

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
GREEN THUMB OF INDIANA, LLC) CASE NO. 05-14171
)
Debtor)

DECISION AND ORDER DENYING MOTION TO ALTER OR AMEND

At Fort Wayne, Indiana, on January 24, 2007

In this chapter 11 case¹ the unsecured creditors did not accept the debtor's proposed plan and the debtor asked the court to confirm the plan over that rejection. Doing so is commonly referred to as a "cram down" and turns on whether the proposed plan is "fair and equitable" and "does not discriminate unfairly" as to the rejecting class. 11 U.S.C. § 1129(b)(1). Although what constitutes a fair and equitable plan might seem to be a bit subjective, the concept is defined by the Bankruptcy Code not only for the debtor's secured and unsecured creditors but for its interest holders as well. See, 11 U.S.C. 1129(b)(2)(A), (B), (C). The court held a trial of the issue, as a result of which it determined that the proposed plan was worthy of being confirmed and did so by an order issued on November 17, 2006. The only rejecting creditor that chose to participate in the confirmation trial, P.V.P. Industries, has filed a motion, accompanied by a brief in support thereof, asking the court to alter or amend its order confirming the plan. The motion has been filed pursuant to Rule 59 of the Federal Rules of Civil Procedure, and argues that the court misinterpreted one of the parties' stipulations of fact and that this constitutes a manifest error of law or fact. It is that motion which is presently before the court.

Rule 59 of the Federal Rules of Civil Procedure is made applicable to these proceedings by

¹This case is governed by the law as it existed prior to October 17, 2005.

Bankruptcy Rule 9023. See, Charles v. Daley, 799 F.2d 343, 347 (7th Cir. 1986); Deutsch v. Burlington Northern R. Co., 983 F.2d 741, 744 (7th Cir. 1992), cert. denied, 507 U.S. 1030, 1135 S.Ct. 1845 (1993). The motion is addressed to the court’s discretion. Figgie Int’l, Inc. v. Miller, 966 F.2d 1178, 1179 (7th Cir. 1992). It “may only be granted if the movant shows there was a mistake of law or fact or presents newly-discovered evidence that could not have been discovered previously.” Deutsch, 983 F.2d at 744 (citing Figgie, 966 F.2d at 1180). Publishers Resource Inc. v. Walker-Davis Publications, Inc., 762 F.2d 557, 561 (7th Cir.1985). It is not an opportunity to rehash earlier arguments, or to present arguments or evidence “that could and should have been presented” before, in the hope that the court will change its mind. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir.1996)(citing LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir.1995)).

P.V.P. argues that the court misconstrued or misinterpreted the parties’ stipulation number 9, which is contained in the joint stipulations of fact, witness and exhibit lists that P.V.P. and the debtor filed shortly before trial. Although the proper interpretation of this particular stipulation was the subject of some argument and debate at trial, the argument P.V.P. makes in its present motion was not raised at trial. As an argument that could have been, but was not, advanced at trial, P.V.P.’s new construction of stipulation nine cannot properly be the subject of a Rule 59 motion. See, Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir.1996)(citing LB Credit Corp. v. Resolution Trust Corp., 49 F.3d 1263, 1267 (7th Cir.1995)).

Even if P.V.P.’s argument concerning the proper interpretation of the stipulation is considered by the court, it does not succeed. The stipulation should be interpreted according to its plain meaning and the words it contains should be given their ordinary meaning. See, In re Enron

Corp., 349 B.R. 96, 105 (Bankr. S.D. N.Y. 2006) (stipulations interpreted according to contract law); U.S. v. Liranzo, 944 F.2d 73, 77 (2nd Cir. 1991) (agreements interpreted according to contract law); Hilbert v. Conseco Services, LLC, 836 N.E.2d 1001, 1008 (Ind. Ct. App. 2005) (interpretation of contracts under Indiana law). It should not be subjected to an esoteric interpretation which can only be divined and understood by those who have been initiated into the proper mysteries. P.V.P.'s argument contorts the language of the stipulation in order to make it say something radically different than what it fairly and plainly does. This is not only improper, but if the court were to accept P.V.P.'s arguments it would discourage litigants from ever entering into any stipulations of facts because of the fear that the other side would later claim that the document says something other than what it apparently and unambiguously does.

To the extent P.V.P. is advancing an argument that 1st Source Bank is receiving more than the full payment of its claim, that argument also fails. The amount of a creditor's claim is specified by the Bankruptcy Code as the amount due as of the date of the petition, 11 U.S.C. § 502(b), together with any allowable post-petition interest, fees, and additional charges provided for by the underlying loan documents. See, 11 U.S.C. § 506(b). P.V.P. does not argue that the bank is being paid more than the total amount due it from the debtor, even though it does contend that the bank is receiving more than 100% of its claim. The cases upon which it relies for the argument, In re Coram Healthcare Corp., 315 B.R. 321, 337 (Bankr. D. Del. 2004); In re Exide Technologies, 303 B.R. 48, 61 (Bankr. D. Del. 2003); In re R & S Vinyl Products Group, LLC, 291 B.R. 685 (Bankr. W.D. Pa. 2003); In re Mcorp Financial, Inc., 137 B.R. 219, 235 (Bankr. S.D. Tex. 1992), are all inapposite. In them, the creditor was receiving something other than money in satisfaction of its claim – such as the proceeds from a lawsuit that had yet to be concluded, MCorp, 137 B.R. 219, or an equity stake

in the debtor, Coram Healthcare, 315 B.R. 321; Exide Technologies, 303 B.R. 48 – and the value of that property in relation to the amount due was open to some debate.² Here, by contrast, the bank is receiving cash and the value of that is not debatable.

P.V.P.'s motion is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

²The other case cited in support of the argument, R & S Vinyl, appears to be addressing the proper time to value property securing a creditor's claim pursuant to § 506, and does not involve the value of property being distributed.