

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

**In re:** : **Case No. 95-2000-CH**  
**ALFRED K. RYDER and** :  
**MARY ANN RYDER,** :  
: **Chapter 7**  
:

**ORDER— MOTION TO RECONSIDER ALLOWANCE OF CLAIMS AND  
OBJECTIONS THERETO**

This matter pends on Debtor’s Motion to Reconsider Allowance of Claims. The court held a hearing on the matter on May 14, 2001. Debtor Alfred K. Ryder appeared pro se; Attorney Paul A. Drey appeared for Trustee Donald F. Neiman; Mercer County appeared by Jeffrey W. Courter; Maple Tree Investments appeared by Michael J. Cunningham; and Mercantile Bank n/k/a Firststar Bank appeared by Richard G. Book. Mary Ann Ryder did not appear.

The court has jurisdiction of this matter pursuant to 28 U.S. C. § 157(b)(1) and § 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

**FACTS**

Debtors filed a petition for relief under chapter 7 on July 6, 1995, and their case has remained under the bankruptcy court’s jurisdiction ever since that time. Six contentious years of case administration are well documented in six main case files and additional adversary files. Pertinent to the matter at hand is the fact that at a May 9, 2000 hearing, Debtors, on their own behalf and on behalf of Ryder Farms, Inc. of Iowa, entered into a global settlement resolving all the matters before the court at that time. After Debtors reneged and failed to perform, the court

entered an order and judgment on July 14, 2000, providing for specific performance of the settlement agreement.

Section 6 of the settlement agreement provides:

The Debtors, Alfred K. and Mary Ann Ryder, and Ryder Farms Inc., an Iowa Corporation, and all other entities of the Debtors hereby agree to the payment of all Trustee fees, attorney fees, expenses, taxes, and all allowed claims, including any interests, if allowed by the Court. The creditors, including the creditors identified in the Chapter 7 proceeding brought by Alfred K. and Mary Ann Ryder as well as the Chapter 12 proceeding brought by Ryder Farms, Inc., an Iowa corporation, shall be given notice to file claims in this matter. A claims hearing, if necessary, shall be held to determine the validity and amounts of said claims.

On October 18, 2000, the clerk of bankruptcy court gave notice to creditors of the surplus of funds in the estate after the payment of administrative expenses. The clerk fixed November 17, 2000, as the final date to file proofs of claim.

Mercer County, Maple Tree Investments, and Mercantile Bank n/k/a Firststar Bank filed proofs of claim by the November deadline. Trustee objected to the claims based on information supplied by Debtors. On February 5, 2000, the court conducted a hearing and received evidence on the objections.

On February 20, 2001, the court entered separate orders allowing the above claims. Mercantile Bank was allowed an unsecured claim in the amount of \$314,576.36 through December 31, 2000, plus interest thereafter. The claim of Maple Tree Investments, Inc., was entered in the amount of \$49,726.80. Mercer County, Missouri, was allowed a priority tax claim in the amount of \$15,380.55. Debtor filed the instant motion requesting the court to reconsider the allowance of the claims on March 1, 2001.

## DISCUSSION

Generally, a debtor lacks standing to object to the allowance of claims because he or she no longer has an interest in the property of the bankruptcy estate. Kieffer v. Riske (In re Kieffer-Mickes, Inc.), 226 B.R. 204, 208 (B.A.P. 8th Cir. 1998) citing Kapp v. Naturelle, Inc. (In re Kapp), 611 F.2d 703 (8th Cir. 1979). The exception occurs when estate property exceeds the amount of the claims against it, or will exceed the amount of claims if the contested claim is disallowed. Id. In such a case, any remainder of estate assets after the payment of allowed claims returns to the debtor at the close of the bankruptcy case. Id.

Here, the bankruptcy estate consists in part of cash, farm machinery and equipment, and a large amount of real estate. Trustee indicates that there is a projected surplus in estate assets. Therefore, the court concludes that Debtor has standing to object to the allowance of claims, and accordingly, has standing to request the court to reconsider its allowance of the creditor's claims.

