

No provision in the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") nor the Bankruptcy Local Rules provides for rehearing of motions. 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 McDaniel*, 217 B.R. 348 (Bankr. N.D. Ga. 1998) (J. Drake); *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." *Freeman, supra*. The purpose of a motion for reconsideration "is not to give the moving party a second bite at the apple." *Arms v. Keybank, NA*, 238 B.R. 259, 261 (Bankr. D. Vt. 1999), quoting *Hoye v. McCoy*, 157 B.R. 705, 708 (Bankr. M.D.Fla. 1993).

A motion for reconsideration should not be used to relitigate issues already decided, or to supplement the record with evidence that could and should have been presented at the hearing. See *Kellogg v. Schreiber*, 197 F. 3d 1116 (11th Cir. 1999); *In re McDaniel*, 217 B.R. 348 (Bankr. N.D. Ga. 1998) (J. Drake); *In re Oak Brook Apartments of Henrico County, Ltd.*, 126 B.R. 535 (Bankr. S.D. Ohio 1991); *O'Neal v. Kennamer*, 958 F. 2d 1044 (11th Cir. 1992). Such a motion is frivolous if it raises no manifest errors of law or misapprehensions of fact to explain why the court should change the original order. *Magnus Electric v. Masco Corp.*, 871 F. 2d 626 (7th Cir. 1989). *Unioil v. E.F. Hutton & Co.*, 809 F.2d 548 (9th Cir. 1986).

A motion for reconsideration should be supported by an intervening change in controlling law, the availability of new evidence or the need to correct clear error or prevent manifest injustice. *Pidcock v. Sunnyland America, Inc.*, 726 F. Supp. 1322 (S.D. Ga. 1989). Parties who receive an adverse ruling are not encouraged to, as a matter of course, request the court "to rethink what the Court had already thought through--rightly or wrongly." *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D.Va.1983).

At the hearing on the U.S. Trustee's motion to dismiss, neither party presented evidence to support its position or to rebut the argument of the opposing party, despite which fact, neither side requested a continuance. The burden of proof, however, was on the U.S. Trustee and U.S. Trustee failed to satisfy its burden and failed to preserve its arguments by seeking a continuance; accordingly, it is hereby

ORDERED that the U.S. Trustee's motion for reconsideration is *denied*.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, the U.S. Trustee, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 16th day of October, 2008.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE