

# NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
BARBARA A. COOK ) CASE NO. 09-11094  
 )  
 )  
Debtor )

## DECISION AND ORDER

At Fort Wayne, Indiana, on August 18, 2009.

The debtor has asked the court to alter or amend the order of July 13, 2009.<sup>1</sup> That order avoided a lien held by Wells Fargo Financial Indiana to the extent it secured an amount in excess of \$1,348.00.

The debtor's motion to alter or amend is based upon Rule 59 of the Federal Rules of Civil Procedure, which is made applicable to bankruptcy proceedings by Bankruptcy Rule 9023. The motion is 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 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

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<sup>1</sup>Although the debtor filed a brief in support of the motion to alter or amend, the brief fails to do any of the things a brief is supposed to do. It does not identify the law or the rule governing the situation or advance an argument in which that law, when applied to the facts of the precise matter before the court, demonstrates that the movant is entitled to the relief it seeks. In re King, 2006 WL 1994679 \*1 (Bankr. N.D. Ind. 2006).

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Publications, Inc., 762 F.2d 557, 561 (7th Cir.1985). Not all such evidence, however, will justify changing a court's decision. Movant must also demonstrate that this evidence "had not been discovered despite [its] diligent efforts to ferret it out . . . ." In re Crozier Bros., Inc., 60 B.R. 683, 688 (Bankr. S.D. N.Y. 1986). The motion 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). The rule is not, however, a vehicle for a party to undo its own procedural failures. Moro v. Shell Oil Co., 91 F.3d 872, 876 (7th Cir. 1996). Neither, is it 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 has not demonstrated any mistake of law or fact in the court's decision given the facts set forth in the original motion. Rather than arguing that the court made a mistake in evaluating the facts it was given, the motion is based upon the proposition that the court was not given all of the facts and the facts the debtor omitted from the original motion – that the debtor was only a part owner of the property in question, not "the owner" as originally alleged – would lead to another conclusion. This seems to be some kind of attempt to introduce new facts into the decisional process and that is not the function of a Rule 59 motion, unless those facts qualify as "newly discovered evidence." Here they do not because, presumably, the debtor has know all along what the nature of her interest in the property is. See, School Dis. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993); Matter of McDaniel, 217 B.R. 348, 350-51 (Bankr. N.D. Ga.

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1998). Even if that is not the case, the present motion does nothing to address the extent of the debtor's efforts (diligent or otherwise) to determine the status of title before filing her original motion. Rather than changing the order addressing debtor's original motion, it would seem an entirely new motion and new notice to the lienholder would be required.

The motion to alter or amend is therefore DENIED.

SO ORDERED.

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