

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

ENTERED

APR 05 '00

U.S. Bankruptcy Court  
Greensboro, NC

CPH

IN RE:	)	
	)	
Roasters Corporation,	)	Case No. 98-80704C-11D
Roasters Franchise	)	Case No. 98-81049C-11D
Corporation,	)	(Jointly Administered)
	)	
Debtors.	)	
	)	

ORDER

These jointly administered cases came before the court on December 2, 1999, for hearing upon a motion by Robert Pine for reconsideration of order granting motion for summary judgment and disallowing Claim No. 412 of Robert B. Pine. Lawrence V. Ashe appeared on behalf of Robert Pine ("Claimant") and J. William Blue, Jr., appeared on behalf of the Debtors and Mark Gillis, Trustee. Having considered the motion, the Debtors' response and the arguments of counsel, the court has concluded that the motion should be denied.

The motion was filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and seeks reconsideration of an order entered on November 2, 1999, granting Debtors' motion for summary judgment as to Claim No. 412 and disallowing such claim. The motion incorrectly assumes that the court was unaware of an order of arbitrators dated July 20, 1998. In fact, the order of

arbitrators was attached to Debtors' motion for summary judgment and was one of the documents before the court when the order granting summary judgment was entered by this court on November 2, 1999. When the order granting summary judgment was entered, the court did not regard the order of arbitrators as any indication that the earlier award by the arbitrators granting summary judgment in favor of Roasters and dismissing Roasters from the arbitration proceeding was not a final award for purposes of seeking confirmation or vacatur. As pointed out in the memorandum opinion which was filed in this case on November 2, 1999, the defendants filed motions for summary judgment in the arbitration proceeding. On September 29, 1997, a hearing on the motions for summary judgment was held before the three arbitrators. The result of the hearing was that the arbitrators granted the motions for summary judgment as to Roasters and two other defendants, and denied the motion as to the fourth defendant. This ruling was then embodied in the written award which is dated October 16, 1997, and which states that "[t]he Motions for Summary Judgment of Respondents, Clucker's Wood Roasted Chicken, Inc., David L. Scharps and Roasters Corporation are granted as to all counts in which each of these Respondents are named." On November 11, 1997, arbitrator Greenfield-Mandler sent a letter to AAA, with copies to the other

two arbitrators, advising that the three parties whose motions for summary judgment had been granted "had been dismissed from this action" and that the final hearing would involve only the Claimant and Cluckers International Franchise Corporation. On October 22, 1997, Claimant filed in the arbitration proceeding a motion for reconsideration of the ruling which granted the motions for summary judgment. On November 20, 1997, the arbitrators denied Claimant's motion for reconsideration. When the order of arbitrators subsequently was signed in July of 1998, there were only two parties left in the arbitration, namely, the Claimant and Cluckers International Franchise Corp. Apparently having concluded that Cluckers International Franchise Corp. was not a solvent defendant, the Claimant requested that the arbitration proceeding be deemed abandoned. The July 20, 1998 order provided that no award was being made as to the two parties then remaining in the case, but did not affect the finality of the earlier award in which the motion for summary judgment filed on behalf of Roasters was granted and Roasters was dismissed from the proceeding. In granting the Debtors' motion for summary judgment, this court considered whether the award by the arbitrators granting Roasters' motion for summary judgment was a final order. For the reasons stated in the memorandum opinion, the court concluded that it was a final award

for purposes of seeking confirmation or vacatur. Apparently, in 1997 when the award was entered, the Claimant considered it a final award, as well, since Claimant filed a motion in the arbitration proceeding seeking reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure,<sup>1</sup> which permits a party to seek relief "from a final judgment, order or proceeding . . . ." (Emphasis supplied). Rule 59(e) permits a court to amend a judgment (1) to accommodate an intervening change in controlling law, (2) to take account of new evidence not available at trial, or (3) to correct a legal error of law or prevent manifest injustice. See EEOC v. Lockheed Martin Corp., 116 F.3d 111, 122 (4<sup>th</sup> Cir. 1997). Having concluded that the Claimant has shown none of these or any other grounds for reconsideration of the order granting summary judgment, the motion for reconsideration will be denied.

IT IS SO ORDERED.

This 4<sup>th</sup> day of April, 2000.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge

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<sup>1</sup>See Exhibit A to Debtors' Response to Motion by Claimant Robert Pine for Reconsideration which was filed herein on November 30, 1999.