



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Adrienne Marcia Moore, et al.
Debtor(s).

Case No.: 2:19-bk-10379-ER
Chapter: 11

**MEMORANDUM OF DECISION
DENYING DEBTOR'S SECOND
MOTION FOR RECONSIDERATION
AND/OR TO VACATE DISMISSAL
[DOC. NO. 59]**

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local
Bankruptcy Rule 9013-1(j)(3)]

Adrienne Marcia Moore (the "Debtor") moves for the second time for reconsideration of the "Order Granting United States Trustee's Application To Dismiss Case With 180-Day Refiling Bar Based Upon Debtor's Failure to Comply With Prior Court Order And Dismissing Case With 180-Day Bar" (the "Dismissal Order") [Doc. No. 47]. For the reasons set forth below, the Motion is DENIED.

I. Background

The Debtor initiated a voluntary Chapter 11 petition on January 15, 2019 (the “Petition”) [Doc. No. 1].

A. The Motion to Dismiss and Continuing Compliance Order

On May 13, 2019, the United States Trustee (the “UST”) moved to dismiss this matter, with a 180-day refiling bar, based on the Debtor’s failure to comply with certain Debtor-in-Possession filing and reporting requirements. *See Mot. to Dismiss or Convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* (the “Motion to Dismiss”) [Doc. No. 27]. There was no written opposition to the Motion to Dismiss, but on the hearing date, the UST and the Debtor advised the Court of their intention to stipulate to a continuing compliance agreement.

On June 20, 2019, the Court entered an *Order Granting in Part United States Trustee’s Motion Under 11 U.S.C. § 1112(b)(1), Setting Deadline, and Mandating Continuing Compliance* [Doc. No. 39] (the “Continuing Compliance Order”), which provided in relevant part:

Debtor shall cure all outstanding compliance items with the United States Trustee, including sufficient evidence of closing of all pre-petition bank accounts, proof of opening of debtor-in-possession bank accounts, and projected cash flow, by no later than **July 18, 2019**. If the Debtor fails to cure all outstanding compliance items with the United States Trustee by July 18, 2019, the United States Trustee may, without further notice and hearing, submit an application to dismiss to [sic] case with a 180-day bar or convert the case, whichever is in the best interest of creditors

Id.

On August 5, 2019, the UST filed its *Application to Dismiss Case With 180-Day Refiling Bar Based Upon Debtor’s Failure to Comply With Prior Court Order* [Doc. No. 45] (the “Dismissal Application”). The Dismissal Application provided that as of the date of its filing, the Debtor had failed to submit: (i) proof of opening of debtor-in-possession bank accounts; (ii) evidence of closing of all pre-petition bank accounts; and (iii) a projected cash flow. *Id.* Therefore, in accordance with the terms of the Continuing Compliance Order, the UST requested that the Court immediately enter an order dismissing the case with a 180-day bar to refiling.

On August 6, 2019, the Court entered the Dismissal Order.

B. The First Motion to Reconsider

On August 16, 2019, the Debtor filed a reconsideration motion (the “First Motion to Reconsider”). The Court previously noted that the First Motion to Reconsider primarily consisted of a comprehensive summary of the Debtor’s personal and financial difficulties dating back to 1990. The only relevant facts provided were Debtor’s unsubstantiated allegations of her

inability to close pre-petition accounts and open debtor-in-possession bank accounts. Upon review of all filed pleadings, the Court found Debtor's unsupported statements insufficient to vacate or modify the Dismissal Order pursuant to Civil Rule 59(e). In addition, the Court found that the Debtor's unexplained failure to comply with, or even challenge, the Continuing Compliance Order was fatal to the First Motion to Reconsider.

On August 19, 2019, the Court entered an *Order Denying Debtor's Motion For Reconsideration And/Or To Vacate Dismissal* [Doc. No. 56].

C. The Second Motion to Reconsider

The Debtor filed another motion for reconsideration (the "Second Motion to Reconsider") on September 6, 2019 [Doc. No. 59]. In the Second Motion to Reconsider, the Debtor argues for the first time that communication issues with UST's Office, and principal contact, Hatty K. Yip, as well as the federal government shutdown, impeded her ability to timely prosecute her case. Throughout this period, the Debtor maintains exercising good-faith efforts to openly communicate with the UST's office and to achieve compliance with all outstanding requirements.

D. The UST's Opposition to the Second Reconsideration Motion

On September 9, 2019, the UST filed an *Opposition of United States Trustee to Second Motion for Reconsideration and/or to Vacate Dismissal* [Doc. No. 61] (the "Opposition to Reconsideration"). The UST notes that the Debtor failed to submit any opposition to the Motion to Dismiss, despite previously possessing the evidence she now attaches in support of the instant motion. In addition, the UST argues that Debtor has failed to enumerate any supporting grounds for reconsideration under either Civil Rules 59 or 60. Moreover, it is an undisputed fact that Debtor failed to timely comply with reporting requirements, and her explanations of attempts to cure outstanding items are insufficient to obtain relief.

