

SIGNED.



Dated: December 04, 2007

James M. Marlar
JAMES M. MARLAR
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 11
)
) No. 4:06-bk-00515-JMM
CARDSYSTEMS SOLUTIONS, INC.,)
) **MEMORANDUM DECISION RE:**
) **MOTION TO ALTER OR AMEND**
Debtor.)

The Debtor, CardSystems Solutions, Inc., has filed a motion which seeks to alter, amend, or change certain findings of fact in the Memorandum Decision entered November 20, 2007 (Dkt. #517). In it, CardSystems takes issue with the tone, analysis, or decisional path which led to the entry of three orders: (1) denying confirmation of the Debtor's liquidation plan; (2) denying approval of a compromise with Merrick Bank, and (3) converting the case to chapter 7. However, in the motion's "Introduction" (p. 2, lines 2-14), CardSystems does not appear to argue that the court's dispositive orders should be different, or that such dispositions were legally erroneous.

In other words, although the Debtor disagrees with how the court arrived at its final results, it does not challenge the orders themselves. Therefore, if there is no legal contention that the final results should be different, it is a futile exercise to debate whether any specific point was incorrect. Without a challenge that the facts, if found differently, would have changed the orders or judgments, any perceived error is harmless. See FED. R. BANKR. P. 9005 (also incorporating FED. R. CIV. P. 61).

That said, the court will briefly address each contention in order:

1 **1. Shareholders--Proofs of Claim or Proofs of Interest?**

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3 The Debtor is incorrect as to what the shareholders filed. Or, more aptly, the Debtor and the
4 court were both correct. Blair and Kiphart filed Proofs of Interest on November 27, 2006 in the
5 administrative file (Admin. file, Dkt. ##156, 157, 161-164) and Camden Partners filed Proofs of Interest,
6 also in the administrative file, on December 29, 2006 (Admin. file, Dkt ##185-190). Those parties also
7 filed, as docketed in the claims register, Proofs of Claim #148, 150-152, 185, 188-194. Thus, the
8 shareholders filed proofs of claim and interests. No alteration or amendment is required at this point.

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10 **2. Improper Amendment to Debtor's Schedules**

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12 This is re-argument, with the Debtor merely disagreeing as to how the record should be
13 interpreted. The totality of both the evidence and the court's files support the conclusions drawn by the
14 court. No alteration or amendment is required on this issue.

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16 **3. Manipulation of the Voting**

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18 This portion of the motion also seeks to persuade the court, by re-argument, that it should
19 have interpreted the evidence in a manner different than it did. However, the court is not persuaded that it
20 made either a mistake as to the facts or that it applied incorrect law. Therefore, no alteration or amendment
21 is required on this issue. If the contention is that the court erred, and should have confirmed the plan, the
22 court respectfully disagrees.

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24 **4. The Insurance Trust**

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26 Despite the Debtor's contentions, the Third Disclosure Statement filed on August 3, 2007
27 (Dkt. #377) did not contain exhibits or any substantive discussion, as argued by the Debtor in this motion
28 (at p. 10, lines 5-10). After August 3, 2007, the ECF administrative docket reflects no additional documents

1 in the file that contain supplemental information about the insurance trust. The August 3, 2007 Disclosure
2 Statement (Dkt. #377) gave no specifics in its discussion of the insurance trust, other than the brief
3 discussion found in the Disclosure Statement at pp. 23-26, 30-32, and 69-72. Unless the court somehow
4 missed the information, upon review of the docket, there is no perceived error in the court's decision. The
5 ECF document, Admin. Dkt #377, contained no exhibit describing the detailed information as argued in the
6 motion to alter or amend. Schedule B of the Debtor's schedules, attached to one iteration of the Disclosure
7 Statement, only lists the value of any claims under these policies as "unknown." The Disclosure Statement
8 does not describe the causes of action, nor the value of any asset to be derived from the various policies.

9 Therefore, this aspect of the motion to alter or amend will be denied.

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11 **5. Avoidance Claims**

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13 This, again, is re-argument. The court views the evidence in a different manner than does
14 the Debtor, and differs in what conclusions to draw therefrom. This portion of the decision will neither be
15 altered nor amended.

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17 **6. Channeling Injunction**

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19 Similarly, the arguments set forth by the Debtor are unpersuasive. During the course of the
20 confirmation hearing, the Debtor was asked which "option" it chose, and it chose to "channel." The court's
21 reasoning then rejected that request, upon objection, as being inconsistent with law. It is not up to the court
22 to then unilaterally select an alternative, in the absence of creditor assent.

23 In footnote 3, p. 12, of the Debtor's motion, it attempts to compare this case with another case
24 in this District, *In re The Roman Catholic Church of Diocese of Tucson*, Case No. 4-04-bk-04721-JMM.
25 The court does not recall that this argument was made before, and which apparently seeks to have this court
26 take judicial notice of everything that occurred, procedurally and factually, in a unique case much different
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1 than this one.¹ This the court will not do, for a variety of sound legal reasons, not the least of which was
2 the lack of formal submission of admissible evidence. FED. R. EVID. 201.

3 Thus, the court perceives no error in this portion of the ruling, and therefore no need to alter
4 or amend its decision on this issue.

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6 **7. Gerrymandering**
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8 The Debtor's argument, again, simply argues for an interpretation of the evidence different
9 than that adopted by the court. The court is not persuaded that its decision was erroneous. The Debtor's
10 view of how to interpret the evidence, while understood as advocacy, creates no need to alter or amend.

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12 **8. Good Faith**
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14 In its totality, the court has not been persuaded that its view of the evidence, concerning this
15 legal requirement, is inaccurate. When it came time to make the call, the scales tipped against the Debtor
16 on this point. There is no just reason for the court to change its decision on this critical point.

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18 **RULING**
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20 The Debtor's motion, for the most part, asks the court "to rethink what [it] had already
21 thought through--rightly or wrongly." *See Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99,
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¹ That case is not yet closed, and as of this writing the administrative docket contains 1161
numbered entries.

1 101 (E.D.Va. 1983). Being unpersuaded, the court will deny the motion to alter or amend its findings. A
2 separate order will be entered.

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4 DATED AND SIGNED ABOVE.

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6 COPIES served as indicated below on the
7 date signed above:

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