

SEP - 6 2007

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF GEORGIA  
 ATLANTA DIVISION

IN RE: ) CHAPTER 11  
 )  
 AERO PLASTICS, INC., ) CASE NO. 05-60451-MHM  
 )  
 Debtor. )

-----  
 )  
 AERO HOUSEWARES, LLC, and the )  
 COMMITTEE OF UNSECURED )  
 CREDITORS, )  
 ) **CONTESTED MATTER**  
 Movants, )  
 v. )  
 )  
 INTERSTATE RESTORATION )  
 GROUP, INC., )  
 )  
 Respondents. )

**ORDER DENYING MOTION FOR RECONSIDERATION**

Before the court is the joint motion of Aero Housewares, LLC<sup>1</sup> (“Aero”) and the Official Committee of Unsecured Creditors of Debtor (the “Committee”) for reconsideration of this court’s order entered September 28, 2006 (the “Order”), which held that the claim of Interstate Restoration Group (“IRG”) is a secured claim in the amount of \$265,051.79, plus interest accrued since March 31, 2006, up to an amount not to exceed \$290,000. The motion for reconsideration was filed under Fed. R. Civ. Proc. 59, which is incorporated in Bankruptcy Rule 9023, and any other applicable rule or law. The facts of

---

<sup>1</sup> Aero is the purchaser of Debtor’s assets in a sale approved by order entered August 26, 2005.

the underlying dispute are set forth in some detail in the Order and will not be repeated here.

No provision in the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") nor the Bankruptcy Local Rules specifically provides for reconsideration of orders entered by the court. Motions seeking reconsideration may, however, be filed pursuant to Bankruptcy Rule 9023, which incorporates FRCP 59(e) [motion to alter or amend judgment]; Bankruptcy Rule 9024, which incorporates FRCP 60(b) [motion for relief from judgment or order]; and Bankruptcy Rule 7052, which incorporates FRCP 52(b) [motion to amend findings]. Irrespective of the rule by which a party proceeds seeking reconsideration of an order, motions for reconsideration should not be used to relitigate issues already decided or as a substitute for appeal. *In re Oak Brook Apartments of Henrico County, Ltd.*, 126 B.R. 535 (Bankr. S.D. Ohio 1991). Motions for reconsideration should not be used to raise arguments which were or could have been raised before judgment was issued. *O'Neal v. Kennamer*, 958 F. 2d 1044 (11th Cir. 1992). A motion for reconsideration is not intended to be used as a vehicle to tender new legal theories or introduce new evidence that could have been presented in conjunction with the original action. *In re Freeman*, Civil Action No. 1:88-CV-1320-JTC (N.D.Ga. June 21, 1989). "Motions for reconsideration serve the limited purpose of correcting manifest errors of law or fact or, in certain instances calling newly discovered evidence to the Court's attention." *Id.* at page 2. "[A] party seeking reconsideration 'is not supposed to treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's rulings.'"

*Questrom v. Federated Dep't Stores, Inc.*, 192 F.R.D. 128, 130-31 (S.D.N.Y. 2000) *aff'd*, No. 00-7292, 2001 WL 40768 (2d Cir. Jan. 16, 2001) (unpublished).

In connection with the pleadings filed that led to the entry of the Order, the parties represented that they had agreed that, after the court's ruling on their motions for summary judgment, a hearing would be held to determine the value of the property securing IRG's claim. In the Order, however, the undersigned concluded that no further hearing would be necessary because she had heard sufficient evidence of value in the context of the hearings on Debtor's motion to sell. The motion for reconsideration was filed challenging that conclusion, and contending a hearing is necessary to determine value of the lease securing IRG's claim. The focus of the argument in the motion for reconsideration appears to be that the court should receive evidence regarding whether the lease in question is an above-market, below-market, or market lease. In the pleadings filed prior to entry of the Order, Debtor argued that the lease had no intrinsic value and no equity.

Although the parties seeking reconsideration do not specifically state why their motion for reconsideration is not simply an attempt to relitigate issues already decided in the Order, it can be presumed that Aero and the Committee feel that the issue of the value of the lease was not fully argued because they believed a further hearing would be held; or perhaps they believe the evidence adduced at the hearings on approval of the sale of Debtor's was insufficient to support the court's conclusions. Pursuant to Bankruptcy Rule 7052, which incorporates FRCP 52, a party may file a motion to amend which raises questions of the sufficiency of the evidence.

The undersigned has reconsidered her conclusions about the value of the lease securing IRG's claim and the factual and legal bases for those conclusions. As set forth in

the Order, the lease that secures IRG's claim is the premises upon which Debtor, and now Aero, operates its business. The assumption and assignment of the lease to the purchase of Debtor's assets was so integral to the purchase that the sale would not have occurred without it. Although the lease, standing alone, probably could not have been sold for any appreciable amount, within the context of the sale of Debtor's business — a manufacturing business — the lease was necessary to a smooth continuation of Debtor's business operation. Irrespective of whether the lease provides above-market, below-market or market rates, the lease was integral to Debtor's continued operations and had value, within the context of the sale, substantial enough to secure IRG's claim. Accordingly, it is hereby

ORDERED that, the Order having been reconsidered, no modification of the Order is required.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, counsel for Debtor, Respondent, counsel for Respondent, counsel for Committee of Unsecured Creditors, and the Chapter 13 Trustee.**

IT IS SO ORDERED, this the 5<sup>th</sup> day of September, 2007.

  
\_\_\_\_\_  
MARGARETH H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE