

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:		<b>Case No. 11-57191</b>
Irwin Mortgage Corporation,	:	
	:	Chapter 11
Debtor.	:	Judge Caldwell

**ORDER GRANTING MOTION TO VACATE THE ORDER DISALLOWING THE  
COPPER SANDS CLAIMS CONDITIONED ON PAYMENT OF IRWIN MORTGAGE  
CORPORATION'S LEGAL FEES AND EXPENSES (DOC. NO. 554)**

Attorney Terry L. Wike (“Mr. Wike”) represents a group of homeowners in the Copper Sands Condominium complex and the Copper Sands Homeowners Association, all of whom are creditors in the above-captioned bankruptcy case. Mr. Wike filed a motion seeking relief from stay and proofs of claim on behalf of these creditors (“Copper Sands claims”). These creditors are plaintiffs in a pending lawsuit before the Nevada federal district court regarding alleged construction defects and mortgage fraud.

On May 21, 2012, Irwin Mortgage Corporation (“Debtor”) filed a motion to strike the Copper Sands claims because Mr. Wike did not file a statement required in Chapter 11 cases when a group of creditors acts in concert to advance common interests. Such a statement would detail the facts of: (1) the group’s formation, (2) the name and address of each group member, (3) the nature and amount of the economic interests held by group members in relation to the Debtor, (4) the date and acquisition of these economic interest, and (5) copies of any documents that authorize action on behalf of the group. Fed. R. Bankr. P. 2019(b)–(d).

After a hearing, the Court found that Mr. Wike represented claimants who were acting “...in concert to advance their common interests...” and that he did not file the required disclosures. On this basis, the Court entered an order disallowing the Copper Sands claims. A month later, Mr. Wike filed a motion requesting leave to file the Bankruptcy Rule 2019(b) statement, which the Court granted. Mr. Wike filed his 2019(b) statement within a week.

Mr. Wike next filed the above-captioned Motion requesting reconsideration of the Court’s Order Disallowing the Copper Sands claims. Mr. Wike argues that because he has now complied with the requirements of Bankruptcy Rule 2019(b), the Court should reinstate the Copper Sands claims pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, Rules 3008 and 9024 of the Federal Rules of Bankruptcy Procedure, and Section 502(j) of the United States Bankruptcy Code (“Code”). Mr. Wike asserts that allowing him to file the Bankruptcy Rule 2019(b) statement but disallowing the claims leads to illogical and inequitable results.

On the other hand, the Debtor argues that the Court disallowed the Copper Sands claims because of Mr. Wike’s failure to file the requisite Bankruptcy Rule 2019(b) statement, and that such an error in legal judgment is insufficient to grant reconsideration. Further, the Debtor contends that the order disallowing the claims was a final, appealable order, and that requesting

reconsideration is not a proper substitute for an appeal. The Court will now discuss applicable legal standards.

Federal Civil Rule 60(b) provides that courts can reconsider an order on the bases of: (1) mistake, (2) newly discovered evidence, (3) fraud by a party, (4) that the judgment is void, (5) the judgment has been satisfied, or (6) any other reason that justifies relief. Mr. Wike states that consideration of the equitable factors justifies reconsideration, but he did not produce any evidence of a mistake, new evidence, indication of fraud, that the judgment is void, or that the judgment has been satisfied. In addition, absent extraordinary circumstances, attorney error is not a sufficient basis for equitable relief under Rule 60(b). *Broach v. City of Cincinnati*, 244 Fed. Appx. 729, 734-35 (6<sup>th</sup> Cir. 2007); see also *United Coin Meter. Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 393 (1993) (holding that parties must demonstrate “exceptional or extraordinary circumstances that would justify relief” to be granted reconsideration under Rule 60(b)).

The record in this case shows that Mr. Wike erred. While he filed proofs of claim and motions for relief from stay on behalf of the Copper Sands claimants, Mr. Wike failed in a timely manner to provide the information that all parties would need to assess and respond to the claimants' interests. On these facts, the Court finds and concludes there are no bases for reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure.

The Court will now address Mr. Wike's argument for reconsideration under United States Bankruptcy Code section 502(j) and the related Federal Bankruptcy Rule 3008. Section 502(j) provides that a claim that has “been allowed or disallowed may be reconsidered for cause.” 11 U.S.C. § 502(j). Related Rule 3008 provides for a hearing on notice. The Court has broad discretion to consider the facts, circumstances, and equities of the situation. *In re Sterling Rubber*

*Products Co.*, 316 B.R. 485, 489-90 (Bankr. S.D. Ohio 2004); *see also In re Morningstar*, 433 B.R. 714, 717–18 (Bankr. N.D. In. 2010) (cataloging the various standards for finding cause under Section 502(j) of the Code).

In this case, the Court disallowed the claims because Mr. Wike did not follow the Federal Rules of Bankruptcy Procedure when he filed claims on behalf of creditors acting in concert. None of this litigation has reached the merits of the more than \$20 million in claims. It would be prejudicial to bar these claim holders from recovery because their attorney did not follow procedural rules. However, the Debtor has also engaged in litigation, and most likely incurred significant legal fees and expenses. It would be unfair and prejudicial to require the Debtor and its other creditors to bear the burden of these costs that would have not been necessary had Mr. Wike followed the rules.

For the above reasons, the Court will only grant the above-captioned Motion after Mr. Wike files a statement that he has paid the Debtor’s legal fees and expenses associated with litigating the Copper Sands claims to date. Bankruptcy Rule 2019(e)(2)(c) provides that courts may grant “...other appropriate relief...” where there has been a “...failure to comply with any provision of this rule....” *City of Lafayette v. Oklahoma P.A.C. First Ltd. P’ship (In re Oklahoma P.A.C. First Ltd. P’ship)*, 122 B.R. 387, 391 (Bankr. D. Ariz. 1990) (noting that fees can be awarded to opposing counsel for an attorney’s failure to comply with Rule 2019); 11 U.S.C. § 105(a). If Mr. Wike fails to comply within 30 days from the entry of this Order, the above-captioned Motion will be denied with prejudice.

**IT IS SO ORDERED.**

**Copies to:**

Default List