SO ORDERED.

SIGNED this 24th day of February, 2017.

Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:	)	
VILCOM REAL ESTATE DEVELOPMENT, LLC,	)	Case No. 14-81182
Debtor.	)	

ORDER DENYING MOTION TO RECONSIDER

This case came before the Court on January 17, 2017, upon UDX, LLC's Motion to Reconsider Pursuant to Federal Rules of Bankruptcy Procedure 3008 and 9023 [Doc. # 187] (the the "Motion" or the "Motion to Reconsider"). At the hearing, Seth Moore appeared on behalf of UDX, LLC ("UDX"), John Northen appeared as special counsel for the Trustee, and Robert Price appeared on behalf of the United States Bankruptcy Administrator. After reviewing the Motion, the responses thereto [Doc. #'s 197 and 198], the arguments of the parties, and the record in this case, the Court finds that the Motion should be denied for the reasons which follow.

FACTS

On February 20, 2015, UDX filed a claim against the Debtor in the amount of $4,647,499.77 (the "Claim"). The claim was evidenced by a promissory note dated September

12, 2007, as well as several loan extension agreements (collectively, the "Loan Documents"), and secured by a senior lien on 740 Gimghoul Road, Chapel Hill, North Carolina. The last loan extension agreement between the Debtor and the original lender under the Loan Documents was made effective as of December 17, 2013 (the "Final Loan Extension Agreement", Trial Ex. 4). Under the Final Loan Extension Agreement, the Debtor agreed to pay "all expenses incurred by Lender . . . in connection with the [l]oan, including without limitation, . . . costs incurred by Lender in connection with . . . the enforcement of Lender's rights under the Loan Documents." *Id.*

The Trustee filed an objection to the UDX Claim on February 29, 2016 [Doc. # 138] (the "Claim Objection"), disputing UDX's rights, as assignee of the original lender, to collect: (1) pre- and post-petition interest on the debt at the rate of 14% per annum, (2) pre-petition attorneys' fees and costs, and (3) post-petition attorneys' fees and costs. The Trustee argued, with respect to UDX's request for post-petition attorneys' fees and costs, that the Court could not allow those items under the terms of the promissory note or North Carolina law. Trustee's Memorandum of Law Regarding Second Motion to Distribute Proceeds of Sale and Objection to Claim [Doc. # 173] 9-10. The Trustee asserted, in the alternative, that any post-petition attorneys' fees and costs allowed should not exceed the reasonableness limitation of 11 U.S.C. § 506(b). *Id.*

On November 22, 2016, the Court entered an order [Doc. # 186] (the "Claim Order") overruling, in part, and sustaining, in part, the Trustee's objection to the UDX Claim. With respect to UDX's request for post-petition attorneys' fees and costs, the Court allowed attorneys' fees for services performed by the law firm of Anderson Jones, PLLC in the amount of $1,041.08 and reimbursement of expenses in the amount of $145.08. The Court declined to

allow any attorneys' fees or costs for services performed by the law firm of Anderson Tobin, PLLC. The Court explained that Anderson Jones, PLLC submitted invoices for services billed to UDX. In contrast,

> [n]one of the bills submitted by the law firm of Anderson Tobin, PLLC and filed with the Court were addressed to the Lender under the Loan Documents, UDX. Every bill was directed to Eli Global, LLC, c/o Greg Lindberg. At no time has Eli Global, LLC been the Lender under the Loan Documents. At the hearing, Mr. Hall [,the president of UDX, testified] that he had seen each bill but could not testify as to who had paid the bills. He could not recall what he had done with the bills after he reviewed them. To the best of his knowledge, UDX has never maintained a bank account.

Claim Order 14. The Court concluded that,

> in as much as the Loan Documents require that the fees be incurred by the Lender, and there is no evidence before the Court that any [Anderson Tobin, PLLC] bill was submitted by the attorneys to the Lender or evidence that the Lender paid the bills, [UDX] has failed to carry its burden of proof with respect to the Anderson Tobin, PLLC bills.

Id. at 14-15.

After the Court issued the Claim Order, UDX filed the Motion to Reconsider presently before the Court. In the Motion to Reconsider, UDX requests that the Court reconsider, for cause, the portion of the Claim Order which denies the allowance of the Anderson Tobin, PLLC fees and costs.

