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FILED & ENTERED

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CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

ARTURO GONZALEZ,

Debtor.

No. 2:15-bk-25283-RK

Chapter 7

**MEMORANDUM DECISION ON DEBTOR'S
MOTION FOR RECONSIDERATION OF
FEES TO TRUSTEE AND TRUSTEE'S CPA
AND ANY PARTY**

Vacated Hearing

Date: November 15, 2022

Time: 2:30 p.m.

On October 4, 2022, Debtor Arturo Gonzalez filed a Motion for Reconsideration on Compensation of Fees to Trustee and Trustee's CPA and Any Party ("motion for reconsideration") (Docket No. 668). On October 22, 2022, Debtor filed Additional Arguments in Motion for Reconsideration ("additional arguments") (Docket No. 677). Debtor seeks reconsideration of the court's Order on Final Fee Applications Allowing Payment of: (1) Court and U.S. Trustee Fees; and (2) Final Fees and Expenses of Trustee and Professionals ("order approving fees") (Docket No. 654), entered on September 21, 2022. On November 1, 2022, Chapter 7 Trustee Wesley Avery filed Trustee's Opposition to the Debtor's Motion for Reconsideration of Fees to Trustee and Trustee's CPA and Any Party ("opposition") (Docket No. 679). Having reviewed the

1 motion for reconsideration and additional arguments, and opposition, the motion for
2 reconsideration is hereby DENIED based on the following.

3 Debtor's motion for reconsideration fails to establish any factual or legal basis to
4 support reconsideration of the order approving fees. As noted in *Katyle v. Penn*
5 *National Gaming, Inc.*, 637 F.3d 462 (4th Cir. 2011), "The Federal Rules of Civil
6 Procedure do not provide for a postjudgment 'motion for reconsideration.' Rather, they
7 provide for a [Federal] Rule [of Civil Procedure] 59(e) motion to alter or amend the
8 judgment or a [Federal] Rule [of Civil Procedure] 60(b) motion for relief from judgment."
9 *Id.* at 470 n. 4. Debtor states: "This motion is made pursuant to Bankruptcy Rules 7054,
10 9023 and 9024 and Rules 54(b), 59(e) and 60(b)." Motion for Reconsideration, page 1,
11 lines 17-20. Based on applicable law and Debtor's representation, the court will
12 consider his motion as one within the scope of Federal Rules of Civil Procedure 59(e)
13 and 60(b) made applicable to this bankruptcy case pursuant to Federal Rules of
14 Bankruptcy Procedure 9023 and 9024.

15 Debtor's main arguments for reconsideration are that the fees of the Chapter 7
16 Trustee and his professionals must be denied because there was no dischargeable debt
17 and the Chapter 7 Trustee failed to fulfill his statutory duties in administering this case.
18 These arguments were the ones that Debtor made in his opposition and supplemental
19 opposition to the fees (Docket Nos. 624 and 648), which the court considered and orally
20 addressed at the hearing on the Chapter 7 Trustee's final report and fee applications of
21 the Trustee and his professionals on September 20, 2022. As the court stated at the
22 hearing on September 20, 2022, Debtor's main argument that there was no
23 dischargeable debt in this bankruptcy case is undermined by his implicit
24 acknowledgment that there was such dischargeable debt by his scheduling of \$97,045
25 in general unsecured claims, or rights to payment, of creditors, on his voluntary petition
26 for relief under Chapter 7 of the Bankruptcy Code (Docket No. 1, Schedule F), which
27 was prepared and filed with the assistance of counsel that he chose. See 11 U.S.C. §§
28 101(5) and (12) (defining claim as "right to payment", and defining debt as "liability

1 on a claim"). Because Debtor had these debts, he chose to file for bankruptcy, which
2 was his voluntary act.

