine” (the “Motion”). Although styled as a motion to reconsider the allowance of the claim of Winston Financial Group, Inc. in the above-entitled chapter 7 case, the Motion is, in substance, a collateral attack on various dispositive orders entered by this Court, and affirmed by the Bankruptcy Appellate Panel and the Ninth Circuit, in two prior adversary proceedings that the debtor commenced against defendants Michael Weinstein and Winston Financial Group, Inc. (jointly, the “Winston Defendants”), namely, adversary proceedings nos. LA 03-02085 and LA 04-01303 (jointly, the

1 “Adversary Proceedings”). For the reasons set forth below, the Court concludes that the
2 debtor has failed to make the showing necessary to entitle him, his wife or his chapter 7
3 estate to any of the relief requested in the Motion, and that the Motion should be denied
4 in its entirety on both procedural and substantive grounds.

5 **I. THE MOTION IS PROCEDURALLY DEFECTIVE**

6 a. The Motion is Untimely

7 Motions for reconsideration (or for a new trial) may be brought pursuant to
8 Federal Rule of Civil Procedure 59, made applicable to the Adversary Proceedings by
9 Federal Rule of Bankruptcy Procedure 9023, within 10 days after entry of the judgment
10 or order that the movant seeks to have reconsidered. The most recent orders in the
11 debtor’s bankruptcy case were entered in November of 2006. The Court first entered
12 judgment against the debtor in adversary proceeding no. 03-02085 on November 19,
13 2003 and entered an order denying the debtor’s motion for relief from that judgment on
14 May 12, 2004. This Court entered an order granting summary judgment against
15 defendant in adversary proceeding no. 04-01303 on October 6, 2004. All of these
16 orders were entered more than 10 days before the filing of the instant Motion.
17 Therefore, to the extent that it is correct to characterize the Motion as a motion for
18 reconsideration (or for a new trial) of any of these orders under Rule 59, the Motion is
19 untimely.

20 Federal Rule of Civil Procedure 60(b), made applicable herein by Federal
21 Rule of Bankruptcy Procedure 9024, also authorizes the filing of a motion for relief from
22 a judgment on various grounds, including “(2) newly discovered evidence which by due
23 diligence could not have been discovered in time to move for a new trial under Rule
24 59(b)” and “(3) fraud (whether heretofore denominated as intrinsic or extrinsic),
25 misrepresentation, or other misconduct of an adverse party.” Motions brought under
26

1 Rule 60(b) must be brought “within a reasonable time, and for reasons (1), (2) and (3)
2 not more than one year after the judgment, order or proceeding was entered or taken.”¹
3 The Motion appears to be one brought pursuant to Rule 60(b) in that the basis for the
4 relief appears to be “facts” that the debtor contends are newly-discovered that reveal
5 that the Winston Defendants have perpetrated a fraud upon this Court. This alleged
6 fraud appears to be Winston Financial Group, Inc.’s filing a secured proof of claim
7 against the estate and proceeding with a foreclosure sale, unlawful detainer actions and
8 a subsequent resale of the real property located at 12097 Summit Circle in Beverly Hills
9 (the “Property”) in the face of various denials contained in the verified answer that the
10 Winston Defendants filed on August 11, 2004 in adversary proceeding no. 04-01303
11 (the “Verified Answer”). However, as set forth above, all of the orders and judgments
12 that the debtor seeks to have reconsidered based on these alleged facts were entered
13 well over a year prior to the filing of the Motion, and all of the “newly-discovered” facts
14 alleged in the Motion occurred well over a year prior to the filing of the Motion. Thus,
15 the Motion is untimely under even the more generous time limits contained in Rule
16 60(b).

17 b. The Relief Sought Cannot be Obtained by Motion

18 The Motion seeks, among other things, an order compelling the payment
19 \$4,750,047 to the estate, the debtor and his wife, as well as reconsideration (and
20 disallowance) of Winston’s (secured) claim (and lien) against the Property. Pursuant to
21 Federal Rule of Bankruptcy Procedure 7001, these forms of relief must be sought by
22 way of an adversary proceeding. A simple motion will not suffice. Thus, the Motion is
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24 ¹ There is an exception to this one-year deadline in Fed. R. Bankr. Proc. 9024 for a motion
25 “for the reconsideration of an order allowing or disallowing a claim against the estate entered
26 without a contest.” This exception is inapplicable in this instance in that the orders that the debtor
seeks to have reconsidered were not orders allowing or disallowing a claim, and they most certainly
were *not* entered without contest. The parties actually and actively litigated each one.

1 procedurally defective on this basis as well.

2 c. The Debtor Has Not Provided Evidentiary Support for the Motion

3 In support of his contention that the Winston Defendants admitted facts in
4 the Verified Answer that are inconsistent with the positions that they have previously
5 advanced in this chapter 7 case and/or in the Adversary Proceedings, the debtor offers
6 excerpts from the Verified Answer in a declaration. This approach violates Federal Rule
7 of Evidence 1002 (the “best evidence rule”) and is unacceptable, particularly where, as
8 here, the debtor has *misquoted* the excerpts in each and every instance. Each
9 paragraph quoted from the answer contains an admission of a portion of the allegations
10 contained in the corresponding paragraph of the debtor’s complaint and ends with a
11 blanket denial of all other allegations contained in the paragraph. The debtor then
12 misquotes these paragraphs, adding language at the end of each, to make it appear
13 that the Winston Defendants *specifically* denied the particular allegation that is of
14 interest to the debtor. Even if the motion were timely and were not defective on the
15 merits for the reasons set forth below, it should be denied based on the deceptive and
16 defective manner in which the debtor has purported to offer evidence in support of the
17 Motion.

18 **II. THE MOTION IS SUBSTANTIVELY DEFECTIVE**

19 No matter what caption the debtor chooses to put on his Motion and no matter
20 which procedural vehicle he uses to bring this matter to the Court’s attention, the debtor
21 may not relitigate matters that are barred by the doctrines of claim and issue preclusion.
22 He has now brought at least three separate actions against the Winston Defendants
23 based on his contention that he has already paid off the amounts due under the
24 December 9, 1998 promissory note, that this note was usurious, that the foreclosure
25 sale of the Property was invalid and the unlawful detainer actions used to evict him from
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CERTIFICATE OF SERVICE BY MAIL

I certify that a true copy of this **ORDER** was mailed on **JUL 30 2007** to the parties listed below:

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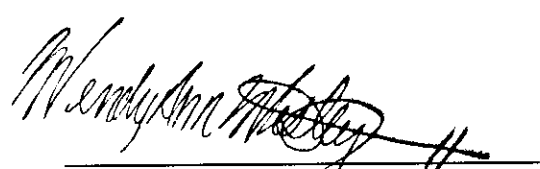
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DATED: **JUL 30 2007**


DEPUTY CLERK