United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CROP PRODUCTION SERVICES, INC.	§	
	§	
v.	§	CASE NO. 4:14-CV-559
	§	Judge Mazzant
JOHN KEELEY, individually	§	
JOHN AND DAWN KEELEY,	§	
individually, G&K FARMS, a general	§	
partnership	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendants John Keeley and Dawn Keeley's Renewed Motion to Vacate Default Judgment Against G&K Farms Under Federal Rules of Civil Procedure 55 and 60 And/Or to Amend or Alter the Judgment Against John Keeley and Dawn Keeley Under Federal Rule of Civil Procedure 59 (Dkt. #102). After reviewing the relevant pleadings, the Court finds the Keeleys' motion is denied.

BACKGROUND

From January 1, 2008, until September of 2009, Defendants Thomas Grabanski, John Keeley, and Dawn Keeley (the "Keeleys") were general partners of G&K Farms, a North Dakota General Partnership (Dkt. #43, Ex. 3). Plaintiff Crop Production Services, Inc. ("CPS") alleges that during 2009 it delivered several shipments of product to G&K Farms and was not paid for the goods (Dkt. #43, Ex. 1 at pp. 3-4). CPS argues that G&K Farms' debt for goods received in 2009 amounts to $642,669.55 (Dkt. #43, Ex. 1 at p. 4).

On September 15 and 16 of 2009, the Keeleys assigned their interests in G&K Farms to Thomas Grabanski (Dkt. #43, Ex. 3 at p. 2). On July 29, 2013, Thomas Grabanski filed for bankruptcy (the "Bankruptcy Case") in the United States Bankruptcy Court for the Eastern District of Texas (the "Bankruptcy Court") (Dkt. #43, Ex. 5 at p.2). On July 31, 2013, CPS

initiated an action against Thomas Grabanski and John Keeley for claims arising from the alleged debt as a state court action, captioned *Crop Production Services, Inc. v. Thomas Grabanski and John Keeley*, in the 76th/276th Judicial District Court of Camp County, Texas (the "Debt Case"). On September 10, 2013, John Keeley filed a Notice of Removal with the Bankruptcy Court. The case was automatically referred to the Court, and the Court referred the Debt Case to the Bankruptcy Court based on its relation to the Bankruptcy Case pursuant to 28 U.S.C. §§ 1334 and 1452(a). John Keeley filed a cross-claim against Tom Grabanski in the Debt Case. On Thomas Grabanski's motion, the Bankruptcy Court dismissed the claims and cross-claims asserted against him. On August 13, 2014, following a motion from the Keeleys, the Court withdrew the reference of the Debt Case from the Bankruptcy Court so that the Debt Case might proceed before the Court (Dkts. #2, 7).

While the Debt Case was pending as an adversary proceeding in the Bankruptcy Court, CPS filed a Second Amended Complaint on April 22, 2014, adding G&K Farms and Dawn Keeley as parties and making claims under six causes of action: (1) sworn account; (2) common law action on account; (3) breach of contract; (4) quantum meruit; (5) suit on guaranty; and (6) fraud, fraudulent inducement, and fraudulent concealment (Dkt. #43, Ex. 1).

On November 6, 2014, CPS moved for default judgment against G&K Farms (Dkt. #26). No party objected, and the clerk entered default of G&K Farms on October 27, 2014 (Dkt. #25). The Court granted default judgment to CPS against G&K Farms on January 8, 2015 (Dkt. #30).

On February 27, 2015, the Supreme Court of Texas issued its ruling in *American Star Energy and Minerals Corporation v. Stowers*, holding that: "[T]he limitations period against a partner generally does not commence until after final judgment against the partnership is entered." 457 S.W. 3d 427, 428 (Tex. 2015).

On April 30, 2015, CPS brought a motion for partial summary judgment based in part on the default judgment (Dkt. #38). On May 1, 2015, John and Dawn Kelley (the "Keeleys") brought a motion to vacate the default judgment against G&K Farms (the "First Motion") (Dkt. #41). On May 22, 2015, CPS filed its response to the First Motion (Dkt. #55), and on June 1, 2015, the Keeleys filed their reply in support of the First Motion (Dkt. #60). On July 24, 2015, the Court entered an order denying the First Motion (Dkt. #78).

On August 14, 2015, the Court granted, in part, CPS's Motion for Partial Summary Judgment and found that the Keeleys were jointly and severally liable for the entire Default Judgment against G&K Farms under general partnership law (Dkt. #86). On September 22, 2015, the Court held a bench trial on CPS's remaining claims against Defendant John Keeley for suit on a guaranty, fraud, fraudulent inducement and fraudulent concealment. On October 14, 2015, the Court entered written findings of fact and conclusions of law and found that CPS was not entitled to relief under its claims for suit on guaranty, fraud, fraudulent inducement, and fraudulent concealment against Defendant John Keeley (Dkt. #98). On October 27, 2015, the Court entered Final Judgment in favor of CPS against the Keeleys.