3 That the creditors did not file proofs of claim for the debts from general
4 unsecured claims totaling \$97,045 that Debtor listed that he owed on his bankruptcy
5 schedules does not mean that these debts were not dischargeable. The language of 11
6 U.S.C. § 524 does not limit the effect of the discharge to only those dischargeable debts
7 for which a proof of claim is filed. See 11 U.S.C. § 524(a). By listing all of these
8 general unsecured creditor claims totaling \$97,045 on his bankruptcy schedules, Debtor
9 wanted to discharge his liability for these claims, or debts, whether the creditors filed
10 proofs of claim or not. Saying that there were no dischargeable debts in this case is
11 simply incorrect. The court also notes that Debtor did not list these claims of creditors
12 as contingent, unliquidated or otherwise disputed by him, including the claims of certain
13 creditors which were later found to be time-barred, indicates that he did not contest
14 these debts as contingent, unliquidated or disputed, or in other words, he listed these
15 debts on his bankruptcy schedules because he thought he owed them. By now saying
16 there were no dischargeable debts, Debtor ignores the fact that he scheduled all of
17 these creditor claims as owed by him on his bankruptcy petition in this case, liability for
18 which he intended to be subject to discharge if he was entitled to a discharge of these
19 debts in this case. Debtor's bankruptcy petition and schedules are admissions that he
20 had potentially dischargeable debt in this case contrary to his assertions in the motion
21 for reconsideration, which indicate that the court's ruling that he had such potentially
22 dischargeable debt was not clearly or manifestly in error.

23 The Chapter 7 Trustee properly administered this case, given the amount of
24 creditor claims scheduled by Debtor on his bankruptcy petition and potential proofs of
25 claims of creditors that could have been filed, in light of Debtor's failure to disclose all of
26 his real estate sales commissions on his bankruptcy schedules and to turn over these
27 prepetition assets to the Trustee which Debtor was spending down during the pendency
28 of the case and would not turn over. The Trustee had to act when he did because

1 Debtor was spending down the real estate sales commissions, which were prepetition
2 assets of the bankruptcy estate to be potentially used to pay prepetition creditor claims
3 and postpetition administrative expense claims, whether proofs of claim were filed
4 before the claims bar date or not (as untimely proofs of claim still needed to be paid,
5 through subordinated in priority). As the court stated at the hearing on September 20,
6 2022, the fees of the Trustee and his professionals were reasonable and necessary and
7 allowable pursuant to 11 U.S.C. §§ 326 and 330 in light of the work they performed in
8 this case, given the extensive litigation that occurred regarding turnover of these assets
9 and Debtor's exemption claims in particular.

10 Pursuant to Federal Rules of Bankruptcy Procedure Rule 9023, "[a] motion for a
11 new trial or to alter or amend a judgment shall be filed, and a court may on its own order
12 a new trial, no later than 14 days after entry of judgment." Federal Rule of Bankruptcy
13 Procedure 9023 makes Federal Rule of Civil Procedure 59 applicable to this bankruptcy
14 case. Although Debtor timely filed his motion to amend or alter judgment, or as he calls
15 it, for reconsideration, the motion failed to state any grounds to amend or alter judgment
16 under Federal Rule of Civil Procedure 59(e). There are four basic grounds to amend or
17 alter judgment under Federal Rule of Civil Procedure 59(e): "(1) if such motion is
18 necessary to correct manifest errors of law or fact upon which the judgment rests; (2) if
19 such motion is necessary to present newly discovered or previously unavailable
20 evidence; (3) if such motion is necessary to prevent manifest injustice; or (4) if the
21 amendment is justified by an intervening change in controlling law." *Allstate Insurance*
22 *Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011) (citation omitted). A motion to
23 amend or alter judgment under Rule 59(e) "offers an extraordinary remedy, to be used
24 sparingly in the interest of finality and conservation of judicial resources." *Kona*
25 *Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (citation
26 omitted). Absent highly unusual circumstances, a motion to amend or alter judgment
27 under Federal Rule of Civil Procedure 59(e) will not be granted "unless the district court
28 is presented with newly discovered evidence, committed clear error, or if there is an

1 intervening change in the controlling law.” *Id.* (citation omitted). In this case, Debtor
2 has failed to show that there was a clear or manifest error in the court’s ruling, or there
3 is any newly discovered evidence or previously unavailable evidence, or there is a need
4 to prevent a manifest injustice, or there is any intervening change in controlling law that
5 would justify amendment or alteration of the court’s decision in approving the final fees
6 of the Chapter 7 Trustee and his professionals. That is, specifically, the court’s ruling
7 that Debtor’s argument that he had no dischargeable debt lacked merit was not clearly
8 or manifestly in error. Since the motion for reconsideration fails to state any proper
9 grounds to alter or amend judgment, the motion should be denied for insufficient cause
10 under Federal Rule of Civil Procedure 59(e).

