

DEC 4 2006

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION\_\_\_\_\_  
IN RE:

CASE NO. 02-74350

Apyron Technologies, Inc.,

CHAPTER 11

Debtor.

JUDGE MASSEY  
\_\_\_\_\_

S. Gregory Hays, Trustee,

Movant,

v.

CONTESTED MATTER

Leslie J. Story,

Respondent.  
\_\_\_\_\_ORDER DENYING TRUSTEE'S MOTION FOR RECONSIDERATION

The Court entered an Order on November 28 denying the Trustee's motion to disqualify the firm of Gibson, Deal & Fletcher, P.C. as counsel to Leslie J. Story with respect to Dr. Story's application for payment of administrative expenses allegedly incurred by Debtor Apyron Technologies, Inc., while it was the Debtor in Possession. The primary disqualifying event, according to the motion, was the fact that the Gibson firm performed legal services for the Debtor prepetition and for the Debtor in Possession postpetition. Just prior to the hearing on the motion to disqualify, the Trustee apparently made a demand for return of fees paid by the Debtor in Possession to the Gibson firm, but in the motion papers, the Trustee had referred to what was

thought to be another unpaid fee due the Gibson firm as an administrative expense. Obviously there was confusion about the propriety of the payment in the Trustee's mind until the hearing. This alleged oral demand was not a part of the motion and played no part in the Court's ruling, which the November 28 Order makes clear.

The Trustee now moves for reconsideration of the November 28 Order on the ground that since the hearing, the Gibson firm has failed to pay to the Trustee legal fees paid by the Debtor in Possession to the firm despite the Trustee's demand. This motion, like the motion to disqualify the Gibson firm, is without merit.

Bankruptcy courts may reconsider orders after their entry pursuant to Fed. R. Civ. P. 59(e). See Fed. R. Bankr. P. 9002 ("Judgment" as used in Fed. R. Civ. P. 59 "includes any order appealable to an appellate court"); *Condor One v. Homestead Partners (In re Homestead Partners)*, 201 B.R. 1014, 1017-18 (Bankr. N.D. Ga. 1996) (applying Rule 59(e) to motion for reconsideration). "Reconsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Wendy's Int'l, Inc. v. Nu-Cape Constr., Inc.*, 169 F.R.D. 680, 685 (M.D. Fla. 1996). Circumstances generally supporting the reconsideration of an order include "(1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice." *Id.*

The motion for reconsideration makes no claim that the law has changed or that there is some other need to correct an error. Although it might be said that the Trustee has proffered new evidence, it is not evidence relating to the operative fact of the representation of the Debtor and Debtor in Possession by the Gibson firm that was the basis for the motion to disqualify. Rather, it

is a new claim based on the Court's admonition in the November 28 Order that the Gibson firm might yet be disqualified if it chose not to pay back fees that the Debtor was not authorized to pay.

The Trustee has failed to give the Gibson firm and the Respondent adequate time to consider the Court's warning. Indeed, it is possible that the Gibson firm had not even received the Order at the time the Trustee filed this latest motion. Moreover, the Court left open the possibility, because the Court has not heard the facts, that the Gibson firm might have some basis for contending that it should not have to refund the fees paid to it by the Debtor in Possession, and the Court set no deadline. The second full sentence on page 6 of the November 28, 2006 Order beginning, "Nonetheless, the Gibson firm is forewarned," was intended to avoid conflict, not to serve as an excuse for creating conflict. On reflection, it was unnecessary and is stricken from that Order.

For these reasons, it is

ORDERED that the Trustee's motion for reconsideration filed on November 30, 2006 is DENIED and the November 28 Order is amended to delete the second full sentence on page 6 of that Order.

Dated: November 30, 2006.

  
JAMES E. MASSEY  
U.S. BANKRUPTCY JUDGE