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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6

7 In re)
8) Case No. 03-30996-A-7
9 ALFONSO FALLON,)
10) Docket Control No. HM-1
11) Date: April 23, 2007
Debtor.) Time: 9:00 a.m.
)
)

12 On April 23, 2007 at 9:00 a.m., the court considered a
13 motion to reconsider its prior order approving a sale by the
14 bankruptcy estate to the chapter 7 and the opposition to the
15 motion. The court's ruling on the motion and the opposition is
16 appended to the minutes of the hearing. Because that ruling
17 constitutes a "reasoned explanation" of the court's decision, it
is also posted on the court's Internet site,
www.caeb.uscourts.gov, in a text-searchable format as required by
the E-Government Act of 2002. The official record, however,
remains the ruling appended to the minutes of the hearing.

18 **FINAL RULING**

19 The motion will be granted in part.

20 William Meyer, Dominick Chirichillo, and Domenico Winery,
21 LLC seek an order setting aside this court's April 10, 2007
22 order, permitting the estate to sell wine inventory to the
23 debtor, pursuant to Fed. R. Civ. P. 59(a) or, in the alternative,
24 pursuant to Rule 60(b). The court granted the motion to sell the
25 wine inventory on March 26, 2007. In support of this motion, the
26 movants allege that the debtor was not qualified to bid for and
27 purchase the wine inventory because he lacked the necessary wine
28 producer permits, licenses, and/or bonds.

1 Fed. R. Civ. P. 59(a)&(e) provides as follows:

2 (a) [a] new trial may be granted to all or any of the
3 parties and on all or part of the issues (1) in an
4 action in which there has been a trial by jury, for any
5 of the reasons for which new trials have heretofore
6 been granted in actions at law in the courts of the
7 United States; and (2) in an action tried without a
8 jury, for any of the reasons for which rehearings have
9 heretofore been granted in suits in equity in the
10 courts of the United States. On a motion for a new
11 trial in an action tried without a jury, the court may
12 open the judgment if one has been entered, take
13 additional testimony, amend findings of fact and
14 conclusions of law or make new findings and
15 conclusions, and direct the entry of a new judgment.

16 (e) [a]ny motion to alter or amend a judgment shall be
17 filed no later than 10 days after entry of the
18 judgment.

19 Reconsideration under Rule 59 is appropriate if the court 1)
20 is presented with newly discovered evidence, 2) committed clear
21 error or the initial decision was manifestly unjust, or 3) if
22 there is an intervening change in controlling law. Dixon v.
23 Wallowa County, 336 F.3d 1013, 1022 (9th Cir. 2003). The burden
24 of proof is on the moving party. Anglo-American Gen. Agents v.
25 Jackson Nat. Life Ins. Co., 83 F.R.D. 41, 43 (N.D. Cal. 1979).
26 But, the court should not lightly disturb a plausible result or
27 verdict. Id.

28 When reconsideration is sought within the 10-day period to
appeal the underlying order, the motion to reconsider is
analogous to a motion for a new trial or to alter or amend the
judgment pursuant to Fed. R. Civ. P. 59 as incorporated by Fed.
R. Bankr. P. 9023. See S.G. Wilson Co. v. Cleanmaster Indus.,
Inc. (In re Cleanmaster Indus., Inc.), 106 B.R. 628, 660 (B.A.P.
9th Cir. 1989); In re Aguilar, 861 F.2d 873, 874-75 (5th Cir.
1988). Hence, a motion under Rule 59, which must be filed prior

1 to the expiration of the 10-day appeal period, may seek a
2 reconsideration of the correctness and merits of the trial
3 court's underlying judgment. See, e.g., Osterneck v. Ernst &
4 Whinney, 489 U.S. 169, 174-77 (1989). When Rule 59 is
5 implicated, however, courts do not permit reconsideration when
6 the grounds for it could have been, but were not, raised
7 previously. Briggs & Stratton Corp. v. Baldrige, 544 F. Supp.
8 667, 668 (E.D. Wis. 1982); Echevarria v. United States Steel
9 Corp., 392 F.2d 885, 892 (7th Cir. 1968).

