



IT IS ORDERED as set forth below:

Date: June 10, 2008

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 07-72241

Reuben Charles Odum and Rhonda L. Odum,

CHAPTER 7

Debtors.

JUDGE MASSEY

Merrill Lynch, Pierce, Fenner & Smith
Incorporated,

Plaintiff,

v.

ADVERSARY NO. 07-9048

Reuben Charles Odum and Rhonda L. Odum,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR
RECONSIDERATION AND PLAINTIFF'S MOTION FOR SANCTIONS**

In an order entered on May 23, 2008, the Court denied Defendants' motion to disqualify Plaintiff's counsel. On June 3, 2008, Defendants filed a motion for reconsideration that is

without merit. About half of the motion is devoted to arguing other matters, which is, needless to say, improper. For example, Defendants argued Plaintiff's motion for summary judgment, thereby filing a supplemental brief that is not authorized under this Court's Local Rules.

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).

Defendants' motion fails all three tests set out in the *Wendy's International* case. They have not shown a change in controlling law, the availability of any new evidence or the need to correct clear error or manifest injustice. Further, the motion for reconsideration was filed more than ten days after the entry of the May 23 Order and is therefore untimely. Fed. R. Civ. P. 59(e), made applicable by Fed. R. Bankr. P. 9023.

Plaintiff moves for sanctions against Defendants and their counsel for filing the motion to reconsider, including making false statements in their motion. Plaintiff contends that an appropriate sanction is the award of attorneys' fees and expenses of litigation. Plaintiff's Brief, document no. 45, p. 6. A motion for sanctions filed by a party is governed by Bankruptcy Rule

9011(c)(1)(A). Plaintiff has not complied with the safe harbor provision in the third sentence of Bankruptcy Rule 9011(c)(1)(A). The denial of the motion for sanctions does reach the merits of the misconduct alleged by Plaintiff and does not preclude the Court from considering at a later date whether the filing of the motion for reconsideration violated Bankruptcy Rule 9011 and from imposing sanctions pursuant to subsections (c)(1)(B) and (c)(2) of that Rule, which the Court may do.

For these reasons, Defendants' motion for reconsideration (document no. 43) is DENIED, and Plaintiff's motion for sanctions (document no. 44) is DENIED.

END OF ORDER