

**FILED**

MAY 27 2005

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF ARIZONA**

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re:	)	Chapter 7
MERLIN GROVER HINRICHS,	)	No. 4-04-02131-SV-JMM
<u>Debtor.</u>	)	Adversary No. 4-04-ap-00077
ROBERT HOOKER, ESQ., dba LAW	)	<b>MEMORANDUM DECISION DENYING</b>
OFFICE OF ROBERT HOOKER,	)	
Plaintiff	)	
vs.	)	
MERLIN GROVER HINRICHS,	)	<b>MOTION FOR RELIEF FROM</b>
<u>Defendant.</u>	)	
		<b>JUDGMENT</b> (Opinion to be Posted)

This court entered judgment on April 21, 2005. On May 5, 2005, the Plaintiff filed a "Motion for Reconsideration."

The Federal Rules of Bankruptcy Procedure do not provide for motions for reconsideration. "Where the time for appeal has expired, a motion for reconsideration should be construed as a motion for relief from judgment under FED. R. CIV. P. 60(b)"<sup>1</sup> *In re Negrete*, 183 B.R. 195, 197 (9th Cir. BAP 1995), *aff'd*, 103 F.3d 139 (9th Cir. 1996) (Table). In this case, the ten-day period for filing of a notice of appeal under FED. R. BANK. P. 8002(a) expired before Debtor filed the Motion. Therefore, I will construe the Motion as one for relief from judgment pursuant to FED. R. CIV. P. 60(b). For the reasons set forth below, the motion will be denied.

Fed R. Civ. P. 60(b) states, in pertinent part, as follows:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial

<sup>1</sup> FED. R. CIV. P. 60(b) is made applicable to bankruptcy by FED. R. BANK. P. 9024.

1 under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or  
2 extrinsic), misrepresentation, or other misconduct of an adverse party; (4)  
3 the judgment is void; (5) the judgment has been satisfied, released, or  
4 discharged, or a prior judgment upon which it is based has been reversed  
or otherwise vacated, or it is no longer equitable that the judgment should  
have prospective application; or (6) any other reason justifying relief from  
the operation of the judgment.

5 Debtor has not established grounds for relief under FED. R. CIV. P. 60(b).<sup>2</sup>

6 Motions for reconsideration which merely revisit the same issues already  
7 ruled upon by the trial court, or which advance supporting facts that were  
8 otherwise available when the issues were originally briefed, will generally  
9 not be granted. *Van Skiver v. U.S.*, 952 F.2d 1241, 1243 (10th Cir.1991).  
Such motions may not be used as a substitute for a timely appeal. *Latham*  
*v. Wells Fargo Bank, N.A.*, 967 F.2d 1199, 1203-04 (5th Cir. 1993).

10 *Negrete*, 183 B.R. at 197. The Motion simply raises the same factual and legal issues that were or should  
11 have been presented to and considered by the court in connection with the trial on the complaint. To the  
12 extent Debtor believes that the court erred in granting the Judgment, his remedy was to timely appeal.

13 IT IS HEREBY ORDERED that the Motion be DENIED.

14  
15 DATED: May 27, 2005.

16  
17   
18 JAMES M. MARLAR  
19 UNITED STATES BANKRUPTCY JUDGE  
20  
21  
22  
23  
24

25  
26 <sup>2</sup> Nor can this Motion be construed as a motion for new trial or for alteration of amendment of the  
judgment, because it was not brought within ten days after judgment was entered. See FED. R. BANKR.  
P. 9023, which incorporates FED. R. CIV. P. 59(b).

1 COPIES served as indicated below this 27th  
day of May, 2005, upon:

2  
3 Merlin Grover Hinrichs  
4 769 East Country Club Drive  
5 Benson, AZ 85602  
6 U.S. Mail

7 Eric Slocum Sparks  
8 Law Office of Eric Slocum Sparks, P.C.  
9 110 South Church Ave., #2270  
10 Tucson, AZ 85701-3031  
11 Attorneys for Plaintiff  
12 Email [eric@ericlocumsparkspc.com](mailto:eric@ericlocumsparkspc.com)

13 Stanley J. Kartchner  
14 7090 N. Oracle Rd., #178-204  
15 Tucson, AZ 85704  
16 Chapter 7 Trustee  
17 Email [statebar@kartchner.bz](mailto:statebar@kartchner.bz)

18 Office of the United States Trustee  
19 230 North First Avenue, Suite 204  
20 Phoenix, AZ 85003-1706  
21 U.S. Mail

22  
23  
24  
25  
26  
By   
Judicial Assistant