

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

|| CASE NO. 04-90427

Tuan Ngoc Ngo,

CHAPTER 7

Debtor.

JUDGE MASSEY

||

Tuan Ngoc Ngo,

Movant,

v.

CONTESTED MATTER

Southern Regional Heath System, Inc.,

Respondent.

||

ORDER DENYING MOTION TO VACATE ORDER DATED OCTOBER 11, 2006

Debtor moves for an order vacating the Order entered in this case on October 11, 2006, which denied Debtor's motion for reconsideration of the Order entered on September 11, 2006, which in turn denied Debtor's motion to avoid an alleged judicial lien held by Southern Regional Medical Center. The motion does correctly point out that the Court overlooked that the amended motion filed on September 13 included a certificate of service of the original motion. This is the first document the Court has ever seen containing three separate certificates of service, one of which was overlooked.

Nonetheless, this latest motion is denied for two reasons. First, its filing violated Bankruptcy Local Rule 9023-1, which provides in relevant part: "Parties and attorneys for the

parties shall not file motions to reconsider the Bankruptcy Court's denial of a prior motion for reconsideration."

Second, the October 11 Order stated as a basis for denying the first motion for reconsideration that a motion may not be amended after it has been denied. "In theory, a motion may be amended at any time before the judge has acted upon the request, although it is particularly inappropriate after briefs have been interposed by the opposing parties, oral arguments have been heard, or other forms of reliance have been built up on the basis of the original motion." 5 C. Wright and A. Miller FED. PRAC. & PROC. CIV. 3d § 1194 (2006). Once a court has ruled on a motion, it is too late to relitigate the motion by correcting defects in the denied motion that could have been avoided or corrected before the court ruled. Debtor's first motion for reconsideration was not based on newly discovered evidence, on an assertion of manifest error in denying the motion to avoid lien or on any other condition that existed at the time the original motion was pending.

Much like Rule 52(b) motions, Rule 59(e) motions "are not intended merely to relitigate old matters nor are such motions intended to allow the parties to present the case under new theories." *Evans*, 416 F.Supp. at 244. See also *Barclaysamerican*, 899 F.2d at 123. Furthermore, a court may alter or amend a judgment pursuant to Rule 59(e) only if the movant "clearly establish[es] either a manifest error of law or fact" or "present[s] newly discovered evidence." *Fed. Deposit Ins. Corp. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir.1986). See also *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D.Miss.1990); *Leigh v. Engle*, 723 F.Supp. 1272, 1273 (N.D.Ill.1989); *Nat'l Resources Defense Council v. U.S. E.P.A.*, 705 F.Supp. 698, 702 (D.D.C.1989). The decision whether to alter or amend a judgment pursuant to Rule 59(e) is "left to the sound discretion of the [trial] court." *Leigh*, 723 F.Supp. at 1273.

Diebitz v. Arreola, 834 F.Supp. 298, 302-303 (E.D.Wis. 1993). Here, the movant did not really seek reconsideration of the ruling. Rather, Debtor sought to continue the litigation as if the order

denying his motion had never been entered. Debtor had absolutely no basis for asserting that the Court had erred in denying his motion to avoid lien. Rather, the first motion for reconsideration was merely a lazy way of attempting not to have to prepare a proper motion to avoid a judicial lien. The present second motion for reconsideration has even less merit because it ignores entirely the primary basis for denying the first motion for reconsideration.

It makes no sense systemically in conducting judicial business to permit litigants to attempt to revive terminated litigation as was done in this case, where there is no contention and could be no contention of error or manifest injustice in denying the relief sought. To do otherwise would be to invite attorneys to be careless, because failures to do their jobs properly would be mitigated by the ability to correct their negligence by simply amending denied motions or complaints, letting the courts do their thinking for them, and continuing on as if nothing were amiss through the device of motions for reconsideration.

Debtor's counsel has chosen the path of stubborn litigiousness over the path of paying careful attention to proper service and proper drafting of a pleading. A word to the wise should be sufficient.

For these reasons, it is

ORDERED that Debtor's Motion to Alter, Amend and/or Vacate Order Dated October 11, 2006 is DENIED. If no new motion to avoid a lien is filed by Debtor within ten (10) days of entry of this Order, the Clerk is directed to re-close this case.

Dated: October 30, 2006.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE