Docket #1376 Date Filed: 03/18/2020

IT IS ORDERED as set forth below:

Date: March 18, 2020

Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 15-64266-WLH
CLAYTON GENERAL, INC., f/k/a SOUTHERN REGIONAL HEALTH SYSTEM, INC., d/b/a SOUTHERN REGIONAL MEDICAL CENTER, ET. AL.,	CHAPTER 11
Debtor,	

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION OF ORDER ENFORCING SALE ORDER

THIS MATTER is before the court on the Motion for Reconsideration, or in the Alternative, Motion to Vacate Judgment filed by Dr. Sybile Val (Doc. No. 733) (the "Motion"). The Court held a hearing on the Motion on March 12, 2020 at which Mr. Crowther appeared on behalf of Dr. Val, Paul Ferdinands appeared on behalf of Prime Healthcare Foundation-Southern Regional, LLC ("Prime"), and Matthew Levin appeared on behalf of the Debtor. After considering the arguments of the parties and the motions and responses filed, the Court finds as follows:

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The Debtor filed a bankruptcy case under Chapter 11 of the United States Bankruptcy Code on July 30, 2015. On October 27, 2015, the Court entered an Order (A) Approving Asset Purchase Agreement And Authorizing The Sale Of Assets Of The Debtors Outside The Ordinary Course Of Business, (B) Authorizing The Sale Of Assets Free And Clear Of Liens, Claims, Encumbrances And Interests, (C) Authorizing The Assumption And Sale And Assignment Of Certain Executory Contracts And Unexpired Leases, And (D) Granting Related Relief (Doc. No. 373) (the "Sale Order"). The sale closed on February 1, 2016. On February 24, 2016, the Debtor rejected the employment agreement with Dr. Val and, as a result, any liability to Dr. Val became an Excluded Liability under the Asset Purchase Agreement between the Debtor and Prime (Doc. No. 561).

Dr. Val filed a complaint ("State Court Action") on July 1, 2016 in the state court of Clayton County against the Debtor and Prime alleging her employment agreement was terminated and she was due various sums under the terminated contract. She also alleges that the Debtor failed to renew her hospital privileges and reported the lack of privileges to other hospitals. She claims this action resulted in claims for defamation, breach of contract, fraudulent inducement and negligent representations in connection with entering into the contract with the Debtor in 2014, tortious interference, and promissory estoppel.

Prime filed a Motion for an Order Enforcing the Sale Order on November 17, 2016 (Doc. No. 725). The matter came before the Court for hearing on December 1, 2016. No one appeared for Dr. Val at the hearing, and an Order Enforcing Sale Order was entered on December 6, 2016 (Doc. No. 729). The Motion was filed on December 16, 2016. It was initially set to be heard in February 2017. After six resets, it was heard on September 28, 2017. At the hearing, the parties sought additional time to resolve the Motion. The Motion came back before the Court on March 12, 2020.

Federal Rule of Civil Procedure 59, made applicable by Bankruptcy Rule 9023, permits bankruptcy courts to alter or amend an order or judgment. Fed. R. Civ. P. 59(e), Fed. R. Bankr. P. 9023. As explained by the Supreme Court, the rule "'may not be used to re-litigate old matters or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" Exxon Shipping Co. v. Baker, 554 U.S. 471, 486, n.5 (2008) (citing 11 C. Wright & A. Miller, Fed. Prac. & Proc. § 2810.1, pp. 127-128 (2nd ed. 1995)); see also Devinsky v. Kingsford, No. 05 Civ. 2064 (PAC), 2008 WL2704338, at *2 (S.D.N.Y. July 10, 2008) (explaining, "A motion for reconsideration is not an opportunity to renew arguments considered and rejected by the court, nor is it an opportunity for a party to re-argue a motion because it is dissatisfied with the original outcome."). Accordingly, to prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact. In re Kellogg, 197 F.3d 1116, 1119 (11th Cir. 1999). "A 'manifest error' is not demonstrated by the disappointment of the losing party. It is the 'wholesale disregard, misapplication, or failure to recognize controlling precedent.'" Oto v. Metro Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000) (citations omitted). Such motions should not be used to relitigate issues already decided, to pad the record for an appeal, or to substitute for an appeal. A motion to reconsider "is frivolous if it raises no manifest errors of law or misapprehensions of fact to explain why the court should change the original order." In re Miles, 453 B.R. 449, 450-51 (Bankr. N.D. Ga. 2011).

