UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 05-83912
William Ralph LaFevor,	CHAPTER 7
Debtor.	JUDGE MASSEY
Ann Woolner,	
Plaintiff,	
v.	ADVERSARY NO. 06-6167
William Ralph LaFevor,	
Defendant.	

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

In an order entered on January 11, 2007, the Court denied Plaintiff's motion for summary judgment and granted Defendant's motion for summary judgment in part and denying it in part. On February 9, 2007, Plaintiff filed a motion for reconsideration of the Court's order denying her motion for summary judgment. In this motion, Plaintiff seeks reconsideration of the Court's order only to the extent that it denied summary judgment as to her claim that Defendant's representations regarding his insurance coverage render a debt owed to her nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). For the following reasons, Plaintiff's motion for reconsideration is denied.

Motions for reconsideration of an order are governed by Fed. R. Civ. P. 59(e), made applicable in adversary proceedings by Fed. R. Bankr. P. 9023. *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). "[T]he goal of this provision is limited to the correction of any manifest errors of law or misapprehension of fact." *Condor One*, 201 B.R. at 1017. Accordingly, courts are generally reluctant to grant a motion for reconsideration unless one of the following is present: "(1) an intervening change in controlling law; (2) the availability of new evidence; [or] (3) the need to correct clear error or manifest injustice." *Wendy's Int'l, Inc. v. Nu-Cape Constr., Inc.*, 169 F.R.D. 680, 685 (M.D. Fla. 1996).

In her motion for reconsideration, Plaintiff argues that the Court should have granted her motion for summary judgment because Defendant failed to produce admissible evidence sufficient to create a factual dispute. Plaintiff's motion for reconsideration does not point to any change in controlling law, new evidence, or even clear error. Rather, Plaintiff maintains that the Court erroneously denied her motion for summary judgment. Her arguments for reconsideration echo the arguments she made in her brief filed in support of her motion for summary judgment, albeit with a more detailed analysis. Rule 59(e) is "not designed to furnish a vehicle by which a disappointed party may reargue matters already argued and disposed of . . . ." *In re DEF Invs.*, 186 B.R. 671, 681 (Bankr. D. Minn. 1995). Likewise, Rule 59(e) "is not to be used for the advancement of arguments that should and could have been made prior to an Order's entry."

Condor One, 201 B.R. at 1018. Plaintiff's asserted basis for reconsideration amounts to nothing more than the arguments that she either made or could have made in support of her motion for summary judgment. Plaintiff thus fails to demonstrate any clear error, manifest injustice, or any other proper basis for the Court to grant her motion.

Moreover, even if Plaintiff could demonstrate a proper basis for reconsideration, which she has not, the arguments set forth in her motion still do not show that she is entitled to summary judgment. In her motion for reconsideration, Plaintiff asserts that summary judgment should have been granted in her favor because Defendant, by submitting only unauthenticated documents rather than admissible evidence, failed to create a factual dispute. Plaintiff is mistaken.

Under Fed. R. Civ. P. 56(c), made applicable in adversary proceedings by Fed. R. Bankr. P. 7056, summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of showing that there is no genuine issue of material fact. *United States v. Four Parcels of Real Property*, 941 F.2d 1428, 1437 (11th Cir. 1991). Plaintiff bears the burden of proof under section 523(a)(2)(A). *In re Hunter*, 780 F.2d 1577, 1579 (11th Cir. 1986).

> When the moving party has the burden of proof at trial, that party must show affirmatively the absence of a genuine issue of material fact: it must support its motion with credible evidence . . . that would entitle it to a directed verdict if not controverted at trial. In other words, the moving party must show that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party. If the moving party makes such an affirmative showing, it is entitled to summary

> judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact.

Four Parcels, 941 F.2d at 1438 (internal citations and quotation marks omitted).

The Court denied Plaintiff's motion for summary judgment because she failed to show the absence of a factual dispute as to each element of her claim. The contract, which was attached to the state court complaint, says that "Contractor shall provide Contractor's liability and other insurance as follows:" Below that printed statement are the initials "HRH," which are the initials of Debtor's insurance broker. Plaintiff in her affidavit (document no. 19) stated:

> When I met with Mr. Lafevor and we were completing the Contract, Lafevor confirmed that his company had liability insurance and directed me to put the letters "HRH" within Article 5, the insurance provision of the Contract. I later learned that HRH is an insurance agency through which Lafevor may have procured insurance at various times.

This testimony, when read with the contract, does not show the absence of an issue of material fact with respect to insurance. The verb form used in the contract, "shall provide," is in the future tense. Was the contractual representation that there was insurance as Plaintiff seems to state or that Defendant would later provide insurance? If the contract was signed after Debtor "confirmed" he had insurance, which controlled: the written contract or the prior oral statement? Although the shorthand "HRH" may indicate that the Contractor was to provide a liability policy through HRH, it does not show the terms of such a policy. It would be possible that the parties intended there to be liability insurance for damage up to the value of the structure or for some lesser amount. If it were a lesser amount and Plaintiff could prove all of the elements of her fraud claim, less than the full amount of the debt would be nondischargeable.

Nothing in Plaintiff's motion shows the absence of dispute as to whether Defendant never intended to get insurance or did not know he did not have it. Documents attached to Plaintiff's

state court complaint could be read to support at least to some degree Defendant's contention that he believed he had insurance. Plaintiff does not assert that documents on which Defendant relies are not genuine, but merely that they are unauthenticated. She does not challenge the truth of any information in any of the documents. Admissibility of a document submitted in support of a motion for summary judgment is not necessarily required in order to grant the motion. "Where there has been a motion for disposition under Rule 56, we have upheld summary judgment where material introduced pursuant to that motion was uncertified, or otherwise inadmissible, and yet unchallenged." *Davis v. Howard,* 561 F.2d 565, 569 (5th Cir. 1977). It follows that admissibility of an unchallenged document is not required to demonstrate an issue of fact.

What all this means is that Plaintiff failed to show the absence of any dispute of any material fact necessary to prove each and every element of the claim. Denying the motions for summary judgment makes no statement as to the ultimate merits of the lawsuit.

Finally, Plaintiff brought her motion for reconsideration too late. Pursuant to Fed. R. Civ. P. 59(e), "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." On February 9, 2007, Plaintiff filed her motion for reconsideration of the Court's order entered on January 11, 2007. Thus, Plaintiff filed her motion for reconsideration outside the 10-day window provided by Fed. R. Civ. P. 59(e).

For these reasons, it is

ORDERED that Plaintiff's motion for reconsideration is DENIED.

Dated: March 1, 2007.

James E. Massey

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE