UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

SCOTT M. GOLDSTEIN,

Debtor.
_____/

Case No. DL 07-04566
Hon. Scott W. Dales

KELLY M. HAGAN, Chapter 7 Trustee,

Plaintiff,

v.

MARY JO GOLDSTEIN,

Defendant.
_____/

Adversary Proceeding
No. 09-80264

MEMORANDUM OF DECISION AND ORDER REGARDING MOTION FOR RECONSIDERATION

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

On May 14, 2010, the court entered its Opinion and Order Regarding Plaintiff Chapter 7 Trustee's Motion for Summary Judgment. Several days later, in conformance with the Opinion, the court entered a judgment avoiding specified transfers that the Debtor made pre-petition to the Defendant and permitting the Trustee to recover $312,626.51 under 11 U.S.C. § 550. Within ten days after entry of the Judgment, Defendant Mary Jo Goldstein, through counsel, filed her Motion for Reconsideration of the court's Judgment against her ("Motion," DN 38). Because of the timing of the Motion, the court will treat it as a motion under Rule 59(e), made applicable here pursuant to Rule 9023.

The court set the Motion for hearing which took place on July 8, 2010 in Grand Rapids, Michigan. The court has carefully considered the Motion and the Plaintiff's response, and after hearing oral argument from counsel, has decided to deny the Motion.

Because of judicial concern for the finality of judgments, and for the respect of the court's rules, reconsideration of judgments and orders is available only in three limited circumstances: (1) in cases involving newly discovered evidence which could not have been discovered prior to entry of the order under review; (2) in cases involving changes in controlling law; and (3) to prevent manifest injustice. *See GenCorp. Inc. v. American Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999); *In re No-Am Corp.*, 223 B.R. 512, 513 (Bankr. W.D. Mich. 1998). Motions for reconsideration are "not an opportunity to re-argue a case" and should not be used by the parties to "raise arguments which could, and should, have been made before judgment issued." *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998). Nor are motions for reconsideration "appropriate merely to let the losing party supplement the evidentiary record that was before the court." *In re Grady*, 417 B.R. 4, 6-7 (Bankr. W.D. Mich. 2009) (citations omitted).

Ms. Goldstein does not contend that there is newly discovered evidence or that there is an intervening change in law. Rather, she contends that reconsideration is necessary to prevent a manifest injustice. In support of the Motion, Ms. Goldstein offers numerous bank statements documenting the transfers at issue and the payments that she contends provided direct or indirect benefits to the Debtor. In addition, for the first time, she presents her affidavit in which she amplifies her contention that she provided direct or indirect benefits in exchange for the challenged transfers. In addition, her affidavit states that she was unable to prepare an affidavit in response to the Plaintiff's summary judgment motion because she was briefly hospitalized in

early May. Neither the bank records nor Ms. Goldstein's affidavit supports reconsideration of the court's Judgment against her.

The bank records standing alone simply establish transfers out of Ms. Goldstein's account; they do not establish the supposed benefits conferred upon the Debtor in exchange for his previous transfers to her. The affidavit simply states in conclusory fashion that the transfers out of the various bank accounts provided direct or indirect benefits to the Debtor in exchange for the transfers, but provide absolutely no detail or information that would create a genuine issue of material fact for trial. Ms. Goldstein's affidavit and other papers filed in response to the summary judgment motion exemplify reliance "merely on allegations or denials in [her] own pleading," contrary to the dictates of the applicable rule. *See* Fed. R. Civ. P. 56(e)(2).

With respect to Ms. Goldstein's contention that her brief hospitalization prevented her from responding to the Plaintiff's summary judgment motion, the court only notes that Rule 56(f) provides for such contingencies, which neither Ms. Goldstein nor her counsel invoked by offering an affidavit in response to the summary judgment motion explaining why Ms. Goldstein was unable to adequately respond, if that in fact were the case.

To summarize, the Motion offers no reason for the court to revisit its prior decision. The judgment will stand as entered.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 38) 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 Kelly M. Hagan, Esq., Rachel L. Hillegonds, Esq., Lyle D. Warren, Esq., Mary Jo Goldstein, and the Office of the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Scott W. Dales
United States Bankruptcy Judge

Dated: July 08, 2010