

NEWS AND DEVELOPMENTS

Time Period in Bankruptcy Rule 9023 Does Not Apply to Motion for Reconsideration of Denial of Summary Judgment

By Marcos A. Ramos

Does Bankruptcy Rule 9023 impose a time limit to file a motion to reconsider the denial of summary judgment? The Delaware Bankruptcy Court (the Honorable Christopher S. Sontchi, presiding) recently decided no. See [Stanziale v. Southern Steel & Supply, L.L.C.](#) In *Southern Steel*, the defendant moved the court to reconsider its denial of the defendant’s motion for summary judgment on the ordinary course of business defense. The plaintiff-trustee opposed the motion, including on the grounds that it was untimely. The defendant’s motion for reargument was filed 27 days after entry of the court’s order, or within the 28-day time period provided under Federal Rule of Civil Procedure 59(e) to file a motion to alter or amend a judgment. See Fed. R. Civ. P. 59(e) (“A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”). According to the plaintiff, however, while Bankruptcy Rule 9023 incorporates Civil Rule 59(e), the 14-day period provided under Rule 9023 controls over the 28-day period provided under Rule 59(e). See Fed. R. Bankr. P. 9023 (“[e]xcept as provided in this rule . . . Rule 59 . . . applies in cases A motion . . . to alter or amend a judgment shall be filed . . . no later than 14 days after the entry of judgment.”). The court was not required to expressly resolve the dispute over the 14- or 28-day time period because it instead found that “[t]he time period in Rule 9023 . . . does not apply to a motion to reconsider denial of a summary judgment” because “the Court’s denial of Defendant’s motion for summary judgment is not a final judgment that implicates the time bar of Rule 9023.” Instead, the filing of a motion for reconsideration of such a ruling “is nothing more than an interlocutory motion invoking the . . . court’s general discretionary authority to review and revise interlocutory rulings prior to entry of final judgment.” Moreover, while “the doctrine of laches might apply if there were an inordinate delay in filing such a motion” here the “motion was filed 27 days after entry of the Opinion and Order and cannot be considered untimely.”

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