

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
JANICE RENEJA JACKSON) CASE NO. 05-14646
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on June 18, 2008.

Before the court in this chapter 7 case is debtor's motion to correct errors regarding the decision and order of April 16, 2008, denying the debtor's renewed objection to a claim filed by FV-1 and her request for turnover of unclaimed funds that have been deposited with the clerk of this court for the benefit of that creditor.

Although the present motion does not identify the procedural rule upon which it is based, it appears to have been filed pursuant to Rule 59 of the Federal Rules of Civil Procedure, which is made applicable to these proceeding by Bankruptcy Rule 9023. Such motions are addressed to the court's discretion, In re Prince, 85 F.3d 314, 324 (7th Cir.1996) and may be considered without a hearing or requiring a response. See, Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991). See also, N.D. Ind. L.B.R. B-9023-1(b).

A Rule 59 motion to alter or amend generally requires the movant to demonstrate a manifest error of law or fact or newly discovered evidence that could not have been discovered previously. See, Deutsch v. Burlington Northern R. Co., 983 F.2d 741, 744 (7th Cir. 1992)(citing Figgie Int'l Inc. v. Miller, 966 F.2d 1178, 1180 (7th Cir. 1992)); Publishers Resource Inc. v. Walker-Davis Publications, Inc., 762 F.2d 557, 561 (7th Cir.1985). It may also be appropriate if the court has clearly misunderstood the party, rendered a decision outside of the issues raised, or if there was a significant change in the law since the issues were submitted. Bank of Waunakee v. Rochester

Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir.1990). 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)).

The debtor’s renewed objection presented largely the same arguments as those advanced in her original objection to FV-1’s claim, which the court overruled on August 23, 2007.¹ The only argument which either was not or could not have been presented to the court at that time is based upon statements the trustee made at the hearing on the debtor’s original objection. The debtor contends the trustee indicated that if FV-1’s distribution check was not cashed that money would be returned to the debtor² and, based upon this statement, the debtor acquiesced in the court’s ruling. FV-1’s check was not cashed, but, instead of paying the money to the debtor, the trustee treated it as unclaimed funds and paid it to the clerk of the court for FV-1’s use and benefit. See, 11 U.S.C. § 347(a).

The debtor did not provide a transcript of the hearing on her original objection to support the argument concerning the trustee’s statement at that hearing. Because that statement was apparently so central to the debtor’s position, the court obtained one. The statement was made during an exchange explaining how the trustee treats distributions returned by creditors whose debt has been

¹Indeed, the first four paragraphs of the renewed objection are identical to the debtor’s original objection. At the hearing on that objection, held on August 15, 2007, the court explained why those allegations were not a sufficient basis for completely denying a creditor’s claim. To the extent both the present motion and the renewed objection present arguments addressed by the court at that hearing there is no reason to revisit those issues here.

²The distribution on account of FV-1’s claim had been equitably subordinated to the full payment all unsecured claims. Since the assets of the estate were sufficient to pay unsecured creditors in full, absent a distribution to FV-1, any remaining funds would be paid to the debtor. See, 11 U.S.C. § 726(a).

paid from some other source. She stated:

. . . typically those checks are sent back to Trustee with notes that they're paid in full. And, then, the monies, it's either redistributed to other . . . creditors, or, if nothing is owed, sent back to the Debtor. . . . Transcript of hearing held on Aug. 15, 2007, pg. 11.

There is a subtle distinction between debtor's counsel's memory of the trustee's statement and what the trustee actually said, and the distinction is important. The trustee did not, as the debtor contends, say that she would remit the money to the debtor if FV-1 did not cash the check. Instead, the trustee indicated she would do so if the check was "sent back." That is not what happened here. The check was never returned, with or without a note from the claimant: it simply was not cashed and we have no explanation why not. Was it lost in the mail, misplaced by the creditor, forwarded to a third party who neglected to process it or simply ignored? We do not know, and without an explanation neither the court nor the trustee has any reason to believe that FV-1 is not entitled to the distribution that was made on account of its allowed claim and no reason to deliver that money to any other entity or to do anything other than treat it as unclaimed funds. See, 11 U.S.C. § 347(a); Fed R. Bankr. P. Rule 3009, 3011.

Unclaimed funds deposited with the clerk of the court may only be paid to their rightful owner, upon full proof of the right thereto. In re Rush Hampton Industries, Inc., 379 B.R. 192, 193 (Bankr. M.D. Fla. 2007). See generally, In re App. Unclaimed Funds In Exhibit "A", 341 B.R. 65 (Bankr. N.D. Ga. 2005). Furthermore, the court has a duty to protect the funds and to make certain they are disbursed to the true owner, which generally is the creditor for whose benefit they were deposited. Unclaimed Funds, 341 B.R. at 69; Rush Hampton Industries, 379 B.R. at 193-94. Nonetheless, even the original claimant must demonstrate its "present entitlement" to the funds at the time it seeks them because the original right to payment may have been satisfied. In re

Bouknight, ___ B.R. ___, 2008 WL 783576 (Bankr. D. Dist. Col. 2008); Unclaimed Funds, 341 B.R. at 73. It is, of course, also possible that the original claimant may have transferred the right to payment, so that the rightful owner is no longer the one for whose benefit the funds were deposited. In that situation, “the application must clearly and unequivocally explain why the applicant is entitled to funds payable on account of a proof of claim in another name and support that explanation with appropriate documentation.” Unclaimed Funds, 341 B.R. at 71. The original claimant should also receive the protections of Rule 3001(e)(2) or of some other proceeding that offers the same type of procedural protections. Unclaimed Funds, 341 B.R. at 72; In re Chochos, 2007 WL 1810556 * 4 (Bankr. N.D. Ind. 2007). In some instances, this might require a civil action or an adversary proceeding. See, Chochos, 2007 WL 1810556 * 4, n.2.

It is not entirely clear why the debtor contends FV-1 is not entitled to a distribution on account of its claim. Both the original objection and the renewed objection acknowledged that the claim was predicated upon a mortgage³ but contended it had “since been transferred to another lender.” Yet, no evidence of such a transfer has ever been filed with the court. See, Fed. R. Bankr. P. Rule 3001(e)(2). But assuming that the claim had been transferred, the right to payment would then belong not to the debtor but to FV-1’s transferee and should, therefore, be sought by the transferee, not the debtor. As an alternative to a transfer of FV-1’s claim, there is also a suggestion that the debtor refinanced her mortgage after filing bankruptcy so that the debt has been paid and the

³To the extent the debtor contends that the loan was not in default when the case was filed, so that there was no arrearage, the court would note that the absence of a pre-petition default does not mean the creditor was not owed money on the date of the petition and is not a basis for denying a claim. See, 11 U.S.C. § 502(b). Any argument that there was no debt at all to FV-1 was not advanced until the present motion to reconsider and is therefore untimely. Given the concession in the original and renewed objection, as well as the fact that FV-1’s claim was accompanied by fourteen pages of exhibits, including a promissory note and a mortgage, simply denying liability is not sufficient to overcome the prima facie validity accorded to a properly filed proof of claim. See, Fed. R. Bankr P. Rule 3001(f). See also, In re Holm, 931 F.2d 620, 623 (9th Cir. 1991).

original claimant would no longer have a “present entitlement” to the funds. If that is the case, presumably the original note and mortgage would have been delivered to the debtor or there would be some type of documentation of the event, but none has been offered.

In order to receive the funds deposited with the clerk of this court for the benefit of FV-1, the debtor must demonstrate that she is the rightful owner of the property. Doing so does not, as the debtor has phrased it, require her to “prove a negative.” She need only clearly and unequivocally explain why explain why FV-1’s right to payment now belongs to her, support that explanation with appropriate documentation, and do so in a proceeding that offers FV-1 the necessary procedural protections. Unclaimed Funds, 341 B.R. at 72; In re Chochos, 2007 WL 1810556 * 4. To simply characterize the creditor’s claim as “bogus” in an unverified filing that has no supporting documentation whatsoever does not rise to that level.⁴

The debtor’s Motion Correct Errors Regarding Renewed Objection to Claim No. 12 FV-1, Inc. is DENIED.

SO ORDERED.

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

⁴Even FV-1 would not be able to withdraw the money without submitting an affidavit demonstrating its present entitlement to the funds. N.D. Ind. L.B.R. B-3011-1(b). Given the demonstration it would be required to make, the court can think of no reason why it should authorize payment to someone else on a lesser showing.