10 The movants filed the instant motion on April 5, 2007, five
11 days before the court entered the order allowing the sale of the
12 wine inventory to the debtor, on April 10, 2007. This means that
13 the motion was filed before the expiration of the 10-day appeal
14 period. Hence, Fed. R. Civ. P. 59(a) applies here. As a result,
15 the movants are not permitted to seek reconsideration on any
16 basis that could have been but was not raised previously. Briggs
17 & Stratton Corp. v. Baldrige, 544 F. Supp. 667, 668 (E.D. Wis.
18 1982); Echevarria v. United States Steel Corp., 392 F.2d 885, 892
19 (7th Cir. 1968).

20 The movants argue that they "[o]bject[ed] to the [d]ebtor as
21 an unqualified bidder who lacked the necessary wine producer's
22 permit to buy bulk wine ... prior to, during, and after the
23 sale...." This is simply untrue. The movants did not challenge
24 the sale, either in a filed objection or orally at the hearing.
25 Nobody challenged the debtor's qualifications as a bidder.
26 Moreover, the movants proceeded to bid against the debtor for the
27 wine inventory and other assets. While the debtor was the
28 highest bidder, the movants asked that their bid be approved as a

1 back-up offer. See Order Approving Sale of Wine Inventory,
2 entered April 10, 2007.

3 Now, the movants ask the court to set aside its order
4 approving the sale to the debtor. But, they have not explained
5 their failure to object to the sale before or at the hearing.
6 According to their motion, they knew at the time of the hearing
7 that the debtor did not have the licenses necessary to qualify
8 him as a purchaser of bulk wine. Yet, they raised no objections.

9 The movants' assertion that the debtor's lack of the
10 necessary license and bond was discussed with the trustee or his
11 counsel outside of the courtroom is irrelevant unless the movants
12 were told by the trustee or his counsel not to raise the issue
13 with the court. There is no assertion that such was the case.

14 Additionally, when the court approved the sale on March 26,
15 2007, it did not approve a sale that would violate applicable
16 nonbankruptcy law, including the laws regulating the sale of
17 alcoholic beverages. The trustee is obligated by 28 U.S.C. §
18 959(b) to operate and conduct the bankruptcy estate's affairs,
19 including this sale, in accordance with applicable nonbankruptcy
20 law. Hence, the court's approval of a sale was not carte blanche
21 for the trustee to violate applicable nonbankruptcy law. The
22 trustee was authorized to sell the assets in a manner that
23 complies with applicable laws.

24 The bankruptcy estate includes the debtor's pre-petition
25 wine grower's license (or any of the other enumerated licenses)
26 and its bond to operate a wine cellar. The bond is in the amount
27 of \$500.

28 The motion argues that California law requires a license to

1 transfer the wine inventory and a license to purchase that
2 inventory. The court agrees.

3 Cal. Bus. & Prof. Code § 23356 provides: "Any manufacturer's
4 or wine grower's license authorizes the person to whom it is
5 issued to become a manufacturer or producer of the alcoholic
6 beverage specified in the license, and to do any of the
7 following: ... (b) [t]o sell only those alcoholic beverages as
8 are packaged by or for him or her only to persons holding
9 wholesaler's, manufacturer's, wine grower's, manufacturer's
10 agent's, or rectifier's licenses authorizing the sale of those
11 alcoholic beverages and to persons who take delivery of those
12 alcoholic beverages within this state for delivery or use without
13 the state." See also Cal. Bus. & Prof. Code § 23383 (permitting
14 a holder of a wine grower's license to transfer title to wine "to
15 other licensed manufacturers, wine growers, manufacturer's
16 agents, importers, rectifiers, and wholesalers when the alcoholic
17 beverages are in storage in a ... United States bonded wine
18 cellar....").

19 To date, the sale of the wine inventory has not been
20 transferred. While the debtor has deposited the purchase price,
21 the trustee has not delivered to the debtor a bill of sale.
22 Hence, sections 23356 and 23383 have not been violated. The
23 debtor did not need a license and a wine cellar bond to bid at
24 the hearing on the sale motion. Both section 23356 and section
25 23383 are limited in their application to sales and transfers.

26 As an aside, the court adds that if the issue of a bidder's
27 licensing had been raised before the sale by the movants, in
28 order to avoid potential delays, the court might have limited

1 bidding only to persons who were then licensed. However, the
2 movants did not raise the issue.