11 In the motion, Debtor refers to Federal Rule of Civil Procedure 60(b) providing for
12 relief from judgment, which may be applicable through Federal Rule of Bankruptcy
13 Procedure 9024. Debtor failed to cite any specific subsection of Federal Rule of Civil
14 Procedure 60(b) or facts to support reconsideration under such rule. However, if a
15 Federal Rule of Civil Procedure 60(b) motion for relief from judgment is filed within the
16 time limits of a motion under Federal Rule of Civil Procedure 59(e), the motion should
17 be treated as a motion to amend or alter judgment under Federal Rule of Civil
18 Procedure 59(e). *Dove v. CODESCO*, 569 F.2d 807, 809 (4th Cir. 1978). Therefore,
19 the court considers Debtor’s motion to be a motion for reconsideration under Federal
20 Rule of Civil Procedure 59(e) rather than one under Federal Rule of Civil Procedure
21 60(b). As stated above, the motion should be denied as there are no grounds to grant a
22 motion to alter or amend judgment under Federal Rule of Civil Procedure 59(e).

23 Debtor asserts additional arguments in Docket No. 677, filed on October 22,
24 2022. These additional arguments are new arguments that were not previously raised
25 in Debtor’s opposition to the Trustee’s final report and the fee applications of Trustee
26 and his professionals. As such, the court should not consider the new arguments not
27 previously raised in the original litigation of the Trustee’s final report and fee
28 applications of the Trustee and his professionals. “A district court does not abuse its

1 discretion when it disregards legal arguments made for the first time on a motion to
2 amend, and a party that fails to introduce facts in a motion or opposition cannot
3 introduce them later in a motion to amend by claiming that they constitute
4 ‘newly discovered evidence’ unless they were previously unavailable.” *Zimmerman v.*
5 *City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) (citations omitted); *see also*,
6 *E.E.O.C. v. St. Joseph’s Hospital, Inc.*, 842 F.3d 1333, 1349 (11th Cir. 2016) (“Rule
7 59(e) may not be used to raise new legal theories or arguments . . .”). In other words,
8 the arguments for reconsideration must be made from the arguments presented on the
9 original motion, not new arguments raised for the first time, because such new
10 arguments are not ones being “reconsidered” because they were not made before.

11 Additionally, the court denies Debtor’s motion for reconsideration based on
12 procedural grounds. The motion was not accompanied by a written notice of motion as
13 required by Local Bankruptcy Rule 9013-1(c)(2) on the mandatory court form, Hearing
14 Notice, Form F9013-1.1.HEARING.NOTICE. Even though Debtor is a self-represented
15 litigant, he is required to comply with the court’s rules the same as parties represented
16 by counsel as stated in Local Bankruptcy Rule 9011-2(d).

17 In ruling upon this motion for reconsideration, the court orders that Debtor may
18 not file any further motions for reconsideration of the order approving the Trustee’s final
19 report and the fee applications of the Trustee and his professionals pursuant to Federal
20 Rule of Bankruptcy Procedure 9023 and Federal Rule of Civil Procedure 59(e) as any
21 additional motions under these rules would be time-barred. If Debtor believes that the
22 court’s rulings on the Trustee’s final report and fee applications of the Trustee and his
23 professionals and on his motion for reconsideration were in error, Debtor’s remedy now
24 should be to take an appeal of these rulings for review by an appellate court pursuant to
25 Federal Rules of Bankruptcy Procedure 8001 *et seq.*, not seeking further
26 reconsideration of these rulings in this court pursuant to Federal Rule of Bankruptcy
27 Procedure 9023.

28 A separate final order consistent with this memorandum decision is being filed

1 and entered concurrently herewith.

2 Because the court has ruled on Debtor's motion for reconsideration, the hearing
3 on the motion for November 15, 2022 at 2:30 p.m. is vacated. No appearances are
4 required on the motion on November 15, 2022 as the court will not call the motion for
5 hearing on that date.

6 IT IS SO ORDERED.

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24 Date: November 9, 2022



25 _____
26 Robert Kwan
27 United States Bankruptcy Judge
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