



**IT IS ORDERED as set forth below:**

**Date: March 29, 2011**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In Re:	:	Chapter 13
	:	
<b>Sharon Lynn Meninger,</b>	:	Case No. <b>09-63791-MGD</b>
	:	
Debtor.	:	Judge Diehl
	:	
<b>Sharon Lynn Meninger,</b>	:	
	:	
Movant,	:	
v.	:	
	:	Contested Matter
<b>BMW Financial Services NA, LLC,</b>	:	
	:	
Respondent.	:	

**ORDER RECONSIDERING DECEMBER 23, 2010 ORDER AND  
SUSTAINING DEBTOR’S OBJECTION TO CLAIM**

Before the Court are Debtor’s Second Objection to BMW Financial Services NA, LLC’s (“BMW”) Claim (“Second Objection”) and BMW’s response thereto. The matter came on for hearing on March 23, 2011. Present at the hearing were Debtor’s attorney, John Eggers, David

Sicay-Perrow for BMW, and Albert Gutherie, counsel for the Chapter 13 Trustee. The Second Objection sought to disallow BMW's \$8,415.19 unsecured claim because the claim was filed late. The deadline for non-governmental proof of claims was June 17, 2009, and BMW filed its claim on September 2, 2010. Debtor previously filed an objection to BMW's claim on November 11, 2010 ("First Objection"), erroneously stating that BMW filed a secured claim in the case and seeking to disallow BMW's claim as a late filed claim. (Docket No. 39). BMW filed a response, and the matter was set for hearing on December 8, 2010. The matter was not heard. Instead, a consent order was presented and prepared by Debtor's counsel, and the Court entered the consent order, which ordered that BMW's claim would be reclassified as unsecured and would be funded as such through the Chapter 13 plan.

Debtor seeks reconsideration of the consent order and another order that disallows BMW's claim in its entirety because it was not timely filed. BMW does not dispute that its claim was not timely filed. BMW asserts that the consent order treating its claim as unsecured is a final, binding order and its claim should be treated as an unsecured claim and funded through the Debtor's confirmed plan. Debtor seeks reconsideration of the consent order, asserting excusable neglect as the ground to warrant reconsideration.

Federal Rule of Bankruptcy Procedure 9024 makes Rule 60(b)(1) of the Federal Rules of Civil Procedure applicable to this matter. FED. R. BANKR. P. 9024. "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect." FED. R. CIV. P. 60(b)(1). In the 1993 case of *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, the Supreme Court provided guidance as to the meaning of the term "excusable

neglect." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). The Supreme Court explained that, as used in Rule 60(b)(1), the word "neglect" encompasses negligence and carelessness. *Id.* at 388 (explaining the word carries its ordinary, contemporary, common meaning). To make a determination as to whether Debtor's counsel's actions constitute excusable neglect, the Court must take account of all relevant circumstances, including (1) the danger of prejudice to the adverse party; (2) the length of any delay caused by the neglect and its effect on the proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and (4) whether the moving party acted in good faith. *Id.* at 395.

Ultimately, the Court's determination as to whether the facts in this case constitute excusable neglect is an equitable one, which requires taking account of all relevant circumstances. *See id.* While the Court implores all parties to use care and thorough review in preparation of all their pleadings and proposed settlements, the Court is also aware that the high volume consumer bankruptcy practice can create greater vulnerability for mistakes and carelessness. Here, both parties are at fault: BMW filed a late claim and Debtor failed to review the type of claim BMW asserted prior to drafting and submitting the terms of the consent order to the Court. However, the equities of this situation favor the Debtor. Although the consent order was prepared by Debtor's counsel, giving him an additional opportunity to reset the objection for hearing or properly craft the relief sought by his client, the Debtor's basis for asserting its First Objection, a late filed claim, was never addressed by the consent order.

Rule 60 allows the Court to reconsider its own order at any time and for Debtor to seek reconsideration of a final order. FED. R. CIV. P. 60. Here, reconsideration of the consent order is

warranted. There is no dispute that BMW's claim is late, and that the claim may be disallowed under § 502(b)(9). The consent order's failure to address the tardiness of the claim constitutes excusable neglect. Because BMW's claim was not timely filed, the reconsideration of the consent order does not prejudice it. Delay is not at issue in this case. Debtor's counsel has acted promptly, here, to correct the errors in the consent order, and there is no evidence that either party acted not in good faith. Upon consideration of the parties' arguments, the equities in this case, and in reconsideration of the December 23, 2010 consent order, it is

**ORDERED** that Debtor's Second Objection to BMW Financial Services NA, LLC's Claim is hereby **SUSTAINED**.

**IT IS FURTHER ORDERED** that BMW's \$8,415.19 unsecured claim is disallowed pursuant to § 502(b)(9).

The Clerk's Office is directed to serve a copy of this Order upon Debtor, Respondent, their respective counsel, and the Chapter 13 Trustee.

**END OF DOCUMENT**