



ORDERED in the Southern District of Florida on October 06, 2008.

**A. Jay Cristol, Judge
United States Bankruptcy Court**

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

In Re:

Case No.: 07-21140-AJC

DEBORAH D. DORWAY,

Chapter 13

Debtor.

**ORDER DENYING ECAST SETTLEMENT CORPORATION'S
MOTION TO RECONSIDER AND VACATE ORDER
SUSTAINING DEBTOR'S OBJECTION TO CLAIM 16**

THIS CAUSE came before the Court on August 26, 2008, upon the Motion of eCast Settlement Corporation ("eCast") to Reconsider and Vacate Order Sustaining Debtor, Deborah D. Dorway's ("Debtor") Objection to Claim 16 and the Court having reviewed eCast's Motion and the Debtor's Response thereto and having heard argument of counsel for the parties, finds as follows:

BACKGROUND

On July 14, 2008, after having conducted an evidentiary hearing on the Debtor's objection to eCast's claim, this Court entered its Order Sustaining Debtor's Objection to eCast Settlement's

Claim. On or about July 24, 2008, eCast filed its Motion to reconsider and vacate the July 14, 2008 Order Sustaining the Debtor's objection ("Motion for Reconsideration"). eCast attaches to its Motion for Reconsideration a Declaration and Affidavit of Alfred J. Marsh. This Court determines that it would be improper for this Court to consider the Affidavit for purposes of ruling on eCast's Motion for Reconsideration.

DISCUSSION

In its Motion for Reconsideration, eCast contends that both the Debtor and this Court mistakenly read the Affidavit of Alfred J. Marsh attached to eCast's Amended Proof of Claim. eCast argues that the Court incorrectly determined the actual date of the assignment from HSBC Consumer Lending (USA) Inc. ("HSBC") to eCast. eCast suggests that it is entitled to reconsideration of this Court's July 14, 2008 Order under three provisions of law - Rules 60(b)(1) and (2), Federal Rules of Civil Procedure, as made applicable by Rule 9024, Federal Rules of Bankruptcy Procedure, and 11 U.S.C. § 105.

Reconsideration of a claim that has been allowed or disallowed is governed by 11 U.S.C. § 502(j). A party moving for reconsideration pursuant to 11 U.S.C. §502(j) bears the burden of proving that reconsideration is appropriate. The movant must show "cause" for reconsideration. *In re Rayborn*, 307 BR 710 (Bankr. S.D. Ala. 2002).

Rule 60(b)(1) permits reconsideration of an order if such order was entered as a result of a "mistake, inadvertence, surprise, or excusable neglect." The only mistake eCast claims is that the Court's July 14, 2008 Order determined that alleged assignment occurred prior to the filing of this

bankruptcy case. eCast now argues that the assignment took place after this case was filed. At the June 4, 2008 evidentiary hearing, this Court heard testimony of the Debtor, reviewed eCast's Proof of Claim and amendments thereof and heard argument of counsel. According to the evidence offered and considered by this Court, including certified copies of Household Finance Corporation III's ("HFC III") Affidavit in Support of Summary Judgment and other papers and pleadings filed in the State Court proceeding filed by HFC III against the Debtor, it was evident that HFC III was at all times, and still is, the owner and holder of a claim against the Debtor. Neither the Affidavit, nor any of the documents attached to eCast's Amended Proof of Claim, indicate any transfer of interest from HFC III to HSBC or eCast.¹ Therefore, what ever date eCast claims the assignment took place is irrelevant since eCast has never produced any evidence establishing a chain of title to the claim from HFC III (the originator of the obligation) to eCast.

Motions for reconsideration should not be used merely to relitigate the issues already decided. Unless the movant can demonstrate "manifest errors of fact or law," reconsideration should not be sought. Such motions should not be used a (sic) substitute for appeal.

In re Oak Brook Apartments of Henrico County, Ltd., 126 BR 535, 536 (Bankr. S.D. Ohio 1991).

¹ The Assignment of Accounts attached to eCast's Amended Proof of Claim is dated October 1, 2006 and is executed by HSBC in favor of eCast. HFC III commenced its State Court action against the Debtor on April 10, 2007 and filed a Motion for Summary Judgment on or about October 19, 2007. The Summary Judgment Motion was accompanied by an Affidavit in Support of Summary Judgment dated September 24, 2007, stating that the Debtor is indebted to HFC III for the principal amount of \$8,980.77 plus interest. The Debtor commenced this Chapter 13 case on December 14, 2007. There being no evidence to the contrary, HFC III was the holder of the claim on October 19, 2007 and eCast failed to meet its burden of proving that HSBC acquired the claim from HFC III at any time after that date.

Rule 60(b) does not authorize relief from judgment based on assertion of a legal argument that could have been raised before the court's initial ruling.

In re Frontier Airlines, Inc., 137 BR 808, 811 (D. Colo. 1992).

To the extent that eCast believes there to be some significance to the date of assignment and that the Court made a mistake by determining it to be an earlier date, eCast had every opportunity to assert its position at the June 4, 2008 evidentiary hearing. eCast chose to rely on the documents attached to its Proofs of Claims and did not otherwise offer any evidence in support of its position. eCast's Motion for Reconsideration and its counsel's argument at the August 26, 2008 hearing offered nothing more than re-argument of facts and law already argued or which could have been argued at the June 4, 2008 hearing.

As a secondary argument, eCast contends that this Court should reconsider its July 14, 2008 Order pursuant to F. R. Civ. P. 60(b)(6), which provides that a Court may relieve a party from an order for any other reason justifying relief from the operation of the order. Neither in its Motion for Reconsideration nor at the August 26, 2008 hearing on the Motion did eCast cite to a single reason why this Court should grant relief under Rule 60(b)(6).

The grounds enumerated in [Rule 60(b)] subsections 1 through 5 are not obscure. Ground 6, any other reason justifying relief from operation of the judgment, is reserved for cases "involving extraordinary circumstances and only when such action is necessary to accomplish justice." A rehash of arguments presented when opposing the allowance of the claim are not sufficient.

In re Torline, 2007 Bankr. LEXIS 1374 (Bankr. D. Kan.).

The principal purpose of Rule 60(b)(6) is to deal with unforeseen contingencies. The basic policy tension in determining whether a final judgment should be set aside revolves around whether the

factual or legal circumstances have changed to such an extent that the Court's interest in deciding the case on the merits outweighs its interest in orderly procedures and the finality of judgments. When strict adherence to the doctrine of res judicata results in injustice being done in light of changing circumstances, the equitable relief of Rule 60(b)(6) is required.

In re Summers, 150 BR 129, 133 (Bankr. M.D. Pa. 1993) citing to *In re Durkake*, 21 BR 618 (Bankr. E.D. Pa. 1982). This case does not involve any unforeseen contingencies. No change in circumstances exists that would render this Court's Order void or necessitate reversal to right a wrong.

As a final reason for vacating the July 14, 2008 Order, eCast requests that this Court invoke its equitable powers under 11 U.S.C. §105. As a basis for the Court to exercise its equitable power, eCast suggests that the Court should do so to avoid a technicality from preventing substantial justice from being done and that eCast has acted diligently to address the Court's concerns about the relationship between the corporate entities. While this Court recognizes that eCast may have attempted to anticipate the Court's concerns, it still failed to address the primary hurdle of establishing a chain of title from HFC III to eCast. This is not a technical issue. It is a very substantive issue. While the initial burden is not on the claimant to prove an assignment, once the Debtor met her burden of creating significant doubt that eCast had any right to file a claim, eCast bore the burden of proving otherwise.

CONCLUSION

eCast failed to meet its burden of establishing "cause" under Rule 60. The most eCast has done in its Motion for Reconsideration and through argument of its counsel at the August 26, 2008

hearing, is reargue facts that have already been argued or that could have been argued at the evidentiary hearing. Even accepting eCast's position that the claim was assigned to it after the Debtor filed this proceeding, the Court is not persuaded that eCast's assignee had any right, title or interest to assign to eCast.

The evidence offered by the Debtor at the June 4, 2008 hearing was significantly more credible and compelling than anything eCast offered. The Court will not grant a rehearing on or vacate its July 14, 2008 Order.

Accordingly, it is thereupon,

ORDERED AND ADJUDGED that eCast Settlement Corporation's Motion to Reconsider and Vacate the Order Sustaining Debtor's Objection to Claim 16 and to Allow the Claim as Filed is DENIED.

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Copies furnished to Jeffrey N. Schatzman, Esq., who is directed to serve copies of this Order on all interested parties.