ANALYSIS

Under 11 U.S.C. § 502(j), a claim that has been allowed or disallowed may be reconsidered "for cause." *Id.* Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define cause. *See, e.g.*, Fed. R. Bankr. P. 3008 ("A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The Court after a hearing on notice shall enter an appropriate order."). Courts often find that if a motion to reconsider a claim is filed within the 14-day period to appeal the original order allowing or

disallowing the claim, it should be evaluated under the standards of Rule 9023 of the Federal Rules of Bankruptcy Procedure ("Rule 9023"). *See, e.g., United Student Funds, Inc. v. Wylie* (*In re Wylie)*, 349 B.R. 204, 209 (B.A.P. 9th Cir. 2006).[1]

The Motion to Reconsider in this case was filed within the 14-day period to appeal the Claim Order and, in fact, requests relief under Rule 9023. Rule 9023 incorporates Rule 59(e) of the Federal Rules of Civil Procedure ("Rule 59(e)"), which allows motions to alter or amend a judgment or order. This Court grants Rule 59(e) motions "(1) to accommodate intervening change in the law, (2) to account for new evidence not available at trial, (3) to correct [a] clear error of law, or (4) to prevent manifest injustice." *In re De Coro*, No. 09-10369C-15G, 2010 WL 5140440, at *3 (Bankr. M.D.N.C. Dec. 13, 2010).

UDX argues that the Court should grant its Motion to Reconsider to: (1) account for new evidence not available at trial and (2) prevent manifest injustice. The Court disagrees. The burden was on UDX to establish that it was entitled to the recovery of post-petition attorneys' fees and costs. The Loan Documents provided that the Debtor would be responsible for expenses incurred by the Lender. UDX became the Lender under the Loan Documents. UDX failed to present any evidence to the Court that it incurred the Anderson Tobin, PLLC fees and costs.[2]

To reconsider the Claim Order with respect to the Anderson Tobin, PLLC fees and costs would impair the finality of judgments in this Court and allow UDX to re-litigate a matter which has already been fully litigated, rather than prevent manifest injustice. UDX received notice of

[1] These same courts assess motions to reconsider filed after the deadline to appeal under Rule 9024 of the Federal Rules of Bankruptcy Procedure. *See id.*

[2] This statement is true regardless as to how one defines the term "incurred." The Court received no facts in evidence that UDX was liable for payment of the Anderson Tobin, PLLC bills, which were, in fact, addressed to Eli Global, LLC. Moreover, the only evidence the Court received with respect to payment of the Anderson Tobin, PLLC bills was that Mr. Hall, the president of UDX, "approved" the bills to be charged to his company. Mr. Hall also stated that he had no idea if UDX in fact paid the bills.

the hearing on the Claim Objection and was represented at that hearing by Seth Moore. The Court can envision no scenario under which UDX did not have all of the evidence that it needed with respect to the Anderson Tobin, PLLC fees before the hearing on the Claim Objection. Indeed, in its Motion to Reconsider, UDX complains that it did not have explicit notice that it would need to present this evidence at the hearing on the Claim Objection,[3] rather than that it did not have the evidence. For these reasons, the Court cannot find that cause exists to reconsider the Claim Order under Rule 9023 of the Federal Rules of Bankruptcy Procedure.[4]

CONCLUSION

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Motion to Reconsider is DENIED.

[END OF DOCUMENT]

[3] UDX's failure to present its prima facie case with respect to the Anderson Tobin, PLLC fees and costs is no one's fault but its own. The final pre-trial disclosures submitted by the parties in advance of the hearing on the Claim Objection [Doc. #157] noted: "The contested issues [include] . . . [w]hether UDX is entitled to post-petition attorneys' fees or costs, and if so in what amount." *Id.* ¶ 3.

[4] Even if the Court were to assess the Motion to Reconsider under other standards used to assess "cause" for reconsideration of claims under 11 U.S.C. 502(j), such as Rule 9024 of the Federal Rules of Bankruptcy Procedure, rather than under the standard cited by the Movant, the result would be the same. Rule 9024 incorporates Rule 60 of the Federal Rules of Civil Procedure. None of the grounds enumerated for relief from judgment under Rule 60(b) applies in the case at present.

SERVICE LIST

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