

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK02-43392
)	A03-4021
DENNIS RAY DAMROW,)	
)	CH. 7
Debtor(s).)	
<u>MARLIN MURDOCH, DUANE MURDOCH,</u>)	
CLYDE LUEKING, JERRY LUEKING,)	
ROBERT LUEKING and DR. THOMAS)	
SMITH, as shareholders of Carter Feeders,)	
Inc. and CFF, Inc., and CARTER FEEDERS,)	
INC. and CFF, Inc.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
DENNIS DAMROW,)	
)	
Defendant.)	

ORDER

This matter is before the court regarding Filing No. 171, Motion to Reconsider, filed by defendant Dennis Ray Damrow, and Filing No. 173, Resistance, filed by plaintiffs. Dennis Damrow appears pro se and the plaintiffs appear through Jocelyn W. Golden, Jeanne R. Lust, and Bruce Hart.

On August 17, 2004, after a two-day trial, the court entered an order finding that the debtor/defendant owed the plaintiffs \$3,550,471.19, and that amount would be deemed non-dischargeable under 11 U.S.C. § 523(a)(4) and (a)(6) if a state court judge eventually entered a judgment on an arbitration award in that amount. The determination of non-dischargeability was not appealed.

On March 7, 2005, the District Court of Buffalo County entered an order confirming the arbitration award and entered a judgment against defendant for \$3,550.471.19. On September 4, 2007, the Nebraska Court of Appeals, in case number 05-1200, affirmed the order for judgment on appeal.

On March 5, 2008, at Filing No. 171, the debtor/defendant filed a "Motion to Reconsider." In the motion and the affidavit accompanying the motion, Filing No. 172, he asserts that the determination of non-dischargeability and the amount were both procured by fraud, perjured testimony and falsified documents.

Federal Rule of Bankruptcy Procedure 9024 incorporates Federal Rule of Civil Procedure 60, which deals with relief from a judgment or order. Federal Rule of Civil Procedure 60(b) provides:

On motion and just terms, the court may relieve a party or its legal representative

from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . .

Pursuant to Federal Rule of Civil Procedure 60(c)(1), when such a motion asserts fraud, misrepresentation, or misconduct by an opposing party, it must be brought no more than a year after the entry of the judgment or the order. This motion was filed several years after the order was entered.

Federal Rule of Civil Procedure 60(d)(3) provides that the timing section, Rule 60(c)(3), does not limit a court's power to set aside a judgment for fraud on the court. However, the affidavit filed in support of the motion is insufficient to convince me that there has been fraud on the court. Most of the assertions in the affidavit have been presented to the court by Mr. Damrow either in the trial of this matter or in other hearings peripheral to this matter. The court, after considering those assertions, ruled against Mr. Damrow and made the non-dischargeability finding plus the determination of the amount due from him, subject only to state court confirmation. There is no new evidence of fraud and no basis for setting aside the order.

IT IS ORDERED that the motion for reconsideration (Fil. #171) is denied, first, because it was not timely filed, and second, because the supporting affidavit is insufficient to support the allegations of fraud.

DATED: April 2, 2008

BY THE COURT:

/s/ Timothy J. Mahoney
Chief Judge

Notice given by the Court to:

*Dennis R. Damrow
Jocelyn W. Golden
Jeanelle R. Lust
Bruce Hart

Movant (*) is responsible for giving notice to other parties if required by rule or statute.