Section 502(j) of the Bankruptcy Code provides for the reconsideration of an allowed or disallowed claim for "cause." If adequate cause is shown, the court may readjust the claim "according to the equities of the case." 11 U.S.C. § 502(j). Fed. R. Bankr. P. 3008 provides for notice and hearing for a motion to reconsider claim. Neither the Code nor the Rules defines "cause" in the context of a motion to reconsider claim. In incorporating Fed. R. Civ. P. 60, Fed. R. Bankr. P. 9024 provides that the one-year time limit of 60(b) does not apply to motions to reconsider the allowance or disallowance of claims. The Eighth Circuit has determined that Fed. R. Civ. P. 60 principles apply in bankruptcy to the reconsideration of the allowance or disallowance of a claim after the time for appeal has expired. Employment Sec. Div. v. W. F. Hurley Inc. (In re W. F. Hurley, Inc.), 612 F.2d 392, 396 (8th Cir. 1980).

Fed. R. Civ. P. 60 provides help in the interpretation of “cause” and sets out the applicable criteria. Amtech Lighting Serv. Co. v. Payless Cashways (In re Payless Cashways, Inc.), 230 B.R. 120, 137 (B.A.P. 8th Cir. 1999) aff’d 203 F.3d 1081 (8th Cir. 2000).

Accordingly, a court may reconsider the allowance or disallowance of a claim based on an assertion of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which could not have been discovered in time to move for a new trial, fraud, or any other reason justifying relief. Fed. Rule Bankr. P. 9024; Fed R. Civ. P. 60. The rule is liberally construed to do substantial justice by allowing meritorious claims to be brought before the court. Kirwan v. Vanderwerf (In re Kirwan), 164 F.3d 1175, 1177 (8th Cir. 1999).

Motions to reconsider claims are subject to the sound discretion of the bankruptcy court. In re W. F. Hurley, 612 F.2d at 395. General equitable principles cover that discretion. In re Kirwan, 164 F.3d at 1177. “Courts may consider whether delay would prejudice the debtors or other creditors, the reason for the delay and its length and impact on efficient court administration, whether the creditors acted in good faith, whether clients should be penalized for counsel’s mistake or neglect, and whether claimants have a meritorious claim.” Id. at 1177-78. However, motions to reconsider claims should not be used as a substitute to an appeal of a decision or to rehash arguments that have already been presented to the court. Colley v. Nat. Bank of Texas (In re Colley), 814 F.2d 1008, 1010 (5th Cir. 1987).

In this case, Debtors state as grounds for reconsideration that neither the Mercantile Bank or Maple Tree Investments renewed their judgments within five years, apparently a reference to Missouri law. Debtors further state that the Mercer County claim was late filed, and was a debt of Ryder Farms, Inc. and not of Alfred Ryder personally. Debtor also states that Missouri law

requires that the county sell the property subject to the tax within three years of the delinquency and Mercer County failed to do so.

Debtors are merely “rehashing” the arguments presented at the February 5, 2001 hearing. Debtors have not claimed mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which could not have been discovered in time to move for a new trial, fraud, or any other reason justifying relief as a basis for the reconsideration. They have not supplied the court with grounds to change its earlier decision, even when afforded the opportunity of a hearing to do so.

Debtors continually fail to appreciate the significance of the settlement agreement they entered into at the May 9, 2000, hearing. Section 6 provides for the payment of debts regardless of whether owing by the Ryders individually or by Ryder Farms, Inc. Further, the argument of late filing of claims is of little significance when, as here, there are sufficient estate assets to pay all claims. Finally, the definition of claim provided by 11 U.S.C. § 101(5) requires only a right to payment, not a judgment, renewed or otherwise.

For all the foregoing reasons, the court determines that Debtors have not established cause for the adjustment of the identified claims. Therefore, their motion to reconsider the claims must be denied.

**ORDER**

IT IS ACCORDINGLY ORDERED that Alfred Ryder and Mary Ann Ryder’s Motion to Reconsider Allowance of Claims is DENIED.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT