

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

STEVEN JON WILCOX,

Debtor.

Case No. DT 13-06474

Chapter 7

Hon. Scott W. Dales

ORDER DENYING MOTION FOR RECONSIDERATION

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

Pro se chapter 7 debtor Steven J. Wilcox (the “Debtor”) seeks reconsideration of the court’s Memorandum of Decision and Order dated April 21, 2015 (the “MDO,” DN 111), in which the court gave its reasons for not holding two of his creditors in contempt of the discharge injunction. For the following reasons, the court will deny the Debtor’s Motion for Reconsideration (the “Motion,” DN 115) without putting the two creditors to the trouble of responding.

First, the Motion is untimely to the extent it seeks relief under Fed. R. Bankr. P. 9023.¹ Such motions must be filed within fourteen days after entry of the order at issue. *See* Fed. R. Bankr. P. 9023. The Debtor filed his Motion on the twenty-third day.

Second, the Motion fails to establish the usual grounds for reconsideration, with which the Debtor is familiar from his prior motion practice in this case. *See* Order Denying Reconsideration Motion dated June 6, 2014 (DN 89) at pp.1-2 (citing *Frontier Energy, LLC v.*

¹ Motions filed under Fed. R. Civ. P. 59 (applicable in bankruptcy cases under Fed. R. Bankr. P. 9023) stay the appeal period, but motions under Fed. R. Civ. P. 60 (applicable under Fed. R. Bankr. P. 9024) do not. The Motion, therefore, does not undermine the finality of the MDO or the authority of the Kent County Circuit Court to continue with the lawsuit that the Creditors commenced against the Debtor and that was the subject of the MDO.

Aurora Energy, Ltd. (In re Aurora Oil & Gas Corp.), 439 B.R. 674, 681-82 (Bankr. W.D. Mich. 2010)).

Third, to the extent the Motion relies on Fed. R. Civ. P. 60(b), it fails to establish grounds under that rule. The only plausibly applicable portion of the rule is subsection (b)(1), dealing with mistake. *See* Fed. R. Civ. P. 60(b)(1).² The Debtor contends that the court failed to recognize his argument that creditors Michael Seiloff and Mary A. Comella (the “Creditors”) had knowledge of his bankruptcy proceeding in time to seek a determination under § 523(c) that their claims were excepted from discharge. *See* 11 U.S.C. § 523(c) and Fed. R. Bankr. P. 4007(c).

The court did not fail to recognize the Debtor’s argument that the Creditors had knowledge of his bankruptcy in time to file a timely complaint under § 523(c). Rather, the court expressly preserved it for presentation to the Kent County Circuit Court. *See* MDO at p. 10.

To the extent the Debtor is arguing that the court should have entered an order discharging his debt to the Creditors after finding, as a matter of fact, that they had knowledge in time to file a timely complaint under § 523(c) against him in the bankruptcy court, the court rejects the argument for the reasons already given in the MDO. *See, e.g.*, MDO at p. 9, n.8 (citing Fed. R. Bankr. P. 7001(6) for the proposition that determinations of dischargeability require an adversary proceeding rather than a contested matter).

Even if the court were inclined to excuse the Debtor’s failure to observe Fed. R. Bankr. P. 7001(6), his statements that he filed a complaint against Ms. Comella in September, 2013, and that the complaint against her “was served,”³ fall short of the proof the court would require to

² The Sixth Circuit explains that Fed. R. Civ. P. 60(b)(1) encompasses the court’s mistakes as well as a litigant’s. *See United States v. Reyes*, 307 F.3d 451, 456 (6th Cir. 2002).

³ In the Declaration of Steven Jon Wilcox (DN 106), at paragraph 3, the Debtor states that on September 15, 2013, a copy of the summons and complaint in Adv. No. 13-80234 “was served upon the Defendants by first class mail,” though he does not state who served the process. Indeed, there is no proof of service upon the Creditors on the docket, and the court stayed the adversary proceeding almost immediately upon the issuance of the summonses in that proceeding.

establish the Creditors' knowledge of the Debtor's bankruptcy case. Indeed, the Debtor did not file any complaint in the bankruptcy court against Mr. Seiloff, and the Debtor's statements "upon information and belief" that Ms. Comella told Mr. Seiloff about the bankruptcy case certainly do not warrant the summary determination he now seeks.

The questions concerning whether or when the Creditors knew about the Debtor's bankruptcy case are matters that federal law authorizes the Kent County Circuit Court to resolve upon proper application in the case pending before the Honorable Paul J. Sullivan.

The court has considered the Debtor's other arguments and finds them without merit.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 115) is **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon the United States Trustee.

IT IS FURTHER ORDERED that the Clerk shall mail a courtesy copy of this Order to the Honorable Paul J. Sullivan, Circuit Judge, Kent County Circuit Court.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon the Debtor and the Creditors by first class mail, addressed to each as follows:

Ms. Mary Ann Comella
4370 Chicago Dr. SW, #B 302
Grandville, MI 49418

Mr. Michael R. Seiloff
P.O. Box 345
Alto, MI 49302

Mr. Steven Jon Wilcox, No. 223862
Michigan Reformatory
1342 West Main Street
Ionia, MI 48846

END OF ORDER

IT IS SO ORDERED.

Dated May 19, 2015



A handwritten signature in black ink, appearing to read "S. Dales".

Scott W. Dales
United States Bankruptcy Judge