3 But, the debtor does need a license and a bond before the
4 transfer of the wine from the estate to the debtor can occur.
5 The trustee acknowledges this and proposes to abandon to the
6 debtor the estate's license and the wine cellar bond. See 11
7 U.S.C. § 554(a). At the April 23 hearing, the court asked the
8 parties whether the license or the bond had any commercial value.
9 Could they be sold for a price? In response, the court was
10 informed by the trustee's counsel and the debtor's attorney that
11 the license could be transferred but it had no market value. See
12 Cal. Bus. & Prof. Code § 24070 (permitting the transfer of a wine
13 grower's license with the approval of Department of Alcoholic
14 Beverage Control). There is nothing in the record to suggest the
15 license has some monetary value. As to the bond, it is a cash
16 bond of \$500. This is nominal and of inconsequential value to
17 the estate.

18 The movants argue that the abandonment motion is in "bad
19 faith" and that the motion should have been filed before the sale
20 was approved by the court. To the contrary, it made imminent
21 sense to wait until the buyer of the inventory was known. If the
22 buyer had been a third person, the trustee might have included
23 the license and the bond as part of the transaction to facilitate
24 the sale. Because the successful bidder was the debtor, the
25 license and bond can now be abandoned to the debtor. Had the
26 trustee abandoned them before the debtor had been approved as the
27 buyer, the trustee might have been accused of favoring the debtor
28 in connection with the bidding.

1 However, if the estate must be licensed in order to sell the
2 wine inventory, should the estate retain the license? Should the
3 debtor apply for a new license rather than the estate? The
4 trustee acknowledges that, if the license and bond are abandoned
5 to the debtor, he will need a new license (or some other
6 authorization) from the state authorities before he can sell the
7 wine inventory to the debtor. Nonetheless, there is no point in
8 retaining the existing license in lieu of a new license or other
9 authorization because the trustee may no longer act under the
10 existing license.

11 This is because, when a licensee files a bankruptcy
12 petition, Cal. Bus. & Prof. Code § 23102 gives the bankruptcy
13 trustee only a limited period of time to exercise the privileges
14 of the license.

15 (a) On the ... insolvency ... of a natural person who
16 is a licensee, the privileges of the license may be
17 exercised by a competent surviving co-licensee for
18 thirty (30) days or until a ... trustee ... for the
benefit of creditors of the estate of the ... insolvent
licensee has been appointed, whichever first occurs.

19 (b) At the end of the period permitted by subsection
20 (a) of this section the privileges of the license may
21 be exercised for sixty (60) days without transfer and
22 thereafter upon transfer by the ... trustee ... of the
23 estate of the ... insolvent licensee, acting jointly
with any competent surviving co-licensee if such joint
action is required by law. The sixty (60) day period
provided for in this subsection may be extended by the
department for good cause.

24 In other words, upon the appointment of a bankruptcy
25 trustee, the bankruptcy estate has 60 days to exercise the
26 privileges of the license, without the need for a transfer of the
27 license. After this period, the estate cannot exercise any
28 privileges of the license.

1 Here, the trustee was appointed on November 29, 2005. The
2 60-day period has expired. Hence, the existing license is of no
3 use to the estate. It can be used, however, upon its transfer to
4 a transferee, provided the transfer is approved by the state
5 authorities. So, given the proposed transfer of the wine
6 inventory to the debtor, the abandonment of the license makes
7 good sense. The abandonment will be approved because the license
8 and the bond have inconsequential value and benefit to the
9 estate. Indeed, their only value to the estate is to facilitate
10 the proposed sale.

11 However, there is a need to amend the sale order. Given the
12 need for the debtor and the estate to comply with state law by
13 obtaining the necessary licenses and authorizations from the
14 authorities, it is clear that the sale will not occur in the very
15 near future. But, the wine inventory and other assets that are
16 the subject of the sale motion are located on real property that
17 is in foreclosure. Therefore, the court will set a deadline to
18 close a sale to the debtor. That sale must occur on or before
19 May 23, 2007. If it does not close by May 23, the movants shall
20 have a further 30 days to close a sale on their backup bid.