Another ground for setting aside an order of this Court exists under Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60. The rule permits relief from a final judgment, order, or proceeding in certain circumstances. Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024. The decision to alter or amend a judgment is highly discretionary. Am. Home Assurance Co. v. Glenn Estess & Assocs., 763 F.2d 1237, 1238-39 (11th Cir.1985). Rule 60(b) lists six categories of reasons or grounds on

which to base a motion seeking relief from a final judgment, order, or proceeding. The rule provides that 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;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). "Rule 60(b) was not intended to provide relief for error on the part of the court or to afford a substitute for appeal." Matter of E.C. Bishop & Son, Inc., 32 B.R. 534, 536 (Bankr. W.D. Mo. 1983) (quoting Title v. U.S., 263 F.2d 28, 31 (9th Cir. 1959)).

Rule 60(b)(1) provides a court may set aside a final order for reasons of "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). The standard for setting aside a default judgment for excusable neglect is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 394 (1993) (ruling that inadvertence, mistake, or carelessness can constitute excusable neglect). For purposes of Rule 60(b), neglect is understood to encompass situations involving negligence including attorney carelessness. Id. Whether a particular instance of neglect will be considered "excusable" turns on all relevant facts, including the effect of the neglect on the proceedings.

Dr. Val argues her counsel's failure to attend the hearing on the Motion to Enforce Sale Order constitutes excusable neglect because he was caught in traffic and called chambers. A single failure to appear at a motion hearing due to an error, if it was not intentional, egregious, or

repetitive, ordinarily constitutes excusable neglect. See Keane v. HSBC Bank USA, 874 F.3d 763 (1st Cir. 2017). However, relief is *only* warranted if the outcome the party seeks to reconsider resulted from excusable neglect in the first place. See Pioneer, 507 U.S. at 400. While counsel's failure to attend the hearing on the Motion to Enforce Sale Order would ordinarily be considered "excusable," counsel's absence had minimal impact on the proceedings. The Court would have entered the Order Enforcing Sale Order, except as modified below, even had counsel been present. Accordingly, the Court finds relief is not warranted under Rule 60(b)(1), except to the limited modification noted below.

Dr. Val argues the Court should not have ordered the State Court Action dismissed in its entirety because at least some of the actions alleged were taken by Prime in its individual capacity and not as a purchaser of Debtor's assets. But, Prime's liability to Dr. Val is eliminated or limited by the Sale Order.

The Sale Order authorized the Debtor to sell its assets to Prime under the terms of the Asset Purchase Agreement between the Debtor and Prime ("APA") and the Sale Order. Under the terms of the APA and the Sale Order, Prime assumed only certain identified contracts and obligations. The Sale Order provided that the sale was free and clear of any and all "Liens," which are defined in the Sale Order and APA to include "all liens, claims . . . liabilities, encumbrances and interests of any kind or nature, . . . whether any of the foregoing are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, secured or unsecured, contingent or liquidated, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, known or unknown[.]" Sale Order ¶ T. Thus, Prime purchased the assets free of any such Lien of Dr. Val.

The Sale Order provided further:

> Effective as of the Closing, the Purchaser . . . shall have no liability or obligation with respect to the Excluded Liabilities. Consequently, all Persons, Governmental Units (as defined in Bankruptcy Code § § 101(27) and 101(41)) and all holders of Liens (other than the Permitted Liens) based upon or arising out of claims retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Assets to recover any Liens or on account of any claims against the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Liens in or relating to the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens or any cause of action against the Purchaser or the Assets for any Liens associated with the Excluded Assets.

Sale Order ¶ 30. This provision bars any such action by Dr. Val against Prime. The Sale Order also provided, with respect to claims like Dr. Val's, that:

> Following the Closing Date, no holder of any Liens in the Assets (other than the Permitted Liens and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Assets based on or related to such Liens, or any actions that the Debtors may take in the Bankruptcy Cases. All Persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Assets are forever barred, estopped and permanently enjoined from pursuing or asserting any such Liens (other than the Permitted Liens and the Assumed Liabilities) against the Purchaser, any of Purchaser's assets, property, successors or assigns, or the Assets.

Sale Order ¶ 11. This paragraph also prohibits claims against Prime, based on or <u>related to</u> the claims Dr. Val had against the Debtors. The Sale Order also provided that,

> Effective as of the Closing, the Purchaser and its Affiliates shall have no liability or obligation with respect to the Excluded Liabilities. Consequently, . . . all holders of Liens (other than the Permitted Liens) based upon or arising out of claims retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Assets to recover any Liens or on account of any claims against the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Liens in or relating to the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens or any cause of action against the Purchaser or the Assets for any Liens associated with the Excluded Assets.

Sale Order ¶ 30. The injunction here includes Dr. Val's action against Prime for claims based on or arising out of her claim against the Debtors.

Further, the Sale Order provided that Prime was not a successor to the Debtor and did not assume, was not deemed to assume, and was not in any way responsible for any liability, claim or obligation of any of the Debtors and/or their estates. Sale Order ¶ 31. The Sale Order also provides clearly that the "transfer of title and possession of the assets shall be free and clear of any claims and other liens pursuant to any successor, successor in interest, continuation, or substantial continuation theory, including the following: (a) any employment or labor agreements." Sale Order ¶ 32. Therefore, as a matter of law, Prime is not a successor to the Debtors.

With respect to employment-related claims specifically, the Sale Order states as follows:

> Without limiting the generality of the foregoing, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge . . . obligations, and liabilities of the Debtors arising pursuant to state Law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date[.]

Sale Order ¶ 35. Finally, paragraph 34 of the Sale Order states:

> [P]ursuant to Bankruptcy Code §§ 105 and 363, all Persons including, but not limited to, . . . the Debtors' **employees or former employees** . . . and other creditors asserting or holding a Lien of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Assets (other than the Permitted Liens and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Assets to the Purchaser, **shall be forever barred, estopped, and permanently enjoined** from asserting, prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against the Purchaser or any affiliate, successor or assign thereof . . . or the Assets.

Sale Order ¶ 34 (emphasis added).

It is therefore hereby Ordered:

The Motion is **DENIED IN PART** and **GRANTED IN PART.**

The Court's Order Enforcing Sale Order (Doc. No. 729) is unchanged except that Dr. Val is directed to dismiss all claims against Prime alleged in the State Court Action of any kind barred under the terms of the Sale Order including, without limitation, the specific paragraphs of the Sale Order set out above. Without limiting the foregoing, all claims related to or arising from or based on the Debtor's operation of the hospital, the rejection and breach of Dr. Val's employment contract, and the sale of the Assets to Prime, are barred. This includes, but is not limited to, any claims for breach of contract, fraudulent inducement, and negligent representation, and promissory estoppel which are barred as a matter of law because those actions were taken solely by the Debtor. To the extent any of Dr. Val's claims against Prime are not barred by the Sale Order, such claims need not be dismissed. It is unclear to the Court from the review of the State Court Action who allegedly committed the acts of alleged defamation and tortious interference and when such acts occurred. To the extent the act was taken by the Debtor or taken by Prime as reporting the prior acts of the Debtor, such claims are barred and must be dismissed.

END OF ORDER

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