E. Debtor's Reply to the UST's Opposition to the Second Motion to Reconsider

On September 11, 2019, the Debtor filed a reply to the Opposition to Reconsideration, making new arguments and re-asserting older points [Doc. No. 63]. In general, Debtor counters that the UST fails to provide any supporting evidence contradicting her good-faith efforts to satisfy all requirements. Debtor restates her inability to complete requirements in a timely manner was due to communication gaps, exacerbated by the federal government shutdown. Debtor contends that she was compliant with Chapter 11 requirements as of the July 18, 2019 deadline, but shortly after, had to search for another bank after one financial institution unexpectedly closed her DIP account. While Debtor is adamant that she timely secured new DIP accounts with a second banking institution, she concedes not being able to close one of her pre-petition accounts, a requirement to Chapter 11 reorganization.

II. Findings and Conclusions

Although the Debtor only discusses Civil Rule 60(b) in response to the UST's Opposition to Reconsideration, she does not assert any legal standards in her moving papers upon which to grant relief. Civil Rule 59(e) governs motions for reconsideration.¹ Reconsideration under Civil Rule 59(e) is "an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted). There are four grounds upon which Civil Rule 59(e) may be granted: "1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; 2) the moving party presents newly discovered or previously unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an intervening change in controlling law." *Enodis Corp. v. Continental Cas. Co.* 2012 WL 2159598 *1 (C.D.Cal. 2012).

A motion for reconsideration may not be used "to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Haw. 1990), *aff'd and remanded sub nom. Greco v. Troy Corp.*, 952 F.2d 406 (9th Cir. 1991). Reconsideration may be appropriate if the Court is presented with newly discovered evidence. *Kona Enterprises*, 229 F.3d at 890. However, the "overwhelming weight of authority is that the failure to file documents in an original motion or opposition does not turn the late filed documents into 'newly discovered evidence.'" *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). To support a motion for reconsideration based upon newly discovered evidence, the "movant is 'obliged to show not only that this evidence was newly discovered or unknown to it until after the hearing, but also that it could not with reasonable diligence have discovered and produced such evidence at the hearing.'" *Frederick S. Wyle Profl Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985).

In the instant matter, the circumstances do not support reconsideration of the Court's denial of the First Motion to Reconsider or of the Dismissal Order. Here, the Debtor argues that she substantially complied with Chapter 11 requisites, and blames her non-compliance on alleged poor communication with the UST's office, the federal government shutdown, and continuous setbacks in what the Debtor characterizes as an increasingly-complex case. However, a motion for reconsideration cannot be used to present arguments that were previously available to the movant. *See Kona Enterprises*, 229 F.3d at 890. The evidence submitted in support of the Second Motion to Reconsider was known by, and available to the Debtor before or at the time the Dismissal Application and the First Motion to Reconsider were filed. For instance, the e-mail communications proffered in support of the Debtor's alleged due diligence

¹ Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

date from on or about February 6, 2019 to on or about August 8, 2019 (“Exhibit ‘1’ in Support of Motion for Reconsideration and/or to Vacate Dismissal”) [Doc. No. 60]. The federal government shutdown took place months before the Motion to Dismiss was filed, lasting from December 22, 2018 to January 25, 2019. Guilbert Gates, Mihir Zaveri & Karen Zraick, *The Government Shutdown Was the Longest Ever. Here’s the History*, N.Y. Times, Jan. 25, 2019, <https://www.nytimes.com/interactive/2019/01/09/us/politics/longest-government-shutdown.html>. To the extent these arguments are based on, or supported by, this information, such arguments were available to the Debtor and could have been asserted in opposition to the Motion to Dismiss or the Dismissal Application, or in support of the First Motion to Reconsider.

Instead, much of the evidence proffered in support of the instant motion is adverse to the Debtor as it indicates her inability to come in full compliance with the Continuing Compliance Order. Similarly, the evidence demonstrates that the UST’s office communicated extensively with the Debtor regarding outstanding Chapter 11 requirements. In fact, in an e-mail dated August 8, 2019 (and, as to which no reply was attached), a representative from the UST’s office enumerated a list of requirements that the Debtor failed to satisfy [Doc. No. 60]. Additionally, Debtor concedes her failure to timely close all pre-petition accounts. The Court has sufficient evidence to determine that the Debtor failed to timely meet all of Chapter 11 requirements, and was thereby in violation of the Continuing Compliance Order. Moreover, while it is noted that Debtor made some attempts to open and maintain DIP accounts, this is not an adequate explanation for her inability to satisfy other requirements, such as closing of all pre-petition accounts. Therefore, the evidence does not support that Debtor had a valid justification for her non-compliance.

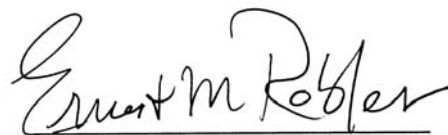
Last, Debtor’s argument that a Chapter 11 reorganization is in the best interest of her creditors is unsupported—the evidence offered says little, if anything, about the financial growth of Debtor’s business or of the alleged resolution of outstanding claims.

Conclusion

For the reasons set forth above, the Debtor’s Second Motion to Reconsider is DENIED. The Court will enter an order consistent with this Memorandum of Decision. Any future motions for reconsideration are strongly discouraged, and may lead to a determination that Debtor is a vexatious litigant.

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Date: September 17, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge