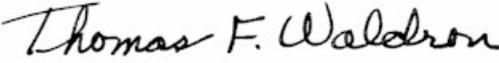


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: December 28, 2006

  
Thomas F. Waldron  
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

In re: DEAN SHEPHERD  
DEBORAH L. SHEPHERD,

*Debtors*

Case No. 06-30924  
Adv. No. 06-3233

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ROBERT J. WEHRLE-EINHORN  
JUANITA L WEHRLE-EINHORN,

*Plaintiffs*

Judge Waldron  
Chapter 7

v.

DEAN SHEPHERD  
DEBORAH L. SHEPHERD,

*Defendants*

**DECISION DENYING MOTION OF  
PLAINTIFFS FOR  
RECONSIDERATION OF DECISION  
GRANTING MOTION TO DISMISS AS  
TO DEBORAH L. SHEPHERD**

DATED AT DAYTON, OHIO this 28th Day of December, 2006:

On October 30, 2006, the Court entered an *Order On Decision Granting In Part, Denying In Part, Motion Of Defendants To Dismiss Complaint* (Doc. 15) and filed an accompanying *Decision* (Doc. 14).

On November 30, 2006, the Plaintiffs filed a *Motion Of Plaintiffs For Reconsideration Of Decision Granting Motion To Dismiss As To Deborah L. Shepherd* (Doc. 20). On December 20, 2006, the Defendants filed *Memorandum Of Defendants Contra Motion Of Plaintiffs For Reconsideration Of Decision Granting Motion To Dismiss As To Deborah L. Shepherd* (Doc. 25).

The Court further notes that on December 13, 2006, the Court entered an *Order: Granting Motion To Convert Chapter 13 Case To Chapter 7 Case, Fixing Filing Dates, Entering Determinations Pursuant To 28 U.S.C. § 157 And 28 U.S.C. § 1334, Fixing Discovery Cut-Off Date, And Requiring Presentation Of Agreed Order Or Written Status Report* (Doc. 23), which will govern future proceedings in this adversary.

Without attempting to dwell on the procedural aspects of this adversary, which will now be determined in the converted chapter 7 case and not in the originally filed Chapter 13 case, it must be noted that the Plaintiffs' motion for reconsideration (Doc. 20), which is deemed by the Court to be a motion seeking amendment of the Court's judgment dismissing the Debtor-Defendant Deborah L. Shepherd and, accordingly, is governed by Federal Rule of Bankruptcy Procedure 9023 (Federal Rule of Civil Procedure 59), remains a motion which must have been filed not later than ten (10) days after the entry of the judgment. (Doc. 14)

The motion for reconsideration (Doc. 20) was not timely filed and is subject to denial on that ground.

A more complete discussion of Rule 59 appears in a recent bankruptcy court decision, *In re Howerton*, 2006 WL 2524103, \*2-3 (Bankr. E.D. Tenn. 2006):

In the Sixth Circuit, “[w]hen a party files a motion to reconsider a final order or judgment within ten days of entry, we will generally consider the motion to be brought pursuant to Rule 59(e).” *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 617 (6 Cir.2002); *Cockrel v. Shelby County Sch. Dist.*, 270 F.3d 1036, 1047 (6 Cir.2001). The court adheres to this rule and will deem GMAC Mortgage's Motion for Rehearing as a motion to alter or amend judgment filed pursuant to Rule 59(e), which is made applicable to contested matters in bankruptcy cases by Rule 9014(c) of the Federal Rules of Bankruptcy Procedure.

Rule 59(e) “should be used sparingly.” *In re Barber*, 318 B.R. 921, 923 (Bankr.M.D.Ga.2004). “Motions to alter or amend [a] judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice.” *Gencorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6 Cir.1998) (internal citations omitted). On the other hand, consideration of a motion under Rule 59(e) does not allow the party to reargue his case. *In re No-Am Corp.*, 223 B.R. 512, 514 (Bankr.W.D.Mich.1998). “Nor should Rule 59(e) be viewed as a means for overcoming one's failure to litigate matters fully.” *Condor One, Inc. v. Homestead Partners, Ltd. (In re Homestead Partners, Ltd.)*, 201 B.R. 1014, 1018 (Bankr.N.D.Ga.1996); see also *Mathis v. United States (In re Mathis)*, 312 B.R. 912, 914 (Bankr.S.D.Fla.2004) (“The function of a motion to alter or amend a judgment is not to serve as a vehicle to relitigate old matters or present the case under a new legal theory ... [or] to give the moving party another ‘bite at the apple’ by permitting the arguing of issues and procedures that could and should have been raised prior to judgment.”). “Arguments and evidence which could have been presented earlier in the proceedings cannot be presented in a Rule 59(e) motion.” *In re See*, 301 B.R. 554, 555 (Bankr.N.D.Iowa 2003).

In the context of Rule 59(e), “the failure to file documents in an original motion or opposition does not turn the late filed documents into ‘newly discovered evidence.’” *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9 Cir.1993). Instead, newly discovered evidence must have previously been unavailable. *Gencorp, Inc.*, 178 F.3d at 834. Additionally, manifest injustice is defined as “[a]n error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds.” BLACK'S LAW DICTIONARY 974 (7 ed.1999).

Accordingly, the motion for reconsideration (Doc. 20) is neither timely, nor would it otherwise meet the criteria to grant the motion.

Accordingly, the *Motion Of Plaintiffs For Reconsideration Of Decision Granting Motion To Dismiss As To Deborah L. Shepherd* (Doc. 20) is **DENIED**. An order in accordance with this decision is simultaneously entered.

**SO ORDERED.**

c:

Robert J. Wehrle-Einhorn and Juanita L. Wehrle-Einhorn, 1554 Benson Drive, Dayton, Ohio 45406 (Plaintiffs)

Dean Shepherd and Deborah L. Shepherd, 1102 Patterson Road, Dayton, Ohio 45420 (Debtors/Defendants)

Jerry A. Meadows, Esq., 580 Lincoln Park Boulevard, Suite 244, Dayton, Ohio 45429 (Atty. for the Debtors/Defendants)

Ruth A. Slone, Esq., 22 Brown Street, Post Office Box 3340, Dayton, Ohio 45401-3340 (Chapter 7 Trustee)

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