UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

GAINEY CORPORATION, *et al.*,	Case No. DG 08-09092
	Chapter 11
Debtors.	Hon. Scott W. Dales

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MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

This matter is before the court on the Motion for Appeal filed by Larry Cannioto on October 1, 2014 (the "Motion," DN 2911). At the heart of the Motion is Mr. Cannioto's disagreement with the court's Memorandum of Decision and Order (the "Order," DN 2906) that earlier disallowed his claim.

Because the Motion did not meet the timing or formal requirements of a notice of appeal, or include a filing fee under Fed. R. Bankr. P. 8001(a), the court issued a Scheduling Order (DN 2913) through which it announced its intention to treat the Motion as a motion for reconsideration under 11 U.S.C. § 502(j) or for relief under Fed. R. Civ. P. 60(b) (made applicable to this case by Fed. R. Bankr. P. 9024).

In the Order that is the subject of the Motion, the court disallowed Mr. Cannioto's unsecured liability claim because he had not taken the steps necessary under the confirmed chapter 11 plan to qualify his personal injury claims for allowance. The court did not reach the merits of the claim, or its timeliness, nor did the court express any doubts about the injuries that prompted Mr. Cannioto to file his claim. Instead, the court's ruling was premised on a record establishing Mr. Cannioto's failure to comply with the court-approved claims allowance process

for his particular class of claim, a process that required him to resort to a non-bankruptcy court in the first instance. He has not done so.

Through the Motion, Mr. Cannioto, again without benefit of counsel, seeks unspecified relief from the Order, amplifying many of the same reasons he offered before the court disallowed his claim. The court has reviewed the Motion and the response filed by the Debtor's Liquidation Trustee (DN 2919), and will deny the Motion for the following reasons.[1]

"Alteration or amendment of a judgment under Rule 9024 is only justified in instances where there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice." *In re Ying Ly*, 350 B.R. 757, 759 (Bankr. W.D. Mich. 2006). Motions for reconsideration cannot be used to argue a new legal theory. *See In re Bulson*, 327 B.R. 830, 836 (Bankr. W.D. Mich. 2005). It would appear from the Motion that Mr. Cannioto is not arguing an error of law, or any newly discovered evidence, or an intervening change in the law. Instead, he appears to be arguing that to disallow his claim would be manifestly unjust.

The court has fully considered the issues in the original Order, and finds no grounds for relief under either 11 U.S.C. § 502(j) or Fed. R. Bankr. P. 9024.[2] Nothing extraordinary has come to the court's attention that would prompt the court to exercise its discretion in favor of changing its decision. Mr. Cannioto received notice of the chapter 11 plan and is therefore bound by its preclusive effect. He has not fulfilled the prerequisites to allowance. To rule otherwise would be inconsistent with the plan and 11 U.S.C. § 1141.

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[1] The court's conclusions with respect to its jurisdiction to enter the Order apply equally to today's decision.

[2] *In re SCBA Liquidation, Inc.*, 485 B.R. 153, 159-60, note 10 (Bankr. W.D. Mich. 2012) (noting similarity in standards governing reconsideration under § 502(j) and Fed. R. Bankr. P. 9024, as well as the trial court's discretion in finding "cause" under Fed. R. Bankr. P. 3008).

To the extent that the Motion shows any injustice or hardship, the hardship flows from the injuries Mr. Cannioto says he suffered years ago following the accident giving rise to the claim, not from the court's decision to adhere to the confirmation order and the process prescribed in the plan for resolving personal injury claims such as Mr. Cannioto asserts. It is not manifestly unjust to enforce a confirmed chapter 11 plan and honor the principles of finality that protect the reliance interests of others who have conformed their conduct to the court's prior orders.

Finally, the court disfavors allegations of fraud, loosely asserted by disappointed litigants, supported by nothing beyond mere suspicion and general distrust of lawyers. The court, therefore, will take no further action with respect to this aspect of the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 2911) is DENIED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Gainey Corporation, Barry P. Lefkowitz, Larry Cannioto, the United States Trustee, and all parties requesting notice of these proceedings.

END OF ORDER

IT IS SO ORDERED.

Dated October 30, 2014

Scott W. Dales
United States Bankruptcy Judge