On November 3, 2015, the Keeleys filed their Renewed Motion to Vacate Default Judgment Against G&K Farms Under Federal Rules of Civil Procedure 55 and 60 And/Or to Amend or Alter the Judgment Against John Keeley and Dawn Keeley Under Federal Rule of Civil Procedure 59 (the "Renewed Motion") (Dkt. #102). On November 23, 2015 CPS filed its response to the Renewed Motion. On November 30, 2015 the Keeleys filed their reply in support of the Renewed Motion (Dkt. #111). On December 7, 2015, CPS filed a sur-reply (Dkt. #114).

RULE 59 ANALYSIS

Although Federal Rule of Civil Procedure 54(b) applies to motions for reconsideration of an interlocutory order, courts have utilized the standards of Rule 59 when analyzing such motions. *Dos Santos v. Bell Helicopter Textron, Inc. Dist.*, 651 F. Supp. 2d 550, 553 (N.D. Tex. 2009) ("considerations similar to those under Rules 59 and 60 inform the Court's analysis"); *T-M Vacuum Prod., Inc. v. TAISC, Inc.*, No. H-07-4108, 2008 WL 2785636, at *2 (S.D. Tex. July 16, 2008), *aff'd sub nom. T-M Vacuum Prod. v. Taisc, Inc.*, 336 Fed. Appx. 441 (5th Cir. 2009) ("Rule 59(e)'s legal standards are applied to motions for reconsideration of interlocutory orders."). "Although the general rule is that motions for reconsideration will not be considered when filed more than [twenty-eight] days after the judgment at issue is entered, this deadline does not apply to the reconsideration of interlocutory orders." *T-M Vacuum Prod., Inc.*, 2008 WL 2785636, at *2 (citing *Standard Quimica De Venez. v. Cent. Hispano Int'l, Inc.*, 189 F.R.D. 202, 204 (D.P.R. 1999)).[1] Therefore, "[a] court may consider a motion to reconsider an interlocutory order so long as the motion is not filed unreasonably late." *Id.* (citing *Standard Quimica De Venez.*, 189 F.R.D. at 205; *Martinez v. Bohls Equip. Co.*, No. SA-04-CA-0120-XR, 2005 WL 1712214, at *1 (W.D. Tex. July 18, 2005)).[2]

A motion seeking reconsideration, "calls into question the correctness of a judgment." *Templet v. HydroChem Inc.*, 367 F.3d 473, 478 (5th Cir. 2004) (quoting *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002)). A Rule 59(e) motion is "not the proper vehicle for

[1] Federal Rule of Civil Procedure 59(e) was amended in 2009, in which it provided for the twenty-eight day limitation. The case referenced by the Court, uses the original ten day limit, as it was decided before the amendment took effect.

[2] CPS argues that the Keeley's motion is untimely because it was made more than 28 days after the Court's publication of the Default Judgment and Memorandum Opinion and Order which granted summary judgment on the claims at issue in the Keeley's Renewed Motion (Dkt. #107 at p. 24). However, this was an interlocutory order, and the Renewed Motion was made within 28 days of the Final Judgment. *See* Dkt. #111 at p. 13; *see also Calpetco 1981 v. Marshall Expl., Inc.*, 989 F.2d 1408, 1414 (5th Cir. 1993) (finding that "[b]ecause a partial summary judgment is interlocutory in nature, the district court retains the discretion to revise it"). Therefore, the Court finds that the Keeley's Renewed Motion is timely.

rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment." *Templet*, 367 F.3d at 479 (citing *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990)). "Rule 59(e) 'serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.'" *Id.* (quoting *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)). "Relief under 59(e) is also appropriate when there has been an intervening change in the controlling law." *Milazzo v. Young*, No. 6:11-CV-350, 2012 WL 1867099, at *1 (E.D. Tex. May 21, 2012) (citing *Schiller v. Physicians Res. Grp.*, 342 F.3d 563, 567 (5th Cir. 2003)). "Altering, amending, or reconsidering a judgment is an extraordinary remedy that courts should use sparingly." *Id.* (citing *Templet*, 367 F.3d at 479).

The Keeleys argue that default judgment should not have been entered against G&K Farms under the *Frow* doctrine (Dkt. #102 at p. 8). *See Frow v. De La Vega*, 82 U.S. 552 (1872). The Keeleys maintain that because they were "actively defending the claims involving joint and several liability" the default judgment should not have been entered against G&K Farms (Dkt. #102 at p. 8). The Keeleys argue that the Court should amend or alter the judgment against the Keeleys by eliminating any amounts for the invoices outside of the statute of limitations period (Dkt. #102 at p. 26).[3]

In *Frow*, the plaintiff filed a claim against several defendants alleging that they acted in a joint civil conspiracy to commit fraud. *Frow*, 82 U.S. at 553. Frow was the only defendant who did not submit a timely answer, and the court entered the equivalent of an order for default judgment. *Id.* Frow sought to vacate the order but the court entered a "final decree" against

[3] CPS argues that since the Keeleys did not mention *Frow* in their first motion to vacate, the Court should refuse to consider arguments and evidence relating to *Frow* (Dkt. #107 at p. 9). However, the Court finds that while the parties argue *Frow*'s relevance under both their Rule 59 analysis as well as their Rule 55 and 60 analysis, it is appropriate for the Court to consider its applicability to discern if there has been an error of law.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.